



Topaz Labs End User License Agreement

This End User License Agreement (“**EULA**”) is a binding agreement between you (referred to herein as “**Customer**”, “**End User**”, “**You**” or “**Your**”) and Topaz Labs LLC (“**Topaz**”) and governs Your use of the products set forth at <https://www.topazlabs.com/>, including, but not limited to, Photo AI, Video AI, and Gigapixel (collectively, the “**Software**”).

TOPAZ PROVIDES THE SOFTWARE SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS EULA AND ON THE CONDITION THAT YOU ACCEPT AND COMPLY WITH THEM. BY USING THE SOFTWARE YOU (A) ACCEPT THIS EULA AND AGREE THAT YOU ARE LEGALLY BOUND BY ITS TERMS; AND (B) REPRESENT AND WARRANT THAT: (I) YOU ARE OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT; AND (II) IF YOU ARE AN INDIVIDUAL ACTING ON BEHALF OF A CORPORATION, GOVERNMENTAL ORGANIZATION, OR OTHER LEGAL ENTITY, YOU HAVE THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS EULA ON BEHALF OF SUCH ENTITY AND TO BIND SUCH ENTITY TO ITS TERMS. IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, TOPAZ WILL NOT AND DOES NOT LICENSE THE SOFTWARE TO YOU AND YOU MUST NOT DOWNLOAD OR INSTALL THE SOFTWARE.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS EULA OR YOUR ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS EULA, NO LICENSE IS GRANTED (WHETHER EXPRESSLY, BY IMPLICATION, OR OTHERWISE) UNDER THIS EULA, AND THIS EULA EXPRESSLY EXCLUDES ANY RIGHT, CONCERNING ANY SOFTWARE THAT YOU DID NOT ACQUIRE LAWFULLY OR THAT IS NOT A LEGITIMATE, AUTHORIZED COPY OF THE SOFTWARE.

PLEASE NOTE THAT THIS EULA CONTAINS **INDEMNIFICATION, DISPUTE RESOLUTION (INCLUDING ARBITRATION AND CLASS WAIVER REQUIREMENTS FOR CERTAIN USERS), DISCLAIMER OF WARRANTIES, AND LIMITATION OF LIABILITY SECTIONS** THAT AFFECT YOUR RIGHTS, INCLUDING YOUR ABILITY TO BRING LEGAL CLAIMS AGAINST TOPAZ. Please read this EULA and any other terms referenced in this EULA carefully.

1. **PRIVACY.** How Topaz collects, uses, and discloses information, including personal information, that You provide to us is described in our Privacy Policy found at: <https://topazlabs.com/privacy>
2. **LICENSE GRANT.**
 - 2.1. **Personal License to the Software.** Subject to and conditioned upon Your payment of the Fees (as defined below) and Your compliance with the terms and conditions set forth in this EULA, Topaz hereby grants You a non-exclusive, non-sublicensable, non-transferable, license during the Term (as defined below) to download, install, use, and run the Software in accordance with this EULA, solely for the Purpose. If You have a Gigapixel Personal License, You are prohibited from using the Gigapixel Command Line Interface (“**CLI**”) to access the software.
 - 2.2. **Purpose.** The permitted purpose for which You may use and run the Software depends on whether You purchased a Personal License or a Professional License, as each are described below (the “**Purpose**”):
 - 2.2.1. Personal License. A “**Personal License**” means that You can use the Software for Your personal purposes only. The Software may not be used under a Personal License for Limited Commercial Use by full-time or part-time employees of organizations whose consolidated annual revenue exceeds \$1 million (USD

\$1,000,000) (“**Professional Organizations**”). “**Limited Commercial Use**” includes generation and distribution of content for game or media assets, paid distribution on video platforms or stock photo platforms, advertising, publication, or printed media. Professional Organizations and its employees are required to purchase a Professional License to the Software as set forth below. Independent contractors who are employed by Professional Organizations for part-time work for periods of six (6) months or less (“**Freelance Contractors**”) may use a Personal License for authorized Purposes including Limited Commercial Use. A Personal License grants You the right to install and use the Software on no more than two (2) computers for as many licenses as You purchase. Personal Licenses are only valid for a single user and may not be shared between individuals. At all times, Topaz may monitor Your use of the Software. If Topaz, in its sole discretion, determines that Your use of the Software exceeds the permitted use under the Personal License then You shall, within 30 days following the date of such determination by Topaz, obtain and pay for the Professional License, unless You can demonstrate otherwise by documentary evidence. If You fail to timely pay such amounts, Your right to use the Software is immediately terminated and Topaz may take all actions necessary against You to suspend Your account and to recover all amounts due to Topaz.

