# TIMEKEEPER SOFTWARE END-USER LICENSE AGREEMENT

PLEASE READ THIS END-USER LICENSE AGREEMENT ("EULA") CAREFULLY. BY INSTALLING OR USING THE TIMEKEEPER SOFTWARE ACCOMPANYING THIS EULA, LICENSEE AGREES TO THE TERMS OF THIS EULA. IF LICENSEE DOES NOT AGREE, DO NOT INSTALL AND/OR USE THE SOFTWARE. BY SIGNING THE AGREEMENT OR OTHERWISE INSTALLING OR USING THE SOFTWARE, YOU REPRESENT AND WARRANT THAT YOU ARE THE LICENSEE IDENTIFIED IN A VALID TIMEKEEPER LICENSE CERTIFICATE OR THAT YOU ARE AUTHORIZED BY SUCH LICENSEE TO ACCEPT THE TERMS OF THIS EULA AS THE AGRENT OF THE LICENSEE AND ON THE LICENSEE'S BEHALF.

IF YOU ARE NOT A LICENSEE, OR ARE NOT PROPERLY AUTHORIZED BY A LICENSEE TO USE THE SOFTWARE IN COMPLIANCE WITH THE TERMS OF THIS EULA, YOU DO NOT HAVE ANY LICENSE TO THE SOFTWARE OR THE INTELLECTUAL PROPERTY RIGHTS CONTAINED THEREIN.

#### **1. DEFINITIONS.** The following definitions apply to this EULA:

- **a.** "Acquisition Event" means (1) the sale to a third party of (i) all or substantially all of the assets of Licensee's business to which this EULA relates; (ii) sufficient equity of Licensee to effect a change of control of Licensee including by merger, acquisition, consolidation or other reorganization; or (iii) fifty percent (50%) or more of the combined voting power of Licensee's then outstanding securities, or (2) the purchase by Licensee of (i) all or substantially all of the assets of a third party a third party's business to which this EULA relates; (ii) sufficient equity of a third party to effect a change of control of the third party including by merger, acquisition, consolidation or other reorganization; or (iii) fifty percent (50%) or more of the combined voting power a third party to effect a change of control of the third party including by merger, acquisition, consolidation or other reorganization; or (iii) fifty percent (50%) or more of the combined voting power a third party's then outstanding securities.
- **b.** "Authorized User" means an employee, agent, contractor or client of Licensee permitted by Licensee to use the Software.
- **c.** "Certificate" means the TimeKeeper License Certificate provided by FSMLabs to Licensee with the Software, which sets forth the scope and duration of Licensee's rights to use the TimeKeeper Software, together with the Quote provided to Licensee by FSMLabs, which sets forth the licensed Software, prices, and renewal terms (if any).
- d. "EULA" means End User License Agreement.
- e. "FSMLabs" means Finite State Machine Labs, Inc., a Delaware corporation.
- **f.** "Device" means a single personal computer, workstation, terminal, handheld computer, pager, telephone, personal digital assistant, or other electronic device.
- g. "Licensee" means the party to this EULA identified in a valid Certificate accompanying the Software.
- **h.** "New Entity" means the successor to Licensee and/or the third party following an Acquisition Event.
- **i.** "TimeKeeper License File" means a data file that authorizes the use of TimeKeeper Software during the Term and determines the enabled capabilities of TimeKeeper Software.
- **j.** "TimeKeeper Software" means the software, documentation, interfaces, content, and any accompanying data provided to Licensee by FSMLabs.
- **k.** "Software" means the TimeKeeper Software, the TimeKeeper License File, and any update to the forgoing provided or made available to Licensee by FSMLabs during the Term.
- 1. "Term" means the term set forth in the applicable Certificate issued to Licensee.
- **2. APPLICATION.** This EULA is a legal agreement between FSMLabs and Licensee. This EULA governs the Software, identified in the Certificate, and any support services related to the Software. This EULA applies to any Software update, upgrade, add-on component or service that FSMLabs may provide or make available to

Licensee, unless FSMLabs provides a separate license with such update, upgrade and add-on component or service, in which case the terms of that license will govern.

