

# LinkTek End User Software License Agreement

3 July 2016

**You should carefully read the following terms and conditions before installing, copying or using the SOFTWARE in any manner. Installing, copying or using the SOFTWARE indicates your acceptance of these terms and conditions. If you do not agree with them, you are not authorized to install, copy or use the SOFTWARE. Installing, copying or using the SOFTWARE constitutes your agreement that you and your company or organization are ethically and legally bound by all terms and conditions of this license Agreement as contained herein.**

## 1. Definitions

LICENSOR means LinkTek Corporation of 1805 Drew Street; Clearwater, Florida, USA.

LICENSEE means the organization, company, individual or party which is granted a license from LICENSOR to install, copy and use the SOFTWARE.

SOFTWARE means any programs, documentation, files or materials owned, sold or developed by LICENSOR that have been obtained by LICENSEE in any manner.

SITE means all facilities where the SOFTWARE will be used, which facilities are owned or leased by LICENSEE within a radius of one-half mile of the exact street address LICENSEE has registered with LICENSOR and for which LICENSOR has supplied a license code.

ORGANIZATION means either the entire corporation, government agency or organization or the clearly definable subset thereof as specified below. An ORGANIZATION may be defined based on:

- A legal entity — for example, ABC Corporation
- A distinct organization within a legal entity — for example, ABC Corporation's Finance Division
- A clearly defined geographical area — for example, ABC Corporation in Texas
- Or some combination thereof — for example, ABC Corporation's Finance Division in Texas

## 2. License Privileges and Restrictions

In consideration of payment of the license fee, which is a part of the price LICENSEE paid for this product (except for the trial license), LICENSOR grants LICENSEE one of the following non-transferable, non-exclusive, non-sublicensable licenses to install, copy and use the SOFTWARE subject to the restrictions in this Agreement:

- If LICENSEE purchased an organization license, it is agreed that ORGANIZATION is strictly designated and defined as:

\_\_\_\_\_. ORGANIZATION has no more than \_\_\_\_\_ full-time or part-time employees and full-time contractors (if pricing is based on personnel count) or \_\_\_\_\_ computers that can run any of the applications supported by the SOFTWARE (if pricing is based on computer count). LICENSEE may use the SOFTWARE for the benefit of the defined ORGANIZATION provided that ORGANIZATION is defined such that a minimum of ninety-five percent (95%) of the usage of the computer files which are processed by the SOFTWARE is performed 1) on computers owned or leased by the defined ORGANIZATION (for number-of-computer-based organization licenses) or 2) by employees or full-time contractors of the defined ORGANIZATION (for number-of-employee-based organization licenses). Any other use of the SOFTWARE is a violation of this license. Notwithstanding any other provision of this Agreement,

the purchase of annual maintenance is a requirement of the continued use of organization-licensed SOFTWARE. "Usage" of the files includes but is not limited to storing files or processing files (including processing the files with the SOFTWARE).

