

Software Third Party Dealer Agreement

This Software Third Party Dealer Agreement (this “**Agreement**”), effective as of the last date set forth with the signatures below (the “**Effective Date**”), is by and between Rice Lake Weighing Systems, Inc., (“**Licensor**”) and _____ (“**Third Party Dealer**”). Licensor and Third-Party Dealer may be referred to herein collectively as the “**Parties**” or individually as a “**Party**.”

- A. Licensor developed and licenses a certain PC-based webserver scale application (the “**Software**”).
- B. Third Party Dealer desires a license to utilize the Software 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.

- 1.1 “**Documentation**” means Licensor’s user manuals, handbooks, and installation guides relating to the Software provided by Licensor to Third Party Dealer either electronically or in hard copy form.
- 1.2 “**End User**” means a customer that licenses one or more Software from Licensor in accordance with the EULA for its own use and not for transfer or resale of any kind.
- 1.3 “**End User Information**” means any information collected, received, processed, or maintained by or on behalf of Third-Party Dealer or Licensor from or relating to any End User in connection with the Software.
- 1.4 “**EULA**” means Licensor’s then current end-user software license agreement setting forth the terms and conditions of an end user’s permitted use of Software.
- 1.5 “**Licensor Properties**” means the Software, Equipment, Specifications, Documentation, Licensor Marks, Marketing Materials, Licensor’s Confidential Information, APIs (application programming interfaces), and other technologies, information (including any End User Information), and materials provided by Licensor to Third Party Dealer to enable Third Party Dealer to market, distribute, or license, or provide maintenance, support, or other services for, Software.
- 1.6 “**Marketing Materials**” means any advertising, promotional, or marketing materials for or relating to the Software or Software that Licensor may make available to Third Party Dealer from time to time during the Term.
- 1.7 “**Software Open-Source Components**” means any open-source software provided with or incorporated into the Software, including any available under the GNU Affero General Public License (AGPL), GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), Apache License, BSD licenses, or any other license that is approved by the Open-Source Initiative.

- 1.8 “**Specifications**” means the technical specifications attached, titled “OnTrak Enterprise Spec”
- 1.9 “**Third-Party Materials**” means all materials and information in any form or medium, including any Software Open-Source Components or other software, documents, data, content, specifications, products, equipment, or components of or relating to the Software, that are not proprietary to Licensor.
- 1.10 “**Updates**” means any updates, bug fixes, patches, maintenance releases, or other error corrections to the Software that Licensor generally makes available free of charge to all End Users and Third-Party Dealers of the Software.

2. Grant of Rights.

- 2.1 License Grants. Subject to and conditioned on Third Party Dealer’s compliance with the terms and conditions of this Agreement, Licensor hereby grants Third Party Dealer a limited, non-exclusive, non-sublicensable, non-transferable (except as provided herein) license during the Term solely to: (i) demonstrate and distribute the Software to End Users solely for use under the EULA; (ii) use Licensor’s trademarks, service marks, trade names, and logos (“**Licensor Marks**”); (iii) reproduce and distribute Marketing Materials, solely to market and promote the Software under this Agreement; and (iv) use, copy, reproduce, integrate, and distribute the Documentation, in whole or in part, and integrate the Documentation, in whole or in part, solely in support of the licensed use of Software by End Users.
- 2.2 Use Restrictions.
- (a) General. Third Party Dealer shall not use the Licensor Properties for any purposes beyond the scope of the license granted in this Agreement. Except as otherwise expressly set forth in this Agreement, Third Party Dealer shall not at any time, directly or indirectly: (i) market, distribute, license, or otherwise make available any Software; (ii) copy, modify, or create derivative works of the Licensor Properties, in whole or in part; (iii) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Licensor Properties; (iv) 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; (v) remove any proprietary notices from the Licensor Properties.
- (b) Trademark Use Restrictions. All uses of the Licensor Marks, and all goodwill associated therewith, will inure solely to the benefit of Licensor. Third Party Dealer shall not use any Licensor Marks (whether individually or in combination, or in whole or in part): (i) in or in connection with the advertising, promotion, marketing, or distribution of any goods, services, or technologies other than the Software; (ii) as part of Third Party Dealer’s corporate or trade name or any domain name; (iii) in any way that may cause confusion, mistake, or deception; or (iv) in any way that may dilute, tarnish, or otherwise diminish the Licensor Marks’ distinctiveness, or jeopardize the reputation of or goodwill associated with the Licensor Marks, Software, or Licensor or the validity of Licensor’s ownership of the Licensor Marks or the registrations therefor.
- 2.3 Software Open-Source Components. The Software may include Software Open-Source Components. Any use of Software Open-Source Components by Third Party Dealer is subject to and governed solely by the terms and conditions of the applicable open-source license agreement(s).

