

# SOFTWARE LICENSE AGREEMENT FOR TECHSMITH SOFTWARE - MORAE®

**IMPORTANT-READ CAREFULLY:** This end-user license Agreement ("EULA") is a legally binding license agreement between the entity or organization you represent, or if you do not designate an entity or an organization in connection with a license purchase, you in your individual capacity on behalf of yourself ("Licensee") and TechSmith Corporation, whose address is 2405 Woodlake Drive, Okemos, Michigan 48864 ("Vendor") for the TechSmith Software identified above and as further defined in this Agreement.

**BY PAYING THE LICENSE FEE FOR THE SOFTWARE WITHOUT PROMPTLY REQUESTING A REFUND OF SUCH FEE OR INSTALLING, ACCESSING, COPYING, OR OTHERWISE USING THE SOFTWARE IN ANY MANNER, SUCH ACTS INDICATE LICENSEE'S ACCEPTANCE OF THIS AGREEMENT AND LICENSEE'S AGREEMENT TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU AS LICENSEE DO NOT DESIRE TO ACCEPT THIS AGREEMENT OR AGREE TO THE TERMS AND CONDITIONS OF THIS THIS AGREEMENT, PROMPTLY RETURN THE UNUSED SOFTWARE TO THE VENDOR FOR A FULL REFUND OF THE LICENSE FEE.**

**THE SOFTWARE IS PROTECTED BY U.S. COPYRIGHT LAWS AND INTERNATIONAL COPYRIGHT TREATIES, AS WELL AS OTHER INTELLECTUAL PROPERTY LAWS AND TREATIES. VENDOR IS AND SHALL REMAIN THE OWNER OF ALL INTELLECTUAL PROPERTY RIGHTS IN THE SOFTWARE AND SHALL REMAIN THE OWNER OF ALL COPIES OF THE SOFTWARE. THE SOFTWARE IS LICENSED TO LICENSEE ON A NON-EXCLUSIVE, NON-ASSIGNABLE, NON-TRANSFERABLE, LIMITED, PERSONAL BASIS, NOT SOLD.**

**VENDOR STRIVES TO PROTECT THE SECURITY AND PRIVACY OF THE USERS OF ITS PRODUCTS. THE VENDOR PRIVACY POLICY FOUND AT:**

<http://www.techsmith.com/privacy-policy.html>

**IS INCORPORATED IN THIS AGREEMENT BY REFERENCE.**

**WHEN LICENSEE USES THE SOFTWARE, VENDOR MAY COLLECT CERTAIN INFORMATION ABOUT LICENSEE'S COMPUTER TO FACILITATE, EVALUATE AND VERIFY LICENSEE'S USE OF THE SOFTWARE WHICH MAY BE SENT TO A VENDOR WEB SERVER FOR ITS OWN INTERNAL USE AND SHALL NOT BE SHARED WITH ANY THIRD PARTIES. THIS INFORMATION IS GENERALLY COLLECTED IN THE AGGREGATE FORM, WITHOUT IDENTIFYING ANY USER INDIVIDUALLY, ALTHOUGH IP ADDRESS, COMPUTER AND SESSION ID IN RELATION TO PURCHASES AND DOWNLOADS/ INSTALLATIONS OF THE SOFTWARE MAY BE TRACKED AS PART OF VENDOR'S CUSTOMER ORDER REVIEW, STATISTICAL ANALYSIS, FRAUD AND PIRACY PREVENTION EFFORTS. FOR EXAMPLE, VENDOR MAY COLLECT INFORMATION SUCH AS THE NUMBER OF DOWNLOADS/INSTALLATIONS OF THE SOFTWARE FOR NONIDENTIFYING STATISTICAL ANALYSIS AND FOR IMPROVING, PROVIDING LICENSEE WITH A MORE RELEVANT EXPERIENCE. VENDOR MAY ALSO COLLECT CERTAIN INFORMATION, SUCH AS NAMES AND E-MAIL ADDRESSES IN CONNECTION WITH LICENSEE'S USE OF CERTAIN FEATURES OF THE SOFTWARE WHICH ALSO MAY BE SENT TO A VENDOR WEB SERVER TO PROVIDE LICENSEE WITH YOUR REQUESTED PRODUCTS. AS INDICATED ABOVE, IF LICENSEE DOES NOT DESIRE TO ACCEPT THIS AGREEMENT OR AGREE TO THE TERMS OR CONDITIONS OF THIS AGREEMENT, PROMPTLY RETURN THE UNUSED SOFTWARE TO THE PLACE FROM WHICH YOU OBTAINED IT FOR A FULL REFUND OF THE LICENSE FEE.**

