

EYEMAGINATIONS, INC.

SOFTWARE BETA TEST AGREEMENT

ECHO

NOTICE TO USER:

This Software Beta Test Agreement is a contract between you and Eyemaginations, Inc. (Eyemaginations), which covers your use of the Eyemaginations beta software product that accompanies this Software Beta Test Agreement and related software components, which may include associated media, printed materials, and "online" or electronic documentation. All such software and materials are referred to herein as the "Beta Software." If you do not agree to the Terms (as defined below) of this Software Beta Test Agreement, then do not install, login or use the Beta Software. By explicitly accepting this Software Beta Test Agreement, however, or by installing, copying, downloading, accessing, or otherwise using the Beta Software, you are acknowledging and agreeing to be bound by the following terms.

1. DEFINITIONS

- (a) "Beta Software" shall mean the beta version of Eyemaginations' ECHO software, in object form only, excluding any Open Source Software provided with such software, and the media and Documentation provided by Eyemaginations to Licensee and for which Licensee is granted a use license pursuant to this Agreement.
- (b) "Documentation" shall mean the printed or online written reference material furnished to Licensee in conjunction with the Beta Software, including, without limitation, instructions, beta testing guidelines, and end user guides.
- (c) "Intellectual Property Rights" shall mean all intellectual property rights, including, without limitation, patent, copyright, trademark, design, layout, scripts and trade secrets.
- (d) "Open Source Software" means various open source software components provided with the Beta Software that are licensed to you under the terms of the applicable license agreements included with such open source software components or other materials for the Beta Software.
- (e) "Updates" shall mean a modification, error correction, bug fix, new release, or other update to or for the Beta Software.

2. YOUR RELATIONSHIP WITH EYEMAGINATIONS

(a) Your use of Eyemaginations' Beta Software (referred to in this document and excluding any services provided to you by Eyemaginations under a separate written agreement) is subject to the terms of a legal agreement between you and Eyemaginations.

(b) Unless otherwise agreed in writing with Eyemaginations, your agreement with Eyemaginations will always include, at a minimum, the terms and conditions set out in this document. These are referred to below as the "Terms".

3. ACCEPTING THE TERMS

(a) In order to use the Beta Software, you must first agree to the Terms. You may not use the Beta Software if you do not accept the Terms.

(b) You can accept the Terms by:

(i) clicking to accept or agree to the Terms, where this option is made available to you by Eyemaginations in the user interface for the Beta Software; or

(ii) by actually using the Beta Software. In this case, you understand and agree that Eyemaginations will treat your use of the Beta Software as acceptance of the Terms from that point onwards.

(c) You may not use the Beta Software and may not accept the Terms if (1) you are not of legal age to form a binding contract with Eyemaginations, (2) you are a person barred from using the Beta Software under the laws of the United States or other countries including the country in which you are resident or from which you use the Beta Software, or (3) you are not a doctor, physician, employee, staff member, associate or affiliate of a health care or medical practice located within the United States.

4. LICENSE GRANT, USE AND OWNERSHIP

(a) Limited License. Subject to the Terms, Eyemaginations grants to Licensee a non-exclusive, non-transferable license (without the right to sublicense) (i) to use the Beta Software in accordance with the Documentation solely for purposes of testing and evaluation, and (ii) to use the Documentation provided with the Beta Software in support of Licensee's authorized use of the Beta Software.

(b) Evaluation Feedback. The purpose of this limited license is the testing and evaluation of the Beta Software and Documentation. In furtherance of this purpose, Licensee shall provide feedback to Eyemaginations concerning the functionality and performance of the Beta Software from time to time as reasonably requested by Eyemaginations, including, without limitation, identifying potential errors and improvements. Such feedback will be in a manner convenient to Licensee and will be subject to reasonable availability of Licensee's personnel. Feedback and other information which is provided by Licensee to Eyemaginations in connection with the Beta Software or this Agreement may be used by Eyemaginations to improve or enhance its products and, accordingly, Eyemaginations shall have a non-exclusive, perpetual, irrevocable, royalty-

free, worldwide right and license to use, reproduce, disclose, sublicense, distribute, modify, and otherwise exploit such feedback and information without restriction, warning or announcement.

