GENESIS NETWORK

SOFTWARE LICENSE AGREEMENT

Last Updated: 3 July 2024

IMPORTANT – PLEASE READ CAREFULLY THESE THIS SOFTWARE LICENSE AGREEMENT ("AGREEMENT"), WHICH IS AN ENFORCEABLE CONTRACT THAT GOVERNS THE USE BY YOU ("LICENSEE"), THE BUSINESS ENTITY THAT PURCHASED THE LICENSES TO THE SOFTWARE LICENSED HEREUNDER FROM THERMON, INC., A CORPORATION FORMED UNDER THE LAWS OF THE STATE OF TEXAS, OR AN AFFILIATE OF THERMON, INC. (IN EITHER CASE, "THERMON"), WHETHER DIRECTLY FROM THERMON OR THROUGH AN AUTHORIZED AGENT, REPRESENTATIVE, DISTRIBUTOR OR RESELLER.

Licensed Software	
Name	**Description**
Genesis Server Software	Multiple executables and object codes providing site-wide alarm status and history; trace heater performance history; panel settings management; and IoT device network management
Genesis Gateway Software	Gateway firmware providing communication; message buffering; and device management
Genesis Bridge Software	Bridge firmware providing management of heat trace controllers, sensors, and related devices; communication; and message buffering

BY EXECUTING (WHETHER MANUALLY OR ELECTRONICALLY) THE PURCHASING DOCUMENTS THAT CROSS-REFERENCE OR INCORPORATE BY REFERENCE THIS AGREEMENT, OR BY INSTALLING, ACCESSING OR USING ANY OF THE SOFTWARE, LICENSEE IS AGREEING TO BE LEGALLY BOUND BY THIS AGREEMENT:

1. **DEFINITIONS**

In addition to the terms identified above and the terms otherwise defined herein, the following initially capitalized terms have their respective meanings:

"*Affiliate*" means, with respect to a business entity, another entity that, directly or indirectly controls, is controlled by or is under common control with such entity. For the purposes of this definition, "control" when used with respect to any specified entity, means the power to direct the management and policies of such entity, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise. The terms "controlling" and "controlled" have meanings correlative to the foregoing.

"***Business Day***" means Monday through Friday excluding weekends and United States federal holidays.

"***Bypass***" means a procedure by which Licensee can avoid a reported problem experienced by Licensee with the Software that is subsequently reported to Thermon for analysis and correction, if applicable, by changes to the procedures followed or data supplied by Licensee when using the Software.

"***Confidential Information***" means any data, material or information, in whatever form or media, of a party to this Agreement ("***Disclosing Party***") that is provided, disclosed or made available to the other party ("***Receiving Party***"), whether prior to the Effective Date or during the term of this Agreement, that is either marked or otherwise identified as confidential or which, by its nature or the circumstances under which it is disclosed should reasonably be understood to be confidential, but excluding any data, material or information that is: (a) publicly available or later becomes available other than through a breach of this Agreement; (b) known to Receiving Party or its employees, agents, or representatives prior to such disclosure or is independently developed by Receiving Party or its employees, agents, or representatives subsequent to such disclosure; or (c) subsequently lawfully obtained by Receiving Party or its employees, agents, or representatives from a third party without obligations of confidentiality. Without limiting the foregoing, the Software and Documentation comprise Confidential Information of Thermon.

"***Critical Error(s)***" means a failure of the Software that Severely Impacts Licensee's ability to perform Software tasks, and which cannot be eliminated through the use of a Bypass.

"*Documentation*" means on-line help files, written instruction manuals or instructional videos regarding the use of the Software provided by Thermon and the Software Specifications.

"Effective Date" means the date specified in the Purchase Documents as the effective date or, if the effective date is not specified in the Purchase Documents, the date of the last signature of the Purchase Documents.

"Embedded Software" means, collectively, the firmware identified above as Genesis Gateway Software and Genesis Bridge Software, as such firmware is installed on Thermon's Genesis Gateway products and Thermon's Genesis Bridge Products, together with all Updates thereto provided by Thermon to Licensee.

"Error(s)" means a failure of the Software, which cannot be eliminated through the use of a Bypass, to: (a) function substantially and materially in accordance with the Software Specifications; and (b) be compatible and conform to Documentation.

"Genesis Hardware" means, collectively, the Thermon products purchased by Licensee that are marketed under the names "Thermon Genesis Bridge" and "Thermon Genesis Gateway", respectively.

"Genesis Network" means Thermon's hardware and software solution marketed under the name "Genesis Network", as purchased by Licensee, comprising the Genesis Server Software and the Genesis Hardware.

