

## END USER LICENSE AGREEMENT

ITRS Group Limited, incorporated and registered in England and Wales with registered office at 15 Bonhill Street, London, EC2A 4DN ("ITRS") is willing to licence certain software applications and platforms (collectively the "**Services**") and user documentation ("**Documentation**") which it makes available to users who register via <https://capacity-planner.itrsgroup.com/> or any other website notified to users by ITRS from time to time (the "**Website**"). The Services are described in more detail on the Website and in the Documentation.

These terms and conditions are divided into two sections – Sections A and B.

Section A contains terms and conditions that apply to all users of the Services. Where you are using the Services as an authorised user under a specific agreement that your employer, your principal or client has or have entered with ITRS (a "**Customer Agreement**") then the terms of that Customer Agreement regulate the legal rights and responsibilities between ITRS, you, your employer, your principal or client (as appropriate) in relation to those Services and you agree to abide by the terms of that Customer Agreement. In those circumstances, the terms and conditions contained within Section A are additional terms which apply to you as a user of the Services and these terms are subject to the terms of the Customer Agreement which take precedence in the case of conflict or ambiguity.

Section B applies only where the Services are being provided on a free trial basis and no Customer Agreement is in place. In these circumstances, the terms of both Sections A and B apply.

You wish to use the Services. By clicking the "I Accept" button displayed as part of the registration process, you agree to use the Services subject to the terms and conditions set out in Section A and, where appropriate, Section B, together with any other policies referenced in the terms and conditions (together the "**Agreement**"). If you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to this Agreement, in which case the terms "you" and "your" shall refer to such entity.

## AGREED TERMS

### SECTION A - TERMS AND CONDITIONS APPLYING TO ALL USERS

#### 1 Interpretation

*This clause explains the meaning of terms used in this Agreement.*

- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement.
  - 1.1.1 "**Business Day**" means any day which is not a Saturday, Sunday or public holiday in England;
  - 1.1.2 "**Development Environment**" means an environment in which the Software may be used for evaluation purposes only;
  - 1.1.3 "**Effective Date**" means the date upon which you click "I Accept" button, or on which ITRS otherwise gives you access to the Services;
  - 1.1.4 "**Objective**" means evaluation of the Software in a Development Environment or Test Environment for the purpose of deciding whether or not to enter into a full licence with ITRS for use of the Software in your business and for development of your own applications and interfaces, provided that in no event shall you be permitted to use the Software for any purpose in a Production Environment or in connection with Production Data;
  - 1.1.5 "**Production Data**" means any data, including but not limited to information, figures, statistics, records, documents or results, derived directly or indirectly from a Production Environment. For the avoidance of doubt, this may include data from a Development Environment or Test Environment where it originates from current or historic data from a Production Environment and either (i) the business derives benefit, or (ii) commercial value may be extracted as a result of the use of the Software;
  - 1.1.6 "**Production Environment**" means the environment in which you may deploy software for your business purposes. It is not a Development Environment or a Test Environment;
  - 1.1.7 "**Software**" means the online software application(s) provided by ITRS as part of the Services which may be downloaded and installed in order to assist you to collect and upload Your Data for the purposes of using the Services;
  - 1.1.8 "**Test Environment**" means an environment in which the Software may be used in connection with testing or pre-production staging only;
  - 1.1.9 "**Your Data**" means the data inputted by you for the purpose of using the Services or facilitating your use of the Services.
- 1.2 Clause headings and clause preambles (in bold and italic text) shall not affect the interpretation of this Agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 A reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.8 A reference to writing or written includes e-mail but not faxes.
- 1.9 References to clauses are to the clauses of this Agreement.

## **2 User restrictions**

***This clause describes certain restrictions that apply to your use of the Services.***

- 2.1 You undertake that:
  - 2.1.1 you will not allow anyone else to use the Services and the Documentation; and
  - 2.1.2 you will keep a secure password for your use of the Services and Documentation and that you will keep your password confidential.

## **3 Your Data**

***This clause describes how ITRS may use Your Data.***

- 3.1 You hereby grant to ITRS and its contractors and agents a non-exclusive licence to use and process Your Data to the extent necessary to provide the Services.

