

PRIMARY MEMBER LICENCE AND SUPPORT CONDITIONS

The following conditions are an integral part of the **Primary Member User Agreement** entered on the **Effective Date** between **ISENTRY** and the **Primary Member User** (referred to herein for ease of reference as the **Licensee**) with respect to the Use of the Licensed Products. These conditions comprise part of the Primary Member User Documentation referred to in the Primary Member User Agreement and words and expressions defined in the Primary Member User Documentation shall bear the same respective meanings in these conditions:

1. Grant of Licence.

(a) *Scope and Restrictions.* With respect to each software product (**Licensed Product**) licensed by Licensee from ISENTRY and accepted by ISENTRY as referred to in Purchase Order forming part of the Primary Member User Documentation, Licensee is granted a nonexclusive non-assignable personal licence in or from the Territory as shall have been specified in the Purchase Order to use or deploy or install, store, load, execute and display (collectively, **Use**) the Licensed Product for Licensee's internal Use for those number of individual users identified to ISENTRY and approved by ISENTRY (an **Individual User**). The Licensed Product may be reallocated among Individual Users so long as (a) the total number of Individual Users approved and agreed to by ISENTRY does not exceed the number agreed to by ISENTRY in the Primary Member User Agreement, (b) Licensee provides written notice of the new Individual User within 48 hours of incepting a new Individual User, and (c) Licensee immediately cancels access to the Licensed Product by any previous Individual User. Each Individual User may only use the Licensed Product subject to each Individual User agreeing to the terms of the Individual User registration licence (**Individual User Registration Licence**) as made available to each Individual User prior to activation of the Use of the Licensed Product; and Licensee agrees to make a hard copy of such terms of the Individual User Registration Licence available to each Individual User. The Licensed Product shall only be used to service secure internet based electronic mail and document transmission and archiving for lawful and proper purposes within the publish rules and regulations from time to time in force of the ISENTRY Global Community (**ISENTRY Community Rules**) and for no other purpose whatsoever. The Licensed Product shall not be used in any service bureau or time-sharing arrangements.

(b) *Other Restrictions.* Licensee may not rent, lease, or sub-licence the licence provided hereunder, the Licensed Product, or any accompanying documentation. Licensee may not attempt to modify the Licensed Product. Licensee shall not cause or permit unauthorized copying, reproduction or disclosure of any portion of the Licensed Product or any of its accompanying documentation or the delivery or distribution of any part thereof to any third party or entity, for any purpose whatsoever, without the prior written consent of ISENTRY.

2. Term. Subject to timely payment of Licence Fees as provided for in the Purchase Order referred to in the Primary Member User Documentation, the term of this licence shall be as provided for in the Primary Member User Agreement and shall continue unless and until terminated according to Section 10 with respect to the Licensee or any Individual User.

3. Program Code and Documentation. The Licensed Products shall be made available to Licensee and Individual Users solely in machine-readable object code format. The Licensee shall be provided one (1) copy of documentation (**Product User Documentation**), where available, describing in reasonable detail understandable by a programmer of general proficiency the use and operation of the Licensed Product. The Product User Documentation may be reproduced by Licensee solely for purposes of Licensee's authorized use of the Licensed Products, as required.

4. Permission to Copy the Licensed Product. Licensee may (if and to the extent that the same should be necessary and deemed appropriate by ISENTRY for security and audit reasons

and subject to the prior written consent of ISENTRY) make such backup copies of the Licensed Product as are reasonably necessary and in keeping with Licensee's standard backup procedures. The original and any copies that Licensee makes of the Licensed Product and other materials, in whole or in part, are ISENTRY's property and subject to the terms of these conditions. Licensee shall not permit any personnel to remove any proprietary legends or restrictive notices contained or included in any materials provided by ISENTRY under the Primary Member User Documentation, and Licensee shall not permit any personnel to copy or modify any such materials except as specifically authorized hereunder.

5. Payment. Licensee will pay the Licence Fees to ISENTRY as provided for in the Purchase Order referred to in the Primary Member User Documentation as a condition of access to and Use of the Licensed Product and which shall be paid and provided for as set out in the Purchase Order and otherwise the Primary Member User Documentation.

6. Proprietary Rights and Confidentiality.

(a) *Proprietary Rights.* The Licensed Product is owned or licensed by ISENTRY and is protected by copyright laws and international treaty provisions. Licensee acknowledges that the Licensed Product, its enhancements and modifications, major and minor releases and all supporting documentation constitute valuable proprietary property of ISENTRY or its affiliates and licensors and that all title and ownership rights in the Licensed Product and related materials remain exclusively with ISENTRY or its affiliates and licensors. ISENTRY or its affiliates and licensors reserve all rights with respect to the Licensed Product, its enhancements and modifications, major and minor releases and all supporting documentation under all laws of the Territory and other jurisdictions designated for the protection of proprietary information, including, but not limited to, trade secrets, copyrights, trademarks, service marks, and patents.

