RIEKER®
INCORPORATED

34 MT PLEASANT RD
ASTON, PA 19014

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SOFTWARE AS A SERVICE AGREEMENT

THIS SOFTWARE AS A SERVICE AGREEMENT (the "Agreement") is made and entered into as of _____, ("Effective Date") by and between Rieker, Inc., with its principal place of business at 34 Mount Pleasant Road, Aston, PA 19104 ("Rieker") and _____, ("Customer") with its principal place of business at _____ (each a "Party" and collectively the "Parties") and sets forth the terms and conditions under which Rieker shall license the CARS System to Customer. In consideration of the mutual promises contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, and intending to be legally bound, the Parties agree as follows.

1.   SERVICES.

1.1.   <u>License</u>. Subject to the terms and conditions of this Agreement and during the Term, Rieker shall make the Services available to Customer solely for Customer's business operations only in the Territory (set forth in Schedule A) and only in accordance with this Agreement. "Services" or "Service" collectively means Rieker's or its licensor's software, equipment, hardware, web application, user documentation, data and information made available by or received by Customer directly or indirectly from Rieker, and any hosting services or other products, services or related materials provided by Rieker or its partners in connection with this Agreement, as more fully set forth in Schedule A of this Agreement. Upon Customer's request, the Parties shall, in good faith, negotiate additional services to be provided under a Statement of Work ("SOW"). Each SOW shall be deemed a part of this Agreement upon signing and subject to all of its terms and provisions. In the event of any conflict or inconsistency between the terms of this Agreement and any SOW, the terms of the SOW shall prevail solely with respect to the subject matter of that SOW. In the event of any conflict or inconsistency between the terms of this Agreement and any Schedule, the terms of the Agreement shall prevail.

1.2.   <u>Support Service</u>. Rieker shall provide training to Customer as set forth in Schedule B of this Agreement.

1.3.   <u>Scope of Use</u>. Customer will use the Services only for its business operations and will not permit the Services to be used by or for the benefit of anyone other than Customer. This Agreement is sub-licensable to the Customer's subcontractors, only in connection with the scope of work as defined in Schedule A, provided such sublicenses are pursuant to the same terms and conditions of this Agreement. Except as specifically permitted under this Agreement, Customer will not sell, sublicense, rent, lease, display, outsource or assign the Services or any related documentation, publish or make any of the same available on a time-sharing basis, or use any of the same to provide service bureau or similar services. Customer may not modify, translate, reverse engineer, decompile or create derivative works based upon the Services. Customer agrees to use the Services, in a manner that complies with all applicable laws, including intellectual property, copyright, and export laws. Rieker expressly reserves all rights not expressly granted to Customer herein. Customer will not export or re-export the Services without the appropriate U.S. and/or foreign government license(s) or license exception(s), and such licenses or exceptions shall be required to be secured by Customer to the reasonable satisfaction of Rieker, Inc.

1.4.   <u>Hardware</u>. In connection with the Services, Rieker will provide and maintain all hardware identified in Schedule A ("Hardware") pursuant to the terms of this Agreement.

1.5.   <u>Service Availability</u>. The Service will be accessible at least ninety-eight and a half percent (98.5%) of the time, twenty-four (24) hours a day, seven (7) days a week, except for any loss or interruption of the Services due to causes beyond the control of Rieker. As Customer's sole and exclusive remedy, in the event that Customer is unable to achieve the 98.5% availability during any given month, excluding unavailability due to causes beyond the control of Rieker, upon Customer's request, Rieker shall extend the Term by adding time equal to the downtime in the month which exceeds 98.5% (for any loss or interruption of the Services due to causes beyond the control of Rieker).

