



# SENTURUS END USER SOFTWARE LICENSE AGREEMENT

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- 1.1. "**Authorized User**" means a person authorized by Senturus to install and/or use the Software for any purpose, who has accepted the terms of this Agreement and for whom license fees have been paid.
- 1.2. "**Documentation**" means the written, electronic, or recorded work provided to Licensee in connection with the Software that describes the functions and features of the Software.
- 1.3. "**License Fees**" means the license fees associated with the Software, as set forth on the Order Form.
- 1.4. "**Licensee Network**" means the hardware and software components, including client machines, servers, and internetworking devices within Licensee's internal computer network at Licensee's location.
- 1.5. "**Maintenance and Technical Support**" means Senturus' provision of maintenance and technical support services related to the Software.
- 1.6. "**Order Form**" means the Senturus order form(s) under which licensees may acquire the right to license the Software pursuant to this Agreement.
- 1.7. "**Software**" means Senturus' proprietary enterprise business intelligence connector computer software program in machine-readable, object code form only, and any modifications, additions, or updates (**Updates**) thereto delivered by Senturus to Licensee in machine-readable, object code form.

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## 3. **License.**

- 3.1. **Grant of License.** Subject to all of the terms and conditions of this Agreement, Senturus grants to you a non-exclusive, non-transferable, and non-sublicensable worldwide, license for the License Term to: (a) install, or have installed, one copy of the Software on a single computer, for a single user license, and on server machines not to exceed the number of licensed Server Seats, (b) use the Software, in accordance with the Documentation, on the Licensee Network in accordance with the Software's normal and intended use and subject to applicable Device Seat limits, (c) use any third party-proprietary computer information or software that Senturus has licensed for inclusion in the Software; and (d) make one copy of the Software for archival or backup purposes only. For a single user license, the Authorized User of the computer on which the Software is installed may install a second copy of the software for his or her exclusive use on either a portable computer or a computer located at his or her home, provided the software on the portable or home computer is not used at the same time as the software on the primary computer.
- 3.2. **License Restrictions.** Licensee may not: (a) modify, disassemble, de-compile, reverse engineer, or otherwise attempt to determine the source code or protocols from the object code of the Software or knowingly permit or encourage any third party to do so, (b) use the Software in any manner to provide service bureau, time-sharing or other computer services to third parties, (c) use the Software in

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3.4. License Keys. Senturus will provide Licensee with a license key that is required to activate and use the Software. The license key will be provided via email or other like method at Senturus' discretion. The license key is used to ensure that the Software operates in accordance with the license granted to you in this Agreement. As such, the Software may contain time-out devices, counter devices, or other similar devices intended to prevent the Software from being used beyond the bounds of the license. Licensee consents to such activity and agrees not to disable, attempt to disable or tamper with the license key system or any other such license enforcement technology.

3.5. Software Updates. If the Software is an Update to a previous version, Licensee must possess a valid License to the previous version. Any Update provided to Licensee is made on a License exchange basis such that Licensee agrees, as a condition for receiving an Update, that Licensee will terminate all of Licensee's rights to use any previous version of the Licensed Software. However, Licensee may continue to use the previous version only to assist in transitioning to the Updated version. Once an Update has been released, Senturus may cease support for prior versions, without any notice to Licensee.

#### 4. Support.

4.1. Technical Support. Senturus offers free telephonic phone support for the first year of the license with respect to use of the Software and to resolve defects at telephone numbers designated by Senturus from time-to-time. Telephone support will be available from 8:00 am to 6:00 pm, Pacific Time, Monday through Friday, excluding holidays. Senturus will use commercially reasonable efforts to provide the Technical Support.

4.2. Additional Support. After the first year, Licensee may order support services for an additional charge as Senturus may offer from time to time, subject to such additional terms and conditions as may apply to such support services.

