

# End User Licence Agreement

## Hema 4WD Nav

**IMPORTANT: PLEASE READ THIS DOCUMENT IN ITS ENTIRETY**

IF YOU PURCHASE A DEVICE; DOWNLOAD, INSTALL, USE, OR PAY ANY FEE FOR THE PRODUCT, CREATE A HEMA MAPS CLOUD ACCOUNT, ACCESS THE HEMA MAPS CLOUD OR REGISTER YOUR APP AND/OR DEVICE DETAILS VIA A HEMA MAPS CLOUD ACCOUNT, YOU ARE DEEMED TO HAVE READ, UNDERSTOOD AND AGREED TO BE BOUND BY THE TERMS OF THIS AGREEMENT.

IF YOU DO NOT UNDERSTAND THE TERMS OF THIS AGREEMENT OR DO NOT INTEND TO BE BOUND BY THEM, DO NOT PURCHASE A DEVICE DOWNLOAD, INSTALL, OR USE THE PRODUCT, CREATE A HEMA MAPS CLOUD ACCOUNT; ACCESS THE HEMA MAPS CLOUD OR REGISTER YOUR APP AND/OR DEVICE DETAILS VIA A HEMA MAPS CLOUD ACCOUNT.

# Contents

<b>1.</b>	<b>Definitions and interpretation .....</b>	<b>2</b>
1.1	Definitions .....	2
1.2	Interpretation .....	4
<b>2.</b>	<b>User acceptance .....</b>	<b>5</b>
<b>3.</b>	<b>Licence.....</b>	<b>5</b>
<b>4.</b>	<b>Fees.....</b>	<b>5</b>
<b>5.</b>	<b>Goods and Services Tax.....</b>	<b>5</b>
<b>6.</b>	<b>Commencement and term .....</b>	<b>6</b>
<b>7.</b>	<b>Product FAQs.....</b>	<b>6</b>
<b>8.</b>	<b>Software updates.....</b>	<b>6</b>
<b>9.</b>	<b>Licence for one computer or device.....</b>	<b>6</b>
<b>10.</b>	<b>Rights in the Product .....</b>	<b>7</b>
<b>11.</b>	<b>Intellectual property .....</b>	<b>7</b>
11.1	Owner IP .....	7
11.2	Customer IP .....	7
<b>12.</b>	<b>No replication.....</b>	<b>7</b>
<b>13.</b>	<b>No modification or alteration.....</b>	<b>8</b>
<b>14.</b>	<b>No derivative works.....</b>	<b>8</b>
<b>15.</b>	<b>Reverse engineering and security.....</b>	<b>8</b>
<b>16.</b>	<b>No release of performance data.....</b>	<b>8</b>
<b>17.</b>	<b>No unlawful use .....</b>	<b>8</b>
<b>18.</b>	<b>Observation of traffic regulations and rules.....</b>	<b>8</b>
<b>19.</b>	<b>No spam.....</b>	<b>9</b>
<b>20.</b>	<b>Other general restrictions.....</b>	<b>9</b>
<b>21.</b>	<b>User registration .....</b>	<b>9</b>
<b>22.</b>	<b>Privacy .....</b>	<b>10</b>
<b>23.</b>	<b>Consent to data use .....</b>	<b>10</b>
<b>24.</b>	<b>No transfer, assignment or sub-licence.....</b>	<b>10</b>
<b>25.</b>	<b>Limitation of liability.....</b>	<b>11</b>
<b>26.</b>	<b>User warranties.....</b>	<b>12</b>
<b>27.</b>	<b>Warranties regarding legal advice.....</b>	<b>13</b>
<b>28.</b>	<b>Service interruptions.....</b>	<b>13</b>
<b>29.</b>	<b>No agency, partnership or joint venture .....</b>	<b>13</b>
<b>30.</b>	<b>Variation.....</b>	<b>13</b>
<b>31.</b>	<b>Termination .....</b>	<b>13</b>
<b>32.</b>	<b>Product after termination.....</b>	<b>14</b>
<b>33.</b>	<b>General.....</b>	<b>14</b>
33.1	Governing law and jurisdiction.....	14
33.2	Language .....	14
33.3	Rights, remedies and powers .....	14
33.4	Survival .....	14
33.5	Waiver .....	14
33.6	Severability .....	14
33.7	Force majeure.....	15
33.8	Further acts.....	15
33.9	Contact us.....	15



# End User Licence Agreement

## Hema 4WD Nav

This version of the Agreement is dated 31 January 2025.

