



## SOFTWARE END USER LICENSE AGREEMENT

SQL Sentry, LLC.  
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SQL Sentry, LLC, a Delaware limited liability company ("SQL Sentry"), hereby grants the end user licensee ("Customer" or "Licensee") of the Products and Customer hereby accepts from SQL Sentry a limited, revocable, nonexclusive, nonsublicensable, nonassignable, nontransferable, nonresellable license and right to use the software products described in Section 1 below (the "Products") subject to the terms and conditions specified below.

1. PRODUCTS - "Products" means (i) the machine-readable object code version of the software that SQL Sentry or its authorized representative makes available to the Customer, whether in a free or purchased versions, and whether embedded on disc, tape or other media (the "Software"), (ii) the published user manuals and documentation that SQL Sentry or its authorized representative makes generally available for the Software (the "Documentation"), (iii) the updates ("Updates") or revisions of the Software or Documentation that SQL Sentry or its authorized representative may offer to Customer, and (iv) any copy of the Software, Documentation or Updates Nothing in this Agreement will entitle Customer to receive source code of the Software or Updates, in whole or in part. SQL Sentry, in its sole discretion, reserves the right to add additional features or functions, or to provide programming fixes, updates and upgrades, to the Products. Customer acknowledges and agrees that SQL Sentry has no obligation to make available to Customer any subsequent versions of the Products, except where Customer has purchased maintenance services from SQL Sentry as governed by Section 6 of this Agreement. All Products shall be delivered to Customer by way of electronic delivery or communication.

2. EFFECTIVENESS OF TERMS - BY INSTALLING THIS SOFTWARE, YOU SIGNIFY YOUR ACCEPTANCE OF EACH AND EVERY TERM AND CONDITION SET FORTH IN THIS LICENSE AGREEMENT. THE LICENSE GRANTED UNDER THIS LICENSE AGREEMENT IS EXPRESSLY CONDITIONED UPON YOUR ACCEPTANCE OF AND COMPLIANCE WITH ALL TERMS AND CONDITIONS SET FORTH IN THIS LICENSE AGREEMENT. IF YOU DO NOT ACCEPT THE TERMS OF THIS LICENSE AGREEMENT OR DO NOT WISH TO COMPLY WITH ANY TERM OR CONDITION SET FORTH HEREIN, DO NOT INSTALL THIS SOFTWARE. ONCE THIS SOFTWARE IS INSTALLED, THE TERMS HEREOF WILL BE DEEMED TO HAVE BEEN ACCEPTED BY YOU AND YOU WILL BE BOUND BY ALL OF THE TERMS, CONDITIONS, AND RESTRICTIONS CONTAINED HEREIN.

3. USE AND SCOPE OF LICENSE- Customer may use the Products only in and for Customer's own internal purposes and business operations, to include use by Customer's affiliates ("Affiliate"). For purposes of this Agreement, Affiliates shall include any commonly-owned entities, joint venturers or similar partners. Customer shall not copy, translate, modify, adapt, decompile, disassemble or reverse engineer the Products, except as specifically set forth below. Subject to the terms and conditions of the Agreement, Licensor grants to Licensee and each of its Affiliates a corporate-wide, perpetual, irrevocable, fully paid-up, royalty-free, non-exclusive license to:

- a. use, install, run, execute, store, transmit, copy, and network the Software solely in Object Code format;
- b. use and copy the Documentation in support of such authorized use of the Software;
- c. make copies of the Software and the Documentation for archival, training, testing, back-up, or disaster recovery purposes; and
- d. process data on behalf of and permit remote access to and use of the Software and the Documentation by, (i) Licensee's Affiliates, (ii) customers of Licensee and its Affiliates, and (iii) any person in connection with the operation, support and maintenance of the Software, all pursuant to sublicenses which provide no greater rights than and which are otherwise in compliance with the terms of the Agreement.