4.3. Subcontracting. Senturus reserves the right to subcontract all or part of its support services.

#### 5. Fees.

5.1. Fees. As a condition of the Software License, Licensee shall have paid to Senturus the License Fees requested by Senturus at the time of purchase, or for continued use after expiration of the Evaluation Copy. Fees for support services shall be at such rates as Senturus may offer at the time support services are ordered.

5.2. Taxes. All fees payable by Licensee are exclusive of and do not include local, state or federal sales, use, value-added, excise or personal property or other similar taxes or duties. Any such taxes shall be assumed and paid by the Licensee except those taxes based on the net income of Senturus.

#### 6. Ownership.

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7.2. Confidentiality of this Agreement. Neither Party will disclose the terms of this Agreement other than to business, financial, or legal advisors without the express written consent of the other Party. However, a Party may disclose the terms of this Agreement as required under United States or other applicable securities regulations, or in furtherance of a proposed sale, acquisition, or merger of substantially all of the Party's business interests related to this Agreement as long as such disclosure is made under a duty of confidentiality.

#### 8. Warranties.

8.1. Limited Software Warranty. Senturus warrants that for a period of ninety (90) days after receipt of Licensee's receipt of the Software that: (a) the media on which the Software is delivered, if any, will be free from defects in materials and workmanship under normal use; and (b) the Software will function substantially in accordance with the Documentation. This warranty covers only problems reported to Senturus during the warranty period. As Licensee's sole and exclusive remedy and Senturus' entire liability for any breach of the foregoing warranty, Senturus will, at its sole option and expense, promptly repair or replace any Software which fails to meet this limited warranty or, if Senturus is unable to repair or replace the Software, refund to Licensee the applicable License Fees, if any, already paid by Licensee upon return of the nonconforming Software to Senturus and termination of the license.

8.2. Disclaimer of Warranties. EXCEPT FOR THE EXPRESS WARRANTY SET FORTH IN THIS SECTION 8, SENTURUS MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE, MAINTENANCE AND TECHNICAL SUPPORT, INSTALLATION SERVICES, OR ANY OTHER MATERIALS (TANGIBLE OR INTANGIBLE) OR SERVICES SUPPLIED BY SENTURUS, ITS RESELLERS, OR ITS AGENTS, AND SENTURUS HEREBY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES

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9.1. Infringement Indemnity. Senturus will indemnify Licensee and defend any action brought against Licensee to the extent that it is based upon a claim by a third party that the Software, as provided by Senturus to Licensee under this Agreement and used within the scope of this Agreement, infringes any U.S. patent, copyright, or trade secret, and will pay any costs, damages and reasonable attorneys' fees attributable to such claim that are awarded against Licensee, provided that Licensee (a) notifies Senturus in writing of the claim within ten (10) days after becoming aware of such claim; (b) grants Senturus sole control of the defense and settlement of the claim, if Senturus assumes such defense; and (c) provides Senturus with all assistance, information and authority required for the defense and settlement of the claim.

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9.3. Exclusions. Notwithstanding the terms of Subsection 9.1, Senturus will have no liability for any infringement claim of any kind to the extent it results from: (a) modification of the Software made other than by Senturus; (b) unauthorized or unlicensed use of the Software; (c) the combination, operation or use of any Software with equipment, devices or software not supplied by Senturus to the extent such a claim would have been avoided if the Software was not used in such combination; (d) failure of Licensee to use updated or modified Software provided by Senturus to avoid infringement; or (e) compliance by Senturus with designs, plans or specifications furnished by or on behalf of Licensee.

9.4. Sole Remedy. The provisions of this Section 9 set forth Senturus' sole and exclusive obligations, and Licensee's sole and exclusive remedies, with respect to infringement of any industrial or intellectual property rights of any kind.

