



End User Licence Agreement

This End User Licence Agreement ("**this Agreement**") is a legal contract between you ("**you**" "**your**" or "**Licensee**") and Scram Software Pty Ltd ACN 168 670 460 of Level 3, 673 Bourke Street, Melbourne VIC 3000 ("**Scram**", "**Licensor**", "**we**" or "**us**") for the use of the Software known as SCRAMPHOTO ("**Software**").

Without limiting the ways in which you may be bound by this Agreement, by clicking "I accept the terms of this Licence Agreement" (or similar wording) or using a similar mechanism indicating your acceptance, by signing a document in which you expressly agree to be bound by this Agreement, by breaking the seal on Software packaging or installing, copying or otherwise using the Software, you will be deemed to have accepted and will be bound by the terms and conditions of this Agreement.

Scram may change this Agreement at any time without notice. The most current version of this Agreement will be published on www.scramphoto.com ("**Site**"). Use of the Software after a change has been made to the Agreement and after you have been made aware of the change will be deemed an acceptance of the change.

1. Licence Conditions

- 1.1 Subject to **clause 11**, the Licensor grants to the Licensee a non-exclusive, non-transferable, revocable licence to download, install, backup and use the Software including any documentation and files accompanying the Software ("**Material**") on the number of personal computers and mobile devices (as specified by the Licensor at the time of granting the Licence) which are owned, leased or otherwise controlled by the Licensee ("**Licensed System**").
- 1.2 The term of the Licence will be separately specified by the Licensor at the time the Licence is granted to the Licensee. The term of the License may, subject to **clause 11**, at the Licensor's discretion be:
 - (a) perpetual;
 - (b) limited to a specific period of time, which may or may not be capable of renewal ("**Subscription Licence**");
 - (c) limited to an evaluation term ("**Evaluation Licence**"); or
 - (d) limited to the beta testing period ("**Beta Testing Licence**")
- 1.3 If the Software is provided on a Subscription Licence basis, the Licence will continue for such time as the Licensee continues to pay all applicable licence fees to the Licensor, unless terminated earlier pursuant to **clause 11**.
- 1.4 The Licensee may only make reproductions of the Software for the purposes of back-up or archival purposes (in which case, only one copy of the Software may



be made), executing the Software for its intended purpose and installing the Software on the Licensed System. The Licensee shall keep any back-up or archival copies of the Software in a secure place under its control.

- 1.5 Apart from **clause 1.4** and except to the extent permissible under the *Copyright Act 1968 (Cth)*, the Licensee may not copy or reproduce the Software.
- 1.6 The Licensee may not sublicense, deliver, transfer or assign the Licence to any other person without the written permission of the Licensor.
- 1.7 Unless otherwise agreed to in writing by the Licensor, the Licensee may not install or use the Software on a server or on any computer or any mobile devices other than the Licensed System.

2. Licence Term

- 2.1 This Agreement is effective from the moment of acceptance as described in the second paragraph of this Agreement and shall remain in force until:
 - (a) expiry of the evaluation period in accordance with **clause 1.2(c)**;
 - (b) expiry of the beta testing period, in the case of beta versions of the Software in accordance with **clause 1.2(d)**;
 - (c) expiry of a valid subscription licence; or
 - (d) unless terminated as provided in **clauses 11.1 and 11.2**,whichever is the sooner.

3. Evaluation Licence & Beta Testing Licence

- 3.1 If the Software is provided on an Evaluation Licence or on a Beta Testing Licence basis, the Licence commences on the date that the Software is installed and expires:
 - (a) at the end of the evaluation period specified by the Licensor at the time of installation ("**Evaluation Term**"); or
 - (b) at the end of the beta testing period specified by the Licensor at the time of installation ("**Beta Testing Period**").
- 3.2 The Licensor may at its discretion, limit the functionality of the Software and/or restrict access to certain functionality of the Software during the Evaluation Term and/or the Beta Testing Period.
- 3.3 The Licensee may purchase a full licence of the Software and unlock its full functionality at any time by visiting www.scramphoto.com or via the purchase functionality contained in the Software. Upon expiry of the Evaluation Term and/or the Beta Testing Period, the Licensor may offer the Licensee the option to purchase



a full licence of the Software, subject to payment of all applicable fees specified by the Licensor.

- 3.4 This Licence terminates automatically without notice from the Licensor upon the expiration of the Evaluation Term or the Beta Testing Period, unless the Licensee elects to purchase a full licence of the Software pursuant to **clause 3.3**. Upon expiry or termination of the Evaluation Licence or the Beta Testing Licence, the Licensee must without limitation, comply with its obligations under **clauses 11.3 and 11.4**.

