

## Loadrite (Auckland) Limited Software Support and Maintenance Terms

These Software Support and Maintenance terms (“**Terms**”) set forth the terms and conditions under which Loadrite (Auckland) Limited and/or its affiliates (“**Loadrite**”) will provide support and maintenance (“**Support**”) for certain specified Loadrite software product(s) (“**Software**”). If you have entered into a separate written support agreement with Loadrite, the terms and conditions of that agreement must prevail over any conflicting terms or conditions in these terms.

The applicable Loadrite entity, Software related to the Support provided, and applicable fees (“**Fees**”) under these Terms will be as identified in the applicable order form, which for the avoidance of doubt may be in the form of a sales agreement, order acknowledgment or other similar written arrangement provided or executed by Loadrite (any such written arrangement, the “**Order Form**”).

As used in these Terms, “**You**” refers to the end-user customer organization which has purchased a license to use the Software and receive the applicable support and maintenance, and is authorized to use the Software pursuant to the applicable Loadrite Software End User License Agreement or another written agreement with Loadrite (the applicable licensing document, the “**License Agreement**”). These Terms are incorporated into, and are subject to all applicable terms and conditions of, the License Agreement, including for the avoidance of doubt, any disclaimers of warranties, limitations of liability, etc.

### 1. **SCOPE.**

- 1.1 Loadrite will provide the Support services described in these Terms during the maintenance term specified in the Order Form (or, if not specified, for a period of one (1) year) (the “**Maintenance Term**”).
- 1.2 The Maintenance Term may be renewed as specified in the Order Form (or, if not specified, as set forth in Section 7 below).

### 2. **SUPPORT.**

- 2.1 During the applicable Maintenance Term, Loadrite will use reasonable efforts to correct or provide a workaround for any reproducible programming error in the Software attributable to Loadrite with a level of effort commensurate with the severity of the error, as reasonably determined by Loadrite.
- 2.2 Upon identification of any programming error, You must promptly notify Loadrite of such error and must provide Loadrite with enough information to reproduce the error, including a listing of output and any other data that Loadrite may reasonably request in order to reproduce the error and operating conditions under which the error occurred or was discovered.
- 2.3 Loadrite is not responsible for correcting any errors not attributable to Loadrite. For certain Software, Loadrite may provide additional or different support services or procedures as set forth in the applicable Software documentation, support handbook, or other written documentation provided by Loadrite, if any (the “**Additional Support Documentation**”).
- 2.4 If there is any conflict between these Terms and such Additional Support Documentation with respect to the description of support services or procedures, the provisions of such Additional Support Documentation will prevail.

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2.5 You agree and acknowledge that Loadrite may subcontract the performance of the support and maintenance services. You expressly consent to Loadrite permitting the relevant subcontractors to access Your information and data to perform the support and maintenance services for You.

### **3. UPDATES AND UPGRADES.**

3.1 During the applicable Maintenance Term, You are entitled to receive all upgrades and updates to the Software that are publicly released by Loadrite.

3.2 The contents and timing of all upgrades and updates will be decided by Loadrite in its sole discretion. Any such updates and upgrades will be deemed to be Software and licensed to You under the terms and conditions of the applicable License Agreement.

3.3 Updates and upgrades exclude new versions of the software designated by Loadrite by a change to the left of the decimal in the version number (e.g., 1.x to 2.x), and any separate modules and other functionality for which Loadrite charges a separate fee.

### **4. LIMITATIONS AND EXCEPTIONS.**

4.1 The following matters are not covered (and Loadrite will not have any obligations or liability relating to these matters) under these Terms:

- (a) Any Software for which the applicable Fees have not been paid;
- (b) Any problem caused by, or arising out of:
  - (i) the misuse, improper use, alteration or damage of the Software;
  - (ii) modifications, alterations, repairs or adjustments of the Software not made or authorized in writing by Loadrite;
  - (iii) any failure by You to adhere to your obligations, undertakings, covenants or warranties under these Terms or any other agreement with Loadrite;
  - (iv) any hardware component of Your system or any software not developed by Loadrite, including, without limitation: any computers, disk drives, operating systems, network hardware or software, database or any other hardware or third party software; and
  - (v) the combination of the Software with other programming or equipment to the extent that such combination has not been approved in writing by Loadrite.
- (c) Errors in any version of the Software other than the most recent release, provided that Loadrite will continue to provide services for superseded releases for a reasonable period (not to exceed ninety (90) days).

