

Calven End User Licence Agreement

BY DOWNLOADING OR USING THE CALVEN APP, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT.

1 Overview

- (a) These terms and conditions are our **EULA** and govern your access to and use of the Calven App.
 - (b) You will be legally bound by this EULA when, either:
 - (i) you indicate you accept these terms and conditions (for example, by clicking “I accept” or “I agree” in respect of these terms and conditions); or
 - (ii) you download or use the Calven App after these terms and conditions have been made known to you.
 - (c) This EULA applies whenever, and for so long as, you possess a copy of, access or use the Calven App.
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2 Calven App

2.1 Licence and ownership

- (a) Subject to your ongoing compliance with this EULA, we grant to you a limited, non-exclusive, non-transferable right for you to access and use the Calven App, for your internal business purposes. You may only access and use the Calven App with valid User Accounts.
- (b) We (or our licensors) own all right, title and interest, including all Intellectual Property Rights, in and to the Calven App and any other materials provided by us to you. This includes all improvements, enhancements, and modifications to, and derivative works of, the Calven App.

2.2 Security

We will implement and maintain security measures designed to prevent unauthorized access to the Calven App. However, we cannot guarantee that there will never be any unauthorized use, destruction, loss, damage or alteration to the Calven App or any data residing in the Calven App.

2.3 Data location

- (a) We may use third party providers of cloud-based infrastructure services (as set out in our Privacy Policy), to host parts of the Calven App. As such, you acknowledge that Your Materials may be hosted by our hosting provider (the **Cloud Host**) who may in turn provide the information to their contractors, in order to provide the relevant hosting services. We will only use a Cloud Host which we believe to be reliable and reputable.
- (b) We will not be liable for a failure to comply with this EULA or any loss of any kind arising from an act or omission of a Cloud Host or their contractors, except where (and to the extent) the Cloud Host is similarly liable to us for that act or omission.

2.4 Changes to the Calven App

We may change the Calven App from time to time. If we make a material change to the Calven App, we will inform you by publishing this information on our website or in the Calven App itself.

2.5 App Store and Play Store

To download the App, you may be required to access third party platforms over which the App is distributed (for example, the Apple App Store, Google Play Store and others) (**App Stores**). We are not responsible for the App Stores and your use of those platforms is subject to the terms between you and the operators of those platforms.

2.6 Third Party Materials

- (a) You may be able to access Third Party Materials when using the Calven App.
- (b) Your use of any Third Party Materials is not governed by this Agreement, but rather between You and the relevant third party. Third Party Materials do not form part of the Calven App.
- (c) Notwithstanding any other provision of this Agreement, we do not provide any warranties or support, and disclaim all liability, regarding any Third Party Materials. We provide no commitments that any Third Party Materials will interoperate or integrate with, or will continue to interoperate or integrate with, the Calven App.

3 Your responsibilities

3.1 Information

You will provide, in a timely manner, any information reasonably requested by us in connection with our provision of the Calven App. We are entitled to rely on, and will not verify any information provided by you or on your behalf.

3.2 Access rights

- (a) You will be provided with access details for your use of the Calven App. You will be responsible for any access or use of the Calven App using those access details.
- (b) You will promptly notify us in writing if: (i) you become aware that the confidentiality of the details used to access your User Account or password is compromised; or (ii) you become aware of any unauthorized use of the Calven App.
- (c) You may not license or transfer your rights in relation to the Calven App except as permitted under 12.6.

3.3 Acceptable use

- (a) You must ensure that your access and use of the Calven App comply with the Acceptable Use Policy.
- (b) The terms of the Acceptable Use Policy take effect as if set out in full in this EULA.

3.4 Your Materials

- (a) We do not acquire ownership in Your Materials under this EULA. Your Materials remain your property. You grant us and our Personnel the right to use, store and modify Your

Material in connection with our provision of the Calven App and performance of our obligations and exercise of our rights under this EULA.