"Genesis Server Software" means the version of the Object Code for Thermon's Genesis Server Software that has been provided by Thermon to Licensee, including all Updates thereto that have been provided by Thermon to Licensee.

"Installation Site" means the site where the Genesis Network is installed.

"Law" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement of any federal, state, provincial, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

"License Fee" has the meaning set forth in Section 11(a) below.

"Object Code" means the binary machine-readable version of the Software.

"Purchase Documents" means the document or documents pursuant to which Licensee purchased the licenses to the Software granted herein, which cross-references or incorporates by reference this Agreement and which are executed (whether manually or electronically) by or on behalf of Licensee.

"Severely Impacts" means having a material negative impact directly on Licensee's ability to manage or process information through the Genesis Network which is critical to Licensee's operations for which the Software is to support.

"*Software*" means, collectively, the Genesis Server Software and the Embedded Software.

"*Software Specifications*" means the specifications set forth in the Documentation provided at https://www.thermon.com/products/heat-trace/controls-monitoring/genesis-network/, as in effect on the date hereof and any updates thereto posted by Thermon.

"*Term*" has the meaning set forth in Section 12(a) below.

"*Update*" means, with respect to Software, updates, upgrades, improvements, enhancements, modifications, new releases, or new versions of any of the Software.

2.   **UPDATES TO THIS AGREEMENT**

(a)   Thermon reserves the right to amend or otherwise update this Agreement at any time and from time to time without notice. The version of this Agreement in effect during the Initial Term or the then-current Renewal Term, as applicable, shall remain in effect for the duration of the Initial Term or such Renewal Term. If Thermon posts un update to this Agreement at least 60 days prior to the end of the Initial Term or a Renewal Term (as evidenced by the update date at the top of this Agreement), then such updated Agreement will become effective for the succeeding Renewal Term. If Licensee does not timely give a notice of non-renewal for the succeeding Renewal Term, or if Licensee uses the Software during such succeeding Renewal Term, then Licensee will be deemed to have agreed to the updated Agreement.

3.   **COUNTRY SPECIFIC ADDENDUM**

(a)   If Licensee's location is outside of the United States (as specified in the Purchase Documents), or if the Installation Site is located outside of the United States, then the "*Country-Specific Terms Addendum*" to this Agreement, accessible at https://content.thermon.com/pdf/software_license_information/country_speci fic_addendum.pdf and incorporated herein by reference, will, to the extent specified in the Country-Specific Terms Addendum, supersede certain provisions in the main body of this Agreement.

4.   **LICENSE GRANT**

(a)   **Genesis Server Software**. Conditioned upon Licensee's compliance with the terms of this Agreement, Thermon hereby grants Licensee during the Term a limited, non-exclusive, non-transferrable, license, without the right to sublicense:

    (i)   to install onto the number of servers identified in the Purchase Documents at each Installation Site, and to permit Users (as defined below) to use, one copy of the Genesis Server Software in Object Code form for Licensee's

own internal business operations on each server as part of the Genesis Network, solely in accordance with the applicable Documentation; or

(ii)   to install on up to three servers at each Installation Site one copy of the Genesis Server Software for testing and/or training purposes, but not for production use or use in a live environment.

Licensee may make one backup copy of the Genesis Server Software but only for backup and archival purposes.

(b)   **Embedded Software**. Conditioned upon Licensee's compliance with the terms of this Agreement, Thermon hereby grants Licensee during the Term a non-exclusive, limited license, without the right to sublicense, to permit Users to use the Embedded Software, solely as installed in, and in connection with its use of, the Genesis Hardware. Furthermore, Thermon grants Licensee the right to have Users install Updates to the Embedded Software that are provided by Thermon to Licensee pursuant to this Agreement.

(c)   **Documentation**. Conditioned upon Licensee's compliance with the terms of this Agreement, Thermon hereby grants Licensee during the Term a non-exclusive, limited license, without the right to sublicense, to permit Users to make a reasonable number of copies of the Documentation for use in connection with the exercise of the licenses in the Software under this Agreement.

(d)   **Users**. The Software may only be used by the following persons (each a "*User*"): (i) authorized employees of Licensee and its Affiliates, and (ii) authorized contractors and agents of Licensee or its Affiliates acting directly on behalf of Licensee or its Affiliates, as applicable, who provide implementation, consultation or outsourcing services and who are under a written enforceable agreement with Licensee or its Affiliates protecting the Software and Thermon's Confidential Information with protections, obligations and restrictions that are no less stringent than those protections, obligations and restrictions set forth in this Agreement.

(e)   **Object Code Only**. All rights granted in the Software hereunder will be only the Object Code form of the Software, subject to any rights that Licensee may have under Section 7 below with respect to Open-Source Components.

