

## Canvastic Software End User License Agreement

IMPORTANT: THIS SOFTWARE END USER LICENSE AGREEMENT ("EULA") IS A LEGAL AGREEMENT BETWEEN YOU AND CANVASTIC. READ IT CAREFULLY BEFORE COMPLETING THE INSTALLATION PROCESS AND USING THE SOFTWARE. IT PROVIDES A LICENSE TO USE THE SOFTWARE AND CONTAINS WARRANTY INFORMATION AND LIABILITY DISCLAIMERS. BY INSTALLING AND USING THE SOFTWARE, YOU ARE CONFIRMING YOUR ACCEPTANCE OF THE SOFTWARE AND AGREEING TO BECOME BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS, THEN SELECT THE "CANCEL" BUTTON, DO NOT INSTALL THE SOFTWARE AND RETURN THE SOFTWARE TO YOUR PLACE OF PURCHASE FOR A FULL REFUND.

THIS EULA SHALL APPLY ONLY TO THE SOFTWARE SUPPLIED BY CANVASTIC HERewith REGARDLESS OF WHETHER OTHER SOFTWARE IS REFERRED TO OR DESCRIBED HEREIN.

### 1. Definitions

- (a) "Canvastic" or "Canvastic" means Canvastic LLC and its licensors, if any.
- (b) "Software" means only the Canvastic software program(s) and third party software programs, in each case, supplied by Canvastic herewith, and corresponding documentation, associated media, printed materials, and online or electronic documentation.
- (c) "Trial Version" means a version of the Software, so identified, to be used only to review, demonstrate and evaluate the Software for a limited time period. The Trial Version may have limited features, may lack the ability for the end-user to save the end product, and will cease operating after a predetermined amount of time due to an internal mechanism within the Trial Version.
- (d) "Teacher Workshop Version" means a version of the Software, so identified, to be used only by the teacher that attended the workshop on one computer. This version may not be given or sold to any other party without permission from Canvastic.
- (e) "Demo Version" means a version of the software that has some functions disabled until it is "registered" with the appropriate codes. This version may not be given or sold to any other party without permission from Canvastic.

## 2. License Grants

(a) You may install and use the Software on a single computer; OR install and store the Software on a storage device, such as a network server, used only to install the Software on your other computers over an internal network, provided you have a license for each separate computer on which the Software is installed and run. A license for the Software may not be shared, installed or used concurrently on different computers. A 5 Seat Lab Pack allows you to install on 5 computers only. A 10 Seat Lab Pack allows you to install on 10 computers only. A 35 Seat Lab Pack allows you to install on 35 computers only. A Building Site License allows you to install on every computer in one school site. A District Site License is calculated on the number of schools purchased, it allows you to install on every computer in all school sites that the software was purchased for.

(b) In the event the Software is distributed along with other Canvastic software products as part of a suite of products, the license of the Software is licensed as a single product and none of the products in the suite, including the Software, may be separated for installation or use on more than one computer.

(c) You may make one copy of the Software in machine-readable form solely for backup purposes. You must reproduce on any such copy all copyright notices and any other proprietary legends on the original copy of the Software.

(d) You agree that Canvastic may audit your use of the Software for compliance with these terms at any time, upon reasonable notice.

(e) Teachers employed at a school that owns a Building Site License may install a copy of the Software on their home or portable computer for training purposes only.

(f) Your license rights under this EULA are non-exclusive.

## 3. License Restrictions

(a) Other than as set forth in Section 2, you may not make or distribute copies of the Software, or electronically transfer the Software from one computer to another or over a network.

(b) You may not alter, merge, modify, adapt or translate the Software, or decompile, reverse engineer, disassemble, or otherwise reduce the Software to a human-perceivable form.

(c) Unless otherwise provided herein, you may not rent, lease, or sublicense the Software.

(d) Other than with respect to a Trial Version of the Software, you may permanently transfer all of your rights under this EULA only as part of a sale or transfer, provided you retain no

copies, you transfer all of the Software (including all component parts, the media and printed materials, any upgrades, this EULA, and the serial numbers), and the recipient agrees to the terms of this EULA. If the Software is an upgrade, any transfer must include all prior versions of the Software from which you are upgrading. You may retain no copies of the Software. You may not sell or transfer any Software purchased under a volume discount. You may not sell or transfer any Trial Version of the Software. If the copy of the Software is licensed as part of the suite (as defined above), the Software shall be transferred only with and as part of the sale or transfer of the whole suite and not separately. Teacher Workshop Versions may have special rights, see the accompanying license.