9.5. Licensee Indemnity. Licensee will indemnify Senturus and, at its option, defend any action brought against Senturus to the extent that it is based upon a third party claim arising out of the unauthorized or unlicensed use of the Software or which result from Senturus' compliance with Licensee's designs, specifications, or instructions, and will pay any costs, damages and reasonable attorneys' fees attributable to such claim that are awarded against Senturus, provided that Senturus (a) notifies Licensee in writing of the claim within ten (10) days after becoming aware of such claim; (b) grants Licensee sole control of the defense and settlement of the claim, if Licensee assumes such defense; and (c) provides Licensee with all assistance, information and authority required for the defense and settlement of the claim.

## 10. Limitation of Liability.

10.1. Disclaimer of Consequential Damages. EXCEPT FOR LICENSEE'S BREACH OF SECTIONS 3 (LICENSE), 7 (CONFIDENTIALITY) OR 12.6 (ASSIGNMENT), IN NO EVENT

WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, INFORMATION, PRODUCTIVITY, BUSINESS OR PROFITS) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE SOFTWARE OR SERVICES, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT, PRODUCT LIABILITY OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. LICENSEE UNDERSTANDS THAT THE OPERATION OF THE SOFTWARE MAY NOT BE ERROR FREE OR BUG FREE.

10.2. Aggregate Liability. EXCEPT FOR LICENSEE'S BREACH OF SECTIONS 3 (LICENSE), 7 (CONFIDENTIALITY) or 12.6 (ASSIGNMENT), EACH PARTY'S CUMULATIVE LIABILITY TO THE OTHER PARTY, FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY, WILL BE LIMITED TO AND WILL NOT EXCEED THE AGGREGATE AMOUNT PAID OR OWED TO SENTURUS BY LICENSEE DURING THE ONE (1) YEAR PRECEDING THE DATE ON WHICH THE CAUSE OF ACTION ACCRUED. THIS LIMITATION IS CUMULATIVE AND NOT PER INCIDENT.

10.3. Reasonable Allocation of Risk. The parties understand and agree that the limitations of liability set forth in this Section 10 are a reasonable allocation of risk between the parties, and, absent such allocation, Senturus would not be able to charge the prices it is charging for the Software. Furthermore, the limitations of liability set forth in this Agreement shall apply notwithstanding any failure of essential purpose of any limited remedy provided herein.

## 11. Term and Termination.

11.1. Term. This Agreement will begin on the Effective Date and will terminate the earlier of (i) Senturus' discontinuation of support for the version of the Software purchased by Licensee, (ii) the term set forth in the Order Form, and (iii) earlier termination earlier in accordance with the terms of this Agreement.

11.2. Termination for Breach. Senturus shall be entitled to terminate this Agreement effective immediately upon serving written notice on the Licensee in the following circumstances; if Licensee commits a material breach of any of its obligations under this Agreement which is not capable of remedy or if Licensee commits a material breach of any of its obligations under this Agreement which is not remedied within fifteen (15) calendar days after receipt of a notice. Termination of this Agreement shall not affect any rights, obligations or liabilities of either party which have accrued before termination or which are intended to continue to have effect beyond termination.

11.3. Effect of Termination. Upon any termination of this Agreement, all Software licenses granted pursuant to this Agreement shall immediately terminate. At such time, Licensee will promptly return the Software to Senturus or destroy the Software and all copies and portions thereof, in all forms and types of media, and, at Senturus' request, provide Senturus with written certification, certifying to Licensee's compliance with the foregoing.

11.4. Survival. The rights and obligations of the parties contained in Sections 3.4, 3.5, 6, 7, 8, 9, 10, and 12 will survive the termination or expiration of this Agreement.

## 12. General.

12.1. Third Party Beneficiaries. Senturus, its affiliates and its licensors may be third party beneficiaries of this Agreement. No other third party is intended to be or shall be construed

as a beneficiary of this Agreement entitled to enforce its terms.

