TERMS AND CONDITIONS

For the purpose of these Terms and Conditions, the term "***Agreement***" shall mean the agreement between Imatest LLC, a Colorado limited liability company ("***Imatest***"), and Buyer arising as a result of Buyer's submission of an order, downloading of Free Trial Software, or making a purchase through Imatest's website for Imatest's Products, Software, or Services, all of which orders, downloads, and purchases shall incorporate and be governed by these Terms and Conditions. **THESE TERMS AND CONDITIONS SHALL TAKE PRECEDENCE OVER ANY TERMS AND CONDITIONS WHICH APPEAR IN BUYER'S PURCHASE ORDER, INVOICE, OR IN ANY DOCUMENTS AND COMMUNICATIONS INCORPORATED BY REFERENCE IN BUYER'S PURCHASE ORDER OR ANY TERMS AND CONDITIONS WHICH MAY BE DEEMED TO APPLY UNDER SECTION 2-207 OF THE UNIFORM COMMERCIAL CODE, AND IMATEST SHALL NOT BE BOUND BY ANY SUCH TERMS AND CONDITIONS. Any term or condition of Buyer's purchase order which is additional or different from these Terms and Conditions are deemed to be material and are expressly rejected.** No term or condition of Buyer's purchase order additional to or different from these Terms and Conditions shall become part of the contract for sale unless explicitly agreed to in writing by Imatest. By submitting an order to Imatest, Buyer agrees to be subject to these Terms and Conditions in their entirety. Imatest's failure to object to any provision contained in any communication from Buyer shall not be construed as a waiver of these Terms and Conditions or as an acceptance of any such provision in such communication.

1. **PRODUCTS**. Imatest sells certain products and equipment including test charts, lightboxes, reflective lighting systems, test fixtures, light measuring equipment, motion generators, spectrophotometers, chart stands, and other items (collectively "***Products***") which may be manufactured directly by Imatest or by third-party suppliers, as set forth on the Product pages on the Imatest website. Imatest also licenses its digital test chart files for internal simulation testing pursuant to these Terms and Conditions ("***Chart Files***").

2. **SOFTWARE LICENSES**.

a) Licensed Software. As used herein, Software refers to the object code of (i) the Imatest Master, IT or Ultimate Software that Buyer has licensed from Imatest, and (ii) any Updates, Upgrades (defined below), revisions, modifications or derivative works of such Software that are provided to Buyer, all of which are collectively referred to as the "***Software***".

b) Licenses. Buyer may license Software from Imatest on a perpetual or subscription basis. One year of Support Services is included with each license. Additional Support Services may be purchased as described in Section 5 below.

i) *Perpetual License*. A perpetual license may be used by Buyer for an indefinite period. Updates and Upgrades will be provided for as long as Buyer has purchased Support Services.

ii) *Subscription License*. A subscription license may be used by Buyer for the 12-month term of the license only and if not renewed, access to the Software will cease when the subscription term expires. Buyer will be notified in advance of expiration.

iii) *Users*. Buyer may also choose between a Node-Locked License and a Floating License (both as described below), depending on the number of seats and simultaneous users desired.

c) Paid License Grant. Upon Buyer's payment of applicable license fees for the Software, and Buyer's continued compliance with these Terms and Conditions, Imatest grants to Buyer a non-exclusive, non-transferable license to install and run the Software solely for Buyer's internal business use (including in support of Buyer's customers) as set forth in this Agreement for the type of license selected. For each copy of the Software licensed to Buyer from Imatest, Buyer is authorized to install and run the Software, as set forth below depending on the license type selected:

i) *Node-Locked License*.

A. A Node-Locked License provides for one (1) instance per license.

B. Buyer is authorized to install Software purchased pursuant to a Node-Locked License, on multiple computers that are owned and controlled by Buyer. However,

the Buyer may only run one (1) instance of such Software and up to twelve (12) processes within an instance on a single computer at any one time.

ii) *Floating License*.

A. A Floating License provides a certain number of instances (also known as "seats") to be used concurrently, depending on the number of seats purchased with the license.

