



**SOFTWARE LICENSE AGREEMENT  
(Term License)**

PLEASE READ THIS SOFTWARE LICENSE AGREEMENT ("AGREEMENT") CAREFULLY BEFORE ACCESSING, DOWNLOADING OR OTHERWISE USING ("SOFTWARE"). BY CLICKING THE "I ACCEPT" BUTTON OR BY DOWNLOADING OR OTHERWISE USING THE SOFTWARE, YOU ACCEPT THIS AGREEMENT AND ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND AND AGREE TO BE BOUND BY ITS TERMS. IF YOU ARE AN INDIVIDUAL ACTING ON BEHALF OF AN ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, YOU ARE SOLELY RESPONSIBLE FOR YOUR USE OF THE SOFTWARE. IF YOU DO NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN YOU ARE NOT PERMITTED TO ACCESS, DOWNLOAD OR OTHERWISE USE THE SOFTWARE.

This Agreement, including all referenced documents is between ADARA NETWORKS, INC. ("ADARA") and the purchaser of the license to the Software ("Customer"). This Agreement is effective ("Effective Date") the earlier of the date that Customer downloads the Software begins using the Software. This Agreement applies where Software is download or used for any purpose.

**1. LICENSE**

- a. Upon payment of the license fees, ADARA grants to Customer a personal, nonexclusive and nontransferable license to use the binary form of the ADARA Software with the end users documentation (the "Licensed Products") for internal business purposes only for the term purchased.

Support and maintenance to the Licensed Products, is provided under a separate optional Licensed Products Support and Maintenance Agreement for an annual fee.

## **2. SCOPE OF USE**

- a. Customer may not make copies of the Licensed Products, except for backup and archival purposes.
- b. Customer has the right to develop interfaces to the Licensed Products using the Licensed Products. Such Customer-developed interfaces shall be owned by Customer.
- c. Except for any Customer user interfaces developed, any changes or modifications to the Licensed Products shall be owned by ADARA. Any changes or modifications to the Licensed Product render any limited warranty void and support services will be charged at ADARA's then prevailing service rate, but ADARA shall have no obligation to provide such services.
- d. The Licensed Products may not be sold, leased, assigned, sublicensed or otherwise transferred by Customer.

## **3. PROPRIETARY INFORMATION**

- a. The Licensed Products and the pricing and terms (collectively "Information") are the proprietary and confidential information of ADARA and/or its licensors. Customer agrees to maintain the Information in strict confidence and not to disclose, duplicate or otherwise reproduce, directly or indirectly, the Information in whole or in part.
- b. Customer may not to modify, create derivative works of, translate, disassemble, reverse engineer, de-compile or derive the source code of the Licensed Products. Customer agrees not to remove any copyright notice or other proprietary markings from the Information.
- c. Customer's agrees that the failure to comply with this Agreement shall cause irreparable harm to ADARA and/or its Business Associates for which a remedy at law would be inadequate. In the event of the breach or threatened breach by Customer of its obligations under this Section, ADARA shall be entitled to

equitable relief for specific performance and/or an injunction for any actual or threatened breach, besides exercising any other remedies at law or in equity.

- d. If Customer must produce Information to any governmental agency having jurisdiction under an order to produce or in a legal proceeding under a lawful request for discovery, then Customer shall promptly notify ADARA of the order or request in discovery and reasonably cooperate with ADARA if ADARA elects (at ADARA's expense ) to limit or to avoid such disclosure by any lawful means and, if information is disclosed,
- e. Customer agrees to provide immediate, written notification to ADARA of all circumstances surrounding the unauthorized possession or use of the Licensed Products by any person or entity. Customer agrees to cooperate fully with ADARA in any litigation relating to or arising from such unauthorized possession or use.
- f. ADARA reserves all proprietary and commercial rights in the Licensed Products not expressly granted.

#### **4. LIMITED WARRANTY; ALL SALES ARE FINAL**

- a. ADARA represents and warrants it owns or otherwise has the rights in the Licensed Products and has the right to grant a license to use the Licensed Products under this Agreement.
- b. ALL SALES ARE FINAL. THE WARRANTY SET FORTH ABOVE IS A LIMITED WARRANTY AND IT IS THE ONLY WARRANTY MADE BY ADARA.
- c. ADARA EXPRESSLY DISCLAIMS, AND CUSTOMER EXPRESSLY WAIVES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND THE IMPLIED WARRANTY OF NON-INFRINGEMENT. ADARA DOES NOT WARRANT AND

SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS THAT THE SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE AND/OR ITS USE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SOFTWARE, IF ANY, WILL BE CORRECTED.

- d. ADARA'S LIMITED WARRANTY IS IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF ADARA FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY OF THE SOFTWARE OR RELATED SERVICES. EXCEPT FOR THE ABOVE LIMITED WARRANTY, THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SOFTWARE IS WITH THE CUSTOMER.

## 5. INDEMNIFICATION

- a. By ADARA.

