



End User Licence Agreement (EULA)

acQuire Software



Document information

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About this Document

Purpose

This document sets out terms and conditions for the licensing and use of acQuire Software and any associated Maintenance or other services.

Agreement

IMPORTANT: Please read the following terms and conditions carefully before using the Software:

This End User Licence Agreement (**EULA**) applies to your use of the Software and any Maintenance or other services provided by or on behalf of acQuire Technology Solutions Pty Ltd (**acQuire**) with respect to the Software. This EULA constitutes a legally binding agreement and is enforceable by acQuire or by any Affiliate of acQuire.

If you (or, if you are using the Software on behalf of another Person such as your employer, that other Person) and acQuire have mutually executed a separate written software licence and maintenance agreement that expressly purports to govern the licensing and use of the Software, then that separate executed agreement shall prevail to the extent of any inconsistency between the terms of that separate executed agreement and those set out in this EULA. Otherwise, your access to and use of the Software (and any associated services) is governed in all respects by this EULA.

During installation of the Software, please review this EULA carefully and check the “I Accept...” box to acknowledge and accept this EULA and continue the installation process. By doing so, you acknowledge and accept this EULA and the Privacy Policy (which is incorporated into this EULA by reference) on your own behalf and on behalf of any Person on whose behalf you use the Software, such as your employer if you are using the Software in the course of your employment (and you warrant that you are authorised to bind that other Person to the terms of this EULA). If you are accepting this EULA on behalf of another Person, then a reference to “you” or “Licensee” in this EULA, refers to that other Person as applicable.

This EULA, and the acQuire Privacy Policy are also available for review online at https://download.acquire.com.au/public/acQuire_EULA.pdf and http://www.acquire.com.au/acquire_privacy_policy.pdf respectively.

Except in circumstances where we have executed a separate written agreement that expressly purports to govern the licensing and use of the Software (and any associated Maintenance or other services), this EULA, together with the acQuire Privacy Policy and the additional terms set out in the applicable Quotation, shall collectively be the complete agreement and understanding between us and replaces any prior oral or written communications between us related thereto, including but not limited to any additional, conflicting, or inconsistent terms and conditions which may appear on any purchase order or other document furnished by you (regardless of any statement to the contrary contained in any such purchase order or document).

If you do not accept this EULA (or if you are not authorised to accept this EULA on behalf of your employer or other Person on whose behalf you use the Software), then you may not install or use the Software. If you do not accept this EULA, then please delete any copies of the Software on your system(s) and return the Software to acQuire.

acQuire reserves the right to modify the terms of this EULA at its discretion at any time with future releases of the Software, at which point you will be asked to accept the modified EULA.

1 Definitions

"**Accredited acQuire Implementer**" means an individual who has been assessed, by acQuire in its sole discretion, as competent to implement and/or configure the Software.

"**acQuire**" means acQuire Technology Solutions Pty Ltd, a company incorporated in Australia with Australian Company Number (ACN) 009 333 644.

"**Affiliate**" with respect to a Person (the "first Person"), means any Person that, directly or indirectly, is controlled by, is under common control with, or controls the first Person (for the purposes of this definition, "control" means the ownership or exercise of voting control or direction over shares, securities or other voting instruments carrying fifty percent (50%) or more of the unrestricted voting rights, or ownership or exercise of other rights or powers entitling the holder thereof to direct, cause the direction of, or to manage the business of the Person).

"**Anti-Corruption Laws**" means any law related to combating bribery and corruption, including the OECD *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, the UN *Convention against Corruption* and any implementing legislation promulgated pursuant to such Conventions, the U.S. *Foreign Corrupt Practices Act 1977*, the U.K. *Bribery Act 2010*, the *Corruption of Public Officials Act (Canada)*, and all other legislation and related regulations and guidelines (whether federal, state, provincial or foreign) dealing with or relating to the corruption of public officials or bribery.

"**API**" means application programming interface.

"**Authorised Users**" include and are limited to: (i) employees of Licensee or of an Affiliate of Licensee; (ii) agents or independent contractors of Licensee (or of an Affiliate of Licensee) during the course of providing services under contract to Licensee (or the relevant Affiliate); and (iii) any other Person(s) expressly authorised by acQuire to access and use the Software.

"**Confidential Information**" means the confidential information of acQuire which relates to the subject matter of this EULA and includes (but is not limited to) information relating to:

- the design, specification and content of the Software;
- the Documentation;
- the policies, business strategies or financial position of acQuire; and
- the terms upon which the Software is being supplied and installed pursuant to this EULA,

but excludes information that:

- Licensee can demonstrate (with supporting documentary evidence) has been independently developed by Licensee without reference to any Confidential Information of acQuire;
- is or becomes publicly available without breach of this EULA;
- is rightfully received by Licensee from a third party without obligation of confidence; or
- is released for disclosure by acQuire with its written consent.

"**Defect**" means a failure of the Software to operate in substantial conformity with the Documentation.

"**Deprecated Licence**" means a Licence for Software that is no longer offered by acQuire because it has been superseded by newer Software. Licences are deprecated for a deprecation period, during which period they are still supported by acQuire. Upon the Expiry Date of the deprecation period, Deprecated Licences become Terminated Licences.

"**Documentation**" means all printed and digital materials, including but not limited to online help, user documentation, training documentation or technical information supplied under this EULA.

"**Dormant Licence**" means any Licence with respect to which a Dormant Licence Agreement has been agreed by Licensee and acQuire.

"**Dormant Licence Agreement**" means a separate agreement describing the options available to Licensee if Licensee elects to make a Software Licence dormant pursuant to clause 6.4.

“**EnviroSys**” means any or all modules of the *EnviroSys*[™] software licensed by or on behalf of acQuire.

"**Expiry Date**" means the date at which a Licence expires and becomes a Terminated Licence.

