

## TERMS AND CONDITIONS

### 1. ORDERS

All orders are subject to acceptance or rejection by iS5 Communications Inc. (“**Supplier**”). No purchase order from Buyer shall be binding on Supplier until accepted in writing by a duly authorized officer or employee of Supplier. All sales are subject to these Terms and Conditions, and none of the terms of Buyer’s purchase order, except those specifying quantity and type of items ordered, invoice information and shipping instructions, shall be considered applicable to such purchases. Such terms, together with these Terms and Conditions shall constitute the entire agreement between the parties, shall supersede and replace all other prior written or oral agreements between the parties (or any of their predecessors) respecting the subject matter and may only be amended by both parties in writing.

### 2. USE

Buyer shall not resell or license to, make available for use by, or otherwise transfer title to or possession of any product to any other end user or other third party, including any reseller, without the specific authority to resell such products from Supplier. For greater certainty, this Section 2 applies to Section 7 and Section 16 of these Terms and Conditions regarding the export, re-export and transfer of Supplier’s products, documentation and services to any other end user or other third party.

### 3. EULA

All products which consist of or include software (including operating software for hardware supplied by Supplier and software in object code format that is embedded in any hardware) and/or any documentation shall be subject to the End User License Agreement (“**EULA**”) attached hereto as Exhibit A. Buyer shall be deemed to have agreed to be bound by all of the terms, conditions and obligations therein and shall ensure that all subsequent purchasers and licensees of such products shall be further bound by all of the terms, conditions and obligations therein. For software and/or documentation delivered in connection with these Terms and Conditions, that is not produced by Supplier and which is separately licensed by a third party, Buyer’s rights and responsibilities with respect to such software or documentation shall be governed in accordance with such third party’s applicable software license. Buyer shall, on request, enter into one or more separate “click-accept” license agreements or third party license agreements in respect thereto. Supplier shall have no further obligations with respect to such products beyond delivery thereof. Where Buyer is approved by Supplier to resell products, Buyer shall provide a copy of the EULA and applicable third party license agreements to each end user with delivery of such products and prior to installation of any software. Buyer shall notify Supplier promptly of any breach or suspected breach of the EULA or third party license agreements and shall assist Supplier in efforts to preserve Supplier’s or its supplier’s intellectual property rights including pursuing an action against any breaching third parties. For purposes of these terms and conditions: “software” shall mean scripts, programs, macros, computer programs, application

programming and other interfaces, tools and other instructions and sets of instructions for hardware to follow, including SQL and other query languages, hypertext markup language (“**html**”) and other computer mark-up languages; “**hardware**” shall mean mainframes, personal computers, servers, client/server stations, network equipment, routers, semi-conductor chips, communication lines and other equipment; and “**documentation**” shall mean documentation supplied by Supplier relating to the development, use, installation, implementation, integration, configuration, operation, modification, maintenance or support of any software.

#### 4. **PRICES**

Prices shall be as set out in accepted purchase orders. Prices stated do not include tax, customs or duties. Buyer shall be responsible for and pay the amount of any customs or duties and any tax based upon the sale, use, transfer, ownership or possession of the products.

#### 5. **PAYMENT**

Unless different payment terms have been agreed to with Buyer in writing, payment is due on date of invoice or the date product is shipped, whichever is earlier. If at any time Buyer is delinquent in the payment of any invoice, or is otherwise in breach of these Terms and Conditions, Supplier may, in its discretion, and without prejudice to its other rights, withhold shipment (including partial shipments) of any order, require Buyer to prepay for further shipments, and/or withhold the provision of any services, until complete payment has been received. Any sum not paid by Buyer when due shall bear interest from the due date until paid at a rate of ten per cent per annum. Buyer grants Supplier a security interest in products purchased under these Terms and Conditions to secure payment for such products. If requested by Supplier at any time, Buyer shall execute financing statements to perfect such security interest.

#### 6. **FREIGHT**

Delivery shall be Ex Works Supplier’s facility in Mississauga, Ontario (Incoterms 2010). Transfer of risk and title occurs on shipment. Shipping shall be by common carrier at Buyer’s cost. For clarity, Buyer shall bear all risk of loss or damage in transit and carrier shall not be deemed to be Supplier’s agent. Insurance shall be Buyer’s cost and responsibility.

