**Terms of Use**

**This Agreement was last updated on 7/10/2017**

**1. Introduction**

This Subscription Agreement is entered into by To-Scale Software, LLC ("TSS"), a Delaware Limited Liability corporation, having its principal place of business at 6398 Thornberry Ct Mason, Ohio 45040, and you, the "User". The term "User" refers to the person who completed the registration process and their associated business entity. By logging in and continuing to use Stack, User represents that he or she is over 18 years old and is a legal entity in the commercial construction industry and agrees to abide by the following terms and conditions.

**2. Stack Construction Technologies**

**2.1** Subject to User's compliance with the terms of this Agreement, TSS will allow User to subscribe to and use TSS's Stack Construction Technologies web application (the "App"). User, upon full registration, must pay the appropriate App access fees to TSS. User's access to App will be limited to the type of access and the number of persons allowed based on the subscription fee paid by the User. A license is defined as a unique user id and password which is to be assigned to one employee of the User for the purpose of signing in to the App.

**2.2** TSS shall not be responsible for delays or service interruptions attributable to causes beyond its reasonable control, including limitations on the availability of telephone transmission lines and facilities, failures of other communications equipment, Internet access delays or failures, failures or deficiencies of User's equipment, or User's failure to meet its responsibilities under this Agreement. See item 12 of this agreement for the specific terms of the "Uptime Guarantee".

**3. App License**

**3.1** "Drawings" is defined as any plans, blueprints, drawings, documentation, specifications, and related design information.

**3.2** "App" is defined as the web based application created by TSS including all components and developmental add-ons which went into building the application, as well as the drawings and all other information, including but not limited to project location, project details, bid date and bidders, which may reside in the App.

**3.3** "Owner" is defined as the person or legal entity which holds legal title and rights to the Drawings.

**3.4** License. TSS hereby grants User a non-exclusive, revocable and non-transferable right to use the App for facilitating the estimating or design process and potentially to build the project. This license shall terminate upon the termination of this Agreement. Use of the App is restricted solely to employees of the User. User may assign each authorized employee a unique username and password. Each unique username and password may be used to access the App by only one person at a time. In addition to and notwithstanding anything to the contrary herein, the App may not in any event be used or be permitted to be used in any manner that is competitive with TSS's distribution of the App. TSS assumes no responsibility for the reproduction, distribution, or use of any Drawings other than in accordance with the terms and conditions of this Agreement. Unless the User obtains the prior consent of the Owner of any Drawing, User shall be liable to the Owner of any Drawing in the event that User reproduces, uses or distributes the Drawing in any way inconsistent with the terms of this Agreement.

**3.5** Proprietary Rights. Title and ownership rights to the Drawings including copyrights, mask work rights, patents, trademarks, trade secrets, and other intellectual property rights, as well as all copies thereof reside and shall remain in the Owner. The Drawings embody the proprietary and trade secret information of the Owner, who owns the copyrights therein. All copies of the Drawings made by the User shall bear the proprietary markings (be they patent, copyright or trade secret) of Owner borne by the copies transmitted by Owner to User and in the same form and location as the original. At our request, upon the earlier of the termination of the User's license to the Drawings or the completion of the bidding process if the User is not selected to perform services on the project, User shall destroy all Drawings together with all copies (including electronic files containing the Drawings), modifications, and merged portions in any form.

**3.6** TSS shall have no obligation to store or maintain Users access to Drawings or other data stored within or generated by the App after termination of this Agreement.

**4. Software License**

**4.1** TSS has incorporated various computer software programs ("Applications") into the App. Subject to the terms and conditions of this Agreement, TSS grants User a personal, nonexclusive, and nontransferable license to use the Applications for User's own construction business needs only on an on-line basis in connection with User's use of App. This license shall terminate upon the termination of this Agreement. Use of the Applications shall be restricted to the internal use of employees of the User.

