THOR

Software License Agreement

This THOR Software License Agreement (this "**Agreement**"), effective as of [DATE] (the "**Effective Date**"), is by and between Aronetics, LLC, an Ohio limited liability company ("**Aronetics**" or "**Licensor**") and the party identified in **Exhibit A** hereto ("**Customer**" or "**Licensee**"). Licensor and Licensee may be referred to herein collectively as the "**Parties**" or individually as a "**Party**."

WHEREAS, Licensee desires to obtain a license to use the Software described in **Exhibit A** hereto for its internally or externally facing business purposes, and

WHEREAS, Licensor is willing to license the Software attached hereto to Licensee; subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions.

    a. "**Authorized User**" means any person affiliated with Licensee who Licensee permits to access and use the Software and/or Documentation pursuant to Licensee's license hereunder.

    b. "**Device**" means each computer or computing device (including server, personal computer, laptop, tablet and the like) on which a module of the Software is installed.

    c. "**Documentation**" means Licensor's installation and user guides relating to the Software provided by Licensor.

    d. "**Software**" means the software modules identified in Exhibit A in object code format, including any Updates provided to Licensee pursuant to this Agreement.

    e. "**Updates**" means any additions, redactions or other modifications to the Software.

2. License.

    a. License Grant. Subject to terms and conditions of this Agreement, Licensor hereby grants Licensee a non-exclusive, non-sublicensable, and non-transferable

(except as provided herein) license during the Term to use and permit Authorized Users to use the Software solely for Licensee's internal business purposes and as permitted herein on no more than the maximum number of Devices specified in Exhibit A.

b. <u>Use Restrictions</u>. Licensee shall not use the Software or Documentation for any purposes beyond the scope of the license granted in this Agreement. Without limiting the foregoing and except as otherwise expressly set forth in this Agreement, Licensee shall not at any time, directly or indirectly: (i) copy, modify, or create derivative works of the Software or the Documentation, in whole or in part; (ii) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software or the Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Software, in whole or in part; (iv) remove any proprietary notices from the Software or the Documentation; (v) install or use the Software on more than the maximum number of Devices specified in Exhibit A; or (vi) use the Software in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.

c. <u>Reservation of Rights</u>. Licensor reserves all rights not expressly granted to Licensee in this Agreement.

d. <u>Licensee Responsibilities</u>. Licensee is responsible and liable for all uses of the Software and Documentation by Authorized Users or otherwise resulting from access provided by Licensee, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement.

3. <u>Support</u>. Support for the Software may be available as provided in **Exhibit A**.

4. <u>Fees and Payment</u>. Licensee shall pay Licensor the fees (**"Fees"**) as set forth in **Exhibit A** without offset or deduction.

5. <u>Confidential Information</u>. From time to time during the Term, either Party may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether or not marked, designated or otherwise identified as "confidential" (collectively, **"Confidential Information"**). For the avoidance of doubt, the Software constitutes Confidential Information of Aronetics.

Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; or (d) independently developed by the receiving Party. The receiving Party shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder.

Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party's rights under this Agreement, including to make required court filings. On the expiration or termination of the Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information, or, at the Disclosing Party's discretions and instruction, destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed.

6. Intellectual Property Ownership; Feedback.

   a. Licensee acknowledges that, as between Licensee and Licensor, Licensor owns all right, title, and interest, including all patents, patent rights, copyrights, trademarks, trade secrets and other proprietary and intellectual property rights, in and to the Software and Documentation ("IP Rights").

   b. Feedback. If Licensee or any of its employees or contractors sends or transmits any communications or materials to Licensor by mail, email, telephone, or otherwise, suggesting or recommending changes to the Software or Documentation, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("Feedback"), Licensor is free to use such Feedback (irrespective of any other obligation or limitation between the Parties governing same) and Licensee, on behalf of itself, its employees, contractors, agents and other Authorized Users, hereby assigns to Licensor all right, title, and interest in and to such Feedback, including all IP Rights therein, which Licensor is free (but not obligated) to use, without any attribution or compensation to any party.

7. Warranty Disclaimer.

   a. Licensor warrants that: (i) the Software will perform materially as described in the Documentation for a period of ninety (90) days following the Effective Date; and (ii) at the time of delivery the Software does not contain any known virus or other malicious code.

   b. The warranties set forth in Section 8(a) do not apply and become null and void if Licensee breaches this Agreement, or: (i) installs or uses the Software on or in connection with any hardware or software not specified in the Documentation; (ii) modifies or damages the Software; or (iii) misuses the Software, including via any use of the Software other than as specified in the Documentation.

   c. If, during the period specified in Section 8(a), any Software fails to comply with the warranty in Section 8(a), and such failure is not excluded from warranty pursuant to Section 8(b), Licensor shall, subject to Licensee's promptly notifying

Licensor in writing of such failure, at its sole option, either: (i) repair or replace the Software, provided that Licensee provides Licensor with all information Licensor requests to resolve the reported failure, including sufficient information to enable the Licensor to recreate such failure; or (ii) refund any pre-paid, unused Fees paid for further such Software, subject to Licensee ceasing all use of and returning to Licensor all copies of the Software.

d. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 8(a), THE SOFTWARE AND DOCUMENTATION ARE PROVIDED "AS IS" AND LICENSOR HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. LICENSOR SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. LICENSOR MAKES NO WARRANTY OF ANY KIND THAT THE SOFTWARE AND DOCUMENTATION, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET LICENSEE'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

