

Definitions: In these terms and conditions:

- 1.1 **Agreement** means the Proposal and these terms and conditions (including the appendices).
Business Day means a day that is not a Saturday, Sunday or statutory holiday in Auckland, New Zealand.
- 1.2 **Customer** means the customer named in the Proposal.
- 1.3 **Commencement Date** means the date that the Customer signs the Proposal.
- 1.4 **Confidential Information** means any proprietary information, know-how and data disclosed by one party to the other party but does not include any information which (a) is in the public domain without any breach of the Agreement; (b) on receipt by the other party.
is already known by that party; (c) is at any time after the date of receipt by the other party, received in good faith by that party from a third party; (d) required by law to be disclosed by the other party.
- 1.5 **Data** means the Customer's data and the data of any External Customer that is captured and processed in the course of provision of the Service and consists primarily of operational event data.
- 1.6 **External Customer** means a customer of the Customer that the Customer decides should have access to the Service and includes any employee or contractor of that customer.
- 1.7 **Intellectual Property** includes all copyright, trademarks, designs, patents, domain names, concepts, know-how, trade secrets, logos and all other similar property and rights whether registered or unregistered.
- 1.8 **Permitted Users** means any employee or contractor of the Customer and any External Customer that the Customer authorises to have access to the Service and the Software by setting up and providing login details to that person (and excludes bots or access by other non-manual means except as expressly permitted under clause 5.4).
- 1.9 **Proposal** means the proposal to which these terms and conditions are attached, and which is signed by both parties.
- 1.10 **Service** means the service provided by ICOS to the Customer, being the provision of use of the Software over the internet from the Website and hosting of all Data entered by the Customer on the Software.
- 1.11 **Software** means the iCOS LIVE software as at the date of the Agreement and includes updates and modifications as may be released by ICOS from time to time at its discretion,
- 1.12 **iCOS** means ICOS LIVE Limited a company registered in New Zealand and having its principal place of business in Auckland, New Zealand.
- 1.13 **Website** means the website at which the Service is accessed, as specified in the Proposal.

2 Charges and payment

- 2.1 The Customer will pay the fees specified in the Proposal in accordance with the timing specified in the Proposal. All payments must be made in full without deduction or set-off.
- 2.2 All applicable value added taxes will be charged and payable on all amounts specified in the Schedule.
- 2.3 If the Customer disputes any invoice the Customer shall pay any undisputed portion and notify iCOS in writing (within seven days of receiving the invoice) of the reason for disputing the remainder of the invoice. Any disputed portion shall be paid promptly following resolution of the dispute.

2.4 Hourly rate fees, fees associated to EDIS, APIS, Bookings or 3rd Party integrations described in the Proposal may be changed by iCOS on iCOS giving at least six weeks written notice to the Customer of the new charges that will apply.

3 Default Payments

If any amount is not paid by the due date, iCOS:

- 3.1 reserves the right to charge interest on that amount at 2% per month calculated from the due date up until the date that payment is received by iCOS; and
- 3.2 on five days' notice in writing to the Customer, suspend provision of Service until iCOS receives payment in full of all outstanding amounts.
- 3.3 shall be entitled to recover from the customer all costs and disbursements which it incurs in recovering or endeavoring to recover such money including solicitor-client costs and the fees and other disbursements of any debt collection agency, court costs, legal fees and default fees.

4 Price Review

Annual price increases will be capped at the NZ CPI Rate applied upon the 12-month anniversary of commencement of use of iCOS Live SaaS. The base rate is set from the Series reference CPIQ.SE9A, CPI All Groups for New Zealand Index value.

Source: <https://stats.govt.nz/large-datasets/csv-files-for-download/>

5 Term

- 5.1 This Agreement will commence on the Commencement Date and, subject to clause 11:
 - (a) in the case of a fixed term contract, continues until the end of the contract term (subject to clause 3.3).
 - (b) In the case of an open term contract, continues until terminated by the Customer on one month's notice in writing.
 - (c) Any reduction to the truck totals requires one months notice in writing.
- 5.2 This Agreement will cease on the date worked out via calculating the date of signing and the agreed term selected and initialed in the first table of this agreement. Upon or before that date, a new agreement will need to be signed by both parties.
- 5.3 In the case of a fixed term contract, should you decide to terminate the agreement prior to expiration of the fixed term, you must pay the monthly amounts for the remaining part of the fixed term period. All amounts due to ICOS will become immediately due and payable within 7 days following termination.