**AS INDICATED ABOVE, IF YOU AS LICENSEE DO NOT DESIRE TO ACCEPT THIS AGREEMENT OR AGREE TO THE TERMS OF THIS AGREEMENT, PLEASE SEE TECHSMITH'S [RETURN AND CANCELLATION POLICIES AND PROCEDURES AND/OR THE APPLICABLE RETURN AND CANCELLATION POLICIES OF TECHSMITH.](#)**

**LICENSEE ACKNOWLEDGES AND AGREES: (A) THAT LICENSEE IS NOT AN OWNER OF THE SOFTWARE OR ANY COPIES OF THE SOFTWARE; (B) THAT LICENSEE IS IN FACT A MERE LICENSEE OF THE**



**SOFTWARE AND ANY COPIES OF THE SOFTWARE WITHOUT ANY RIGHT TO FURTHER TRANSFER OR DISTRIBUTE THE SOFTWARE OR ANY COPIES OF THE SOFTWARE OR PROVIDE ACCESS TO THE SOFTWARE IN ANY MANNER WITHOUT VENDOR'S PRIOR WRITTEN CONSENT; (C) NOT TO CHALLENGE THE ENFORCEABILITY OR VALIDITY OF THIS AGREEMENT; AND (D) NOT TO INITIATE ANY PROCEEDINGS INCONSISTENT WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT**

**THE SOFTWARE MAY INCLUDE PRODUCT ACTIVATION AND OTHER TECHNOLOGY DESIGNED TO PREVENT UNAUTHORIZED USE AND COPYING, AND TECHNOLOGY TO HELP LICENSEE MANAGE LICENSES. SUCH TECHNOLOGY MAY PREVENT LICENSEE'S USE OF THE SOFTWARE IF LICENSEE DOES NOT FOLLOW THE ACTIVATION, INSTALLATION, AND/OR LICENSE MANAGEMENT PROCESS DESCRIBED IN THE SOFTWARE AND DOCUMENTATION. VISIT <http://www.techsmith.com/support> FOR INFORMATION ABOUT PRODUCT ACTIVATION AND LICENSE MANAGEMENT.**

### **Software License**

THIS SOFTWARE LICENSE ("Agreement") is made as of the Effective Date by and among Vendor, a Michigan corporation with offices located at 2405 Woodlake Drive, Okemos, MI 48864 and you as the party identified as "Licensee" in this Agreement.

### **Recitals**

- A. Vendor has developed and owns a certain computer software program described as Morae, including the component programs of the same referred to as Morae Manager, Morae Recorder, Morae Observer (such components individually and collectively referred to in this Agreement as the "Software" as more specifically defined in the definition Article of this Agreement); and
- B. Licensee desires to obtain a license to access the Software, subject to the terms and conditions of this Agreement; and
- C. Vendor desires to grant Licensee a license to access the Software, subject to the terms and conditions of this Agreement.

In consideration of the mutual benefits of the covenants and restrictions set forth below, Licensee and Vendor hereby agree as follows:

## Article I: Definitions

### **Section 1.01 Recitals**

The above identification of parties and recitals are true and correct.

### **Section 1.02 Definitions**

The following definitions shall apply:

1. **Access:** The term "access" and variants thereof (including, but not limited to, the terms "access", "accessible" and "accessing", in upper or lower case) shall mean to store data in, retrieve data from or otherwise approach or make use of (directly or indirectly) through electronic means or otherwise.
2. **Associates:** The term "Associates" shall mean an employee of Vendor or an independent contractor hired by Vendor.
3. **Activation:** The term "activation" and variants thereof (including, but not limited to, the terms "activate" and "activating", in upper or lower case) shall mean the process of entering a Software Key provided with the Software that is communicated to a server or a vendor representative for the purposes of accessing the Morae Manager component of the Software.
4. **Authorized Person:** The term "Authorized Person" shall mean employees of Licensee or designated individuals authorized by Licensee to access Confidential Information and individuals or entities that are authorized in writing by Vendor to receive Confidential Information and who agree to maintain the confidentiality of such Confidential Information.



