

End User License Agreement (EULA)

INEMSOFT, INC.

SOFTWARE LICENSE AGREEMENT

INEMSOFT Inc., 5850 Town and Country Road, Suite 401, Frisco, Texas, 75034 ("**INEMSOFT**") and [**Business Name**] ("**Customer**") agree to the following terms and conditions.

1. DEFINITIONS

- (A) "**Agreement**" means this License Agreement, any amendment thereto, or any Schedule or Exhibit that exists as of the date of this Agreement or may hereinafter be incorporated by reference.
- (B) "**Concurrent User**" means a Registered Client licensed to Use a Licensed Program which has been designated by INEMSOFT to be a concurrent software application. A concurrent software application is a Licensed Program which may be shared by any number of Registered Clients but, the maximum simultaneous Use of the Licensed Program is limited to the number of Concurrent User licenses purchased by Customer.
- (C) "**Licensed Programs**" means INEMSOFT'S ONCENTS Endpoint Manager with its marketing name (oncents) (as well as any Updates thereof furnished by INEMSOFT pursuant to the terms of this Agreement and in any written amendments thereto), in machine readable, printed or other form, including but not limited to instructional and operational manuals, flow charts, logic diagrams, file layouts and listings. The term Licensed Programs does not include source code in any form, such source code being the sole and exclusive property of INEMSOFT, free from any claim or retention of rights thereto on the part of Customer.
- (D) "**Hosted Service**" means provision of the Licensed Programs as a managed service to one or more Third Parties from a network host.
- (E) "**Software as a Service or SaaS**" means provision of the Licensed Programs to one or more Third Parties via the internet.
- (F) "**Third Parties**" means natural persons or legal entities other than the parties to this Agreement.
- (G) "**Node Locked Software**" means a Licensed Program which is licensed for Use on a designated computer only.
- (H) "**Proprietary Information**" means the Licensed Programs in any embodiment, and any other information relating to the Licensed Programs received by Customer from INEMSOFT which is also identified by INEMSOFT as proprietary or confidential.
- (I) "**Registered Clients**" means any computer system, endpoint or device authorized to Use a Licensed Program and access data from or perform functions on a Server.
- (J) "**Server**" means a designated computer system situated at a specific location and configured with Licensed Programs to support an authorized number of Registered Clients and Concurrent Users.

- (K) **"Use"** means (i) transferring any portion of any Licensed Program from storage units or media into the Customer's computer equipment for processing; (ii) executing any portion of any Licensed Program as a Registered Client or as a Concurrent User for any purpose; (iii) executing any portion of any Node Locked Software for any purpose; (iv) accessing any Server for the purpose of obtaining or preparing information or data created through the execution of a Licensed Program; or (v) merging any Licensed Programs in machine readable form into another program.
- (L) **"Resolution Time"** means the elapsed clock time between CUSTOMER's service call to report a problem and (i) INEMSOFT implementing a recovery or Workaround to resolve the problem, or (ii) INEMSOFT implementing a permanent fix that corrects the problem and causes the Licensed Programs to be in compliance and operate without Errors.
- (M) **"Response Time"** means the elapsed clock time between (i) the Service Call to report an Error, and (ii) a Supplier technical support analyst capable of understanding the Error speaking to Customer's support contact about the Error.
- (N) **"Workaround"** means a solution that resolves an Error without decreasing in a material respect Licensed Program features, functionality or performance. For further clarity, "Workaround" includes the ability to recover the services using the available redundant server. Customer is responsible for maintaining redundant servers for recovery from primary server outages.
- (O) **"Third Party Caused Errors"** means discovery and validation that the Error resulted from Customer, Customer's authorized party or third party updates or changes to the system configurations or operating environment interfering with system operations, environment and causing incompatibilities.
- (P) **"Error"** means any error, defect or malfunction in the Licensed Programs that: (i) causes an unexpected error message or fatal error to occur while using the Licensed Programs; or (ii) causes the Licensed Programs to fail to conform to any of the applicable warranties.
- (Q) **"Update"** means software provided by Supplier which improves performance, fixes Errors, or otherwise updates the existing software.
- (R) **"Major Update"** (also sometimes referred to as **"version"**) means an Update containing substantially enhanced business functionality not previously included in the Licensed Programs and designated by an incremental increase in the version number to the left of the decimal point (for example, version 2.0 designates a Major Update to version 1.0).

