



## Beyond The Map

THIS MASTER LICENCE AGREEMENT ("AGREEMENT") GOVERNS YOUR ACQUISITION AND USE OF OUR SERVICES, INCLUDING FREEHOUND AND ANY PREMIUM SERVICES.

BY CLICKING THE BOX INDICATING YOUR ACCEPTANCE YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS RELATED BODIES CORPORATE TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS RELATED BODIES CORPORATE. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

You may not access the Services if You are Our direct competitor, except with Our prior written consent. In addition, You may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement was last updated on May 1, 2011. It is effective between You and Us as of the date of You accepting this Agreement.

### 1. DEFINITIONS

"**API Documentation**" means the online documentation accessible at <http://www.ehoundplatform.com>, as updated from time to time. You acknowledge that You have had the opportunity to review the API Documentation.

"**FreeHound**" means the Services that You or Your Related Bodies Corporate can access at no cost.

"**Malicious Code**" means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

"**Non-eHoundPlatform.com Applications**" means online applications that are provided by entities or individuals other than Us and are clearly identified as such, and that interoperate with the Services.

"**Order Form**" means the documents for placing orders hereunder, including addenda thereto, that are entered into between You and Us or any of Our Related Bodies Corporate from time to time. Order Forms shall be deemed incorporated herein by reference.

"**Premium Services**" means Services that You or Your Related Bodies Corporate purchase under an Order Form.

"**Related Body Corporate**" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"**Services**" means the products and services (including FreeHound and Premium Services) that are accessed or ordered by You and made available by Us online via the customer login link at <http://www.ehoundplatform.com> and/or via our application programming interface, as described in the User Guide and API Documentation. "Services" exclude Non-eHoundPlatform.com Applications.

"**Subscription**" means the period of access to Premium Services granted under an Order Form.

"**User Guide**" means the online user guide for the Services, accessible via login at <http://www.ehoundplatform.com>, as updated from time to time. You acknowledge that You have had the opportunity to review the User Guide.

"**Users**" means individuals who are authorised by You to use the Services. Users may include but are not limited to Your employees, consultants, contractors and agents, and third parties with which You transact business.

"**We,**" "**Us**" or "**Our**" means eHound Pty Ltd ABN 34 097 045 570, a company incorporated in Australia.

"**Website**" means [www.ehoundplatform.com](http://www.ehoundplatform.com) and any subsequent URL which may replace it.

"You" or "Your" means the company or other legal entity for which you are accepting this Agreement, and Related Bodies Corporate of that company or entity.

"Your Data" means all electronic data or information submitted by You to the Services.

## 2. PROVISION OF THE SERVICES

**2.1. Provision of FreeHound.** We shall make FreeHound available through a combination of the Website and a web-services API, as described in the User Guide and API Documentation. You agree that Your use of FreeHound hereunder is neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Us regarding future functionality or features.

**2.2. Provision of Premium Services.** We shall make the Premium Services available to You pursuant to this Agreement and the relevant Order Forms during the Subscription period. You agree that Your purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Us regarding future functionality or features.

## 3. USE OF THE SERVICES

**3.1. Our Responsibilities.** We shall: (i) use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for any unavailability caused by circumstances beyond Our reasonable control, including without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Our employees), Internet service provider failures or delays, or denial of service attacks, and (ii) provide the Services only in accordance with applicable laws and government regulations.

**3.2. Our Protection of Your Data.** We shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data. We shall not (a) modify Your Data, (b) disclose Your Data except as compelled by law in accordance with Section 6.3 (Required Disclosure) or as expressly permitted in writing by You, or (c) access Your Data except to provide the Services and prevent or address service or technical problems, or at Your request in connection with customer support matters.

**3.3. Your Responsibilities.** You shall (i) be responsible for Users' compliance with this Agreement, (ii) be responsible for the accuracy, quality and legality of Your Data and of the means by which You acquired Your Data, (iii) use commercially reasonable efforts to prevent unauthorised access to or use of the Services, and notify Us promptly of any such unauthorised access or use, and (iv) use the Services only in accordance with the User Guide, API Documentation and applicable laws and government regulations. You shall not (a) make the Services available to anyone other than Users, (b) sell, resell, rent or lease the Services, (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Services to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (f) attempt to gain unauthorised access to the Services or their related systems or networks.

