Airron End User Agreement

Warning: Use of **Airron™** software is conditional upon you ("the **Customer**") agreeing to the terms of this **Agreement**. Choosing "I accept the terms and conditions of this **Agreement**" when installing **Airron™** software shall be deemed to be your acceptance of the terms of this **Agreement**. If you do not agree, (a) choose "do not accept" and do not proceed to install or use **Airron software** and (b) contact **Airron™** to arrange for any applicable refund.

Warning: You agree to and comply with the terms and conditions of any third party software or services supplied by **Airron™** or made available with **Airron software** and or not use any such third party software or services. Do you agree to comply with these terms and conditions as if same were set out in the End User Agreement? " If you do not agree, (a) choose "do not accept" and do not proceed to install or use **Airron software** and (b) contact **Airron™** to arrange for any applicable refund.

Operative Part

1.   Definitions

1.1   In this **Agreement**, unless inconsistent with the context:

(a)   **Agreement** means this agreement, its recitals, provisions and any schedule of this agreement.

(b)   **Airron software** means software developed by **Airron™.** Current products offered include but not exclusive to **iServiceCRM™** and **Q3™.**

(c)   **Confidential Information** includes information which relates to **Airron software** including account details, passwords and activation codes, development concepts, source code, object code, specifications, data models and schema, protocols, algorithms, manuals, drawings and data created or used by **Airron™**.

(d)   **Clause** means a clause of this **Agreement**.

(e)   **Confidential Client Data Information** means information which relates solely to **Customer's** business and does not include any underlying data structures or concepts.

(f)   **Duration** means initially 7 days but upon payment of the amount specified in an invoice issued by **Airron™** the **Duration** shall be extended for the period specified in that invoice.

(g)   **Fees** means either the agreed fees of **Airron™** or, if none, the published fees of **Airron™** as amended from time to time.

(h)   **Force Majeure** means an act, omission or circumstance over which **Airron™** could not have reasonably exercised control including telecommunication failures.

(i)   **Intellectual Property Right** includes any right arising from or capable of arising from the: *Circuits Layout Act 1989* (Cth); *Copyright Act 1968* (Cth); *Designs Act 2003* (Cth); *Patents Act 1990* (Cth); *Trade Marks Act 1995* (Cth); any similar legislation outside the Commonwealth of Australia; any similar unregistered right and **Confidential Information**.

(j)   **Interest Rate** means the rate of 10% per annum calculated monthly in arrears and added to the outstanding sum.

(k)   **Party** and **Parties** means a party to this **Agreement** and their respective successors, trustees and permitted assigns.

(l)   **Sub-clause** means a sub-clause of this **Agreement**.

(m)   **Taxes** includes taxes, duties and government charges, fees, levies and any penalty for not paying same.

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2. Interpretation

2.1 In this **Agreement**, unless inconsistent with the context:

(a) Words denoting a person shall include corporations, statutory corporations, partnerships, joint ventures, associations, boards, governments or semi-government agencies or authorities.

(b) Words denoting the singular number shall include the plural number and vice versa.

(c) Words denoting any gender shall include all other genders.

(d) A reference to a statute or a regulation also refers to any statute or regulation amending, or consolidating or re-enacting same.

(e) Money references are references to Australian currency.

(f) A reference to "**includes**", "**including**" or "**inclusive**" is to be construed as being a reference to "includes, without limitation", "including, without limitation", and "inclusive, without limitation" respectively.

(g) Headings used in this **Agreement** are for convenience and ease of reference only, and are not part of this **Agreement** and shall not be relevant or affect the meaning or interpretation of this **Agreement**.

(h) Every obligation, covenant, agreement, condition express or implied in this **Agreement** and entered into by more than one party shall bind them jointly and each of them severally.

(i) A provision of this **Agreement** shall not be construed adversely to the **Party** that drafted it.

(j) If any provision or part provision of this **Agreement** is held invalid, unenforceable or illegal for any reason, this **Agreement** shall remain otherwise in full force apart from such provision or part provision which shall be deemed deleted.

(k) The recitals, provisions and any schedule to this **Agreement** form part of this **Agreement** and shall be read in the following order of precedence: the recitals, the provisions of this **Agreement**; and thereafter any applicable third party term or condition.

