

**archTIS Limited (“archTIS”)
NC Protect
End User License Agreement (“the Agreement”)**

DEFINITIONS

“**Authorised Users**” means Customer’s employees and authorised independent contractors for whom Customer has purchased a license to use NC Protect, the number of which is as set forth in the Order.

“**Azure Marketplace**” means the on-line platform through which products and services may be purchased that are either built on or designed to integrate with Microsoft’s Azure public cloud. Microsoft’s relationship with the Customer is solely governed by Microsoft’s respective agreements for the use of the Azure Marketplace.

“**Confidential Information**” means information disclosed by a party to the other about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information and other sensitive or proprietary information, whether orally or in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential”

“**Customer Data**” means any data or information resulting from Customer’s use of NC Protect.

“**Documentation**” means NC Protect user manuals, handbooks and installation guides, if any, relating to NC Protect made available by archTIS or its authorised partners to Customer.

“**Effective Date**” means the date of the Order from the Customer or such other date as stated in the Order.

“**Error**” means a reproducible failure of NC Protect to materially perform in accordance with the Documentation.

“**Major Improvements**” means material feature changes or improvements that archTIS offers its customers for additional fees.

“**NC Protect**” means archTIS’s NC Protect Software licensed in accordance with this Agreement, as ordered by Customer pursuant to the Order.

“**Order**” means an order received by archTIS directly or through the Azure Marketplace from the Customer for the right to use NC Protect and Documentation on the terms and conditions of this Agreement. Any such order will be based on the terms and conditions of this Agreement and any quote or other terms notified by archTIS to Customer.

“**Subscription Period**” means the period of 12 months from acceptance of an Order or as otherwise stated in the Order, unless terminated earlier in accordance with this Agreement.

“**Usage Data**” means usage data and statistics related to NC Protect.

1. NC PROTECT

1.1. License. Subject to the terms and conditions of this Agreement, archTIS hereby grants to Customer Users a non-exclusive, non-transferable license for its Authorised Users to use NC Protect for internal business purposes in accordance with this Agreement. archTIS also grants to Customer the right to use and make a reasonable number of copies of the Documentation solely for its internal business purposes in connection with Customer’s use of NC Protect. As directed by Customer, archTIS shall (a) deliver NC Protect electronically, on tangible media, or by other means on a date agreed to by the Parties, for Customer to install NC Protect into its infrastructure, or (b) install NC Protect into Customer’s account in Microsoft Azure.

1.2. Authorised Users. Customer is responsible for all Authorised Users’ compliance with the terms of this Agreement and for all acts or omissions of such Authorised Users. Customer agrees to limit the access to and use of NC Protect to the maximum number of Authorised Users stated in the Order and to ensure that all Authorised Users safeguard any usernames and passwords (“**Credentials**”) provided to them to use and access NC Protect. Customer will notify archTIS promptly if it learns of any unauthorised use of NC Protect.

1.3. Customer Obligations. Without limiting the foregoing and except as otherwise expressly set forth in this Agreement, Customer shall not, and shall not permit any Authorised User or other party to, (a) reverse engineer, disassemble, or decompile any component of NC Protect; (b) rent, lease, lend, sell, sublicense or otherwise distribute any Customer rights under this Agreement (except as expressly authorised hereunder) or otherwise use NC Protect for or to operate a service bureau, application service provider service, or any NC Protect-as-a-service offering in any way related to this Agreement; (c) modify, copy or make derivative works based on any part of NC Protect or Documentation; (d) use NC Protect to build a competitive offering; (e) remove any proprietary notices from NC Protect or Documentation; or (f) use NC Protect in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.

1.4. Open-Source Licenses. Certain NC Protect code incorporated into or distributed with NC Protect may be licensed by third parties under various “open-source” or “public-source” software licenses (such as the GNU General Public License, the GNU Lesser General Public License, the Apache License, the Berkeley Software Distribution License, and the Sun Public License) (collectively, the “Open Source Software”). Notwithstanding anything to the contrary in this Agreement, the Open Source Software is not licensed under this Agreement and instead is separately licensed pursuant to the terms and conditions of their respective open-source software licenses. Customer agrees to comply with the terms and conditions of such open-source software license agreements.

