

End User License Agreement

This End User License Agreement ("EULA") is a legal agreement between the customer identified in an Order Form ("Company") and LightGuide, Inc., a Delaware company with its principal place of business at 48443 Alpha Drive, Suite 175, Wixom, Michigan 48393 ("LightGuide"), that governs Company's licensing and use of proprietary Light Guide Systems software. It is effective between Company and LightGuide as of the date set forth in the applicable Order Form (the "Effective Date"). This EULA shall govern each Order Form.

BY ACCESSING OR USING ANY PART OF THE SOFTWARE, COMPANY EXPRESSLY AGREES TO AND CONSENT TO BE BOUND BY ALL OF THE TERMS OF THIS EULA. IF COMPANY DOES NOT AGREE TO ALL OF THE TERMS OF THIS EULA, COMPANY MAY NOT ACCESS OR USE ANY PART OF THE SOFTWARE.

1. DEFINITIONS

1.1 "Add-on" means a separate component which works in conjunction with LightGuide products to provide additional or enhanced functionality. Add-ons include, but are not limited to, plug-ins, macros, extensions and libraries.

1.2 "Affiliate" means any worldwide entity which directly or indirectly controls, is controlled by, or is under common control with Company. "Control," for purposes hereof, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

1.3 "Agreement" means the Order Form, as governed by the terms and conditions of this EULA.

1.4 "Delivery Date" has the meaning provided in Section 5.

1.5 "Documentation" means the published and generally available online or electronic user and administrator materials LightGuide delivers or makes available with the Software, including FAQs and help desk materials available online, as updated from time to time.

1.6 "Order Form" means LightGuide's physical or online order form or other document, including a signed quote, for placing orders hereunder, which form is entered into between Company and LightGuide and identifies the Software ordered by Company, including the number of seats, license fees, payment terms and access information, as applicable. Order Forms shall be governed by the terms and conditions of this EULA.

1.7 "Software" means only the licensed LightGuide software program(s), Updates and third-party software programs supplied by LightGuide (all of the foregoing, solely in object code form) and corresponding Documentation.

1.8 "Support Services" mean those support services that LightGuide generally provides to its customers who have purchased Usage Rights of the Software as set forth on an Order Form. Support Services are provided pursuant to a Service and Support Plan (SSP) as further defined herein.

1.9 "Update" means any upgrade, improvement, enhancement, correction, bug fix, hotfix, patch, modification, revision, or new release of the Software, including of any including DAT, signature set, policy or database associated with the Software that LightGuide generally provides to its customers who have purchased a Service and Support Plan (SSP) as reflected on an Order Form. Updates do not include any Software that is marketed and priced separately by LightGuide such as Add-Ons.

1.10 "User" means an individual or non-human device, such as a process workstation who/that is authorized by Company to use the Software in accordance with this Agreement, and has been supplied

credentials by Company (or by LightGuide at Company's request). A User may include but is not limited to Company's employee, consultant, contractor and agent.

1.11 "Usage Rights" has the meaning provided in Section 3.

1.12 "Usage Term" means the period commencing on the Delivery Date and continuing until expiration or termination of the period as specified in the Order Form, during which period the Company has the right to use the applicable Software. The Usage Term will be either a defined subscription period or perpetual as set forth in the Order Form.

2. TRIALS

If LightGuide agrees to provide Company access to the Software on a trial basis, LightGuide will make available to Company a version of the Software (the "Trial Version") for the agreed upon trial period. The Trial Version may be used by Company's personnel only to review, demonstrate (for internal purposes only) and evaluate the Software and whether to license the Software, and may have limited features. Company shall elect to purchase the Software or cease using the Trial Version upon the expiration of the trial.

Company shall not (i) install or use more than one (1) copy of the Trial Version, (ii) download the Trial Version under more than one username, (iii) alter the contents of any hard drive or computer system to enable Company to exceed the rights granted in the Trial Version (including, for an aggregate period in excess of the trial period granted for more than one (1) license to such Trial Version), (iv) demonstrate the Trial Version or disclose the results of software performance benchmarks obtained using the Trial Version to any third party without LightGuide's prior written consent, (v) use the Trial Version for any commercial training or any application deployment or ultimate production purpose, (vi) use the Trial Version to update Software that is no longer eligible for Support Services, or (vii) use the Trial Version for any purpose other than the sole purpose of determining whether to license the Software.

ANY DATA ENTERED BY COMPANY INTO THE TRIAL VERSION, AND ANY CONFIGURATIONS MADE TO THE TRIAL VERSION BY OR FOR COMPANY DURING ANY TRIAL MAY BE PERMANENTLY LOST UNLESS COMPANY PURCHASES A LICENSE TO THE SAME SOFTWARE AS THE ONE COVERED BY THE TRIAL, PURCHASE UPGRADED SOFTWARE, OR EXPORT SUCH DATA, BEFORE THE END OF THE TRIAL PERIOD.

