# IFS ULTIMO
## Software and Services Terms

IFS Ultimo ("**IFS Ultimo**") is the provider of software ("**Software**") and support and/or Software as a service ("**SaaS**") as well as other services (collectively with SaaS, the "**Services**") as may be included on any Order (defined below) and made a part hereof by reference ("**Software and Services**"). These Software and Services Terms ("**Terms**") apply to and govern all purchases, sales and Customer's access to any of the Software and Services, including any license thereto, and are binding on customer ("**Customer**") and IFS ULTIMO upon Customer's agreement to these Terms or upon Customer's entering into any agreement, including any renewal of any license or other agreement relating to the Software and Services, whether by placing a purchase order or the like with IFS ULTIMO or by any other method of ordering acceptable to IFS ULTIMO (collectively, an "**Order**"). These Terms shall also supplement, amend and apply fully to any existing Order, license or other agreement between Customer and IFS ULTIMO pertaining to the Software and Services, and Customer and IFS ULTIMO acknowledge and agree that the mutual promises and new rights granted to each party pursuant to these Terms constitute valuable and sufficient consideration for such supplement and amendment. These Terms and any other document incorporated herein, as well as any applicable Order, pertaining to the Software and Services form the agreement (the "**Agreement**") and Customer agrees that the Software and Services are governed by the Agreement.

1. **SOFTWARE**
   1.1.    If Software is licensed on premise, IFS ULTIMO grants to the Customer a non-exclusive, non-transferable license during the term specified in the applicable Order, to access and use the Software for Customer's own internal business operations, in accordance with the Agreement, on an as-is basis, except as explicitly set forth otherwise in the then-current documentation for the Software.
   1.2.    The Software shall be considered to be accepted unconditionally on the date such Software is made available by IFS ULTIMO.

2. **SAAS:**
   2.1.    Where SaaS is made available, IFS ULTIMO grants to Customer a non-exclusive, non-transferable right, during the Term, to access and use the SaaS for Customer's own internal business operations, in accordance with the Agreement, on an as-is basis, except as explicitly set forth otherwise in the then-current documentation for the SaaS.
   2.2.    IFS ULTIMO will use commercially reasonable efforts to make the SaaS service available subject to the Agreement and any scheduled downtime, force majeure event, or other event outside of IFS ULTIMO's reasonable control, and Customer agrees that the SaaS shall be considered to be accepted unconditionally on making the SaaS available by IFS ULTIMO. Except as explicitly set forth in the Agreement or applicable documentation, Customer's obligation to pay the fees shall always remain in full force, notwithstanding actual availability.

3. **RESTRICTIONS**
   3.1.    Customer shall not, and shall not permit any third party to: (i) modify or create any derivative works based on the Software and Services or any portion thereof; (ii) reproduce the Software and Services; (iii) sublicense, distribute, sell, lend, rent, lease, transfer, or grant any rights in or to all or any portion of the Software and Services or provide access to the Software and Services to third parties on a service bureau basis or otherwise; (iv) decompile, disassemble, reverse engineer, reverse assemble, analyze or otherwise examine, prepare derivative works of, modify, or attempt to derive source code from the Software and Services, as applicable; (v) remove, modify, alter, destroy, or obscure any of the logos, trademarks, patent or copyright notices, confidentiality or proprietary legends or other notices or markings on the Software and Services or content stored thereto; (vi) add any logos, proprietary marks or other notices or markings on the Software and Services if not already there without prior written consent of IFS ULTIMO; or (vi) use the Software and Services or thereto, as applicable, other than as provided herein.

4. **AUDIT**
   4.1.    The Customer shall permit IFS ULTIMO to audit the use of the Software and Services by the Customer to establish whether such use is in compliance with the Agreement.

5. **TERM**
   5.1.    The term of the Software license or SaaS as applicable, will commence on the date that the Software/SaaS is made available to Customer of, if different, the date specified in the applicable Order.
   5.2.    Upon the expiration of the term or upon termination of the Agreement or any license to the Software and Services, Customer's right to use the Software and Services, including without limitation by accessing the SaaS, shall immediately terminate and all rights granted hereunder and all Software licenses shall be immediately and automatically revoked. Customer must destroy all copies of any Software upon expiration of the term or termination.

