

ISENZO BROADCASTING

END USER LICENSING AGREEMENT

This is a legal agreement between you and Isenzo Broadcasting CC (Isenzo), a South African based software developer in the media market in terms of which the Software is being licensed, not sold, to you. By clicking the “I agree” button on the website or installing copying, or otherwise using the Software, you the End User agree to the terms and conditions of this EULA with Isenzo. If you do not agree to these terms and conditions, please click on the “I do not agree” button, which will result in you not being able to use and install the Software.

To the extent that you are a Reseller installing the Software on behalf of the End User, you agree to the terms and conditions of this EULA in a representative capacity on behalf of your customer, the End User, You hereby warrant that you are legally authorised to do so and you indemnify Isenzo against any loss or damage that Isenzo may sustain resulting from your lack of authority. If Isenzo discovers that the Reseller has contracted without contractual capacity to do so, Isenzo will be entitled to terminate this EULA immediately without any further liability to the End User and the End User shall not be entitled to claim any restitution or refund of any amount already paid, regardless of whether the End User has used the Software.

Please note that you are allowed to download and use the Software for a limited period of time free of charge, whereafter the license will be automatically terminated unless you pay for the Software.

1. INTERPRETATION

In these EULA, unless a contrary intention appears –

- 1.1 the clause headings have been inserted for purposes of convenience only and will not be taken into consideration in its interpretation;
- 1.2 any reference to (i) the singular includes the plural and vice versa, (ii) any gender includes the other genders and (iii) a natural person includes a juristic person and vice versa;
- 1.3 the rule of interpretation that in case of ambiguity a provision in an agreement may be interpreted against the party responsible for the drafting or preparation of the agreement (contra proferentem) and any other similar rules of interpretation, shall not apply to these EULA and the parties waive any rights they have to rely on such rules;
- 1.4 unless the context indicates a contrary intention, the words and expressions defined in clause 2 shall, throughout bear the meanings assigned to them in that clause 2 and related expression shall bear corresponding meanings;
- 1.5 defined terms appearing in title case shall be given the meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with the ordinary meaning as qualified by clause 2 and shall, unless the context otherwise indicates, include the term as defined;
- 1.6 terms other than those defined will be given their plain English meaning, and those terms, acronyms, and phrases known in the Information Technology industry will be

interpreted in accordance with their generally accepted meanings;

- 1.7 any reference to “**days**” shall be construed as being a reference to calendar “**days**” unless qualified by the word “**Business**” in which instance a “**Business Day**” shall be any day other than a Saturday and a Sunday and/or a public holiday as determined by the laws of the Republic of South Africa; “Business hours” shall be 08:00 to 17:00 on business days;
- 1.8 the word “**include**” and “**including**” means “**include without limitation**” and “**including without limitation**”. The use of the word “**including**” followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it;
- 1.9 a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this EULA, and a reference to this EULA includes any schedule or annexure.

2. DEFINITIONS

In this EULA, unless inconsistent with or otherwise indicated by the context, the following terms will have the meanings assigned to them in this clause:

- 2.1 “**End User**” means the user of the Software which has been licensed in terms of the provisions of this EULA;
- 2.2 “**EULA**” or “**End User License Agreement**” means these terms and conditions together with all annexures and schedules or other documents which are incorporated herein by reference;
- 2.3 “**Intellectual Property Rights**” include all works eligible for copyright under section 2 of the Copyright Act, 98 of 1978, domain names, trade or business names, trade secrets, know-how and all rights or forms of protection of a similar nature in any country and whether or not registerable, registered or application for registration thereof has been made in any part of the world;
- 2.4 “**Licensor**” means Isenzo Broadcasting CC, a Close Corporation duly incorporated in terms of the Company Laws of South Africa;
- 2.5 “**Reseller**” means the entity which has sold the Software to the End User;
- 2.6 “**Software**” means the software available for download from the Website, known as “Mediacaster” owned and developed by the Licensor;
- 2.7 “**Trial Period**” means a period of 30 days, calculated from the date of acceptance of the terms of this EULA.
- 2.8 “**Updates**” means corrections to inherent errors / faults in the Software;
- 2.9 “**Upgrades**” mean all changes/improvements made to the Software by the Licensor after installation of the Software, which result in the addition of function/s and/or feature/s not present in the Software prior to the introduction of the changes/improvements;

- 2.10 **"Website"** means any website from which the End User is able to download the software, currently being www.isenzo.co.za.