NOTWITHSTANDING **SECTION 10. (LIMITED WARRANTY AND DISCLAIMERS)**, DURING A TRIAL, THE TRIAL VERSION AND ANY APPLICABLE SUPPORT SERVICES ARE PROVIDED "AS-IS" WITHOUT WARRANTY.

Additional trial terms and conditions may appear on the trial registration web page or Order Form. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding.

3. LICENSE GRANT

The licenses granted in this **Section 3. (License Grant)** are subject to Company's compliance with all terms and conditions set forth in this EULA.

3.1 **General.** LightGuide grants Company a non-exclusive, non-transferable (except as provided in **Section 15.4 (Assignment)** below), limited license to install and use the Software on compatible devices during the Usage Term (the "Usage Rights"). Company may install and use the Software solely as permitted based on the number of software licenses specified in the applicable Order Form, as further described in **Section 3.1.1 (Floating Seats)** below. The license granted hereunder is sublicensable only to Affiliates of Company that are approved in writing by LightGuide. Company acknowledges and agrees that both Company and its sublicensee shall be and remain liable for the acts and omissions of the sublicensee and the sublicensee's User(s) in connection with its (and their) use of the Software and compliance with the terms of this Agreement.

3.1.1 Floating Seats. The Software is licensed to specific Users for use by a specified maximum number of devices that may access the Software on a private network at the same time. Neither the number of running instances of the Software nor the number of individuals simultaneously having access to the Software through the devices may exceed at any one time the number of floating seats licensed. One computer or computing device shall be designated as the “license server” where the license is installed with a unique username and password and all other devices will require access to the license server to run the Software. If there is no license server, then the dongles described in Section 3.2.2 (Dongles) shall be used for the license.

Non-human devices that use the Software without interaction are counted as Users. Each device that runs the Software must be properly licensed to use the Software pursuant to the license granted. Examples of non-human devices include, but are not limited to, virtual PCs, build servers and unattended PCs used for batch jobs.

3.1.2 Updates or Additional Copies of Software. Company may only use Updates or additional copies of the Software beyond your Usage Term if it has (a) acquired such rights under a SSP covering the applicable Software; or (b) have purchased the right to use Updates or additional copies separately.

3.1.3 Software Renewal. Usage Rights in LightGuide Software and technology acquired on a subscription basis will automatically renew for the renewal period indicated on the order Company placed with LightGuide (“Renewal Term”) unless: (a) Company notifies LightGuide in writing at least 60 days before the end of the then-current Usage Term of Company’s intention not to renew; or (b) Company elects not to auto-renew at the time of the initial order placed with LightGuide. If the Company elects not to auto-renew under (b), LightGuide may offer to Company reasonably in advance of a Renewal Term a proposed Order Form to extend or renew the Agreement.

3.1.4 Effect of Expiration or Termination. Upon expiration or termination of the Agreement: (a) Company will delete all copies of the Software; (b) all applicable Software licenses will terminate; (c) all Order Forms will terminate; (d) LightGuide will have no further obligation to provide any Support Services to Company; and (e) upon request, each party will return or destroy all Confidential Information (as defined below) of the other party.

3.2 Acceptable Use

3.2.1 Internal Use Only. The Software may be used only for internal purposes (i) to generate work instructions for use in connection with the Software, and (ii) using the work instructions generated, to aid authorized Users in the performance of their duties for Company by providing the User visual and/or audio guidance, feedback and/or other information while the User is interacting with one or more of Company's systems.

3.2.2 Dongles. Company will use dongles provided by LightGuide at all times in connection with its deployment and use of the Software.

3.2.3 Copies. The Software may be copied only by Company to redeploy the Software to an authorized application or device, as set forth in **Section 3.1.1 (Floating Seats)**. The Software may be redeployed from one authorized application or device to another within Company such that it ceases to be used on one application while it is used on a different application. The software may be copied as part of an image or a clone for the purposes of installing it on additional computers that will always remain in the possession of Company.

In addition to the foregoing, Company may make a single copy of the Software for the sole purpose of backing-up and archiving the Software for disaster recovery purposes. The copy of the Software is subject to all terms and conditions of this Agreement and must contain the same titles, trademarks, and copyrights as the original.

3.2.4 Software-Defined License. Company will not attempt to circumvent or bypass hardware-specific software, licenses, or restrictions that allow for the Software to run only on a specific computer or for a limited period of time. Backups, spares, and license transfers must be obtained from LightGuide.

3.3 Restrictions

3.3.1 No Implied License. Company's use of the Software is limited to the number of Users, and such other usage restrictions as are set forth on an Order Form and as set forth herein. LightGuide and its suppliers and licensors reserve any and all rights, implied or otherwise, that are not expressly granted to Company hereunder, and retain all rights, title and interest in and to the Software.

3.3.2 Modifications, Use as Service Bureau, Reverse Engineering and Unlawful Use. Company shall not (i) modify, adapt, distribute, resell, rent, lease or loan the Software, create or prepare derivative works based upon the Software or any part thereof, or make the functionality of any Software or LightGuide technology available to any third party, (ii) use the Software in a service bureau, or application service provider environment, or in any commercial time share arrangement, (iii) use the Software in contravention to any applicable laws or government regulations, (iv) decompile, disassemble decrypt, deobfuscate, or otherwise reverse engineer or tamper with the Software, or (v) use the Software on equipment not authorized by LightGuide, or use Software that is licensed for a specific device on a different device.