4. PAYMENT TERMS. Where applicable, Customer shall pay all invoices from SQL Sentry within 30 days of receipt of invoice. SQL Sentry reserves the right to terminate Customer's License Key in the

event that Customer's account becomes past-due. All unpaid invoices shall bear interest at an amount equal to 1-1/2% of the outstanding balance per month, commencing upon the date payment is due, or the highest rate allowed by state law, whichever is less. In the event the sales invoice shall be placed by SQL Sentry in the hands of an attorney for the purpose of collection, with or without litigation, or for the purpose of enforcing SQL Sentry's security interest in the Products, Customer agrees to pay any and all costs associated with such placement, including, but not limited to, attorney's fees and costs incurred prior to, during, or subsequent to trial, and including, without limitation, collection, bankruptcy, or other creditor's rights proceedings.

5. REFUND POLICY: ALL PRODUCT SALES ARE FINAL, with the exception of refunds pursuant to Sections 7 and 8 and pro rata refunds pursuant to Section 16 below. This Section 5 is not applicable to free Products.

6. MAINTENANCE - "Maintenance" shall consist of the services described in this Section 6, which shall apply only where Customer has purchased maintenance services from SQL Sentry in association with the Products. The following terms and conditions shall apply during the Maintenance Term (as defined below) that Customer has purchased from SQL Sentry or its authorized representative, and shall not apply to free Products:

- a. Maintenance Agreement - SQL Sentry or its authorized representative will provide maintenance for the Products during the Maintenance Term purchased and paid for by Customer (each, a "Maintenance Term"). Maintenance includes problem determinations, reasonable problem resolutions and automatic provisioning of software program temporary fixes and new releases. Maintenance includes phone and email support from SQL Sentry offices during normal business hours from 8:30 AM to 5:30 PM EST, Monday through Friday except for holidays. Maintenance will entitle Customer to receive free updates during each Maintenance Term, if any.
- b. Maintenance Terms - Prior to expiration of each Maintenance Term, SQL Sentry will invoice Customer for another 12 month Maintenance Term unless SQL Sentry or its authorized representatives are notified in writing by Customer 60 days prior to the renewal date that Customer elects not to renew Maintenance. If Customer allows maintenance to lapse, Customer will not be entitled to subsequent upgrades except at full fair market value. Maintenance may not be renewed after expiration.
- c. Program Enhancements and Updates - During each Maintenance Term, SQL Sentry or its authorized representative shall provide Customer, at no additional charge, with all upgrades and enhancements to the Products which are generally offered by SQL Sentry. These would include (i) enhancements to the application, (ii) updates of the application, and (iii) any special "fixes" that may be required in order for the software to operate in accordance to documentation.
- d. Support Line - During each Maintenance Term, SQL Sentry or its authorized representative shall provide Customer the availability of telephone or email service for questions or problems associated with the product.
- e. Materials Maintenance - During each Maintenance Term, SQL Sentry or its authorized representative shall provide Customer with all updates to the Documentation.

## 7. LIMITED WARRANTIES

- a. Warranty - SQL Sentry warrants to Customer that during the first 30 days after purchase of the Products (i) the Products will conform to SQL Sentry's published specifications in effect on the date of delivery and (ii) the Products will perform substantially as described in the accompanying Documentation. SQL Sentry does not warrant that (i) the Products will satisfy or may be customized to satisfy all of Customer's requirements or (ii) the use of the Products will be uninterrupted or error-free. Laws from time to time in force may imply warranties that cannot be excluded or can only be excluded to a limited extent. This Agreement shall be read and construed subject to any such statutory provisions.
- b. Remedies - In case of breach of warranty or other duty related to the quality of the Products, SQL Sentry or its authorized representative will correct or replace any defective Product or, if not practicable, SQL Sentry or its authorized representative will accept the return of the defective Product and refund to Customer the amount paid for the defective Product, less depreciation based on a 3-year straight line schedule; provided, however, that where the

defective product is returned during the initial 30-day period referenced in Section 7(a), no depreciation shall be applied. Customer acknowledges that this Paragraph sets forth Customer's exclusive remedy, and SQL Sentry's and its authorized representatives' exclusive liability, for any breach of warranty or other duty related to the quality of the Products.