6 Set up

- 6.1 iCOS will, on execution of the Agreement by both parties, undertake the provisioning work described in the Proposal (and as further detailed in Appendix A) in order that the Service can be provided to the Customer.
- 6.2 iCOS will notify the Customer when the Service is available to the Customer.

7 Supply of Service

- 7.1 iCOS will provide the Service to the Customer in accordance with the Agreement and service levels contained in Appendix B. iCOS will:

- (a) provide log on details to the Customer to enable the Customer to access and use the Service.
- (b) make the Service available for access and use by the Customer and its Permitted Users including External Customers, via the Website.
- (c) provide phone and email support between the hours of 8.30am-5pm NZ Time Monday to Friday for matters which relate directly to the Service. Outside of these hours for URGENT matters only relating to Service. Should any urgent support be required for user error, standard hourly rate of **\$350** per hour applies (minimum charge of 1 hour); and
- (d) enable the Customer to set up users.

iCOS provides the Service subject to the terms and conditions of the Agreement including without limitation clauses 5.7 and 5.8.

7.2 Where the Permitted Users include any External Customers, the Customer is responsible for ensuring that each External Customer is aware of and complies with these terms and conditions. Any breach by an External Customer of these terms and conditions will be deemed to be a breach by the Customer of these terms and conditions and the Customer will be liable for that breach accordingly. Where any External Customer breaches these terms and conditions, the Customer will co-operate with ICOS and take any action reasonably required by ICOS in respect of that breach. The Customer may at its discretion decide to enter into a back to back agreement with any External Customer in respect of the Agreement however the Customer's responsibility for and liability in respect of the Agreement however the Customer's responsibility for and liability in respect of the External Customer's use of the Service is not diminished by any such back to back agreement.

7.3 The Customer must not, nor may the Customer permit any External Person or other person to do any of the following, or attempt to do so:

- (a) copy the Software.
- (b) access or use the Service in a manner that is detrimental or could be detrimental to access and/or use by other users accessing the Service.
- (c) access or use the Service in a manner other than could be reasonably intended or anticipated by iCOS Live.
- (d) access or use the Service using a bot or any other form of automation (except as expressly permitted under clause 5.4).
- (e) access or use the Service in such a way as to diminish the speed of service for other iCOS Live customers or their users, whether deliberately or not.
- (f) alter, modify, reverse assemble, reverse compile or enhance the Software; or
- (g) use the Software for any purpose other than the Customer's own business purposes; or
- (h) resell, rent, lease, transfer, sublicense or otherwise transfer rights to the Software; or
- (i) remove any proprietary notices or labels on or in the Software; or
- (j) do any act which would or might invalidate or be inconsistent with ICOS' Intellectual Property rights

- 7.4 In no event is automated or non-manual access permitted, whether by EDI, a bot or otherwise, unless expressly approved in writing by iCOS LIVE following request made by the Customer (for itself or in respect of an External Customer). Any such authorisation is granted or declined at the absolute discretion of iCOS Live and if granted, may be granted on any conditions that iCOS LIVE thinks fit.
- 7.5 The Customer must notify ICOS of any actual, threatened, or suspected infringement of any Intellectual Property right and of any claim by any third party that any use of the Software infringes any rights of any other person, as soon as that infringement or claim comes to the Customer's notice. The Customer must (at ICOS' expense) do all such things as may reasonably be required by ICOS to assist ICOS in pursuing or defending any proceedings in relation to any such infringement or claim.
- 7.6 The Customer indemnifies ICOS against any loss, costs, expenses, demands or liability whether direct, indirect or otherwise, and whether arising in contract, tort (including in each case negligence), equity or otherwise, arising out of a claim by a third-party alleging infringement of that third party's Intellectual Property rights if such claim arises from infringement, suspected infringement or alleged infringement due to:
- (a) use of the Software in a manner or for a purpose or in combination with software or equipment not reasonably contemplated or authorised by ICOS; or
 - (b) a breach by the Customer of clause 5.2.
- 7.7 The availability of the Service and the Software is dependent on factors outside of ICOS' control including without limitation the availability of telecommunications networks and as such ICOS cannot and does not warrant that the Service and Software will be continuously available or available without interruption.
- 7.8 iCOS will advise the Customer in advance of any planned outage (and as a guide only such outages occur about once every six months and the outage is for a maximum of 30 minutes).