3.3.3 Preventing Unauthorized Access and Use. Company shall use the Software only with a dongle purchased from the LightGuide and shall take all other reasonable precautions to prevent unauthorized or improper use or disclosure of the Software. Without limiting the foregoing, Company may not provide to any third-party images, videos, descriptions, or other information relating to the configuration, setup, or use of the Software that could be used to copy key functionality of the Software or impede the operation of the Software.

3.3.4 Source Code and Modifiable Files. The provision of source code, if included with the Software, does not constitute transfer of any legal rights to such code, and resale or distribution of all or any portion of all source code and intellectual property is strictly prohibited hereunder. All Software and other files remain LightGuide's exclusive property. If source code or modifiable files are provided, regardless of any modifications that Company makes, Company may not redistribute them unless LightGuide has expressly designated these as re-distributable.

3.3.5 Security Testing. Company shall not perform any technical security integrity test, penetration test, load test, denial-of-service simulation, vulnerability scan or other similar procedures on the Software or any of LightGuide's systems or computing infrastructure without LightGuide's prior written consent. If Company identifies a need to address security or reliability concerns, any tests, reverse engineering, decompiling or other probing activity designed to look for security risks or reliability Company shall (i) provide LightGuide a detailed list of the actions that it intends to perform, (ii) obtain LightGuide's written approval at least thirty (30) days prior to taking any such actions, and (iii) provide LightGuide a detailed written report of all actions taken and results of such actions within ninety (90) days of the date of LightGuide's approval of the actions.

3.3.6 Proprietary Notices. Company will not remove, alter, or obscure any proprietary notice, marking (including any notice of trademark, copyright, or patent notices) or any restrictive legend placed on or contained within the Software.

3.3.7 Offline Programming. A separate engineering dongle may be provided to Company for offline programming and training purposes only. It may not be used for production work and no attempt shall be made to circumvent the password login or captcha in order to minimize their disruption to the regular operation of the Software using an engineering dongle.

3.3.8 Export. Company acknowledges that the Software is subject to U.S. export and import laws and regulations, and may be subject to those of other jurisdictions. Company shall comply with all applicable export and import laws and regulations for the jurisdiction in which the Software will be imported and/or exported. Company will not export (or re-exported from a country of installation) or import the Software or the direct or indirect product thereof directly or indirectly, unless Company obtains (at its own expense) any and all necessary licenses, permits and approvals from the U.S. Department of Commerce or other applicable local or national agency or governmental body as required under applicable law. Company will not export the Software to any individual, entity or into any country prohibited by the United States Export Administration Act and the regulations thereunder. Without limiting the generality of the foregoing, Company agrees that the Software is prohibited for export or re-export to Cuba, North Korea, Iran, Libya, Syria and Sudan or to any person or entity on the U.S. Department of Commerce Denied Persons List or on the U.S. Department of Treasury's lists of Specially Designated Nationals, Specially Designated Narcotics Traffickers or Specially Designated Terrorists, as such is changed from time to time. Company represents and warrants that it is not identified as a sanctioned or restricted party under any applicable law, and shall notify LightGuide immediately of any change of its status with respect to the foregoing representation and warranty. Company acknowledges and agrees that LightGuide may immediately terminate Company's access to the Software, in whole or in part, in such event.

4. SERVICE AND SUPPORT PLAN (SSP)

4.1 Support Services. During the Company's usage term LightGuide will also provide Company with an SSP. This SSP is provided to Company's designated representatives for the current release of the Software and all other releases whose version number begins with the same number. If and when reasonably requested by LightGuide, Company shall provide the necessary access to Company's systems and Software for LightGuide to perform the Support Services hereunder. LightGuide may use technical information provided by Company relating to the Software as part of the Support Services, including for product support and development. LightGuide makes no representation or warranty that all bugs will be fixed or all Software will be updated. See LightGuide SSP for further details of support levels.

4.2 Software Support Agreement Term. LightGuide will provide Company the Updates and Support Services during the Usage Term reflected on the applicable Order Form, which term will commence on the Delivery Date of the Software. Except as otherwise specified in the applicable Order Form, such term will automatically renew for successive twelve (12) month periods, unless either party gives the other notice of non-renewal at least forty-five (45) days before the end of the expiring period. In addition, the Software Support Agreement term will automatically terminate upon the termination of the Usage Term.

5. DELIVERY

Delivery of the Software shall be made by electronic means and such delivery shall be deemed to have been made upon LightGuide making the Software or services available to Company for download and, if applicable, providing Company with a key for such usage (the "Delivery Date"). Notwithstanding the foregoing, where the Order Form provides for physical delivery or where electronic delivery is not possible given the nature of the requirements, delivery shall be deemed to have been made upon the transfer of the Software by LightGuide to its shipping agent.