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### **5. PAYMENT.**

5.1 Unless otherwise provided in the Order Form, all payments are payable annually in advance.

### **6. TERMINATION AND MODIFICATION.**

6.1 Should You fail to pay any Fees or fail to carry out any other obligation under these Terms or the License Agreement, Loadrite may, at its option and in addition to other available remedies:

(a) terminate these Terms; or

(b) suspend Support,

either in their entirety or in relation to the relevant Software, provided that Loadrite first gives You five (5) days' prior notice in order to permit You to cure Your default.

6.2 These Terms and any Support will automatically terminate with respect to any Software that is no longer licensed for use under the applicable License Agreement, whether as a result of expiration or termination of such License Agreement, or replacement of the applicable Software with new releases.

6.3 Loadrite reserves the right to modify or terminate these Terms upon five (5) days' written notice to You. In such event, You have the right to terminate these Terms in relation to all Software by giving written notice.

6.4 In the event of termination of these Terms under section 6.3, Loadrite will provide on request, as Your sole and exclusive remedy, a pro-rata refund of Fees paid for the balance of the applicable Maintenance Term following the effective date of termination of these Terms.

### **7. RENEWALS.**

7.1 Unless otherwise specified in the Order Form, these Terms will automatically renew for additional periods of one year provided You have made payment for the upcoming year prior to the renewal date.

### **8. CHANGES AND UPDATES TO FEES AND TERMS.**

8.1 At any time following the expiration of the Maintenance Term, Loadrite may change the applicable Fees, provided that Loadrite gives You at least five (5) days' prior written notice of the change. Such notice may be made by posting the revised Fees on Loadrite's website.

### **9. DISPUTE RESOLUTION.**

9.1 If a party believes that there is a dispute in relation to these Terms, it will first notify the other party in writing giving details of the dispute. The dispute will then be promptly referred to a senior representative of each party for resolution (who may use mediation to assist). Pending resolution of the dispute, both parties will continue to perform all their respective obligations under these

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Terms. If the dispute remains unresolved 20 Working Days after the meeting of senior representatives referred to above, then the dispute will be referred to the arbitration of a single arbitrator to be appointed by the parties or failing agreement to be appointed by the President of the New Zealand Law Society. Such arbitration will be carried out in New Zealand, and in accordance with the provisions of the New Zealand Arbitration Act 1996.

9.2 Nothing in these Terms prevents either party from taking urgent interlocutory, injunctive or declaratory relief in respect of the dispute.

### 10. GENERAL TERMS.

10.1 **No assignment:** You may not assign or transfer (or purport to assign or transfer) Your interest in these Terms without Loadrite's prior written consent.

10.2 **Waiver:** No failure to exercise or delay in exercising any right or remedy by a party will constitute a waiver by that party of that or any other right or remedy available to it.

10.3 **Force Majeure.** Except for payment obligations, neither party will be liable to the other for failure to perform its obligations to the extent caused by an event beyond the reasonable control of such party, including, without limitation, government regulations or orders, outbreak of a state of emergency, acts of god, acts of terrorism, blockade, war, warlike hostilities, civil commotion, riots, epidemics and pandemics, fire, natural disasters, strikes, lockouts, failure or diminishment of power or of telecommunications or data networks or services, or refusal of approval or a license by a government agency, or any other similar cause or causes, provided that, to the extent feasible, the affected party promptly notifies the other of such occurrence and makes its commercially reasonable efforts to eliminate the effect thereof.

10.4 **Survival:** Termination or expiry of these Terms (or any one or more Order Form) will not terminate clauses 4 5 6, or this clause 10 or any other clause intended to survive termination or expiry of these Terms.

10.5 **Severability:** If any provision or part of a provision of these Terms is held invalid, unenforceable or illegal for any reason, these Terms and any remainder of the provisions shall remain otherwise in full force apart from that part of the provisions which shall be deemed deleted.

10.6 **Further assurances:** Each party will do all things (including executing all documents) necessary to implement and to carry out its obligations under these Terms.

10.7 **Governing Law and Jurisdiction: Governing law and jurisdiction:** Unless expressly otherwise set forth in an SOW, New Zealand law governs these Terms and all SOWs, and the parties agree to submit to the jurisdiction of the New Zealand courts (subject to Section 9).