

# IMAGINE PRODUCTS END USER LICENSE AGREEMENT

Version: 2018.1

**PLEASE READ THIS END USER LICENSE AGREEMENT (THE "LICENSE") CAREFULLY. IT CONTAINS IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, REMEDIES, AND OBLIGATIONS, INCLUDING VARIOUS LIMITATIONS AND EXCLUSIONS, AND A DISPUTE RESOLUTION CLAUSE THAT GOVERNS HOW AND WHERE DISPUTES WILL BE RESOLVED.**

**1. General.** Imagine Products, Inc. ("Imagine Products" or "We" or "Us"), an Indiana corporation, provides software for media and broadcast applications. The term "Application" shall refer to any software application available from Imagine Products. This License contains the terms and conditions governing use of the Applications by you ("Licensee" or "You"). By creating an Account or using an Application, You signify Your agreement to this License.

**2. Your Account.** You are required to create an account (the "Account") to access and use each Application. You must provide correct and complete personal and business information as requested by Us in the Account registration process. By submitting any information to Us, You represent and warrant that such submission is accurate, complete, current, and is not in violation of any contractual restrictions or other third party rights. You are responsible for the confidentiality and security of Your Account, password, and user ID. Keep Your password confidential and do not let others use Your Account. You agree to notify Us immediately of any unauthorized access or use of Your Account or password, or any other breach of security, by contacting Us at [support@imagineproducts.com](mailto:support@imagineproducts.com). You are responsible for anything that happens through Your Account until You notify Us of a breach, close down Your Account, or prove that Your Account security was compromised due to a fault of our systems. You are prohibited from selling, trading or otherwise transferring Your Account or any rights that run with the Account. You are prohibited from registering or creating an Account for any entity or individual other than Yourself, unless You are expressly authorized to create an Account on behalf of the entity or individual. Should we determine that Your Account information may be compromised due to a virus, malware, other malicious code or due to other theft of Your Account information, we reserve the right to invalidate, delete, or otherwise modify Your Account in order to protect Your Account, the accounts of other account holders, and Imagine Products from further damage or exposure. This may include proactively changing Your password. Should this need arise, we will make reasonable efforts to inform You of any modifications made, via the email address listed for Your Account.

### **3. License Grant.**

**3.1. License Grant.** Each Application is individually licensed, not sold, to You by Imagine Products for use strictly in accordance with the terms and conditions of this License. Imagine Products grants You a revocable, non-exclusive, non-transferable, limited right to access and use each Application strictly in accordance with the terms and conditions of this License.

**3.2. Term.** This License shall be in effect with respect to a particular licensed Application for the term You elect at the time of purchase, and will be listed in Your account on the Imagine Products website.

**3.3. Restrictions.** You may install each Application on one or more computers as permitted by the Application. If the Application permits installation on only a single computer, You may install the Application on a single computer. If the Application permits concurrent installation use on more than one computers, You may install the Application on that number of computers permitted by the Application. You also may make an archival copy of each licensed Application for the sole purpose of backing up the

Application, so long as you reproduce and include the proprietary notices on the backup copy. You shall not: (a) decompile, reverse engineer, disassemble, attempt to derive the source code of, or decrypt any Application or any third party components contained therein; (b) make any modification, adaptation, improvement, enhancement, translation or derivative work from any Application; (c) circumvent or attempt to circumvent any restrictions or limitations with respect to renting, leasing, lending, or transferring any Application; (d) violate any applicable laws, rules or regulations in connection with Your access or use of any Application; (e) remove, alter or obscure any proprietary notice (including any notice of copyright or trademark) of Imagine Products or its affiliates, partners, suppliers or the licensors of any Application; (f) use any Application for any purpose for which it is not designed or intended; (g) distribute any Application, except as permitted by the Application itself; (h) make any Application available over a network or other environment permitting access or use by multiple users at the same time, except as permitted by the Application itself; (i) use any Application for creating a product, service or software that is, directly or indirectly, competitive with or in any way a substitute for any services, product or software offered by Imagine Products or its affiliates; (j) use any Application to send automated queries to any website or to send any unsolicited commercial e-mail; or (k) use any proprietary information or interfaces of Imagine Products or its affiliates or other intellectual property of Imagine Products or its affiliates in the design, development, manufacture, licensing or distribution of any applications, accessories or devices for use with any Application.

**3.4. Maintenance.** Imagine Products may provide, or offer for purchase, an Application Maintenance Plan for an Application for a limited period of time (the "Maintenance Period"). "Application Maintenance" means provision of new releases and updates to an Application that Imagine Products makes generally available to its customers during the Maintenance Period. All releases and updates to each Application are subject to this License. Application Maintenance does not include the provision of new products licensed separately by Imagine Products.

