

ISAAC[®] Software Suite

End User License Agreement

IMPORTANT -- READ CAREFULLY:

PLEASE READ THIS SOFTWARE LICENSE AGREEMENT ("LICENSE AGREEMENT") CAREFULLY BEFORE USING THE ISAAC SOFTWARE. BY USING THE ISAAC SOFTWARE, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS LICENSE. IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENSE, DO NOT INSTALL AND/OR USE THE ISAAC SOFTWARE AND, IF PRESENTED WITH THE OPTION TO "AGREE" OR "DISAGREE" TO THE TERMS, CLICK "DISAGREE". IF YOU ACQUIRED THE ISAAC SOFTWARE AS PART OF AN ISAAC HARDWARE PURCHASE AND IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENSE, YOU MAY RETURN THE ENTIRE ISAAC HARDWARE/SOFTWARE PACKAGE WITHIN THE RETURN PERIOD TO THE AUTHORIZED DISTRIBUTOR WHERE YOU OBTAINED IT FOR A REFUND, SUBJECT TO ISAAC'S RETURN POLICY. YOU MUST RETURN THE ENTIRE HARDWARE/SOFTWARE PACKAGE IN ORDER TO OBTAIN A REFUND.

This End User License Agreement ("Agreement") is entered into between you, for yourself and for the company or other person(s), if any you represent (the final user, a legal entity or natural person hereinafter known as "You" or "Licensee") and Smart Monkeys, Inc., 10800 Biscayne Boulevard, Suite #400, Miami, Florida 33161, and concerns the Software and Documentation .

You shall inform all authorized users of the terms and conditions of this Agreement.

I. GRANT OF LICENSE:

Smart Monkeys, Inc. hereby grants to Licensee a non-exclusive license to use the Software and Documentation subject to the following terms:

Licensee may: (i) install, use and run one (1) copy of the ISAAC Software on a single ISAAC-branded system at any one time. For example, these single-copy license terms apply to you if you obtained the ISAAC Software preinstalled on ISAAC-branded hardware (Single unit server or multi-unit cluster). (ii) use the Software on a VMWare licensed system so long as the initial purchased was approved for non ISAAC-branded system; (iii) copy the Software for back-up, archival purposes provided any copy must contain all of the original Software's proprietary notices.

Licensee may not: (i) permit other individuals to use the Software except under the terms listed above; (ii) modify, translate, reverse engineer, decompile, disassemble (except to the extent that this restriction is expressly prohibited by law) or create derivative works based upon the Software or Documentation; (iii) copy the Software or Documentation (except for back-up purposes); (iv) rent, lease, sell, or otherwise transfer rights to the Software or Documentation; or (v) remove any proprietary notices or labels on the Software or Documentation.

II. SOFTWARE:

If Licensee receives the first copy of the Software electronically and a second copy on media the second copy may be used for archival purposes only and may not be transferred to or used by any other person. This license does not grant Licensee any right to any enhancement or update.

Title, ownership, intellectual property rights including copyrights, and all other rights in and to the Software and Documentation shall remain in Smart Monkeys, Inc.

III. LIMITATION OF LIABILITY:

Except as provided otherwise in this Agreement, THE SOFTWARE IS PROVIDED 'AS IS' AND 'AS AVAILABLE' FOR USE, WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE WHATSOEVER IS MADE REGARDING THE SOFTWARE AND DOCUMENTATION. SMART MONKEYS, INC. AND ITS THIRD PARTY LICENSORS MAKE NO WARRANTY THAT THE SOFTWARE WILL PERFORM WITHOUT INTERRUPTION OR FREE FROM ERRORS, VIRUSES OR OTHER HARMFUL COMPONENTS. SMART MONKEYS, INC. AND ITS THIRD PARTY LICENSORS MAKE NO REPRESENTATION OR WARRANTY AS TO THE ACCURACY, RELIABILITY, TIMELINESS, USEFULNESS OR COMPLETENESS OF ANY OF THE INFORMATION CONTAINED IN THE SOFTWARE.

IN NO EVENT, AND MORE PARTICULARLY IN CASE OF BREACH OF THE SAFETY RULES AS DESCRIBED IN THE SDK DOCUMENTATION, SHALL SMART MONKEYS, INC. OR ITS THIRD PARTY LICENSORS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, ACCESSORY, OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO BODY OR MATERIAL INJURY, LOSS OF PROFIT, INTERRUPTION OF ACTIVITY, LOSS OF INFORMATION OR OTHER PECUNIARY LOSSES ARISING FROM OR CAUSED BY USE OF, RELIANCE ON, OR INABILITY TO ACCESS AND USE THE SOFTWARE AND DOCUMENTATION, EVEN IF SMART MONKEYS, INC. OR ITS THIRD-PARTY LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES.