(b) *Acknowledgement.* Licensee acknowledges that certain items related to the Licensed Product, including any User Documentation, object or source code, designs, know-how, specifications, translations, compilations, partial copies and derivative works, as well as ISENTRY's business information, the Primary Member User Documentation; sales and marketing research, materials, plans, accounting and financial information, personnel information and the like, contain confidential and proprietary information belonging exclusively to ISENTRY or third parties (**Confidential Information**). Confidential Information does not include: (i) information already known or independently developed by the Licensee outside the scope of this relationship by personnel not having access to any Confidential Information, (ii) information in the public domain through no wrongful act of the Licensee or a third party, or (iii) information received by the Licensee from a third party who was free to disclose it.

(c) *Covenant.* With respect to the Confidential Information, and except as expressly authorized herein, the Licensee agrees that during the Term and at all times afterwards it shall not use, commercialize or disclose such Confidential Information to any person or entity, except to its own employees, consultants, subcontractors or agents having a "need to know" (and who themselves are bound by similar nondisclosure restrictions), and to such other recipients as ISENTRY may approve in writing; provided that all such recipients shall have first executed a confidentiality agreement in a form acceptable to ISENTRY. Neither the Licensee nor any recipient shall: (i) alter or remove from any Licensed Product or associated Product User Documentation any proprietary, copyright, trademark or trade secret legend, or (ii) attempt to decompile, disassemble or reverse engineer the Licensed Product or other Confidential Information. Any information derived in violation of such covenant shall automatically be deemed Confidential Information owned exclusively by ISENTRY. The Licensee and its personnel shall use at least the same degree of care in safeguarding the Confidential Information as Licensee uses in safeguarding its own confidential information, but in no event shall less than due diligence and care be exercised. Upon termination, Licensee shall return or

certify the destruction of all Confidential Information in its possession or control, and cease all further use thereof.

(d) *Injunctive Relief.* Licensee acknowledges that violation of the provisions of this section would cause irreparable harm to ISENTRY not adequately compensable by monetary damages. In addition to other relief, Licensee agrees that injunctive relief, without any requirement for posting a bond, shall be available to prevent any actual or threatened violation of such provisions.

7. Warranties

(a) *Non-infringement Warranty.* ISENTRY represents and warrants that the Licensed Product, when properly used in accordance with the ISENTRY Community Rules, Product User Documentation and otherwise under the Primary Member User Documentation and will not infringe or misappropriate any Territory copyright, trademark, patent, or the trade secrets of any third party. If it allegedly should do so and upon being notified of such a claim, ISENTRY shall (i) defend through litigation or obtain through negotiation the right of Licensee to continue using the Licensed Product; (ii) rework the Licensed Product so as to make it non-infringing while preserving the original functionality, or (iii) replace the Licensed Product with functionally equivalent software. If ISENTRY determines that none of the foregoing alternatives is reasonably feasible, it may terminate all or any part of the Primary Member User Agreement and refund to Licensee a pro rata portion of the amounts paid for the infringing Licensed Product based on the unexpired period of the Primary Member User Agreement on the assumption that notice of termination shall have been given by the Licensee as from the date of any such determination by ISENTRY in accordance with the foregoing provisions hereof. This section contains ISENTRY's sole and exclusive remedy for a breach of this warranty. THE FOREGOING WARRANTY DOES NOT APPLY TO THE EXTENT A CLAIMED INFRINGEMENT IS CAUSED BY LICENSEE'S MODIFICATIONS TO THE LICENSED PRODUCT, BY LICENSEE'S FAILURE TO INSTALL UPDATES PROVIDED BY ISENTRY, OR BY USE OF THE LICENSED PRODUCT IN COMBINATION WITH OTHER SOFTWARE OR HARDWARE NOT SPECIFIED BY ISENTRY.

(b) *Limited Performance Warranty.* ISENTRY represents and warrants for a period of thirty (30) days from delivery (**Warranty Period**) that it will make reasonable efforts to ensure the Licensed Product operates substantially in accordance with the applicable specifications referred to in the Product User Documentation (if any) and otherwise under the Primary Member User Documentation; provided that: (i) the Licensed Product is installed, implemented and operated in accordance with all instructions supplied by ISENTRY, (ii) Licensee provides written notice to ISENTRY of any such defect within ten (10) calendar days after the appearance thereof, (iii) Licensee has properly installed all updates made available with respect to the Licensed Product, and updates recommended by ISENTRY with respect to any third party software products (including operating system software) that materially affect the performance of the Licensed Product, (iv) Licensee has properly maintained all associated equipment, software and environmental conditions in accordance with applicable specifications and industry standards, (v) Licensee has not introduced other equipment or software creating an adverse impact on the Licensed Product, and (vi) Licensee has timely paid all amounts due hereunder and is not in material breach of any provision of the Primary Member User Documentation. THE FOREGOING WARRANTY DOES NOT EXTEND TO ANY APPLICATIONS CREATED THROUGH USE OF A LICENSED PRODUCT.

