Integrated Control Technology Ltd

# End User License Agreement

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# 1. Legal Agreement

1.1. This EULA is an agreement between Integrated Control Technology Limited, Auckland, New Zealand, ("ICT") and the person or business or entity who subscribes, uses or installs the Program(s), whether directly from ICT or through an Integrator or Authorized ICT Installer, (you or your).

1.2. By installing or using ICT's Program(s), you acknowledge that you have read, understand and accept the terms of this EULA, and that you have the authority to enter into this EULA.

1.3. The Program(s) are to be delivered to you, as set out in the Customer Agreement or otherwise agreed with the Integrator, in either of the following ways:

a. On-Premise Software license which you install and host on your own systems. The On-Premise License is supplemented by an additional Care Plan. It is required in year 1, but optional from year 2 onwards. All software subscriptions from version 6 onwards will have access to the Care Plan on payment of the applicable Care Plan Fee. Prior versions will need to be updated to the latest version to be eligible to access the Care Plan; or

b. Subscription Software, which is licensed to you under the Subscription License. The Subscription License fee includes access to the Care Plan.

1.4. For purposes of this EULA:

a. clauses 3 and 6.5 only apply to On-Premise Licenses; and

b. clauses 4 and 6.4 only apply to Subscription Licenses,

and all other clauses will be applicable to both.

# 2. Definitions and Precedence

2.1. In this EULA, the following terms have the following meanings:

**Affiliate**, as it relates to a party to this EULA, means a company controlling, controlled by, or under common control with, that party;

**Authorized ICT Installer** means an Integrator, or other third party authorized by ICT to sell and install the Program(s);

**Business Day** means any day (other than a Saturday, Sunday or public holidays) in the location where the ICT Affiliate performing this EULA is based;

**Care Plan** means support and maintenance services provided by ICT to you in respect of the Program(s) that you have licensed from ICT, whether delivered by On-premise Software or Subscription;

**Commencement Date** means the date at which the subscription to the Program(s) is to commence in accordance with the Customer Agreement or on such other date specified by ICT;

**Confidential Information** means any and all information and data in any form that:

a. is related to the business or financial affairs, operations, methodologies, personnel, suppliers, customers, systems, processes, plans, intentions, know-how, or pricing of the other party;

b. comprises the provisions of this EULA; or

c. is obtained from the other party and that is a trade secret or is otherwise confidential in nature or expressed to be confidential,

whether obtained before or after the date of this EULA;

**Customer** means an existing or prospective customer that has procured the Goods and/or Services;

**Customer Agreement** means the agreement or arrangement between you and the Integrator or ICT, for the sale and provision of Goods and/or Services;

**Data Processing Addendum** is ICT's Data Processing Addendum found at ict.co/data-processing-addendum;

**Designated Site** means the agreed location at which the Programs will be used;

**Documentation** means the documentation (if any) ICT makes available to the ICT Customer through the Software or the Application, which describes the functionality of the Program(s) or providing user instructions (whether paper or electronic) for the Program(s) including as found online at www.ict.co, as modified from time to time by ICT;

**Fees** means the Subscription Fee, the Care Plan Fee and/or any other fees payable by you in connection with this EULA;

**Goods** means all goods including ICT Hardware, Software, Subscription Goods (and including any files, information, printed or virtual material, data, hardware, software or firmware, whether provided from a third party or where custom developed or programmed for the Integrator);

**ICT Customer** means an Integrator or a Customer, as applicable;

**ICT Hardware** means the hardware or equipment supplied by ICT;

**Initial Support Term**, if applicable, has the meaning given in clause 6.4;

**Integration** means Goods integrated and/or incorporated by an Integrator to a Solution provided to a Customer either as a standalone product or as a bundled product along with the Integrator's other products and/or services (and "Integrate" shall have a corresponding meaning);

**Integrator** means the person/s or business appointed as an Integrator pursuant to an Agreement requesting ICT to provide the Goods or Services as specified in any invoice, document or Purchase Order, and if there is more than one person requesting the Goods or Services, Integrator is a reference to each person jointly and severally;

**Intellectual Property Rights** means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual property rights, whether registered, in the course of being registered or unregistered and any analogous rights worldwide;

