

# Trial Agreement

THIS IS A LEGAL AGREEMENT BETWEEN [INSERT COMPANY NAME] WITH PRINCIPAL OFFICES AT [INSERT COMPANY ADDRESS], ACTING ON BEHALF OF ITSELF, ITS SUBSIDIARIES AND AFFILIATES, AND EXTERNAL PORTFOLIO MANAGERS ENGAGED BY ITSELF, AND ITS SUBSIDIARIES OR AFFILIATES, HERETOFORE REFERRED AS “THE CLIENT”, AND GTCOM Technology Corporation, WITH PRINCIPAL OFFICES AT 5201 Great America Parkway, Suite 309, Santa Clara, CA 95054 HERETOFORE REFERRED AS “THE VENDOR”, REGARDING THE TRIAL OF PRODUCTS:

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HERETOFORE REFERRED AS “THE PRODUCTS”.

VENDOR AND CLIENT DESIRE TO ENTER INTO THIS AGREEMENT DEFINING THEIR RESPECTIVE RIGHTS AND RESPONSIBILITIES AND MEMORIALIZING THE TERMS AND CONDITIONS PURSUANT TO WHICH VENDOR WILL PROVIDE TO CLIENT THE TRIAL PRODUCT FOR A FEE.

BY ACCESSING OR USING THIS PRODUCT, THE CLIENT ACKNOWLEDGES THAT THE CLIENT HAS READ THIS TRIAL PRODUCT AGREEMENT (“AGREEMENT”), THAT THE CLIENT UNDERSTANDS IT, CONSENTS TO BE BOUND BY AND BECOMING A PARTY TO THIS AGREEMENT.

## 1. GRANT OF PRODUCT ACCOUNT

The Vendor grants to the Client [INSERT NUMBER] account for each of the Products with non-transferable, non-exclusive right to use the Product for trial purposes during the agreed upon term.

The Client may use the product on any computer owned, leased, or otherwise controlled solely by the Client.

## **2. RESTRICTIONS**

Under this agreement, the Client MAY NOT:

- (1) sell, lease, rent, license, sublicense or otherwise distribute the Product or any part thereof to any person or entity;
- (2) use the Product for any purpose other than expressly permitted by this Agreement;
- (3) reproduce, modify, copy, transmit or create derivative work of all or any portion of the Product;
- (4) reverse engineer, decompile, or disassemble the Product or otherwise attempt to recreate all or any portion of the Product;
- (5) remove the copyright notice from the Product or the written materials, if any, accompanying the Product;
- (6) use the Product for any illegal purpose, or in violation of any local, state, national, or international law;
- (7) authorize any third party to do any of the foregoing.

## **3. CONTENT IN THE PRODUCT**

(1) The Client understands that all information (such as data files, written text, computer software, audio files or other sounds, photographs, videos or other images) which the Client may have access to as part of, or through the Client 's use of, the Product are the sole responsibility of the person from which such content originated. All such information is referred to below as the "Content".

(2) The Client should be aware that Content presented through the Product, may be protected by intellectual property rights which are owned by the Content owners. The Client may not modify, rent, lease, loan, sell, distribute or create derivative works based on this Content (either in whole or in part) unless The Client has been specifically told that the Client may do so by the owners of that Content, in a separate agreement.

(3) The Client understands that by using the Products the Client and the Client's end users may be exposed to Content that may be found offensive, indecent or

objectionable and that, in this respect, the Client uses the Products at the Client's own risk.

(4) The Client agrees that the Client is solely responsible for (and that the Vendor has no responsibility to the Client or to any third party for) any Content that the Client creates, transmits or displays while using the Product and for the consequences of the Client actions (including any loss or damage which the Vendor may suffer) by doing so.

#### **4. PROPRIETARY RIGHTS**

The Client acknowledges and agrees that the Products is proprietary product of the Vendor whether or not patented or copyrighted.

The Client further acknowledges and agrees that all right, title, and interest in and to the Product, including associated intellectual property rights, is and shall remain with the Vendor.