1.6.   <u>Hosting</u>. Customer acknowledges and agrees that the CARS System may include additional components, products, or services obtained from third party vendors, and that such will be provided in accordance with the terms and policies of the applicable vendor, including such other vendor selected by Rieker, and Customer hereby agrees that the provision of those components, products, or services may be subject to Customer's adherence to and

compliance with applicable terms and policies, which shall be provided to Customer upon Customer's request. All data backup and data security is provided through Rieker, or a Rieker hosting provider, such other vendor selected by Rieker. Rieker shall pass through any warranties or indemnification provided to Rieker by vendors to Customer to the extent possible, however Rieker is not responsible or liable for any components, products, or services obtained from third party vendors. Rieker may upon reasonable notice to Customer, if such notice is possible and within Rieker's control, terminate Customer's license under Section 1 above to the Services, if Rieker reasonably believes Customer has knowingly and intentionally violated any of the terms or policies of a third party vendor of the Services, including those of HostMySite.

2. CUSTOMER OBLIGATIONS.

2.1. <u>Fees</u>. Customer shall pay the amounts set forth in Schedule A on such schedule as set forth in Schedule A. Rieker reserves the right to adjust pricing for the Services upon expiration of the Initial Term. If custom pricing is provided to Customer for any Service, such pricing is based upon information that both parties believe to be complete and accurate. If such information proves to be incomplete or inaccurate in any material respect, the parties will negotiate in good faith to make appropriate adjustments to the Services and/or pricing. Customer shall be solely responsible for all aspects of Internet use, including any third party products.

2.2. <u>Customer Caused Problems</u>. Rieker reserves the right to charge Customer at Rieker's then current hourly rates for any troubleshooting, break/fix or other services required for Rieker to correct problems caused by Customer (as documented by Rieker with a reasonable amount of certainty through root cause analysis). Prior to invoicing Customer for Customer caused problems, Rieker will notify Customer of its determination and will provide a summary of the root cause analysis. It is solely the responsibility of Customer to secure against unauthorized dissemination of any and all passwords, identifying codes and similar information provided by Rieker or used by it in accessing data from Rieker and/or the Services.

3. PROPRIETARY RIGHTS.

3.1. <u>Customer Content</u>. As between Customer and Rieker, and except as set forth below in this Section 3, all rights, title and interests, including copyright and any other intellectual property rights, in and to any proprietary materials provided by Customer to Rieker hereunder, including text, graphics, or materials or Customer's marks, logos or other identifiers ("Customer Content"), shall remain the property of Customer. Customer grants to Rieker a non-exclusive, transferable license to access, use, reproduce and distribute the Customer Content in connection with the Services.

3.2. <u>Rieker Materials</u>. Notwithstanding anything in this Agreement to the contrary, in no event shall Customer have any title or right to any materials, software, equipment, hardware, processes or procedures used, created or developed by Rieker in providing the Services or the conduct of its business, including graphics, text, data, ideas, software applications, computer programming, which shall be owned by Rieker and shall be Rieker's sole and exclusive property, including any modifications or updates to such materials or the Services, whether or not made by Customer ("Rieker Materials"). Rieker grants to Customer a non-exclusive, non-transferable license to Customer to use the Rieker Materials solely in connection with the Services. For clarity, it is understood that Rieker shall own all customizations, modifications, improvements or enhancements to the Rieker Materials and Services.

3.3. <u>Residuals</u>. It is mutually acknowledged that, during the normal course of its dealings with Customer Content under this Agreement, Rieker and its personnel and agents may become acquainted with ideas, concepts, know-how, methods, techniques, processes, skills, and adaptations pertaining to the Customer Content, 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, Rieker shall be entitled to use, disclose and otherwise employ any ideas, concepts, know-how, methods, techniques, processes, 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 Rieker or its personnel or any other client or customer of Rieker or its personnel any prohibition or restraint from so doing.