## **4 Your obligations**

***This clause sets out your main obligations under this Agreement.***

- 4.1 You shall:
  - 4.1.1 provide ITRS with:
    - 4.1.1.1 all necessary co-operation in relation to this Agreement; and
    - 4.1.1.2 all necessary access to such information as may be required by ITRS, its contractors or agents;
  - in order to provide the Services;
  - 4.1.2 comply with all applicable laws and regulations with respect to your activities under this Agreement;
  - 4.1.3 carry out all your other responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in your provision of such assistance as agreed by the parties, ITRS may adjust any agreed timetable or delivery schedule as reasonably necessary;
  - 4.1.4 obtain and shall maintain all necessary licences, consents, and permissions necessary for ITRS, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;
  - 4.1.5 ensure that your network and systems comply with the relevant specifications provided by or on behalf of ITRS from time to time on the Website; and
  - 4.1.6 be solely responsible for procuring and maintaining your network connections and telecommunications links from your systems to the Services data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to your network connections or telecommunications links or caused by the internet.

## **5 Proprietary rights**

***This clause confirms ITRS's intellectual property rights in the Services, the Software and the Documentation.***

- 5.1 You acknowledge and agree that ITRS, its contractors and/or agents own all intellectual property rights in the Services, the Software and the Documentation. Except as expressly stated herein, this Agreement does not grant you any rights to, or in, patents, copyrights, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services, the Software or the Documentation.
- 5.2 ITRS confirms that it has all the rights in relation to the Services, the Software and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.
- 5.3 In the event that you are notified by a third party that that party claims rights in the Software or that use of the Software infringes any right of that third party, you agree to immediately notify ITRS and, at ITRS's request, to immediately cease use of the Software.

#### 5.4 You undertake

- 5.4.1 not to copy the Software except where such copying is incidental to normal use of the Software or where it is necessary for the purpose of back-up or operational security;
- 5.4.2 not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the Software or Documentation;
- 5.4.3 not to make alterations to, or modifications of, the whole or any part of the Software nor permit the Software or any part of it to be combined with, or become incorporated in, any other programs;
- 5.4.4 not to disassemble, de-compile, reverse engineer or create derivative works based on the whole or any part of the Software nor attempt to do any such things except to the extent that (by virtue of section 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the Software with another software program, and provided that the information obtained by you during such activities:
  - 5.4.4.1 is used only for the purpose of achieving inter-operability of the Software with another software program;
  - 5.4.4.2 is not disclosed or communicated without ITRS's prior written consent to any third party to whom it is not necessary to disclose or communicate it; and
  - 5.4.4.3 is not used to create any software which is substantially similar to the Software.

### 6 Temporary Suspension

***This clause allows ITRS to suspend the Services if you breach your obligations under the Agreement.***

- 6.1 Without prejudice to any other rights or remedies to which ITRS may be entitled, if you commit any breach of the Agreement, ITRS may immediately and without liability to you, disable your password, account and access to all or part of the Services, and ITRS shall be under no obligation to provide any or all of the Services until such breach or breaches are remedied by you.

### 7 Miscellaneous

***This clause contains miscellaneous provisions which apply to the terms of the Agreement.***

- 7.1 **Variation:** ITRS shall be entitled to amend these terms and conditions (and/or any of the policies referred to in these terms and conditions) by giving you at least 5 days' notice of writing (which notice may be given by email or by a notice on the Website). Your continued use of the Services after the expiry of the notice period shall be treated as being your acceptance of the amended terms and conditions or policies.
- 7.2 **Force Majeure.** ITRS shall have no liability to you 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 ITRS 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 you are notified of such an event and its expected duration.
- 7.3 **Waiver.** A waiver of any right under this Agreement 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 Agreement are cumulative and do not exclude rights provided by law.
- 7.4 **Severance.** If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 7.5 **Entire agreement.** This Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover. Each of the parties acknowledges and agree that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement other than as expressly set out in this Agreement.
- 7.6 **Assignment.** You shall not, without the prior written consent of ITRS, assign, transfer, charge, sub-contract or deal in any other manner with all or any of your rights or obligations under this Agreement. ITRS may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of your rights or obligations under this Agreement.
- 7.7 **No partnership or agency.** Nothing in this Agreement 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).