5.   **RESTRICTIONS, ACKNOWLEDGEMENTS OBLIGATIONS**

In addition to Licensee's compliance with the other terms, conditions and obligations set forth in this Agreement, the rights and licenses in the Software granted to Licensee in this Agreement are conditioned upon Licensee's continued compliance with all of the following:

(a) Licensee shall not itself, or through any Affiliate, agent or third party:

    (i) reproduce, modify, make derivative works of, translate, or distribute the Software or Documentation except as otherwise expressly provided herein;

    (ii) disassemble, reverse compile, or reverse engineer any part of the Software, nor attempt to create the source code from the Object Code for the Software;

    (iii) license, sublicense, sell, rent, lease, distribute, transfer, host for others, act as a service bureau, publish, disclose, encumber, or commercially exploit the Software or Documentation or make the Software or Documentation available to any third party other than as expressly permitted by this Agreement;

(b) except as expressly stated herein, no part of the Software may be transmitted in any form or by any means, including electronic, mechanical, photocopying, recording or via a hacking device or other means;

(c) Licensee uses its best efforts: (i) to safeguard the Software so as to ensure that no unauthorized entity or person has access to the Software and that no such entity or person makes any unauthorized copy of the Software; and (ii) to assist Thermon in identifying and preventing any unauthorized use, copying, or disclosure of Software or any portions thereof, including maintaining the confidentiality of all passwords and other access credentials, if any; and

(d) Licensee advises Thermon within one (1) Business Day in the event Licensee learns, or has reason to believe, that any person or entity to whom Licensee has given access to the Software or who otherwise has access to the Software has violated, or intends to violate, the terms of this Agreement or to make unauthorized copies or use of the Software, and Licensee cooperates with Thermon in seeking injunctive or other equitable relief against any such entity or person;

Licensee shall be solely responsible to Thermon for the observance and compliance with all terms and conditions of this Agreement by Licensee or its Affiliates, or any of their respective employees, contractors, service providers, agents and any other third party who has access to Licensee's copy of the Software, whether or not such party is actually permitted to have such access under the terms of this Agreement as a User.

6. OWNERSHIP AND RESERVATION OF RIGHTS

The original and all copies of the Software and Documentation, including translations, compilations, partial copies, modifications, and Updates, are the property of Thermon.

This Agreement confers no title or ownership rights to Licensee and is not a sale of the Software or any copy thereof, the Documentation or any copy thereof, or the media on which either is recorded or printed. Licensee does not acquire any rights, express or implied, in the Software or the Documentation, other than those rights specifically licensed in this Agreement. Licensee acknowledges that the Software and Documentation are protected by Law, which may include, without limitation, patent laws, copyright laws, trademark laws, international treaty provisions, trade secret laws and laws governing confidential information. Licensee shall not, directly or through any User, remove or alter any patent, copyright, trademark, confidentiality or any other proprietary notices on the original or any copy of the Software, the Documentation. Any copies thereof made by or for Licensee shall bear all such proprietary notices. Any rights not expressly granted by Thermon in this Agreement are expressly reserved by Thermon.

7.   **OPEN-SOURCE COMPONENTS**

The Software may include components, including, without limitation, programs, applications, tools, utilities, libraries, and other programming code that are made available from third parties under a free or open-source licensing model ("*Open-Source Components*"). Open-Source Components included in or with the Software are redistributed by Thermon under the terms of the applicable Open-Source Components license for such Open-Source Component. Licensee's receipt of the Open-Source Components will neither enlarge nor curtail Licensee's rights or obligations under the license applicable to such Open-Source Component. The Open-Source Components that are included in or with the Software, and links to copies of the licenses for such Open-Source Components, may be found at https://content.thermon.com/pdf/software_license_information/Open_source_software_information.pdf.

8.   **REQUIRED COMPUTING ENVIRONMENT**

Licensee shall procure, install, and operate a proper computing environment, in accordance with the minimum operating environment requirements set forth in the Documentation or Software Specifications or as otherwise communicated by or on behalf of Thermon to Licensee, for the Software and shall provide proper electrical and other required utilities for such computing environment, including proper networking capabilities and uninterrupted power supplies.

9.   **SOFTWARE SUPPORT AND MAINTENANCE SERVICES**

Licensee acknowledges that Thermon is not obligated to provide any support or maintenance services under this Agreement. In the event Licensee wishes to receive Software support and/or maintenance services, Licensee and Thermon shall negotiate in good faith to agree upon a separate services agreement and/or statement of work

setting forth the scope, fees, expenses and other terms and conditions of the services to be provided by Thermon thereunder.

10. SOFTWARE UPDATES

Thermon may, within its sole discretion, elect to provide Software Updates from time to time to Licensee. Licensee shall promptly install all Updates provided by Thermon.