#### **4. Intellectual Property Rights.**

**4.1. Rights to Applications.** You acknowledge and agree that each Application and all copyrights, patents, trademarks, trade secrets and other intellectual property rights associated therewith are, and shall remain, the property of Imagine Products or its suppliers (to the extent third party products are contained therein). Furthermore, You acknowledge and agree that the source and object code of each Application and the format, directories, queries, algorithms, structure and organization of each Application are the intellectual property and proprietary and confidential information of Imagine Products and its affiliates, licensors and suppliers. Except as expressly stated in this License, You are not granted any intellectual property rights in or to any Application by implication, estoppel or other legal theory, and all rights in and to each Application not expressly granted in this License are hereby reserved and retained by Imagine Products.

**4.2. Third Party Software.** An Application may utilize or include third party software that is subject to open source and third party license terms ("Third Party Software"). You acknowledge and agree that Your right to use such Third Party Software as part of an Application is subject to and governed by the terms and conditions of the open source or third party license applicable to such Third Party Software, including, without limitation, any applicable acknowledgements, license terms and disclaimers contained therein. In the event of a conflict between the terms of this License and the terms of such open source or third party licenses, the terms of the open source or third party licenses shall control with regard to Your use of the relevant Third Party Software. In no event, shall any Application or components thereof be deemed to be "open source" or "publicly available" software.

**4.3. Imagine Products' Marks.** You are not authorized to use the trademarks of Imagine Products or its affiliates in any advertising, publicity or in any other commercial manner without the prior written consent of Imagine Products, which may be withheld for any or no reason.

**4.4. Infringement Acknowledgement.** You acknowledge and agree that, in the event You become aware of a third party claim that an Application infringes any third party's intellectual property rights, You will promptly notify Imagine Products in writing of such a claim.

**5. Consent to Use Information.** Imagine Products and its affiliates will also be free to use any ideas, concepts, know-how, or techniques contained in any suggestion or feedback received from You regarding the Applications for any purpose whatsoever including, without limitation, developing, manufacturing and marketing products and services incorporating such information.

## **6. Third Party Content and Services.**

**6.1. General.** You acknowledge that an Application may permit access to products, services, web-sites, advertisements, promotions, recommendations, advice, information, and materials created and provided by advertisers, publishers, content partners, marketing agents, vendors and other third parties ("Third Party Content and Services").

**6.2. Disclaimer.** You acknowledge that Imagine Products does not investigate, monitor, represent or endorse the Third Party Content and Services (including any third party websites available through an Application). Furthermore, Your access to and use of the Third Party Content and Services is at Your sole discretion and risk, and Imagine Products and its affiliates, partners, suppliers and licensors shall have no liability to You arising out of or in connection with Your access to and use of the Third Party Content and Services. Imagine Products and its affiliates hereby disclaim any representation, warranty or guaranty regarding the Third Party Content and Services, whether express, implied or statutory, including, without limitation, the implied warranties of merchantability or fitness for a particular purpose, and any representation, warranty or guaranty regarding the availability, quality, reliability, features, appropriates, accuracy, completeness, or legality of the Third Party Content and Services.

**6.3. Third Party Terms of Service.** You acknowledge and agree that Your access to and use of the Third Party Content and Services and any correspondence or business dealings between You and any third party located using an Application are governed by and require Your acceptance of the terms of service of such third party, including, without limitation, any terms, privacy policies, conditions, representations, warranties or disclaimers contained therein. Furthermore, You acknowledge and agree that the Third Party Content and Services and any related third party terms of service are subject to change by the applicable third party at its sole discretion and without any notice. You assume all risks arising out of or resulting from Your transaction of business over the Internet and with any third party, and You agree that Imagine Products and its affiliates, partners, suppliers and licensors are not responsible or liable for any loss or result of the presence of information about or links to such advertisers or service providers. Furthermore, You acknowledge and agree that this License does not include a license to (i) the Third Party Content and Services; (ii) any products, services, processes or technology described in or offered by the Third Party Content and Services; or (iii) any copyright, trademark, patent or other intellectual property right in the Third Party Content or Services or any products, services, processes or technology described or offered therein.

**6.4. Endorsements.** You acknowledge and agree that the provision of access to any Third Party Content and Service shall not constitute or imply any endorsement by Imagine Products or its affiliates of such Third Party Content and Services. Imagine Products reserves the right to restrict or deny access to any

Third Party Content and Services otherwise accessible through an Application, although Imagine Products has no obligation to restrict or deny access even if requested by You.

