

## END USER LICENCE AGREEMENT

This End User License Agreement records the terms and conditions of access and use of Loadscan software and is legally binding on the Parties once signed or once the Licensee (You) access the System, Services or Software.

### 1. LICENSE

- 1.1.** Licensor grants to Licensee and Licensee accepts from Licensor, a non-exclusive, non-transferable, non-sub-licensable, limited right to:
  - 1.1.1.** access and use the System and Services; and
  - 1.1.2.** use any Software furnished by Licensor for access to or use of the System, Services or otherwise, for the purpose of utilizing the Services during the Term, subject to Licensee's full compliance with the terms and conditions set forth in this Agreement.
- 1.2.** At no time will Licensee be permitted to: (a) make the System, in whole or in part, available to any other person, group, entity or business; (b) copy without Licensor's written consent, reverse engineer, decompile or disassemble the System or Software, in whole or in part, or otherwise attempt to discover the source code to the Software; or (c) modify the Services or the System or associated Software or combine the Services, System or Software with any other software or commercially on sold services not provided or approved by Licensor. Any prohibited use of the System, Services or Software, as provided above and as otherwise under the law shall result in the immediate termination of this Agreement.
- 1.3.** Licensee agrees and acknowledges that, except for the limited rights of access to and use of the System, Services and Software expressly granted by this Agreement, at no time do any rights to the System, Services and Software transfer to Licensee, and any that have licensed their proprietary rights as part of the System, Services or Software.
- 1.4.** Licensee is authorised to access the cloud based applications of the System and Software via the Internet.
- 1.5.** Except as required by law, Licensee will not permit any third Party (other than Licensee's Authorised Workforce) to have access to the System, or to use the Software or Services without Licensor's prior written consent, which consent may be withheld in Licensor's sole discretion.
- 1.6.** Licensee may permit Licensee's Authorised Workforce to use the System, Services and Software, subject to the terms of this Agreement, on the basis that Licensee will:
  - 1.6.1.** Provide a User Account to each member of Licensee's Authorised Workforce prior to first-time access or use;
  - 1.6.2.** Train all members of Licensee's Authorised Workforce in the obligations and requirements of this Agreement and other requirements relating to their access to and use of the System, Services and Software, and ensure that they comply with such requirements and applicable laws on an on-going basis;
  - 1.6.3.** Take appropriate disciplinary action against any member of Licensee's Authorised Workforce or any other individual of Licensee's Workforce who violates the terms of this Agreement, including but not limited to, temporary suspension from access to and use of the System, Services and Software; and
  - 1.6.4.** Licensee acknowledges and agrees that it is solely responsible for ensuring Licensee's Authorised Workforce is compliant with the terms and obligations of this Agreement.
  - 1.6.5.** Notify Licensor in writing following the termination of employment of any member of Licensee's Authorised Workforce. Upon receiving writing notification, Licensor will withdraw authorisation to access or use of the System, Services and Software for that member of Licensee's Authorised Workforce.
- 1.7.** Subject to the provisions of this Agreement, Licensee is solely responsible for ensuring that its use of the System, Services and Software complies with applicable law. Licensee will not undertake or permit any unlawful use of the System, Services and Software.
- 1.8.** Licensee will be solely responsible for the professional services it provides and advice it issues. Licensor makes no representations concerning the completeness, accuracy or utility of any information in the System, Services and Software. Licensor has no liability for the consequences to Licensee for use of the System, Services and Software, and Licensee will indemnify, defend and hold Licensor harmless from any claims arising from its use of the System, Services and Software.
- 1.9.** From time to time, Licensor may, at its sole discretion, update the System, Services or Software and provide Licensee with access to same. If necessary, Licensor may require Licensee to enter into a new end user licence agreement and terminate this Agreement.