6. FEES AND PAYMENTS

6.1 Amounts Due. Company shall pay LightGuide the fees, charges and other amounts specified in an Order Form in accordance with the terms of such Order Form. To the extent permitted by law, orders for the Software are non-cancellable. If Company uses the Software beyond its authorized usage ("Overage"), LightGuide may invoice Company, and Company agrees to pay, for such Overage.

6.2 Payment. Except as otherwise provided in an Order Form, (i) all amounts are to be paid in advance, (ii) Company shall pay LightGuide within thirty (30) days of the date of invoice. To the extent fees are not required to be paid in advance, LightGuide is expressly authorized by Company to ship the Software upon execution of the applicable Order Form and, to invoice any applicable fees, charges or other amounts upon delivery. However, Company agrees that LightGuide may require Company to provide a purchase order or notice that a purchase order is not required for purchase or payment before LightGuide ships the Software or otherwise provides Company access to the Software or any Support Services.

6.3 Refunds. Except as expressly provided in **Section 10.3 (Exclusive Remedies)** and **Section 12. (Indemnification)**, Company will not be entitled to a refund of any amounts paid hereunder. Further, Company acknowledges and agrees that no such refunds will be provided unless and until LightGuide receives a written certification executed by an authorized representative of Company that Company has uninstalled all instances of the Software and destroyed, deleted and purged all of LightGuide's Confidential Information.

6.4 Overdue Balances. Overdue balances are subject to a service charge equal to the lesser of 1.5% per month or the maximum legal interest rate allowed by law.

6.5 Taxes. Company shall be responsible for taxes levied on any transaction under this Agreement, including all federal, state, and local taxes, levies and assessments, excluding any tax based on LightGuide's income.

7. USAGE VERIFICATION

At LightGuide's written request, and no more than once every twelve (12) months, Company will permit LightGuide to review and verify Company's deployment and use of the Software for compliance with the terms and conditions of this Agreement, at LightGuide's expense. Any such review shall be scheduled at least ten (10) days in advance and conducted during normal business hours at Company's facilities. LightGuide shall use commercially reasonable efforts to conduct the review so as not to unreasonably interfere with Company's business activities. Within ten (10) days of any review that finds Company's use of the Software to be greater than that licensed, Company will either (i) provide LightGuide an executed Order Form for the applicable number of additional licenses or use, and pay all applicable fees in accordance therewith, retroactively to the date that the additional use began, or (ii) certify that such Software has been purged and uninstalled from Company's systems and pay only the fees applicable to the period of the additional use.

8. CONFIDENTIALITY AND DATA PRIVACY

8.1 Confidential Information. In the event an NDA has not been executed, during the term of this Agreement, each party will regard any information provided to it by the other party and designated in writing as proprietary or confidential to be confidential ("Confidential Information"). Confidential Information shall also include information which, to a reasonable person familiar with the disclosing party's business and the industry in which it operates, is of a confidential or proprietary nature. Without limiting the foregoing, Company acknowledges that the Software, including any and all source code, object code, ideas, methods, algorithms, formulae, processes, and concepts used in developing or incorporated into the Software, including all future Updates, and the terms of this Agreement are proprietary and confidential to LightGuide. A party will not disclose the other party's Confidential Information to any third party, or make use of any of the other party's Confidential Information except in the exercise of its rights or performance of its obligations under this Agreement without the prior written consent of the other party. Each party accepts responsibility for the actions of its agents or employees

and shall protect the other party's Confidential Information in the same manner as it protects its own valuable confidential information, but in no event shall less than reasonable care be used. A receiving party shall promptly notify the disclosing party upon becoming aware of a breach or threatened breach hereunder, and shall cooperate with any reasonable request of the disclosing party in enforcing its rights. Upon the reasonable request of the disclosing party, the receiving party will either return, delete or destroy all Confidential Information of the disclosing party and certify the same.

8.2 Exclusions. Information will not be deemed Confidential Information hereunder if such information: (i) is known prior to receipt from the disclosing party, without any obligation of confidentiality, (ii) becomes known to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party, (iii) becomes publicly known, other than through a breach of this Agreement; or (iv) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information. The receiving party may disclose Confidential Information pursuant to the requirements of applicable law, legal process or government regulation; provided that it gives the disclosing party reasonable prior written notice (to the extent legally permissible) to permit the disclosing party to contest such disclosure, and such disclosure is otherwise limited to the required disclosure.

8.3 Data Privacy. Company authorizes the collection, use and disclosure of information collected by LightGuide for the purposes provided for in this Agreement. Without limiting the foregoing, Company acknowledges that LightGuide's Software may transmit license-related data at the time of installation, registration, use or update to a LightGuide license server in order to activate Company's license and provide Company with Update notifications, protect Company and LightGuide against unlicensed or illegal use of the Software, and improve customer service. Company acknowledges that the Software may include license keys, password protection, anticopying subroutines and other security measures designed to limit usage of the Software to that which is licensed hereunder. Such measures shall not interfere with Company's normal and permitted operation of the Software as licensed hereunder.

