



SafeConnect™

End User Licensing Agreement (EULA)

The following terms and conditions shall apply to the provision and use of the Impulse Point LLC SafeConnect™ product and services (individually a "Service" and collectively the "Services") provided. This End User Licensing Agreement (EULA) grants the CUSTOMER a Software License to use Impulse Point SafeConnect products.

1.0 DEFINITIONS

- 1.1 "Affiliate" of a party means any entity that controls, is controlled by, or is under common control with such party, and, in the case of IMPULSE POINT LLC (hereafter, IMPULSE POINT®); it also means any entity which IMPULSE POINT has authorized to offer any Service or part of any Service.
- 1.2 "Content" means information made available, displayed or transmitted in connection with a License (including, without limitation, information made available by means of an HTML "hot link", a third-party posting or similar means) including all trademarks, service marks and domain names contained therein as well as the contents of any bulletin boards or chat forums, and all updates, upgrades, modifications and other versions of any of the foregoing.
- 1.3 "User" means anyone who uses or accesses any licensed product or Service purchased by the CUSTOMER under this Agreement.
- 1.4 "Internet" means the global communications network commonly known as the Internet.
- 1.5 "Effective Date" is defined as the date the agreement is agreed to by both parties).

2.0 EULA TERM, SUPPORT SERVICE PERIOD

- 2.1 This EULA begins on the Effective Date (below) in accordance with the provisions hereof. Support Service period begins on the Effective Date (below) and is renewable annually.

3.0 TERMINATION

- 3.1 Termination or failure to renew Support Services terminates all Support Services references in Section 4.0 of this Agreement.

4.0 RESPONSIBILITIES OF THE PARTIES

- 4.1 IMPULSE POINT shall License and provide Services to the CUSTOMER in accordance with the terms and conditions specified herein, consistent with all applicable laws and regulations.
- 4.2 IMPULSE POINT'S policy is to continually improve its products and services, and so may from time to time change the Service as provided to the CUSTOMER.
- 4.3 IMPULSE POINT will not provide support directly to nor interface directly with any End User. The CUSTOMER is responsible for
 - 4.3.1 selecting the Users that the CUSTOMER permits to access the Service
 - 4.3.2 implementing with its Users appropriate terms, conditions, and measures to ensure that all Users comply with the terms and conditions of the CUSTOMER'S specific Acceptable Use Policy
 - 4.3.3 establishing its Users' rights to access the Service
 - 4.3.4 training its Users

- 4.3.5 billing and collecting any amounts the CUSTOMER elects to charge its Users in connection with the Service
- 4.3.6 supporting the End User.

