

SOFTWARE LICENSE AGREEMENT

This Software License Agreement (the "Agreement") is by and between Techmark, Inc., having its principal place of business at 15400 S. US 27, Lansing, Michigan 48906 ("Licensor") and the individual or legal entity who has expressly accepted the terms of this Agreement or accepts the terms of this Agreement by either executing an invoice (or other ordering or purchasing document) referencing this Agreement or uses the Licensed Software ("Licensee") (together with Licensor, the "Parties", and each, a "Party"), and governs the use of the Licensed Software.

WHEREAS, Licensor is the entire legal and beneficial owner of the Licensed Software, and desires to license the Licensed Software to Licensee; and

WHEREAS, Licensee desires to obtain a license to use the Licensed Software for its internal business purposes, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. Capitalized terms have the meanings set forth or referred to in this **Section 1**:

"**Action**" has the meaning set forth in **Section 10.2(d)**.

"**Affiliate**" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person.

"**Authorized User**" means each of the individuals authorized to use the Licensed Software pursuant to **Section 2** and the other terms and conditions of this Agreement.

"**Confidential Information**" has the meaning set forth in **Section 6.1**.

"**Controlled Technology**" means any software, documentation, technology or other technical data, or any products that include or use any of the foregoing, the export, re-export or release of which to certain jurisdictions or countries is prohibited or requires an export license or other governmental approval, under any law, including the US Export Administration Act and its associated regulations.

"**Disclosing Party**" has the meaning set forth in **Section 6.1**.

"**Documentation**" means any and all manuals, instructions and other documents and materials that Licensor provides or makes available to Licensee in any form or medium which describe the functionality, components, features or requirements of the Licensed Software, including any aspect of the installation, configuration, integration, operation, use, support or maintenance thereof.

"**Effective Date**" means the date upon which the Licensee expressly accepts the terms of this Agreement or accepts the terms of this Agreement by either executing an invoice (or

other ordering or purchasing document) that references this Agreement or uses the Licensed Software.

"**Force Majeure Event**" has the meaning set forth in **Section 16.1**.

"**Indemnatee**" has the meaning set forth in **Section 13.3**.

"**Indemnitor**" has the meaning set forth in **Section 13.3**.

"**Intellectual Property Rights**" means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

"**Licensed Software**" means the T-Trac application that is physically installed on the Licensee's computer and the Spor-Trac/Stor-Trac application that is a cloud-based program, together with any Maintenance Releases provided to Licensee pursuant to this Agreement.

"**Licensee**" has the meaning set forth in the preamble.

"**Licensee Indemnatee**" has the meaning set forth in **Section 13.1**.

"**Licensor**" has the meaning set forth in the preamble.

"**Licensor Indemnatee**" has the meaning set forth in **Section 13.2**.

"**Loss**" means any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

"**Maintenance Release**" means any update, upgrade, release or other adaptation or modification of the Licensed Software, including any updated Documentation, that Licensor may provide to Licensee from time to time during the Term, which may contain, among other things, error corrections, enhancements, improvements or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency or quality of the Licensed Software, but does not include any New Version.

"**New Version**" means any new version of the Licensed Software that Licensor may from time to time introduce and market generally as a distinct licensed product (as may be indicated by Licensor's designation of a new version number), and which Licensor may make available to Licensee at an additional cost under a separate written agreement.

"**Parties**" has the meaning set forth in the preamble.

"**Party**" has the meaning set forth in the preamble.

"**Payment Failure**" has the meaning set forth in **Section 11.2(a)**.

"**Permitted Use**" means use of the Licensed Software by an Authorized User for the benefit of Licensee in the ordinary course of its internal business operations.

"**Person**" means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association or other legally authorized committee, organization or entity.

"**Receiving Party**" has the meaning set forth in **Section 6.1**.

"**Representatives**" means, with respect to a Party, that Party's and its Affiliates' employees, officers, directors, consultants, agents, independent contractors, service providers and legal advisors.

"**Term**" has the meaning set forth in **Section 11.1**.

"**Warranty Period**" has the meaning set forth in **Section 12.2**.