### Background

- A. You have purchased a Device or App to plan or navigate trips or have registered a Hema Maps Cloud account or accessed the Hema Maps Cloud.
- B. The Device has, or will have, the Hema 4WD Nav software installed on it.
- C. This End User Licence Agreement (hereinafter, "**Agreement**") governs Your use of the Hema 4WD Nav software (which is hereinafter referred to as the "**Product**").
- D. The Product may be more specifically described as Hema Maps' on-road and off-road navigation solution which includes various digital applications (comprising Mireo Genius Maps, Memory-Map's 4WD Maps, and data from third parties including HERE Technologies).
- E. We may also provide You with access to various other content, documentation, materials, information, goods or services. In this Agreement, these items collectively all form part of the Product.
- F. The Product is owned by Hema Maps or otherwise licensed to Hema Maps under separate agreement.
- G. This Agreement constitutes a binding contract between You and Hema Maps.
- H. This Agreement will govern Your use of all versions, parts and features of the Product.

### Agreed terms

#### 1. Definitions and interpretation

##### 1.1 Definitions

In this Agreement:

"**Agreement**" means this agreement and any schedules or annexures to it.

"**App**" means a software application designed to run on a mobile device such as a phone, tablet, or watch.

"**Australian Consumer Law**" means the Australian Consumer Law which is contained in the *Competition and Consumer Act 2010* (Cth).

"**AWS**" means Amazon Web Services which is used for cloud storage, hosting, security and data processing, both upstream and downstream.

"**Business Day**" means any day other than a Saturday, Sunday or public holiday in Victoria, Australia.

"**Customer IP**" means any intellectual property owned by You that is uploaded to or stored in or on a Device, the Portal, an App, or the Hema Maps Cloud.

"**Data**" means Hema Maps' mapping content, tracks, points of interest and other location-based datasets and any third-party mapping and datasets provided under licence to Hema Maps.

"**Device**" means any authorised in-vehicle infotainment, black box GPS unit or PND unit that has the Hema 4WD Nav software enabled and "**Devices**" means any combination thereof.

"**FAQ**" means a frequently asked question in relation to the Product as published on Hema Maps' website or Portal and as updated from time to time.

"**GPS**" means global positioning system.

"**GST**" means the goods and services tax imposed under the GST Act.

"**GST Act**" means *A New Tax System (Goods & Services Tax) Act 1999* (Cth).

"**Hema Maps**" means Hema Maps Pty Ltd ACN 010 601 911 and Hema Maps includes any employees, affiliates, agents or other representatives of Hema Maps.

"**Hema Maps Cloud**" means an online account management system, accessible via a website, which maintains Your Product information in the 'cloud' (being a way of storing and accessing data over the internet) which can be synchronised to Your Apps and/or Devices to allow You to store, access and manage Your user data, customer records and customer authentication.

"**Hema Maps Cloud Account**" means the user account that grants the customer access to the Hema Maps Cloud (and related privileges) and allows You to save, store, synchronise, update and share information that You create, including Customer IP, in a secure manner.

"**Hema 4WD Nav**" means the Product.

"**HERE Technologies**" means the digital technology company HERE Europe B.V. located at Kennedyplein 222, 5611 ZT Eindhoven, Netherlands which provides turn-by-turn navigation applications to Hema Maps under separate agreement.

"**Identifying Information**" means information provided by You when registering to use the Product via a Hema Maps Cloud Account, which may include but is not limited to Your name and email address, a user name and a password.

"**Licence**" means the licence created under clause 3.