2. GRANT OF LICENSE.

- 2.1 INEMSOFT grants to Customer, on the terms and conditions set forth herein, that number of non-exclusive, non-transferable, perpetual and royalty-free licenses purchased by Customer, as such licenses are required to support implementation of Customer's configuration of Server, Registered Client, Concurrent User, and Node Locked Software applications. The license

granted does not authorize Customer to change or modify the Licensed Programs. Customer may not host, on a subscription basis or otherwise, the Licensed Programs or otherwise permit Third Parties to use the Licensed Programs for any reason. Without limiting the generality of the foregoing, Customer may not make the Licensed Programs available as a Hosted Service or Software as a Service or otherwise make the Licensed Programs available to third parties.

- 2.2 INEMSOFT reserves the right, upon prior reasonable notice to Customer, to audit usage and, if unauthorized Use is found, Customer agrees to cease such usage immediately upon receipt of written notification, or to promptly purchase additional Licensed Programs such that the total of all purchased licenses reflects the actual number of licenses in Use.

3. CONDITIONS OF LICENSE

- 3.1 Customer may, in accordance with Section 7.1 entitled "Trade Secrets – Intellectual Property Rights," copy for backup purposes only, Licensed Programs which are provided in machine readable form. Customer may copy, for internal use only, any portion of Licensed Programs which are provided in printed form (i.e. instructional or operational manuals).
- 3.2 Immediately upon termination of this Agreement, Customer shall return to INEMSOFT the original and all copies of the Licensed Programs and shall certify in writing to INEMSOFT that it has done so.
- 3.3 Except as permitted herein, Customer shall (a) not reproduce, reverse engineer, decompile, transfer electronically or permit any other Use of the Licensed Programs not expressly authorized by Section 3; and (b) acknowledge that any unpermitted act(s) or Use(s) is a breach of a material obligation of this Agreement.
- 4.4 Customer may not separate any component of the Licensed Programs and Use such component separately from the Licensed Programs.

4. DELIVERY AND INSTALLATION

- 4.1 Risk of loss of Licensed Programs shall transfer to Customer upon delivery.
- 4.2 It is the responsibility of the Customer to provide and prepare the system environment upon which the Licensed Programs are to be installed.

- 5. **LIMITED WARRANTY.** INEMSOFT warrants that it has the right to enter into this Agreement and that it has the right to grant the licenses hereunder. INEMSOFT warrants for a period of Ninety (90) days from the date of delivery that the Licensed Programs will be free from defects in media and shall substantially conform to the specifications therefore published by INEMSOFT, subject to the condition that the Licensed Programs are installed on computer hardware

conforming to INEMSOFT's published system requirements. In the event of any non-conformance of the Licensed Programs, Customer shall promptly notify INEMSOFT in writing, and provide INEMSOFT with evidence and documentation which reproduces the claimed error and resultant output from the execution of such programs or data. INEMSOFT's sole obligation under this warranty shall be limited to use of its commercial best efforts to promptly correct such defects. Unless Customer purchases and maintains software maintenance, INEMSOFT will be under no obligation to provide Customer with phone support or with any Licensed Programs updates, releases or enhancements other than to remedy non-conformance under this warranty. INEMSOFT's warranty obligations shall be void if the Licensed Program(s) is/are used on other than computer hardware conforming to INEMSOFT's published system requirements or the computer hardware is modified without the advance written consent of INEMSOFT.

6. **DISCLAIMER OF ALL OTHER WARRANTIES.** EXCEPT AS SPECIFICALLY SET FORTH IN SECTION 5 ENTITLED "LIMITED WARRANTY", INEMSOFT AND ITS THIRD PARTY SUPPLIERS MAKE NO EXPRESS OR IMPLIED OR STATUTORY WARRANTIES, INCLUDING, BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR ARISING FROM A COURSE OF DEALING, TRADE USAGE OR TRADE PRACTICE. INEMSOFT'S LIABILITY, AND THAT OF ITS THIRD PARTY SUPPLIERS, TO CUSTOMER FOR ALL CLAIMS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, SHALL BE LIMITED TO A REFUND OF ANY AMOUNTS ACTUALLY PAID BY CUSTOMER FOR THE LICENSED PROGRAMS. IN NO EVENT SHALL INEMSOFT OR ITS THIRD PARTY SUPPLIERS BE RESPONSIBLE FOR ANY CONSEQUENTIAL OR OTHER INDIRECT DAMAGES. THE PARTIES TO THIS AGREEMENT HEREBY ACKNOWLEDGE THE EXISTENCE OF ERRORS IN THE LICENSED PROGRAMS WHICH DO NOT MATERIALLY AFFECT THE OPERATION OF ACCURACY OF THE LICENSED PROGRAMS AND INEMSOFT OFFERS NO WARRANTY THAT ALL SUCH ERRORS IN THIS PROGRAM WILL BE CORRECTED.