2. CUSTOMER DATA.

- 2.1. **Usage Data.** Customer shall own all Customer Data. archTIS will not collect or store Customer Data, other than usage data on Customers utilization of NC Protect in aggregate and anonymous form only. Customer hereby grants to archTIS a royalty-free, non-exclusive license, with the right to sublicense to its affiliates, to use the such usage data for any business or commercial purpose.
- 2.2. **Indemnity.** Customer indemnifies archTIS against any liability, claim, proceeding, cost, expense and loss of any kind arising from any actual or alleged claim by a third party that any Customer Data infringes the rights of that third party (including intellectual property and privacy rights) or that the Customer Data is objectionable, incorrect or misleading.
- 2.3. **Personal Information.** Customer acknowledges and agrees that all personal information that is entered into or processed by NC Protect is under the Customer's sole control and that the Customer is responsible for complying with any obligations the Customer may have under any laws relating to record keeping, archiving, freedom of information or disclosure of such information.

3. SUPPORT SERVICES.

- 3.1. **Support.** Subject to Customer's compliance with this Agreement, archTIS will provide Authorised Users with maintenance and support services in accordance with the Service Level Agreement found at: <https://help.archtis.com/knowledgebase>.

4. CONFIDENTIALITY.

- 4.1. **Obligations.** The receiving Party shall not disclose the disclosing Party's Confidential Information to any person or entity except to the receiving Party's employees or contractors who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder.
- 4.2. **Exclusions.** Confidential Information does not include information that, at the time of disclosure, is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; (d) independently developed by the receiving Party; or (e) required to be disclosed under applicable federal, state or local law, regulation or a valid order issued by a court or governmental agency of competent jurisdiction. Notwithstanding the foregoing, if the receiving Party is required to disclose the disclosing Party's Confidential Information pursuant to a duly authorised subpoena, court order or other government authority, the receiving Party will provide prompt written notice to the disclosing Party prior to such disclosure so that the disclosing Party may seek a protective order or other appropriate remedy.
- 4.3. **Return.** On the expiration or termination of the Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form of the disclosing Party's Confidential Information or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed.
- 4.4. **Term.** Each Party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five (5) years from the expiry or termination of this Agreement. The expiry or termination of this Agreement shall not relieve the receiving Party of complying with the obligations imposed by this Agreement with respect to Confidential Information received prior to the date of expiry or termination of this Agreement.
- 4.5. **Remedy.** The Parties agree that the disclosing Party would be irreparably injured by a breach or threatened breach of the obligations of confidentiality stated in this clause by the receiving Party and that the disclosing Party would not have an adequate remedy at law. Therefore, in the event of a breach or threatened breach by the receiving Party of these obligations, the disclosing Party shall be entitled, in addition to any and all other remedies, to seek injunctive relief and specific performance. The receiving Party further agrees not to resist such application for relief on the basis that the disclosing Party has an adequate remedy at law.

5. FEES.

- 5.1. **Fees:** The fees to be paid by the Customer are as stated in the Order and governed more generally by this Agreement and the terms of use of the Azure Marketplace. All fees will be billed in advance with payment due within thirty (30) days of receipt of invoice, unless otherwise agreed upon in the Order. If Customer fails to make any payment when due, in addition to all other remedies that may be available: (i) archTIS may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law; and (ii) archTIS may suspend Customer's license to NC Protect for any period during which any payment owed to archTIS has not been made by Customer. archTIS also reserves the right to charge Customer a reinstatement fee of no more than one (1) month's fee applicable to the suspended license in the event of suspension, at archTIS's sole discretion.
- 5.2. **Pricing Review:** In this clause CPI means the weighted average of the All Groups Price Index Numbers for the eight capital cities of the states and territories of Australia published from time to time by the Australian Bureau of Statistics or, if that index number is no longer published, its substitute as a cumulative indicator of the inflation rate in Australia. archTIS may increase the Fees (exclusive of GST) on each anniversary of the term of this Agreement to an amount calculated by the percentage increase of CPI since the previous anniversary of the term of the Agreement.