## **2. PROTECTION OF INTELLECTUAL PROPERTY**

- 2.1.** Licensor is the sole owner or holder (where it is a licensee) of all rights (including Intellectual Property rights) in the System, Services and Software supplied under this Agreement. For the avoidance of any doubt this also includes any Improvements or Updates to the System, Services and Software.
- 2.2.** The Licensee must not, nor may it permit any other person to:
  - 2.2.1.** Tamper, obscure or remove any trade marks, any patent or copyright notices, or other proprietary right or legal notice in relation to the System, Services and Software; or
  - 2.2.2.** Do any act not otherwise permitted by this Agreement that would or might invalidate or be inconsistent with Licensor's Intellectual Property rights.
  - 2.2.3.** The Licensee acknowledges that any Intellectual Property subsisting in the System, Services and Software is the property of the Licensor.
- 2.3.** The Licensee must notify the Licensor of any actual, threatened, or suspected infringement of any Intellectual Property right and of any claim by any third Party that any use of the System, Services and Software infringes any rights of any other person, as soon as that infringement or claim comes to its attention. The Licensee shall do all such things as may reasonably be required by Licensor to assist Licensor in pursuing or defending any proceedings in relation to any such infringement or claim.
- 2.4.** The Licensee indemnifies Licensor against any loss, costs, expenses, demands or liability, whether direct, indirect or consequential or otherwise, and whether arising in contract, tort (including in each case negligence), or equity or otherwise, arising out of a claim by a third Party alleging infringement of that third Party's Intellectual Property rights if such claim arises from infringement, suspected infringement or alleged infringement due to:
  - 2.4.1.** Use of the System, Services and Software in combination by any means and in any form with equipment not specifically approved by Licensor or in a manner or for a purpose not reasonably contemplated or authorised by Licensor; and/or
  - 2.4.2.** The Licensee's breach of clause 2.2.
- 2.5.** The Licensee agrees not to compete with Licensor in respect of the System, Services and Software (including developing, selling or distributing products or services that are the same or similar to the System, Services and Software).

## **3. USER ADMIN ACCOUNT FOR ONLINE SERVICES**

- 3.1.** Licensor will create a User Admin Account for the Licensee. Licensee must subsequently activate the User Admin Account and register the Software with Licensor within thirty (30) days of creation of the User Admin Account.
- 3.2.** A User Admin Account may only be activated or subsequently upgraded in respect to the business that Licensee operates and the sharing of a User Admin Account is prohibited.
- 3.3.** Licensee is only entitled to activate or upgrade the User Admin Account that Licensee has been allocated.
- 3.4.** If Licensee is upgrading an earlier version of the Software, Licensee is entitled to activate the same number of User Admin Accounts and User Accounts as was previously allocated to Licensee.
- 3.5.** Additional User Admin Accounts may be allocated to Licensee by Licensor at Licensor's sole discretion by contacting Licensor.
- 3.6.** Licensor authorises Licensee to create User Accounts for Licensee's Authorised Workforce. Licensee acquires no ownership rights in any User Accounts, and User Accounts may be revoked or changed at any time in Licensor's sole discretion. Licensee will adopt and maintain reasonable and appropriate security precautions for User Accounts to prevent their disclosure to or use by unauthorised persons, groups, entities and/or businesses.

## **4. CONFIDENTIALITY**

- 4.1.** The Licensee recognises and acknowledges the confidential nature of the Confidential Information.
- 4.2.** The System, Services and Software are Licensor's Confidential Information.
- 4.3.** Except for the specific rights granted by this Agreement, Licensee shall not:
  - 4.3.1.** Possess;
  - 4.3.2.** Use; or
  - 4.3.3.** Disclose any Confidential Information without Licensor's prior written consent.
- 4.4.** Licensee shall use reasonable care to protect the Confidential Information.
- 4.5.** Licensee shall be responsible for any breach of confidentiality by its Authorised Workforce.
- 4.6.** Section 3 will survive the termination or expiration of this Agreement for any reason.

## **5. PAYMENT**

- 5.1.** Licensee will pay to Licensor the service fees (the Service Fee) for the System, Services and Software to which Licensee has access during the Term of this Agreement. The Service Fee will be agreed either in a separate contract or will be the sum payable for the Software, Services and System as set out in the Website from time to time.
- 5.2.** Licensee also agrees to pay, the then current rates of the Licensor, for all goods and/or services that Licensee requests from Licensor that are not included in the standard services offered as part of the System, Services or Software (Miscellaneous Charges). Licensor will notify Licensee of the applicable Service Fee when Licensee is granted access to the System, Services and Software, and Licensor will notify Licensee of the applicable Miscellaneous Charges, if any, before performing services to which a Miscellaneous Charge will apply. The Service Fee and Miscellaneous Charges may change from time to time.
- 5.3.** Any applicable Service Fee shall be paid upon initial access to the System, Services or Software or as agreed in a separate contract (if any). The Service Fee will entitle the Licensee to one year's access to the Services, System or Software and shall be payable on renewal of that access for further terms of one year. Any Miscellaneous Charges shall be paid within thirty (30) days of the date of invoice.
- 5.4.** Any Service Fees or Miscellaneous Charges not paid within twenty (20) business days of the due date are subject to a late charge of five percent (5%) of the amount owing and interest thereafter at the rate of two percent (2%) per month on the outstanding balance. Failure to pay any amounts due to Licensor within twenty (20) days of the due date may result in termination of access to the System, Services and Software without notice. A reconnection fee equal to one (1) month's Service Fee shall be assessed to re-establish connection after termination due to non-payment.