- If LICENSEE purchased a single-computer license, LICENSEE may use the SOFTWARE only on the individual computer to which the single-computer license has been dedicated and at the SITE which LICENSEE has registered with LICENSOR. A single-computer license for the SOFTWARE may not be used on any other computer or at any other site. Use of any software (such as hardware virtualization or desktop virtualization systems) or hardware that would allow usage of the SOFTWARE at, from, via or using a computer other than the one computer to which it is dedicated is not permitted with a single-computer license unless every computer involved in such use is also licensed to use the SOFTWARE. With the prior, written approval of LICENSOR, a single-computer license may be manually uninstalled and then installed on a different computer.
- If LICENSEE purchased a site license, LICENSEE may use the SOFTWARE on any computer at the SITE which LICENSEE has registered with LICENSOR and for which LICENSOR has supplied a license code. If LICENSEE wants to use the SOFTWARE at any other SITE, purchase of an additional license or licenses is required. Use of any software or hardware that would allow usage of the SOFTWARE at, from, via or using a computer at any other SITE is not permitted under this license, unless every computer involved in such use is also licensed to use the SOFTWARE. Notwithstanding any other provision of this Agreement, the purchase of annual maintenance is a requirement of the continued use of site licensed SOFTWARE.
- If LICENSEE is installing or using a trial version of the SOFTWARE, LICENSEE may use the SOFTWARE on any computer for a period up to thirty (30) days from the day LICENSEE installed the SOFTWARE. The trial version may not have all the capabilities of the full, purchased version. Visit LICENSOR'S web site or contact LICENSOR to find out what those limitations are. This and the "VAR Demonstration License" (covered below) are the only versions that may be installed, copied or used without first buying a license. Trial licenses may be used for testing only and not for production work. Modifying production files is not permitted with any license that has not been purchased. Trial licenses may also be referred to as "demo" licenses.
- If LICENSEE is a Value Added Reseller (VAR) that has been granted a "VAR Demonstration License", then, except as follows, all of the rules regarding a trial version fully apply. LICENSOR may, at its sole discretion, on a case-by-case basis:
  - 1) add back to a VAR Demonstration License some of the functionality that is normally removed from a trial version and
  - 2) allow a longer time period than the usual 30 days before a given VAR Demonstration License expires (not to exceed one year). Notwithstanding any other clause of this Agreement, LICENSOR may terminate *any* free or unpaid licenses of the SOFTWARE at will upon notice to LICENSEE.

The SOFTWARE may not be installed or used on any computer not owned or leased by LICENSEE.

The SOFTWARE may be used only for the internal benefit of LICENSEE. LICENSEE is not permitted to use the SOFTWARE in any manner external to LICENSEE or for the benefit of someone else, including, but not limited to, providing services for any party external to LICENSEE.

If LICENSEE is purchased by, merges with or otherwise combines with another entity, LICENSEE may continue to use the SOFTWARE, subject to the terms of this license, on each computer and at each SITE or ORGANIZATION (if an organization license was purchased) previously registered with LICENSOR, but not on any other computer or at any other site or organization. LICENSEE may make one (1) copy of the SOFTWARE for back-up purposes, provided that such copy contains the same copyright and other proprietary notices that appear on or in the SOFTWARE.

### 3. Additional License Restrictions

SOFTWARE installed or running at one SITE may not be used to process files ordinarily stored at a different SITE nor to process files used by personnel normally located at a different SITE, via a wide area network or any other means, unless both SITES have active (not terminated) site licenses of the SOFTWARE which are properly registered with LICENSOR or, in the case of an organization license, unless all usage of the SOFTWARE falls within the agreed-upon definition of ORGANIZATION as given above.

Each license comes with sixty (60) days of software maintenance, starting from the day LICENSEE receives the SOFTWARE. This period may be extended by the purchase of LICENSOR'S annual software maintenance plan. Notwithstanding any other provision of this Agreement, software support, including but not limited to such services as providing new license codes when computer IDs change, and transferring of a license to a different computer and other licensing services and support, is provided only to customers with active maintenance. Maintenance fees are non-refundable except as otherwise set forth in this LinkTek End User Software License Agreement or the LinkTek Maintenance Plus Agreement.

LICENSEE agrees to *not*, directly or indirectly 1) sell, lease, rent, lend, share, assign, sublicense or transfer the SOFTWARE, in whole or in part; 2) modify the SOFTWARE in any manner whatsoever; 3) translate, decompile, disassemble, reverse-engineer or create derivative works based on the SOFTWARE; 4) create license keys, or any similar product, that enables use of the SOFTWARE; 5) allow any third party to use LICENSEE'S license to create license keys, or any similar product, that enables use of the SOFTWARE or 6) for fee or otherwise, use the SOFTWARE to process files for parties other than LICENSEE.

A SOFTWARE license which is leased by LICENSOR to LICENSEE shall be subject to the same terms as a purchased license, except that 1) maintenance services are included for the term of the lease and 2) the license and all LICENSEE rights expire at the end of the lease period.