6. INTELLECTUAL PROPERTY.

- 6.1. **Ownership.** Customer acknowledges and agrees that archTIS retains all right, title and interest, including all intellectual property rights, in and to NC Protect, Documentation and all associated materials. Other than as expressly set forth in this Agreement, no licenses, subscriptions or other rights in NC Protect are granted to Customer. Customer hereby grants archTIS and its affiliates a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or

incorporate into NC Protect any suggestions, enhancement requests, recommendations or other feedback provided by Customer or its Authorised Users relating to NC Protect.

- 6.2. Trademark.** The archTIS name and the product names associated with NC Protect are trademarks of archTIS or third parties and no right or licence is granted to use them.

7. TERM AND TERMINATION

- 7.1. Term.** This Agreement commences on the Effective Date and continues for the duration of the Subscription Period. Thereafter, this Agreement shall continue for successive twelve (12) month periods unless either party provides written notice of termination not less than sixty (60) days prior to the expiration of the then current term.

- 7.2. Termination for Cause.** archTIS shall be entitled to terminate this Agreement by immediate notice for failure of Customer to pay fees in accordance with this Agreement. Either Party may terminate this Agreement for a material breach by the other Party of any of its terms and conditions upon a minimum of thirty (30) days written notice, provided the breach is not remedied during the notice period.

- 7.3. Effect of Termination.** Upon any termination of this Agreement, Customer shall immediately discontinue all use of NC Protect and Documentation and each Party shall (a) immediately discontinue all use of the other Party's Confidential Information; (b) delete the other Party's Confidential Information from its computer storage or any other media, including, without limitation, Customer Data, as applicable, but excluding Usage Data; (c) return to the other Party or destroy (with written certification), all copies of such other Party's Confidential Information then in its possession; and (d) promptly pay all amounts due and remaining payable hereunder.

8. WARRANTIES

- 8.1. General.** Each Party represents and warrants to the other Party that: (i) it has all necessary right, power and authority to enter into this Agreement and to perform its obligations hereunder, (ii) the execution and delivery of this Agreement, and the performance of its obligations hereunder, do not conflict with and will not result in a breach of any other agreement to which it is a party or by which its assets are bound, and (iii) this Agreement constitutes the legally valid and binding obligation of such Party, enforceable against it in accordance with its terms, except as such enforcement may be limited by applicable law.

- 8.2. Conformance.** archTIS represents and warrants that NC Protect will substantially conform to the Documentation for the ninety (90) days following the date that NC Protect are made available to Customer for Customer's use. This warranty does not apply if NC Protect (i) has been altered, except by archTIS or its authorised representative; (ii) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by archTIS; or (iii) has been subjected to abnormal physical or electrical stress, abnormal environmental conditions, misuse, negligence, or accident. In the event of a breach of this clause, as Customer's sole and exclusive remedy, archTIS shall repair, replace or cause the refund of the fees paid for the non-conforming NC Protect. This remedy is conditioned upon Customer reporting the non-conformance in writing within the warranty period.

- 8.3. Remedy.** If archTIS is unable to correct any breach of any warranty in Clauses 8.1 within thirty (30) days after receipt of Customer's written notice, Customer may terminate this Agreement with respect to such NC Protect and receive a refund of the unearned portion of all amounts paid under this Agreement in respect of the terminated NC Protect. Such refund will be payable within thirty (30) days after the effective date of termination of NC Protect.

