



# INSOMNIAC CIA ORDER AGREEMENT

OpenTech Alliance, Inc., 2101 West Peoria Avenue, Suite 100, Phoenix, AZ 85029 Phone: 602 749 9370 Fax: 602 324 8658

This Order Agreement ("Agreement") is between Customer and OpenTech Alliance, Inc. ("OpenTech") located at 2101 West Peoria Avenue, Suite 100, Phoenix 85029.

## LICENSE

Subject to the terms and conditions of this Agreement and Customer's payment of all fees, OpenTech grants Customer a non-exclusive, non-transferable, limited license to use the INSOMNIAC CIA software, and related updates, features, services, and materials, provided by OpenTech (collectively the "Software") during Customer's Lifetime Protection subscription solely for Customer's self-storage business in the territories set forth in this Agreement. All rights not expressly granted to Customer hereunder are expressly reserved by OpenTech. All copyrights, patents, trade secrets, trademarks, service marks, trade names, moral rights, and other intellectual property and proprietary rights in the Products and all improvements, enhancements, or modifications thereto shall remain the sole and exclusive property of OpenTech.

## TITLE, CONFIDENTIALITY, AND RESTRICTIONS; RELOCATION

The Software and Hardware will be collectively known as "Products." Title and risk of loss to the INSOMNIAC™ CIA hardware set forth in this Agreement ("Hardware"), excluding any Software embedded therein, will transfer to Customer upon complete payment of the fees specified in this Agreement and the Hardware leaving OpenTech's facilities. Customer shall not (nor shall it permit any third party to): (i) copy or manufacture the Products or any portion thereof or otherwise use the Products to develop a competing product or service; (ii) translate, modify, adapt, enhance, extend, decompile, disassemble, reverse engineer, or otherwise attempt to derive the trade secrets embodied in the Products or any portion thereof or remove any proprietary, disclaimer, or warning notice thereon; or (iii) use or allow the transfer, transmission, export, or re-export of the Products or any portion thereof outside the Country set forth in the associated Order Agreement or otherwise in violation of applicable law. The parties agree that information designated by a party as confidential or reasonably understood by the parties to be confidential, is confidential and proprietary to the disclosing party, and each party agrees to keep such information strictly confidential until the information becomes public knowledge without breach of this Agreement or similar confidentiality requirements. The Products are OpenTech's confidential information.

Customer may not assign, transfer, or delegate its rights or obligations hereunder without the prior written consent of OpenTech. If Customer relocates its business, Customer will notify OpenTech and pay the additional STC service fees applicable to its new location. If Customer sells the Products as a result of a change of control, it will remain responsible for all outstanding fees payable hereunder. All terms of this Agreement will be binding upon and inure to the benefit of the parties, their successors, assigns, and legal representatives.

## WARRANTY

OpenTech represents that while Customer has an active Lifetime Protection subscription the Products will operate materially in accordance with the specifications published by OpenTech and any hardware components of the Products that require replacement, will be refurbished, repaired or replaced at no additional charge to Customer (the "Warranty"). If the Products do not meet the Warranty, OpenTech's sole responsibility, and Customer's sole and exclusive remedy, will be for OpenTech to use commercially reasonable efforts consistent with industry standards to cure the defect. The Warranty shall terminate if Customer's Lifetime Protection subscription lapses or if Customer changes or modifies the Products, except as directed by OpenTech. The Warranty includes lightning and transient currents, but does not include service, replacement, repair, or damage to the Products resulting from vandalism, accident, negligence, disaster, misuse, abuse, or alteration of or with respect to the Products and does not include other extraneous causes, including unavailability of components, labor difficulties, war, riot, acts of God, export control regulations, laws, judgments, or government instructions.

## WARRANTY AND LIABILITY LIMITATIONS

THE FOREGOING WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, QUALITY OF INFORMATION, AND TITLE/NON-INFRINGEMENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY OPENTECH OR ITS REPRESENTATIVES WILL CREATE ANY OTHER WARRANTIES OR IN ANY WAY INCREASE THE SCOPE OF OPENTECH'S OBLIGATIONS HEREUNDER. OPENTECH SHALL NOT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR LOSS OF PROFITS, SALES, BUSINESS, DATA, OR OTHER, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL LOSSES, DAMAGES, OR EXPENSES, INCLUDING EXEMPLARY AND PUNITIVE, DIRECTLY OR INDIRECTLY ARISING FROM THIS AGREEMENT, THE PRODUCTS, OR THE PROVISION OF SERVICES BY OPENTECH, OR FROM ANY OTHER CAUSE WITH RESPECT TO THE PRODUCTS, SERVICES, OR THIS AGREEMENT, WHETHER SUCH CLAIM IS BASED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY IN TORT, NEGLIGENCE, OR ANY OTHER LEGAL THEORY. OPENTECH'S TOTAL LIABILITY HEREUNDER TO CUSTOMER OR ANY THIRD PARTY ARISING OUT OF THIS AGREEMENT OR USE OF THE PRODUCTS IN ANY CASE IS EXPRESSLY LIMITED, AT OPENTECH'S ELECTION, TO REPAIR OR REPLACEMENT (IN THE FORM ORIGINALLY SHIPPED) OF PRODUCTS NOT COMPLYING WITH THIS AGREEMENT, OR TO THE REPAYMENT OF, OR CREDITING CUSTOMER WITH, AN AMOUNT EQUAL TO THE FEES FOR SUCH PRODUCTS OR SERVICES DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO LIABILITY. ANY CLAIM BY CUSTOMER WITH REFERENCE TO THE PRODUCTS SOLD HEREUNDER FOR ANY CAUSE SHALL BE DEEMED WAIVED BY CUSTOMER UNLESS SUBMITTED TO OPENTECH IN WRITING WITHIN THIRTY (30)

DAYS FROM THE DATE CUSTOMER DISCOVERED OR SHOULD HAVE DISCOVERED ANY CLAIMED BREACH. THIS SECTION WILL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT FOR ANY REASON.