### 4. Retention of Rights by LICENSOR

LICENSEE understands and agrees that except for the rights expressly granted in this Agreement, all other rights, title and interest in the SOFTWARE, including any and all trademark, copyright, patent, trade secret, intellectual and industrial property rights remain the sole and exclusive property of LICENSOR. Any reference to the sale of the SOFTWARE by LICENSOR or the purchase of the SOFTWARE by LICENSEE shall be deemed by all parties to mean the sale or purchase of licenses, not the sale or purchase of the SOFTWARE itself. Nothing in this Agreement or its addenda, notwithstanding any provision to the contrary, will be construed to waive or limit LICENSOR'S right to be compensated for unlicensed use of the SOFTWARE or waive or limit any remedies provided by copyright law.

### 5. Limited Warranty

LICENSEE is advised to test the SOFTWARE thoroughly before relying on it. Except as explicitly provided in this section and section "Intellectual Property Indemnification", the SOFTWARE is provided "as is" without warranty of any kind, either expressed or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose and the entire risk as to the quality and performance of the SOFTWARE is with LICENSEE.

Should the SOFTWARE prove defective during any period during which LICENSEE has active maintenance:

- For defects reported by LICENSEE to LICENSOR within forty-five (45) days of LICENSEE'S initial purchase of the SOFTWARE, LICENSOR, at its option, shall either repair the defect or refund the entire payment, including maintenance fees, for any defective SOFTWARE.
- For defects reported by LICENSEE to LICENSOR forty-six (46) to three hundred sixty-five (365) days after LICENSEE'S initial purchase of the SOFTWARE, LICENSOR, at its option, shall either repair the defect or refund payment for any defective SOFTWARE, linearly prorated based on the initial purchase date, the date of defect reporting and the three hundred sixty-fifth (365<sup>th</sup>) day and refund payment for unused maintenance.
- For defects reported by LICENSEE to LICENSOR more than three hundred sixty-five (365) days after LICENSEE'S initial receipt of the SOFTWARE, LICENSOR, at its sole option, shall either repair the defect or refund payment for any unused maintenance.

LICENSOR represents and warrants that:

1. LICENSOR has not knowingly included in or with the SOFTWARE or allowed to be included in or with the SOFTWARE any software intended to be harmful to LICENSEE'S files or computers or to the security and privacy of LICENSEE'S data or computers.
2. LICENSOR is a duly authorized and registered Florida corporation and has the authority to enter into this Agreement and perform its obligations hereunder.
3. LICENSOR is not currently the subject of voluntary or involuntary petition in bankruptcy, does not, at the time of this license purchase, contemplate filing any such voluntary provision, and is not aware of any claim for the filing of an involuntary petition.

If any of the above three (3) representations and warranties are breached by LICENSOR, then LICENSOR will, within thirty (30) days, at LICENSOR'S option, either 1) remedy the breach or 2) terminate this Agreement and refund to LICENSEE its initial license fee for the SOFTWARE as depreciated on a straight-line twelve-month (12-month) basis plus any unused maintenance.

Except for LICENSOR'S obligations under the Intellectual Property Indemnification provisions, in no event will LICENSOR nor any other party involved in the creation, production, sale or delivery of the SOFTWARE be liable to LICENSEE for any damages, including lost profits, lost savings or other incidental or consequential damages arising out of the use or inability to use the SOFTWARE.

Except for LICENSOR'S obligations under the Intellectual Property Indemnification provisions, under no circumstances, will LICENSOR nor any other party involved in the creation, production, sale or delivery of the SOFTWARE be liable to LICENSEE for any damages or amount exceeding the amount LICENSEE paid for the SOFTWARE plus unused maintenance.

The value of "unused" maintenance will be linearly prorated based on the total number of days in the maintenance period and the number of days elapsed and remaining.

The parties agree that this is an end-user license agreement for the use of off-the-shelf software and, as such, neither party shall be obligated to maintain any particular types or amounts of insurance coverage.

## 6. Confidentiality

LICENSEE and its agents are required to protect the confidentiality of the SOFTWARE. LICENSEE may not distribute or otherwise make the SOFTWARE or the documentation available to any other party using any conceivable method.

In the event LICENSEE sends files containing proprietary data to LICENSOR for analysis or correction, LICENSOR will take reasonable precautions to maintain the confidentiality of such data and will use such data only for the purposes for which it was disclosed.

