TERMS AND CONDITIONS

For the purpose of these Terms and Conditions, the term "***Agreement***" shall mean the agreement between Imatest LLC, a Colorado limited liability company ("***Imatest***"), and Buyer arising as a result of Buyer's submission of an order or making a purchase through Imatest's website for Imatest's Products, Software, or Services, all of which purchases shall incorporate and be governed by these Terms and Conditions. **THESE TERMS AND CONDITIONS SHALL TAKE PRECEDENCE OVER ANY TERMS AND CONDITIONS WHICH APPEAR IN BUYER'S PURCHASE ORDER, INVOICE, OR IN ANY DOCUMENTS AND COMMUNICATIONS INCORPORATED BY REFERENCE IN BUYER'S PURCHASE ORDER OR ANY TERMS AND CODITIONS WHICH MAY BE DEEMED TO APPLY UNDER SECTION 2-207 OF THE UNIFORM COMMERCIAL CODE, AND IMATEST SHALL NOT BE BOUND BY ANY SUCH TERMS AND CONDITIONS.** No term or condition of Buyer's purchase order additional to or different from these Terms and Conditions shall become part of the contract for sale unless explicitly agreed to in writing by Imatest. By submitting an order to Imatest, Buyer agrees to be subject to these Terms and Conditions in their entirety. Imatest's failure to object to any provision contained in any communication from Buyer shall not be construed as a waiver of these Terms and Conditions or as an acceptance of any such provision in such communication.

1.   **PRODUCTS**. Imatest sells certain products and equipment including test charts, lightboxes, reflective lighting systems, test fixtures, light measuring equipment, motion generators, spectrophotometers, chart stands, and other items (collectively "***Products***") which may be manufactured directly by Imatest or by third-party suppliers. Imatest holds the copyright, or is the licensee of the copyright, for all such Products. By purchasing any Products, Buyer agrees to not copy, modify, reproduce, make derivative works from, or otherwise replicate the Products in any manner or for any purpose. Additionally, Buyer agrees to abide by the terms of any third-party licenses or copyrights that may be included in the purchase of any Product manufactured by such third-party supplier.

2.   **LICENSE**.
   a) <u>Licensed Software</u>. Software means the object code of (i) the Imatest Software that Buyer purchased or downloaded, and (ii) any Updates, Upgrades, revisions, modifications or derivative works of such Software that are provided to Buyer, all of which are collectively referred to as the "***Software***".
   b) <u>Paid License Grant and Reservation of Rights</u>. Upon Buyer's payment of any applicable license fees or purchase price for the Software, and Buyer's continued compliance with these Terms and Conditions, Imatest grants to Buyer a perpetual (except as set forth below), non-exclusive, non-transferable, license to install and run the Software solely for Buyer's internal business use (including in support of Buyer's customers). For each copy of the Software licensed to Buyer hereunder, Buyer is authorized to install and run the Software, as set forth below depending on the license type:
   a. <u>Node-Locked License.</u>
      i.   A Node-Locked License provides for one (1) instance per license.
      ii. Buyer is authorized to install Software purchased pursuant to a Node-Locked License, on multiple computers that are owned and controlled by Buyer. However, the Buyer may only run one (1) instance of such Software and only one (1) process within an instance on a single computer at any one time.
      iii. If the Software is explicitly named a parallel processing version, then Buyer may run one (1) instance of such Software and up to twelve (12) processes within an instance on a single computer at any one time.
   b. <u>Floating License.</u>
      i.   A Floating License provides a certain number of instances (also known as "seats") to be used concurrently, depending on the number of seats purchased with the license.
      ii. Buyer is authorized to install Software purchased pursuant to a Floating License on multiple computers that are owned and controlled by Buyer. However, per seat

purchased, the Buyer may only run one (1) instance of such Software and one (1) process within an instance on a single computer at any one time. For example, a license purchased with four seats, and installed on ten different computers, allows for four active users at any one time.

      iii. If the Software is explicitly named a parallel processing version then, per seat purchased, the Buyer may run one (1) instance of such Software and up to twelve (12) processes within an instance on a single computer at any one time.

