

# Midmark Corporation End-User License Agreement

READ THIS MIDMARK CORPORATION END-USER LICENSE AGREEMENT (AGREEMENT) CAREFULLY BEFORE INSTALLING THE ACCOMPANYING SOFTWARE. BY INSTALLING THE SOFTWARE, YOU (USER) ARE AGREEING TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, THEN DO NOT USE OR INTALL THE SOFTWARE AND CONTACT MIDMARK WITH RESPECT TO PROCEDURES FOR OBTAINING A REFUND.

## 1 Definitions

- 1.1 **Authorizing Agreement** means the written agreement between Midmark and User, or alternatively the order form and other documents provided by Midmark confirming the purchase, in each case identifying the purchase of the Software or device to which the Software relates, and the rights and responsibilities with respect to the Software.
- 1.2 **Limited Warranty** means the Midmark Limited Warranty, if any, supplied separate from the terms and conditions of this Agreement.
- 1.3 **Midmark** means Midmark Corporation.
- 1.4 **Software** means all software accompanied by this Agreement, including all documentation, explanatory written materials and files, content, and code, whether on disks, in read-only memory, embedded into the device, as a standalone application or in a connected network environment, or on any other media or in any other form, as well as Software Updates.
- 1.5 **Software Updates** means Software updates and upgrades provided to the User subsequent to original retail purchase, whether supplied at no cost or purchased by User.
- 1.6 **User** means the persons and/or entities authorized by Midmark to use the Software, pursuant to the Authorizing Agreement, and any purchaser of the Software to which this Agreement has been assigned in accordance with the terms and conditions of this Agreement.

2 **Limited Use License; Permitted Uses:** Subject to the terms and conditions of this Agreement and the Software Authorizing Agreement, Midmark grants User a non-exclusive, non-transferable, perpetual license to use the Software for the scope of license for which User has been authorized pursuant to its Authorizing Agreement. Each Software license is authorized for one (1) User to access the Software at any time.

3 **Restrictions on License and Use:** Any installation or use of the Software not expressly permitted under this Agreement is prohibited. By way of example and not of limitation, except as set forth in the Authorizing Agreement, User may not: (i) copy, distribute, publish, disclose, decompile, reverse engineer, disassemble, attempt to derive the source code of, decrypt, or create derivative works of the Software, or any part thereof; or (ii) rent, lease, lend, sublicense, or assign any rights under this Agreement, except in accordance with the Assignment subsection of this Agreement.

- 3.1 The Software may be provided to User on an emergency or trial basis. In that event, this Agreement shall apply, except: (i) User's license shall not be transferable, User will have no access to Software Updates, and the Limited Warranty shall not apply; and (ii) notwithstanding the Limited Use License subsection of this Agreement, User's use of and access to the Software and the duration of the license provided may be terminated at any time by Midmark in its sole discretion.

4 **Application to Software Updates:** Midmark may from time-to-time make Software Updates available to User, whether at no cost or for purchase. User acknowledges and agrees that all Software Updates are subject to the terms and conditions of this Agreement.

5 **Ownership of Intellectual Property:** User acknowledges and agrees that all copyright and other intellectual property rights in and to the Software are solely and exclusively retained and maintained by Midmark and, to the extent applicable, its licensors, and the User's rights are only as a licensee subject to the terms and conditions of this Agreement.

6 **Developments:** In the event User makes modifications, improvements, or any other changes to the Software, whether in breach of this Agreement or as consented to by Midmark, all intellectual property and other ownership rights in such changes shall be exclusively owned by Midmark. User shall timely notify Midmark of any such changes, and User shall timely execute such agreements and other documents reasonably requested by Midmark to vest in Midmark all rights in and to those changes.

7 **Termination:** This Agreement and all license rights of User in and to the Software shall automatically terminate upon User's failure to comply with any terms or conditions of this Agreement or the Authorizing Agreement, or upon destruction of all of the Software in User's possession.

8 **Disclaimer of Warranties:** The Limited Warranty, if any, separately provided to User constitutes the sole warranty made by Midmark with respect to the Software.