**On-Premise License** has the meaning given in clause 3.1;

**On-premise Software** means any software provided by ICT that is not Subscription Software;

**Program(s)** means ICT's Goods and/or Services, licensed to you by ICT in accordance with the Customer Agreement;

**Services** means all services (which includes any advice or recommendations, installation of Goods, applications (mobile or web applications), product support and any other services);

**Software** means On-premise Software and/or Subscription Software;

**Solution** means the non-exclusive and non-transferrable license granted by ICT to use the Software, mechanisms made available by ICT that allows the ICT Customer to access the Software (including mobile, web or other method) (**Application**); and Documentation, during the Subscription Period solely for the ICT Customer's internal business purpose or, in the case of the Customer, to resell the Solution in accordance with the agreement entered into between the Integrator and ICT;

**Specific Terms** means any terms of this EULA and any specific terms agreed in writing between ICT and the Integrator, and/or you; and

**SSN** means a software serial number issued by ICT upon purchase of a License, which is used to activate the License when the Program(s) is installed or started;

**Subscription Fee** means the subscription fee payable in relation to the Program(s) in accordance with your Customer Agreement, including the payment (if any) for the Care Plan;

**Subscription Goods** means the Subscription Software and ICT Hardware in respect of which Integrator may resell Subscriptions to Customers;

**Subscription License** has the meaning set out in clause 4.1;

**Subscription Software** means any ICT cloud platform and related services provided by ICT;

**Subscription Period** means the period commencing on the Commencement Date and ending on:

a. where a subscription period is agreed and accepted by the Integrator or ICT, the expiry of that agreed period; or

b. where no subscription period is agreed between you and ICT or the Integrator, the date that is 20 years from the Commencement Date,

unless this EULA is terminated earlier in accordance with its terms.

2.2. In the event of any conflict or inconsistency between the terms applicable to your purchase or use of the Program(s), the following (descending) order of precedence will apply:

a. the Specific Terms;

b. the Data Processing Addendum;

c. the Privacy Policy;

d. this EULA.

# 3. License - On-Premise Software

3.1. Subject to the terms of this EULA and any Specific Terms, ICT grants a non-exclusive, non-transferable, revocable and non-sublicensable right to use the Program(s), as applicable, solely:

a. at the Designated Site; and

b. for your internal business purposes,

c. during the Subscription Period

(**On-Premise License**).

3.2. The development, release and timing of any additional features or functionality of any Program(s) remains at ICT's sole discretion. The On-Premise License to the Program(s) is based solely upon features and functions that are currently available as at the time of any applicable Customer Agreement or agreement between ICT and the Integrator (for the aforementioned On-Premise License), and not in expectation of any future feature or function.

# 4. License - Subscription Software

4.1. Subject to the terms of this EULA and any Specific Terms, ICT grants a non-exclusive, non-transferable, revocable and non-sublicensable right to use the Program(s), as applicable, solely:

a. at the Designated Site;

b. for your internal business purposes; and

c. during the Subscription Period,

(**Subscription License**).

4.2. The development, release and timing of any additional features or functionality of any Program(s) remains at ICT's sole discretion. The Subscription License to the Program(s) is based solely upon features and functions that are currently available as at the start date of any Subscription Period, and not in expectation of any future feature or function.

# 5. Your Obligations

5.1. You undertake that you will not:

a. sublicense, supply, resell, rent, lease, loan, distribute, market, commercialize or otherwise transfer rights granted under this EULA or usage of the Program(s) to any other person (including to any unit of government);

b. except as expressly permitted by law or ICT, copy, reproduce, manufacture, modify, reverse engineer, recode, disassemble or decompile any part of the Program(s), including attempting to discover the source code of the Program(s), or directly access, modify, or inject data into the underlying database of the Program(s) (including via SQL or other means);

c. remove or erase any part of the Program(s) or otherwise try to disable or alter any software functionality;

d. attempt to circumvent or break any encryption, decryption or other security device or technology measure(s) contained in the Program(s) or that control access to or use of the Program(s);

e. use the Program(s) in any way or for any purpose other than as specifically contemplated by this EULA or the Specific Terms;

f. remove or alter any copyright, trademark or proprietary notice;

g. export the Program(s) from the country of the Designated Site without ICT's prior written consent and without being in full compliance with applicable export control laws;

h. use the Program(s) for any unlawful purpose.