(l) No remedy, expressly granted to **Airron™** excludes or shall be deemed to exclude or modify any other right or remedy which would otherwise be available to **Airron™**.

3. Customer's Right to Use Airron software

3.1 Subject to the terms of this **Agreement Airron™** grants **Customer** a revocable non-exclusive right to use **Airron software** for the **Duration** as follows. If

(a) a single machine licence is purchased then the licence is limited to a single machine.

(b) a single user licence is purchased then the licence is limited to a single user.

(c) a licence for multiple machines is purchased then the licence is limited to the number of concurrent machines so purchased.

(d) a licence for multiple users is purchased then the licence is limited to the number of concurrent users so purchased.

(e) a site licence is purchased then the licence is limited to machines and or users located at the site for which such a licence is purchased.

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(f)   an enterprise machine licence is purchased then the licence is limited to computers operated by the **Customer**.

(g)   an enterprise user licence is purchased then the licence is limited to all users working for that **Customer.**

3.2   **Airron™** shall, from time to time, provide access codes to permit **Customer** to use **Airron software**.

4.   Customer's Responsibilities

4.1   **Customer** shall:

(a)   pay the **Fees** specified in an invoice in one of the manners specified by **Airron™**;

(b)   keep its user accounts, passwords and activation codes details confidential and not disclose same to any other party. **Customer** shall be responsible for the use of same whether authorised by **Customer** or not. Should any such disclosure occur **Customer** shall report same to **Airron™** in writing as soon as possible;

(c)   provide equipment which **Airron™** considers suitable to use **Airron software**;

(d)   comply with **Airron™'s** Reasonable Use Policy which may be updated and changed from time to time and is currently located at http://[insert URL];

(e)   apply, without delay, all updates issued by **Airron™** from time to time to which it is entitled;

(f)   backup its data wherever same is stored;

(g)   agree to and comply with the terms and conditions of any third party software or services supplied by **Airron™** or made available with **Airron software** and or not use any such third party software or services;

(h)   comply with all applicable laws;

(i)   conduct all appropriate virus and security checks;

(j)   ensure that its customers, employees, sub-contractors and other agents who have authorised access to **Airron software** are made aware of the terms of this **Agreement**;

(k)   supervise and control the use of **Airron software** in accordance with the terms of this **Agreement**;

(l)   immediately advise **Airron™** in writing it becoming aware of any person using **Airron software** who is not authorised by **Airron™** to do so; and

(m)   train its staff in the use of **Airron software** and the internet.

4.2   **Customer** shall not:

(a)   copy, reproduce, translate, adapt, vary, modify, decompile, disassemble, reverse engineer, create derivative works of, sub-license, rent, lease, loan or distribute **Airron software** other than as expressly authorised by this **Agreement**;

(b)   engage in password sharing, remote desktop access or port aggregation without the express permission of **Airron™**;

(c)   exceed the licensed number of users or machines;

(d)   install, upload or execute any computer programs which have not been checked and are not expressly specified by **Airron™** as suitable;

     (e)   interfere with the network or disrupt any other user, service or equipment;

     (f)   permit any act which infringes the **Intellectual Property Rights** which subsist in **Airron software** and which belong to **Airron**™.

     (g)   provide or otherwise make available **Airron software** in any form to any other person;

     (h)   use **Airron software** for any illegal, unauthorised or dangerous purpose including unsolicited commercial e-mail;

     (i)   use **Airron software** for or in connection with a service bureau operation; or

     (j)   use **Airron software** to publish any material of which it is not the **Intellectual Property Right** owner or licensed by the **Intellectual Property Right** owner or is defamatory.

5. Supplier's rights

5.1   **Airron**™ may, whilst being under no obligation to do so and at its sole discretion, without notice or giving any reason or incurring any liability for doing so:

     (a)   delete, remove or refuse to publish any material which is, in its sole opinion, without limitation,:

          (i)   dangerous;

          (ii)   found in an unauthorised area;

          (iii)   excessive in volume;

          (iv)   unauthorised;

          (v)   uncollected for an excessive period;

          (vi)   unlawful;

          (vii)   in breach of **Airron**™**'s** Reasonable Use or Publishing Policy; and

     (b)   take action if it suspects that malicious, illegal or unacceptable usage of **Airron software** is occurring or has occurred, including destruction or disposal of **Customer's** access passwords.