2. License.

2.1. License Grant. Subject to the terms and conditions of this Agreement, and conditioned on Licensee's and its Authorized Users' compliance therewith, Licensor hereby grants to Licensee a non-exclusive, non-sublicensable and non-transferable, limited license to use the Licensed Software and Documentation solely for the Permitted Use during the Term.

2.2. Scope of Licensed Access and Use. Licensee may make one copy of the Licensed Software solely for archival purposes, testing, disaster recovery, and customization to be performed solely by Licensor or a Person approved by Licensor in writing in advance. Any copy, derivative, or customization of the Licensed Software made by or for Licensee: (a) will remain the exclusive property of Licensor; (b) be subject to the terms and conditions of this Agreement; and (c) must include all copyright or other Intellectual Property Rights notices contained in the original. Licensee assumes exclusive and complete responsibility as to the individuals who shall be Authorized Users. Without limiting the generality of the foregoing, Licensee shall solely be responsible to add or remove individuals as Authorized Users.

3. Use Restrictions. Licensee shall not, and shall not permit any other Person to:

- (a) copy the Licensed Software, in whole or in part;
- (b) modify, correct, adapt, translate, enhance or otherwise prepare derivative works or improvements of any Licensed Software;
- (c) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Licensed Software to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service;
- (d) reverse engineer, disassemble, decompile, decode or adapt the Licensed Software, or otherwise attempt to derive or gain access to the source code of the Licensed Software, in whole or in part;

(e) bypass or breach any security device or protection used for or contained in the Licensed Software or Documentation;

(f) remove, delete, efface, alter, obscure, translate, combine, supplement or otherwise change any trademarks, terms of the Documentation, warranties, disclaimers, or Intellectual Property Rights, proprietary rights or other symbols, notices, marks or serial numbers on or relating to any copy of the Licensed Software or Documentation;

(g) use the Licensed Software in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any Person, or that violates any applicable law;

(h) use the Licensed Software for purposes of: (i) benchmarking or competitive analysis of the Licensed Software; (ii) developing, using or providing a competing software product or service; or (iii) any other purpose that is to Licensor's detriment or commercial disadvantage;

(i) use the Licensed Software in or in connection with the design, construction, maintenance, operation or use of any hazardous environments, systems or applications, any safety response systems or other safety-critical applications, or any other use or application in which the use or failure of the Licensed Software could lead to personal injury or severe physical or property damage;

(j) use the Licensed Software or Documentation other than for the Permitted Use or in any manner or for any purpose or application not expressly permitted by this Agreement; or

(k) allow only an Authorized User to use or have access to the Licensed Software.

4. Delivery. Licensor shall deliver one copy of the Licensed Software electronically, on tangible media or by other means, in Licensor's sole discretion, to Licensee within twenty-one (21) calendar days of the Effective Date. Licensee shall be deemed to have accepted the Licensed Software upon receipt.

5. Maintenance. During the Term, Licensor or its designated agent will provide Licensee with all Maintenance Releases (including updated Documentation) that Licensor may, in its sole discretion, make generally available to its licensees at no additional charge. All Maintenance Releases, on being provided by Licensor to Licensee hereunder, are deemed Licensed Software subject to all applicable terms and conditions in this Agreement. Licensee will install all Maintenance Releases as soon as practicable after receipt. Licensee does not have any right

hereunder to receive any New Versions of the Licensed Software that Licensor may, in its sole discretion, release from time to time.

6. Confidentiality.

6.1. Confidential Information. In connection with this Agreement each Party (as the "Disclosing Party") may disclose or make available to the other Party (as the "Receiving Party") Confidential Information. Subject to **Section 6.2**, "**Confidential Information**" means information in any form or medium (whether oral, written, electronic or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party's activities, technology, Licensed Software and Documentation (if the Licensor is the Disclosing Party) trade secrets, know-how, business operations, plans, strategies, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, whether or not marked, designated or otherwise identified as "confidential".