(c) *Warranty Disclaimer.* EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION (**WARRANTIES**), ISENTRY HEREBY DISCLAIMS WITH RESPECT TO ALL LICENSED PRODUCTS OR OTHER DELIVERABLES PROVIDED HEREUNDER, AND ANY APPLICATIONS CREATED THROUGH USE OF THE LICENSED PRODUCT, ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF

MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER WARRANTIES ARISING FROM THE COURSE OF DEALING, PERFORMANCE OR USAGE OF THE TRADE.

8. Limitation of Remedies and Liabilities. The parties acknowledge that the following provisions have been negotiated by them and reflect a fair allocation of risk:

(a) *Remedies.* Licensee's sole remedies for ISENTRY's breach hereunder shall be (i) to obtain from ISENTRY the repair, replacement or correction of the defective Licensed Product to the extent warranted under section 7 or, if ISENTRY reasonably determines that such remedy is not economically or technically feasible, (ii) to obtain a pro rata refund of amounts paid with respect to the defective Licensed Product based on the unexpired period of the Primary Member User Agreement on the assumption that notice of termination shall have been given by the Licensee as from the date of any determination by ISENTRY that the Licensed Product cannot be replaced..

(b) *Liabilities.* ISENTRY SHALL NOT BE LIABLE FOR ANY AMOUNT EXCEEDING THE TOTAL PORTION OF THE LICENCE FEE ACTUALLY PAID BY LICENSEE UNDER THE PRIMARY MEMBER USER AGREEMENT. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO EACH OTHER OR THIRD PARTIES, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFIT OR BUSINESS INTERRUPTION EVEN IF NOTIFIED IN ADVANCE OF SUCH POSSIBILITY) ARISING OUT OF OR PERTAINING TO THE SUBJECT MATTER OF THE PRIMARY MEMBER USER DOCUMENTATION. THE LIMITATIONS OF THIS SECTION SHALL NOT APPLY TO BREACHES OF CONFIDENTIALITY OR TO INDEMNIFICATION OBLIGATIONS HEREUNDER.

9. Notices Notices sent to either party under these licence conditions shall be in writing and shall become effective when delivered in person or transmitted by telecopier ("fax") machine (with machine confirmation report), one (1) day after being sent by overnight courier, or two (2) days after being sent by first class mail postage prepaid to the addresses stated above, or as modified by written notice.

10. Termination. Without prejudice to the termination provisions of the Primary Member User Agreement, ISENTRY may, upon immediate notice without giving any reason or explanation therefor, terminate a Individual User Registration Licence or this licence if in its opinion the Use is in breach of the ISENTRY Community Rules or is prejudicial to or may risk or compromise the integrity and security of the ISENTRY Licensed Product or any goodwill or undertaking of ISENTRY and its affiliates and businesses. Either party may, in addition to other available legal or equitable remedies, terminate any licence granted hereunder if the other party breaches any material provision hereof and fails within thirty (30) days after receipt of notice of breach to correct such default or to commence corrective action reasonably acceptable to the aggrieved party and proceed with due diligence to completion. Either party shall be in default hereof if it is declared insolvent, makes an assignment for the benefit of its creditors, a receiver is appointed or a petition in bankruptcy is filed with respect to the party and is not dismissed within thirty (30) days. Termination of the Primary Member User Agreement or any licences granted hereunder shall have no effect on the parties' rights or obligations which expressly or implicitly survive termination.

11. Disputes under these Conditions. Except for certain injunctive judicial relief authorized under section 6 which may be brought at any time and without prejudice to any right a party may have to bring any action or proceeding under these conditions or the Primary Member User Documentation generally, the parties agree that all disputes between them shall first be submitted to the parties' respective contracts administrators and if not resolved, shall then be

submitted for informal resolution to their respective chief operating officers for a period of thirty (30) days. Any remaining dispute shall be submitted to a panel of three (3) arbitrators, having experience in the field of software licensing law. All proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association and held in the jurisdiction of the party against whom the arbitration is initiated. The award of the arbitrators shall include a written explanation of their decision, shall be limited to remedies otherwise available in court and shall be binding upon the parties and enforceable in any court of competent jurisdiction.

THESE CONDITIONS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE GOVERNING LAW SET OUT IN THE PRIMARY MEMBER USER AGREEMENT WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

12. Independent Contractor Status. Each party, and its affiliates, employees and representatives, are independent contractors in relation to the other party with respect to all matters arising under these conditions. Nothing herein shall be deemed to establish a partnership, joint venture, association or employment relationship between the parties.

