



ISENTRY DIGITAL HANDSHAKE CONTROL™

SUBSCRIBER LICENCE CONDITIONS

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

1. Grant of Licence.

(a) *Scope and Restrictions.* With respect to the internet based software products and services (**iSentry Services**) with accompanying documentation subscribed to by Subscriber from ISENTRY and accepted by ISENTRY as referred to in the *Purchase Order Form* forming part of the Subscriber User Documentation, Subscriber is granted:

(i) if the Subscriber has purchased a Licence for DHS Control and in respect of which the Licence Fee has been paid, subject to the relevant Service Fee being paid in respect of the maintenance of the Licence, a perpetual non-exclusive, non-transferable licence for Use of the DHS Control; and

(ii) if the Subscriber is supplied Signature Transaction Support in connection with DHS Control, subject to payment of the relevant Transaction Fees, a non-exclusive, non-transferable personal licence for Use of the DHS Control for so long as the Signature Transaction Support is supplied by iSentry to the Subscriber,

And, in each case, referred to herein as a **Licence** and which Licence shall be automatically revoked and withdrawn, without notice, in the event that such Use is in violation of the rights of iSentry and its Affiliates or any of them or is on any other terms than those specified in this section or otherwise in these Conditions.

In these Conditions, **Use** means to use or install, store, execute and display the DHS Control for Subscriber's own personal purposes.

(b) *Other Restrictions.* Subscriber may not rent, lease, or sub-licence the iSentry Services, nor attempt to modify the iSentry Services. Subscriber shall not cause or permit unauthorized copying, reproduction or disclosure of any portion of the iSentry Services 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 Service Fees as provided for in the *Purchase Order Form* referred to in the Subscriber User Documentation, the term of the Licence shall be as provided for in the Subscriber Agreement and shall continue unless and until terminated according to section 1 or section 10.

3. Product Documentation. Subscriber shall be provided one copy of documentation (**Product User Documentation**), where available, describing in reasonable detail the use and operation of the iSentry Services. The Product User Documentation may be reproduced by Subscriber solely for purposes of Subscriber's authorized use of the iSentry Services, as required and will be made available in hard copy or electronically.

4. Payment. Subscriber will pay the Service Fees to ISENTRY as provided for in the *Purchase Order Form* referred to in the Subscriber Agreement as a condition of access to and Use of the



iSentry Services and which shall be paid and provided for as set out in the *Purchase Order Form* and otherwise in the Subscriber Agreement.

5. Proprietary Rights and Confidentiality.

(a) *Proprietary Rights.* All intellectual property rights in and to the iSentry Services are owned or licensed by ISENTRY and is protected by copyright laws and international treaty provisions. Subscriber acknowledges that the iSentry Services, 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 iSentry Services 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 iSentry Services, 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.* Subscriber acknowledges that certain items related to the iSentry Services, including any Product 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 Product 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 Subscriber 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 Subscriber or a third party, or (iii) information received by the Subscriber 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 Subscriber 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 Subscriber nor any recipient shall: (i) alter or remove from any iSentry Services or associated Product User Documentation any proprietary, copyright, trademark or trade secret legend, or (ii) attempt to decompile, disassemble or reverse engineer the iSentry Services or other Confidential Information. Any information derived in violation of such covenant shall automatically be deemed Confidential Information owned exclusively by ISENTRY. The Subscriber and its personnel shall use at least the same degree of care in safeguarding the Confidential Information as Subscriber uses in safeguarding its own confidential information, but in no event shall less than due diligence and care be exercised. Upon termination, Subscriber shall return or certify the destruction of all Confidential Information in its possession or control, and cease all further use thereof.

(d) *Injunctive Relief.* Subscriber 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, Subscriber agrees that injunctive relief, without any requirement for posting a bond, shall be available to prevent any actual or threatened violation of such provisions.