"**GIM Suite**" means any or all modules and components of the *GIM Suite*[®] software licensed by or on behalf of acQuire.

"**Intellectual Property Rights**" means all intellectual property rights existing worldwide, whether or not registered or registrable and includes (without limitation) any patent or right to apply for a patent, any copyright, any registered or other design right, any trade secret, any right to have confidential information treated confidentially, any trademark whether registered or not, any right to any name, or indicia of business, any domain name and any circuit layout or similar right.

"**Licence**" means licence(s) to use Software, granted to Licensee by or on behalf of acQuire according to the terms and conditions of this EULA and the relevant Quotation.

"**Licence Key**" means a unique security key without which Software will not operate.

"**Licence Manager**" means the software program(s) or system(s) utilised by acQuire to control the activation and allocation of Licences to Named Users.

"**Licensee**" means the Person on whose behalf this EULA has been accepted.

"**Licensee Data**" means the data inputted into the Software by Licensee, Authorised Users, or acQuire on Licensee's behalf for the purpose of using the Software or facilitating Licensee's use of the Software.

"**Maintenance**" is defined in clause 6.1 below.

"**Named User**" means an individual Authorised User who is uniquely identified by login credentials and registered in the acQuire Licence Manager as having access to a Named User Licence (for the avoidance of doubt, a single Named User login may not be shared between multiple Authorised Users).

"**Person**" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

"**Personnel**" means the employees of Licensee and personnel from third parties who perform work on behalf of Licensee under a contract entered into and between Licensee and the third party.

"**Privacy Policy**" means the Privacy Policy available at http://www.acquire.com.au/acquire_privacy_policy.pdf.

"**Quotation**" means any written quotation, commercial proposal or offer provided by or on behalf of acQuire for the purchase of Software Licences, Maintenance or other services governed by this EULA.

"**Restricted Party**" means a Person that is (i) subject to, or owned or controlled by a Person subject to, Sanctions; (ii) located in or organised under the laws of a country or territory that is the subject of country- or territory-wide Sanctions, or a Person who is owned or controlled by, or acting on behalf of such a Person; or (iii) otherwise a subject of Sanctions.

"**Sanctions**" means economic or financial sanctions or trade embargoes imposed, administered or enforced from time-to-time by (a) the U.S. government, including but not limited to those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) the United Nations Security Council, the European Union, the Government of Canada, or Her Majesty's Treasury of the United Kingdom.

"**Site**" means (where a Licence to use the Software is limited by reference to a specified geographical location or business operation of Licensee) a geographical location or business operation of Licensee with respect to which the Software is licensed for use, as further specified in the relevant Quotation.

"**Software**" means any acQuire software product including but not limited to: GIM Suite, EnviroSys or other components, plug-ins, workflows, scripts, objects and programs delivered on any media or downloaded over the internet, including but not limited to, alpha, beta, pre-release, restricted versions or final commercial release provided in object or executable code format(s), inclusive of backups, updates, service packs or sample code supplied under this EULA.

"**Standard Licence**" has the meaning given to that term in clause 2.2.

"**Subscription Licence**" has the meaning given to that term in clause 2.3

"**Subscription Term**" means the duration of a Subscription Licence, as set out in the Quotation or otherwise agreed between acQure and Licensee.

"**Support Compliant**" means that an acQure Software implementation has been assessed as compliant with acQure's implementation guidelines by an Accredited acQure Implementer (including via a Warranty Survey). Implementation guidelines may be subject to change and are at the sole discretion of acQure.

"**Support Fact Sheet**" means the fact sheet published by acQure (and updated from time-to-time) setting out the scope and limitations of: (i) Defect correction; and (ii) remotely-provided technical support and assistance, provided to customers procuring Maintenance services from acQure. The current Support Fact Sheet (which is subject to change by acQure at its discretion, provided that material changes shall be notified to Licensee) is located at <https://download.acquire.com.au/public/Factsheet - acQure Support.pdf>.

"**Terminated Licence**" means a Trial Licence or Subscription Licence that has expired or any other licence category where this EULA is terminated in accordance with its terms.

"**Trial Licence**" means a licence provided for a specified term for the *sole purpose* of evaluating the software for commercial use by Licensee.

"**Virus**" means any device or thing (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

"**Warranty Survey**" means the conduct of a Software or database audit by an Accredited acQure Implementer for the purpose of enabling acQure to determine that an acQure Software implementation is Support Compliant.

2 Grant of Licence

2.1

Quotations – The Quotation provided to Licensee by or on behalf of acQuire will specify: (i) the specific Software licensed to Licensee; (ii) the category(ies) of Licence being granted to Licensee; and (iii) the Maintenance or other services (if any) to be provided to Licensee.

The specific Software licensed to Licensee and the category(ies) of Licence (as further set out in the applicable Quotation), describe how Licensee may use the Software and describe the restrictions that apply to Licensee's use of the Software (for example, the number of Named Users who may access the Software under the Licence, the specific Software modules or functionality licensed to Licensee, the expiry date of the Licence in the case of a non-perpetual Subscription Licence, and any geographical or other usage restrictions that apply) and Licensee must comply with those restrictions at all times.

In the event of any conflict or inconsistency between the terms set out in an applicable Quotation and those set out in this EULA, the terms set out in this EULA shall prevail and those set out in the Quotation shall be void to the extent of the conflict or inconsistency.

For the avoidance of doubt, certain Software of acQuire may only be available for licensing via some (but not all) of the categories of Licence set out in this clause.

If the Software licensed to Licensee comprises or includes the GIM Suite Software, then the terms of Appendix 1 (GIM Suite Specific Terms) also apply to Licensee's use of the Software (and this EULA is to be read together with Appendix 1 and the applicable Quotation).

If the Software licensed to Licensee comprises or includes the EnviroSys Software, then the terms of Appendix 2 (EnviroSys Specific Terms) also apply to Licensee's use of the Software (and this EULA is to be read together with Appendix 2 and the applicable Quotation).