LightGuide will access, process and use data in connection with Company's use of the Software in accordance with applicable privacy and data protection laws. Company consents to the processing of personal information of its Users in the United States for the purposes described herein.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 Ownership. Company acknowledges and agrees that no title or ownership are transferred to Company by this Agreement to the Software or any copies thereof. Except as expressly provided in this Agreement, LightGuide and its suppliers and licensors retain all right, title and interest, including all copyright and intellectual property rights, in and to, the Software (as an independent work and as an underlying work serving as a basis for any improvements, modifications, derivative works, and applications Company may develop), including, without limitation any and all Updates thereto (including those developed at the request or direction of Company) and copies thereof. All rights not specifically granted in this Agreement, including U.S. and international copyrights, are reserved by LightGuide and its suppliers and licensors.

9.2 Improvements. In the event that Company conceives, suggests or contributes any ideas for improvements, enhancements or modifications derived from, relating to or in connection with the Software, Company agrees to assign, grant, and convey, and hereby grants, assigns and conveys, any and all right, title and interest in and to those ideas and in and to any improvements, enhancements or derivative works derived from, relating to or in connection with the Software, created, conceived or designed by Company to LightGuide and irrevocably waives all moral rights therein. Company also agrees to provide such cooperation and assistance to LightGuide, at LightGuide's cost, as may be reasonably necessary to enable LightGuide to effectuate and perfect such assignment, grant, and conveyance,

including without limitation, by providing such information and executing such documents as may be reasonably necessary to enable LightGuide to file patent applications or obtain other intellectual property protection, and record such assignment, grant, and conveyance.

10. LIMITED WARRANTY AND DISCLAIMERS

10.1 Software and Support Services Warranty. Except with respect to the Trial Version of the Software (for which LightGuide provides no remedies or warranties), LightGuide warrants that (i) it has the right to grant Company the license to use the Software as set out in this Agreement, (ii) that it uses commercially reasonable measures to ensure that the Software is free from any virus at the time of delivery, (iii) for a period of thirty (30) days following the initial delivery of the Software to Company (the “Warranty Period”), the Software will perform substantially in conformity with its Documentation; and (iv) any Support Services will be provided with reasonable skill and care conforming to generally accepted software industry standards.

10.2 Exclusions. THE ABOVE LIMITED WARRANTY DOES NOT APPLY IF: (I) THE SOFTWARE IS NOT USED IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT AND THE DOCUMENTATION, (II) COMPANY FAILS TO INSTALL ANY UPDATES IN A TIMELY MANNER, (III) THE SOFTWARE, OR ANY PART THEREOF, HAS BEEN MODIFIED BY ANY PERSON OR ENTITY OTHER THAN LIGHTGUIDE, (IV) A MALFUNCTION IN THE SOFTWARE IS CAUSED BY ANY EQUIPMENT OR SOFTWARE NOT SUPPLIED BY THE LIGHTGUIDE, OR (V) COMPANY'S INSTANCE OF MICROSOFT WINDOWS IS UPDATED, COMPUTER OR SYSTEMS CONFIGURATIONS ARE CHANGED OR COMPONENTS ARE UPDATED OR REPLACED AFTER THE SOFTWARE IS DELIVERED OR INSTALLED.

10.3 Exclusive Remedies.

In the event of a breach of the warranty provided in **Section 10.1** above, LightGuide's entire liability and Company's exclusive remedy shall be LightGuide's indemnification of Company as set forth in **Section 12. (Indemnification)** below.

In the event of a breach of the warranty provided in **Section 10.1** above, LightGuide will, at its option and at no cost to Company, either reconfigure the Software, provide a Software Update or provide such Support Services or other remedial services necessary to enable the Software to conform to the warranty, or refund to Company any amounts paid in respect of the defective Software or Support Services. The foregoing shall be LightGuide's entire liability and Company's exclusive remedy for such a breach.

LightGuide's obligations to remedy any failure of the Software to perform in substantial conformity to the Documentation will only extend (i) to material errors that can be demonstrated to exist in an unmodified version of the Software, except where the modifications were made by LightGuide, and (ii) in respect of defects for which LightGuide has received written notice within the Warranty Period. Company will provide LightGuide with a reasonable opportunity to remedy any breach and reasonable assistance in remedying any defects.

10.4 Hardware. Company acknowledges that, to the extent the Software is accompanied by any computers, processors, boards, cabling, peripherals or other equipment (collectively “Hardware”) specified in an Order Form, such Hardware is provided by LightGuide on a “pass through” to Company, with warranties provided by such third-party hardware LightGuide. LightGuide will provide Support Services during the Usage Term to support operation of the Software with purchased Hardware.

10.5 Third-Party Software. Company acknowledges that certain third-party software incorporated in the Software requires that LightGuide provide copyright notices and/or additional terms and conditions to Company, which copyright notices and additional terms and conditions may be accessed by Company upon written request to LightGuide and are made a part of, and are incorporated by reference into this Agreement.

