

## Elevate Internet (Pty)Ltd

# My Wi-Fi Mobile Application End User License Agreement (For the Apple App Store)

This My Wi-Fi Mobile Application End User License Agreement ("Agreement") is a binding agreement between you ("End User" or "you") and Elevate Internet (Pty) Ltd ("ELEVATE, "us" or "we"). This Agreement governs your use of the My Wi-Fi Mobile Application through the Google Play Store, including all related documentation, (the "App"). The App developed by Calix is licensed, not sold, to you.

BY CLICKING THE "ACCEPT" BUTTON BELOW OR CHECKING "I ACCEPT THE TERMS AND CONDITIONS" ON THE APP REGISTRATION PAGE, YOU (A) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT; (B) REPRESENT THAT YOU ARE OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT; AND (C) ACCEPT THIS AGREEMENT AND AGREE THAT YOU ARE LEGALLY BOUND BY ITS TERMS. IF YOU DO NOT AGREE TO THESE TERMS, CLICK "DECLINE" BELOW AND DO NOT USE THE APP.

### 1. License Grant.

Subject to the terms of this Agreement, Elevate Internet grants you a limited, non-exclusive, and nontransferable license to download, install, and use the App for your personal, non-commercial use on a mobile device owned or otherwise controlled by you ("Mobile Device") strictly in accordance with the App's documentation.

### 2. License Restrictions. Licensee shall not:

- (a) copy the App, except as expressly permitted by this license;
- (b) modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, copyrightable or registrable under intellectual property laws, of the App;
- (c) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the App or any part thereof;
- (d) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from the App, including any copy thereof;
- (e) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the App, or any features or functionality of the App, to any third party for any reason, including by making the App available on a network where it is capable of being accessed by more than one device at any time;
- (f) remove, disable, circumvent, or otherwise create or implement any workaround to any copy protection, rights management, or security features in or protecting the App; or
- (g) use the App in, or in association with, the design, construction, maintenance, or operation of any hazardous environments or systems, including any power generation systems; aircraft navigation or communication systems, air traffic control systems, or any other transport management systems; safety-critical applications, including medical or life-support systems, vehicle operation applications or any police, fire, or other safety response systems; and military or aerospace applications, weapons systems, or environments.

### 3. Reservation of Rights.

You acknowledge and agree that the App is provided under license, and not sold, to you. You do not acquire any ownership interest in the App under this Agreement, or any other rights thereto other than to use the App in

accordance with the license granted, and subject to all terms, conditions, and restrictions, under this Agreement. Elevate Internet and Calix reserves and shall retain its entire right, title, and interest in and to the App, including all copyrights, trademarks, and other intellectual property rights therein or relating thereto, except as expressly granted to you in this Agreement.

#### **4. Collection and Use of Your Information.**

(a) You acknowledge that when you download, install, or use the App, we may collect information about your Mobile Device and about your use of the App. You also may be required to provide certain information about yourself as a condition to downloading, installing, or using the App or certain of its features or functionality. When you download, register with, or use the App, we may ask you to provide information by which you may be personally identified, such as name, email address, telephone number, or any other identifier by which you may be contacted online or offline ("personal information") and that is about you but individually does not identify you, such as your password, and your router's MAC address and serial number. This information includes information that you provide by filling in forms in the App and information provided at the time of registering to use the App. We may also ask you for information when you report a problem with the App and keep records and copies of your correspondence (including email addresses and phone numbers), if you contact us. Additionally, you may provide personal or other information to your internet service provider and other third parties that may be provided to us by your internet service provider and displayed on the App through your use of the App. The provision of this information by you to these third parties may be subject to such third parties' terms and conditions. We do not assume and will not have any liability or responsibility to you or any other person or entity for such information.

(b) We use information that we collect about you, that you provide to us, including any personal information, to provide you with the App and its contents, and any other information, including any in-App notifications related to your use of the App, fulfill any other purpose for which you provide it and/or carry out our obligations and enforce our rights arising from any contracts entered into between you and us. We may also use information that we collect about you to contact you about goods and services offered by us or other third parties that may be of interest to you by sending you emails or in-App notifications. If you do not want us to use your information in this way, please do not use the App and delete your account. If you agree to let us use your information in this way but do not wish to receive in-App notifications, you may adjust your push notification preferences in your account profile.

All information we collect through or in connection with this App is subject to our My Wi-Fi Mobile Application Privacy Policy (accessible at [www.elevateinternet.com.au/legal/](http://www.elevateinternet.com.au/legal/)). By downloading, installing, using, and providing information to or through this App, you consent to all actions taken by us with respect to your information in compliance with the My Wi-Fi Mobile Application Privacy Policy. We may update our My Wi-Fi Mobile Application Privacy Policy from time to time and updated versions will be posted on the link provided in this section.

#### **5. Information You Provide to Third Parties.**

You acknowledge that you may provide personal or other information that may be displayed by us on the App through your use of the App. The provision of this information by you to these third parties may be subject to such third parties' terms and conditions. We do not assume and will not have any liability or responsibility to you or any other person or entity for such information. The App may display, include, or make available content (including data, information, applications, and other products, services, and/or materials) from your internet service provider including data based on your service selections, instructions and/or consent to your internet service provider.