2.2

Standard Licences – Where a "Standard Licence" is specified in an applicable Quotation, acQuire grants to Licensee a limited, perpetual, non-exclusive, non-assignable, non-transferable Licence for Authorised Users of Licensee to access and use the Software and Documentation for Licensee's internal business purposes only, in accordance with the terms and conditions set out in the Quotation and this EULA including but not limited to the restrictions imposed under clause 4.1 (and either Appendix 1 or Appendix 2, as applicable).

2.3

Subscription Licences – Where a "Subscription Licence" is specified in an applicable Quotation, acQuire grants to Licensee a limited, non-perpetual, non-exclusive, non-assignable, non-transferrable Licence for Authorised Users of Licensee to access and use the Software and Documentation during the relevant Subscription Term for Licensee's internal business purposes only, in accordance with the terms and conditions set out in the Quotation and this EULA including but not limited to the restrictions imposed under clause 4.1 (and either Appendix 1 or Appendix 2, as applicable).

Subscription Licences are granted for successive Subscription Terms of one (1) year each, unless otherwise specified by acQuire. The Subscription Licence expires at the end of the Subscription Term. Upon expiry of the Subscription Term (and unless the Subscription Licence is renewed for a further Subscription Term), the Subscription Licence becomes a Terminated Licence and Licensee must cease its use of the Software save only for those uses permitted pursuant to clauses 2.6 and 4.7.

2.4

Trial Licences – Where a Trial Licence is granted to Licensee by acQuire, Licensee's rights and obligations under the Trial Licence are the same as those for a Subscription Licence, with the exception that the Trial Licence expires

after 30 days (unless acQuire has expressly agreed in writing that the Trial Licence shall continue for a further period).

Where acQuire has issued a Trial Licence to Licensee with respect to the Software, Authorised Users of Licensee must only use the Software that is the subject of the Trial Licence for sole purpose of determining the suitability of the Software for Licensee's business purposes.

2.5

Deprecated Licences – Licensee's rights and obligations under a Deprecated Licence are the same as those for a Standard Licence, except that the licence expires on the Expiry Date of the relevant deprecation period, at which point the Deprecated Licence becomes a Terminated Licence.

2.6

Terminated Licence – This EULA will terminate with respect to any Licence that becomes a Terminated Licence. A Terminated Licence includes any:

- a. Trial Licence or Subscription Licence which has reached its Expiry Date without being renewed (the effective date of termination being the Expiry Date);
- b. Deprecated Licence that has reached the Expiry Date of its deprecation period (the effective date of termination being the Expiry Date); or
- c. Licence with respect to which this EULA is terminated in accordance with its terms (the effective date of termination being the date of expiry of the notice period applicable to the termination).

Upon termination of a Licence, Licensee may only use the Software for the sole purpose of extracting Licensee's data for a period of seven days from the date of termination. A Terminated Licence is subject to the restrictions imposed under clause 4.3.

2.7

Licence fee – The amounts payable for any Software Licences procured by Licensee will be specified in the relevant Quotation. Licensee is not entitled to exercise any of its rights under this EULA until such licence fees are received by acQuire.

The Licence fee structure and pricing for all Standard Licences and Subscription Licences, are determined by acQuire in its sole discretion from time-to-time.

3 Licence Activation

Usage Protection - Licensee acknowledges that the Software may contain usage protection measures that limit Licensee's Software access to the scope permitted under the applicable Licence, or that cause the Software to cease to operate without prior notice upon expiry or termination the Licence or this EULA. Licensee acknowledges that the Software may cause the computer on which it is installed to connect to the internet and/or to a licence server automatically for Licence validation and the Software may require activation or registration via a Licence Manager or Licence Key prior to use, to prevent unlicensed or illegal use of the Software or use of the Software in breach of this EULA. Attempting to circumvent (or "hacking") the security, access-control or other features of the Software is prohibited and may contravene applicable laws. Licensee acknowledges that the Software may contain technological measures designed to validate whether the Software has been validly licensed to Licensee by acQuire, and to disable or restrict its functions in the event of it being found not to be validly licensed. Licensee agrees to follow any requirements of acQuire regarding such technological measures. Licensee may also be required to reactivate the Software if Licensee modifies Licensee's computer hardware or installs the Software on another computer or node. The absence of technological restrictions does not affect Licensee's obligation to comply with this EULA in all respects.

Password Access – Where a unique username and password is required in order for Authorised Users to access the Software, Licensee must ensure that each Authorised User keeps a secure password for their use of the Software and that each Authorised User keeps their password confidential. Licensee must not allow or suffer any username or password to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Software.