In any action against Smart Monkeys, Inc. or its third party licensors arising out of, related to, or in any way connected with this Agreement or with respect to the Software or Documentation furnished to Licensee under this Agreement or otherwise, Licensee shall not be entitled to recover any sum as damages, reimbursement, contribution, indemnity or otherwise, in excess of the total of all fees, less costs, made by Licensee to Smart Monkeys, Inc. for the Software and Documentation under this Agreement.

Regardless of the form of action, no action arising from the Agreement may be brought by Licensee more than twelve (12) months after the cause of action arises.

Licensee agrees to defend, indemnify and hold Smart Monkeys, Inc., its licensors, affiliates, directors, officers, and employees of each harmless against all claims, losses, damages, liabilities and costs (including, without limitation, reasonable attorneys' fees and court costs) arising out of, related to, or in any way connected with any breach of this Agreement or use by Licensee or any third party of the Software and Documentation. Smart Monkeys, Inc. reserves the right, at its own expense, to assume the exclusive defence and control of any matter otherwise subject to indemnification by Licensee.

IV. LIMITED WARRANTY:

Smart Monkeys, Inc. warrants that for a period of ninety (90) days from the date of acquisition the Software if operated as directed will substantially achieve the functionality described in the Documentation. Smart Monkeys, Inc. does not warrant however that Licensee's use of the Software will be uninterrupted or that the operation of the Software will be error-free or secure. Smart Monkeys, Inc. also warrants that the media containing the Software if provided by Smart Monkeys, Inc. is free from defects in material and workmanship and will so remain for ninety (90) days from the date Licensee acquires the Software. The sole obligation of Smart Monkeys, Inc. under the warranty period is to replace the nonconforming media within a reasonable time, or give Licensee a pro rata refund of the license fee paid, less costs, provided that Licensee has given Smart Monkeys, Inc. written notice of such defect within the warranty period.

V. INFRINGEMENT:

Smart Monkeys, Inc. represents and warrants that, as of the date of this Agreement, it is not aware of any claim or action alleging that the Software or Documentation infringes any third party intellectual property right. Smart Monkeys, Inc., however, disclaims any obligation of defence or indemnity of the Licensee or its customer with respect to any such claim or action, or otherwise arising out of this Agreement. Smart Monkeys, Inc. shall have no liability arising out of any such actual or alleged intellectual property infringement. The Licensee, however, shall promptly notify Smart Monkeys, Inc., in writing, of each such infringement claim of which the Licensee becomes aware.

VI. GOVERNING LAW; JURISDICTION AND VENUE:

1. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, USA, with venue in Miami-Dade County, Florida as applicable to agreements made and wholly performed within that state regardless of the place, time or sequence of its execution. As applicable to International Agreements, the parties hereby disclaim and expressly exclude the application of the 1980 U.N. Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act.

VII. INJUNCTIVE RELIEF:

Regardless of Licensee's geographic location, Licensee acknowledges that a breach of any term of this Agreement could result in irreparable injury to Smart Monkeys, Inc. and its business for which monetary damages may not be sufficient, and agrees that Smart Monkeys, Inc. will be entitled to seek, in addition to its other rights and remedies hereunder or at law, injunctive or all other equitable relief, as well as such further relief at law as may be proper from a court of competent jurisdiction, as determined by Smart Monkeys, Inc.

VIII. NOTICE:

Any notice to be given under this Agreement shall be in writing and shall be sent by first class mail, courier, express service, or by e-mail, which provides the sender with written proof of delivery, to the address in the preamble for Smart Monkeys, Inc. and to the last physical or e-mail address provided to Smart Monkeys, Inc. during registration to use, access, or download the Software.

IX. MISCELLANEOUS PROVISIONS:

1. In the event a court finds any provision of this Agreement to be invalid, void or unenforceable, the remainder of this shall remain valid and enforceable according to its terms.
2. Should Licensee or Smart Monkeys, Inc. fail to exercise or enforce any provision of this Agreement or to waive any rights in respect thereto, such waiver or failure shall not be construed as constituting a continuing waiver or waiver of any other right.
3. Nothing herein shall be construed to create a partnership, joint venture or agency relationship between the parties. Each party shall be solely responsible for their payment of all compensation owed to its employees, as well as employment related taxes and benefits.
4. Licensee shall comply with all local laws and regulations of a country, while in that country and shall comply with all provisions of any applicable export laws of the United States