B. Buyer is authorized to install Software purchased pursuant to a Floating License on multiple computers that are owned and controlled by Buyer. However, per seat purchased, Buyer may only run one (1) instance of such Software and up to twelve (12) processes within an instance on a single computer at any one time. For example, a license purchased with four seats, and installed on ten different computers, allows for four active users at any one time.

iii) *Cloud Computing*. Buyer may install the Software in a Cloud Arrangement, subject to these Terms and Conditions. "***Cloud Arrangement***" means an arrangement whereby the Software is installed and executed on virtualized computational resources by a third party that manages and controls the hardware used to provide the computational resources but maintaining restrictions against any replication or time sharing which could permit the creation multiple instances of an activated copy of the Software.

d) Free Trial. For any Buyer who has not previously installed an Imatest Product and wishes to demo the Master or IT Software, subject to these Terms and Conditions, Imatest grants to Buyer a limited, non-exclusive, non-transferable license to download, install and run the Software solely for Buyer's trial and testing purposes (a "***Free Trial***"). A Free Trial shall expire fourteen (14) days from installation for the Master Software and twenty-one (21) days from installation for the IT Software (as applicable, the "***Trial Period***"). This Free Trial license does not include any support or maintenance and the Software is provided "AS IS" without warranty of any kind. At the end of the Trial Period, the Free Trial Software will automatically cease functioning unless a license is purchased.

e) Restrictions and Reservation of Rights. Aside from the limited license to use the Software granted herein, Imatest reserves all other rights in and to the Software. Buyer agrees that neither it, nor anyone gaining access to the Software through Buyer, shall, copy, reproduce, reverse-engineer, decompile or otherwise attempt to discover the means of operation of the Software or otherwise replicate, rent, time share, host, or use virtualization to create multiple instances of an activated copy of the Software. Buyer may provide limited access to the Software to Buyer's employees and independent contractors who are required to access the Software to provide services to Buyer, provided that an independent contractor must sign a legally binding written agreement with terms and conditions at least as protective of Imatest and its intellectual property rights as these Terms and Conditions, including without limitation Section 2 (Software License) and Section 6 (User Obligations). Buyer shall at all times remain responsible for the compliance of its employees and contractors with these Terms and Conditions.

f) **Any reference to purchases of Software in these Terms and Conditions or other agreements signify only the purchase of a license to use the Software pursuant to the Terms and Conditions**. Ownership of the Software remains solely with Imatest (see Section 9 (Ownership of Intellectual Property)).

3. **CHART FILES LICENSE.**

a) Chart Files. Upon Buyer's payment of applicable license fees for the desired Chart Files, and Buyer's continued compliance with these Terms and Conditions, Imatest grants to Buyer, solely for Buyer's internal business use and solely for the scope and with the limitations set forth below (the "***Chart Files License***"), a non-exclusive, non-transferable, non-sublicensable license to integrate Imatest's unprocessed Chart Files into Buyer's simulation tool to produce processed versions of such Chart Files. Such integration must be accomplished to protect against extraction or direct access to Imatest's Chart Files.

b) Restrictions.

i) Buyer may not sell, distribute or otherwise provide any of Imatest's unprocessed / unmodified Chart Files to anyone. No use of Imatest's Chart files outside of the simulation tool is permitted.

ii) Buyer may not print any graphics files (test charts) for itself or to sell, distribute or license to anyone else. Printed test charts may only be purchased from Imatest.

c) **Any reference to purchases of Chart Files in these Terms and Conditions or other agreements signify only the purchase of a license to use the Chart Files pursuant to the Terms and Conditions**. Ownership of the Chart Files remains solely with Imatest (see Section 9 (Ownership of Intellectual Property)).

4. SERVICES. Imatest provides the following "***Services***" related to the Software:

a) Support Services. Buyer's purchase of any Software includes one (1) year of support services ("***Support Services***") beginning on the purchase date of the Software ("***Initial Term***"). All Support Services shall be limited as set forth in the ***Support Guidelines***.

b) Additional Services. If Buyer desires additional professional services as described in Section 5f, such Professional Services may be ordered through a separate statement of work ("***SOW***") or agreement, setting forth the fees, scope of Professional Services, and any requirements applicable to such Professional Services, all of which will be governed by these Terms and Conditions unless explicitly altered by a SOW or agreement. A separate SOW or agreement shall be valid only if signed by both parties.

c) Third-Party Contractors. Imatest may use one or more third-party contractors to perform the Support Services and the Professional Services (collectively, the "***Services***"), and any other services performed hereunder.

5. **SUPPORT GUIDELINES**. These "***Support Guidelines***" govern the Support Services that Imatest provides Buyer for the Software.

a) Support Term. Support Services are provided for the Initial Term. Any Services requested in addition to the Support Services or following the Initial Term shall be only pursuant to separate written agreement with Imatest. For each new Software purchase, Buyer shall be eligible for Support Services as part of such purchase, but only for such new purchase. New purchases shall not extend the Initial Term.

b) Supported Software. Imatest shall maintain and support the Software modules as updated from time to time and provided on Imatest's website. Imatest agrees to support the Software for a period including the two (2) most recently released Updates ("***Supported Software***"), but shall have no obligation to continue maintenance of any Software that Imatest has designated as End of Life, and shall have no obligation to provide any Services in support of such End of Life Software.

