

END USER LICENSE AGREEMENT – ON-PREMISE

THIS END USER LICENSE AGREEMENT (“EULA”) IS APPLICABLE TO END CUSTOMERS OF THE SOFTWARE 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 IS SUBJECT TO YOUR COMPLIANCE WITH THIS EULA, THE NOTIFICATION FORM, AND, IN ADDITION, THE RELEVANT [PRODUCT TERMS](#) FOR SUCH 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.

1. INTRODUCTION

- 1.1. 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.
- 1.2. 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.
- 1.3. 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.
- 1.4. Agreement between Customer and Partner. Partner is not authorized to agree any amendments to the Agreement in your agreement with Partner.
- 1.5. IFS Support Services. Where purchased, IFS will provide IFS Support Services subject to the Support Terms. IFS Support Services does not include (and should not be mistaken for) support IFS may provide to Partner when Customer contracts for Partner delivered support. Where Customer purchases IFS Support Services through Partner, such support does not include support for any Customized Software.

2. LICENSE GRANT

Copies & Delivery

- 2.1. IFS will make available the Software and Software Documentation from online repositories(s) (“First Copy”) in accordance with the terms for delivery set forth below. Additional copies of the Software may be subject to additional charges.
- 2.2. 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

- 2.3. IFS grants Customer a personal, non-exclusive, non-transferable and non-assignable, limited license to access and use, the Software and Software 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:
 - 2.3.1. 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;
 - 2.3.2. 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 (subject to section 2.3.5 below), based on the Use Types and up to the applicable Use Level and all other applicable use restrictions set forth herein;
 - 2.3.3. 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);
 - 2.3.4. Access and use all Services Updates, Updates and new Releases of the Software made available for general commercial distribution by IFS, while You have an active contract for support services through Your Partner; and
 - 2.3.5. 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.
- 2.4. Customer Affiliate(s) will be entitled to benefit from the licenses granted hereunder subject to (a) the agreed use restrictions and other applicable restrictions apply to the Customer’s and Customer Affiliates’ aggregate use thereof and (b) any rights extended to Customer Affiliates are only available through Customer and, consequently: (i) no right (or any related remedy) shall be separate and all limitations, exclusions and disclaimers applicable to Customer shall include Customer’s and any Customer Affiliate’s claims in the aggregate and Customer shall be liable for all acts and omissions of its Customer Affiliates, including, but not limited to, their data, content, and performance in compliance with the Agreement; and (ii) if any Customer Affiliate should cease to be an affiliated company as per the applicable definition, all such rights will automatically terminate and Customer shall ensure it complies with the termination obligations set out in section 7.4 below.

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License Key

- 2.5. The Application Software may include an embedded security system which if provided 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. Customer is solely responsible for any cost or loss arising out of Customer's failure or delay to renew the license key.
- 2.6. 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

- 2.7. The following will apply to third-party software associated with the Software:
 - 2.7.1. Third-party software included in the Software are licensed to Customer as part of the Software under this EULA and/or any additional or separate [Product Terms](#) included herein by reference (including without limitation such terms indicated in any applicable readme files, installation details, etc.). It is agreed that 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 this EULA, 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 express terms of this EULA.
 - 2.7.2. 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 and Partner for any fees, charges and costs IFS or the Partner (as applicable) 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

- 2.1. 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.
- 2.2. 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; (b) copy (except as expressly permitted herein), decompile, reverse engineer, disassemble, decrypt, translate or unbundle the Software or Software 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 Software 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 the Partner, IFS or a third party licensor of any fees to which they are entitled in respect to the Software or Software Documentation.
- 2.3. 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 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. VERIFICATION

- 3.1. 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.
- 3.2. 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.

4. PROPRIETARY RIGHTS

- 4.1. 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 customizations, configurations, custom fields, menus and layouts, port or screen reformatting, corrections, modifications, improvements, enhancements, translations, compilations, remodellings, or any other 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 (collectively "IFS Material"), which shall include all patents and rights to patent, copyright, trade secret, and trademark. The IFS Material constitutes and contains 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.