4 Licence Restrictions

4.1 General restrictions

- a. Only Authorised Users may access and use the Software. The number of Licences in use by Authorised Users of Licensee must not at any time exceed the total number of Licences granted by acQuire to Licensee, as set out in the relevant Quotation. Licensee must ensure that its Authorised Users comply in all respects with this EULA in their access to, and use of, the Software and Documentation.
- b. Where a Licence is non-perpetual in nature (for example, if the Licence is a Subscription Licence, a Trial Licence or a Deprecated Licence during its applicable deprecation period), Licensee must not alter any computer storage drive or system to enable the Software to operate for a period beyond the Expiry Date of the Licence.
- c. Licensee may make one copy of the Software and Documentation for archival purposes during the term of this EULA. Additionally, Licensee may make routine computer backups consistent with Licensee's normal backup or disaster recovery procedures, or as otherwise permitted by acQuire. Licensee must maintain a log of the number and location of all originals and copies of the Software, which shall be provided to acQuire upon request. Any redundant installation of the Software must remain dormant while the primary installation is operational.
- d. Licensee must not: (i) transfer, assign or sublicense any Licence granted under this EULA; or (ii) distribute, provide or make available the Software or Documentation to any third party (other than an Authorised User) without the prior written consent of acQuire (which consent may be granted, withheld or granted subject to conditions in acQuire's sole discretion). Licensee must not (and must not permit third parties to) access or modify the software via an API (whether or not the API is developed or published by acQuire) unless Licensee has entered into a separate agreement with acQuire allowing for such API access to the Software.
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- f. Licensee must not remove, obscure or alter any patent, copyright, trademark or proprietary rights notice contained in or affixed to the Software or Documentation.
- g. After a commercially reasonable transition period during which Licensee may upgrade to the most current version of the Software (which period shall not in any event be greater than two years from the date that the installed version of the Software is superseded by a new version), Licensee must cease using all prior version(s) of the Software unless otherwise permitted by acQuire.
- h. Licensee must not reverse assemble or reverse compile (or directly or indirectly cause or permit a third party to reverse assemble or reverse compile) the whole or any part of the Software.
- i. Licensee must not access or use the Software in connection (directly or indirectly) with the design, development, testing, support, pricing, marketing, distribution or licensing to third parties of any software product that is directly or indirectly competitive with the Software.
- j. Licensee must not disclose the results of any Software performance benchmarks generated or obtained by Licensee, without the written consent of acQuire (which consent may be granted, withheld or granted subject to conditions in acQuire's sole discretion).
- k. Licensee must not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Software that is unlawful, harmful, threatening, defamatory, discriminatory, obscene, infringing, harassing or racially or ethnically offensive (and acQuire reserves the right, without liability to Licensee, to disable Licensee's access to any material that breaches the provisions of this clause).
- l. Licensee must not otherwise use, copy or deal with the Software except as expressly provided in this EULA.

4.2 Restrictions that apply to a Dormant Licence

Dormant Licences are subject to a separate Dormant Licence Agreement entered into by Licensee and acQure. The Dormant Licence Agreement sets out the terms under which the Dormant Licences may be reinstated.

4.3 Restrictions that apply to a Terminated Licence

- a. Any Licence that becomes a Terminated Licence must be deactivated and confirmation sent to *acqlicense@acquire.com.au*. Licensee must cease any use of Software that is the subject of a Terminated Licence.
- b. A Terminated Licence may only be reinstated, if the Terminated Licence is an expired Subscription Licence and acQure and Licensee agree to extend the applicable Subscription Term.
- c. For the avoidance of doubt, a Dormant Licence does not constitute a Terminated Licence. A Dormant Licence can be reinstated in accordance with clause 6.4.

5 Compliance

5.1

At any time upon receiving a request in writing from acQuire to do so, Licensee must provide acQuire with a written declaration executed by a suitably authorised representative of Licensee's senior management, to the effect that Licensee is in full compliance with the terms of this EULA.

acQuire shall have the right, at any time upon providing not less than fourteen (14) days' written notice to Licensee and during normal business hours, to audit Licensee's books and records to verify Licensee's compliance with the terms of this EULA and any applicable Quotation (including establishing the name and password of each Authorised User as applicable).

If an audit reveals that Licensee has, based on Licensee's actual use of the Software, failed to comply with the terms of this EULA in relation to any Licence (including but not limited to use of the Software by Licensee beyond the limitations applicable to the Licence) then without limiting any other rights that acQuire may have, Licensee must pay to acQuire promptly upon demand: (a) the Licence fees applicable to Licensee's actual use of the Software (including but not limited to any retrospective Licence fees that may be applicable), at acQuire's then-current list prices; (b) additional fees for any associated Maintenance (including any retrospective Maintenance fees that may be applicable) at acQuire's then-current list prices; (c) any applicable late charges; and (d) all of acQuire's reasonably incurred expenses related to such audit in addition to any other losses, expenses or liabilities that acQuire may incur as a result of Licensee's non-compliance.

If an audit reveals that Licensee is utilising the Software in a manner not permitted by this EULA or the applicable Licence then Licensee agrees to take, at Licensee's expense and without delay, all reasonable corrective action requested by acQuire. Without limiting the foregoing, if an audit reveals that any username or password has been provided to any individual who is not an Authorised User then, without prejudice to acQuire's other rights, Licensee shall promptly disable such passwords and acQuire shall not issue any new passwords to the relevant individual.

6 Software Maintenance and Technical Support

6.1

Scope of Maintenance - Subject to clause 6.3 below and provided that Licensee has paid all applicable Maintenance fees (or Subscription Licence fees as the context requires) in advance, Licensee shall be entitled to receive:

- a. all updates, corrections or enhancements to (or new versions of) the relevant Software and Documentation that acQuire elects to make generally available to its customers with active Maintenance from time-to-time;
- b. access to and use of any secure acQuire website resources made available to Licensee for internal use by Authorised Users, provided that Licensee follows acQuire's *Terms of Use* policy specified therein (all password or controlled access information provided by acQuire shall be treated by Licensee as acQuire's Confidential Information for the purposes of clause 12 below); and
- c. the exercise by acQuire of commercially reasonable efforts to service requests for remotely-provided support and assistance with respect to the Software, issued by Authorised Users via communication methods specified by acQuire from time-to-time, in accordance with acQuire's then current *Support Fact Sheet*,

(collectively, "**Maintenance**").

6.2

Invoicing and Pricing - Maintenance for Standard Licences is purchased annually in advance, unless otherwise agreed in writing by acQuire. Maintenance fee structure and pricing is determined by acQuire in its sole discretion from time-to-time. The Maintenance fee structure does not allow Licensee to purchase individual components of Maintenance exclusively, nor may Licensee procure Maintenance with respect to some Licences but not others (unless otherwise agreed by acQuire including pursuant to a Dormant Licence Agreement).

Maintenance for Subscription Licences is included with the Subscription Licence fee and applies until the Expiry Date of the Subscription Licence.

