



Market Street™ iPhone® (mobile digital device) Application – End User Licence Agreement (EULA)

WARNING: PERMISSION TO USE THE MARKET STREET IPHONE APPLICATION AND ANY UPDATES, UPGRADES AND CHANGES TO THE APPLICATION IS CONDITIONAL UPON YOU, THE USER, AGREEING TO THE TERMS SET OUT BELOW IN THIS END USER LICENCE AGREEMENT. YOU MAY ONLY USE THE MARKET STREET IPHONE APPLICATION ON CONDITION THAT YOU READ AND ACCEPT ALL THE TERMS OF THIS END USER LICENCE AGREEMENT. ACCEPTANCE WILL BIND YOU TO YOUR OBLIGATIONS UNDER THIS END USER LICENCE AGREEMENT. BY CLICKING "I ACCEPT" AT THE END OF THIS END USER LICENCE AGREEMENT, YOU WILL BE DEEMED TO HAVE ACCEPTED THE TERMS HEREOF. IF YOU DO NOT AGREE TO THIS END USER LICENCE AGREEMENT YOU MUST NOT CLICK "I ACCEPT" AND YOU MAY NOT USE THE MARKET STREET IPHONE APPLICATION

Acknowledgement

This End User Licence EULA ("EULA") is entered into between you, the user ("you") and Cappitalise Pty Ltd ABN 27 151 255 604 of 30 Glenayr Ave, North Bondi, NSW 2026 Australia (referred to herein as "Cappitalise", "we", and "us"), and not with Apple Inc ("Apple"). Cappitalise, not Apple, is solely responsible for the Market Street iPhone Application ("Licensed Application"). Cappitalise is solely responsible for the data, graphics, information, text, and other content in the Licensed Application ("Content") except in respect of Content supplied for publication via the Licensed Application by third party merchants ("Merchant Content"). Each third party merchant is solely responsible for its Merchant Content.

Scope of Licence

Cappitalise grants you a limited non-transferable licence to use the Licensed Application on any iPhone, iPad® or iPod touch® (mobile digital devices) that you own or control as permitted by the Usage Rules set forth in the App StoreSM (online store) Terms of Service ("Usage Rules"), for personal and non-commercial purposes only. This licence extends to any accompanying documentation ("Documentation"). Without limiting the foregoing provisions, you must not, under any circumstances, sell or resell access to the Licensed Application or scrape, republish, mirror or otherwise rent, lend, lease, sell, redistribute, sublicense, copy or duplicate the Licensed Application or any Merchant Content or other Content you obtain via the Application.

You must comply with the provisions of this EULA, the Usage Rules, all applicable laws and regulations governing the downloading, installation and use of the Licensed Application, and any relevant third party contracts such as telecommunications agreements you have entered into for the downloading and uploading of data.

Termination

We may terminate this EULA at any time if you fail to comply with any provision of this EULA or if we choose to discontinue providing or supporting the Licensed Application. Upon termination:

- (a) you must cease to use Cappitalise's Intellectual Property (including the Licensed Application and Documentation); and
- (b) you must delete all copies of the Licensed Application and Documentation in your possession and control and any material containing Cappitalise's Intellectual Property;

Termination of this EULA shall be without prejudice to any other rights or remedies of either party accrued prior to termination.

Maintenance and Support

Cappitalise does not represent that the Licensed Application will be error free or that your use of the Licensed Application will be uninterrupted. The Licensed Application may be unusable while Cappitalise is conducting maintenance, or as a result of any telecommunications failure or fault or other matter beyond Cappitalise's reasonable control. To the extent possible by law, Cappitalise shall not have any liability in respect of any of the foregoing matters.

Cappitalise is solely responsible for providing any maintenance and support services with respect to the Licensed Application, as specified in this EULA, or as required under applicable law. Cappitalise and you each acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Licensed Application.

Any questions, complaints or claims with respect to the Licensed Application should be sent to Cappitalise via the following means:

Telephone: 0413845256

Email: info@marketstreet.com.au

Warranty

Cappitalise is solely responsible for any product warranties, whether express or implied by law, to the extent not effectively disclaimed hereunder. In the event of any failure of the Licensed Application to conform to any applicable warranty, you may notify Apple, and Apple will refund the purchase price for the Licensed Application to you; and, to the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Licensed Application, and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure of the Licensed Application to conform to any warranty will be Cappitalise's sole responsibility.

Product Claims

You and Cappitalise each acknowledge that Cappitalise, not Apple, is responsible for addressing any of your claims or any third party relating to the Licensed Application or your possession and/or use of the Licensed Application, including, but not limited to: (i) product liability claims made in respect of the Licensed Application; (ii) any claim that the Licensed Application fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation in respect of the Licensed Application.