c) Support Fee. There shall be no fees for Support Services during the Initial Term. If any additional Support Services beyond those listed in these Terms and Conditions are requested, or Buyer requests an extension of the Support Services Initial Term, such additional Support Services shall be invoiced, in advance, at the fees set forth on https://www.imatest.com/product-category/software/renewals/. Support Services shall be provided only after payment in full for such extension has been received by Imatest.

d) Activating Support. To access Support Services during the Initial Term, Buyer must have available the purchase date of the Software, any license code(s) included in the download or mailed Software, the Buyer's email address used to register the Software, and other relevant information as requested by Imatest to verify Buyer's purchase of Software.

e) Updates and Upgrades.

i) From time to time Imatest may, in its discretion, develop one or more Updates or Upgrades to the Software. "***Update***" means any dot version of the Software (e.g., 3.x to 3.y), developed after the Buyer's purchase of the Software, which implements improvements or bug fixes to features or functions and is not marketed by Imatest as a separate product and/or service. Updates will be provided to Buyer without charge, when and as available, provided that Buyer is still within the Initial Term or an extension thereof, but Imatest shall have no obligation to create new Updates. Buyer shall install any Updates required by Imatest to avoid or address a claim of infringement. "***Upgrade***" means any newly named version of the Software that includes substantially new features or functions and is generally denoted by a change in the leading number (e.g., 3.x to 4.x). Upgrades will be made available to Buyer provided that Buyer is still within the Initial Term or an extension thereof. Imatest shall have no obligation to generate Upgrades, the development of which shall be at Imatest's sole discretion.

ii) Any such Updates and Upgrades provided to Buyer will be deemed to constitute part of the Software subject to these Terms and Conditions. The provision of an Update or Upgrade does not include

any additional installation or related services, which may be provided only pursuant to a separate SOW or agreement.

f) Exclusions.

i) *Professional Services*. Any installation, customization, modification, development, training or other professional services (collectively, "***Professional Services***") will be provided only pursuant to a separate SOW or agreement mutually agreed to by the parties. All fees will be at Imatest's then prevailing rates, terms and conditions for time, materials and service as set forth in the SOW or agreement.

ii) *Other Exclusions*. Notwithstanding any other provision of this Agreement, Imatest shall have no obligation to resolve Supported Software errors or provide Support Services to correct errors that are the result of or caused by modification to the Supported Software not performed by Imatest, failure by Buyer to meet the Imatest system requirements, failure of third-party software or telecommunications services, or integration of the Supported Software with hardware, software and/or technology not supported by Imatest.

6. **USER OBLIGATIONS**. In order to enable Imatest to perform the Services, Buyer will provide Imatest personnel with such cooperation and assistance as Imatest reasonably requests. If Buyer fails to perform its obligations or provide reasonable cooperation and assistance consistent with any requirements expressly set forth in the Support Guidelines or in an SOW, Imatest will be excused from performing the affected Services until Buyer's obligations are performed. Imatest shall have the right to suspend performance in the event of Buyer's breach of this Agreement, including but not limited to, non-payment.

7. **PRICES AND TAXES**. All amounts payable under this Agreement are exclusive of federal, state or local taxes, duties or tariffs, including without limitation, sales, use, value-added or excise taxes now or hereafter enacted, applicable to the Products, Software, or Services sold or provided to Buyer, which taxes may, in Imatest's discretion, be added by Imatest to the sales price or billed separately and which taxes shall be paid by Buyer unless Buyer provides Imatest with any necessary tax exemption certificate.

8. **TERMS OF PAYMENT**.

a) Purchase Fees. Buyer shall pay Imatest the fees in accordance with the list price set forth on Imatest's website, all of which fees shall be pre-paid, unless other payment terms are set forth in an invoice from Imatest. Initial fees shall be paid immediately through the Imatest website in order to purchase the Products, Software or Services, or may be separately invoiced by Imatest if agreed and approved by Imatest.

b) Invoicing and Payment. With respect to any orders for Professional Services or extended Support Services, Buyer will pay all invoiced amounts prior to the delivery of such additional Services. All payments must be made in U.S. dollars. All fees paid are non-refundable.