- (b) We may store and back-up Your Materials, as necessary to meet our obligations under this Agreement. Any such backups will only be available for use by us, unless we otherwise agree. We recommend you maintain any necessary backups of Your Materials which you require.
- (c) You must ensure that:
 - (i) you are permitted to provide Your Materials to us and our Personnel for use in accordance with this EULA;
 - (ii) Your Materials do not infringe the rights of any third party, including rights related to intellectual property, confidentiality or privacy;
 - (iii) you have made any disclosures and obtained any consents required under law, including the *Privacy Act 1988* (Cth), for the use of Your Materials by us and our Personnel in accordance with this EULA.

4 Suspension

We may suspend the use of or access to the Calven App from time to time:

- (a) to perform routine or emergency maintenance;
- (b) to implement service changes and upgrades to the Calven App;
- (c) if we reasonably believe that your use of the Calven App could adversely impact other clients' or their end users' use of the Calven App or the hosting environment, such as the servers used to provide the Calven App;
- (d) if there is suspected unauthorised third party access to the Calven App;
- (e) if we reasonably believe that suspension is required to comply with applicable law;
- (f) if we become aware of any actual or potential Claim to which 8.2(a) applies;
- (g) to mitigate issues caused by any acts or omissions of third parties or issues with any internet infrastructure;
- (h) if you are in breach of this EULA (including the AUP and including any failure to pay any amount due to us), or if the Calven App is, in our opinion, being misused; or
- (i) if we are required to do so by law.

Any such suspension or resulting downtime will be limited to the minimum extent reasonably necessary in the circumstances, as determined by us.

5 Confidentiality

5.1 Restrictions on use and disclosure

- (a) The Receiving Party may only use the Confidential Information of the Disclosing Party for the purposes of exercising its rights or performing its obligations under this EULA.

- (b) Subject to clause 5.2, the Receiving Party must keep the Disclosing Party's Confidential Information confidential.

5.2 Permitted disclosures

The Receiving Party may disclose the Confidential Information of the Disclosing Party:

- (a) to those of its Personnel who need to know such Confidential Information, provided that the Receiving Party ensures that those Personnel and professional advisers keep such Confidential Information confidential in accordance with this clause 5;
- (b) to the extent required by law, provided that the Receiving Party discloses no more than the minimum amount of Confidential Information required to satisfy such law; or
- (c) with the prior written consent of the Disclosing Party.

5.3 Security

- (a) The Receiving Party must take reasonable steps to protect the Confidential Information of the Disclosing Party against unauthorized use or disclosure, and in any event steps at least as stringent as those used by the Receiving Party to protect its own confidential information.
- (b) Where Your Materials are Confidential Information, we will take steps to protect Your Materials in accordance with clause 2.2.

5.4 Right to injunctive relief

The Receiving Party acknowledges that monetary damages may not be a sufficient remedy for a breach of its obligations under this clause 5, and that the Disclosing Party will be entitled, without limiting any of its other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction if any such breach occurs.

5.5 Return of Confidential Information

- (a) Subject to paragraph (b), upon request of the Disclosing Party following termination or expiration of this EULA, the Receiving Party must immediately return to the Disclosing Party, destroy or (in the case of machine readable records) delete all Confidential Information of the Disclosing Party in the Receiving Party's possession or control relating to this EULA.
- (b) Nothing in paragraph (a) requires the Receiving Party to return, destroy or delete any Confidential Information of the Disclosing Party to the extent that such Confidential Information:
 - (i) continues to be licensed to the Receiving Party under this EULA;
 - (ii) needs to be retained for the purpose of actual or potential litigation or other record-keeping purposes; or
 - (iii) is on back-up, archival storage tapes or the like and it is not practical to do so.

6 Privacy

- (a) Each party must comply with the Privacy Act in the collection, use, storage and handling of any Personal Information obtained from the other party in connection with this EULA. We

will comply with our Privacy Policy, in relation to our collection, use, storage and handling of any Personal Information you provide.

- (b) Without limiting paragraph (a), in relation to any Personal Information contained in Your Materials, we will:
 - (i) only use such Personal Information to the extent necessary to perform our obligations under this EULA;
 - (ii) not disclose any such Personal Information to any person (other than our Personnel) without your prior written consent or as required by law;
 - (iii) take such steps as are reasonable in the circumstances to protect such Personal Information from:
 - (A) misuse, interference and loss; and
 - (B) unauthorized access, modification or disclosure.
- (c) If you provide us with any Personal Information, you must ensure that you are permitted to do so, and that you have made any disclosures or obtained any consents necessary under the Privacy Act.