No right, title, or interest in or to any trademark, service mark, logo or trade name of the Vendor is granted under this Agreement.

#### **5. FEE AND PAYMENT**

The fees associated with this Agreement shall be a one-time upfront payment of [INERT FEE AMOUNT] from Client to Vendor.

#### **6. TERM**

This Agreement shall become effective on **[INSERT DATE]** and will terminate on **[INSERT DATE]**. The Vendor may terminate this Agreement at any time and without notice in the event that:

(1) The Client uses the Products or otherwise engages in any action that, in the Vendor's sole discretion, may harm the Vendor;

(2) The Vendor determines that it is in the best interest of the Vendor to terminate the Agreement;

## **7. WARRANTIES**

(A). ANY USE BY THE CLIENT OF THE PRODUCT IS AT THE CLIENT'S OWN RISK. THE PRODUCT IS PROVIDED FOR USE "AS IS" WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE VENDOR DISCLAIMS ALL WARRANTIES OF ANY KIND, EITHER EXPRESS, STATUTORY OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THE VENDOR IS NOT OBLIGATED TO PROVIDE ANY UPDATES TO THE PRODUCT. THE VENDOR DOES NOT WARRANT THAT THE PRODUCT OR ANY PART THEREOF WILL MEET THE CLIENT'S REQUIREMENTS OR BE UNINTERRUPTED, SECURE OR ERROR-FREE, OR THAT ERRORS WILL BE CORRECTED.

(B). VENDOR WARRANTS TO CLIENT THAT: (I) THE PRODUCT, DOCUMENTATION AND OTHER MATERIALS FURNISHED HEREUNDER DO NOT INFRINGE OR MISAPPROPRIATE THE RIGHTS OF ANY THIRD PARTY OR VIOLATE THE LAWS OR REGULATIONS OF ANY GOVERNMENTAL OR JUDICIAL AUTHORITY; (II) CLIENT'S USE OF THE PRODUCT AND OTHER MATERIALS WILL NOT BE INTERRUPTED OR OTHERWISE DISTURBED BY ANY ENTITY ASSERTING A CLAIM UNDER OR THROUGH VENDOR; (III) VENDOR FURTHER REPRESENTS AND WARRANTS THAT IT MAINTAINS AND ENFORCES POLICIES AND PROCEDURES THAT ARE REASONABLY DESIGNED TO PREVENT THE DISTRIBUTION OF PERSONAL IDENTIFIABLE INFORMATION ("PII") AND/OR MATERIAL NON-PUBLIC INFORMATION (WITHIN THE MEANING OF U.S. FEDERAL SECURITIES LAWS) ("MNPI") AND INFORMATION THAT IS SUBJECT TO A DUTY OR

CONTRACTUAL RESTRICTION OWED TO A THIRD PARTY.

(C). VENDOR HAS NO KNOWLEDGE OF ANY CURRENT, PENDING, ANTICIPATED OR THREATENED LITIGATION OR SIMILAR PROCEEDING INVOLVING VENDOR OR ANY OF ITS EMPLOYEES IS NOT AWARE OF ANY GOVERNMENTAL OR REGULATORY INQUIRY OR INVESTIGATION INVOLVING VENDOR OR ANY OF ITS EMPLOYEES OR AFFILIATES. IF AT ANY TIME DURING THE TERM, VENDOR DISCOVERS THAT ANY EVENT HAS OCCURRED THAT MAKES ANY OF THE FOREGOING REPRESENTATIONS, WARRANTIES OR INCOMPLETE OR INACCURATE, VENDOR SHALL PROMPTLY NOTIFY CLIENT IN WRITING OF SUCH EVENTS AND OF THE STEPS, IF ANY, BEING TAKEN TO REMEDY THE MATTER.