2.2.1.1. *Additional Information for Personal Licenses.* This Section provides additional information for users with Personal Licenses.

2.2.1.1.1. Command Line Interface. If You have a Video AI Personal License, You may use the Video AI Command Line Interface (“**CLI**”) to access the software.

2.2.2. *Professional License to the Software.* A “**Professional License**” means that You can use the Software for any lawful purpose, including Limited Commercial Use, but Your download and installation of the Software is limited to one (1) computer for as many licenses as You purchase. Professional Licenses to the Software may also come with certain additional features.

2.2.2.1. *Additional Information for Professional Licenses.* This Section provides additional information for users with Professional Licenses.

2.2.2.1.1. Seat Management. If You hold a Professional License to the Software, You have the ability to determine how many persons the Software may be assigned to. You may do this by accessing the online admin and account management portal.

2.2.2.1.2. Offline Authorization. If You hold a Professional License to the Software, You may access the Software offline; provided, however, You must access the Software online at least one (1) time every twelve (12) months for re-authentication.

2.2.2.1.3. Command Line Interface. If You have a Gigapixel Teams, Video AI, or Photo AI Professional License, You may use the applicable CLI to access the software.

2.3. **Updates.** During the Initial Term, You will have access to any update to the Software offered by Topaz.

3. **THIRD PARTY MATERIALS.** The Software may include software, content, data, or other materials, including related documentation, that are owned by persons other than Topaz (“**Third-Party Components**”) and that are provided to You on terms that are in addition to and/or different from

those contained in this EULA ("**Third-Party Licenses**"). A list of all materials, if any, included in the Software and provided under Third-Party Licenses can be found in Schedule A to this EULA, and the applicable Third-Party Licenses are accessible via links therefrom. You are bound by and shall comply with all Third-Party Licenses. Any breach by You of any Third-Party License is also a breach of this EULA. TOPAZ IS NOT RESPONSIBLE FOR THE THIRD-PARTY COMPONENTS AND EXPRESSLY DISCLAIMS ANY AND ALL LIABILITY, INCLUDING ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE THIRD-PARTY COMPONENTS, AND YOU HEREBY WAIVE AND AGREE NOT TO BRING ANY CLAIM AGAINST TOPAZ PERTAINING TO THE THIRD-PARTY COMPONENTS.

4. **USE RESTRICTIONS.** You shall not, and You shall not permit any third party to, directly or indirectly, (a) use the Software beyond the scope of the license granted under Section 2; (b) provide any other person, including any subcontractor, independent contractor, affiliate, or service provider, with access to or use of the Software; provided, however, You may provide Freelance Contractors with access to or use of the Software; (c) modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the Software or any part thereof; (d) combine the Software or any part thereof with, or incorporate the Software or any part thereof in, any other programs; (e) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Software or any part thereof; (f) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices provided on or with the Software, including any copy thereof; (g) copy the Software, in whole or in part; (h) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software, or any features or functionality of the Software, to any third party for any reason, whether or not over a network or on a hosted basis, including in connection with the internet or any web hosting, wide area network (WAN), virtual private network (VPN), virtualization, time-sharing, service bureau, software as a service, cloud, or other technology or service; (i) use the Software in violation of any law, regulation, or rule; (j) use the Software for purposes of competitive analysis of the Software, the development of a competing software product or service, or any other purpose that is to Topaz's commercial disadvantage; or (k) You may not use the output generated by the Software (the "**Output**") to train, retrain, or improve Your artificial intelligence technologies (including generative artificial intelligence technologies) or machine learning technologies.
5. **RESPONSIBILITY FOR USE OF THE SOFTWARE.** You are responsible and liable for all uses of the Software through access thereto provided by You, directly or indirectly. Specifically, and without limiting the generality of the foregoing, You are responsible and liable for all actions and failures to take required actions with respect to the Software by any other person to whom You may provide access to or use of the Software, whether such access or use is permitted by or in violation of this EULA.
6. **INTELLECTUAL PROPERTY RIGHTS.** You acknowledge and agree that the Software is provided under license, and not sold, to You. You do not acquire any ownership interest in the Software or any other intellectual property or confidential information of Topaz, including, but not limited to, trademarks, trade secrets, and copyright (collectively, "**Topaz Property**"), under this EULA, or any other rights thereto, other than to use the same in accordance with the license granted and subject to all terms, conditions, and restrictions under this EULA. Topaz reserves and shall retain its entire right, title, and interest in and to the Topaz Property and any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world (collectively, "**Intellectual Property Rights**") arising out of or relating to the Topaz Property, except as expressly granted to You in this EULA. You shall use commercially reasonable efforts to safeguard all Topaz Property (including all copies thereof) from infringement, misappropriation, theft, misuse, or unauthorized access. You shall promptly notify Topaz if You become aware of any infringement of Topaz's Intellectual Property Rights in the Topaz Property and fully cooperate with Topaz in any legal action taken by Topaz to enforce its Intellectual Property Rights. Any feedback or suggestions (collectively, "**Feedback**") You