4. CONFIDENTIALITY.

4.1. <u>Obligation</u>. It is necessary and desirable that both Parties disclose certain proprietary and confidential

information ("Confidential Information") to the other ("Recipient"). "Confidential Information" includes (a) any information that is conspicuously designated as confidential or proprietary, (b) a Party's technical advice or knowledge, contractual agreements, price lists, financial information and any other information with respect to a Party's products or a Party's business that may at any time be furnished, communicated or delivered to the other Party, whether oral, tangible, electronic or other form; and (c) all Rieker software, code, technology, know-how, or related information, products or services, including the Services. Each Party hereby agrees that it will not disclose to a third party any Confidential Information received from the other Party, or use or copy any Confidential Information received from the other Party for any purpose other than as expressly permitted under the terms of this Agreement, as necessary to perform a Party's obligations under this Agreement, or as expressly authorized in writing by the other Party. Each Party will use the same degree of care to protect the other Party's Confidential Information as it uses to protect its own confidential information of like nature, but in no circumstances less than reasonable care.

4.2.   Exclusions. The obligations of Section 4.1 hereof shall not apply with respect to any portion of Confidential Information: (a) that is or becomes publicly available other than as a result of acts by Recipient; (b) that is in the possession evidenced in writing of either Party prior to the disclosure by either Party; (c) that is independently developed by Recipient; or (d) that is or becomes available to either Party from a source that, to either Party's knowledge, is not bound by a confidentiality agreement with either Party prohibiting such disclosure. If either Party is required by law or legal process to disclose the other Party's Confidential Information, that Party shall promptly inform the other Party of such requirement (if permitted), so that the other Party may seek an appropriate protective order or waive compliance of the Party with the confidentiality obligations of this Agreement to the extent required by law.

4.3.   Customer Data. The Services shall generate Customer specific data ("Customer Data"). Such Customer Data is and shall remain the sole and exclusive property of Customer. Rieker shall not make the Customer Data publicly available except as may be necessary in performing the Services or to comply with applicable laws. Customer shall have access to its Customer Data as identified on Schedule A. Upon the termination or expiration of this Agreement, Customer shall download any Customer Data within thirty (30) days of the termination or expiration date. After such date, Rieker, in its sole discretion, may permanently delete all Customer Data without notice to Customer. While the Customer Data shall be and remain at all times the sole property of Customer, Customer hereby grants Rieker a royalty free, perpetual, worldwide license to use the Customer Data in the aggregate and for Rieker's internal business purposes or any purpose, and as applicable, in its performance of this Agreement. Use of the Customer Data by Rieker includes aggregating such Customer Data, collecting and tracking Customer Data in the Services to analyze trends, and making associations to identify products or services that may interest end users or that they may benefit from and to contact such end users regarding such products and services.

5.   WARRANTIES AND DISCLAIMERS.

5.1.   Warranties. Rieker warrants that all services performed under this Agreement shall be performed by qualified personnel with the proper skill, training, and experience so as to be able to perform competently and in a manner consistent with good practice in its industry and that all work shall be performed in accordance with this Agreement. Customer represents and warrants that it: (a) will not use the Services, Rieker Materials, or the Hardware, in any manner which is in violation of any laws, governmental regulations or tariffs or allow end users to do so; and (b) Customer shall not, directly or indirectly, re-license or sell the Services or Hardware or modify, translate, reverse engineer, decompile or create derivative works based upon the Services or Hardware.

5.2.   WARRANTY DISCLAIMER. THE SERVICES, RIEKER MATERIALS, AND HARDWARE ARE PROVIDED "AS IS" AND FOR INFORMATIONAL PURPOSES ONLY. EXCEPT AS EXPRESSLY PROVIDED HEREIN, RIEKER AND ITS LICENSORS AND SUPPLIERS EXPRESSLY DISCLAIM ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, AS TO ANY ASPECT OF THE SERVICES, RIEKER MATERIALS, AND HARDWARE INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. RIEKER AND ITS LICENSORS AND SUPPLIERS DO NOT WARRANT THAT THE SERVICES, RIEKER MATERIALS, AND HARDWARE WILL BE UNINTERRUPTED, SECURE, ACCURATE, TIMELY, VIRUS-FREE OR ERROR-FREE.