9. **OWNERSHIP OF INTELLECTUAL PROPERTY; RESTRICTIONS**. Imatest (or, where indicated, its third party suppliers) shall at all times have and retain sole title and full ownership of all worldwide intellectual property rights in the hardware, software, and firmware contained in the Products and Software and documentation supplied by Imatest for use with the Products and Software, and any custom or specialized products, software, or services ("***Additional Products***") created or performed by Imatest (collectively "***IP Rights***"). Nothing in this Agreement or Buyer's purchase of Products or Software or Additional Products will be deemed to grant, by implication, estoppel, or otherwise, any interest in or license of any of Imatest's IP Rights, except as specifically set forth herein or in a Statement of Work signed by both parties. Imatest has the sole right to apply for patents or copyright registrations on inventions that relate specifically to any of its Products, Software or Additional Products owned by Imatest or on any component therefore and any improvement or modification thereto. By purchasing any Product, Software or Additional Products, Buyer agrees to not copy, modify, reproduce, make derivative works from, or otherwise replicate the Products, Software or Additional Products in any manner or for any purpose. Additionally, Buyer agrees to abide by the terms of any third party licenses or copyrights that may be included in the purchase of any Product or Additional Product manufactured or supplied by a third party. Notwithstanding the foregoing, the parties expressly agree that (a) the IP Rights do not include any Buyer Proprietary Information or Buyer data which is provided to Imatest, and (b) a Statement of Work signed by both parties may expressly

provide for Buyer's ownership of and rights in and to certain deliverables resulting from Imatest's Services, including but not limited to data, reports or charts generated as a result of the use of Products, Software or the Additional Products.

10. **SHIPMENT AND DELIVERY**.

a) Products. Delivery of any of the Products is F.O.B. (and for foreign shipments, F.O.B. Incoterms 2020) at the place of manufacture or warehouse location and may be shipped in several lots. Unless otherwise agreed to in writing by Imatest, Imatest will select the carrier and ship at the expense of Buyer, but shall not be deemed thereby to assume any liability in connection with the shipment, nor shall the carrier be construed to be the agent of Imatest. Buyer must provide its own insurance. Title and risk of loss or damage to all Products sold hereunder shall pass from Imatest to Buyer upon delivery by Imatest to the possession of the carrier, provided that Imatest reserves a purchase money security interest in the Products. Any claims for loss, damage or mis-delivery shall be filed with the carrier by Buyer. All Products shall be deemed finally inspected and accepted by Buyer within ten (10) days after delivery unless notice of rejection is given in writing to Imatest within such period. Acceptance shall constitute acknowledgement of full performance by Imatest of all obligations under this Agreement with regard to the Products except as stated at Section 13 (Limited Warranty for Products and Software).

b) Software. A link to download any Software licensed by Buyer will be provided electronically to the following email address unless otherwise agreed in writing by Imatest and Buyer: [_____].

11. **PROPRIETARY INFORMATION**.

a) Either party may have access to confidential and proprietary material and information ("***Proprietary Information***") belonging to the other party which the parties desire to remain confidential.

b) Proprietary Information shall include without limitation, the disclosing party's source code, business plans, customer and vendor lists and information, financial records, partnership arrangements and marketing plans and any other information that a party would reasonably consider proprietary and confidential.

c) Proprietary Information does not include (i) information generally available to the public, (ii) information the receiving party had in its possession prior to receiving it from or developing it for the disclosing party, (iii) information received from a third-party, or (iv) information independently developed by the receiving party without reference to information received pursuant to this Agreement from the disclosing party.

d) Each party agrees that the disclosing party's Proprietary Information will be kept strictly confidential by the receiving party and will not be disclosed to non-employees and agents, unless expressly authorized to do so by the disclosing party. The receiving party will protect the disclosing party's Proprietary Information from unauthorized use, access or disclosure in the same manner as the receiving party protects its own confidential or proprietary information of a similar nature, but not less than reasonable care. Each party shall have the right, in addition to any other rights it may have, and the other party hereby consents, to seek in any court having jurisdiction of a temporary or permanent restraining order or injunction enjoining the receiving party from breach of this Section. Notwithstanding the foregoing, any information that Buyer submits or shares with Imatest in connection with this Agreement may be used to improve the function, marketing or utilization of the Software, Products or may be used to otherwise enhance Imatest's ability to deliver Services without compensation to Buyer. This Section shall survive termination or cancellation of this Agreement for two (2) years, however, the obligation of confidentiality and non-use hereunder shall continue indefinitely after such 2-year period for any trade secrets of Buyer or Imatest until such trade secrets are no longer trade secrets.

12. **TERM AND TERMINATION**. This Agreement commences on the date of purchase of any Software, Products or Services and shall continue for so long as Buyer continues to use the Software, Products, or Services, or is terminated as set forth below. In the case of a Free Trial, the license rights to use the Software shall terminate immediately upon the conclusion of such Trial Period, and those provisions that survive this Agreement shall continue. Unless otherwise agreed in writing, the term of a Chart Files License shall be 12 months. Imatest may terminate this Agreement, an SOW or license at any time if Imatest notifies Buyer in writing that Buyer is in breach of a material provision of this Agreement, SOW or license, and such breach remains uncured after a period of thirty (30) days following such notice. If Imatest terminates due to Buyer's material breach, then (a) Buyer's

license to use the Software or Chart Files (as applicable) shall terminate; and (b) Buyer shall uninstall the Software and Chart Files from its computer systems and delete any copies. Upon termination or expiration of this Agreement for any reason, all SOWs and licenses will immediately terminate, Buyer will promptly pay Imatest all amounts owed to Imatest as of the effective date of termination or expiration, and each party will destroy or return all Proprietary Information (and copies thereof) of the other party in its possession.