5. **Cancellation Notice:** The term "Cancellation Notice" shall mean that written notice sent by one party to this Agreement to the other party to this Agreement seeking to cancel this Agreement because of a breach of this Agreement by such other party.
6. **Component Programs:** The term "Component Programs" shall mean collectively the Morae Manager, Morae Observer, and Morae Recorder, but each component may also be referred to in this Agreement individually or severally by their respective component names/marks ( e.g. Morae Manager, Morae Observer, or Morae Observer).
7. **Concurrent Access:** The term "Concurrent Access" shall mean concurrent access to the Product and /or its applicable Component Program(s).
8. **Confidential Information:** The term "Confidential Information" shall mean all information concerning the business and technical plans of Vendor, the Product and this Agreement which is disclosed by Vendor to Licensee or learned by Licensee and which is not: (a) already known to Licensee; (b) conveyed to Licensee by a third party without restriction; (c) released by Vendor without restriction; (d) independently developed by Licensee; or (e) in the public domain.
9. **Defect:** The term "Defect" shall mean programming errors which substantially impair the performance, utility and functionality of the Software as represented in the Documentation.
10. **Documentation:** The term "Documentation" shall mean the Software Getting Started Guide as provided in printed or electronic form to Licensee.
11. **Effective Date:** The term "Effective Date" shall mean the date Licensee accesses the Product.
12. **Export Laws:** The term "Export Laws" shall mean the Export Administration Act, 50 U.S.C. §2401 et. seq., and the Export Administration Regulations, 15 C.F.R. Parts 730-774.
13. **Government:** The term "Government" shall mean the state and federal governments of the United States of America, including (without limitation) any and all branches, bodies, agencies, departments, offices, entities and corporations in connection therewith.
14. **Licensee:** The term "Licensee" shall mean the individual or entity as indicated in this Agreement.
15. **Price Schedule:** The term "Price Schedule" shall mean the schedule of fees and payment terms regarding access to the Software as published by Vendor and as modified by Vendor from time to time.
16. **Product:** The term "Product" shall mean the Software and the Documentation and any related services.
17. **Restatements:** The term "Restatements" shall mean Section 757 of the Restatement of Torts, Section 39 of the Restatement (Third) of Unfair Competition, 18 U.S.C. §1839 and Section 1 of the Uniform Trade Secrets Act.
18. **Rules:** The term "Rules" shall mean laws, rules, regulations, orders, procedures or policies of Government or third parties as amended.
19. **Software Key:** The term "Software Key" shall mean that certain unique number assigned by Vendor to each User for purposes of activating the Software.
20. **Software:** The term "Software" shall mean the individual and collective components of the executable code for a certain computer software program developed and owned by Vendor as accessed by Licensee referred to as the Morae software program, which is comprised of the Component Programs.
21. **Term:** The term "Term" shall mean a period starting on the Effective Date and continuing until this Agreement is terminated or cancelled as provided under this Agreement.
22. **Trial Version** means a version of the Software which is fully functional, but is limited in terms of the length of time the Software may be used and will cease operating after a 30 day period of time (the "Initial Trial Period") or after an additional 30 day period of time (the "Extended Paid Trial Period") due to an internal mechanism within the Trial Version. The Software will notify Licensee that the Software is in trial mode, which may include. but may not be limited to, watermarking.
23. **Unauthorized Access:**The term "Unauthorized Access" shall mean any access to the Product except for the exclusive purposes of using the performance, utility and functions of the Product for internal business operation of Licensee, and training employees of Licensee in the use of the Product.



24. **Unauthorized User:** The term "Unauthorized User" shall mean any individual who accesses the Product except for employees of Licensee or designated individuals authorized by licensee to access the Product using the performance, utility and functions of the Product for internal business operations of Licensee and training employees of Licensee in the use of the Product.
25. **Users:** The term "Users" shall mean Authorized Persons of Licensee to access the Product, excluding Unauthorized Users.

## Article II: Scope of License

### Section 2.01 Grant of License:

- (a) So long as Licensee complies with the terms and conditions of this Agreement as a condition to the license granted herein, Vendor hereby grants to Licensee a non-exclusive and non-transferable personal license to access and install a copy of the Morae Manager and to access the Documentation for the Term in a manner consistent with its design, Documentation and Licensee's order.
- (b) So long as Licensee complies with the terms and conditions of this Agreement as a condition to the license granted herein, Vendor also hereby grants to Licensee a non-exclusive, non-transferable personal license to provide unlimited Concurrent Access to Morae Observer and Morae Recorder to Authorized Persons to install on their computers for temporary use as necessary for the internal business purposes of Licensee as further described in 2.01(c)(4) below.