13. Audit. ISENTRY or its representatives may conduct an on-site audit with reasonable notice to Licensee during regular business hours, no more than twice a year, of Licensee's compliance with the Use restrictions in the licence. If any such audit shows that Licensee has exceeded the number of Individual Users, without limitation of ISENTRY's other remedies, Licensee shall pay ISENTRY's then-current Licence Fees for the increased total number of Individual Users identified in such audit. If any such audit shows that Licensee has exceeded the number of authorized Individual Users by more than five (5) percent, Licensee shall also pay the reasonable cost of such audit.

14. Compliance with Laws. The parties and their affiliates, officers, directors, employees, agents and representatives shall comply with all applicable governmental laws and regulations relating to the provision or Use of the Licensed Products, including the ISENTRY Community Rules. Licensee has or shall obtain in a timely manner all necessary or appropriate licences, permits or other governmental authorizations or approvals; and shall indemnify and hold ISENTRY harmless from, and bear all expense of, complying with all foreign or domestic laws, regulations or requirements pertaining to the importation, exportation, or use of the technology to be provided hereunder.

15. Indemnification. (a) Licensee agrees to indemnify, defend and hold harmless ISENTRY and its affiliates, and their respective directors, officers, employees, agents and assigns, as applicable, against any and all claims, damages, losses and expenses (including reasonable attorneys' fees), as incurred, arising from or in connection with or otherwise with respect to any claim, demand or legal action by a client, potential client, employee, consultant, independent contractor or agent of Licensee (or any of Licensee's affiliates), or by a third party (each, a "**Third Party Claim**"), related directly or indirectly to the Licensee's Use of or failure to use the Licensed Product for any purpose, except to the extent such claim arises from ISENTRY's negligence, willful misconduct or alleged infringement. ISENTRY shall notify in writing Licensee of the Third Party Claim within ten (10) business days after receipt of written notice of the Third Party Claim; provided however, that failure to give such notification shall not affect the above indemnification except to the extent the Licensee shall have been actually prejudiced as a result of such failure. Licensee may, at its option, conduct the defense in any such Third Party Claim provided that Licensee does not agree to any settlement or other outcome that directly affects the Licensed Product without prior written approval from an authorized official of ISENTRY, and ISENTRY agrees to cooperate fully with such defense (subject to reimbursement by the Licensee of actual expenses incurred therewith). (b) ISENTRY agrees to indemnify, defend, and hold harmless Licensee and its affiliates, and their respective directors, officers, employees, agents and assigns, as applicable, from and against any losses, claims, damages, costs,

expenses (including but not limited to reasonable attorneys' fees), liabilities and obligations arising out of any claim or allegation that the Licensed Product infringes or violates any patent, copyright, trademark, trade secret, or other intellectual property right of any third party in the Territory or in other territory or territories where Use of the Licensed Product has been authorized, provided that such claim does not arise out of (1) a modification to the Licensed Product made by or on behalf of Licensee that was not authorized by ISENTRY in writing, (2) Use of the Licensed Product in combination with hardware or software not recommended by ISENTRY, or (3) Licensee's failure to install an updated release provided the ISENTRY that would have avoided the infringement claim. Licensee shall notify in writing ISENTRY of the Third Party Claim within ten (10) business days after receipt of written notice of the Third Party Claim; provided however, that failure to give such notification shall not affect the above indemnification except to the extent the ISENTRY shall have been actually prejudiced as a result of such failure. ISENTRY may, at its option, conduct the defence in any such, and Licensee agrees to cooperate fully with such defence claim (subject to reimbursement by the ISENTRY of actual expenses incurred therewith).

16. Anti-terrorism. Use of the Licensed Product is or may be specifically controlled by anti-terrorism rules or regulations in the Territory. The Licensed Product may not be Used in or with any country designated by ISENTRY as subject to anti-terrorism controls.

17. Miscellaneous. (a) Except as specifically permitted herein, neither the Primary Member User Agreement nor any rights or obligations hereunder may be transferred or assigned by Licensee without ISENTRY's prior written consent and any attempt to the contrary shall be void; (b) ISENTRY reserves all rights not specifically granted herein; (c) neither party shall be liable for delays caused by events beyond its reasonable control; (d) any provision hereof found by a tribunal of competent jurisdiction to be illegal or unenforceable shall be automatically conformed to the minimum requirements of law and all other provisions shall remain in full force and effect; (e) waiver of any provision hereof in one instance shall not preclude enforcement thereof on future occasions; (f) headings are for reference purposes only and have no substantive effect; and (g) The United Nations Convention on Contracts for the International Sale of Goods does not apply to this licence.