

## **END USER LICENCE AGREEMENT**

**This End User Licence Agreement (Agreement) applies to your use of the Properly App (Properly) on behalf of the Agency you represent. These terms are intended to help you understand your rights and responsibilities when using Properly and make sure you use it in a manner that is appropriate, acceptable and in accordance with the law.**

### **Terms and Conditions**

#### **1 ACCEPTANCE**

1.1 Detector Inspector Pty Ltd ABN 87 118 191 727 (DI) agrees to provide you (an End User) with the Software Licence granted in clause 4 to use Properly in accordance with this Agreement.

1.2 Please read these terms carefully. By using Properly, and accepting these terms by selecting “I agree”, ticking a box, or similar, you represent that you understand these terms and are authorised to agree to these terms and our Privacy Policy.

#### **2 CHANGES TO THESE TERMS**

2.1 DI may vary or update these terms from time to time. Unless otherwise advised by DI, material changes to this Agreement will be effective 30 days after they are posted, except if the changes apply to the functionality of Properly, in which case it will be effective immediately.

2.2 DI reserves the right to modify Properly or update any information contained in Properly at any time, including but not limited to:

- (a) ceasing providing or discontinuing the development of any particular feature, part, element or functionality of Properly, temporarily or permanently; or
- (b) rebranding or repackaging Properly.

#### **3 TERM**

3.1 This Agreement applies for the duration of the Agency Agreement, unless terminated earlier in accordance with this Agreement (Term).

3.2 If the Agency Agreement terminates or expires, this Agreement will automatically terminate.

#### **4 LICENCE TO USE PROPERLY**

4.1 Subject to your compliance with this Agreement, DI grants you a non-exclusive, non-transferable, revocable licence to use Properly during the Term for the sole purpose of accessing and using Properly for you and the Agency’s internal business purposes, in accordance with this Agreement (Software Licence).

4.2 For clarity, the Software Licence includes but is not limited to the right to use Properly to collect, store and organise Your Data.

4.3 DI may upload materials to Properly as part of its service. Subject to your compliance with this Agreement, DI grants you a non-exclusive, licence during the Term to use, download, transfer, and store Properly Materials for you and the Agency’s internal business purposes with a perpetual licence to use the Properly Materials, despite any expiry or termination of this Agreement.

4.4 You acknowledge and agree that DI owns all the Intellectual Property Rights in Properly, including Properly Materials and this Agreement does not transfer or assign ownership of any Intellectual Property Rights in Properly to you or any other person.

4.5 Save for your rights under clause 4.3 regarding Properly Materials, you must not reproduce, copy, distribute, modify, sell, rent, lease, license, sublicense, resell, reverse engineer, decompile, attempt to obtain the source code or algorithms or transfer any part of Properly or the content made available by DI on Properly.

4.6 You indemnify DI for any loss, cost, damage, claim, or expense suffered or incurred by DI in relation to any use of DI's Intellectual Property Rights, including the breach of any relevant Software Licence or any further conditions provided by DI in connection with your use of Properly.

## **5 APPLICATION SERVICES**

5.1 DI will:

- (a) Make Properly available to you, on the terms of this Agreement;
- (b) Provide troubleshooting and support in relation to your use of Properly, including via [help@detectorinspector.com.au](mailto:help@detectorinspector.com.au) or through the relevant DI account managers allocated to your Agency;
- (c) Use commercially reasonable endeavours to make Properly available at all times, except for:
  - (i) Planned downtime (of which DI shall give advanced notice where possible); and
  - (ii) Any unavailability caused by a Force Majeure Event.
- (d) Maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data.

5.2 DI:

- (a) does not guarantee the information contained within Properly is reliable, accurate, up-to-date or complete, or that your access to that information will be uninterrupted, timely or secure, noting in particular that Properly may rely on integrations with third parties which may impact Properly's availability and data integrity;
- (b) is not liable for any of Your Data you upload, including Your Data relating to services that you procure from third parties (Third Party Services), and does not warrant that such Third Party Services have resolved any issues or provided services in accordance with laws and regulations;
- (c) does not give you any assurances that any information contained in Properly will meet your requirements or be suitable for your purposes; and
- (d) does not accept responsibility for loss suffered as a result of your reliance on the accuracy of information contained in Properly.