6. **TERMS APPLICABLE TO SAAS**
   6.1.    Customer shall only use the SaaS and Services

in accordance with the terms of the Agreement and all applicable laws and regulations. Customer shall be exclusively responsible for its selection, security, and usability for business operations, application and use of the SaaS and other Services made available by IFS ULTIMO unless otherwise explicitly and specifically agreed between the parties in writing.

6.2. Customer shall be responsible for all activities in its account; shall comply with all applicable federal, state, provincial, territorial, and local laws, rules, regulations, orders, and ordinances in its access to the SaaS; and shall ensure that users keep passwords confidential, and in the event of becoming aware of any unauthorized access to or use of the SaaS, immediately notify IFS ULTIMO and give IFS ULTIMO all assistance that it reasonably requires to investigate and prevent such unauthorized access.

6.3. Customer shall not, and shall procure that users shall not: (i) use the SaaS to transmit, upload, disseminate or otherwise distribute any material that: (a) is unlawful, harmful, threatening, obscene, infringing, or offensive; (b) facilitates or promotes illegal activity; or (c) threatens security or confidentiality of the SaaS; (ii) store, distribute or transmit any viruses or any software, code, file or program which may prevent, impair or otherwise adversely affect the operation of any computer software in its use of the SaaS, or attack the SaaS via a denial-of-service attack; (iii) attempt to access without authority, interfere with, damage or disrupt any part of the SaaS; or (iv) use the SaaS to commit any fraud or fraudulent activity; or (v) access all or any part of the SaaS in order to build a product or service which competes with the SaaS.

6.4. It is further agreed that none of the associated hardware and/or other equipment associated with SaaS or used to access SaaS, including but not limited to routers, networks, cell equipment, computers and/or devices, is owned by IFS ULTIMO and that, as between the parties, Customer shall be responsible for all such associated hardware and/or other equipment.

6.5. Without limiting the foregoing Clause 6.4, Customer is responsible for providing, at Customer's own expense, all necessary telephone lines, Internet connections, equipment, software (including a compatible Web browser), and services for Customer to effectively access the SaaS and shall procure adequate security measures to prevent unauthorized access. Customer is solely responsible for upgrading and configuring Customer's internal systems (e.g. network settings, Internet routing, firewalls, and Web browsers) to be and remain compatible with the SaaS.

6.6. IFS ULTIMO makes no representation of availability or accessibility of the SaaS.

**7. SUSPENSION**

7.1. If Customer: (i) does not comply with its obligations in Clause 6; or (ii) does not pay the amounts due within the period as referred to in Clause 9.2, IFS ULTIMO (in addition to its other rights under the Agreement or at law) shall be authorized to suspend the respective services or any part thereof (including access to the SaaS) immediately upon notice to the Customer. With respect to breach of Clause 6, the Customer shall, indemnify IFS ULTIMO for any claims, costs and expenses, losses, damages, and liabilities suffered by IFS ULTIMO as a result of such breach.

**8. OTHER SERVICES**

8.1. IFS ULTIMO may provide certain other consulting/professional services, separate from the Software and Services, to Customer under the Agreement, as agreed by the parties in an Order. IFS ULTIMO shall provide such other services to Customer in accordance with the Agreement. Customer shall pay the fees as described in the relevant Order for such other services in accordance with the Agreement. Such other services shall be rendered remotely or at a location to be determined by IFS ULTIMO unless agreed otherwise in writing between the parties.

