

## Elten Logistic Systems North America LLC

### End User License Agreement (EULA) for software embedded in Elten make and supplied equipment

**Important, read this EULA carefully before using your Elten equipment: if you do not agree to all of the terms and conditions of this EULA you will not be entitled to use the licensed software. Using the Elten equipment indicates your acceptance of this EULA:**

This End User License Agreement ("EULA") is a legal agreement between you, the user (either an individual, a legal entity or any affiliated companies or other entities; "Licensee"), and **Elten Logistic Systems North America LLC** as the licensor ("Licensor" or "Elten") for the Licensed Software specified in Article 1. Licensor is the owner of, or is legally licensed to the use or licensing of, Licensed Software. The EULA authorizes the Licensee to use the Licensed Software under the terms and conditions set forth below. Read this EULA carefully before installing or using the Licensed Software. Licensor and Licensee may hereinafter also separately be referred to as "Party" or jointly as "Parties". Elten may add to, change, or remove any part, term, or condition of the EULA as it applies to the Licensed Software at any time without prior notice to Licensee.

By installing, copying, or otherwise using the Licensed Software, Licensee acknowledges that it: (1) has read and understood the full contents of the EULA and any 3<sup>rd</sup> party licenses (if applicable; including any open-source software licenses) set forth in Article 6 hereof ("Additional Terms") and (2) agrees and declares to be bound by all of the terms and conditions of this EULA and such Additional Terms. Furthermore, Licensee confirms that it has the power to agree and to make such declaration for itself as well as for the company or party it represents. Licensee further agrees that if Elten or any Elten affiliated company or any company licensing intellectual property rights to Elten (jointly and separately "Elten Company") for use in Equipment (as defined in Article 1) is required to engage in any proceeding, legal or otherwise, to enforce their rights under this EULA, Elten Company shall be entitled to recover from Licensee, in addition to any other sums due, reasonable attorney's fees, costs and disbursements unless specifically and unequivocally otherwise agreed in a separate, written arrangement between and signed by the Parties.

## Article 1. Licensed Software and updates.

As used in this EULA, the term "Licensed Software" shall strictly mean (i) the software provided by Elten as firmware, embedded or otherwise, for licensed use in or with Elten make and / or any Elten affiliated company make equipment ("Equipment"), supplied to Licensee, that Licensee has purchased, (ii) any related documentation for the Licensed Software as well as (iii) any updates, releases, revisions, enhancements, modifications and / or supplements to such software and documentation ("Update"). Licensee may use the Licensed Software on such Equipment, not separate from Equipment. From time to time, Elten or Elten Company may Update the Licensed Software, for example, but not limited to, for purposes of error correction, improvement of features, and enhancement of security features. Such Update may change or delete the nature of features or other aspects of the Licensed Software, including features Licensee may rely upon. Licensee hereby agrees that such activities may occur at Elten's sole discretion and that Elten may condition continued use of the Licensed Software upon Licensee's complete installation or acceptance of such Update.

## Article 2. Intellectual property rights and confidentiality.

The Licensed Software and all rights, without limitation, including all copyrights, patents, trademarks, trade secrets, publicity rights, and other proprietary rights therein, are owned by Elten or Elten Company and are protected by international treaty provisions and all applicable laws. The structure, organization, and code of the Licensed Software are valuable trade secrets and confidential information of Elten or Elten Company. Licensee agrees and acknowledges that the Licensed Software contains confidential information, including but not limited to trade secrets, know-how, and information pertaining to the technical structure and / or performance of the Licensed Software, that is and shall remain the exclusive property of Elten or Elten Company. During the term of this EULA and at all times thereafter, Licensee shall maintain Elten's or Elten Company's confidential information in confidence and use the same degree of care, but in no event less than reasonable care, to avoid disclosure of Elten's or Elten Company's confidential information, as it uses with respect to its own confidential and proprietary information of similar type and importance. Licensee agrees to immediately notify Elten of the unauthorized disclosure or use of the Licensed Software and to assist Elten or Elten Company in remedying such unauthorized use or disclosure. Except as expressly and unambiguously provided herein, Licensee does not possess, and Elten does not grant to Licensee, any express or implied rights (whether by implication, estoppels, or other legal theory) in or to any such intellectual property rights and all such rights are retained by Elten or Elten Company. Licensee may make a single copy of the Licensed Software solely for its

back-up purposes, provided that such copy is and remains the exclusive property of Elten and includes all copyright and other intellectual property right notices that appear on the original.