13. **LIMITED WARRANTY FOR PRODUCTS AND SOFTWARE**.

a) Software. Imatest warrants that, for seven (7) days following the purchase date of the Software, the Software, when installed properly on hardware supported by the Software, will function substantially in accordance with any documentation provided by Imatest. Imatest is not obligated to provide warranty protection or Support Services for any claims resulting from a failure to meet hardware, software or other requirements provided by Imatest, modifications to the Software during the warranty period made by Buyer or any other causes beyond Imatest's control that may impact operation of the Software. Buyer's sole and exclusive remedy and Imatest's sole liability for breach of the foregoing warranty is to utilize the Support Services that are included with the Software purchase, or to receive a link to a new download of the Software.

b) Imatest Product Warranty. Imatest warrants that any Products which are manufactured by and purchased by Buyer from Imatest ("***Imatest Products***") shall be free from defects in materials and workmanship in accordance with Imatest specifications for a one (1) year period. All warranty periods begin on the date of shipment (the "***Imatest Warranty Period***") to Buyer, without regard to whether any claimed defects were discoverable or latent on the date of shipment.

i) *Warranty Procedure*. Provided that Buyer notifies Imatest in writing of any claimed defect in an Imatest Product promptly upon discovery, obtained prior authorization for the return (as described below) and returned the defective Imatest Product to the location designated below, transportation charges prepaid, including applicable duties, taxes, etc., within the Imatest Warranty Period and upon examination Imatest determines to its satisfaction that such Imatest Product is defective in material or workmanship, i.e. contains a defect arising out of the manufacture of the Imatest Product and not a defect caused by other circumstances, including, but not limited to the Excluded Conditions listed below or covered by Section 14 (Disclaimer of Warranties; Remedies). Imatest shall, at its option, repair or replace such Imatest Product or defective components. Imatest shall have reasonable time to make such repairs or to replace such Imatest Product. Any repair of Imatest Products shall not extend the Imatest Warranty Period. Replacement Imatest Products will have a one year Warranty Period from the date of shipment of such Replacement Product.

ii) *Excluded Conditions*. If the Imatest Products are modified or in any way altered, or repaired by anyone other than Imatest, without the explicit written consent of Imatest, or if the Imatest Product has suffered an accident, misuse, unforeseeable use, neglect, alteration, improper installation, improper adjustment, improper repair, improper testing or unusual physical, electrical or electromagnetic stress or interference, or used outside of Imatest's specifications, then the Imatest Warranty is null and void.

iii) *RMA*. Buyer must obtain a Return Merchandise Approval (RMA) number from Imatest prior to returning any claimed defective Imatest Product by sending an email with a detailed description of the issue to **sales@imatest.com**. Warranty returns will not be accepted without this RMA number. Buyer must mark the RMA number on the outside of the box and send it to Imatest at 2525 Frontier Ave. Suite B, Boulder, Colorado, 80301, USA.

c) Chart Files. Imatest provides no warranty for the Chart Files provided under the Chart Files License.

d) Third-Party Products. Products manufactured or supplied to Imatest for resale are warranted by the applicable manufacturer or supplier. Such warranties are as provided on the applicable Product webpage or may be obtained from such manufacturer or supplier. Imatest provides no warranty for any third-party Products, which carry only such warranties as provided by the manufacturer of those Products. Imatest hereby assigns any such third-party warranties to Buyer upon purchase of a third-party Product. Buyer shall make any warranty claims directly with such manufacturer or supplier.

e) Termination of Warranties. If Buyer shall fail to pay when due any portion of the purchase price, license fee or any other payment required from Buyer to Imatest under the Agreement, including under any purchase

order or otherwise, all warranties and remedies granted under this Section terminate without requirement for notice or other action as to the specific Products or Software not paid for.