## **6. LIMITATIONS**

- 6.1.** The System, Services and Software may only be used for Licensee's internal business purposes by only the Licensee's Authorised Workforce for which all fees have been paid to the Licensor by or on behalf of Licensee, unless agreed to otherwise in writing between the Parties.

## **7. LICENSEE CONTROL**

- 7.1.** Licensee acknowledges that the System, Services and Software may contain code or require devices that detect or prevent unauthorised use of, or disable, the System, Services and Software.
- 7.2.** If the Licensee needs to circumvent or disable such code or devices to achieve interoperability, the Licensee shall contact Licensor and request any changes. Any such changes to be carried out at Licensor's sole discretion and in accordance with Licensor's payment terms.

## **8. SUPPORT SERVICES**

- 8.1.** Licensor will use commercially reasonable efforts to provide Licensee with maintenance and support for the System, Services and Software during the Support Hours.
- 8.2.** Requests for any support services must be made in writing using the support channels accessible via the Website.
- 8.3.** Licensor will have no obligation to support any version other than the then current and immediate prior version of the System, Services and Software.
- 8.4.** Licensee agrees that Licensor may charge in accordance with its then current policies for any support services resulting from:
  - 8.4.1.** problems, errors or inquiries relating to any non-Licensor-provided hardware, system, service or other content or software; or
  - 8.4.2.** use of any unsupported version of the System, Services and Software.
- 8.5.** Where the Licensee requests Licensor to provide services as set out at clause 8.1 above (the Additional Services), in addition to the applicable Service fees or Miscellaneous Charges, the Licensee agrees to reimburse Licensor for any out of pocket expenses it incurs in providing these Additional Services, including without limitation travel and accommodation expenses and any expenses incurred in collecting Licensor's fee for the Additional Services.

## **9. UPDATES**

- 9.1.** Licensor will provide Licensee with any applicable Update that it makes generally available to its other Licensees that have purchased the same System, Services and Software.

## **10. RESTRICTIONS**

- 10.1.** Except and only to the extent expressly specified in this Agreement, Licensee shall not:
  - 10.1.1.** use any Confidential Information to create any software, content or documentation that is the same or similar to the System, Services and Software;

- 10.1.2.** disassemble, decompile, reverse engineer or otherwise try to discover any source code or underlying structures, ideas or algorithms of the System, Services and Software;
- 10.1.3.** encumber, lease, rent, loan, sublicense, transfer or distribute any the System, Services and Software;
- 10.1.4.** copy, adapt, merge, create derivative works of, translate, localise, port or otherwise modify the System, Services and Software;
- 10.1.5.** use the System, Services and Software, or allow the transfer, transmission, export or re-export of all or any part of the System, Services and Software or any product thereof; or
- 10.1.6.** permit any third Party to engage in any of the foregoing proscribed acts.
- 10.2.** Except for the limited rights and license expressly granted hereunder, no other license is granted, no other use is permitted.
- 10.3.** The System, Services and Software may operate or interface with software or other technology (In-Licensed Code) that is in-licensed from, and owned by, third Parties (Third Party Licensors). Licensee agrees that:
  - 10.3.1.** it will use In-Licensed Code in accordance with this Agreement and any other restrictions specified in the applicable license set forth or referenced in the Documentation,
  - 10.3.2.** no Third Party Licensor makes any representation or warranty to Licensee concerning the In-Licensed Code or the System, Services and Software;
  - 10.3.3.** no Third Party Licensor will have any obligation or liability to Licensee as a result of this Agreement or Licensee's use of the In-Licensed Code or the System, Services and Software.