### **Article 3. License grant.**

Only a license is granted for the Licensed Software; the Licensed Software is not sold to Licensee. Through this EULA, Elten grants to Licensee a limited, revocable, non-transferable, non-sublicensable, non-exclusive license to use the Licensed Software in object code format as installed in or upon installation in the Equipment, provided Licensee complies with all terms and conditions of this EULA.

### **Article 4. Limitations on license.**

#### **Section 4.1 No Copies of Licensed Software.**

The Equipment shall be provided with the Licensed Software installed therein by Elten. Licensee is not entitled to make copies of or install the Licensed Software or any Update thereof in the Equipment. Licensee must at all times separately request Elten for such installation service if needed, except and only to the extent that (a) such activity is expressly permitted by this EULA or (b) such activity is expressly permitted by applicable law notwithstanding this limitation or (c) unless - in deviation from (a) and (b) above - specifically and unequivocally otherwise agreed in a separate, written arrangement between and signed by the Parties.

#### **Section 4.2 Reproduction of copyright notice.**

If this Licensed Software includes any related documentation provided in electronic form, Licensee may print copies of this electronic documentation, subject to the conditions of this EULA. Licensee must reproduce and include the copyright notices on any permitted copies, Licensee makes of such electronic documentation.

#### **Section 4.3 No transfer without Elten's consent.**

Licensee may not sublicense, rent, lease, assign or transfer this EULA, the Licensed Software or its components, or any portion thereof without the express prior written consent from Elten. Except, in the event that Licensee sells or otherwise transfers the Equipment to a 3<sup>rd</sup> party, Licensee shall assign this EULA for the Licensed Software installed in such Equipment to such 3<sup>rd</sup> party, provided that (a) such 3<sup>rd</sup> party agrees to accept such assignment, subject to

all terms and conditions of this EULA and that (b) such transfer and subsequent use of the Licensed Software by such 3<sup>rd</sup> party directly following such transfer, complies with all terms and conditions of this EULA. If Licensee, or any such 3<sup>rd</sup> party prior to becoming a Licensee, violates these restrictions, this EULA shall automatically be terminated, while any associated rights to the use of Licensed Software by Licensee or such 3<sup>rd</sup> party will do the same. No Licensed Software shall be used with Equipment without a validly accepted license thereto, pursuant to and in compliance with the conditions contained in this EULA.

#### **Section 4.4 No reverse engineering of Licensed Software.**

Licensee may not, or direct any 3<sup>rd</sup> party to, reverse engineer, decompile, decode, or disassemble the Licensed Software and any associated Equipment except and only to the extent that such activity is expressly permitted by applicable law, notwithstanding this limitation.

#### **Section 4.5 No derivative work of Licensed Software.**

Licensee (or any 3<sup>rd</sup> party at Licensee's direction) shall not (i) modify or create a derivative work of the Licensed Software, or (ii) extract any individual parts except and only to the extent that such activity is expressly permitted by applicable law, notwithstanding this limitation. Any modification of the Licensed Software, by Licensee or a Licensee Party (as defined in Article 5), to be used in association with the Licensed Equipment, constitutes misuse of the Licensed Software as well as a violation of this EULA.

#### **Section 4.6 No other rights.**

This EULA does not grant Licensee any rights whatsoever in relation to the trademarks or service marks of any Elten Company.