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- 4.2. Except for the limited licenses and/or use rights specified in the applicable Notification Form Customer will not acquire any right in the IFS Materials. All right, title and interest, including without limitation all patents, trademarks, copyright, moral rights, database rights, trade secrets, service marks and applications for any of the foregoing, and any other intellectual property right of whatever nature anywhere in the world, in and to the IFS Materials, shall remain or become upon creation, as applicable, the exclusive property of IFS or its licensors, worldwide and in perpetuity, and Customer hereby, without charge or royalty, conveys, assigns, and transfers all right, title and interest that it may have in the IFS Materials with full and unrestricted right for IFS or its licensors to change, duplicate, exploit, transfer, assign or otherwise dispose of in any way, such works and all rights to enforce such rights and interests. In respect of IFS Materials, Customer will not remove or alter any proprietary legends or notices and will maintain any marking of ownership.
- 4.3. Subject to any applicable confidentiality provisions, nothing herein restricts either Party's right to use and employ its general skills, know-how, techniques, concepts and expertise within its general knowledge and in the regular course of its business. Customer grant to IFS and its Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the IFS products and services any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or users.

5. WARRANTY

Warranty and Warranty Disclaimer

- 5.1. 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. Unless you have purchased IFS Support Services where warranty claims may be made to IFS directly, all warranty claims must be made by Customer to Your Partner. Claims must be made to IFS or Partner (as applicable) 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.
- 5.2. 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.
- 5.3. 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. Customer is solely responsible for the selection, use, and suitability of any Application Software for Customer's purposes, even if IFS or Partner 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

- 5.4. Warranty remedies will be made available through Your Partner not directly through IFS, Customer must have a valid agreement for the provision of support services from or through your Partner in regards of the warranted Application Software. If IFS has breached the warranty set forth in section 5.1 Customer's sole and exclusive remedy is for IFS, in consultation with Your Partner, to use reasonable efforts consistent with industry standards to cure the defect or otherwise to redeliver the Application Software directly or through Your Partner as determined by IFS in consultation with Your Partner so that it substantially complies with the Software Documentation.
- 5.5. 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 or data 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.

6. INDEMNITY

- 6.1. 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 Partner; 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.

7. TERM AND TERMINATION

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

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- 7.2. Any license granted hereunder may be subject to immediate termination:
- 7.2.1. On written notice from IFS if IFS is not paid by Partner, when due, the fees for the license, including for a subscription license, the subscription fee;
 - 7.2.2. 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 capable of cure) within thirty (30) days of receipt of written notice of default;
 - 7.2.3. 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; or
 - 7.2.4. If Customer or any Customer Affiliate becomes subject to sanctions under applicable EU/UK/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.
- 7.3. (a) Termination does not (i) relieve Customer of 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. (c) Moreover, it is agreed that the licenses granted 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 hereunder, which shall continue to apply in accordance with the terms hereof.
- 7.4. 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.

8. CONFIDENTIALITY

- 8.1. Customer and IFS acknowledge and agree that one party (and/or any of Customer Affiliates or IFS Affiliates (together "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, contractors and other professional advisors 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 shall continue for the duration of the Agreement and survive the termination of the Agreement until the later of (i) five (5) years; or (ii) with respect to any Confidential Information that constitutes a trade secret, including without limitation IFS Application Software and roadmap information, when such Confidential Information no longer qualifies as a trade secret under applicable law.
- 8.2. 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.
- 8.3. 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.

9. NO GENERAL WARRANTY AND LIMITATION OF LIABILITY

- 9.1. 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, 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.
- 9.2. Neither Party excludes or limits its liability with respect to any liability which cannot be excluded by law. Except for breach of section 8 (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 6 (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 Application Software and any IFS Support Services in the twelve months period immediately preceding the events giving rise to the claim or an Japanese Yen equivalent of €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).
- 9.3. 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.

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- 9.4. Customer acknowledges that it is solely responsible and liable for its use, operation, output and result of the Software 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 Software, 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 related to the Software 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.
- 9.5. 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.

