

Midmark Smart View Terms of Use

Last Updated: March 15, 2024

This Midmark Smart View Terms of Use ("Terms of Use") is a legally binding agreement between Midmark Corporation, an Ohio corporation ("Licensor" or "Midmark") and the end user entering into these Terms of Use with Midmark ("You," "Your," or "Licensee").

CAREFULLY READ THESE TERMS OF USE. BY CLICKING THE "ACCEPT" BUTTON, OR BY ACCESSING AND USING THE SMART VIEW PRODUCT OFFERING, YOU AGREE TO BE BOUND BY THESE TERMS OF USE AND REPRESENT THAT YOU ARE DULY AUTHORIZED TO ACCEPT THESE TERMS OF USE ON BEHALF OF YOURSELF OR YOUR ORGANIZATION. IF YOU DO NOT AGREE TO THESE TERMS OF USE, THEN DO NOT CLICK THE "ACCEPT" BUTTON OR OTHERWISE ACCESS THE SERVICES.

These Terms of Use do not apply to the purchase, delivery, or other maintenance or support service(s) for any Midmark connectible device(s), which shall be governed by the terms of Your separate agreement(s) for such Midmark device(s) or service(s).

These Terms of Use govern Your access to the Services, however acquired, including via an authorized distributor or reseller of Midmark. If You are a Customer acquiring the Services through a Midmark reseller or distributor, then these Terms of Use are by and between Midmark and You.

WHEREAS, Midmark is the entity responsible for creating, developing, and distributing the Services covered by these Terms of Use;

WHEREAS, You desire to access the Services provided by Midmark;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, Midmark and You agree as follows:

1. Definitions. Terms not otherwise defined herein shall have the following meanings:

"Access Credentials" means the user identification name and password and/or other access keys or controls for the Services.

"Applicable Data Protection Law" means all applicable laws and regulations relating to the privacy, confidentiality, security, or protection of Personal Data, including, without limitation, the California Consumer Privacy Act.

"Authorized Users" means individuals authorized by You to access the Services solely on Your behalf, which may include, employees, temporary employees, and contractors but no other third parties without Midmark's prior written consent.

"Customer" means the end user purchasing or otherwise receiving the benefit of the Services.

"Customer Data" means any information transmitted to the Services via a Midmark Connectible Device(s) or otherwise uploaded or stored to the Services by Authorized Users including information necessary to set-up an Authorized User's account.

"Documentation" means user manuals, online help files, technical manuals, and other materials published by Midmark that describe the Services

and its uses, features, specifications, and/or technical requirements.

"Midmark Connectible Device(s)" means internet-connectible device(s) and/or sensor(s) provided by Midmark that collect and transmit information regarding the device to the Services. These Terms of Use do not govern the purchase, delivery, or other maintenance or support service(s) for a Midmark Connectible Device(s).

"Malicious Code" means (i) any code, program, or sub-program the knowing or intended purpose or effect of which is to damage or maliciously interfere with the operation of a computer system containing the code, program or sub-program, or to halt, disable, or interfere with the operation of the software, code, program, or sub-program, itself, or (ii) any device, method, or token that permits any person to circumvent without authorization the normal security of any software or system containing the code.

"Order Form" means the quote or order form (whether in paper or electronic form) that sets forth the specific Services that a Customer is subscribing to, together with all other pertinent details of a Customer's subscription including, but not limited to the applicable Subscription Term, permitted numbers of Authorized Users, pricing, and any other terms or restrictions.

“Personal Data” means any information provided by You to Midmark, or otherwise Processed by Midmark on Your behalf that identifies, either alone or in combination with other information, an individual or from which identification or contact information of an individual can be derived.

“Process, Processing, and Processed” means any operation or set of operations that is performed upon Personal Data or Processed Data, whether or not by automatic means, including, but not limited to, collection, recording, organization, storage, access, adaptation, alteration, retrieval, consultation, use, disclosure, dissemination, making available, alignment, combination, blocking, deletion, erasure, or destruction.

“Processed Data” means all information that is collected by Midmark through the Services, or to which Midmark has access that relates to You and Your Authorized Users' use of the Services. Processed Data includes, but is not limited to, Customer Data and the results generated through use of the Services.

“Services” means the internet-based Midmark Smart View product offering that is designed to be used in connection with a Midmark Connectible Device(s) to provide Authorized Users with certain information collected through Midmark Connectible Device(s). Midmark hosts and provides the infrastructure necessary to host and operate the Services including hardware, software, applications, and data storage. The Services also include the Documentation associated with the Services.

“Subscription Term” means the length of Your subscription as set forth in the Order Form.

