



**CenterTRAK Managements Systems, LLC
AGREEMENT of Terms and Conditions**

This Agreement (the "Agreement") is entered into between CenterTRAK Management Systems, LLC ("Licensor"), a Delaware limited liability company, with operating offices in the state of Alabama and the company being represented by the individual downloading this evaluation copy of the Licensed Program ("Licensee").

WITNESSETH:

WHEREAS, Licensor is the owner of copyrighted computer software program(s), including related documentation, (individually or collectively, the "Licensed Program") the use of which it is willing to license to Licensee; and

WHEREAS, Licensee understands and agrees that by executing this Agreement, it is entitled only to the use of the Licensed Program, that the Program is copyrighted by Licensor, that is not sold by Licensor to Licensee, and that use of the Licensed Program by Licensee will not begin until this Agreement has been accepted by Licensee.

NOW, THEREFORE, in consideration of the premises and the mutual benefits and obligations set forth below, the parties agree as follows:

1. **License.** Subject to the terms and conditions contained in this Agreement, Licensor grants Licensee a non-exclusive and non-transferable license to use the Licensed Program for a 30 day evaluation period.
2. **Scope of Rights.** For each copy of a Licensed Program obtained by Licensee, Licensee shall receive a non-exclusive, non-transferable right to install Licensed Program in Licensee's facility. Licensee is required to obtain a separate license for each computer system on which any Licensed Program will be used, except for multi-user Local Area Network (LAN) License referred to below.
3. **LAN and License.** If needed by Licensee a LAN License may be available for the Licensed Program. Such LAN License would be limited to one location and single local network, and would contain a description of the number of workstation terminals to be included.

6. **Proprietary Protection and Restrictions.** Licensor shall have sole and exclusive ownership of all right, title and interest in and to the Licensed Program and all modifications and enhancements thereof (including ownership of all trade secrets and copyrights pertaining thereto), subject only to the rights and privileges of limited use expressly granted to Licensee herein. Licensee shall keep the Licensed Program free and clear of all claims, liens and encumbrances. Licensee may not use, copy, modify or distribute the Licensed Program (electronically or otherwise), or any copy, adaptation, transcription, or merged portion thereof, except as expressly authorized by Licensor; or, reverse assemble, reverse compile, reverse engineer or otherwise translate the Licensed Program. Licensee may not transfer, lease, assign or sub-license its rights, except to transfer the Licensed Program in its entirety to (a) a successor in interest of Licensee's entire business who assumes the obligations of this Agreement, or (b) any other party reasonably acceptable to Licensor, who enters into a substitute version of this Agreement, and pays a fee to cover transfer costs. No service bureau work, multiple user license, or time sharing arrangement is permitted, except as expressly authorized by Licensor. Licensee may not install the Licensed Program in any other computer system or use it at any other location without Licensor's express written authorization obtained in advance (which will not be unreasonably withheld). The License is subject to termination if the provisions of this paragraph are violated by Licensee.

(a) Liquidated Damages. Licensee agrees that, in the event of its breach of this Agreement

Licensor will not have an adequate remedy in money or damages. Licensor shall therefore be entitled to obtain an injunction against such breach from any court of competent jurisdiction immediately upon request, and Licensor's right to obtain injunctive relief shall not limit its right to seek further remedies.

7. **Use and Restrictions.** Licensee's rights and obligations concerning the use of any Error Corrections, Enhancements or Releases (or any other programming provided by Licensor, regardless of its form or purpose) shall be as provided in the License Agreement. Licensor shall have sole and exclusive ownership of all right, title and interest in and to such works (including ownership of all copyrights and other intellectual property rights pertaining thereto), subject only to the License expressly granted to Licensee therein. Unless otherwise agreed, Licensee is entitled to make and use only the number of copies of such works as it is authorized to use of the Program to which they relate, and at Licensor's request, Licensee agrees to return or destroy superseded copies of the Program when replaced by Licensor.

8. **Limited Warranty and Limitation of Liability.** Licensor's warranty is expressly conditioned on Licensee's observance of the operating, security and data control procedures set forth in the User's Manual included with the Licensed Program. Licensor assumes no responsibility for theft or embezzlement by the agents or employees of Licensee. Licensor shall perform its services hereunder in a workmanlike manner. Notwithstanding the addition of any Error Correction, Enhancement or Release to the Program(s) for purposes of the Program License Agreement, Licensor's obligation to correct Errors in such additions shall be limited to the maintenance terms of this Agreement. **EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH, LICENSOR SHALL HAVE NO LIABILITY FOR THE PROGRAM OR SERVICES PROVIDED, INCLUDING ANY LIABILITY FOR NEGLIGENCE; MAKES NO WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR CONTRACTUAL (WHETHER IN ANY OTHER PROVISION OF THIS AGREEMENT OR ANY OTHER COMMUNICATION). LICENSOR SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, LICENSOR DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS, AND WARRANTIES WITH RESPECT TO THE LICENSED PROGRAM, INCLUDING ITS CONDITION, ITS CONFORMITY TO ANY REPRESENTATION OR DESCRIPTION, THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS, ANY NEGLIGENCE, OR ITS MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE.

