

**IMPORTANT-READ CAREFULLY: BY DOWNLOADING, INSTALLING AND/OR USING THE SOFTWARE OR THE DOCUMENTATION, YOU (ON BEHALF OF YOURSELF OR AS AN AUTHORIZED REPRESENTATIVE ON BEHALF OF AN ENTITY) AS THE “CUSTOMER” AGREE TO ALL THE TERMS OF THIS MASTER SOFTWARE LICENSE AND SERVICE AGREEMENT (THE “AGREEMENT”) WITH TETRATE.IO, INC. (“TETRATE”) REGARDING CUSTOMER’S USE OF THE SOFTWARE AND THE DOCUMENTATION. IF CUSTOMER DOES NOT AGREE WITH ALL OF THESE TERMS, DO NOT DOWNLOAD, INSTALL OR OTHERWISE USE THE SOFTWARE OR THE DOCUMENTATION AND CLICK ON THE “I DISAGREE” BUTTON AND THE INSTALLATION PROCESS WILL NOT CONTINUE AND CUSTOMER WILL NOT BE ABLE TO USE THE SOFTWARE. THE EFFECTIVE DATE OF THIS AGREEMENT IS THE DATE THAT YOU ACCEPT THIS AGREEMENT BY CLICKING ON THE “I AGREE” BUTTON.**

## **1. Definitions.**

1.1 **“Confidential Information”** means the non-public information that is: (a) identified as confidential at the time of disclosure by the disclosing party (**“Discloser”**); or (b) disclosed under circumstances that would indicate to a reasonable person that the information should be treated as confidential by the party receiving such information (**“Recipient”**).

1.2 **“Documentation”** means the end user manuals, Software specifications, other materials and all updates relating to the functionality or operation of the Software provided with the Software or made available for download for use in conjunction with the Software and templates, reports or results of the Services expressly excluding marketing and sales collateral and materials.

1.3 **“Error”** means a failure of the Software to conform substantially to the Documentation at the time of delivery which is reproducible and otherwise covered under the Support Services Program.

1.4 **“Evaluation Period”** means the period commencing on the date Software is made available to Customer to download and ending 30 days thereafter.

1.5 **“Fees”** mean, collectively, the fees paid for the license to use the Software in accordance with this Agreement and the applicable Documentation (**“Subscription Fees”**) for the term for which the applicable Subscription Fee has been paid (**“Subscription Term”**) and all other fees for Services and Support.

1.6 **“Software”** means the Tetrade software and all updates, upgrades, alterations, modifications and derivatives Tetrade makes available from time to time during the Subscription Term excluding third party software and open source software provided with the Software for which the applicable license terms are available upon request (**“Third Party Software”**).

1.6 **“Subscription License”** means the right of use of the Software and Documentation as set forth in Section 2.1 in a production environment, for the payment of all Fees for the Subscription Term.

1.7 **“Services”** consist of installation, implementation, configuration services, architectural review and such other services Tetrade makes available from time to time as set forth in an order or statement of work signed by the parties.

1.8 **“Support”** mean technical support and maintenance provided in accordance with and subject to Tetrade’s Support Services Program.

## **2. License.**

2.1 **Subscription License to Software and Documentation.** During the Subscription Term, subject to this Agreement and the payment of all Fees, Tetrade grants Customer a limited, non-sublicensable, non-transferable (except as expressly permitted), non-exclusive Subscription License to: (a) install the Software in the quantity specified in the order on the server(s) under Customer’s sole control; (b) reproduce one cold backup copy of the Software and such reasonable number of copies of the Documentation to support Customer’s use of the Software; and, (c) use the Software and Documentation only for Customer internal business purposes. Software is licensed only in object code. Customer agrees to comply with the terms of the applicable licenses for the Third Party Software.

**2.2 Evaluation.** During the Evaluation Period, and notwithstanding any provision in this Agreement to the contrary, Tetrat grants Customer a personal, nonexclusive license to use the Software and Documentation, in accordance with the Documentation and this Agreement, solely for internal testing and evaluation purposes, in a non-production environment. If the Software meet the agreed to goals, Customer will purchase a Subscription License to the Software. Tetrat is not obligated to provide any Services during the Evaluation Period. On expiration of the Evaluation Period unless Customer purchase a Subscription License: (a) Customer will stop all use of the Software and Documentation; and, (b) Remove and destroy all copies of the Software from all installation sites.