c) <u>Free Trial</u>. For first-time users who have not previously installed an Imatest product, Imatest grants to Buyer a limited, non-exclusive, non-transferable, license to install and run the Software solely for Buyer's trial and testing purposes (a "***Free Trial***"). This Free Trial shall expire thirty (30) days from installation (the "***Trial Period***"). This trial license does not include any support or maintenance and is provided "AS IS" without warranty of any kind. Once expired, the Free Trial software will automatically cease functioning unless a license is purchased.

d) <u>Restrictions</u>. Aside from the limited license to use the Software granted herein, Imatest reserves all other rights in and to the Software. Access to the Software shall be limited to Buyer's employees and independent contractors that are required to access the Software to provide services to Buyer, provided that an independent contractor must sign a legally binding written agreement with terms and conditions at least as protective of Imatest as these Terms and Conditions, including without limitation Sections 2 (License), and 5 (User Obligations). Buyer shall at all times remain responsible for the compliance of its employees and contractors with the Terms and Conditions. Buyer agrees it shall not, except as expressly permitted in this Agreement, copy, reproduce, reverse-engineer, decompile or otherwise attempt to discover the means of operation of the Software or otherwise replicate, rent, time share, host, use virtualization to create multiple instances of an activated copy or otherwise provide remote access to the Software in any manner or for any purpose.

3.   **SERVICES**. Imatest provides the following "***Services***" related to the Software.

a) <u>Support Services</u>. Buyer's purchase of any Software includes one (1) year of support services ("***Support Services***") beginning on the purchase date of the Software. All Support Services shall be limited as set forth in the ***Support Guidelines***.

b) <u>Additional Services</u>. If Buyer desires additional professional services ("***Professional Services***"), such Professional Services may be ordered through a separate statement of work ("***SOW***") or agreement, setting forth the fees, scope of Professional Services, and any requirements applicable to such Professional Services, all of which will be governed by these Terms and Conditions unless explicitly altered by a SOW or agreement. A separate SOW or agreement shall be valid only if signed by both parties.

c) <u>Third-party Contractors</u>. Imatest may use one or more third-party contractors to perform the Support Services, Professional Services (collectively, the "***Services***"), and any other services performed hereunder.

4.   **SUPPORT GUIDELINES**. These "***Support Guidelines***" govern the Support Services that Imatest provides Buyer for the Software.

a) <u>Support Term</u>. Support Services are provided for one (1) year beginning on the purchase date of the Software ("***Initial Term***"). Any Services requested in addition to the Support Services or following the Initial Term shall be only pursuant to separate written agreement with Imatest. For each new Software purchase, Buyer shall be eligible for Support Services as part of such purchase, but only for such new purchase. New purchases shall not extend the Initial Term.

b) <u>Supported Software</u>. Imatest shall maintain and support the Software modules as updated from time to time and provided on Imatest's website. Imatest agrees to support the Software for a period including the two (2) most recently released Updates ("***Supported Software***"), but shall have no obligation to continue maintenance of any Software that Imatest has designated as End of Life, and shall have no obligation to provide any Services in support of such End of Life Software.

c) <u>Support Fee</u>. There shall be no fees for Support Services during the Initial Term. If any additional Support Services beyond those listed in these Terms and Conditions are requested, or Buyer requests an extension of the Support Services Initial Term, such additional Support Services shall be invoiced, in advance,

at the fees set forth on http://store.imatest.com/software/renewals.html, and Support Services shall be provided only after payment in full for such extension.

    d) <u>Activating Support</u>. To access Support Services during the Initial Term, Buyer must have available the purchase date of the Software, any license code(s) included in the download or mailed Software, the Buyer's email address used to register the Software, and other relevant information as requested by Imatest to verify Buyer's purchase and ownership of Software.

    e) <u>Updates and Upgrades</u>.