#### 7. **SHIPMENTS OUTSIDE CANADA**

For purchases by Buyer of Supplier products, documentation or services for shipments to addresses in Canada, Buyer shall assume responsibility for compliance with any and all applicable Export Controls and Sanctions on subsequent Buyer exports or transfers of Supplier products, documentation and services including the preparation and filing of shipping documentation necessary for export clearance, and shall obtain all required Canadian and any other country authorizations, permits or licenses. This also applies in cases where Buyer requests in its purchase order delivery of Supplier products, documentation or services to Buyer’s forwarding agent or another representative in

Canada. For Buyer shipments to an address specified outside Canada, Buyer shall provide Supplier with the complete name and address of each end user either (a) in the purchase order issued, or (b) in writing within five (5) days of receiving a request by Supplier, together with any other information and documents requested by Supplier. As appropriate in the circumstances, Supplier will use any applicable general global export licenses or, in the case a general global license does not include the listed end user destination, individual export licenses that Supplier must obtain prior to export. Buyer accepts any delays caused by the export licensing process. This includes delays by Buyer to provide documents and other information in the possession and control of Buyer required by Supplier to obtain the individual export license. For greater certainty, Buyer agrees to respond forthwith to all reasonable requests by Supplier for documentation or any other information required by Supplier to obtain any applicable export licenses.

## **8. ACCEPTANCE**

Buyer shall inspect all products immediately upon shipment and shall within fifteen (15) days after receipt of the products give written notice to Seller of all claims for defects or shortages. All products not objected to in writing within such fifteen (15) day period shall be deemed accepted and Buyer shall not be entitled to claim that it did not receive the full quantity or quality of products requested pursuant to the applicable purchase order or that such products did not comply with these Terms and Conditions. Upon receipt of the defective or unsatisfactory products, Seller in its sole discretion, shall replace the products, issue a credit to Buyer to be applied against subsequent purchase orders or take such further action as determined necessary by Seller so as to resolve the matter fairly and promptly. Under no circumstances shall Seller be liable for damages, losses or expenses in connection with or by reason of the use of or inability to use the products purchased for any purpose.

## **9. CANCELLATION**

Buyer may defer any product shipment for up to thirty (30) days from the original shipping date scheduled by Supplier, provided written or electronic notice (issued, in either case, by an authorized representative of Buyer) is received by Supplier at least five (5) days before the originally scheduled shipping date. Cancelled purchase orders, rescheduled shipments or product configuration changes requested by Buyer less than ten (10) days before the original scheduled shipping date shall be subject to (a) acceptance by Supplier, and (b) a charge of twenty-five percent (25%) of the total invoice amount relating to the affected products. Supplier reserves the right to reschedule shipment in cases of configuration changes requested by Buyer within ten (10) days of scheduled shipment. No cancellation shall be accepted by Supplier where products are purchased with implementation services, including design, customization or installation services, except as specifically provided in any statement of work under which the services are to be rendered.

## **10. WARRANTY**

Supplier warrants that, for a period of five (5) years from the date of manufacture of the product, the product will be free from defects in materials and workmanship. Supplier

warrants that any services provided hereunder shall be performed in a workmanlike manner consistent with industry standards. Supplier shall, at its option and at its expense, repair, replace or issue a credit for products or services found defective during the warranty period. Apart from Supplier's obligation to repair or replace or issue a credit for defective products or services, Supplier shall bear no other obligation or liability whatsoever to Buyer in relation to defective products or services or any other products or services. The limited warranty set out herein shall not apply if the product (a) has been altered (except by Supplier), (b) has not been installed, operated, repaired, used or maintained in accordance with instructions made available by Supplier, (c) has been subjected to abnormal or unusual physical or electrical stress or environmental conditions, misused, or negligently handled or operated, or (d) is acquired by Buyer for beta, evaluation, testing, demonstration purposes or other circumstances for which Supplier does not receive a payment of a purchase price or license fee. All claims for breach of warranty must be received by Supplier no later than thirty (30) days after the expiration of the warranty period. It is the responsibility of Buyer to establish the suitability of the products or services purchased for the purpose intended by Buyer, and any participation by Supplier in establishing such suitability is of an advisory nature only. The parties hereby expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Law on the Sale of Goods and the Uniform Law on the Formation of Contracts for the International Sale of Goods. THE EXPRESS WARRANTIES CONTAINED IN THESE TERMS AND CONDITIONS ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, CONDITIONS, REPRESENTATIONS, RIGHTS AND REMEDIES, GUARANTEES AND PROMISES EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AND WHETHER ORAL OR WRITTEN. ALL EXPRESS AND IMPLIED WARRANTIES, CONDITIONS, REPRESENTATIONS, RIGHTS AND REMEDIES, INCLUDING, BUT NOT LIMITED TO, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, AGAINST INFRINGEMENT, OR OTHERWISE (EXCEPT AS TO TITLE), ARE HEREBY EXPRESSLY DISCLAIMED, EXCLUDED AND WAIVED BY BUYER TO THE FULLEST EXTENT PERMITTED BY LAW. UNDER NO CIRCUMSTANCES WILL SUPPLIER OR ITS AFFILIATES BE RESPONSIBLE OR DEEMED LIABLE FOR ANY LOST PROFITS, LOST REVENUE, LOST DATA OR CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES ARISING FROM THE SUPPLY OF PRODUCTS, WHETHER FROM ANY BREACH OF WARRANTY AS SET FORTH IN THIS CLAUSE OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES. Buyer may not make any warranty commitment on Supplier's behalf. Buyer shall indemnify Supplier against any warranties made in addition to the warranty set out herein. The limited warranties referenced in this Section do not apply to any non-iS5Com branded products supplied by Supplier. Such products are warranted solely by the applicable manufacturer or licensor. Supplier will pass through, to the extent permitted, the manufacturers and/or licensor's warranties and Buyer shall look solely to such manufacturer and/or licensor for warranty claims.