(e) Unless otherwise provided herein, you may not modify the Software or create derivative works based upon the Software.

(f) Unless otherwise provided herein, you shall not (A) in the aggregate, install or use more than one copy of the Trial Version of the Software, (B) download the Trial Version of the Software under more than one username, (C) alter the contents of a hard drive or computer system to enable the use of the Trial Version of the Software for an aggregate period in excess of the trial period for one license to such Trial Version, and (D) use the Trial Version of the Software for a purpose other than the sole purpose of determining whether to purchase a license to a commercial or education version of the software; provided, however, notwithstanding the foregoing, you are strictly prohibited from installing or using the Trial Version of the Software for any commercial training purpose.

(g) You may not export the Software into any country prohibited by the United States Export Administration Act and the regulations thereunder.

(h) You may receive the Software in more than one medium but you shall only install or use one medium. Regardless of the number of media you receive, you may use only the medium that is appropriate for the server or computer on which the Software is to be installed.

(i) In the event that you fail to comply with this EULA, Canvastic may terminate the license and you must destroy all copies of the Software (with all other rights of both parties and all other provisions of this EULA surviving any such termination).

#### 4. Upgrades

If this copy of the Software is an upgrade from an earlier version of the Software, it is provided to you on a license exchange basis. You agree by your installation and use of such copy of the Software to voluntarily terminate your earlier EULA and that you will not continue to use the earlier version of the Software or transfer it to another person or entity unless such transfer is pursuant to Section 3.

#### 5. Prior Same Version License

If this copy of the Software is licensed as part of the suite (as defined above), and you have a prior license to the same version, and the suite was licensed to you with a discount based, in whole or in part, on your prior license to the same version, the Software is provided to you on a license exchange basis. You agree by your installation and use of this copy of the Software to voluntarily terminate your EULA with respect to such prior license and that you will not continue to install or use such prior license of the Software or transfer it to another person or entity.

## 6. Ownership

The foregoing license gives you limited license to use the Software. Canvastic and its suppliers retain all right, title and interest, including all copyright and intellectual property rights, in and to, the Software (as an independent work and as an underlying work serving as a basis for any application you may develop), and all copies thereof. All rights not specifically granted in this EULA, including Federal and International Copyrights, are reserved by Canvastic and its suppliers.

## 7. LIMITED WARRANTY AND DISCLAIMER

(a) Except with respect to the Trial Version of the Software, Canvastic warrants that, for a period of ninety (90) days from the date of delivery (as evidenced by a copy of your receipt):

(i) when used with a recommended hardware configuration, the Software will perform in substantial conformance with the documentation supplied with the Software; and (ii) the physical media on which the Software is furnished will be free from defects in materials and workmanship under normal use.

(b) CANVASTIC PROVIDES NO REMEDIES OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, FOR THE TRIAL VERSION OF THE SOFTWARE. THE TRIAL VERSION OF THE SOFTWARE ARE PROVIDED "AS IS".

(c) EXCEPT AS SET FORTH IN THE FOREGOING LIMITED WARRANTY WITH RESPECT TO SOFTWARE OTHER THAN THE TRIAL VERSION, CANVASTIC AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALSO, THERE IS NO WARRANTY OF NON-INFRINGEMENT AND TITLE OR QUIET ENJOYMENT. CANVASTIC DOES NOT WARRANT THAT THE SOFTWARE IS ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION. NO RIGHTS OR REMEDIES REFERRED TO IN ARTICLE 2A OF THE UCC WILL BE CONFERRED ON YOU UNLESS EXPRESSLY GRANTED HEREIN. THE SOFTWARE IS NOT DESIGNED, INTENDED OR LICENSED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS, INCLUDING WITHOUT LIMITATION, THE DESIGN, CONSTRUCTION, MAINTENANCE

OR OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS. CANVASTIC SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH PURPOSES.

(d) IF APPLICABLE LAW REQUIRES ANY WARRANTIES WITH RESPECT TO THE SOFTWARE, ALL SUCH WARRANTIES ARE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE OF DELIVERY.

(e) NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY CANVASTIC, ITS DEALERS, DISTRIBUTORS, AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY PROVIDED HEREIN.

(f) (USA ONLY) SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE.