**4.2** User acknowledges that the Applications, including associated report formats, screen displays, and menu features, and all derivative works are owned by or licensed to TSS. The Applications and all copies, versions, and derivative works of the Applications shall remain the sole property of TSS and/or its licensors. User shall not make and shall not permit anyone else to make any copies of the Applications, except as necessary in connection with its authorized use of the App. User shall not allow any third party to access or use the Applications.

**4.3** User shall not decompile or otherwise reverse engineer or decode the Applications. User shall not take or refrain from taking, directly or indirectly, any action that may in any way lead to the unauthorized dissemination, reproduction, or use of Applications.

**4.4** Documents contained on the App are copies of originals held by the Architect or Engineer. In any instance where conflicting information is found between the documents on the App and the originals, the original documents will control. The presence of project information and/or documents on the App in no way obligates the Architect, Engineer or owner to provide additional or updated bidding documents released as addenda to TSS.

**4.5** User's obligations under this Section 4 shall survive termination of this Agreement. User acknowledges that a breach of its obligations under this Section 4 will cause irreparable harm to TSS, and/or their licensors for which monetary damages would be inadequate. TSS and/or their licensors will be entitled to injunctive relief for any such breaches, threatened or actual.

**5. User Responsibilities**

**5.1** User is responsible for (a) acquiring, installing, and maintaining computer equipment and computer software programs at its premises compatible with and as necessary to use App, (b) obtaining access to the Internet, and (c) downloading from App and installing any necessary plug-ins. All fees associated with these items are the responsibility of the User.

**5.2** User is responsible for complying with all federal, state and local laws and regulations when using the Applications and the App, including, but not limited to, complying with The Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227 and 47 C.F.R. § 64.1200, as amended from time to time.

**5.3** User grants permission for TSS to communicate with User via email, facsimile or telephone from time to time and as needed for all issues related to the App, including but not limited to support, training, updates or other issues.

**6. Fees and Payment**

No fees are incurred during the Trial Period, if such a period exists. Subscription fee is due, upon registration, beginning with the Effective Date. Each paid subscription fee to an individual App entitles the User to a single license to that App. User agrees to pay all fees at the rates in effect when the charges were incurred. TSS will be entitled to change these fees at any time by posting new fee rates on-line at stackct.com or notifying the User by email. User shall pay all amounts due under this Agreement, except those disputed in good faith, upon receipt of the invoice to the address designated on the invoice. User shall pay a monthly service charge of 1½% on all such amounts not paid within 30 days of the invoice date.

**7. Term, Termination and Renewal**

**7.1** This agreement can be terminated by the User with 30 days notice upon expiration of the initial subscription period selected during the Purchase Process. No portion of User's subscription fees will be refunded upon early termination of this Agreement. This Agreement shall automatically renew for successive renewal terms of one (1), twelve (12) or thirty-six (36) months each, depending upon the User's choice and subscription fees shall be automatically charged to previously used credit card information if available, unless User provides 30 day notice to TSS prior to the end of the renewal term. User will be charged the subscription fees in effect at the time of renewal.

**7.2** No termination of this Agreement or suspension of access to the App shall release User from any obligation to pay TSS any amount that has accrued or becomes payable at or prior to the date of termination. User shall not be entitled to any refund of any fees paid to TSS as a result of a termination.

**8. Warranties**

**8.1** TSS warrants that the App has the functionality described in the current published specifications for the App. As TSS's sole responsibility and User's exclusive remedy, in the event of any material failure to meet such standards, TSS shall make all reasonable efforts to remedy any such failure.

**8.2** EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, TSS MAKE NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, REGARDING ANY MATTER WHATSOEVER. TSS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**8.3** NEITHER TSS NOR ANY THIRD PARTY LICENSORS MAKE ANY GUARANTEES OR WARRANTIES AS TO THE ACCURACY OR COMPLETENESS OF, OR RESULTS TO BE OBTAINED FROM USING THE THE APP.

**8.4** User warrants that all App will only be used for the intended purposes as stated within the scope of this Agreement, and will not infringe the intellectual property rights of TSS.

