

## FLOORSIGHT VIRTUAL END USER LICENCE AGREEMENT (“EULA”)

THIS IS A LICENCE BETWEEN YOU AND FLOORSENSE LIMITED, A NEW ZEALAND COMPANY LOCATED AT UNIT 403, IRONBANK, 150 KARANGAHAPE ROAD, AUCKLAND 1010 (“**Floorsense**”).

BY CLICKING THE “I ACCEPT” BUTTON AND/OR USING THE SYSTEM, YOU ACCEPT ALL OF THE TERMS AND CONDITIONS IN THIS EULA ON BEHALF OF YOURSELF AND, IF APPLICABLE, YOUR EMPLOYER, COMPANY OR OTHER ORGANISATION FOR WHOSE BENEFIT YOU ARE USING THE SYSTEM (“**Customer**”), THEREBY FORMING A LICENCE BETWEEN THE CUSTOMER AND FLOORSENSE.

IF YOU ARE ACCEPTING THIS EULA ON BEHALF OF A CUSTOMER, YOU PERSONALLY WARRANT AND REPRESENT THAT YOU HAVE FULL AUTHORITY TO LEGALLY BIND THAT CUSTOMER TO THIS EULA.

IF YOU DO NOT ACCEPT THE TERMS AND CONDITIONS OF THIS EULA, OR DO NOT HAVE FULL AUTHORITY TO BIND THE CUSTOMER, DO NOT CLICK “I ACCEPT” AND DO NOT USE OR ACCESS THE SYSTEM.

Floorsense (and its Related Companies) designed, own and operate the Floorsight Virtual System. The Floorsight Virtual System contains and uses software and applications.

### DEFINITIONS

1.1 In this EULA, the following words will have the following meanings:

“**Contract Period**” means the period for which the Customer has purchased and continues to maintain a valid licence to access the System via the Distributor;

“**Distributor**” means the authorised distributor/reseller and support provider from whom the Customer purchased access to the System, or such other authorised support provider that Floorsense may appoint to replace them from time to time;

“**Documentation**” means operating manuals, user guides, specifications and other printed or electronic materials relating to the System and officially published by Floorsense or its Related Companies from time to time for general availability to licensees or end-users of the System;

“**Floorsense’s Infringement Warranty**” has the meaning given to that term in clause 4.9;

“**Floorsense’s Specification Warranty**” has the meaning given to that term in clause 4.1;

“**Intellectual Property Rights**” means all industrial and intellectual property rights whether conferred by statute, at common law or in equity in or relating to the System, the Documentation, or any part of them, including, but not limited to, all copyright and similar rights that may subsist in works or other subject matter, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs (whether or not registrable), rights in relation to databases, rights in relation to semi-conductor topographies or integrated circuit layouts, rights in relation to registered and unregistered trade marks, business names and rights in relation to domain names;

“**Permitted Person**” means any employee or contractor of the Customer and any person visiting or entering the Customer’s premises under the express or implied authority of the Customer;

“**Permitted Use**” means use of the System and Documentation for the purpose of work space reservation, user tracking, occupation analytics, enforcing physical distancing, contact tracing, and generating data and reports for workspace planning and complying with Government requirements relating to COVID 19;

“**Related Companies**” means Agile Workspace Limited, Cloudstore Limited and any other “related company” as defined in the Companies Act 1993 (NZ);

“**System**” means all software, firmware, applications and computer code (in both source and object code form) within the Floorsight Virtual system, including without limitation, the master controller software, the applications installed on any kiosks, the applications installed on end user devices such as iPhones and the administrator/system management software and also includes all Upgrades; and

“**Upgrades**” means any releases, patches, bug-fixes, upgrades, improvements, developments, new versions, new features or other updates of any of the System released by Floorsense from

time to time, either for general availability to licensees of the System or developed for specific customers of Floorsense.

