

EULA – SOFTWARE, IFS CLOUD AND IFS SUPPORT SERVICES

THIS END USER LICENSE AGREEMENT (“EULA”) IS APPLICABLE TO END CUSTOMERS OF THE SOFTWARE, IFS CLOUD SERVICES AND SUPPORT SERVICES OBTAINED FROM AN IFS CHANNEL PARTNER (“PARTNER”). “IFS”, “WE”, “US,” AND “OUR” REFERS TO THE IFS ENTITY IDENTIFIED IN THE NOTIFICATION FORM.

YOU AS END CUSTOMER (“CUSTOMER” “YOU OR “YOUR”) UNDERSTAND AND AGREE THAT YOUR RIGHT TO USE THE SOFTWARE AND TO USE AND RECEIVE THE IFS CLOUD SERVICES AND SUPPORT SERVICES IS SUBJECT TO YOUR COMPLIANCE WITH THIS EULA, THE NOTIFICATION FORM, AND, IN ADDITION, THE RELEVANT [PRODUCT TERMS](#) FOR SOFTWARE (COLLECTIVELY, THESE DOCUMENTS ARE REFERRED TO AS THE “AGREEMENT”).

BY DOWNLOADING OR USING THE SOFTWARE, YOU CONFIRM YOU ARE AUTHORIZED TO ACCEPT THE TERMS OF THE AGREEMENT AND YOU HAVE READ AND AGREE TO THE TERMS OF THE AGREEMENT. THE AGREEMENT SUPERSEDES ANY OTHER LICENSE AGREEMENT OF THE SOFTWARE GRANTED BY IFS OR ANY AGREEMENT FOR THE PROVISION OF IFS CLOUD SERVICES AND SUPPORT SERVICES.

INTRODUCTION

- 1.1. EULA. This EULA specifies terms and conditions which apply to Software licensed to Customer as well as terms associated with the provision of IFS Cloud Services and Support Services (together referred to as the “IFS Offering”). This EULA includes: (1) Part A - General Terms which sets out general terms applicable to this EULA; (2) Part B – Software, which sets out terms for licensing of the Software (3) Part C - IFS Cloud Services, which sets out terms applicable to the provision of IFS Cloud Services; (4) Part D – Support Services, which sets out terms applicable to the provision of Support Services; (5) Part E – Definitions, which sets out defined terms used in this EULA; and (6) Part F – Acceptable Use Policy (or AUP) which set out the IFS AUP for the IFS Cloud Services and Support Services (together “Services”). References in Part C and Part D to “Application Software” and “Software”, shall be to the Application Software and Software for which Customer has purchased IFS Cloud Services and Support Services respectively as described in the Notification Form.
- 1.2. Definitions. Defined terms used in this EULA shall have the meaning given to them in the Definitions section of this EULA unless the context requires otherwise.
- 1.3. Independent contractors. Customer acknowledges that Partner and IFS are independent contractors and that Partner has no right or authority to contract in the name of or on behalf of IFS, nor create any obligations or liabilities for IFS other than as has been expressly agreed to by IFS in writing.
- 1.4. Third party beneficiary. IFS shall be designated as a third-party beneficiary for the purpose of Customer’s contract with Partner as it concerns the Software or Services.
- 1.5. Agreement between Customer and Partner. Partner is not authorized to agree any amendments to the Agreement in your agreement with Partner.
- 1.6. No Dependency. The license to the Software is not dependent on the provision of IFS Cloud Services, which license is granted on a stand-alone basis on the applicable license terms and conditions.

PART A – GENERAL TERMS AND CONDITIONS

GENERAL

1. Analytics

- 1.1. IFS may track and analyze the usage of the IFS Offering for purposes of determining usage made of the IFS Offering, for the purposes of security, to assist customers, and for improving the Software and Services and the user experience in using such Software and Services. For example, IFS may use this information to help customers derive more value from the Software and Services, to understand and analyze trends, or to track which features are used most often in order to improve the Software and Services. IFS may share anonymous usage data with its service providers for the purpose of helping in such tracking, analysis and improvements. Additionally, IFS may share such anonymous usage data on an aggregate basis in the normal course of operating their business; for example, IFS may share information publicly to show trends about the general use of its software and services.

TERMS - SERVICES

2. Customer Responsibilities and Customer Content

- 2.1. Customer shall obtain and keep in effect all Required Consents. Upon request, Customer will provide to IFS evidence of any Required Consent. IFS will be relieved of its obligations to the extent that they are affected by Customer’s failure to promptly obtain and provide to IFS any Required Consents.
- 2.2. Customer shall comply with all laws applicable to its use of the Services and is responsible for (a) determining whether the Services are appropriate for storage and processing of information subject to any specific law or regulation; and (b) responding to any request from a third-party regarding Customer’s use of the Services under applicable laws.
- 2.3. Customer is solely responsible for: (a) the selection, operation and maintenance of all Customer Components (b) all Configurations; (c) all Content including, without limitation, its selection, creation, design, licensing, installation, disruption, error, reprogramming, repair and accuracy, and for all necessary permissions to include the Content in the Cloud Platform and IFS may use, store, and process the Content in the delivering of the Services; (d) all copyright, patent and trademark clearances in all applicable jurisdictions and usage agreements for any and all Content and Customer shall not at any time provide or use any Content or other data with the Services which infringes or may infringe any third-party intellectual

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property rights; (e) the selection of controls on the access and use of Content; (f) the selection, management and use of any public and private keys and digital certificates it may use with the Services.

- 2.4. IFS acknowledge that all Content stored or processed by Customer using the Services, including all intellectual property rights embodied in the Content, are owned or licensed by Customer. Customer grants to IFS, without charge or royalty: (a) all necessary licenses and rights in relation to the Content solely for IFS to perform its obligations hereunder, including without limitation the right to store, record, transmit and display the Content for such limited purpose; and (b) the right to use any Customer-owned, developed or licensed application software systems necessary and solely for IFS to provide the Services. IFS will not access or view Content except as reasonably necessary to provide the Services. IFS will not remove or alter any copyright or other proprietary notice on or in any Content without Customer's consent. Customer is aware that IFS, for the purposes of fulfilling its contractual obligations to Customer hereunder, may permit Content to be accessed or viewed by other IFS Affiliates or subcontractors, including foreign nationals, located in and/or outside of the country or countries in which Customer operates.
- 2.5. Customer shall not (nor enable or permit others to) as a condition and material term of its use of the Services, without IFS's prior written permission: (a) assign, transfer, distribute, export or re-export, sell, rent, lease, lend, pledge, sublicense or otherwise exploit or encumber the Services, or otherwise make available any portion thereof, or use or permit use on behalf of, any third party for any purpose (whether in such third party's business operations or otherwise), including but not limited to use in the operation of a service bureau, sourcing, subscription or time-sharing arrangement, or in a rental, software as a service or outsourcing context; (b) publish any results of benchmark tests performed with respect to any portion of the Services; or (c) otherwise act in any way that would negatively impact any rights of IFS in the Services, or that would deprive IFS, in whole or in part, of any fees to which it is entitled, and Customer agrees to comply with all reasonable requests by IFS to protect the respective rights of IFS in the Services.
- 2.6. Where Customer Content is subject to governmental regulation or other security requirements beyond those specified by IFS for the Services, the Customer must not input such Content into the IFS Cloud Services or provide such data in conjunction with other Services unless IFS has first agreed in writing to provide additional security measures. Without limiting the generality of the foregoing, Customer agrees to not deliver, provide access, or facilitate to be viewed, in any form or format (whether physical or electronic, including email), any "controlled materials", i.e. hardware, technical data, software and/or technical assistance that is or may be deemed to be subject to any applicable export and re-export control laws and regulations, to or by any IFS personnel, except with IFS's express prior written agreement. If such controlled materials must be exchanged, accessed or viewed, subject to IFS's prior agreement, Customer remains solely responsible for ensuring that any such controlled materials may be provided to IFS or accessed or viewed by IFS personnel without violating, and the Parties will consult with each other to ensure their compliance with, any and all applicable export and re-export control laws and regulations.

3. Security

- 3.1. IFS will maintain and administer a security policy with physical and technical safeguards designed to protect the security, integrity and confidentiality of the Content stored on the Cloud Platform. Further information about IFS security practices is set forth in the [IFS Information Security Management Document](#).
- 3.2. Customer shall (a) use reasonable security precautions for Customer's own IT assets that may be used in connection with its use of the Services, e.g. maintain up-to-date virus scanning and operating system security patches and firewall protection; (b) require each Permitted User to use reasonable security precautions. In addition, Customer shall use all reasonable efforts not to take any action or install any software that may preclude or impair IFS's ability to access or administer its network or provide the Services.

4. Monitoring

- 4.1. In its use of the Services the Customer agrees to monitor and maintain the correct number of Users and Use Types reflecting the applicable Use Level, and promptly report to IFS any use in excess thereof. The Customer also agrees to implement reasonable security and supervisory controls for the correct and proper access and use, to prevent any unauthorized use, copying, distribution, publication or disclosure thereof; and to promptly report to IFS any actual or suspected non-compliance.