**2.3 Certain Restrictions.** Except as expressly and unambiguously permitted by this Agreement, Customer will not, nor permit anyone else to, directly or indirectly: (a) Use any feature, function or capability without first purchasing the applicable license even if such feature, function or capability is enabled without a key; (b) Copy, modify, encumber or distribute the Software or Documentation; (c) Reverse engineer, disassemble, decompile or otherwise attempt to discover the source code or structure, sequence and organization of the Software (except where the foregoing is expressly permitted by applicable local law, and then only to the extent so permitted) or create any derivative works including, without limitation, customization, translation or localization; (d) Sell, license, sublicense, rent, lease, lend, transfer or otherwise provide access to Software or use the Software for timesharing or service bureau purposes, or otherwise use the Software on behalf of any third party (including as part of a managed service offering); (e) Remove or obscure any proprietary notices on the Software or Documentation; (f) Use the Software for performing comparisons or other “benchmarking” activities, either alone or in connection with any hardware or software; (g) Publish or disclose to any third party any technical features, performance or benchmark tests, or comparative or competitive analyses relating to the Software except for internal use or as may be authorized in writing by Tetrat; or, (h) Use the Software or Documentation for any purpose and in any manner not expressly and unambiguously authorized herein (including, without limitation, for any purpose competitive with Tetrat).

**2.4** The Software contains automated reporting routines that generate and report to Tetrat metrics and statistics regarding the performance of the Software, to report problems and issues with the Software and provide information back to Tetrat pertaining to the Software (“**Report**”). Tetrat owns all right, title and interest in and to any data and information it so collects (and Customer hereby make all assignments necessary to accomplish such ownership). Customer may disable this functionality.

**2.5 Acceptance and Support Services Program.** The Software and Documentation are deemed accepted when made available for download. Services and Support are accepted on performance. Errors are addressed by the Support Services Program as Customer’s sole and exclusive remedy.

**2.6 Services.** Customer may purchase Services from time to time which may include the use of templates and reports resulting from the Services or such other deliverables set forth in the applicable statement of work.

**3. Proprietary Rights.** Software and Documentation are licensed to Customer and not sold. As between the parties, title, ownership rights, and intellectual property rights in and to the Software (including third party and open source software), Documentation and Tetrat’s Confidential Information, in any form or format, along with all copies remain exclusively in Tetrat and its licensors excluding Customer data provided by the Customer for use in conjunction with the Services. All suggestions, input, comments and feedback provided to Tetrat with respect to the Software, Services, Documentation and Support are Tetrat’s property and deemed Tetrat’s Confidential Information. Customer hereby assigns to Tetrat and its licensors any interest Customer may have in the same. The Software and Documentation are protected by copyright and other intellectual property laws and by international treaties. Tetrat owns all of its trademarks, service marks and logos hereunder and no license to use any such trademarks is provided hereunder. This Agreement does not grant Customer any rights not expressly granted herein.

#### **4. Fees.**

**4.1 Payments.** All Fees (plus applicable taxes and duties) are due and payable within 30 days of the date of the invoice in US Dollars, without set-off or deduction and, once paid, are not refundable, except as expressly stated in this

Agreement. Payment is not conditioned on the future availability of any Software, feature or functionality. Undisputed amounts not received by Tetrade timely accrue interest at a rate of one and one-half percent (1.5%) for each month that the invoice is overdue, or the highest interest rate permitted by applicable law, whichever is lower. Customer will notify Tetrade within 10 business days of the date of the invoice of any disputed invoiced amount or such claim is waived. The parties will endeavor to resolve any dispute of invoiced amount within 30 days; upon which resolution, Customer will remit all amounts due and payable to Tetrade or Tetrade will refund excess payment.

**4.2 Audit.** During the Subscription Term and for three (3) years thereafter, within 15 business days of Tetrade's request, Customer will provide Tetrade with all usage and other records and will permit Tetrade (or its representative) to audit Customer's records to confirm Customer compliance with this Agreement. Customer will pay all unpaid Fees. If such underpayment is greater than 5% of the Fees paid by Customer to Tetrade under this Agreement, Customer will pay all reasonable expenses related to such audit upon receipt of an invoice.