Information Portal for Merchant Content

You agree and acknowledge that the Licensed Application is an information portal only for the display of Merchant Content. Merchant Content (including details of a Merchant's goods and services) can be uploaded and published on the Licensed Application by the relevant Merchant. Merchant Content is generally not screened or checked by Cappitalise before (and generally not after) it is published on the Licensed Application. We have no control over the availability, quality, suitability and appropriateness of any goods and services supplied, or failed to be supplied, by a Merchant.

The publication of any Merchant Content does not constitute a recommendation or endorsement by us of any Merchant or a Merchant's goods or services. Any Merchant Content uploaded to the Licensed Application (and any third party information linked to in any Merchant Content) is solely the responsibility of the Merchant who uploaded the content. You understand that although you may encounter content that is offensive, objectionable or indecent, you nevertheless agree and accept to use the Licensed Application at your sole risk and that, to the extent possible by law, Cappitalise shall not (and neither shall Apple) have any liability to you in respect of any Merchant Content. Cappitalise recommends that you consult qualified financial and other professionals prior to making any significant transaction in reliance on any Merchant Content.

Consent to use data

You agree and acknowledge that Cappitalise may collect and use the data you input into the Application as well as technical data and related information, including but not limited to technical

information about your smartphone device, system and application software, and peripherals. Please see our Privacy Policy at www.marketstreet.com.au/privacy_policy for full details of how we may collect, use and disclose personal information.

Intellectual Property

You and Cappitalise each acknowledge that, in the event of any third party claim that the Licensed Application or your possession and use of the Licensed Application infringes that third party's intellectual property rights, Cappitalise, not Apple, will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim.

Cappitalise (or its licensors) is the sole owner of all rights (including all copyrights, patent rights, design rights, trademark rights, trade name and domain name rights, goodwill rights, and all other intellectual property rights) in the Licensed Application and the Documentation. The Merchants (or their licensors) are the sole owners of all rights (including all copyrights, patent rights, design rights, trademark rights, trade name and domain name rights, goodwill rights, and all other intellectual property rights) in the Merchant Content uploaded by them.

You must not, nor may you permit any other person to:

- (a) copy, alter, modify, adapt, reproduce, republish, frame, translate, reverse assemble, reverse engineer, reverse compile, transfer, sell, licence, creative derivative works from or enhance the Licensed Application and/or the Content and/or the Merchant Content and/or the Documentation (except as expressly permitted by the *Copyright Act 1968 (Cth)*);
- (b) alter, remove or tamper with any trademarks, any patent or copyright notices, or any confidentiality, proprietary or trade secret, legend or notice, or any numbers, or other means of identification used on or in relation to the Licensed Application and/or the Documentation;
- (c) do any act that would or might invalidate or be inconsistent with Cappitalise's or any Merchant's intellectual property rights;
- (d) use the Licensed Application and/or Documentation in any way that infringes Cappitalise's rights or the rights of any Merchant or third party; or
- (e) take any steps to circumvent any technological protection measure or security measures in the Licensed Application.

Legal Compliance

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.

Acceptable Use Policy

The Licensed Application may not be used in any manner that is illegal, discriminatory, abusive, insulting, threatening, obscene, harassing, racist, or otherwise inappropriate and your commission, or authorising, aiding, abetting, encouraging or inciting any person to do or attempt to use the Licensed Application in any such manner (including, but not limited to, by any one or more of the following acts) is strictly prohibited:

- (a) violation of all or any legal rights of any person or company or other entity in any jurisdiction is strictly prohibited (including, but not limited to, laws relating to crimes such as theft and fraud, and laws relating to the protection of copyright, trade secrets, patents or other intellectual property and laws relating to spam or privacy) and whether such violation is by way of the installation or distribution of "pirated" software or otherwise;
- (b) unauthorised copying of copyrighted material is strictly prohibited;
- (c) exporting software, technical information, encryption software or technology, in violation of domestic export control laws, is strictly prohibited;
- (d) introduction of malicious programs onto our web servers or those of the entity that hosts Content (e.g., viruses, worms, Trojan horses, e-mail bombs) is strictly prohibited;