5.2. You must:

a. provide ICT with all reasonable assistance and cooperation as reasonably requested by ICT from time to time in the provision of the Program(s), including (where applicable) by providing access to relevant platforms and systems upon which the Program(s) is deployed;

b. immediately report any security violations or misuse of the Program(s) to ICT; and

c. comply at all times with applicable laws (including all applicable export law), protocols, policies, guidelines, and any reasonable directions issued by ICT from time to time.

5.3. Upon ICT's reasonable request (such request not to be made more than twice during any 12 month period) and on reasonable notice, you agree to allow ICT or its representative to inspect and have access to the Designated Site, and computer equipment or systems, at or on which the Program(s) is installed, stored or used, solely for the purposes of ensuring that you are complying with the terms of this EULA.

5.4. ICT may collect diagnostic, technical, usage and related information regarding your use of the Program(s) ("Statistical Data"). To the extent that Statistical Data is deemed to be personal data under applicable data protection laws, and without prejudice to section 9 below, ICT will process such Statistical Data in accordance with ICT's Privacy Policy. You agree that ICT may use such Statistical Data to monitor your compliance with your obligations under this EULA and for other legitimate business purposes. Any processing of Statistical Data (to the extent it is deemed to be personal data under applicable data protection laws) by ICT in its capacity as a processor on behalf of you (acting as controller) will be governed by the Data Processing Addendum as further described in section 9 below.

# 6. Care Plan

6.1. Subject to clause 6.2 of this EULA, and in relation to any On-premise Software, payment of the Care Plan Fee, ICT will provide the following support and maintenance services to you in respect of the Program(s) that you have licensed from ICT, whether delivered by On-premise Software or Subscription Goods (Care Plan):

a. access to ICT's support, via an Authorized ICT Installer, to receive technical assistance and/or general consultation with regard to the Program(s);

b. as they become generally available, make available any minor versions, updates and/or enhancements, cyber enhancements or updates, fixes, and workarounds to current versions of the Program(s) (excluding upgrades);

c. as they become generally available, make available updates and enhancements to existing Documentation; and

d. ICT taking all reasonable steps to correct defects in the Program(s) that are directly attributable to programming if ICT, at its sole discretion, recognizes them as having a material detrimental effect on the performance of those Program(s).

6.2. The following is expressly excluded from the Care Plan and unless otherwise agreed will not be covered by ICT:

a. provision, installation and/or support of new versions and/or enhancements to current versions of any software (including but not limited to operating systems) or materials other than Program(s) and Documentation, and these new versions and/or enhancements will be subject to additional licensing requirements. This clause excludes the minor versions, updates and/or enhancements specifically provided under the Care Plan as set out in clause 6.1(b). Whether such versions, updates and/or enhancements are included in the Care Plan under clause 6.1(b) is at the sole discretion of ICT;

b. installation of the Program(s) on any end users' systems. Installation must be attended to by an Authorized ICT Installer and is separate to the Care Plan;

c. third-party software or hardware or integration of the Program(s) with third party software or hardware;

d. communication and connectivity issues caused by or contributed to by telecommunication links, internet, or telecommunication problems;

e. problems arising out of use of the Program(s) otherwise than in accordance with the Documentation or guidance, unauthorized alteration of, interference with, or negligent use or misuse of, the Program (s), or caused by or contributed to by third party software or hardware; and

f. Care Plan of Program(s) which are not within the last two (2) long-term support releases of those Program(s) by ICT. ICT may be able to provide Care Plan for older releases but expressly excludes all obligations to do so.

ICT reserves the right to charge additional fees at its then current rates for any services performed in connection with the matters referred to in this clause 6.2.

6.3. The Care Plan:

a. may be used only for your internal business purposes and use of Care Plan by you on behalf of a third party is not permitted; and

b. shall not be provided to you if you do not have:

i. in respect of an On-premise Software License, a current Care Plan; or

ii. in respect of Subscription Software, a current Subscription License, and

iii. in each case for the Program(s) in question, all Fees for those Program(s) and all other fees payable to ICT are paid.

6.4. In the case of Subscription Software, the Care Plan for each Program will commence from the date when the SSN for that Program(s) is first registered with ICT and will continue throughout the Subscription Plan.