- 8.4. Disclaimer.** Except as expressly provided in this Agreement and to the maximum extent permitted by applicable law NC Protect and Documentation are provided "as is" and "as available" and archTIS expressly disclaims all other warranties, express or implied, by operation of law or otherwise, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose, title, non-infringement, quiet enjoyment or similar. archTIS does not warrant and specifically disclaims that NC Protect and Documentation will be accurate and without interruption or error free.

9. INDEMNITY.

- 9.1. By archTIS.** If any action is instituted by a third party against Customer based upon a claim that NC Protect, as delivered without modification and used as specified in all applicable documentation, infringes any third party's intellectual property rights, archTIS shall defend such action at its own expense on Customer's behalf and will pay all damages attributable to such claim which are finally awarded against Customer or paid in settlement, provided that archTIS agrees in writing to such settlement. This indemnity will not apply if the alleged claim arises, in whole or in part, from (a) a use or modification of NC Protect by Customer in a manner inconsistent with any applicable documentation or outside the scope of any right granted or in breach of this Agreement, (b) a combination, operation or use of NC Protect with other NC Protect, hardware or technology not specifically Authorised by archTIS, or (c) the Customer Data (the "*Customer Indemnity Responsibilities*").

- 9.2. Infringement or Likely Infringement.** If NC Protect is enjoined or, in archTIS's determination is likely to be enjoined, in an action or is otherwise infringing any third party intellectual property rights, archTIS may, at its option and expense (a) procure for Customer the right to continue using NC Protect, (b) replace or modify NC Protect so that it they are no longer infringing but continue to provide comparable functionality, or (c) terminate Customer's access to NC Protect and refund any amounts previously paid for NC Protect attributable to the remainder of the then-current term. This section sets forth the entire obligation of archTIS and Customer's exclusive remedy against archTIS for any claim that NC Protect infringes a third party's intellectual property right.

9.3. By Customer. If any action is instituted by a third party against archTIS or its affiliates (collectively the “*archTIS Indemnitees*”) relating to (i) Customer’s negligent or willful misconduct, (ii) Customer’s or Authorised Users’ use of NC Protect or Documentation in a manner not authorised or contemplated by this Agreement, (iii) use of any version of NC Protect other than the most current version of NC Protect and Documentation delivered by archTIS to Customer or (iv) Customer Indemnity Responsibilities, Customer will defend such action at Customer’s own expense on the archTIS Indemnitees’ behalf and will pay all damages attributable to such claim which are finally awarded against the archTIS Indemnitees or paid in settlement of such claim.

9.4. Procedure. Any Party that is seeking to be indemnified under the provision of these indemnity clauses must (a) promptly notify the other Party of any third-party claim, suit, or action for which it is seeking an indemnity hereunder and (b) give the indemnifying party the sole control over the defense of such claim.

10. LIMITATION OF LIABILITY

10.1. Indirect Damages. In no event will either party or its affiliates be liable to the other party for any incidental, indirect, special, consequential, punitive, or other indirect damages, regardless of the nature of the claim, including, without limitation, lost profits, costs of delay, any failure of delivery, business interruption, costs of lost or damaged data or documentation, or liabilities to third parties arising from any source, even if the other party has been advised of the possibility of such damages.

10.2. Total Liability. The cumulative liability of each party to the other party for all claims, including negligence, arising from or relating to this agreement, and including, without limitation, any cause of action sounding in contract, tort, or strict liability, will not exceed, the total amount of all fees paid by Customer to archTIS under this agreement during the twelve (12)-month period prior to the act, omission or occurrence giving rise to such liability. The limitations of liability are intended to apply without regard to whether other provisions of this Agreement have been breached or have proven ineffective.

10.3. Exclusions. The limitations on liability in Clauses 10.1 and 10.2 will not apply to a breach of obligations in relation to the other Party’s intellectual property, a breach of a Party’s confidentiality obligations, or liability arising from a Party’s indemnification obligations.