**3. GRANT OF LICENSE**. Licensee's compliance with all the terms and conditions of this EULA, including without limitation, the payment of the applicable license fees set forth in the valid Certificate issued to Licensee, is a condition precedent to the license granted herein. FSMLabs grants Licensee the following non-exclusive rights during the Term of this EULA, subject to the reservations and restrictions set forth in this EULA (including without limitation **Section 4**):

Licensee may install and use, and permit any Authorized User to use the Software on no more than the number of Devices, server computers, or virtual hosts (virtual machines) owned, operated or maintained by Licensee that are authorized by the valid Certificate issued to Licensee. Each copy of TimeKeeper Software must either (a) be installed with a copy of the TimeKeeper License File provided along with the TimeKeeper Software, or (b) be in communication with a server that provides the TimeKeeper License File. As a condition precedent to Licensee's providing any Authorized User access to use the Software, Licensee agrees that it shall require such Authorized User to agree to use the Software in compliance with the limited right of use stated in this **Section 3** and the restrictions set forth in **Section 4**.

## 4. RESTRICTIONS AND LIMITATIONS

- **a.** *Reservation of Rights.* The Software is protected by copyright and other intellectual property laws and treaties. FSMLabs or its suppliers own the title, copyright, and other intellectual property rights in the Software. **The Software is licensed, not sold.** FSMLabs reserves all rights not expressly granted to Licensee in this EULA.
- **b.** *Restrictions.* Notwithstanding any other provision in this EULA, neither this EULA nor any Certificate grants a license, under any FSMLabs intellectual property, to implement any functionality contained in the Software (including without limitation communication protocols used by the Software) in any other hardware or software, even if installed on a Device accessing or utilizing the Software. Licensee shall not, and agrees not to enable others to, modify, reverse engineer, decompile, disassemble, attempt to derive the source code of, decrypt, modify, or create derivative works of the Software or any services provided by the Software, or any part thereof, or otherwise exploit the Software in a manner not permitted under this EULA (except as and only to the extent any foregoing restriction is prohibited by applicable law or by licensing terms governing use of opensource components that may be included with the Software). Renting, leasing, or lending the Software (including providing commercial hosting services) is prohibited.
- c. Assignment. (1) Neither this EULA nor any of the rights or obligations hereunder may be assigned by Licensee without the prior express written consent of FSMLabs, except in accordance with Section 4.c.(2). Except in accordance with Section 4.c.(2), any attempt to so assign this EULA shall constitute a material breach of this EULA and shall automatically terminate, as of the date of the attempted assignment, this EULA. (2) Notwithstanding the preceding Section 4.c.(1), Licensee may assign this EULA in the event of an Acquisition Event to the New Entity, provided that: (i) all obligations of Licensee under this EULA shall become the obligations of the New Entity, including without limitation, the obligation of Licensee to pay the applicable license fees set forth in the valid Certificate issued to Licensee, and (ii) if the valid Certificate issued to Licensee permitted use of the Software on an unrestricted number of Devices, server computers, or virtual hosts, then, as of the effective date or the Acquisition Event, the New Entity's rights under the Certificate and this EULA shall immediately be limited to permit use of the Software on no more than the number of Devices, server computers, or virtual hosts on which the Software was actually installed by Licensee thirty (30) days prior to the Acquisition Event.
- d. Notice of Violation. Licensee shall promptly notify FSMLabs of any breach of the restrictions in Section 3 or 4 of this EULA, regardless of whether such breach is by: i) Licensee; ii) Licensee's client; iii) any employee, contractor, or other agent of Licensee or Licensee's Client; or iv) a third-party utilizing a Device owned, operated or maintained by Licensee.

### 5. PRODUCT SUPPORT SERVICES

a. *Rights and Obligations.* FSMLabs will provide Licensee with telephone and email based responses to inquiries related to the operation of the Software during the Term. Licensee should contact FSMLabs with support inquiries at <u>support@fsmlabs.com</u> or 512 263 5530. FSMLabs will not respond to any support

inquiries from Licensee's clients. FSM Labs may require Licensee to execute a separate support agreement for an additional fee where extensive support is required or desired by Licensee. Any software FSMLabs may provide to Licensee as part of support services are governed by this EULA, unless separate terms are provided. THE FSMLABS SUPPORT SERVICES ARE OFFERED SUBJECT TO THE LIMITATIONS ON WARRANTIES AND LIABILITY SET FORTH IN **SECTIONS 8-11** BELOW.