        i) From time to time Imatest may, in its discretion, develop one or more Updates or Upgrades to the Software. Such Updates and Upgrades will be available to all Buyers still under Support Services. "***Update***" means any dot version of the Software (e.g., 3.x to 3.y), developed after the Buyer's purchase of the Software, which implements improvements or bug fixes to features or functions and is not marketed by Imatest as a separate product and/or service. Updates will be provided to Buyer without charge, when and as available, provided that Buyer is still within the initial Support Term or an extension thereof, but Imatest shall have no obligation to create new Updates. "***Upgrade***" means any newly named version of the Software that includes substantially new features or functions and is generally denoted by a change in the leading number (e.g., 3.x to 4.x). Upgrades will be made available to Buyer provided that Buyer is still within the initial Support Term or an extension thereof. Imatest shall have no obligation to generate Upgrades, the provision of which shall be at Imatest's sole discretion.

        ii) Any such Updates and Upgrades provided to Buyer will be deemed to constitute part of the Software subject to these Terms and Conditions. The provision of an Update or Upgrade does not include any additional installation or related services, which may be provided only pursuant to a separate SOW or agreement.

    f) <u>Exclusions</u>.

        i) <u>Professional Services</u>. Any installation, customization, modification, development, training or other professional services (collectively, "***Professional Services***") will be provide only pursuant to a separate SOW or agreement mutually agreed to by the parties. All fees will be at Imatest's then prevailing rates, terms and conditions for time, materials and service as set forth in the SOW or agreement.

        ii) <u>Other Exclusions</u>. Notwithstanding any other provision of this Agreement, Imatest shall have no obligation to resolve Supported Software errors or provide Support Services to correct errors that are the result of or caused by modification to the Supported Software not performed by Imatest, failure by Buyer to meet the Imatest system requirements, failure of third-party software or telecommunications services, or integration of the Supported Software with hardware, software and/or technology not supported by Imatest.

5.   **USER OBLIGATIONS**. In order to enable Imatest to perform the Services, Buyer will provide Imatest personnel with such cooperation and assistance as Imatest reasonably requests. If Buyer fails to perform its obligations or provide reasonable cooperation and assistance consistent with any requirements expressly set forth in the Support Guidelines or in an SOW, Imatest will be excused from performing the affected Services until Buyer's obligations are performed. Imatest shall have the right to suspend performance in the event of Buyer's breach of this Agreement, including but not limited to, non-payment.

6.   **PRICES AND TAXES**. All amounts payable under this Agreement are exclusive of federal, state or local taxes, duties or tariffs, including without limitation, sales, use, value-added or excise taxes now or hereafter enacted, applicable to the Products, Software, or Services sold or provided to Buyer, which taxes may, in Imatest's discretion, be added by Imatest to the sales price or billed separately and which taxes shall be paid by Buyer unless Buyer provides Imatest with any necessary tax exemption certificate.

7.   **TERMS OF PAYMENT**.

    a) <u>Purchase Fees</u>. Buyer shall pay Imatest the fees in accordance with the list price set forth on Imatest's website, all of which fees shall be pre-paid, unless other payment terms are set forth in an invoice from Imatest. Initial fees shall be paid immediately through the Imatest website in order to purchase the Products, Software or Services, or may be separately invoiced by Imatest if agreed and approved by Imatest.

b) <u>Invoicing and Payment</u>. With respect to any orders for Professional Services or extended Support Services, Buyer will pay all invoiced amounts prior to the delivery of such additional Services. All payments must be made in U.S. dollars. All fees paid are non-refundable.

8.　　**OWNERSHIP OF INTELLECTUAL PROPERTY**. Imatest shall at all times have and retain sole title and full ownership of all worldwide intellectual property rights in the hardware, software, and firmware contained in the Products and Software and documentation supplied by Imatest for use with the Products and Software, and any specialized products, software, or services ("***Additional Products***") created or performed by Imatest (collectively "***IP Rights***").　Nothing in this Agreement or Buyer's purchase of Products or Software or Additional Products will be deemed to grant, by implication, estoppel, or otherwise, any interest in or license of any of Imatest's IP Rights, except as specifically set forth herein. Imatest has the sole right to apply for patents or copyright registrations on inventions that relate specifically to any of its Products or Software or Additional Products or on any component therefore and any improvement or modification thereto.