**9. Indemnities and Liabilities**

**9.1** User shall indemnify and hold TSS and it's affiliates harmless from any claims, liabilities or other damages (including reasonable attorney's fees) resulting from User's use of the App, or the use of the App by anyone authorized by User to access the App. User shall indemnify and hold TSS harmless from any claims, liabilities or other damages (including reasonable attorney's fees) for actual or alleged infringement of intellectual property rights in connection with User's use of any App beyond the scope of this agreement, including, without limitation, any unauthorized use of the Drawings. User shall also indemnify and hold TSS harmless from any claims, liabilities or other damages (including reasonable attorney's fees) resulting from User's use of the App, which use is in violation of any applicable federal, state or local law or regulation.

**9.2** The total cumulative liability of TSS for all claims, whether in contract, tort, or otherwise, arising out of, connected with, or resulting from use of the App shall not exceed the amounts paid by User to TSS under this Agreement during the 12 months immediately preceding the claim.

**9.3** TSS SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR CAUSED, IN WHOLE OR IN PART, BY ANY ERRORS OR OMISSIONS IN ANY APP OR OTHER INFORMATION PROVIDED THROUGH THE APP OR BY DELAYS IN OR INTERRUPTIONS OF ACCESS TO THE APP.

**9.4** TSS SHALL NOT BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOST REVENUE,OR LOST SAVINGS OR GOOD WILL, OR CLAIMS OF USER'S CUSTOMERS, SUBCONTRACTORS OR SUPPLIERS, EVEN IF TSS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**10. Miscellaneous**

**10.1** Assignment. User may not assign or otherwise transfer this Agreement or any rights or obligations under this Agreement to any third party without the prior written consent of TSS. Consent shall not be unreasonably withheld. Subject to the restriction on transfer set forth in this Paragraph 10.1, this Agreement shall be binding upon and shall inure to the benefit of the parties' successors and assigns.

**10.2** Waiver. The failure of either party to act upon any right, remedy, or breach of this Agreement shall not constitute a waiver of that or any other right, remedy, or breach. No waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

**10.3** Governing Law. This Agreement and any claim arising out of this Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, excluding its conflict of laws principles.

**10.4** Government Rights. If used or acquired by the United States Government, the Government acknowledges that (a) Applications constitute "commercial computer software" or "commercial computer software documentation" for purposes of 48 C.F.R. 12.212 and 48 C.F.R. 227-7202-3, as applicable and (b) the Government's rights are limited to those specifically granted pursuant to this Agreement. The manufacturer is To-Scale Software LLC, located at 6398 Thornberry Ct, Mason, Ohio 45040.

**10.5** Provisions Severable. The provisions of this Agreement are severable. If any provision is held to be invalid, unenforceable, or void, the remaining provisions shall not as a result be invalidated.

**11. Terms of Use**

TSS reserves the right to modify these terms of use at any time. Any modifications shall be effective upon the earlier of the posting by TSS of the modified terms of use at this URL or direct e-mail or other notification of the changes to TSS's customers. No oral statements or representations will constitute any waiver or modification of any term or condition in the terms of use. You agree to review these terms of use periodically so that you are aware of any modifications. Your continued use or access of the App shall be deemed your acceptance of the modified terms of use.

**12. Uptime Guarantee**

Service Availability Guarantee
TSS offers a service uptime guarantee for the Services of 99.9% ("Service Uptime") of available time. If TSS fails to maintain this level of service availability, you may contact TSS and request a credit for the time that your service was unavailable to you. The credit may be used only for the purchase of further products and services from TSS, and is exclusive of any applicable taxes. The credit does not apply to service interruptions caused by:

**A.** periodic scheduled maintenance or repairs TSS may undertake from time to time

**B.** outages that affect only the User or the User's computer, network or Internet Service Provider

**C.** power outages or acts of Nature beyond the control of TSS

Ultimately the total service uptime shall be solely determined by TSS and shall be calculated on a prorated monthly basis.