11. LICENSE FEES

(a) **License Fees**. Licensee shall pay Thermon the license fee set forth in the Purchase Documents (the "*Initial License Fees*") for the Initial Term, as defined below, in accordance with the terms set forth therein and this Section 11(a). Thermon may increase the License Fee for the then-upcoming Renewal Term, provided that Thermon gives Licensee at least sixty (60) calendar days' written notice of any such increase prior the start of such Renewal Term (the license fee for the Renewal Term, the "*Renewal License Fee*" and, together with the Initial License Fee, the "*License Fee*"). If this Agreement is renewed for any Renewal Term(s), Licensee shall pay the applicable Renewal License Fee for such Renewal Term.

(b) **Taxes**. All License Fees and other amounts payable by Licensee under this Agreement are exclusive of all taxes and similar assessments. Without limiting the foregoing, Licensee is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, provincial, or local governmental or regulatory authority on any amounts payable by Licensee hereunder, other that any taxes imposed on Thermon's income.

(c) **Payment**. Licensee shall pay all License Fees due and owing under this Agreement within thirty (30) days after the date of Thermon's invoice therefor. Licensee shall make all payments as specified in such invoice or as otherwise instructed by Thermon.

(d) **Late Payment**. If Licensee fails to make any payment when due then, in addition to all other rights and remedies that may be available to Thermon, including but not limited to termination of this Agreement, Thermon may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable Law.

(e) **No Deductions or Setoffs**. All amounts payable to Thermon under this Agreement shall be paid by Licensee to Thermon in full without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason (other than any deductions or withholding of taxes as may be required by applicable law).

(f)   <u>Right to Audit</u>. Thermon or its nominee may, on reasonable request, inspect and audit Licensee's use of the Software and Documentation and its compliance with the terms of this Agreement at any time during the Term. All such audits will be conducted during regular business hours and no more frequently than once in any twelve-month period, and in a manner that does not unreasonably interfere with Licensee's business operations. Licensee shall make available all documents, equipment, information, and personnel, and provide such cooperation and assistance, as may reasonably be requested by Thermon or its nominee with respect to such audit. Any such audit shall be subject to Section 17 below of this Agreement.

12.   **TERM AND TERMINATION**

(a)   <u>Term; Termination for Non-Renewal</u>. This Agreement commences on the Effective Date and will remain in force for a term of one (1) year ("*Initial Term*") unless it is terminated as provided herein. This Agreement will automatically renew for successive periods of one (1) additional year each on the anniversary date of the Effective Date (each a "*Renewal Term*" and, together with the Initial Term, the "*Term*"), unless either party provides the other party with written notice of its intention not to renew this Agreement at least thirty (30) calendar days prior to the expiration of the then current Term.

(b)   <u>Termination for Cause</u>. Thermon and Licensee acknowledge and agree that this Agreement may be terminated for cause, as follows:

     (i)   Thermon may terminate this Agreement upon fifteen (15) days' prior written notice to licensee if Licensee breaches any obligation to timely pay any amount due hereunder and such breach is not cured within such 15-day period.

     (ii)   Thermon may terminate this Agreement immediately upon notice to Licensee, without any opportunity to cure, if Licensee is in material breach of Section 2 above or Section 5 above, or if Licensee otherwise uses or handles the Software or Documentation other than as expressly set forth in this Agreement.

     (iii)   Except as otherwise provided above, either party may terminate this Agreement upon thirty (30) days' prior written notice to the other party if the other party is in material breach of this Agreement and such breach is not cured within such 30-day period.

     (iv)   Either party may terminate this agreement upon notice to the other party upon the occurrence of any of the following:

(1) the institution of bankruptcy, receivership, insolvency, reorganization, or other similar proceedings by or against the other party under any section or chapter of the United States Bankruptcy Code, as amended, or under any similar laws or statutes of any relevant jurisdiction, and such proceedings have not been dismissed or discharged within thirty (30) calendar days after they are instituted;

(2) the insolvency or making of an assignment for the benefit of creditors or the admittance by the other party of any involuntary debts as they mature or the institution of any reorganization arrangement or other readjustment of debt plan of either party not involving the U.S. Bankruptcy Code or under any similar laws or statutes of any relevant jurisdiction, or any corporate action taken by the board of directors of the other party in furtherance of any of the above actions; or

(3) the appointment of a receiver for all or substantially all of the other party's assets or any corporate action taken by the board of directors of either party in furtherance of such action.

(c) **Required Actions upon Termination**.

