

# NONIK TECHNOLOGIES, INC. Standard Terms and Conditions

## I. OWNERSHIP OF CUSTOM SOFTWARE

- A. Ownership of Custom Software** As between Customer and NONIK TECHNOLOGIES, INC., all right, title and interest, including copyright interests and any other intellectual property, in and to the Custom Software and any other programs, systems, data or materials produced by NONIK TECHNOLOGIES, INC., alone or in combination with Customer and/or its employees, under this Agreement shall at all times be and remain the exclusive property of NONIK TECHNOLOGIES, INC.. NONIK TECHNOLOGIES, INC. rights to the Custom Software are protected by the copyright laws of the United States and by applicable international treaties. No rights under such laws or treaties are transferred to Customer, except as specifically provided in this Section below.
- B. Software License**
1. Subject to final payment of all invoices for the Services and Custom Software, Customer is granted a non-exclusive, non-transferable, paid-up license to use the Custom Software for so long as Customer does not breach any term or condition contained in this Agreement.
  2. Because the Custom Software contains trade secrets, Customer shall not deliver any copy of the Custom Software to any other person and shall not compile, reverse-engineer or disassemble the Custom Software. Further, Customer shall not rent, lease, loan, resell for profit, distribute or sublicense the Custom Software or any part thereof.
- C. Termination of License** NONIK TECHNOLOGIES, INC. may terminate the license granted in this Section at any time following Customer's breach of any of the foregoing restrictions or of any material terms of this Agreement. Such termination will not relieve Customer of any of its obligations incurred prior to such termination, and will not relieve Customer of any other liability which it may have at law for such breach. Immediately upon termination of the license granted in this Section, Customer shall return to NONIK TECHNOLOGIES, INC. all copies of the Custom Software in Customer's possession or control.
- D. Residuals** It is mutually acknowledged that, during the normal course of its dealings with Customer and the Custom Software under this Agreement, NONIK TECHNOLOGIES, INC. and its personnel and agents may become acquainted with ideas, concepts, know-how, methods, techniques, processes, skills, and adaptations pertaining to the Custom Software, including those which Customer considers to be proprietary or secret. Notwithstanding anything in this Agreement to the contrary, and regardless of any termination of this Agreement, NONIK TECHNOLOGIES, INC. shall be entitled to use, disclose and otherwise employ any ideas, concept, know-how, methods, techniques, processes, and skills, and adaptations, including generalized features of the sequence, structure and organization of any works of authorship, in conducting its business (including providing services or creating programming or materials for other customers), and Customer shall not assert against NONIK TECHNOLOGIES, INC. or its personnel any prohibition or restraint from so doing.
- E. Third-Party Interests** Customer's interests in and obligations with respect to any programming, materials, or data to be obtained from third-party vendors, whether or not obtained with the assistance of NONIK TECHNOLOGIES, INC., shall be determined in accordance with the agreements and policies of such vendors.

## II. WARRANTIES

- A. NONIK TECHNOLOGIES, INC. IS NOT A HARDWARE MANUFACTURER, BUT A SOFTWARE DEVELOPER, A RESELLER, INTEGRATOR AND TECHNOLOGY MANAGEMENT SERVICE PROVIDER. ACCORDINGLY, NONIK TECHNOLOGIES, INC. DOES NOT PROVIDE ITS OWN WARRANTIES FOR HARDWARE OR THIRD PARTY SOFTWARE, BUT MERELY ASSIGNS TO ITS CUSTOMERS THE WARRANTIES, IF ANY, PROVIDED BY THE MANUFACTURER OR SUPPLIER OF THE HARDWARE OR THIRD PARTY SOFTWARE. NONIK TECHNOLOGIES, INC. RESELLS OR SUB-LICENSES, TO THE EXTENT SUCH WARRANTIES ARE TRANSFERRABLE. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NONIK TECHNOLOGIES, INC. DOES NOT OFFER, AND SPECIFICALLY DISCLAIMS, ANY WARRANTY OF ITS OWN, EXPRESS OR IMPLIED.**
- B. Services Warranty** NONIK TECHNOLOGIES, INC. warrants that the Services will be performed in a manner consistent with customary practice in the industry. Should a failure to comply with this warranty appear within thirty (30) days after the date of completion of such Services, NONIK TECHNOLOGIES, INC. shall, if promptly notified in writing, at its option, either provide the Services anew or refund to the Customer the price charged for such non-conforming Services. Such reperformance or refund shall be Customer's exclusive remedy and shall constitute fulfillment of all liabilities of NONIK TECHNOLOGIES, INC. with respect to any nonconformity of or defect or deficiency in Services furnished to Customer.
- C. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL WARRANTIES OF QUALITY AND PERFORMANCE, WRITTEN, ORAL OR IMPLIED; ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR THAT SOFTWARE OR EQUIPMENT IS FREE OF THE RIGHTFUL CLAIM OF ANY THIRD PERSON BY WAY OF INFRINGEMENT OR THE LIKE ARE HEREBY DISCLAIMED.**