## **11. INTELLECTUAL PROPERTY**

Buyer shall not alter, obscure, remove, cancel or otherwise interfere with any markings (including without limitation any trademarks, logos, trade names, or labelling applied by

Supplier). Buyer acknowledges that Supplier is the sole owner of the trademarks used in association with the products and that Buyer has no right, title or interest whatsoever in such trademarks and any goodwill associated therewith and that all goodwill associated with such trademarks is owned by and shall enure exclusively to and for the benefit of Supplier. Further, Buyer shall not represent in any manner that it has acquired any ownership rights in such trademarks or other intellectual property of Supplier. Supplier will defend any claim against Buyer that any iS5Com branded product supplied under these Terms and Conditions infringes third party patents or copyrights (a “**Patent Claim**”) and will indemnify Buyer against the final judgment entered by a court of competent jurisdiction or any settlements arising out of a Patent Claim, provided that Buyer: (1) promptly notifies Supplier in writing of the Patent Claim; and (2) cooperates with Supplier in the defence of the Patent Claim, and grants Supplier full and exclusive control of the defence and settlement of the Patent Claim and any subsequent appeal. If a Patent Claim is made or appears likely, Buyer agrees to permit Supplier to procure for Buyer the right to continue using the affected product, or to replace or modify the product with one that is at least functionally equivalent. If Supplier determines that none of those alternatives is reasonably available, then Buyer will return the product and Supplier will refund Buyer’s remaining net book value of the product calculated according to generally accepted accounting principles. Supplier has no obligation for any Patent Claim related to: (1) compliance with any designs, specifications, or instructions provided by Buyer or a third party on Buyer’s behalf; (2) modification of a product by Buyer or a third party; (3) the amount or duration of use which Buyer makes of the product, revenue earned by Buyer from services it provides that use the product, or services offered by Buyer to external or internal Buyers; (4) combination, operation or use of a product with non-Supplier products, software or business processes; or (5) use of any product in any country other than the country or countries specifically authorized by Supplier.

## 12. **CONFIDENTIAL INFORMATION**

Buyer may use confidential information of Supplier solely for the purpose of furthering the business relationship between Supplier and Seller. Buyer shall not disclose any confidential information of Supplier to any third party, other than to those of Buyer’s employees who have a need to have access to and knowledge of the confidential information. “**Confidential information**” means any information regarding Supplier’s products and services, technical, financial, and marketing data, and information relating to future product and service development.

## 13. **INDEMNIFICATION**

Buyer shall indemnify, defend, and hold Supplier and its affiliates, shareholders, directors, officers, employees, contractors, agents and other representatives harmless from all third party demands, claims, actions, causes of action, proceedings, suits, assessments, losses, damages, liabilities, settlements, judgments, fines, penalties, interest, costs and expenses (including fees and disbursements of counsel) of every kind (each a “**Claim**” and, collectively “**Claims**”) arising out of the use or possession of any products sold hereunder, providing that same does not arise from the direct negligence of Supplier in the defective design or manufacture of its products. Supplier shall indemnify, defend, and hold Buyer harmless from all third party Claims (i) based upon personal injury or

death or injury to property (other than damage to the products itself, which is handled in accordance with Section 10 “**Warranty**”) to the extent caused by the negligent or willful acts or omissions of Supplier. Further Supplier shall indemnify, defend, and hold Buyer harmless from Patent Claims as set out in this Section 13.

