

## Photo Mechanic EULA

This End User License Agreement (“**EULA**”) clarifies your rights, our rights, and how any disputes will be handled. Accordingly, this EULA applies to your use of all Software (defined below) that Camera Bits, Inc. (“**Camera Bits**” or “**we**”) provides. By clicking accept and accessing any of the Software, you signify that you have read, understand and agree to be bound by this EULA. Camera Bits provides various resources, including download areas, tutorials, and product information through the website at [www.CameraBits.com](http://www.CameraBits.com) (the “**Site**”). All use of the Site is governed by the Terms of Use available at <http://www.camerabits.com/terms-of-use>.

**Unless you opt out of arbitration within 30 days of the date you first agree to these terms by following the opt-out procedure specified in the “Arbitration Agreement and Class Action Waiver” section below, you agree that most disputes between you and Camera Bits will be resolved by binding, individual arbitration, and you are waiving your right to a trial by jury or to participate as a plaintiff or class member in any purported class action or representative proceeding.**

### 1.0 Definitions.

- (i) “**Software**” means the proprietary software identified that you have downloaded from the Camera Bits Site, in object code format, including any Updates provided to you pursuant to this EULA.
- (ii) “**Updates**” means any updates, bug fixes, patches, or other error corrections to the Software that Camera Bits generally makes available free of charge to all users of the Software within the same version release. Updates do not include upgrades to new versions of the Software.
- (iii) “**Technical Documentation**” means user instructions, release notes, manuals, and online help files that describe the operation of the Software in the form generally made available to customers.
- (iv) “**Your Content**” means photos, images, and other content that you upload or import in connection with the Software, including source data, location data, and other keywords, metadata, and information associated with such photos, images, and other content.
- (v) “**Perpetual License**” means a license that you have purchased and that provides perpetual access rights to the then-existing Software, subject to your compliance with this EULA.

### 2.0 License.

2.1. License Grant. Subject to and conditioned on your payment of fees and compliance with the terms and conditions of this EULA, Camera Bits hereby grants you a non-exclusive, non-sublicenseable, and non-transferable license during the Term to: (i) use the Software solely for your internal purposes; and (ii) use and make a reasonable number of copies of the Technical Documentation (defined below) solely for your internal purposes in connection with your use of the Software. You will host and access the Software through your computer equipment, hardware, software, communications systems, network, and other infrastructure (“**Technical Infrastructure**”). You are solely responsible for obtaining and maintaining, at your own expense, all equipment needed activate and operate the Software, including, without limitation, internet access and adequate bandwidth for Activation (defined below). You acknowledge and agree that Camera Bits does not monitor or evaluate Your Content transmitted through the Software, and Camera Bits shall not be responsible for any of Your Content. You shall use the Software exclusively for authorized and legal purposes and consistent with all laws, rules, and regulations (“**Applicable Law**”) in relation to the Software and performance under the EULA.

2.2. Activation. The Software uses an encrypted and unique identifier from the hardware on which the Software is installed (“**Machine ID**”) to authenticate a license key that contains flags to define the capabilities accessible by the Authorized User (“**License Key**”). The license is activated when an Authorized User registers

the Software and is accepted by the Camera Bits licensing server ("**Activation**"). Camera Bits grants to you one "**Seat**" license for each individual Activation identified by a Machine ID. A Seat license may be transferred to another machine by using the Software to deactivate the current Seat license ("**Deactivation**") and completing the Activation process on another machine.

2.3. Restrictions on Use. You shall not (i) sell, resell, distribute, host for third parties, lease, rent, license, or sublicense, the Software or any portion thereof; (ii) reverse engineer or otherwise attempt to discover the source code of or trade secrets embodied in the Software or any portion thereof (except and only to the extent that you may be permitted under applicable law to decompile only in order to achieve interoperability with the Software); (iii) write or develop any derivative works based upon the Software; (iv) modify, adapt, tamper with, or otherwise make any changes to the Software; (v) frame or mirror any materials Camera Bits provides or posts in connection with the Software; or (vi) remove or alter any of Camera Bits' copyright notices or trademarks. CERTAIN PHOTO MECHANIC FEATURES ARE NOT INTENDED OR SUITABLE FOR USE, AND YOU MAY NOT USE PHOTO MECHANIC, IN SITUATIONS OR ENVIRONMENTS WHERE THE FAILURE OF, ERRORS OR INACCURACIES IN, OR INTERCEPTION OF, THE USER DATA COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE, INCLUDING WITHOUT LIMITATION THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, LIFE SUPPORT, OR WEAPONS SYSTEMS.

2.4. Your Content. You retain all ownership of and are solely responsible for, all of Your Content. Camera Bits takes no responsibility and assumes no liability for any of Your Content.