- 7.8 **Notices.** Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement (or such other address as may have been notified by that party for such purposes). A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by e-mail shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).
- 7.9 **Import and Export Compliance.** In connection with this Agreement, we will both comply with all applicable import, re-import, export, and re-export control laws and regulations. For clarity, you are solely responsible for compliance related to the manner in which you choose to use the Services (including the jurisdiction from which you use the Services), including your transfer and processing of Your Data.
- 7.10 **Governing law and jurisdiction.** This Agreement is made under English law and you agree to the exclusive jurisdiction of the English courts to settle any dispute. Notwithstanding the previous sentence, ITRS will be free to take action against you in the English courts or in the courts of any other country which has authority to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

## **SECTION B – TERMS AND CONDITIONS APPLYING TO SERVICES PROVIDED ON FREE TRIAL BASIS ONLY**

### **8 Limitation of free trial Services**

*This clause advises you that free trial Services may be limited and not error free.*

- 8.1 Given that the Services are being provided on a free trial basis, the underlying software and applications that are used to provide them may still be in testing and otherwise be restricted or limited in functionality and nature and may not be error free. You are advised to read carefully any notices on the Website concerning any such restrictions or limitations before using the Services.

### **9 User licence**

*This clause describes the terms of the licence granted to you to use the Services*

- 9.1 ITRS hereby grants to you a non-exclusive, non-transferable right to use the Services and the Documentation during the term of this Agreement solely for the purposes of the Objective. You acknowledge that the Software will, or may, automatically "time out" (that is to say, cease to operate) pursuant to Clause 10.1 or if this Agreement is terminated by ITRS pursuant to Clause 13.1.

### **10 Limited nature of Services**

*This clause explains that the Services are provided to you on a limited 'as available basis'.*

- 10.1 The Services are provided on an 'as available' basis subject to any specific restrictions or limitations described on the Website. ITRS may withdraw the Services and the Documentation, bringing the licences contained within this Agreement to an end, at any time without notice. No service levels are provided and you agree that this is reasonable given that ITRS makes the Services, the Software and the Documentation available to you under this Agreement without charge.

### **11 ITRS's obligations**

*This clause sets out ITRS's obligations in relation to the Services.*

- 11.1 ITRS:
- 11.1.1 does not warrant that your use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by you through the Services will meet your requirements; and
  - 11.1.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and you acknowledge that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 11.2 As the Services are provided on a free trial basis for the purposes of allowing you to evaluate them, you agree that ITRS will not have any liability to you in the event that the Services do not conform with the Documentation. You agree that this is reasonable in all the circumstances.
- 11.3 This Agreement shall not prevent ITRS from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.
- 11.4 ITRS will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

- 11.5 You acknowledge that the Services may be subject to limitations, delays and other problems inherent in the use of the internet and electronic communications, and ITRS is not responsible for any delays or delivery failures or other damage resulting from such problems (including but not limited to any failure or delay of ITRS's third party hosting provider).
- 11.6 Save as provided above, and to the fullest extent permitted by law, all representations, warranties, licences, conditions or terms (whether express or implied, statutory or otherwise) as to the quality of the Services and/or the Documentation, their fitness for any purpose, or in any other respect, are excluded.