14. **DISCLAIMER OF WARRANTIES**; **REMEDIES**. OTHER THAN AS PROVIDED IN SECTION 13 (LIMITED WARRANTY FOR PRODUCTS AND SOFTWARE), THE SOFTWARE, PRODUCTS, GRAPHIC FILES AND SERVICES ARE PROVIDED TO BUYER "AS IS." IMATEST HEREBY DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, REGARDING THE SERVICES, SOFTWARE (INCLUDING CUSTOM SOFTWARE), CHART FILES AND PRODUCTS, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. IMATEST SHALL NOT BE LIABLE FOR, AND BUYER ASSUMES ALL RISK OF, ANY FAILURE BY IMATEST TO PROVIDE ADVICE TO BUYER REGARDING THE PRODUCTS, SOFTWARE, CHART FILES OR SERVICES OR BUYER'S USE OF OR INABILITY TO USE THE SAME. IMATEST DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE, CHART FILES OR PRODUCTS WILL BE UNINTERRUPTED. IMATEST DOES NOT WARRANT SUITABILITY OF THE SOFTWARE, CHART FILES OR PRODUCTS FOR BUYER'S USE. BUYER SHALL BE RESPONSIBLE FOR DETERMINING THAT THE SOFTWARE, CHART FILES AND/OR PRODUCTS ARE SUITABLE FOR BUYER'S USE AND THAT SUCH USE COMPLIES WITH ANY APPLICABLE LOCAL, STATE OR FEDERAL LAW. IMATEST DOES NOT WARRANT ANY TEST RESULTS OR ERRORS CREATED BY BUYER'S FAILURE TO PROPERLY INSTALL OR USE THE SOFTWARE, CHART FILES OR PRODUCTS. NO REPRESENTATIVE OR PERSON IS AUTHORIZED TO BIND IMATEST FOR ANY OBLIGATIONS OR LIABILITY BEYOND THIS WARRANTY IN CONNECTION WITH THE SALE OF THE SOFTWARE, CHART FILES, PRODUCTS AND SERVICES. UNDER NO CIRCUMSTANCES SHALL IMATEST BE LIABLE TO BUYER UNDER ANY TORT, NEGLIGENCE, STRICT LIABILITY, OR PRODUCT LIABILITY CLAIM AND BUYER AGREES TO WAIVE SUCH CLAIMS. IMATEST'S SOLE AND EXCLUSIVE LIABILITY, AND BUYER'S SOLE AND EXCLUSIVE REMEDY, FOR ANY NONCONFORMITY OR DEFECT IN THE SOFTWARE, CHART FILES, PRODUCTS OR SERVICES OR ANYTHING DONE IN CONNECTION WITH THIS AGREEMENT OR ANY PURCHASE ORDER OR SOW, IN TORT (INCLUDING NEGLIGENCE), CONTRACT, OR OTHERWISE, SHALL BE LIMITED TO REPAIR AND REPLACEMENT OF THE DEFECTIVE SOFTWARE, CHART FILES, PRODUCTS OR SERVICES, OR A REFUND OF THE PURCHASE PRICE OF THE SOFTWARE, CHART FILES, PRODUCTS OR SERVICES, AT IMATEST'S SOLE OPTION. IN NO EVENT WILL IMATEST BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTED PRODUCTS BY BUYER.

15. **LIMITATION OF LIABILITY AND BUYER INDEMNITY**.

a) IN NO EVENT, REGARDLESS OF THE FORM OF ACTION, SHALL IMATEST BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL LOSSES OR DAMAGES ARISING OUT OF OR RELATED TO THE SALE OR USE OF THE PRODUCTS, SOFTWARE, OR SERVICES, INCLUDING, BUT NOT LIMITED TO, LOSSES OR DAMAGES ARISING OUT OF CLAIMS FOR LOSS OF USE, BUSINESS, GOODWILL, LOST PROFITS, OR LOST DATA, INCLUDING CLAIMS ARISING OUT OF THIRD-PARTY ACTIONS, REGARDLESS OF WHETHER SUCH THIRD-PARTY ACTIONS, OR ANY OTHER CLAIMS, LOSSES, OR DAMAGES, WERE REASONABLY FORESEEABLE TO BUYER OR IMATEST. BUYER'S EXCLUSIVE REMEDY ARISING OUT OF ITS PURCHASE AND USE OF IMATEST'S PRODUCTS, SOFTWARE, OR SERVICES, SHALL BE FOR DIRECT DAMAGES (SUBJECT IN ALL RESPECTS TO THIS AGREEMENT) AND NO CLAIM OR CLAIMS OF ANY KIND, WHETHER BASED UPON CONTRACT, WARRANTY, TORT INDEMNITY, CONTRIBUTION, OR OTHERWISE, SHALL BE GREATER IN AMOUNT IN AGGREGATE THAN THE PURCHASE PRICE PAID BY BUYER FOR THE PRODUCTS, SOFTWARE, OR SERVICES, IN RESPECT OF WHICH DAMAGES ARE CLAIMED. BUYER SPECIFICALLY ACKNOWLEDGES THAT IMATEST'S PRICE FOR THE PRODUCTS, SOFTWARE, OR SERVICES IS BASED UPON THE LIMITATIONS OF IMATEST'S LIABILITY AS SET FORTH IN THESE TERMS AND CONDITIONS.

b) Buyer shall indemnify and hold harmless Imatest, its officers, managers, members, employees, subsidiaries, parents, affiliates and insurers from and against any and all liabilities, damages, losses, claims, lawsuits, including costs and expenses and reasonable attorney fees incurred in connection therewith, for death or injury to any persons or loss of any property whatsoever, caused in any manner by Buyer's possession, use or operation of the Products, Software, or Services. Further, to the extent permitted by applicable law, Buyer will reimburse, indemnify, defend and hold harmless Imatest, its officers, managers, members, employees,

subsidiaries, parents, affiliates, and insurers against any penalties, fines, damages and claims due to failure to comply with Buyer's obligations in Sections 18 (Export) and 19 (FCPA).

