

Giveback Pty Ltd

GiveBack™

End user licence agreement (EULA)

This Agreement, between you as licensee and GIVEBACK PTY LTD (ACN 659 029 795) ("**GiveBack**") as licensor, governs your use of the GiveBack software which this Agreement accompanied and the accompanying user documentation ("**Software**").

READ THE TERMS AND CONDITIONS OF THIS END USER LICENCE AGREEMENT ("**EULA**") CAREFULLY BEFORE LOADING OR USING THE SOFTWARE. THE SOFTWARE, INCLUDING ALL INTEGRATED FEATURES, MODULES AND APPLICATIONS, IS COPYRIGHTED, AND IS LICENCED (NOT SOLD). BY CLICKING "I AGREE" WHEN INSTALLING THIS PROGRAM, YOU ARE ACCEPTING AND AGREEING TO THE TERMS OF THIS LICENCE AGREEMENT. IF YOU ARE NOT WILLING TO BE BOUND BY THE TERMS OF THE LICENCE AGREEMENT, YOU WILL NOT BE ABLE TO INSTALL, DOWNLOAD OR USE THE SOFTWARE AND YOU MUST CANCEL THE SOFTWARE INSTALLATION FROM YOUR COMPUTER. THIS LICENCE AGREEMENT REPRESENTS THE ENTIRE AGREEMENT CONCERNING THE SOFTWARE BETWEEN YOU AND GIVEBACK AND IT SUPERSEDES ANY PRIOR PROPOSAL, REPRESENTATION, OR UNDERSTANDING BETWEEN THE PARTIES. YOU AGREE THAT THIS LICENCE AGREEMENT SHALL ALSO APPLY TO ANY UPDATES OR UPGRADES OF THE SOFTWARE YOU ACQUIRE. YOU MAY NOT ASSIGN, SUBLICENCE, RENT, LEASE, REPRODUCE, DISTRIBUTE, CONVEY OR OTHERWISE TRANSFER TO ANY THIRD PARTY OR DISPOSE OF THE SOFTWARE, IN WHOLE OR IN PART, OTHER THAN AS PERMITTED UNDER THIS AGREEMENT. YOU MAY NOT TRANSLATE, CONVERT TO ANOTHER PROGRAMMING LANGUAGE, DECOMPILE, REVERSE ENGINEER OR DISASSEMBLE THE SOFTWARE.

1 DEFINITIONS

- 1.1 "**Agreement**" means this agreement and any schedules, annexures, and amendments thereto.
- 1.2 "**GiveBack**" means Giveback Pty Ltd ACN 659 029 795.
- 1.3 "**Commencement Date**" means the date on which you first download and/or install the Software.
- 1.4 "**Consequential Loss**" means:
 - 1.4.1 incidental, special, remote or unforeseeable loss or damage;
 - 1.4.2 loss of revenue, profit, income, bargain, opportunity, use, production, sales, business, contract, goodwill, or anticipated savings, loss, damage or corruption of data, loss caused by business interruption, or the cost of obtaining new financing or maintaining existing financing;
 - 1.4.3 costs incurred to prevent or reduce loss or damage which otherwise may be incurred or suffered by a third party; or
 - 1.4.4 loss or damage set out above in the above paragraphs that is incurred or suffered by or to a third party.

- 1.5 "EULA" means this End User Licence Agreement.
- 1.6 "**Intellectual Property Rights**" means copyright, trademark, design, patent, semi-conductor or circuit lay-out rights, software, trade, business or company names, trade secrets, know-how, confidential information and all intellectual property defined by Article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967, and any right to register those rights whether created before or after the Commencement Date, and whether existing in Australia or otherwise and in all cases for the duration of those rights.
- 1.7 "**Software**" means the suite of computer programs generally described as the Giveback program suite provided by GiveBack to you in object code of which GiveBack is the owner of the copyright therein (other than copyright created or reproduced by other persons for which GiveBack has a licence to sublicense as a component of the Giveback suite of programs). The Giveback suite of programs includes:
- 1.7.1 updates, patches and new point versions (other than major versions hereafter published from time to time by GiveBack) during the currency of the present version of the suite; and
- 1.7.2 all copyright comprising literary and artistic works in the technical documents, instruction manuals, user guides and other written material provided to you for the installation and operation of the Giveback suite.