## **2. LICENCE**

- 2.1 For the Contract Period, Floorsense grants to the Customer and the Customer accepts, a non-exclusive, non-transferable licence to use the System and Documentation solely for the Permitted Use, and only with the QR and work point codes and labels generated for the Customer by Floorsense.
- 2.2 The Customer must not permit any person who is not a Permitted Person to access or use the System or Documentation, and may not disclose the System or Documentation to any person who is not a Permitted Person. The Customer will be liable for all acts or omissions of its Permitted Persons as if they were the acts or omissions of the Customer.
- 2.3 The Customer warrants and undertakes that it will obtain all necessary consents and authorisations from all Permitted Persons who use the System in accordance with applicable privacy and data protection laws. The Customer will at all times indemnify and keep indemnified Floorsense and its Related Companies and their respective directors, employees, contractors, suppliers and agents from and against any and all liability, losses, damages, costs and expenses of any nature whatsoever awarded against, incurred or suffered by them, whether direct or consequential (including, but without limitation, any economic loss or other loss of profits, business opportunity, data or goodwill), arising out of any breach of this clause by the Customer.

## **3. RESTRICTIONS ON USE**

- 3.1 The Customer may not:
  - (a) translate, decompile, reverse engineer, reverse compile, reverse assemble or in any manner attempt to derive the source code of the System (or any part of it), or directly or indirectly allow or cause a third party to do so, except to the extent expressly permitted under applicable law;
  - (b) copy the System or Documentation (or any part of the System or Documentation) by any means or in any form, without Floorsense's prior written consent;
  - (c) attempt to defeat or circumvent any hardware or software lock or licence key or code provided with, or incorporated within, the System;
  - (d) merge all or any part of the System with any other software;
  - (e) modify, adapt, customise, enhance or alter the System or allow anyone other than Floorsense to do so, without Floorsense's prior written consent, except to the extent expressly permitted under applicable law;
  - (f) attempt to devise alternate software that eliminates the need for any part of the System, or
  - (g) sell, sub-license, rent, lease or otherwise distribute the System or Documentation (or any part of the System or Documentation) to any other person, without the prior written consent of Floorsense.
- 3.2 The Customer will:
  - (a) be solely responsible for the use of, access to and supervision, management and control of the System and Documentation and all copies of any part of the System and Documentation;
  - (b) effectively protect the System and Documentation, and all copies of any part of the System and Documentation, at all times from misuse, damage, theft, destruction or any form of unauthorised use or access, including by implementing effective and appropriate security measures;
  - (c) retain the System and Documentation, and all copies of any part of the System and Documentation, under its effective control; and
  - (d) only access and use the System strictly in accordance with the Documentation and any other normal operating procedures for the System published by Floorsense from time to time.
- 3.3 The Customer may not remove, deface or obscure any notices provided on or within the System or Documentation as to the ownership of the System or Documentation by Floorsense, its Related Companies or its licensors.

- 3.4 The Customer acknowledges that any breach of clauses 2.2 or 3.1 to 3.3 may cause Floorsense irreparable harm for which damages would not be an adequate remedy. In addition to any other remedy available to it, Floorsense may seek equitable relief (including injunctive relief or specific performance) against any breach or threatened breach of any of clauses 2.2 or 3.1 to 3.3 by the Customer.