## **6 APPLICATION FEATURES**

6.1 DI may, from time to time, make available within Properly certain functions or a set of functions that provide a particular capability ("Features"), which may be subject to additional terms and conditions from DI or third parties.

6.2 DI may offer you certain Features for the purpose of testing and evaluation ("Beta Features"). DI reserves the right to fully or partially discontinue, at any time, temporarily or permanently, any of the Beta Features, with or without notice. You agree that DI will not be liable to you or to any third party for any harm related to or arising out of your use

of the Beta Features, or caused by the modification, suspension or discontinuance of any of the Beta Features, for any reason.

6.3 Properly may contain Features that are integrated with third party applications. DI cannot guarantee the continued availability of such Features, and may cease providing them without notice and without entitling you to any refund, credit, or other compensation, including but not limited to where the provider of a third party application ceases to make the relevant application available for integration with the Platform in a manner acceptable to DI.

## **7 END USER ACCOUNT**

7.1 You must create an End User Account, and accept, and only use Properly in compliance with, this Agreement and all applicable Laws.

7.2 You are responsible for maintaining the confidentiality of your End User Account details and you are solely responsible for all activities that occur with your End User Account. Your End User Account must not be shared by multiple persons.

7.3 You must use reasonable security measures to prevent unauthorised access to or use of Properly.

7.4 DI is under no obligation to make enquiries into, investigate or verify your authorisation to access Properly and End User Account on behalf of the Agency.

7.5 You must promptly notify DI of any known or suspected unauthorised use of the End User Account or any other security breach, including any actual, suspected or potential misuse of Properly, breach of this Agreement, breach of any applicable Laws, or anything that a person may do to cause you to be in breach of this Agreement.

7.6 DI may, immediately upon receipt of any notice given under clause 7.5, in its sole discretion disable or suspend your End User Account or the Agency Account.

7.7 You understand and agree that DI may require you to provide information that may be used to verify your identity and help ensure the security of your End User Account. In the event that you lose access to your End User Account or otherwise request information about any End User Account, we reserve the right to request any verification or information from you we deem necessary before restoring access to or providing information about the relevant End User Account.

## **8 YOUR DATA**

8.1 Subject to these terms, you grant DI a non-exclusive, worldwide, royalty-free, perpetual licence (including the right to sub-licence) to store, reproduce, publish, use, and deal with Your Data in order for DI to provide Properly and other related services, including:

- (a) to provide updates or improve Properly;
- (b) for DI's internal business purposes;
- (c) for the purposes of marketing its services to you;
- (d) as required by law;
- (e) to respond to, deal with, or challenge any claims in connection with the services DI provides to you; and
- (f) to prevent or address any service, security, technical or support issues.

8.2 You warrant that you have the right to grant the licence provided in clause 8.1.

8.3 You must not upload any of Your Data to Properly or otherwise use Properly to transmit any of Your Data that:

- (a) infringes or misappropriates the Intellectual Property Rights or other rights of another person;
- (b) is defamatory, offensive, abusive, pornographic, profane or otherwise unlawful, including material that racially or religiously vilifies, incites violence or hatred, or is likely to insult or humiliate others based on race, religion, ethnicity, gender, age, sexual orientation or any physical or mental disability;
- (c) creates a privacy or security risk to any person, including by soliciting personal information from any person;
- (d) solicits money from any person, or is in exchange for payment or other consideration from another person or entity;
- (e) is false, misleading or deceptive;
- (f) contains financial, legal, medical or other professional advice;
- (g) would harm, abuse, harass, stalk, threaten or otherwise offend;
- (h) would reflect negatively on us, including our goodwill, name and reputation;
- (i) tampers with, hinders the operation of, or makes unauthorised modifications to Properly and associated applications; or
- (j) in your reasonable belief, relates to unlawful conduct, would breach any applicable laws, or would otherwise result in civil or criminal liability for you, us or any third party.