“Updates” means the software releases by Midmark, which may include, but are not limited to, error corrections, workarounds, and/or other enhancements to the Services during the Subscription Term. Updates shall be considered Services governed by these Terms of Use. Updates exclude new products for which Midmark generally charges a separate license fee or upgrade fee.

2. License Grant. Midmark hereby grants to You and Your Authorized Users, a non-exclusive, non-transferable, non-sublicensable, limited right to access and use the Services for Your internal business purposes in connection with Customer's use of a Midmark Connectible Device(s) during the Subscription Term, subject to the terms of any applicable Order Form, the Documentation, and these Terms of Use. All rights not expressly granted to You are reserved to Midmark.

3. Usage Restrictions. In addition to any other limitations set forth herein and in the Order Form, You agree (i) not to copy, download, modify, or translate any software and/or database hosted as part of the Services in any manner not authorized by these Terms of Use; (ii) not to reverse engineer, decompile, or disassemble any software and/or database hosted as part of the Services, or otherwise attempt to discover the underlying source code of the Services; (iii) not to tamper with, bypass, or alter the security features of the Services or any of the hosted infrastructure; (iv) not to rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise provide any access to or use of the Services or any features or functionality of the Services to any person or entity other than Your Authorized Users, or use the Services to run an outsourcing business; (v) not to use the Services or Documentation in violation of any law, regulation, or rule, including for any illegal, obscene or threatening purpose; and (vi) not to use the Services or Documentation for purposes of competitive analysis, the development of a competing software product or service, or any purpose that is detrimental to Midmark or to its commercial disadvantage.

4. Your Obligations; Customer Data.

4.1 Only Authorized Users may access the Services and solely for Your internal business purposes. All access to the Services by Your Authorized Users must comply with these Terms of Use. Your Authorized Users will be granted access to the Services through individual usernames and passwords. You will ensure that each Authorized User uses a unique username and password and that such usernames and passwords are not shared. You shall promptly notify Midmark if any Authorized User's username or password has been or is suspected of being lost, stolen, or compromised. You are liable for, and shall indemnify and hold Midmark and its officers, directors, employees, affiliates, and agents harmless from any damages, claims, or expenses arising from Your or Your Authorized Users' breach of these Terms of Use (including the entirety of this Section 4 and any terms incorporated by reference into these Terms of Use) and for any access to the Services through Your Access Credentials. You shall implement appropriate security measures to safeguard Your Access Credentials.

4.2 You must maintain all hardware, software, and network connectivity needed to connect to the Services, including but not limited to the minimum (system) requirements set forth in the Documentation, if any.

4.3 The Services provide for access and use only by persons located in the United States. You acknowledge that You may not be able to access all or some of the Services outside of the United States and that access thereto may not be legal by certain persons or in certain countries. If You access the Services from outside the United States, then You are responsible for compliance with local laws.

4.4 To the extent that You have any rights in any Processed Data, You hereby grant to Midmark a perpetual, worldwide, non-exclusive, transferable, royalty-free license to use such Processed Data without restriction, including, but not limited to, using the Processed Data to provide the Services to You, sharing the Processed Data with Your selected authorized distributor(s) and/or preferred service provider(s), and as otherwise set forth in these Term of Use and in the Midmark Privacy Policy viewable at <https://www.midmark.com/about-us/legal>. By submitting or transmitting Customer Data to the Services, You represent and warrant that You are the owner of and/or have all necessary right and consents to permit Midmark to use the same in accordance with these Terms of Use without violating the rights of any third party.

4.5 You will use reasonable security precautions in light of Your access to the Services. You agree to implement commercially reasonable actions and precautions to prevent the introduction and proliferation of Malicious Code into the Services.

4.6 You will reasonably cooperate with any investigations or audits by Midmark into service outages, security problems, connectivity issues with a Midmark Connectible Device(s), and/or suspected breaches of these Terms of Use. You will not seek to block or otherwise interfere with such investigations or audits. You agree to allow Midmark access to Your premises, computers (including, but not limited to, hardware, software, and network Services), and personnel at all reasonable times for the purposes set forth in this Section 4.6.

5. Midmark Security. Midmark shall implement and maintain appropriate technical, physical, and organizational controls to secure the Services and to protect the security, confidentiality, and integrity of the Customer Data in accordance with the Applicable Data Protection Law.