With the exception of any Terminated Licences, Licensee shall remain entitled to receive Maintenance for so long as applicable Maintenance fees (or Subscription Licence fees as applicable) continue to be paid in full (provided that acQuire shall only be obliged to provide updates, enhancements and error-correction for the latest version of the Software made available by acQuire from time-to-time).

6.3

Exclusions - acQuire shall not be obliged to provide Maintenance in circumstances where: (i) the Software has not been implemented by an Accredited acQuire Implementer or assessed as Support Compliant by acQuire; (ii) the Software has been the subject of unauthorised alteration or modification; or (iii) Licensee or any Authorised User has made improper use of the Software or failed to comply with the directions of acQuire including any reasonable requests for assistance.

Without limitation, acQuire reserves the right not to provide support in connection with Maintenance where Licensee has not made reasonable attempts to deploy updates or upgrades to the Software offered by acQuire in connection with Maintenance. acQuire further reserves the right not to provide support to Authorised Users who have not received reasonable training in the use of the Software.

acQuire shall not be responsible for providing Maintenance for any customisations or modifications to the Software. If acQuire in its discretion agrees to provide Maintenance for customisations or modifications to the Software, then additional Maintenance fees may apply.

6.4

Dormant Licences – Licensee and acQuire may agree from time-to-time to convert a Standard Licence into a Dormant Licence, by executing a Dormant Licence Agreement with respect to the Licence. During the period of the Dormant Licence Agreement: (i) Maintenance fees are not payable with respect to the Dormant Licence; and (ii) the Dormant Licence must be surrendered and may not be used by Licensee. Dormant Licences (and any associated Licence Keys) may only be reinstated in accordance with the applicable Dormant Licence Agreement.

Cessation of Maintenance - If at any time Licensee declines to renew Maintenance with respect to a Standard Licence and subsequently seeks to reinstate Maintenance for the relevant Licence, then (unless Licensee and acQuire have executed a Dormant Licence Agreement applicable to the Licence that provides otherwise) Licensee shall pay: (i) the cumulative retrospective Maintenance fees applicable for the period during which Maintenance was declined or terminated; and (ii) Maintenance fees in advance for the current Maintenance Period, all at acQuire's then-current list price.

For the avoidance of doubt, the termination or cessation of Maintenance with respect to any Standard Licence shall not, of itself (and unless the Standard Licence has been converted into a Dormant Licence and surrendered as set out in this clause 6.4) affect Licensee's perpetual rights with respect to the Standard Licence.

7 Ownership

7.1

General - Licensee acknowledges that the Software and Documentation are valuable assets of acQuire provided to Licensee on a restricted and confidential basis and that, under the terms of this EULA, Licensee has obtained a limited Licence only for Authorised Users to use the Software and Documentation set out in the relevant Quotation on the terms set out in that Quotation and this EULA. Licensee acknowledges there is no transfer of title or ownership to Licensee of the Software or Documentation. All rights not expressly granted to Licensee pursuant to this EULA and the applicable Quotation, are reserved.

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Licensee Data - Licensee shall own all rights, title and interest in and to all Licensee Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of Licensee Data.

8 Limited Warranty and Disclaimer

8.1

acQuire warrants that:

- a. the Software will be free from Defects for a period of 90 days from the date of installation of the Software;
- b. all Maintenance and other services will be performed by suitably qualified and experienced representatives of acQuire, in a professional manner and consistent with generally accepted industry practise; and
- c. acQuire has and will maintain all necessary licences, consents and permissions necessary for the performance of its obligations under this EULA.

8.2

acQuire is not liable under the warranty set out in clause 8.1(a):

- a. unless within 90 days of the date of installation of the Software, Licensee returns any Defective Software to acQuire together with a written report specifying in detail the nature and extent of any Defect;
- b. if acQuire (after exercising commercially reasonable efforts) is unable to reproduce the reported Defect in an operating environment consistent with that specified in the Documentation;
- c. if the Software is not installed, used and operated in conformity with the Documentation.

If Licensee does not comply with the clauses 8.2 (a), (b) or (c), then acQuire may, at its option, and with the express permission of Licensee, conduct a Warranty Survey for the purpose of determining if the Software implementation at Licensee's Site or Sites is Support Compliant. If this occurs then:

- i. any Warranty Survey will be at the sole expense of Licensee;
- ii. any remedial measures identified by acQuire must (unless otherwise expressly agreed in writing by acQuire) be implemented by an Accredited acQuire Implementer within 30 days of receipt of the recommendations; and
- iii. if Licensee does not comply with subclauses (i) and (ii) above, then acQuire may, at its option and in its sole discretion, elect to suspend Licensee's access to Maintenance and/or support until such time as the licensee complies with subclauses (i) and (ii) above. If this occurs then no refund of Maintenance or Subscription Fees paid by Licensee shall apply during the period of suspension.

8.3

If a Defect is determined by acQuire to have been caused by a failure of the Software to conform to the warranty set out in clause 8.1(a), then acQuire will, at its option and in its sole discretion, either replace any Defective media, or repair, correct or provide workaround support for the Software, or terminate this EULA and return any Licence fees paid for the Software provided that Licensee removes and destroys all copies of the Software and provides appropriate evidence of such removal and destruction.

8.4

acQuire's obligations set out in clause 8.3 are Licensee's sole and exclusive remedies against acQuire if the Software does not comply with the warranty provided in clause 8.1(a).

