



LICENSED SOFTWARE END USER TERMS

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Envision IT Inc. (Supplier)
Licensed Software
End User Terms and Conditions

Last updated 21 September 2022

1 Terms and conditions

1.1 Acceptance of terms and conditions:

- (a) The Customer accepts the terms and conditions in effect at the time of supply of the Licensed Software.
- (b) The Supplier may update these terms and conditions at any time on one month's written notice to the Customer except that where a Fixed Term applies the updated terms and conditions will not apply for the remainder of the current Fixed Term but will apply for the renewal of that Fixed Term (if any) and any ongoing use beyond the end of the current Fixed Term (as applicable).
- (c) Without limiting clause 1.1(b), the Customer's continued use of the Licensed Software confirms the Customer's acceptance to be bound by the latest terms and conditions.
- (d) Any additional or different terms that the Customer may stipulate or state in any communication with the Supplier will not be binding on the Supplier or included in the Agreement unless expressly agreed in writing by the Supplier.

1.2 The 'Agreement' comprises the Customer Information, Selected Options, Relevant Pricing and these terms and conditions (as updated from time to time under clause 1.1(b) above).

1.3 These terms and conditions apply to:

- (a) customers that purchase Licensed Software (or on whose behalf Licensed Software is purchased),

and in either case, if there is a trial period available, these terms and conditions also apply to that trial period.

1.4 The Licensed Software is available from the Supplier directly and from Authorized Partners and is available at various Purchase Locations. Regardless of where the purchase is made, these terms and conditions apply as between the Supplier and the Customer.

1.5 All capitalized terms used in these terms and conditions have the meanings given to them in the definition section in clause 19.

1.6 Where someone other than the Customer purchases Licensed Software on behalf of the Customer that person is deemed to have authority to accept these terms and conditions for the Customer.

2 Trial

2.1 If a Trial is available to the Customer and the Customer elects to use the Licensed Software for a Trial, the Customer acknowledges that use of the Licensed Software for the Trial is subject to these terms and conditions.

2.2 Trial period

(a) The Trial will commence when the Trial Licensed Software is made available to the Customer. In order for the Trial Licensed Software to be available to the Customer, the Customer will need to follow the steps outlined below to the Customer by the Supplier, the Authorized Partner or at the Purchase Location, and accept these terms and conditions. The Customer acknowledges that the Trial is for the version of Licensed Software made available under the free trial offer. The free trial will end on expiration of the Trial Period, unless terminated earlier under these terms and conditions.

2.3 Provisioning for Trial

(a) The Supplier will provide the Trial Licensed Software to the Customer in accordance with these terms and conditions. The Supplier will:

- i. provide the Customer with access to the Trial Licensed Software;
- ii. provide assistance with use of the Licensed Software as reasonably requested by the Customer (or the Supplier will procure the Authorized Partner to provide assistance). The assistance will be available from the Customer during the hours notified by the Supplier, or the hours notified by the Authorized Partner or at the Purchase Location (as applicable). If no hours are notified, the Supplier or relevant Authorized Partner will use reasonable endeavours to provide assistance during their working day.

2.4 Common terms apply: Except for clauses 3, 4, 6 and 7, all clauses of these terms and conditions apply to Trials (in addition to this clause 2).

3 Licensed Software

3.1 Grant of License: The Supplier grants to the Customer a non-exclusive, non-transferrable license to use the Licensed Software.

3.2 License limitations: The license granted under clause 3.1 is subject to the limitations and conditions (if any) that are:

- (a) agreed in writing between the Customer and the Supplier or relevant Authorized Partner (as applicable) prior to the purchase by the Customer; or
- (b) notified to the Customer at the Purchase Location and agreed to by the Customer, prior to the purchase by the Customer.

The limitations could include such items as a limitation on the purpose for which the Licensed Software can be used, a limit on the number of users or who the users can be or a limitation on the number of devices on which the Licensed Software can be installed.