#### **4. WARRANTY, SUPPORT AND MAINTENANCE, LIABILITY**

##### **Floorsense's Specification Warranty**

- 4.1 Floorsense warrants that for the Contract Period, the System will operate substantially in accordance with the published specifications for that System. During the Contract Period, if a Product does not operate substantially in accordance with the relevant specifications, then, subject to compliance with clauses 4.2 to 4.6 below, Floorsense will use commercially reasonable endeavours to either rectify the defect or provide a replacement for the System (or part of the System) ("**Floorsense's Specification Warranty**").
- 4.2 To claim under Floorsense's Specification Warranty, the Customer must notify the Distributor in writing of the defect. Floorsense has appointed the Distributor as its agent to be the first point of contact for the Customer for First and Second Level Support of the System.
- 4.3 When notifying the Distributor of a defect under clause 4.2, the Customer will provide the Distributor with a documented example of such defect and as much information about the defect as practicable.
- 4.4 The Distributor (acting as Floorsense's agent) will investigate the reported defect. Subject to clause 4.11, the Distributor will, upon verifying the defect, use commercially reasonable endeavours to either rectify such defect or provide a replacement of the relevant System (or part or component of the System), without additional charge to the Customer.
- 4.5 Where the Distributor has been unable to rectify the defect after providing First and Second Level Support to the Customer under clause 4.4, the Customer may contact Floorsense to escalate the defect and request Third Level Support. Floorsense's contact details are provided in clause 7.1 below, or as updated from time to time on the [www.floorsense.co.nz](http://www.floorsense.co.nz) website. Floorsense will investigate the escalated defect. Subject to clause 4.11, Floorsense will, upon verifying the existence of the defect, use commercially reasonable endeavours to either rectify such defect or provide a replacement of the relevant System (or part or component of the System), without additional charge to the Customer.
- 4.6 To validly claim under Floorsense's Specification Warranty, the Customer agree must:
- (a) review and follow the Floorsense Virtual self-help, troubleshooting and support Documentation published at [[support.smartalock.com](http://support.smartalock.com)] before escalating a defect to Floorsense for Third Level Support;
  - (b) be responsible for any expenses or costs incurred in making the claim, including any costs associated with contacting the Distributor or Floorsense; and
  - (c) fully co-operate with the Distributor and Floorsense when they are investigating and rectifying reported defects, including by allowing the Distributor and Floorsense full access to relevant premises and systems.
- 4.7 Unless the Customer has entered into a separate extended support agreement directly with Floorsense, and subject to clause 4.19, the obligations under clauses 4.4 and 4.5 will be Floorsense's sole obligation, and the Customer's sole remedy, in the event of defect, issue or problem with any System or any failure of any of the System to operate in accordance with the relevant specifications.
- 4.8 To the maximum extent permitted under applicable law, Floorsense makes no warranty that the operation of any System will be completely error-free or uninterrupted, and the Customer acknowledges and agrees that the existence of such errors or interruptions will not constitute a breach of this EULA.

##### **Floorsense's Infringement Warranty**

- 4.9 Floorsense warrants to the Customer that to the best of its knowledge, the use of the System by the Customer in accordance with the Documentation will not infringe the intellectual property

rights of any third party. If there is a breach of such warranty, Floorsense will indemnify the Customer in accordance with clause 4.10 (“**Floorsense’s Infringement Warranty**”).

- 4.10 Subject to clause 4.11 and 4.13, Floorsense will indemnify the Customer against any and all losses, costs, expenses, demands and liabilities incurred or suffered by the Customer arising directly from a breach of Floorsense’s Infringement Warranty, provided that if the Customer wishes to be indemnified under this clause 4.10 it must:
- (a) promptly notify Floorsense of any relevant claim or legal proceeding and make no admission or settlement without Floorsense’s prior written consent;
  - (b) allow Floorsense to participate in and control any defence, compromise, settlement, resolution or disposition of such claim or proceeding and if Floorsense elects to conduct the defence of such claim or proceeding, the Customer must:
    - (i) provide Floorsense with reasonable assistance and information in conducting the defence of such claim or proceeding (including by ensuring the Customer’s directors, employees, agents or sub-contractors give such advice, evidence or statements as Floorsense may reasonably request); and
    - (ii) give Floorsense the sole control of, and the complete authority to conduct, the defence of such claim or proceeding and to negotiate and settle such claim or proceeding, as Floorsense may determine in Floorsense’s absolute discretion; and
  - (c) allow Floorsense to either:
    - (i) modify or substitute the infringing part of the System to avoid continuing infringement; or
    - (ii) obtain the authority to enable the Customer to continue to possess and use the relevant part of the System, at Floorsense’s option and expense.