6. Intellectual Property Rights.

6.1 The Services and associated software and databases are owned by Midmark (and its licensors) and are protected by applicable intellectual property laws and regulations, including U.S. and international copyright laws. As between the parties

hereto, Midmark retains all right, title, and interest in and to the Services and any derivative works that are created and/or developed based, in whole or in part, on access to and use of the Services. Nothing herein shall operate to transfer or convey to You any rights in the Services and/or software or databases hosted as part of the Services. You agree to promptly notify Midmark if You become aware of, or suspect any unauthorized, access, use, or misuse of the Services.

6.2 Except as otherwise set forth in these Terms of Use, a Customer retains all right, title, and interest in and to its Customer Data. To the extent You provide Midmark with any feedback, ideas, or technical improvement suggestions about the Services ("Feedback"), You acknowledge and agree that Midmark will be the owner of all such Feedback and may use and incorporate the Feedback into the Services without compensation or attribution to You. Further, You acknowledge and agree that Midmark shall have the right to de-identify and aggregate Processed Data and use it for Midmark's own purposes, including to analyze trends, perform market research, improve the Services, and develop other products and technologies and that Midmark will own all such de-identified Processed Data.

6.3 All trademarks on or related to the Services are the sole and exclusive property of Midmark and are protected by U.S. and international trademark laws. Nothing in these Terms of Use shall give You any right, title, or interest in or to Midmark's trademarks, nor give You any right to use Midmark's trademarks for any purpose without the prior written approval of Midmark. You agree that You will do nothing inconsistent with Midmark's ownership of its trademarks and will neither register, nor attempt to register, any trade name or trademark that, in whole or in part, incorporates or is confusingly similar to any of Midmark's trademarks.

6.4 Portions of the Services may utilize or include third party software, open-source software, and other copyrighted material. Use of third party or open-source software by You is governed exclusively by their respective terms and not by these Terms of Use.

7. Confidentiality

7.1 Each party, as a recipient ("Recipient"), agrees to use the disclosing party's ("Discloser") Confidential Information solely for the purposes of performing its obligations or exercising its rights under these Terms of Use. Recipient will not disclose Discloser's Confidential Information to any third party other than its Authorized Recipients. As used herein, "Authorized Recipients" are a party's and its

affiliates' officers, employees, agents, and consultants who require access to the Confidential Information for the purposes set forth in these Terms of Use and who are bound by confidentiality obligations at least as stringent as those set forth herein. Recipient shall use commercially reasonable standards to protect the Confidential Information from disclosure using equal measures as it uses to protect its own Confidential Information of a similar nature.

7.2 The obligations set forth in this Section 7 shall survive until five years from the termination or expiration of these Terms of Use except with regard to trade secret information, which shall be protected for the statutory period.

7.3 "Confidential Information" refers to any proprietary information, software, data, or know-how of the Discloser that is disclosed under these Terms of Use that is marked as confidential or that a reasonable person would understand to be confidential based on the context of the disclosure or the nature of the information. For purposes of clarification, the Services and Documentation shall be Midmark's Confidential Information. Confidential Information does not include information that the Recipient is able to demonstrate through written evidence: (i) was already known to the Recipient prior to the time that it was disclosed by the Discloser; (ii) is or has entered the public domain through no breach of these Terms of Use by Recipient; (iii) has rightfully been received by Recipient from a third party without any breach of these Terms of Use; (iv) was approved for release by the written consent of the Discloser; (v) was independently developed by the Recipient without use of the Discloser's Confidential Information; or (vi) was required to be disclosed pursuant to the order of a court or governmental agency of competent jurisdiction provided that the Discloser has, if permitted by law, been given reasonable notice of the order and the opportunity to contest the disclosure and any such disclosure is limited strictly to the Confidential Information that is the subject of such order.

8. Term and Termination; Suspension.

8.1 Term. These Terms of Use shall continue in full force and effect for the Subscription Term. You may terminate these Terms of Use as they apply to You as set forth in the Order Form or as otherwise described herein.

8.2 Termination or Suspension. Midmark may, at its option, terminate these Terms of Use for cause or suspend the Services if: (i) Midmark reasonably believes that the Services are being accessed or used in violation of law or the terms of these Terms of

Use; (ii) Your access or use of the Services interferes with the normal operations of the Services or other customer(s) use of the same; (iii) there is an attack on the Services or Your server(s), Your server is accessed or manipulated by a third party without Your consent, or there is another event for which Midmark reasonably believes suspension of the Services is necessary to protect the Midmark network or Midmark's other customers; (iv) Your payment of any invoiced amount is overdue and You fail to pay the overdue amount within ten calendar days of Midmark's written notice; (v) You breach any obligation relating to Midmark's (or its suppliers') intellectual property rights; or (vi) You materially fail to comply with any other provision of these Terms of Use and do not remedy that failure within 15 calendar days of Midmark's notice to You describing the failure in reasonable detail. Midmark may also terminate these Terms of Use or suspend the Services in accordance with any termination provision in the Order Form. Midmark will endeavor to give You advance notice of pending suspension or termination under this Section 8 of at least 12 hours unless Midmark determines, at Midmark's sole discretion, that a suspension on no or shorter notice is necessary to protect Midmark, its customers, or others. You may terminate these Terms of Use for a material breach by Midmark that remains uncorrected after the giving by You of not less than 30 days' prior written notice of the breach to Midmark or in accordance with any termination provision in the Order Form.