**b**. *Consent to Use of Data.* Licensee agrees that FSMLabs may collect and use technical information gathered as part of the support services provided to Licensee, if any, related to the Software. FSMLabs may use this information solely to improve its products or to provide customized services or technologies to Licensee and will not disclose this information in a form that personally identifies Licensee.

### 6. LICENSE FEES/RENEWAL

- **a.** *Fees & Renewal.* Licensee shall pay to FSMLabs the license fee(s) set forth in the applicable Certificate(s) authorizing the use of the Software during the Term. This EULA may be renewed pursuant to the terms set forth in the Certificate. Licensee's compliance with all terms of this Agreement is a condition precedent to Licensee's rights to renew this EULA and to exploit the Software during the Term.
- b. *Remote Monitoring.* The Software includes components that automatically monitor compliance with the Certificate, and FSMLabs may monitor Licensee's compliance with the terms of this EULA and the Certificate remotely or otherwise. Unless Licensee has separately negotiated an agreement with FSMLabs to the contrary, THE SOFTWARE MAY NOT FUNCTION (i) BEYOND THE TERM SET FORTH IN THE CERTIFICATE, OR (ii) IF LICENSEE ALTERS THE DATES AND TIMES FUNCTIONS ON THE DEVICE ON WHICH THE SOFTWARE IS INSTALLED. SOFTWARE PROVIDED UNDER AN EVALUATION LICENSE IS NOT INTENDED FOR USE IN PRODUCTION. ANY USE OF THE SOFTWARE OUTSIDE THE TERMS OF THE CERTIFICATE AND THIS EULA IS UNAUTHORIZED AND IS ENTIRELY AT LICENSEE'S OWN RISK.
- 7. TERMINATION. This EULA shall be effective from the Effective Date set forth in the applicable Certificate and shall continue in effect for the Term set forth in such Certificate and any renewal thereof, unless terminated earlier as permitted in this EULA. Without prejudice to any other rights, FSMLabs may terminate this EULA if Licensee or its employees, agents, contractors or clients are using the Software in any manner violating any terms or conditions of this EULA. In the event of the expiration or other termination of the Term, Licensee must destroy or return to FSMLabs all copies of the Software . Upon termination or expiration of this EULA, all rights of Licensee and any Authorized User relating to the Software shall immediately cease. Sections 6-11, 15, and 16 shall survive termination of this EULA.
- 8. DISCLAIMER OF WARRANTIES. FSMLABS AND ITS SUPPLIERS PROVIDE THE SOFTWARE AND SUPPORT SERVICES (IF ANY) AS IS AND WITH ALL FAULTS, AND HEREBY DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY (IF ANY) IMPLIED WARRANTIES, DUTIES OR CONDITIONS OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF RELIABILITY OR AVAILABILITY, OF ACCURACY OR COMPLETENESS OF RESPONSES, OF RESULTS, OF WORKMANLIKE EFFORT, OF LACK OF VIRUSES, AND OF LACK OF NEGLIGENCE, ALL WITH REGARD TO THE SOFTWARE, AND THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT OR OTHER SERVICES, INFORMATION, SOFTWARE, AND RELATED CONTENT THROUGH THE SOFTWARE OR OTHERWISE ARISING OUT OF THE USE OF THE SOFTWARE.
- 9. EXCLUSION OF INCIDENTAL, CONSEQUENTIAL AND CERTAIN OTHER DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL FSMLABS OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY OF GOOD FAITH OR OF REASONABLE CARE, FOR NEGLIGENCE, AND FOR ANY OTHER PECUNIARY OR OTHER LOSS WHATSOEVER) ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE SOFTWARE, THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT OR OTHER SERVICES, INFORMATION, SOFTWARE, AND RELATED CONTENT THROUGH THE SOFTWARE, OR OTHERWISE UNDER OR IN CONNECTION WITH ANY PROVISION OF THIS EULA,

EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE), MISREPRESENTATION, STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY OF FSMLABS OR ANY SUPPLIER, AND EVEN IF FSMLABS OR ANY SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- 10. LIMITATION OF LIABILITY AND REMEDIES. NOTWITHSTANDING ANY DAMAGES THAT LICENSEE MIGHT INCUR FOR ANY REASON WHATSOEVER (INCLUDING, WITHOUT LIMITATION, ALL DAMAGES REFERENCED HEREIN AND ALL DIRECT OR GENERAL DAMAGES IN CONTRACT OR ANYTHING ELSE), THE ENTIRE LIABILITY OF FSMLABS AND ANY OF ITS SUPPLIERS UNDER ANY PROVISION OF THIS EULA AND LICENSEE'S EXCLUSIVE REMEDY HEREUNDER SHALL BE LIMITED TO THE LESSER OF THE ACTUAL DAMAGES INCURRED BY LICENSEE IN REASONABLE RELIANCE ON THE SOFTWARE OR THE AMOUNT ACTUALLY PAID BY LICENSEE FOR THE SOFTWARE. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS (INCLUDING SECTIONS 8, 9, AND 10) SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE.
- 11. NON-DISCLAIMABLE WARRANTY LIMITATION. IF, DESPITE THE DISCLAIMERS SET FORTH ABOVE, AN IMPLIED WARRANTY OR CONDITION OF THE SOFTWARE IS CREATED UNDER THIS EULA OR ANY LAW OR PRECEDENT UNDER APPLICABLE LAW, LICENSEE SHALL HAVE SUCH IMPLIED WARRANTY OR CONDITION, BUT ONLY AS TO DEFECTS DISCOVERED DURING THE FIRST NINETY DAYS OF THIS EULA. AS TO ANY DEFECTS DISCOVERED AFTER THE NINETY-DAY PERIOD, THERE IS NO WARRANTY OR CONDITION OF ANY KIND.
- **12. AUDIT RIGHTS.** FSMLabs may audit Licensee's compliance with the terms of this EULA as set forth in the Certificate. Upon reasonable notice, FSMLabs may conduct an audit during normal business hours (with the auditor's costs being at FSMLabs' expense). If an audit reveals use of the Software outside of the scope permitted by the Certificate or this EULA, then, at FSMLabs' sole option, FSMLabs may immediately terminate this EULA as set forth in Section 6 and require Licensee to pay to FSMLabs the auditor's costs and its then-current rates for the additional use outside of the scope of the Certificate.
- **13.U.S. GOVERNMENT LICENSE RIGHTS**. All Software provided to the U.S. Government pursuant to solicitations issued on or after December 1, 1995, is provided with the commercial license rights and restrictions described elsewhere herein. All Software provided to the U.S. Government pursuant to solicitations issued prior to December 1, 1995, is provided with "Restricted Rights" as provided for in FAR, 48 CFR 52.227-14 (JUNE 1987) or DFAR, 48 CFR 252.227-7013 (OCT 1988), as applicable.
- **14. EXPORT RESTRICTIONS.** Licensee acknowledges that the Software is subject to U.S. export jurisdiction. Licensee agrees to comply with all applicable international and national laws that apply to the Software, including the U.S. Export Administration Regulations, as well as end-user, end-use, and destination restrictions issued by U.S. and other governments. For additional information see <a href="http://www.FSMLabs.com/exporting">http://www.FSMLabs.com/exporting</a>.
- **15. APPLICABLE LAW.** This EULA is governed by the laws of the State of Delaware, excluding its choice of law principles. This License shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. Licensee consents to the jurisdiction of and venue of any dispute relating to the EULA or the Software in the State or Federal courts located in Delaware.
- **16. ENTIRE AGREEMENT; SEVERABILITY.** This EULA (including any addendum or amendment to this EULA which is included with the Software) are the entire agreement between Licensee and FSMLabs relating to the Software and the Support Services (if any) and they supersede all prior or contemporaneous oral or written communications, proposals and representations with respect to the Software or any other subject matter covered by this EULA. To the extent the terms of any FSMLabs policies or programs for support services conflict with the terms of this EULA, the terms of this EULA shall control <u>unless the parties otherwise agree in writing</u>. If any provision of this EULA is held to be void, invalid, unenforceable or illegal, the other provisions shall continue in full force and effect.
- 17. EFFECTIVE DATE. These terms are a legal contract that will bind both FSM Labs and Licensee as soon as Licensee or Licensee's Authorized Agent clicks "I AGREE" or otherwise installs or uses the Software