



END USER LICENSE AGREEMENT

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4. LICENSEE RESPONSIBILITIES.

4.1. Record-Keeping. During the Term and for three years following the Term, Licensee shall maintain complete and accurate records with respect to Licensee’s access to and use of the Product. Vexcel has the right, during normal business hours and upon at least five-business-day notice, to have a reputable independent accounting firm selected by Vexcel, which is subject to reasonable confidentiality obligations, audit Licensee’s records relating to Licensee’s use of the Product to verify that Licensee has complied with the terms and conditions of this Agreement. Vexcel shall fund the audit, but if the audit reveals that Licensee failed to comply with this Agreement, then Licensee shall reimburse Vexcel for the reasonable costs of such audit. Licensee shall promptly correct any compliance deficiencies identified by the audit and pay Vexcel any amounts shown by any such audit to be owing, plus 1.5% monthly interest.

4.2. Compliance with Laws. Licensee shall comply with all applicable laws and regulations in performing its obligations under this Agreement, including all applicable employment, tax, data-privacy, export control, and environmental laws and regulations. Licensee shall not export, re-export, sell, resell or transfer any third-party data or any export-controlled commodity, technical data or software (a) in violation of any law, regulation, order, policy or other limitation imposed by the United States (including the United States Export Administration regulations) or any other government authority with jurisdiction; (b) to any country in violation of any applicable embargo; or (c) to any country for which an export license or other governmental approval is required at the time of export, without first obtaining all necessary licenses or equivalent. Without limiting the foregoing, Licensee shall comply with the United States Foreign Corrupt Practices Act and any anti-bribery or similar law or regulation in any jurisdiction where business is conducted or services performed in connection with this Agreement.

5. **CONFIDENTIALITY.** Licensee shall not disclose any Confidential Information to any third party without Vexcel’s prior written consent and shall limit access to Confidential Information to those of Licensee’s personnel and contractors who require access to Confidential Information for purposes consistent with the terms of this Agreement, and in the case of contractors, who have signed confidentiality agreements with Licensee containing obligations no less stringent than those set forth in this Agreement. Licensee shall use the same degree of care to protect the Confidential Information that Licensee uses to protect the confidentiality of its own like confidential information, but in any event not less than reasonable care.

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8. LIMITATION OF LIABILITY. In no event will Vexcel or its licensors be liable for any consequential, special, indirect, incidental, exemplary, or punitive damages, whether or not foreseeable and whether or not Vexcel has been advised of the possibility of the damages. In no event will the total liability of Vexcel and its licensors arising out of or in connection with the Product exceed \$1,000. The foregoing limitations apply to all causes of action in the aggregate, to the extent permitted by applicable law.

9. TERMINATION. If Licensee breaches this Agreement, Vexcel may immediately terminate the License. Upon termination of this Agreement, Licensee must (a) discontinue all use of the Product; and (b) permanently delete the Product from all storage, devices, and systems; and (c) deliver to Vexcel an officer’s certificate certifying compliance with this section at 12503 E Euclid Drive, Suite 20, Englewood, CO 80111, Attention: Legal Department. The termination of this Agreement does not relieve either Party of any obligations that have accrued on or before the effective date of termination.

10. INJUNCTIVE RELIEF; LIQUIDATED DAMAGES.

10.1. Injunctive Relief. Any material breach of this Agreement by Licensee may cause irreparable injury and monetary damages may not be a sufficient remedy. Vexcel is entitled to equitable relief, including injunctive relief and specific performance, in the event of a breach, and Licensee waives the defense that there is an adequate remedy at law. The above will not be construed to limit the remedies available to Vexcel.

10.2. **Liquidated Damages.** Vexcel may recover, at Vexcel's election, either (a) damages that arise from Licensee's breach of this Agreement; or (b) in the event of a breach of the License only, liquidated damages as contemplated by the statutory damages provision of the Copyright Act, 17 U.S. Code §504(c). For purposes of determining breach of the License and the calculation of liquidated damages, an image is infringed when it is improperly downloaded, improperly distributed, or used in the preparation of derivative works after being improperly downloaded. This liquidated-damages provision applies whether or not Vexcel has filed for a copyright registration in connection with such image. Licensee shall reimburse Vexcel for its reasonable attorneys' fees and expenses and for investigation fees incurred by Vexcel in enforcing its rights under this Agreement. The Parties acknowledge that this calculation of damages is reasonable as proportionate to the potential losses arising from the unauthorized use of the Product in light of the proprietary intellectual property that Vexcel has developed to maintain a competitive business advantage and the complexity of determining the monetary harm caused by misappropriation of that intellectual property through a License breach.

11. GENERAL TERMS. This Agreement constitutes the entire agreement between the Parties with respect to access to and use of the Product and supersedes all previous and contemporaneous agreements, understandings, and arrangements, whether oral or written. The waiver of a breach of any provision of this Agreement shall not be interpreted as a waiver of any other or subsequent breach. This Agreement shall not be construed to establish any form of partnership, agency, or other joint venture between Vexcel and Licensee. If the performance of any obligation under this Agreement is prevented, restricted, or interfered with by reason of tornado, hurricane, storm, fire, flood, earthquake, explosion, pandemic, or other casualty or accident or act of God; strikes or labor disputes; inability to procure or obtain delivery of parts, supplies, power, telecommunication services, equipment, or software from suppliers, war or other violence; any law, order proclamation, regulation, ordinance, demand, or requirement of any governmental authority; or any other act or condition whatsoever beyond the reasonable control of the affected Party, the Party so affected will be excused from such performance to the extent of such prevention, restriction, or interference; *provided*, however, that the Party so affected shall take reasonable steps to avoid or remove such cause of non-performance and shall resume performance hereunder whenever such causes are removed. If Vexcel must seek the services of an attorney to enforce the provisions of this Agreement, Licensee shall pay all reasonable attorneys' fees, costs, and damages incurred by Vexcel, whether such attorneys' fees, costs, and damages are incurred in or out of court. Any disputes arising out of this Agreement shall be governed by the laws of the State of Colorado, without giving effect to its conflict of law rules. Each Party consents to the exclusive jurisdiction and venue of the state and federal courts located in Denver, Colorado. Licensee may not assign (by operation of law or otherwise), rent, sell, sublicense, sub-contract or otherwise transfer this Agreement or any portion thereof to any other person, firm, or entity without Vexcel's written consent. Any attempted assignment or transfer in violation of this section will be null and void. Vexcel may freely assign or otherwise transfer this Agreement. This Agreement will be binding upon Licensee and Vexcel and inure to the benefit of Licensee and Vexcel and their respective successors and permitted assigns. The headings or captions used in this Agreement are for reference purposes only and are not intended to be used or relied upon in interpreting or enforcing this Agreement. To the extent that any portion of this Agreement is deemed to be unenforceable, such portion shall be severed and deleted or limited to give effect to the intent of the Parties to the extent possible, and the remainder of this Agreement shall remain binding upon the Parties.