

Schedule 2.1 - Provider Software License Agreement

This SOFTWARE LICENSE AGREEMENT (the “**License Agreement**”) is a schedule to and is governed by the Master Services Agreement between CUSTOMER (“Customer”) and iRely LLC (“Provider”) (the “Master Agreement”), and is effective on the Effective Date of the Master Agreement. Customer and Provider are hereafter referred to collectively as the “Parties” and individually as a “Party”.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency thereof the Parties hereby acknowledge, the Parties agree as follows:

1) **CERTAIN DEFINITIONS**

Capitalized terms not defined in this Maintenance Agreement will have the meanings ascribed in the Master Agreement. For the purposes of this Agreement, the following terms have the following applicable meanings:

- “**Affiliate**” means, with respect to a specified Person, any Person which directly or indirectly controls, is controlled by, or is under common control with the specified Person as of the date of this Agreement, for as long as such relationship remains in effect.
- “**Documentation**” means the materials created by or on behalf of Provider that describe or relate to the functional, operational, or performance capabilities of the Software, regardless of whether such materials are printed or electronic, including but not limited to: all operator’s and user manuals, training materials, guides, commentary, technical, design or functional specifications, requirements documents, product descriptions, proposals, schedules, listings and other materials related to the Software.
- “**Permitted User**” means Customer’s account administrator or employees, representatives, consultants, contractors, agents and any third party to whom the Customer gives permission to access the Software via user identification and password combination or any method requiring authentication of an individual’s identity.
- “**Person**” means any individual, sole proprietorship, joint venture, partnership, corporation, company, firm, association, cooperative, trust, estate, government, governmental agency, regulatory authority or other entity of any nature.
- “**Proprietary Items**” means, collectively, the Software and Documentation, all deliverables provided as a result of or in connection with Master Agreement, the object code and the source code for the Software, the visual expressions, screen formats, report formats and other design features of the Software, all development tools and methodologies used in connection with the Software, Professional Services, Maintenance Services and other Provider Services, as applicable, all ideas, methods, algorithms, formulae and concepts used in developing and/or incorporated into the Software, Documentation or deliverables provided as a result of or in connection with the Master Agreement, all future modifications, revisions, updates, releases, refinements, improvements and enhancements of the Software, Documentation or deliverables

provided as a result of or in connection with the Master Agreement, all derivative works (as such term is used in the U.S. copyright laws) based upon any of the foregoing and all copies of the foregoing.

- **"Software"** means, collectively, the Provider software identified in the Ordering Documents, any software or other items developed pursuant to a Professional Services Agreement, and all Updates thereto.
- **"Update"** means any patch, bug fix, correction, update, upgrade, enhancement, minor release, or other modification by Provider to the Software.

2) SOFTWARE LICENSE

- Provider hereby grants to Customer, for the use and benefit of the Permitted Users, a personal, non-transferable, non-sublicensable, limited-scope license to use the Software and Documentation only in the ordinary course of Customer's business operations and only for Customer's normal business purposes. The Software and Documentation will be used only at the specific Customer location(s) and only by the specific number of Permitted Users specified in the applicable Ordering Document.
- Provider shall provide permanent passwords or license keys for all licensed Software that requires passwords or license keys for proper and complete operation thereof.
- Customer is responsible for the compliance by all Permitted Users with this License Agreement and for all use of Permitted User accounts and confidentiality of passwords. Customer will promptly notify Provider in the event that an Permitted User's password has been lost, stolen or otherwise compromised. The numbers and location of Permitted Users is limited to those numbers and locations specified in applicable Ordering Documents.