## **6. Updates.**

Calix may from time to time in its sole discretion develop and provide App updates, which may include upgrades, bug fixes, patches, other error corrections, and/or new features (collectively, including related documentation, "Updates"). Updates may also modify or delete in their entirety certain features and functionality. You agree that Elevate and Calix have no obligation to provide any Updates or to continue to provide or enable any particular features or functionality. Based on your Mobile Device settings, when your Mobile Device is connected to the internet either:

- (a) the App will automatically download and install all available Updates; or
- (b) you may receive notice of or be prompted to download and install available Updates.

You shall promptly download and install all Updates and acknowledge and agree that the App or portions thereof may not properly operate should you fail to do so. You further agree that all Updates will be deemed part of the App and be subject to all terms and conditions of this Agreement.

## **7. Third-Party Materials.**

We may display, include, or make available on the App content from third parties or provide links to third-party websites or services, including through third-party advertising ("Third-Party Materials"). You acknowledge and agree that Elevate is not responsible for Third-Party Materials, including their accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality, or any other aspect thereof. Elevate does not assume and will not have any liability or responsibility to you or any other person or entity for any Third-Party Materials. Third-Party Materials and links thereto are provided solely as a convenience to you, and you access and use them entirely at your own risk and subject to such third parties' terms and conditions. If you do not wish to have such Third Party Materials displayed or sent to you, you may adjust the push notification preferences in your account profile or delete the App.

## **8. Term and Termination.**

(a) The term of Agreement commences when you acknowledge your acceptance and will continue in effect until terminated by you or Elevate as set forth in this Section 8.

(b) You may terminate this Agreement by deleting your My Wi-Fi account and the App (and all copies thereof) from your Mobile Device(s). Please note that deleting your My Wi-Fi account will not delete your account(s) with Elevate for internet related services.

(c) Elevate may terminate this Agreement at any time without notice if it ceases to support the App, which Elevate may do in its sole discretion. In addition, this Agreement will terminate immediately and automatically without any notice if you violate any of the terms and conditions of this Agreement.

(d) Upon termination:

- (i) all rights granted to you under this Agreement will also terminate; and
- (ii) you must cease all use of the App and delete all copies of the App from your Mobile Device(s).

(e) Termination will not limit any of Elevate's rights or remedies at law or in equity.

## **9. Disclaimer of Warranties.**

THE APP IS PROVIDED TO YOU "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, Elevate, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE APPLICATION, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY,

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SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF OR LIMITATIONS ON IMPLIED WARRANTIES OR THE LIMITATIONS ON THE APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO SOME OR ALL OF THE ABOVE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO YOU.

#### **10. Limitation of Liability.**

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL ELEVATE, CALIX OR ITS AFFILIATES, OR ANY OF THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, HAVE ANY LIABILITY ARISING FROM OR RELATED TO YOUR USE OF OR INABILITY TO USE THE APP FOR:

(a) PERSONAL INJURY, PROPERTY DAMAGE, LOST PROFITS, COST OF SUBSTITUTE GOODS OR SERVICES, LOSS OF DATA, LOSS OF GOODWILL, BUSINESS INTERRUPTION, COMPUTER FAILURE OR MALFUNCTION, OR ANY OTHER CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES.

**(b) DIRECT DAMAGES IN AN AMOUNT THAT IN THE AGGREGATE EXCEED \$100.00 US.**

THE FOREGOING LIMITATIONS WILL APPLY WHETHER SUCH DAMAGES ARISE OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER WE WERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW CERTAIN LIMITATIONS OF LIABILITY SO SOME OR ALL OF THE ABOVE LIMITATIONS OF LIABILITY MAY NOT APPLY TO YOU.

#### **11. Indemnification.**

You agree to indemnify, defend, and hold harmless Elevate and Calix and its officers, directors, employees, agents, affiliates, successors, and assigns from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, arising from or relating to your use or misuse of the App or your breach of this Agreement, including but not limited to the content you submit or make available through this App.

#### **12. Severability.**

If any provision of this Agreement is illegal or unenforceable under applicable law, the remainder of the provision will be amended to achieve as closely as possible the effect of the original term and all other provisions of this Agreement will continue in full force and effect.

#### **13. Governing Law and Dispute Resolution.**

You hereby consent to the jurisdiction of the courts of the Federal Court of Australia which shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this agreement.

#### **14. Entire Agreement.**

This Agreement and our Privacy Policy constitute the entire agreement between you and Elevate with respect to the App and supersede all prior or contemporaneous understandings and agreements, whether written or oral, with respect to the App.

#### **15. Waiver.**

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No failure to exercise, and no delay in exercising, on the part of either party, any right or any power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or power hereunder preclude further exercise of that or any other right hereunder. In the event of a conflict between this Agreement and any applicable purchase or other terms, the terms of this Agreement shall govern.

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