#### **14. LIMITATION OF LIABILITY**

WITH THE EXCEPTION OF THE INDEMNITY OBLIGATIONS UNDER SECTION 13 HEREIN IN NO EVENT SHALL SUPPLIER’S LIABILITY (WHETHER ASSERTED AS A TORT CLAIM OR CONTRACT CLAIM) EXCEED THE AMOUNTS PAID TO SUPPLIER FOR PRODUCTS HEREUNDER. IN NO EVENT SHALL SUPPLIER BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS BY BUYER.

#### **15. DELIVERY DATE**

Supplier shall use commercially reasonable efforts to deliver the products ordered hereunder on the agreed-upon delivery dates and shall notify Buyer of any anticipated delays; provided, however, that Supplier shall not be liable for any failure to meet Buyer’s delivery dates or for any failure to give notice of anticipated delays.

#### **16. EXPORT CONTROLS AND SANCTIONS**

- (a) In these Term and Conditions, “**Export Controls and Sanctions**” means the export control and sanctions laws of each of Canada, the US and any other applicable country, territory or jurisdiction including the United Nations, European Union and the United Kingdom, and any regulations, orders, guides, rules, policies, notices, determinations or judgements issued thereunder or imposed thereby.
- (b) Supplier products, documentation and services provided under these Terms and Conditions may be subject to Canadian, U.S. and other country Export Controls and Sanctions. Buyer shall accept and comply with all applicable Export Control and Sanctions in effect and as amended from time to time pertaining to the export, re-export and transfer of Supplier’s products, documentation and services. Buyer also acknowledges and agrees that the export, re-export or transfer of Supplier products, documentation and services contrary to applicable Export Controls and Sanctions may be a criminal offence.
- (c) For greater certainty, Buyer agrees that (i) it will not directly or indirectly export, re-export or transfer Supplier products, documentation and services provided under these Terms and Conditions to any individual or entity in violation of any aforementioned Export Controls and Sanctions; (ii) it will not directly or indirectly export, re-export or transfer any such products, documentation and services to any country or region of any country that is prohibited by any applicable Export Controls and Sanctions or for any of the following end-uses, or in any of the following forms unless expressly authorized by any applicable

government permit issued under or otherwise expressly permitted by applicable Export Controls and Sanctions:

- (i) For use that is directly or indirectly related to the research, design, handling, storage, operation, detection, identification, maintenance, development, manufacture, production or dissemination of chemical, biological or nuclear weapons, or any missile or other delivery systems for such weapons, space launch vehicles, sounding rockets or unmanned air vehicle systems;
  - (ii) Technical information relating to the design, development or implementation of the cryptographic components, modules, interfaces, or architecture of any software; or
  - (iii) Source code or pseudo-code, in any form, of any of the cryptographic components, modules, or interfaces of any software.
- (d) Buyer confirms that it is not (i) listed as a sanctioned person or entity under any Export Controls and Sanctions list of designated persons, denied persons or specially designated nationals maintained by the Canadian Department of Foreign Affairs, Trade and Development, the Canadian Department of Public Safety and Emergency Preparedness, the U.S. Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, the U.S. Department of Commerce, United Nations Security Council, the European Union or any EU member state, HM's Treasury, or any other department or agency of any of the aforementioned countries or territories, or the United Nations or any other country's sanctions-related list; (ii) owned or controlled by such person or entity; or (iii) acting in any capacity on behalf of or for the benefit of such person or entity. Buyer also confirms that this applies equally to any of its affiliates, joint venture partners, subsidiaries and to the best of Buyer's knowledge, any of its agents or representatives.

## 17. COMPLIANCE WITH ANTI-BRIBERY AND CORRUPTION LAWS

- (a) Buyer confirms that it is not engaged in any conduct that violates any of the Corruption of Foreign Public Officials Act, the UK Bribery Act, the Foreign Corrupt Practices Act or any other applicable local anti-bribery and corruption law (each an "**Anti-bribery and Corruption Law**" and collectively "**Anti-bribery and Corruption Laws**"). Buyer further confirms and agrees that in using any Supplier products, documentation and services, provided under these Terms and Conditions, it will abide by and continue to fully comply with all applicable Anti-bribery and Corruption Laws.
- (b) In furtherance of and addition to the obligations in Section 17(a), Buyer shall:
  - (i) Immediately notify Supplier if it is being investigated or reasonably anticipates that it will be investigated in the foreseeable future for

violations of any applicable Anti-bribery and Corruption Laws or any other applicable laws;