- 3.3 Term of License: The license granted under clause 3.1 will commence when the Customer downloads or otherwise receives delivery of the Licensed Software (and the Agreement commences at that time) and will continue for the remainder of the term of the Agreement, refer to clause 6 below.
- 3.4 Backup: The Customer is entitled to make unlimited back-up copies of the Licensed Software. Any back up copy of the Licensed Software is in all respects subject to these terms and conditions and is deemed to form part of the Licensed Software for the purposes of the Agreement.
- 3.5 Non-Production Copies: The customer is entitled to install the Licensed Software in development, test, and other non-production environments for development and testing purposes.
- 3.6 Maintenance and support:
 - (a) The Supplier will at its discretion release updates of the current version of the Licensed Software which will be made available to the Customer provided the Customer is up to date with payment of Relevant Pricing.
 - (b) The Supplier (or if the Customer purchases the Licensed Software from an Authorized Partner, that Authorized Partner) will provide assistance in resolving issues in respect of the Customer's use of the Licensed Software, on receiving a request for assistance from the Customer. This assistance does not extend to any issues arising with use of the Licensed Software that in the Supplier's reasonable opinion are due to the Customer's or any third party's services or products including where the Licensed Software is dependent on or integrated in any way with those services or products (including the Customer's Integrated Products and Services). The support under this clause will be available during the hours notified by the Supplier or Authorized Partner (as applicable) or at the Purchase Location. If no hours are notified, the Supplier or Authorized Partner (as applicable) will use reasonable endeavours to provide the support during their working day. The Supplier or relevant Authorized Partner (as applicable) may charge the Customer, at their respective standard rates, for any assistance requested by the Customer as Licensed Software support but which is beyond the assistance described in this clause.

3.7 Common terms apply: Except for clauses 2 and 3, all clauses of these terms and conditions apply to the Licensed Software (in addition to this clause 4).

4 Licensed Software Dependencies

4.1 The Customer acknowledges that the Licensed Software are dependent on proper implementation and availability and correct functioning of the Customer's Integrated Services and Products.

4.2 Neither the Supplier nor any Authorized Partner has any responsibility or liability to the Customer, and in any event no obligation to refund or reduce amounts paid by the Customer, for incorrect or unexpected functioning, or failure, of the Licensed Software where that incorrect or unexpected functioning, or failure, is directly or indirectly due to incorrect or inappropriate implementation or incorrect functioning, or lack of availability of the Customer's Integrated Services and Products.

5 Charges and payment

5.1 The Customer will pay the Relevant Pricing for the Licensed Software to the Supplier, the Authorized Partner or via the Purchase Location (as applicable) in accordance with the timing agreed in writing between the Customer and the Supplier, between the Customer and the Authorized Partner or as accepted by the Customer at the Purchase Location. All payments must be made in full without deduction or set-off.

5.2 All applicable value added taxes will be charged and payable in addition to the Relevant Pricing.

5.3 If any amount is not paid by the due date, upon thirty (30) days written notice to Customer the Supplier may suspend the Customer's right to use the Licensed Software until the Customer makes payment in full of all outstanding amounts.

5.4 The Relevant Pricing may be changed by the Supplier on the Supplier giving at least six weeks' written notice (by email) to the Customer of the new charges that will apply except that where a Fixed Term applies, the new pricing will not apply until expiration of the current Fixed Term.

6 Term

6.1 The Agreement commences when specified in clause 3.3 and:

(a) where there is no Fixed Term, will continue until terminated under clause 6.2 or clause 12;

(b) where there is a Fixed Term, will continue for the Fixed Term unless terminated under clause 6.3 or clause 11.

6.2 In addition to the parties' rights of early termination under the Agreement or otherwise at law, where there is no Fixed Term the Agreement may be terminated by the Customer at any time:

- (a) on written notice to the Supplier, or where the purchase was made from an Authorized Partner on written notice to that Authorized Partner; or
- (b) through the termination processes at the Purchase Location,

with the termination taking effect at the end of the month in which the Supplier or Authorized Partner (as applicable) confirms receipt of the Customer's termination request.

6.3 In addition to the parties' rights of early termination under the Agreement or otherwise at law, where a Fixed Term applies (including where the Customer selects a Fixed Term at the Purchase Location as a Selected Option (where available)), the Agreement will continue until expiration of the Fixed Term. On expiration of the Fixed Term the Agreement will, subject to clause 5.4, automatically continue for further periods each of the duration of the Fixed Term (or such shorter period as may apply following the initial Fixed Term) on the same terms and conditions (unless updated as provided for under clause 1.1(b)) unless at least one month prior to the expiration of the current Fixed Term one party notifies the other party in writing that the Agreement is to terminate on expiry of the current Fixed Term.