3. GRANT OF LICENCE

- 3.1 The Licensor hereby grants End User an irrevocable, non-exclusive, non-transferable licence to use the Software in object code together with the User Manual in accordance with the terms and conditions of this EULA.

4. RESTRICTIONS ON USE

The End User:

- 4.1 undertakes that it will use the Software only for the purposes of its business and not for any form of commercial exploitation;
- 4.2 understands that the Software contains proprietary information, and agrees that it will not provide or otherwise make any of the Software and/or user manual available for any reason to any other person, firm, company or organisation;
- 4.3 agrees, except to the extent permitted by this Agreement or applicable Law:
- 4.3.1 not to decompile, disassemble, reverse engineer or otherwise attempt to derive the source code from the object code;
- 4.3.2 not to sell, rent, lease, licence, sub-licence, display or otherwise transfer the Software to, or permit the use of the Software by, any third party;
- 4.3.3 not to copy or permit the Software to be copied, except for reasonable security and backup purposes;
- 4.3.4 not to modify or create derivative systems based on the Software, whether in whole or in part; and
- 4.3.5 to use reasonable care and protection to prevent the unauthorised use, copying, publication or dissemination of the Software.
- 4.4 In recognition that the Software has significant commercial value to the Licensor, agrees to indemnify the Licensor in respect of any losses or expenses incurred by the Licensor as a result of the unauthorised use of the Software by any third party, whether through misuse of the Software by the End User or through any other breach by the End User of this EULA or through the negligence of the End User or through any other cause.

5. RIGHTS IN THE SOFTWARE

- 5.1 No title or rights of ownership, copyright or any other intellectual property in the Software, including all Updates and Upgrades, is or will be transferred to the End User.
- 5.2 All Intellectual Property Rights in the Software are the property of the Licensor and no express or implied rights in relation to such intellectual property are granted to

the End User.

- 5.3 The End User is prohibited from removing any copyright or other notices evidencing Intellectual Property Rights, from the Software.

6. DURATION

- 6.1 This licence commences on the date the End User clicks the "I Agree" button.
- 6.2 The license will subsist for the Trial Period, whereafter the functionality of the Software shall automatically be reduced, unless the End User pays the license fee in terms of the provisions of clause 7. However, the End User agrees to be bound by the terms of this EULA until such time that the End User has uninstalled the Software.
- 6.3 Once the Software has been registered in terms of clause 7, the End User shall be entitled to use the Software in perpetuity, subject to the Licensor's right to cancel this EULA in terms of clause 10.

7. REGISTRATION

- 7.1 In order to use the Software beyond the Trial Period, the End User must obtain a registration code from the Reseller or Isenzo who will provide the registration code (i) on payment of the license fee and (ii) on transmission of the unique serial number to the Licensor or Reseller (The unique serial number can be obtained from the Software at any time after the Software was first downloaded).
- 7.2 The End User may not reproduce or distribute the registration code except with the prior written permission of the Licensor.

8. LIMITATION OF LIABILITY

- 8.1 The Licensor's liability for all loss or damage suffered by the End User shall be limited to direct damages only in an amount equal to the license fee paid by the End User for the Software.
- 8.2 Under no circumstances whatsoever shall the Licensor be liable for any indirect, incidental, extrinsic, special, penal, punitive, exemplary or consequential loss or damage of any kind whatsoever or howsoever caused (whether arising under contract, delict, including negligence and gross negligence and whether the loss was actually foreseen or reasonably foreseeable), suffered by the End User or any third party as a result of the use of the Software, including, but not limited to, damages for loss of profit, revenue, business or data, business opportunities, operation time and corruption, alteration or loss of information and/or reconstruction of corrupt, altered, incorrect or lost data.

9. NO WARRANTY

- 9.1 The Licensor does not warrant the fitness for use of the Software for any particular purpose or the proper performance thereof and any downloading, installation and use of the Software is undertaken entirely at the End User's own risk.

- 9.2 In addition to the foregoing, the Licensor gives no express or implied warranties in relation to the merchantability, merchantable quality or non-infringement of any third party's rights in relation to the Software.
- 9.3 The Licensor does not warrant that the Software is free from error of any kind and does not make any warranties in relation to the results to be obtained from use of the Software.
- 9.4 The Licensor specifically gives no warranty whatsoever that the Software will operate timeously and any use of the Software for delivery of emergency services or critical information will be at the sole risk of the End User or any other third party.

