

End User License Agreement

1. DEFINITIONS

In this License Agreement ("the License") the following words and expressions when used with initial capital letters shall have the meanings set forth:

- 1.1. "**Applicable Law**" means any of the following, to the extent that it applies to a Party, any statute, directive, order, enactment, regulation, by-law, ordinance or subordinate legislation in force from time to time that is binding on the Parties, in any jurisdiction applicable to this Agreement.
- 1.2. "**Confidential Information**" has the meaning given to it in Section 6.
- 1.3. "**Customer**" means any user of the Software.
- 1.4. "**Device**" means anything with an IP address which is added to the Software.
- 1.5. "**Documentation**" means the instruction manuals and user guides made available to the Customer by IRIS NS in electronic form.
- 1.6. "Element" is a physical or logical entity that exists on a device, which has data associated with it. Each entity has an identifier or "tag" that is used to reference it and is called an Element in Iris terminology.
- 1.7. "**Intellectual Property Rights**" shall mean all intellectual property, including patents, trade and service marks, trade names, rights in designs, copyrights, topography rights, rights in databases, trade secrets and know-how, in each case whether or not registered and including registrations and applications for registration of any of these, and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these anywhere in the world.
- 1.8. "**License Term**" means the period of time that the Customer is permitted to use the License as defined during online sign up or the issuing of a Purchase Order.
- 1.9. "**Purchase Order**" shall mean any purchase orders accepted by IRIS NS from the Customer or should the Customer not issue a purchase order an accepted quotation issued by IRIS NS and/or an agreed Statement of Work shall constitute a purchase order.
- 1.10. "**Schedule(s)**" means all schedules attached to this agreement.
- 1.11. "**Software**" means the products and software programs in object code form and made available by IRIS NS to the Customer.
- 1.12. "**Third Parties**" means any other party which is a licensor of software to IRIS NS.

2. GRANT OF LICENSE

- 2.1. **Grant of License.** Subject to the terms and conditions of this License, the relevant IRIS NS quotation and subject to payment of all License fees due to IRIS NS, IRIS NS hereby grants to Customer a non-exclusive, non-transferable, non-sub-licensable, license to use the Software during the License Term and solely for Customer's own internal business purposes and for the quantity as specified. Published pricing is based on a maximum number of Devices or Elements as set out during sign up or on any Purchase Order. Should the Customer exceed the maximum number of Devices or Elements additional fees will be payable as advised by IRIS NS.
- 2.2. **Requirements.** Customer shall use the Software only in accordance with the Documentation and this License.
- 2.3. **License Restrictions.** Customer shall not, and shall not permit any third party to, under any circumstances:
 - 2.3.1. use the Software for any purpose or in any manner that is not expressly authorized by this License;
 - 2.3.2. alter, modify, adapt or create derivative works of the Software or any part of it;
 - 2.3.3. remove, erase, alter or tamper with any copyright, trade mark or other proprietary rights notice printed or stamped on, affixed to, or encoded or recorded in the Software or fail to preserve any such notice in any copy of the Software;
 - 2.3.4. reproduce, modify or copy the Software, except to make back-up copies as permitted by any applicable law;
 - 2.3.5. sell, rent, market, assign, license, sublicense, transfer, transmit or convey any right or interest in the Software to any person, including any outsourcer, vendor, contractor, partner or affiliate;

- 2.3.6. reverse assemble, engineer or compile, disassemble or decompile the Software except to the extent permitted by any Applicable Law.
- 2.3.7. continue to use the Software after the License Term has been reached or continue to use the Software if the subscriptions have not been renewed.
- 2.4. **Updates and Upgrades.** The Licenses provided hereunder shall apply to any updates or upgraded versions of the Software delivered under any Support and Maintenance Agreement.
- 2.5. **Open Source Software.** The Software may include and be distributed with certain third party open source components ("OSS"). The OSS is provided in terms of the relevant licenses and the required notices are provided with the Software.

3. ACCEPTANCE.

Unless otherwise agreed in writing, the Software shall be deemed to be accepted by the Customer upon delivery of the Software. But in any event the Software shall be deemed to be accepted by the Customer upon the Customer's commercial and/or operational use of the Software.

