PRONTO SOFTWARE LICENSE AGREEMENT

The Pronto Mail Software (as the same may be updated, modified or enhanced from time to time, the "*Pronto Software*"), is licensed to you by CommTouch, Inc. ("*CommTouch*") on the following terms and conditions. By installing or using the Pronto Software, you accept and agree to comply with this Pronto Software License Agreement (this "*Agreement*"). If you do not agree to this Agreement, you are not authorized to install or use the Pronto Software. Installation or use by you of the Pronto Software shall be deemed to constitute your acceptance of this Agreement.

The Pronto Software is designed to provide a user with access to an advertiser-supported service that allows registered users to send and receive e-mails, together with any attachments, over the Internet. Attachments to e-mails may be in the form of images, text, graphics, audio, video, data, software and other materials (collectively, "*Materials*").

- 1. Grant and Term of License. Subject to your compliance with the terms of this Agreement, CommTouch grants to you a nonexclusive, nontransferable and royalty-free right to install and use the Pronto Software in accordance with the terms and conditions of this Agreement. The Pronto Software may be installed only on (a) computers controlled by you, or (b) a network server allowing only you and other persons who have agreed to the terms and conditions of this Agreement to access the Pronto Software. This Agreement and the license granted in it shall continue until CommTouch notifies you of its termination, and will terminate automatically if you fail to comply with this Agreement. The Pronto Software is owned by CommTouch or its licensors, and is protected by United States copyright laws and international treaty provisions. You agree not to modify, translate, reverse engineer, decompile, disassemble or create derivative works based on the Pronto Software, or remove any proprietary notices or labels it contains. All applicable rights to patents, copyrights, trademarks and trade secrets in the Pronto Software or any modifications to it shall be and remain in CommTouch or its licensors. You may reproduce the Pronto Software and give such copies (freee of charge) to persons so that they can install and use the Pronto Software on their computer as long as a copy of this Agreement is also copied and provided to such persons together with the Pronto Software.
- 2. Registration. The primary registrant (the "Postmaster") of the Pronto Software must be an adult. If you are the Postmaster, you represent to CommTouch and its licensees that you are 18 years old or older. The Postmaster may create additional sub-accounts ("Sub-Accounts") for use by the Postmaster or third parties (each such third party, a "Secondary User"). Each Secondary User must read and agree to comply with this Agreement. NOTICE TO SECONDARY USERS: In creating each Sub-Account, the Postmaster must assign a security status to such Sub-Account. If the Postmaster assigns a "monitored" security status to a Sub-

- Account, copies of *ALL* incoming and outgoing emails from such Sub-Account will be sent to a folder that the Postmaster can access. Even if "monitored" security status is not used, it is possible to defeat the security function, so do not rely on the security function to maintain the confidentiality of e-mails from other users on your account.
- **3.** Hardware and Internet Access. You are responsible for obtaining and maintaining at your own expense all telephone or other communications links, computer hardware and other equipment or facilities needed for access to the Internet and use of the Pronto Software.
- 4. Usage by Minors. If you wish to ensure that a minor does not send or receive offensive or otherwise inappropriate Materials through use of the Pronto Software, you agree to closely monitor such minor's use of the Pronto Software and to select appropriate level of user protection for each Secondary User based upon the age of each Secondary User (such as disabling a Sub-Account from receiving advertisements). If you are unable or do not wish to monitor use by a minor and do not wish such minor to potentially access any inappropriate Materials through the use of the Pronto Software, you agree not to allow such minor to register as a Secondary User or to otherwise use or have access to the Pronto Software.
- **5.** Compliance with Law. You agree to use the Pronto Software only as permitted under applicable law. You agree not to use the Pronto Software to conduct any business or engage in any activity that is prohibited by applicable law.
- 6. Advertisements and Other Content. You understand that when using the Pronto Software, COMMTOUCH WILL CAUSE ADVERTISEMENT AND OTHER CONTENT TO BE SENT TO YOUR COMPUTER AND DISPLAYED AS E-MAIL OR AS PART OF THE USER