7 Termination

- (a) Either party may terminate this EULA immediately by providing notice to the other party if:
 - (i) the other party suffers an Insolvency Event; or
 - (ii) the other party materially breaches this EULA to be terminated, and, if such breach is capable of remedy, the other party fails to remedy such breach within 30 days of receiving notice of the breach.
- (b) Termination or expiry of this EULA will not affect the accrued rights or remedies of either party.

8 Liability and indemnities

8.1 Liability

- (a) By their nature and despite our efforts, the Calven App may contain errors or faults from time to time and may experience periods of downtime. To the maximum extent permitted by law, we do not give any warranty, representation or guarantee to the contrary.
- (b) To the maximum extent permitted by law, all express or implied guarantees, warranties, representations and other terms and conditions of any kind in relation to the Calven App not contained in this EULA are expressly excluded. If any guarantee, warranty, term or condition is implied or imposed in relation to this EULA under the Australian Consumer Law or any other applicable legislation and cannot be excluded (a **non-excludable provision**), and we are able to limit your remedy for a breach of the non-excludable provision, then our liability for breach of the non-excludable provision is limited to one or more of the following at our option:
 - (i) in the case of services, the resupply of the services or the cost of having services supplied again; and

- (ii) in the case of goods, the replacement of the goods or the supply of equivalent goods, the repair of such goods, the payment of the cost of replacing the goods or acquiring equivalent goods, or the payment of the cost of having the goods repaired.
- (c) To the maximum extent permitted by law:
 - (i) we will not be liable to you for any indirect, special, incidental or consequential loss or damage or damages for loss of profits, goodwill, revenue, savings or opportunity arising under or in connection with this EULA;
 - (ii) except for our liability under paragraph 8.2, our maximum aggregate liability for any damages under or in connection with this EULA is \$10. The parties acknowledge that this liability cap is reasonable given you are not obliged to pay any fees under this EULA; and
 - (iii) our liability under this EULA is reduced to the extent that your acts or omissions (or those of a third party other than our subcontractors) contribute to or cause the loss or liability,

whether in contract, in tort (including negligence), in equity, under statute or otherwise, whether or not such loss or damage was foreseeable and even if we were advised of the possibility of the loss or damage.

8.2 Indemnities

- (a) Each party (**Indemnifying Party**) indemnifies the other party and its officers, employees, agents and contractors (collectively, **Those Indemnified**) from and against any Losses incurred or suffered by Those Indemnified arising out of any Claim made or brought against Those Indemnified by any third party that:
 - (i) where we are the Indemnifying Party, your use of the Calven App in accordance with this EULA infringes the Intellectual Property Rights of a third party; or
 - (ii) where you are the Indemnifying Party, our use, copying or modification of any of Your Materials in accordance with this EULA infringes the Intellectual Property Rights of a third party,

provided that:

 - (iii) Those Indemnified:
 - (A) promptly give the Indemnifying Party notice of the Claim;
 - (B) give the Indemnifying Party control of the Claim and any negotiations for settlement; and
 - (C) provide the Indemnifying Party with all reasonable assistance in connection with its handling of the Claim, at the expense of the Indemnifying Party; and
 - (iv) the Indemnifying Party's liability to indemnify Those Indemnified will be reduced proportionately to the extent that any act or omission of Those Indemnified contributed to the relevant Losses.
- (b) If there is any Claim where we are (or would be) the Indemnifying Party under paragraph 8.2, we may in our sole discretion:
 - (i) modify or replace the Calven App to make them non infringing;

- (ii) obtain for Those Indemnified the right to continue using the Calven App; or
 - (iii) if we are unable to do those things in paragraphs (i) or (ii) using commercially reasonable endeavours, terminate this EULA upon 14 days' notice to you.
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9 Subcontracting