2 LICENCE BY GIVEBACK

- 2.1 GiveBack hereby grants to you a non-exclusive, non-transferable licence to use and execute the Software solely for the purpose of business-related activity capture and reporting.
- 2.2 GiveBack permits consultants, sub-contractors and your employees who have contracted with you to provide services to you, to use the Software but only for your benefit in accordance with this Agreement.
- 2.3 Title to the Software shall at all times reside in GiveBack.
- 2.4 No right is granted hereunder to reproduce, in whole or in part, the Software (other than documentation).

3 LICENCE BY YOU

- 3.1 You hereby grant to GiveBack the non-exclusive copyright licence in any data generated by you for processing by the Software.

4 COPYRIGHT and TRADEMARKS

- 4.1 You acknowledge that all Intellectual Property Rights in the Software are owned and remain the property of GiveBack.
- 4.2 You may not use any trademarks, service marks, trade names or logos owned by GiveBack including, without limitation, in connection with or in any advertising, brochures or promotional materials, unless you have obtained prior written consent from GiveBack.

5 TERM AND TERMINATION

- 5.1 This Agreement takes effect on the Commencement Date and shall continue until the earliest of the following:
 - 5.1.1 you breach any term or condition of this Agreement;
 - 5.1.2 GiveBack terminates this Agreement in writing;
 - 5.1.3 Access and use of the Software is discontinued due to non-payment of any applicable licencing fees
- 5.2 Upon termination of this Agreement, you must immediately:
 - 5.2.1 cease using the Software and make no further attempts to access the Software; and
 - 5.2.2 return or delete all copies of the Software from your systems (as applicable) and if requested by us, provide written certification that this has been done;

6 WARRANTY, LIMITATIONS AND INDEMNITY

- 6.1 GiveBack warrants that it has the right and authority to enter into and to grant the licence under this Agreement.
- 6.2 You acknowledge that GiveBack does not warrant that the Software is error free, correct, up to date or of suitable quality and accuracy for the purposes required by you.
- 6.3 It is your responsibility to choose, maintain and match the hardware and software components of your computer system. GiveBack cannot guarantee uninterrupted service, the absence or correction of errors, or that the functions or performance of the Software will meet your requirements.
- 6.4 You use the software at your own risk. GiveBack accepts no liability however it arises (including without limitation for processing unauthorised or erroneous calculations) for any loss, damage or injury in connection with the supply or use of the Software.
- 6.5 You shall defend, indemnify and hold GiveBack and its respective employees, officers and agents harmless from any and all claims, damages, losses, liabilities, costs and expenses (including all legal fees) arising out of or in connection with your breach of this Agreement.
- 6.6 Nothing in this Agreement is intended to modify or exclude GiveBack' liability for a breach of non-excludable conditions or warranties implied into this Agreement by reason of any statutory enactment, including any state or territory law. However, if GiveBack breaches a condition or warranty implied under any law which cannot lawfully be modified or excluded by this Agreement then, to the maximum extent permitted by law, GiveBack' liability is limited, at GiveBack' option, to:
 - 6.6.1 resupply of the Software; or
 - 6.6.2 payment of the cost of having the Software supplied again; or
 - 6.6.3 any amount paid by you in respect of the Software.
- 6.7 You agree that, in no circumstances, will GiveBack be liable, whether in contract or tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement, your use of, or reliance on, the

Software, including losses or damages arising out of, or attributable to, an act or omission by us, for:

- 6.7.1 loss of profits;
- 6.7.2 loss of sales or business;
- 6.7.3 loss of agreements or contracts;
- 6.7.4 loss of anticipated savings;
- 6.7.5 loss of use or corruption of software, data or information;
- 6.7.6 loss of or damage to goodwill; or
- 6.7.7 any indirect or Consequential Loss.

