

## **DON'T USE WHEN VEHICLE IS MOVING**

### **EROAD DAY LOGBOOK**

EROAD provides software, web-applications and related services (including for use with its products) for the purpose of providing tax management, compliance and commercial services.

This document governs your use of the EROAD Day Logbook Application.

### **PLEASE READ CAREFULLY BEFORE USING THE APPLICATION.**

This end-user license agreement (**EULA**) is a legal agreement between you (**End-user** or **you**) and EROAD Ltd of 260 OTEHA VALLEY RD, NORTH SHORE, NEW ZEALAND (**EROAD, us** or **we**) for:

- EROAD mobile application software, which consists of EROAD Day Logbook and its accompanying application (the **App**); and
- Accompanying App help, guidance and training documents supplied by EROAD (the **Documents**).

The license granted to you in connection with the EROAD Day Logbook is a non-exclusive, non-transferable and revocable license to use the EROAD Day Logbook that you own or control and as permitted by the Usage Rules set forth in the Google Play Store Terms of Service found on <https://play.google.com/about/play-terms/index.html>

In addition to this EULA you must comply with the Usage Rules set out in the Google Play Terms of Service i.e. [https://play.google.com/intl/en\\_us/about/movies-tv-usage-rules.html](https://play.google.com/intl/en_us/about/movies-tv-usage-rules.html)

We do not sell the App or Documents to you. We remain the owners of the App and Documents at all times. This EULA also incorporates the terms of EROAD's Privacy Policy available here <http://www.eroad.com/us/privacy-policy>.

**OPERATING SYSTEM REQUIREMENTS:** THIS APP REQUIRES AT A MINIMUM A MOBILE DEVICE WITH RESOLUTION OF AT LEAST 300 PPI (PIXEL DENSITY), INTERNET CONNECTIVITY ACCESS AND THE ANDROID OPERATING SYSTEM CODE NAME "MARSHMALLOW" (VERSION 6.X) OR ABOVE. AS FUTURE VERSIONS AND CODE NAMES OF THE ANDROID OPERATING SYSTEM ARE RELEASED, EROAD MAY NOT CONTINUE TO SUPPORT SUPERSEDED CODE NAMES AND VERSIONS OF THE ANDROID OPERATING SYSTEM. EROAD WILL HOWEVER SUPPORT THE APP ON THE MOST RECENT CODE NAME OF THE ANDROID OPERATING SYSTEM (FOR EXAMPLE, AT THE TIME OF THE RELEASE OF THIS APP, THE CURRENT CODE NAME OF THE ANDROID OPERATING SYSTEM RELEASE IS "P") AND THE TWO MOST RECENTLY SUPERSEDED VERSIONS OF THE CODE NAME (AS AN EXAMPLE, AT THE TIME OF THE RELEASE OF THIS APP, THE TWO MOST RECENTLY SUPERSEDED VERSIONS OF THE ANDROID OPERATING SYSTEM ARE "OREO" AND "NOUGAT").

### **IMPORTANT NOTICE:**

- BY DOWNLOADING THE APP OR CLICKING ON THE "ACCEPT" BUTTON BELOW, YOU AGREE TO THE TERMS OF THE LICENSE WHICH WILL BIND YOU. THE TERMS OF THE LICENSE INCLUDE THE TERMS OF EROAD'S HARDWARE AND SERVICES AGREEMENT (AVAILABLE HERE - <https://www.eroad.co.nz/nz/eroads-terms/>) THAT APPLY TO EROAD CUSTOMERS AND AUTHORIZED USERS. IN THE EVENT OF ANY INCONSISTENCY BETWEEN THE TERMS OF THE HARDWARE AND SERVICES AGREEMENT AND THIS EULA, THE TERMS OF THE EULA APPLY. CAPITALIZED TERMS IN THIS LICENSE HAVE THE MEANING AS DEFINED IN THIS LICENSE OR IN THE HARDWARE AND SERVICES AGREEMENT.