6.5. In the case of On-premise Software:

a. The Care Plan for each Program will:

i. commence from the date when the SSN for that Program(s) is first registered with ICT and will continue for 12 months from that date, unless otherwise notified to you (Initial Support Term); and

ii. renew from the expiry of the Initial Support Term for the same period as set out in the Initial Support (Renewal Support Term) and renew at the end of each Renewal Support Term for further Renewal Support Terms until the Care Plan lapses, or is canceled by either party.

b. You agree to pay the fee for renewal of the Care Plan (Care Plan Fee) for the Initial Support Term and Renewal Support Term, in advance, at ICT's then current rates for the Care Plan.

c. The Care Plan Fee is not refundable (irrespective of whether the Program(s) is terminated during the relevant Renewal Support Term).

d. Payment of the Care Plan Fee does not ensure the longevity or continuance of the Program(s). If ICT chooses to discontinue the Program(s) or the Support and Maintenance of Program(s), ICT will notify you in writing 20 Business Days in advance and ICT shall, at its discretion, elect to do any or all of the following:

   i. replace the Program(s) with a comparable product, if one exists, subject to monetary adjustments depending upon the cost of the replacement product relative to that of the Program(s);

   ii. reimburse you a pro-rated amount of the Subscription Fee and Care Plan Fee already paid; or

   iii. assign the maintenance of the Program(s) to a third party at no cost to you, provided that if you do not consent to ICT assigning the maintenance of the Program(s), you may terminate this EULA by giving ICT at least 20 Business Days written notice.

e. Where the Care Plan for the Program(s) lapses is canceled or expires, such as for non-payment of Fees, you may obtain cover at a later stage during the Subscription Period of that Program(s) as follows:

   i. you may purchase support for currently supported software versions on an as-needed basis at ICT's then current terms and rates; and/or

   ii. reinstatement of any lapsed Care Plan. However, this:

      A. is only available for up to three years beyond the expiration of the Initial Support Term or any subsequent Renewal Support Term, except at the sole discretion of ICT; and

      B. will require full payment of any Annual Care Plan Fee that would have been due from the expiration of the last active Initial Support Term or any subsequent Renewal Support Term through to the reinstatement date, plus a 20% administrative surcharge.

   Upon reinstatement, you will receive the latest version of the Program(s) to which this subclause applies.

# 7. Intellectual Property

7.1. You acknowledge and agree that ICT or its licensors own all Intellectual Property Rights:

a. in the Program(s), the Documentation and in any enhancements to or modifications of the Program(s) or the Documentation, whether recommended or created by ICT, you or any other person; and

b. in, or created during the performance of, the Care Plan,

and you will not dispute such ownership. Except as expressly provided in this EULA, this EULA does not grant you any rights (including Intellectual Property Rights) to, or in, the Program(s), the Documentation or the Care Plan. Your right to use such Intellectual Property Rights in the Program(s), the Documentation or the Care Plan as provided in this EULA will cease upon termination of this EULA.

7.2. To the extent you provide suggestions or other feedback to ICT or an Authorized ICT Installer, you grant to ICT a royalty-free, fully paid, sub-licensable, transferable, non-exclusive, irrevocable, perpetual, worldwide right and license to collect, use, sell and otherwise exploit such feedback, including incorporating it into the Program(s).

7.3. You grant ICT and ICT's Affiliates the right to use your company's name and logo for promotional purposes, including, but not limited to, on websites, in press releases and in advertising and promotional material, unless indicated otherwise by you in written notice to ICT.

# 8. Indemnities

8.1. If you become aware that any party is infringing or misappropriating any ICT Intellectual Property Rights then you must promptly notify ICT in writing and assist ICT, at ICT's expense, to protect such Intellectual Property Rights.

8.2. SUBJECT TO CLAUSE 8.4, IF A THIRD PARTY INITIATES OR THREATENS A LEGAL CLAIM AGAINST YOU ALLEGING THAT YOUR USE OF THE PROGRAM(S) IN ACCORDANCE WITH THIS EULA INFRINGES THAT THIRD PARTY'S COPYRIGHT (CLAIM), THEN ICT WILL PAY THE RESULTING COSTS, DAMAGES AND REASONABLE LAWYERS' FEES AWARDED IN ACCORDANCE WITH A FINAL JUDGMENT OR SETTLEMENT OF THE CLAIM PROVIDED THAT YOU:

a. NOTIFY ICT IN WRITING OF THE CLAIM PROMPTLY AFTER RECEIPT OF THE CLAIM AND, IN ANY EVENT, IN SUFFICIENT TIME FOR ICT TO RESPOND TO THE CLAIM WITHOUT PREJUDICE;

b. PROVIDE ICT WITH THE EXCLUSIVE RIGHT TO CONTROL AND DIRECT THE INVESTIGATION AND DEFENSE OF THE CLAIM AND TO SETTLE THE CLAIM IN ICT'S SOLE DISCRETION; AND

c. COOPERATE WITH ICT IN THE DEFENSE OF THE CLAIM (AT ICT'S COST), INCLUDING BY PROVIDING ICT WITH A COPY OF THE CLAIM AND ALL RELEVANT EVIDENCE IN YOUR POSSESSION OR CONTROL.

8.3. If the Program(s) becomes the subject of any actual or anticipated Claim, ICT may, at ICT's sole option and expense:

a. procure for you the right to continue using the Program(s) consistent with this EULA;

b. replace or modify the Program(s) or any part of the Program(s); or

c. if either (a) or (b) is not available on a commercially-feasible basis, terminate this EULA. If the Relevant Programs are being provided under a Subscription License, ICT will refund any prepaid Fees for the unused portion of your then-current Subscription Period.

8.4. THE INDEMNITY IN CLAUSE 8.2 DOES NOT APPLY TO PORTIONS OF THE PROGRAM(S), IF ANY, THAT ARE LICENSED BY ICT FROM THIRD PARTIES, WHICH ARE PROVIDED "AS IS". CLAUSES 8.2 AND 8.3 ARE YOUR SOLE AND EXCLUSIVE REMEDY IN RESPECT OF ANY CLAIM.

8.5. YOU SHALL INDEMNIFY AND HOLD ICT HARMLESS FROM AND AGAINST ANY LOSS, CLAIM, LIABILITY, DAMAGE, COST OR EXPENSE, INCLUDING LAWYER'S FEES, PAYABLE TO ANY PERSON OR ENTITY ARISING OUT OF OR RELATING TO THE YOUR BREACH OF THE TERMS OF THIS EULA.

# 9. Privacy

9.1. You acknowledge that ICT, as controller under applicable data protection laws, may collect and process personal data from you, your personnel and professional advisers, including names, email addresses and company information. ICT may engage third-party data processors to perform functions on ICT's behalf, including in connection with fulfilling orders, delivering packages, sending postal mail and e-mail, removing repetitive information from customer lists, analyzing data, providing marketing assistance, processing, payment processing and customer service. Where required under applicable data protection laws, any such third-party processors will be bound by appropriate data processing agreements, and will only process personal data on ICT's documented instructions.

9.2. When acting as controller, ICT will collect and retain information in accordance with ICT's Privacy Policy in ICT's processing of that information or data. ICT's privacy policy is accessible at: https://ict.co/privacy-policy. It is your responsibility to ensure you are aware of the most up to date version of ICT's Privacy Policy.

9.3. Where ICT processes personal information or personal data on your behalf (with ICT acting as processor, and you acting as controller), both parties shall comply with the Data Processing Addendum (https://ict.co/data-processing-addendum) which shall be deemed fully executed and incorporated herein by reference.

9.4. You:

a. warrant that you have all necessary consents and permissions, and have given all necessary notifications, to provide ICT with any personal information or personal data that you provide to ICT; and

b. agree that ICT may access, process and use personal information or personal data as set out in this EULA, the Data Processing Addendum or ICT's Privacy Policy (as applicable).

# 10. Confidentiality

10.1. Each party (the Recipient) will keep confidential all Confidential Information obtained from the other party (Disclosing Party) and, except as permitted by clauses 10.2 and 10.3 below, will not use for itself or its own benefit, or divulge or make available the same to a third party without the written consent of the Disclosing Party or as specifically contemplated by this EULA.

10.2. The Recipient may divulge Confidential Information only to those of its personnel who are directly involved in fulfilling the Recipient's obligations under this EULA and will ensure that such personnel are aware of and comply with these obligations as to confidentiality.

