2016-2017

End User

License Agreement

***End User Software License Agreement***

**1. Scope**

This End User License Agreement (the "**EULA**") is entered into by and between Winhgroup JAFZA (Jabal Ali Free Zone Authority), a company incorporated pursuant to the laws of Dubai, United Arab Emirates, having its principal place of business located at Unit No. Almas-01-31, Almas Tower, Plot No: JLT- PH1-A0, (hereinafter referred to as “**Fotopia**”, and also “**us**”, “**we**”, “**ours**” and “**ourselves**”), and, you, an end-user of our software solution suite (also referred to as the “**Customer**”, and also “**you**”, “**your(s)**” or “**yourself**”). By clicking the "I Accept" button or otherwise accepting this EULA through a purchase order or similar document, or by installing, using or otherwise executing the Software, you hereby acknowledge, agree and accept the terms and conditions of this EULA. If you do not agree to the terms and conditions of this EULA, please do not implement, access or otherwise stop using the Software.

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“**Affiliates**” means mean any person, corporation, partnership or entity that, directly or indirectly, through one or more intermediaries, controls a party under this Agreement, that is, the ownership of 50% or more of the equity, shares, memberships or interest with controlling rights into such party.

“**Confidential Information**” means any information, including without limitation, any business, marketing, technical, scientific or other information disclosed by either party and relating to such party’s operations, products, designs, development, customers, business, finances, research, know-how or trade secrets, and which is either designated as confidential or which ought reasonably to be treated as confidential information of the party disclosing it. Confidential Information shall include, without limitation, any financial, operational, managerial, technical, marketing and commercial information relating to current or planned software products, of the disclosing party. Confidential Information includes not only written information but also information in the cloud, in digital form, in portable drives, orally, visually, electronically, or by other means and any copies thereof.

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Updates. Support for paid versions of Software shall be provided for a specific term to be indicted by Fotopia from time to time. In the case of demo/testing/free trial version of the Software, support shall automatically terminate on expiration of the then current trial license term. Customer’s right to receive further patches, updates, fixes, and release notes for the paid versions of Software shall begin on the date the new license term commences, and not on the calendar anniversary date of the original payment date of license.

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For purposes of this Section, “**Objectionable Content**" means, but is not limited to: (a) sexually explicit materials; (b) obscene, defamatory, libelous, slanderous, violent and/or unlawful content or profanity; (c) content that infringes upon the rights of any third party, including copyright, trademark, privacy, publicity or other personal or proprietary right, or that is deceptive or fraudulent; (d) content that promotes the use or sale of illegal or regulated substances, tobacco products, ammunition and/or firearms; and (e) gambling, including without limitation, any online casino, sports books, bingo or poker; (iv) remove or modify any copyright, trademark or other proprietary rights notice that appears on any portion of the Software or on any materials copied from the Software; and (v) engages in an activity that is harmful to the Fotopia, its users, advertisers, subsidiaries, affiliates or anyone else.

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You hereby acknowledge and agree that the Software has not been completely tested in all situations or devices, and that the Software may contain operational malfunctions, errors, viruses, bugs, worms, trojan horses, bots and other harmful and destructive components or defects. Henceforth, during the Term of this EULA, Fotopia guarantees to you that the Software shall perform in all material respects according to Fotopia’s specifications. Your sole remedy for Fotopia’s breach thereof shall be that Fotopia shall correct the Software according to the terms of this Limited Warranty of Functionality.

This limited warranty not apply in the event that the Software or any part thereof is: (i) modified in any manner by any party other than Fotopia or as authorized thereby; (ii) used in conjunction with yours or third parties’ software and/or products resulting in a defect or non-conformance other than as specified by Fotopia; or (iii) used on an operating environment not approved by Fotopia.

Under no circumstances shall Fotopia incur any responsibility or liability for breaches of warranty caused by your onsite power, telecommunications, internet-connectivity or performance of cloud services provider or other environmental causes.

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Neither party shall disclose any Confidential Information to any third party except to its employees, attorneys, tax or accounting professionals who have a legitimate need to know and who have agreed to be bound by the provisions of a confidentiality agreement at least as stringent as the ones herein. Each party shall further protect the Confidential Information to the same extent as it protects its own information of a similar type.

Confidential Information shall not include, information that: (i) is in the public domain at the time of disclosure; (ii) becomes publicly available through no fault of the recipient party and without breach of this EULA, (iii) is already in the lawful possession of a party without restriction prior to disclosure; (iv) becomes rightfully known to a party without restriction from a source other than the disclosing party; or that (v) is required to be disclosed by virtue of an order of a competent court or a legal requirement; shall not be deemed Confidential Information.

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Security, backup. You are responsible for properly configuring and using the Software and taking your own steps to maintain appropriate security, protection and backup of your Content.

End-User Violations. You acknowledge and agree that you are responsible for your Content and use of the Software’s functionalities. You will ensure that all of your users shall comply with your obligations under this EULA. If you become aware of any violation of your obligations under this EULA Agreement by third party, you will immediately terminate such third party’s access to the Software.

Minors. You hereby acknowledge that you are at least eighteen (18) years of age, or older, as of the date of first access to the Software, and that you will not use the Software to collect any personally identifying information of persons under the age of thirteen (13).

Binding Agreement. This EULA shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors. This EULA supersedes all prior agreements arrangements and understandings between the parties hereto and constitutes the entire agreement between the parties relating to the subject matter hereof.

Severability. In the event that any provision hereof or part thereof is found invalid or unenforceable, the remainder of this EULA shall remain valid and in force. Without limiting the foregoing, it is expressly understood and agreed that in the event any remedy hereunder is determined to have failed of its essential purpose, all limitations of liability and exclusion of damages set forth herein shall remain in full force and effect.

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No Waiver. Fotopia’s failure to exercise or enforce any right or provision of this EULA shall not constitute a waiver of such right or provision.

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Amendment. This EULA may not be modified unless agreed to in writing by both parties.

Export control. Your hereby agree not to use the Software if you or your users are barred from installing or using it under any of export control law, or if you or your users are located in a jurisdiction that is subject to United States of America sanctions regulations, which currently includes Cuba, Iran, North Korea, Sudan and Syria and which are subject to change as posted by the United States government.

Waiver of Class Actions, Non-Individualized Relief. You acknowledge and accept that claims brought against Fotopia shall be only on an individual basis and not as a plaintiff or class member in any possible future class or representative action or similar proceeding. Unless otherwise agreed by you and Fotopia, you may not adjoin or consolidate any claim with more than one person's; and you may not otherwise supervise or take over any form of a class, representative or consolidated proceeding.

Waiver of Jury Trial. The parties herein waive their constitutional and statutory rights to go to court and have a trial in front of a judge or a jury, instead electing that all claims and disputes be resolved by a competent judge.

Mediation. In the event of any dispute arising out of or in connection with the present Agreement, the parties agree in the first instance to discuss and consider referring the dispute to non-binding mediation under the International Chamber of Commerce Mediation Rules. The language of the mediation shall be the English language.

Forum. The parties hereby consent and submit to the exclusive jurisdiction of the competent courts located at the City of Dubai, United Arab Emirates, which shall have exclusive jurisdiction to hear all disputes arising in connection with this Agreement and no other courts shall have any jurisdiction whatsoever in respect of such disputes.

Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the United Arab Emirates, without giving effect to the principles thereof relating to conflict of laws. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

