

## END USER LICENCE AGREEMENT TERMS OF SERVICE

This End User Licence Agreement is entered into between **Real Time Site Assessment's** ("The Software Provider") and you.

### **BACKGROUND**

**Real Time Site Assessment's** own the Software and allow you to use this Software for your own use and benefit only. This document outlines our terms of service which govern the use of our Software.

### **OPERATIVE PART**

These terms of service governs your use of **Real Time Site Assessment's** Software and related online or electronic documentation.

**You agree to be bound by the terms of this End User License by activating, logging in or otherwise using the Software. If you do not agree, do not activate, login or use our Software.**

**By clicking "REGISTER", you agree to be bound by these terms of service as an End User. Signing is not required to make these terms in this Terms of Service binding.**

**If you do not accept our terms of service, you cannot use our Software.**

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1 DEFINITIONS**

In this agreement, unless the context otherwise requires:

**Australian Consumer Law** means the law as set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth).

**Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in Victoria.

**Confidential Information** includes information which:

- (i) is disclosed to the Receiving Party in connection with this Agreement at any time; and/or
- (ii) is prepared or produced under or in connection with this Agreement at any time; and/or
- (iii) relates to the Disclosing Party's business, assets or affairs; and/or
- (iv) relates to the subject matter of, the terms of and/or any transactions contemplated by this Agreement, and/or
- (v) extends further to the nature and concept of discussions, negotiations, communication, the fact of something occurring or being discussed;

whether or not such information or documentation is reduced to a tangible form or marked in writing as "confidential", and howsoever the Receiving Party receives that information.

**GST** means Goods and Services Tax under the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Licence** means the license granted to you to enable you to use the Software.

**Software** means the software to be licensed by **Real Time Site Assessment's** to you on the terms and conditions set out in this Agreement and includes any instructions in hard copy or electronic form and any update, modification or release of any part of that software after this Agreement is entered into by the Parties.

**Fees** means the fees actually paid to **Real Time Site Assessment's** to access and use **Real Time Site Assessment's** Software including the fees paid to **Real Time Site Assessment's** for training. The fees exclude GST if applicable, additional fees including support and maintenance service, software enhancements and upgrades, consulting services, fees for optional extras or other fees associated with the Software.

**Parties** means the parties entering into this Agreement.

**Updates** means available updates to the Software, such as bug fixes, patches, enhanced functions, plug-ins and new versions.

## 1.2 INTERPRETATION

In this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) headings are for convenience only and do not affect interpretation;
- (c) a reference to a clause, paragraph, schedule or annexure is a reference to a clause, paragraph, schedule or annexure, as the case may be, of this Agreement;
- (d) if any act which must be done under this Agreement is to be done on a day that is not a Business Day then the act must be done on or by the next Business Day;
- (e) a reference to any legislation or law includes subordinate legislation or law and all amendments, consolidations, replacements or re-enactments from time to time;
- (f) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (g) a reference to a natural person includes a body corporate, partnership, joint venture, association, government or statutory body or authority or other legal entity and vice versa;
- (h) includes and similar words mean includes without limitation;
- (i) no clause will be interpreted to the disadvantage of a Party merely because that Party drafted the clause or would otherwise benefit from it;
- (j) a reference to a party to a document includes that party's executors, administrators, successors, permitted assigns and persons substituted by novation from time to time;
- (k) a reference to this Agreement or any other document includes the document, all schedules and all annexures as novated, amended, supplemented, varied or replaced from time to time;
- (l) a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally;
- (m) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (n) a reference to time is to local time in Victoria, Australia; and
- (o) unless otherwise specified or denoted, a reference to \$ or dollars refers to the currency of Australia.

## 2. LICENSE AND ACCEPTANCE

2.1 Our Software is licensed to you and not sold.

2.2 If you are using our Software as an Employee of your Employer, or as a representative of another, then you will be deemed to represent your employer or that other person and any actions by you including your acceptance of these terms of service which will bind your employer or that other person. If you sign up to our software using an email address that belongs to your employer, through vicarious liability you will be binding yourself and your employer.