6.2. Exclusions and Exceptions. Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) the Receiving Party can demonstrate by written or other documentary records was or is independently developed by the Receiving Party without reference to or use of any Confidential Information. Notwithstanding the foregoing, Confidential Information always includes Licensed Software and Documentation.

6.3. Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall:

(a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement;

(b) except as may be permitted under the terms and conditions of **Section 6.4**, not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this **Section 6**; and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this **Section 6**; and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this **Section 6**;

(c) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its sensitive information and in no event less than a reasonable degree of care; and

(d) promptly notify the Disclosing Party of any unauthorized use or disclosure of Confidential Information and use its best efforts to prevent further unauthorized use or disclosure; and

(e) ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this **Section 6**.

6.4. Compelled Disclosures. If the Receiving Party or any of its Representatives is compelled by applicable law to disclose any Confidential Information then, to the extent permitted by applicable law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under **Section 6.3**; and (b) provide reasonable assistance to the Disclosing Party in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this **Section 6.4**, the Receiving Party remains required by law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose.

7. Fees and Payment.

7.1. License Fees. In consideration of the rights granted to Licensee under this Agreement, Licensee shall pay to Licensor the license fees established by Licensor from time to time and the terms of this **Section 7**.

7.2. Additional Fees and Expenses. In the event that it becomes necessary to customize the Licensed Software for Licensee, Licensee shall pay all necessary additional fees invoiced by Licensor for such customization.

7.3. Taxes. All Fees and other amounts payable by Licensee under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Licensee is responsible for all sales, service, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by Licensee hereunder, other than any taxes imposed on Licensor's income.

7.4. Payment. Licensee shall pay all license fees due and owing under this Agreement on the Effective Date or within seven (7) calendar days after the date of Licensor's invoice therefor. Licensee shall make all payments hereunder in US dollars.

7.5. Late Payment. If Licensee fails to make payment when due then, in addition to all other remedies that may be available to Licensor:

(a) Licensee shall reimburse Licensor for all costs incurred by Licensor in collecting any late payment of amounts due or related interest, including attorneys' fees (whether or not litigation is commenced), court costs and collection agency fees; and

(b) if such failure continues for ten (10) days following written notice thereof, Licensor may: (i) disable Licensee's use of the Licensed Software (including by

means of a disabling code, technology or device); (ii) withhold, suspend or revoke its grant of a license hereunder; and/or (iii) terminate this Agreement under **Section 11.2(a)**.

8. Security Measures. The Licensed Software may contain technological measures designed to prevent unauthorized or illegal use of the Licensed Software. Licensee acknowledges and agrees that: (a) Licensor may use these and other lawful measures to verify Licensee's compliance with the terms of this Agreement and enforce Licensor's rights, including all Intellectual Property Rights, in and to the Licensed Software; (b) Licensor may deny any individual access to the Licensed Software if Licensor, in its sole discretion, believes that Person's use of the Licensed Software would violate any provision of this Agreement, regardless of whether Licensee designated that person as an Authorized User; and (c) Licensor and its Representatives may collect, maintain, process and use diagnostic, technical, usage and related information, including information about Licensee's computers, systems and software, that Licensor may gather periodically to improve the performance of the Licensed Software or develop Maintenance Releases.

9. Audits.

9.1. Audit Procedure. Licensor or its designated agent may, in Licensor's sole discretion request on seven (7) calendar days' notice, inspect and audit Licensee's use of the Licensed Software under this Agreement at any time during the Term and following the termination or earlier expiration of this Agreement. Licensee shall make available all such books, records, equipment, information and personnel, and provide all such cooperation and assistance, as may reasonably be requested by or on behalf of Licensor with respect to such audit.

9.2. Cost and Results of Audit. If the audit determines that Licensee's use of the Licensed Software exceeded the usage permitted by this Agreement, Licensee shall pay to Licensor all amounts due for such excess use of the Licensed Software.