5. Proprietary Rights in the Services

- 5.1. IFS or its licensor retains all right, title, and interest in the Services, including any materials furnished, developed, provided or created by IFS as part of the Services, and in all improvements, enhancements, modifications, or derivative works thereof including, without limitation, all rights to patent, copyright, trade secret, and trademark (whether or not specifically recognized or perfected under the laws of the country where the Services are provided). The Services constitute and contain valuable proprietary services, products and trade secrets of IFS or its licensor, embodying substantial creative efforts and confidential information, know-how, technology, ideas and expressions that are protected by applicable intellectual property and other laws, and Customer shall handle the same strictly confidential, with utmost care and not disclose it to any third party without IFS's prior written permission.

6. Incidents

- 6.1. First Line Support and Key Users
 - 6.1.1. Customer has the sole responsibility for organizing first line and end-user support to its Users, with adequately trained and qualified personnel; support related training may be provided by IFS as a Chargeable Service.
 - 6.1.2. Customer shall coordinate, manage and supervise its Incidents centrally to avoid duplicate reports, through a limited number of designated Key Users having the appropriate competences regarding the functionality of the Services, the Software and related business processes, third-party hardware and software which interoperates with the Software, and the use of the IFS case management portal, as directed by IFS.
- 6.2. IFS Case Management Portal

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- 6.2.1. Customer is granted access to IFS's case management portal where the Customer (via its designated Key Users) can create and manage Cases, view statistics on Case performance, and search available Resolutions in a mature knowledge database.
- 6.2.2. The IFS case management portal is normally constantly available (subject to any downtime experienced due to periodic maintenance or network unavailability), which allows Customer to report Incidents 24x7.
- 6.2.3. The IFS case management portal is accessible using individual log-in details. Customer shall keep confidential any such log-in details and shall take reasonable measures to prevent any unauthorized access or use thereof.
- 6.3. Reporting of Incidents
 - 6.3.1. Except for automatically detected Incidents, an Incident must always be registered as a Case in the IFS case management portal before IFS will commence any work in regards thereof.
 - 6.3.2. Incidents shall be reported by the Key User, who shall:
 - 6.3.2.1. before the Incident is reported to IFS, make reasonable efforts to (a) isolate and identify the related non-conformity and verify that the Incident is re-creatable and (b), by searching the IFS case management portal, check for a Resolution to the Incident;
 - 6.3.2.2. combine the Incident report with a detailed written description, including any error messages, as directed by IFS from time to time to enable IFS to diagnose and isolate, identify and re-create the Incident; and
 - 6.3.2.3. provide reasonable and timely assistance to IFS in providing the Services and tracking the Case.
 - 6.3.3. If IFS must perform additional work due to the inability of the Key User to provide the requested information, materials or assistance IFS will not be required to investigate further. If the Customer wishes IFS to continue to investigate, IFS may charge Customer for its efforts on a time and material basis and Customer understands that any attempted resolution to the Incident may not be successful.
- 6.4. Incident Handling and False Alarms
 - 6.4.1. If IFS confirm the existence of a reported Incident, it will be addressed by IFS in accordance with the terms of this EULA. If it is reasonably confirmed that no Incident exists, or if the Incident cannot be re-created, despite IFS and Customer complying with their respective obligations set out herein, the Case will be closed.
 - 6.4.2. Customer-Induced issues or other Excluded Incidents are "False Alarms", for which IFS will have no responsibility hereunder. Customer understands that any work performed by IFS in regards of any False Alarm may involve additional charges, whether the Incident is successfully resolved. IFS will notify the Customer without undue delay when the relevant IFS resource realizes that an Incident constitutes a False Alarm.
- 6.5. Test and Verification
 - 6.5.1. It is the Customer's sole responsibility to test and verify any resolutions to an Incident in order to satisfy itself as to their suitability for Customer's business purposes and IFS accepts no responsibility in this respect regardless of the testing done.
- 6.6. Additional Training
 - 6.6.1. Customer acknowledges that Improvements provided by IFS may require additional training of Key Users and Users.

7. Miscellaneous

- 7.1. Access and use of the Services is permitted solely for the own internal business operations of the Customer and, as applicable Customer Affiliates, and in accordance this EULA.
- 7.2. Customer acknowledges that (a) all Services are delivered as remote services, (b) any reporting, communication and documentation hereunder will be provided in English, (c) IFS may use personnel from IFS Affiliates or partners around the world to provide the Services, and (d) the Services will not be constantly available, uninterrupted or error free.
- 7.3. The Services do not include provision of implementation, development or other consultancy or professional services.
- 7.4. In its use of the Services, Customer will comply with the AUP set forth in Part F of this EULA.
- 7.5. The terms of the [data processing addendum](#) ("DPA") shall apply to the provision of the Services in respect of the processing of Personal Data (as defined in the DPA) and in which case Customer shall be the controller and IFS shall be the processor. The DPA shall be incorporated into the Agreement provided, and from the date that, Customer sends to privacy@ifs.com a copy of the DPA signed by Customer in accordance with the instructions therein.

TERMS – ALL IFS OFFERINGS

8. Term and Termination

- 8.1. Term
 - Software
 - 8.1.1. Subscription License. A Subscription license will commence on the date specified in the Notification Form and continue in force for the fixed initial term specified therein. The license is firm and cannot be cancelled or otherwise reduced or terminated by Customer during the license term. On expiry of the initial term, the subscription license will terminate unless renewed. Unless otherwise stated in the applicable Notification Form, each subscription license will include the provision of Support Services.
 - 8.1.2. Perpetual License with Support Services. A perpetual license will commence on the date specified in the Notification Form and continue indefinitely. Support Services will commence on the date specified in the Notification Form and continue (a) for successive periods of 12 months unless either Party gives written notice of termination to the other Party at least six (6) months prior to the expiry of such 12 month period, or (b) for the initial term where an initial term for Support Services is stated in an Notification Form, and thereafter for successive

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periods of 12 months unless either Party gives written notice of termination to the other Party at least six (6) months prior to the expiry of the initial term or any subsequent 12 month period.

IFS Cloud Services

8.1.3. The IFS Cloud Services will commence on the date specified in the Notification Form and continue in force for the initial term specified therein. On expiry of the initial term, the subscription to the IFS Cloud Services will terminate unless renewed by the written agreement of the Parties.

8.2. Termination

8.2.1. The licenses granted hereunder shall apply for such term set forth in the Agreement.

8.2.2. The Agreement may be terminated by IFS immediately on written notice to the Customer:

8.2.2.1. If IFS is not paid by Partner, when due, fees for the license, Support Services or IFS Cloud Services granted or provided hereunder;

8.2.2.2. If Customer, any Customer Affiliate, User or any other person for which Customer (or Customer Affiliate) is responsible, commits or permits a material breach of any provision of the Agreement and fails to cure such breach (if the breach is susceptible to cure) within thirty (30) days of receipt of written notice of default; or

8.2.2.3. If Customer ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a winding-up petition or petition in bankruptcy or is declared bankrupt by a competent court of law or other relevant authority, or appoints a receiver, acquiesces in the appointment of a receiver or liquidator for it or any substantial part of its assets or properties, or any other substantially similar event takes place

8.2.3. The Agreement will be subject to immediate termination (without the requirement for notice) if Customer or any Customer Affiliate becomes subject to sanctions under applicable EU/US/UN or other applicable export control and economic sanctions laws and regulations or becomes so by being directly or indirectly controlled by such a sanctioned entity or person.

8.3. Effect of Termination

8.3.1. (a) Termination does not (i) relieve Customer any liability accrued as at the date, or as a result, of termination, or (ii) preclude Partner or IFS from pursuing any other rights or remedies available to it in connection with the termination. (b) Upon expiry or termination of any license granted hereunder, Customer shall (and shall cause its Customer Affiliates and Users to) cease using and delete all copies of any Software or other IFS Materials from its systems, including copies stored for archival or storage purpose and either destroy or return them to Partner or IFS, with certification by an officer.

8.3.2. Except in the event of IFS's termination for default, licenses or use rights granted to Customer hereunder shall survive termination of the IFS Cloud Services for the remainder of the applicable license term, subject to Customer's continued compliance with the terms hereof. If Customer terminates the IFS Cloud Services, the Customer will have the right to take possession of the Software (i.e. to receive a copy of such Software) and Customer may use and access the Software subject to the license terms applicable to such Software for the term of the applicable license. Offboarding assistance will be provided as set forth in Part C of this EULA.

8.3.3. It is agreed that the licenses granted and Services provided hereunder shall be separate from and shall apply independently of any implementation services or other services or deliveries related to the Software provided to the Customer by the Partner or any third party. Consequently, any variation, suspension or termination of such services or deliveries shall have no impact on the licenses granted or Services provided hereunder, which shall continue to apply in accordance with the terms hereof.

