

myMidmark Terms of Use

Last Updated: February 15, 2026

These myMidmark Terms of Use ("Terms of Use") establish a legally binding agreement between Midmark Corporation, an Ohio corporation ("Midmark") and the end-user entering into these Terms of Use with Midmark ("You" or "Your").

ACCEPTANCE: BY DOING ANY OF THE FOLLOWING, YOU AGREE TO THESE TERMS AND REPRESENT YOU ARE AUTHORIZED TO BIND YOUR ORGANIZATION: (A) CLICKING "ACCEPT," CHECKING A BOX, OR OTHERWISE INDICATING ASSENT IN AN ACCOUNT OR DEVICE INTERFACE; (B) EXECUTING OR ACCEPTING AN ORDER FORM, QUOTE, SERVICE AUTHORIZATION, OR EMAIL THAT REFERENCES AND LINKS TO THESE TERMS; (C) ACCESSING OR USING THE MYMIDMARK PLATFORM OR ANY RELATED OFFERING; OR (D) INSTALLING, ACTIVATING, OR CONNECTING ANY DEVICE SOFTWARE OR FIRMWARE THAT INTERFACES WITH THE SERVICES. IF YOU DO NOT AGREE, THEN DO NOT ACCEPT, ACCESS, OR USE THE SERVICES. You agree that the foregoing methods of assent constitute your electronic signature.

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 terms set forth in separate agreement(s) for such Midmark device(s) or service(s).

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

WHEREAS, You desire to access and/or use 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:

- 1.1 "Access Credentials" means the user identification name and password and/or other access keys or controls for the Services.
- 1.2 "Aggregated Data" means De-identified Data combined with other data to report across multiple customers or devices.
- 1.3 "Applicable Data Protection Law" means all applicable laws and regulations relating to the privacy, confidentiality, security, or protection of Personal Data.
- 1.4 "Authorized User(s)" means individual(s) 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.
- 1.5 "Customer" means the organization or individual that enters into an Order Form or other enrollment with Midmark and that controls the account under which the Services are provisioned. For clarity, "Customer" excludes Preferred Service Providers and Authorized Users.
- 1.6 "Customer Data" means content, telemetry, device logs, configuration data, account information, and support materials submitted to or collected by the Services by or on behalf of Customer (including via Preferred Service Providers) in connection with Customer's use of Midmark Connectible Devices and the Services. Customer Data excludes Service Data and any records Midmark maintains outside of the Services for its own business purposes.
- 1.7 "De-identified Data" means data that cannot reasonably be used to identify a specific individual, household, or Customer, taking account of the means reasonably likely to be used. Midmark will not attempt to re-identify De-identified Data.
- 1.8 "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.
- 1.9 "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).
- 1.10 "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.

- 1.11 "Order Form" means any order instrument, including a quote, order form, service authorization, online checkout page or in-product enrollment screen, or an email that references and links to these Terms, issued by Midmark or its authorized distribution partner that identifies the Services to be provided, whether paid or at no charge. An Order Form is the parties' commercial record for the applicable Services and will specify: (i) the Subscription Term and/or any no-fee period, start date, and any renewal terms; (ii) scope/quantities (e.g., devices, sites, or Authorized Users); and (iii) fees and billing terms. Order Forms may be concluded by any acceptance method described in the Acceptance Section.
- 1.12 "Personal Data" means information relating to an identified or reasonably identifiable natural person processed by Midmark on Customer's behalf in connection with the Services.
- 1.13 "Preferred Service Provider" means a third-party service provider designated by Customer to access the Services to provide service or support to the Customer's Midmark Connectible Device on Customer's behalf. A Preferred Service Provider has no independent rights to the Services; its access may be enabled, limited, or revoked by Customer or Midmark.
- 1.14 "Service Data" means data generated by the operation of the Services (e.g., system logs, performance metrics, and diagnostic data) that does not include Customer Data.
- 1.15 "Services" means the internet-based myMidmark offering used with a Midmark Connectible Device(s) to provide certain information collected from such devices, together with related Documentation. Features, limits, and support level vary by access level and role as stated on the Order Form. Midmark may modify the Services from time to time, provided it does not materially reduce the core functionality during a paid Subscription Term.
- 1.16 "Subscription Term" means the length of a Customer's paid subscription as set forth in the Order Form.
- 1.17 "Updates" means the software releases by Midmark, including error corrections, workarounds, and/or other enhancements to the Services. 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 a Customer's use of a Midmark Connectible Device(s), 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; Your Obligations.