- 2.3 Our Software allows an End User to be an Administrator. The Administrator can be you or another End User who will have important rights and control over your software. This may include the responsibility for ordering products, monitoring users, modifying user accounts, setting user permissions, managing access to data.
- 2.4 **Real Time Site Assessment's** grants the Licence to you on condition that:
- (a) you cannot sub-license your Licence to any third party, nor can you allow any third party to use your License.
  - (b) your use of the Software is subject to and conditional upon you entering into a Enterprise License Agreement which must remain active at all time during the use of the software;
  - (c) the Software will only be used by you in accordance with the Software's normal operating procedures as notified by **Real Time Site Assessment's** to you from time to time;
  - (d) you have provided complete and accurate information;
  - (e) you are responsible for any activity on your account;
  - (f) unless authorised by this Agreement, you must not copy, modify, reproduce, reverse engineer or otherwise alter in any way the Software without the prior written consent of **Real Time Site Assessment's** ;
  - (g) any warranties, so far as they relate to you, are true at all times during the term of this Agreement; and
  - (h) you will be responsible for the Software and will ensure at all times during the term of this Agreement that the Software is protected from damage, misuse and/or unauthorised use by any person.
- 2.5 The Software is not intended for; and should not be used by anyone under the age of 15.
- 2.6 **Real Time Site Assessment's** reserves the right at any time, at its sole discretion, to change or otherwise modify this End User Licence Agreement or the Enterprise Service Agreement if one has been enacted. In the event this occurs:
- (i) **Real Time Site Assessment's** will provide a notice through the Software log in page which will allow you to review and agree or not agree to the amendments.
  - (ii) You may decline or accept the amendments. If you decline, you may terminate this agreement without penalty within 7 days.
  - (iii) If you continue to use the Software after such modification is posted, then your continued access or use of the Software signifies your acceptance of the updated or modified Agreement.
- 2.7 You acknowledge that **Real Time Site Assessment's** has no obligation to provide you with any support for Updates to the Software, except as set out in the Enterprise Licence if one has been enacted. **Real Time Site Assessment's** may, from time to time, issue updated versions of the Software and the Software may automatically connect to **Real Time Site Assessment's** or third-party servers via the Internet to check for available Updates to the Software, and may either (1) automatically update the version of the Software that you are using on your device or (2) give you the option of downloading it. By installing the Software and not disabling any automated check for Updates, if applicable, you hereby agree to automatically request and receive Updates from **Real Time Site Assessment's** or third-party servers. You consent to such automatic upgrading, and agree that the terms and conditions of this Agreement will apply to all such Updates.
- 2.8 The Software may contain communications features which relay certain non-personally identifiable information to **Real Time Site Assessment's** in connection with the operation of the Software. This information may include your Software settings and what version of the Software you are using. **Real Time Site Assessment's** may use this information for research purposes including statistical analysis of aggregate customer behaviour.
- 2.9 If any condition in this clause 2 is not met, or is breached then this is considered a substantial breach and we may terminate this agreement without notice effective immediately.

### 3. BILLING

- 3.1 Our software is offered for free. Reporting is billed on a “Pay as you Go” basis with payments due in 7 Days. Discuss a monthly, quarterly subscription with us on a per user basis.
- 3.2 You may add users, and we will charge you accordingly for their output.
- 3.3 You will pay all fees in accordance with this agreement within 7 days. On the 8<sup>th</sup> day your account will be suspended, unpaid reports will be removed from the system.
- 3.4 Your fees exclude any taxes or duties payable in the jurisdiction that governs the payment. If GST is payable on any supply, you must pay an amount equal to the GST payable on the supply. That amount must be paid at the same time that the consideration is to be provided and is to be paid in addition to the consideration. The same principles apply for any other taxes or duties payable under the jurisdiction that applies

### 4. ACKNOWLEDGEMENTS, WARRANTIES AND REPRESENTATIONS

- 4.1 You acknowledge, agree, warrant and represent that:
  - (a) you have legal capacity, power and authority to enter into this Agreement;
  - (b) **Real Time Site Assessment’s** owns all intellectual property rights in the Software;
  - (c) title and/or ownership of the Software has not been transferred to you in any way and never will;
  - (d) **Real Time Site Assessment’s** reserves all such rights with respect to the Software, except for the license expressly granted to you in this Agreement. Except for such express license, no right, title, interest or license in or to the Software, whether by implication, estoppel or otherwise, is granted, assigned or transferred to you;
  - (e) your use of the Software is at your own risk;
  - (f) you must keep your data safe and undertake backups. **Real Time Site Assessment’s** will not take any responsibility for your data or the loss or it;
  - (g) you will keep confidential and in a safe place usernames and passwords to the Software;
  - (h) if the Licensor wishes to provide you with an update of the Software then you will facilitate the provision of such update by giving any assistance to the Licensor that the Licensor reasonably requires;
  - (i) **Real Time Site Assessment’s** may pursue any available equitable or other remedy against you as a result of a breach by you of any provision in this subclause or in any part of this Agreement.
- 4.2 **Real Time Site Assessment’s** acknowledges, agrees, warrants and represents that:
  - (a) it has legal capacity, power and authority to enter into this Agreement;
  - (b) to the best of its knowledge and belief the Software does not infringe the intellectual property rights of any third party and there are no actual or threatened proceedings for any intellectual property infringements in relation to the Software; and
  - (c) Other than as set out in this Agreement, **Real Time Site Assessment’s** makes no warranties or representations in relation to the Software.