16. **LIABILITY FOR INFRINGEMENT**. Imatest shall defend any suit or proceeding brought against Buyer to the extent that it is based on a claim that any Products manufactured by Imatest or any Software or Chart File purchased by Buyer infringes in construction or design of a United States patent or intellectual property rights of any person or entity ("***Infringing Materials***"), and shall indemnify Buyer against all costs, damages, and expenses finally awarded against Buyer and payment of any settlement amount provided that Buyer notifies Imatest promptly in writing of any such claim and gives Imatest full and complete authority, information and assistance for the defense of such claim and provided further that Imatest shall have sole control of the defense and of the negotiations for settlement, if any, of such claim. If the Infringing Materials are or in Imatest's judgment may become the subject of any claim of intellectual property infringement, or if a court determines the Infringing Material infringes any intellectual property right then Imatest may, at its sole option and expense, (a) procure for Buyer the right to continue using such Infringing Materials, (b) replace such Infringing Materials with a suitable non-infringing item, (c) suitably modify such Infringing Materials, or (d) refund the purchase price of such Infringing Materials, less depreciation at twenty percent (20%) per year, upon its return to Imatest. Imatest shall not be liable for any cost or expense incurred without Imatest's written authorization, nor shall Imatest be liable for any lost profits related to such Infringing Materials. Imatest shall not be obligated to defend or be liable for costs and damages if the infringement arises out of compliance with Buyer's specification or from a combination with or an addition to products not manufactured or developed by Imatest or a modification of the Products or Software after delivery or the use of Products or Software beyond that established by Imatest or approved in writing by Imatest. THE FOREGOING STATES THE ENTIRE LIABILITY OF IMATEST, AND THE EXCLUSIVE REMEDY OF BUYER, WITH RESPECT TO ANY ALLEGED PATENT OR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT BY THE PRODUCTS, SOFTWARE OR CHART FILES.

17. **INDEPENDENT CONTRACTOR**. Imatest and Buyer are independent contractors. Nothing in this Agreement or the performance of any Services should be construed as a joint venture, employment or agency relationship between the parties. Notwithstanding the foregoing, either party may acknowledge or disclose the existence of a professional relationship between the parties.

18. **EXPORT**. Regardless of any disclosure made by Buyer to Imatest of the ultimate destination of the Products or Software, Buyer shall not export either directly or indirectly any Products or Software either in contravention of the statute or regulation of the United States governing exports ("***Export Law***") or without first obtaining all required licenses and permits from the United States Department of Commerce, Department of State, and any other relevant agencies or departments of the United States government. Buyer shall not directly or indirectly export any Products or Software to any country or individual to which such export or transmission is banned, restricted, or prohibited by any agency of the United States government. Buyer will timely pay any fine, penalty, or charge by any governmental agency charged against Buyer and/or Imatest or paid by Imatest due to any violation of any Export Law by Buyer, together with Imatest's costs and reasonable attorneys' fees for responding to or dealing with such violation. In the event Buyer violates any Export Law, Imatest may suspend sales to Buyer until such time as Imatest determines that such violation is being remedied, payments made as required above, and steps taken to ensure Buyer's future actions will comply with all Export Laws. Any import or export fees or duties assessed to the Products or Software will be paid by Buyer.

19. **FCPA**. Buyer will comply, and will cause its employees, agents and representatives to comply, with the U.S. Foreign Corrupt Practices Act which makes it unlawful for anyone acting on behalf of a U.S. Company or U.S. citizen to corruptly offer, pay, promise or authorize to pay any money, gift or anything of value, including but not limited to bribes, entertainment, kickbacks or any benefit, (a) directly to any official or employee of a foreign government or a public international organization or any foreign political party or candidate for political office or official of a public international organization, or (b) directly or indirectly to any person while knowing or suspecting that the payment or gift will be passed on to a foreign government official, all with the intent of

causing the government official to misuse such official's position to obtain or retain business or to secure any improper advantage. If Buyer is not a U.S. company, then such compliance shall be as though Buyer and such individuals were citizens of the United State of America.