7 SECURITY

- 7.1 You must maintain adequate security measures for the Software and any technical and user documentation and agree not to make copies in either digital or hard copy form other than as expressly permitted under this Agreement.
- 7.2 You must promptly notify GiveBack if you become aware of any disclosure or distribution of the Software in violation of the provisions of this Agreement by any person, and must give GiveBack all necessary assistance in connection with any proceedings instituted relating to that disclosure or distribution.
- 7.3 You must permit GiveBack to verify the use of the Software and inspect all applicable records or media at all reasonable times in the company of you or a nominated responsible officer.

8 PERSONAL INFORMATION

- 8.1 You agree that GiveBack may collect, retain and use data and information generated from the Software or by you for processing by the Software for purposes of research, promotion and development of the Software.
- 8.2 To the extent that GiveBack collects, retains and uses that data and information, any personal details relating to that data and information must remain confidential and will not be disclosed to any third party.

9 CONFIDENTIALITY

- 9.1 You acknowledge that the Software and documentation are proprietary in nature and contain valuable confidential information developed or acquired at great expense, including data processing algorithms, innovations, and concepts.
- 9.2 You must keep confidential all such information relating to the coding, operation and workings of the Software and may not disclose this information to any person except:
 - 9.2.1 to employees, legal advisers, auditors and other consultants of the party or its related bodies corporate requiring the information for the purposes of this Agreement; or
 - 9.2.2 with the consent of GiveBack; or
 - 9.2.3 if the information is, at the date of this Agreement, lawfully in the possession of the recipient and not as a result of a breach of confidence; or

- 9.2.4 if required by law.
- 9.3 If you disclose information under clause 9.2.1 or 9.2.2 you must use all reasonable endeavours to ensure that persons who receive confidential information from it do not disclose it except in the circumstances permitted by clause 9.2.
- 9.4 If you have received confidential information from GiveBack under this Agreement you must, on the request of GiveBack, immediately deliver to GiveBack all documents or other materials (including software) containing or referring to that information which are in your possession, power or control or in the possession, power or control of persons who have received such information from you under clause 9.2.1 or 9.2.2

10 GENERAL TERMS

- 10.1 This Agreement is governed and construed in accordance with the law in force in the State of South Australia and the parties agree to submit to the non-exclusive jurisdiction of the courts of that state. You agree that any litigation, action or proceeding related to this Agreement must be instituted in any state or federal court in the State of South Australia, and you waive any objection that you may have with respect to jurisdiction, venue or forum.
- 10.2 In the event that a provision of this Agreement is declared or found to be illegal by any court or tribunal of competent jurisdiction, such provision shall be void with respect to the jurisdiction of that court or tribunal and all the remaining provisions of this Agreement shall remain in full force and effect.
- 10.3 The failure of any party to exercise or its delay in exercising any right, power or privilege available to it does not operate as a waiver of that right, power or privilege or preclude any other or further exercise that right, power or privilege or the exercise by that party of any other right, power or privilege in this Agreement.
- 10.4 No rights or obligations of you may be dealt with in any way by you (whether by assignment, sub-licence or otherwise) without GiveBack' prior written consent. GiveBack may freely deal with its rights and obligations under this Agreement, other than the licence referred to in Clause 3
- 10.5 Clauses 4, 6, 8, 9 and any indemnities given by you under this Agreement survive termination of this Agreement.

ACKNOWLEDGEMENT

BY CLICKING "I AGREE" AT THE BOTTOM OF THIS PAGE, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTOOD IT, AND AGREE TO BE BOUND BY ITS TERMS. YOU FURTHER AGREE THAT THIS AGREEMENT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF AGREEMENT BETWEEN YOU AND GIVEBACK CONCERNING THE SUBJECT MATTER HEREOF WHICH SUPERSEDES ANY PROPOSALS OR PRIOR AGREEMENT, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATIONS BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER

OF THIS AGREEMENT. NO AMENDMENT TO THIS AGREEMENT SHALL BE EFFECTIVE UNLESS IT IS IN WRITING AND SIGNED BY AN OFFICER OF GIVEBACK.