Full Circle Solutions End User License Agreement

Important notice – please read carefully before installing the software: this licence agreement ("Licence") is a legal agreement between you ("Licensee" or "You") and Full Circle Solutions Pty. Ltd. ("Licensor", "Us" or "We") for this software product, which includes computer software, printed materials and documentation ("Documentation").

By using all or any portion of the software, you agree to be bound by the terms of this licence. If you do not agree to the terms of this licence, we are unwilling to license the software to you and you must uninstall and desist from using the software and the documentation within 30 days of purchase.

1.   Definitions

"Derivative Works" shall mean any work, whether in Source or Object form, that is based on (or derived from) the Work and for which the editorial revisions, annotations, elaborations, or other modifications represent, as a whole, an original work of authorship. For the purposes of this Licence, Derivative Works shall not include works that remain separable from, or merely link (or bind by name) to the interfaces of, the Work and Derivative Works thereof.

"Licence" shall mean the terms and conditions for use of the Software as set out in this Agreement.

"Licence Fee" shall mean the fee paid by you to us in consideration for the grant of the Licence (other than the licence to the free Community Edition of the Software).

"Major Release" means a major Software upgrade (for example, versions 1.0, 2.0 and 3.0 of the Software are each separate Major Releases).

"Minor Release" means a minor Software upgrade within the same Major Release (for example, versions 1.0, 1.1 and 1.2 are Minor Releases within the version 1 Major Release).

"Object" form shall mean any form resulting from mechanical transformation or translation of a Source form, including but not limited to compiled object code, generated documentation, and conversions to other media types.

"Server" means the central web portal and co-ordination service as described in the Documentation.

"Project" refers to the concept of a project as described in the Documentation; typically, a single set of deployment steps that are executed at the same time.

"Software" means the software program in binary form, including its documentation. "Source" form

shall mean the preferred form for making modifications, including but not limited to software source code, documentation source, and configuration files.

"User Account" means an individual login that will be used to access the web portal as described in the Documentation.

"Work" shall mean the work of authorship, whether in Source or Object form, made available under the Licence, as indicated by a copyright notice that is included in or attached to the work (an example is provided in the Appendix below).

2.   Grant and scope of licence

2.1   In consideration of the payment of the Licence Fee (where applicable) and of your acceptance of the terms, conditions and limitations set forth in this Agreement, the Licensor grants You a worldwide, non-exclusive, non-transferable, perpetual licence to use the Software and the Documentation for your own internal business purposes as follows:

   (a)   Under the free Community Edition licence, You may install any number of Server instances.

   (b)   Under the Standard Edition licence, You may install any number of Server instances. Each Server instance may only be used for the benefit and business of the Licensee.

   (c)   Under the Enterprise Edition and the Enterprise + Source Edition licence, You may install any number of Server instances. Each Server instance may only be used for the benefit and business of the Licensee.

   (d)   You may create and use an unlimited number of User Accounts.

   (e)   You may make backup copies of the Software for archival and business continuity purposes.

   (f)   You may use any Documentation in support of the use of the Software permitted under clause 2.1 and of the Source Code permitted under condition 2.3 (if applicable) and make as many copies of the Documentation as are reasonably necessary for its lawful use

2.2   If using a trial license of the Software, the restrictions set forth in sections 2.1, 2.2 and 2.3 do not apply, and You may create an unlimited number of Projects solely for the purpose of testing the Software.

2.3   If You have purchased an Enterprise + Source Edition licence, the Licensor grants You the right to view and modify the Source Code for the sole purposes of education, trouble-shooting, and customizing features for Your own particular needs. If You modify the source code, you may compile and distribute the resulting object code subject to the following conditions:

   (a)   You may not distribute or disclose the Source Code, or any portion or modifications or derivative works thereof, to any third party;

   (b)   You acknowledge that the Source Code contains valuable property of the Licensor, and agree to take reasonable measures to help ensure its confidentiality;

   (c)   Under no circumstances may the Source Code be used, in whole or in part, as the basis for creating a product that provides the same, or substantially the same, functionality as sold by Full Circle Solutions currently or at any time in the future.

   (d)   You agree that the Licensor is not obliged to provide any technical support or error corrections in relation to any issues or problems arising out of any modifications of the Source Code.

3.   Upgrades

3.1   Licensor will make available to You free of charge:

(a)   all generally available Minor Releases within the same Major Release originally licensed to You by Us.