provide Topaz may be used by Topaz for any purpose. By providing Feedback to Topaz, You irrevocably transfer and assign to Topaz, and forever waive, and agree never to assert, any copyrights or other rights that You may have in such Feedback. Topaz is free to use, without obligation of any kind, any Feedback for any purpose whatsoever. You understand and agree that if Topaz makes use of You Feedback, Topaz is not required to credit or compensate You. You represent and warrant that You have sufficient rights in any Feedback that You provide to Topaz and grant Topaz the rights described above.

7. **DISCLAIMER OF WARRANTIES.** THE SOFTWARE IS PROVIDED TO YOU "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, TOPAZ, ON ITS OWN BEHALF AND ON BEHALF OF ITS LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE SOFTWARE, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, TOPAZ PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE SOFTWARE WILL MEET YOUR REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE, OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS, OR SERVICES, OPERATE WITHOUT INTERRUPTION OR OTHERWISE BE READILY AVAILABLE, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE, OR VIRUS-FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.
8. **LIMITATION OF LIABILITY.** TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL TOPAZ OR ANY OF ITS LICENSORS OR SERVICE PROVIDERS, BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY USE, INTERRUPTION, DELAY, OR INABILITY TO USE THE SOFTWARE; LOST REVENUES OR PROFITS; DELAYS, INTERRUPTION, OR LOSS OF SERVICES, BUSINESS, OR GOODWILL; LOSS OR CORRUPTION OF DATA; LOSS RESULTING FROM SYSTEM OR SYSTEM SERVICE FAILURE, MALFUNCTION, OR SHUTDOWN; FAILURE TO ACCURATELY TRANSFER, READ, OR TRANSMIT INFORMATION; FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION; SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION; OR BREACHES IN SYSTEM SECURITY; OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF OR IN CONNECTION WITH THIS EULA, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT YOU WERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL TOPAZ'S, INCLUDING ANY OF ITS LICENSORS' AND SERVICE PROVIDERS', COLLECTIVE AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS EULA OR ITS SUBJECT MATTER, INCLUDING THE SOFTWARE, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, EXCEED THE TOTAL AMOUNT ACTUALLY PAID TO TOPAZ PURSUANT TO THIS EULA FOR THE SOFTWARE THAT IS THE SUBJECT OF THE CLAIM DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FACTS THAT GAVE RISE TO SUCH CLAIM. THE LIMITATIONS SET FORTH IN THIS SECTION SHALL APPLY EVEN IF YOUR REMEDIES UNDER THIS EULA FAIL OF THEIR ESSENTIAL PURPOSE.
9. **INDEMNIFICATION.** To the fullest extent permitted by applicable law, You agree to indemnify, defend and hold harmless Topaz, and its respective past, present and future employees, officers, directors, contractors, consultants, equity holders, suppliers, vendors, service providers, parent companies, subsidiaries, affiliates, agents, representatives, predecessors, successors and assigns (individually and collectively, the "**Topaz Parties**"), from and against all actual or alleged claims, proceedings, hearings, actions, damages, awards, judgments, losses, and liabilities of every kind and nature whatsoever that are caused by, arise out of or are related to (a) Your use or misuse of the Software, (b) Your violation of this EULA, and/or (c) Your violation of any right(s) of any third party. You agree to