7 Personal Data and Data Protection

7.1 The Customer consents to the Processing of Personal Data by the Supplier for the purposes of this Agreement. Before providing Personal Data to the Supplier, the Customer will obtain all required consents from third parties (including Customer's contacts, partners, distributors, administrators, and employees) under applicable Data Protection Laws.

7.2 To the extent permitted by applicable law, Personal Data collected by the Supplier under this Agreement may be transferred, stored and processed in the State(s) and/or country (or countries) in which the Supplier maintains facilities or any other country in which the Supplier's contractors or service providers (including third party vendors) maintain facilities.

7.3 In the event of any Personal Data Breach, the Supplier will comply with its obligations, including notification obligations, (if any), under applicable Data Protection Laws.

8 Intellectual Property

8.1 All Intellectual Property in:

- (a) the Licensed Software; and
- (b) the software, processes, methodology and know-how used by the Supplier in its performance of the Agreement;

is the property of the Supplier (or its licensors) and nothing in the Agreement operates to change that ownership.

8.2 The Customer must not, nor may the Customer permit any other person to do any of the following, or attempt to do so:

- (a) copy, alter, modify, reverse assemble, reverse compile, reverse engineer or enhance the Licensed Software; or
- (b) provide the Licensed Software to any users through operation of a bureau or like service; or
- (c) resell, rent, lease, transfer, sublicense or otherwise transfer rights to use the Licensed Software; or
- (d) use the Licensed Software otherwise than in the manner in which the Licensed Software is designed to be used;
- (e) do any act which would or might invalidate or be inconsistent with the Supplier's Intellectual Property rights.

8.3 The Customer must notify the Supplier of any actual, threatened or suspected infringement of any Intellectual Property right and of any claim by any third party that any use of the Licensed Software infringes any rights of any other person, as soon as that infringement or claim comes to the Customer's notice. The Customer must (at the Supplier's expense) do all such things as may reasonably be required by the Supplier to assist the Supplier in pursuing or defending any proceedings in relation to any such infringement or claim.

8.4 The Customer indemnifies the Supplier against any loss, costs, expenses, demands or liability whether direct, indirect or otherwise, and whether arising in contract, tort (including negligence), equity or otherwise, arising out of a claim by a third party alleging infringement of that third party's Intellectual Property rights if such claim arises from infringement, suspected infringement or alleged infringement due to:

- (a) use of the Licensed Software in a manner or for a purpose or in combination with any other SaaS or Licensed Software (as applicable) or product not reasonably contemplated or authorized by the Supplier; or
- (b) a breach by the Customer of clause 8.2.

9 Confidential Information

9.1 The parties recognise and acknowledge the confidential nature of the Confidential Information.

9.2 Neither party may use or disclose any Confidential Information other than:

- (a) to its employees, directors or contractors to the extent necessary in the performance of the Agreement; or
- (b) with the express prior written consent of the other party; or
- (c) to its professional advisers.

10 Warranties

10.1 Each party warrants to the other that it has authority to enter into and perform and the ability to perform its obligations under the Agreement.

10.2 The Supplier warrants, for the duration of the Warranty Period, that the Licensed Software will meet the functionality described in the supplied User Guides. If the Customer notifies the Supplier in writing within the Warranty Period of a breach of the warranty in this clause 10.2 (identifying the specific non-conformity) ('Warranty Claim'), the Supplier will, on receipt of any such notification investigate the issue and, if it accepts the Warranty Claim, remedy the non-conformity notified in that Warranty Claim at no charge to the Customer. To the extent permitted by applicable laws, the remedy in this clause 10.2 is the Customer's sole and exclusive remedy in respect of any Warranty Claim.

10.3 The warranty in clause 10.2 does not apply in the event of:

- (a) use of the Licensed Software otherwise than as anticipated by the Supplier or for a purpose for which it was not designed;
- (b) modification (or attempted modification) of the Licensed Software by the Customer or any unauthorised third party;
- (c) use of the Licensed Software on equipment and/or software other than the Recommended Infrastructure; or
- (d) use of the Licensed Software otherwise than in accordance with the license granted under clause 3.1 and the limitations in clause 3.2.

10.4 With the exception of the warranties given under clauses 10.1 and 10.2, all warranties, terms and conditions (including without limitation, warranties and conditions as to fitness for purpose and merchantability), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.