7. **TRADE SECRETS – INTELLECTUAL PROPERTY RIGHTS**

- 7.1 Customer acknowledges that the Licensed Programs and related materials licensed hereunder are proprietary and protected by patent, copyright and/or trade secret law. All proprietary notices incorporated in, marked on or fixed to Licensed Programs, or other confidential information by INEMSOFT or its suppliers, shall be duplicated by Customer on all copies of all or any part of the Licensed Programs, and shall not be altered, removed, or obliterated. The obligation to include such notices is a material obligation hereunder. A copyright notice on Licensed Programs does not, by itself, constitute evidence of publication or public notice.
- 7.2 Unless otherwise agreed to in writing by INEMSOFT, Customer agrees to limit access to the Licensed Programs to those employees, contractors or affiliates actively employed or engaged on behalf of Customer in the installation or continued Use of the Licensed Programs.

- 7.3 TITLE. Subject to the licenses granted herein, all right, title and interest in and to the Licensed Programs, INEMSOFT Proprietary Information and any other patents, patent applications, trademarks, copyrights or trade secrets related to the Licensed Programs, including moral rights, shall remain with INEMSOFT and its licensors.

8. TERMINATION OF AGREEMENT

- 8.1 Either party may terminate this Agreement by written notice to the other party (i) should the other party file a petition in bankruptcy, or have filed against it an involuntary petition in bankruptcy not dismissed within sixty (60) days after filing, or apply for or consent to the appointment of a receiver, custodian, trustee or liquidator, or make a general assignment for the benefit of its creditors; (ii) upon failure of the other party to make a payment hereunder within fifteen (15) days after written notice that such payment is past due; (iii) upon any other material breach of this Agreement by the other party, which if remediable, has not been corrected within thirty (30) days after written notice; or (iv) immediately in the event of a breach of the sections of this Agreement entitled Conditions of License or Trade Secrets – Intellectual Property Rights.
- 8.2 On termination of this Agreement, (i) all licenses granted by INEMSOFT to Customer hereunder shall terminate immediately, (ii) Customer shall cease using the Licensed Programs, whether or not modified or merged into other materials, program installation instructions and user manuals, and (iii) Customer shall certify in writing to INEMSOFT that all copies (in any form or media) of the Licensed Programs, installation instructions and user manuals, whether or not modified or incorporated into other materials, have been destroyed or returned to INEMSOFT.
- 8.3 Customer's obligation under the Sections of this Agreement entitled Conditions of License, Limited Warranty, Disclaimer of All Other Warranties, Trade Secrets – Intellectual Property Rights, and General Provisions shall survive any expiration or termination of this Agreement.

9. SOFTWARE MAINTENANCE. So long as Customer purchases and maintains software maintenance:

- 9.1 General Terms. INEMSOFT will maintain, in accordance with this Agreement, the Licensed Programs and, to the extent related thereto, ONCENTS® Endpoint Manager Server Middleware, System Web Administration Software, Linux Operating System, Embedded Database, and Device Management Applications Software. Software maintenance does not cover Aura Communication Manager, Session Manager, Session Enablement Services, Applications Enablement Services, or other Customer components or software, Customer's network communication components such as virtual machines, routers, servers, databases, switches, hubs, data and voice trunks that are installed and configured for the

purpose of maintaining and operating the Licensed Programs, or any third-party equipment, components, software and firmware not directly sourced from INEMSOFT.