promptly notify Topaz of any claim(s) and shall cooperate fully with the Topaz Parties in resolving such claims. You further agree that the Topaz Parties may elect, without affecting its right to indemnification from You, to assert sole control of the defense or settlement of such third-party claims.

10. **FEES AND PAYMENT.** Prior to accessing the Software, You shall pay Topaz all fees required to be paid by You for the license granted under this EULA ("**Fees**"). All Fees are exclusive of taxes and similar assessments. You are responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by You hereunder, other than any taxes imposed on Topaz's income. You shall make all payments hereunder in US dollars. If Your payment has been rejected or if You have yet to pay the Fees but have still downloaded the Software, You agree to pay the Fees immediately. Topaz reserves the right to offer select payment terms at its own discretion as agreed upon in writing.

If You fail to pay the Fees prior to accessing the Software, in addition to all other remedies that may be available to Topaz: (a) Topaz may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable Law; (b) You shall reimburse Topaz for all costs incurred by Topaz in collecting any late payment of amounts due or related interest, including attorneys' fees, court costs, and collection agency fees; and (c) Topaz may suspend Your account and access to the Software.

11. **TERM AND TERMINATION.**

11.1. **Term.** Access to the software will be provided under subscription terms or as a perpetual license. This EULA and the license granted hereunder shall remain in effect for a period of twelve (12) months for annual subscriptions or one (1) month for monthly subscriptions, commencing at the time You purchase the software or otherwise accept the terms of this EULA (the "**Initial Term**"). Perpetual license purchases will provide access to updates of the software during a one (1) year initial term after purchasing the software which may be optionally renewed or otherwise extended at the end of the Term by You. Usage of the software under a perpetual license will continue to be covered under the EULA and usage of the software will be allowed even after expiry of the Initial Term, however the user will not be able to update versions of the software released outside of the Term; this may limit usage of certain features or customer support capabilities and Topaz may not fully support certain superseded app versions or features due to technical limitations. For subscriptions or other recurring purchases, following expiration of the Initial Term, (i) if You have payment information on file with Topaz, the EULA and software subscription will be automatically renewed for successive twelve (12) month or one (1) month terms unless earlier terminated as set forth herein (each a "**Renewal Term**" and, together with the Initial Term, the "**Term**"); or (ii) if You do not have payment information on file, the EULA will automatically terminate along with access to the subscription product. Upon renewal of the Initial Term and any Renewal Term thereafter, the Fees shall be the then-standard pricing for the applicable Software.

11.2. **Termination.** This EULA will terminate automatically without notice if You fail to comply with any of its terms and conditions. You may also terminate this EULA by ceasing to use and destroying all copies of the Software. Upon termination, the license granted hereunder will automatically terminate, You may no longer exercise any of the rights granted to You by the license, and You must destroy all copies of the Software in Your possession.

12. **DISPUTE RESOLUTION.** PLEASE READ THE FOLLOWING SECTION CAREFULLY BECAUSE IT REQUIRES YOU TO ARBITRATE CERTAIN DISPUTES AND CLAIMS WITH TOPAZ AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM TOPAZ.

In the event a controversy, dispute, demand, count, claim, or cause of action arising under, arising out of, or in connection with this EULA ("**Disputes**") arises between You and Topaz, the parties shall

attempt to reach a reasonable and equitable resolution of the Dispute in an expeditious manner prior to taking any other action. Either You or Topaz may initiate such, by written notice (a “**Dispute Notice**”). You and Topaz shall meet within ten (10) days after delivery of the Dispute Notice and, thereafter, as often as You and Topaz deem necessary, to exchange relevant information and to attempt to resolve the Dispute. If the Dispute has not been resolved within thirty (30) days after delivery of the Dispute Notice, or if You and Topaz fail to meet within ten (10) days, then the following applicable provision applies:

12.1. **United States.** The following information only applies to users who reside in the United States. This EULA is governed by, and all Disputes will be resolved exclusively in accordance with, the laws of the state of Texas, excluding its conflict of laws provisions. All Disputes will be finally settled exclusively through binding arbitration administered by the Commercial Arbitration Rules of the American Arbitration Association (“**AAA**”) in effect at the time of the arbitration (the “**Rules**”). Except as otherwise provided by this clause, the appointment and confirmation of the arbitrators shall be made in accordance with the relevant provisions of the Rules. The arbitral tribunal shall be composed of one (1) arbitrator, selected in accordance with the Rules. The seat of the arbitration shall be in Dallas County, Texas. The hearings in this arbitration shall be held at the seat. The arbitration shall be conducted and the award rendered in the English language. The parties agree that discovery and evidence in the arbitration shall be governed by the Rules then in force. The arbitrator shall not decide the dispute *ex aequo et bono* or as *amiable compositeur* or by reliance on any other doctrine or principle that would permit the arbitrator to avoid the application of this EULA and/or the governing law. The arbitrator shall not have the authority to modify or amend any term or provision of this EULA. The award shall be final and binding on the parties and may be confirmed in, and judgment upon the award entered by, any court having jurisdiction over the parties. The arbitrator’s award shall be entitled to all of the protections and benefits of a final judgment as to any dispute, including compulsory counterclaims, that were or could have been presented to the arbitrator, and shall be final and binding on the parties and non-appealable to the maximum extent permitted by law. Except to the extent necessary for proceedings relating to enforcement of the arbitration agreement, the award or other, related rights of the parties, the fact of the arbitration, the arbitration proceeding itself, all evidence, memorials or other documents exchanged or used in the arbitration and the arbitrators’ award shall be maintained in confidence by the parties to the fullest extent permitted by applicable law. However, a violation of this covenant shall not affect the enforceability of this EULA to arbitrate or of the arbitrator’s award. The parties agree to be responsible for their own attorneys’ fees, costs, and expenses of the arbitration (including arbitrators’ fees and/or expenses). No failure or delay in exercising any right, power or privilege shall operate as a waiver thereof, nor shall any single or partial exercise preclude any other or further exercise of any right, power or privilege.

12.2. **International (not including China).** The following information only applies to users who reside anywhere other than China and the United States. This EULA is governed by, and all Disputes will be resolved exclusively in accordance with, the laws of the state of Texas, excluding its conflict of laws provisions. All Disputes will be finally settled exclusively through binding arbitration administered by the International Arbitration Rules of the International Centre for Dispute Resolution (“**ICDR**”) in effect at the time of the arbitration (the “**Rules**”). Except as otherwise provided by this clause, the appointment and confirmation of the arbitrators shall be made in accordance with the relevant provisions of the Rules. The arbitral tribunal shall be composed of one (1) arbitrator, selected in accordance with the Rules. The seat of the arbitration shall be in Dallas County, Texas. The hearings in this arbitration shall be held at the seat. The arbitration shall be conducted and the award rendered in the English language. The parties agree that discovery and evidence in the arbitration shall be governed by the Rules then in force. The arbitrator shall not decide the dispute *ex aequo et bono* or as *amiable compositeur* or by reliance on any other doctrine or principle that would permit the arbitrator to avoid the application of this EULA and/or the governing law. The arbitrator shall not have the authority to modify or amend any term or provision of this EULA. The award

shall be final and binding on the parties and may be confirmed in, and judgment upon the award entered by, any court having jurisdiction over the parties. The arbitrator's award shall be entitled to all of the protections and benefits of a final judgment as to any dispute, including compulsory counterclaims, that were or could have been presented to the arbitrator, and shall be final and binding on the parties and non-appealable to the maximum extent permitted by law. Except to the extent necessary for proceedings relating to enforcement of the arbitration agreement, the award or other, related rights of the parties, the fact of the arbitration, the arbitration proceeding itself, all evidence, memorials or other documents exchanged or used in the arbitration and the arbitrators' award shall be maintained in confidence by the parties to the fullest extent permitted by applicable law. However, a violation of this covenant shall not affect the enforceability of this EULA to arbitrate or of the arbitrator's award. The parties agree to be responsible for their own attorneys' fees, costs, and expenses of the arbitration (including arbitrators' fees and/or expenses). No failure or delay in exercising any right, power or privilege shall operate as a waiver thereof, nor shall any single or partial exercise preclude any other or further exercise of any right, power or privilege.