## **AGREED TERMS**

### **1. ACKNOWLEDGEMENTS**

- 1.1 The terms of this EULA apply to the App or any of the services accessible through the App (known in this EULA as **Services**), including any updates or supplements to the App, unless they come with separate terms, in which case those terms apply.
- 1.2 We may change these terms at any time by notifying you of a change when you next start the App. The new terms may be displayed on-screen and you may be required to read and accept them to continue your use of the Services.
- 1.3 From time to time updates to the App may be issued through the Appstore. Depending on the update, you may not be able to use the Services until you have downloaded or streamed the latest version of the App and accepted any new terms.
- 1.4 You will be assumed to have obtained permission from the owners of the mobile tablet or handheld devices that are controlled, but not owned, by you (**Devices**) and to download or stream a copy of the App onto the Devices. You and they may be charged by your and their service providers for internet access on the Devices and you or they are solely responsible for all internet charges incurred in relation to the use of the App and Services. You accept responsibility in accordance with the terms of this EULA for the use of the App or any Service on or in relation to any Device, whether or not it is owned by you.
- 1.5 You will use the App and Services in accordance with the recommended protocols and processes outlined in the Documents, including the protocols and directions for when the App crashes, ceases functioning, is out of cellular range, displays any warnings or faults, or is unable to transmit or email information or data to government organizations, entities or enforcement officers;
- 1.6 You must use the App in accordance with all applicable laws and ordinances (including driving laws). You are solely responsible for installing and using the App and Device on which the App is used in a manner that complies with the law and will

not cause accidents, personal injury or property damage. You are solely responsible for observing safe driving practices.

- 1.7 You accept and agree that the App and Services are tools specifically designed to cater to EROAD Customer's drivers to assist them with complying with standard hours of service.
- 1.8 You however must act in accordance, and comply, with all rules, regulations and legislation and you are solely responsible for your records and your compliance with all local, state and federal laws. You will hold EROAD harmless for any violation or failure to observe any rule, regulation or legislation which occurs from your use of the App and Services or any act or omission by EROAD.
- 1.9 EROAD has developed the App to assist you in your compliance obligations. You acknowledge however that the App and Services have not been developed to meet your individual requirements and that it is therefore your responsibility to ensure that the App and Services meet your requirements and are suitable for your purposes. Except as otherwise provided in this license, your access to and use of the App and Services are on an "as-is" basis and at your own risk. You also acknowledge that EROAD is not in the business of providing professional advice and you are therefore responsible for verifying any information given by EROAD before relying on or making use of it.
- 1.10 You warrant that all information and data that is collected by, or inputted into, the App and Services is accurate and you will be required to certify the accuracy of such information and data prior to submitting any information with a government organization, enforcement officer or entity with the App. You are solely responsible for all errors, inaccuracies and omissions in the information and data on the App and Services that you submit to the EROAD Customer, government organization or enforcement officer.
- 1.11 At your direction you authorise EROAD to submit to the EROAD Customer reports containing your data on your behalf in connection with the App and Services You authorize EROAD to use, copy, modify, store, disclose and communicate the data to the extent necessary to enable you to use the App and Services. You also acknowledge that EROAD is under no obligation to store and make available to you data collected by the App or Services following the termination or expiry of this EULA.
- 1.12 You authorize EROAD to contact you for marketing purposes for EROAD products only. EROAD may use data provided by you and other data it collects about you to market and promote its products and services to you. EROAD will not provide your data to any other party so they can use it to market their products to you.

- 1.13 By using the App or any of the Services, you consent to us collecting and using technical information about the Devices and related software, hardware and peripherals for Services that are internet-based or wireless to improve our products and to provide any Services to you.
- 1.14 EROAD strives to provide you with a great App and Services. And, while EROAD intends to make the App and Services available 24 hours a day, 365 days a year, the App and Services may be interrupted for scheduled maintenance or for reasons beyond EROAD's control. EROAD will not be responsible for any such interruptions, but if the App is likely to be interrupted for extended periods, EROAD will use reasonable efforts to provide advance notice of such interruption on its websites <https://depot.eroad.co.nz> or any other website operated by EROAD (the **Website**). During any interruptions you agree to follow the recommended protocols and processes outlined in the Documents.
- 1.15 The App will depend on availability and proper performance of third-party systems, such as computer networks, the Internet, and cellular networks, which can be unpredictable and which may from time to time interfere with use of or limit access to the App and Services, including leading to latency issues with the collection of data and potential loss of data if the App fails to synch with EROAD's servers. Where there are availability or performance issues which interfere or limit access to the App and Services, you agree to follow the recommended protocols and processes outlined in the Documents.
- 1.16 EROAD has created a technology platform to store data inputted into the App that, meets or exceeds, internationally accepted control objectives and practices for privacy, security and information systems. EROAD also intends to maintain a back-up of the data. However, no back-up system is completely failsafe and you will not hold EROAD responsible, nor bring any claims against EROAD, for any loss, corruption, destruction or alteration of data.