6.   INDEMNIFICATION. Rieker will defend Customer against any third party claim that the Services infringe its intellectual property rights in the United States and indemnify Customer from the damages, liabilities,

costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by Rieker, if (a) Customer notifies Rieker in writing no later than thirty (30) days after Customer receives notice of the claim (or sooner if required by applicable law), (b) Customer gives Rieker sole control of the defense and any settlement negotiations, and (c) gives Rieker the information, authority and assistance Rieker needs to defend against or settle the claim. The foregoing obligation of Rieker does not apply (i) if the Services are combined with any non-Rieker software, equipment, or processes where the alleged infringement would not have occurred without such combination or if there has been an unauthorized modification of the Service by Customer or a third party, (ii) where the allegedly infringing activity continues after Rieker has informed Customer of modifications that would have avoided the alleged infringement, (iii) where Customer's use of the Services is used other than in connection with the documentation or as intended by or in accordance with this Agreement, or (iv) to any infringement or alleged infringement arising from any content, information or data provided by Customer, end users or any third party; Customer will indemnify and hold harmless Rieker from all damages, settlements, attorneys' fees and expenses related to a claim of infringement or misappropriation excluded from Rieker's indemnity obligation by this sentence. If any applicable infringement claim is initiated, or, in Rieker's reasonable opinion, is likely to be initiated, then Rieker shall, at its option and at its sole cost and expense, (i) modify or replace the infringing part of such products or services so that it is no longer infringing, (ii) procure for Customer the right to continue using the infringing part of such products or services, or (iii) if Rieker can neither acquire the right to continue using nor replace or modify the infringing part of such products or services then remove the infringing part of such products or services and refund to Customer all amounts paid by Customer for the infringing part of such products or services. The foregoing states Customer's sole and exclusive remedy, and Rieker's sole liability, with respect to claims of infringement of proprietary rights of any kind. Customer will defend, indemnify, and hold harmless Rieker, its affiliates, and their officers, directors, agents and employees from any and all third party claims, actions, demands, liabilities, costs or expenses, including reasonable attorneys' fees, resulting from (i) Customer's, end-users and other third parties' access to and use of the Services, and (ii) breach of its representations and warranties herein if (a) Rieker notifies Customer in writing no later than thirty (30) days after Rieker receives notice of the claim (or sooner if required by applicable law), and (b) Rieker gives Customer the information, authority and assistance Customer needs to defend against or settle the claim. Customer shall enter into no settlement or compromise without Rieker's prior written approval.

7.   LIMITATION OF LIABILITY. RIEKER'S, ITS DIRECTORS', OFFICERS', EMPLOYEES', AGENTS', SUBSIDIARIES', AFFILIATES', PREDECESSORS', OR SUCCESSORS' CUMULATIVE LIABILITY TO CUSTOMER (OR ANY OTHER PARTY WHATSOEVER) FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS OR ACTIONS ARISING OUT OF OR RELATING TO THE SERVICES, HARDWARE OR RIEKER MATERIALS PROVIDED HEREUNDER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL NOT EXCEED) THE FEES (IF ANY) PAID TO RIEKER FOR SUCH SERVICES, HARDWARE AND RIEKER MATERIALS IN THE YEAR PRECEDING THE CAUSE OF ACTION. IN NO EVENT SHALL RIEKER OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OR LOST PROFITS, EVEN IF RIEKER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NO ACTION OR PROCEEDING UNDER THIS AGREEMENT, REGARDLESS OF FORM, MAY BE COMMENCED BY CUSTOMER MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES.

8.   TERM AND TERMINATION.

8.1.   <u>Term</u>. This Agreement shall have a term of t h r e e (3) years beginning on the Effective Date (the "Initial Term"), unless terminated earlier as provided herein. At the end of the Initial Term, the Agreement may, upon the written agreement of the parties, be renewed under the same terms and conditions for an additional term, the length of which will be agreed upon by the parties. Ninety (90) days prior to the expiration of the Initial Term or any Subsequent Term of this Agreement, Rieker will notify Customer of the impending expiration and Customer shall have thirty (30) days in which to notify Rieker of its intention to either renew or cancel the Agreement. The Term and any Subsequent Terms shall be referred to collectively as the "Term."