3) INSTALLATION OF SOFTWARE

- Upon execution of the Agreement, including all Schedules, and payment of all applicable Fees, Provider shall install the Software within a commercially reasonable time at Customer's designated location(s) and provide a link to the online help desk. If there is delay in signing the Agreement or receiving payment, the project plan and anticipated go live date will adjust to accommodate such delay.
- Customer shall designate a primary contact to assist with installation of the Software and ensure all technical requirements are met.
- Customer will cooperate with Provider as reasonably necessary for Provider to perform its obligations under this License Agreement. Customer will devote all equipment, facilities, personnel and other resources identified in the applicable Ordering Documents or otherwise reasonably required to install, implement and use the Software and Services. Provider will not be responsible for any delays or additional fees and costs associated with Customer's failure to timely perform its obligations under this [Section 3](#).

4) OTHER TERMS RELATING TO USE OF THE SOFTWARE

- License Copies. Customer and Permitted Users shall have the right to make one operational copy and one backup copy for archival purposes.
- Documentation Copies. Customer may reproduce the Documentation as reasonably necessary to support internal use of the Software.

- Emergency Use of Software on Other Computer(s). Customer shall have the right to temporarily use the Software and Documentation on back-up computers at any location for disaster recovery and emergency purposes. As soon as practical after cessation of the disaster or emergency, Customer and its Affiliates shall remove the Software and Documentation from the back-up computers. Customer and its Affiliates shall also have the right to periodically activate and test the Software on such back-up computers for evaluating and verifying emergency and disaster recovery techniques and procedures. If license keys, passwords or other information from Provider are required to use the Software on such other computers, Provider shall provide such to Customer.

5) EXCESS USE

- Customer's Software license is limited to the specific number of Permitted Users stated in the applicable Ordering Documents. Customer may purchase additional user Licenses. Provider's remedy for unintentional non-compliance by Customer includes, but is not limited to, collecting additional fees from Customer for such additional use. Such additional fees will be calculated on a pro-rata basis based upon the Provider's stated fees for the relevant Software. Should non-compliance be deemed to be an intentional act, Provider may consider action a material breach of the Master Agreement.
- Provider may inspect and audit Customer's servers and facilities to determine Customer's compliance with the Software license and Permitted Users limitations. If Provider determines that a noncompliance has occurred, in addition to Provider's other remedies, Customer will promptly pay Provider, as applicable, all additional software license and service fees due Provider, together with all reasonable out-of-pocket costs and expenses of such audit.

6) ACCEPTANCE

Applicable Software deliverables under all applicable Ordering Documents will be accepted by Customer when the written acceptance criteria, if any, specified in applicable Ordering Documents are deemed to have been met. Where no Software acceptance criteria are specified, such deliverables will be deemed accepted upon delivery to Customer.

7) CONFIDENTIALITY AND OWNERSHIP

- Confidential Information. During the term of this License Agreement and in perpetuity thereafter, each Party will keep in confidence all of the Confidential Information of the other party, and will not use such Confidential Information of the other Party without such other Party's prior written consent. No Party will disclose the Confidential Information of any other party to any Person, except to its own employees, agents and independent contractors to whom it is necessary to disclose the Confidential Information for the sole purpose of performing their duties and/or exercising their rights under this License Agreement, and who have agreed to receive it under terms at least as restrictive as those specified in this Agreement. Each Party will maintain the confidentiality of the Confidential Information, with not less than the standard of care that an ordinarily prudent business would exercise to maintain the secrecy of its own most confidential information. Each Party will immediately give notice to the other Party of any