## **5. Confidentiality.**

**5.1 Maintenance of Confidentiality.** Discloser retains all right, title and interest to Discloser and its licensors' Confidential Information. The parties acknowledge that a violation of the Recipient's obligations with respect to Confidential Information may cause irreparable harm to the Discloser for which a remedy at law would be inadequate. Therefore, in addition to any and all remedies available at law, Discloser will be entitled to seek an injunction or other equitable remedies in all legal proceedings in the event of any threatened or actual violation of any or all of the provisions hereof without the need to post bond. Recipient will: (a) take reasonable measures to protect the Discloser's Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination or publication of the Confidential Information as the Recipient uses to protect its own confidential information of a like nature; (b) limit disclosure to those of Recipient's employees, contractors or other third parties having a need to know and who have previously agreed in writing, prior to receipt of Confidential Information to obligations similar to the provisions hereof; (c) not copy, reverse engineer, disassemble, create any works from, or decompile any prototypes, software or other tangible objects which embody the Recipient's Confidential Information and/or which are provided to the party hereunder; and (iv) comply with and obtain all U.S. export control laws or regulations. Confidential Information will not be reproduced in any form except as required to accomplish the purposes and intent of this Agreement. Any reproduction of Confidential Information will be the property of Discloser and will contain any and all notices of confidentiality contained on the original.

**5.2 Exceptions.** The parties agree that the foregoing will not apply to any information that Recipient can evidence: (a) is or becomes publicly known and made generally available through no improper action or inaction of Recipient; (b) is already in its possession or known by Recipient prior to disclosure; (c) is independently developed by Recipient without use of or reference to any Confidential Information; or (d) is rightfully disclosed to it by a third party. Recipient may use Confidential Information: (i) as needed to assert defenses or seek to enforce this Agreement; or, (ii) as reasonably required to make disclosures required by law or court order provided that Recipient notifies Discloser prior to disclosure (except to the extent limited or prohibited by law) so Discloser can seek to protect, limit or quash any such disclosure.

**6. Disclaimers.** THE SOFTWARE, THIRD PARTY SOFTWARE, DOCUMENTATION, SERVICES AND SUPPORT ARE PROVIDED ON AN "AS IS" BASIS. TETRDE AND ITS LICENSORS HEREBY DISCLAIM ALL WARRANTIES, REPRESENTATIONS AND CONDITIONS REGARDING THE SOFTWARE, THIRD PARTY SOFTWARE, DOCUMENTATION, SERVICES AND SUPPORT WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUALITY AND NON-INFRINGEMENT. CUSTOMER ACKNOWLEDGES AND AGREES THAT TETRDE AND ITS LICENSORS DO NOT WARRANT THAT THE SOFTWARE, THIRD PARTY SOFTWARE, DOCUMENTATION, SERVICES AND SUPPORT WILL MEET CUSTOMER'S REQUIREMENTS, BE UNINTERRUPTED, TIMELY, SECURE OR ERROR FREE OR MAKE ANY WARRANTY AS TO THE RESULTS WHICH MAY BE OBTAINED FROM THE USE OF THE SOFTWARE, THIRD PARTY SOFTWARE, DOCUMENTATION, SERVICES OR SUPPORT. THE SOFTWARE, THIRD PARTY SOFTWARE AND DOCUMENTATION ARE NOT DESIGNED, INTENDED, OR LICENSED FOR USE IN ANY AERONAUTICAL, NUCLEAR, MEDICAL, LIFE SAVING OR LIFE SUSTAINING SYSTEMS, OR FOR ANY OTHER APPLICATION IN WHICH THE USE OF WHICH COULD CREATE A SITUATION WHERE PERSONAL INJURY OR DEATH MAY OCCUR. CUSTOMER IS RESPONSIBLE TO BACKUP ALL OF CUSTOMER'S DATA AND SYSTEMS. TETRDE AND ITS LICENSORS ARE NOT

RESPONSIBLE OR LIABLE FOR LOSS, CORRUPTION OR DESTRUCTION OF DATA. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.