8.2.   <u>Termination</u>. Either Party may terminate this Agreement upon written notice, if the other Party breaches any of the terms of this Agreement provided hereunder and the breaching Party fails to cure such breach within thirty (30) days of notice of such breach or such other time period as may be commercially reasonable to cure such breach; provided that the cure period for any failure of Customer to pay approximately earned fees and charges due hereunder shall be fifteen (15) days from the date of receipt by Customer of notice of such failure. In the event of termination, Customer shall pay Rieker for all Services properly rendered by Rieker

prior to termination. In addition, in the event that Customer fails to cure any breaches within the time period set forth in this Section, Customer shall pay to Rieker within thirty (30) days the balance of all the fees set forth on Schedule A (receipt of such payment shall be without prejudice to any other right or remedy available to Rieker).

8.3. <u>Changes to the Service</u>. Rieker may make modifications to the Service or particular components of the Service from time to time and will use commercially reasonable efforts to notify Customer of any material modifications. Rieker reserves the right to discontinue offering the Service at the conclusion of Customer's then current Term. Rieker shall not be liable to Customer nor to any third party for any modification of the Service as described in this Section.

8.4. <u>Obligations upon Termination or Expiration</u>. Upon termination or expiration of this Agreement, Customer will immediately terminate any use of the Services, Hardware, Rieker Materials and/or Confidential Information and return the Hardware and any copies of the Rieker Materials to Rieker immediately. In the event that Customer files bankruptcy without paying for the Rieker Materials or Services, Customer acknowledges that the unpaid-for Rieker Materials or Services constitute intellectual property of Rieker and, as such, Customer is prohibited from assuming and assigning this contract under Section 365(c)(1) of the U.S. Bankruptcy Code. Upon any termination or expiration of this Agreement, Rieker may immediately deactivate access to the Services, and that following a reasonable period of not less than thirty (30) days shall be entitled to delete the account, including all Customer Data and other materials and information. During this thirty (30) day period and upon Customer's request, Rieker will provide Customer limited access to the Services, for the sole purpose of permitting Customer to retrieve Customer Data, or a copy of all Customer Data in the format currently maintained by Rieker, in its discretion, provided that Customer has paid in full all undisputed amounts owed to Rieker. Customer agrees that Rieker shall have no liability to Customer or to any third party for any termination of access to the Services or deletion of Customer Data, provided that Rieker is in compliance with the terms of this Section.

8.5. <u>Suspension</u>. If Customer breaches any material term of this Agreement, including Sections 1.1, 1.3, 3, or 4, then in addition to all other rights and remedies which Rieker may have at law or in equity, Rieker may, in its sole discretion and without further notice to Customer, suspend performance of any or all of its obligations under this Agreement and Rieker shall have no liability with respect to Customer's use of (or inability to use) the Services until all past due amounts are paid in full.

8.6. <u>Survival</u>. Upon expiration or termination of this Agreement, the provisions of Sections 3, 4, 5, 6, 7, 8.4, 8.5 and 9 shall survive.

9. MISCELLANEOUS.

9.1. <u>Non-Solicitation</u>. Customer agrees not to directly solicit, which does not include general employment solicitations published on the internet or in newspapers or journals not targeting any particular person, for hire or retain the services of Rieker's employees engaged in providing Services under this Agreement during the period of time said employee is employed by Rieker and for six (6) months thereafter. If Customer breaches this covenant in any respect, Customer agrees to pay Rieker, as liquidated damages, two times said employee's annual salary.