## **11. WARRANTY DISCLAIMERS**

- 11.1.** To the fullest extent permitted by law, Licensor hereby disclaims all warranties, whether express or implied, oral or written, with respect to the System, Services and Software including, without limitation:
  - 11.1.1.** All implied warranties of title, non-infringement, integration, merchantability or fitness for any particular purpose;
  - 11.1.2.** All warranties arising from any course of dealing, course of performance or usage of trade; and
  - 11.1.3.** The System, Services and Software will meet Licensee's requirements or that they will be uninterrupted or error-free.
- 11.2.** That the System, Services and Software are provided "as is" without warranty of any kind.
- 11.3.** Licensee acknowledges that access to the System will be provided over various facilities and communication lines, and information will be transmitted over local exchange and internet backbone carrier lines and through routers, switches, and other devices (collectively, Carrier Lines) owned, maintained, and serviced by third-Party carriers, utilities, and internet service providers, all of which are beyond Licensors control. Licensor assumes no liability for or relating to the integrity, privacy, security, confidentiality, or use of any information while it is transmitted on the Carrier Lines, or any delay, failure, interruption, interception, misappropriation, loss, transmission, or corruption of any data or other information attributable to transmission on the Carrier Lines. Use of the Carrier Lines is solely at the risk of the Licensee and is subject to all applicable laws.

## **12. LIMITATION OF LIABILITY**

- 12.1.** In no event shall Licensor be liable concerning the subject matter of this Agreement, regardless of the form of any claim or action (whether in contract, negligence, strict liability or otherwise), for any:
  - 12.1.1.** matter beyond its reasonable control;
  - 12.1.2.** loss or inaccuracy of data, loss or interruption of use or cost of procuring substitute technology, goods or services; and
  - 12.1.3.** indirect, punitive, incidental, reliance, special, exemplary or consequential damages including, but not limited to, loss of business, revenues, profits or goodwill.
- 12.2.** In no event shall Licensor's liability arising out of or related to this Agreement exceed the Service Fee paid by Licensee to Licensor for the System, Services and Software that gave rise to the claim during the prior three (3)-month period, even if Licensor has been advised of the possibility of such damages.
- 12.3.** In no event will Licensor have any liability for any claim arising in connection with this Agreement.
- 12.4.** The Parties agree that these limitations shall apply notwithstanding the failure of the essential purpose of this Agreement or any limited remedy hereunder.

## **13. TERM AND TERMINATION**

- 13.1.** This Agreement shall commence on the Effective Date and continue in effect until terminated as provided herein (the Term).
- 13.2.** Licensee may terminate this Agreement at any time for its convenience upon 90 days written notice to Licensor.
- 13.3.** Full payment of contract by Licensee to Licensor will be due upon termination.
- 13.4.** This Agreement shall automatically terminate without further action by any Party, immediately upon any material breach by Licensee of any limitation or restriction.

**13.5.** Upon termination of this Agreement for any reason, all rights, obligations and licenses of the Parties hereunder shall cease, except that:

**13.5.1.** all obligations that accrued prior to the effective date of termination (including without limitation, any payment obligation) and any remedies for breach of this Agreement shall survive any termination;

**13.5.2.** Licensee shall promptly return or destroy all of the System, Services and Software and other tangible Confidential Information, and permanently erase all Confidential Information from any computer and storage media; and

**13.5.3.** the provisions of this Agreement that are capable of surviving termination shall survive.

**13.6.** Termination of this Agreement will be in addition to and not in lieu of any other remedies available to Licensor.

#### **14. MODIFICATION**

**14.1.** Licensor may update or change the System, Services and Software from time to time by posting the changes on the Website or within the System. Licensee understands and agrees that its continued use of the System, Services and Software after the update or change constitutes acceptance of any revisions to the same.

#### **15. GENERAL PROVISIONS**

**15.1.** This Agreement constitutes the entire Agreement, and supersedes all prior negotiations, understandings or Agreements (oral or written), between the Parties about the subject matter of this Agreement.

**15.1.1.** No waiver, consent or modification of this Agreement shall bind either Party unless in writing and signed by the Party against which enforcement is sought.

**15.2.** The failure of either Party to enforce its rights under this Agreement at any time for any period will not be construed as a waiver of such rights. If any provision of this Agreement is determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

**15.3.** Any notice or communication hereunder shall be in writing and either personally delivered or sent via recognized express delivery courier or certified or registered mail, prepaid and return receipt requested.

**15.4.** Notices shall be delivered to the address specified by Licensee when the System, Services and Software was ordered, or to the address above for Licensor as the case may be, or at such other address designated in a subsequent notice.

**15.5.** All notices shall be in English, effective upon receipt or, if refused, three (3) business days after being sent as set forth above.

**15.6.** This Agreement and the rights and obligations hereunder are personal to Licensee, and may not be assigned or otherwise transferred, in whole or in part, without Licensor's prior written consent. Any attempt to do otherwise shall be void and of no effect.

**15.7.** Without Licensee's consent, Licensor may assign this Agreement to any third Party. This Agreement shall be binding upon, and inure to the benefit of, the successors, representatives and permitted assigns of the Parties.