6. Disclaimer & Acknowledgments

6.1   **Customer** acknowledges that:

     (a)   customer relationship management, instant job scheduling, invoicing, stock control, process management and online credit payment are complex areas and **Airron software** is not designed as a substitute in any way for professional advice. **Customer** shall obtain appropriate professional advice before using **Airron software**;

     (b)   supplied with **Airron software** are certain notes and instructions and a failure to follow those instructions or notes carefully could result in erroneous data being produced or actions being taken or not taken by **Airron software**;

     (c)   whilst **Airron software** may be used by persons without a detailed knowledge of computers, **Airron software** is designed to be used by persons who are familiar with instant job scheduling, invoicing, stock control, process management and online credit payment. **Customer** shall check all data stored or provided by **Airron software** for any anomalies and compliance with law;

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        (d)   **Airron software** does not check for all anomalies and data incorrectly entered may be processed without question;

        (e)   **Airron software** does not necessarily comply with any standard or legislation;

        (f)   **Airron software** is licensed on the strict understanding that, subject to the warranties below, **Airron™** is not responsible for the results of any actions taken, either by **Customer** or a third party relying on data supplied or not supplied by **Airron software**;

        (g)   **Airron™** cannot and does not warrant that **Airron software** shall be available 24 hours a day or that any defect shall be corrected within a specific time frame;

        (h)   **Airron software** is not necessarily secure, virus free or without defect; and

        (i)   **Airron™** is not responsible for:

                (i)   ensuring that **Airron software** is suitable for **Customer's** requirements or fit for any purpose;

                (ii)   any interruption to **Airron software** due to equipment failure, the need for routine maintenance, service upgrades, peak demand etc;

                (iii)   the supply or maintenance of **Customer's** equipment, software or telephone lines;

                (iv)   monitoring, controlling or ensuring the accuracy, appropriateness or content of any information on the internet and does not do so; and

                (v)   any software available on the internet or supplied by third parties.

7. Support

7.1   **Airron™** may, from time to time, make available various support services and other assistance in relation to **Airron software**.

7.2   Should **Customer** wish to use such services then **Customer** shall pay the then published rate of **Airron™** in relation to such services. Such services are supplied pursuant to the terms and conditions set out in this **Agreement**.

8. Intellectual Property Rights

8.1   **Airron™** retains the **Intellectual Property Rights** in **Airron software** and the trade marks **Airron** and **iServiceCRM** and **Q3**.

8.2   **Customer** shall retain the **Intellectual Property Rights** in all materials supplied by **Customer** to **Airron™**, however, nothing in this **Sub-clause** grants **Customer** the right to download any **Confidential Client Data Information** until all **Fees** are paid in full.

9. Confidential Information

9.1   To the extent that **Confidential Information** is not in the public domain (other than by way of breach of this **Agreement**) and is not known by the **Customer** at the time of disclosure, **Customer**:

        (a)   shall:

                (i)   keep such information confidential;

                (ii)   take all necessary precautions to prevent any disclosure of **Confidential Information** to unauthorised third parties; and

                (iii)   inform **Airron™** of any suspected or actual disclosure of **Confidential Information**; and

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      (b)   shall not, without the express written consent of **Airron™**:

           (i)   directly or indirectly divulge or communicate or otherwise disclose any **Confidential Information**, in whole or part to any third party;

           (ii)   use any **Confidential Information**, other than for the express purpose set out in this **Agreement**; or

           (iii)   remove or cause to be removed from **Airron™'s** systems any **Confidential Information**.

9.2   This **Clause** shall survive the termination of this **Agreement**.

10.   Confidential Client Data Information

10.1   To the extent that **Confidential Client Data Information** is not in the public domain (other than by way of breach of this **Agreement** and is not known by **Airron™** at the time of disclosure, **Airron™**:

      (a)   shall keep such information confidential;

      (b)   shall not, without the express written consent of **Customer**:

           (i)   directly or indirectly divulge or communicate or otherwise disclose **Confidential Client Data Information**, in whole or part to any third party; or

           (ii)   use **Confidential Client Data Information** for its own purposes;

10.2   This **Clause** shall survive the termination of this **Agreement**.

11.   Fees

11.1   **Customer** shall pay **Airron™** the **Fees** without withholding, deduction or offset of any amounts for any purpose.