2.5. Feedback. In the event you submit or post any creative suggestions, proposals, or ideas about Camera Bits' products and services ("**Feedback**"), you agree that such submissions will be automatically treated as non-confidential and non-proprietary. You hereby grant to Camera Bits a royalty-free, perpetual license to use, without any attribution or compensation to any party (including you), any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever.

2.6. Third-Party Products. The Software may reference, allow access, to or use third-party systems, software, or services ("**Third-Party Products**") solely as a convenience to you. To the extent that the Software contains or provides access to any Third-Party Products, the Software is not endorsing or making any representations or warranties as to such system, software, or service. Third-Party Products are subject to their own license terms. Camera Bits is not responsible for any Third-Party Products.

2.7. Updates. Any Updates to the Software are made available at the discretion of Camera Bits and subject to your compliance with this EULA. Camera Bits reserves the right to make Updates to the Software. The terms of this EULA apply to any Updates made generally available for Authorized Users.

### 3.0 **Ownership.**

3.1. Ownership of Software and Documentation. You acknowledge that, as between you and Camera Bits, Camera Bits owns all right, title, and interest, including all intellectual property rights, in and to the Software and Technical Documentation. With respect to Third-Party Products, the applicable third-party licensors own all right, title and interest, including all intellectual property rights, in and to the Third-Party Products.

3.2. Ownership of Your Content. Camera Bits acknowledges and agrees that, as between you and Camera Bits, you own all rights, titles, and interest, including all intellectual property rights, in and to Your Content.

4.0 **Warranty.** To the extent permitted by law, this Warranty ("**Warranty**") and remedies set forth in this section are exclusive and in lieu of all other warranties, remedies, and conditions, whether oral or written, and whether express, implied, or statutory.

4.1. Warranty. Excluding any Trial License (defined below), Camera Bits warrants to you (i) the Software, if used in accordance with the Technical Documentation and the terms of this EULA, will perform materially as described in the Technical Documentation for 90 days after installation ("**Warranty Period**"); and (ii) Camera Bits will not design its systems to include any "back door," "Trojan horse," "worm," "virus," "preventative routines," or other similar computer software routines. THE FOREGOING WARRANTIES DO NOT APPLY TO, AND CAMERA

BITS STRICTLY DISCLAIMS ALL WARRANTIES WITH RESPECT TO, ANY THIRD-PARTY PRODUCTS. If, during the Warranty Period, any Software fails to comply with this warranty, Camera Bits shall, subject to you promptly notifying Camera Bits in writing of such failure, at its sole option, either: (i) repair or replace the Software, provided that you provide Camera Bits with all information Camera Bits reasonably requests to resolve the reported failure, including sufficient information to enable the Camera Bits to recreate such failure; or (ii) refund the fees paid for such nonconforming Software, subject to your ceasing all use of and, if requested by Camera Bits, returning to Camera Bits all copies of the Software. **The remedies set forth in this Section are your sole and exclusive remedies and Camera Bits' sole liability under the limited warranty set forth in this Section 4.1.**

4.2. Your Warranties. You represent and warrant that: (i) you are authorized to provide all of Your Content, and that all Integrations requested by you are authorized; (ii) your use of the Software and provision of Your Content will comply with all Applicable Laws.

4.3. Mutual Warranties. Each party represents and warrants the following: (i) each party's performance of its obligations will not conflict with, result in a breach of, or constitute a default under any other material agreement to which that party is bound; and (iii) each party is in material compliance with all Applicable Laws with regard to its obligations under the EULA.

4.4. Disclaimer of Warranties. EXCEPT FOR THE LIMITED WARRANTY PROVIDED IN SECTION 4.1, THE SOFTWARE IS PROVIDED "AS IS," WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND, AND CAMERA BITS DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS, WITH RESPECT TO THE SOFTWARE, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, AND NONINFRINGEMENT. CAMERA BITS DOES NOT WARRANT THAT THE SOFTWARE WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE SOFTWARE WILL BE WITHOUT DELAY, ERROR FREE, OR UNINTERRUPTED, THAT ANY BUGS OR DEFECTS IN THE SOFTWARE WILL BE CORRECTED, OR THAT THE SOFTWARE WILL BE COMPATIBLE WITH YOUR HARDWARE OR WITH THIRD-PARTY SYSTEMS, SOFTWARE, OR SERVICES.

4.5. Results and Effort. You understand and agree that work product and results from use of the Software may vary, and that performance, accuracy, and/or satisfactory quality are dependent on factors such as the features and quality of the camera or other photo capture device, your effort, experience and knowledge, and other extraneous factors.

## **5.0 Payment.**

5.1. Payment. At the time of purchase, you will remit payment for the license fee as one lump sum, plus applicable taxes.