8.5

EXCEPT AS EXPRESSLY STATED IN THIS EULA (BUT OTHERWISE TO THE MAXIMUM EXTENT PERMITTED BY LAW), THE SOFTWARE, DOCUMENTATION AND ALL MAINTENANCE AND OTHER SERVICES ARE SUPPLIED TO LICENSEE "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OR GUARANTEE OF ANY KIND, EITHER EXPRESS OR IMPLIED AND INCLUDING BUT NOT LIMITED TO WARRANTIES OR GUARANTEES OF MERCHANTABILITY, QUIET ENJOYMENT, FITNESS FOR ANY PARTICULAR PURPOSE OR NON-INFRINGEMENT. ACQUIRE DOES NOT WARRANT THAT: (A) THE SOFTWARE OPERATES UNINTERRUPTED; (B) ALL SOFTWARE ERRORS CAN BE CORRECTED; (C) THE APPLICATIONS CONTAINED IN THE SOFTWARE ARE DESIGNED TO MEET ANY OF LICENSEE'S BUSINESS REQUIREMENTS; OR (D) THE INFORMATION OR DATA PROVIDED IS ACCURATE OR ERROR-FREE.

BY ENTERING INTO THIS EULA, LICENSEE ACKNOWLEDGES THAT IT HAS RELIED UPON ITS OWN EXPERIENCE, SKILL AND JUDGMENT TO EVALUATE THE SOFTWARE AND THAT IT HAS SATISFIED ITSELF AS TO THE SUITABILITY OF THE SOFTWARE TO MEET ITS REQUIREMENTS. SUBJECT TO THE WARRANTIES SET OUT AT CLAUSES 8.1(a) AND 10.1, THE ENTIRE RISK AS TO THE QUALITY OF THE SOFTWARE IS ASSUMED BY LICENSEE. LICENSEE ASSUMES RESPONSIBILITY FOR THE SELECTION OF THE SOFTWARE TO ACHIEVE ITS INTENDED PURPOSES AND FOR THE END RESULTS OBTAINED FROM THE SOFTWARE AND/OR ITS OPERATION (TOGETHER WITH ANY CONCLUSIONS DRAWN THEREFROM).

8.6

No employee or agent of acQuire is authorised to provide any warranty or representation beyond those expressly set out in this EULA.

8.7

Nothing in this EULA will exclude, restrict or modify any condition, warranty, guarantee, right, remedy or liability implied or imposed by any legislation if they cannot be excluded, restricted or modified (a "**Non-Excludable Term**"). Where a Non-Excludable Term applies, unless it is unlawful to do so, the liability of acQuire for any breach of such Non-Excludable Term is limited, at the sole option of acQuire, to one or more of the following:

- a. in the case of services, the supply of the service again; or
- b. in the case of goods, any one or more of the following:
 - i. the replacement of the goods or the supply of equivalent goods; or
 - ii. the repair of the goods.

8.8

Except as and to the extent otherwise specifically provided in this EULA, under no circumstances will acQuire and its officers, employees, agents or contractors (nor any officers, employees, agents or contractors of any Affiliate of acQuire) be liable in any amount for special, incidental, consequential or indirect damages, or for any loss of goodwill or business profits, work stoppage, data loss or corruption, computer failure or malfunction, or exemplary or punitive damages, however arising, even if acQuire has been advised of the possibility of such damages.

9 Limitation of Liability

9.1

The aggregate liability of acQuire to Licensee, whether arising from breach of contract, negligence or any other tort, in equity or otherwise and whether or not acQuire was advised of the possibility of such loss or damage, is limited to an amount equal to the fees received by acQuire under this EULA during the 12-month period prior to the date on which Licensee's claim is communicated to acQuire. However, this limitation of liability shall not apply to the extent, and to the extent only, that any legislation prohibits or restricts limitation of liability for personal injury (including sickness and death) and/or loss or damage to tangible property.

Each party acknowledges that the fees reflect the allocation of risk between the parties and that acQuire would not enter into this EULA or any applicable Quotation without these limitations on its liability.

10 Intellectual Property Infringement Indemnity

10.1

acQuire warrants that, to the best of its knowledge and belief, Licensee's use of the Software in accordance with the provisions of this EULA and any applicable Quotation will not infringe the Intellectual Property Rights of any third party.

acQuire will indemnify Licensee and hold Licensee harmless against all fees, damages or costs finally awarded against Licensee as a result of any claim brought against Licensee by a third party alleging that use of the Software in conformity with this EULA and any applicable Quotation infringes the Intellectual Property Rights of any third party (collectively, an "**Infringement Claim**").

10.2

acQuire shall not be liable under the indemnity set out in clause 10.1 unless Licensee:

- a. promptly notifies acQuire in writing as soon as it becomes aware of any actual, suspected or alleged infringement of Intellectual Property Rights;
- b. gives acQuire the option to conduct the sole defence of the Infringement Claim, including all negotiations for settlement or compromise prior to the institution of legal proceedings;
- c. provides acQuire with all reasonable assistance in conducting the defence of the Infringement Claim; and
- d. permits acQuire (at acQuire's expense) to modify, alter or substitute the portion of the Software that is the subject of the Infringement Claim, or to procure a licence for Licensee to continue to access and use the Software that is the subject of the Infringement Claim.

10.3

acQuire shall have no obligation to Licensee for any Infringement Claim arising out of or relating to:

- a. use of the Software in combination with any other products or technologies if the Infringement Claim would not have occurred but for such combination;
- b. use of the Software in a manner or for a purpose not reasonably contemplated or not authorised by acQuire;
- c. modification or alteration of the Software without the prior written consent of acQuire;
- d. failure by Licensee to comply with any third-party terms and conditions referred to in clause 12; or
- e. continued use of the Software following a notification by acQuire regarding an actual or threatened Infringement Claim.

10.4

Licensee must indemnify acQuire against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of any Infringement Claim (or any other claim brought against acQuire by a third party alleging that the Software infringes the third party's Intellectual Property Rights) to the extent that:

- the claim arises from an event specified in clause 10.3; or
- the ability of acQuire to defend the claim has been prejudiced by the failure of Licensee to comply with any requirement of clauses 10.2 or 10.3.

10.5

The foregoing states Licensee's sole and exclusive rights and remedies, and acQuire's (including acQuire's employees', agents' and sub-contractors') entire obligations and liability, for infringement of the Intellectual Property Rights of any third party.