## **2. ADDITIONAL TERMS FOR HE APP ON GOOGLE PLAY STORE BRANDED PRODUCTS**

- 2.1 This EULA is concluded between EROAD and you only and **not** with Google Play Store. EROAD, **not** Google Play, is solely responsible for the EROAD Day Logbook and the content thereof.
- 2.2 You acknowledge that Google Play has no obligation whatsoever to furnish any maintenance and support services with respect to the App.
- 2.3 EROAD is solely responsible for any product warranties, whether express or implied by law, to the extent not effectively disclaimed by EROAD's other applicable terms and conditions. In the event of any failure of the App to conform to any applicable warranty, you may notify Google Play, and Google Play will refund the purchase price

(if applicable) for the App to you. To the maximum extent permitted by applicable law, Google Play will have no other warranty obligations whatsoever with respect to the App, or any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty.

2.4 You and We acknowledge and agree that Google Play is not responsible for addressing any claims of you or any third party relating to the App or your possession and/or use of the App, including, but not limited to: (i) product liability claims; (ii) any claim that the App fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.

2.5 You and We acknowledge and agree that in the event of any third party claim that the App or your possession and use of the App infringes that third party's intellectual property rights, Google Play will not be responsible for the investigation, defense, settlement or discharge of any such intellectual property infringement claim.

2.6 You represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.

2.7 You can contact EROAD in relation to any questions, complaints or claims that you may have at the e-mail address provided at clause **Error! Reference source not found.** below.

2.8 You must comply with any applicable third party terms of agreement (as notified by us and including the terms and conditions of your mobile data service provider) when using the App.

2.9 You and We acknowledge and agree that Google Play, and Google Play subsidiaries, are third party beneficiaries of the EULA, and that, upon your acceptance of the terms and conditions of the EULA, Google Play will have the right (and will be deemed to have accepted the right) to enforce the EULA against you as a third party beneficiary.

### 3. **GRANT AND SCOPE OF LICENSE**

3.1 To use the App, you must be an **Authorized User** as defined in the Agreement. We grant you a non-transferable, non-exclusive revocable license to use the App on the Devices, subject to these terms, the terms of the Agreement and the terms of Google Play Store. We reserve all other rights.

3.2 You may:

- (a) download or stream a copy of the App onto the Device and to view, use and display the App on the Devices; and
  - (b) use the Documents,
- for the purpose of set out in this document.

#### 4. **LICENSE RESTRICTIONS**

Except as expressly set out in this EULA or as permitted by any local law, you agree:

- (a) not to copy the App or Documents except where such copying is incidental to normal use of the App, or where it is necessary for the purpose of back-up or operational security;
- (b) not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the App or Documents;
- (c) not to make alterations to, or modifications of, the whole or any part of the App, or permit the App or any part of it to be combined with, or become incorporated in, any other programs;
- (d) not to disassemble, decompile, reverse-engineer or create derivative works based on the whole or any part of the App or attempt to do any such thing;
- (e) to keep all copies of the App secure and to maintain accurate and up-to-date records of the number and locations of all copies of the App;
- (f) to include our copyright notice on all entire and partial copies you make of the App on any medium;
- (g) not to provide or otherwise make available the App in whole or in part (including object and source code), in any form to any person without prior written consent from us; and
- (h) to comply with all technology control or export laws and regulations that apply to the technology used or supported by the App or any Service (**Technology**),

together **License Restrictions**.

#### 5. **ACCEPTABLE USE RESTRICTIONS**

You agree that you:

- (a) will ensure that the Device is in proper working condition and meets the minimum specifications to download and stream the App, including having sufficient cellular and data connection services with third party providers to optimize the use of the App;
- (b) not use the App or any Service in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with this EULA, or act fraudulently or maliciously, for example, by hacking into or inserting malicious code, including viruses, or harmful data, into the App, any Service or any operating system;

- (c) not infringe our intellectual property rights or those of any third party in relation to your use of the App or any Service, including the submission of any material (to the extent that such use is not licensed by this EULA);
- (d) not transmit any material that is defamatory, offensive or otherwise objectionable in relation to your use of the App or any Service;
- (e) not use the App or any Service in a way that could damage, disable, overburden, impair or compromise our systems or security or interfere with other users; and
- (f) not collect or harvest any information or data from any Service or our systems or attempt to decipher any transmissions to or from the servers running any Service.

together **Acceptable Use Restrictions**.