9.2. <u>Force Majeure</u>. Except for the obligation to pay money, nether Party shall be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed, restricted or prevented by reason of any act of God, fire, natural disaster, act of government, strikes or labor disputes, inability to provide raw materials, power or supplies, or any other act or condition beyond the reasonable control of the Party in question.
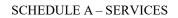
9.3. <u>General</u>. The relationship between the parties created by this Agreement is that of independent contractors and not partners, joint ventures, franchisers, brokers, employees, legal representatives or agents. Neither party is granted any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of, or in the name of, the other party, or to bind the other party in any manner. This Agreement is for the exclusive benefit of the parties who sign it. No third party will be entitled to assert third party beneficiary status or otherwise made a claim under this Agreement. Customer shall not assign this Agreement or any of its rights hereunder, nor delegate any of its obligations hereunder, whether by operation of law or otherwise, without Rieker's prior written consent. No modification of this Agreement, and no waiver of any breach of this Agreement, shall be effective unless in writing and signed by an authorized representative of the party against whom enforcement is sought. This

Agreement may not be modified or amended in any manner without the prior written agreement of the parties. This Agreement shall bind, benefit and be enforceable by and against Rieker and Customer and, to the extent permitted hereby, their respective successors and permitted assigns. A determination that any provision of this Agreement is invalid or unenforceable shall not affect the other provisions of this Agreement. Section headings are for convenience of reference only and shall not affect the interpretation of this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. This Agreement shall be construed and enforced in accordance with the laws of the State of Ohio excluding choice of law; provided, however, that the terms of any applicable law now or hereafter enacted that is based on or similar to the Uniform Computer Information Transactions Act drafted by the National Conference of Commissioners on Uniform State Laws shall not apply. In any action relating to this Agreement, each of the parties irrevocably consents to the exclusive jurisdiction and venue of the state and federal courts located in Cincinnati, Ohio. When used herein, the words "includes" and "including" and their syntactical variations shall be deemed followed by the words "without limitation."

[Signature Page Follows]

10. **SIGNATURES** The parties accept this Agreement and have caused this Agreement to be executed and delivered as set forth below. Each party represents and warrants that its signatory whose signature appears below has been, and is on the date executed, duly authorized to execute this Agreement.

RIEKER, INC.
34 Mount Pleasant Rd
Aston, PA   19014

_____
(Customer)

_____

BY:_____   BY:_____
(signed)   (signed)

NAME: _____   NAME: _____
(printed name)   (printed name)

TITLE: _____   TITLE: _____

SCHEDULE A – SERVICES

Services: the service combines Rieker's proven Ball Bank inclinometer with GPS and proprietary software to   generate a comprehensive Curve Advisory Report for a horizontal curve.

Access to Customer Data: Customer has access to data during the contract period and can download data from the   portal at any time via CSV format. Data is the exclusive property of the Customer and Rieker will delete all data pursuant to Section 4.3 of this Agreement or at   Customer's earlier request from our servers.

Hardware: Up to _____ CARS kits including all hardware to perform the capturing data for _____ separate users. CARS kit include Rieker's Ball Bank unit with GPS and tablet with all applicable attachment cables.

Territory: As defined at the time of purchase and attached to the purchase order .

Fees: As quoted at time of sale..

Customer shall pay interest at the lesser of one and one- half percent (1.5%) per month or the highest legal rate, on any payment not made when due and until such amount is paid. All prices quoted are exclusive of all taxes including federal, state and local use, sales, property, ad valorem, provincial and similar taxes. Customer agrees to pay any and all such taxes (except taxes levied against Rieker's income), including any interest and/or penalties assessed, to Rieker if so invoiced, or if not so invoiced to the proper taxing authority.

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Training: Rieker or its authorized agent will provide training for the end user. The training will consist of an initial class, provided by Rieker, through either on-site or webinar conference. One person will be selected by Customer to be the designated technical support person for the Customer (Train the Trainer concept) and will be the only point of contact for support to contact Rieker to insure efficient and quality technical support. The designated technical support person can be transferred if needed but one point of contact between the Customer and Rieker support team at a time is acceptable.

The training class includes aspects of unit set up, calibration, operation, reporting, and troubleshooting.

One Rieker technical support person shall be available to customer Point of Contact Monday – Friday from 8 am – 5 pm EST, excluding Rieker holidays.

Rieker will make commercially reasonable efforts to respond to support calls and emails to customer's designated technical support person on the same business day.