**7. Indemnity.** Tetrate agrees to defend or settle, at Tetrate's option, a third party claim or cause of action against Customer alleging that the Software infringes or misappropriates a patent or copyright of such third party ("**Claim**") and to pay damages finally awarded against Customer or to pay settlement amounts to the extent directly resulting from such Claim, provided Tetrate is notified promptly of such Claim, is given sole control of the defense and settlement of the Claim, Customer provide to Tetrate all reasonable assistance and Customer is not in material breach of this Agreement. The foregoing obligations do not apply to third party claims or causes of action pertaining to an Evaluation or to any Software or portions or components thereof: (a) not supplied by Tetrate; (b) made in whole or in part in accordance with Customer's specifications; (c) modified other than by Tetrate; (d) if the alleged infringement results from the use of the Software in combination with other products, processes or materials but for such combination the Software would not infringe; (e) if Customer continues infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement and failure to use such modifications; or, (f) use of the Software other than in strict conformity with this Agreement and the Documentation. For all such exceptions, Customer will indemnify, defend and hold harmless Tetrate and its officers, directors, employees, agents, successors and assigns against all damages and liabilities including reasonable attorneys' fees and costs. If any Claim arises, Tetrate may, at its sole option and expense: (i) replace or modify the affected Software to make it non-infringing with no less material functionality; (ii) procure a license for Customer's continued use of the affected Software; or, (iii) require Customer stop using the affected Software, terminate this Agreement and Customer's rights hereunder. This Section 7 states Tetrate's sole and exclusive obligations, and Customer's sole and exclusive remedies, with respect to any claims of infringement or misappropriation of third party intellectual property rights of any kind.

**8. Limitation of Liability.** UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, INCLUDING, BUT NOT LIMITED TO, TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, WILL TETRATE OR ITS LICENSORS BE LIABLE TO CUSTOMER OR ANY OTHER PERSON OR ENTITY FOR ANY OF THE FOLLOWING: (A) ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, WORK STOPPAGE, ACCURACY OF RESULTS, COMPUTER FAILURE OR MALFUNCTION, OR LOSS OR CORRUPTION OF DATA OR THE COST OF PROCURING SUBSTITUTE SOFTWARE; OR (B) ANY AMOUNT IN THE AGGREGATE IN EXCESS OF THE SUBSCRIPTION LICENSE FEES PAID FOR THE SOFTWARE FROM WHICH THE CAUSE OF ACTION AROSE IN THE TWELVE (12) MONTHS PRECEDING THE DATE THE CLAIM AROSE, OR, IF GREATER, \$500.00. THE FOREGOING LIMITATIONS APPLY EVEN IF TETRATE HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS ARE INDEPENDENT FROM ALL OTHER PROVISIONS OF THIS POLICY AND APPLY NOTWITHSTANDING THE FAILURE OF ANY REMEDY PROVIDED HEREIN.

**9. Term and Termination.**

9.1 This Agreement continues until the expiration or earlier termination of the Subscription Period. Notwithstanding, a party may terminate this Agreement if the other party materially breaches this Agreement and such breach is not cured within 30 days (or 5 days in the case of non-payment) of the breaching party's receipt of written notice describing the breach. This Agreement terminates automatically in the event (a) Customer breaches Section 2, 5 or 11 in addition to all other legal or equitable rights or remedies or (b) of party's insolvency, admission in writing that a party is unable to pay its debts as they come due, an assignment for the benefit of creditors or a party otherwise become subject to receivership, bankruptcy or insolvency proceedings.

9.2 **Effect of Termination.** Upon expiration or termination of this Agreement for any reason, the license granted hereunder terminates and Customer will stop using the Software and Documentation. Customer will destroy and remove from all computers, hard drives, networks and other storage media all copies of the Software and Documentation and will certify to Tetrate upon request. Sections 1, through 8, 9.2, 11 and 12 survive expiration or termination of this Agreement for any reason.

**10. Government Use.** The Software provided under this Agreement is commercial computer software developed exclusively at private expense. Unless otherwise set forth in this Agreement, use, duplication, and disclosure by civilian agencies of the U.S. Government will not exceed those minimum rights set forth in FAR 52.227-19(c) or successor regulations. Use, duplication, and disclosure by U.S. Department of Defense agencies is subject solely to the software license terms contained in this Agreement, as stated in DFARS 227.7202 or successor regulations. U.S. Government rights will apply only to the specific agency and program for which the Software is obtained.