(i) Upon termination of this Agreement for any reason, (1) the licenses granted hereunder in the Software and the Documentation shall automatically terminate, (2) Licensee shall cease using the Software, (3) Licensee shall delete all copies of the software and Documentation in Licensee's possession or control, and (4) Licensee shall certify in writing to Thermon that Licensee has complied with the foregoing obligations.

(ii) If Thermon terminates this Agreement for cause pursuant to Section 12(b) above, then: (1) Thermon shall be entitled to keep all License Fees and other payments theretofore made by Licensee hereunder and (2) all unpaid amounts by Licensee shall become due and immediately payable hereunder on the fifteenth (15th) calendar day following termination.

(iii) If Thermon terminates this Agreement pursuant to Section 15(a)(ii) below, then upon Thermon's receipt of Licensee's certification of compliance under Section 12(c)(i)(4) above, Thermon shall refund to Licensee a pro rata amount of any prepaid License Fees attributable to the remainder of such Term.

(iv) If Licensee terminates this Agreement (1) for an uncured material breach by Thermon under Section 12(b)(iii) above12(b)(iii), or (2) pursuant to

THERMON GENESIS NETWORK SOFTWARE LICENSE AGREEMENT

Section 13(b) below, then upon Thermon's receipt of Licensee's certification of compliance under Section 12(c)(i)(4) above, Thermon shall refund to Licensee a pro rata amount of any prepaid License Fees attributable for the remainder of such Term.

(d) **Survival**. All provisions of this Agreement which by their nature or terms should survive Termination of this Agreement will survive termination. Without limiting the foregoing, the following sections shall survive termination of this Agreement for any reason: 5, 6, 12(c), 12(d), 13(c), 14, 15, 16, 17, 19, and 20.

13. LIMITED WARRANTY

(a) **Performance Warranty**. Thermon warrants to Licensee that, during the Initial Term and each Renewal Term, the Software will perform without Errors and without Critical Errors. If Licensee reports a breach of this warranty, then Thermon shall use its good faith and commercially reasonable efforts: (i) to correct or provide a work-around for reported Critical Error(s) affecting Licensee's continued business use of the Software within forty-five (45) calendar days after Thermon's receipt of written notification of the Critical Error(s) (or such longer period of time as the parties may agree upon), and (ii) to correct or provide a work-around for reported Error(s) within ninety (90) calendar days after Thermon's receipt of written notification of such Error(s) (or such longer period of time as the parties may agree upon).

(b) **Exclusive Remedy for Failure to Correct**. In the event that Thermon is unable to repair or provide a work-around for the Critical Error(s) or Error(s) on commercially reasonable terms (as determined by Thermon within its sole discretion) within the time frames set forth in Section 13(a) above, then Licensee's sole remedy shall be to terminate this Agreement and receive a pro-rata refund of any prepaid license fees for the remainder of the then-current Term (whether the Initial Term or a Renewal Term) from the date when the Critical Error was first reported, subject to and in accordance with Section 12(c)(iv) above.

(c) **Warranty Exclusions**. Notwithstanding anything in this Agreement to the contrary, Thermon will have no responsibility or liability of any kind whether for breach of warranty or otherwise, arising or resulting from:

(i)   any use of the Software other than in accordance with this Agreement;

(ii)   use of the Software in an operating environment other than as specified in the Documentation;

(iii)   alterations or modifications made to the Software by any person or entity other than Thermon or its authorized agents or representatives;

THERMON GENESIS NETWORK SOFTWARE LICENSE AGREEMENT

(iv)   neglect, misuse, vandalism, electrical or electromagnetic stress, accident, fire, water, hazard or other peril, including events of force majeure set forth in Section 20(g) below;

(v)   improper testing, handling, storage, transportation, operation, interconnection, or installation by anyone other than Thermon or its authorized agents, representatives or contractors;

(vi)   moving or relocation of the Software not authorized in writing by Thermon; or

(vii)   any cause beyond the range of normal use or handling of the Software.

14.   DISCLAIMER OF WARRANTIES

EXCEPT AS SET FORTH IN SECTION 13(A) ABOVE, THE SOFTWARE AND DOCUMENTATION ARE PROVIDED TO LICENSEE "AS-IS", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND. THERMON DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND WITH RESPECT TO THE SOFTWARE AND DOCUMENTATION, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, QUIET ENJOYMENT, TITLE, AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS AND ANY WARRANTIES OR CONDITIONS ARISING FROM A PARTICULAR COURSE OF DEALING, USAGE OR TRADE PRACTICE. EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 13(A) ABOVE, THERMON MAKES NO WARRANTY OF ANY KIND THAT THE SOFTWARE, OR ANY RESULTS OF THE USE THEREOF, WILL MEET LICENSEE'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF VIRUSES OR OTHER HARMFUL CODE, OR OPERATE ERROR FREE.