10. BREACH

- 10.1 In the event that the End User breaches any of these EULA, the Licensor shall be entitled, without prejudice to any other rights which it may have, to immediately terminate the End User's use of the Software without any prior notice and refuse, at any time thereafter for an indefinite period, to enter into any other agreement of licensing or sale in respect of the Software with such End User.
- 10.2 Where the Licensor institutes action against the End User for breach of any of these EULA, the Licensor shall be entitled to recover costs on a scale as between attorney and own client.

11. DISPUTE RESOLUTION

- 11.1 If any dispute arises out of or in connection with this EULA, or related thereto, whether directly or indirectly, the Parties must refer the dispute for resolution firstly by way of negotiation and in the event of that failing, by way of mediation and in the event of that failing, by way of Arbitration. The reference to negotiation and mediation is a pre-condition to the parties having the dispute resolved by arbitration.
- 11.2 A dispute shall arise if the dispute and particularity thereof is communicated by one party to the other in writing. Each party agrees to continue performing its obligations under the Agreement while any dispute is being resolved except to the extent that the issue in dispute precludes performance.
- 11.3 Within 7 (seven) days of the dispute arising, the Parties shall seek an amicable resolution to such dispute by referring such dispute to representatives of each of the Parties concerned for their negotiation and resolution of the dispute. The representatives shall be authorised to resolve the dispute.
- 11.4 In the event of the negotiation envisaged in 11.3 failing for whatsoever reason or cause, the Parties must, within 7 (seven) days of such failure refer the dispute to mediation. The mediation shall, inter alia, be deemed to have failed if one of the parties declares in writing that it has failed.
- 11.5 In the event of the mediation envisaged in 11.4 failing, the matter must, within 7 (seven) days thereafter, be referred to arbitration as envisaged in the clauses below.
- 11.6 The period of 7 (seven) days aforesaid for negotiation or mediation may be shortened or lengthened by written agreement between the parties.

- 11.7 Each party agrees that the Arbitration will be held as an expedited arbitration in Cape Town in accordance with the then current rules for expedited arbitration of the Arbitration Foundation of Southern Africa (below "AFSA") by 1 (one) arbitrator appointed by agreement between the Parties. If the parties cannot agree on the arbitrator within a period of 5 (five) Business Days after the referral of the dispute to arbitration, the arbitrator shall be appointed by the Secretariat of AFSA. The decision of the arbitrator shall be binding on the Parties after the expiry of the period of 7 (seven) days from the date of the arbitrator's ruling if no appeal has been lodged by either party.
- 11.8 The Parties irrevocably agree that the submission to arbitration is not subject to the parties' rights of appeal.
- 11.9 A decision which becomes final and binding in terms of clause 11.8 may be made an order of court at the instance of any Party.
- 11.10 The provisions of this clause 11 shall not preclude any Party from access to an appropriate court of law for interim relief in respect of urgent matters by way of an interdict, or *mandamus* pending the outcome of the arbitration for which purpose the Parties irrevocably submit to the jurisdiction of a division of the High Court of the Republic of South Africa.
- 11.11 This clause is a separate, divisible agreement from the rest of this EULA and shall remain in effect even if the Agreement terminates, is nullified or cancelled for whatsoever reason or cause.

12. FORCE MAJEURE

Each Party shall be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation, in whole or in part, as a result of causes beyond its reasonable control and without its fault or negligence (a "Force Majeure Event").

13. ENTIRE AGREEMENT

This EULA records all the terms and conditions agreed to between the End User and Licensor and supercedes any prior verbal and written agreements, understandings or representations made to or with the End User and the End User shall not be entitled to rely, in any dispute regarding these EULA, on any terms, conditions or representations not contained herein.

14. VARIATIONS

- 14.1 It is recorded that the Licensor reserves the right, at any time, to amend any of the terms of this EULA without specific notice to the End User. An updated version of this EULA will be posted on the Website. The End User hereby agrees to the Licensor making such changes and agrees that it is its responsibility as a diligent user to peruse any amended terms posted on the Website. If the End User objects to any amended terms which are to become binding upon it, the End User is entitled to terminate its relationship with the Licensor.
- 14.2 With the exception of clause 14.1, no variation of or addition to these terms and conditions will be of any force or effect unless reduced to writing and signed by or on behalf of a duly authorised representative of the Licensor.

15. NO RELAXATION

No indulgence, leniency or extension of a right which the End User may have in terms of these EULA and which the Licensor may purport to grant to the End User shall be construed as a waiver by the Licensor of that right.

16. APPLICABLE LAW

These terms and conditions set forth in this EULA shall be interpreted in accordance with the laws of the Republic of South Africa.