8.3.4. Any Customer Affiliate's and/or User's right to access and use the Software and Software Documentation is only available through Customer hereunder. Consequently, if such Customer Affiliate should cease to be an affiliated company as per the applicable definition, or if any User's association with Customer is terminated for any reason (or he or she otherwise ceases to be an authorized user), the right to access and use the Software and Software Documentation for such entity or person shall automatically terminate and Customer shall ensure that they immediately cease using such materials and that any copy thereof used by such entity/person is, at Customer's expense, returned, erased or destroyed.

9. Indemnity

9.1. IFS will defend Customer and its Affiliates from and against any Third-Party IP Claim and will indemnify Customer and its Affiliates against any damages, attorney fees and costs finally awarded against Customer or its Affiliate, or amounts paid by Customer in settlement of such Third-Party IP Claim, together with any reasonable and verifiable costs and expenses incurred by Customer in the defense or settlement thereof (such costs and expenses to be approved in advance by IFS acting reasonably) provided Customer: (a) provides IFS prompt written notice of the claim; (b) gives IFS sole control of the defense and settlement of the claim; (c) provides IFS with all reasonable assistance in connection with said defense or settlement; and (d) does not admit liability in connection with such Third-Party IP Claim. If there is a Third-Party IP Claim or if IFS in IFS' reasonable opinion such claim is likely to be made, IFS may, at its option and expense, elect to (i) procure for Customer the right to continue using the relevant portion of the Application Software or (ii) replace or modify such portion so that it no longer infringes, but without prejudicing its functionality. The above defense and indemnity does not apply to any Third-Party IP Claim to the extent such arises: (1) from any unauthorized use or any modification of the applicable Application Software by Customer, Partner or someone acting for the Customer; or (2) as a consequence of use in combination with (a) any software based on any code or design specifications or instructions provided by Customer or Your Partner if the infringement would not have occurred without such combination; (b) any software, data or business methods not provided by IFS; or (c) any third-party software, if the infringement would not have occurred without such combined use; (3) use of the Application Software in an application or environment for which it was not designed or contemplated; or (4) use of a release of the Application Software where a subsequent release does not entail such infringement and such release has been made available to Customer. This sets forth Customer's sole remedy with respect to any Third-Party IP Claim. Notwithstanding the foregoing, IFS will pass on the benefit of any indemnity it receives from the provider of any Third-Party Software concerning infringement of applicable intellectual property rights.

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- 9.2. Customer acknowledges that they are in control of the use of the Services and all Content which may cause negative consequences for IFS or the Cloud Platform Vendor. Consequently, Customer will defend IFS and IFS Affiliates from and against any third party claim, demand or proceedings and for any related expenses and costs (including without limitation court costs and reasonable legal fees) (a) alleging that any Content infringes the intellectual property rights of any third party or otherwise violates applicable law or (b) arising out of the Customer's breach of the AUP (each a "Claim Against IFS") and will indemnify IFS and IFS Affiliates against any damages, attorney fees and costs finally awarded against IFS or IFS Affiliate or amounts paid by IFS or an IFS Affiliate in settlement of such Claim Against IFS, together with any reasonable and verifiable costs and expenses (including without limitation reasonable attorney's fees) incurred by IFS or an IFS Affiliate in the defence thereof, provided IFS (i) provides Customer prompt written notice of the claim; (ii) gives Customer full control of the defence and settlement of the claim; and (iii) provides Customer with all reasonable assistance reasonable in connection with said defence or settlement, at Customer's expense; (iv) does not admit liability in connection with such Claim Against IFS. This sets forth IFS's sole remedy with respect to any Claim Against IFS.

10. Confidentiality

- 10.1. Customer and IFS acknowledge and agree that one party (and/or any of its Affiliates) ("Receiving Party") may have access to Confidential Information of the other party (and/or any of its Affiliates) ("Disclosing Party"). Receiving Party agrees (a) to hold all Confidential Information disclosed hereunder to it in confidence and to use at least the same degree of care that it uses to protect its own confidential information (but no less than reasonable care); (b) to use such Confidential Information solely for the purposes of the Agreement; and (c) not to disclose any such Confidential Information to anyone except its employees, Affiliates, and contractors who need to know the Confidential Information in connection with the Agreement and who are subject to obligations of confidentiality no less stringent than those herein. Receiving Party shall be liable for the acts and omissions of any employees, Affiliates, and contractors as it is for its own acts and omissions. Confidential Information does not include information which Receiving Party can show: (i) is, or becomes, available within the public domain without breach of any obligation owed to the Disclosing Party; (ii) is already in the possession of Receiving Party at the time of receiving the same without obligation of confidence; (iii) is independently developed or acquired by Receiving Party without any breach of the Agreement; or (iv) is received by Receiving Party from a third party without restriction on its disclosure or use. The parties' obligations relating to Confidential Information survive the termination of the Agreement.
- 10.2. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled to do so by law, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.
- 10.3. Damages may not be an adequate remedy for breach of the obligations of confidentiality. Receiving Party therefore acknowledges that, in addition to any other remedies that may be available at law, Disclosing Party may seek such injunctive relief, specific performance or other remedy as may be deemed proper by a court or administrative authority of competent jurisdiction.

11. Limitation of Liability

- 11.1. Neither party excludes or limits its liability for (a) fraud or fraudulent misrepresentation (b) death or personal injury caused by the negligence or willful default of that party or (c) any other liability which cannot be excluded by law.
- 11.2. In no event will a party, or its Affiliates, be liable under or in connection with the Agreement for any indirect, consequential, special, exemplary or incidental cost, loss or damage, or for any loss or corruption of data (subject to section 11.3 below), loss of profits, revenue, production, business opportunity, or loss of anticipated savings, goodwill or reputation, howsoever arising, even though the parties may be aware of the possibility or likelihood of such cost, loss or damage and regardless of the form of action or whether arising in contract, tort, negligence, by statute or otherwise.
- 11.3. IFS or its Affiliates shall only be liable under the Agreement for any loss or corruption of data to the extent such loss or corruption was caused as a result of IFS' negligence or misconduct in providing the Services, in which case, IFS' only obligation and Customer's exclusive remedy is for IFS to use commercially reasonable efforts to restore the data from its most recent successful available backup. IFS's liability shall exclude any lost data (a) caused or contributed to by Customer, including without limitation Customer's incorrect or unpermitted modification, configuration or use or relating to any Customer Content or non-IFS software or service stored or used by Customer in conjunction with the Application Software, or (b) occurring while the Application software not being in a "Non-Current State", meaning where the software is not current, i.e. does not have the latest fixes or updates installed and/or which is out of support.
- 11.4. Except for breach of section 10 (Confidentiality) (provided, for the avoidance of doubt, this exception does not include liability arising under a DPA in respect of the processing of Personal Data (defined in the DPA) which is subject to the liability exclusions and limitations set forth herein), the indemnity in section 9 (Indemnity), and for unauthorized use or transfer of intellectual property rights hereunder, each party's maximum and cumulative liability for all obligations and liabilities arising under or in connection with the Agreement, whether in contract, tort, negligence, by statute or otherwise, shall in no event exceed the lesser of the fees paid by Customer to Partner for the IFS Offering in the twelve months period immediately preceding the events giving rise to the claim or €1 million (one million euros), (and for clarity, any claim, or multiple interlinked claims, shall be subject to the liability cap applicable at the date on which the event or circumstance forming the basis for the claim(s) first arose).
- 11.5. Any claim by a party hereunder shall be made in writing, setting forth comprehensive details of the specified matter, within twenty-four (24) months after such party first became aware of the circumstances giving rise to such claim.
- 11.6. Customer acknowledges that it is solely responsible and liable for its use and operation of the IFS Offering in its business, including but not limited to Customer's compliance with any laws, regulatory requirements, financial or operational controls, policies or processes, maintenance programs, industry standards or practices or other provisions applicable to its business operations as well as the compliant use and accuracy of any configuration, data, content or non-IFS software stored or used in conjunction with or operation of any IFS Offering, and IFS expressly disclaims any liability for any cost, loss or damage of any kind in relation thereto, whether financial or physical and whether direct, indirect, consequential or incidental. Moreover, IFS expressly disclaims (i) any liability for any implementation services or other services or deliveries provided by the Partner or any third party; and (ii) any liability to perform any obligations or incur any liability not specifically agreed to by IFS.

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- 11.7. With respect to any third-party software or services it is expressly acknowledged and agreed that no supplier of such products or services shall have any direct liability towards the Customer for any damages of any kind and howsoever arising, whether direct, indirect, consequential, special, or incidental, arising from or in connection with the use of such products or services by the Customer hereunder, except to the extent expressly stipulated in the applicable terms and conditions of such third-party supplier.