**3.4. Usage Limitations.** Services may be subject to other limitations, such as, for example, limits on disk storage space, on the number of calls You are permitted to make against Our application programming interface, and, for Services that enable You to provide public websites, on the number of page views by visitors to those websites. Any such limitations are specified in the User Guide. The Services provide real-time information to enable You to monitor Your compliance with such limitations.

**3.5. Integration with Non-eHoundPlatform.com Services. The Services may contain features designed to interoperate with Non-eHoundPlatform.com Applications (e.g., Google or Bing applications). To use such features, You may be required to obtain access to such Non-eHoundPlatform.com Applications from their providers. If the provider of any such Non-eHoundPlatform.com Application ceases to make the Non-eHoundPlatform.com Application available for interoperation with the corresponding Service features on reasonable terms, We may cease providing such Service features without entitling You to any refund, credit, or other compensation.**

## 4. FEES AND PAYMENT FOR PREMIUM SERVICES

**4.1. Fees.** You shall pay all fees specified in all Order Forms hereunder. Except as otherwise specified herein or in an Order Form, (i) fees are based on services purchased and not actual usage, (ii) payment obligations are non-cancellable and fees paid are non-refundable, and (iii) the Subscription purchased cannot be decreased during the relevant subscription term stated on the Order Form. Subscription fees are based on annual periods that begin on the subscription start date and each anniversary thereof.

**4.2. Invoicing and Payment.** You will provide Us with valid and updated credit card information, or with a valid purchase order or alternative document reasonably acceptable to Us. If You provide credit card information to Us, You authorise Us to charge such credit card for all Services listed in the Order Form for the initial subscription term and any renewal subscription term(s) as set forth in Section 10.2 (Term of Subscriptions). Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than a credit card, We will invoice You in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced charges are due net 30 days from the invoice date. You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information.

**4.3. Overdue Charges.** If any charges are not received from You by the due date, then at Our discretion, (a) such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (b) We may condition future subscription renewals and Order Forms on payment terms shorter than those specified in Section 4.2 (Invoicing and Payment).

**4.4. Suspension of Service and Acceleration.** If any amount owing by You under this or any other agreement for Our services is 30 or more days overdue (or 10 or more days overdue in the case of amounts You have authorised Us to charge to Your credit card), We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Our services to You until such amounts are paid in full. We will give You at least 7 days' prior notice that Your account is overdue, in accordance with Section 11.2 (Notice), before suspending services to You.

**4.5. Payment Disputes.** We shall not exercise Our rights under Section 4.3 (Overdue Charges) or 4.4 (Suspension of Service and Acceleration) if You are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.

**4.6. Taxes.** Unless otherwise stated, Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by You, unless You provide Us with a valid tax exemption certificate authorised by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against it based on Our income, property and employees.

## **5. PROPRIETARY RIGHTS**

**5.1. Reservation of Rights in Services.** Subject to the limited rights expressly granted hereunder, We reserve all rights, title and interest in and to the Services, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.

**5.2. Restrictions.** You shall not (i) permit any third party to access the Services except as permitted herein or in an Order Form, (ii) create derivative works based on the Services except as authorised herein, (iii) copy, frame or mirror any part or content of the Services, other than copying or framing on Your own intranets or otherwise for Your own internal business purposes, (iv) reverse engineer the Services, or (v) access the Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Services.

**5.3. Your Applications and Code.** If You, a third party acting on Your behalf, or a User creates applications or program code for use in conjunction with the Services, We acquire no right, title or interest from You or Your licensors under this Agreement in or to such applications or program code, including any intellectual property rights therein.

**5.4. Your Data.** Subject to the limited rights granted by You hereunder, We acquire no right, title or interest from You or Your licensors under this Agreement in or to Your Data, including any intellectual property rights therein.

**5.5. Suggestions.** We shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by You, including Users, relating to the operation of the Services.

## **6. CONFIDENTIALITY**

**6.1. Definition of Confidential Information.** As used herein, "**Confidential Information**" means all confidential information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure.