8 Data

- 8.1 The Customer warrants that the Customer has the right and authority to deal with the Data in the manner contemplated by the Agreement. The Customer is responsible for all Data entry requirements and, except as expressly provided otherwise in the Agreement, for all aspects of the Customer's access and use of the Software.
- 8.2 Nothing in the Agreement transfers ownership of the Data to iCOS.
- 8.3 All Data is available to the customer:
- (a) For the term of the Agreement, by logging into the website;
 - (b) In the form of CSV files, on request to iCOS at any time during the term of the Agreement and for a period of 6 months following expiration or termination of the Agreement. Our standard fee of **\$450** per hour plus GST applies for the extraction of this data.
 - Payment of all outstanding invoices must be paid in full prior to the data files are released.
- 8.4 The customer acknowledges that:
- (a) through use of the service, the raw accounting (job charge) data is passed to the Customer's accounting system and processed in that system, not through the Service and accordingly accounting information is not captured or retained by iCOS; and
 - (b) the Customer's documents, images and PDF and other files are not stored by iCOS and it is the

Customer's responsibility to organize and manage the storage of such items (for example using Dropbox).

9 Electronic messages and spam

- 9.1 The Customer consents to receiving from iCOS any electronic message for which the Customer's consent is required under the New Zealand Unsolicited Electronic Messages Act 2007 (or any statutory modification or re-enactment of that Act for the time being in force), provided iCOS will cease to send such messages to the Customer if requested.
- 9.2 The Customer must comply with all applicable anti-spam legislation in its use of the Software.
- 9.3 The Customer indemnifies iCOS against any losses, costs (including legal costs on a solicitor and own Customer basis), expenses, demands or liability whether direct, indirect, or otherwise, and whether arising in contract, tort (including in each case negligence), equity or otherwise, arising out of a claim by a third party in respect of any unsolicited electronic messages sent by or on behalf of the Customer whether in breach of any anti-spam legislation or otherwise.

10 Intellectual Property

- 10.1 iCOS (or its licensor) owns all Intellectual Property in the Software. Nothing in this Agreement transfers to the Customer, ownership of any Intellectual Property in the Software.
- 10.2 All Intellectual Property in the Service and the processes, methodology and know-how used by ICOS in its performance of the Agreement are and will remain the property of ICOS (or its licensor).

11 Confidential Information

- 11.1 The parties recognise and acknowledge the confidential nature of the Confidential Information.
- 11.2 Neither party may use or disclose any Confidential Information other than:
- (a) to its employees to the extent necessary in the performance of the Agreement;
 - (b) with the express prior written consent of the other party;
 - (c) to its professional advisers.

12 Warranties

- 12.1 Each party warrants to the other that it has authority to enter and perform and the ability to perform its obligations under the Agreement.
- 12.2 Except as expressly provided in these terms and conditions, all warranties, terms and conditions (including, without limitation, warranties and conditions as to fitness for purpose and merchantability), whether express or implied by statute, common law or otherwise, are excluded to the extent permitted by law.

13 Termination

- 13.1 Either party may terminate the Agreement immediately if the other party:
- (a) breaches any of its obligations under the Agreement and fails to remedy the breach within 10 days of receiving notice requiring the breach to be remedied; or
 - (b) becomes insolvent or goes into liquidation or has a receiver or statutory manager appointed over its assets or ceases to carry on business or makes any arrangement with its creditors.

13.2 On termination of the Agreement under clause 11.1:

- (a) all amounts due to ICOS will become immediately due and payable and in the case of termination by ICOS under clause 11.1(a) when there is a fixed term contract, the Customer will, within 7 days following termination, pay the monthly amounts for the remaining part of the fixed term period.
- (b) ICOS will cease to provide, and the Customer and External Customers will cease to have any entitlement to the Service and the Customer and External Customers will otherwise have no right to access or use the Software;
- (c) the provisions of the Agreement that are by their nature intended to survive termination will remain in full force.

13.3 On expiration of the Agreement, should the Customer not renew the contract:

- (a) The Customer must advise of non-renewal within 1 month of expiration of this contract in writing.
- (b) Access to your data will be available with **read only access** for up to **3 months at a fee of \$500 per month or your current monthly fee, whichever is the lessor**. Payment is required in advance.
- (c) All EDI's and operational features will be disabled the expiration date of the contract, unless requested in writing, you adopt an open term agreement whereby the Open Term fees will apply.
- (d) Invoicing functions will be available **for up to 1 month** from expiry date.
- (e) Under clause 6.3, ICOS can provide your historical data (a maximum of 7 years).