6. Warranties

(a) *Non-infringement Warranty.* ISENTRY represents and warrants that the iSentry Services, when properly used in accordance with the Product User Documentation 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 Subscriber to continue using the iSentry Services; (ii) rework the iSentry Services so as to make it non-infringing while preserving the original functionality, or (iii) replace the iSentry Services 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 Subscriber Agreement and refund to Subscriber a pro rata portion of the amounts paid for the infringing iSentry Services based on the unexpired period of the Subscriber Agreement on the assumption that notice of termination shall have been given by the Subscriber 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 SUBSCRIBER'S MODIFICATIONS TO THE ISENTRY SERVICES BY SUBSCRIBER'S FAILURE TO INSTALL UPDATES PROVIDED BY ISENTRY, OR BY USE OF THE ISENTRY SERVICES 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 iSentry Services operate substantially in accordance with the applicable specifications referred to in the Product User Documentation (if any) and otherwise under the Subscriber User Documentation; provided that: (i) the iSentry Services are installed, implemented and operated in accordance with all instructions supplied by ISENTRY, (ii) Subscriber provides written notice to ISENTRY of any such defect within ten (10) calendar days after the appearance thereof, (iii) Subscriber has properly installed all updates made available with respect to the iSentry Services, and updates recommended by ISENTRY with respect to any third party software products (including operating system software) that materially affect the performance of the iSentry Services, (iv) Subscriber has properly maintained all associated equipment, software and environmental conditions in accordance with applicable specifications and industry standards, (v) Subscriber has not introduced other equipment or software creating an adverse impact on the iSentry Services, and (vi) Subscriber has timely paid all amounts due hereunder and is not in material breach of any provision of the Subscriber User Documentation. THE FOREGOING WARRANTY DOES NOT EXTEND TO ANY APPLICATIONS CREATED THROUGH USE OF THE ISENTRY SERVICES.

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

7. 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.* Subscriber's sole remedies for ISENTRY's breach hereunder shall be (i) to obtain from ISENTRY the repair, replacement or correction of the defective iSentry Services to the extent warranted under section 6 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 iSentry Services based on the unexpired period of the Subscriber Agreement on



the assumption that notice of termination shall have been given by the Subscriber as from the date of any determination by ISENTRY that the iSentry Services cannot be replaced.

(b) *Liabilities.* ISENTRY SHALL NOT BE LIABLE FOR ANY AMOUNT EXCEEDING THE TOTAL PORTION OF THE SERVICE FEES ACTUALLY PAID BY SUBSCRIBER UNDER THE SUBSCRIBER 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 SUBSCRIBER USER DOCUMENTATION. THE LIMITATIONS OF THIS SECTION SHALL NOT APPLY TO BREACHES OF CONFIDENTIALITY OR TO INDEMNIFICATION OBLIGATIONS HEREUNDER.

8. Notices Notices sent to either party under these Conditions shall be sent in accordance with the *General Conditions*.

9. Termination. Without prejudice to the termination provisions of the Subscriber Agreement, ISENTRY may, upon immediate notice without giving any reason or explanation therefor, terminate the Licence if in its opinion the Use is prejudicial to or may risk or compromise the integrity and security of ISENTRY or the iSentry Services 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 Subscriber Agreement or any Licences granted hereunder shall have no effect on the parties' rights or obligations which expressly or implicitly survive termination.

10. Disputes under these Conditions. Except for certain injunctive judicial relief authorized under section 5 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 Subscriber 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 SUBSCRIBER AGREEMENT WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

11. 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.

12. Audit. ISENTRY or its representatives may conduct an on-site audit with reasonable notice to Subscriber during regular business hours, no more than twice a year, of Subscriber's compliance with the Use restrictions in the Licence.

13. 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 iSentry Services. Subscriber 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.

14. Indemnification. (a) Subscriber 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 Subscriber (or any of Subscriber's affiliates), or by a third party (each, a "Third Party Claim"), related directly or indirectly to the Subscriber's Use of or failure to use the iSentry Services for any purpose, except to the extent such claim arises from ISENTRY's negligence, willful misconduct or alleged infringement. ISENTRY shall notify in writing Subscriber 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 Subscriber shall have been actually prejudiced as a result of such failure. Subscriber may, at its option, conduct the defense in any such Third Party Claim provided that Subscriber does not agree to any settlement or other outcome that directly affects the iSentry Services without prior written approval from an authorized official of ISENTRY, and ISENTRY agrees to cooperate fully with such defence (subject to reimbursement by the Subscriber of actual expenses incurred therewith). (b) ISENTRY agrees to indemnify, defend, and hold harmless Subscriber 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 iSentry Services infringe or violate 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 iSentry Services have been authorized, provided that such claim does not arise out of (1) a modification to the iSentry Services made by or on behalf of Subscriber that was not authorized by ISENTRY in writing, (2) Use of the iSentry Services in combination with hardware or software not recommended by ISENTRY, or (3) Subscriber's failure to install an updated release provided that ISENTRY would have avoided the infringement claim. Subscriber 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 Subscriber agrees to cooperate fully with such defence claim (subject to reimbursement by the ISENTRY of actual expenses incurred therewith).

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

16. Miscellaneous. (a) Except as specifically permitted herein, neither the Subscriber Agreement nor any rights or obligations hereunder may be transferred or assigned by Subscriber 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; (g) The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Licence; and words and expressions given defined meanings in the General Conditions shall have the same respective meanings when used in these Conditions.