10. Intellectual Property Rights.

10.1. Intellectual Property Ownership. Licensee acknowledges and agrees that:

(a) the Licensed Software and Documentation are licensed, not sold, to Licensee by Licensor and Licensee does not and will not have or acquire under or in connection with this Agreement any ownership interest in the Licensed Software or Documentation, or in any related Intellectual Property Rights;

(b) Licensor is and will remain the sole and exclusive owner of all right, title and interest in and to the Licensed Software derivatives, customization and Documentation, including all Intellectual Property Rights relating thereto; and

(c) Licensee hereby unconditionally and irrevocably assigns to Licensor, its entire right, title and interest in and to any Intellectual Property Rights that Licensee may now or hereafter have in or relating to the Licensed Software or Documentation (including any rights in derivative works customization or patentable improvements relating to either of them), whether held or acquired by operation of law, contract, assignment or otherwise.

10.2. Licensee Cooperation and Notice of Infringement. Licensee shall, during the Term:

(a) take all reasonable measures to safeguard the Licensed Software and Documentation (including all copies thereof) from infringement, misappropriation, theft, misuse or unauthorized access;

(b) at Licensor's expense, take all such steps as Licensor may reasonably require to assist Licensor in maintaining the validity, enforceability and Licensor's ownership of the Intellectual Property Rights in the Licensed Software and Documentation;

(c) promptly notify Licensor in writing if Licensee becomes aware of:

(i) any actual or suspected infringement, misappropriation or other violation of Licensor's Intellectual Property Rights in or relating to the Licensed Software or Documentation; or

(ii) any claim that the Licensed Software or Documentation, including any production, use, marketing, sale or other disposition of the Licensed Software or Documentation, in whole or in part, infringes, misappropriates or otherwise violates the Intellectual Property Rights or other rights of any Person; and

(d) fully cooperate with and assist Licensor in all reasonable ways in the conduct of any claim, suit, action or proceeding (each, an "Action") by Licensor to prevent or abate any actual or threatened infringement, misappropriation or violation of Licensor's rights in, and to attempt to resolve any claims relating to, the Licensed Software or Documentation, including having Licensee's employees testify when requested and making available for discovery or trial relevant records, papers, information, samples, specimens and the like.

10.3. No Implied Rights. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel or otherwise, to Licensee or any third party any Intellectual Property Rights or other right, title, or interest in or to any of the Licensed Software or Documentation.

11. Term and Termination.

11.1. Term. The term of this Agreement commences as of the Effective Date and shall automatically renew for successive terms of one (1) year each upon such terms and conditions as may be in effect on the renewal date of this Agreement, unless terminated earlier pursuant to any of the Agreement's express provisions (the "Term").

11.2. Termination. This Agreement may also be terminated at any time:

(a) by Licensor, effective on written notice to Licensee, if Licensee fails to pay any amount when due under this Agreement, where such failure continues more than

seven (7) calendar days after Licensor's delivery of written notice thereof ("Payment Failure");

(b) by either Party, effective on written notice to the other Party, if the other Party materially breaches this Agreement and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured after the non-breaching Party provides the breaching Party with written notice of such breach;

(c) by Licensor, effective immediately, if: (i) the Licensee is dissolved or liquidated or terminated or takes any corporate action for such purpose; (ii) the Licensee becomes insolvent or is generally unable to pay its debts as they become due; (iii) the Licensee becomes the subject of any voluntary or involuntary bankruptcy proceeding under any domestic or foreign bankruptcy or insolvency law; (iv) the Licensee makes or seeks to make a general assignment for the benefit of its creditors; or (v) the Licensee applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property.

11.3. Effect of Termination or Expiration. On the expiration or earlier termination of this Agreement:

(a) all rights, licenses and authorizations granted to Licensee hereunder will immediately terminate and Licensee shall:

- (i) immediately cease all use of and other activities with respect to the Licensed Software and Documentation other than those described in **Section 11.3(a)(ii)**;
- (ii) within fourteen (14) calendar days deliver to Licensor, or at Licensor's written request destroy, and permanently erase from all devices and systems Licensee directly or indirectly controls, the Licensed Software, the Documentation and the Licensor's Confidential Information, including all documents, files and tangible materials (and any partial and complete copies) containing, reflecting, incorporating or based on any of the foregoing, whether or not modified or merged into other materials;
- (iii) certify to Licensor in a signed written instrument that it has complied with the requirements of this **Section 11.3**; and

11.4. Surviving Terms. The provisions set forth in the following sections, and any other right, obligation or provision under this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: this **Section 11.4**, **Section 1** (Definitions), **Section 6** (Confidentiality), **Section 9** (Audits), **Section 10** (Intellectual Property Rights), **Section 12** (Representations and Warranties), for clarity, including **Section 12.7** (Disclaimer), **Section 13** (Indemnification), **Section 14** (Limitations of Liability) and **Section 17** (Miscellaneous).