11.2   **Airron™** may increase the **Fees** at any time upon 90 days' notice.

11.3   An account rendered by e-mail or otherwise by **Airron™** shall be prima facie evidence for a Court of the provision of the items referred to in same to **Customer** by **Airron™**.

12.   Tax

12.1   Unless expressly stated to the contrary and to the extent permitted by law:

      (a)   the **Fees** are exclusive of all **Taxes** which may arise in relation to the subject matter of this **Agreement**;

      (b)   **Customer** shall immediately pay any applicable **Taxes** to **Airron™**; and

      (c)   **Customer** shall indemnify and keep indemnified **Airron™** from payment of the **Taxes** and any penalties arising from non-payment of same.

13.   Interest

13.1   **Customer** shall pay **Airron™** interest at the **Interest Rate** on all overdue amounts from the due date until payment is made.

14.   Suspension of Obligations

14.1   If **Customer** breaches any provision of this **Agreement Airron™** may, without further notice to **Customer**,

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      (a)   suspend all its obligations to **Customer** under this **Agreement**;

      (b)   disable **Airron software** using time out codes, remote access or other technological measures; and or

      (c)   withdraw any discount which was otherwise applicable to the **Fees**.

15. Force Majeure

15.1 **Airron™** shall not be liable for any delay or failure to perform its obligations if such a failure or delay is due to **Force Majeure**.

16. Limited Warranty

16.1 **Airron™** shall supply **Airron software** with all due care and skill.

16.2 **Airron™** shall re-supply **Airron software** which are not supplied in accordance with this **Clause** provided that **Customer** notifies **Airron™** of same within a reasonable time. This remedy shall be **Customer's** sole and exclusive remedy for breach of this **Agreement** or any other cause of action against **Airron™**.

17. Limitation of Liability

17.1 To the extent permitted by law and except as expressly provided to the contrary in this **Agreement**, all warranties whether express, implied, statutory or otherwise, relating in any way to the subject matter of this **Agreement** or to this **Agreement** generally, are excluded. Where legislation implies in this **Agreement** any condition or warranty and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or the exercise of or liability under such term, such term shall be deemed to be included in this **Agreement**. However, the liability of **Airron™** for any breach of such term shall be limited, at the option of **Airron™**, to any one or more of the following: if the breach related to goods: the replacement of the goods or the supply of equivalent goods; the repair of such goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired; and if the breach relates to services the supplying of the services again; or the payment of the cost of having the services supplied again.

17.2 To the extent permitted by law and except as expressly provided to the contrary in this **Agreement**, **Airron™** shall not be under any liability (contractual, tortious or otherwise) to **Customer** in respect of any loss or damage (including consequential loss or damage) howsoever caused, which may be suffered or incurred or which may arise directly or indirectly in respect to the supply of goods or services pursuant to this **Agreement** or an act, failure or omission of **Airron™**.

17.3 **Customer** warrants that it has not relied on any representation made by **Airron™** or upon any descriptions or illustrations or specifications contained in any document including any catalogues or publicity material produced by **Airron™**.

18. Indemnity

18.1 To the extent permitted by law, **Customer** shall release, indemnify and keep indemnified **Airron™**, its officers, employees and agents, against any injury, death, damage, loss, costs (including legal costs on an indemnity basis), expenses, interest, taxes or liability whether direct or indirect and whether sustained by **Airron™**, **Airron™'s** officers, employees and agents, **Customer**, **Customer's** officers, employees and agents or a third party arising out of:

      (a)   a breach of this agreement by **Customer**;

      (b)   any wilful, unlawful or negligent act or omission of **Customer**, its officers, employees or agents;

      (c)   any injury suffered by **Customer's** officers, employees or agents; and

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      (d)   the discharge of **Customer's** obligations pursuant to this **Agreement**.

18.2   This indemnity applies regardless of whether or not legal proceedings are instituted.

18.3   This indemnity applies to any payment, settlement, compromise or determination regardless of whether same is authorised or not.

18.4   It is not necessary to incur any expense or make any payment before enforcing any right of indemnity under this **Agreement**.

18.5   This clause survives termination of this **Agreement**.

19.   Waiver

19.1   No right of **Airron™** under this **Agreement** shall be deemed to be waived except by notice in writing signed by **Airron™**.