4. Restrictions

- 4.1 The Licensee may not publish, display, disclose, rent, lease, sell, re-sell, modify, loan or create derivative works based on the Software or any part thereof.
- 4.2 The Licensee may not reverse engineer, decompile, translate, adapt, vary, alter, change, modify or disassemble the Software or attempt to create the source code from the object code of the Software.
- 4.3 The Licensee may not reproduce, re-sell or exploit the Software for commercial purposes without the express permission of the Licensor.
- 4.4 Use of the Software within your commercial enterprise for internal purposes is expressly allowed provided that you have purchased a licence or subscription licence that allows for business, commercial or corporate use.
- 4.5 The Licences granted herein are only valid if:
- (a) the Software is not modified in any manner;
 - (b) all copyright and proprietary notices or labels in the Software are maintained in their original format;
 - (c) this Software is only installed and used in accordance with your Licence system;
 - (d) this Agreement is accepted without modification; and
 - (e) you have not breached the terms of this Agreement.
- 4.6 All rights not expressly granted herein are reserved to Licensor.

5. Upgrades and Support

- 5.1 Subject to the payment of applicable Software subscription, maintenance and support fees that are specified by the Licensor or its resellers from time to time, the Licensee may be entitled to updates, upgrades or new releases for the Software ("**Upgrades**") and to software maintenance and support, which may be provided by the Licensor or its resellers. The terms of any Software maintenance and support



and the Licensee's entitlement to Upgrades will be separately specified by the Licensor or its resellers to the Licensee at the time the Licence is granted. Apart from the forgoing, the Licensee has no entitlement to Software maintenance or support or to receive any Upgrades from the Licensor.

- 5.2 By installing, copying or otherwise using Upgrades, the Licensee agrees to be bound by any additional Licence terms that accompany such upgrades.
- 5.3 Upgrades are made in the Licensor's sole discretion and the Licensor is not obligated to provide Upgrades to you under any circumstances. Software incorporating the Licensor's internet base updating services may automatically check the version of the Software being used and may provide Upgrades automatically through the updating Service.
- 5.4 Scram reserves the right through Software to check for a valid subscription and may deny upgrades, disable Software or restrict functionality.

6. Risk

- 6.1 Please note the Software uses passwords and/or encryption keys to encrypt and secure information. The passwords and/or encryption keys are the Licensee's sole responsibility and the Licensor does not backup or store passwords and/or encryption keys. If you lose or forget your password, your data will be completely irretrievable. No technical support can be given to assist in recovering such passwords, and that by your forgetting of any passwords you create, to loss of your data. The Licensee accepts that no backdoor exists to gain access to scrambled (encrypted) data.
- 6.2 The Software may require registration or activation to be used properly. The Licensee agrees to provide accurate and complete information on all registration forms. Failure to complete the registration or activation may limit your ability to use the Software or may disable the Software from functioning.
- 6.3 Your functionality of the Software, if dependent on access to the Licensor's server or Site may occasionally be restricted to allow for repairs, maintenance or the introduction of new facilities. Access may also be offered by conditions beyond the control of the Licensor including but not limited to Acts of God. The Licensor will attempt to restore access as soon as it is reasonably able.

7. Conduct

- 7.1 The Software is solely for lawful use and purposes. You are responsible to ensure that your use of the Software is in accordance with this Agreement and other applicable laws, statutes, ordinances, regulations, rules and other government requirements.
- 7.2 You agree:
 - (a) not to provide any information that is inaccurate, false or misleading;



- (b) not to interfere or disrupt Licensor's networks;
- (c) to comply with all regulations, policies and procedures of the Licensor's networks;
- (d) not to use the Software to infringe any third party's copyright patent, trademarks, trade secrets or other proprietary rights or any third party's right of publicity or privacy;
- (e) not to post, distribute or otherwise make available or transmit any computer file that contains a virus, Trojan, adware, malware or other malicious code which are designed or likely to interrupt, damage, destroy any computer software or hardware or Licensor's networks;
- (f) not to attempt to gain unauthorised access to other computer systems;
- (g) not to carry out any "spam", "junk mail", "chain letters", "pyramid schemes" or other form of solicitation or commercial exploitation;
- (h) not to transmit any unlawful, libellous, abusive, violent, threatening, intimidating, harmful, offensive or other objectionable material of any kind or nature.