- 2.4 Delivery. Licensor shall deliver the Software to Third Party Dealer electronically, on tangible media, or by other means, in Licensor's sole discretion.
- 2.5 No Implied Rights. Licensor reserves all rights not expressly granted to Third Party Dealer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Third Party Dealer or any third party any IP rights or other right, title, or interest in or to any of the Software or other Licensor Properties. All uses in this Agreement of the terms "sell," "sale," "resell," "resale," "purchase," "price," and the like mean the grant of a license and shall not be deemed a sale of any copy of or rights in the Software or other Licensor Properties: (i) in the case of Third-Party Dealer, under this Agreement; and (ii) in the case of End Users, under the EULA. Nothing in this Agreement grants or conveys, or permits Third Party Dealer to grant or convey, any ownership right in any of the Licensor Properties or Third-Party Materials, or any article or copy thereof or IP rights therein.

3. Third Party Dealer Obligations.

- 3.1 Marketing and Distribution. At all times during the Term, Third Party Dealer shall, in accordance with this Agreement and at its own cost: (i) ensure that End Users receive, are aware of, and accept the terms and conditions of the EULA before using the Software and promptly report to Licensor in writing any actual or suspected EULA non-compliance; (ii) advertise, promote, market, and distribute the Software and Equipment to End Users using Third Party Dealer's best efforts to maximize the distribution of, licensing revenues from, and End User satisfaction with, the Software; and (iii) promptly give Licensor written notice of any notice, complaint, or claim of which Third Party Dealer becomes aware concerning any data security breach, personal injury, property damage, or other injury alleged to have been caused, in whole or in part, by the Software.
- 3.2 End User Information. Third Party Dealer shall at all times during and after the Term provide to Licensor, in such written, electronic, or other form as Licensor may reasonably request for purposes of administering or enforcing the licenses to the Software and providing maintenance and support or other services to End Users, all End User Information collected or received by Third Party Dealer and, for any End User Information that includes personal information: (i) notify and, where required by applicable law, obtain the written consent of, all End Users that their information may be transferred or disclosed to Licensor for the foregoing purposes; (ii) maintain appropriate administrative, physical, and technical safeguards for the protection of the privacy, security, confidentiality, and integrity of such End User Information; and (iii) comply, and ensure that its employees, agents, and contractors comply, with all applicable laws regarding data privacy and security, required data breach notifications, and personal information.

4. Support.

- 4.1 Licensor Support. This Agreement does not entitle Third Party Dealer to any maintenance, support, or training for the Software or the Equipment except for limited phone-based technical support, documentation, and online content, all as provided by Licensor in Licensor's sole discretion. Additional maintenance, support, and training may be offered to Third Party Dealer, in Licensor's sole discretion, for additional fees.
- 4.2 End User Support. Unless otherwise agreed by the Parties, Third Party Dealer is solely responsible for providing technical support, maintenance, and warranty support to End Users for the Software and the Equipment.

5. Fees and Payment.

5.1 Payment. Licensor make all payments hereunder in US dollars when due to Third Party Dealer in the form of an actual payment or a credit to Third Party Dealer's account. The decision of payment or credit will be solely that of the Licensor. Fees and payments are shown on Exhibit A.

6. Confidential Information. 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 in written, oral, or electronic form or media, and whether or not marked, designated, or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party; (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. Each Party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five (5) years from the date first disclosed to the receiving Party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

7. Intellectual Property Ownership. All right, title, and interest in and to the Licensor Properties and Third-Party Materials, including all intellectual property rights therein, are and will remain, respectively, with Licensor and the rights holders in the Third-Party Materials. Third Party Dealer has no right or license to any Licensor Properties or Third-Party Materials except as expressly licensed under this Agreement or the applicable third-party license, and subject to the requirements and restrictions set forth in this Agreement. Third Party Dealer hereby unconditionally and irrevocably assigns to Licensor its entire right, title, and interest in and to any intellectual property rights that Third Party Dealer may acquire in or relating to any of the Licensor Properties (including any rights in derivative works or patent improvements relating thereto), whether acquired by operation of law, contract, assignment, or otherwise.

8. Warranty Disclaimer. ALL LICENSOR PROPERTIES 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. EXCEPT FOR THE LIMITED WARRANTY, LICENSOR MAKES NO WARRANTY OF ANY KIND THAT THE LICENSOR PROPERTIES, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET THIRD PARTY DEALER'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. ANY REPRESENTATIONS AND WARRANTIES OF OR RELATING TO THE SOFTWARE MADE TO

END USERS ARE MADE SOLELY UNDER THE TERMS AND CONDITIONS OF THE END USER'S EULA. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS."