OpenTech shall have no liability or responsibility with respect to any dispute between Customer and its clients, including any dispute arising out of, or related to, use of or access to the Products or services by Customer's clients. Customer agrees to indemnify, defend, and hold harmless OpenTech from and against any and all claims, actions, proceedings, liabilities, damages, losses, costs or expenses, including attorneys' fees arising from Customer's clients, the acts or omissions of Customer, or Customer's use of the Products.

## INFORMATION SECURITY

Consistent with any law or regulation applicable to the Products and OpenTech's then current practices and procedures, OpenTech will maintain and enforce administrative, technical, and physical safeguards to reasonably protect the confidentiality, availability, and integrity of any Customer data input by Customer into the Products. OpenTech will promptly report to Customer any compromise of security that it becomes aware of with regard to Customer data. THE PRODUCTS MAY BE USED TO ACCESS AND TRANSFER INFORMATION OVER THE INTERNET. CUSTOMER ACKNOWLEDGES AND AGREES THAT OPENTECH DOES NOT OPERATE OR CONTROL THE INTERNET AND THAT: (I) VIRUSES, WORMS, TROJAN HORSES, OR OTHER UNDESIRABLE DATA OR SOFTWARE; OR (II) UNAUTHORIZED USERS (E.G., HACKERS) MAY ATTEMPT TO OBTAIN ACCESS TO AND DAMAGE CUSTOMER DATA, WEB SITES, COMPUTERS, OR NETWORKS AND OPENTECH IS NOT RESPONSIBLE FOR SUCH ACTIVITIES.

## LIFETIME PROTECTION REQUIRED

Lifetime Protection is an annual support service and Software subscription commitment for the Products commencing the first month that it is billed. Lifetime Protection will automatically renew annually at the then current fee, unless, at least sixty (60) days prior to expiration of the current term, either party gives written notice to the other of its intention not to renew. CUSTOMER UNDERSTANDS, ACKNOWLEDGES, AND AGREES THAT WITHOUT LIFETIME PROTECTION THE PRODUCTS WILL NOT FUNCTION. The fee for annual Lifetime Protection is invoiced by email monthly in advance of the service period; if Customer requires that the invoice be sent by USPS then a \$5 service fee will be added to each invoice. The first payment will be due at the beginning of the first full month following the completion of the STC service. OpenTech may terminate this Agreement if Customer has an outstanding balance for more than 30 days. If Lifetime Protection is terminated and Customer desires to reinstate it, Customer must pay the fees to bring Customer current for the period Lifetime Protection was not provided and any additional fees as determined by OpenTech due to the condition of the Hardware.

## CUSTOMER SETUP, TRAINING, AND CUSTOMIZATION RESPONSIBILITIES

All construction, wiring, installation, and telecommunication or Internet connections required to use the Products are Customer's responsibility.

## ORDER CANCELLATION POLICY

All orders are non-cancelable.

## CONFIDENTIALITY

Tenant Data made available by Customer to OpenTech to enable OpenTech to provide and improve OpenTech Products and Services under this Agreement shall be kept strictly confidential by OpenTech and shall not be disclosed to any third party except as: 1. required by law, 2. necessary for OpenTech to provide and improve its Products and Services, 3. with Customer's prior approval, or 4. in connection with OpenTech aggregating data for use in industry reports which does not include personal identifying information.

OpenTech shall make Data available only to its personnel, affiliates, agents, subcontractors, and information system vendors where access is essential to enable them to perform their obligations under this Agreement. The rights and obligations of OpenTech in performing this Agreement may be, in whole or in part, exercised or fulfilled by OpenTech affiliates, agents, subcontractors, and information system vendors.

## GOVERNING LAW

This Agreement shall be deemed to have been executed and delivered in Phoenix, Arizona. This Agreement and all rights and obligations hereunder, including matters of construction, validity, and performance, shall be governed by the internal laws of the State of Arizona, without giving effect to the principles of conflicts of law thereof. Any lawsuit arising from or related to this Agreement shall be brought in a state or federal court located in Maricopa County, Arizona, and both OpenTech and Customer hereby consent to the jurisdiction of such courts.

## ENTIRE AGREEMENT AND MODIFICATIONS

This Agreement represents the entire agreement between the parties with respect to the Products. No alteration or modifications of this Agreement will be valid unless made in writing and signed by the parties. No attachment, supplement, or exhibit to this Agreement shall be valid unless initialed by an authorized signatory of OpenTech. No modification of any of these terms will be affected by OpenTech's shipment of Products following receipt of Customer's purchase order, shipping request, or similar forms containing terms and conditions conflicting or inconsistent with the terms herein.