"**Memory-Map**" means the digital technology company Memory-Map, Inc. located at 8 Chelsea's Walk, Ithaca, New York 14850 USA which provides outdoor adventure GPS mapping software to Hema Maps under separate agreement.

"**Mireo**" means the digital technology company Mireo d.d. located at Buzinski Prilaz 32, 10010 Zagreb, Croatia which develops navigation applications for Hema Maps under separate agreement.

"**OTA Updater**" means a digital application which has 'over the air' update functionality enabled which is used to deploy software updates via Hema Maps' AWS cloud services.

"**Owner**" means Hema Maps.

"**Owner IP**" includes, but is not limited to, the contents, code, layout, design, colours, appearance, graphics and imagery of the Product, as well as all copyrights, trademarks, trade secrets, patents and other intellectual property contained in the Product.

"**Parties**" means both You (the user of the Product) and Us (the owner of the Product) collectively.

"**Party**" means either You (the user of the Product) or Us (the owner of the Product).

"**PND**" means portable navigation device.

"**Portal**" means all online access points for Hema 4WD Nav users.

"**Product**" means Hema 4WD Nav (Hema Maps' on-road and off-road navigation solution) which includes digital Apps (Hema Maps Launcher, OTA Updater, Mireo Genius Maps, Memory-Map 4WD Maps App and data from third parties including HERE Technologies) and includes:

- (a) any software that We provide to You; and
- (b) any materials, information or documentation that We may provide to You in connection with Your use of this software product including documentation, data, information developed by Us, licensed to Us, or owned by Us, and other materials which may assist in Your use of the software product; and
- (c) any content, writing, images, audiovisual content or other information published on the software or on the materials, information or documentation that We provide to You.

"**URL**" means uniform resource locator (or web address) which is a type of uniform resource identifier.

"**Us**", "**We**" or "**Our**" refers to Hema Maps.

"**You**" or "**Your**" refers to the user of the Product.

## 1.2 Interpretation

In this Agreement, except where inconsistent with the context or intent:

- (a) headings are for convenience only and do not affect its interpretation;
- (b) the singular number includes the plural and vice versa;
- (c) the meaning of general words is not limited by use of terms such as "including", "for example", "such as" or similar language;
- (d) a reference to this Agreement includes any schedules or annexures thereto;
- (e) a reference to the whole includes a part of the whole;
- (f) a reference to a party includes that party's executors, administrators, trustees, successors and permitted assigns;

- (g) a reference to a person includes an individual, corporation, unincorporated association, partnership, joint venture or government body;
- (h) a reference to any statute, ordinance or other law includes all regulations and other instruments under it and all consolidations, amendments, re-enactments or replacements of it;
- (i) a reference to another agreement or document includes any variation or replacement of that other agreement or document;
- (j) a provision must not be constructed against a party solely because that party was responsible for preparing this Agreement or that provision;
- (k) a reference to "dollars" or "\$" is to Australian currency unless specified otherwise;
- (l) a reference to time is a reference to the time in Victoria, Australia;
- (m) if the day on which or by which something must be done under this Agreement is not a Business Day, then that thing must be done on or by the next Business Day; and
- (n) if a payment is made or something is done after 5:00pm on any Business Day, it is deemed to have been made or done on the next Business Day.

## **2. User acceptance**

- (a) This Agreement constitutes a binding agreement between You and Hema Maps.
- (b) By purchasing a Device or downloading, installing, using, or paying any Fee for the Product, and/or by registering your App and/or Device details via a Hema Maps Cloud Account, and/or by accessing the Hema Maps Cloud, and/or creating a Hema Maps Cloud Account, You hereby agree to be bound by the terms of this Agreement.
- (c) If You do not understand the terms of this Agreement or do not agree to be bound by them, then you must not download, install, use, purchase or pay any Fee for the Product, or register your Product details via a Hema Maps Cloud Account.

## **3. Licence**

When You purchase a Device, Hema Maps will grant You a non-exclusive, non-transferable, revocable, limited licence to use the Product ("**Licence**") on the Device.