8.3 Effect of Termination. Upon termination of these Terms of Use: (i) You will cease accessing the Services; (ii) each party shall use commercially reasonable efforts to return or destroy all Confidential Information in accordance with Section 7; and (iii) You will permanently delete from any hardware and storage device all downloads and backup copies of any Midmark information obtained from the Services. Upon request, You agree to provide Midmark with written certification that all information from the Services has been removed and deleted from all of Your hardware and storage devices. Termination of these Terms of Use will not relieve a party from any accrued payment obligations. Midmark will not be liable to You for any claims or damages of any kind arising out of termination of these Terms of Use or suspension of Services in accordance with this Section 8.

8.4 In the event that Midmark is required to, or reasonably believes it has cause to, discontinue offering the Services in response to allegations made by a third party that the Services infringe that third party's or another third party's intellectual property rights, then Midmark may, in its sole discretion: (a)

obtain for You the right to continue using the Services on a non-infringing basis; (b) modify the Services so they are no longer infringing but of equivalent functionality, performance, and interoperability; or (c) terminate these Terms of Use and discontinue the provisioning of the Services, *provided that* it will issue You a pro rata refund or credit for any prepaid fees with regard to periods after termination.

9. Fees and Payment Terms. Any fees applicable to the Services shall be set forth in, and shall be payable as stated in, the Order Form.

10. Support Services. Throughout the Subscription Term, Midmark shall provide support services to You as provided in this Section 10. Midmark shall provide and install Updates on an as-needed basis to maintain the Services in conformance with its Documentation. All Updates shall be released in a manner designed to minimize disruption to Your access to and use of the Services. In addition to the release of Updates, Midmark shall also provide reasonable amounts of telephonic and/or email-based technical support for the Services during Midmark's normal business hours of 8:00 am to 5:00 pm, Eastern time, Monday - Friday, excluding U.S. holidays. Midmark's telephone number for telephonic support is 1.800.MIDMARK and its email address for email-based technical support is techsupport@midmark.com. These Terms of Use do not include any onsite software support services. If onsite support is required to be performed by a Midmark authorized representative, then additional charges, including but not limited to, hourly labor, travel, meals, lodging, and related expenses shall apply.

11. Representations and Warranties; Disclaimers.

11.1 Midmark warrants that: (a) the Services will substantially perform in accordance with applicable Documentation; (b) it will use commercially reasonable efforts, in accordance with industry standard practices, to protect the Services from the introduction of Malicious Code; and (c) it will perform the support services in a professional and workmanlike manner in accordance with applicable industry standards. You shall notify Midmark of any non-compliance with the foregoing warranties within 30 days after the event giving rise to the breach of warranty occurs. Upon receipt of a timely breach of warranty claim, as Your sole and exclusive remedy and Midmark's sole obligation for a breach of the warranties in this Section 11.1, Midmark shall use commercially reasonable efforts to repair or replace any Services or reperform any support services that do not conform with the

foregoing warranties.

11.2 EXCEPT FOR THE LIMITED WARRANTIES SET FORTH ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MIDMARK DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTIES, DUTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, RELIABILITY OR AVAILABILITY, ACCURACY OR COMPLETENESS, WORKMANLIKE EFFORT, LACK OF VIRUSES, AND LACK OF NEGLIGENCE. MIDMARK DOES NOT REPRESENT THAT THE SERVICES WILL BE COMPLETELY SECURE, WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF OR ACCESS TO THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, THAT ANY INFORMATION GENERATED, POSTED, MAINTAINED, OR ACCESSED WILL BE ACCURATE, TIMELY, OR COMPLETE, OR THAT DEFECTS IN THE SERVICES WILL BE CORRECTED.