- 12.3. **China.** The following information only applies to users who reside in China. This EULA is governed by, and all Disputes will be resolved exclusively in accordance with, the laws of Hong Kong, excluding its conflict of laws provisions. All Disputes will be finally settled exclusively through binding arbitration administered by the Hong Kong International Arbitration Centre ("HKIAC") under the HKIAC Administered Arbitration Rules in effect at the time of the arbitration (the "Rules"). Except as otherwise provided by this clause, the appointment and confirmation of the arbitrators shall be made in accordance with the relevant provisions of the Rules. The arbitral tribunal shall be composed of one (1) arbitrator, selected in accordance with the Rules. The seat of the arbitration shall be in Hong Kong. The hearings in this arbitration shall be held at the seat. The arbitration shall be conducted and the award rendered in the English language. The parties agree that discovery and evidence in the arbitration shall be governed by the Rules then in force. The arbitrator shall not decide the dispute *ex aequo et bono* or as *amiable compositeur* or by reliance on any other doctrine or principle that would permit the arbitrator to avoid the application of this EULA and/or the governing law. The arbitrator shall not have the authority to modify or amend any term or provision of this EULA. The award shall be final and binding on the parties and may be confirmed in, and judgment upon the award entered by, any court having jurisdiction over the parties. The arbitrator's award shall be entitled to all of the protections and benefits of a final judgment as to any dispute, including compulsory counterclaims, that were or could have been presented to the arbitrator, and shall be final and binding on the parties and non-appealable to the maximum extent permitted by law. Except to the extent necessary for proceedings relating to enforcement of the arbitration agreement, the award or other, related rights of the parties, the fact of the arbitration, the arbitration proceeding itself, all evidence, memorials or other documents exchanged or used in the arbitration and the arbitrators' award shall be maintained in confidence by the parties to the fullest extent permitted by applicable law. However, a violation of this covenant shall not affect the enforceability of this EULA to arbitrate or of the arbitrator's award. The parties agree to be responsible for their own attorneys' fees, costs, and expenses of the arbitration (including arbitrators' fees and/or expenses). No failure or delay in exercising any right, power or privilege shall operate as a waiver thereof, nor shall any single or partial exercise preclude any other or further exercise of any right, power or privilege. **Please see Section 16.1 for additional information related to users in China.**

- 12.4. **Additional Information for United States and International (not including China) Users with a Personal License to the Software.** The following information applies only to users who reside anywhere other than China and have a Personal License to the Software: YOU HEREBY WAIVE ANY RIGHT YOU MIGHT HAVE TO RESOLVE ANY DISPUTE ON ANY BASIS (INCLUDING, BUT NOT LIMITED TO A CLASS ACTION BASIS) INVOLVING

CLAIMS BROUGHT IN A PURPORTED REPRESENTATIVE CAPACITY ON BEHALF OF THE GENERAL PUBLIC OR OTHER PERSONS SIMILARLY SITUATED.

- 12.5. **Equitable Relief.** In addition to all other remedies at law or under this EULA, Topaz may enforce its rights in the Topaz Property and any other provision of this EULA by seeking to obtain equitable relief in any jurisdiction deemed appropriate, without the need to post bond or other security or to prove the inadequacy of monetary damages. In such circumstances the above arbitration requirements do not apply.
- 12.6. **Procedure.** If You wish to begin an arbitration proceeding, You must send a letter requesting arbitration and describing Your claim to:

Topaz Labs LLC
14555 Dallas Parkway
Suite 350
Dallas, Texas 75254
Attn: Eric Yang