## **4. Fees**

- (a) As part of the Licence, you may be granted a Premium Subscription which will need to be renewed in accordance with the specific Device terms and conditions.
- (b) Any additional Fees payable to Hema Maps will be managed via the Portal terms and conditions.

## **5. Goods and Services Tax**

- (a) Unless otherwise explicitly agreed to by Hema Maps, any Fee payable under this Agreement includes GST.
- (b) In the event that GST is payable on any Fee under this Agreement, You will pay to Hema Maps an amount equal to the GST payable on the Fee ("**GST Amount**"), calculated by multiplying the Fee by the prevailing GST rate.

- (c) You must pay the GST Amount to Hema Maps at the same time and in the same manner as the Fee is payable.
- (d) Any obligation on You to pay a GST Amount under this clause is conditional on Hema Maps providing You with a valid tax invoice in accordance with the GST Act.

## **6. Commencement and term**

- (a) This Agreement, and the Licence granted under it, are effective on the date You:
  - (1) purchase a Device;
  - (2) download, install, use, or pay any Fee for the Product;
  - (3) create a Hema Maps Cloud Account;
  - (4) access the Hema Maps Cloud; or
  - (5) register your App and/or Device details via a Hema Maps Cloud Account,whichever is the earliest.
- (b) This Agreement, and the Licence granted under it, continues for as long as you use, retain the Product or access the Hema Maps Cloud, unless terminated under this Agreement.

## **7. Product FAQs**

Product FAQs are available at <https://kb.hemamaps.com> or via the Hema Maps Portal.

## **8. Software updates**

- (a) Hema Maps may from time to time release software updates, patches, upgrades, bug fixes or other modifications for the Product (hereinafter "**Updates**").
- (b) You may be required to install Updates in order to use the Product.
- (c) You agree to promptly install any Updates that Hema Maps provides.
- (d) Updates may be installed automatically, without any additional notice being provided to You, and without any additional consent being sought from You.
- (e) By downloading, installing, using, purchasing or paying any Fee for the Product, You also consent to these Updates.

## **9. Licence for one computer or device**

- (a) The Licence permits You to download, install and use the Product on one (1) Device.
- (b) The Licence does not permit You to download, install or use the Product on more than one (1) Device at any time.
- (c) The Licence does not permit You to share the Product, or any part of the Product, with other users.
- (d) The Licence does not permit You to download the Product on any device that is not authorised by Hema Maps to operate the Product.



- (e) The Licence does not permit You to download, install or use the Product on any system that allows multiple users, including but not limited to:
  - (1) any system or network that is accessible by multiple users;
  - (2) any system or network that allows shared use of applications; and
  - (3) any other system or network that allows any user(s) other than You to download, install or use the Product.

except in the event that You have a valid licence for each copy of the Product on each individual Device on which you download, install or use the Product.

## **10. Rights in the Product**

- (a) This Agreement is a licence. It is not an assignment agreement or a sale agreement.
- (b) In no event will this Agreement be deemed to assign any Owner IP in the Product from Hema Maps to You.
- (c) Hema Maps retains any and all Owner IP and all other rights and title to the Product, except for those rights which are expressly licensed to You in this Agreement.

## **11. Intellectual property**

### **11.1 Owner IP**

You agree that the Product, Hema Maps' website and all services provided by Hema Maps are the property of Hema Maps, including all Owner IP. You agree that Hema Maps owns all right, title and interest in and to Owner IP and that you will not use Owner IP for any unlawful or infringing purpose. You agree not to reproduce or distribute Owner IP in any way, including electronically or via registration of any new trademarks, trade names, service marks or URLs, without express written permission from Hema Maps.

### **11.2 Customer IP**

You acknowledge and agree that if You upload, store or make Customer IP publicly available on any Device, Product, App or the Hema Maps Cloud:

- (a) You grant Hema Maps a perpetual, non-exclusive, royalty-free licence to use the Customer IP in an anonymised format within its maps and data products; and
- (b) tracks and photographs that You upload may be shared across other third-party platforms to promote the Product, Devices or Hema Maps Cloud.