## **8. NO LIABILITY FOR DAMAGES**

IN NO EVENT SHALL THE VENDOR OR ITS SUPPLIERS BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, INCIDENTAL, DIRECT, INDIRECT, SPECIAL AND CONSEQUENTIAL DAMAGES, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OR INABILITY TO USE THE PRODUCT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING FAULT, NEGLIGENCE AND THE FAILURE OF THE ESSENTIAL PURPOSE. REGARDLESS OF THE CAUSE OR FORM OF THE ACTION, THE VENDOR'S AGGREGATE LIABILITY TO THE CLIENT FOR ACTUAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE LIMITED TO THE TOTAL AMOUNT OF THE LICENSE FEE, IF ANY, PAID BY THE CLIENT TO THE VENDOR FOR THE USE OF THE PRODUCT. BECAUSE SOME STATES/COUNTRIES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL

DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO THE CLIENT. THIS PROVISION SHALL NOT APPLY WITH RESPECT TO BREACHES ARISING OR RELATED TO SECTION 7.B OF THIS AGREEMENT.

## **9. CONFIDENTIAL INFORMATION**

Vendor shall regard and preserve as confidential, and shall not use (other than as necessary to perform its obligations under this Agreement) or disclose to third parties any information provided by or obtained from users of the Product or otherwise related to the business of Client (including without limitation Client's positions and/or transactions as well Client's relationship with Vendor), or its clients, that may be obtained by Vendor from any source as a result of this Agreement (collectively, the "**Confidential Information**"). Vendor shall not, without first obtaining Client's prior written consent, disclose to any person, firm or enterprise, or use in any way, any Confidential Information. Vendor shall segregate the Confidential Information from the data, reports and other information of other Vendor clientele and shall maintain appropriate physical, electronic and procedural safeguards to store, dispose of (if applicable) and secure Confidential Information to protect it from unauthorized access, use, disclosure, alteration, loss and destruction.

## **10. INDEMNIFICATION**

The Client shall defend, indemnify and hold harmless the Vendor, its Affiliates, and their licensors, officers, directors, agents and employees from any liability, loss, damage, cost or expense arising out of Client's fraud or willful misconduct in connection with the use of this Product.

Vendor agrees to defend, indemnify and hold Client, its officers, directors, employees and agents harmless from and against any claim or action brought against Client by a third party arising from (i) actual or alleged infringement, breach, contravention, misuse, or misappropriation of any intellectual or industrial property or proprietary right, including, without limitation, trademarks, service marks, patents, copyrights, trade secrets, or any similar proprietary rights, relating to or arising out of the use of

the Product provided by Vendor hereunder; (ii) any claim that the Product provided by the Vendor hereunder violates any contract or any law, rule or regulation, including, without limitation, any applicable privacy law; or (iii) Vendor's material breach of any of its representations or warranties under this Agreement.

## **11. GOVERNING LAW AND JURISDICTION.**

(1) This Agreement and all rights and obligations hereunder, including but not limited to matters of construction, validity and performance, shall be governed by and construed in accordance with the laws of the People's Republic of China.

(2) Each of the parties hereto:

(i) Any dispute arising out of or in relation to this Agreement shall be settled by both Parties through negotiation under the principle of friendly cooperation. Where such friendly negotiation fails, either Party may file a lawsuit with the court at the place where the Vendor's domicile is located.

(ii) Irrevocably agrees that all claims in respect of such action or proceeding shall be heard and determined in such the court at the place where the Vendor's domicile is located. Each of the parties hereto irrevocably waives, to the fullest extent it may legally do so, any rights to a trial by jury in such action or proceeding and the defense of an inconvenient forum to the maintenance of such action or proceeding. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

## **12. ASSIGNMENT.**

This Agreement may not be assigned by either of the Parties without each other's mutual prior written consent.

**13. SEVERABILITY.**

Should any term of this Agreement be declared void or unenforceable by any court of competent jurisdiction, such declaration shall have no effect on the remaining terms hereof.

AGREED TO AS OF THE EFFECTIVE DATE:

[INSERT COMPANY NAME]

GTCOM Technology Corporation

By:

By:

Name:

Name: Thomas Nigro

Title:

Title: Head of North America

Date: September 15, 2020

Date: [INSERT DATE]