4. INTELLECTUAL PROPERTY

- 4.1. **Title.** The copyright and other Intellectual Property Rights originating in or deriving from the Software and the Services and programme files, codes, related technical information and any subsequent revisions, enhancements or other derivative works of the foregoing and all documents prepared or supplied by IRIS NS in connection with this Agreement or otherwise are and will at all times remain the property of IRIS NS (or its licensors). The Customer acknowledges that any and all copyright and other Intellectual Property Rights which subsist in or arise in connection with the Software and/or the Services anywhere in the world belong to IRIS NS (or its licensors) and that the Customer shall have no right in or to the Software and/or the Services or any related documentation save the right to use it as permitted by this Agreement. Nothing in this Agreement shall be construed as an assignment or grant to Customer of any right, title or interest in or to the Software, the documentation related thereto, or in any patent, copyright, trademark, service mark, slogan, symbol or design of IRIS NS or any licensor. Customer shall have no right to use the foregoing except as specifically permitted by this Agreement, and IRIS NS and its licensors retain all rights not expressly granted herein.
- 4.2. **Modifications.** Customer hereby assigns to IRIS NS any present and future Intellectual Property Rights in any modification or improvement to the Software which incorporates part of the original Software and is made by the Customer. Customer agrees to execute, and shall procure that any employee or independent contractor execute, any documentation reasonably requested by IRIS NS consistent with the foregoing, all without additional consideration.
- 4.3. **Customer's Data.** Notwithstanding the above, all data provided by the Customer shall remain the sole and exclusive property of Customer.
- 4.4. **Marks.** No rights are granted to Customer hereunder to any trademarks, service marks, slogans, symbols or designs of IRIS NS ("IRIS NS Marks"), and Customer agrees not to register or to use any term which contains or is confusingly or deceptively similar to the IRIS NS Marks.

5. DATA PROTECTION

- 5.1. To the extent any party processes personal data in terms of this Agreement, such party undertakes to comply with the applicable data protection laws in respect of such personal data, and the parties will enter into additional agreements reflecting the jurisdiction specific compliance requirements with respect to such personal data where required (including, but not limited to, the execution of a data processing agreement and, as necessary, the EU standard contractual clauses).

6. CONFIDENTIALITY

- 6.1. **Confidentiality Obligations.** "Confidential Information" includes all Software, training material, the output of any services, all related documents plus all information reasonably identified by the disclosing party as confidential. The receiving party shall retain the Confidential Information of the disclosing party in strict confidence, shall not use it for any purpose other than as permitted under this Agreement, and shall not disclose it to any third party (except as authorized by this Agreement) without the disclosing party's express written consent.
- 6.2. **Exceptions.** The receiving party shall be relieved of the obligations of Section 6.1 with respect to information it can establish through credible evidence: (a) was in the public domain at the time it was disclosed or has become in the public domain through no fault of the receiving

party; (b) was known to the receiving party, without restriction, at the time of disclosure as shown by the files of the receiving party in existence at the time of disclosure; (c) was independently developed by the receiving party without any use of the disclosing party's confidential information and by employees or other agents of the receiving party who have not had access to any of the disclosing party's confidential information; or (d) became known to the receiving party, without restriction, from a source other than the disclosing party without breach of this Agreement by the receiving party and otherwise not in violation of the disclosing party's rights.

- 6.3. **Required Disclosure.** If the receiving party is required by law or by any legitimate regulatory authority to which the receiving party is subject to disclose Confidential Information of the disclosing party, the receiving party may disclose such Confidential Information; provided that the receiving party shall: (a) give the disclosing party as much notice as reasonably practicable of the requirement for such disclosure; (b) assist the disclosing party in challenging, limiting and/or obtaining protective treatment with respect to such disclosure; and (c) limit disclosure of the disclosing party's Confidential Information to that required to be disclosed.
- 6.4. Except as provided in Sections 6.2 and 6.3 above, each party and its respective successors and permitted assigns will maintain the confidentiality of the Confidential Information provided by the other party or its suppliers and will not: (i) use, disclose, reproduce, distribute or otherwise transfer the Proprietary Information to any other person or entity nor (ii) remove from the Confidential Information any notice placed thereon indicating the confidential nature of or the proprietary right of the parties or their suppliers.
- 6.5. Each party agrees that: (i) the Confidential Information accessed or acquired by it or its employees or agents in connection with this Agreement is and remains the exclusive property of the party or its supplier from whom it was received; and (ii) such access will be limited to employees and independent contractors who have a need to know the Confidential Information and who agree in writing to abide by the restrictions of this Agreement and to use the Confidential Information only for the purposes permitted hereunder.
- 6.6. The obligations of confidentiality in this section will apply to any Confidential Information during the term hereof and for a period of three (3) years after termination of this Agreement.
- 6.7. **Return of Confidential Information.** All tangible forms of the Confidential Information, including, without limitation, all summaries, copies, excerpts of any Confidential Information whether prepared by the disclosing party or not, shall be the sole property of the disclosing party, and shall be immediately delivered by the receiving party to the disclosing party upon the disclosing party's request or the termination of this Agreement (whichever is earlier). The receiving party shall not copy, reproduce, publish or distribute in whole or in part any Confidential Information of the disclosing party without the prior written consent of the disclosing party.

7. REPRESENTATIONS AND WARRANTIES

- 7.1. **Software Warranty.** IRIS NS warrants, for Customer's benefit alone, that for a period of 30 (thirty) days from the date of delivery of the Software that: (a) the Software, when used in accordance with this Agreement, will perform substantially in accordance with the Documentation therefor; and (b) the medium upon which the Software is provided to Customer shall be free from defects in materials and workmanship under normal use; and (c) any services provided by IRIS NS will be performed in a workmanlike manner. IRIS NS does not warrant that the operation of the Software will be uninterrupted or error-free or that any defects that may exist in the Software can be corrected.
- 7.2. **Software Warranty Remedy.** For any breach of warranty by IRIS NS, Customer's exclusive remedy, and IRIS NS's entire liability, shall be replacement/modification/re-performance of the Software or services in question at the sole discretion of IRIS NS. Customer shall provide IRIS NS promptly with all necessary cooperation, information and data that may be reasonably required by IRIS NS for the analysis and rectification of any non-conformance of the Software.