12. Representations and Warranties.

12.1. Mutual Representations and Warranties. Each Party represents, warrants and covenants to the other Party that:

(a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its residence;

(b) it has the full right, power and authority to enter into and perform its obligations and grant the rights, licenses and authorizations it grants and is required to grant under this Agreement;

(c) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such Party; and

(d) when executed and delivered by both Parties, this Agreement will constitute the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.

12.2. Limited Warranty. Subject to the limitations and conditions set forth in **Section 12.3** and **Section 12.4**, Licensor warrants to Licensee that for a period of ninety (90) calendar days from the Effective Date (the "Warranty Period"):

(a) the Licensed Software will substantially conform in all material respects to the specifications set forth in the Documentation, when installed, operated and used as recommended in the Documentation and in accordance with this Agreement.

12.3. Licensee Requirements. The limited warranty set forth in **Section 12.2** shall apply only if Licensee: (a) notifies Licensor in writing of the warranty breach before the expiration of the Warranty Period; (b) has promptly installed all Maintenance Releases to the Licensed Software that Licensor previously made available to Licensee; and (c) as of the date of notification, is in compliance with all terms and conditions of this Agreement (including the payment of all license fees then due and owing).

12.4. Exceptions. Notwithstanding any provisions to the contrary in this Agreement, the limited warranty set forth in **Section 12.2** shall not apply to, nor shall Licensor bear any responsibility for, problems arising out of or relating to:

(a) Licensed Software, or the media on which it is provided, that is modified or damaged by Licensee, or its Representatives;

(b) any operation or use of, or other activity relating to, the Licensed Software other than as specified in the Documentation, including any incorporation in the Licensed Software of, or combination, operation or use of the Licensed Software in or with, any technology (including any software, hardware, firmware, system or network) or service not specified for Licensee's use in the Documentation;

(c) Licensee's or any third party's negligence, abuse, misapplication or misuse of the Licensed Software, including any use of the Licensed Software other than as specified in the Documentation;

(d) Licensee's failure to promptly install all Maintenance Releases that Licensor has previously made available to Licensee;

(e) the operation of, or access to, Licensee's or a third party's system or network;

(f) Licensee's breach of any material provision of this Agreement;

(g) any other circumstances or causes outside of the reasonable control of Licensor (including abnormal physical or electrical stress); or

(h) any other circumstances that would prevent the Licensee from receiving a notification or alarm attributable to, in whole or in part, events outside of the reasonable control of the Licensor, including, but not limited to, Internet problems, electrical failures, and equipment malfunction.

12.5. Remedial Efforts. If Licensor breaches, or is alleged to have breached the warranty set forth in **Section 12.2**, Licensor may, at its sole option and expense, take any of the following steps to remedy such breach:

(a) replace any damaged or defective media on which Licensor supplied the Licensed Software;

(b) amend, supplement or replace any incomplete or inaccurate Documentation;

(c) repair the Licensed Software;

(d) replace the Licensed Software with functionally equivalent software (which software will, on its replacement of the Licensed Software, constitute Licensed Software hereunder); and/or

(e) terminate this Agreement and, provided that Licensee fully complies with of its post-termination obligations as set forth in **Section 11.3**, promptly refund to Licensee, fifty percent (50%) of any license fees prepaid by Licensee.