## **12. No replication**

The Licence granted under clause 3 does not permit You to replicate or copy (or permit any other user to replicate or copy) the Product (whether in part or in full). You are prohibited from replicating, copying or permitting any other user to replicate or copy the Product or any part of the Product, except:

- (a) if Your legitimate use of the Product requires a temporary copy to be stored in computer memory; or
- (b) with Hema Maps' prior written consent.

**13. No modification or alteration**

You may not modify or alter the Product (including any files or any other parts of the Product) in any way, except with Hema Maps' prior written consent.

**14. No derivative works**

You may not create, develop, or attempt to create or develop any derivative works based on the Product or any works serving the same purpose or providing the same features as the Product.

**15. Reverse engineering and security**

You may not undertake any of the following actions:

- (a) attempting to derive the source code for the Product, for example by reverse engineering, deconstructing, decompiling or disassembling the Product or Hema Maps' website;
- (b) violating the security of the Product through any unauthorised access, circumvention of encryption or other security tools, data mining or interference to any host, user or network;
- (c) copying or otherwise distributing copies of the Product unlawfully, such as through any peer-to-peer network or other intellectual property circumvention tool; or
- (d) evading or interfering with the protection of the Product and Data, or modifying, circumventing, or obviating such protection through technological or any other means.

**16. No release of performance data**

Except with the prior written consent of Hema Maps, You may not release or communicate results from any functional evaluation or performance evaluation of the Product to any third party or third parties.

**17. No unlawful use**

You agree not to use the Product for any unlawful purpose.

**18. Observation of traffic regulations and rules**

- (a) While using the Product, in any form of vehicle, You agree to observe the local traffic regulations and rules in operation at the time and act with proper and generally expected care and attention in the given situation and special care and attention required due to the use of the Product.
- (b) To the maximum extent permitted by law, and subject to clause 25 (Limitation of liability), Hema Maps (including its licensors and suppliers) shall not assume any responsibility for any damages incurred by or to you or by or to a third party in relation to Your use of the Product in any form of vehicle if such damages are due to your failure to act with the requisite level of care and attention while observing local traffic regulations and rules.

## **19. No spam**

You are strictly prohibited from using the Product or any of Hema Maps' services for illegal spam activities, including gathering email addresses and personal information from others or sending any mass commercial emails.

## **20. Other general restrictions**

- (a) You must not use the Product and/or Data in any way that could damage Hema Maps' website, services, reputation, or the general business of Hema Maps, or for any purpose prohibited under this clause.
- (b) You must not to use the Product and/or Data, for any commercial, 'service bureau', 'time-sharing', 'asset management' or similar purposes.
- (c) Unless You have been specifically authorised by Hema Maps, under licence or otherwise, You must not use the Product and/or Data:
  - (1) with any products, systems or Apps installed or otherwise connected to or in communication with vehicles in any critical or commercial capacity (including emergency services, positioning, dispatch, real-time route guidance, fleet management or similar applications); or
  - (2) with or in communication with any commercial or proprietary positioning devices or any 'drive assist' aids (including health monitors, vehicle safety systems and their respective networks, vehicle proximity detection systems and in-vehicle computer systems).
- (d) You must not use the Product and/or Data to:
  - (1) harass, abuse, or threaten others or otherwise violate any person's legal rights;
  - (2) violate any intellectual property rights of Hema Maps or any third party;
  - (3) upload or otherwise disseminate any computer viruses or other software that may damage the property of another;
  - (4) perpetrate any fraud;
  - (5) engage in or create any unlawful gambling, sweepstakes, or pyramid scheme;
  - (6) publish or distribute any obscene or defamatory material;
  - (7) publish or distribute any material that incites violence, hate, or discrimination towards any group; or
  - (8) unlawfully gather information about others.