14 Liability

14.1 ICOS will only be liable for losses (excluding loss of business or profits) which flow directly or naturally from a breach of this Agreement up to a maximum of the amount paid by the Customer to ICOS in the three months preceding the event giving rise to the claim under the Agreement.

14.2 ICOS will not have any liability or responsibility to the Customer for any loss, damage or injury whether arising in contract, tort, equity or otherwise which does not flow directly or naturally (i.e. in the ordinary course of things) from a breach of the Agreement including, in each case consequential loss of business or profits or other loss.

14.3 The Customer indemnifies ICOS against any losses, costs (including legal costs on a solicitor and own Customer basis), expenses, demands or liability whether direct, indirect, consequential or otherwise, and whether arising in contract, tort (including in each case negligence), equity or otherwise, arising (whether directly or indirectly) out of a claim by a third party in respect of the Customer's use of the Service or Software, provided that this indemnity does not apply to the extent that the claim has arisen as a direct result of ICOS' negligence.

14.4 The Customer acknowledges that:

- a) in using the Service, the Customer may be redirected to third party websites and/or elect to use third party products and services (by way of example only, this might include Xero accounting software or Dropbox for document or file storage);
- b) access or use by the Customer of any such third-party website, products or services is subject to the third party's terms and conditions; and
- c) ICOS accepts no responsibility or liability for or in connection with access or use by the Customer of any such third-party website.

15 Dispute resolution

- 15.1 Where any dispute arises between the parties concerning this Agreement or the circumstances, representations, or conduct giving rise to the Agreement, no party may commence any court or arbitration proceedings relating to the dispute unless that party has complied with the procedures set out in this clause 13.
- 15.2 The party initiating the dispute (“the first party”) must provide written notice of the dispute to the other party (“the other party”) and nominate in that notice the first party’s representative for the negotiations. The other party must within seven days of receipt of the notice, give written notice to the first party naming its representative for the negotiations. Each representative nominated will have authority to settle or resolve the dispute.
- 15.3 If the parties are unable to resolve the dispute by discussion and negotiation within 14 days of receipt of the written notice from the first party, then the parties must immediately refer the dispute to mediation.
- 15.4 The mediation must be conducted in terms of the LEADR New Zealand Inc Standard Mediation Agreement. The mediation must be conducted by a mediator at a fee agreed by the parties. Failing agreement between the parties, the mediator will be selected, and his/ her fee determined by the Chair for the time being of LEADR New Zealand Inc.

16 Consumer Guarantees Act

- 16.1 The Customer acknowledges that it is acquiring the Services from ICOS under the Agreement for the purposes of a business, and accordingly that the New Zealand Consumer Guarantees Act 1993 does not apply to the Agreement.

17 General

- 17.1 Entire agreement: This Agreement constitutes the complete and exclusive statement of the agreement between the parties, superseding all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of the Agreement.
- 17.2 Amendments: Except as specifically provided, no amendment to the Agreement will be effective unless it is in writing and signed by both parties.
- 17.3 Waiver: No exercise or failure to exercise or delay in exercising any right or remedy by a party will constitute a waiver by that party of that or any other right or remedy available to it.
- 17.4 Partial invalidity: If any provision of this Agreement or its application to any party or circumstance is or becomes invalid or unenforceable to any extent, the remainder of this Agreement and its application will not be affected and will remain enforceable to the greatest extent permitted by law.
- 17.5 Independent contractor: ICOS is an independent contractor to the Customer and is in all respects independent of the Customer. Nothing in the Agreement constitutes either party a partner, agent, employee, or joint venture of the other.
- 17.6 Suspension: ICOS may suspend performance of its obligations under the Agreement for so long as it is unable to perform for reasons outside of its control.
- 17.7 Assignment: The Customer must not assign its rights under the Agreement without the prior written consent of ICOS.
- 17.8 Precedence: In the event of any conflict or inconsistency as between the Proposal and these terms and

conditions, these terms and conditions will take precedence.

18 Notices

18.1 Notices under the Agreement must be in writing and sent by post or email to the address specified in the Proposal (unless otherwise notified on 7 days written notice).

18.2 Notices sent by post shall be deemed received 3 Business Days after posting within New Zealand and notices sent by email shall be deemed received on transmission so long as the sender has not received a delivery notification failure.