### **Article 5. Misuse of Licensed Software.**

Misuse of Licensed Software or data generated by the Licensed Software by Licensee, or any 3<sup>rd</sup> party allowed to operate or access the Licensed Software by Licensee (e.g. software or Equipment maintenance engineer) (jointly and separately "Licensee Party"), is strictly prohibited and may violate Georgia state, US federal, EU and other applicable laws and may subject Licensee to substantial liability including indemnification per Article 15 hereof. Licensee is and shall be solely responsible for any misuse of the Licensed Software under this EULA and for any liability or damage related in any way to Licensee Party's use of the

Licensed Software in violation of this EULA. Licensor denies and rejects any and all responsibility due to misuse of the Licensed Software and / or a violation of this EULA, such responsibility rests with the party misusing or having misused the Licensed Software and / or violating or having violated the EULA, which is unequivocally agreed and acknowledged by Licensee and / or Licensee Party. Licensee shall also be responsible for a Licensee Party's use of the Licensed Software in accordance with the limitations of this EULA.

## **Article 6. Additional Terms for 3<sup>rd</sup> party components.**

This EULA applies to Updates to the original Licensed Software, as provided by Licensor, unless Licensor provides other terms along with such Update. The Licensed Software may contain certain components such as open-source software components or 3<sup>rd</sup> party components (sub)licensed by Licensor (each a "Component"). Each Component may have a separate end user license agreement (a "3<sup>rd</sup> Party License"). The terms of any 3<sup>rd</sup> Party License (if any) that apply to the Licensed Software are herein incorporated, by reference to this EULA. In the event of any inconsistencies between this EULA and any 3<sup>rd</sup> Party License, the terms of this EULA shall control and prevail.

## **Article 7. Termination of EULA and license.**

This EULA is effective from the first date Licensee installs, copies, or otherwise uses the Licensed Software. Without prejudice to any other rights of Licensor, the EULA shall terminate automatically and immediately without notice if Licensee fails to comply with any provision or condition of this EULA, which may cause Licensee to become subject to indemnification obligations pursuant to Article 15. Licensor may take any legal and / or technical steps to remedy or to prevent violation of and / or to enforce this EULA, including, without limitation, immediate termination of Licensee's access to the Licensed Software, if Licensor in its discretion believes that Licensee is violating this EULA. Upon termination of the license to use the Licensed Software for any reason, Licensee shall have no recourse against Elten or Elten Company for its inability to use the Licensed Software and / or any associated Equipment. Licensee may terminate this license at any time by disabling or destroying the Licensed Software and / or the Equipment in which the Licensed Software is installed, and all related documentation provided to Licensee by Elten.

## Article 8. Warranty disclaimer.

UNLESS ELTEN AGREES IN A SEPARATE, WRITTEN ARRANGEMENT SIGNED BY ELTEN, UNEQUIVOCALLY PROVIDING FOR AN EXCEPTION TO THIS WARRANTY DISCLAIMER WITH RESPECT TO THE LICENSED SOFTWARE AS PROVIDED IN THE EQUIPMENT PURCHASED BY LICENSEE, ELTEN SHALL BE ONLY LIABLE FOR DEFECTS AND ANY VIOLATION OF PROPERTY RIGHTS AS SET FORTH IN THIS ARTICLE 8, AS FOLLOWS:

**SECTION 8.A** LICENSED SOFTWARE 'AS IS'. LICENSEE ACKNOWLEDGES THAT THE LICENSED SOFTWARE IS PROVIDED 'AS IS' AND NO ELTEN COMPANY MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR THAT THE LICENSED SOFTWARE WILL NOT INFRINGE ANY 3RD PARTY PATENTS, COPYRIGHTS, TRADEMARKS OR OTHER RIGHTS. THERE IS NO WARRANTY BY ANY ELTEN COMPANY OR BY ANY OTHER PARTY, THAT THE FUNCTIONS AND FEATURES CONTAINED IN THE LICENSED SOFTWARE WILL MEET LICENSEE'S REQUIREMENTS OR THAT THE OPERATION OF THE LICENSED SOFTWARE WILL BE UNINTERRUPTED OR FREE OF ERRORS, BUGS AND / OR VIRUSES. ELTEN COMPANY SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OR CONDITION FOR FITNESS FOR ANY PARTICULAR PURPOSE, SPECIFICALLY EXCLUDING FITNESS FOR HIGH-RISK ACTIVITIES (AS DEFINED IN SECTION 8.B). NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY AN ELTEN COMPANY REPRESENTATIVE SHALL CREATE A WARRANTY OR IN ANY WAY AFFECT THIS DISCLAIMER. LICENSEE ASSUMES ALL RESPONSIBILITY TO ACHIEVE LICENSEE'S INTENDED RESULTS AS WELL AS FOR THE USE OF THE LICENSED SOFTWARE AND RESULTS OBTAINED FROM SUCH USE.

**SECTION 8.B** THE LICENSED SOFTWARE IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN OPERATIONS IN WHICH THE FAILURE OF THE LICENSED SOFTWARE COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE ("HIGH RISK ACTIVITIES").

**SECTION 8.C** EXCLUSION OF FURTHER RIGHTS. ANY FURTHER RIGHTS AND REMEDIES THAN THOSE DEFINED IN THIS EULA (IN PARTICULAR LICENSEE'S RIGHT TO CLAIM DAMAGES) BASED ON A DEFECT OR A VIOLATION OF PROPERTY RIGHTS SHALL BE EXCLUDED. THE EXCLUSIONS IN THIS EULA SHALL NOT APPLY IN THE EVENT OF GROSS NEGLIGENCE, UNLAWFUL INTENT OR INSOFAR AS MANDATORY LAW PROVIDES OTHERWISE.

## **Article 9. No other obligations; reservation of rights.**

This EULA creates no obligations on the part of Elten other than as specifically set forth herein. Elten reserves all rights not expressly granted to Licensee in this EULA.

## **Article 10. Limitation of liability.**

UNLESS OTHERWISE AGREED IN A SEPARATE, WRITTEN ARRANGEMENT BETWEEN, AND SIGNED BY, THE PARTIES, UNDER NO CIRCUMSTANCE AND IN NO EVENT SHALL ELTEN, OR ANY ELTEN COMPANY OR ANY OF ITS EMPLOYEES, AGENTS OR REPRESENTATIVES BE LIABLE FOR ANY LOST PROFITS OR COSTS OF PROCUREMENTS OF SUBSTITUTE GOODS OR SERVICES, PROPERTY DAMAGE, INTERRUPTION OF BUSINESS OR FOR ANY SPECIAL, INDIRECT, ECONOMIC, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, AND WHETHER ARISING UNDER CONTRACT, TORT, NEGLIGENCE, OR OTHER THEORY OF LIABILITY, OR ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE LICENSED SOFTWARE AND / OR ASSOCIATED EQUIPMENT. THIS LIMITATION OF LIABILITY SHALL NOT APPLY IF AND TO THE EXTENT THAT ELTEN'S LIABILITY IS MANDATORY UNDER APPLICABLE LAW.

## **Article 11. Technical support and audit.**

Elten Company has no obligation to furnish Licensee with any technical support services or to debug the Licensed Software unless agreed in a separate, written arrangement between, and signed by, the Parties. Elten Company shall be free to use any feedback and / or technical data including audit data received from Licensee resulting from Licensee's access to, and use of, the Licensed Software for business purposes associated with development, supply, and maintenance of the Equipment, including (without limitation) development, manufacture, marketing, product ordering, and maintenance or support of the Equipment and of any other Elten products and services. If and insofar as permissible under relevant laws, Licensee unequivocally permits Elten Company to audit the use of the Licensed Software, while Licensee shall provide assistance and access to information necessary to perform such audit.