10.6 DISCLAIMERS. EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN THE **SECTION 10.1 (Software and Support Services Warranty)** ABOVE, THE SOFTWARE IS PROVIDED “AS IS” AND LIGHTGUIDE AND ITS SUPPLIERS AND LICENSORS DISCLAIM ALL OTHER WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN TRADE, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SYSTEMS INTEGRATION, NON-INFRINGEMENT AND TITLE OR QUIET ENJOYMENT. LIGHTGUIDE DOES NOT WARRANT THAT THE SOFTWARE WILL BE FAILSAFE, FREE OF ERRORS OR DEFECTS, PROTECT AGAINST THREATS OR OPERATE WITHOUT INTERRUPTION. NO RIGHTS OR REMEDIES REFERRED TO IN ARTICLE 2A OF THE UCC WILL BE CONFERRED ON COMPANY UNLESS EXPRESSLY GRANTED HEREIN.

WITHOUT LIMITING THE FOREGOING, COMPANY ACKNOWLEDGES THAT THE SOFTWARE IS NOT DESIGNED, DEVELOPED, TESTED, INTENDED OR LICENSED FOR USE IN HAZARDOUS ENVIRONMENTS OR HIGH RISK SYSTEMS REQUIRING FAIL-SAFE CONTROLS, INCLUDING WITHOUT LIMITATION, THE DESIGN, CONSTRUCTION, MAINTENANCE OR OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS. LIGHTGUIDE AND ITS SUPPLIERS AND LICENSORS SPECIFICALLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH PURPOSES.

If applicable law requires any warranties other than the foregoing, all such warranties are limited in duration to thirty (30) days from the date of delivery. Some jurisdictions do not allow the exclusion of implied warranties, so the above exclusion may not apply to Company. The warranty provided herein gives Company specific legal rights and Company may also have other legal rights that vary from jurisdiction to jurisdiction. The limitations or exclusions of warranties, remedies or liability contained in this Agreement shall apply to Company only to the extent such limitations or exclusions are permitted under the laws of the jurisdiction where Company are located.

10.7 No Other Warranties. No oral or written information or advice given by LightGuide, its resellers, dealers, distributors, agents, representatives or employees shall create any warranty or in any way increase any warranty provided herein.

11. LIMITATION OF LIABILITY

EXCEPT AS SET FORTH IN **SECTION 12. (INDEMNIFICATION)**, LIGHTGUIDE SHALL NOT BE LIABLE TO COMPANY OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, COVER OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR THE INABILITY TO USE EQUIPMENT OR ACCESS DATA, LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION OR THE LIKE), ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE SOFTWARE AND BASED ON ANY THEORY OF LIABILITY INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF LIGHTGUIDE OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. LIGHTGUIDE'S TOTAL LIABILITY TO COMPANY FOR ACTUAL DAMAGES FOR ANY CAUSE WHATSOEVER WILL BE LIMITED TO THE AMOUNT PAID BY COMPANY, FOR THE SOFTWARE THAT CAUSED SUCH DAMAGE.

WITHOUT LIMITING ANY OTHER LIMITATIONS OF LIABILITY OR DISCLAIMERS OF WARRANTIES, COMPANY AGREES THAT LIGHTGUIDE AND ITS SUPPLIERS AND LICENSORS SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR, ANY DAMAGES WHATSOEVER, DIRECT OR INDIRECT, RESULTING FROM OR IN CONNECTION WITH (I) COMPANY'S USE OF THE SOFTWARE ON OR IN A HAZARDOUS ENVIRONMENT OR HIGH RISK SYSTEM, (II) WORK INSTRUCTIONS, OR OTHER SOFTWARE INPUTS DEVELOPED, UPLOADED OR IMPLEMENTED BY COMPANY, (III) COMPANY'S FAILURE TO PROVIDE A SAFE WORKING ENVIRONMENT

OR ADEQUATELY TRAIN ITS PERSONNEL IN THE USE OF THE SOFTWARE, OR (IV) ANY OTHER USE OF THE SOFTWARE THAT RESULTS IN PERSONAL INJURY OR DEATH.

Company acknowledges that it is the Company's responsibility to ensure the accuracy, completeness, lawfulness and non-infringement of the work instructions, and to adequately train its personnel regarding the use of the Software and to provide a safe working environment.

Company further acknowledges that LightGuide has entered into this Agreement in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth herein, and that the same form an essential basis of the bargain between the parties, including the fees agreed to by the parties hereunder. The parties agree that the limitations and exclusions of liability and disclaimers specified in this Agreement will survive and apply even if found or alleged to have failed of their essential purpose.