Licensor's cumulative liability to Licensee for all claims relating to the Licensed Program and this Agreement, including any cause of action sounding in contract, tort, or strict liability, shall not exceed the total amount of all license fees paid to Licensor hereunder for the 30 day evaluation period. This limitation of liability is intended to apply notwithstanding other provisions of this Agreement that have been breached or have proven ineffective. Licensee is responsible for its own backup procedures, and Licensor shall not be liable for loss of data or documentation. In no event shall Licensor be liable for any claims or damages for loss of profits, interruption of business, theft or embezzlement by third parties, or any incidental, special, exemplary, or consequential damages, even if Licensor has been advised of the possibility of such claims or damages. This limitation upon damages and claims is intended to apply without regard to whether other provisions of this Agreement have been breached or have proven ineffective.

9. **Term of Agreement and Termination.** Licensee's License and the maintenance provided by this Agreement shall become effective upon delivery of the Licensed Program to Licensor and shall continue for a period of 30 days (the "Term"), provided that Licensee has satisfied all other requirements set forth in this Agreement and its exhibits. Upon the expiration of the term, this Agreement shall automatically expire. At the end of the evaluation period, if the Licensee wishes to begin an agreement for leasing the Licensed Program, Licensee must contact CenterTrak or their applicable sales representative to obtain copies of required documents to complete. These Terms and Conditions will remain in effect during the entire lease period. Promptly upon termination of this Agreement for any reason, or upon discontinuance or abandonment of possession or use of the Licensed Program, Licensee shall return or destroy all copies of the Licensed Program in its possession (whether modified or unmodified), and all other materials pertaining

to the Licensed program (including all copies thereof). Licensee shall certify its compliance with such restrictions at Licensor's request.

10. **Scope of Maintenance.** During the term of this Agreement, Licensor agrees to provide basic maintenance services in support of the Program. Basic Maintenance services shall consist of:

(a) **Error Correction.** Licensee shall notify Licensor promptly following the discovery of any error, and if requested by Licensor, shall submit a listing of output and any other data required by Licensor in order to reproduce the error and the operating conditions under which the error occurred or was discovered. Licensor shall use all reasonable diligence in accordance with its standard reporting procedures to correct verifiable and reproducible errors reported to it. The error correction may be provided in the form of a "temporary fix" consisting of sufficient programming and/or operating instructions to implement the error correction.

(b) **On-line support.** Licensee may report problems and seek assistance with the Licensed Program from the support team by emailing a completed System Modification Request (SMR) form to support@centertrak.com. This form is included in the software system.

(c) **New Releases.** If Licensor issues new Releases of the Licensed Program or upgrades, Licensor will provide Licensee with one (1) copy of each new Release or upgrade for each copy of the Program being maintained under this Agreement. Licensor shall provide reasonable assistance to Licensee for installation and operation of each new Release or upgrade because Releases are cumulative, each Release or upgrade is useful and is offered only if Licensee has obtained and installed all prior applicable Releases or upgrade.

(d) **Staff.** Licensor shall maintain a trained staff capable of rendering the services set forth in this Agreement.

(e) **Exceptions.** The following matters are not covered by Basic Maintenance: (i) any problem resulting from the misuse, improper use, alteration, or damage of the Program(s); (ii) any problem caused by modification in any version of the Program not made or authorized by Licensor; (iii) any problem resulting from hardware, software, or programming other than the Program; (iv) any problem resulting from combining the Program with other programming or equipment not recommended or approved by Licensor; (v) errors in any version of the Program other than the most recent Release (except that Licensee shall have 15 days to implement the newest Release).

Licensee shall pay Licensor's normal charges and expenses for time or other resources provided by it to diagnose or attempt to correct problems. Licensee is also responsible for procuring, installing and maintaining all equipment, telephone lines, communication interfaces, and other hardware necessary to operate the Program and to obtain maintenance services from Licensor. Licensor will not be responsible for delays caused by events or circumstances beyond its reasonable control.

11. **Additional Services.** Licensor may provide additional services in support of the Program subject to payment by Licensee of Licensor's normal charges and expenses, the following: (a) Major Enhancements: Licensor may offer Licensee major enhancements at no charge provided Licensee is not in default of this Agreement. If offered, Licensee may obtain 1 copy of each major enhancement for each copy of the Program being maintained under this Agreement; (b) Additional Training – Licensee may enroll its employees in additional or advanced training classes offered by Licensor, as space permits; and (c) Additional Enhancements – Licensor will consider and evaluate the development of additional enhancements for Licensee's specific use and will respond to Licensee's requests for additional services pertaining to the Program.

12. **Miscellaneous.**

(a) This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Alabama.

(b) In the event that any of the terms of this Agreement are, or become, or are declared to be invalid or void by any court or tribunal of competent jurisdiction, such term or terms shall be null and void and shall be deemed severed from this Agreement and all the remaining terms of this Agreement shall remain in full force and effect.

(c) The non-enforcement or waiver of any provision on one occasion shall not constitute a waiver of such provision on any other occasion unless expressly agreed in writing.

By clicking on the “Accept” button, the Licensee hereto agrees that this Agreement, including the accompanying terms, conditions and exhibits, is the complete and exclusive statement of the agreement between the parties and supersedes all proposals or prior agreements, oral or written, relating to the subject matter hereof.