- unauthorized use or disclosure of any Confidential Information. Each Party agrees to assist the other party in remedying such unauthorized use or disclosure of Confidential Information. Upon either Party's request, the other Party will return all copies of Confidential Information and proprietary materials or information, and all copies and notes made thereof, received from hereunder, or destroy all Confidential Information and copies and notes made thereof, and provide a certification in writing to such effect.
- **Proprietary Items and Ownership.** The Proprietary Items are trade secrets and proprietary property of Provider, having great commercial value to Provider. All Proprietary Items provided to Customer under this License Agreement are being provided on a strictly confidential and limited use basis. Customer will not, directly or indirectly, communicate, publish, display, loan, give or otherwise disclose any Proprietary Item to any Person, or permit any Person to have access to or possession of any Proprietary Item. Title to all Proprietary Items and all related patent, copyright, trademark, trade secret, intellectual property and other ownership rights will be and remain exclusively with Provider, even with respect to such items that were created by Provider specifically for or on behalf of Customer. This License Agreement is not an agreement of sale, and no title, patent, copyright, trademark, trade secret, intellectual property or other ownership rights to any Proprietary Items are transferred to Customer by virtue of this License Agreement. All copies of Proprietary Items in Customer's possession will remain the exclusive property of Provider and will be deemed to be on loan to Customer during the term of this License Agreement.
 - **Use Restrictions.** Customer will not do, attempt to do, nor permit any other Person to do, any of the following: (a) use any Proprietary Item for any purpose, at any location or in any manner not specifically authorized by this License Agreement; (b) make or retain any copy of any Proprietary Item except as specifically authorized by this License Agreement; (c) create or recreate the source code for the Software, or re-engineer, reverse engineer, decompile or disassemble the Software; (d) modify, adapt, translate or create derivative works based upon the Software or Documentation, or combine or merge any part of the Software or Documentation with or into any other software or documentation; (e) refer to or otherwise use any Proprietary Item as part of any effort either to develop a program having any functional attributes, visual expressions or other features similar to those of the Software or to compete with Provider or its Affiliates; (f) remove, erase or tamper with any copyright or other proprietary notice printed or stamped on, affixed to, or encoded or recorded in any Proprietary Item, or fail to preserve all copyright and other proprietary notices in any copy of any Proprietary Item made by Customer; or (g) sell, market, license, sublicense, distribute or otherwise grant to any Person, including any outsourcer, vendor, consultant or partner, any right to use any Proprietary Item, whether on Customer's behalf or otherwise.
 - **Notice and Remedy of Breaches.** Each Party will promptly give written notice to the other of any actual or suspected breach by it of any of the provisions of this [Section 7](#), whether or not intentional, and the breaching Party will, at its expense, take all steps reasonably requested by the other Party to prevent or remedy the breach.
 - **Enforcement.** Each Party acknowledges that the restrictions in this Agreement are reasonable and necessary to protect the other's legitimate business interests. Each Party acknowledges that any breach of any of the provisions of this [Section 7](#) will result in irreparable injury to the other for which money damages could not adequately compensate. If there is a breach, then the injured Party will be entitled, in addition to all

other rights and remedies which it may have at law or in equity, to have a decree of specific performance or an injunction issued by any competent court, requiring the breach to be cured or enjoining all Persons involved from continuing the breach. The existence of any claim or cause of action that a Party or any other Person may have against the other Party will not constitute a defense or bar to the enforcement of any of the provisions of this Section 7.

8) PROVIDER INTELLECTUAL PROPERTY INDEMNITY

Provider shall defend and indemnify Customer against any third-party claim that the Software and Documentation, as and when delivered to Customer by Provider and when properly used for the purpose and in the manner specifically described in the Documentation and as authorized by this Agreement, do not infringe upon any United States patent issued as of the date of this Agreement, or copyright, trade secret or other proprietary right of any Person. Provider shall have no obligation under this Section 8 unless Customer promptly gives written notice to Provider after any applicable infringement claim is initiated against Customer and allows Provider to have sole control of the defense or settlement of the claim. The remedies provided in this Section 8 are the sole remedies for any infringement claims and related issues. If any applicable infringement claim is initiated, or in Provider's sole opinion is likely to be initiated, then Provider shall have the option, at its expense, to modify or replace all or the infringing part of the Software or Documentation so that it is no longer infringing or procure for Customer the right to continue using the infringing part of the Software or Documentation.

9) FEES

Fees associated with the Software are outlined in Schedule 1 – Proposal. Invoicing and payment terms are outlined in Schedule 5 – Charging and Invoicing.

By clicking the "I agree" box you acknowledge that you are entering into a legally binding contract with Provider, and that you have read, understood, and agreed to the terms set forth herein, including all applicable schedules.