7.3 You may not download the Software from any jurisdiction where:

- (a) such use or access would be prohibited or restricted by law;
- (b) such use or access would be prohibited or restricted by export control laws of Australia; or
- (c) Scram prohibits or restricts use of, export to or re-export for use.

7.4 Any breach or suspected breach of this clause shall be a material breach incapable of remedy thereby entitling the Licensor to terminate this Agreement immediately.

7.5 In addition, the Licensee agrees to indemnify and hold the Licensor harmless from and against any claim, loss, liability or damage suffered or incurred by the Licensor relating from or relating to the Licensee's violation of this clause.

7.6 Breach of this clause may result in user information tracking to identify the offending user. Offending users may be permanently restricted from using the Software. If required by law, Scram may provide your information to law enforcement officials in the appropriate jurisdiction.

8. Limitation and Implied Terms

8.1 The Licensee acknowledges that the Licensor has made no warranties that the Software is error free or will operate on the Licensed System.



- 8.2 The Licensee acknowledges that the Licensor has not made and will not make any express or implied warranties in relation to the Software or any other goods or services provided by the Licensor under this Agreement, other than those warranties expressly contained in this Agreement. Subject to **clauses 8.5 or 8.6**, any term that would be implied into this Agreement, including without limitation any condition or warranty, is hereby excluded.
- 8.3 Subject to **clauses 8.4, 8.5 or 8.6**, the Licensee agrees that the Licensor will not be liable in respect of any claim by the Licensee (whether contractual, tortious, statutory or otherwise) for any direct, special, incidental, indirect or consequential damages or injury including, but not limited to, any loss of profits, contracts, revenue or data arising out of or in connection with the provision of the Software or the provision of any other goods or services under this Agreement or any restricted or inability to access Scram's server and whether as a result of any breach or default, by the Licensor.
- 8.4 The maximum liability of the Licensor under this Agreement for any and all breaches of this Agreement, and for any negligence in relation to this Agreement, will not exceed the lesser of:
- (a) the purchase price paid for the Software by the Licensee; or
 - (b) AUD \$1.00.
- 8.5 Any of the terms and conditions of this Agreement which limit or exclude any term, condition or warranty, express or implied, or the liability of the Licensor will apply to the extent permitted by law and will not be construed as excluding, qualifying or limiting the Licensee's statutory rights or remedies arising by virtue of the breach of any implied term of this Agreement where such exclusion, qualification or limitation would be prohibited by legislation.
- 8.6 The Licensee indemnifies the Licensor, its agents, officers and employees against any loss, cost, expense or damage (including legal costs on a full indemnity basis) which is suffered or incurred by the Licensor, its agents, officers or employees as a direct or indirect result of:
- (a) any breach of this Agreement by the Licensee; or
 - (b) any action, claim, demand or proceedings instituted against the Licensor as a result of the use of the Software by the Licensee.

9. Intellectual Property and Disassembly

- 9.1 The Licensor retains ownership of the Software and Material and all rights in copyright, moral rights, inventions (including patents), trademarks, designs, circuit layouts (whether or not registered or registrable) which subsist in the Software and Material at all times. Apart from the Licence granted herein, all such rights are reserved by the Licensor.
- 9.2 The Licensee agrees that it will use the same degree of effort that it uses to protect its own proprietary information to maintain possession and confidentiality of the



Software and Material, and to protect the copyrights, and all related technical information, data and materials supplied to the Licensee by the Licensor.

10. Compliance with Third Party Licences

- 10.1 The Software incorporates components licensed to the Licensor by third parties, which may be subject to their own End User Licence Agreements ("**Third Party Licences**").
- 10.2 The Licensee agrees that the use of the Software, in addition to this Agreement, will be governed by any terms and conditions specified by any Third Party Licence that applies to the Software, including but not limited to those appended to this Agreement.
- 10.3 The Licensee agrees to be bound by and observe all terms and conditions of any Third Party Licence and acknowledges that any breach of a Third Party Licence will entitle the Licensor to terminate the Licence and exercise its rights under **clause 11**.