12. Miscellaneous

- 12.1. Independence of Partner. Partner is not an agent of IFS. It is an independent entity with no authority to bind IFS or to make representations or warranties on IFS' behalf. IFS will not be liable for reasonably relying on the accuracy and reliability of written information provided by Partner in making any decision that would give IFS ground to suspend Services or terminate the Agreement.
- 12.2. Export. The Customer will ensure (and shall cause its Customer Affiliates, Users and Contractors to ensure) that neither the IFS Materials, Software nor any direct product thereof are (i) exported, directly or indirectly, in violation of such laws and regulations; or (ii) are intended to be used for any purposes prohibited by such laws and regulations, including, but not limited to, nuclear, chemical, or biological weapons proliferation. Customer and IFS shall in connection with the Agreement comply with, if applicable, the US Arms Export Control Act, the US International Traffic in Arms Regulations ("ITAR"), the US Export Administration Act, and the US Export Administration Regulations ("EAR"). If any of the hardware, technical data, software and/or technical assistance (collectively, "Controlled Materials") to be provided to IFS by Customer, or which may be viewed by IFS personnel, are controlled under the ITAR or EAR, Customer shall obtain IFS' prior written approval before providing any Controlled Materials to IFS or before IFS personnel view Controlled Materials. If Controlled Materials must be exchanged or viewed, the Parties shall consult with each other to ensure the Parties' compliance with export control laws. In no event will IFS accept or receive any ITAR Controlled Materials in electronic or physical form on its sites or infrastructure, including email. Solely for the purposes of fulfilling its contractual obligations to Customer, IFS Affiliates (or subcontractors) located in and/or outside of the country or countries in which Customer operates may access or view customer data for which Customer is responsible and such data may be accessed or viewed by foreign nationals.
- 12.3. Assignment. Customer may, with the prior written consent of IFS transfer or assign the Agreement, whether as a result of a merger or sale of the business. Any assignment or transfer attempted without the written consent of IFS will be null and void. IFS may assign, in whole or in part, the Agreement, or any rights or obligations thereunder to any IFS Affiliate subject to providing Customer with prior written notice. The Agreement shall inure to the benefit of, and be binding upon, the parties and their respective successors and permitted assigns.
- 12.4. General. Save for Partner and IFS' licensors which are third party beneficiaries under the Agreement, the Agreement shall not create any rights in favor of, or any obligations owed by, any third party. In the Agreement, unless the context otherwise requires, words in the singular include the plural and vice versa and words in one gender include any other gender. The headings in the Agreement are for convenience only and shall not affect its meaning. Any phrase in the Agreement introduced by the term "include", "including", "in particular" or any similar expression will be construed as illustrative and will not limit the sense of the words preceding that term. The parties are independent contractors. The Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Neither party is the representative of the other party for any purpose and neither has power or authority to act as agent or employee or to represent, act for, bind, or otherwise create or incur any obligation on behalf of the other party. IFS may engage subcontractors for the performance, in whole or in part, of any work under the Agreement. IFS will be responsible for such subcontractor's work as if it were its own personnel.
- 12.5. Governing Law. The laws of the Province of Ontario and the laws of Canada applicable therein will govern, without regard to any conflicts of law principles. IFS and Customer submit the exclusive jurisdiction of the applicable federal or provincial courts for Ottawa, Ontario for the resolution of contractual or non-contractual disputes arising in relation to the Agreement.
- 12.6. Entire Agreement, Order of Precedence & Waiver. The Agreement shall be the entire agreement regarding its subject matter, and shall supersede all other representations, understandings or agreements, whether oral or written, between the parties relative to such subject matter. No modification, amendment or variation of the Agreement shall be of effect or binding upon IFS unless agreed to in writing by IFS. In the event of a conflict or inconsistency between the terms comprising the Agreement the order of precedence shall be: (1) the Product Terms (2) the Notification Form (3) this EULA. No failure or delay by IFS or Customer in exercising any right hereunder will constitute a waiver of that right. Any waiver must be made in writing and the single or partial exercise of a right, power or remedy shall not prevent its subsequent exercise or the exercise of any other right, power or remedy.

PART B – SOFTWARE

1. License Grant

Copies & Delivery

- 1.1. IFS will make available one (1) copy of the Software in executable object code form and one (1) copy of the Software Documentation ("First Copy") in accordance with the terms for delivery set forth below. Additional copies of the Software may be subject to additional charges.
- 1.2. Should the First Copy be accidentally destroyed, erased, or otherwise become unusable, and Customer has no backup copy for replacement purposes, IFS will make available to Customer a replacement copy for a reasonable administrative charge to cover actual duplication, shipping, and any installation costs incurred (such copy being deemed to be the First Copy thereafter).
- 1.3. The Software will be deemed to be delivered when it is made available to Customer for download. No Software will be delivered where the Customer is purchasing only additional quantities and/or licenses of the Software that it has previously licensed.

Software and Software Documentation

- 1.4. IFS grants Customer a personal, non-exclusive, non-transferable and non-assignable, limited license to access and use, the Software and Documentation (including modules and components forming part of the Software but only for use in association with and for the purpose of its use of such Software) for the applicable term set forth in the Notification Form to:

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- 1.4.1. Use the First Copy solely for the purpose expressed herein and Customer may make additional copies for the exclusive purposes of backup, testing and archiving to the extent strictly necessary. Any additional copies shall contain copyright, disclaimers, proprietary notices and other markings corresponding to those which exist on the First Copy, and shall be held in strict confidence pursuant to the applicable confidentiality provisions;
- 1.4.2. Install the Software at the Designated Location, access and use the Software solely for the own internal business operations of the Customer and Customer Affiliates, based on the Use Types and up to the applicable Use Level and all other applicable use restrictions set forth herein;
- 1.4.3. Configure the Application Software using its embedded capabilities including to create custom fields, custom objects, custom events, custom menus, custom business rules, client scripting, report layouts and personalization's (such as shortcuts, saved searches and screen layouts);
- 1.4.4. Access and use all Services Updates, Updates and new Releases of the Software made available for general commercial distribution by IFS, while Customer has an active contract for Support Services; and
- 1.4.5. Allow its temporary staff, subcontractors or agents ("Contractors"), to access and use the Software solely on Customer's behalf for Customer's and Customer's Affiliates internal business operations and subject to the applicable Use Level and all other applicable use restrictions set forth herein, provided (a) the Contractor shall not be an entity conducting business in competition with IFS or any IFS Affiliate, and (b) Customer will be and remain liable for Contractor's compliance with the terms of the Agreement and all acts and omissions of any such Contractor.

License Key

- 1.5. The Application Software may include an embedded security system which must be used together with a license key. The license key may limit the use of the Application Software to the applicable Use Level and prevent a single User from using more than one workstation at the same time and is valid for a certain period of time following which the license key must be renewed. IFS is not responsible for any cost or loss arising out of Customer's failure or delay to renew the license key.
- 1.6. Customer may not, and will not permit its Users to, share or transfer any license key, password or other security device relating to the use of the Software with or to any other user of the Software or any other third party.

Third-Party Software

- 1.7. Third-party software may be subject to additional or separate [license terms](#) and any terms indicated in any applicable readme files, installation details, or specifically set forth in the applicable Notification Form, and in certain circumstances may be licensed directly to Customer from the third-party software vendor. Any additional or separately applicable third-party software license terms shall, with regard to their respective subject-matter, prevail in the event of a conflict with the Agreement, provided, however, that such additional or separate terms will not impose on IFS any wider, more stringent or more far-reaching obligations or liabilities than the terms of the Agreement.
- 1.8. If Customer will operate third-party software in conjunction with the Application Software for which a license has not been granted by IFS, the Customer agrees, upon request, to provide IFS with a written statement confirming the existence of valid license agreement(s) approved by the relevant third-party software vendor for use in conjunction with the Application Software. The Customer will reimburse IFS for any fees, charges and costs IFS incurs or is charged as a result of Customer's failure to obtain any requisite third-party software licenses or to comply with any applicable third-party software license terms.