9.　　**SHIPMENT AND DELIVERY**. Delivery of any of the Products is F.O.B. at the place of manufacture or warehouse location and may be shipped in several lots. Unless otherwise agreed to in writing by Imatest, Imatest will select the carrier and ship at the expense of Buyer, but shall not be deemed thereby to assume any liability in connection with the shipment, nor shall the carrier be construed to be the agent of Imatest. Buyer must provide its own insurance. Title and risk of loss or damage to all Products sold hereunder shall pass from Imatest to Buyer upon delivery by Imatest to the possession of the carrier, provided that Imatest reserves a purchase money security interest in the Products. Any claims for loss, damage or mis-delivery shall be filed with the carrier. All Products shall be deemed finally inspected and accepted within ten (10) days after delivery unless notice of rejection is given in writing to Imatest within such period. Acceptance shall constitute acknowledgement of full performance by Imatest of all obligations under this Agreement with regard to the Products except as stated at Section 11 (Limited Warranty for Products and Software).

10.　　**PROPRIETARY INFORMATION**.
　　a) During the term of this Agreement, either party may have access to confidential material and information ("***Proprietary Information***") belonging to the other party, including information regarding customers, vendors, or partners.
　　b) "***Proprietary Information***" shall include without limitation, the disclosing party's source code, business plans, customer/member lists and information, financial records, partnership arrangements and business plans and any other information that a party would reasonably consider proprietary and confidential.
　　c) Proprietary Information does not include (i) information generally available to the public, (ii) information the receiving party had in its possession prior to receiving it from or developing it for the disclosing party, (iii) information received from a third-party, or (iv) information independently developed by the receiving party without reference to information received pursuant to this Agreement from the disclosing party.
　　d) Each party agrees that the disclosing party's Proprietary Information will be kept strictly confidential by the receiving party and will not be disclosed to non-employees and agents, unless expressly authorized to do so by the disclosing party. The receiving party will protect the disclosing party's Proprietary Information from unauthorized use, access or disclosure in the same manner as the receiving party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care. Each party shall have the right, in addition to any other rights it may have, and the other party hereby consents, to entry in any court having jurisdiction of a temporary or permanent restraining order or injunction enjoining the receiving party from breach of this Section. Notwithstanding the foregoing, any information that Buyer submits or shares with Imatest in connection with this Agreement may be used to improve the function, marketing or utilization of the Software, Products or may be used to otherwise enhance Imatest's ability to deliver Services. This Section shall survive termination or cancellation of this Agreement for two (2) years, however, the obligation of confidentiality and non-use hereunder shall continue indefinitely after such 2-year period for any trade secrets of Buyer or Imatest until such trade secrets are no longer trade secrets.

11.   **TERM AND TERMINATION**. This Agreement commences on the date of purchase of any Software, Products or Services and shall continue for so long as Buyer continues to use the Software, Products, or Services, or is terminated as set forth below. In the case of a Free Trial, the license rights to use the Software shall terminate immediately upon the conclusion of such Trial Period, and those provisions that survive this Agreement shall continue. Imatest may terminate this Agreement or an SOW at any time if Imatest notifies Buyer in writing that Buyer is in breach of a material provision of this Agreement, and such breach remains uncured after a period of thirty (30) days following such notice. If Imatest terminates this Agreement due to Buyer's material breach, then (i) Buyer's license to use the Software shall terminate; and (ii) Buyer shall uninstall the Software from its computer systems. Upon termination or expiration of this Agreement for any reason, all SOWs will immediately terminate, Buyer will promptly pay Imatest all amounts owed to Imatest as of the effective date of termination or expiration, and each party will destroy or return all Proprietary Information (and copies thereof) of the other party in its possession.

