

Mercury Computer Diagnostic System - G3  
Software License

This Agreement is entered into by and between Mercury Marine, a division of Brunswick Corporation, having a business address at W6250 Pioneer Road, Fond du Lac, Wisconsin 54935 (“*Licensor*”), and the Authorized Mercury Marine Dealer listed in the signature block below (“*Licensee*”).

**WHEREAS**, Licensor has engaged in substantial research and development efforts to create diagnostic software for marine propulsion systems known as “CDS G3” (“*Licensed Software*”);

**WHEREAS**, Licensee desires to obtain a license and Licensor desires to grant a license for the Licensed Software to Authorized Mercury Marine Dealers and OEM’s;

**NOW THEREFORE**, in consideration of mutual promises and covenants set forth herein, the parties, intending to be legally bound, agree as follows:

**1. GRANT OF LICENSE**

Licensor hereby grants to Licensee and Licensee hereby accepts a revocable, nonexclusive, nontransferable, non-assignable license on the terms and conditions provided in this License Agreement (“*Agreement*”) to use Licensed Software for the sole purpose of diagnosing marine propulsion systems.

**2. TITLE AND LICENSE TERMS AND CONDITIONS**

(A) Licensee acknowledges that the Licensor owns the Licensed Software and all rights therein and that nothing in this Agreement shall give Licensee any right, title, or interest in or to the Licensed Software other than pursuant to the license granted herein.

(B) Licensee agrees to protect and maintain the security of the proprietary codes incorporated into the Licensed Software.

(C) Licensee agrees to not copy, disclose, publish, transfer or otherwise make available the Licensed Software to any third party without the prior written permission of Licensor.

(D) Licensee agrees to not assign this Agreement or assign or delegate its rights or obligations under this Agreement to any party.

(E) Licensee agrees to not decompile, disassemble, reverse engineer, or modify the Licensed Software in any way.

### **3. FEES**

(A) Licensee shall pay to Licensor an initial activation fee as published on the date that Licensee requests a license for the CDS G3 Software.

(B) From time to time, Licensor may, at its sole discretion, update the Licensed Software during the term of this Agreement, and Licensee, at its discretion, may receive the updated software by paying to Licensor the update fee as published on the date that Licensee requests a license upgrade.

### **4. TERMINATION**

Licensor shall have the right, but not the obligation to immediately terminate this Agreement if:

(A) Licensee fails to comply with the above License Terms or Conditions;

(B) Licensee fails to pay any fee owed to Licensor;

(C) Licensee ceases doing business or declares bankruptcy; or ceases being an authorized dealer with Mercury Marine.

### **5. WARRANTY, LIMITATION OF LIABILITY AND INDEMNITY**

(A) Licensor warrants to Licensee that Licensor is the owner of the entire right, title, and interest in and to the Licensed Software and that it has the power and authority to enter into and grant the license granted in this Agreement.

(B) Licensee represents that its execution and delivery of this Agreement has been duly authorized and no further approval, corporate or otherwise, is required in order for Licensee to execute this binding Agreement, that it shall comply with any applicable laws and regulations in its performance under this Agreement, and that its rights and obligations under this Agreement do not conflict with any contractual obligation or court or administrative order by which it is bound.

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(D) IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR SPECIAL, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES, LOSSES, COSTS, CHARGES, CLAIMS DEMANDS, FEES OR EXPENSE OF ANY NATURE OR KIND.

(E) Licensee shall at all times during the term of this Agreement and thereafter, indemnify, defend and hold harmless Licensor, its trustees, directors, officers, employees, agents and affiliates, against all claims, proceedings, demands, and liabilities of any kind whatsoever, including the legal expenses and reasonable attorney's fees, arising out of, connected with, resulting from or sustained as a result of Licensee's exercise of the license granted under this Agreement or its execution or performance of all or any part of this Agreement.

## **6. MISCELLANEOUS**

(A) **Non-Agency.** Nothing in this Agreement is intended or shall be deemed to constitute a partnership, agency, employer-employee, or joint venture relationship between the Parties. Neither Party shall incur any debts or make any commitments for the other.

(B) **Entire Agreement, Amendments, and Waivers.** This Agreement constitutes and contains the entire agreement between the Parties regarding the matters hereof, and supersedes any and all prior negotiations, conversations, correspondence, understandings, and letters respecting the subject matter hereof. This Agreement may be amended or modified or one or more provisions hereof waived only by a written instrument signed by the Parties. No delay or omission by any Party in exercising any right or power arising from any default by the other Party shall be construed as a waiver of such default, nor shall any single or partial exercise thereof preclude any further exercise thereof or the exercise of any other right or power arising from any default by a party. No waiver of any breach of any covenant or other condition shall be construed to be a waiver of or consent to any previous or subsequent breach of the same or of any other covenant

or condition.

(C) **Severability and Captions.** If one or more provisions of this Agreement are held to be invalid or unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded. In the event a part or provision of this Agreement is held to be invalid or unenforceable or in conflict with law for any reason, the Parties shall replace any invalid part or provision with a valid provision which most closely approximates the intent and economic effect of the invalid provision. The captions to this Agreement are for convenience only and are to be of no force or effect in construing and interpreting the provisions of this Agreement.

(D) **Governing Law and Consent to Jurisdiction.** This Agreement shall be governed by and construed under applicable federal law and the laws of the State of Illinois, excluding any conflict of law provisions. Each Party irrevocably consents to the jurisdiction of any state or federal court sitting in the Northern District of Illinois, over any suit, action or proceeding arising out of or relating to this Agreement or involving any claim of infringement of the Licensed Software.

(E) **Notices.** Any notice required or permitted under this Agreement shall be given in writing and shall be sent via overnight carrier or via regular mail to the contacts below:

LICENSOR

CDS G3 Development Team  
Mercury Marine  
P.O. Box 1939  
W.6250 Pioneer Road  
Fond du Lac, WI 54936-1939

LICENSEE

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(F) **Third Party Beneficiaries and Assignment.** Nothing in this Agreement shall be construed

to give rise to any obligation on either party hereto for the benefit of a third party or to confer any rights on any party other than Woodward or Brunswick, except as allowed herein.