10.5 Any warranties made to the Customer under the Agreement extend solely to the Customer.

11 Termination

11.1 The Supplier or the Customer may terminate the Agreement immediately on written notice to the other party if the other party:

- (a) breaches any of its obligations under the Agreement and fails to remedy the breach within 20 days of receiving notice requiring the breach to be remedied; or
- (b) ceases business or becomes insolvent or goes into liquidation or has a receiver or statutory manager appointed over its assets or ceases to carry on business or makes any arrangement with its creditors.

11.2 On termination of the Agreement:

- (a) all amounts due to the Supplier or relevant Authorized Partner will become immediately due and payable;
- (b) the Supplier will cease to provide the Licensed Software to the Customer, and the Customer will cease to have any entitlement to use the Licensed Software;
- (c) the provisions of the Agreement that are by their nature intended to survive termination will remain in full force.

12 Liability

12.1 This limitation does not apply to claims by the Customer for bodily injury or damage to real property or tangible personal property where the Supplier is legally liable for that injury or damage.

12.2 The Supplier's liability under this Agreement is limited to direct loss only, to the amount paid by the Customer in the 12 month period preceding the event giving rise to the claim.

12.3 In no event is the Supplier liable for any indirect loss or for any loss of profits, lost savings, lost revenue, loss of data, business interruption, incidental or special damages, or for any consequential loss.

13 Dispute resolution

13.1 In the event of any dispute arising between the parties in relation to the Agreement, no party may commence any proceedings relating to the dispute (except where the party seeks urgent interlocutory relief) unless that party has complied with the procedures in this clause 13.

13.2 The party initiating the dispute ("the first party") must provide written notice of the dispute to the other party ("the other party") and nominate in that notice the first party's representative for the negotiations. The other party must within fourteen days of receipt of the notice, give written notice to the first party naming its representative for the negotiations ("Other Party's Notice"). Each nominated representative will have authority to settle or resolve the dispute. The parties will co-operate with each other and endeavour to resolve the dispute through discussion and negotiation.

13.3 If the dispute is not resolved within one month following the date of the Other Party's Notice (or such longer period agreed by the parties in writing), either party may utilize any other legal remedies available to it in seeking to resolve the dispute.

14 **Consumer guarantees**

14.1 The Customer acknowledges that where it is acquiring the Licensed Software for the purposes of a business, to the extent permitted by the relevant legislation, any statutory consumer guarantees or legislation that are intended to apply to non-business consumers only will not apply.

15 **Force majeure**

15.1 The Supplier may suspend its obligations to perform under the Agreement if it is unable to perform as a direct result of a Force Majeure Event. Any such suspension of performance must be limited to the period during which the Force Majeure Event continues.

15.2 Where the Supplier's obligations have been suspended under clause 15.1 for a period of 90 days or more, the Customer may immediately terminate the Agreement by giving notice in writing to the Supplier.

16 **General**

16.1 Entire agreement: The Agreement 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 the Agreement.

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

16.3 Partial invalidity: If any provision of the Agreement or its application to any party or circumstance is or becomes invalid or unenforceable to any extent, the remainder of the Agreement and its application will not be affected and will remain enforceable to the greatest extent permitted by law.

16.4 Independent contractor: The Supplier is an independent contractor to the Customer and is in all respects independent of the Customer. Nothing in the Agreement constitutes either party a partner, agent, employee or joint venture of the other.

16.5 Suspension: The Supplier may suspend performance of its obligations under the Agreement for so long as it is unable to perform for reasons outside of its control.

16.6 Assignment: The Customer is not permitted to assign its rights under the Agreement.

17 Notices

17.1 Notices from the Supplier to the Customer under the Agreement will be sent to the Customer at the Customer’s contact details specified in the Customer Information. The Customer may notify the Supplier of a change to the contact details specified in the Customer Information, on seven days’ notice in writing to the Supplier. Notices from the Customer to the Supplier under the Agreement must be sent to the Supplier at the Supplier’s relevant office, details included on the Supplier’s website.

17.2 Notices sent by email will be deemed received on sending, provided that the sender does not receive an automatic delivery failure notification. Notices sent by post will be deemed received:

- (a) on the third day following posting if sent and received locally (not internationally); and
- (b) on the tenth day following posting if posted internationally.