4.   Licensee's undertakings

4.1   Except as expressly set out in this Licence or as permitted by any local law, you undertake:

(a)   not to copy the Software, the Source Code or the Documentation except where such copying is incidental to normal use of the Software or the Source Code or where it is necessary for the purpose of back-up or operational security;

(b)   not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the Software, the Source Code or the Documentation;

(c)   not to make alterations to, or modifications of, the whole or any part of the Software or the Source Code nor permit the Software or the Source Code or any part of them to be combined with, or become incorporated in, any other programs;

(d)   not to disassemble, decompile, reverse engineer or create derivative works based on the whole, or any part, of the Software or the Source Code nor attempt to do any such things except to the extent that such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the Software with another software program, and provided that the information obtained by you during such activities:

(i)   is used only for the purpose of achieving inter-operability of the Software with another software program; and

(ii)   is not unnecessarily disclosed or communicated to any third party without the Licensor's prior written consent; and

(iii)   is not used to create any software which is substantially similar to the Software;

(e)   to keep all copies of the Software and the Source Code secure and to maintain accurate and up-to-date records of the number and locations of all copies of the Software and the Source Code;

(f)   to supervise and control use of the Software and the Source Code and ensure that your employees and representatives use the Software and the Source Code in accordance with the terms of this Licence;

(g)   to include the copyright notice of the Licensor on all entire and partial copies you make of the Software or the Source Code on any medium.

5.   Intellectual property rights

5.1   You acknowledge that all intellectual property rights in the Software, the Source Code and the Documentation throughout the world belong to the Licensor, that rights in the Software, the Source Code and the Documentation are licensed (not sold) to you, and that you have no rights in, or to, the Software, the Source Code and the Documentation other than the right to use them in accordance with the terms of this Licence.

5.2   You acknowledge that unless you have purchased an Enterprise + Source Edition licence you have no right to have access to the Software in Source form or in unlocked coding or with comments.

6.   Warranty

6.1   Subject to clauses 6.2 to 6.4, the Licensor warrants that during the Warranty Period, the Software will, when properly used, perform substantially in accordance with the functions described in the Documentation (provided that the Software is properly used on the computer and with the operating system for which it was designed as referred to in the accompanying documentation), and the Documentation correctly describes the operation of the Software in all material respects. The Warranty Period will be three months from the date of purchase.

6.2   The warranty set out at clause 6.1 does not apply to Beta versions of the Software or to Software supplied under the free Community Edition licence, for which no warranty is given. Such Software is supplied on an as-is basis and without warranties of any kind save for those required by applicable law.

6.3   You acknowledge that the Software, the Source Code and the Documentation have not been developed to meet your individual requirements and that it is therefore your responsibility to ensure that the facilities and functions of the Software and the Source Code meet your requirements.

6.4   You acknowledge that the Software and the Source Code may not be free of errors or bugs and you agree that the existence of any minor errors shall not constitute a breach of this Licence.

6.5   If, within the Warranty Period, you notify the Licensor in writing of any defect or fault in the Software (other than in the Beta version of the Software or in Software supplied under the free Community Edition licence, for which no warranty is given) in consequence of which it fails to perform substantially in accordance with the Documentation, and such defect or fault does not result from you having amended the Software or used it in contravention of the terms of this Licence, the Licensor will, at its sole option, repair or replace the Software, provided that you make available all the information that may be necessary to assist the Licensor in resolving the defect or fault, including sufficient information to enable the Licensor to recreate the defect or fault.

7.   Licensor's liability

7.1   This condition sets out the entire financial liability of the parties (including any liability for the acts or omissions of their respective employees, agents and subcontractors) to each other in respect of:

        (a)   any breach of this Licence however arising

        (b)   any use made of the Software or the Documentation by you, or of any product or service incorporating any of the Software or the Documentation; and

        (c)   any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Licence.

7.2   Nothing in this Licence shall limit or exclude the liability of either party for:

        (a)   death or personal injury resulting from negligence; or

        (b)   fraud or fraudulent misrepresentation; or

        (c)   the deliberate default or wilful misconduct of that party, its employees, agents or subcontractors.