Restrictions and Technical Limitations

- 1.9. Any access or use, whether via the interface designated by IFS via mobile device applications or via any External Integration, including without limitation any multiplexer or robotic process automation technology, may be subject to minimal technical and sizing requirements as made available by IFS and must be licensed by Customer for the agreed Use Types up to the applicable Use Level, as measured at the interface/application/External Integration front-end. If not explicitly licensed by any other metric, the default is always Named Users. Customer acknowledges and agrees that (a) an interface/application/External Integration may never be used in any way so as to circumvent the use restrictions under the Agreement; and (b) the permitted use of External Integrations in conjunction with the Software requires the use of recognized IFS interface methods/technology and may be subject to additional terms and conditions, as designated by IFS, and may also require specific third-party software licenses which the Customer must procure at its own expense. Distribution of mobile applications through app stores and other application distribution platforms will be subject to the applicable distribution and download terms and conditions, and any use of such applications on the applicable mobile device will be subject to the terms and conditions imposed by the applicable provider of the application distribution platform or operating system or other associated providers, all of which are subject to periodic reviews and updates.
- 1.10. Except to the extent permitted by mandatory law, the Customer shall not (nor enable or permit others to) as a condition and material term of the license, without IFS's prior written permission: (a) make any correction, adjustment, modification, customization, addition, creation of derivative works (including but not limited to creating new or extending existing tables or databases) or in any other way using any portion of the Software for development purposes of any kind. Any right for Customer to develop or use self-customized software to interoperate with the Software requires separate terms with IFS and may require payment of separate fees; (b) copy (except as expressly permitted herein), decompile, reverse engineer, disassemble, decrypt, translate or unbundle the Software or Documentation, nor attempt to extract or in any other way recreate or derive the source code or review data structures or similar materials included in or produced by the Software; (c) assign, transfer, distribute, export or re-export, sell, rent, lease, lend, pledge, sublicense or otherwise exploit or encumber the Software or Documentation, or otherwise make available any portion thereof, or use or permit use on behalf of, any third party for any purpose (whether in such third party's business operations or otherwise), including but not limited to use in the operation of a service bureau, sourcing, subscription or time-sharing arrangement, software as a service, or in a hosting or outsourcing context; (d) attempt to defeat the present and any future security system of the Software; (e) publish any results of benchmark tests conducted with regard to any portion of the Software; or (f) otherwise act in any way that would deprive IFS or a third party licensor, in whole or in part, of any fees to which it is entitled in the Software or Documentation.
- 1.11. The Software is intended for standard commercial uses and must not be used in any hazardous environments requiring fail safe performance, such as in the construction, operation or maintenance of nuclear facilities, on-line or real-time control of aircraft, aircraft navigation or communication

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systems, air traffic control, direct life support machines, or weapons systems, in which the failure of products could lead directly to death, personal injury, or severe physical or environmental damage.

2. Proprietary Rights

- 2.1. IFS or its licensors retains all right, title, and interest including, without limitation, patents and rights to patent, copyright, trade secret, and trademark in the Software, Documentation and Support Services and in all improvements, enhancements, modifications, or derivative works thereof including, all right, title, and interest in Resolutions and other materials furnished, developed, provided or created by IFS as part of the Support Services, which shall include all patents and rights to patent, copyright, trade secret, and trademark. The Software, Documentation and Support Services constitute and contain valuable proprietary products and trade secrets of IFS or its licensor, embodying substantial creative effort and confidential information, know-how, technology, ideas and expressions that are protected by applicable intellectual property and other laws. Customer undertakes to not remove or alter any proprietary legends or notices and to maintain any marking of ownership as advised by IFS from time to time.
- 2.2. No title, copyright, patent, trademark, trade secret or other right of intellectual property not expressly granted hereunder is exchanged between the Parties.

3. Warranty

Warranty and Warranty Disclaimer

- 3.1. IFS warrants that the Application Software will perform substantially as described in the Software Documentation for a period of six (6) months from the original license start date specified in the Notification Form (“Warranty Period”). No separate or extended Warranty Period shall apply with respect to any remedy of Errors or the purchase by Customer of any additional quantities and/or licenses of the Application Software or delivery by IFS of any additional copies. Any warranty claim must be made by Customer within the Warranty Period. IFS do not warrant that the Software will be constantly available, uninterrupted or error free or that all errors may be found to enable correction.
- 3.2. IFS makes no performance or other warranty with respect to third-party software which is covered by whatever warranty, if any, each such third party may separately provide to the Customer.
- 3.3. Only such limited warranties, conditions or remedies that have been expressly agreed herein shall be granted and available to Customer and are in lieu of all other warranties, conditions or remedies, whether express or implied, written or oral, arising by statute, operation of law, course of dealing, usage or trade or otherwise, including without limitation the implied warranties or conditions of merchantability, satisfactory quality, fitness for a particular or intended purpose, ability to achieve a particular result, or accuracy or completeness of responses or results. While IFS attempts to identify the functions of the IFS Offering which may be of particular benefit to Customer, only Customer is in a position to understand its current and future business needs and, therefore, is solely responsible for the selection, use, and suitability of the IFS Offering for Customer’s purposes, even if IFS has been informed of such purpose. EXCEPT WHERE EXPRESSLY PROVIDED OTHERWISE BY IFS, THE APPLICATION SOFTWARE IS PROVIDED TO YOU ON AN “AS IS” BASIS.

Warranty Remedy

- 3.4. Warranty remedies will be provided as part of Support Services, Customer must therefore have a valid agreement for the provision of Support Services in regards of the warranted Application Software. Subject to the Support Terms, if IFS has breached the warranty set forth in section 3.1 Customer’s sole and exclusive remedy is for IFS, in consultation with Customer, to use reasonable efforts consistent with industry standards to cure the defect or otherwise to redeliver the Application Software so that it substantially complies with the Software Documentation.
- 3.5. Warranty remedies are conditioned upon (a) any error or defect complained of is reasonably reproducible by IFS, (b) the Application Software not having been modified and being used in accordance with the Software Documentation, (c) the breach not being attributable in whole or in part to any non-IFS product(s) or service(s) including third-party software or relating to any Content stored or used by Customer in conjunction with the Software; or (d) the breach not otherwise being attributable to Customer or any third party acting on its behalf, including without limitation Customer’s incorrect or unpermitted implementation, modification, configuration or use of the Software.

4. Verification

- 4.1. Upon request, Customer will provide IFS or its designated representative with reasonable access to the Designated Operating Environment to confirm that the Software is being used in conformance with the Agreement. Should IFS find that Customer is not in compliance with the terms of the Agreement in all material respects, Customer shall, in addition to paying additional fees as may be due for such use, pay all reasonable costs of the audit. Failure to provide such access is a material breach of the Agreement.
- 4.2. In the event Customer receives an audit request from a supplier of Third-Party Software, Customer shall without delay notify IFS of such request and shall permit IFS to handle and coordinate the request in relation to the requesting supplier in question.

PART C – IFS CLOUD SERVICES

1. IFS Cloud Services

- 1.1. IFS will provide the IFS Cloud Services which shall comprise of:
 - 1.1.1. Installation and initialization of the Software and Cloud Platform;
 - 1.1.2. Facilitating network connectivity into the Cloud Platform (excluding for the avoidance of doubt Customer’s network connectivity into the Cloud Platform);
 - 1.1.3. Management of the Cloud Platform and agreed Environments;
 - 1.1.4. Installation of Resolutions; and
 - 1.1.5. The provision of IFS Cloud Services availability information generated through monitoring tools.

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- 1.2. The Services are provided based on resources and capacity for the Environment configuration size set out in the Notification Form to provide performance in accordance with industry norms for typical demand associated with the agreed Use Level and other applicable restrictions. Customer is responsible for planning and requesting changes to Environment configurations, including any additional capacity required.
- 1.3. IFS warrants that IFS Cloud Services will be performed in a professional manner by qualified personnel.

2. Installation and Installation Deferral

- 2.1. Installation of Resolutions, as and when they are available, will normally be performed during Scheduled Downtime, except in regards of Critical Resolutions, Emergency Changes or Proactive Changes where installation may be unscheduled.
- 2.2. If permitted in accordance with the applicable Notification Form, Customer may have the right to defer the installation of Resolutions or Releases during the applicable Deferral Period (provided such period falls during applicable Support Periods).
- 2.3. Customer acknowledges that (a) any installation deferral beyond the applicable Deferral Period will render any agreed service levels inapplicable and may also inhibit IFS's performance of its obligations under this EULA, and IFS disclaims any liability in relation thereto; (b) any Incident occurring during the Deferral Period as a result of an Environment being in a Non-Current State, i.e. that would not have occurred had Customer allowed IFS to apply and install all the Resolutions available prior to the Incident occurring, will be considered an Excluded Incident.

3. Operation of the Cloud Platform

- 3.1. Customer is responsible for day to day functional administration and usage of the Cloud Platform, including but not limited to the following:
 - 3.1.1. Configuration and management of Customer on-site routes/firewalls used to establish VPN or other connectivity;
 - 3.1.2. Configuration and management of software (if any) installed on site with Customer (such as on-site print agents or off-shore environments);
 - 3.1.3. Installation, configuration, and maintenance of any software on end-user machines;
 - 3.1.4. Managing Content;
 - 3.1.5. Internal Customer Case/problem management; centralized co-ordination of Incident reporting to IFS in accordance with the terms of this EULA;
 - 3.1.6. Creating and managing Users, profiles, settings and permissions;
 - 3.1.7. Configuring and managing archiving, history logging, tasks, background jobs, messages, and event actions;
 - 3.1.8. Report management and archiving, and print manager configuration; and
 - 3.1.9. Functional use of the Cloud Platform, including integrations.