- (a) We may subcontract the performance of our obligations under this EULA.
 - (b) We must ensure that our subcontractors comply with this EULA to the extent it applies to the work we subcontract to them, and will be liable for their acts and omissions in the performance of the work we subcontract to them.
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10 Dispute resolution

- (a) If a difference or dispute (**Dispute**) between the parties arises out of or relates to this EULA, then the party claiming the Dispute may give the other party a written notice of the Dispute identifying and providing details of the Dispute (**Notice of Dispute**).
 - (b) A senior representative of each party must meet and attempt to resolve the Dispute within 10 Business Days of receipt of the Notice of Dispute. All aspects of every such conference, except the fact of its occurrence, will be privileged.
 - (c) If the Dispute is not resolved within 15 Business Days of receipt of the Notice of Dispute (or such other period as agreed), the parties will endeavour in good faith to settle the Dispute by mediation administered by the Australian Disputes Centre in Sydney, Australia, before having recourse to arbitration or litigation. The mediation will be conducted in accordance with the ADC Guidelines for Commercial Mediation.
 - (d) A party must not start court proceedings unless they have first complied with this clause 11, however, nothing in this clause prejudices the right of a party to institute proceedings to seek injunctive or urgent declaratory relief.
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11 General

11.1 Governing law

This EULA is governed by and is to be construed in accordance with the laws in force in New South Wales. Each party submits to the exclusive jurisdiction of the courts sitting in New South Wales.

11.2 Notices

Any notices, consent, or any other communication given under this EULA is only effective if it is in writing, signed by or on behalf of the party giving it and received in full and legible form at the addressee's address or specified email address. Each party's contact details are as specified on the first page of this EULA, unless either party gives notice to the other party of an alternative address or email address.

11.3 Severable Provisions

If any provision of this EULA is held to be invalid, unenforceable or illegal for any reason, then that provision will be severed and the remainder of this EULA will remain in full force and effect.

11.4 Waiver

The failure by a party to exercise or delay exercising a right or power does not operate as a waiver of that right or power and does not preclude the future exercise of that right or power. A waiver is not effective unless it is in writing.

11.5 Variation

We may vary this EULA at any time. If you do not agree to the changes, then you must cease using, and delete your copy of, the Calven App. If you continue using the Calven App after we have changed this EULA and published the updated terms, then you will be taken to have agreed to be bound by the terms of the varied EULA.

11.6 Assignment

Neither party may assign, novate or otherwise transfer any of its rights or obligations under this EULA without the prior written consent of the other party (which consent may not be unreasonably withheld), except to a related body corporate or in connection with a merger, acquisition, reorganization or sale of all or a substantial part of its assets.

11.7 Entire agreement

This EULA constitutes the entire agreement between the parties in connection with their respective subject matter and supersedes all previous agreements or understandings between the parties in connection with the relevant subject matter.

11.8 Survival

Clauses 5, 6, 7(b), 8, 11 and 12 survive termination or expiry of this EULA together with any other provision which by its nature is intended to do so.

11.9 Cumulative rights

Except as expressly provided in this EULA, the rights of a party under this EULA are in addition to and do not exclude or limit any other rights or remedies provided by law.

12 Dictionary

12.1 Definitions

In this EULA, unless the context otherwise requires:

Acceptable Use Policy and **AUP** means our acceptable use policy available at calven.com/aup.

Business Day means a day, other than a Saturday, Sunday or public holiday in Sydney, New South Wales.

Calven App means the mobile application we provide and, where applicable, all systems, software and infrastructure used by us to support and provide the Calven App.

Claim means any claim, action, proceeding or demand.

Confidential Information means (whether or not in material form and whether or not disclosed before or after the commencement of this EULA) any information of whatever kind disclosed or revealed by one party (the **Disclosing Party**) to the other party (the **Receiving Party**) under or in relation to this EULA that:

- (a) is by its nature confidential;
- (b) is designated by the Disclosing Party as confidential; or
- (c) the Receiving Party knows or reasonably ought to know is confidential,

including in our case any software that we provide to you, but does not include information that:

- (d) is published or has otherwise entered the public domain without a breach of this EULA or other obligation of confidence;
- (e) is obtained from a third party who has no obligation of confidentiality to the Disclosing Party; or
- (f) is independently developed or obtained without breach of this EULA;

Customer means the person identified in the “Parties” section at the beginning of this document.