11 Anti-corruption, Bribery and Sanctions

11.1

Licensee warrants that neither it nor any of its Personnel or Affiliates has offered or given, or will offer or give, anything of value or advantage to:

- a. any government official, in order to influence or reward any action relating to acQuire, this EULA or any Quotation;
- b. any other Person where it knows or reasonably should know that the same (or part thereof) will be offered, promised or given to:
 - i. a government official in order to influence or reward action relating to acQuire, this EULA or any Quotation; or
 - ii. any Person in order to influence or reward such Person for acting improperly.

11.2

Licensee will comply with all local, state, national and international applicable laws, rules and regulations related to ethical conduct and responsibility in all jurisdictions within which Licensee makes business with acQuire, including but not limited to all such laws, rules and regulations relating to human rights (including but not limited to human trafficking and slavery, labour regulations and the supply of conflict minerals), environmental protection, sustainable development, and Anti-Corruption Laws.

11.3

Licensee shall not offer gifts, entertainment, payments, loads or other favours for the purpose of receiving favourable treatment under any agreement or other advantage that contravenes any applicable Anti-Corruption Laws.

11.4

Licensee represents and warrants that neither it nor any of its Personnel or Affiliates:

- a. are or will become a Restricted Party;
- b. has sourced or will source goods or services, directly or indirectly, from a Restricted Party; or
- c. will violate any relevant Sanctions.

12 Third Party Software

12.1

The Software may contain third party software which requires notices and/or additional terms and conditions. Such required third party software notices and/or additional terms and conditions are made a part of and incorporated by reference into this EULA. By accepting this EULA, Licensee also agrees to accept these additional terms and conditions, if any, set out therein.

- Bing Maps terms of use are found at the following hypertext link:
<http://www.microsoft.com/maps/assets/docs/terms.aspx>

13 Confidentiality and Privacy

13.1

Licensee shall not, without the prior written approval of acQuire, disclose acQuire's Confidential Information.

13.2

Licensee shall not be in breach of clause 13.1 in circumstances where it is legally compelled to disclose acQuire's Confidential Information, provided that: (i) Licensee must notify acQuire in writing as soon as reasonably practicable after it becomes aware that disclosure is required; (ii) unless immediate disclosure is required, Licensee must give acQuire a reasonable opportunity to comment on the requirement for, and proposed form of, the disclosure; and (iii) Licensee must take all steps reasonably required by acQuire to prevent or restrict the disclosure of the Confidential Information.

13.3

Licensee must take all reasonable steps to ensure that its Personnel (and the Personnel of any Affiliate of Licensee), do not disclose acQuire's Confidential Information and that Confidential Information is only used in a manner authorised by this EULA.

13.4

Licensee consents to the collection and other handling of its Personal Information by acQuire in accordance with the terms of the Privacy Policy.

14 Termination and Breach

14.1

Either party (“**the Terminating Party**”), at its option and without prejudicing any other rights it may have under this EULA, may terminate this EULA in writing if the other party:

- a. is in breach of any clause or term of this EULA (including any breach of Anti-Corruption Laws or any warranty in respect of Sanctions) and such breach is not remedied within 30 days of its notification by the Terminating Party (or if the breach is not reasonably capable of remedy);
- b. makes a general assignment for the benefit of creditors; or makes a written admission of its inability to pay its debts or obligations as they become due; or on becoming bankrupt or insolvent, takes the benefit of any law in force for the bankrupt or insolvent debtor; or seeks, consents to or acquiesces in the appointment of any trustee, receiver or liquidator of its business or its assets; or
- c. is found by a governmental authority or a competent court to be guilty of money laundering, breaching any law relating to bribery, corruption or offering inducements, or in breach of any other applicable laws related to the EULA.

14.2

Immediately upon termination of this EULA, and after any applicable period during which Licensee may extract its data under clause 2.6, Licensee must destroy all copies of the Software and Documentation and any component parts of such Software and Documentation in its possession or control, and certify to acQuire that it has done so.

14.3

Clauses 9, 12, 13, 14, 15 and 16 shall survive the termination of this EULA. The accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

15 Severability, Waiver, No Adverse Construction

If any provision of this EULA or any Quotation is held to be invalid or unenforceable, then that provision shall be deemed modified only to the minimum extent necessary to render it valid (preserving the intention of the parties where applicable) or eliminated if modification is not possible, and the remainder of this EULA (or the relevant Quotation) shall be enforced and construed as if the provision had been included as modified or as if it had not been included, as the case may be.

No provision of this EULA (or any Quotation) is to be construed adversely against a party on the grounds that the party was responsible for the preparation of that provision, or the preparation of this EULA or the relevant Quotation generally.

A waiver of any right under this EULA is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given. Unless specifically provided otherwise, rights arising under this EULA are cumulative and do not exclude rights provided by law.

16 Governing Law

16.1

This EULA will be governed by and construed by the laws of the State of Western Australia, excluding the provisions of the *United Nations Convention on Contracts for the International Sale of Goods* (known as the *Vienna Convention*) which shall not apply to this EULA and shall be subject to the exclusive jurisdiction of the courts of the State of Western Australia.

17 Force Majeure

17.1

acQuire shall have no liability to Licensee under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of acQuire or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that Licensee is notified of such an event and its expected duration.

18 Assignment, No Agency

18.1

Licensee shall not, without the prior written consent of acQuire, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this EULA

18.2

acQuire may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this EULA.

18.3

Nothing in this EULA is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

Nothing in this EULA shall prevent acQuire from entering into similar agreements with third parties.



Appendix 1 – GIM Suite Additional Terms

If the Software licensed to Licensee comprises or includes the GIM Suite Software, then the additional terms set out in this Appendix 1 (GIM Suite Additional Terms) shall apply to Licensee’s use of the Software (and this EULA is to be read together with this Appendix 1 and the applicable Quotation).