- c. Disclaimer - EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, ALL WARRANTIES, REPRESENTATIONS, INDEMNITIES AND GUARANTEES WITH RESPECT TO THE PRODUCTS, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM, PRIOR ORAL OR WRITTEN STATEMENTS BY SQL SENTRY OR ITS AUTHORIZED REPRESENTATIVES OR OTHERWISE (INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE) ARE HEREBY OVERRIDDEN AND DISCLAIMED.
- d. No warranties as may be set forth herein shall be applicable to free Products or user-created Custom Conditions , which shall be accepted by Customers on an "as is" basis.

## 8. INDEMNITY

- a. Indemnity - If a claim is asserted or an action is brought against Customer claiming that a Product infringes a U.S. patent, copyright, trade secret or other proprietary right within the country where the Product is situated (the "Territory") SQL Sentry or its authorized representative will defend and hold harmless Customer at SQL Sentry's expense, and subject to this Section 8 and Section 9, pay the damages and costs arising out of or incidental to the infringement action, but only if (i) SQL Sentry or its authorized representative has sole control over the defense of the claim and any negotiation for its settlement or compromise and (ii) Customer takes no action that, in SQL Sentry's reasonable judgment, is contrary to SQL Sentry's interest.
- b. Alternative Remedy - If a claim described in Paragraph 8 (a) may or has been asserted, Customer will permit SQL Sentry, at SQL Sentry's option and expense, to (i) procure the right to continue using the Product, (ii) replace or modify the Product to eliminate the infringement while providing functionally equivalent performance or (iii) accept the return of the Product and refund to Customer the amount actually paid to SQL Sentry or its authorized representative for such Product less depreciation based on a 3-year straight-line depreciation schedule.
- c. Limitation - SQL Sentry shall have no indemnity obligation to Customer under this Section if the patent, copyright or trade secret infringement claim results from (i) a correction or modification of the Product not provided by SQL Sentry or its authorized representative, such as in the case of a user-created Custom Condition, if the infringement would not have occurred but for such correction or modification (ii) the failure by Customer to promptly install an Update, if the infringement would not have occurred but for such failure by Customer to promptly install the Update or (iii) the combination of the Product with other non-SQL Sentry software, except where such combination is necessary for the intended use of the Product or is suggested or authorized by SQL Sentry.

9. NO CONSEQUENTIAL DAMAGES – UNDER NO CIRCUMSTANCES WILL SQL SENTRY OR ITS AUTHORIZED REPRESENTATIVES BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, (INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LOSS OF DATA, GOODWILL, PROFITS, USE OF MONEY OR USE OF THE PRODUCTS, INTERRUPTION IN USE OR AVAILABILITY OF DATA, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS), ARISING OUT OF BREACH OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE, EXCEPT ONLY (a) IN THE CASE OF PERSONAL INJURY WHERE AND TO THE EXTENT THAT APPLICABLE LAW REQUIRES SUCH LIABILITY AND (b) IN THE EVENT OF FRAUD, GROSS NEGLIGENCE AND WILLFUL MISCONDUCT. IN NO EVENT WILL THE AGGREGATE LIABILITY INCURRED IN ANY ACTION OR PROCEEDING BY SQL SENTRY OR ITS AUTHORIZED REPRESENTATIVE EXCEED THE TOTAL FEES PAID BY CUSTOMER UNDER THIS AGREEMENT. SQL SENTRY SHALL BE LIABLE FOR NO DAMAGES ASSOCIATED WITH FREE SOFTWARE OR PRODUCTS. ANY AND ALL LIABILITY WHICH MAY EXIST PURSUANT TO THE TERMS OF THIS AGREEMENT SHALL APPLY ONLY TO PURCHASED PRODUCTS.