## III. LIMITATION OF REMEDIES AND LIABILITY

- A. Exclusive Remedies** NONIK TECHNOLOGIES, INC. liability on any claim, whether in contract, negligence, tort, strict liability or otherwise, arising in whole or in part out of Services performed, or Equipment and/or Custom Software provided, under this Agreement, shall in no case exceed the lesser of the fees paid to NONIK TECHNOLOGIES, INC. under this Agreement or the fees paid to NONIK TECHNOLOGIES, INC. for the portion of Services or Equipment or Custom Software which give rise to the claim. All causes of action against NONIK TECHNOLOGIES, INC. arising out of or relating to this Agreement or the performance or breach of this Agreement shall expire unless brought within one (1) year after the first date of performance or breach which in whole or in part gives rise to the claim. These remedies are exclusive and in lieu of all other remedies available at law or in equity for any act performed in connection with this Agreement, or for any breach of this Agreement, whether brought under a theory of tort liability, contract liability, or any other theory.
- B. Limitation of Liability** NONIK TECHNOLOGIES, INC. liability with respect to the quality and conformity of Equipment, Services and Custom Software supplied to Customer shall be limited to the provision of the warranties set forth or described in Section II above. **IN NO EVENT SHALL NONIK TECHNOLOGIES, INC. BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER FOR BREACH OF WARRANTY OR OTHER CONTRACT BREACH, NEGLIGENCE OR OTHER TORT, STRICT LIABILITY OR OTHER THEORIES OF LAW.** Without limiting the generality of the foregoing, NONIK TECHNOLOGIES, INC. shall have no responsibility to compensate Customer for delays in or loss of use of Equipment, loss or miscalculation of data, loss of revenue or increased costs, loss of facilities, loss or delays in services, or claims of Customer's clients, or other third parties to whom it provides goods or services, loss of profits or revenue, cost of substitute goods, facilities or services, downtime costs, delays.

## II. INDEMNIFICATION

- A. Indemnification of Customer** Subject to the terms and conditions hereof, NONIK TECHNOLOGIES, INC. shall indemnify, defend and hold Customer harmless from any claim for loss of damage of any nature asserted against Customer resulting from any act or omission of any employee, agent, subcontractor or representative of NONIK TECHNOLOGIES, INC. while on Customer property during the term of this Agreement. In the event that such a claim is asserted against Customer, Customer shall give NONIK TECHNOLOGIES, INC. prompt written notice of any such claim.
- B. Indemnification of NONIK TECHNOLOGIES, INC.** By accepting this Agreement, Customer hereby releases and agrees to indemnify, defend, and hold NONIK TECHNOLOGIES, INC. harmless from and against any and all claims, obligations, losses, liabilities, and expenses of any and every kind whatsoever (including without limitation attorneys' fees and other costs of defending any action) which NONIK TECHNOLOGIES, INC. may incur as a result of any claim by Customer or others either:
1. For which NONIK TECHNOLOGIES, INC. has no liability for under Section III; or
  2. That are caused by accidents, misuses, misapplication, neglect of the Customer or any of its agents or employees or as a result of service provided by any person other than a NONIK TECHNOLOGIES, INC. representative; placement or operation of the equipment in an area that does not comply with the manufacturer's published space or environmental requirements; or improper storage use and movement of the equipment.