4.11 Subject to clause 4.19, Floorsense will not be liable for a breach of Floorsense’s Specification Warranty or Floorsense’s Infringement Warranty, and will not indemnify the Customer under clause 4.10, to the extent that any defect, fault or infringement, or suspected defect, fault or infringement is caused or contributed to by any:

- (a) use or operation of the System not in accordance with the Documentation or not reasonably contemplated by Floorsense;
- (b) failure by the Customer to follow the Floorsight self-help, troubleshooting and support Documentation published at [support.smartalock.com](http://support.smartalock.com);
- (c) faults, problems, changes or outages in or to any IT, WIFI or other system or any other software that adversely affects the operation of the System, including without limitation, reboots or changes to the Customer’s networks, upgrades to non-Floorsense software or changes to firewalls preventing access to the system;
- (d) faults, problems, changes or outages outside of Floorsense’s control, such as Acts of God or changes to Customer premises;
- (e) improvements, modifications, additions, customisations, enhancements, developments, patches releases, bug fixes or changes in or to any System, other than those made by Floorsense;
- (f) use or interoperation of any System with any other computer programs or software;
- (g) any negligent act or omission of the Distributor, the Customer or their personnel or any other third party;
- (h) any incorrect configuration or installation of the System, except where such incorrect configuration or installation is caused by Floorsense or the Distributor;
- (i) any virus, worm, trojan horse, backdoor, time-lock or any other malicious or disabling code, unless introduced by Floorsense;
- (j) any hardware, equipment, desks, accessories, attachments, supplies, consumables or other items of the Customer or the Distributor not supplied by Floorsense; or
- (k) operator errors.

Floorsense reserves the right to charge for time spent by Floorsense personnel on reported defects that are caused or contributed to by any of the matters listed in this clause 4.11.

#### **Additional guarantees under consumer laws**

4.12 The New Zealand Consumer Guarantees Act 1993 and the Australian Competition and Consumer Act 2010 (including the Australian Consumer Law 2011), as well as other laws in those jurisdictions (“Consumer Law”), guarantee or imply certain conditions, warranties and

undertakings, and give consumers other legal rights, in relation to the quality and fitness for purpose of certain products sold in New Zealand and Australia respectively.

- 4.13 For products sold in New Zealand, if the Customer is in trade and acquiring the Products in trade, the customer agrees that the New Zealand Consumer Guarantees Act 1993 and sections 9, 12A, 13 and 14(a) of the Fair Trading Act 1986 will not apply, and that it is fair and reasonable that it is bound by the provisions of this clause.
- 4.14 For products sold in Australia, our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 4.15 The benefits given by Floorsense's Specification Warranty and Floorsense's Infringement Warranty are in addition to any other rights and remedies the Customer may have under the Consumer Law applicable to the purchase of the licence to use the System. Except as otherwise provided by Floorsense's Specification Warranty and Floorsense's Infringement Warranty above, all warranties, terms, conditions, guarantees or similar, other than those which cannot be excluded under applicable Consumer Law, are expressly excluded by Floorsense to the extent legally permitted.

#### **Floorsense's liability**

- 4.16 To the maximum extent permitted under applicable law, Floorsense is not responsible for any loss or corruption of any data or information caused or contributed to by the System or use of the Documentation.
- 4.17 To the maximum extent permitted under applicable law, in no event will Floorsense be liable (whether in contract, tort including negligence, or otherwise) to any Customer for:
  - (a) loss of revenue and/or profit, loss of anticipated savings, loss of goodwill or opportunity, loss of production, business interruption, loss or corruption of data or wasted management or staff time; or
  - (b) loss, damage, cost or expense of any kind whatsoever that is indirect, consequential, or of a special nature,arising directly or indirectly out of the System, even if Floorsense had been advised of the possibility of such damages, and even if such loss, damage, cost or expense was reasonably foreseeable by Floorsense.
- 4.18 Subject to clauses 4.17 and 4.19, the maximum liability of Floorsense to the Customer arising out of Floorsense's Specification Warranty, Floorsense's Infringement Warranty, this EULA, or otherwise relating to the System or Documentation, will not exceed NZD5000.00.
- 4.19 None of the exclusions or limitations in this EULA will have the effect of limiting or excluding any liability to the extent such liability cannot be so limited or excluded by applicable law. Where Floorsense cannot legally limit its liability as provided in clauses 4.16 to 4.18 under applicable law, if permitted by such applicable law, Floorsense limits its liability under the Specification Warranty, the Infringement Warranty and any other implied guarantee that cannot be lawfully excluded, to (at Floorsense's election):
  - (a) replacement of the System;
  - (b) repair of the System;
  - (c) payment of any cost of replacing the System or of acquiring equivalent products; or
  - (d) payment of the cost of having the System repaired.