12.6. Sole Remedy. If Licensor does not cure a warranty breach or terminate this Agreement as provided in **Section 12.5** within a reasonable period of time after Licensor's receipt of written notice of such breach, Licensee shall have the right to terminate this Agreement as provided in **Section 11.2(b)**. Provided that Licensee fully complies with its post-termination obligations as set forth in **Section 11.3**, Licensor shall promptly refund to Licensee, twenty-five percent (25%) of any license fees prepaid by Licensee. **THIS SECTION 12.6 SETS FORTH THE LICENSEE'S SOLE REMEDY AND THE LICENSOR'S ENTIRE OBLIGATION AND LIABILITY FOR ANY BREACH OF ANY LICENSOR WARRANTY OF THE LICENSED SOFTWARE OR DOCUMENTATION SET FORTH IN THIS AGREEMENT.**

12.7. DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS LIMITED WARRANTIES SET FORTH ABOVE, ALL LICENSED SOFTWARE, DOCUMENTATION AND OTHER PRODUCTS, INFORMATION, MATERIALS AND SERVICES PROVIDED BY LICENSOR ARE PROVIDED "AS IS." LICENSOR HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER (INCLUDING ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE), AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, LICENSOR MAKES NO WARRANTY OF ANY KIND THAT THE LICENSED SOFTWARE OR DOCUMENTATION, OR ANY OTHER LICENSOR OR THIRD-PARTY GOODS, SERVICES, TECHNOLOGIES OR MATERIALS (INCLUDING ANY SOFTWARE OR HARDWARE), OR ANY PRODUCTS OR RESULTS OF THE USE OF ANY OF THEM, WILL MEET LICENSEE'S OR OTHER PERSONS' REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY OTHER GOODS, SERVICES, TECHNOLOGIES OR MATERIALS (INCLUDING ANY SOFTWARE, HARDWARE, SYSTEM OR NETWORK), OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE.

13. Indemnification.

13.1. Licensor Indemnification. Licensor shall indemnify, defend and hold harmless Licensee from and against any and all Losses incurred by Licensee arising out of or relating to any Action by a third party to the extent that such Losses arise from any allegation in such Action that the Licensed Software, or any use of the Licensed Software, in accordance with this Agreement (including the Documentation) infringes any Intellectual Property Right. The foregoing obligation does not apply to the extent that such Action or Losses arise from any allegation of or relating to any:

- (a) patent issued on a patent application published after the Effective Date;
- (b) incorporation by the Licensed Software of, or combination, operation or use of the Licensed Software in or with, any technology (including any software, hardware, firmware, system or network) or service not provided by Licensor or specified for Licensee's use in the Documentation;
- (c) modification of the Licensed Software other than: (i) by Licensor in connection with this Agreement; or (ii) with Licensor's express written authorization and in strict accordance with Licensor's written directions and specifications;
- (d) failure to timely implement any Maintenance Release, modification, update or replacement of the Licensed Software made available to Licensee by Licensor;
- (e) use of the Licensed Software after Licensor's notice to Licensee of such activity's alleged or actual infringement, misappropriation or other violation of a third party's rights;

(f) negligence, abuse, misapplication or misuse of the Licensed Software or Documentation by or on behalf of Licensee, Licensee's Representatives or a third party;

(g) use of the Licensed Software or Documentation by or on behalf of Licensee that is outside the purpose, scope or manner of use authorized by this Agreement or in any manner contrary to Licensor's instructions;

(h) events or circumstances outside of Licensor's commercially reasonable control (including any third-party hardware, software or system bugs, defects or malfunctions);

(i) Action or Losses for which Licensee is obligated to indemnify Licensor pursuant to **Section 13.2**; or

(j) events or circumstances referenced in **Section 12.4**.