8.4 You agree that all of Your Data that you submit or upload to Properly follows all instructions provided by DI, is complete, accurate and that you will keep it current.

8.5 We may, upon providing notice to you, review, modify or remove any of Your Data from Properly where we reasonably believe it violates this Agreement, or the Agency Agreement, or you have violated this Agreement.

8.6 We also collect and prepare other de-identified and aggregated statistical data using Your Data, and information relating to use of Properly ("Aggregated Data"). You acknowledge that we own all right, title and interest in the Aggregated Data, and we may use and commercialise any Aggregated Data as we see fit. We agree not to take any steps (whether through data analytics or otherwise) which will deliberately cause any Aggregated Data to become personal information.

## **9 YOUR OBLIGATIONS**

9.1 In order for DI to provide its services to you through Properly, you must:

- (a) provide any documentation, information, or material requested by DI;
- (b) install and keep installed any plug-ins or applications on your mobile phone that are required in order to access Properly;
- (c) cooperate with any investigations by DI relating to outages, security problems, unauthorised use of Properly or suspected breaches of this Agreement or applicable law;
- (d) comply with all reasonable directions of DI in connection with Properly, including by providing any information or data reasonably requested by DI;
- (e) not use Properly for unlawful, obscene, offensive or fraudulent content, or activity or to benefit a third party, or in a manner that may adversely impact the reputation of DI;
- (f) not harm, harass, abuse, make threats or violate the privacy of any person in connection with your use of Properly;
- (g) not allow any third party to access Properly, including without limitation DI's competitors;

- (h) comply with all applicable Laws, including Privacy Laws, in connection with your use of Properly and End User Account; and
- (i) only use Properly for you and the Agency's internal business resourcing purposes and for no other purpose.

9.2 You indemnify DI and its Affiliates for any loss, cost, damage, claim, or expense suffered or incurred by DI or its Affiliates as a result of your breach of this clause 9, and in respect of your use, misuse or abuse of Properly generally.

## **10 SUSPENSION & TERMINATION**

10.1 The Agency may suspend or terminate your End User Account at any time at its discretion.

10.2 DI may immediately terminate or suspend your Software Licence or End User Account by notice if, as determined by DI in its sole discretion:

- (a) the Agency is in breach of the Agency Agreement;
- (b) DI believes that you or the Agency have breached a term of this Agreement, or have used Properly, or End User Account otherwise than for the purposes of, and in compliance with, this Agreement;
- (c) any unauthorised users use Properly or access End User Account or the Agency Account; or
- (d) such action is otherwise required by Law or an order of a court or relevant authority, without incurring any liability in respect of that termination or suspension.

10.3 Either party may terminate this Agreement at any time by written notice.

10.4 On termination or expiry of the Agency Agreement for any reason, this agreement will automatically terminate.

## **11 CONSEQUENCES OF TERMINATION**

11.1 Upon termination of this Agreement:

- (a) you must uninstall any associated applications or plug-ins;
- (b) the Software Licence will be terminated;
- (c) it is your responsibility to copy, download, or otherwise transfer Your Data and Properly Materials from Properly, to the extent that it is accessible and available prior to termination;
- (d) you are responsible for saving and backing up Your Data;
- (e) any licence, access or consent, granted to you ceases immediately;
- (f) you must return to DI any Confidential Information, property and or materials obtained in the course of this Agreement; and

11.2 Upon termination of this Agreement by DI, DI will completely disable your, and/or the Agency's, access to Properly.

## **12 PRIVACY**

12.1 You must comply with Privacy Laws including without limitation, by obtaining all required consents and making all the required disclosures and notifications to ensure that you have the right to use, collect, provide and disclose to DI any Personal Information contained in Your Data.

## **13 LIABILITY & INDEMNITY**

13.1 You indemnify DI, its Affiliates, and its Personnel from and against any loss, cost, expense or damage (including legal costs on a full indemnity basis) which is suffered or incurred by DI, its Affiliates, or its Personnel as a result of:

- (a) your breach of this Agreement;
- (b) injury, death, or property damage;
- (c) fraud, wilful misconduct, or gross negligence; or
- (d) any third-party action, claim, demand or proceedings instituted against DI as a result of your use of Properly.