13. **COMPLIANCE WITH LAWS.**

- 13.1. **General Compliance.** To the extent You access or use the Software, You must comply with all applicable law, including, but not limited to, applicable local laws.
- 13.2. **Export Regulation.** The Software may be subject to US export control laws, including the Export Control Reform Act and its associated regulations, such as those of the Export Administration Regulations of the United States Department of Commerce (the "EAR"). You shall not, directly or indirectly, export, re-export, or release the Software to, or make the Software accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. You shall not directly or indirectly, export, re-export, or release the Software to (i) any of those countries listed from time to time in the EAR as countries subject to embargo or to any persons who are specially designated nationals of such countries, including to Cuba, Libya, North Korea, Iran, Iraq, Uganda, Serbia, and Rwanda; or (ii) any person listed on any U.S. Government list of prohibited or restricted parties. You represent and warrant that You are not listed on any U.S. Government list of prohibited or restricted parties. You shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, reexporting, releasing, or otherwise making the Software available outside the U.S.

14. **GOVERNMENT USERS.** The following information applies only to users who are government users. The Software has been developed entirely at private expense, as defined in FAR Section 2.101, DFARS Section 252.227-7014(a)(1) and DFARS Section 252.227- 7015 (or any equivalent or subsequent agency regulation thereof), and is provided as a "commercial item," "commercial computer software" and/or "commercial computer software documentation." Consistent with DFARS Section 227.7202 and FAR Section 12.212, and to the extent required under U.S. federal law, the minimum restricted rights as set forth in FAR Section 52.227-19 (or any equivalent or subsequent agency regulation thereof), any use, modification, reproduction, release, performance, display, disclosure or distribution thereof by or for the U.S. Government shall be governed solely by this EULA and shall be prohibited except to the extent expressly permitted by this EULA. You represent and warrant to Topaz that You are not located in a country that is subject to a U.S. embargo or that has been designated by the U.S. Government as a "terrorist supporting" country, and that You are not listed on any U.S. Government list of prohibited or restricted parties.

15. **MISCELLANEOUS.**

- 15.1. **Notices.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (i) when delivered by hand (with written confirmation of receipt); (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); or (iii) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to Topaz at the address set forth in Section 12.6.
- 15.2. **Force Majeure.** In no event shall Topaz be liable to You, or be deemed to have breached this EULA, for any failure or delay in performing its obligations under this EULA, if and to the extent such failure or delay is caused by any circumstances beyond its reasonable control, including, but not limited to: (i) acts of God; (ii) flood, fire, earthquake, explosion, or other potential disasters or catastrophes, such as epidemics; (iii) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (iv) government order, law, or actions; (v) embargoes or blockades in effect on or after the date of this EULA; (vi) national or regional emergency; (vii) strikes, labor stoppages or slowdowns, or other industrial disturbances; (viii) shortage of adequate power or transportation facilities; (ix) a cyberattack or virus; and (x) due to Third Party Components or other actions of third parties.
- 15.3. **Publicity Rights.** You hereby grant Topaz the right to use Your name or your organization's name, logo, or trademarks in any advertising, publicity, marketing, or other promotional materials or activities ("**Publicity Rights**").
- 15.3.1. *Revocation of Publicity Rights.* If You wish to revoke the Publicity Rights, You may do so in accordance with the following applicable provision:
- 15.3.1.1. *Personal License.* If You have a Personal License to the Software, You may revoke the Publicity Rights by terminating the EULA in accordance with Section 11.2.
- 15.3.1.2. *Professional License.* If You have a Professional License to the Software, You may revoke the Publicity Rights by contacting Topaz at enterprise@topazlabs.com ("**Notice of Revocation**"). Upon receipt of such Notice of Revocation, Topaz will cease the use of Your name, logo, or trademarks within thirty (30) days; provided, however, such Publicity Rights shall continue with respect to any advertising, publicity, marketing, or other promotional materials or activities already in distribution or production.
- 15.4. **Assignment.** This EULA, and any rights and licenses granted hereunder, may not be transferred or assigned by You, but Topaz may assign them without restriction. Any attempted transfer or assignment in violation hereof will be null and void.
- 15.5. **Amendment.** Topaz may, in its sole discretion, amend this EULA from time to time by posting the amended EULA on its website or by providing You with digital access to the amended EULA through the Software or other means. If You do not agree with any such amendments or any new versions of the EULA, You may terminate this EULA in accordance with Section 11.2 before such amended EULA becomes effective, upon which You must stop using the Software. By using the Software after the amended EULA becomes effective or otherwise indicating Your acceptance of the amended EULA, You are agreeing to be bound by the terms of the amended EULA.
- 15.6. **Severability.** If any provision of the EULA is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of the EULA, which shall remain in full force and effect.