## 10. OWNERSHIP

- a. Customer agrees that SQL Sentry retains exclusive ownership of the trademarks represented by its company name and logo and product names and all of the documentation and computer recorded data related thereto. Customer also agrees that all techniques, algorithms, and processes contained in the Products or any modification or extraction thereof constitute trade secrets of SQL Sentry and will be safeguarded by Customer, but in no event shall Customer exercise less than due diligence and care in accordance with the laws of the country of purchase and International Law, whichever operates to best protect the interests of SQL Sentry. Customer shall not copy, reproduce, re-manufacture or in any way duplicate all or any part of the Products or related intellectual property WHETHER MODIFIED OR TRANSLATED INTO ANOTHER LANGUAGE OR NOT, or in any documentation, or in any other material provided by SQL Sentry in association with the Products except as specified in this Agreement and in accordance with the terms and conditions of this Agreement. Customer agrees that unauthorized distributing, copying, duplications, or otherwise reproducing ALL OR ANY PART OR TRANSLATED PART of the Products or the failure to protect such Products will actually and materially damage SQL Sentry. Customer agrees that in the event Customer breaches this Agreement, Customer will be liable for damages as may be determined by a court of competent jurisdiction.
- b. Customer agrees that, except as otherwise permitted under this Agreement, Customer shall not, either directly or indirectly, copy or reproduce any of the materials which comprise the Products and related products. Customer shall not, directly or indirectly, attempt to reverse, engineer or otherwise deconstruct the Products and its underlying code and content for use in another software program or application. Other than as expressly stated herein, the license granted hereunder is limited by its clear terms and grants no further rights.

## 11. CONFIDENTIALITY

- a. Confidentiality - Customer acknowledges that the Products incorporate confidential and proprietary information developed or acquired by or licensed to SQL Sentry. In addition, SQL Sentry acknowledges that in connection with the performance of this Agreement, Customer may disclose to SQL Sentry information about its business or activities or other information that it considers proprietary and confidential. Each party will take all reasonable precautions necessary to safeguard the confidentiality of the disclosing party's confidential and proprietary information, including (i) those taken by the receiving party to protect its own confidential information and (ii) those which the disclosing party or its authorized representative may reasonably request from time to time. Either party will not allow the removal or defacement of any confidentiality or proprietary notice placed on the disclosing party's information or products. The placement of copyright notices on these items will not constitute publication or otherwise impair their confidential nature.
- b. Disclosure - If an unauthorized use or disclosure occurs, the receiving party will immediately notify the disclosing party or its authorized representative and take, at the receiving party's expense, all steps reasonably necessary to recover the disclosed information or products and to prevent their subsequent unauthorized use or dissemination.

12. TERMINATION - Customer may terminate this Agreement for convenience, without right to refund (other than refunds pursuant to Sections 7, 8 and 16), by notifying SQL Sentry of such termination. Either party may terminate this Agreement, upon reasonable notice, if the other party or any of its employees or consultants breach any material term or condition hereof and fails to cure such breach within 30 days of demand for cure. This Agreement will terminate automatically if either party becomes insolvent or enters into bankruptcy, suspension of payments, moratorium, reorganization or any other proceeding that relates to insolvency or protection of creditors' rights. Upon the termination of this Agreement for any reason, all rights granted to Customer hereunder will cease, and Customer will promptly (i) purge the Software and any related Updates from the Products and all of Customer's other computer systems, storage media and other files, (ii) destroy the Products and all copies thereof and (iii) deliver to SQL Sentry an affidavit which certifies that Customer has complied with these termination obligations. The provision of Sections 8, 9, 10, 11, 14 and 17 will survive the termination of this Agreement.

13. U.S. EXPORT RESTRICTIONS - Customer acknowledges that the Products and all related technical information, documents and materials are subject to export controls under the U.S. Export Administration Regulations. Customer may not re-export or divert the Products or any related technical information, document or material, or direct products thereof, to any other country or any resident thereof, unless Customer has obtained an appropriate authorization from SQL Sentry and the U.S. Commerce Department.