**6.5. Inappropriate Materials.** You understand that by accessing and using the Third Party Content and Services, You may encounter information, materials and subject matter (i) that You or others may deem offensive, indecent, or objectionable; (ii) which may or may not be identified as having explicit language, and (iii) that automatically and unintentionally appears in search results, as a link or reference to objectionable material. Notwithstanding the foregoing, You agree to use the Third Party Content and Services at Your sole risk and that Imagine Products and its affiliates, partners, suppliers and licensors shall have no liability to You for information, material or subject matter that is found to be offensive, indecent, or objectionable.

**6.6. Use of Third Party Content and Services.** You agree that the Third Party Content and Services contain proprietary information and material that is owned by Imagine Products and its affiliates, partners, suppliers and licensors and is protected by applicable intellectual property and other laws, including, without limitation, pursuant to copyright, and that You will not use such proprietary information or materials in any way whatsoever except for permitted use of the Third Party Content and Services. No portion of the Third Party Content and Services may be reproduced in any form or by any means. You agree not to modify, rent, lease, loan, sell, distribute, or create derivative works based on the Third Party Content and Services, in any manner, and You shall not exploit the Third Party Content and Services in any unauthorized way whatsoever, including, without limitation, by trespass or burdening network capacity. You agree that You will not use any Third Party Content and Services in a manner that would infringe or violate the rights of any other party, and that Imagine Products is not in any way responsible for any such use by You.

## **7. Term and Termination.**

**7.1. Term.** This License shall be effective until it is terminated or it expires.

**7.2. Termination.** Imagine Products may, in its sole and absolute discretion, at any time and for any or no reason, suspend or terminate this License and the rights afforded to You hereunder with or without prior notice. Furthermore, if You fail to comply with any terms and conditions of this License, then this License and any rights afforded to You hereunder shall terminate automatically, without any notice or other action by Imagine Products. Upon the termination of this License, You shall immediately cease all use of each Application and destroy every copy of each Application.

**8. Disclaimer of Warranties.** YOU ACKNOWLEDGE AND AGREE THAT EACH APPLICATION IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND THAT YOUR USE OF OR RELIANCE UPON THE APPLICATION AND ANY THIRD PARTY CONTENT AND SERVICES ACCESSED THEREBY IS AT YOUR SOLE RISK AND DISCRETION. IMAGINE PRODUCTS AND ITS AFFILIATES, PARTNERS, SUPPLIERS AND LICENSORS HEREBY DISCLAIM ANY AND ALL REPRESENTATIONS, WARRANTIES AND GUARANTEES REGARDING ANY APPLICATION AND THIRD PARTY CONTENT AND SERVICES, WHETHER EXPRESS, IMPLIED OR STATUTORY, AND INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. FURTHERMORE, IMAGINE PRODUCTS AND ITS AFFILIATES, PARTNERS, SUPPLIERS AND LICENSORS MAKE NO WARRANTY THAT (I) ANY APPLICATION OR THIRD PARTY CONTENT AND SERVICES WILL MEET YOUR REQUIREMENTS; (II) ANY APPLICATION OR THIRD PARTY CONTENT AND SERVICES WILL BE UNINTERRUPTED, ACCURATE, RELIABLE, TIMELY, SECURE OR ERROR-FREE; (III) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION OR OTHER MATERIAL

ACCESSED OR OBTAINED BY YOU THROUGH ANY APPLICATION WILL BE AS REPRESENTED OR MEET YOUR EXPECTATIONS; OR (IV) ANY ERRORS IN AN APPLICATION OR THIRD PARTY CONTENT AND SERVICES WILL BE CORRECTED. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM IMAGINE PRODUCTS OR ITS AFFILIATES OR FROM ANY APPLICATION SHALL CREATE ANY REPRESENTATION, WARRANTY OR GUARANTEE.

**9. Limitation of Liability.** UNDER NO CIRCUMSTANCES SHALL IMAGINE PRODUCTS OR ITS AFFILIATES, PARTNERS, SUPPLIERS OR LICENSORS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH YOUR ACCESS OR USE OF OR INABILITY TO ACCESS OR USE ANY APPLICATION AND/OR ANY THIRD PARTY CONTENT AND SERVICES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF GOODWILL, BUSINESS INTERRUPTION, WORK STOPPAGE, DATA LOSS, LOST PROFITS, OR COMPUTER FAILURE, WHETHER OR NOT THE DAMAGES WERE FORESEEABLE AND WHETHER OR NOT IMAGINE PRODUCTS OR ITS AFFILIATES WERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IMAGINE PRODUCTS AND ITS AFFILIATES TOTAL AGGREGATE LIABILITY TO YOU (WHETHER UNDER CONTRACT, TORT, STATUTE OR OTHERWISE) SHALL NOT EXCEED THE AMOUNT YOU PAID FOR THE APPLICATION OUT OF WHICH THE CLAIM OR DISPUTE AROSE. THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