5.0 DISCLAIMERS AND LIMITATION OF LIABILITY

- 5.1 THE PRODUCTS AND SERVICES PURCHASED UNDER THIS AGREEMENT ARE NOT SOLD OR PROVIDED UNDER ANOTHER CONTRACT OR TARIFF.
- 5.2 IN ADDITION TO AND WITHOUT LIMITATION OF THE PROVISIONS CONTAINED IN THE AGREEMENT, IMPULSE POINT SHALL NOT BE RESPONSIBLE FOR:
 - 5.2.1 SERVICE IMPAIRMENTS CAUSED BY ACTS OF THE CUSTOMER, ITS AGENTS, SUBCONTRACTORS, SUPPLIERS, LICENSEES OR USERS
 - 5.2.2 INABILITY OF THE CUSTOMER OR ANY USER TO ACCESS OR INTERACT WITH ANY OTHER SERVICE PROVIDERS, NETWORKS, USERS OR INFORMATIONAL OR COMPUTING RESOURCES THROUGH THE INTERNET
 - 5.2.3 INTERACTIONS WITH THIRD PARTIES THROUGH THE INTERNET
 - 5.2.4 PERFORMANCE IMPAIRMENTS CAUSED ON THE INTERNET
- 5.3 For the purposes of Articles 5 and 12, and all other exclusive remedies and limitations of liability set forth in this Agreement or any Attachment, "IMPULSE POINT" shall be defined as IMPULSE POINT, its Affiliates, and its and their employees, directors, officers, agents, representatives, subcontractors, interconnection service providers and suppliers; and "CUSTOMER" shall be defined as the CUSTOMER, its Affiliates, and its and their employees, directors, officers, agents, and representatives; and "Damages" will refer collectively to all and any injury, damage, liability, loss, penalty, interest and/or expense incurred.
- 5.4 IMPULSE POINT'S ENTIRE LIABILITY SHALL BE LIMITED TO PROVEN DIRECT DAMAGES AND SHALL NOT EXCEED AN AMOUNT EQUAL TO THE CUSTOMER'S PAYMENT OWED TO IMPULSE POINT FOR THE TWELVE (12) MONTHS PRECEDING THE MONTH IN WHICH THE PROVEN DAMAGE OCCURRED. THIS DOES NOT LIMIT THE CUSTOMER'S RESPONSIBILITY FOR PAYMENT OF ANY AND ALL CHARGES DUE UNDER THIS AGREEMENT.
- 5.5 IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, ADVANTAGE, SAVINGS OR REVENUES OF ANY KIND OR INCREASED COST OF OPERATIONS, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 5.6 IMPULSE POINT SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATING TO: INTEROPERABILITY, INTERACTION OR INTERCONNECTION PROBLEMS WITH APPLICATIONS, EQUIPMENT, SERVICES OR NETWORKS PROVIDED BY THE CUSTOMER OR THIRD PARTIES; SERVICE INTERRUPTIONS OR LOST OR ALTERED MESSAGES OR TRANSMISSIONS; OR, UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS OR DESTRUCTION OF CUSTOMER'S, USERS' OR THIRD PARTIES' APPLICATIONS, CONTENT, DATA, PROGRAMS, INFORMATION, NETWORK OR SYSTEMS.
- 5.7 IMPULSE POINT DOES NOT AUTHORIZE ANYONE TO MAKE A WARRANTY OF ANY KIND ON ITS BEHALF AND THE CUSTOMER SHOULD NOT RELY ON ANYONE MAKING SUCH STATEMENTS.
- 5.8 THE LIMITATIONS OF LIABILITY SET FORTH IN THIS ARTICLE 5 AND IN ANY ATTACHMENT SHALL APPLY: (I) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE; AND (II) WHETHER OR NOT DAMAGES WERE FORESEEABLE. THESE LIMITATIONS OF LIABILITY SHALL SURVIVE FAILURE OF ANY EXCLUSIVE REMEDIES PROVIDED IN THIS AGREEMENT.

- 5.9 THIS AGREEMENT DOES NOT EXPRESSLY OR IMPLICITLY PROVIDE ANY THIRD PARTY (INCLUDING USERS) WITH ANY REMEDY, CLAIM, LIABILITY, REIMBURSEMENT, CAUSE OF ACTION OR OTHER RIGHT OR PRIVILEGE.

6.0 USE OF INFORMATION

- 6.1 ALL DOCUMENTATION, TECHNICAL INFORMATION, SOFTWARE, BUSINESS INFORMATION, OR OTHER MATERIALS THAT ARE DISCLOSED BY EITHER PARTY TO THE OTHER IN THE COURSE OF PERFORMING THIS AGREEMENT SHALL BE CONSIDERED PROPRIETARY INFORMATION TO THE EXTENT THAT INFORMATION IS NOT A PUBLIC RECORD OR OTHERWISE EXEMPT FROM DISCLOSURE REQUIREMENTS. INFORMATION PROVIDED BY THE DISCLOSING PARTY, PROVIDED SUCH INFORMATION IS IN WRITTEN OR OTHER TANGIBLE FORM THAT IS CLEARLY MARKED AS "PROPRIETARY" OR "CONFIDENTIAL", OR IS DISCLOSED ORALLY AND IS BOTH IDENTIFIED AS PROPRIETARY OR CONFIDENTIAL AT THE TIME OF DISCLOSURE AND SUMMARIZED IN WRITING SO MARKED WITHIN FIFTEEN (15) BUSINESS DAYS FOLLOWING THE ORAL DISCLOSURE AND PROVIDED THAT THE OBLIGATION SET FORTH SHALL NOT APPLY TO THE EULA. THIS AGREEMENT SHALL BE DEEMED TO COVER IMPULSE POINT AND CUSTOMER INFORMATION. CUSTOMER CONTENT SHALL BE DEEMED TO BE CUSTOMER INFORMATION.
- 6.2 EACH PARTY'S INFORMATION (INCLUDING SOFTWARE) SHALL FOR AN INDEFINITE PERIOD:
- 6.2.1 be held in confidence
 - 6.2.2 be used only for purposes of performing this Agreement (including in the case of IMPULSE POINT, the ability to monitor and record CUSTOMER transmissions in order to detect fraud, check quality, and to operate, maintain and repair the Services) and using the Services; and
 - 6.2.3 not be disclosed except to the receiving party's employees, agents and contractors having a need-to-know (provided that such agents and contractors are not direct competitors of either party and agree in writing to use and disclosure restrictions as restrictive as this Article 9), or to the extent required by law (provided that prompt advance notice is provided to the disclosing party to the extent practicable)
- 6.3 THE RESTRICTIONS IN SECTION 6 (USE OF INFORMATION) SHALL NOT APPLY TO ANY INFORMATION THAT:
- 6.3.1 is independently developed by the receiving party
 - 6.3.2 is lawfully received by the receiving party free of any obligation to keep it confidential
 - 6.3.3 becomes generally available to the public other than by breach of this Agreement