19 Governing law

19.1 The Agreement is governed by and construed in accordance with New Zealand law and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

APPENDIX A

Provision of Service:

The iCOS LIVE provision of service fee covers the costs and resources required for iCOS LIVE to implement Provision of Service.

This fee also includes up to four hours of online training for the designated super-user and other users as requested covering the iCOS LIVE functionality provided as stated below.

iCOS LIVE defines provision of service as the following:

- a. Connection: Make iCOS LIVE available for access to the customer:
 - Connection provisioning will ensure that a customer is able to connect to and load the iCOS LIVE web interface located at <http://login.icos.co.nz> and <http://go.icos.co.nz> using certified web browsers such as Mozilla Firefox, Google Chrome, or Apple Safari (Desktop), or iCOS LIVE GO²Android. Currently excludes Microsoft Internet Explorer.
 - A standard, working internet connection that directly connects to the iCOS LIVE web server is required. Access via proxy servers or other indirect methods may work; but are not supported.
 - Connection provisioning does not include diagnostics or configuration of a customer's internet connection, or any third-party service or entity that may interfere with connectivity such as firewalls or web security products.
 - Connection provisioning does not cover configuration or performance of any customer hardware or software.
- b. Access: Enable access to a customer's iCOS LIVE account
 - Access provisioning will ensure that an active iCOS LIVE account is configured with a single super-user login and password with which a Super User can:
 - i. Create subsequent user accounts, or modify existing accounts
 - ii. Create customers and subcontractors
 - iii. Enter cost and charge rates
 - iv. View loaded products (for use with additional costs and charges module)
 - v. Maintain rate zones, depots, and branches
 - vi. Book and edit jobs using an existing iCOS LIVE booking screen
 - vii. Search for existing consignments
 - viii. Perform standard dispatch functions such as allocating work to vehicles or creating manifests
 - ix. Perform standard job tracking functions using iCOS LIVE GO² or iCOS Driver.
 - x. Print consignment notes, labels, and other standard existing reports
 - xi. Perform standard invoicing functions such as rerating, verification
 - xii. Send invoices to a third-party financial product using standard, existing integrations
 - xiii. View utilisation data using standard utilisation functionality.
 - Access provisioning also includes these optional tasks to be performed by iCOS LIVE staff

- i. Link customer created user accounts to vehicles for usage with iCOS LIVE GO
- ii. Import a single vehicle list supplied in iCOS LIVE standard import format
- iii. Import a single customer list supplied in iCOS LIVE standard import format
- iv. Import a single product list supplied in iCOS LIVE standard import format
- v. Preconfigure iCOS LIVE defaults to suit intended usage of the system

PLEASE NOTE YOU ARE RESPONSIBLE FOR DELETING PASSWORDS AND USERNAME WHEN EMPLOYEES LEAVE YOUR EMPLOYMENT.

APPENDIX B

Service Availability:

iCOS LIVE guarantees Service uptime and availability of 99.9% on a monthly basis. This excludes scheduled, planned, pre-adviced maintenance, service and upgrade down times.

The Service will be available 24/7 barring any unplanned outages and planned system maintenance.

Planned Outages:

A planned service outage is work that is planned and scheduled at least two weeks prior to the scheduled date. It may include program, operating system, patching or hardware updates. The iCOS Transport Development Manager communicates (as needed) to the appropriate audience a minimum of one week prior to the scheduled outage. Planned outages usually occur two or three times per year. They may be scheduled for any time of the day dependent upon the nature of the planned outage. Out-of-hours scheduling will be considered where possible.

Emergency maintenance:

In rare situations, it may become necessary to perform emergency maintenance to correct or prevent imminent service issues. iCOS LIVE will provide as much advance notice as possible via email or by phone.

Unplanned Outages:

An unplanned outage might be due to an unforeseen event or need for urgent repair to prevent failure. Unplanned service outages are given priority (and communicated immediately) on a case-by-case basis depending on the type and urgency of the service failure.

Disaster Recovery and Service Redundancy:

The data centre which hosts iCOS LIVE has an extensive disaster recovery plan in place which includes the capability of operating even if there was a power outage in Auckland of more than 30 days. iCOS LIVE maintains backups for disaster recovery purposes in case of catastrophic server failure or data centre disaster. Temporary services can be established for customers on a fixed term contract.

Please contact Support for more in-depth details at Support@icoslive.com