7.3 Without prejudice to condition 7.2, neither party shall under any circumstances whatever be liable to the other, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:

   (a) loss of income;

   (b) loss of business profits or contracts;

   (c) business interruption;

   (d) loss of the use of money or anticipated savings;

   (e) loss of information;

   (f) loss of opportunity, goodwill or reputation;

   (g) loss of, damage to or corruption of data; or

   (h) any indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise;

   provided that this condition 7.3 shall not prevent claims for loss of or damage to your tangible property that fall within the terms of condition 6 or any other claims for direct financial loss that are not excluded by any of categories (a) to (h) inclusive of this condition 7.3.

7.4 Subject to condition 7.2 and condition 7.3, the Licensor's maximum aggregate liability under or in connection with this Licence, or any collateral contract, whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to a sum equal to the Licence Fee.

7.5 Subject to condition 7.2, condition 7.3 and condition 7.4, the Licensor's liability for infringement of third party intellectual property rights shall be limited to breaches of rights subsisting in Australia.

7.6 This Licence sets out the full extent of the Licensor's obligations and liabilities in respect of the supply of the Software, the Source Code and the Documentation. In particular, there are no conditions, warranties, representations or other terms, express or implied, that are binding on the Licensor except as specifically stated in this Licence. Any condition, warranty, representation or other term concerning the supply of the Software and Documentation which might otherwise be implied into or incorporated in this Licence, or any collateral contract, whether by statute, common law or otherwise, is hereby excluded to the fullest extent permitted by law.

8. Termination

8.1 The Licensor may terminate this Licence immediately on written notice to you if you commit a material or persistent breach of this Licence which you fail to remedy (if remediable) within 14 days after the service on you of written notice requiring you to do so.

8.2 Upon termination for any reason:

   (a) all rights granted to you under this Licence shall cease;

   (b) you must cease all activities authorised by this Licence; and

   (c) you must immediately delete or remove the Software from all computer equipment in your possession and immediately destroy or return to the Licensor (at the Licensor's option) all copies of the Software then in your possession, custody or control and, in the case of destruction, certify to the Licensor that you have done so.

9.   Transfer of rights and obligations

9.1   This Licence is binding on you and us and on our respective successors and assigns.

9.2   We may transfer, assign, charge, sub-contract or otherwise dispose of this Licence, or any of our rights or obligations arising under it, at any time during the term of the Licence.

10.   Events outside the Licensor's control

10.1   The Licensor will not be liable or responsible for any failure to perform, or delay in performance of, any of his obligations under this Licence that is caused by an event outside his reasonable control (Force Majeure Event).

10.2   A Force Majeure Event includes any act, event, non-happening, omission or accident beyond our reasonable control and includes in particular (without limitation) the following:

(a)   strikes, lock-outs or other industrial action;

(b)   civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war;

(c)   fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster;

(d)   impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport;

(e)   impossibility of the use of public or private telecommunications networks;

(f)   the acts, decrees, legislation, regulations or restrictions of any government.

10.3   The Licensor's performance under this Licence is deemed to be suspended for the period that the Force Majeure Event continues, and he will have an extension of time for performance for the duration of that period. We will use our reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which our obligations under this Licence may be performed despite the Force Majeure Event.

11.   Waiver

11.1   If we fail, at any time during the term of this Licence, to insist upon strict performance of any of your obligations under this Licence, or if we fail to exercise any of the rights or remedies to which we are entitled under this Licence, this shall not constitute a waiver of such rights or remedies and shall not relieve you from compliance with such obligations.

11.2   A waiver by us of any default shall not constitute a waiver of any subsequent default.

11.3   No waiver by us of any of these terms and conditions shall be effective unless it is expressly stated to be a waiver and is communicated to you in writing.

12.   Severability

If any of the terms of this Licence are determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law.

13. Entire agreement

13.1 This Licence and any document expressly referred to in it constitute the whole agreement between us and supersede any previous arrangement, understanding or agreement between us, relating to the licensing of the Software and Documentation.

13.2 We each acknowledge that, in entering into this Licence (and the documents referred to in it), neither of us relies on any statement, representation, assurance or warranty (**Representation**) of any person (whether a party to this Licence or not) other than as expressly set out in this Licence or those documents.

13.3 Each of us agrees that the only rights and remedies available to us arising out of or in connection with a Representation shall be for breach of contract as provided in this Licence.

13.4 Nothing in this clause shall limit or exclude any liability for fraud.

14. Law and jurisdiction

This Licence, its subject matter or its formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with Australian law and submitted to the non-exclusive jurisdiction of the Australian courts.