

## Hardcat Software Licence Agreement

1. This document sets out the terms on which a licensor ('Hardcat' or 'we', 'us', 'our' etc.) permits a licensee ('you' 'your' etc.) to use certain software. The licensor, the licensee and the software are identified in the schedule.
2. The software is taken to include any upgrades, patches or modifications you are entitled to use in the future, as well as all related documentation (e.g. user manuals) that we provide, in whatever format. A reference to the software includes any part of it, as well as its functionality.
3. Your rights under these terms are non-exclusive, and are collectively called 'your licence'. Your licence starts only when you have paid in full for it and we have received a copy of these terms executed by you.
4. For the purposes of identifying your licence, the licence number in the schedule will be used.
5. Your licence lapses one year after it starts but after that year:
  - 5.1. you may still use the software for 'read only' reporting (and the software may lock out other functionality); and
  - 5.2. if you purchase a further annual maintenance agreement, your licence is extended for a further year;If your licence and annual maintenance both lapse, we will reinstate your licence if you purchase an annual maintenance agreement and also pay the annual maintenance charges in respect of the lapsed period.
6. The whole of the title to and copyright and all other intellectual property comprising the software are, and will remain solely ours and none of it is transferred to you.
7. You may:
  - 7.1. install and operate the software on one local area network only, at the address in the schedule ('your site');
  - 7.2. load the software into RAM in the course of operating it;
  - 7.3. make one *bona fide* back up copy as long as:
    - 7.3.1. it is clearly labelled as a back up copy;
    - 7.3.2. you only use it for back up purposes;
    - 7.3.3. you keep it securely under your control; and
    - 7.3.4. a full copy of these terms is attached to it;
  - 7.4. make further copies in the course of *bone fide* back up of your hard drive, as long as:
    - 7.4.1. those copies are only ever used to restore the hard drive on that machine or, if it is taken out of service, its replacement; and
    - 7.4.2. you keep it securely under your control.
  - 7.5. create interfaces between the software and other software for the purpose of co-operation (but we continue to own the whole of our software, including any modifications you make under this clause ('user modifications')).
8. You must:
  - 8.1. use reasonable endeavours to prevent or stop anyone from making unauthorised use of your copies of the software, or from doing anything that would be a breach of your licence if you were to do it;
  - 8.2. if there is evidence of a breach of these terms, allow us to enter your site and to investigate; and
  - 8.3. pay us all monies that you owe us, whether or not under these terms, as and when due.

9. You must not:
  - 9.1. copy the software except as permitted above;
  - 9.2. use the software for any purpose other than to manage and control your own assets;
  - 9.3. use, or attempt to use, or access the software in excess of any agreed limits on either, or both of, the number of concurrent users and/or to manage or control a greater number of individual assets than the numbers indicated as the maximum numbers in the schedule, (we can increase that number upon the payment of an additional licence fee);
  - 9.4. lend, rent, lease, sub-license, time or capacity share the software to or with anyone else, or use it to manage or control anyone else's assets (whether by way of bureau service or in some other way);
  - 9.5. transfer the software except to someone who has already entered a licence agreement with us in terms that are satisfactory to us;
  - 9.6. (except as allowed above or by law) alter, modify, de-compile, disassemble, reverse engineer or change the software, or integrate it with or into any other software, or create a derivative work from the software by any means;
  - 9.7. remove or obscure any markings, branding or documentation associated with the software or the medium it is stored on, that indicate our ownership of it; or
  - 9.8. use the software at any place but your site.
10. We may:
  - 10.1. change the specifications or functionality of future versions of the software without notice; and
  - 10.2. cease to offer maintenance agreements for your version the software on at least 6 months notice to you, or without notice if the software is being run with an operating system that has ceased to be supported by its supplier. In either case, we shall continue support on a 'reasonable endeavours' basis until the end of the term of the maintenance agreement.
11. While this licence applies to any upgrades, patches or modifications we provide in the future, you are only entitled to receive upgrades, patches or modifications if you have a separate software maintenance agreement with us (except for defect repairs under clause 16).
12. If you breach these terms, we may terminate your licence by notice in writing (and email counts as writing for this purpose). In that event, you must cease using and uninstall the software, and destroy all copies of it that are under your control.
13. When your licence ends, our rights arising from any prior breach of these terms continues.
14. We can assign our interest in these terms on notice to you.
15. We promise that as at the time of supply, the software will perform substantially in accordance with the descriptions in its user and operational documentation if used properly ('the performance standard').
16. If within one year of the date on which we first send you the software you report to us a defect in the software that causes it not to perform in accordance with the performance standard, and we confirm that defect, we shall repair the defect at no cost to you. That does not apply where the defect is caused or significantly aggravated by a change in your network (hardware or software), user modification or any other matter beyond our reasonable control.
17. As far as the law permits, except for those set out in black and white in these terms, we give no warranty or undertaking, and make no representations or promises regarding the software, its characteristics, performance or suitability for your purposes, and all implied warranties, undertakings, representations, terms, conditions and promises are excluded.
18. We are not responsible for any statement or representation concerning the software made by any other person, and you promise that you have not relied on any such statements or representations.

19. We do not promise that the software will operate continuously or be free of errors.
20. We are not responsible for the consequences of any user modifications, and we are not obliged to support them.
21. You are solely responsible for backing up all your data so that no hardware or software error, defect or malfunction, nor any other event, will cause you data loss.
22. You acknowledge that we have no control how and for what purposes you use the software. In no event will we be liable for any direct, indirect, consequential or incidental loss or damage of any kind however caused by use or misuse of the software.
23. In spite of anything above, where law implies in these terms any condition or warranty that cannot be excluded, then it is included, but our liability for breach of such a condition or warranty is limited, at our option, to one or more of the following:
  - 23.1. if the breach relates to goods – their replacement or resupply of the same or equivalent goods, or their repair, or payment to you of the cost of replacing the goods with the same or equivalent ones; and
  - 23.2. if the breach relates to services – resupplying them, or payment of the cost of having them supplied again.
24. Subject to the above provisions, our liability to you under or in connection with the software or its use, whether in contract, tort or otherwise, is limited to the fee you have paid for your licence in respect of the current year and you otherwise release us from all claims, demands, liability or responsibility in respect of the software, its use and / or its functionality restrictions when your licence lapses.
25. These terms are subject to the laws of Victoria, Australia, and the parties submit to the exclusive jurisdiction of the courts of that state in the event of any dispute.
26. We can give any notice to you by email or any way recognised by law, to your last known address. We can give notice about a matter that affects our licensees generally, or substantial numbers of them, by publication on our web site.
27. These terms are to operate to the full extent allowed by law. To the extent that any part is unlawful, it is taken to be read down (to the point of exclusion if necessary) as far as is required to operate lawfully.
28. Any change or amendment to any of the clauses in this Agreement, as agreed between Hardcat and the Licensee, will be noted in the 'Special Conditions' section of the Schedule. The change or amendment will override that particular part of a clause, complete clause or clauses of this Agreement only to the extent as noted in the Schedule.