- i. ADARA shall indemnify, defend, and hold Customer harmless from any action against Customer if it is based on an allegation that the Licensed Products have infringed a US intellectual property right, provided that Customer (i) promptly notifies ADARA of any such action; (ii) gives ADARA full authority, information and assistance to defend such claim; and (iii) gives ADARA sole control of the defense of such claim and all negotiations for the compromise or settlement of the claim. Customer's failure to perform these conditions will excuse ADARA from all its indemnification obligations, whether provided by law or this Agreement.
- ii. ADARA shall have no obligation to indemnify, defend, or hold Customer harmless regarding any claim based upon (a) Licensed Products modified by anyone other than ADARA; (b) use of other than the then-current release of the Licensed Products, if infringement could have been avoided by the then-current release and such current release has been made available to Customer; (c) use of

the Licensed Products with Customer data where use with such data established the infringement claim; (d) use of the Licensed Products with other software or hardware, where use with such other software or hardware established the infringement claim; (e) use of the Licensed Products in a manner inconsistent with its Documentation, and/or (f) use of the Licensed Products which breaches this Agreement.

iii. If ADARA determines the Licensed Products are or are likely to be the subject of a claim of infringement, ADARA shall have the right (i) to replace Customer's copy of the Licensed Products with non-infringing Licensed Products that have substantially equivalent functionality; (ii) to modify the Licensed Products so they are free of infringement; (iii) to procure the right to continue to use the Licensed Products; or (iv) to terminate the license to use the Licensed Products and Documentation.

iv. THIS IS CUSTOMER'S EXCLUSIVE REMEDY FOR ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT

b. By Customer.

i. Customer will indemnify, defend, and hold ADARA harmless from any action against ADARA involving the Licensed Products not based on an allegation that the Licensed Products has infringed a US intellectual property right. This includes, but is not limited to, claims, actions, liabilities, losses, damages, judgments, costs and expenses (including attorneys' fees) arising out of injury or death to persons, or damage to tangible and intangible property, resulting from or pertaining to Customer's use or operation of the Licensed Products. Customer will indemnify and promptly reimburse ADARA for any expenses, including attorneys' fees, incurred by ADARA for its own defense.

## **6. LIMITATION OF LIABILITY**

- a. ADARA SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE THAT MAY ARISE IN CONNECTION WITH CUSTOMER'S USE OF THE LICENSED PRODUCT. ADARA AND ITS BUSINESS ASSOCIATES SHALL NOT BE LIABLE FOR ANY LOST PROFITS, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF ADARA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY OF ANY KIND. ADARA'S MAXIMUM LIABILITY UNDER ANY THEORY SHALL NOT EXCEED THE AMOUNT CUSTOMER PAID ADARA FOR THE LICENSED PRODUCT.

## **7. DEFAULT AND REMEDIES**

- a. ADARA may terminate this Agreement if Customer fails to cure a breach within 15 days after ADARA provides notice of the breach. For misuse of intellectual property, the notice period shall be 2 days.
- b. Customer may terminate this Agreement at any time after full payment of the license fee has been made.
- c. If this Agreement is terminated, Customer shall pay all amounts due and Customer shall have no further right to use the Licensed Products and shall, within ten (10) days after the effective date of any such termination, certify in writing that such Licensed Products and all materials relating thereto in the possession of Customer have been removed from Customer's system and destroyed and the appliance shall be returned to ADARA shipping prepaid.

## **8. GENERAL**

- a. No Waiver. The failure of either party to exercise any right will not prevent a subsequent exercise or enforcement of such provisions or be deemed a waiver of any subsequent breach.

- b. Assignment. Customer may not assign this Agreement without the prior written consent of ADARA, which consent may be granted or withheld in ADARA's sole discretion. ADARA may assign this Agreement, provided the assignee assumes the obligations of ADARA under this Agreement. ADARA may also assign its right to payments under this Agreement or grant a security interest in this Agreement or such payment right to any third party without requiring such third party be liable for the obligations of ADARA under this Agreement. This Agreement is binding upon and shall inure to the benefit of the parties and their respective successors and assigns.
- c. Force Majeure. If performing this Agreement or any obligation, except for making payments, is prevented, restricted, or interfered with by a force beyond the party's control, the party so affected will resume performance when such causes are removed. If performance is prevented for more than 30 days, either party may terminate the Agreement.
- d. Export. Customer shall not export, re-export or transfer, whether directly or indirectly, the Licensed Products outside the United States of America without first complying with the export laws of the United States of America.
- e. Survival. All provisions of this Agreement relating to proprietary, confidentiality, and non-disclosure rights shall survive the termination of this Agreement.
- f. Governing Law and Jurisdiction. This Agreement governed under the laws of California. Any lawsuit between the parties shall be brought in Santa Clara County California. The parties consent to the exclusive personal and subject matter jurisdiction and venue in this county. The prevailing party in a lawsuit shall recover its reasonable attorney's fees, expert fees and costs.

- g. Integration. This Agreement is the entire Agreement between the parties regarding its subject matter and merges all prior discussions and negotiations and supersedes and replaces any other agreement between ADARA and Customer regarding its subject matter.