# SOFTWARE LICENSE AGREEMENT

This Software License Agreement (hereinafter the “Agreement”) is made as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2015, (the “Effective Date”) by and between Basemark Ltd (Business ID 2688018-1, hereinafter “Basemark”),[ a corporation organized and existing under the laws of Finland, having its registered office in Niittymäentie 7, 02200 Espoo, Finland] and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Business ID \_\_\_\_\_\_\_\_\_, hereinafter the “Licensee”) a corporation organized and existing under the laws of \_\_\_\_\_\_\_\_\_, having its registered office in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. This Agreement replaces any and all previous agreements Licensee has made for Browsermark and Basemark Web products with Rightware Oy and which were transferred to Basemark on May 1, 2015 upon the acquisition of Rightware benchmark business by Basemark.

**WHEREAS,** Basemark and the Licensee (hereinafter collectively referred to as the “the Parties”) each have extensive knowledge and technical expertise in the field of computer software;

**WHEREAS,** Basemark has developed proprietary computer software and owns all intellectual property rights in its software;

**WHEREAS,** Basemark shall furnish the Licensee with the software only for Licensee’s internal product development, testing and evaluation purposes in accordance with the terms set forth in this Agreement;

**WHEREAS,** the Parties desire to exchange evaluation feedback and ideas related to the software free of charge for the mutual purpose of further development of the software;

**NOW, THEREFORE,** in consideration of the mutual promises, covenants and conditions set forth herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

# 1. LICENSE GRANTED TO THE LICENSEE

1.1 Subject to the terms and conditions of this Agreement, Basemark shall furnish the Licensee with the license to use its software, as defined in Section 2 of Appendix A of this Agreement, in either i) source code and object or executable code form or, ii) object or executable code form, along with related documentation (hereinafter together the “Basemark Software”).

1.2 Basemark hereby grants to the Licensee during the validity of this Agreement, a non-exclusive, non-transferable, revocable right and license, without the right to sub-license:

i) to install, use and operate the Basemark Software solely for the purposes of Licensee’s internal product development, product marketing, testing and evaluation (hereinafter the “Purpose”), and

ii) to reproduce, adapt and modify the Basemark Software to the extent necessary only for the Purpose. All copies and derivative versions of the Basemark Software shall be subject to the terms of this Agreement.

iii) to distribute the modified Basemark Software developed under the license granted in Section 1.2 (ii) above to any third party that has a valid license from Basemark for the Basemark Software; and

iv) to publish and communicate performance results obtained from using the official unaltered Basemark Software to any third party.

1.3 This license gives the Licensee only limited license to use the Basemark Software. Basemark retains all right, title and interest including but not limited to all intellectual property rights to the Basemark Software, new versions, upgrades, updates, modifications, enhancements or copies thereof and all related documentation shall at all times remain solely the property of Basemark.

1.4 Other than as set out in Section 1.2 above Licensee shall not distribute, sell, offer for sale, lease, sub-license, transfer possession of, or otherwise convey the Basemark Software or any copy thereof.

1.5 The Licensee also agrees that it shall neither cause nor permit the disassembly, decompilation, reverse engineering or other such process to discover the source code, ideas or structure of the Basemark Software or any attempt thereof in deviation to the Purpose according to this Agreement.

1.6 The Licensee shall neither make nor permit others to make any modifications, adaptations, enhancements, changes, or derivative works of the Basemark Software in deviation to the Purpose according to this Agreement, and Licensee shall advise all of its employees that they are prohibited from making any modifications, adaptations, enhancements, changes or derivative works of the Basemark Software for the purpose other than pursuant to this Agreement.

1.7 Except for the rights specifically granted in this section 1, no rights in the Basemark Software are granted to the Licensee. Any use of the Basemark Software in deviation to this Agreement is expressly forbidden. These rights and license are temporary and valid only for as long as this Agreement is in force and the Licensee operates under the terms and conditions of this Agreement.