### 5. RESTRICTIONS AND INTELLECTUAL PROPERTY RIGHTS

- 5.1 Subject to clause 5.2, you acknowledge and agree that you will not:
  - (a) resell, assign, transfer, distribute or provide others with access to the Software;
  - (b) “frame”, “mirror” or serve the Software on any web server or other computer server over the Internet or any other network;

- (c) copy, alter, modify, create derivative works from, reproduce, resell, transfer to a third party, reverse assemble, reverse engineer, reverse compile or enhance the Software (except as expressly permitted by the Copyright Act 1968 (Cth));
- (d) alter, remove or tamper with any trademarks, any patent or copyright notices, or any confidentiality legend or notice, or any numbers, or other means of identification used on or in relation to the Software;
- (e) use the Software in any manner to aid in the violation of any third party Intellectual Property, including but not limited to another's copyrights, trade secrets, and patents; or
- (f) take any action that interferes, in any manner, with **Real Time Site Assessment's** or its licensors' rights with respect to the Software. In addition, title, ownership rights and intellectual property rights in and to any content in the Software is the property of the applicable content owner and may be protected by applicable copyright or other law. This Agreement gives you no rights to such content.

5.2 The restrictions in clause 5.1 do not apply to the extent that you:

- (a) Are an Administrator in which case you can provide others with access to the Software which will be subject to additional fees for additional users.

## 6. PRIVACY AND REGISTRATION INFORMATION

6.1 As part of any account registration process, **Real Time Site Assessment's** may request registration-related information, including your name and email address. By providing this information, you consent to its collection and use by **Real Time Site Assessment's** to provide non-promotional communications regarding the Software, including notices of availability of any Updates. You may also have the opportunity to opt-in to receive promotional emails and materials from **Real Time Site Assessment's**. By choosing the opt-in option, you give your consent to receive such promotional materials from **Real Time Site Assessment's** until you exercise your option to unsubscribe from such communications.

6.2 **Real Time Site Assessment's** will not, at any time, share your registration information with third parties unless:

- (a) specifically authorised by you;
- (b) as required by law or court order;
- (c) to third-parties providing related services for **Real Time Site Assessment's** under appropriate obligations of confidentiality;
- (d) in connection with a legal process; or
- (e) to an acquirer of all or substantially all of the shares or assets of **Real Time Site Assessment's** or of the **Real Time Site Assessment's** division to which this Agreement relates.

## 7. DISCLAIMER OF WARRANTY

7.1 The Software is provided to you "as is" without warranty of any kind, except as provided under Australian Consumer Law. To the maximum extent permitted by applicable law, **Real Time Site Assessment's** and its licensors disclaim all warranties, express or implied, including, without limitation, any implied warranties of merchantability, fitness for a particular purpose and non-infringement of third party intellectual property rights or lack of viruses, for the Software. **Real Time Site Assessment's** does not warrant that the licensed Software will meet your requirements or be error free. The entire risk arising out of the use or performance of the Software remains with you. You understand and agree that any Software, material or data downloaded or otherwise obtained through the use of the Software, is at your own discretion and risk and that you will be solely responsible for any damage to your computer, system or network, including any loss or corruption of data.

## 8. LIMITATION ON LIABILITY AND INDEMNITY

8.1 To the maximum extent permitted by applicable law, in no event will **Real Time Site Assessment's** or its licensors be liable for any consequential, incidental, indirect, special, punitive, or other damages

whatsoever (including, without limitation, damages for loss of business profits, business interruption, loss of data, computer system failure, malfunction or other pecuniary loss) arising out of this Agreement, or the use of or inability to use the Software, even if **Real Time Site Assessment's** has been advised of the possibility of such damages.

8.2 **Real Time Site Assessment's** is not responsible or liable for any infections or contamination of your system, damage to your system, or delays, inaccuracies, errors or omissions arising out of your use of the Software. The Software is not intended for use in the operation of nuclear facilities, aircraft navigation or communications systems or air traffic control machines or any other machines in which case the failure of the Software could lead to death, personal injury or severe physical or environmental damage.

8.3 Despite anything to the contrary, to the maximum extent permitted by the law **Real Time Site Assessment's** maximum aggregate liability arising from or in connection with this Agreement will be limited to, and must not exceed the consideration you have given us to use the Software.