7.0 PUBLICITY AND MARKS

- 7.1 Unless otherwise agreed upon in writing between the parties, public statements or announcements relating to this Agreement can be issued by either party without the prior written or verbal consent of the other party.
- 7.2 Each party agrees and acknowledges approval to display or use, in advertising or otherwise, any of the other party's trade names, logos, trademarks, service marks or other indicia of origin (collectively "Marks") without the other party's prior written or verbal consent, provided that such consent use may be revoked at any time with prior written notification.

8.0 SOFTWARE/ LICENSE GRANT

- 8.1 IMPULSE POINT grants the CUSTOMER a nontransferable and non-exclusive license (without the right to sublicense) to use, only installed in the provided Hardware, in object code form, all SafeConnect related Software and associated written and electronic documentation and data furnished pursuant to this EULA (collectively, the "Software"), solely in connection with the License granted and the Support Services provided solely in accordance with applicable written and electronic documentation. The CUSTOMER will

refrain from taking any steps to reverse engineer, reverse assemble, reverse compile or otherwise derive a source code version of the Software. The Software shall at all times remain the sole and exclusive property of IMPULSE POINT or its suppliers. "IMPULSE POINT Software" means all Software other than Third-Party Software. All IMPULSE POINT Products are Copyright © Impulse Point LLC. ALL RIGHTS RESERVED.

- 8.2 The CUSTOMER shall not copy or download the Software, except to the extent expressly provided otherwise in the applicable documentation for the Service or in writing signed by IMPULSE POINT. Any copy must contain the same copyright notices and proprietary markings as the original Software. All CUSTOMER-provided software not developed by the CUSTOMER must have the appropriate licenses and upon request copies of said licenses shall be provided to IMPULSE POINT.
- 8.3 The CUSTOMER shall require that its Users comply with the terms and conditions of this agreement.
- 8.4 The term of the license granted for the use of the Software hereunder shall be coterminous with the purchase order, which covers the Software and the applicable peak concurrent device license tier level which includes device software agents (aka "SafeConnect Policy Keys").
- 8.5 In the event that IMPULSE POINT is not able to provide software maintenance and support due to insolvency, the CUSTOMER has the right to continue the use of the system without any financial liability to IMPULSE POINT. IMPULSE POINT can also make arrangements to place system software in an escrow account for an additional fee.

9.0 THIRD PARTY SOFTWARE AND LICENSING AND TRADEMARKS

- 9.1 All perpetual software licensed products and subscription software licensed software with the exception of Third Party Software is the property of its respective owner. "Third-Party Software" means Software that bears a copyright notice of a third party.
 - 9.1.1 **MySQL** is a registered copyright of Free Software Foundation, Inc. Copyright © 2007 Free Software Foundation, Inc. <http://www.fsf.org/>
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 - 9.1.7 **GNU crypto** (GNU GPL)
 - 9.1.8 **Ganymed SSH-2, Bouncy Castle Cryptography for Java, DOM4j**. Copyright (c) 2005 - 2006 Swiss Federal Institute of Technology (ETH Zurich), Department of Computer Science

(<http://www.inf.ethz.ch>), Christian Plattner. All rights reserved.