8. INDEMNIFICATION

- 8.1. **Obligation to Indemnify.** Subject to the remaining provisions of this Section 8, IRIS NS shall defend, indemnify and hold harmless Customer from and against all damages, awards, judgments, costs and/or expenses (including reasonable legal fees incurred at the request of

IRIS NS) finally awarded in any third-party claim or demand alleging infringement of any third party Intellectual Property Rights by the Software.

- 8.2. **Indemnification Procedures.** Customer shall promptly notify IRIS NS of any claim or demand that is made, brought or threatened against Customer for which Customer requires an indemnity hereunder. Customer agrees that IRIS NS or any other third party owner of the Software shall have control of the defense and/or settlement of the claim and give IRIS NS or any other third party owner of the Software as applicable such assistance as it may reasonably request.
- 8.3. **Infringement.** If the Software becomes subject to any allegation of infringement or misappropriation or, in the reasonable opinion of IRIS NS, is likely to become subject to such an allegation, IRIS NS shall be entitled, at its own expense and option, either to:
- 8.3.1. modify or replace the infringing items of the Software (without detracting in any way from their performance or functionality) so that the same cease to be infringing; or
 - 8.3.2. procure the right for Customer to continue using the Software as contemplated by this Agreement; or
 - 8.3.3. refund the unutilised portion of any prepaid Licence fee paid to IRIS NS.
- 8.4. **Exceptions.** IRIS NS shall have no liability for, and Customer shall indemnify and hold harmless IRIS NS and any other third party licensors from and against, any claim that the Software infringes or misappropriates any Intellectual Property Right, where the infringement or misappropriation is caused by the Customer's use of the Software other than as set out herein.
- 8.5. **Exclusive Remedy.** This Section 8 states IRIS NS's entire liability and Customer's exclusive remedy for infringement and/or misappropriation of Intellectual Property Rights.

9. LIMITATION OF LIABILITY AND DISCLAIMER OF DAMAGES

- 9.1. **Limitation of Liability.** Iris NS's and its agents' and subcontractors' aggregate liability, if any, and customer's sole and exclusive remedy for damages for any and all claims of any kind whatsoever with respect to this license, the software, any services provided by iris ns, or the delivery or non-delivery of the software, regardless of the legal theory (whether contract, delict, strict liability or otherwise), shall not be greater than the license fees paid to iris ns under this agreement during the 12 (twelve) months prior to the accrual of such claim(s) or R10 000 000.00 (ten million rand) in aggregate whichever is the lesser. This limitation will not apply to death or personal injury caused by iris ns's negligence or any other liability that cannot be limited by law.
- 9.2. **Disclaimer of Damages.** Under no circumstances will Iris NS be liable for any loss of profits, any special, indirect, incidental, punitive, exemplary or consequential damages of any kind or nature, including, but not limited to, loss of data, business interruption, loss of use, loss of revenue or loss of goodwill, even if iris ns is notified of the possibility of such damages. The provisions of this agreement allocate the risks between iris ns and customer, and iris ns's pricing reflects this allocation of risk and the limitation of liability specified herein. The parties agree that the limitations and exclusions of liability and disclaimers set forth in this agreement will survive and apply even if found to have failed of their essential purpose.

10. USAGE

- 10.1. IRIS NS requires that the Customer's license usage will be audited at the end of every month to ascertain the usage and license types used during the month.

11. TERM AND TERMINATION

- 11.1. The term of this License shall commence on delivery of the Software by IRIS NS to the Customer and shall continue thereafter for the duration of the License Term or until terminated as set forth in this Section 11 whichever is the earlier.
- 11.2. Either party may terminate this License with immediate effect by written notice to the other party on or at any time after the occurrence of a material breach by the other party of this Agreement and which (if the breach is capable of remedy) the defaulting party has failed to remedy within 30 (thirty) days after receipt of written notice of such breach from the terminating party.
- 11.3. On termination by IRIS NS under Section 11.2 all Licenses granted under this agreement will terminate automatically and Customer shall cease all use of the Software and, at IRIS NS's sole option, either: (a) return all copies of the Software in its possession or control; or (b) destroy all copies of the Software in its possession or control. At IRIS NS's request a

duly authorized officer of Customer shall certify in writing to IRIS NS that Customer has complied with its obligation under this Section 11.3.

11.4. On termination or expiration of this License for any reason:

11.4.1. IRIS NS shall be entitled to be paid all sums due;

11.4.2. termination shall not affect the rights of either party accruing or accrued prior to the termination of this Agreement; and

11.4.3. this Agreement shall continue in force to the extent necessary to give effect to those of its provisions that expressly or impliedly have effect after termination.