### Section 2.01(c)

Notwithstanding Section 2.01(a) and (b) above and so long as Licensee complies with the terms and conditions of this Agreement as a condition to the license granted herein the following uses are permissible under the Grant of License:

1. If an employee or contractor is terminated, the license may be re-used by another employee or contractor;
2. If the computer on which the license resides fails or is upgraded, the license may be transferred to another computer;
3. If the license for Morae Manager resides on one computer, e.g., desktop PC, Licensee may install a second copy of Morae Manager on another portable computer, e.g., a laptop, by the same employee or contractor located at his or her home, provided, that there will be no concurrent usage of the two computers unless otherwise permitted under the type of license ordered by Licensee and granted by Vendor; and/or
4. Licensee is authorized to make and/or send an additional copies of the Morae Recorder component and/or Morae Observer component to Authorized Persons to be installed on their computer(s) for temporary use as necessary for internal business purposes of Licensee. Licensee shall take steps to ensure the Morae Recorder and Morae Observer are removed from these applicable additional computers upon completion of the temporary business purpose.

### Section 2.02

Licensee shall promptly inform Vendor of any and all Unauthorized Access (or suspected Unauthorized Access) and Unauthorized Users (or suspected Unauthorized Users) of which Licensee has knowledge or suspicion. Access to the Product using third party software for the purpose of viewing, using or disclosing the internal structure of the Product; unauthorized Concurrent Access; and modifications to the Product shall be deemed Unauthorized Access.

### Section 2.03

Making additional Copies of the Software is strictly prohibited, except as authorized in Section 2.01 of this Agreement. Licensee shall have a duty of care to prevent unauthorized copies of the Software from being made or distributed. The making of any additional unauthorized copies of the Software is strictly prohibited and such restriction shall survive any termination or cancellation of this Agreement. So long as Licensee complies with the



terms and conditions of this Agreement as a condition to the license granted herein, it is not a violation of this provision for Licensee to make back-up copies of the Software and Documentation for archival purposes.

#### **Section 2.04**

##### **Development License Restrictions**

In addition to any other restrictions or obligations otherwise set forth in this Agreement, the restrictions contained in this Section 2.04 also apply to a Licensee that develops or intends to develop Application Software that utilizes programmatic control features of the Morae Recorder component. In that regard, Licensee:

- i. shall not resell Morae Recorder as part of the Application Software;
- i. shall give proper acknowledgment of the copyright of Vendor;
- ii. shall not be used to create a software application that competes with or is intended to compete with, directly or indirectly, the Software.

All other uses that fall outside the scope of this Agreement must receive the prior written permission of TechSmith.

#### **Section 2.05 Trial Version**

This section 2.05. and its subparagraphs apply in addition to the license granted in 2.01 above and solely if Licensee has received a valid Trial Version of the Software from Vendor.

- i. Subject to the terms and conditions of this Agreement and the payment of a fee for an Extended Paid Trial Period, if applicable, Vendor hereby grants to Licensee, a non-exclusive, non-transferable license to install and/or access a copy of the Trial Version on a single computer strictly for Licensee's internal evaluation and review purposes and not for production purposes.
- ii. Licensee shall not (a) in the aggregate install or access more than one copy of the Trial Version, (b) download the Trial Version under more than one username, if applicable, (c) alter the contents of a hard drive or computer system to enable the use of the Trial Version for an aggregate period in excess of the Initial Trial Period or the Extended Paid Trial Period, if applicable, for which Licensee may evaluate the Trial Version, (d) disclose the results, if any, of the Software performance benchmarks obtained using the Trial Version to any third party without Vendor's prior written consent, (e) use the Trial Version for a purpose other than the sole purpose of determining whether to purchase a license to the Software. Notwithstanding the foregoing, Licensee is strictly prohibited from installing, accessing or using a copy of the Trial Version for any commercial training purposes.
- iii. Licensee's licensed rights to install, access, and use a copy of the Trial Version under this section 2.05 will immediately terminate upon the earlier of (a) the expiration of the Initial Trial Period or the Extended Paid Trial Period, if applicable, or (b) such time that Licensee purchases a license to the Software. Vendor reserves the right to terminate Licensee's license to the Trial Version at any time in its sole discretion during the Initial Trial Period. To the extent that any provision in this section 2.05 is in conflict with any other terms or conditions in this Agreement, this section 2.05. shall supersede such other terms and conditions with respect to the Trial Version only, but only to the extent necessary to resolve the conflict. **LICENSEE ACKNOWLEDGES THAT THE TRIAL VERSION MAY FUNCTION FOR A LIMITED PERIOD OF TIME. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THE TRIAL VERSION IS PROVIDED TO YOU ON A "AS IS" BASIS, AND VENDOR DISCLAIMS ANY WARRANTY OR LIABILITY OBLIGATIONS TO YOU OF ANY KIND.**