- (ii) Not take any action or permit the taking of any action including by any third party that may render Supplier liable for a violation or place Supplier in violation of any applicable Anti-bribery and Corruption Laws or any other applicable laws;
  - (iii) Not use and not permit any third party to use any Supplier products, documentation and services or anything else of value for any unlawful purpose, including any purposes that violate any applicable Anti-bribery or Corruption Laws or any other applicable laws. This includes directly or indirectly making Supplier products, documentation and services available to any of the following unlawfully for the purpose of obtaining or retaining business: (i) any government official (including any person holding an executive, legislative, judicial or administrative office, whether elected or appointed, or of any public international organization, such as the United Nations or World Bank; (ii) any person acting in any capacity for or on behalf of any such government, government official or public international organization; (iii) any public enterprise or state-owned business; (iv) any corporation or agency or ministry or department, whether federal, sub-federal, regional or municipal and including those acting for, under the control of or behalf of any of (i) to (iii) inclusive; or (iv) any political parties or political party officials or candidates for political office.
- (c) For greater certainty, this Section 17(b) shall apply equally to any record-keeping and audit obligations that may apply to Buyer under any applicable Anti-bribery and Corruption Laws;
  - (d) Buyer agrees that Supplier retains the right to terminate any pending orders with Buyer and terminate its relationship with Buyer immediately upon written notice if Supplier believes, in good faith, that such Buyer has breached any elements of this Section 17, or if Buyer makes a false or fraudulent statement, representation or warranty while carrying out these or any other contractual obligations.

## **18. GOVERNING LAW AND JURISDICTION**

These Terms and Conditions and all purchase orders shall be governed by, and interpreted and enforced in accordance with, the laws in force in the Province of Ontario (excluding any conflict of laws rule or principle which might refer such construction to the laws of another jurisdiction) and will be treated in all respects as an Ontario contract. Buyer irrevocably submits to the exclusive jurisdiction of the courts of Ontario with respect to any matter arising under these Terms and Conditions, any purchase order or the supply of products.

**19. SEVERABILITY**

Should any term or condition, or any portion hereof, deemed to be invalid or unenforceable under applicable law, these Terms and Conditions shall be considered as divisible as to such provision and the same shall thereafter be inoperative, provided however, the remaining provisions of these Terms and Conditions shall be valid and binding.

**20. FORCE MAJEURE**

Neither party shall be in default hereunder by reason of any failure or delay in the performance of any obligation under these Terms and Conditions or any purchase order (other than payment of any amounts owing), where such failure or delay arises out of any cause beyond the reasonable control and without the fault or negligence of such party. Such causes shall include, without limitation, storms, floods, labour unrest, embargoes and other governmental actions or regulations which would prohibit either party from ordering or furnishing products or from performing any other aspects of the obligations hereunder, delays in transportation, and inability to obtain necessary labour, supplies or manufacturing facilities.

**21. LANGUAGE**

The parties have expressly requested that these terms and conditions be drawn-up in the English language. Les parties ont expressément requis que ces termes et conditions soit rédigé en langue anglaise.

**22. GENERAL**

The waiver of any right provided under these Terms and Conditions shall not constitute a subsequent or continuing waiver of such right or of any other right under these Terms and Conditions. No agency is created by these Terms and Conditions. Buyer shall have no authority to bind Supplier in any respect.

**EXHIBIT A**  
**END USER LICENSE AGREEMENT**

IMPORTANT - READ CAREFULLY: iS5 Communications Inc. (“**iS5Com**”) licenses the iS5Com Materials (as defined below) subject to the terms and conditions of this end user license agreement (the “**EULA**”). BY SELECTING “ACCEPT” OR OTHERWISE EXPRESSLY AGREEING TO THIS EULA, BY DOWNLOADING, INSTALLING OR USING THE SOFTWARE, OR BY USING THE HARDWARE (AS DEFINED BELOW), ALL OF THE TERMS AND CONDITIONS CONTAINED IN THIS EULA BECOME LEGALLY BINDING ON THE CUSTOMER.

This End User License Agreement (the “**EULA**”) supplements the Terms and Conditions or such other terms and conditions between iS5Com or, if applicable, a reseller for iS5Com, and the Customer (as defined below) (in either case, the “**Contract**”).