## **Article 12. Export controls.**

### **Section 12.1 Export controls and regulations.**

The Licensed Software and the associated Equipment (each and collectively the "Products") may be subject to import or export controls. Licensee, in using the Products, shall comply

with all applicable national and international import and (re-)export control regulations, including executive orders issued by competent authorities (the "Regulations"). Any such Regulations may be issued by authorities in Elten Company's jurisdiction, or any authorities of the European Union, of the United States of America and of the United Nations (each or collectively the "Global Regulations").

### **Section 12.2 Licensee not restricted by Global Regulations.**

Licensee represents and warrants that (i) it is not located in any jurisdiction that is subject to an embargo or restriction under Global Regulations, and that (ii) it or any of its management or ultimate beneficial owners is not listed on any Global Regulations' related list of prohibited or restricted parties.

### **Section 12.3 Transfer to 3<sup>rd</sup> party.**

Prior to any transfer of Products to a 3<sup>rd</sup> party, which may be Licensee's purchasers or end customers, Licensee shall in particular check and, to the extent permissible, guarantee to Elten by appropriate measures that (i) there will be no infringement of any (trade) embargo or restrictions, economic sanctions or other prohibition (the "Embargo" or "Embargoes") imposed by Elten Company's or any other Global Regulations' jurisdiction upon and by such transfer, by brokering of contracts concerning those Products, or by provision of other economic resources in connection with those Products, also considering the prohibitions of by-passing those Embargoes; and that (ii) such Products are not intended for use in connection with armaments, nuclear technology or weapons, if and to the extent such use is subject to Embargo or authorization, unless mandatory official authorization has been provided; as well as that (iii) the regulations of all applicable sanctioned party lists of Elten Company's or any other Global Regulations' jurisdiction concerning the trading with entities, persons and organizations listed therein are considered. In any event of a transfer of Products, the party to which Products are transferred shall, to the extent permissible and applicable, in its use of Products, comply with Global Regulations, for which Licensee as the Products transferring party shall be responsible.

## **Article 13. Commercial computer / equipment software.**

The Licensed Software was developed at private expense and is a "commercial item", consisting of "commercial computer and / or equipment software" and "commercial computer and / or equipment software documentation". Any end user, of whatever nature in



whatever jurisdiction, solely acquires the Licensed Software with only those limited rights set forth in this EULA, to the extent permitted by mandatory law.

## **Article 14. Applicable law and forum.**

### **Section 14.1 Applicable law.**

This EULA is governed by the laws of the State of Georgia, USA, without regard to any conflict-of-law provisions therein. The United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

### **Section 14.2 Forum.**

To the extent permitted by mandatory law, all disputes arising out of or in connection with this EULA shall be finally settled under the rules of arbitration of the International Chamber of Commerce by three (3) arbitrators appointed in accordance with the said rules (such arbitrators collectively: the "Arbitral Tribunal" and said rules collectively: the "Rules"). An arbitration procedure hereunder shall be conducted in Geneva, Switzerland and shall be conducted in the English language. The arbitral tribunal will determine the matters in dispute in accordance with the laws of the state of Georgia, USA. Any award granted by the arbitral tribunal shall be final, binding, and enforceable against the parties. THE ARBITRAL TRIBUNAL MAY ONLY AWARD DAMAGES AS PROVIDED FOR UNDER THE TERMS OF THIS EULA AND IN NO EVENT MAY PUNITIVE, CONSEQUENTIAL AND SPECIAL DAMAGES (OR AS OTHERWISE SPECIFIED IN THIS EULA, INCLUDING, WITHOUT LIMITATION, IN ARTICLE 10 OF THIS EULA) BE AWARDED. IN THE EVENT OF ANY CONFLICT BETWEEN THE RULES AND ANY PROVISION OF THIS AGREEMENT, THIS AGREEMENT SHALL GOVERN.