## Article III: Activation

### **Section 3.01 Activation**

Vendor shall assign Licensee a Software Key for purposes of activating the Morae Manager component of the Software. Licensee will use the Software Key to activate the Morae Manager component of the Software, either by communicating the Software Key to an activation server through the Internet, or by contacting an Associate via telephone and providing the Software Key. Licensee shall be responsible for the confidentiality and maintenance of the Software Key. Modification of the Software Key shall be subject to prior written approval of



Vendor. The Morae Recorder and the Morae Observer components of the Software do not require a Software Key.

## Article IV: Payments and Fees

### **Section 4.01 License Fees**

Licensee shall pay a license fee to Vendor in accordance with the payment terms set forth in the Price Schedule, provided, however, that the applicable license fee may be reduced by the fees paid by Licensee for an Extended Paid Trial Period, if the Licensee purchases a license to the Software no later than 180 days from the date the Extended Paid Trial Period expired.

### **Section 4.02 Taxes**

Licensee shall pay any and all applicable taxes (municipal, state and federal) which may now or hereafter be imposed on accessing the Product by Licensee (excluding income taxes assessed against Vendor).

## Article V: Intellectual Property

Vendor's grant to Licensee of a non-exclusive, nontransferable, limited personal license to install and access a copy of the Software in a manner consistent with its design, Documentation, and this Agreement and Licensee's order is further conditioned upon Licensee's compliance with all of the following conditions:

### **Section 5.01 Ownership and Title**

Vendor shall own any and all rights, title and interests in the Product, including (without limitation) ownership rights to any and all patents, copyrights, trademarks, and trade secrets in connection therewith.

### **Section 5.02 Confidential Information**

Licensee shall not disclose Confidential Information except to Authorized Persons of internal use only. Licensee shall not duplicate, use or disclose Confidential Information except as otherwise permitted under this Agreement. The Product shall be deemed Confidential Information of Vendor.

### **Section 5.03 Trade Secrets**

Licensee hereby acknowledges and agrees that the Confidential Information of Vendor derives independent economic value (actual or potential) from not being generally known to other persons who can obtain economic value from its disclosure or use and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; is the subject of reasonable confidentiality efforts by Licensee.

### **Section 5.04 No Contest**

Licensee shall not contest or aid in contesting the ownership or validity of the copyrights, trademarks, service marks, and trade secrets of Vendor.

### **Section 5.05 Reverse Engineering**

Licensee shall not reverse engineer, decompile, disassemble or translate the Product, without the prior written consent of Vendor. Licensee shall not allow the Product to be reverse engineered, decompiled, disassembled, or translated, without the prior written consent of Vendor.

### **Section 5.06 Modifications**

Licensee shall not modify the Product and shall not allow the Product to be modified without the prior written consent of Vendor. Licensee shall not use the Product or any materials incident thereto to develop computer software without the prior written consent of Vendor. If the Product is modified, such modifications shall be the sole and exclusive property of Vendor and Vendor shall own any and all of the rights, title, and interests to such modifications and any resulting computer software, including (but not limited to) any and all copyrights, patents, and trade secrets related thereto.

### **Section 5.07 Export**

Licensee shall not export or reexport the Product and shall not allow the Product to be exported or perform any





act in violation of any applicable law, including (without limitation) the Export Laws. The Product shall not be used by Licensee to transfer the data to either a foreign national or a foreign destination in violation of any applicable law, including (without limitation) the Export Laws.

#### **Section 5.08 U.S. Government Restricted Rights**

Where Licensee is the U.S. Government or an agency or department thereof (collectively "Government"), the Product is provided with RESTRICTED RIGHTS and use or disclosure by the Government is subject to restrictions set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (c)(2) of the Commercial Computer Software Restricted Rights clause at 48 C.F.R. 52.227-19, as applicable, which is incorporated herein by this reference.