Restrictions on disclosure or use of confidential information or proprietary data shall not apply to any information which: (i) is or becomes a part of the public knowledge or literature through no act or omission of the receiving party; (ii) was in lawful possession of the receiving party, without restriction on disclosure or use, prior to the disclosure under this Agreement; (iii) is lawfully disclosed hereafter to the receiving party, without restriction on disclosure or use, by a third party who, to the best information of the receiving party, did not acquire the information directly or indirectly from the other party under an obligation of confidentiality; (iv) was independently developed by LICENSOR or LICENSEE without the use of information disclosed under this Agreement; or (v) is required to be disclosed under operation of applicable laws.

## 7. Intellectual Property Indemnification

LICENSOR warrants that LICENSOR has clear title to the SOFTWARE (including the applicable intellectual property rights), the SOFTWARE does not infringe on the intellectual property rights of any third party, and LICENSOR is not the subject of any lawsuit claiming otherwise.

Subject to the limitations set forth below, LICENSOR agrees to defend, indemnify and hold harmless LICENSEE from all liabilities and reasonable expenses, including but not limited to attorneys' fees, judgments, fines or penalties which LICENSEE incurs that result from any claim, action, suit or proceeding (whether civil, criminal or administrative, including any associated appeals) the material allegation of which avers that the SOFTWARE constitutes an infringement of a United States registered copyright, trademark, existing patent or other intellectual property, provided that LICENSEE both (i) notifies LICENSOR in writing within thirty (30) days of receipt of notice of such claim, action, suit or proceeding (it being understood, however, that LICENSOR shall not be relieved of its obligations hereunder as a consequence of any delay in providing such notice if LICENSOR is not materially prejudiced by such delay); and (ii) provides LICENSOR with all information within LICENSEE'S possession that is help in the defense of such suit. In lieu of indemnification, LICENSOR, at its sole option, may: (i) obtain for LICENSEE the right to utilize the SOFTWARE or (ii) use its best efforts to make the SOFTWARE non-infringing without materially diminishing the utility to LICENSEE of the SOFTWARE or (iii) terminate this Agreement and refund to LICENSEE its initial license fee for the SOFTWARE as depreciated on a straight-line five-year (5-year) basis plus any unused maintenance.

**Indemnification Procedure.** LICENSEE shall notify LICENSOR in writing as soon as practicable. LICENSOR shall control the defense and investigation of any such claim and employ and engage attorneys of its choice to handle and defend the same, at LICENSOR'S

expense. LICENSEE shall reasonably cooperate with LICENSOR and its attorneys in the investigation, trial and defense of any such claim.

## 8. Termination and Recourse

This license is effective until terminated. Upon termination, LICENSEE'S rights to install, keep, copy or use the SOFTWARE immediately cease.

The right to install, copy or use the SOFTWARE will terminate automatically without notice from LICENSOR if LICENSEE fails to comply with any provision of this Agreement. Upon termination, LICENSEE agrees to immediately discontinue all use of the SOFTWARE. If LICENSEE remedies, to the satisfaction of LICENSOR, any such breach within thirty (30) days of LICENSOR notifying LICENSEE of the breach, including but not limited to payment to LICENSOR for any unauthorized use of the SOFTWARE, LICENSOR shall approve the rescinding of the termination, which approval shall not be unreasonably withheld or delayed. Termination is in addition to other remedies available to LICENSOR such as compensation for unauthorized use of the SOFTWARE. LICENSEE also agrees that in the event of a violation of this Agreement, including the use of copyrighted data, patented data, trademarks or trade secrets, that LICENSOR has no immediate remedy in law or equity and therefore LICENSEE agrees that LICENSOR is entitled to injunctive relief until the matter can be decided in a court of law or by arbitration.

Notwithstanding any other term, condition or agreement herein or in any other document created by LICENSOR, LICENSEE or any third party, whether such document comes into existence before, during or after the date of purchase, all parties agree that LICENSOR may terminate the license if LICENSOR does not, for any reason, receive payment in full for the license and maintenance (where applicable).