10.3. The obligations of confidentiality set out in clause 10.1 above will not apply to information that:

a. the Recipient can clearly show was independently available to it from a third party having the right to disclose it;

b. at the time of disclosure is in the public domain, or subsequently enters the public domain, through no fault of the Recipient or any other person to whom it discloses the information; or

c. the Recipient is obliged by law to disclose, provided that it has first advised the Disclosing Party of this obligation, has allowed the Disclosing Party reasonable time to avoid the disclosure having to be made, and has given the Disclosing Party such assistance (at the Disclosing Party's cost) as the Disclosing Party reasonably requests in doing this.

10.4. Each party will on demand and, in any event, on termination of this EULA, deliver to the other party all Confidential Information and any other document or information supplied by or obtained from the other party relating to this EULA, provided that the Recipient will be entitled to retain Confidential Information of the Discloser to the extent reasonably necessary to meet any applicable legal, regulatory or internal compliance obligations, in which case the provisions of this EULA will continue to apply to any Confidential Information so retained.

10.5. The obligations under this clause 10 will survive termination of this EULA.

# 11. Warranty

11.1. You have various rights under the laws applicable in your jurisdictions which ICT cannot exclude in this EULA. Nothing in this EULA is intended to limit those rights, but ICT excludes all other implied terms to the fullest extent permitted by law.

11.2. For Warranty information, please refer to our standard product warranty (https://www.ict.co/Standard-Product-Warranty). TO THE EXTENT PERMITTED BY LAW, THIS CLAUSE 11.2 IS YOUR SOLE AND EXCLUSIVE REMEDY FOR BREACH OF WARRANTY BY ICT.

11.3. ICT will not be liable for a breach of the Warranty in clause 11.2 to the extent of any defect which is caused by:

a. a modification of the Program(s) by anyone other than ICT; or

b. your use of the Program(s) in a manner not reasonably contemplated, or contrary to the instructions given to you(whether directly by ICT, or via the Authorized ICT Installer).

11.4. EXCEPT AS EXPRESSLY SET OUT IN CLAUSE 11.2 AND EXPECT FOR THE WARRANTIES AND REPRESENTATIONS THAT CANNOT BE EXPRESSLY EXCLUDED BY LAW, ICT MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO THE PROGRAM(S) AND SPECIFICALLY MAKES NO WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE WARRANTY IN CLAUSE 11.2 DOES NOT APPLY TO PORTIONS OF THE PROGRAM(S), IF ANY, WHICH ARE LICENSED BY ICT FROM THIRD PARTIES. SUCH PORTIONS ARE PROVIDED "AS IS".

# 12. Suspension and Termination

12.1. ICT may suspend your Subscription License or On-Premise License, and access to the Care Plan, at any time if required under law or if ICT reasonably considers that you are in breach of this EULA or any Specific Terms.

12.2. ICT may terminate this EULA immediately by notice in writing to you if:

a. you commit a material breach of this EULA which is capable of remedy and fail to remedy the breach within 10 Business Days of receipt of notice from the ICT requiring the breach to be remedied;

b. you commit a material breach of this EULA which is incapable of remedy; or

c. you breach any term of the Specific Terms.

12.3. This EULA shall automatically be terminated if you:

a. are declared bankrupt or insolvent in any jurisdiction;

b. make any assignment or enter into any compromise or arrangement for the benefit of your creditors;

c. are liquidated, dissolved, struck off, put into administration, have a receiver, manager or similar appointed or any similar event occurs in any jurisdiction; or

d. cease a material part of your business or threaten to cease a material part of your business.

12.4. Upon termination of this EULA:

a. the License and any other rights granted to you under this EULA will immediately come to an end;

b. you must immediately cease using the Program(s);

c. you will, within 20 Business Days, return, destroy, delete or put beyond use any Confidential Information of ICT, physical media containing the Program(s), and/or physical copies of the Documentation which are in your possession or control; and

d. you will, within 20 Business Days, uninstall and/or delete all copies of the Program(s) and any copies of the Documentation.

12.5. Within 20 Business Days after the date of expiration or termination of the EULA, you will furnish written evidence, endorsed by an officer of your company, that (i) all original(s) and all copies of the Program(s) and Documentation, in whole or in part, have been destroyed; (ii) that none of the Program(s) remain resident on or in any computer or other storage device(s) of any type or form; and (iii) all printed/hard copies of the Documentation have been destroyed or returned.

12.6. Termination of this EULA will be without prejudice to the rights and obligations of the parties which accrued prior to termination.