#### **Section 5.09 Continuation**

The terms and provisions of this Article V shall survive termination and cancellation of this Agreement.

## Article VI: Warranty

#### **Section 6.01 Software Warranty**

Vendor represents and warrants that the Software shall perform substantially as represented in the Documentation for a period of thirty (30) days after the Effective Date.

#### **SECTION 6.02 EXPRESS WARRANTIES**

**LICENSEE HEREBY ACKNOWLEDGES AND AGREES THAT VENDOR AND ITS SUBSIDIARIES (INCLUDING OFFICERS, ASSOCIATES, AGENTS, AND DIRECTORS OF VENDOR AND ITS SUBSIDIARIES) HAS NOT MADE OR GRANTED ANY EXPRESS WARRANTIES CONCERNING THE SERVICES AND THE PRODUCT EXCEPT FOR THE SOFTWARE WARRANTY IN SECTION 6.01.**

#### **SECTION 6.03 WARRANTY LIMITATION**

**THE WARRANTIES SET FORTH IN SECTION 6.01 ARE IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES OF MERCHANTABILITY. THE WARRANTIES SET FORTH IN SECTION 6.01 ARE LIMITED TO THE PRODUCT AND DO NOT APPLY TO ANY THIRD PARTY SOFTWARE OR TECHNOLOGY. EXCEPTING THE WARRANTY SET FORTH IN SECTION 6.01, VENDOR HEREBY DISCLAIMS AND LICENSEE HEREBY WAIVES ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND ALL IMPLIED WARRANTIES ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE AND NONINFRINGEMENT. VENDOR DOES NOT MAKE ANY WARRANTY AND LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES AS TO THE RESULTS OBTAINED FROM THE SUPPORT SERVICES, IF ANY. LICENSEE HEREBY ACKNOWLEDGES AND AGREES THAT USE OF SUPPORT SERVICES, IF ANY, SHALL BE AT THE SOLE AND EXCLUSIVE RISK OF LICENSEE AND SUBJECT TO THE RULES, THE ESSENTIAL PLAN STATEMENT AND THIS AGREEMENT. VENDOR SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR HARM OR DAMAGES RESULTING FROM OR ARISING OUT OF LICENSEE INABILITY TO USE SUPPORT SERVICES, IF ANY, OR TO ACCESS THE PRODUCT.**

#### **Section 6.04 Regulations**

The Product shall not be used (directly or indirectly) to conduct or solicit the performance of any business or activity which is tortious or prohibited by law. Licensee shall comply with Rules.

#### **Section 6.05 Force Majeure**

Vendor shall not be liable for any failure to perform its obligations or for any failure of the Software or services, if any, or so performed, because of circumstances beyond the control of Vendor. Such circumstances shall include (without limitation) any acts or omissions of any government or governmental authority, declarations of government, war, natural disaster, act of a public enemy, acts of terrorism, riot, sabotage, labor disputes, power failure, delays in transportation or deliveries of supplies or materials, laws, court orders, acts of God, computer failure, network downtime, electronic mail failure, telecommunication failure, failure of Licensee to cooperate with the reasonable requests of Vendor, misuse of the Software by Licensee or a third party, misuse of the



Product by Licensee or a third party, breach of this Agreement by Licensee, or any other events reasonably beyond the control of Vendor.

**Section 6.06 Continuation:**

The terms and conditions of this Articles VI shall survive the termination or cancellation of this Agreement.

## Article VII: Indemnification

**Section 7.01 Limitation of Damages**

Vendor shall not be liable for any lost profits or consequential, exemplary, incidental or punitive damages under this Agreement (including, without limitation, in connection with (i) use, performance or operation of the Product; and (ii) loss of data), regardless of the form of action, whether in contract or in tort, including negligence, regardless of whether Vendor has been advised of the possibility of such damages in advance or whether such damages are reasonably foreseeable.