- (e) revealing your account password to others or allowing use of your account on our website by others is strictly prohibited;
- (f) using another person's name, username or password or otherwise attempting to gain access to the account of any other person is strictly prohibited;
- (g) using the Licensed Application to actively engage in procuring or transmitting material that is in violation of sexual harassment or workplace relations laws is strictly prohibited;
- (h) making fraudulent offers of goods or services is strictly prohibited;
- (i) effecting security breaches or disruptions of network communication is strictly prohibited. Security breaches include, but are not limited to, accessing data of which you are not an intended recipient or logging into a server or account that you are not expressly authorised to access or corrupting any data. For the purposes of this paragraph, "disruption" includes, but is not limited to, network sniffing, pinged floods, packet spoofing, denial of service, and forged routing information for malicious purposes;
- (j) executing any form of network monitoring which will intercept data not intended for you is strictly prohibited;
- (k) circumventing user authentication or security of the Licensed Application is strictly prohibited;
- (l) using any program/script/command, or sending messages of any kind, with the intent to interfere with, or disable, any persons' access to the Licensed Application, via any means, locally or via the Internet, is strictly prohibited;
- (m) sending unsolicited messages in breach of the *Spam Act 2003* is strictly prohibited;
- (n) any form of harassment via email, or any other form of harassing or spam messaging, whether through language, frequency, or size of messages is strictly prohibited;
- (o) unauthorised use, or forging, of email header information is strictly prohibited;
- (p) solicitation of email for any email address, with the intent to harass or to collect replies is strictly prohibited;
- (q) creating or forwarding "chain letters", "Ponzi" or other "pyramid" schemes of any type is strictly prohibited;
- (r) use of the Licensed Application in breach of any persons privacy (such as by way of identity theft or "phishing") is strictly prohibited.

We reserve the right to terminate any user account, block any person from using our Licensed Application, and remove any content from the Licensed Application in connection with a breach of the above Acceptable Use Policy.

Third Party Beneficiary

Cappitalise and you each acknowledge and agree that Apple, and Apple's subsidiaries, are third party beneficiaries of this EULA, and that, upon your acceptance of the terms and conditions of this EULA, Apple will have the right (and will be deemed to have accepted the right) to enforce this EULA against you as a third party beneficiary of this EULA.

Limitation of Liability and Indemnity

To the extent and if possible by law, Cappitalise shall not have any liability or responsibility to you for any loss, damage or injury whether arising in contract, tort, equity or otherwise which does not flow directly or naturally (i.e. in the ordinary course of things) from a breach of this EULA or your use of the Application. Without limiting the foregoing, Cappitalise shall not have any liability for consequential loss of business or profits, loss of anticipated savings, loss of business opportunity, loss of data, or loss of goodwill incurred by you. To the extent and if possible by law, Cappitalise shall only be liable for losses (excluding loss of business or profits) which flow directly from Cappitalise's breach of this EULA, in respect of any incident or series of incidents in which you incur liability, up to a maximum aggregate sum equivalent to the cost paid by you when you downloaded the Licensed Application from the App Store.

In the case of goods or services supplied by Cappitalise under this Agreement, liability for breach of any implied warranty or condition which cannot be excluded is limited at Cappitalise's option (but only where the goods or services are not goods or services of a kind that are ordinarily acquired for personal, domestic or household use) to either:

- (a) the supply of the goods (or equivalent goods) or services again; or
- (b) the payment of the cost of having the goods (or equivalent goods) or services supplied again.

The exclusions and limitations of liability in this EULA shall apply to the fullest extent permissible at law, but Cappitalise does not exclude or limit liability which may not be excluded or limited by law. Nothing in this EULA shall exclude or limit our liability for breach of the statutory consumer guarantees relating to the supply of goods and services in Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

You agrees to release, indemnify and defend Cappitalise, its servants and agents (“those indemnified”) against all actions, claims and demands (including the cost of defending or settling any action, claim or demand) which may be instituted against those indemnified arising out of breach by you of the terms of this EULA or the Usage Rules.

General

You shall not assign your rights or novate your obligations under this EULA without the prior written consent of Cappitalise. Cappitalise may assign its rights under this EULA to a third party in connection with the sale of Cappitalise’s assets at any time in its absolute discretion.

This EULA constitutes the complete and exclusive statement of the agreement between the parties, superseding all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this EULA.

No exercise or failure to exercise or delay in exercising any right or remedy by a party shall constitute a waiver by that party of that or any other right or remedy available to it.

If any provision of this EULA or its application to any party or circumstance is or becomes invalid or unenforceable to any extent, the remainder of this EULA and its application shall not be affected and shall remain enforceable to the greatest extent permitted by law.

Cappitalise reserves the right to update the Licensed Application and this EULA from time to time. Cappitalise may provide updates, upgrades, patches, additional functionality and new versions of the Licensed Application. Changes to the EULA will take effect once the revised version is posted on the App Store. Your subsequent use of the Licensed Application constitutes Your acceptance of the revised version of the EULA.

If You do not agree to any modification made to the Application or the EULA, You must immediately uninstall and discontinue using the Application.

Cappitalise reserves the right to suspend or discontinue providing the Application or any part of it at any time without notice and with no liability to you.

The parties agree to use their best endeavours to resolve any dispute in respect of the subject matter of this Agreement in good faith prior to commencing proceedings against the other party in respect of the dispute. This clause does not prevent a party from seeking urgent injunctive relief from a court of competent jurisdiction.

This EULA shall be governed by the laws of New South Wales and the Commonwealth of Australia, and the parties submit to the exclusive jurisdiction of the courts of New South Wales and the Commonwealth of Australia.