**11. Compliance and Export Controls.** Customer will comply with all applicable laws and regulations, including, without limitation: (a) all privacy laws and regulations; (b) export laws and regulations, including the Export Administration Regulations, of the Bureau of Industry and Security (“**BIS**”) of the U.S. Department of Commerce and the economic sanctions administered by the Office of Foreign Assets Control (“**OFAC**”), of the U.S. Department of the Treasury and to obtain any necessary license or other authorization to export, reexport, or transfer Proprietary Information or Tetrade’s Products (“**Products**”). Without limiting the foregoing, Customer agree Customer will not, and will not permit a third party, directly or indirectly, to export, re-export, divert, provide, disclose or transfer Confidential Information or the Software to Crimea, Cuba, Iran, North Korea, Sudan, or Syria, to the governments of these countries, wherever located, to any person or entity identified on BIS’s Denied Persons, Entity, or Unverified List or OFAC’s Specially Designated Nationals List or List of Consolidated Sanctions as updated from time to time, to any end user with knowledge or reason to know that the Software or Confidential Information will be used for nuclear, chemical, or biological weapons proliferation, or for missile-development purposes or to any person with knowledge or reason to know that they will export, re-export, provide, or transfer the Software or Confidential Information other than in compliance with the foregoing restrictions, and (c) the U.S. Foreign Corrupt Practices Act, the UK Bribery Act and all similar laws and regulations which prohibit offering any inducement, whether money or goods or services, to any government official, employee, candidate or party.

**12. General.** Violation of Section 2 or 5 may cause irreparable harm to a party for which a remedy at law would be inadequate. Therefore, in addition to any and all remedies available at law, a party is entitled to seek an injunction or other equitable remedies in all legal proceedings in the event of any threatened or actual violation thereof without the need to post bond. Written notice is effective when delivered or rejected at the address a party last notified the other party in writing. This Agreement, the Support Services Program and statement of work signed by both parties, are the complete agreement between the parties concerning the Software and Documentation, Services and Support to the exclusion of any pre-printed or contrary terms of any purchase order (or similar document), and supersedes all prior agreements and representations between them. This Agreement may be amended either by a writing executed by both parties. If any provision of this Agreement is held to be unenforceable for any reason, such provision will be reformed only to the extent necessary to make it enforceable. The failure of a party to act with respect to a breach of this Agreement does not constitute a waiver and will not limit such party’s rights with respect to such breach or any subsequent breaches. Except as expressly stated, this Agreement is personal to Customer and this Agreement and the Software and Documentation cannot be assigned or transferred for any reason whatsoever, without Tetrade’s prior written consent, and any action or conduct in violation of the foregoing will be void and without effect. Tetrade expressly reserves the right to assign this Agreement and to delegate any of its obligations hereunder to a successor in interest agreeing to be bound to this Agreement. The parties are and will remain independent contractors as to each other. At no time will either party be deemed to be the agent or employee of the other. This Agreement will be governed by and construed under California law as such law applies to agreements between California residents entered into and to be performed within California, and The U.N. Convention on Contracts for the International Sale of Goods will not apply. The controlling language of this Agreement is English and all communications and proceedings will be conducted in English. If Customer have received a translation into another language, it has been provided as a convenience only. Unless waived by Tetrade in a particular instance, the sole and exclusive jurisdiction and venue for actions arising under this Agreement will be the State and Federal courts in Santa Clara County, California and each party hereby consents to the jurisdiction of such courts for any such dispute. The party prevailing in any dispute under this Agreement will be entitled to an award of its costs and attorneys’ fees. This Agreement may be executed in multiple counterparts all of which taken together shall constitute one single agreement between the parties. The signatories hereto represent that they are duly authorized to sign this Agreement on behalf of their respective companies and the electronic version of this Agreement is legally binding as if it were the original. Other than as expressly set out in this Agreement, this Agreement does not

create any rights for any person who is not a party to it and no person who is not a party to this Agreement may enforce any of its terms or rely on any exclusion or limitation contained in it.