**1. DEFINITIONS**

“**Confidential Information**” means all data and information relating to the business and management of iS5Com, including iS5Com Materials, trade secrets, technology and records to which access is obtained hereunder by the Customer, and any materials provided by iS5Com to the Customer, but does not include any data or information which: (a) is or becomes publicly available through no fault of the Customer; (b) is already in the rightful possession of the Customer prior to its receipt from iS5Com; (c) is already known to the Customer at the time of its disclosure to the Customer by iS5Com and is not the subject of an obligation of confidence of any kind; (d) is independently developed by the Customer; (e) is rightfully obtained by the Customer from a third party; (e) is disclosed with the written consent of iS5Com; or (f) is disclosed pursuant to court order or other legal compulsion.

“**Customer**” means the licensee of the iS5Com Software pursuant to the Contract.

“**iS5Com Documentation**” means Documentation supplied by or on behalf of iS5Com under the Contract relating to the development, use, installation, implementation, integration, configuration, operation, modification, maintenance or support of iS5Com Software, or iS5Com Firmware.

“**iS5Com Firmware**” means iS5Com Software in object code format that is embedded in iS5Com Hardware.

“**iS5Com Hardware**” means Hardware supplied by or on behalf of iS5Com under the Contract.

“**iS5Com Materials**” means, collectively, the iS5Com Software and the iS5Com Documentation.

**“iS5Com Software”** means Software supplied by or on behalf of iS5Com under the Contract. For greater certainty, iS5Com Software shall include all operating Software for iS5Com Hardware, and iS5Com Firmware.

**“Documentation”** means written instructions and manuals of a technical nature.

**“EULA”** means this End User License Agreement.

**“Hardware”** means hardware, mainframes, personal computers, servers, client/server stations, network equipment, routers, semi-conductor chips, communication lines and other equipment.

**“Intellectual Property Rights”** means any and all proprietary rights provided under: (i) patent law; (ii) copyright law (including moral rights); (iii) trade-mark law; (iv) design patent or industrial design law; (v) semi-conductor chip or mask work law; or (vi) any other statutory provision or common law principle applicable to this EULA, including trade secret law, which may provide a right in either Hardware, Software, Documentation, Confidential Information, ideas, formulae, algorithms, concepts, inventions, processes or know-how generally, or the expression or use of such Hardware, Software, Documentation, Confidential Information, ideas, formulae, algorithms, concepts, inventions, processes or know-how trade secret law; any and all applications, registrations, licenses, sub-licenses, franchises, agreements or any other evidence of a right in any of the foregoing; and all licenses and waivers and benefits of waivers of the intellectual property rights set out herein, all future income and proceeds from the intellectual property rights set out herein, and all rights to damages and profits by reason of the infringement of any of the intellectual property rights set out herein.

**“Software”** means scripts, programs, macros, computer programs, application programming and other interfaces, tools and other instructions and sets of instructions for hardware to follow, including SQL and other query languages, hypertext markup language (“html”) and other computer mark-up languages.

**“Third Party License Terms”** means additional terms and conditions that are applicable to Third Party Software.

**“Third Party Software”** means Software owned by any third party, licensed to iS5Com and sublicensed to the Customer.

**“Update”** means a supplemented or revised version of iS5Com Software which rectifies bugs or makes minor changes or additions to the functionality of iS5Com Software and is designated by iS5Com as a higher release number from, for example, 6.06 to 6.07 or 6.1 to 6.2.

**“Upgrade”** means a significantly rewritten or revised version of iS5Com Software prepared by iS5Com and made available or distributed to one or more licensees of iS5Com Software which adds substantial functionality or performance or changes the software architecture and is designated by iS5Com as a higher release number from, for example 6.0 to 7.0.

## **2. LICENSE**

### **2.1 License Grant**

The iS5Com hereby grants to the Customer, subject to any Third Party License Terms, a non-exclusive, non-transferable, non-sublicensable right and licence to use iS5Com Materials solely in object code format, solely for the Customer's own business purposes, solely in accordance with this EULA (including, for greater certainty, subject to Section 6.1 of this EULA) and the applicable iS5Com Documentation, and, in the case of iS5Com Firmware, solely on iS5Com Hardware on which iS5Com Firmware was installed, provided that Customer may only install iS5Com Software on such number of nodes expressly set out in the Contract.

### **2.2 License Restrictions**

Except as otherwise provided in Section 2.1 above, the Customer shall not: (a) copy iS5Com Materials for any purpose, except for the sole purpose of making an archival or back-up copy; (b) modify, translate or adapt the iS5Com Materials, or create derivative works based upon all or part of such iS5Com Materials; (c) assign, transfer, loan, lease, distribute, export, transmit, or sublicense iS5Com Materials to any other party; (d) use iS5Com Materials for service bureau, rent, timeshare or similar purposes; (e) decompile, disassemble, decrypt, extract, or otherwise reverse engineer, as applicable, iS5Com Software or iS5Com Hardware; (f) use iS5Com Materials in a manner that uses or discloses the Confidential Information of iS5Com or a third party without the authorization of such person; (g) permit third parties to use iS5Com Materials in any way that would constitute breach of this EULA; or (h) otherwise use iS5Com Materials except as expressly authorized herein.