15.   INDEMNIFICAITON

(a)   Intellectual Property Infringement Claims.

(i)   **In General**. Except as otherwise set forth herein, Thermon shall indemnify, defend and hold harmless Licensee from and against any costs and damages awarded against Licensee in a settlement or by a court of competent jurisdiction pursuant to a final judgment in favor of the owner of any valid U.S. patent, copyright, or trade secret, as a result of any claim of infringement by a third party of any such patent or copyright or misappropriation of any trade secret related to the Software (each an "*Infringement Claim*"); provided that: (1) Licensee promptly notifies Thermon in writing of such Infringement Claim; (2) Licensee giving Thermon sole control of the defense thereof and any related settlement negotiations; (3) Licensee cooperating with Thermon in such defense

(including, without limitation, by making available to Thermon all documents and information in Licensee's possession or control that are relevant to the infringement or misappropriation claims, and by making Licensee's personnel available to testify or consult with Thermon or its attorneys in connection with such defense); and (4) Licensee has paid all accrued fees owed to Licensee for the Software.

(ii) **Remedial Actions of Thermon**. In the event of an Infringement Claim, Thermon may, at its sole option and expense: (i) procure for Licensee the right to continue use of the Software or infringing part thereof; or (ii) modify or amend the Software or infringing part thereof or replace the Software or infringing part thereof with other software having substantially the same or better capabilities. If Thermon determines that none of these alternatives is available on commercially reasonable terms, then Thermon may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Licensee.

(iii) **Exclusions**. Notwithstanding the foregoing, Thermon will have no obligation with respect to any infringement or misappropriation claim based upon: (1) any use of the Software not in accordance with this Agreement or for purposes not intended by Thermon; (2) any use of the Software in combination with other products, equipment, software, or data not supplied by Thermon; (c) any use of any release of the Software other than the most current release made available to Licensee; or (3) any modification of the Software made by any person other than Thermon.

(iv) **Entire Liability**. This Section 15(a) states Thermon's entire liability and Licensee's sole and exclusive remedy arising from or in connection with any Infringement Claim.

(b) <u>**Bodily Injury and Property Damage**</u>. Licensee shall indemnify, defend and hold harmless Thermon and Thermon's officers, directors, employees, agents, distributors, resellers and contractors from and against any claims and liabilities arising out of or related to bodily injury and/or tangible property damage arising from or related to Licensee's use of the Software, except to the extent that such bodily injury and/or tangible property damage was solely and directly the result of the negligence or more culpable conduct of Thermon.

16. **LIMITATION OF LIABILITY**

   (a) <u>**No Consequential Damages**</u>. UNDER NO CIRCUMSTANCES WILL THERMON OR ITS AUTHORIZED REPRESENTATIVES BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR INCIDENTAL DAMAGES, WHETHER FORESEEABLE

OR UNFORESEEABLE, BASED ON CLAIMS BY LICENSEE OR ANY THIRD PARTY, REGARDLESS OF WHETHER THERMON HAS BEEN MADE AWARE OF THE POSSIBILITY OF SUCH DAMAGES (INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LOSS OF DATA, GOODWILL, PROFITS, USE OF MONEY OR USE OF THE LICENSED MATERIALS, INTERRUPTION IN USE OR AVAILABILITY OF THE SOFTWARE, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS, BUSINESS INTERRUPTION OR ANY OTHER COMMERCIAL DAMAGES OR LOSSES), ARISING OUT OF LICENSEE'S INABILITY TO USE THE SOFTWARE, BREACH OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE, EXCEPT ONLY IN THE CASE OF PERSONAL INJURY WHERE AND TO THE EXTENT THAT APPLICABLE LAW REQUIRES SUCH LIABILITY.

(b) **Damages Cap.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, BUT EXCLUDING ANY CLAIMS FOR INDEMNIFICATION HEREUNDER, THERMON'S AGGREGATE FINANCIAL LIABILITY UNDER THIS AGREEMENT, WHETHER UNDER CONTRACT LAW, TORT LAW, WARRANTY, OR OTHERWISE WILL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED THE AMOUNTS OF LICENSE FEES ACTUALLY RECEIVED BY THERMON HEREUNDER DURING THE TWELVE (12) MONTHS PRECEDING THE DATE WHEN THE CIRCUMSTANCES GIVING RISE TO A CLAIM FOR DAMAGES FIRST AROSE, AND IF SUCH EVENT(S) OCCURRED DURING ONE OR MORE TERMS, THEN THE LIABILITY CAP SHALL BE THE AVERAGE OF THE ANNUAL LICENSE FEES ACTUALLY PAID BY LICENSEE TO THERMON DURING ALL SUCH TERMS.