1.8 The Licensee may disclose to its customer (the “Customer”) performance results obtained by using the modified Basemark Software (“Non-official Results”) provided, that i) Basemark has given its prior written approval to the Licensee, ii) such Customer is bound by the non-disclosure agreement with the Licensee prohibiting such Customer from publishing or disclosing any Non-official Results and iii) the Licensee clearly notifies the Customer that the performance results disclosed by the Licensee are Non-official Results and permitted to be used for Customer’s product debugging purposes only. Any other use of the Non-official Results by the Customer is expressly forbidden.

# 2. LICENSE FEE

2.1 Pursuant to this Agreement, Licensee shall pay Basemark the respective license fees for all the products licensed, as described in Appendix A (“Fee”). Licensee agrees to remit payments within 30 days of the date of the invoice; Interest for delayed payment is 12%.

# 3. UPDATES, SUPPORT AND OTHER SERVICES

3.1 Basemark may, at its sole discretion, release updates or any subsequent public commercial releases of Basemark Software.

3.2 Basemark shall provide the Licensee with support services described in Appendix A, section 3.

# 4. CONFIDENTIALITY

4.1 In order to facilitate the Purpose according to this Agreement the Parties may provide each other with certain information, which is confidential, proprietary and not generally available to the public. Parties acknowledge and agree that the confidential information provided by the other Party was developed through substantial expenditures of time, effort and money and constitutes valuable and unique property of the other Party.

4.2 “Confidential Information” shall mean any information received by the Party (hereinafter the "receiving Party") from the other Party (hereinafter the "disclosing Party"), whether before or after the execution of this Agreement, which is marked or described by disclosing Party in writing as being ”confidential”, ”secret” or ”proprietary” or otherwise from the context understood as confidential. The terms, provisions and substance of this Agreement are also Confidential Information.

4.3 The Licensee shall treat the Basemark Software and any associated source code, documentation, information, designs, technology, marketing plans, business plans, product plans, trade secrets, identities of development team members and financial information as Confidential Information and shall not disclose any information (in particular but without limitation any information related to testing and comparison of the Basemark Software) in relation to the Basemark Software, which has not been publicly disclosed, in particular but without limitation, by preventing any unauthorised copying and use of the Basemark Software, by its employees, or other third parties.

4.4 The Parties agree that the obligations of this Section 4 shall survive the expiration, termination or rescission of this Agreement, or any part hereof.

# 5. NO WARRANTIES

5.1 Basemark is making the Basemark Software available “as is” for the Purpose only, and accordingly BASEMARK MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE. NO CONDITIONS, WARRANTIES OR OTHER TERMS, WHETHER EXPRESS OR IMPLIED, APPLY TO THE SOFTWARE SUPPLIED UNDER THIS AGREEMENT, IN PARTICULAR, WITH RESPECT TO THE NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. BASEMARK SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

# 6. REMEDIES AND LIMITATIONS OF LIABILITIES

6.1 The Licensee acknowledges that Basemark has no control over Licensee's use or exploitation of the Basemark software. The Licensee therefore agrees to indemnify and hold Basemark harmless against any costs, claims, demands, expenses and liabilities of whatsoever nature by any third party arising from such use or exploitation.

6.2 The Licensee acknowledges that its failure to comply with any of the provisions of this Agreement will irreparably harm the business of Basemark, and that Basemark will not have an adequate remedy at law in the event of such non-compliance.

6.3 Each Party’s cumulative liability to the other Party or any other party for any loss or damages resulting from any claims, demands, or actions arising out of or relating to this Agreement shall not exceed the price paid, except to the extent that such liability may not be lawfully excluded under the applicable mandatory law. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, COVER OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR THE INABILITY TO USE EQUIPMENT OR ACCESS DATA, LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION OR THE LIKE), ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE OTHER PARTY’S PRODUCTS OR BASED ON ANY THEORY OF LIABILITY INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF THE OTHER PARTY OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

# 7. TERM AND TERMINATION

7.1 This Agreement shall become effective on the Effective Date and shall remain in force for an initial term of one (1) year, unless terminated under the provisions of this Agreement. This agreement will automatically renew each year for additional one year periods unless the Licensee terminates the agreement by sending a written notice to Basemark 60 days prior to next year’s support service fee becoming due.