8.2. IFS ULTIMO shall make commercially reasonable efforts to provide such other services. All time schedules agreed in writing by the parties are based on Customer information and circumstances known to IFS ULTIMO at the time the Order is concluded. Failure to meet such a schedule shall not be considered a breach of the Agreement by IFS ULTIMO. In the case that there is a risk of delay, or has been a delay in meeting an agreed schedule, the parties shall consult promptly to address any such delay. IFS ULTIMO shall not be liable for any delay in providing the services caused by anyone other than IFS ULTIMO, including failure by any Customer or any third party to provide information or access required by IFS ULTIMO. In the event of any delays not caused by IFS ULTIMO, IFS ULTIMO may adjust any agreed schedule as reasonably necessary.

**9. FEES AND PAYMENT**

9.1. Customer shall pay the fees as set out in the Order for the Software and Services and other services, as such fees or rates may be updated by IFS ULTIMO pursuant to Clause 9.4. Fees shall be expressed in US Dollars unless stated otherwise in the relevant Order. The fees regarding support and/or SaaS are due and payable each year in advance and shall be invoiced on the acceptance of the Order for the first year, and at the start of each calendar year in advance for each subsequent year of the applicable term. The fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, sales or value added taxes ("**Taxes**"). Customer is responsible for paying all Taxes applicable to any Order.

9.2. All invoices from IFS ULTIMO shall be paid no later than thirty (30) calendar days after the invoice date. Payment shall take place without any setoff, deduction or suspension.

9.3. IFS ULTIMO is authorized to increase the applicable fees, rates and prices at any time. In addition to the foregoing, IFS ULTIMO reserves the right to increase such applicable fees, rates and prices during the then-current term no more than one (1) time per contiguous twelve (12) month period upon written notice to Customer; provided that IFS ULTIMO notifies Customer that IFS ULTIMO's cost of goods or services has materially increased due to facts or circumstances that are not reasonably in IFS ULTIMO's control, then the parties shall negotiate in good faith to increase the applicable fees, rates and prices to appropriately reflect such material increase.

9.4. Customer shall pay all fees and travel expenses, including hotel and incidental expenses, reasonably incurred by IFS ULTIMO in carrying out any other services described in Clause 8.

9.5. In addition to IFS ULTIMO'S other rights and remedies, if Customer does not pay the amounts due within the period as referred to in Clause 9.2 IFS ULTIMO may charge interest on the overdue amount at a rate of the lesser of one and a half percent (1.5%) per month or the maximum amount permitted under applicable law, from the due date for payment until fully paid, whether before or after judgment, as well as debt collection costs.

## 10. TERMINATION

10.1. An Order, of any kind, cannot be terminated during the applicable term without cause. Upon any termination of any Order, the full payment applicable to such Order shall immediately become due and payable by the Customer.

10.2. Without limiting any other rights of IFS ULTIMO hereunder, if Customer commits any material breach of the Agreement, including failure to pay, and in the case of SaaS, if Customer fails to keep the SaaS reasonably secure consistent with Customer's obligations hereunder, including any failure to comply with Customer's obligations under Clause 6, IFS ULTIMO may terminate the Agreement if Customer fails to remedy any such breach within fourteen (14) days after the date of a written notice of default to Customer, without prejudice to any other rights or remedies that IFS ULTIMO may have.

10.3. Either party may terminate the Agreement with immediate effect, without any further notice of default and without any prior legal intervention, by written notice if the other party becomes insolvent, enters into liquidation (whether voluntary or otherwise) or becomes unable to pay its debts as they fall due.

## 11. WARRANTY AND DISCLAIMER

11.1. IFS ULTIMO hereby warrants to the Customer that (a) it will, in the performance of the Agreement, comply with all applicable federal, state, provincial, territorial, and local laws, rules, regulations, orders, and ordinances, and (b) the Software provided by IFS ULTIMO will conform in all material respects with the then-current applicable documentation for such Software as made available to Customer by IFS ULTIMO.