(c) Restrictions. Licensee shall not copy or use the Beta Software (including the Documentation) except as expressly permitted in this Agreement. The Beta Software is free to the Licensee during the term of this Agreement as outlined in Section 5, herein. Eyemaginations reserves the right to charge a fee for the Software at its sole discretion. Licensee will not, and will not permit any third party to, sublicense, rent, copy, modify, create derivative works of, translate, reverse engineer, decompile, disassemble, or otherwise reduce to human perceivable form any portion of the Beta Software or accompanying Documentation. In no event shall Licensee use the Beta Software for Licensee's product development or any other commercial purpose. The Beta Software and all performance data and test results, including without limitation, benchmark test results, user activity, usage patterns, and clicks (collectively "Performance Data"), relating to the Beta Software are the Confidential Information of Eyemaginations, and will be treated in accordance with the terms of Section 4 of this Agreement. Accordingly, Licensee shall not publish or disclose to any third party any Performance Data relating to the Beta Software.

(d) Ownership. Eyemaginations shall own and retain all right, title and interest in and to the Intellectual Property Rights in the Beta Software and any derivative works thereof, subject only to the limited license expressly set forth in Section 3(a) hereof. Licensee does not acquire any other rights, express or implied, in the Beta Software. ALL RIGHTS NOT EXPRESSLY GRANTED HEREUNDER ARE RESERVED TO EYEMAGINATIONS.

(e) No Support Services. Eyemaginations is under no obligation to support the Beta Software in any way or to provide any Updates to Licensee. In the event Eyemaginations, in its sole discretion, supplies any Update to Licensee, such Update shall be deemed Beta Software hereunder and shall be subject to the terms and conditions of this Agreement.

(f) Open Source Software. The terms and conditions of this Agreement shall not apply to any Open Source Software accompanying the Beta Software. Any such Open Source Software is provided under the terms of the open source license agreement or copyright notice accompanying such Open Source Software or in the open source licenses file accompanying the Beta Software.

5. PROVISION OF SERVICES BY EYEMAGINATIONS

(a) Eyemaginations is constantly innovating in order to provide the best possible experience for its users. You acknowledge and agree that the form and nature of the Beta Software which Eyemaginations provides may change from time to time without prior notice to you.

(b) As part of this continuing innovation, you acknowledge and agree that Eyemaginations may stop (permanently or temporarily) providing the Beta Software (or any features within the Beta Software) to you or to users generally at Eyemaginations' sole discretion, without prior notice to you. You may stop using the Beta Software at any time.

(c) You acknowledge and agree that if Eyemaginations disables access to your account, you may be prevented from accessing the Beta Software, your account details or any files or other content which is contained in your account.

6. TERM AND TERMINATION

Licensee's rights with respect to the Beta Software will terminate upon the earlier of (a) the initial commercial release by Eyemaginations of a generally available version of the Beta Software or (b) automatic expiration of the Beta Software based on the system date. Either party may terminate this Agreement at any time for any reason or no reason by providing the other party advance written notice thereof. Upon any expiration or termination of this Agreement, the rights and licenses granted to Licensee under this Agreement shall immediately terminate, and Licensee shall immediately cease using, and will return to Eyemaginations (or, at Eyemaginations' request, destroy), the Beta Software, Documentation, and all other tangible items in Licensee's possession or control that are proprietary to or contain Confidential Information. The rights and obligations of the parties set forth in Sections 4(b) 4(c), 4(d), 4(e), 4(f), 5, 6, 7, 8 and 9 shall survive termination or expiration of this Agreement for any reason.

7. CONFIDENTIALITY

"Confidential Information" shall mean all trade secrets, know-how, inventions, techniques, processes, algorithms, software programs, hardware, schematics, and software source documents relating to the Beta Software, and other information provided by Eyemaginations, whether disclosed orally, in writing, or by examination or inspection, other than information which Licensee can demonstrate (i) was already known to Licensee, other than under an obligation of confidentiality, at the time of disclosure; (ii) was generally available in the public domain at the time of disclosure to Licensee; (iii) became generally available in the public domain after disclosure other than through any act or omission of Licensee; (iv) was subsequently lawfully disclosed to Licensee by a third party without any obligation of confidentiality; or (v) was independently developed by Licensee without use of or reference to any information or materials disclosed by Eyemaginations or its suppliers. Confidential Information shall include without limitation the Beta Software, Documentation, Performance Data, and any Updates. Licensee shall not use any Confidential Information for any purpose other than as expressly authorized under this Agreement. In no event shall Licensee use the Beta Software or any Confidential Information to develop, manufacture, market, sell, or distribute any product or service. Licensee shall limit dissemination of Confidential Information to its employees who have a need to know such Confidential Information for purposes expressly authorized under this Agreement. In no event shall Licensee disclose any Confidential Information to any third party. Without limiting the foregoing, Licensee shall use at least the same degree of care that it uses to prevent the disclosure of its own confidential information of like importance, but in no event less than reasonable care, to prevent the disclosure of Confidential Information.