12. LIMITED LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL MIDMARK BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR OTHER DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST BUSINESS, OR LOST DATA, RELATING TO THE SERVICES OR THE PROVISION OR FAILURE TO PROVIDE THE SERVICES OR SUPPORT THEREFOR, WHETHER OR NOT DUE TO MIDMARK'S NEGLIGENCE. MIDMARK'S TOTAL, AGGREGATE LIABILITY FOR ANY DAMAGES OR CLAIMS ARISING UNDER THESE TERMS OF USE OR RELATED TO THE SERVICES SHALL IN NO EVENT EXCEED THE AMOUNT PAID BY YOU FOR ACCESS TO THE SERVICES UNDER THE APPLICABLE ORDER IN THE TWELVE (12) MONTH PERIOD BEFORE THE CLAIM AROSE. THE FOREGOING LIMITATIONS AND DISCLAIMERS APPLY TO DAMAGES HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY, OR OTHERWISE, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

13. Indemnification.

13.1 You shall indemnify, defend, and hold harmless Midmark and its affiliates, employees, agents, officers, directors, shareholders, representatives, successors, and assigns from and against any loss, liability, cause of action, cost, or expense (including reasonable attorneys' fees) arising from, in connection with, or related to: (i) any breach of these Terms of Use by You, any employee or agent of You, or any Authorized User, (ii) the acts and omissions of You, Your employees and agents, or any Authorized User, in connection with Your, its,

or their accessing or use of the Services, and (iii) the violation, infringement, or misappropriation by You, any employee or agent of You, or any Authorized User of the intellectual property rights of Midmark.

14. Export Regulation. You agree to abide by and to conform to any and all export regulations in force during the Subscription Term that are applicable to You or the Services provided, including but not limited to any export rules and regulations of the United States of America. You understand that these regulations may prohibit the export or re-export of Documentation, and any information or technical data related to the Services. The Services and the underlying information and technology may not be accessed, downloaded, or otherwise exported or re-exported (i) into (or to a national or resident of) any country to which the U.S. has embargoed goods; or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders.

15. Modifications. Midmark reserves the right to change or modify the terms of these Terms of Use at any time upon written notice to You. All such changes will: (a) be applied prospectively; and (b) will apply to all similarly situated users of the Services. If any changes to these Terms of Use are unacceptable to You, then You may terminate Your access to the Services by providing ten days' written notice of termination to Midmark, delivered at any time within 30 days of the effective date of the change. Continued access in or use of the Services following the effective date of any changes constitutes Your acceptance of the changes but does not affect the foregoing right of termination. For purpose of this Section 15, the posting of an updated copy of these Terms of Use to the Services shall constitute written notice of the change(s) to these Terms of Use.

16. Miscellaneous.

16.1 Notices. Except as otherwise provided herein, notices under these Terms of Use will be deemed to be sufficiently given, effective on the date received, when delivered personally or by overnight express, or nationally recognized courier services, or three business days after mailing when sent by certified or registered mail, postage prepaid. Notice required to be given to You hereunder will be sent to the address specified in the Order Form or that otherwise made available by You during registration. Notice required to be given to Midmark should be sent to Midmark Corporation, attention Legal Counsel, at 60 Vista Dr., Versailles, OH 45380.

16.2 Entire Agreement. The Order Form together with these Terms of Use and any other terms and conditions incorporated into these Terms of Use by reference constitutes the complete agreement between Midmark and You regarding access to and use of the Services and supersedes all previous communications between the parties relating to the subject matter herein.

16.3 Assignment; Relationship. You may not assign these Terms of Use or the license granted hereunder without Midmark's prior written consent. The parties' relationship is that of independent contractors. Neither party is an agent for the other, nor does either party have the right to bind the other to any agreement with a third party.

16.4 Governing Law. These Terms of Use shall be governed by the laws of the State of Ohio without reference to its conflicts of law principles. Each party hereby consents to the exclusive personal jurisdiction and venue of the federal and state courts located in Montgomery County, Ohio. The parties expressly exclude the United Nations Convention on Contracts for the International Sale of Goods from application to these Terms of Use. The parties agree that any claim arising out of or related to these Terms of Use must be brought within one year after the date it first accrued.

16.5 Force Majeure. Except for payment obligations, neither party shall be held responsible for any delay or failure in its performance to the extent that such delay or failure is caused by causes beyond its reasonable control.

16.6 Conflict; Captions. If any part of these Terms of Use is found unenforceable by a court of competent jurisdiction, then such provision(s) will be ineffective to the extent of the court's ruling and the remainder of these Terms of Use will remain in full force and effect. The captions used in these Terms of Use are for convenience only and are not binding.

16.7 Waiver. Midmark's failure to enforce any rights hereunder, irrespective of the length of time for which such failure continues, shall not constitute a waiver of those or any other rights. The waiver by a party of any breach of any provision of these Terms of Use will not operate or be construed as a waiver of any subsequent breach.