11.2. EXCEPT AS SET OUT IN THESE TERMS, IFS ULTIMO MAKES NO WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS, ON ITS OWN BEHALF AND ON BEHALF OF ITS SUPPLIERS, ANY IMPLIED WARRANTIES OR CONDITIONS OF NON-INFRINGEMENT, DATA LOSS, MERCHANTABILITY, SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE. IFS ULTIMO DOES NOT WARRANT THAT THE SAAS OR SOFTWARE AND SERVICES WILL MEET ANY OR ALL OF CUSTOMER'S REQUIREMENTS OR THAT THE USE THEREOF WILL BE UNINTERRUPTED OR ERROR FREE.

## 12. LIMITATION OF LIABILITY

12.1. In no event shall IFS ULTIMO be liable to Customer for indirect, incidental, special or other consequential damages, damages for loss of profits, loss of or interruption to business, loss or corruption of data or information, incurred by Customer or any party, arising out of or related to the Agreement whether in an action in contract, tort, or otherwise, even if IFS ULTIMO had been advised of the possibility of such damages.

12.2. In no event shall IFS ULTIMO's aggregate liability arising out of or related to the Agreement exceed an amount equal to the relevant fees paid to IFS ULTIMO for the service giving rise to the liability in the six (6) month period immediately prior to the event giving rise to the liability, whether an action in contract, tort, or otherwise. IFS ULTIMO and Customer agree that the foregoing limitations represent a reasonable allocation of risk under the Agreement.

12.3. The above limitations do not apply to, and neither party excludes or limits its liability for, any damages or liability which cannot be excluded or limited under applicable law.

## 13. DATA

13.1. Data provided by Customer or collected or generated through Customer's use of the SaaS ("**Data**") shall be owned by Customer. Notwithstanding the foregoing, IFS ULTIMO will have the right to access the Data at any time and retain an archival copy of such data upon termination of the

Agreement and/or these Terms. Customer shall be responsible for costs associated with, and timely response to, third-party requests involving data protection regulations in connection with the collection, processing, disclosure, subject access requests, retention, and transfer of Data.

13.2. IFS ULTIMO shall have the right to receive a copy of any stored Data as part of the provision of the SaaS on termination of the SaaS.

## 14. OWNERSHIP

14.1. IFS ULTIMO and its licensors are the exclusive owner(s) of all rights and title in and to the Software and Services, including the intellectual property rights and the functionality thereof, and of all intellectual property rights created by IFS ULTIMO in providing any other services. Customer shall acquire no rights whatsoever other than explicitly described in these Terms or agreed in writing by IFS ULTIMO.

14.2. 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.

## 15. INDEMNIFICATION

15.1. Except for damages, claims or losses due to IFS ULTIMO's willful or gross negligence, Customer, to the fullest extent permitted by law, will indemnify, defend, and hold IFS ULTIMO, its employees and agents ("**IFS ULTIMO Indemnitees**"), free and harmless from and against any and all losses, damages, liabilities, and expenses (including reasonable attorneys' fees and other costs of defense) (collectively, "**Losses**") in connection with any and all actions, suits, claims, or demands (collectively, "**Claims**") that may be brought or instituted against any IFS ULTIMO Indemnitee by any third party based on or arising out of or related to any: (i) Customer failure to comply with data privacy obligations and/or confidentiality obligations, (ii) IFS ULTIMO or Customer's use of the Data, (iii) Customer's breach of Clause 6 or (iv) Customer's use of the Software and Services.

15.2. IFS ULTIMO shall defend Customer against Claims based on the substantiated allegation of a third party that the Software or SaaS infringes any registered patents or copyright valid in the United States (an IP Claim) and indemnify Customer against any Losses finally awarded against Customer, or amounts paid by Customer in settlement of such IP Claim, provided that: (i) the Customer informs IFS ULTIMO immediately in writing of such IP Claim in detail; (ii) IFS ULTIMO is given sole authority to defend or settle the IP Claim; and (iii) the Customer does not make any admission, or otherwise attempt to compromise or settle the IP Claim and shall provide its cooperation to IFS ULTIMO in the defense and settlement of such IP Claim. In the case of such an IP Claim by a third party, IFS ULTIMO may at its discretion procure the right for the Customer to continue using the Software or SaaS, or replace or change the Software or SaaS entirely or partially if necessary so that they become non-infringing, or if such remedies are not reasonably available, terminate the Agreement.