## **21. User registration**

- (a) You may be asked to register a Hema Maps Cloud Account in order to use or access the Product.
- (b) If You register a Hema Maps Cloud Account, You may be asked to provide Identifying Information which may include but is not limited to personal details such as Your name and email address, as well as choosing a user name and a password. This Identifying Information will allow You to access the Product.

- (c) You acknowledge that You are responsible for ensuring the accuracy of any Identifying Information You provide as part of the Hema Maps Cloud Account registration process.
- (d) You agree that You will not share your Identifying Information with any third party and if You discover that Your Identifying Information has been compromised, You agree to notify Hema Maps immediately in writing.
- (e) You acknowledge that You are responsible for maintaining the safety and security of Your Identifying Information as well as keeping Hema Maps informed of any changes to Your Identifying Information.
- (f) You acknowledge that providing false or misleading information, or using the Product to further fraud or unlawful activity is grounds for immediate termination of this Agreement.

## **22. Privacy**

- (a) Through Your use of the Product, You may provide Hema Maps with some of Your personal information. By using the Product, You authorise Hema Maps to use Your information in Australia and any other country where Hema Maps operates.
- (b) You agree that through Your use of the Product, You may provide Hema Maps with access to location data. You have the option to enable this location data to be made public via the Platform, at which point it will become Customer IP.
- (c) Through your use of the Product, You may provide Hema Maps access to location data which may be public or private. This location data may be used as part of an anonymised data set by Hema Maps to process road and track information based on Your use of the Product.
- (d) Hema Maps takes its privacy obligations very seriously. Please refer to Hema Maps' Privacy Policy available at <https://www.hemamaps.com> for further information about what information Hema Maps collects, how that information is used and stored, and Your rights in relation to it.

## **23. Consent to data use**

- (a) You agree that We may collect, monitor, review, analyse and use data or information We collect from Your use of the Product, including the Customer IP, for internal purposes including Product improvement.
- (b) You agree that we may sell or share data or information We collect from Your use of the Product, including Customer IP, to or with third parties on an anonymised and/or aggregated basis.

## **24. No transfer, assignment or sub-licence**

- (a) This Licence is non-transferrable.
- (b) You are prohibited from assigning, selling, renting, sub-licensing, leasing, or transferring in any other way any or all of Your rights under this Licence, except with Hema Maps' prior written consent.
- (c) This clause will survive termination or expiration of this Agreement.

## 25. Limitation of liability

- (a) You may have certain rights under the Australian Consumer Law, or under other similar or related consumer protection laws.
- (b) The Australian Consumer Law (or any other similar or related consumer protection laws) may give You certain rights, warranties, guarantees and remedies regarding the provision of goods or services by Hema Maps, which cannot be excluded, modified or restricted by Hema Maps ("**Statutory Rights**").
- (c) Your liability to Hema Maps is governed solely by the Australian Consumer Law if applicable (and any other similar or related consumer protection laws) and by this Agreement.
- (d) Unless otherwise expressly provided in writing by Hema Maps, all guarantees, warranties, representations and conditions are expressly excluded except for any Statutory Rights which are required by law.
- (e) To the maximum extent permitted by law, Hema Maps excludes all conditions and warranties implied by custom, law or statute, except for Your Statutory Rights, and Hema Maps expressly disclaims all warranties of any kind including but not limited to implied warranties of merchantability, fitness for a particular purpose, or non-infringement of third party rights.
- (f) You hereby acknowledge and agree that You use the Product at Your sole risk.
- (g) You hereby acknowledge and agree that the Product is provided to You "as-is".
- (h) You hereby agree and acknowledge that the Product and/or Data may contain errors, inaccurate or incomplete information due to the passage of time, changing circumstances, sources used, and the nature of collecting comprehensive geographic data, any of which may lead to incorrect results.
- (i) You hereby acknowledge and agree that You are solely responsible for evaluating and for determining whether the Product is fit for Your purpose.
- (j) When Your Statutory Rights apply, to the maximum extent possible, Hema Maps' liability in respect of any claim is limited to, at Your option:
  - (1) in the case of goods:
    - (A) a replacement of the goods;
    - (B) the supply of equivalent goods;
    - (C) a repair of the goods;
    - (D) the payment of the cost of replacing the goods;
    - (E) the payment of the cost of acquiring equivalent goods or of having the goods supplied again; or
    - (F) the payment of the cost of having the goods repaired; and
  - (2) in the case of services:
    - (A) the supply of the services again; or
    - (B) the payment of the cost of having the services supplied again.