4. Availability

Definitions applicable to this section only:

- 4.1. "Availability" means such times during the Service Hours where the Production Environment is available, i.e. not being subject to an Outage. The % availability calculation formula, measured over the relevant calendar month, is as follows (where "A" = Availability, "T" = the total Service Hours in the relevant calendar month (calculated in minutes), "O" = Sum of Outages): $A = (T - O) \times 100\% / T$.
- 4.2. "Clock-Stop Events" means elapsed time (a) outside of the applicable Service Hours, (b) during Scheduled Downtime or installation of Critical Resolutions, Emergency Changes or Proactive Changes, (c) waiting for necessary and requested response, input, assistance or approval from the Customer upon which IFS's performance depends, and/or (d) during which an Excluded Incident exists.
- 4.3. "Outage" means the elapsed net-resolution time during which it is not possible to log-in to the Production Environment by any User, as determined by IFS or the Cloud Platform Vendor from automated health monitoring and system logs, due to a failure in the Cloud Platform. The duration of an Outage is measured during Service Hours on a net-resolution time basis from which the accumulated time for all Clock-Stop Events related to the Outage will be deducted, until the Outage has been temporarily or permanently resolved.
- 4.4. "Scheduled Downtime" means any period of scheduled maintenance used to perform any necessary changes, including any period scheduled by the Cloud Platform Vendor. Scheduled Downtime comprises: (a) planned and scheduled maintenance periods, as notified by IFS from time to time with reasonable notice; (b) where necessary, scheduled additional maintenance windows, as agreed with Customer, to implement Customer-approved changes of the IFS Cloud Services; and (c) Cloud Platform maintenance operations (scheduled by the Cloud Platform Vendor with notice provided approximately one week in advance).

Service Level - Availability Target and Service Credits

- 4.5. The Availability target is 99.5% per Production Environment. In the event the Availability target is not achieved during any calendar month, the Customer is entitled to a service credit as specified below ("Availability Service Credit"). Any cumulative Availability Service Credits will be applied quarterly as a reduction to the Partner's next invoice. Customer must liaise with Partner to seek a corresponding reduction in Partner's invoice to Customer.
- 4.6. The Availability Service Credit shall be:
 - 4.6.1. Between 0.5% and 1% below Availability target: 5% of monthly IFS Cloud Service fees paid to IFS;
 - 4.6.2. Between 1% and 5% below Availability target: 15% of monthly IFS Cloud Services fees paid to IFS; and
 - 4.6.3. More than 5% below Availability target: 25% of monthly IFS Cloud Services fees paid to IFS.Total Availability Service Credits per calendar month may not, in the aggregate, exceed the amount corresponding to one month's fees paid to IFS for the IFS Cloud Services hereunder.

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4.7. Any claim for an Availability Service Credit shall be reported as a Case by the Key User in the IFS case management portal, accompanied with a detailed written description of the applicable Incident to which it relates. Such a Case shall be raised within thirty (30) days of the end of the calendar month in which the Outage to which the claim relates occurred. Customer must be in compliance with the AUP to make such a claim. IFS will evaluate all information reasonably available to it and make a good faith determination of whether an Availability Service Credit is owed and will use commercially reasonable efforts to process claims within thirty (30) days of receipt. If the Availability target in regards of the Production Environment is not achieved during any consecutive three (3) calendar months in any contract year and for which the Customer was entitled to a Availability Service Credit (“Availability Failure”), the Customer may terminate the IFS Cloud Services on providing at least five (5) days and no more than ninety (90) days written notice to IFS, provided such notice is received by IFS within thirty (30) days of determining such Availability Failure occurred. In the event of termination pursuant to this section Support Services shall continue, but on Support Terms for non-IFS Cloud Services customers, for the period Customer remains entitled to such Support Services. Termination of the IFS Cloud Services pursuant to this section 4.7 shall not impact any software license or other services (including for the avoidance of doubt Support Services) all of which will continue in full force and effect subject to the terms of the agreement in respect thereof. Customer acknowledges that the Availability target is not warranted. Any Availability Service Credits paid by IFS to Partner shall be the Customer’s sole remedy with respect to any failure by IFS to meet the applicable Availability target.

Conditions

4.8. Customer may not unilaterally offset any fees payable to Partner or IFS for any performance or other issues. For the avoidance of doubt: (a) the Availability targets described herein are not part of or related to any other service level agreement or target as may be applicable between the Parties e.g. for Support Services; (b) Availability Service Credits payable hereunder are alternative and not cumulative, which means that where a credit would be payable by IFS also under a different service level agreement for the same Incident, payment will only be made for the higher value one on a mutually exclusive basis e.g. where an Availability Service Credit is due as well as a credit in respect of Support Services; and (c) Availability Service Credits cannot be claimed for Outages constituting or resulting from Excluded Incidents.

5. Offboarding Assistance

- 5.1. Customer must have requested IFS to provide a full back-up of Content stored on the Cloud Platform prior to termination or expiration of the IFS Cloud Services and where it has done so, IFS will, at Customer’s provide Customer with a full backup of the Content stored on the Cloud Platform. Except where agreed by the Parties otherwise prior to such termination or expiration of the IFS Cloud Services, such agreement to be in writing, all such Content stored on the Cloud Platform will be erased by IFS on termination or expiration of the IFS Cloud Services including all backup catalogue references to such Content.
- 5.2. If the Customer wishes to remove software or data from the Cloud Platform, then IFS will promptly provide the Customer with all reasonable support and assistance, as a Chargeable Service. Such assistance may include providing Content stored on the Cloud Platform to the Customer or assisting the Customer to redeploy the Software to an alternative hosting platform.

6. Change Management

Regular Change Management

- 6.1. Either Party may request modifications to the IFS Cloud Services using the process described in this section.
- 6.2. Written change approval is required from the other Party prior to execution of a change to the IFS Cloud Services, except for Emergency Changes, Proactive Changes or changes required pursuant to section 7 (Cloud Platform Vendor Terms & Conditions) of this EULA.
- 6.3. Changes requested by Customer shall be submitted as a Case in the IFS case management portal and must detail the requested changes. On receiving the request, IFS will document the proposed actions to address the requested changes and the associated cost and send them to the Partner for approval. Customer understands that work of investigation, analysis and scoping may be a Chargeable Service (except for commercial quotation work) and that IFS’s work related to Change requests may require reallocation of resources that may have an impact on the timing of any agreed delivery.

Emergency Changes

- 6.4. IFS shall be entitled to perform Emergency Changes at any time deemed necessary in its reasonable judgement.
- 6.5. Customer will be notified of the Emergency Change, but IFS shall not require Customer approval. Steps taken will be documented by IFS and, to the extent it impacts Customer’s IFS Cloud Service, full documentation will be provided to Customer after the change. IFS may charge Customer in one-hour increments if IFS is required to conduct an Emergency Change as a result of an Excluded Incident, IFS may charge Customer directly or through the Partner (at IFS’ discretion in consultation with the Partner).

Proactive Changes

- 6.6. IFS shall be entitled to perform Proactive Changes at any time deemed necessary in its reasonable judgement. Customer will be notified of the Proactive Change, but IFS shall not require Customer approval. Steps taken will be documented by IFS and, to the extent it impacts Customer’s IFS Cloud Service, full documentation will be provided to Customer after the change. IFS may charge Customer in one-hour increments if IFS is required to conduct a Proactive Change as a result of an Excluded Incident. IFS may charge Customer directly or through the Partner (at IFS’ discretion in consultation with the Partner). The Customer may defer a Proactive Change by a maximum Deferral Period of:
 - 6.6.1. One (1) month for Critical Resolutions addressing Security Vulnerabilities (having a total score of 9.0 or higher using the base metrics under the latest published version of the Common Vulnerability Scoring System standard); and
 - 6.6.2. Two (2) months for other Critical Resolutions.

Customer must notify IFS of a request to defer such Critical Resolutions within five (5) working days of being notified of a Proactive Change by logging a support Case ticket.

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7. Cloud Platform Vendor Terms and Conditions

7.1. In addition to the terms of the Agreement, the use of the Cloud Platform and the Services is subject to the Cloud Platform Vendor's terms and conditions, which are subject to change, and Customer acknowledges that IFS is limited in the provision of the Cloud Platform and Services by the provisions of such Cloud Platform Vendor's terms and conditions. IFS reserves the right to change the Services to reflect any change to the Cloud Platform Vendor's terms and conditions or as mandated by applicable law. In the event of any material change, IFS will give Customer reasonable prior written notice setting out the scope and contents of the change and the impact of the same. If in the reasonable opinion of Customer such changes will materially impair the functionality of the Services then the Parties shall discuss in good faith a resolution to such impairment, and if no such resolution can be achieved within ninety (90) days of IFS's notice of the change, the Customer will be entitled to terminate the Services on six (6) months' written notice to IFS. Such notice to terminate must be served on IFS within thirty (30) days of IFS and Customer determining that no resolution can be achieved.

PART D – SUPPORT SERVICES

1. General Terms

- 1.1. IFS will provide Support Services subject to the Support Terms. Customer must purchase support for any Customized Software, which support will be provided as a separate Chargeable Service subject to separate terms.
- 1.2. IFS warrants that the Support Services will be performed in a professional manner by qualified personnel.
- 1.3. The Support Terms applicable to IFS Cloud Services are only applicable to Support Services where provided in combination with the IFS Cloud Services. Stand-alone Support Services will be subject to IFS's Support Terms for non-cloud customers based on the support option Customer has purchased.