## **5. INTELLECTUAL PROPERTY RIGHTS**

- 5.1 The Customer acknowledges that:
  - (a) Floorsense, its Related Companies or its licensors own the System and Documentation and all the Intellectual Property Rights;
  - (b) the System and Documentation are and contain valuable confidential and proprietary information of Floorsense, its Related Companies and its licensors; and
  - (c) no licence, right or other interest in the System, Documentation or any Intellectual Property Rights is granted to the Customer, except as expressly stated in this EULA.

5.2 All improvements, modifications, customisations, enhancements or developments in or to the System or Documentation made by Floorsense or the Customer (“Improvements”) and all intellectual property rights in and to them, will be owned by Floorsense, its Related Companies or its licensors. The Customer agrees to execute all documents and do all things necessary to vest legal ownership of the intellectual property rights in such Improvements in Floorsense or its licensors.

## **6. TERM AND TERMINATION**

6.1 Subject to clause 6.2, this EULA will commence on the earlier of the date that the Customer:

- (a) first uses any part of the System; or
- (b) receives any QR or work point codes or labels generated for the Customer by Floorsense, and remain in full force and effect until the expiry of the Contract Period.

6.2 Floorsense may terminate this EULA and the licence granted under it at any time if the Customer:

- (a) fails to comply with any of the terms of this EULA;
- (b) ceases or threatens to cease to carry on its business, becomes bankrupt or insolvent, is unable to pay its debts as they fall due, enters into a general assignment of its indebtedness or a scheme of arrangement or composition with its creditors, or takes or suffers any similar action in consequence of debt;
- (c) has a trustee, manager, administrator, administrative receiver, receiver, inspector under any other legislation or similar officer appointed in respect of the whole or any part of the Customer’s assets or business, or enters into liquidation (other than voluntarily for the purpose of a solvent amalgamation or reconstruction);
- (d) being an individual, dies or is physically incapacitated; or
- (e) being a partnership, is dissolved.

6.3 Upon termination or expiry of this EULA, the Customer will stop using the System and Documentation and will at Floorsense’s option, but at the Customer’s cost, return or destroy all copies of the System and Documentation in the Customer’s possession or control.

6.4 Clauses 3, 4.8, 4.11 to 4.19, 5 and 6 will survive termination or expiry of this EULA for any reason.

## **7. GENERAL**

7.1 Floorsense may be contacted at:

Unit 403, 150 Karangahape Road, Auckland Central 1010, New Zealand

Phone: +64 9 280 4521

E-mail: [info@floorsen.se](mailto:info@floorsen.se)

7.2 The Customer may not assign, transfer or sub-license this EULA, or its rights and obligations under it, without Floorsense’s prior written consent.

7.3 If any provision of this EULA is held invalid, unenforceable or illegal for any reason, this EULA will remain otherwise in full force apart from such provisions, which will be deemed deleted.

7.4 All variations of this EULA must be in writing and signed by authorised representatives of both parties.

7.5 No failure or delay by either party to exercise any right or remedy under this EULA will be treated as a waiver of such right or remedy. No single or partial exercise of any right or remedy will present the further exercise of such right or remedy.

7.6 This EULA shall be governed by and construed in accordance with New Zealand law. Floorsense and the Customer irrevocably agree that New Zealand courts will have non-exclusive jurisdiction to hear and determine all disputes under or in relation to the System or this EULA. Floorsense and the Customer waive any objections to New Zealand as the forum for proceedings on the grounds of forum non-conveniens or otherwise.