## 12 Limitation of liability

*This clause limits ITRS's liability to you to what ITRS believes is a reasonable extent.*

- 12.1 This Clause 12 sets out the entire financial liability of ITRS (including any liability for the acts or omissions of its employees, agents and sub-contractors) to you:
- 12.1.1 arising under or in connection with this Agreement;
  - 12.1.2 in respect of any use made by you of the Services, Software and Documentation or any part of them; and
  - 12.1.3 in respect of any representation, statement or tortious/delictual act or omission (including negligence) arising under or in connection with this Agreement.
- 12.2 Except as expressly and specifically provided in this Agreement:
- 12.2.1 you assume sole responsibility for results obtained from the use of the Services, Software and the Documentation by you, and for conclusions drawn from such use. The Services involve predictions based on assumptions and while the Services should be used as a tool to guide conclusions, forecasted outcomes are not guaranteed. ITRS shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to ITRS by you in connection with the Services, or any actions taken by ITRS at your direction;
  - 12.2.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
  - 12.2.3 the Services, Software and the Documentation are provided to you on an "as is" basis.
- 12.3 Nothing in this Agreement excludes the liability of ITRS:
- 12.3.1 for death or personal injury caused by ITRS's negligence; or
  - 12.3.2 for fraud or fraudulent misrepresentation; or
  - 12.3.3 to the extent that such liability cannot be not limited or excluded by law.
- 12.4 Subject to Clauses 12.2 and 12.3:
- 12.4.1 ITRS shall not be liable whether in tort/delict (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, loss of anticipated savings, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement;
  - 12.4.2 ITRS's total aggregate liability in contract, tort/delict (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall not exceed a total sum of £1,000 and you expressly agree that this limit is reasonable given the basis upon which the services are being provided to you under this Agreement; and
  - 12.4.3 you acknowledge that the Services are hosted by third party service provider(s) ("**Third Party Provider(s)**"). Notwithstanding Clause 12.4.2, to the extent that any claim arises out of an act, error, omission or negligence by any such Third Party Provider(s), ITRS's aggregate liability to its customers shall not exceed the total liability of such Third Party Provider(s) (if any) to ITRS in respect of such act, error, omission or negligence.
- 12.5 You shall defend, indemnify and hold harmless ITRS against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with your use of the Services, the Software and/or Documentation, provided that:
- 12.5.1 you are given prompt notice of any such claim;
  - 12.5.2 ITRS co-operates reasonably with you in the defence and settlement of such claim, at your expense; and
  - 12.5.3 you are given sole authority to defend or settle the claim.

- 12.6 ITRS warrants that your use of the Services, the Software or Documentation will not infringe any third party intellectual property rights. In the event of ITRS receiving a court order, or ITRS receiving independent legal advice, that your use of the Services, the Software or Documentation is likely to infringe a third party's intellectual property rights, ITRS may at its discretion, subject to Clause 12.7:
- 12.6.1 procure the right for you to continue to use the Services, the Software or Documentation;
  - 12.6.2 replace or modify the Services, the Software or Documentation so that they become non-infringing; or,
  - 12.6.3 terminate this Agreement forthwith on giving written notice to you.
- 12.7 ITRS shall not be required to take any action under Clause 12.6, and in no event shall ITRS, its employees, agents and sub-contractors be liable to you, to the extent that the alleged infringement is based on:
- 12.7.1 a modification of the Services, the Software or Documentation by anyone other than ITRS; or
  - 12.7.2 your use of the Services, the Software or Documentation in a manner contrary to the instructions given to you by ITRS; or
  - 12.7.3 your use of the Services, the Software or Documentation after notice of the alleged or actual infringement from ITRS or any appropriate authority.
- 12.8 The foregoing Clauses 12.6 and 12.4.2 state your exclusive rights and remedies, and ITRS's (including ITRS's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any third party intellectual property right or right of confidentiality.

### **13 Term; termination; and effect of termination**

***This clause explains when the Services may be withdrawn and the Agreement terminated.***

- 13.1 **Term.** This Agreement shall commence on the Effective Date and last until the first to happen of the following:
- 13.1.1 The end of any applicable free trial period referred to on the Website;
  - 13.1.2 Termination of this Agreement in terms of Clause 12.6.3;
  - 13.1.3 The withdrawal of the Services by ITRS in terms of Clause 10.
- 13.2 **Effect of termination.** On termination of this Agreement for any reason:
- 13.2.1 each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
  - 13.2.2 ITRS may destroy or otherwise dispose of any of Your Data in its possession. **You are strongly advised to keep Your Data properly backed up at all times;** and
  - 13.2.3 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.