## 8. Exclusive Remedy

Your exclusive remedy under the preceding is to return the Software to the place you acquired it, with a copy of your receipt and a description of the problem. Provided that any non-compliance with the above warranty is reported in writing to Canvastic no more than ninety (90) days following delivery to you, Canvastic will use reasonable commercial efforts to supply you with a replacement copy of the Software that substantially conforms to the documentation, provide a replacement for defective media, or refund to you your purchase price for the Software, at its option. Canvastic shall have no responsibility if the Software has been altered in any way, if the media has been damaged by misuse, accident, abuse, modification or misapplication, or if the failure arises out of use of the Software with other than a recommended hardware configuration. Any such misuse, accident, abuse, modification or misapplication of the Software will void the warranty above. THIS REMEDY IS THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO YOU FOR BREACH OF EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE SOFTWARE AND RELATED DOCUMENTATION.

## 9. LIMITATION OF LIABILITY

(a) NEITHER CANVASTIC NOR ITS SUPPLIERS SHALL BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, COVER OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR THE INABILITY TO USE EQUIPMENT OR ACCESS DATA, LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION OR THE LIKE), ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE SOFTWARE AND BASED ON ANY THEORY OF

LIABILITY INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF CANVASTIC OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

(b) CANVASTIC'S TOTAL LIABILITY TO YOU FOR ACTUAL DAMAGES FOR ANY CAUSE WHATSOEVER WILL BE LIMITED TO THE AMOUNT PAID BY YOU FOR THE SOFTWARE THAT CAUSED SUCH DAMAGE.

(c) (USA only) SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OF CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE.

(d) THE FOREGOING LIMITATIONS ON LIABILITY ARE INTENDED TO APPLY TO THE WARRANTIES AND DISCLAIMERS ABOVE AND ALL OTHER ASPECTS OF THIS EULA.

#### 10. Basis of Bargain

The Limited Warranty and Disclaimer, Exclusive Remedies and Limited Liability set forth above are fundamental elements of the basis of the agreement between Canvastic and you. Canvastic would not be able to provide the Software on an economic basis without such limitations. Such Limited Warranty and Disclaimer, Exclusive Remedies and Limited Liability inure to the benefit of Canvastic's licensors.

#### 11. U.S. GOVERNMENT RESTRICTED RIGHTS LEGEND

This Software and the documentation are provided with "RESTRICTED RIGHTS" applicable to private and public licenses alike. Without limiting the foregoing, use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in this EULA and as provided in DFARS 227.7202-1(a) and 227.7202-3(a) (1995), DFARS 252.227-7013 (c)(1)(ii)(OCT 1988), FAR 12.212(a)(1995), FAR 52.227-19, or FAR 52.227-14, as applicable. Manufacturer: Canvastic LLC, 12635 Flagg Dr., Lafayette, CO 80026.

#### 12. (Outside of the USA) Consumer End Users Only

The limitations or exclusions of warranties and liability contained in this EULA do not affect or prejudice the statutory rights of a consumer, i.e., a person acquiring goods otherwise than in the course of a business.

The limitations or exclusions of warranties, remedies or liability contained in this EULA shall apply to you only to the extent such limitations or exclusions are permitted under the laws of the jurisdiction where you are located.

### 13. Third Party Software

The Software may contain third party software which requires notices and/or additional terms and conditions. Such required third party software notices and/or additional terms and conditions are located at <http://www.canvastic.com/licenses> and are made a part of and incorporated by reference into this EULA.

### 14. General

This EULA shall be governed by the internal laws of the State of Colorado, without giving effect to principles of conflict of laws. You hereby consent to the exclusive jurisdiction and venue of the state courts sitting in Boulder County, Colorado or the federal courts in the Colorado to resolve any disputes arising under this EULA. In each case this EULA shall be construed and enforced without regard to the United Nations Convention on the International Sale of Goods.

This EULA contains the complete agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements or understandings, whether oral or written. You agree that any varying or additional terms contained in any purchase order or other written notification or document issued by you in relation to the Software licensed hereunder shall be of no effect. The failure or delay of Canvastic to exercise any of its rights under this EULA or upon any breach of this EULA shall not be deemed a waiver of those rights or of the breach.

No Canvastic dealer, agent or employee is authorized to make any amendment to this EULA.

If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, that provision will be enforced to the maximum extent permissible, and the remaining provisions of this Agreement will remain in full force and effect.

All questions concerning this EULA shall be directed to: Canvastic LLC, 12635 Flagg, Lafayette, CO 80026, Attention: General Counsel.

Canvastic and other trademarks contained in the Software are trademarks or registered trademarks of Canvastic LLC in the United States and/or other countries. Third party trademarks, trade names, product names and logos may be the trademarks or registered trademarks of their respective owners. You may not remove or alter any trademark, trade

names, product names, logo, copyright or other proprietary notices, legends, symbols or labels in the Software. This EULA does not authorize you to use Canvastic's or its licensors' names or any of their respective trademarks.