17. CONFIDENTIAL INFORMATION

(a) **In General**. The party that has received Confidential Information ("*Receiving Party")* shall exercise at least the same degree of care and protection with respect to the Confidential Information of the party that has disclosed Confidential Information to Receiving Party ("*Disclosing Party*") that it exercises with respect to its own Confidential Information and shall not, except as otherwise expressly authorized herein, directly or indirectly, disclose, copy, distribute, republish, or allow any third party to have access to any Confidential Information of Disclosing Party. Notwithstanding the above: (i) Licensee may disclose Thermon Confidential Information to authorized Users who have a need to know in furtherance of Licensee's exercise of its rights and performance of its obligations hereunder, subject to the requirements set forth in Section 4(d) above; (ii) Thermon may disclose Licensee's Confidential Information to its employees and agents who have a need to know in furtherance of Thermon's rights and the performance of Thermon's obligations hereunder and who are subject to legally enforceable obligations of confidentiality that are no less protective of Licensee's Confidential Information than the protections set forth in this Agreement; and (iii) Receiving Party may disclose Confidential Information pursuant to and in

accordance with Section 17(c) below, if so required by law (including court order or subpoena).

(b) <u>**Return of Confidential Information**</u>. Unless otherwise authorized, upon the earlier of termination of this Agreement or written request of Disclosing Party, with respect to Disclosing Party's Confidential Information Receiving Party shall promptly either: (a) return such Confidential Information and provide certification to Disclosing Party that all such Confidential Information has been returned; or (b) destroy such Confidential Information and provide certification to Disclosing Party that all such Confidential Information has been destroyed.

(c) <u>**Notification Obligations**</u>. If Receiving Party becomes aware of any unauthorized use or disclosure of the Confidential Information of Disclosing Party, Receiving Party shall promptly and fully notify Disclosing Party of all facts known to it concerning such unauthorized use or disclosure. In addition, if Receiving Party or any of its employees or agents are requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand, or other similar process) to disclose any of the Confidential Information of Disclosing Party, Receiving Party shall, to the extent permitted by applicable law, not disclose the Confidential Information without providing Disclosing Party at least twenty-four (24) hours prior written notice of any such request or requirement so that Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. Notwithstanding the foregoing, Receiving Party shall exercise its best efforts to preserve the confidentiality of the Confidential Information including, without limitation, by cooperating with Disclosing Party to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information by such tribunal.

18.   **EXPORT**

Licensee and Thermon acknowledge that the Software and Documentation and all related technical information, documents, and materials may be subject to export controls under the U.S. Export Administration Regulation. Licensee shall not export any Software or Documentation without the express prior written consent of Thermon, which consent may by withheld, conditioned or delayed at Thermon's sole discretion. In all events, Licensee will: (a) comply strictly with all legal requirements established under these controls; (b) cooperate fully with Thermon in any official or unofficial audit or inspection that relates to these controls; and (c) not export, re-export, divert, transfer, or disclose, directly or indirectly, any Software or related technical information, document, or material or direct products thereof to any country so restricted by the U.S. Export Administration Regulations, as modified from time to time, or to any national or

resident thereof, unless Licensee has obtained the prior written authorization of Thermon and the U.S. Commerce Department and any relevant local governmental authority. Licensee will indemnify and hold Thermon harmless from any and all claims, losses, liabilities, damages, fines, penalties, costs and expenses (including attorney's fees) arising from or relating to any breach by Licensee of its obligations under this Section 18.

19. ARBITRATION

(a) Binding Nature. Any claim, dispute or controversy between the parties arising out of or relating to this Agreement, not otherwise resolved to the mutual satisfaction of the parties (collectively "*Claim*") shall be resolved as set forth in this Section 19. A Claim includes any dispute between the parties regarding the applicability of this Section 19 to a dispute or controversy between the parties, and such dispute regarding the applicability of this Section 19 shall be resolved in accordance with this Section 19.

(b) Escalation Procedure. A party alleging a Claim shall inform the other party of such Claim in writing detailing the particulars of such Claim pursuant to the notice provisions of this Agreement. Upon receipt of such notice, receiving party shall have ten (10) Business Days to respond to such Claim. The parties shall make good faith efforts to resolve the Claim to their mutual satisfaction within twenty (20) Business Days after the delivery of the Claim response. The parties, may, but are not obligated to, jointly retain a mediator from a professional mediation organization (such as the American Arbitration Association, JAMS/Endispute, or the CPR Institute for Dispute Resolution) to mediate a resolution to the Claim.