8.4 Despite anything to the contrary, to the maximum extent permitted by the law, **Real Time Site Assessment's** has no liability, and you release and discharge **Real Time Site Assessment's** from all liability, arising from or in connection with any:

- (a) injury, damage or loss to any person or property;
- (b) failure or delay in providing the Software;
- (c) content loss that you provide in the Software;
- (d) unavailability, outage or interruption to the Software; or
- (e) breach of this Agreement or any applicable laws,
- (f) where caused or contributed to by any:
- (g) event or circumstance beyond **Real Time Site Assessment's**' reasonable control;
- (h) a fault, defect, error or omission in your computing environment or data you input; or
- (i) act or omission of you, your related parties or a third-party service provider, and, in any event, any error, omission or lack of suitability (or the absence of, or reduction in, any anticipated result, outcome or benefit) with respect to the Software.

8.5 Certain legislation including the Australian Consumer Law, and similar consumer protection laws and regulations may confer you with rights, warranties, guarantees and remedies relating to our provision of **Real Time Site Assessment's** services which cannot be excluded, restricted or modified (Statutory Rights). Nothing in this Agreement attempts to exclude, restrict or modify your Statutory Rights as a consumer under the ACL. Any and all other warranties or conditions which are not guaranteed by the ACL are expressly excluded where permitted, except to the extent such warranties and conditions are fully expressed in this Agreement.

8.6 You acknowledge and agree that:

- (a) you use the Software and any associated programs and files at your own risk;
- (b) the Software may use third party products, facilities or services. **Real Time Site Assessment's** does not make any warranty or representation in respect of the third-party products, facilities or services;
- (c) **Real Time Site Assessment's** does not guarantee that any file or program available for download and/or execution from or via the Software is free from viruses or other conditions which could damage or interfere with data, hardware or software with which it might be used; and
- (d) **Real Time Site Assessment's** may pursue any available equitable or other remedy against you if you breach any provision of this Agreement.

## 9. DISPUTE RESOLUTION

### 2.0 Disputes

- (a) A Party must not commence court proceedings relating to any dispute arising from, or in connection with, this Document (**Dispute**) without first complying with this clause unless those court proceedings relate to urgent interlocutory relief or a dispute relating to compliance with this clause.
- (b) Despite the Dispute, the parties must continue to comply with their obligations under these terms of Service.

## 2.1 Negotiation

- (a) In the event of a Dispute, the Party claiming there is a Dispute must give written notice to the other Party or Parties to the Dispute setting out the details of the Dispute and proposing a resolution (**Dispute Notice**).
- (b) Within 10 Business Days after receipt of the Dispute Notice, each relevant Party must (if applicable by its senior executives or senior managers who have authority to reach a resolution on its behalf) meet at least once to attempt to resolve the Dispute in good faith. All aspects of every such meeting, except for the occurrence of the meeting, will be privileged and/or without prejudice.

## 2.2 Mediation

- (a) If the relevant Parties are unable to resolve the Dispute with 15 Business Days after receipt of the Dispute Notice, any Party involved in the Dispute may (by written notice to the other Parties) submit the Dispute to mediation administered by the Australian Commercial Disputes Centre (**ACDC**), with such mediation to be conducted:
  - (i) in good faith;
  - (ii) in Victoria; and
  - (iii) in accordance with the ACDC Mediation Guidelines.
- (b) The costs of mediation are to be split between the relevant Parties, provided that each Party will bear its own costs in relation to the mediation.
- (c) If the Dispute has not been settled within 20 Business Days after the appointment of a mediator, or such other period as agreed in writing between the Parties, the Dispute may be referred by any Party involved in the Dispute (by written notice to the other Parties) to litigation.

## 10. TERMINATION

- 10.1 We may terminate this Agreement in our sole discretion without incurring any liability to you, if:
  - (a) you commit a non-remediable breach of this Agreement; or
  - (b) you commit a remediable breach of this Agreement and do not remedy the breach within three (3) days after receiving notice of the breach.
- 10.2 Upon termination, you must immediately cease all use of the Software and destroy all Confidential Information or other materials of ours in your possession, including on any third-party systems operated on your behalf. In addition to any other remedy available to **Real Time Site Assessment's**, you agree that **Real Time Site Assessment's** may request proof or certification of such occurring, we may seek immediate injunctive relief in the event of a breach of this Agreement by you and we may seek liquidated and unliquidated damages.
- 10.3 **Real Time Site Assessment's** may, at any time and at its sole discretion, suspend or terminate your account and the Licence if you breach this Agreement. You must ensure that all data stored on the Software is backed up so that you do not lose your data if **Real Time Site Assessment's** suspends or terminates your account and/or the Licence. **Real Time Site Assessment's** will generally alert you when it takes such action and give you a reasonable opportunity to remedy any breach of this Agreement, but if **Real Time Site Assessment's** determines that your actions endanger the operation of the Software or other users, **Real Time Site Assessment's** may suspend or terminate your account immediately without notice.