- 9.2 Term. The initial term for software maintenance is one (1) year from purchase and delivery of the Licensed Programs (the "Initial Term"). First year software maintenance is mandatory with each purchase. Customer shall have an option to extend the term for up to two (2) additional renewal terms of (1) year (each a "Renewal Term") by providing INEMSOFT with written notice at least ninety (90) days prior to the expiration of the Initial Term or first Renewal Term. The Initial Term and the exercised Renewal Terms are collectively referred to as the "Term". Customer may purchase a three (3) year term software maintenance contracts, prepay for first year and the remaining years are billed annually at contract anniversary.
- 9.3 Hours. INEMSOFT will provide Customer with telephone and email support to resolve questions about maintaining the operation of the Licensed Programs, as well as the status of problems reported by Customer.
- 9.4 Notification. Customer will notify INEMSOFT of any Errors or other nonconformities in the Licensed Programs via e-mail or telephone. Supplier will correct Errors, repair or replace all defective or inoperable Licensed Programs and otherwise cause the Licensed Programs to be in compliance in accordance with the service levels set forth in this Agreement.
- 9.5 Updates. Each Update will be provided as it is made generally available by Supplier to any of its customers. Each Update can be installed by Supplier (subject to upgrade services and fees) on CUSTOMER's equipment at a time mutually agreed by Supplier and CUSTOMER. Supplier represents and warrants that each Update will be compatible with each preceding version of the Licensed Programs, provided that Customer has installed and updated the appropriate Avaya software. Provided that Customer has a) installed the required Avaya Aura software, Avaya Aura devices, device firmware and licensed properly; b) continuously subscribes to and pays for software maintenance, INEMSOFT will continue to provide Maintenance for: (i) each Update for 24 months after delivery to Customer, and (ii) at least the one (1) prior Major Update provided to Customer.
- 9.6 Access. INEMSOFT must be able to access to all the components of the Licensed Programs remotely. Customer shall ensure that at all times during the Term, INEMSOFT has the necessary network access, user ID, passwords, appropriate profile access, and VPN to provide such services including desktop sharing and other collaboration software. Upon reasonable request, Customer shall provide INEMSOFT with access to required systems twenty-four hours per day, seven days per week to complete any necessary services, subject to Customer's reasonable security procedures and protocol. In the event of any delay by Customer in providing access to the system as requested, any obligations of INEMSOFT hereunder shall

not commence until such time as Customer has met its obligations as set forth in this clause. Termination. Customer may terminate software maintenance for convenience, in whole or in part, at any time by giving INEMSOFT at least thirty (30) days' prior notice. If termination is only with respect to certain items of Licensed Programs, the termination notice will identify those items. Upon any termination of software maintenance, Customer shall be subject to payment of: (i) Support charges up to and including the date of termination, and (ii) cancellation fees. Cancellation fees shall be equal to the Support charges that would otherwise be payable for the affected Support coverage for the remainder of the year of the Term in effect as of the effective date of the termination. The parties agree that the cancellation fees are liquidated damages comprising a reasonable estimate of Supplier's damages in the event of the Customer's early termination and are not a penalty. Unless already paid, the cancellation fees shall be immediately due and payable upon cancellation.

Cancellation fees will be calculated as follows for a 1 year agreement:

- Cancel in Year 1: Full amount of 1st year annual fees to be paid in full

Cancellation fees will be calculated as follows for a 3 year agreement:

- Cancel in Year 1: Full amount of 1st annual fees to be paid in full
- Cancel in Year 2: Full amount of 1st , 2nd year annual fees to be paid in full
- Cancel in Year 3: Full amount of 1st, 2nd and 3rd year annual fees to be paid in full.

Customer may reinstate any terminated software maintenance by giving INEMSOFT at least thirty (30) days' prior notice and paying a reinstatement fee equal to one hundred and fifty percent (150%) of the cumulative maintenance fees that would have been paid for the period of time that Customer did not receive software maintenance. Agreement to pay the reinstatement fee entitles Customer to all Updates issued by INEMSOFT during the period Customer did not have the software maintenance coverage.

- 9.7 Service Levels and Response. For customers with a valid and current support agreement, INEMSOFT will respond to and resolve Errors so as to meet or exceed the service levels as provided below. If INEMSOFT subsequently demonstrates that the Error was not the result of a failure of the Licensed Programs or is a Third Party Caused Error, Customer will reimburse INEMSFOT for those on-site services, including travel related expenses, at INEMSOFT's prevailing rates. INEMSOFT is entitled to recover reasonable cost of error correction support incurred if INEMSOFT determines that the reported Error is caused by unauthorized changes or updates to the system or as a result of changes to third party systems or tools that

caused incompatibilities and Errors in the Licensed Programs. Based on input, context and assessment, INEMSOFT will determine the criticality of the ticket:

- (A) **"Priority 1"** – Means a major outage and redundant or backup servers, are not available or accessible for maintaining system operations of the Licensed Programs and impacting all users, devices and endpoints. Response Time is within (30) minutes of opening ticket. If not resolved by INEMSOFT within Eight (8) hours after INEMSOFT is notified of the Error, at Customer's request, INEMSOFT will immediately allocate qualified personnel to work exclusively, remotely and continuously on the Error until it is resolved.
- (B) **"Priority 2"** – Means a severe outage rendering a server or a database malfunction resulting in the partial failure of the software and causing the Licensed Program to be partially inoperable, impacting a limited subset of users, endpoints or devices. In some cases, the users may have a Workaround by using the redundant configuration if implemented. Response Time is within (1) hour of opening ticket. Supplier Resolution Time is within Sixteen (16) hours of opening ticket.
- (C) **"Priority 3"** – Means a minor issue affecting a local user, endpoint or device or a group of users, endpoints or devices. Issues may be caused by profile errors or network or configuration issues. Reboot is an option, or there is a Workaround by the end user. INEMSOFT will respond no later than the next business day. Response Time is within (4) hours of opening ticket. Resolution Time is within one business day of opening ticket.

10. GENERAL PROVISIONS

- 10.1 **GOVERNING LAW:** The validity, construction and performance of this Agreement, and the rights and obligations of the parties arising in connection therewith, shall be governed in all respects and for all purposes by and construed in accordance with the law of the State of Texas, United States of America. Such law shall apply to all claims arising out of or in connection with the performance or breach of this Agreement whether such claims are characterized as contractual, tortuous or otherwise. The parties hereto expressly exclude from such applicable law the conflict of law rules and the UN Convention on Contracts for the International Sale of Goods.
- 10.2 **NO ASSIGNMENT:** This Agreement shall not be assignable by Customer without the prior written consent of INEMSOFT, and any attempted assignment without such consent shall be void.
- 10.3 **HEADINGS:** Title or headings to the sections of this Agreement are not part of the terms of this Agreement and are inserted only for convenience.

- 10.4 **NOTICES:** All notices herein shall be in writing and shall be sent via U.S. Mail, postage prepaid, to the address of the other party as set forth in this Agreement or to such other address as a party shall designate.

Notices for INEMSOFT shall be addressed to:

Attn: INEMSOFT Inc.
C/O Webb & Webb, P.C.
6301 Preston Road, Suite 700
Plano, Texas 75024

- 10.5 **FORCE MAJEURE:** INEMSOFT shall not be liable for any loss, failure, or delay in furnishing a product or service resulting from fires, explosions, floods, storms, acts of God, governmental acts, orders or regulations, hostilities, civil disturbances, acts of terrorism, strikes, labor difficulties, machinery breakdowns, transportation contingencies, difficulty in obtaining parts, supplies, or shipping facilities, delays of carriers, or any other cause beyond the control of INEMSOFT.
- 10.6 **TIMELY CLAIMS:** No action for breach of this Agreement or any other action to enforce any claim arising out of or in connection with the subject matter of this Agreement shall be brought by Customer against INEMSOFT more than one (1) year after Customer has notice that the cause of action has accrued.
- 10.7 **ACCESS BY INEMSOFT:** Customer agrees to provide INEMSOFT with full, free and timely access to Customer's computer equipment and Licensed Programs at all reasonable times for the purpose of fulfilling its obligations hereunder.
- 10.8 **ARBITRATION:** INEMSOFT and Customer agree to submit all disputes of whatever kind or nature, whether in law or in equity, arising out of this or any other agreement between the parties or their affiliates, to binding arbitration only, to be conducted pursuant to the rules of the American Arbitration Association, such arbitration to be held in Collin County, Texas. If the parties cannot agree on a single arbitrator, then the parties shall each select one arbitrator and these two arbitrators shall jointly select a third arbitrator who shall conduct the arbitration. The parties are entitled to limited discovery under the local rules of civil procedure for courts of general jurisdiction. The parties further agree that any monetary award may be reduced to judgment and docketed in any court of competent jurisdiction without objection and execution had thereon. This provision shall survive the termination or cancellation of this Agreement.
- 10.9 **CUSTOMER ACKNOWLEDGMENT:** Customer acknowledges that, prior to accepting of this Agreement, it has had an opportunity to determine for itself the characteristics and capabilities of the Licensed Programs and is satisfied that the Licensed Programs fulfill Customer's requirements.

INEMSOFT makes no representations of any kind beyond those contained in this Agreement, and no agent of INEMSOFT has the authority to make any representations beyond those contained in those agreements.