Your Confidential Information shall include Your Data; Our Confidential Information shall include the Services; and Confidential Information of each party shall include the terms and conditions of this Agreement and all Order Forms, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information (other than Your Data) shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

**6.2. Protection of Confidential Information.** The Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorised by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Related Bodies Corporate' employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party shall disclose the terms of this Agreement or any Order Form to any third party other than its Related Bodies Corporate and their legal counsel and accountants without the other party's prior written consent.

**6.3. Required Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

## **7. WARRANTIES AND DISCLAIMERS**

**7.1. Our Warranties.** We warrant that (i) We have the right, power and authority to enter into this Agreement, (ii) the Services shall perform materially in accordance with the User Guide and API Documentation.

**7.2. Your Warranties.** You warrant that You have the right, power and authority to enter into this Agreement.

**7.3. Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## **8. MUTUAL INDEMNIFICATION**

**8.1. Indemnification by Us.** We shall defend You against any claim, demand, suit, or proceeding made or brought against You by a third party alleging that the use of the Services as permitted hereunder infringes or misappropriates the intellectual property rights of a third party (a "**Claim Against You**"), and shall indemnify You for any damages, attorney fees and costs finally awarded against You as a result of, and for amounts paid by You under a court-approved settlement of, a Claim Against You; provided that You (a) promptly give Us written notice of the Claim Against You; (b) give Us sole control of the defense and settlement of the Claim Against You (provided that We may not settle any Claim Against You unless the settlement unconditionally releases You of all liability); and (c) provide to Us all reasonable assistance, at Our expense. In the event of a Claim Against You, or if We reasonably believe the Services may infringe or misappropriate, We may in Our discretion and at no cost to You (i) modify the Services so that they no longer infringe or misappropriate, without breaching Our warranties under "Our Warranties" above, (ii) obtain a license for Your continued use of the Services in accordance with this Agreement, or (iii) terminate Your User subscriptions for such Services upon 30 days' written notice and refund to You any prepaid fees covering the remainder of the term of such User subscriptions after the effective date of termination.

**8.2. Indemnification by You.** You shall defend Us against any claim, demand, suit or proceeding made or brought against Us by a third party alleging that Your Data, or Your use of the Services in breach of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law (a "**Claim Against Us**"), and shall indemnify Us for any damages, attorney fees and costs finally awarded against Us as a result of, or for any amounts paid by Us under a court-approved settlement of, a Claim Against Us; provided that We (a) promptly give You written notice of the Claim Against Us; (b) give You sole control of the defense and settlement of the Claim Against Us

(provided that You may not settle any Claim Against Us unless the settlement unconditionally releases Us of all liability); and (c) provide to You all reasonable assistance, at Your expense.

**8.3. Exclusive Remedy.** This Section 8 (Mutual Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section.

## **9. LIMITATION OF LIABILITY**

**9.1. Personal Injury.** Nothing in this Agreement shall exclude or limit liability for death or personal injury.

**9.2. Aggregate Liability.** Subject to this Section 9, the aggregate liability of each party in contract, tort, negligence, pre-contract or other representations or otherwise arising out of or in connection with, this Agreement shall be limited to an amount equal to 100% of the Fees paid in the 12 month period immediately preceding the event giving rise to the claim.

**9.3. Limitation of Liability.** Neither party shall be liable in contract, tort (including negligence) or otherwise for (i) any economic losses (including, without limitation, loss of revenues, profits, contracts, business or anticipated savings (ii) any loss of goodwill or reputation; or (iii) any special, indirect or consequential losses in any case, whether or not such losses were within the contemplation of the parties at the date of this Agreement, or were suffered or incurred by that party arising out of or in connection with any matter under this Agreement.

**9.4. Exclusion of Warranties.** Except as set out in this Agreement (and particularly clause 9.5), We exclude all conditions, terms, representations (except fraudulent representations) and warranties relating to the Services, whether imposed by statute or by operation of law or otherwise, that are not expressly stated herein including, without limitation, the implied warranties of satisfactory quality and fitness for a particular purpose.