12.   **LIMITED WARRANTY FOR PRODUCTS AND SOFTWARE**.
    a)   Imatest represents and warrants, for seven (7) days following the purchase date of the Software, that the Software, when installed properly on hardware supported by the Software, will function substantially in accordance with any documentation provided by Imatest. Imatest is not obligated to provide warranty protection or Support Services for any claims resulting from a failure to meet hardware, software or other requirements provided by Imatest, modifications to the Software during the warranty period made by Buyer or any other causes beyond Imatest's control that may impact operation of the Software. Buyer's sole and exclusive remedy and Imatest's sole liability for breach of the foregoing warranty is to utilize the Support Services that are included with the Software purchase, or to receive a link to a new download of the Software.
    b)   Imatest represents and warrants that any Products which are manufactured by Imatest are in good working order and comply with the specifications stated for such Products. Imatest provides no warranty for any third-party Products, which carry only such warranties as provided by the manufacturer of those Products. Imatest hereby assigns such third-party warranties to Buyer upon purchase of a third-party Product.
    c)   Imatest does not warrant suitability of the Products or Software for Buyer's use. Buyer shall be responsible for determining that the Products or Software are suitable for Buyer's use and that such use complies with any applicable local, state or federal law.
    d)   If Buyer shall fail to pay when due any portion of the purchase price or any other payment required from Buyer to Imatest under the Agreement, including under any purchase order or otherwise, all warranties and remedies granted under this Section terminate without requirement for notice or other action as to the specific Products or Software not paid for.

13.   **DISCLAIMER OF WARRANTY**; **REMEDIES**. Other than as provided in Section 12 (Limited Warranty for Products and Software), the Software, Products, and Services are provided to Buyer "AS IS." Imatest hereby disclaims any other representations or warranties, express, implied, statutory, or otherwise, regarding the Services, Software, custom software and Products, including without limitation any implied warranty of merchantability, title, non-infringement, fitness for a particular purpose, and implied warranties arising from course of dealing or course of performance. No representative or person is authorized to bind Imatest for any obligations or liability beyond this warranty in connection with the sale of the Products, Software, and Services. Under no circumstances shall Imatest be liable to Buyer under any tort, negligence, strict liability, or product liability claim and Buyer agrees to waive such claims. Imatest's sole and exclusive liability, and Buyer's sole and exclusive remedy, for any nonconformity or defect in the Products, Software, or Services or anything done in connection with this Agreement or any purchase order or SOW, in tort (including negligence), contract, or otherwise, shall be limited to repair and replacement of the defective Products, Software, or Services, or a refund of the purchase price of the Products, Software, or Services, at Imatest's sole option. In no event will Imatest be liable for costs of procurement of substituted products by Buyer.

14.   **LIMITATION OF LIABILITY AND BUYER INDEMNITY**.
    a)   In no event, regardless of the form of action, shall Imatest be liable for any special, indirect, incidental, punitive or consequential losses or damages arising out of or related to the sale or use of the Products, Software,

or Services, including, but not limited to, losses or damages arising out of claims for loss of use, business, goodwill, lost profits, or lost data, including claims arising out of third-party actions, regardless of whether such third-party actions, or any other claims, losses, or damages, were reasonably foreseeable to Buyer or Imatest. Buyer's exclusive remedy arising out of its purchase and use of Imatest's Products, Software, or Services, shall be for direct damages (subject in all respects to this Agreement) and no claim or claims of any kind, whether based upon contract, warranty, tort indemnity, contribution, or otherwise, shall be greater in amount in aggregate than the purchase price paid by Buyer for the Products, Software, or Services, in respect of which damages are claimed. Buyer specifically acknowledges that Imatest's price for the Products, Software, or Services is based upon the limitations of Imatest's liability as set forth in these Terms and Conditions.

b) Buyer shall indemnify and hold harmless Imatest, its officers, managers, members, employees, subsidiaries, parents, affiliates and insurers from and against any and all liabilities, damages, losses, claims, lawsuits, including costs and expenses in connection therewith, for death or injury to any persons or loss of any property whatsoever, caused in any manner by Buyer's possession, use or operation of the Products, Software, or Services. Further, to the extent permitted by applicable law, Buyer will reimburse, indemnify, defend and hold harmless Imatest, its officers, managers, members, employees, subsidiaries, parents, affiliates, and insurers against any penalties, fines, damages and claims due to failure to comply with Buyer's obligations in Sections 17 (Export) and 18 (FCPA).