## 16. CONFIDENTIAL MATERIAL

16.1. Both IFS ULTIMO and Customer shall treat all data and information that each obtains from the other party with respect to the Software and Services, as well as other confidential information such as commercial, strategic, and technical data and know how connected with that other party, as confidential. For the avoidance of doubt, any Data or information uploaded by Customer in the SaaS will be treated as confidential information of Customer.

16.2. A party's confidential information shall not be deemed to include information that (i) is or becomes publicly known without any breach of confidence by a party, (ii) was already in the possession of the other party before disclosure pursuant to the Agreement, (iii) is developed independently by the other party without use of or reference to the information disclosed pursuant to the Agreement or (iv) is lawfully disclosed to the other party by a third party without restriction on disclosure. A party may only disclose confidential information of the other party (a) with the prior written permission of the party concerned, or (b) to the extent such confidential information is required to be disclosed by law, by any governmental authority or by a court or other authority of competent jurisdiction, in which case the party concerned will, to the extent it is legally permitted to do so, inform the other party in advance.

## 17. GENERAL

17.1. These Terms, combined with relevant terms of the Agreement, constitute the entire agreement between the IFS ULTIMO and Customer regarding the Software and Services and supersede any prior understanding or representation of any kind preceding the date of these Terms. All capitalized terms used, but not defined in these Terms are as defined in the Agreement and, where in conflict, these Terms shall govern. There are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of these Terms. Notwithstanding anything to the contrary, should any conflict exist, then the order of precedence shall be for the provision of Services, (i) these Terms, and (ii) the Agreement.

17.2. Customer acknowledges that references to '**days**' in communications from IFS ULTIMO will mean business days in California unless otherwise specified.

17.3. The covenants and conditions contained in the

Agreement shall apply to and bind IFS ULTIMO and Customer and the heirs, legal representatives, successors and permitted assigns of IFS ULTIMO and Customer.

17.4.    Customer shall provide remote access when required by IFS ULTIMO in order to provide the Services.

17.5.    If any part or parts of the Agreement shall be held unenforceable for any reason, the remainder of the Agreement shall continue in full force and effect. If any court of competent jurisdiction deems any provision of the Agreement invalid or unenforceable, and if limiting such provision would make the provision valid, then such provision shall be deemed to be construed as so limited.

17.6.    Export. Each party shall comply fully with all applicable export and re-export control laws and regulations.

17.7.    Solely for the purposes of fulfilling its contractual obligations to Customer, IFS ULTIMO and its 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.

17.8.    The failure of either party to enforce any provisions of these Terms shall not be deemed a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of these Terms. The acceptance of subscription fees by IFS ULTIMO does not waive IFS ULTIMO's right to enforce any provisions of these Terms.

17.9.    Feedback. Customer grants to IFS ULTIMO and its affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Software and Services or other offerings of IFS ULTIMO any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or users and no such feedback shall be considered confidential information of Customer or Customer Data.

17.10.    Governing Law and Jurisdiction. These Terms, the Agreement and related matters hereto (including non-contractual disputes or claims) shall be governed by the laws of the State of California, without giving effect to the principles of conflict of laws. All disputes arising in connection with the Agreement, these Terms and related matters, including non-contractual disputes or claims which cannot be solved through amicable negotiations, shall be exclusively and finally settled by the state and federal courts located in San Diego County California.

**18. ASSIGNMENT**

18.1.    Customer may not transfer or assign the Agreement or its rights or obligations, in whole or in part, whether by contract or operation of law, e.g., as a result of a merger or sale of the business, without the prior written consent of IFS ULTIMO. Any assignment or transfer attempted without the prior written consent of IFS ULTIMO will be null and void.

18.2.    IFS ULTIMO may assign or transfer, in whole or in part, the Agreement, including any Order or any rights or obligations thereunder to any third party subject to providing Customer with prior written notice.

18.3.    The Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and permitted assignees.