- (k) To the maximum extent permitted by law, except as otherwise provided in this Agreement, and except in cases of death or personal injury caused by Hema Maps' gross negligence, wilful misconduct or bad faith, Hema Maps' liability in contract, tort or otherwise arising through or in connection with this Agreement or through or in connection with the fulfilment of obligations under this Agreement, liability shall be limited to the total of any Fee paid by You to Hema Maps.
- (l) To the maximum extent permitted by law, and except as otherwise provided in this Agreement, Hema Maps shall not be liable to You in contract, tort, negligence, breach of statutory duty or otherwise for any indirect, consequential, incidental, special, punitive or exemplary loss, damages, costs or expenses of any nature whatsoever including without limitation any economic loss, data loss, loss of goodwill or other loss of turnover, profits or business.
- (m) For the sake of clarity, in no event will Hema Maps be liable for any consequential, indirect, incidental or special damages of any kind including any damages for loss of revenue, profits, interruption of business, or loss of data, even if the possibility of such loss was made known to Hema Maps.
- (n) To the maximum extent permitted by law, and except as otherwise expressly provided in this Agreement, Hema Maps hereby disclaims any and all warranties of quality, whether express or implied, including but not limited to any warranties of merchantability and fitness for a particular purpose. You acknowledge that You are relying solely on Your own investigations, inspections and/or examinations and have not been induced by Hema Maps making any statements as to the quality or condition of the Product.
- (o) Nothing in this Agreement restricts Your Statutory Rights. In the event that the Australian Consumer Law applies, and there is a conflict between this clause and the Australian Consumer Law, the Australian Consumer Law shall prevail.
- (p) This limitation is cumulative. Hema Maps' liability will not be increased by the existence of more than one incident or claim.
- (q) This clause will survive the termination or expiration of this Agreement.

## **26. User warranties**

- (a) You hereby provide the following warranties:
  - (1) That You have the full legal authority and capacity to enter this Agreement.
  - (2) That You are of sufficient legal age to enter this Agreement under the laws of Victoria, Australia.
  - (3) That You will only use the Product in accordance with the Licence granted under this Agreement.
- (b) If You are a company or other organisation, the person who downloads, installs, uses, purchases or pays any Fee for the Product on behalf of Your company or organisation, or who otherwise agrees to this Agreement on behalf of Your company or organisation, hereby represents and warrants that they have the right, authority and capacity to accept and agree to this Agreement on their own behalf and on behalf of Your company or organisation.
- (c) This clause will survive termination or expiration of this Agreement.

## **27. Warranties regarding legal advice**

- (a) Each Party, (which for the purposes of this clause shall be referred to as the "**Warranting Party**" as the context requires) hereby respectively warrants:
  - (1) That the Warranting Party fully understands the terms of this Agreement.
  - (2) That the Warranting Party has had the opportunity to obtain independent legal advice in relation to the matters addressed by this Agreement and the Warranting Party has either:
    - (A) taken such independent legal advice; or
    - (B) elected not to take such independent legal advice.
  - (3) That the Warranting Party has not been induced to enter this Agreement by any representation(s) made by the other Party or by any officer, employee, director, agent, contractor, assignee, successor or other representative of the other Party, except as provided in this Agreement.
- (b) This clause will survive termination or expiration of this Agreement.

## **28. Service interruptions**

- (a) You acknowledge and agree that Hema Maps may need to interrupt access to the Product to perform maintenance or emergency services on a scheduled or unscheduled basis.
- (b) You acknowledge and agree that your access to the Product may be affected by unanticipated or unscheduled downtime, for any reason, but that Hema Maps shall have no liability for any damage or loss caused as a result of such downtime.