**6.0 Trial Use.** If you have selected a trial license of the Software, these terms apply to such Trial License (defined below). Subject to and conditioned upon your compliance with the terms and conditions of this EULA, Camera Bits grants you a non-exclusive, non-sublicenseable, and non-transferable license during the 30 day evaluation period (the "**Trial Term**") to: (i) use the Software solely for evaluation purposes; and (ii) use and make a reasonable number of copies of the Technical Documentation (defined below) solely for your internal purposes in connection with evaluating the Software the Software (the "**Trial License**").

6.1. No Technical Support. Camera Bits has no obligation to provide any maintenance, support or other services relating to the Software provided under the Trial License. You are solely responsible for taking appropriate measures for your systems, backups, and any data loss.

6.2. No Warranty or Liability. THE SOFTWARE PROVIDED UNDER THE TRIAL LICENSE IS PROVIDED "AS IS," WITH ALL FAULTS AND WITHOUT WARRANTIES OF ANY KIND. CAMERA BITS EXPRESSLY DISCLAIMS ANY REPRESENTATIONS AND WARRANTIES, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CAMERA BITS SHALL HAVE ABSOLUTELY NO LIABILITY IN CONNECTION WITH YOUR DOWNLOAD OR USE OF THE SOFTWARE UNDER THE TRIAL LICENSE, INCLUDING WITHOUT LIMITATION, ANY LIABILITY FOR DAMAGE TO YOUR HARDWARE, DATA, INFORMATION, AND BUSINESS RESULTING FROM YOUR CHOICE TO EVALUATE THE SOFTWARE.

6.3. Termination of Trial License. The Trial License: (i) will automatically terminate after the 30 day evaluation period; (ii) may be terminated by either party at any time for any reason upon notice to the other party. You may cancel your Trial License by contacting support@camerabits.com.

## **7.0 Term and Termination.**

7.1. Term. The term for each instance of the Software purchased ("**Term**") shall begin after full payment of the license fees and continue unless otherwise terminated in accordance with these terms.

7.2. Termination. The EULA may be terminated (i) by either party if the other party materially breaches the EULA and does not cure the breach within 30 calendar days after receiving notice from the non-breaching party; (ii) if Camera Bits becomes insolvent (generally unable to pay its debts as they become due) or the subject of a bankruptcy, conservatorship, receivership, or similar proceeding, or makes a general assignment for the benefit of creditors; and (iii) by you in accordance with Section 6 (Trial Use) of this EULA.

7.3. Effect of Termination.

- (i) Perpetual Licenses. So long as you have fully paid the initial costs for the Perpetual License fee, you may continue to use the then-current version of the Software present on the Authorized Users' Activated Machine ID, without ongoing Support or Updates. Any access of the Software after termination shall be subject to the terms of the EULA, which, by their nature, shall survive termination.

## 8.0 Indemnification.

8.1. By You. You will indemnify and defend Camera Bits and its officers, directors, employees and agents and their successors and assigns from any loss, liability, cost or expense (including legal fees and costs) (“**Losses**”) directly or indirectly arising out of or in connection with any claim, suit, or proceeding (“**Claim**”) by a nonparty to the extent arising out of or related to any: (i) breach of this EULA; (ii) infringement, misappropriation or other violation of any person's intellectual property right; (iii) fraud, gross negligence or willful misconduct by you; (iv) violation of Applicable Law by you; or (v) bodily injury, death or damage to property caused by the negligence or willful misconduct of you, including any employees or agents.

8.2. By Camera Bits. Camera Bits will indemnify and defend you and its officers, directors, shareholders, employees and agents from and against all Losses arising out of any claim by a nonparty to the extent it is based on or arising from any claim that the Software or Technical Documentation, or any use of the Software or Technical Documentation in accordance with this EULA, infringes or misappropriates such third party's U.S. intellectual property rights, provided that you promptly notify Camera Bits in writing of the claim, cooperates with Camera Bits, and allows Camera Bits sole authority to control the defense and settlement of such claim.

(i) If such a claim under Section 8.2 is made or appears possible, you agree to permit Camera Bits, at Camera Bits' sole discretion, to (A) modify or replace the Software or Technical Documentation, to make it non-infringing, or (B) obtain the right for you to continue use. If Camera Bits determines that none of these alternatives is reasonably available, Camera Bits may terminate this EULA, in its entirety or with respect to the affected component or part, effective immediately on written notice to you and refund any prepaid amounts to you promptly after such termination. THIS SECTION 8.2 SETS FORTH YOUR SOLE REMEDIES AND CAMERA BITS' SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SOFTWARE OR TECHNICAL DOCUMENTATION INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. Section 8.2(iii) will not apply to the extent that the alleged infringement arises from: (A) use of the Software in combination with data, software, hardware, equipment, or technology not provided by Camera Bits or authorized by Camera Bits in writing; (B) modifications to the Software not made by Camera Bits; (C) use of any version other than the most current version of the Software or Documentation delivered to you; or (D) Third-Party Products.