- 8.1 EXCEPT AS SET FORTH IN THE LIMITED WARRANTY, USER ACKNOWLEDGES AND AGREES THAT THE SOFTWARE AND SOFTWARE UPDATES ARE PROVIDED "AS-IS," WITH ALL FAULTS, AND WITHOUT ANY OTHER WARRANTIES OF ANY KIND, AND THAT MIDMARK AND ITS LICENSORS DISCLAIM ANY AND ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. MIDMARK AND ITS

LICENSORS DO NOT WARRANT THAT THE SOFTWARE AND SOFTWARE UPDATES: (i) ARE ERROR FREE; (ii) CAN BE USED WITHOUT PROBLEMS OR INTERRUPTIONS; (iii) ARE FREE FROM VULNERABILITY TO INTRUSION OR ATTACK BY VIRUSES OR OTHER METHODS; OR (iv) WILL MEET USER'S REQUIREMENTS.

9 **Limitations on Liability**

9.1 EXCEPT SUCH REMEDIES AS SET FORTH IN THE LIMITED WARRANTY, MIDMARK AND ITS LICENSORS SHALL NOT BE LIABLE FOR AND HEREBY DISCLAIM ANY AND ALL DIRECT, SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, AND CONSEQUENTIAL DAMAGES OR DELAY, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS OR INCOME, LOSS OF DATA, LOSS OF USE, DOWN TIME, COVER, AND EMPLOYEE AND INDEPENDENT CONTRACTOR WAGES, PAYMENTS, AND BENEFITS. IN NO EVENT SHALL THE TOTAL LIABILITY OF MIDMARK AND ITS LICENSORS TO USER FOR ALL DAMAGES ARISING OUT OF OR RELATING TO THE SOFTWARE EXCEED THE PURCHASE PRICE OF THE SOFTWARE. THESE RESTRICTIONS ON THE LIABILITY OF MIDMARK AND ITS LICENSORS, AND THE REMEDIES AVAILABLE TO USER, SURVIVE ANY FAILURE OF THE ESSENTIAL PURPOSE OF THE SOFTWARE.

10 **Assignment:** User may not assign any rights or delegate any duties arising out of or relating to this Agreement without the prior written consent of Midmark. Any assignment or delegation not in accordance with the terms and conditions of this Assignment subsection shall be void and of no effect.

11 **Governing Law:** This Agreement is governed by, construed, and enforced in accordance with the laws of the State of Ohio, without reference to conflict of law principles. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the applicability of which is hereby excluded.

12 **Export Control:** User acknowledges and agrees that User may not use the Software or export or re-export the Software except as permitted by applicable United States law and the laws of the country or jurisdiction in which User received the Software.

13 **Notice to Government End-Users (if applicable):** The Software is a "commercial product" as that term is defined in 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. § 12.212 or 48 C.F.R. § 227.7202, as applicable. Consistent with 48 C.F.R. § 12.212 or 48 C.F.R. § 227.7202-1 through 227.7202-4, as applicable, the Software is being licensed to U.S. Government end-users: (i) only as commercial products; and (ii) with only those rights as are granted to all other end-users pursuant to the terms and conditions of this Agreement. All unpublished rights are reserved under the copyright laws of the United States to Midmark Corporation, 1001 Asbury Drive, Buffalo Grove, IL 60089.

14 **Third-Party Beneficiaries:** Certain aspects of the Software may be licensed to Midmark, in which case those licensors are deemed to be third-party beneficiaries of this Agreement with the authority to enforce all aspects herein. Except as set forth herein, this Agreement is not, and shall not be construed as being, for the benefit of any person or entity not a party to this Agreement.

15 **Entire Agreement; Priority:** This Agreement and the Authorizing Agreement constitute the entire agreement between the parties with respect to the matters contemplated herein and therein, and cannot be modified except in a writing signed by the parties hereto. In the event of any conflict between this Agreement and the Authorizing Agreement, the Authorizing Agreement shall control.

16 **Severability:** In the event any provision of this Agreement is determined to be illegal, invalid, or otherwise unenforceable, it is the express intent of the parties that: (i) the provision be enforced in a manner that closest holds to the intent of the parties, while at the same time curing any illegality, invalidity, or unenforceability; and (ii) the balance of this Agreement, being severable, shall not be affected in the event the provision that is illegal, invalid, or unenforceable cannot be enforced in whole or in part. By way of example, this Agreement places certain restrictions on the use of the Software and limitations on warranties and remedies of User; to the extent those restrictions are not fully enforceable in accordance with applicable law, those restrictions will be deemed modified to the extent necessary to comply with applicable law, but shall otherwise be fully enforceable.