## **29. No agency, partnership or joint venture**

No agency, partnership, or joint venture has been created between the Parties as a result of this Agreement. No Party has any authority to bind the other to third parties.

## **30. Variation**

- (a) You will be bound by the version of this Agreement which is in force at the time that You purchase a Device or download, install or purchase the Product.
- (b) Hema Maps reserves the right to unilaterally vary this Agreement, with notice to You, provided that the variation is reasonable and only goes as far as is reasonably necessary to allow Hema Maps to protect its legitimate business interests.
- (c) If Hema Maps seeks to vary this Agreement under paragraph (b) above, You have the right to exit the Agreement without penalty where the proposed variation could be materially detrimental to You.

## **31. Termination**

If You fail to comply with any terms of this Agreement, Hema Maps may immediately terminate this Agreement without further notice.

## **32. Product after termination**

Upon the termination or expiration of this Agreement:

- (a) You are not permitted to retain or use the Product or any part of the Product in any way.
- (b) You will not be permitted to access or use the Hema Maps Cloud or any part of the Hema Maps Cloud in any way.
- (c) You must either return any copies of the Product to Hema Maps if directed by Hema Maps to do so, or must permanently delete all copies of the Product.

## **33. General**

### **33.1 Governing law and jurisdiction**

This Agreement shall be governed in all respects by the laws in force in the State of Victoria, Australia. Both Parties submit to the non-exclusive jurisdiction of the Victorian courts and the courts of appeal from them.

### **33.2 Language**

All communications made or notices given pursuant to this Agreement shall be in the English language.

### **33.3 Rights, remedies and powers**

Unless expressly provided in this Agreement, any rights, remedies or powers which a Party acquires under this Agreement are cumulative and apply in addition to any rights, remedies or powers which that Party may otherwise have. Unless expressly provided in this Agreement, nothing in this Agreement shall in any way reduce, extinguish, postpone, restrict or otherwise limit any right, remedy or power which that Party may have.

### **33.4 Survival**

Notwithstanding any other provisions of this Agreement, at the termination, expiration or completion of this Agreement, any provisions of this Agreement which would by their nature be expected to survive termination, expiration or completion shall remain in full force and effect, including but not limited to any provisions which are explicitly stated to survive termination, expiration or completion.

### **33.5 Waiver**

None of the powers or rights created under the terms of this Agreement shall be deemed to have been waived by any act or acquiescence of either Party. A power or right under the terms of this Agreement may only be waived in writing, signed by the Party that is waiving the said power or right. No waiver of any power or right under a term of this Agreement shall constitute a waiver of any other power or right or of the same power or right on a future date. Failure of either Party to enforce any term of this Agreement shall not constitute waiver of such term or any other term.

### **33.6 Severability**

If any provision or term of this Agreement is held to be unenforceable, then this Agreement will be deemed amended to the extent necessary to render the otherwise unenforceable provision, and the rest of the Agreement, valid and enforceable. If a court of competent jurisdiction declines to amend this Agreement as provided herein, the invalidity or



unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the remaining terms and provisions, which shall be enforced as if the offending term or provision had not been included in this Agreement.

**33.7 Force majeure**

Neither Party is liable to the other for any failure to perform due to causes beyond its reasonable control including, but not limited to, acts of God, acts of civil authorities, acts of military authorities, riots, embargoes, acts of nature and natural disasters, labour or transportation disputes, and other acts which may be due to unforeseen circumstances.

**33.8 Further acts**

Each Party must do all things reasonably required in order to give effect to this Agreement and to the rights and obligations of the Parties created under this Agreement.

**33.9 Contact us**

If you wish to contact Hema Maps about:

- (a) this Agreement;
- (b) the Licence; or
- (c) the Product,

please use the following details:

<b>Email</b>	info@hemamaps.com.au
<b>Telephone</b>	+61 7 3340 0000
<b>Post</b>	3 Wyman Place Braeside Victoria 3195 AUSTRALIA