- 12.2. Governing Law and Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California applicable to agreements entered into, and to be performed entirely, within California, without regards for California's conflict of laws principles. Any legal action or proceeding arising under this Agreement shall be brought exclusively in the federal or state courts of San Mateo County California. The parties hereby consent to personal jurisdiction and venue therein.
- 12.3. Government End Users. The Software is commercial computer software. If the user or licensee of the Software is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Software, or any related documentation of any kind, including technical data and manuals, is restricted by a license agreement or by the terms of this Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. The Software was developed fully at private expense. All other use is prohibited
- 12.4. Equitable Relief. The parties agree that a material breach of the license or confidentiality provisions of this Agreement would cause irreparable injury to Senturus for which monetary damages would not be an adequate remedy, and therefore Senturus shall be entitled to equitable relief in addition to any other remedies it may have hereunder or at law.
- 12.5. Force Majeure. Neither party shall be liable for any breach of any provision of this Agreement (except the payment provisions), including any delay, failure in performance, or interruption of service resulting directly or indirectly from acts of God, network failures, acts of civil or military authorities, civil disturbances, wars, terrorism, energy crises, fires, transportation contingencies, interruptions in third-party telecommunications or Internet equipment or service, other catastrophes, or any other occurrences which are beyond such party's control.
- 12.6. Assignment. Licensee may not, in whole or part, sublicense, assign, transfer, sell or otherwise dispose of the Software, or any of its rights or obligations under this EULA, whether by merger, operation of law, assignment, sale or otherwise, without Senturus' prior written consent. Senturus may assign this Agreement in its discretion. Any purported assignment in violation of this section shall be null and void. This Agreement shall be binding on all permitted assignees.. This EULA shall be binding upon and inure to the benefit of the permitted successors and assigns of Licensee hereto.
- 12.7. Severability. If any provision of this Agreement shall be adjudged by a court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to

the minimum extent necessary, and the remainder of this Agreement shall otherwise remain in full force and effect.

- 12.8. Waiver. The failure to enforce any provisions of this Agreement, or the failure to require at any time performance of any of the provisions of this Agreement, shall not be construed to be a waiver of the right to enforce such provisions, in any manner. A waiver of any provision, condition or requirement of this Agreement shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement unless expressly stated in writing by the party against whom the waiver is charged.
- 12.9. Entire Agreement. This Agreement is the entire agreement between the parties concerning the subject matter of this Agreement and supercedes any and all prior representations, agreements, negotiations, or understandings, whether written or oral, with respect to the subject matter hereof. No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding upon Senturus unless in writing and signed by duly authorized representative of Senturus.
- 12.10. Amendments. Modifications of or amendments to this Agreement may be made by Senturus at any time by posting a modified version of this Agreement reflecting such amendments on [www.senturus.com](http://www.senturus.com) including without limitation where such amendment is: (i) required by law, regulation or court order (or is made in anticipation of an impending change in applicable law or regulation), or (ii) made in the ordinary course of Senturus's business, applicable to substantially all of Senturus's licensees located in the Licensee's jurisdiction that have agreed to terms similar to those set out in this Agreement. Licensee may terminate this Agreement by ceasing all use of the Licensed Software and returning to Senturus or destroying all copies of the Software if Licensee does not agree with the amendment. The amendment shall be deemed accepted by Licensee if Licensee does not terminate this Agreement.
- 12.11. Notices. All notices required or permitted under this Agreement to Senturus will be in writing and delivered by courier, overnight delivery by an internationally recognized courier requiring a signature evidencing receipt, or by certified mail, to Senturus at 533 Airport Boulevard, Suite 400, Burlingame, CA 94010, or to such other address as may be specified by Senturus by notice on [senturus.com](http://senturus.com). Notices to you will be given by email at the email address you provided when registering to purchase the Software. Either party may change its address for notices under this Agreement by giving written notice to the other party by the means specified in this section. You warrant that any email address given to Senturus is and will be valid, and that you will promptly advise Senturus if the email address you previously provided to Senturus becomes invalid. Except as otherwise agreed, notice shall be deemed to have been given if sent for overnight delivery, the next business day, and if sent by registered mail, return receipt requested, five (5) days after the mail is sent. Notice by email or personal delivery shall be deemed given upon the date of delivery.