**SECTION 7.02 LIMITATION OF LIABILITY**

**THE LIABILITY OF VENDOR FOR ANY REASON AND FOR ANY CAUSE OF ACTION WHATSOEVER IN CONNECTION WITH THIS AGREEMENT, THE PRODUCT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING NEGLIGENCE, SHALL NOT EXCEED THE TOTAL AMOUNT OF MONEY PAID BY LICENSEE TO VENDOR WITHIN THE NEXT PRECEDING TWELVE MONTHS FROM THE DATE WHICH SUCH CLAIMED DAMAGE OR INJURY AROSE.**

**Section 7.03 Vendor Indemnification**

Licensee shall release, indemnify, defend and hold harmless Vendor (including officers, directors, agents, and Associates of Vendor), Vendor subsidiaries, Vendor affiliates and Vendor suppliers and distributors, from and against any and all losses, costs, claims, suits, obligations, demands, damages, liabilities, expenses and reasonable attorney and paralegal fees on account thereof resulting from or in connection with (i) access to the Product by Licensee (including, without limitation, any claim regarding use of the Product by Licensee in an infringing manner or third parties for breach of warranty, libel, slander, invasion of privacy or false advertising); (ii) the performance of the Product (iii) the Borrower Services; (iv) Licensee failure to comply with the Rules or Licensee breach of the Rules; (v) the acts (or any failure to act) of Licensee hereunder; or (vi) any breach by Licensee of the obligations of Licensee hereunder. This Section 7.01, 7.02, and 7.03 shall survive termination and cancellation of this Agreement. Licensee hereby accepts responsibility for, and shall be liable for, all access to the Software and use of Vendor services in connection with the password.

**Section 7.04 Licensee Indemnification**

If a third party receives a judgment from a court of competent jurisdiction upholding claims that the Product violates trade secrets, proprietary information, trademark, copyright or any patent rights of such third party, Vendor shall perform one or more of the following actions (as determined by Vendor) within one year of the date of judgment in favor of such third party's claim is rendered by a court of competent jurisdiction:  
Replacement: Replace the Product by delivering to Licensee a non-infringing Software product or Documentation (as the case may be) of substantially equivalent functional and performance capability;  
Modification: Modify the Software or the Documentation (as the case may be) to avoid the infringement without substantially eliminating the functional and performance capabilities of the Product as described in the Documentation;  
Obtain License: Obtain a license for use of the Software or the Documentation from the third party claiming infringement for use of the same by Licensee.

The remedies set forth herein shall be the sole and exclusive remedies of Licensee for any and all claims of indemnification under this Section 7.04.





## Article VIII: Termination

### **Section 8.01 Termination Limitations**

This Agreement shall only be terminated or canceled as provided under this Article VIII. This Agreement shall be valid for the Term. Licensee may terminate this Agreement for any reason upon providing thirty (30) days advance written notice of termination to Vendor.

### **Section 8.02 Cancellation**

If a party violates its obligations under this Agreement, the other party may cancel this Agreement by sending Cancellation Notice describing the noncompliance to the noncomplying party. Upon receiving Cancellation Notice describing the noncompliance, the noncomplying party shall have thirty (30) days from the date of such notice to cure any such noncompliance. If such noncompliance is not cured within the required thirty day period, the party providing Cancellation Notice shall have the right to cancel this Agreement as of the thirty-first (31st) day after the date of the Cancellation Notice.

### **Section 8.03 Access to the Product**

Upon termination or cancellation of this Agreement, Licensee shall cease accessing the Product, and provide Vendor with a certificate of compliance with this Section 8.03 signed by an authorized representative of Licensee.

## Article IX: Miscellaneous

### **Section 9.01 Assignments**

All assignments of rights under this Agreement by Licensee without the prior written consent of Vendor shall be void.

### **Section 9.02 Entire Agreement**

This Agreement and any applicable schedules or orders, contain the entire understanding of the parties and supersedes previous verbal and written agreements between the parties concerning the subject matter herein.

### **Section 9.03 Amendments and Modifications**

This Agreement may be amended from time to time by Vendor only and only upon Vendor's release of a new version of the Software. Licensee must accept any newly amended terms and conditions of this Agreement before installing, copying or otherwise using the newly released Software. Except as otherwise provided in this section 9.03 of this Agreement, this Agreement may not be amended, altered, or any of its provisions waived on behalf of either party, except in writing executed by both parties' duly authorized agent. Notwithstanding the provisions of this section 9.03 (Amendments and Modifications), Vendor may amend its Privacy Policy at any time by posting a new version of its Privacy Policy at its web site along with an outline of the changes to the Privacy Policy.

### **Section 9.04 Severability**

If a provision of this Agreement is rendered invalid, the remaining provisions shall remain in full force and effect.