15. **LIABILITY FOR INFRINGEMENT**. Imatest shall defend any suit or proceeding brought against Buyer to the extent that it is based on a claim that any Products manufactured by Imatest or any Software purchased by Buyer infringes in construction or design of a United States patent or intellectual property rights of any person or entity ("***Infringing Materials***"), and shall indemnify Buyer against all costs, damages, and expenses finally awarded against Buyer and payment of any settlement amount provided that Buyer notifies Imatest promptly in writing of any such claim and gives Imatest full and complete authority, information and assistance for the defense of such claim and provided further that Imatest shall have sole control of the defense and of the negotiations for settlement, if any, of such claim. If the Infringing Materials are or in Imatest's judgment may become the subject of any claim of intellectual property infringement, or if a court determines the Infringing Material infringes any intellectual property right then Imatest may, at its sole option and expense, (a) procure for Buyer the right to continue using such Infringing Materials, (b) replace such Infringing Materials with a suitable non-infringing item, (c) suitably modify such Infringing Materials, or (d) refund the purchase price of such Infringing Materials, less depreciation at twenty percent (20%) per year, upon its return to Imatest. Imatest shall not be liable for any cost or expense incurred without Imatest's written authorization, nor shall Imatest be liable for any lost profits related to such Infringing Materials. Imatest shall not be obligated to defend or be liable for costs and damages if the infringement arises out of compliance with Buyer's specification or from a combination with or an addition to products not manufactured or developed by Imatest or a modification of the Products or Software after delivery or the use of Products or Software beyond that established by Imatest or approved in writing by Imatest. THE FOREGOING STATES THE ENTIRE LIABILITY OF IMATEST, AND THE EXCLUSIVE REMEDY OF BUYER, WITH RESPECT TO ANY ALLEGED PATENT INFRINGEMENT BY THE PRODUCTS OR SOFTWARE.

16. **INDEPENDENT CONTRACTOR**. Imatest is an independent contractor of Buyer. Nothing in this Agreement or the performance of any Services should be construed as a joint venture or agency relationship between the parties. Notwithstanding the foregoing, either party may acknowledge or disclose the existence of a professional relationship between the parties.

17. **EXPORT**. Regardless of any disclosure made by Buyer to Imatest of the ultimate destination of the Products or Software, Buyer shall not export either directly or indirectly any Products or Software either in contravention of the statute or regulation of the United States governing exports ("***Export Law***") or without first obtaining all required licenses and permits from the United States Department of Commerce, Department of State, and any other relevant agencies or departments of the United States government. Buyer shall not directly or indirectly export any Products or Software to any country or individual to which such export or transmission is banned, restricted, or prohibited by any agency of the United States government. Buyer will timely pay any

fine, penalty, or charge by any governmental agency charged against Buyer and/or Imatest or paid by Imatest due to any violation of any Export Law by Buyer, together with Imatest's costs and reasonable attorneys' fees for responding to or dealing with such violation. In the event Buyer violates any Export Law, Imatest may suspend sales to Buyer until such time as Imatest determines that such violation is being remedied, payments made as required above, and steps taken to ensure Buyer's future actions will comply with all Export Laws. Any import or export fees or duties assessed to the Products or Software will be paid by Buyer.

18.   **FCPA**. Buyer will comply, and will cause its employees, agents and representatives to comply, with the U.S. Foreign Corrupt Practices Act; and if Buyer is not a U.S. company, then such compliance shall be as though Buyer and such individuals were citizens of the United State of America.

19.   **ASSIGNMENT**. This Agreement shall be binding upon and inure to the benefit of Buyer and Imatest and their respective legal representatives, successors and permitted assigns. Buyer may not assign any of its rights or delegate any of its obligations hereunder, in whole or in part, without the prior written consent of Imatest, not to be unreasonably withheld. Notwithstanding the foregoing, Imatest may subcontract any portion of the work on any item subject to this Agreement provided that Imatest's obligations and rights hereunder shall not be limited nor affected by such subcontract.