18 Governing law and jurisdiction:

18.1 The Agreement is governed by the laws of Ontario, Canada. The parties hereby submit to the non-exclusive jurisdiction of the courts of Ontario, Canada.

19 Definitions: In these terms and conditions:

“Agreement” has the meaning given to that term in clause 1.2 above;

“Authorized Partner” means a third party that has been authorized by the Supplier to sell the Licensed Software;

“Confidential Information” means any proprietary information, know-how and data disclosed or made available by one party to the other party but does not include any information which:

- (a) is in the public domain without any breach of the Agreement;
- (b) on receipt by the other party is already known by that party;
- (c) is at any time after the date of receipt by the other party, received in good faith by that party from a third party;
- (d) required by law to be disclosed by the other party;

“Customer” means the customer named in the Customer Information;

“Customer Information” means the customer name, email address and any other contact information submitted by or on behalf of a customer:

- (a) to the Supplier or Authorized Partner in the course of agreeing to purchase (or agreeing to a Trial) of the Licensed Product;
- (b) at a Purchase Location in the course of agreeing to purchase (or agreeing to a Trial) the Licensed Product;

“Customer’s Integrated Services and Products” means services or products (including third party services or products) which have been integrated (in any way) by or for the Customer with the Licensed Software, regardless of who has undertaken that integration work or how it has been undertaken;

“Fixed Term” (if any) means:

- (a) the license term for Licensed Software, agreed in writing between the Supplier or relevant Authorized Partner and the Customer; or
- (b) the fixed term selected by the Customer in the Selected Options;

“Force Majeure Event” means any war, riot, third party strike, natural disaster or other circumstance of a similar nature that is outside of the control of the affected party;

“Functionality Description” (if any is published) means the description of the functionality of the Licensed Software, as published by the Supplier, which is available from the Supplier on request;

“Intellectual Property” includes all copyright, trademarks, designs, patents, domain names, concepts, know-how, trade secrets, logos and all other similar property and rights whether registered or unregistered;

“Licensed Software” means the software (executable version only) supplied by the Supplier and selected by the Customer by agreement with the Supplier or an Authorized Partner or at the Purchase Location, as updated from time to time by the Supplier;

“Personal Data” means any information relating to an identified or identifiable natural person, or any equivalent definition in relevant data protection or privacy laws in force at the relevant time;

“Personal Data Breach” means unauthorised access to, unauthorised disclosure of, or loss of, Personal Data (being Personal Data that is Processed by the Supplier under this Agreement), or any equivalent definition in relevant data protection or privacy laws;

“Processing” means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaption or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction, and ‘Process’ and ‘Processed’ has/have a corresponding meaning, or any equivalent definition in relevant data protection or privacy laws;

“Purchase Location” means any internet site from which the Licensed Software is available for purchase;

“Recommended Infrastructure” (if any) means the minimum requirements for the infrastructure, as recommended by the Supplier, for the Licensed Software be installed on, as notified by the Supplier, Authorized Partner or at the Purchase Location at the time of the purchase of the Licensed Software;

“Relevant Pricing” means the pricing for the Licensed Product that is notified in writing to the Customer by the Supplier or by the relevant Authorized Partner prior to the purchase by the Customer or made available at the Purchase Location, and where Selected Options apply, means or includes (as applicable) the pricing for the Selected Options;

“Selected Options” means, if there are options to choose from for provision of the Licensed Software, the options for provision of the Licensed Software selected by the Customer by agreement with the Supplier, an Authorized Partner or at the Purchase Location (the options may include for example, the maximum number of external users or the term for Licensed Software the type of license);

“Trial” (where available) means use of the Licensed Software, free of charge;

“Trial Period” (where applicable) means the trial period notified to the Customer in writing by the Supplier, Authorized Partner or at the Purchase Location, prior to commencement of the Trial;

“Trial Licensed Software” (if any) means the version of the Licensed Software made available by the Supplier at its discretion for a Trial;

“User Guide” means the document(s) provided as part of the release package for the Licensed Software;

“Warranty Period” for the Licensed Software (where applicable) means the period of 30 days from the date the Licensed Software was downloaded by or for the Customer or otherwise delivered or made available to or for the Customer, whichever occurs first.

19.2 Interpretation: In these terms and conditions:

- (a) reference to the plural includes reference to the singular, and vice versa;
- (b) headings inserted for convenience of reference only and do not affect the interpretation of the Agreement.