12. INDEMNIFICATION

12.1 Indemnification by LightGuide. LightGuide shall indemnify, defend, and hold the other party and, its employees, officers, directors, agents, affiliates or other representatives harmless from and against any and all damage, loss, liability, claim, cost or expense (including, without limitation, reasonable attorney's fees) ("Losses") incurred in connection with or as a result of any third-party claim (i) that the Software, as delivered by LightGuide, infringes any patent, copyright, trademark, trade secret or proprietary right of any third party under United States law or international copyright treaty, or (ii) arising out of or relating to the gross negligence or intentional misconduct of LightGuide, its employees, officers, agents, affiliates or other representatives. The foregoing obligations will not apply to the extent the infringement arises out of or relates to (i) any modification made by a person or entity other than LightGuide, or developed by LightGuide at Company's request or direction, (ii) use of the Software in combination with products, equipment, devices, software, systems or data not supplied by LightGuide, (iii) use of the Software not in accordance with the terms or specifications set forth herein or in the Documentation, or (iv) Company's failure to install any Updates in a timely manner, provided that the Software would not have been infringing upon installation of such Update.

12.2 Indemnification by Company. Company shall indemnify, defend, and hold LightGuide and, its employees, officers, directors, agents, affiliates or other representatives harmless from and against any and all Losses incurred in connection with or as a result of any third-party claim (i) that the Software, as modified, improperly used, or combined with products, equipment, devices, software, systems or data not supplied by LightGuide, or as not updated by Company, infringes any patent, copyright, trademark, trade secret or proprietary right of any third party, to the extent such infringement arises out of or relates to such modification, improper use, or combination, or lack of updating, or (ii) arising out of or relating to (x) Company's use of the Software, including, without limitation, any work instructions, or other inputs developed or implemented by Company, (y) Company's breach of this Agreement, or (z) the negligence or intentional misconduct of the Company, its employees, officers, agents, affiliates or other representatives.

12.3 Options. In the event that any infringement claim, action or allegation is brought or threatened, LightGuide shall have the option to (i) procure for Company the right to continue use of the affected Software (or part thereof), (ii) modify the affected Software or replace it with other software having substantially the same or better functionality, or (iii) terminate the Agreement without further liability to Company.

12.4 Procedures. The indemnified party shall provide the indemnifying party written notice of any claim promptly upon receipt of notice or otherwise becoming aware of the claim. The indemnifying party will have the exclusive right to defend any indemnified claim (including the right to select and control the work of counsel) and make settlements thereof at its own discretion; provided that, if the indemnifying party fails to assume or conduct the defense, the indemnified party may do so at the indemnifying party's

expense, if the indemnifying party fails to (i) provide written assurances to the indemnified party that it intends to fulfill its obligations within one (1) business day after receipt of a written demand from the indemnified party, and (ii) take substantial steps to assume or resume the defense within a reasonable period thereafter (based on the totality of the circumstances). The indemnified party may not settle or compromise any indemnified claim, action or allegation, except with prior written consent of the indemnifying party. The indemnifying party may not, without the indemnified party's prior written approval, enter into any settlement of an indemnified claim that imposes a direct financial liability on the indemnified party or includes an admission of fault by the indemnified party. The indemnified party shall give such non-monetary assistance and information as the indemnifying party may reasonably request to settle or defend indemnified claims.

12.5 Exclusive Remedy. This **Section 12.5 (Exclusive Remedy)** states the entire liability of the indemnifying party with respect to an indemnified claim.

13. TERM AND TERMINATION

13.1 Term. This Agreement shall be effective as of the Effective Date and shall remain in effect during the period for which the fees for the licenses granted herein are fully paid according to the terms of this Agreement (the "Term").

13.2 Events of Termination. Without limiting any other termination right set forth in this Agreement, this Agreement and/or the individual licenses granted hereunder may be terminated (i) by mutual agreement of LightGuide and Company, (ii) by either party if the other party is adjudicated as bankrupt, or if a petition in bankruptcy is filed against the other party and such petition is not discharged within thirty (30) days of filing, or (iii) by either party if the other party materially breaches this Agreement and fails to cure the breach within thirty (30) days following receipt of written notice thereof, or (iv) immediately upon notice by LightGuide, if Company misappropriates or infringes LightGuide's intellectual property rights, exports the Software to any jurisdiction where LightGuide may not be able to enforce its rights under this Agreement, or otherwise takes any action that would compromise LightGuide's rights in and to the Software or other intellectual property.. Company acknowledges that LightGuide may suspend Company's access to the Software and Support Services during the continuation of any material breach by Company.

13.3 Effects of Termination. Upon the termination of this Agreement or any license granted hereunder, the applicable license(s) will immediately terminate. Company shall (i) immediately cease use of and uninstall all instances of the applicable Software, (ii) promptly return or destroy (at LightGuide's option) any and all physical copies of the Software media, Documentation and all other associated Confidential Information to LightGuide (as applicable), (iv) delete and purge all electronic copies of the foregoing, and (iv) certify in writing to LightGuide within thirty (30) days after such termination that Company has done so.

13.4 Remedies Upon Termination. Except as set forth in **Section 10.3 (Exclusive Remedies)**, termination of this Agreement or a license granted hereunder shall not limit either party from pursuing any remedies available to it, including injunctive relief, or relieve Company of Company's obligation to pay all fees that have accrued or become payable through the end of the applicable Term.