13.2 To the maximum extent permitted by Law, DI will not be liable for any loss, cost, damage, expense, or claim, suffered or incurred by you in connection with this Agreement or Properly.

13.3 DI's liability to you for any loss or damage however caused that you suffer or incur in connection with this Agreement is limited to an amount equal to the actual amount recoverable under DI's insurance in respect of any such liability.

13.4 Neither party will be liable to the other party (whether in contract, tort, negligence, breach of statutory duty or otherwise) for any Consequential Loss suffered or incurred by the other party in connection with this Agreement.

13.5 Any of the terms of this Agreement which limit or exclude any term, condition or warranty, express or implied, or the liability of DI will apply to the extent permitted by law and will not be construed as excluding, qualifying or limiting your statutory rights or remedies arising by virtue of the breach of any implied term of this Agreement where such exclusion, qualification or limitation would be prohibited by legislation.

## **14 DISPUTE RESOLUTION**

14.1 A party must not commence court proceedings in relation to a dispute arising under this Agreement until it has exhausted alternative dispute resolution procedures as set out in this clause 14, unless the party seeks urgent or injunctive relief.

14.2 If a dispute arises between the parties arising out of or in connection with this Agreement, either party may give notice of the dispute to the other party (Dispute Notice). If a Dispute Notice is given:

- (a) the parties must negotiate in good faith as soon as possible in an attempt to resolve the dispute;
- (b) if the dispute is not resolved within 7 days of the Dispute Notice being issued, the parties' representatives the parties must meet to resolve the dispute within 14 days; and
- (c) if the dispute is not resolved within 21 days of the Dispute Notice being issued, the parties must agree to appoint an independent third party mediator to attempt to resolve the dispute by mediation and the parties must participate in the mediation in good faith. The costs of the mediation will be shared equally between the parties.

14.3 All communications concerning negotiations made by the disputants in connection with this clause 14 are confidential and to the extent possible, must be treated as "without prejudice" negotiations for the purpose of applicable laws of evidence.

## **15 GENERAL**

15.1 Entire agreement: Save for any Agency Agreement between the parties, this Agreement encompasses the entire understanding and agreement between the parties as to the subject matter of this Agreement and supersedes all prior discussions or

agreements. To the extent of any inconsistencies between this Agreement and an Agency Agreement, the Agency Agreement prevails.

15.2 Governing Law & Jurisdiction: This Agreement is governed by the laws of Victoria, Australia, and each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, Australia, and its courts of appeal.

15.3 Assignment & Novation: You must not assign or novate your rights or obligations under this Agreement without the prior written consent of DI. DI may assign or novate its rights or obligations under this Agreement on notice.

15.4 Relationship of the parties: Unless expressly stated otherwise this Agreement does not create a relationship of employment, trust, agency or partnership between the parties.

15.5 Severability: Each provision of this Agreement is to be read and construed as a separate and severable provision or part of this Agreement and if any provision is void or unenforceable then that provision will be severed, and the remainder will be read and construed as though the severable provision does not exist or apply.

15.6 Subcontracting: You acknowledge and agree that DI may subcontract the performance of all or any part of its obligations under this Agreement.

15.7 Force Majeure: If DI is unable to comply with its obligations under this Agreement to a Force Majeure Event, then such obligations shall be suspended while the Force Majeure Event continues and DI shall not be liable for any loss the End User or Agency suffers, or costs the End User or Agency incurs, as a consequence of the Force Majeure Event.

15.8 No Waiver: A right or obligation under this Agreement may only be waived in writing by the party granting the waiver and is only effective to the extent set out in the written waiver.

15.9 Survival: Any indemnity or obligation of confidence or any other term by its nature intended to survive termination under this agreement continues after termination or expiry of this Agreement.

## **Definitions & Interpretation**

"Account" means both or either an End User Account or an Agency Account.