- 15.7. **Entire Agreement.** This EULA, together with all documents that are incorporated by reference herein, constitutes the sole and entire agreement between You and Topaz with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

16. ADDITIONAL INFORMATION.

- 16.1. **Additional Information for Users in China.** This Section provides additional information for users who reside in China. If You reside in China, You must, and You agree that You shall: (i) promptly file this EULA with the Ministry of Commerce of the People's Republic of China; (ii) maintain a bank account outside of China; and (iii) pay all Fees with such bank account.

- 16.2. **Additional Information for Gigapixel Professional Licenses.** This Section provides additional information for users with Gigapixel Professional Licenses.

- 16.2.1. Credits. You may purchase credits from Topaz, which may be used for various services ("**Credits**"). Topaz reserves the right to adjust the value or balance of Credits at any time and for any purpose, including, but not limited to, for overages or for providing free Credits for trial.

- 16.2.2. Printing. If You have a Professional License for Gigapixel, Topaz offers a printing service, which allows You to order Your image(s) directly in the Software or via the website and receive such image(s) directly to Your door (the "**Print Service**").

- 16.2.2.1. Topaz currently uses a third party for the Print Service (each a "**Third Party Partner**"). Please see the Privacy Policy found at: <https://topazlabs.com/privacy> for more information. Topaz Labs may collect, process, and store uploaded media content provided by a user to provide optional print services to that user or their associated organization. Topaz Labs will not use those uploaded media content for any other purposes other than providing requested print services, and agrees to delete the uploaded media content from storage upon request. Topaz Labs may delete the uploaded media content after the print order is delivered, at which point a direct reprint will not be possible. User agrees that uploaded images are printed as-is, and Topaz Labs does not offer refunds or returns unless the printed media contains an error which was not present in the original file. Topaz Labs will provide reprints at no cost or at reduced cost at its discretion for prints which arrive with significant damage from shipping. Topaz Labs makes no guarantee of print deliveries and reserves the right to cancel or refund an order at any time. Topaz Labs is not responsible for additional unforeseen taxes or fees on shipping or import of prints and the user may need to provide additional payment in order to release the order from customs in certain countries. For support relating to printed orders, please contact prints@topazlabs.com.

- 16.2.2.2. Title to and Intellectual Property Rights in Your image(s) and prints remains Your property. You grant Topaz (and the Third Party Partner) a worldwide, non-exclusive, fully paid up, transferable, irrevocable license to use, store, copy, modify, make available and communicate the image(s) to the extent reasonably required to perform our obligations in accordance with this EULA.

- 16.2.3. Processing. If You have a Gigapixel Professional License, You have two (2) image processing options: (a) You can process image(s) on Your computer for no additional

cost (“**Personal Processing**”); or (b) You can upload Your image(s) to Topaz’s cloud-based service and Topaz will process Your image(s) using its machines for an additional cost (“**Cloud Processing**”). Cloud Processing allows You to upscale Your image(s) of various sizes, without rendering on Your local machine. In order to use Cloud Processing, You must subscribe to a monthly or annual payment plan, which will provide You with Credits that can be used for Cloud Processing. If You process Your image(s) via Cloud Processing, such processing occurs on Topaz’s local machine. You represent and warrant that You possess all necessary rights to share the image(s) that You submit to Topaz for processing.

Whether You process Your image(s) via Personal Processing or Cloud Processing, Topaz does not and will not: (i) make any claim of copyright ownership related to Your image(s); and (ii) assert any right to royalties in relation to Your image(s).

SCHEDULE A

THIRD-PARTY LICENSES

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 - SimpleCrypt copyright (c) 2011, Andre Somers.
 - FFmpeg is licensed under the GNU Lesser General Public License version 2.1 or later (LGPL v2.1+). A copy may be found here:
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2. **Photo AI.** The following materials provided under Third-Party Licenses are included in Photo AI:
 - OpenCV is licensed under the Apache 2 License. A copy may be found here:
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