## **6. INTELLECTUAL PROPERTY RIGHTS**

- 6.1 You acknowledge that all intellectual property rights in the App, the Documents and the Technology anywhere in the world belong, or is licensed, to us, that rights in the App are licensed (not sold) to you, and that you have no rights in, or to, the App, the Documents or the Technology other than the right to use each of them in accordance with the terms of this EULA.
- 6.2 You acknowledge that you have no right to have access to the App in source-code form.

## **7. LIMITATION OF LIABILITY**

- 7.1 You acknowledge that the App has not been developed to meet your individual requirements, and that it is therefore your responsibility to ensure that the facilities and functions of the App as described in the Documents meet your requirements.
- 7.2 We only supply the App and Documents to an Authorised User of an EROAD Customer. You agree not to use the App and Documents for any commercial, business or resale purposes.
- 7.3 To the maximum extent permitted by law, EROAD excludes all liability in contract, tort (including negligence) and under statute and EROAD shall not be liable for any direct, indirect, special, punitive or consequential loss or damage (including loss of data or information, or loss of profits, revenue, or opportunities or any fines, penalties or levies that you may receive due to your use of the App or Services) however caused, arising out of the use of the App or Services.

7.4 In the event of any breach, or any negligent performance, of this license by EROAD which causes you loss, your sole and exclusive remedy from EROAD is that EROAD will use commercially reasonable endeavors to restore the App, Services or data.

## **8. TERMINATION**

8.1 We may terminate this EULA immediately by written notice to you:

- (a) if you are no longer an Authorised User of an EROAD customer;
- (b) if EROAD and the Customer to which you are an employee or contractor of terminates the Hardware and Service Agreement;
- (c) if you commit a material or persistent breach of this EULA which you fail to remedy (if remediable) within 14 days after the service of written notice requiring you to do so; and
- (d) if you breach any of the License Restrictions or the Acceptable Use Restrictions.

8.2 On termination for any reason:

- (a) all rights granted to you under this EULA shall cease;
- (b) you must immediately cease all activities authorized by this EULA, including your use of any Services;
- (c) you must immediately delete or remove the App from all Devices, and immediately destroy all copies of the App and Documents then in your possession, custody or control and certify to us that you have done so; and
- (d) we may remotely access the Devices and remove the App from all of them and cease providing you with access to the Services and the Appstore.

## **9. COMMUNICATION BETWEEN US**

9.1 If you wish to contact us in writing, or if any condition in this EULA requires you to give us notice in writing, you can send this to us by e-mail at [support@eroad.com](mailto:support@eroad.com). We will confirm receipt of this by contacting you in writing, normally by e-mail.

9.2 If we have to contact you or give you notice in writing, we will do so by e-mail or by posting the notice on the Website.

## **10. EVENTS OUTSIDE OUR CONTROL**

10.1 We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under this EULA that is caused by any act or event beyond our reasonable control, including failure of public or private telecommunications networks (**Event Outside Our Control**).

10.2 If an Event Outside Our Control takes place that affects the performance of our obligations under this EULA, we will use our reasonable endeavors to find a solution by which our obligations under this EULA may be performed despite the Event Outside Our Control.

**11. OTHER IMPORTANT TERMS**

11.1 We may transfer our rights and obligations under this EULA to another organization, but this will not affect your rights or our obligations under this EULA.

11.2 You may only transfer your rights or obligations under this EULA to another person if we agree in writing.

11.3 If we fail to insist that you perform any of your obligations under this EULA, or if we do not enforce our rights against you, or if we delay in doing so, that will not mean that we have waived our rights against you and will not mean that you do not have to comply with those obligations. If we do waive a default by you, we will only do so in writing, and that will not mean that we will automatically waive any later default by you.

11.4 Each of the conditions of this EULA operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining conditions will remain in full force and effect.

11.5 Clauses 1.8, **Error! Reference source not found.**, 1.12, 6 and 7 survive termination or expiry of this license.

11.6 Please note that this EULA, its subject matter and its formation, are governed by the laws of New Zealand and the parties submit to the jurisdiction of the High Court of New Zealand.

*V.1 October 2019*