**15.8.** The Parties shall be independent contractors under this Agreement, and nothing herein will constitute either Party as the employer, employee, agent or representative of the other Party, or both Parties as joint venturers or partners for any purpose.

**15.9.** Each Party recognises and agrees that the warranty disclaimers and liability and remedy limitations are materially bargained-for on the basis of this Agreement and that they have been taken into account by each Party and reflected in determining the consideration to be given by each Party hereunder and in the decision to enter into this Agreement.

**15.10.** Licensee acknowledges that:

**15.10.1.** Licensee has read and understands this Agreement;

**15.10.2.** it has had an opportunity to have its legal counsel review this Agreement;

**15.10.3.** this Agreement has the same force and effect as a signed Agreement; and

**15.10.4.** issuance of this license does not constitute general publication of the System, Services and Software or any other Confidential Information.

#### **16. INTERPRETATION**

**16.1.** This Agreement is entered into by and between LoadScan Limited, a New Zealand registered company ("Licensor") and you ("Licensee") as a User of the System, our Services and Software. Licensee and Licensor are individually referred to herein as the "Party" and collectively as the "Parties."

## 16.2. Definitions:

- 16.2.1. Agreement** means this End-User License.
- 16.2.2. Authorised Workforce** means those members of Licensee's workforce who are individually authorised by Licensee to use the System, Services and Software, external contractors, customers, suppliers, other interested parties and to whom the Licensee has assigned a User Account to have access and to use the System and Services solely for the purposes provided hereunder.
- 16.2.3. Effective Date** means the date the Licensee accepts the terms of the Agreement unless the provisions of **Return**, as stated above, apply.
- 16.2.4. Content** means any and all images, photos, videos, text, templates, sound recordings and other content accompanying this System, Services and Software.
- 16.2.5. Confidential Information** means any information which Licensor (including all trade secrets, know-how, software and other financial, business or technical information of Licensor or any of its suppliers that is disclosed by or for Licensor in relation to this Agreement) has disclosed to the Licensee, unless that information is:
- i. on receipt, in the public domain or that subsequently enters the public domain without any breach of this Agreement;
  - ii. on receipt, already known by the Party receiving it;
  - iii. at any time after the date of receipt, received in good faith from a third Party; or
  - iv. independently developed by Licensee without reliance on such Confidential Information.
- 16.2.6. Documentation** means the user guide, help information and/or other documentation provided by Licensor with the System, Services or Software.
- 16.2.7. Forms** means the documents, manuals, and standard forms available via the Website and System, including but not limited to supplier agreements, registration forms, privacy policies.
- 16.2.8. Intellectual Property** means copyright, patents, designs, trademarks, trade names, goodwill rights, trade secrets, confidential information and any other intellectual proprietary right or form of intellectual property.
- 16.2.9. Improvements** means the variation, addition and/or improvements to the System, Services or Software.
- 16.2.10. Licensee** means the User, together with the business or other entity for which the System, Services or Software are obtained.
- 16.2.11. Services** means the services, in connection with the System for which Licensee has registered and to which Licensee has been granted access in accordance with this Agreement and which may include the Forms and other services, whether provided directly by Licensor or a third-Party provider.
- 16.2.12. Software** Licensor's software, including the embedded software in Licensor's products, reporting software, online services software, application programming interfaces, database connectivity software and all other software and user documentation produced by Licensor in relation to its products.
- 16.2.13. Support Hours** means the hours during which Licensor will be available to provide the support service to the Licensee which are between 9 and 5 (New Zealand Time) on any Working Day;
- 16.2.14. System** means the electronic communication network, including all (i) hardware supplied by Licensor, (ii) Software, and (iii) any such hardware and software installed or accessed at Licensee's Location(s), and (iv) all Documentation, whether hardcopy or electronic, supplied by Licensor in connection with the System and Services.
- 16.2.15. Updates** means, if applicable, any patch, update or new version of the System and Software and any update or new version of the Services delivered to Licensee.
- 16.2.16. User Account** means a unique user account assigned to an individual member or group of Licensees Authorise Workforce to access the System.
- 16.2.17. User Admin Account** means a unique user admin account assigned to Licensee by Licensor.
- 16.2.18. User** means a unique individual authorised by Licensee or Licensor to use the System, Services or Software with a User Admin Account or a User Account.
- 16.2.19. Website** shall mean the website at [www.loadscan.com](http://www.loadscan.com).