12.7. Any provisions which by their nature are intended to survive, or which are expressed to survive, termination of this EULA will survive.

## 13. Disputes

13.1. If a dispute arises out of or relates to this EULA, neither party may commence any court or arbitration proceedings relating to the dispute unless it has first complied with this clause 13, except where a party seeks urgent interlocutory relief or money judgement.

13.2. A party claiming a dispute has arisen must give written notice to the other party specifying the nature of the dispute.

13.3. On receipt of that notice, the parties must use all reasonable endeavors to resolve the dispute by discussion, consultation, negotiation, or other informal means.

13.4. If the dispute is not resolved within 15 Business Days of the notice being given pursuant to clause 13.2 (or within any further period agreed in writing by the parties), the parties must refer the matter to a mediation to occur in Auckland, New Zealand.

13.5. The mediation will be conducted in accordance with the New Zealand Disputes Resolution Centre (NZDRC) Mediation Guidelines and with a mediator as agreed by the parties or, failing agreement, any party may ask the President of the Auckland branch of the New Zealand Law Society or his/her nominee to select a mediator with the appropriate qualifications and expertise, and that selection will be final.

13.6. While the procedure in this clause 15 is being followed, both parties must continue to fulfill their obligations under this EULA.

# 14. Notices

14.1. Any notice under this EULA is to be made in writing by email, personal delivery or post to the party's physical or email address.

14.2. All notices to ICT will be sent to 4 John Glenn Ave, Auckland, New Zealand 0632, or to support@ict.co, or such other address published on ICT's website or otherwise notified to you.

14.3. Any communication to any person will be deemed to be received by that person:

a. where sent by email, when the email is sent provided that:

   i. the sender can demonstrate that the email was sent to the correct email address of the recipient; and

   ii. no error message was received by the sender to indicate that the email did not reach its intended destination;

b. where delivered by a person, when left at the address required by clause 16.1;

c. where sent by post within New Zealand, five Business Days after being put in the post with postage prepaid; and

d. where sent by post internationally, 10 Business Days after being put in the post with postage prepaid.

# 15. General

15.1. From time to time, ICT may modify this EULA. ICT will use commercially reasonable efforts to provide you reasonable prior written notice of any material changes to these Terms through ICT's website or other forms of communication. Your continued use of the Software after such notification constitutes acceptance of the modified EULA. If you do not agree with the modifications, you must immediately stop using the Program(s) and contact us.

15.2. Nothing in this EULA is to be construed as creating an agency, partnership, or joint venture relationship between the parties. Neither party will have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of any other party, whether express or implied, or to bind the other party in any respect.

15.3. No waiver of any breach of this EULA will be deemed to be a waiver of any other or any subsequent breach. The failure of any party to enforce any provision of this EULA at any time will not be interpreted as a waiver of the provision.

15.4. If one or more of the provisions of this EULA is deemed to be invalid or unenforceable, the parties shall negotiate in good faith to replace the invalid or unenforceable provisions with valid provisions which correspond as closely as possible to the original intent. The remaining provisions of this EULA will not be affected and will continue in full force and effect.

15.5. ICT may subcontract any of its obligations under this EULA to any third party at any time without notice to you, but ICT will continue to be liable to you for the performance of ICT's obligations under this EULA.

15.6. ICT may assign or novate, in whole or in part, any of its rights or obligations under this EULA upon written notice which may be by way of a general notice through ICT's website or other forms of communication. If you do not consent to ICT assigning or novating ICT's rights or obligations under this EULA to a third party (other than ICT's Affiliates), you may terminate this EULA by giving ICT at least 20 Business Days written notice, in which case ICT will provide you with a pro rata refund of any prepaid Fees in accordance with 6.5 (d)(ii).

15.7. You cannot assign or novate any of your rights or obligations under this EULA, in whole or in part, without the prior written consent of ICT (which will not be unreasonably withheld).

15.8. These Terms are subject to the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand courts.

15.9. Notwithstanding the foregoing or any other provision of these Terms, ICT retains the right to seek any monetary judgment or debt recovery claim, or to apply for any interim or conservatory measures, including injunctive relief, through any competent court of jurisdiction. Nothing in this clause shall restrict the application of mandatory consumer protection laws in force where you are usually resident, where applicable .