Disclosing Party has the meaning given in the definition of Confidential Information.

Dispute has the meaning given in clause 11(a).

EULA has the meaning given in clause 1(a).

Force Majeure Event means any fire, flood, earthquake, elements of nature or acts of God, strikes, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, quarantines, embargoes and other similar governmental action, or any other event beyond the reasonable control of a party, and, for clarity, includes the COVID-19 pandemic and governmental actions relating to the COVID-19 pandemic.

GST Law means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and associated acts and legislative instruments.

Indemnifying Party has the meaning given in clause 8.2.

Insolvency Event means the occurrence of any one or more of the following events in relation to a party:

- (a) an order is made or an effective resolution is passed for winding up or dissolution without winding up (other than for the purposes of solvent reconstruction or amalgamation) of that party and the order or resolution remains in effect for a continuous period of 7 days;
- (b) a controller, receiver, receiver and manager, official manager, administrator, provisional liquidator, liquidator, or like official is appointed over the whole or substantial part of the undertaking and property of that party and the appointment remains in effect for a continuous period of 7 days;
- (c) a holder of an encumbrance takes possession of the whole or any substantial part of the undertaking and property of that party;
- (d) that party is unable to pay its debts as they fall due;
- (e) that party becomes insolvent or is deemed to become insolvent under any applicable law; or
- (f) that party ceases to carry on business or threatens to do so.

Intellectual Property Rights means any and all intellectual and industrial property rights throughout the world including copyright (including future copyright and rights in the nature of or analogous to copyright), moral rights, inventions (including patents), trade marks, service marks, designs and circuit layouts whether or not now existing and whether or not registered or registrable including any right to apply for the registration of such rights and all renewals and extensions.

Loss means any damage, cost, loss, expense, liability, outgoing, fine or payment (including reasonable legal fees).

Material includes designs, drawings, graphics, pictures, documents, software, specifications, information, documentation, reports, manuals, flowcharts, working papers, listings, layouts and data stored by any means.

Modern Slavery Law means the *Modern Slavery Act 2018* (Cth).

Non-Excludable Provision has the meaning given in clause 8.1.

Notice of Dispute has the meaning given in clause 11(a).

Personnel of a party means that party's officers, employees, contractors (including subcontractors) and agents, provided that neither of us will be considered the Personnel of the other.

Personal Information has the meaning given in the Privacy Act.

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

Privacy Policy means our privacy policy, located at calven.com/privacy.

Receiving Party has the meaning given in the definition of Confidential Information.

Third Party Materials means all Materials that are owned by a third party and that are either:

- (a) not provided by us to you; and/or
- (b) provided to you under a separate agreement between you and the relevant third party.

Those Indemnified has the meaning given in clause 8.2.

User Account means an end user account associated with a unique user name and password, through which you may access and use the Calven App as permitted under this EULA.

Your Materials means any information (including any Personal Information) or materials that: (a) you provides to us in connection with this EULA (including for purposes of making them available via the Calven App); or (b) you input, transmit or upload to, or otherwise stores or processes on or through, the Calven App.

1.2 Interpretation

In this EULA the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this EULA;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;

- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be interpreted as, words of limitation;
- (f) a reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
 - (ii) a thing (including a chose in action or other right) includes a part of that thing;
 - (iii) a party includes its successors and permitted assigns;
 - (iv) a document includes all amendments or supplements to that document;
 - (v) a law is a reference to that law as amended, consolidated or replaced;
 - (vi) an agreement other than this EULA includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing; and
 - (vii) a monetary amount is in Australian dollars;
- (g) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
- (h) in determining the time of day, where relevant to this deed, the relevant time of day is:
 - (i) for the purposes of giving or receiving notices, the time of day where a party receiving a notice is located; or
 - (ii) for any other purpose under this deed, the time of day in the place where the party required to perform an obligation is located; and
- (i) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this deed or any part of it.