19.2   Such a waiver by **Airron™** shall not prejudice its rights in respect of any subsequent breach of this **Agreement** by **Customer**.

19.3   Any failure by **Airron™** to enforce any provision of this **Agreement**, or any forbearance, delay or indulgence granted by **Airron™** shall not be construed as a waiver of **Airron™'s** rights.

20.   Survival

20.1   The provisions of this **Agreement** which are capable of having effect after the expiration of this **Agreement** shall remain in full force and effect following the expiration of this **Agreement**.

21.   Assignment, Novation and Sub-Contracts

21.1   **Customer** shall not sub-contract, sub-licence, assign or novate, in whole or part, any entitlement or obligation under this **Agreement** without the prior written consent of **Airron™**.

21.2   **Airron™** may:

      (a)   sub-contract for the performance or part performance of this **Agreement**; and

      (b)   assign this **Agreement** to a third party without notice and in such circumstances, **Airron™'s** rights and obligations under this **Agreement** shall be immediately terminated upon assignment.

22.   Notices

22.1   Notices under this **Agreement** may be delivered by hand, by mail or by facsimile to the addresses specified from time to time by the **Parties**.

22.2   Notices shall be deemed given in the case of:

      (a)   hand delivery, upon written acknowledgment of receipt by an officer or other duly authorised employee, agent or representative of the receiving party;

      (b)   email, immediately upon acceptance of same from a machine outside the control of the sender;

      (c)   posting, 3 days after dispatch; and

      (d)   facsimile, upon completion of transmission.

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23. Early Termination

23.1 If **Customer** accepts an offer from **Airron™** which is for a fixed period and before that fixed period has expired terminates this **Agreement** then **Customer** shall pay **Airron™** by way of liquidated damages the full amount remaining to be payable for that fixed period.

23.2 The **Parties** agree that amount is a genuine pre-estimate of the loss or damage which **Airron™** would suffer in such circumstances.

24. Termination

24.1 **Airron™** may terminate this **Agreement** immediately by notice if:

(a)   any payment due from **Customer** to **Airron™** remains unpaid for a period of 14 days;

(b)   **Customer** breaches any provision of this **Sub-clause** and such breach is not remedied within 14 days of notice by **Airron™**;

(c)   **Customer** becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration;

(d)   **Customer**, being a partnership, dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving;

(e)   **Customer** being a natural person, dies; or

(f)   **Customer** ceases or threatens to cease conducting its business in the normal manner.

24.2 In addition to terminating this **Agreement, Airron™**:

(a)   may disable **Airron software** using time out codes, remote access or other technological measures;

(b)   may retain any moneys paid;

(c)   may charge a reasonable sum for any un-invoiced items;

(d)   shall be regarded as discharged from any further obligations under this **Agreement**;

(e)   shall be under no liability to **Customer** for damages or compensation or any other payment whatsoever;

(f)   may immediately erase all **Confidential Client Data Information** stored by **Airron™**; and

(g)   may pursue any additional or alternative remedies provided by law.

25. Entire Agreement

25.1 Unless stated expressly to the contrary in this **Agreement**:

(a)   this **Agreement** constitutes the entire agreement between the **Parties** for the subject matter referred to in this **Agreement**. Any prior arrangements, agreements, representations or undertakings are superseded;

(b)   this **Agreement** is not to be construed as creating a joint venture, partnership or agency situation between the **Parties**. No **Party** may represent that there exists such a relationship between the **Parties**;

(c)   no **Party** may bind the other **Party** to any agreements, arrangements, contracts or understanding or represent that they have such authority; and

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    (d)   no modification or alteration of any provision of this **Agreement** shall be valid except in writing signed by each **Party** save that **Airron™** may on 30 days notice change any term of this **Agreement** and in such a case **Customer** may terminate this **Agreement** during that notice period without further obligation.

26.   Governing Law

26.1 This **Agreement** shall be governed by and construed according to the law of Victoria, Australia.

26.2 The **Parties** irrevocably submit to the exclusive jurisdiction of the courts of Victoria, Australia and the Commonwealth of Australia and any courts hearing appeals from such courts. Any proceedings in a Commonwealth court shall be commenced in Victoria, Australia.