(c) Filing of Claim. If, the parties fail to resolve any Claim to their mutual satisfaction after following the process set forth in Section 19(b) above, then either party may, as the sole method of dispute resolution, submit to the office of the American Arbitration Association ("*AAA*") located closest to Austin, Texas, for resolution, and shall be settled by arbitration to occur in C, said arbitration to be administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules in effect at the time of the arbitration and the laws of the State of Texas governing such arbitration Such arbitration must be filed within twelve (12) months of the first notice provided by one party to the other of the Claim, and the parties agree that the statute of limitations for any cause of action brought pursuant to, in connection with, or relating to the provision of Software or any other subject matter of this Agreement shall be twelve (12) months from such date.

(d) General Rules. There shall be one arbitrator agreed to by the parties within thirty (30) days of receipt by respondent of the request for arbitration or in

default thereof appointed by the AAA in accordance with its Commercial Rules. The seat of arbitration shall be Austin, Texas. The arbitration shall be conducted, and the award shall be rendered, in the English language. The arbitrator shall hear and determine any preliminary issue of law asserted by a party to be dispositive of the Claim, in whole or in part, in the manner of a court hearing a motion to dismiss for failure to state a claim or for summary judgment, pursuant to such terms and procedures as the arbitrators deem appropriate. No witness or party shall be required to waive any privilege recognized under Texas law. The hearing shall not last longer than four (4) calendar days unless all parties agree otherwise, with time to be divided equally between Thermon and Licensee.

(e) **Decision**. The arbitrators shall issue written findings of fact and/or conclusions of law, and the arbitrators may award damages and/or grant injunctive or other equitable relief. The decisions of the arbitrators will be binding and conclusive upon all parties involved, and judgment upon any decision of the arbitrators may be entered in the highest court of any forum, federal or state, having jurisdiction thereof.

(f) **Confidentiality.** Except as may be required by law, neither party nor the arbitrator may disclose the existence, content or results of any arbitration without the prior written consent of both parties, unless to protect or pursue a legal right.

(g) **Equitable Relief**. Notwithstanding anything herein to the contrary, either party may seek a temporary restraining order or other emergency injunctive relief in a court of competent jurisdiction, if such party reasonably believes that it may suffer immediate irreparable harm absent such relief.

20. MISCELLANEOUS

(a) **Entire Agreement**. This Agreement, including the Purchase Documents that incorporate this Agreement by reference, together with any other documents incorporated herein by reference and all schedules, exhibits or attachments hereto or thereto, 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.

(b) **Order of Precedence.** In the event of any inconsistency between the statements made in the body of this Agreement, the related exhibits, and any other documents incorporated herein by reference, the following order of precedence governs: (i) the main body of this Agreement, (ii) any documents incorporated herein or therein by reference, (iii) the Purchase Documents.

(c) **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, (a) 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 (b) 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.

(d) **Compliance with Laws.** Each party shall comply with all applicable Laws as they concern this Agreement and the subject matter hereof.

(e) **Choice of Law**. This Agreement will be governed by the laws of the State of Texas, United States of America, without giving effect to any conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. The Uniform Computer Information Transactions Act does not apply to this Agreement.

(f) **Severability**. If any term, condition, or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the parties shall endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

(g) **Force Majeure**. Except with respect to a party's financial obligations hereunder, neither party will incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without negligence of such party. Such events, occurrences or causes will include, without limitation, acts of God, work stoppages or strikes, lockouts, riots, acts of war or terrorism, earthquakes, fires, adverse weather events, floods, epidemics, explosions, government restrictions, embargoes, disruptions or in supply chains.

(h) **Non-Assignment**. This Agreement and the license granted by it may not be assigned, sublicensed, or otherwise transferred by Licensee without the prior written consent of Thermon, which consent may be withheld, conditioned or delayed in Thermon's sole discretion.

(i) **Successors**. This Agreement will be binding upon and will inure to the benefit of the parties hereto and their respective representatives, successors and assigns except as otherwise provided herein.

(j) **Notices**. Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be (a) delivered in person, (b) sent by registered mail return receipt requested, (c) sent by overnight air courier, or (d) by electronic mail, in each case forwarded to the appropriate address set forth as follows:

Notices to Licensee:

To the name and address of the individual and company on the Purchase Documents, unless otherwise specified in writing by the Licenseee.

Notices to Thermon:

Legal Department
Thermon, Inc.
7171 Southwest Pkwy
Bldg. 300 Ste 200
Austin, TX 78735   Legal.Notice@thermon.com

Either party may change its address for notice by written notice to the other party. Notices will be considered to have been given at the time of actual delivery in person, three (3) Business Days after posting or one (1) Business Day after (i) delivery to an overnight air courier services or (ii) the moment of transmission by electronic mail.