7.2 This Agreement shall not be assignable by the Licensee without the prior written consent of Basemark if such assignment is to the successors of substantially the entire business of the Licensee. The Licensee shall however remain liable for the performance of the duties and obligations pursuant to this Agreement. Any assignment or attempted assignment by the Licensee contrary to the provisions of this Agreement whether by instrument, merger, acquisition or succession, without the prior written consent of Basemark shall be nullity and entitle Basemark to terminate this Agreement immediately.

7.3 A breach of any provision of sections 1 and 4 shall entitle Basemark to terminate this Agreement immediately. Either Party shall have the right to terminate this Agreement with immediate effect by notice in writing in the event the other Party materially breaches any of its obligations, unless the breach is cured within the fourteen (14) day period following the notice. The Licensee is not entitled to any monetary refund in any case.

7.4 Upon termination of this Agreement, the Licensee shall on the date of termination of this Agreement: i) cease to use the Basemark Software; ii) return to Basemark or destroy all copies of the Basemark Software together with all reproduction and modifications of the Basemark Software and all Confidential Information; iii) purge all installed Basemark Software or any part of the Basemark Software from any device or medium in which the Licensee has placed the Basemark Software; and iv) give Basemark a written guarantee that the Licensee has complied with all of its obligations under this section. This section 7 shall survive the expiration or termination of this Agreement.

# 8. MISCELLANEOUS

8.1 Each Party shall bear all costs and expenses incurred by it under or, in connection with, this Agreement.

8.2 Should any term of this Agreement be declared void or unenforceable by any court of competent jurisdiction, such a declaration shall have no effect on the remaining terms herein.

8.3 This Agreement contains the entire agreement between the Parties relating to the subject matter hereof and all prior understandings, representations and warranties by and between the parties, written or oral, which may be related to the subject matter hereof in any way are superseded by this Agreement. None of the terms of this Agreement shall be deemed to be waived or amended by either Party unless such a waiver of amendment specifically references this Agreement and is in writing singed by an authorized representative of the Party to be bound.

# 9. GOVERNING LAW AND DISPUTES

9.1 This Agreement shall be governed by the laws of Finland. Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or validity thereof shall be finally settled by arbitration in accordance with the Rules of the Arbitration Board of the Central Chamber of Commerce in Finland. The arbitration shall be held in Helsinki, Finland, and the arbitration proceedings shall be conducted in the English language.

# EXECUTION

**IN WITNESS WHEREOF,** the Parties have caused this Agreement and Appendix A to be executed by their duly authorized representatives as of the Effective Date.

Basemark \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signed: Signed:

Name: Name:

Title: Title:

Date: Date:

# APPENDIX A

# 1. GENERAL

1.1 Any and all terms used herein in this Appendix shall have the respective meanings given to them in the Agreement. The terms and conditions in the referenced Agreement, as may be complemented or modified by any terms and conditions identified below, shall apply to the Basemark Software and Support Service defined below.

# 2. LICENSED PRODUCTS AND LICENSE FEES

Licensed products (Basemark Software):

1. Basemark Web 3.x (source code), including access to Alpha, Beta and Release Candidate versions as those become available
2. Browsermark 2.1 (source code). Basemark has stopped development of Browsermark and hence will offer no new versions or support. Licensee however has the right to use this product as is

License fees for Basemark Software:

One time license fee of USD \_\_\_\_\_\_\_\_.

Yearly maintenance fee, starting from one year from the effective date of USD \_\_\_\_\_\_\_.

All prices quoted are exclusive of any possible taxes, duties and similar third party or government fees including but not limited to sales tax, value added tax and withholding tax.

# 3. SUPPORT SERVICE

3.1 Basemark shall provide support service to the Licensee. This support service consists of email and phone support during Finnish business hours and concerns the unmodified and unaltered Basemark Software.

# 4. ERROR CORRECTIONS

4.1 Basemark shall provide the Licensee with error corrections to the Basemark Software for as long as the licensee continues to pay the maintenance fee.