### **Section 9.05 Captions**

The headings and captions of this Agreement are inserted for reference convenience and do not define, limit or describe the scope or intent of this Agreement or any particular section, paragraph or provision. Pronouns and nouns shall refer to the masculine, feminine, neuter, singular or plural as the context shall require.

### **Section 9.06 Public Announcement**

All public announcements of the relationship of Vendor and Licensee under this Agreement shall be subject to the prior written approval of Vendor.

### **Section 9.07 Governing Law**

This Agreement shall be governed by the laws of the State of Michigan without regard to any rules of conflict or choice of laws which require the application of laws of another jurisdiction, and venue shall be Ingham County and the State of Michigan. This Agreement has been prepared in the English language and such version shall be





controlling in all respects and any non-English version of this Agreement is solely for accommodation purposes. The parties to this Agreement waive personal service of any and all process upon them and consent that all such service of process be made by registered mail and shall be deemed to be completed five (5) business days after the same shall have been deposited in the United States mail, postage prepaid. Licensee waives any objection based on inconvenient forum and any objection to venue of any action instituted under this Agreement by TechSmith in any jurisdiction. This Agreement shall not be governed by the United Nations' Convention on Contracts for the International sale of Goods, the application of which is expressly excluded. If you are a federal, state, or local government entity in the United States using the Software in your official capacity and legally unable to accept the controlling law, jurisdiction or venue clauses above, then those clauses do not apply to you as a Licensee. For such U.S. federal government entities, this Agreement and any action related thereto will be governed by the laws of the United States of America (without reference to conflict of laws) and, in the absence of federal law and to the extent permitted under federal law, the laws of the State of Michigan (excluding choice of law).

#### **Section 9.08 Notice**

All notices shall be in writing. Notices to Vendor shall be deemed delivered when delivered by commercial overnight delivery service, Certified or Registered Mail - Return Receipt Requested - or by hand to the address set forth below for Vendor in this Agreement. Notices to Licensee shall be deemed delivered when delivered electronically, by commercial overnight delivery services, by Certified or Registered Mail - Return Receipt Requested - or by hand to the address provided by Licensee upon registering the Product Agreement . Notices shall be deemed given on the date notice is delivered electronically (in case of notices delivered to Licensee) or on the date of receipt - as evidenced in the case of Certified or Registered Mail by Return Receipt. Notices delivered to Licensee electronically (including, without limitation, electronic mail) shall be deemed written notices.

Vendor Address  
TechSmith Corporation  
2405 Woodlake Drive  
Okemos, MI 48864

#### **Section 9.09 Waiver**

Waiver of breach of this Agreement shall not constitute waiver of another breach. Failing to enforce a provision of this Agreement shall not constitute a waiver or create an estoppel from enforcing such provision. Any waiver of a provision of this Agreement shall not be binding unless such waiver is in writing and signed by the party waiving such provision.

#### **Section 9.10 Employee Pirating**

Licensee shall not induce or solicit (directly or indirectly) any Associate to leave the employment of Vendor or engage the services of an Associate without the prior written consent of Vendor.

#### **Section 9.11 Relationship of the Parties**

It is agreed that the relationship of the parties is primarily that of licensee and licensor. Nothing herein shall be construed as creating a partnership, an employment relationship, or an agency relationship between the parties, or as authorizing either party to act as agent for the other. Each party shall maintain its separate identity.

#### **Section 9.12 Litigation Expense**

In the event of litigation arising out of this Agreement, each party shall pay its own costs and expenses of litigation or arbitration (excluding fees and expenses of arbitrators and administrative fees and expenses of arbitration).

#### **Section 9.13 Equitable Remedies**

The parties hereby acknowledge that damages at law may be an inadequate remedy for Vendor. In addition to other rights which may be available, Vendor shall have the right of specific performance, injunction or other equitable remedy ) without proof of damages or without the posting of a bond (including, but not limited to, the right to such equitable remedies prior to or pending arbitration) in the event of a breach or threatened breach of this Agreement by Licensee.





**AS STATED ABOVE, PAYING THE LICENSE FEE OR Installing, ACCESSING, COPYING, OR OTHERWISE USING IN ANY MANNER THE SOFTWARE, INDICATES YOUR ACCEPTANCE OF THIS AGREEMENT AND LICENSEE'S AGREEMENT TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT AS A LICENSEE.**

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