14. SQL SENTRY'S RIGHTS - Customer acknowledges that the provisions of this Agreement are intended to benefit SQL Sentry. If Customer breaches any of these provisions, SQL Sentry will be entitled to enforce this Agreement directly against Customer, whether in SQL Sentry's name or the name of its authorized representative. Customer further acknowledges that SQL Sentry executes this Agreement as principal on its own behalf and, exclusively to accept or otherwise perfect SQL Sentry's rights against Customer, as agent on behalf of SQL Sentry.

15. LICENSE KEY - Customer acknowledges and agrees that a special security code owned and controlled by SQL Sentry ("License Key") may be required to render operational certain SQL Sentry Products. Where necessary for operation of the Products, SQL Sentry will procure the provision of the License Key to Customer. Customer agrees not to reverse engineer or otherwise attempt to acquire, bypass or disable the License Key.

16. PRODUCT DEFECTS - During the term of this Agreement, SQL Sentry's sole obligation regarding Product defects shall be limited to repair of any program which prevents normal use of the Products at no cost to Customer. Customer shall give SQL Sentry prompt notice of any alleged Product defect. SQL Sentry will make every effort to correct the Product defect within 30 days. SQL Sentry's obligations shall be waived in the event of (i) any problem with data on disk files or diskettes which have been caused by improper handling or use by Customer not authorized or suggested by SQL Sentry, or (ii) an alteration or revision to the Products by Customer or its employees not authorized or suggested by SQL Sentry. In the event SQL Sentry is unable to correct the Product defect, and where Customer elects to terminate this Agreement, the Customer shall be refunded the amount paid for the defective Product, less depreciation based on a 3-year straight line schedule. SQL Sentry shall bear no liability hereunder with respect to free Products or user-created Custom Conditions. All obligations arise only with respect to purchased Products.

#### 17. PRIVACY POLICY

- a. SQL Sentry will implement and maintain all reasonable and appropriate administrative, organizational, technical and physical measures to protect Customer information from loss, misuse, unauthorized access, disclosure, alteration and destruction. SQL Sentry shall process Customer information only in a manner compatible with and relevant for the purpose for which it was collected or authorized by Customer. Customer acknowledges and agrees that Customer has the sole responsibility to specify and manage all data and information uploaded to SQL Sentry websites by Customer, and which groups, third parties or similar persons or entities are authorized to view and analyze the Customer data and information. Customer shall indemnify SQL Sentry against any and all claims arising from Customer data and information uploaded to the SQL Sentry websites by Customer.
- b. SQL Sentry shall use credit card information solely for payment processing and fraud prevention efforts. Credit card information, and other sensitive information required to process a credit decision, is not used for any other purposes by SQL Sentry, its financial service providers or its affiliates, and will not be retained any longer than necessary to provide Customer services.
- c. Customer information may be aggregated with other Customers' information on a purely non-identifiable basis for knowledge sharing purposes and to understand how SQL Sentry Products are used for research and design purposes, in order to improve subsequent generations of the Products.
- d. In the event SQL Sentry becomes aware of any possible or actual loss of, unauthorized or unlawful access to, acquisition of, use of, disclosure of, or any other compromise of Customer's confidential or proprietary information within the possession or control of SQL Sentry, SQL Sentry shall promptly notify Customer of such security breach. In the event of

such security breach, SQL Sentry shall cooperate in good faith with Customer to investigate and resolve the security breach and mitigate any harmful effects of such breach.

18. **GOVERNING LAW** - This Agreement shall be interpreted in accordance with the laws of the State of North Carolina. The parties to this Agreement stipulate and acknowledged that the state courts of Mecklenburg County, North Carolina shall maintain exclusive venue and jurisdiction over the subject matter and the parties. In the event any part of this Agreement is invalidated by court or legislative action of competent jurisdiction, the remainder of this Agreement shall remain in binding effect. If Customer is a resident of or a company domiciled in a country other than the United States, this Agreement will be interpreted in accordance with International Law.