### **2.3 Updates and Upgrades**

The license granted hereunder shall apply to the latest version of iS5Com Materials provided to the Customer as of the effective date of this EULA, and shall apply to any Updates and Upgrades subsequently provided to the Customer by iS5Com pursuant to the terms of this EULA. Customer shall only be provided with Updates and/or Upgrades if expressly set out in the Contract.

### **2.4 Versions**

In the event any Update or Upgrade includes an amended version of this EULA, Customer will be required to agree to such amended version in order to use the applicable iS5Com Materials and such amended EULA shall be deemed to amend the previously effective version of the EULA.

### **2.5 Third Party Software**

Customer shall comply with any Third Party License Terms.

### **3. OWNERSHIP**

#### **3.1 Intellectual Property**

Notwithstanding any other provision of the Contract, iS5Com and the Customer agree that iS5Com is and shall be the owner of all Intellectual Property Rights in iS5Com Materials and all related modifications, enhancements, improvements and upgrades thereto, and that no proprietary interests or title in or to the intellectual property in iS5Com Materials is transferred to the Customer by this EULA. iS5Com reserves all rights not expressly granted to the Customer under Section 2.1.

#### **3.2 Firmware**

iS5Com and the Customer agree that any and all iS5Com Firmware in or forming a part of iS5Com Hardware is being licensed and not sold, and that the words “purchase,” “sell” or similar or derivative words are understood and agreed to mean “license,” and that the word “Customer” as used herein are understood and agreed to mean “licensee,” in each case in connection with iS5Com Firmware.

#### **3.3 Third Party Software**

Certain of iS5Com Software provided by iS5Com may be Third Party Software owned by one or more third parties and sublicensed to the Customer. Such third parties retain ownership of and title to such Third Party Software, and may directly enforce the Customer’s obligations hereunder in order to protect their respective interests in such Third Party Software.

### **4. CONFIDENTIALITY**

#### **4.1 Confidentiality**

The Customer acknowledges that iS5Com Materials contain Confidential Information of iS5Com and that disclosure of such Confidential Information to any third party could cause great loss to iS5Com. The Customer agrees to limit access to iS5Com Materials to those employees or officers of the Customer who require access to use iS5Com Materials as permitted by the Contract and this EULA and shall ensure that such employees or officers keep the Confidential Information confidential and do not use it otherwise than in accordance with the Contract and this EULA. The obligations set out in this Section 4 shall continue notwithstanding the termination of the Contract or this EULA and shall only cease to apply with respect to such part of the Confidential Information as is in, or passes into, the public domain (other than in connection with the Customer’s breach of this EULA) or as the Customer can demonstrate was disclosed to it by a third person who did not obtain such information directly or indirectly from iS5Com.

## **4.2 Irreparable Harm**

Without limiting any other rights or remedies available to iS5Com in law or in equity, the Customer acknowledges and agrees that the breach by Customer of any of the provisions of this EULA would cause serious and irreparable harm to iS5Com which could not adequately be compensated for in damages and, in the event of a breach by the Customer of any of such provisions, the Customer hereby consents to an injunction against it restraining it from any further breach of such provisions.

## **4.3 Security**

Any usernames, passwords and/or license keys (“**Credentials**”) provided to you by iS5Com shall be maintained by the Customer and its representatives in strict confidence and shall not be communicated to or used by any other persons. THE CUSTOMER SHALL BE RESPONSIBLE FOR ALL USE OF CREDENTIALS, REGARDLESS OF THE IDENTITY OF THE PERSON(S) MAKING SUCH USE, AND WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IS5COM SHALL HAVE NO RESPONSIBILITY OR LIABILITY IN CONNECTION WITH ANY UNAUTHORIZED USE OF CREDENTIALS.