13.2. Licensee Indemnification. Licensee shall indemnify, defend and hold harmless Licensor and its officers, directors, employees, agents, subcontractors, successors and assigns (each, including Licensor, a "Licensor Indemnitee") from and against any and all Losses incurred by the Licensor Indemnitee in connection with any Action by a third party (other than an Affiliate of a Licensor Indemnitee) to the extent that such Losses arise out of or relate to any allegation:

(a) that any Intellectual Property Right or other right of any Person, or any law, is or will be infringed, misappropriated or otherwise violated by any:

(i) use or combination of the Licensed Software by or on behalf of Licensee or any of its Representatives with any hardware, software, system, network, service or other matter whatsoever that is neither provided by Licensor nor authorized by Licensor in this Agreement and the Documentation or otherwise in writing; and

(ii) information, materials or technology or other matter whatsoever directly or indirectly provided by Licensee or directed by Licensee to be installed, combined, integrated or used with, as part of, or in connection with the Licensed Software or Documentation;

(b) of or relating to facts that, if true, would constitute a breach by Licensee of any representation, warranty, covenant or obligation under this Agreement;

(c) of or relating to negligence, abuse, misapplication, misuse or more culpable act or omission (including recklessness or willful misconduct) by or on behalf of Licensee or any of its Representatives with respect to the Licensed Software or Documentation or otherwise in connection with this Agreement; or

(d) of or relating to use of the Licensed Software or Documentation by or on behalf of Licensee or any of its Representatives that is outside the purpose, scope or manner of use authorized by this Agreement or the Documentation, or in any manner contrary to Licensor's instructions.

13.3. Indemnification Procedure. Each Party shall promptly notify the other Party in writing of any Action for which such Party believes it is entitled to be indemnified pursuant to **Section 13.1** or **Section 13.2**. The Party seeking indemnification (the "Indemnitee") shall cooperate with the other Party (the "Indemnitor") at the Indemnitor's sole cost and expense. The Indemnitor shall immediately take control of the defense and investigation of such Action and shall employ counsel to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee's failure to perform any obligations under this **Section 13.3** will not relieve the Indemnitor of its obligations under this **Section 13** except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

13.4. Mitigation. If the Licensed Software, or any part of the Licensed Software, is, or in Licensor's opinion is likely to be, claimed to infringe, misappropriate or otherwise violate any third-party Intellectual Property Right, or if Licensee's use of the Licensed Software is enjoined or threatened to be enjoined, Licensor may, at its option and sole cost and expense:

(a) obtain the right for Licensee to continue to use the Licensed Software materially as contemplated by this Agreement;

(b) modify or replace the Licensed Software, in whole or in part, to seek to make the Licensed Software non-infringing, while providing materially equivalent features and functionality, and such modified or replacement software will constitute Licensed Software under this Agreement; or

(c) if, after Licensor's exercise of commercially reasonable efforts, none of the remedies set forth in the above **Section 13.4(a)** or **Section 13.4(b)** is reasonably available to Licensor, terminate this Agreement, in its entirety or with respect to the affected part or feature of the Licensed Software, effective immediately on written notice to Licensee, in which event:

(i) Licensee shall cease all use of the Licensed Software and Documentation immediately on receipt of Licensee's notice; and

(ii) provided that Licensee fully complies with its post-termination obligations set forth in **Section 11.3**, Licensor shall promptly refund to Licensee twenty-five percent (25%) of any license fees prepaid by Licensee.

13.5. Sole Remedy. **SECTION 13.4** SETS FORTH LICENSEE'S SOLE REMEDIES AND LICENSOR'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THIS AGREEMENT OR ANY SUBJECT

MATTER HEREOF (INCLUDING THE LICENSED SOFTWARE AND DOCUMENTATION) INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

14. Limitations of Liability.

14.1. EXCLUSION OF DAMAGES. EXCEPT AS EXPRESSLY OTHERWISE PROVIDED, IN NO EVENT WILL LICENSOR, OR ANY OF ITS SERVICE PROVIDERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY (a) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES OR PROFITS, (b) LOSS OF GOODWILL OR REPUTATION, (c) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY LICENSED SOFTWARE, (d) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, (e) COST OF REPLACEMENT GOODS OR SERVICES, OR (e) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, IN EACH CASE REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

14.2. CAP ON MONETARY LIABILITY. IN NO EVENT WILL THE AGGREGATE LIABILITY OF LICENSOR ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL AMOUNTS PAID TO LICENSOR UNDER THIS AGREEMENT WITH RESPECT TO THE MOST RECENT CALENDAR YEAR OF THIS AGREEMENT. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

15. Export Regulation. Licensee shall not itself, or permit any other Person to, export, re-export or release, directly or indirectly any Controlled Technology to any country, jurisdiction or Person to which the export, re-export or release of Controlled Technology (a) is prohibited by applicable Law or (b) without first completing all required undertakings (including obtaining any necessary export license or other governmental approval).