20. **ASSIGNMENT**. This Agreement shall be binding upon and inure to the benefit of Buyer and Imatest and their respective legal representatives, successors and permitted assigns. Buyer may not assign any of its rights or delegate any of its obligations hereunder, in whole or in part, without the prior written consent of Imatest, not to be unreasonably withheld. Notwithstanding the foregoing, Imatest may subcontract any portion of the work on any item subject to this Agreement provided that Imatest's obligations and rights hereunder shall not be limited nor affected by such subcontract.

21. **ENTIRE AGREEMENT**. Except in the case of separate agreement that has been countersigned by both Imatest and Buyer, this Agreement and any mutually executed SOW(s) or separate agreement(s) constitutes the entire agreement between the parties relating to the sale of the Products, the Software, and performance of Services (if any), and no addition to or modification of any provision of this Agreement shall be binding upon Imatest unless agreed to in writing by Imatest. In the event of any conflict between this Agreement and any separately executed SOW or agreement, the SOW or agreement shall govern only as to the scope of such SOW or separate agreement. In all other cases, this Agreement shall control unless the SOW or separate agreement specifically references this Agreement and describes the provision of this Agreement that should be superseded or amended by the SOW or separate agreement.

22. **MARKETING**. Unless otherwise agreed in writing by the parties in a separate Non-Disclosure Agreement that expressly restricts marketing or disclosure of Buyer as a customer of Imatest, Imatest may use Buyer's name and logo in marketing and other promotional materials (including the Imatest website) for the sole purpose of identifying Buyer as a customer of Imatest beginning on the first date Buyer purchased the Software or any Product.

23. **NON-WAIVER; REMEDIES**. No waiver of any breach of these Terms and Conditions shall constitute a waiver of any prior or subsequent breach of any similar or dissimilar provision or a modification of this Agreement. All Imatest rights and remedies, whether evidenced hereby or by any other contract or document, shall be cumulative and non-exclusive and may be exercised singularly or concurrently.

24. **NOTICES**. All notices given under this Agreement shall be in writing, mailed by first class mail, certified or registered, delivered by hand to the address of the party set forth in the quotation, sent via electronic mail to the address provided by Buyer, or otherwise associated with the licensed copy of Buyer's account if purchased from a third-party other than Imatest when purchasing or registering the Software or Products, or to such other address as such party may designate from time to time by such notice, and shall take effect when received.

25. **SEVERABILITY**. If any provision of this Agreement is deemed unenforceable for any reason, such provision shall be changed and interpreted to accomplish the objective of such provision to the greatest extent possible under applicable law. All remaining provision will continue in full force and effect.

26. **SURVIVAL**. Section 2 (Software License), Section 3 (Chart Files License), Section 9 (Ownership of Intellectual Property), Section 11 (Proprietary Information), Section 13 (Limited Warranty), Section 14 (Disclaimer of Warranties; Remedies), Section 15 (Limitation of Liability and Buyer Indemnity), Section 16 (Liability for Infringement), Section 17 (Independent Contractor), Section 18 (Export), Section 19 (FCPA), Section 22 (Marketing), Section 23 (Non-Waiver; Remedies), Section 25 (Severability), Section 27 (Applicable Law; Actions to Recover Damages), and Section 28 (Jurisdiction and Venue; Attorney Fees) and any other provision which is intended to survive will survive the expiration, termination or cancellation of this Agreement for any reason.

27. **APPLICABLE LAW; ACTIONS TO RECOVER DAMAGES**. The validity, performance and construction of this Agreement shall be governed by the laws of the State of Colorado, except for the conflicts of laws principles thereof which would cause the laws of a different jurisdiction to apply. If any provision of this Agreement is held to be unenforceable, such holding shall not affect the enforceability of any other provision. Any legal presumption that the terms of this Agreement shall be strictly construed against the party who drafted such terms or who benefits from such terms shall not be employed in construing and interpreting this Agreement. Prior to commencement of any legal proceedings, Buyer and Imatest shall meet at a senior level to attempt to resolve differences. Notwithstanding any attempts to resolve differences or negotiations regarding such differences, any action brought by Buyer against Imatest arising out of this Agreement or Buyer's purchase and use of the Products, Software, or Services must be commenced within one (1) year after such action accrues and in no event later than two (2) years after the date of shipment, delivery, or performance of such Products, Software, or Services, as applicable.

28. **JURISDICTION AND VENUE; ATTORNEY FEES**. Buyer and Imatest consent and submit to the exclusive jurisdiction of the state courts located in Boulder, Colorado, and the federal courts located in Denver, Colorado, USA in connection with any suits or other actions arising between the parties to this Agreement, and consents and waives any objections to the venue of such action or proceeding in such courts. The prevailing party in any legal action brought by one party against the other will be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses, including court costs and reasonable attorneys' fees.

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