## **5. LIMITATION OF LIABILITY**

### **5.1 Disclaimer**

EXCEPT FOR THE EXPRESS WARRANTIES MADE BY IS5COM IN THE CONTRACT, (A) IS5COM MAKES NO AND HEREBY EXPRESSLY DISCLAIMS, AND THE PARTIES HERETO HEREBY EXPRESSLY WAIVE AND EXCLUDE TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, AND THE CUSTOMER AGREES NOT TO SEEK OR CLAIM ANY BENEFIT THEREOF, IN EACH CASE, ALL WARRANTIES, CONDITIONS, REPRESENTATIONS OR INDUCEMENTS (AND THERE ARE NO OTHER WARRANTIES, CONDITIONS, REPRESENTATIONS OR INDUCEMENTS, ORAL OR WRITTEN, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, OF ANY KIND WHATSOEVER SET OUT HEREIN) WITH RESPECT TO THE IS5COM MATERIALS, INCLUDING AS TO THEIR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR CONDITION, COMPLIANCE WITH THE REQUIREMENTS OF ANY APPLICABLE LAWS, CONTRACT OR SPECIFICATION, NON- INFRINGEMENT OF THE RIGHTS OF OTHERS, ABSENCE OF LATENT DEFECTS, OR AS TO THE ABILITY OF THE IS5COM MATERIALS TO MEET CUSTOMER’S REQUIREMENTS OR TO OPERATE OF ERROR FREE; AND (B) THE IS5COM MATERIALS ARE PROVIDED “**AS IS**” WITHOUT WARRANTY OR CONDITION OF ANY KIND.

### **5.2 Limitation of Liability**

EXCEPT AS EXPRESSLY PROVIDED IN THE CONTRACT, IN NO EVENT SHALL IS5COM BE LIABLE TO THE CUSTOMER OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING

UNDER OR IN CONNECTION WITH THIS EULA EVEN IF ADVISED OF THE POSSIBILITY THEREOF. THIS LIMITATION SHALL APPLY IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION, DEMAND OR CLAIM, INCLUDING BREACH OF CONTRACT, NEGLIGENCE, TORT OR ANY OTHER LEGAL THEORY, AND SHALL SURVIVE A FUNDAMENTAL BREACH OR BREACHES AND/OR FAILURE OF THE ESSENTIAL PURPOSE OF THIS EULA.

## **6. TERM**

### **6.1 Term**

Customer's right to use iS5Com Materials shall terminate at such time as set out in the Contract or upon termination or expiration of the Contract, in each case at which time this EULA shall be deemed to terminate.

### **6.2 Survival**

Each of Sections 1, 2.4, 3, 4, 5, 6.2, and 7 shall survive termination of the EULA.

## **7. MISCELLANEOUS**

### **7.1 Miscellaneous**

This EULA is (together with, as applicable, any click-wrap license agreement or Third Party License Terms pertaining to the use of iS5Com Materials) the entire agreement between the Customer and iS5Com pertaining to the Customer's right to access and use iS5Com Materials, and supersedes all prior or collateral oral or written representations or agreements related thereto. Notwithstanding anything to the contrary contained in the Contract, to the extent of any inconsistency between this EULA and the Contract, or any such applicable click-wrap agreement, this EULA shall take precedence over the Contract and such click-wrap agreement. In the event that one or more of the provisions is found to be illegal or unenforceable, this EULA shall not be rendered inoperative but the remaining provisions shall continue in full force and effect. The parties expressly disclaim the application of the *United Nations Convention for the International Sale of Goods*. This EULA shall be governed by the laws of the Province of Ontario, Canada, and federal laws of Canada applicable therein. In giving effect to this EULA, neither party will be or be deemed an agent of the other for any purpose and their relationship in law to the other will be that of independent contractors. Any waiver of any terms or conditions of this EULA: (a) will be effective only if in writing and signed by the party granting such waiver, and (b) shall be effective only in the specific instance and for the specific purpose for which it has been given and shall not be deemed or constitute a waiver of any other provisions (whether or not similar) nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. The failure of either party to exercise, and any delay in exercising, any of its rights hereunder, in whole or in part, shall not constitute or be deemed a waiver or forfeiture of such rights, neither in the specific instance nor on a continuing basis. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right. Customer shall not assign or transfer this EULA or any of its rights or obligations

hereunder, in whole or in part, without the prior written consent of iS5Com. The division of this EULA into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this EULA. References herein to Sections are to sections of this Agreement. Where the word “**include**”, “includes” or “including” is used in this EULA, it means “include”, “includes” or “including”, in each case, “without limitation”. All remedies provided for iS5Com under this EULA are non-exclusive and are in addition, and without prejudice, to any other rights as may be available to of iS5Com, whether in law or equity. By electing to pursue a remedy, of iS5Com does not waive its right to pursue any other available remedies. The parties acknowledge that they have required this Agreement to be written in English. Les parties aux présentes reconnaissent qu’elles ont exigé que la présente entente soit rédigée en anglais.