"Affiliates" means directors, officers, employees, contractors, successors, and related entities and related body corporate, as defined in the Corporations Act 2001 (Cth).

"Agency" means the relevant head customer who has entered into the Agency Agreement with DI, and who is your employer and expressly authorises you to access Properly on its behalf.

"Agency Account" means the relevant Agency's registered account to access and use Properly in accordance with the Agency Agreement.

"Agency Agreement" means a separate agreement between the Agency and DI.

"Agreement" means this End User Licence agreement.

"Application" means Properly which is owned, controlled, managed and maintained and/or hosted by DI.

"Consequential Loss" means any indirect, special or consequential loss (being a loss that does not arise naturally, that is, according to the ordinary course of things, whether or not the parties were aware of the possibility of such loss), or any loss of revenues, loss of reputation, loss of profits, loss of bargain, loss of actual or anticipated savings,

theft, loss or corruption of data, cyber security attacks or breaches, loss arising out of any business decisions made as a consequence of using Properly or lost opportunities (including opportunities to enter into arrangements with third parties).

"End User Account" means the account created for the End User to access and use Properly.

"Force Majeure Event" means an event that is outside the reasonable control of the affected party and could not have been prevented or avoided by that party taking all reasonable steps including an act of God, natural disaster or extreme weather event including earthquake, cyclone, fire, flood, landslide, lightning, storm, drought; war (declared or undeclared), invasion, act of a foreign enemy, act of terrorism, hostilities between nations, civil insurrection or militarily usurped power, act of public enemy, sabotage, malicious damage, terrorism or civil unrest, confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government or government authority or industrial action, disruption or unavailability of the internet, strike, lock-out, stoppage, labour dispute or shortage including industrial disputes that are specific to a party or the party's subcontractors, failure of any systems or DI's third party service provider to provide services, including hosting services, failure, error or unavailability of any third party API integrations, but excluding a state of emergency declaration made by a Government, an act of Governmental Authority, an epidemic; or a global or national pandemic.

"Intellectual Property Rights" means all present and future rights, whether registered or unregistered or recorded or unrecorded, in or in relation to any copyright; design, patent, trademark, semiconductor, or circuit layout rights (whether or not continued, registered, abandoned or withdrawn); trade, business, company or domain name; and know-how, inventions, processes, confidential information (whether in writing or recorded in any form), database rights or software, and any other proprietary, licence or personal rights arising from intellectual activity in the business, industrial, scientific or artistic fields.

"Laws" includes:

- (a) Acts of the Commonwealth and the State or Territory from which the End User uses Properly and any other relevant State or Territory;
- (b) ordinances, regulations, by-laws, orders and proclamations or other instruments made under those Acts referred to in paragraph (a); and
- (c) lawful directions by any person exercising statutory powers regarding Properly or the Software Licence.

"Personal Information" has the meaning given to it in the Privacy Act.

"Personnel" means employees, directors, officers, contractors or agents of a party.

"Privacy Act" means the Privacy Act 1988 (Cth).

"Privacy Laws" means any and all applicable Australian State and Commonwealth laws and international laws, regulations, principles, policies and industry codes in relation to data and privacy protection, including but is not limited to the Privacy Act and the Australian Privacy Principles.

"Term" has the meaning given to it in clause 3.

"Your Data" means all information, content or data which you input, upload, transmit or store on Properly.

## **Interpretation:**



In this Agreement:

- (a) a reference to a statute, code or other Law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (b) references to a person includes an individual, partnership, joint venture, association, firm or a body, whether incorporated or unincorporated;
- (c) a reference to a party includes a reference to the party's executors, administrators, successors and assigns;
- (d) headings are for convenience only and will not affect interpretation of this Agreement;
- (e) where a word or phrase is given a particular definition, other parts of speech and grammatical forms of that word or phrase in this agreement will have a corresponding meaning;
- (f) a reference to dollars or \$ is a reference to Australian dollars;
- (g) the singular includes the plural, and vice versa;
- (h) "includes", "including", "for example", "such as" and similar terms are not words of limitation.