- 3.1 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.
- 3.2 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.
- 3.3 Only Authorized Users may access the Services and solely for Your internal business purposes. All access to the Services by You and Your Authorized Users must comply with these Terms of Use. You and Your Authorized Users will be granted access to the Services through individual usernames and passwords. You will ensure that You and each of Your Authorized Users uses a unique username and password and that such usernames and passwords are not shared. You shall promptly notify Midmark if Your or any of Your Authorized Users usernames or passwords have been or are suspected of being lost, stolen, or compromised. You shall implement appropriate security measures to safeguard Your and Your Authorized Users' Access Credentials. 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 YOU OR YOUR AUTHORIZED USERS' BREACH OF THIS SECTION 3.3 AND FOR ANY ACCESS TO THE SERVICES THROUGH YOUR OR YOUR AUTHORIZED USERS' ACCESS CREDENTIALS.

- 3.4 You will use reasonable security precautions in light of You and Your Authorized Users' 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.
- 3.5 To the extent that You or Your Authorized Users access the Services through a federated authentication process, You must (i) have system architecture in place to accurately reflect Your Authorized User's status, (ii) take reasonable precautions, to explicitly include multi-factor authentication, to prevent unauthorized access to or compromise of systems that maintain Your Authorized User's information and login credentials, and (iii) ensure that Your Authorized Users are properly informed of security safeguards. 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 3.5).
- 3.6 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.
- 3.7 You acknowledge that the Services are not authorized under the Federal Risk and Authorization Management Program.
- 3.8 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 You and Your Authorized Users' 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 3.8.

4 Data.

- 4.1 Customer acknowledges that the Services require the collection and processing of Customer Data and Personal Data. Customer: (a) consents to and instructs Midmark to collect, receive, and otherwise process Customer Data and Personal Data as necessary to operate, maintain, secure, support, and improve the Services and for the purposes described in Section 4.3; (b) authorizes Midmark to obtain Customer Data and Personal Data automatically from devices and related software and via Customer-initiated submissions; (c) represents and warrants that Customer has provided all notices and obtained all consents and permissions required under Applicable Data Protection Law; and (d) instructs Midmark to disclose relevant Customer Data and Personal Data to Preferred Service Providers and any third-party integrations enabled by Customer as necessary to provide the requested services, subject to Section 4.3.
- 4.2 Customer retains all right, title, and interest in and to Customer Data and Personal Data, and Midmark obtains no rights in Customer Data or Personal Data except the limited rights expressly granted in Section 4.3.
- 4.3 Customer grants Midmark a perpetual, irrevocable, non-exclusive, worldwide, non-transferable (except under Section 16.3, Assignment), royalty-free license to host, copy, process, transmit, and display Customer Data solely to (a) provide, maintain, support, secure, and operate the Services; (b) troubleshoot, monitor, and improve performance and security; and (c) comply with law and Customer's documented instructions. Midmark may disclose Customer Data to: (i) Preferred Service Providers designated by Customer; and (ii) any subprocessors engaged by Midmark under written contracts that impose confidentiality and data protection obligations no less protective than these Terms. Midmark may create De-identified Data and Aggregated Data from Customer Data and Service Data and may use and disclose such De-identified and Aggregated Data for its lawful business purposes, including analytics, service improvement, and development of new offerings, provided that Midmark implements technical and organizational safeguards designed to prevent re-identification and will not attempt to re-identify such data.
- 4.4 Within 30 days after termination or expiration, upon Customer's written request, Midmark will make available a one-time manual export of Customer Data in a commercially reasonable format (which may be subject to reasonable fees). After that 30-day period, Midmark has no obligation to retain Customer Data except as required by law. Upon Customer's written deletion request, Midmark will delete or cryptographically erase identifiable Customer Data, meaning data that can

indicate or point to a specific customer where the customer name, contact information, or other demographic information can be known, from its active systems within a commercially reasonable period and will provide written confirmation of such deletion. Residual copies may persist in backups or archives and are deleted in the ordinary course; they will not be accessed or restored except to the extent necessary for disaster recovery or as required by law, and any reconstituted Customer Data will be promptly re-deleted.