19. **LEGAL FEES AND ENFORCEABILITY** - If any action at law or inequity is brought to enforce or interpret any of the provisions of this Agreement, the prevailing party shall be entitled to reasonable legal fees. In the event any provision of this Agreement is held by any court to be invalid, void, or unenforceable by notion of law or inequity, the remaining provisions shall continue in full force and effect. It is understood and agreed that, notwithstanding any other provisions of this Agreement, SQL Sentry has the unequivocal right to obtain timely injunctive relief to protect the proprietary rights of SQL Sentry.

20. **GOVERNMENT END USERS** - Where the Products are used by or on behalf of the United States of America, its agencies and/or instrumentalities ("U.S. Government"), it is provided with restricted rights. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Products clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Products--Restricted Rights at 48 CFR 52.227-19, as applicable.

21. **NO MODIFICATIONS**. Customer agrees not undertake, cause, permit or authorize the modification, creation of derivative works, translation, reverse engineering, decompiling, disassembling or hacking of the Products, or any part thereof, except where authorized by SQL Sentry. Customer agrees not to intercept, capture, emulate, or redirect the communications protocols used by SQL Sentry for any purpose, including without limitation causing the Products to connect to any computer server or other device not authorized by SQL Sentry or in a manner not authorized by SQL Sentry.

22. **ENTIRE AGREEMENT** - Customer acknowledge that it has read this Agreement, understands it and agrees to be bound by its terms. Customer and SQL Sentry further agree that this Agreement is the complete and exclusive statement of the agreement between Customer and SQL Sentry and supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter of this Agreement. This Agreement is not subject to modification except by the express mutual agreement of Customer and SQL Sentry. **UNDER NO CIRCUMSTANCES MAY THE TERMS OF THIS AGREEMENT, ANY PURCHASE SCHEDULE OR ANY SQL SENTRY PURCHASE ORDER BE AMENDED, MODIFIED, SUPPLEMENTED, ALTERED, SUPERCEDED OR REPLACED BY ANY NON-SQL SENTRY INVOICE OR NON-SQL SENTRY PURCHASE ORDER OR OTHER SIMILAR INSTRUMENT DELIVERED BY CUSTOMER TO SQL SENTRY. EACH PARTY ACKNOWLEDGES AND AGREES THAT, AS A CONVENIENCE TO CUSTOMER AND ONLY FOR CUSTOMER'S INTERNAL ACCOUNTING PROCEDURES, CUSTOMER MAY DELIVER TO SQL SENTRY A CUSTOMER INVOICE OR CUSTOMER PURCHASE ORDER OR OTHER SIMILAR DOCUMENT FOR ANY TRANSACTION CONTEMPLATED HEREUNDER AND THAT NO ACTION BY SQL SENTRY, INCLUDING SQL SENTRY'S DELIVERY OF ANY LICENSED MATERIALS OR ACCEPTANCE OF PAYMENT, SHALL BE DEEMED TO BE ACCEPTANCE OF ANY OF THE TERMS OR CONDITIONS CONTAINED IN SUCH CUSTOMER INVOICE OR CUSTOMER PURCHASE ORDER OR OTHER SIMILAR INSTRUMENT AND SUCH TERMS AND CONDITIONS SHALL BE VOID AND OF NO FORCE OR EFFECT, UNLESS ACCEPTED BY SQL SENTRY PURSUANT TO A WRITTEN INSTRUMENT SIGNED BY BOTH PARTIES AND EXPRESSLY REFERRING TO THIS SECTION 22.**

23. **MISCELLANEOUS** - Customer shall not assign, delegate or otherwise transfer this Agreement or any of its rights or obligations hereunder, other than to its affiliates, without SQL Sentry's prior approval. All notices or approvals required or permitted under this Agreement must be given in writing. The failure of Company to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of

such right or provision. Any waiver or modification of this Agreement will not be effective unless expressly approved by SQL Sentry. This Agreement will bind Customer's successors-in-interest. The section titles in this Agreement are for convenience only and have no legal or contractual effect. If any part of this Agreement is held invalid or unenforceable, that portion shall be construed to reflect the parties' original intent, and the remaining portions shall remain in full force and effect.