2. Defined Terms

- 2.1. Terms defined in the Support Terms shall apply to this EULA.

3. Support Plan

- 3.1. The Support Terms applicable to the IFS Cloud Services are the IFS Cloud Support Terms save for the specific deviations set forth below:

3.1.1. Service Credits sub-section of the Service Levels section shall be replaced with the following section:

- Service Credits
 - IFS shall be deemed to have met its obligations pursuant to the Service Levels outlined above by reacting within the applicable timeframes in ninety-five percent (95%) of all reported Cases for which a Service Level applies, in the aggregate, within a Calendar Quarter.
 - Where Customer, in any Calendar Quarter, submits less than twenty (20) Cases for which a Service Level applies, in the aggregate, Customer agrees that IFS shall be deemed to have met its obligations hereunder if IFS has not exceeded the applicable timeframe in more than one Case during that Calendar Quarter.
 - Subject to the above conditions, in the case of a Failure, the following terms and procedures shall apply: (i) Customer shall inform IFS in writing of any alleged Failure; (ii) IFS shall investigate any such claims and provide a written report proving or disproving the accuracy of Customer's claim; (iii) Customer shall provide reasonable assistance to IFS in its efforts to correct any problems or processes inhibiting IFS's ability to meet the applicable Service Level(s); and (iv) if, based on IFS's report, a Failure is proved, IFS shall apply a Service Level credit ("Service Credit") to Partner's next invoice for Support Services (Customer must liaise with Partner to seek a corresponding reduction in Partner's invoice to Customer). equal to one quarter percent (0.25%) of the portion of the fee attributable to the applicable Calendar Quarter for each Failure reported and proved in that Calendar Quarter, subject to a maximum cap per Calendar Quarter of five percent (5%) of the portion of the fee to IFS for Support Services attributable to such Calendar Quarter. Customer has the responsibility of notifying IFS of any Service Credit within one (1) month after the end of the Calendar Quarter in which a Failure occurs and it is acknowledged that no Service Credit will be paid unless notice of Customer's well-founded claim for Service Credit(s) is received by IFS in writing within such time. For the avoidance of doubt, a Service Credit for a Failure shall only be applied once per Case. For the purposes of Service Credit calculation, where the Current Release is licensed on a subscription basis, as agreed and specified in the applicable order, the fees for Support Services shall be deemed to be 50% of the applicable subscription license fee paid to IFS, unless otherwise is set forth in the Notification Form. The Service Credits stated in this section is Customer's sole and exclusive remedy with respect to any alleged or actual Failure.

PART E – DEFINITIONS

1. The definitions used in this EULA have the meaning given to them below, unless the context requires otherwise.
 - 1.1. "Access and Use" or "access and use" of the Services and/or the Software (or any similar phrasing) means any access to and/or use of any portion of the Services or the Software, including but not limited to any database information or any other contents thereof) and whether via any IFS interface, External Integration or otherwise.
 - 1.2. "Acceptable Use Policy" or "AUP" means such terms of use applicable to the Services as set forth in section Part F (AUP) of this EULA.
 - 1.3. "Application Software", "IFS Application Software" or "IFS AS" means IFS's standard, unmodified proprietary application software products, modules, applications, "apps" and programs (but, for the avoidance of doubt, excluding any third-party software included therein or associated therewith) which Customer has licensed and/or been granted the right to access and use. It is limited to machine readable code (generally referred to as executable or object code) and the user instructions included in the Software Documentation. It does not include vocabularies and other items generally referred to as source code, nor any descriptions not included in the Software Documentation.

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- 1.4. “Case” means a unique message, identified with a number, reported by the Customer into IFS’s case management portal. Such a message can be a report of an Incident, a request for information, modification or service, or other messages.
- 1.5. “Chargeable Services” are those services which will be provided only where specifically agreed by IFS in writing and will be charged separately (on a time and material basis except where otherwise agreed).
- 1.6. “Cloud Platform” means IFS’s application cloud platform, as provided by the Cloud Platform Vendor, for the delivery of the IFS Cloud Services, including any Environment, as described in the applicable Notification Form.
- 1.7. “Cloud Platform Vendor” means Microsoft or such other third-party cloud hosting vendor, as applicable from time to time, from which IFS operates the Cloud Platform.
- 1.8. “Configurations” means capabilities in the Software to individually tailor the application, consisting of configurations (such as custom fields, custom objects, custom events, custom menus, custom business rules, client scripting, report layouts) and personalization’s (such as shortcuts, saved searches, screen layouts, etcetera).
- 1.9. “Content” means Customer Data and other data which is submitted to the Cloud Platform.
- 1.10. “Country” means (as a Unit a Measure) the countries for which the Customer activates the Application Software allowing the Customer to define entities/companies and sites. The base country will be the country in which the Customer is located and is automatically assigned when the Unit of Measure is (partially or fully) “Country”, other countries being additional countries as specified on the applicable Notification Form.
- 1.11. “Critical Resolution” means any Resolution addressing Security V Vulnerabilities (having a total score of 9.0 or higher using the base metrics under the latest published version of the Common Vulnerability Scoring System standard) or critical operational issue(s), as determined by IFS.
- 1.12. “Current Release(s)” means the latest Release offered by IFS for general commercial distribution and other currently supported Releases as designated by IFS in the then current IFS Support Policy.
- 1.13. “Customer Data” means all data and all content submitted by Customer using the Services and/or the Software or provided by Customer to IFS in the course of IFS providing the Services, including all intellectual property rights embodied in such data or content.
- 1.14. “Customized Software” or “Customization” means any Application Software code modified or amended on behalf of the Customer. Setting of parameters, parameterization or configuration is not a Customization.
- 1.15. “Customer Components” means everything needed by the Customer to access and use the Cloud Platform, including without limitation hardware, routers, VPN’s firewalls software and other products not specifically included in the Services.
- 1.16. “Customer-Induced issue” means issues arising out of (a) specifications, instructions or input provided by Customer; (b) Customer’s use of services, hardware, software, integrations, extensions or interfaces not forming part of the Software or the Services (c) issues caused by inadequate sizing or bandwidth in Customer’s systems or delays or failures in Customer’s network or on-line connectivity; (d) issues caused by incorrect or unpermitted use by Customer of the Services or the Software, or use beyond the applicable Use Level, or a manner otherwise not permitted under the AUP which has not been separately approved by IFS in writing; or (e) breach by Customer of the EULA or otherwise caused by Customer (and, for the avoidance of doubt, each applicable whether induced by Customer or any third party acting on its behalf).
- 1.17. “Deferral Period” means such periods, during the applicable Support Period, where Customer may defer the installation of Resolutions or Releases, as specified in Part C section 6.6 of this Addendum for Proactive Changes and otherwise as specified in the applicable Notification Form. It being understood that separate Deferral Periods apply for different IFS products.
- 1.18. “Designated Location” means the agreed physical location identified in the applicable Notification Form at which where the server-based portion of the Application Software resides.
- 1.19. “Designated Operating Environment” means the hardware and operating system software set forth in the applicable Notification Form on which the Software is authorized for use.
- 1.20. “Emergency Change” means a change or other Resolution that is triggered by a Severity Level 1 Incident. .
- 1.21. “Environment” means the complete infrastructure and Software installation running on the Cloud Platform, which makes up the technical solution for a particular purpose, as specified in the applicable Notification Form. For example, “Production” or “Test”.
- 1.22. “Error” means a software defect in the Application Software, which consists of a nonconformity between the unmodified software and its applicable functional specifications, which for the Application Software are set forth in the Software Documentation.
- 1.23. “Excluded Incidents” means (a) issues caused by network issues outside the control of IFS or the Cloud Platform Vendor or by other elements outside the reasonable control of IFS; (b) issues relating to Content or Configurations; (c) Customer-Induced issues or issues arising as a result of Customer’s failure to comply with reasonable instructions regarding the use of the Services; or (d) Incidents occurring or extending beyond the applicable Deferral Period or Support Period, or occurring as a result of an Environment being in a Non-Current State for reasons not attributable to IFS.
- 1.24. “External Integration” means any external interface(s), links, frontend/clients, apps, integrations, or data collection device, including without limitation any multiplexing hardware or software (including but not limited to a transaction processing monitor or a web server product). For the avoidance of doubt, the applicable Use Level must always be measured at the External Integration front end.
- 1.25. “Fix” means a correction to an Error or a Security Vulnerability in the Application Software. Fixes are compatible with the applicable Current Release designated by IFS.
- 1.26. “Fixed” means General Access Functionality residing on the server that may be used by any General Access User or Use Level for said Module set forth in the Notification Form.
- 1.27. “General Access Module” means an Application Software Module that may be used by any General Access User at the Use Level for said Module set forth in the Notification Form.