Notwithstanding any other term, condition or agreement herein or in any other document created by LICENSOR, LICENSEE or any third party, whether such document comes into existence before, during or after the date of purchase, all parties agree that sections 0, 4, 6, 8, 9, 10, 11, 12, 13, 15, 16 and 17 shall survive termination of this agreement.

## 9. Third Parties

In the event that this license was acquired by a third party on behalf of LICENSEE, including but not limited to a consultant or any other contractor for LICENSEE, the third party is jointly responsible for abiding by the terms of this Agreement and jointly liable for any violations thereof. Nothing in this clause shall act in any way to absolve, reduce or mitigate any of LICENSEE'S responsibilities and liabilities.

No reseller, consultant, VAR or other third party shall be deemed an agent of LICENSOR.

## 10. Headings and Subtitles

The heading at the top of this Agreement and all the subtitles are for formatting and convenience purposes and do not constitute limits on the scope of any of the clauses of this Agreement.

## 11. Entire Agreement

This Agreement constitutes the complete agreement between LICENSEE and LICENSOR regarding the subject matter hereof and supersedes any and all other agreements, proposals, representations, orders or understandings, written or verbal, between LICENSEE and LICENSOR or between LICENSEE and LICENSOR'S resellers or agents. The terms of this Agreement supersede the terms in any purchase order or other document LICENSEE gives LICENSOR regardless of when such document is or was received, regardless of any action or inaction on the part of LICENSOR and regardless of

any terms in such document to the contrary. Any modification or addendum to this Agreement which A) does not have the written signature of LICENSOR'S Legal Officer, President or CEO and B) is not accompanied by payment to LICENSOR at time of purchase of a five percent (5%) premium in exchange for any risks and responsibilities assumed by LICENSOR in addition to those imposed by LICENSOR'S standard license agreement may, at the discretion of LICENSOR, be deemed null and void.

## **12. Successors and Assigns**

Except as explicitly stated herein, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns. LICENSOR may assign this Agreement pursuant to a lawful merger or acquisition by another party.

## **13. Partial Invalidity and Severability**

If any provision of this Agreement is found by a court or arbiter to be invalid or unenforceable, the parties agree that the court or arbiter will modify that provision to the least extent necessary to make it enforceable and that the remaining portions of this Agreement will remain in full force and effect.

## **14. Costs**

The parties will pay their own costs in connection with the initial execution of this Agreement, except that in the event LICENSOR agrees to terms or conditions requested or imposed by LICENSEE which are different from LICENSOR'S standard terms and conditions, including but not limited to the carrying of insurance, then, notwithstanding any term to the contrary in this Agreement or any addenda thereto or any purchase order or document submitted by LICENSEE to LICENSOR, the cost to LICENSOR of implementing any such terms or conditions shall be the responsibility of LICENSEE.

## **15. Non-Waiver**

No term or provision of this Agreement shall be deemed waived and no breach shall be deemed excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. No consent by either party to, or waiver of, a breach by the other shall constitute a consent to, waiver of or excuse for any different or subsequent breach. A failure of either party to enforce any term or provision of this Agreement shall not constitute a waiver of that term or provision, nor shall a failure to enforce a term or provision act to terminate the right of either party to enforce any term or provision, including but not limited to the one violated, at any time.

## **16. Resolution of Civil Disputes**

The parties desire to resolve any disputes that may arise out of this Agreement without litigation. Accordingly — except for: 1) action seeking a temporary restraining order or injunction related to the purposes of this Agreement or 2) suit to compel arbitration or 3) suit to compel compliance with the judgments resulting from a completed dispute resolution — the parties agree to resolve any dispute using binding arbitration conducted by a member of the American Arbitration Association.

## **17. Governing Law**

This Agreement shall be governed by the laws of the State of Florida, United States of America. Venue for the resolution of any dispute arising out of this Agreement shall be Pinellas County, Florida, USA or, if that is not possible, the nearest court of competent jurisdiction thereto. In the event of a breach of this Agreement or the need for one party to enforce the Agreement, the non-prevailing party will be held responsible for reasonable attorney's fees and costs.