**10. Indemnification.** You shall indemnify, defend and hold harmless Imagine Products, its affiliates, partners, suppliers and licensors, and each of their respective officers, directors, agents and employees (the "Indemnified Parties") from and against any claim, proceeding, loss, damage, fine, penalty, interest and expense (including, without limitation, fees for attorneys and other professional advisors) arising out of or in connection with the following: (i) Your access to or use of an Application or Third Party Content and Services; (ii) Your breach of this License; (iii) Your violation of law; (iv) Your negligence or willful misconduct; or (v) Your violation of the rights of a third party, including the infringement by You of any intellectual property or misappropriation of any proprietary right or trade secret of any person or entity. These obligations will survive any expiration or termination of the License.

**11. Compatibility.** Imagine Products does not warrant that any Application will be compatible or interoperable with any other hardware, software, equipment or device. Furthermore, You acknowledge that compatibility and interoperability problems can cause the performance of any other hardware, software, equipment or device to diminish or fail completely, and may result in permanent damage, loss of the data, and corruption of software and files. You acknowledge and agree that Imagine Products and its affiliates, partners, suppliers and licensors shall have no liability to You for any losses suffered resulting from or arising in connection with compatibility or interoperability problems.

**12. Product Claims.** You acknowledge that You (not Imagine Products) are responsible for addressing any third party claims relating to Your use or possession of each Application, and agree to notify Imagine Products of any third party claims relating to any Application of which You become aware. Furthermore, You hereby release Imagine Products and its affiliates from any liability resulting from Your use or possession of each Application, including, without limitation, the following: (i) any product liability claims; (ii) any claim that an Application fails to conform to any applicable legal or regulatory requirement; and (iii) any claim arising under consumer protection or similar legislation.

**13. Miscellaneous.**

**13.1. Governing Law.** This License shall be governed and construed in accordance with the laws of the State of Indiana, USA, without regard to its conflict of laws provisions. The parties agree that exclusive jurisdiction for any dispute arising under or related to this License shall be with the appropriate state or federal court in Marion County, Indiana, USA, and each party consents to the jurisdiction of such court in any action or proceeding and waives any claims or defenses of lack of jurisdiction of or proper venue by such courts. TO THE FULLEST EXTENT PERMITTED BY LAW, AND AS SEPARATELY BARGAINED-FOR CONSIDERATION, EACH PARTY HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING, OR COUNTERCLAIM OF ANY KIND ARISING OUT OF OR RELATING TO THIS LICENSE. This License shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

**13.2. Severability.** If any provision of this License is held to be invalid or unenforceable with respect to a party, the remainder of this License, or the application of such provision to persons other than those to whom it is held invalid or unenforceable shall not be affected and each remaining provision of this License shall be valid and enforceable to the fullest extent permitted by law.

**13.3. Waiver.** Except as provided herein, the failure to exercise a right or require performance of an obligation under this License shall not effect a party's ability to exercise such right or require such performance at any time thereafter nor shall the waiver of a breach constitute waiver of any subsequent breach.

**13.4. Export Control.** You may not use or otherwise export or re-export any Application except as authorized by United States law and the laws of the jurisdiction(s) in which the Application was obtained. You represent and warrant that You are not (a) located in any country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country, or (b) listed on any U.S. Government list of prohibited or restricted parties including the Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. You also agree that You will not use any Application for any purposes prohibited by applicable law.

**13.5. Modification or Amendment.** Imagine Products may modify or amend the terms of this License by including such modifications or amendments at the log-in screen for Your Account. You will be deemed to have agreed to any such modification or amendment by Your accepting the new terms and continuing to use an Application following the date the new License terms are posted.

**13.6. Survival.** The following sections of this License and any other provisions of this License which by their express language or by their context are intended to survive the termination of this License shall survive such termination: 3.3, 4, 5, 8, 9, 10, 12, and 13.

**13.7. Assignment.** Except as permitted in Section 3.3, You shall not assign this License or any rights or obligations herein without the prior written consent of Imagine Products, and any attempted assignment in contravention of this provision shall be null and void and of no force or effect. This License shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

**13.8. Entire Agreement.** This License constitutes the entire agreement with respect to the use of all Applications licensed hereunder and supersedes all prior or contemporaneous understandings regarding such subject matter.

**13.9. Notices.** Any notices required or permitted hereunder shall be deemed to have been given if in writing and delivered personally, sent by overnight delivery, or by first class, registered, or certified mail, postage prepaid.