9. Indemnification.

9.1 Licensor Indemnification.

- (a) Licensor shall indemnify, defend, and hold harmless Third Party Dealer from and against any and all losses, damages, liabilities, and costs (including reasonable attorneys' fees) ("**Losses**") incurred by Third Party Dealer resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") that Third Party Dealer's exercise of its rights under Section 2 in accordance with the Specifications, Documentation, and this Agreement infringes or misappropriates such third party's US intellectual property rights, provided that Third Party Dealer promptly notifies Licensor in writing of the claim, cooperates with Licensor, and allows Licensor sole authority to control the defense and settlement of such claim.
- (b) If such a claim is made or appears possible, Third-Party Dealer agrees to permit Licensor, at Licensor's sole discretion, to (i) modify or replace the Software or Documentation, or component or part thereof, to make it non-infringing, or (ii) obtain the right for Third Party Dealer to continue use. If Licensor determines that none of these alternatives is reasonably available, Licensor may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Third Party Dealer.
- (c) This Section 9.1 does not apply to the extent that the alleged infringement arises from: (i) use of the Software in combination with data, software, hardware, equipment, or technology not provided by Licensor or authorized by Licensor in writing; (ii) modifications to the Software not made by Licensor; (iii) use of any version other than the most current version of the Software or Documentation delivered to Third Party Dealer; or (iv) Third-Party Materials.

9.2 Third Party Dealer Indemnification. Third Party Dealer shall indemnify, defend, and hold harmless Licensor and its officers, directors, employees, agents, successors, and assigns (each, a "**Licensor Indemnitee**") from and against any and all Losses incurred by the Licensor Indemnitee resulting from any Third-Party Claim relating to the Software, provided that such Losses are not attributable to the Licensor Properties, 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.

9.3 Sole Remedy. SECTION 9.1 SETS FORTH THIRD PARTY DEALER'S SOLE REMEDIES AND LICENSOR'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SOFTWARE OR DOCUMENTATION INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

10. Limitations of Liability. 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.

11. Term and Termination.

11.1 Term. The 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 until one (1) year from such date (the "Term").

11.2 Termination. In addition to any other express termination right set forth in this Agreement:

(a) either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach; and

(b) either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files, or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

11.3 Effect of Expiration or Termination. Upon any expiration or termination of this Agreement: (i) all direct EULA licenses granted to then-existing End Users survive in accordance with their terms; (ii) Third Party Dealer shall immediately cease to represent itself as Licensor's authorized Third Party Dealer distributor of the Software; and (iii) subject only to Third Party Dealer's continued right to retain and use one copy each of the Licensor Properties, Specifications, and Documentation solely to perform its support obligations to then-existing End Users, (x) all licenses granted to Third Party Dealer hereunder will also expire or terminate, and (y) Third Party Dealer shall cease all use of Software and other Licensor Properties.

12. Miscellaneous.

12.1 Entire Agreement. This Agreement, together with any other documents incorporated herein by reference and all related Exhibits, 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.

12.2 Relationship of the Parties; No Franchise Relationship. The Parties to this Agreement are independent contractors and nothing in this Agreement will be deemed or construed as creating a joint venture, partnership, agency relationship, franchise, or business opportunity between Licensor and Third-Party Dealer. Neither Party, by virtue of this Agreement, will have any right, power, or authority to act or create an obligation, express or implied, on behalf of the other Party. Third Party Dealer acknowledges that it does not and will not offer or sell Software under a business or marketing plan or system prescribed by Licensor and that Third Party Dealer sells Software at prices set solely by Third Party Dealer.

- 12.3 Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a “**Notice**”) must be in writing and addressed to the Parties at the addresses set forth below (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving Party, and (ii) if the Party giving the Notice has complied with the requirements of this Section.
- 12.4 Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- 12.5 Severability. 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 or invalidate or render unenforceable such term or provision in any other jurisdiction.
- 12.6 Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of Wisconsin without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Wisconsin. Any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses granted hereunder shall be instituted exclusively in the state or federal courts located in Wisconsin, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.
- 12.7 Assignment. Third Party Dealer 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. No assignment, transfer, or delegation will relieve the assigning or delegating Party of any of its obligations hereunder. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective permitted successors and assigns.
- 12.8 Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 6 or, in the case of Third Party Dealer, Section 2.2, would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party 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.

12.9 Counterparts. 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.

RICE LAKE WEIGHING SYSTEMS, INC.

[THIRD PARTY DEALER]

By:

By:

Name:

Name:

Title:

Title:

Date:

Date:

Address: 230 West Coleman St

Address:

Rice Lake, WI

54868