13.5 Survival of Terms. All provisions of this Agreement which by their nature are intended to survive the termination of this Agreement, including, without limitation, the provisions of **Sections 6. (Fees and Payments), 7. (Usage Verification), 8. (Confidentiality and Data Privacy), 9. (Intellectual Property Rights), 10.3 (Exclusive Remedies), 10.6 (Disclaimers), 11. (Limitation of Liability), 12. (Indemnification), 13.3 (Effects of Termination), 13.4 (Remedies Upon Termination), 13.5 (Survival of Terms), 15. (General)**, shall survive such termination.

13.6 **Suspension.** LightGuide may immediately suspend Company's Usage Rights if Company breaches Section 3.1 (General) or Section 3.4 (Restrictions).

14. U.S. GOVERNMENT RESTRICTED RIGHTS LEGEND

This **Section 14. (U.S. Government Restricted Rights Legend)** applies to all acquisitions of the Software by or for the federal government, or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other activity with the federal government. The Software was developed at private expense and is Commercial Computer Software, as defined in Section 12.212 of the Federal Acquisition Regulation (48 CFR 12.212 (October 1995)) and Sections 227.7202-1 and 227.7202-3 of the Defense Federal Acquisition Regulation Supplement (48 CFR 227.7202-1, 227.7202-3 (June 1995)). Accordingly, any use, duplication or disclosure by the Government or any of its authorized users is subject to restrictions as set forth in this standard license agreement for the Software. If for any reason, Sections 12.212, 227.7202-1 or 227.7202-3 are deemed not applicable, then the Government's rights to use, duplicate or disclose the Software are limited to "Restricted Rights" as defined in 48 CFR Section 52.227-19(c)(1) and (2) (June 1987), or DFARS 252.227-7014(a)(14) (June 1995), as applicable. If this Agreement fails to meet the government's needs or is inconsistent in any respect with Federal law, the government agrees to return the Software, unused, to LightGuide. Manufacturer is LightGuide Software Inc., 100 Cummings Center, Suite 234N, Beverly, MA 01915.

15. GENERAL

15.1 **Governing Law.** This Agreement shall be governed by the internal laws of the State of Michigan, U.S.A., without giving effect to principles of conflict of laws. Company hereby consents to the exclusive jurisdiction and venue of the state courts sitting in the State of Michigan or the federal courts in the State of Michigan to resolve any disputes arising under this Agreement. In each case this Agreement shall be construed and enforced without regard to the United Nations Convention on the International Sale of Goods.

15.2 **International Treaties and Local Laws.** If the Software is acquired outside the United States, then Company agrees and assents to the adherence to all applicable international treaties regarding copyright and intellectual property rights, which shall apply to Company's rights and obligations with respect to the Software. In addition, Company agrees that any local laws to the benefit and protection of LightGuide's ownership of, and interest in, its intellectual property, and rights of recovery for damages thereto will also apply.

15.3 **Marketing.** Company agrees to be identified as a customer of LightGuide and agrees that LightGuide may refer to Company by name, trade name and trademark, if applicable, and may briefly describe Company's business in LightGuide's marketing materials and website. Company hereby grants LightGuide a license to use Company's name and Company's trade names and trademarks solely in connection with the rights granted to LightGuide pursuant to this **Section 15.3 (Marketing)**.

15.4 **Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms entered into hereunder), without the consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets; provided that such Affiliate or other successor in interest is not a current or potential competitor of LightGuide. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

15.5 Entire Understanding. This Agreement contains the complete agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous proposals, agreements or understandings, whether oral or written. Company agrees that any inconsistent or additional terms contained in any purchase order or other written notification or document issued by Company in connection with the Software licensed hereunder shall be of no effect.

15.6 Waiver. The failure or delay of LightGuide to exercise any of its rights or enforce any of Company's obligation (including any breach thereof) under this Agreement shall not be deemed a waiver of those rights or obligations. A waiver is only enforceable if in writing and signed by the party against which it is offered. A waiver by either party of any of its rights or the other party's obligations (including any breach thereof) in any one instance shall not constitute a waiver of such rights or obligations (including any breach thereof) in any other instances.

15.7 Amendments. This Agreement cannot be amended, except by a written agreement signed by authorized representatives of both parties. No reseller, dealer, distributor, agent, or other representatives of LightGuide is authorized to make any amendment to this Agreement.

15.8 Purchase Order Terms. The parties agree that any term or condition stated in a purchase order or in any other order documentation, other than a LightGuide-issued Order Form, is void.

15.9 Order of Precedence. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form, (2) any exhibit, schedule or addendum to this Agreement, (3) the body of this Agreement, and (4) the Documentation.

15.10 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the offending provision will be enforced to the maximum extent permissible and the remaining provisions of this Agreement will remain in full force and effect.

15.11 Trademarks and Intellectual Property Notices. Company acknowledges that all trademarks, trade names, product names, logo service marks and other indicia of source used in connection with the Software (collectively, "Trademarks") are the Trademarks of LightGuide. Company may not remove or alter any trademark, copyright or other proprietary notices, legends, symbols or labels in the Software.

15.12 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute the same agreement, and may be transmitted by electronic transmission, PDF, facsimile, email, or other forms of transmission.