11. Termination

- 11.1 This Agreement may be terminated by the Licensee by written notice to the Licensor and by the Licensee returning all copies of the Software and documentation.
- 11.2 This Agreement and the Licensee's rights under this Agreement may be terminated at any time by the Licensor on the provision of written notice to the Licensee if:
 - (a) the Licensee is in breach of this Agreement or a Third Party Licence (as that term is defined in **clause 10.1**);
 - (b) the Licensee becomes insolvent, bankrupt, is wound up, or has an administrator, liquidator or receiver appointed over it or its assets;
 - (c) the Licensee's usage of the Software results in, or is the subject of legal action or threatened legal action against Scram or any of its related parties, without consideration for whether such legal action or threatened legal action is eventually determined to be with or without merit;
 - (d) the Licensor is compelled by law; or
 - (e) another agreement between the Licensee and the Licensor permits the Licensor to terminate this Agreement.
- 11.3 Upon the termination of this Agreement:
 - (a) the Licensee will cease using the Software and will immediately uninstall and delete the Software from the Licensed System;



- (b) the Licensee will delete or destroy, or where specified by the Licensor, return to the Licensor, any Material supplied by the Licensor and any back- up or archival copies of the Software or Materials;
- (c) any licence keys for Software licensed to the Licensee will be immediately deactivated and destroyed by the Licensor; and
- (d) nothing herein shall be construed to release either party from any obligation that arose prior to the effective date of such termination.

11.4 **Clauses 7.5 and 8.6** of this Agreement will survive the termination of this Agreement.

12. Privacy

- 12.1 The use of personal information by the Licensor is governed by the Licensor's privacy policy ("**Privacy Policy**") which is available at www.scramphoto.com. You should review the Privacy Policy to ensure that you are aware of how the Licensor uses information.
- 12.2 The Licensor may update its Privacy Policy from time to time with the most current version located on the Licensor's Site.
- 12.3 The Licensor may provide direct marketing for products made or endorsed by Scram Software as well as disclosing personal information to other entities including such designated payment processor or its advisers as well as any person including any regulatory authority where compelled to do so by a court order, exercise of a statutory power or otherwise where compelled by law (but only as required to comply in such order or law) under the Australian Privacy Principles and as set out in the Privacy Policy.

13. Miscellaneous

- 13.1 In the interpretation of this Agreement, unless the contrary intention appears:
 - (a) a reference to this Agreement means a reference to an agreement between the Licensor and the Licensee on the terms and conditions of this document and includes an amendment or supplement to, or replacement or novation of this Agreement;
 - (b) a reference to a person includes a reference to a corporation, firm, association or other entity, and vice versa;
 - (c) the singular includes the plural and vice versa;
 - (d) a reference to any gender includes a reference to all other genders;



- (e) a reference to any legislation or to any provision of any legislation includes a reference to any modification or re-enactment of or any provisions substituted for such legislation or provisions;
 - (f) an agreement, representation or warranty made by two or more persons is made by them jointly and by each of them severally;
 - (g) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and
 - (h) headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- 13.2 Unless otherwise requested in writing by the Licensee, the Licensor may use the Licensee's corporate identity (if applicable) as part of promoting the Software in the market place.
- 13.3 This Agreement supersedes all prior representations, arrangements, understandings and agreements between the parties relating to the subject matter of this Agreement and sets forth the entire and exclusive agreement and understanding between the parties relating to the subject matter of this Agreement.
- 13.4 A provision of or a right created under this Agreement may not be waived except in writing signed by the party or parties to be bound by the waiver. No single or partial exercise by any party of any right, power or remedy under this Agreement will preclude any other or further exercise of that or any other right, power or remedy. The rights, powers or remedies provided in this Agreement are cumulative with and not exclusive of any rights, powers or remedies provided independently of this Agreement.
- 13.5 If any provision of this Agreement is judged invalid or unenforceable for any reason whatsoever by a court of competent jurisdiction, such invalidity or unenforceability (unless deletion of such provision would materially adversely affect one of the parties) will not affect the operation or interpretation of any other provision of this Agreement to the intent that the invalid or unenforceable provision will be treated as severed from this Agreement.
- 13.6 The Licensor may assign, novate or otherwise transfer its rights and obligations that arise under this Agreement. The Licensee may not assign its rights or obligations that arise under this Agreement without the prior written consent of the Licensor (which may be withheld).
- 13.7 Each provision of this Agreement capable of having effect after termination and each representation and warranty made in this Agreement will survive the execution, delivery and termination of this Agreement and the performance of all obligations under this Agreement and will not merge on termination.
- 13.8 The parties acknowledge and agree that no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or part of it.



13.9 This Agreement is governed by, and must be construed in accordance with, the laws of the State of Victoria Australia and the parties irrevocably submit to the exclusive jurisdiction of the courts of the State of Victoria, Australia.