## 9.0 Limitation of Liability.

9.1. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER, WHETHER UNDER THEORY OF CONTRACT, TORT, OR OTHERWISE, FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, OR SPECIAL DAMAGES (INCLUDING ANY DAMAGE TO BUSINESS REPUTATION, LOST PROFITS, OR LOST DATA), WHETHER FORESEEABLE OR NOT, AND WHETHER OR NOT SUCH PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.2. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH PARTY'S AGGREGATE CUMULATIVE LIABILITY TO THE OTHER IN CONNECTION WITH THE EULA SHALL NOT EXCEED THE LICENSE FEE PAID.

## 10.0 Arbitration Agreement and Class Action Waiver.

10.1. **Subject to the exceptions described below, all disputes arising out of or related to this EULA or any aspect of your relationship with Camera Bits, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory, will be resolved through final and binding arbitration before a single arbitrator instead of in a court by a judge or jury. You agree that Camera Bits and you are each waiving the right to trial by a jury. You agree that any arbitration will take place on an individual basis. You hereby waive the ability to participate in a class action.** The parties agree that the arbitrator will have exclusive authority to resolve any disputes relating to the interpretation, applicability, enforceability or formation of this arbitration agreement.

10.2. You and Camera Bits each retain the right to: (i) bring an individual action in small claims court and (ii) seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement or misappropriation of a party's trade secrets or intellectual property rights.

10.3. You will also have the right to litigate any other dispute that would otherwise be subject to this arbitration agreement if you opt out of the arbitration agreement by sending an email to support@camerabits.com or a letter to Camera Bits, Inc., 472 S 1st Ave, Hillsboro, OR 97123 within 30 days after the date you first agree to this EULA. If you don't provide Camera Bits with a timely opt-out notice, this arbitration agreement applies.

10.4. The arbitration will be administered by the American Arbitration Association ("AAA") under its Consumer Arbitration Rules (currently available at [www.adr.org/Rules](http://www.adr.org/Rules) or by calling the AAA at 1-800-778-7879). The arbitrator will conduct hearings, if any, by teleconference or videoconference, rather than by personal appearances, unless the arbitrator determines that an in-person hearing is appropriate. Any in-person appearances will be held at a location that is reasonably convenient to both parties. If the parties are unable to agree on a location, the arbitrator will determine the location. If you demonstrate that the costs of arbitration will be prohibitive as compared to the costs of litigation, Camera Bits will contribute to your filing and hearing fees as the arbitrator deems necessary to prevent the arbitration from being cost-prohibitive. The arbitrator's decision will follow the terms of this EULA (including the Limitation of Liability provision) and will be final and binding. The arbitrator will have authority to award temporary, interim or permanent injunctive relief or relief providing for specific performance of this EULA, but only to the extent necessary to provide relief warranted by the individual claim before the arbitrator. The award rendered by the arbitrator may be confirmed and enforced in any court having jurisdiction.

## **11.0 Miscellaneous.**

11.1. Disputes. The rights and liabilities of the parties arising out of or relating to this EULA will be governed by the laws of the State of Oregon, exclusive of choice of law remedies. Any litigation between the parties will be conducted exclusively in state or federal courts in Multnomah County, Oregon.

11.2. Commercial Item. The Software and any accompanying Technical Documentation and related software were developed by Camera Bits and its suppliers at private expense and are deemed to be a "commercial item," as that term is defined in 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212. Use, duplication, and disclosure by civilian agencies of the U.S. Government will be in accordance with FAR 52.227-19(c) or other agency data rights provisions, as may be applicable.

11.3. Communications. By using providing your contact information, you agree to receive certain electronic communications from us. You agree that any notice, agreement, disclosure or other communication that we send you electronically will satisfy any legal notice requirements, including that such communications be in writing.

11.4. Assignment; Binding Effect; Severability. You may not assign this EULA or any licenses granted under this EULA without Camera Bits' prior written consent. If any term or provision of this EULA is deemed invalid or unenforceable, the remainder of this EULA will be valid and enforced to the fullest extent permitted by law.

11.5. Entire Agreement; Amendment; Waiver. This EULA, including all documents linked within the EULA, constitutes the entire understanding of the parties with respect to its subject matter and supersedes all prior agreements and understandings of the parties. No modification, change, amendment, or any waiver of rights with respect to this EULA will be binding unless in writing signed by both parties. No waiver of any violation or nonperformance in one instance will be deemed to be a waiver of any subsequent violation or nonperformance.