20.   **ENTIRE AGREEMENT**. Except in the case of separate agreement that has been countersigned by both Imatest and Buyer, this Agreement and any mutually executed SOW(s) or separate agreement(s) constitutes the entire agreement between the parties relating to the sale of the Products, the Software, and performance of Services (if any), and no addition to or modification of any provision of this Agreement shall be binding upon Imatest unless agreed to in writing by Imatest. In the event of any conflict between this Agreement and any separately executed SOW or agreement, the SOW or agreement shall govern only as to the scope of such SOW or separate agreement. In all other cases, this Agreement shall control unless the SOW or separate agreement specifically references this Agreement and describes the provision of this Agreement that should be superseded or amended by the SOW or separate agreement.

21.   **MARKETING**. Unless otherwise agreed in writing by the parties in a separate Non-Disclosure Agreement that expressly restricts marketing or disclosure of Buyer as a customer of Imatest, Imatest may use Buyer's name and logo in marketing and other promotional materials (including the Imatest website) for the sole purpose of identifying Buyer as a customer of Imatest beginning on the first date Buyer purchased the Software or any Product.

22.   **NON-WAIVER; REMEDIES**. No waiver of any breach of these Terms and Conditions shall constitute a waiver of any prior or subsequent breach of any similar or dissimilar provision or a modification of this Agreement. All Imatest rights and remedies, whether evidenced hereby or by any other contract or document, shall be cumulative and non-exclusive and may be exercised singularly or concurrently.

23.   **NOTICES**. All notices given under this Agreement shall be in writing, mailed by first class mail, certified or registered, delivered by hand to the address of the party set forth in the quotation, sent via electronic mail to the address provided by Buyer, or otherwise associated with the licensed copy of Buyer's account if purchased from a third-party other than Imatest when purchasing or registering the Software or Products, or to such other address as such party may designate from time to time by such notice, and shall take effect when received.

24.   **SEVERABILITY**. If any provision of this Agreement is deemed unenforceable for any reason, such provision shall be changed and interpreted to accomplish the objective of such provision to the greatest extent possible under applicable law. All remaining provision will continue in full force and effect.

25.   **SURVIVAL**. Section 2 (License), Section 8 (Ownership of Intellectual Property), Section 10 (Proprietary Information), Section 12 (Limited Warranty), Section 13 (Disclaimer of Warranty; Remedies), Section 14

(Limitation of Liability), Section 16 (Independent Contractor), Section 22 (Non-Waiver; Remedies), and Section 24 (Severability) and any other provision which is intended to survive will survive the expiration, termination or cancellation of this Agreement for any reason.

26.   **APPLICABLE LAW AND ACTIONS TO RECOVER DAMAGES**.   The validity, performance and construction of this Agreement shall be governed by the laws of the State of Colorado, except for the conflicts of laws principles thereof which would cause the laws of a different jurisdiction to apply. If any provision of this Agreement is held to be unenforceable, such holding shall not affect the enforceability of any other provision. Any legal presumption that the terms of this Agreement shall be strictly construed against the party who drafted such terms or who benefits from such terms shall not be employed in construing and interpreting this Agreement. Prior to commencement of any legal proceedings, Buyer and Imatest shall meet at a senior level to attempt to resolve differences. Notwithstanding any attempts to resolve differences or negotiations regarding such differences, any action brought by Buyer against Imatest arising out of this Agreement or Buyer's purchase and use of the Products, Software, or Services must be commenced within one (1) year after such action accrues and in no event later than two (2) years after the date of shipment, delivery, or performance of such Products, Software, or Services, as applicable.

27.   **JURISDICTION AND VENUE**. Buyer and Imatest consent and submit to the exclusive jurisdiction of the state courts located in Boulder, Colorado, and the federal courts located in Denver, Colorado, in connection with any suits or other actions arising between the parties to this Agreement, and consents and waives any objections to the venue of such action or proceeding in such courts. The prevailing party in any legal action brought by one party against the other will be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses, including court costs and reasonable attorneys' fees.