8. <u>Indemnification</u>. Licensee shall indemnify, hold harmless, and, at Licensor's option, defend Licensor from and against any Losses resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") based on Licensee's or any Authorized User's: (i) negligence or willful misconduct; (ii) use of the Software or Documentation in a manner not authorized or contemplated by this Agreement; (iii) use of the Software in combination with data, software, hardware, equipment or technology not provided by Licensor or authorized by Licensor in writing; (iv) modifications to the Software not made by Licensor; or (v) use of any version other than the most current version of the Software or Documentation delivered to Licensee, provided that Licensee may not settle any Third-Party Claim against Licensor unless such settlement completely and forever releases Licensor from all liability with respect to such Third-Party Claim or unless Licensor consents to such settlement, and further provided that Licensor will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

9. <u>Limitations of Liability</u>. IN NO EVENT WILL LICENSOR BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF

DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER LICENSOR WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL LICENSOR'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNT PAID TO LICENSOR UNDER THIS AGREEMENT IN THE SIX-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR $1,000, WHICHEVER IS LESS.

10. Term and Termination.

    a. Term. The initial term of this Agreement begins on the Effective Date and, unless terminated earlier pursuant to any of the Agreement's express provisions, will continue in effect for the period specified in **Exhibit A** (the "**Initial Term**"). This Agreement will automatically renew for successive terms of the same length unless terminated earlier pursuant to this Agreement's express provisions or either Party gives the other Party written notice of non-renewal at least ninety (90) days prior to the expiration of the then-current term (each a "**Renewal Term**" and together with the Initial Term, the "**Term**").

    b. Termination. In addition to any other express termination right set forth in this Agreement, Licensor may terminate this Agreement, effective on written notice to Licensee, if Licensee fails to pay any amount when due hereunder or otherwise breaches any of its obligations under the Agreement or becomes insolvent or is subject to a proceeding in bankruptcy or for appointment of a receiver or trustee to assume responsibility for a material part of its business or assets.

    c. Effect of Expiration or Termination. Upon expiration or earlier termination of this Agreement, the license granted hereunder will also terminate, and, without limiting Licensee's other obligations hereunder, Licensee shall cease using and, at Licensor's discretion, delete, destroy, or return all copies of the Software and Documentation and certify in writing to the Licensor that the Software and Documentation has been deleted or destroyed. Promptly after the expiration or termination of this Agreement, the Software will cease to operate.

    d. Survival. Sections 1, 4, 5, 6, 7, 8, 9, 10 and 11 shall survive any termination or expiration of this Agreement.

11. Miscellaneous.

    a. Entire Agreement. This Agreement, together with any other documents expressly incorporated herein and all referenced sections, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and

representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related Exhibit A, and any other documents incorporated herein by reference, the following order of precedence governs: (a) first, Exhibit A to this Agreement; (b) second, this Agreement as of the Effective Date; and (c) third, any other documents expressly incorporated herein by reference.

b. <u>Force Majeure</u>. In no event shall Licensor be liable to Licensee or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement if and to the extent such failure or delay is caused by any circumstances beyond Licensor's reasonable control, including but not limited to: (i) acts of God; (ii) flood, fire, earthquake, epidemics, pandemics, or explosion; (iii) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (iv) government order, law, or actions; (v) embargoes or blockades in effect on or after the date of this Agreement; (vi) national or regional emergency; (vii) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (viii) loss or shortage of adequate power or transportation facilities or interruption or disruption of telecommunications services or Internet connectivity.

c. <u>Amendment and Modification; Waiver</u>. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party.

d. <u>Severability</u>. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement as originally contemplated, to the greatest extent possible.

e. <u>Governing Law; Submission to Jurisdiction</u>. This Agreement is governed by and construed in accordance with the internal laws of the State of Ohio without giving effect to any choice or conflict of law provision or rule. Any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses granted hereunder may be instituted exclusively in the federal courts of the United States or the courts of the State of Ohio in each case located in the city of Cleveland and County of Cuyahoga, Ohio, and each Party irrevocably submits to the exclusive jurisdiction of and waives any objection to venue in such courts in any such suit, action, or proceeding.

f. <u>Assignment</u>. Licensee may not assign or transfer any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Licensor. Any purported assignment, transfer, or delegation in violation of this Section is null and void. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective permitted successors and assigns.

g. <u>Export Regulation</u>. The Software may be subject to US export control laws, including the Export Control Reform Act and its associated regulations. Licensee shall not, directly or indirectly, export, re-export, or release the Software to, or make the Software accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation

h. <u>Equitable Relief</u>. Licensee acknowledges and agrees that a breach or threatened breach by it of any of its obligations related to Licensor's Confidential Information or IP Rights, would cause Licensor irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, Licensor will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

i. <u>Counterparts</u>. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

ARONETICS   LICENSEE

By: _____   By: _____

Name: _____   Name: _____

Title: _____   Title: _____

Exhibit A

To THOR Software License Agreement

Capitalized terms used but not defined in this Exhibit A have the meanings given to those terms in the THOR Software License Agreement, of which this is a part.

1. Licensee: _____, with an address at _____.

2. SOFTWARE MODULES: _____

3. INITIAL TERM: _____

4. FEES: _____ Except as otherwise provided, payments are due upon the earlier of execution of the Agreement and thirty (30) days following invoice date, Late payments will be subject to interest charged at the lesser of 1.5 % per month and the maximum rate permitted by law.

5. MAXIMUM NO. OF DEVICES: _____

6. SUPPORT (OPTIONAL) is available on a time and materials basis at Aronetics' then-current rates, as may be documented in a separate statement of work.