- BY THE INTERFACE **PRONTO** SOFTWARE. AND YOU CONSENT TO THIS. Some advertisements may be interactive and, by clicking on them, may take you to an advertiser's Website or allow you to purchase products or services. You acknowledge and agree that (i) CommTouch is not responsible for the contents of any advertisements or other content and does not warrant in any respect such content or the products or services of such advertisers and (ii) CommTouch and its licensees shall have no responsibility for any aspect of transaction with such advertisers, including without limitation, the delivery, suitability, satisfaction or return of such goods or services, and that you will hold CommTouch and its licensees harmless in connection with its role of providing authorization for such purchases.
- 7. Use of Local Memory. You acknowledge and agree that the Pronto Software, as well as incoming and outgoing e-mails (including attached Materials), software updates and advertisements that you receive through the operation of the Pronto Software, will be stored on the hard drive or other local memory of your computer. From time to time, your Pronto Software will automatically be updated and will store various files on your hard drive to improve the performance of the Pronto Software.
- 8. Collection and Disclosure of Information. CommTouch and its licensees reserve the right to collect and maintain records of limited user information, including data regarding your hardware configuration and advertisements viewed. Without limiting the foregoing, you hereby authorize CommTouch to disclose aggregated user behavioral data (banner clicks, number of use sessions, user session times, etc.), without identifying any specific users, to third parties in connection with the marketing and operation of, and placement of advertising on, the Pronto Mail Service.

9. Use of Materials.

- a. Public Domain Materials. Materials that are in the public domain may be freely transmitted using the Pronto Service. CommTouch bears no responsibility for, and you agree to assume all risks regarding, the determination of whether any given Materials are in the public domain.
- b. Copyrighted Materials. Unless permitted by the copyright holder or otherwise as permitted under applicable law, you agree not to distribute or modify copyrighted Materials using the Pronto Software. You hereby agree to indemnify and hold CommTouch harmless from and against any and all costs, expenses and liabilities incurred by CommTouch arising in connection with any claim

- that copyrighted Materials included in any of your emails were violated or infringed as a result of your transmission of such e-mails or any use of such Materials by you, the recipients of such e-mails or any person receiving such copyrighted Materials, directly or indirectly, from such recipients.
- c. License for Transmission. You acknowledge and agree that any copyrighted Materials that are included as part of any e-mail you send will be automatically reproduced by CommTouch, its licensees and third parties as such e-mail is sent from computer to computer to its intended destination and such e-mail may be temporarily stored or "cached" by various computers during such process. You hereby grant CommTouch, its licensees and other third parties whose equipment may be used to transmit, deliver and store any such e-mail a limited non-exclusive, worldwide, royalty free and irrevocable license to reproduce the copyrighted Materials contained in each such e-mail for such transmission and storage purposes.
- 12. Delay or Loss; Reader Incompatibilities. Transmission and reception of e-mails over the Internet is subject to delays, which can be of substantial duration. In addition, a failure of routers or servers can result in the loss of e-mails. Although the Pronto Software is compatible with most other email programs, due to differences in e-mail readers, e-mails that are sent by or to you may not be readable by you or the recipient if the other party is not using the Pronto Software. Accordingly, CommTouch makes no warranties whatsoever that e-mails sent by or to you will be received, or if received will be intact or readable. YOU AGREE THAT COMMTOUCH WILL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY LOSS OR DELAY OF ANY E-MAILS, OR ANY **PORTION** THEREOF, **SENT** ADDRESSED TO, YOU.
- 13. PRIVACY NOTICE: Due to the inherent structure of the Internet, an e-mail is likely to be routed through numerous different computers before reaching its intended destination. As a result, it is possible for persons other than the intended recipient to intercept such e-mail and, unless the e-mail has been encrypted by the sender, to read the contents of the e-mail. Even if an e-mail has been encrypted by the sender, no encryption product is completely secure. Further, due to severe U.S. Government restrictions on the use and exportation of all encryption products that are generally available for use within the U.S., the encryption technology that is included in the Pronto Mail Service is of limited effectiveness and is not the most secure encryption technology that exists. Accordingly, if you have any information or data that is of a confidential or proprietary nature, do not send such information or

data by e-mail, whether or not encrypted. Commtouch and its licensees will not be liable under any circumstances for the interception of such information or data by a person other than the intended recipient.