- 4.5 As between the parties, Midmark owns and retains all right, title, and interest in and to Service Data. Midmark may collect, use, and disclose Service Data for its lawful business purposes, including operating, securing, supporting, analyzing, and improving the Services and developing new offerings, provided Midmark will not disclose Service Data in a manner that identifies Customer or any individual.

5 Midmark Security. Midmark will implement and maintain appropriate technical and organizational measures aligned with industry standards to protect the security, confidentiality, and integrity of Customer Data in accordance with 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 United States 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 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.
- 6.3 All trademarks on or related to the Services are the sole and exclusive property of Midmark and are protected by United States 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 with a need to know and bound by written obligations no less protective than these Terms of Use. Recipient shall protect Confidential Information using at least the same degree of care it uses to protect its own similar information and no less than a reasonable standard of care.
- 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 clarity, Customer Data is Customer's Confidential Information, and the Services and Documentation are 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, where lawful, provided prompt written notice, cooperated to seek protective treatment, and disclosed only the portion required.

8 Term and Termination; Suspension.

- 8.1 Term. These Terms of Use shall continue in full force and effect for the duration of Your authorized use of the Services. If You are a Customer, then Your authorized use of the paid edition of the Services ("Full Services Platform") identified on the Order Form runs during your Subscription Term. Midmark may, in its sole discretion, provide Customers with limited, no-fee use ("Limited Access"); Limited Access is provided AS IS, with no support service commitments, and may be changed or discontinued at any time. If You are a Preferred Service Provider, then Your authorized use of the Services shall be concurrent to the duration of Your associated Customer's authorized use.
- 8.2 Your Termination. If You are a Customer, then you may terminate You and Your Authorized Users access to the Services and these Terms of Use at any time. Cancellation shall be effective within three working days of receipt of Your cancellation notice. You may also terminate You and Your Authorized Users access to the Services and these Terms of Use for a material breach by Midmark that remains uncured after the giving by You of not less than 30 days' prior written notice of the breach to Midmark.
- 8.3 Midmark 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 or Your Authorized Users 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) if You are a Customer, 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 or Your Authorized Users breach any obligation relating to Midmark's (or its suppliers') intellectual property rights; or (vi) You or Your Authorized Users 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.
- 8.4 Effect of Termination. Upon termination or expiration, You no longer have rights to access or use the Services – YOU WILL NO LONGER BE ABLE TO VIEW INFORMATION TRANSMITTED TO THE SERVICES VIA A MIDMARK CONNECTIBLE DEVICE(S). Upon Your discontinuation of authorized access to the Services and 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.
- 8.5 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 arising under this Section 8.5.

9 Customer Fees and Payment Terms.

- 9.1 Enrollment; Renewal. The Full Services Platform is offered to Customers as an annual subscription under these Terms of Use via an Order Form and auto-renews for successive one-year terms unless the Customer gives non-renewal notice before the then-current term ends. If a Customer enrolls in

a Limited Access period, then the Order Form will state its length and what happens at expiry; if any no-fee period will convert to paid, Midmark will provide advance notice stating the renewal date, price, and how to cancel, and, if Customer did not provide payment details at enrollment, paid service will not commence until Customer supplies them or otherwise affirmatively consents to the paid term.