10.4 This Agreement will terminate when the Enterprise Licensee terminates or otherwise when the Licensee providing you with access to the Software terminates your access.

10.5 Termination of this Agreement will not release either Party from any rights or liabilities accrued prior to termination or which would have accrued as a result of an act or omission prior to termination but for the termination of this Agreement.

## 11. CONFIDENTIALITY

11.1 Subject to subclause 11.2, you agree:

- (a) not to disclose the Confidential Information to any third party at any time;
- (b) to use your best endeavours to protect the Confidential Information from any unauthorised disclosure;
- (c) only to use the Confidential Information for the purpose for which it was disclosed by **Real Time Site Assessment's** and not for any other purpose; and
- (d) to be responsible for and assume liability in relation to all of your employees, agents, consultants and contractors to whom Confidential Information is disclosed and ensure that they maintain the confidentiality of the Confidential Information and otherwise comply with the obligations set out in this Agreement.

11.2 Your obligations set out in clause 11 do not apply to Confidential Information:

- (a) that is already in the public domain, except as a result of the actions of you in breach of this Agreement; and/or
- (b) if you reveal Confidential Information in confidence with your employer who has also signed a confidentiality and non-disclosure agreement;
- (c) received from a third party, except where there has been a breach of confidence; and/or
- (d) that must be disclosed by law, provided that you reveal only so much of the Confidential Information as you are required by law to disclose and gives sufficient notice to **Real Time Site Assessment's** in order to allow **Real Time Site Assessment's** to object to, or otherwise prevent, the Confidential Information being disclosed.

11.3 Clause 11 and its subsections will survive termination of this Agreement.

## 12. RELATIONSHIP OF PARTIES

12.1 Neither Party is authorised to bind the other Party in any way without prior written consent of the other Party. The Parties acknowledge and agree that they will not seek to bind the other Party other than with the prior written consent of the other Party.

12.2 We may identify you as a **Real Time Site Assessment's** customer in our promotional material. We will promptly cease doing so upon your written notification.

## 13. NOTICES

13.1 A notice or other communication given under these Terms of Service must be sent by email to **Real Time Site Assessment's** at admin@realtimesiteassessments.com or to the End user using the End Users email address which was used to create the log in. A notice is deemed to be given on the same Business Day if the email was sent before 5pm; otherwise, the next business day. This clause will survive termination.

## 14. ASSIGNMENT OR TRANSFER

14.1 You must not assign or otherwise transfer, deal with the whole or any part of your rights and/or obligations under this Agreement or the Software.

## 15. RIGHTS, REMEDIES AND WAIVERS



15.1 Except as expressly stated to the contrary in this Agreement, the powers, rights and/or remedies of a Party under this Agreement are cumulative and are in addition to any other powers, rights and remedies of that Party. Nothing in this Agreement merges, extinguishes, postpones, lessens or otherwise prejudicially affects any power, right, or remedy that a Party may have at any time against the other Party to this Agreement or any other person.

15.2 Any failure or delay by a Party in exercising a power or right (either wholly or partially) in relation to this Agreement does not operate as a waiver or prevent that Party from exercising that power or right or any other power or right. A Party is not liable to any other Party for any loss, cost or expense that may have been caused or contributed to by the failure, delay, waiver or exercise of a power or right.

16. CONSENTS AND APPROVALS

16.1 Where this Agreement provides that a Party may conditionally or unconditionally give or withhold any consent or approval in relation to any matter in this Agreement, that Party may in its absolute discretion, and without being obliged to give reasons for doing so, withhold any consent or approval or give consent or approval conditionally or unconditionally. Each Party must from time to time and in a timely manner do all things reasonably required of it by another Party to give effect to this Agreement.

17. ENTIRE AGREEMENT AND UNDERSTANDING

17.1 This Agreement contains the entire understanding between the Parties. All previous oral and written communications, representations, warranties or commitments are superseded by this Agreement and do not affect the interpretation or meaning of this Agreement.

18. GOVERNING LAW AND JURISDICTION

18.1 This Agreement is governed by the laws of Victoria and the Commonwealth of Australia. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Victoria.

Last update: 01/07/2023