## **Article 15. Indemnification.**

To the maximum extent as permitted under applicable law, Licensee agrees to indemnify, defend, and hold harmless Elten, Elten Company and all of its agents, directors, officers, employees, information providers, independent contractors, consultants, advisers, licensors and licensees, content providers, and direct and indirect parent companies (collectively the "Indemnified Parties") from and against any and all liability and costs (including, without limitation, attorneys' fees and costs) incurred by the Indemnified Parties in connection with any claim arising out of (i) any breach or alleged breach by Licensee of this EULA in any manner, (ii) any information Licensee submits to Elten hereunder, (iii) any breach or alleged breach by Licensee of a 3<sup>rd</sup> party's rights, and / or (iv) any damage caused by or alleged to

have been caused by Licensee to the Licensed Software or the licensor or owner thereof (the "Claim"). To the maximum extent as permitted under applicable law, counsel Licensee selects for defense or settlement of a Claim hereunder must be consented to by Elten and / or the Indemnified Parties prior to counsel being engaged by Licensee to represent Licensee and Elten as well as the Indemnified Parties. Licensee and its counsel will cooperate as fully as reasonably required by Elten and / or the Indemnified Parties, in defense or settlement of any Claim. Elten and / or the Indemnified Parties reserve the right, to assume the exclusive defense or settlement, and control of any matter otherwise subject to indemnification by Licensee. Licensee shall not in any event consent to any judgment, settlement, attachment, lien, or any other act adverse to the interest of Elten and / or any Indemnified Parties without the prior written consent of Elten and / or Indemnified Parties.

## **Article 16. Miscellaneous.**

Unless Elten has provided separate, individual contract conditions in writing, signed by a duly authorized representative of Elten, this EULA represents the entire agreement between the Parties relating to the Licensed Software and (i) supersedes all prior or contemporaneous oral or written communications, proposals, and representations with respect to its subject matter; and (ii) prevails over any conflicting or additional terms of any acknowledgement or similar communication between the Parties during the term of this EULA and the associated license to use the Licensed Software. If any provision of this EULA is held invalid, all other provisions shall remain valid unless such validity would frustrate the purpose of this EULA, and this EULA shall be enforced to the fullest extent allowable under applicable law. Elten may amend this EULA at any time; Elten shall communicate such by electronic communication or by publication on its website. It is Licensee's responsibility to regularly check Licensor's website for any such amendments. No amendment to this EULA is binding, unless in writing and acknowledged by a duly authorized representative of Elten. This EULA shall be binding on and shall inure to the benefit of the heirs, successors, and assigns of the

Parties. Any breach of Article 2, 4, 5 or 12 is considered a material breach of this EULA and any such breach would be considered to cause irreparable harm to Elten, Elten Company and its suppliers, entitling Elten, Elten Company or its suppliers to injunctive or similar relief in addition to all other remedies available at law. The failure of Elten to enforce any right resulting from the breach of any provision of this EULA by the Licensee shall not be deemed a waiver of any right related to a subsequent breach of such provision or any other right hereunder. In this EULA, the singular shall include the plural, and the masculine shall include the feminine and neuter, and vice versa. The English text of this EULA is the only authentic text. Licensee acknowledges that it fully understands and comprehends the contents and

scope of this EULA, and it specifically states that, if and to the extent needed, it has sought legal and / or interpretative counsel in order to fully understand and comprehend. Time is of the essence in the performance of the duties under this EULA. A notice to Licensee, to be sent by Licensor in association with this EULA, may be made by letter or e-mail to Licensee's last known address (if known), or by posting a notice notification on Licensor's website. It is Licensee's responsibility to regularly check Licensor's website for such notice notifications. The covenants contained in or liabilities accrued under this EULA which, by their terms, require their performance after the termination of this EULA shall be enforceable notwithstanding the termination thereof. Any headings used herein are for convenience in reference only and are not a part of this EULA, nor shall they in any way affect the interpretation hereof.

*Elten NA\_EULA\_2021\_v02*