- 9.2 Fees; Payment. Fees applicable to the Services shall be set forth in a Customer's Order Form ("Fees") and are non-refundable (except as expressly stated in these Terms). Invoices are due as stated on the Order Form. Taxes are additional. Annual renewal Fees are due at each renewal.
- 9.3 Fee Adjustments. Midmark may change renewal-term Fees by giving at least 30 days' notice before renewal. If the Customer does not agree, then its sole remedy is to give non-renewal notice effective at term end and cease use of the Services.
- 9.4 Cancellation. A Customer may cancel access to the Services prior to the end of a Subscription Term from within the Services or by calling 1-800-Midmark. Under no circumstances will a Customer be entitled to a refund of any Fee.
- 9.5 Proration. Added devices/users during a term are co-terminus with the then-current Subscription Term; Fees for the remainder of the term are prorated and billed upon addition.
- 9.6 Non-Payment. If You are a Customer, then Midmark may alter the level or suspend the Services or terminate these Terms of Use for non-payment by You, as set forth in Section 8. You will pay a late fee equal to one-and-one-half percent per month or the maximum amount allowed by law, if less, on all past due amounts. You are also liable for all costs of collection incurred by Midmark for past due sums, including without limitation, collection agency fees, reasonable attorneys' fees, and court costs.
- 9.7 Taxes. If you are a Customer, then You are responsible for the payment of all applicable local and federal sales, use, value added, personal property, or other taxes and duties that may be levied or assessed in connection with Your use of the Services (excluding any taxes based on Midmark's net income or property). If Midmark is required by law to collect taxes on the provision of the Services to You, then You must pay Midmark the amount of the tax that is due or provide Midmark with satisfactory evidence of Your exemption from the tax.

10 Support Services. During the Subscription Term, Midmark will provide reasonable amounts of telephonic and/or email-based technical support for the Services to Customer and its Authorized Users during Midmark's normal business hours of 8:00 am to 5:00 pm, Eastern time, Monday - Friday, excluding United States holidays. Support excludes (i) issues caused by third-party hardware/software or networks; (ii) use not per the Documentation; and (iii) onsite services. Customer authorizes Midmark to remotely deliver and install Updates (including device firmware) and to perform scheduled and emergency maintenance. Midmark will use commercially reasonable efforts to limit impact, but Updates/maintenance may temporarily affect availability.

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 as set out in Section 10 hereto 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 15 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, 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.
- 11.3 The Services do not replace the need for You to maintain regular data backups or redundant data archives. MIDMARK HAS NO OBLIGATION FOR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION, OR RECOVERY OF ANY DATA.

- 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 IN THE 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, REGULATORY COMPLIANCE, OR OTHERWISE, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 13 Indemnification.** 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, Your Authorized Users, or any employee or agent of You or Your Authorized Users, (ii) the acts and omissions of You, Your Authorized Users, or any employee or agent of You or Your Authorized Users in connection with You, Your, its, or their accessing or use of the Services, and (iii) the violation, infringement, or misappropriation by You, Your Authorized Users, or any employee or agent of You of Your Authorized Users of the intellectual property rights of Midmark.
- 14 Export Regulation.** You agree to abide by and to conform to any and all export regulations that are applicable to You, Your Authorized Users, 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 United States has embargoed goods; or (ii) to anyone on the United States Treasury Department's list of Specially Designated Nationals or the United States Commerce Department's Table of Denial 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. You or Your Authorized Users continued 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 Your Order Form or that was otherwise made available by You or Your Authorized User 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; Conflict. 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. Any additional, different, or conflicting terms and conditions (including those in any purchase order) are hereby objected to by Midmark, shall be inapplicable, and shall not be binding in any way on Midmark.
 - 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; Disputes; Class Action Waiver. 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. YOU AGREE THAT IF ANY DISPUTE SHOULD ARISE BETWEEN YOU

AND MIDMARK, YOU WILL BRING YOUR CLAIM ON AN INDIVIDUAL BASIS AND YOU EXPRESSLY AND UNEQUIVOCALLY WAIVE YOUR RIGHT TO PURSUE ANY CLAIM IN A CLASS ACTION. For any claims involving violation of Your or Your Authorized Users' obligations relating to confidentiality or intellectual property, Midmark could potentially be irreparably damaged and would have no adequate remedy at law; YOU CONSENT TO THE ISSUANCE OF INJUNCTIVE RELIEF AGAINST YOU FOR ANY SUCH THREATENED OR ACTUAL VIOLATIONS.

- 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 Severability; 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.