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- 9.1.10 The Java implementations of the AES, Blowfish and 3DES ciphers have been taken (and slightly modified) from the cryptography package released by "The Legion Of The Bouncy Castle". Their license states the following: Copyright (c) 2000 - 2004 The Legion Of The Bouncy Castle (<http://www.bouncycastle.org>)
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- 9.1.13 THE SOFTWARE IS PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. IN NO EVENT SHALL THE AUTHORS OR COPYRIGHT HOLDERS BE LIABLE FOR ANY CLAIM, DAMAGES OR OTHER LIABILITY, WHETHER IN AN ACTION OF CONTRACT, TORT OR OTHERWISE, ARISING FROM, OUT OF OR IN CONNECTION WITH THE SOFTWARE OR THE USE OR OTHER DEALINGS IN THE SOFTWARE.
- 9.1.14 THIS SOFTWARE IS PROVIDED BY THE COPYRIGHT HOLDERS AND CONTRIBUTORS "AS IS" AND ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE DISCLAIMED. IN NO EVENT SHALL THE COPYRIGHT OWNER OR CONTRIBUTORS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; LOSS OF USE, DATA, OR PROFITS; OR BUSINESS INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OF THIS SOFTWARE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

10.0 HARDWARE

- 10.1 Ownership of the hardware provided by IMPULSE POINT or its authorized reseller or distributor is transferred to the CUSTOMER if the system has been purchased. IMPULSE POINT retains ownership of its hardware for any annual subscription service engagements (aka NAC-as-a-Service or NaaS).

11.0 RIGHTS TO DATA

- 11.1 IMPULSE POINT shall have the right to gather or compile user statistical data, reports and related services utilizing aggregated data from the CUSTOMER and other sources as a service to enhance Impulse Point

products and services. In no event shall the data be distributed to third parties or otherwise used except in full compliance with applicable laws.

11.2 IMPULSE POINT will not gather personally identifying data or view it for other than diagnostic purposes.

12.0 INDEMNITY

- 12.1 IMPULSE POINT agrees to defend or settle, at its own expense, any claim or suit against the CUSTOMER alleging that a Product or Service furnished under this Agreement infringes any United States patent trademark, copyright or trade secret, except where the claim or suit arises out of or results from: the CUSTOMER'S or User's Content in connection with the Service, modifications to the Service made by or combinations of the Service with Services or products provided by CUSTOMER or others; IMPULSE POINT'S adherence to CUSTOMER'S written requirements; or, use of the Service in violation of this Agreement.
- 12.2 In the event of a claim of infringement IMPULSE POINT may at its option either procure the right to continue using, or replace or modify, the alleged infringing Product or Service so that the Product or Service becomes non-infringing and substantially compliant with the requirements in the applicable Attachment. Upon inability to perform either of the foregoing options, IMPULSE POINT may terminate the affected Attachment, without liability other than stated in Section 13.1, except that IMPULSE POINT will refund any charges not earned, pursuant to Section 5 (Disclaimers and Limitation of Liability), above, if applicable.

13.0 FORCE MAJEURE

- 13.1 Neither IMPULSE POINT nor the CUSTOMER shall be liable for any delay, failure in performance, loss or damage due to: fire, explosion, power blackout, earthquake, flood, the elements, strike, embargo, labor disputes, acts of civil or military authority, war, acts of God, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies, or other causes beyond such party's reasonable control, whether or not similar to the foregoing.

14.0 GENERAL PROVISIONS

- 14.1 Nothing in this Attachment shall create or vest in the CUSTOMER any right, title or interest in the Service, other than the right to use the Service under the terms and conditions of this Attachment.
- 14.2 IMPULSE POINT'S performance obligations under this Agreement shall be solely to the CUSTOMER, and not to any third party. Other than as expressly set forth herein, this Agreement shall not be deemed to provide third parties with any remedy, claim, right of action, or other right.
- 14.3 The CUSTOMER and IMPULSE POINT are both independent contractors. Neither party is an agent, legal representative, partner, joint venture partner, franchisee, employee, or servant of the other party for any purpose.
- 14.4 Any supplement, modification or waiver of any provision of this Agreement must be in writing and signed by authorized representatives of both parties. A waiver by either party of any section of this Agreement shall not operate as a waiver of any other section of this Agreement.
- 14.5 This Agreement may not be assigned or dispensed by either party without the prior written consent of the other.
- 14.6 If any portion of this Agreement is found to be invalid or unenforceable, the remaining provisions shall remain in effect and the parties shall promptly begin negotiations to replace any invalid or unenforceable portions that are essential parts of this Agreement.

15.0 AGREEMENT ACCEPTANCE

Signature below, either electronically via The Electronic Signatures Act (Public Law No: 106-229) or manually, acknowledges the CUSTOMER'S and IMPULSE POINT'S acceptance of terms and conditions, service level agreement and acceptable use policy for the IMPULSE POINT System as defined by this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

Impulse Point, LLC

Customer:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____