## III. MISCELLANEOUS

- A. Amendments** This Agreement may only be changed by a written amendment to this Agreement executed by both parties by the below duly authorized representatives.
- B. Authorized Representatives** The signatories below represent and warrant that they are authorized by their respective organizations to enter this Agreement.
- C. Facsimile Execution** This Agreement may be validly executed by the signing of a facsimile copy of this Agreement. Either the fully executed facsimile copy or a conforming executed original shall be evidence the existence of this Agreement.
- D. Counterparts** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same Agreement.
- E. Exchange of NONIK TECHNOLOGIES, INC. Personnel** The Customer shall give thirty (30) days written notice if the services of a NONIK TECHNOLOGIES, INC. employee are no longer needed unless otherwise stated in a statement of work. Conversely, NONIK TECHNOLOGIES, INC. shall provide the Customer the same written notice if NONIK TECHNOLOGIES, INC. chooses to place an employee at a different customer.
- F. Force Majeure** Each party shall be excused from performance for any period and to the extent that the party is prevented from performing any services, in the whole or in part, as a result of delays caused by the other party, and act of God, war, civil disturbance, court order, labor dispute, third party nonperformance, or other cause beyond that party's reasonable control, including failure or fluctuations in electrical power, heat, light, air conditioning or telecommunications equipment. Such nonperformance shall not be a default or a ground for termination. NONIK TECHNOLOGIES, INC. shall be excused from performance due to failures of third party systems, equipment, products and software due to failures because of Year 2000 noncompliance.
- G. Title and Risk of Loss** Any Equipment sold to Customer under this Agreement shall remain the personal property of NONIK TECHNOLOGIES, INC. until fully paid for by Customer, and Customer agrees, if requested by NONIK TECHNOLOGIES, INC., to execute a security agreement covering the Equipment sold and to perform all acts which may be necessary to perfect and assure retention of title to such Equipment by NONIK TECHNOLOGIES, INC.. Notwithstanding any agreement with respect to delivery terms or payment of transportation charges, risk of loss or damage shall pass to Customer and delivery shall be deemed to be complete upon delivery of the Equipment to Customer, either by NONIK TECHNOLOGIES, INC. or by a private or common carrier.
- H. Confidentiality** During the course of NONIK TECHNOLOGIES, INC. provision of Equipment, Services and Custom Software hereunder, each party may have access to information concerning the products and business of the other. Neither party shall make any use of such information of the other party except in connection with the exercise of its rights and responsibilities under this Agreement. Further, each party shall take all steps as may be prudent to prevent the disclosure of such information to third parties; but in no event shall such steps be less than the most stringent steps used by such party in protecting its own confidential and proprietary information. The commitments of confidentiality and non-use set forth above shall not extend to any portion of said information which, as a whole, a) can be documented to be known to recipient or the general public before disclosure hereunder; or b) hereafter, through no act on the part of the recipient hereunder become generally available to the public.
- I. Term and Termination** This Agreement shall remain in full force and effect until either (a) the completion of the Services at set forth in a "Statement of Work" or (b) terminated by either party, with or without cause, upon not less than thirty (30) days prior written notice to the other specifically identifying this Agreement by title and date. Termination of this Agreement shall not affect the respective rights and responsibilities of the parties arising out of or relating to any Equipment, Custom Software or Services provided, or which NONIK TECHNOLOGIES, INC. has provided or committed to provide, prior to the effective date of termination.
- J. Assignment** Any assignment of this Agreement or any rights thereunder, without prior written consent of both parties by duly authorized representatives, shall be void.
- K. Notices** Any notice, request, demand or other communication required or permitted by, or relating to, the terms of this Agreement shall be deemed to be properly given only when delivered to the United States Postal Service, sent certified mail-return receipt requested, or postage prepaid, or upon confirmation of receipt by facsimile, addressed to the party to receive notice as previously requested by notice hereunder or, otherwise, as provided in conjunction with such party's signature below.
- L. Choice of Law** This Agreement shall be governed by and construed in accordance with the law, without reference to principles of conflicts of laws, of the State of Michigan.
- M. Entire Agreement** This Agreement constitutes the entire Agreement between the parties, superseding all prior oral or written negotiations, representations, understandings and agreements, on the subject hereof and there are no conditions to this Agreement which are not expressed herein.