**9.5. Trade Practices Act.** Where the Trade Practices Act (Cth) or other legislation implies conditions or warranties or gives other rights in respect of this Agreement and it is not lawful or possible to exclude the same, then such conditions, warranties or other rights shall (but only to the extent required by law) apply to this Agreement. In all other respects, all implied conditions, warranties and other rights are excluded (see Section 9.4). Subject to qualifications expressly provided in the Trade Practices Act or other legislation, Our liability for any breach of any such implied condition or warranty shall be limited to, in the case of goods supplied, as it may determine, the replacement of the goods or resupply of equivalent goods, the repair of the goods or the payment of the costs of replacing the goods or of acquiring equivalent goods and, in the case of services supplied, as it may determine, the supply of the services again or the payment of costs of having the services supplied again.

**9.6. Severability.** Each provision of this Section 9 excluding or limiting liability shall be construed separately, applying and surviving even if for any reason one or other of these provisions is held inapplicable or unenforceable in any circumstances and shall remain in force notwithstanding the expiry or termination of this Agreement.

## **10. TERM AND TERMINATION**

**10.1. Term of Agreement.** This Agreement commences on the date You accept it and continues until terminated in accordance with this clause 12.

**10.2. Term of Subscriptions.** Subscriptions purchased by You commence on the start date specified in the applicable Order Form and continue for the subscription term specified therein. **Except as otherwise specified in the applicable Order Form, all Subscriptions shall automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term. The per-unit pricing during any such renewal term shall be the same as that during the prior term unless We have given You written notice of a pricing increase at least 60 days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter.**

**10.3. Termination for Cause.** A party may terminate this Agreement for cause: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

**10.4. Refund or Payment upon Termination.** Upon any termination for cause by You, We shall refund You any prepaid fees covering the remainder of the term of all Subscriptions after the effective date of termination. Upon any termination for cause by Us, You shall pay any unpaid fees covering the remainder of the term of all Order Forms after the effective date of termination. In no event shall any termination relieve You of the obligation to pay any fees payable to Us for the period prior to the

effective date of termination.

**10.5. Return of Your Data.** Upon request by You made within 30 days after the effective date of termination of a Premium Services subscription, We will make available to You for download a file of Your Data in comma separated value (.csv) format along with attachments in their native format. After such 30-day period, We shall have no obligation to maintain or provide any of Your Data and shall thereafter, unless legally prohibited, delete all of Your Data in Our systems or otherwise in Our possession or under Our control.

**10.6. Surviving Provisions.** Section 4 (Fees and Payment for Premium Services), 5 (Proprietary Rights), 6 (Confidentiality), 7.3 (Disclaimer), 8 (Mutual Indemnification), 9 (Limitation of Liability), 10.4 (Refund or Payment upon Termination), 10.5 (Return of Your Data), 11 (General Provisions) shall survive any termination or expiration of this Agreement.

## **11. GENERAL PROVISIONS**

**11.1. Relationship of the Parties.** Nothing in this Agreement shall be construed as creating a partnership or joint venture of any kind between the parties or as constituting either party as the agent of the other party for any purpose whatsoever and neither party shall have the authority or power to bind the other party or to contract in the name of or create a liability against the other party in any way or for any purpose.

**11.2. No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

**11.3. Waiver.** The failure to exercise or delay in exercising a right or remedy under this Agreement shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy. The rights and remedies contained in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

**11.4. Severability.** The invalidity, illegality or unenforceability of any provision of this Agreement shall not affect or impact the continuation in force of the remainder of this Agreement.

**11.5. Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party provided that We may assign this Agreement in its entirety (including all Order Forms), without Your consent to a Related Body Corporate or in connection with a merger, acquisition, corporate reorganisation, or sale.

**11.6. Entire Agreement.** This Agreement, and the documents referred to in it, constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this Agreement.

Each of the parties acknowledges and agrees that in entering into this Agreement, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty, understanding, promise or assurance (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement as a warranty.

**11.7. Notices.** Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Billing-related notices to You shall be addressed to the relevant billing contact designated by You. All other notices to You shall be addressed to the relevant Services system administrator designated by You.

**11.8. Agreement to Governing Law and Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of New South Wales Australia and each of the parties submits to the non-exclusive jurisdiction of the courts of the State of New South Wales.