10. GENERAL

- 10.1. **Data Processing.** The terms of the [data processing addendum](#) ("DPA") shall apply to the provision of IFS Support 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.
- 10.2. **Analytics.** IFS may track and analyse the usage of the Software and IFS Support Services for purposes of determining usage made of the Software, 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 analyse 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.
- 10.3. **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 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.
- 10.4. **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.
- 10.5. **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. This 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.
- 10.6. **Governing Law.** The laws of Japan will govern the Agreement, without regard to any conflicts of law principles. IFS and Customer submit to the exclusive jurisdiction of an arbitration through the International Chamber of Commerce (ICC), using ICC 2017 Rules of Arbitration, in such venue agreed as equally convenient to both parties (failing agreement, in Tokyo) for the resolution of contractual or non-contractual disputes arising in relation to the Agreement.
- 10.7. **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 including documents referenced therein (3) this EULA including documents referenced herein. 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.

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11. DEFINITIONS

The definitions used in the Agreement have the meaning given to them below, unless the context requires otherwise:

- 11.1. "Access and Use" or "access and use" of the Software (or any similar phrasing) means any access to and/or use of any portion of 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.
- 11.2. "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 under the Agreement . 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.
- 11.3. "Confidential Information" means any and all information which is either identified as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including, but not limited to, the IFS Materials, the Software and the Agreement, computer programs, code, algorithms, names and expertise of employees and consultants, information relating to existing, previous and potential suppliers, customers and contracts, know-how, trade secrets, formulas, processes, ideas, inventions (whether patentable or not), schematics and other technical, business, financial plans, and product plans and designs, forecasts, strategies and information.
- 11.4. "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 in the Agreement.
- 11.5. "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.
- 11.6. "Customer Affiliate" means any company in which Customer directly or indirectly owns more than fifty (50) percent of the issued share capital and/or votes.
- 11.7. "Designated Location" means the agreed physical location identified in the Agreement at which where the server-based portion of the Application Software resides.
- 11.8. "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.
- 11.9. "External Integration" means any external interface(s), links, frontend/clients, apps, integrations, or data collection device, including without limitation any multiplexing hardware or software (e.g., a TP 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.
- 11.10. "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.
- 11.11. "IFS Affiliate" means any company in which Industrial and Financial Systems, IFS AB, the ultimate parent company of the IFS Group, directly or indirectly owns more than 50 percent of the issued share capital and/or votes.
- 11.12. "IFS Materials" has the meaning given to it in clause 4.1.
- 11.13. "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.
- 11.14. "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.
- 11.15. "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.
- 11.16. "Resolution" means a Fix, Service Update, Update or other solution, including without limitation circumvention and software re-start, made by IFS to resolve an Error. A Resolution may consist of a temporary solution, including the creation of a by-pass or workaround, to restore the affected functionality and that will apply until the Error has been permanently resolved, it being understood that such permanent solution may only be made available only in a future Release.
- 11.17. "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.
- 11.18. "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.
- 11.19. "Software" means Application Software and third-party software together as licensed under the Agreement pursuant to the terms of this EULA.

END USER LICENSE AGREEMENT – ON-PREMISE

- 11.20. "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.
- 11.21. "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. IFS Support Services does not include support IFS may provide Partner when a Customer contracts for Partner delivered support.
- 11.22. "Support Terms" means the detailed description of the applicable Support Services as specified at <https://www.ifs.com/corp/legal/>.
- 11.23. "Third-Party IP Claim" means a claim of a third party that any portion of the Application Software licensed by IFS to Customer infringes any of the third party's registered patents, copyrights, or trademarks.
- 11.24. "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 the Agreement.
- 11.25. "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.
- 11.26. "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 as set forth in the Agreement.
- 11.27. "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 Agreement.
- 11.28. "Use Type" means the metric for counting and controlling the applicable permitted use categories – in terms of Named Users, Units of Measures or other permitted means of use, as applicable, as specified in the Agreement.
- 11.29. "Use Level" means the maximum permitted use level for each Use Type, as specified in the Agreement.