16. Force Majeure.

16.1. No Breach or Default. In no event will either Party be liable or responsible to the other Party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by any circumstances beyond such Party's reasonable control (a "Force Majeure Event"), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of law or any action taken by a governmental or public authority,

including imposing an export or import restriction, quota or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation. Either Party may terminate this Agreement if a Force Majeure Event affecting the other Party continues substantially uninterrupted for a period of thirty (30) calendar days or more.

16.2. Affected Party Obligations. In the event of any failure or delay caused by a Force Majeure Event, the affected Party shall give prompt written notice to the other Party stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

17. Miscellaneous.

17.1. Further Assurances. On a Party's reasonable request, the other Party shall, at the requesting Party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, as may be necessary to give full effect to this Agreement.

17.2. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

17.3. Public Announcements. Neither Party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to this Agreement or, unless expressly permitted under this Agreement, otherwise use the other Party's trademarks, service marks, trade names, logos, domain names or other indicia of source, association or sponsorship, in each case, without the prior written consent of the other Party, which shall not be unreasonably delayed or withheld, provided, however, that Licensor may, without Licensee's consent, include Licensee's name and/or other indicia in its lists of Licensor's current and/or, as the case may be, former customers of Licensor in promotional and marketing materials.

17.4. Notices. Any notice, request, consent, claim, demand, waiver or other communication under this Agreement will have legal effect only if in writing and addressed to a Party as follows (or to such other address or such other person that such addressee Party may designate from time to time in accordance with this **Section 17.4**):

If to Licensor: Techmark, Inc.
 15400 S. US 27
 Lansing, Michigan 48906
 E-mail: techmark@techmark-inc.com
 Attention: President

If to Licensee: The physical address or email address set forth on the Licensee's executed invoice (or other ordering or purchasing document) or other information provided to Licensor by Licensee.

Notices sent in accordance with this **Section 17.4** will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by facsimile or e-mail, with confirmation of transmission, if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (d) on the day after the date mailed by certified or registered mail, return receipt requested, postage prepaid. Notwithstanding the foregoing, any amendment to this Agreement shall be effective when posted on the Licensor's website, www.techmark-inc.com.

17.5. Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

17.6. Entire Agreement. This Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

17.7. Assignment. Licensor may assign this and transfer its rights and delegate its duties under this Agreement. Licensee shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement without Licensor's prior written consent, which consent shall not unreasonably be delayed or withheld.

17.8. Amendment and Modification; Waiver. This Agreement may be amended at any time by the Licensor, in its sole discretion, with or without notice. The effective date of any such amendment(s) shall be the date when Licensor notifies the Licensee pursuant to **Section 17.4** or the date of posting the amendment(s) on the Licensor's website (www.techmark-inc.com), whichever date is earlier. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

17.9. Severability. If any provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. On such determination that any term or other provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

17.10. Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of Michigan without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Michigan. Any legal suit, action or proceeding arising out of this Agreement or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of Michigan in each case located in County of Ingham, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such Party's address set forth herein will be effective service of process for any suit, action or other proceeding brought in any such court.

17.11. Waiver of Jury Trial. Each Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

17.12. Equitable Remedies. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under **Section 3** (Use Restrictions), **Section 6** (Confidentiality), **Section 10** (Intellectual Property Rights) or **Section 13** (Indemnification) of this Agreement would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including in a restraining order, an injunction, specific performance and any other relief that may be available from any court of competent jurisdiction, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

17.13. Attorneys' Fees. In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by the Licensor against the Licensee arising out of this Agreement, the Licensor shall be entitled to recover its reasonable attorneys' fees and court costs from the Licensee.

Version Date: 10/23/2019