14. NO WARRANTIES: LIMITATION OF You expressly acknowledge and LIABILITY. agree that use of the Pronto Software is AT YOUR OWN RISK and that the Pronto Software is provided "AS IS" without any warranties or conditions whatsoever. COMMTOUCH, AND ITS LICENSEES AFFILIATES. AGENTS, (i) HEREBY DISCLAIM ANY LICENSORS: EXPRESS OR IMPLIED WARRANTIES AS TO THE COMPLETENESS, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS PARTICULAR PURPOSE OF THE PRONTO SOFTWARE OR THAT THE OPERATION OF THE PRONTO **SOFTWARE** WILL UNINTERRUPTED OR ERROR-FREE; (ii) SHALL IN NO EVENT BE LIABLE TO YOU OR ANYONE ELSE FOR ANY INACCURACY, ERROR OR OMISSION IN, OR LOSS, INJURY OR DAMAGE CAUSED IN WHOLE OR PART BY, OR FAILURES, DELAYS **INTERRUPTIONS** OF THE **PRONTO** SOFTWARE; (iii) SHALL IN NO EVENT BE LIABLE TO YOU OR ANYONE ELSE FOR ANY CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES. INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS OR LOSSES ARISING OUT OF OR RELATING TO THE USE OR INABILITY TO USE THE PRONTO SOFTWARE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE **EXCLUSION** OR OF LIMITATION WARRANTIES OR CONSEQUENTIAL **INCIDENTAL** OR DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. The Pronto Software is not specifically developed or licensed for use in any nuclear, aviation, mass transit, life support, medical or any other inherently dangerous applications.

15. U.S. Government Rights. If you are acquiring the Pronto Software (including the related documentation) on behalf of any part of the United States Government, the following provisions apply. The Pronto Software is deemed to be "commercial software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Pronto Software (including the related documentation) by the U.S. Government or any of its agencies shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement.

- 16. Changed Terms. CommTouch shall have the right at any time to change the terms of this Agreement or require new terms and to change, impose conditions on or discontinue any aspect or feature of the Pronto Software. Such changes shall be effective immediately upon notification by any means which give you actual knowledge of them and any use by you of the Pronto Software after such notice shall be deemed acceptance of such changes by you.
- 17. Termination. CommTouch may terminate this Agreement at any time, without cause and at CommTouch's sole discretion, upon notification to you. Upon any termination of this Agreement, or upon any transfer of the computers on which the Pronto Software is installed, you agree to uninstall all copies of the Pronto Software and any related files (other than data files solely containing sent or received e-mails). Upon termination of the primary account, all Sub-Accounts for such account shall also thereupon terminate.
- General. This Agreement will be governed by the laws of the State of California, without reference to conflict of laws principles. Agreement is the entire agreement between CommTouch and you and supersedes any other communications or advertising with respect to the Pronto Software. If any provision of this Agreement is held unenforceable, that provision shall be enforced to the maximum extent permissible so as to give effect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect. The headings used in this Agreement are for convenience only, and shall not be given any legal import. Any item or service furnished by CommTouch or its affiliates, agents, licensees and licensors in furtherance of this Agreement, although not specifically identified in it, shall nevertheless be covered by this Agreement unless specifically covered by some other written or electronic agreement accepted by you and an authorized representative of CommTouch or such other party as the case may be. You agree to comply with all U.S., foreign and local laws and regulations which apply to your use of the Pronto Software including without limitation, export control laws and regulations.