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- 1.28. “General Access User” means a User with unrestricted access to all licensed Application Software modules and components.
- 1.29. “Hardware” or “hardware” means the combination of the machine types and other hardware products which, together with the operating system software, can perform one or more data processing functions when utilizing the Software.
- 1.30. “Improvement” means a functional change made by IFS to improve or enhance the Application Software e.g. to implement new capability and address legal requirements. Improvements are compatible with the applicable Current Release designated by IFS.
- 1.31. “IFS Cloud Services” means the provision and automated monitoring of the Cloud Platform and associated services, as further set forth in Part C of this EULA.
- 1.32. “Incident” means an identified Error, Outage or other event impacting the performance of the Services.
- 1.33. “Key User” means a person appointed by the Customer who is trained and qualified to handle initial problem resolution and report Incidents.
- 1.34. “License Type” means the type of license granted be it a perpetual license or subscription license for a specified duration, such information being as specified in the Notification Form.
- 1.35. “Limited Access Module” means an Application Software Module that may only be used by a Limited Task User at the Use Level for said Module set forth in the Notification Form.
- 1.36. “Limited Task User” means a User with access restricted to specific Application Software modules, functions or features.
- 1.37. “Operating System Software” or “operating system software” means the software necessary to operate the Hardware.
- 1.38. “Module” means specific portion of the Application Software designated as such in the Documentation made available to the Customer under the Notification Form.
- 1.39. “Non-Current State” means where an Environment that is not current, i.e. that does not have the latest Resolutions installed and/or for which the applicable Support Period has expired.
- 1.40. “Notification Form” means the form provided to You by IFS, directly or through you Partner, containing information on the Software, the Use Level and Use Type, the license type and other applicable information to the licensing of certain Software. This form is emailed to You following receipt and acceptance by IFS of an order from Your Partner.
- 1.41. “Proactive Change” means a change or other Resolution reasonably deemed necessary by IFS to pre-empt any Severity Level 1 or 2 Incidents based on available monitoring information or to address a Critical Resolution.
- 1.42. “Release” means a version of the Application Software designated by IFS as a “release” and made available for general commercial distribution, typically containing new functionality, a cumulative set of Fixes and Improvements, as well as potential architectural changes, for example FSM 6.x, IFS Applications 10, IFS 2020 R1.
- 1.43. “Required Consents” means any consents, licenses, or approvals required to give IFS, or any person or entity acting for IFS hereunder, the right or license to access, use and/or modify in electronic form and in other forms, including derivative works, the Customer Components and Content, without infringing the ownership or intellectual property rights of IFS or the owners of such Customer Components and Content.
- 1.44. “Resource” means a unique person, piece of equipment, or object that performs activities and has its schedule calculated by Application Software.
- 1.45. “Resolution” means a measure by which an Incident is resolved or preempted hereunder. Errors are resolved by way of Fixes, Services Updates, Updates or other solutions, including without limitation circumvention and software re-start, and may also consist of a temporary solution, including the creation of a by-pass or workaround, to restore the affected functionality that will apply until the Error has been permanently resolved, it being understood that such permanent solution may only be made available in a future Release.
- 1.46. “Security Vulnerability” means a weakness in software code, a product or a system that leaves it open to the potential for exploitation in the form of unauthorized access or malicious behavior.
- 1.47. “Services” means the IFS Cloud Services and Support Services.
- 1.48. “Service Hours” means the hours limited in the applicable Notification Form during which the Services are provided, it being understood that different Service Hours can apply for different Services.
- 1.49. “Severity Level” means the applicable severity level assigned by IFS to an Incident, as it may be re-classified by IFS based on information gathered throughout the Case lifecycle.
- 1.50. “Service Update” means a cumulative set of high severity Fixes for a Release (“high severity” being as designated by IFS as set forth in the IFS Support Policy). Service Updates are compatible with a specific Release of the Application Software as designated by IFS and released in accordance with IFS’s release schedule as applicable from time to time.
- 1.51. “Software” means Application Software and third-party software together as licensed under an Notification Form.
- 1.52. “Software Documentation” means the reference on-line manual produced by IFS describing the function of, and provided together with, the Application Software. It does not include any general descriptions, collateral, training material or other materials not included in the on-line manual.
- 1.53. “Support Period” means the period designated by IFS during which a particular Release of the applicable Application Software product or module will be supported and maintained by IFS.
- 1.54. “Support Services” or “IFS Support Services” means the support and maintenance provided or made available by IFS and purchased by Customer for particular Application Software, which includes different support options, as specified on the Notification Form. Support Services may be limited to certain software installation(s), instance(s), environment(s), language version(s), and country(ies) /site(s) as specified in the applicable Notification Form.
- 1.55. “Support Terms” means the detailed description of the applicable Support Services as specified at <https://www.ifs.com/corp/legal/>.

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- 1.56. “Third-party Software” or “third-party software” means any software product, data or service owned by a third party, whether proprietary, commercial or designated as free and open source software to which Customer has been licensed and/or granted the right to access and use under an Notification Form.
- 1.57. “Update” means a cumulative set of Fixes and Improvements for a Release. Updates are compatible with a specific Release of the Application Software as designated by IFS and released in accordance with IFS’s release schedule as applicable from time to time.
- 1.58. “Upgrade” means an upgrade from one Release of the Application Software to another, which requires a project assignment separately agreed in writing between the Parties, that may include implementation services, migration of Content stored on the Cloud Platform, and other related professional services.
- 1.59. “User” means a physical individual (i.e. user login) who is granted access to use the Software; “Named User” means a named individual authorized to use the Software (or any portion thereof) regardless of whether the individual is actively using the Software at any given time; a non-human operated device will be counted as one or multiple Named User(s) (depending on the nature of operation) in addition to all individuals authorized to use the Software; and “Permitted Users” means Named Users, concurrent Users or other types of Users being authorized to use the Software, as set forth in the applicable Notification Form.
- 1.60. “Unit of Measure” means, as applicable, any agreed volume-based metric, resources, or other applicable metrics, for use of the Software, including but not limited to, number of employees, transaction volumes, operating devices, Countries as set forth in the applicable Notification Form.
- 1.61. “Use Type” means the metric for counting and controlling the applicable permitted use categories – in terms of Permitted Users, Units of Measures or other permitted means of use, as applicable, as specified in the applicable Notification Form.
- 1.62. “Use Level” means the maximum permitted use level for each Use Type, as specified in the applicable Notification Form.

PART F – AUP

1. General

- 1.1. This AUP for Customer’s access and use of the Services. Customer shall be responsible for each User’s compliance with this AUP.

2. Prohibited Use

- 2.1. The Customer must not use the Services nor enable others to use the Services: (a) In a way prohibited by law; (b) To violate the rights of third parties; (c) To try to gain unauthorized access to or disrupt any service, device, data, account or network; (d) To spam or distribute malware, or transmit or cause to be transmitted any viruses, worms, Trojan horses, time bombs, cancel bots or any other harmful, damaging or destructive programs or content; (e) In a way that could otherwise harm the Services or impair anyone else’s use of it; (f) To disable, tamper with, or otherwise attempt to circumvent any billing mechanism that meters Customers use of the Services, nor force any electronic barriers or locks which have been adapted for the purpose of protecting the Services; or share or transfer any license key, password or other security device relating to the use thereof with or to any other User or any third party; (g) In a manner that prevents or disrupts other computer communications, or prevents or disrupts the equipment employed to provide and use the Services; or (h) In any application or situation where failure of the Services could lead to the death or serious bodily injury of any person, or to severe physical or environmental damage.
- 2.2. The Services are intended for standard commercial uses and must not be used in any hazardous environments requiring fail safe performance, such as in the construction, operation or maintenance of nuclear facilities, on-line control of aircraft, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of products could lead directly to death, personal injury, or severe physical or environmental damage.

3. Investigation, Suspension

- 3.1. IFS have the right to investigate potential violations of the AUP. If IFS acting reasonably determines that a repeated or material breach has occurred, then IFS may, in its reasonable discretion: (a) restrict Customer’s and Users’ access to the Services; (b) remove or require removal of any offending Content; (c) Suspend the Services in whole or in part; (d) Terminate the Services for cause; and/or (e) exercise other rights and remedies available to it.
- 3.2. Except where IFS believes on reasonable grounds that an immediate restriction of the access to the Services is required or otherwise is required by law, before undertaking the actions in this section, IFS will attempt to notify Customer by any reasonably practical means under the circumstances, such as, without limitation, by telephone or e-mail. Customer will promptly notify IFS of any event or circumstance related to the Services, Customer’s or any User’s use thereof, or Content of which Customer becomes aware, that could lead to a claim or demand against IFS, and Customer will provide all relevant information relating to such event or circumstance to IFS at IFS’s request. Customer will always have complete and unrestricted access to Customer’s software applications, devices, equipment, hardware, and all Services-related license files so that Customer can audit its Users’ compliance.
- 3.3. In the event of a violation of the AUP, Customer has ten (10) days following notification to correct the violation prior to IFS acting.
- 3.4. The exercise by IFS of suspension rights or other remedies under this AUP shall not relieve Customer of any obligation to pay the applicable fees to Your Partner.