8. LIMITATION OF LIABILITY

IT IS UNDERSTOOD THAT THE BETA SOFTWARE IS PROVIDED WITHOUT CHARGE FOR LIMITED EVALUATION PURPOSES. ACCORDINGLY, THE TOTAL LIABILITY OF

EYEMAGINATIONS AND ITS SUPPLIERS ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED \$100. IN NO EVENT SHALL EYEMAGINATIONS OR ITS SUPPLIERS HAVE LIABILITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION), HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, EVEN IF EYEMAGINATIONS AND ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

9. WARRANTY DISCLAIMER

IT IS UNDERSTOOD THAT THE BETA SOFTWARE, DOCUMENTATION, AND ANY UPDATES MAY CONTAIN ERRORS AND ARE PROVIDED FOR LIMITED EVALUATION ONLY. THE BETA SOFTWARE, THE DOCUMENTATION, AND ANY UPDATES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. EYEMAGINATIONS AND ITS SUPPLIERS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. Licensee acknowledges that Eyemaginations has not publicly announced the availability of the Beta Software, that Eyemaginations has not promised or guaranteed to Licensee that such Beta Software will be announced or made available to anyone in the future, that Eyemaginations has no express or implied obligation to Licensee to announce or introduce the Beta Software, and that Eyemaginations may not introduce a product similar or compatible with the Beta Software. Accordingly, Licensee acknowledges that any research or development that it performs regarding the Beta Software or any product associated with the Beta Software is done entirely at Recipient's own risk. Specifically, the Beta Software may contain features, functionality or modules that will not be included in the production version of the Beta Software, if released, or that will be marketed separately for additional fees.

10. DATA COLLECTION AND STORAGE

Eyemaginations has the right to store and evaluate all Performance Data in connection with the use of the Beta Software.

11. MEDICAL DISCLAIMER

The contents of the Beta Software, such as narration, text, graphics, images, animations, and other material contained in the Beta Software ("Content") are for informational purposes only. The Content is not intended to be a substitute for professional medical advice, diagnosis, or treatment. Licensee agrees that all persons should be encouraged to seek the advice of a physician or other qualified health provider with any questions regarding a medical condition. Eyemaginations does not recommend or endorse any specific tests, physicians, products, procedures, opinions, or other information that may be mentioned in the Beta Software.

12. OTHER CONTENT

(a) The Beta Software may include hyperlinks to other web sites or content or resources. Eyemaginations may have no control over any web sites or resources which are provided by companies or persons other than Eyemaginations.

(b) You acknowledge and agree that Eyemaginations is not responsible for the availability of any such external sites or resources, and does not endorse any advertising, products or other materials on or available from such web sites or resources.

(c) You acknowledge and agree that Eyemaginations is not liable for any loss or damage which may be incurred by you as a result of the availability of those external sites or resources, or as a result of any reliance placed by you on the completeness, accuracy or existence of any advertising, products or other materials on, or available from, such web sites or resources.

13. OTHER PROVISIONS

(a) Governing Law. This Agreement, and all disputes arising out of or related thereto, shall be governed by and construed under the laws of the State of Maryland without reference to conflict of laws principles. All such disputes shall be subject to the exclusive jurisdiction of the state and federal courts located in Baltimore, Maryland, and the parties agree and submit to the personal and exclusive jurisdiction and venue of these courts.

(b) Assignment. Licensee shall not assign this Agreement or any rights or obligations hereunder, directly or indirectly, by operation of law, merger, acquisition of stock or assets, or otherwise, without the prior written consent of Eyemaginations. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

(c) Export Regulations. Licensee understands that Eyemaginations is subject to regulation by the U.S. government and its agencies, which prohibit export or diversion of certain technical products and information to certain countries and individuals. Licensee warrants that it will comply in all respects with all export and re-export restrictions applicable to the technology and documentation provided hereunder.

(d) Modification. This is the entire agreement between the parties relating to the subject matter hereof and all other terms are rejected. No waiver or modification of this Agreement shall be valid unless in writing signed by each party. The waiver of a breach of any term hereof shall in no way be construed as a waiver of any term or other breach hereof. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law the remaining provisions of this Agreement shall remain in full force and effect.

14. CONTACT INFORMATION

If you have any questions about this Software Beta Test Agreement, or if you want to contact Eyemaginations for any reason, please direct all correspondence to: Eyemaginations, Inc., 600

Washington Avenue, Suite 100, Baltimore MD 21204, United States of America or email prodman@eyemaginations.com.

Eyemaginations is a trademark of Eyemaginations, Inc.