11. AUDIT RIGHT.

11.1. Audit. During the Term and for a period of two (2) years thereafter, archTIS may audit Customer’s facilities, records, and use of NC Protect to determine Customer’s compliance with the terms and conditions of this Agreement. Such audits will occur during regular business hours and must be conducted in a manner designed to limit disruption to Customer’s business.

11.2. Results. In the event an audit reveals that Customer has underpaid any fees or charges owing to archTIS (such as by exceeding the maximum number of Authorised Users), or that Customer is using NC Protect in an unauthorised manner, Customer must immediately pay to archTIS any amounts due, together with interest thereon at the lesser of the maximum amount chargeable by law or one and one-half percent (1-1/2%) per month commencing with the date payment was due, together with all reasonable costs of conducting the audit.

12. EXPORT COMPLIANCE

12.1. Export Compliance. The Parties agree that no technical data, hardware, NC Protect, technology, or other information furnished or produced in relation to this Agreement by either Party shall be disclosed, transferred or exported any foreign person, firm, or country, including foreign persons employed by or associated with Customer, except as allowed under applicable Australian and US Government export laws and regulations.

12.2. Indemnity. Each Party shall indemnify, defend, and hold the other Party harmless from and against any and all claims, demands, actions, suits, proceedings, losses, damages, penalties, obligations, liabilities, costs and expenses (including, without limitation, reasonable attorneys’ fees) arising directly or indirectly from breaches of this provision by the other Party.

13. GENERAL PROVISIONS

13.1. Publicity. archTIS may identify Customer as a customer of archTIS, provided that archTIS makes no statement that could reasonably be construed as an endorsement of archTIS or NC Protect by Customer.

13.2. Right to Subcontract. Customer agrees that archTIS may subcontract any aspect of its obligations under this Agreement to qualified third parties; provided that any such subcontracting arrangement will not relieve archTIS of any of its obligations hereunder.

13.3. Headings. The headings in this Agreement are inserted merely for the purpose of convenience and shall not affect the meaning or interpretation of this Agreement.

13.4. Entire Agreement. This Agreement (including the Order) sets forth the entire understanding between the Parties related its subject matter and supersedes all prior oral and written understandings between the Parties related thereto. Neither of the Parties will be bound by any conditions, inducements or representations other than as expressly provided for in this Agreement. Purchase orders provided by Customer including any additional or conflicting terms and conditions will be for administrative purposes only and will have no force or effect. In the event of a conflict between these Terms and Conditions and the Order, the terms of the Order shall govern.

- 13.5. Modifications.** This Agreement contains the entire understanding and agreement of the Parties and supersedes any and all previous and contemporaneous understandings. Only a writing signed by both Parties may modify this Agreement.
- 13.6. Severability.** In the event that any provision of this Agreement is held to be invalid or unenforceable, the valid or enforceable portion thereof and the remaining provisions will remain in full force and effect. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. All waivers must be in writing.
- 13.7. Assignment.** Neither Party may assign or transfer this Agreement without the other Party's prior written approval, except that either Party may, upon written notice, assign this Agreement to an entity that acquires or is merged with the Party or that purchases all or substantially all of the assets of the Party, and with respect to Customer's successor, such successor entity agrees to be bound by the terms of this Agreement.
- 13.8. Waiver.** If either party waives any breach of this Agreement, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.
- 13.9. Notice.** All notices required by or relating to this Agreement will be in writing and will be sent by means of certified mail, postage prepaid, to Customer at the addresses set forth on the Order Form; if to archTIS at: CEO, archTIS Ltd, Level 3, 10 National Circuit BARTON ACT 2600, Australia, or addressed to such other address as the receiving Party may have given by written notice in accordance with this provision.
- 13.10. Applicable Law.** This Agreement will be governed by and construed in accordance with the laws of the Australian Capital Territory and the laws of the Commonwealth. The parties agree to the exclusive jurisdiction of that State or Territory and the Commonwealth.

[END OF TERMS AND CONDITIONS]