1 - Definitions

1.1. The following additional definitions shall apply:

"Named User" means an Authorised User (individual) who is uniquely identified by a login and registered in the acQuire Licence Manager system. A login cannot be shared between multiple users.

2 - Terms of Use

2.1 The following table lists the types of GIM Suite Software Licences governed by this EULA:

Licence Name	Perpetual		Subscription
	Site Licence	Named User	Named User
Core Licences			
GIM Suite Core for Minerals	✓		
GIM Suite Core for Coal	✓		
GIM Suite Core for Hydrocarbons	✓		
Core Extensions			
Automation Core Extension	✓		
Core Workflow Extensions			
Geophysics Extension	✓		
Monitoring Extension	✓		
Coal Extension	✓		
Depth Adjustment Extension	✓		
User Licences			
GIM Suite Design		✓	✓
GIM Suite Analyse		✓	✓
GIM Suite Contribute		✓	✓
GIM Suite Read		✓	✓



Appendix 2 – EnviroSys Additional Terms

If the Software licensed to Licensee comprises or includes the EnviroSys Software, then the additional terms set out in this Appendix 2 (EnviroSys Additional Terms) shall apply to Licensee’s use of the Software (and this EULA is to be read together with this Appendix 2 and the applicable Quotation).

1 - Definitions

1.1. The following additional definitions shall apply:

“**EnviroSys Services Catalogue**” means the document (referenced in any relevant Quotation and as updated or amended by acQure from time-to-time) that sets out the scope of Hosting Services, Product Administration services and other specific services provided by acQure with respect to the EnviroSys Software.

“**Hosting Services**” means, collectively, the supply by acQure of the following:

- a) a cloud-hosted environment suitable for deployment of the EnviroSys Software;
- b) the combination of third-party operating software, utilities and application software which has been approved by acQure as an operating environment in which the EnviroSys Software may be used and is deployed by acQure in the cloud-hosted environment; and
- c) the ongoing administration of those items referred to at (a) and (b) above for the duration of the Hosting Services,

as further described in the EnviroSys Services Catalogue.

2. Provision of Hosting Services

2.1. If Licensee procures Hosting Services from acQure with respect to the EnviroSys Software, then acQure will provide the Hosting Services as further set out in the Quotation (including any document referenced in the Quotation including but not limited to the EnviroSys Services Catalogue), on the terms set out in this Appendix 2.

2.2. acQure may amend the EnviroSys Services Catalogue (including the scope of Hosting Services) in its sole and absolute discretion from time-to-time, and will inform Licensee in a timely manner if Licensee’s service may be adversely affected by said amendments.

3. Availability of Hosting Services

3.1. acQure shall use commercially reasonable endeavours to make the Hosting Services available twenty-four (24) hours a day, seven (7) days a week, except for:

- a) planned maintenance carried out during the agreed maintenance window.
- b) unscheduled maintenance, provided that acQure has used reasonable endeavours to give Licensee notice in advance.

- c) as agreed with the Licensee, the operating hours of the Hosting Service are prescribed less than twenty-four (24) hours a day, seven (7) days a week.

4. Licensee data

- 4.1. acQure will implement a program of back-up of Licensee Data stored by acQure via the Hosting Services, as agreed with Licensee and set out in the relevant Quotation (and/or the EnviroSys Services Catalogue, as applicable). In the event of loss or damage to such Licensee Data, Licensee's sole and exclusive remedy shall be for acQure to use reasonable commercial endeavours to restore the lost or damaged Licensee Data from the latest back-up of such Licensee Data maintained by acQure in accordance with the agreed back-up procedure described. acQure shall not be responsible for any loss, destruction, alteration or disclosure of Licensee Data caused by any third party (except third parties subcontracted by acQure to perform services related to Licensee Data back-up and maintenance).
- 4.2. acQure may destroy or dispose of any Licensee Data in its possession unless acQure receives, no later than seven (7) days after the effective date of the termination of this EULA, a written request for the delivery to Licensee of the then most recent back-up of Licensee Data. acQure shall use reasonable commercial endeavours to deliver the back-up to Licensee within thirty (30) days of its receipt of such a written request, provided that Licensee has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). Licensee shall pay all reasonable expenses incurred by acQure in returning or disposing of Licensee Data.

5. Licensee's obligations

Licensee shall:

- a) provide acQure with:
 - i. all necessary co-operation in relation to this agreement; and
 - ii. all necessary access to such information as may be required by acQure;
in order to render the Hosting Services, including but not limited to Licensee Data, security access information and configuration services;
- b) ensure that its network and systems comply with the relevant specifications provided by acQure from time-to-time; and
- c) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to acQure's Hosting Services, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to Licensee's network connections or telecommunications links or caused by the internet.

6. Warranty Disclaimer

- 6.1. Without limiting clause 8 (Limited Warranty and Disclaimer) of this EULA, Licensee acknowledges that deployment of the Software using the Hosting Services involves the transmission of data over the Internet, which is an inherently insecure medium over which data transmission quality, security and speed may vary. Licensee further acknowledges that the Hosting Services include services and other items provided by third parties, over which acQure exercises limited control.
- 6.2. Without limiting clause 8 of the Agreement, acQure:
 - a) provides the Hosting Services to Licensee on an "as is" and "as available" basis;

- b) does not warrant that Licensee's use of Software deployed using the Hosting Services will be uninterrupted, error-free or adhere to any minimum standard of performance; nor that the Hosting Services will meet Licensee's requirements; and
- c) is not responsible for any delays, delivery failures, or any other loss, wrongful access or disclosure or damage resulting from the transfer of data over communications networks and facilities, including the Internet, and Licensee acknowledges that the Hosting Services may be subject to limitations, delays, security flaws and other issues inherent in the use of such communications facilities.

Contact

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