

## **NeptuneLabs Software END-USER LICENSE AGREEMENT**

between

NeptuneLabs GmbH  
Lagesche Str. 32  
D-32576 Lemgo  
Germany

hereinafter referred to as "NeptuneLabs"

and the "end user".

THESE LICENSE TERMS ARE AN AGREEMENT BETWEEN NEPTUNELABS AND YOU. PLEASE READ THEM CAREFULLY. THEY APPLY TO THE SOFTWARE NAMED ABOVE AS WELL AS TO ANY UPDATES, SUPPLEMENTS, CUSTOMIZATIONS AND SUPPORT SERVICES FOR THIS SOFTWARE, UNLESS OTHER TERMS ACCOMPANY THOSE ITEMS. IF SO, THOSE TERMS APPLY.

BY USING THE SOFTWARE, YOU ACCEPT THESE TERMS. IF YOU DO NOT ACCEPT THEM, DO NOT USE THE SOFTWARE AND PROMPTLY RETURN THE SOFTWARE AS WELL AS ANY ACCOMPANYING ITEMS (INCLUDING WRITTEN MATERIALS AND BINDERS OR OTHER CONTAINERS) TO THE PLACE YOU OBTAINED THEM FOR A FULL REFUND.

### **I. GRANT OF LICENSE**

This NeptuneLabs license agreement (license) permits you to use one copy of the software acquired with this license on one (1) computer or one (1) virtual/simulated computer hosting the domain, computer or IP address you purchased the software license for. You may only use the software if it is properly licensed. Unlicensed use is expressly forbidden except for evaluation purposes according to section III.

### **II. COPYRIGHT**

The software is licensed, not sold, to you. The software has entirely been developed and is owned by NeptuneLabs. This software is protected by copyright laws, international treaty provisions, and other national laws. Therefore, you must treat the software like any other copyrighted material (e.g. a book) except that you are entitled to either:

- (a) make one copy of the software solely for backup or archival purposes,
- (b) or transfer the software to a single hard disk provided you keep the original solely for backup or archival purposes.

Product manual(s) or other written materials accompanying the software – in whole or part - are subject to copyright as well and may not be copied without prior written consent from NeptuneLabs.

Sample images that ship with NeptuneLabs software are not licensed to you and remain property of their respective copyright owners. Please refer to the IPTC data (image => properties) of the images for information on the copyright.

### **III. EVALUATION MODE**

You may use NeptuneLabs software without a valid license for evaluation purposes only. Without a valid license key NeptuneLabs software runs in evaluation mode and may have limited functionality.

### **IV. OTHER RESTRICTIONS**

You may not rent or lease the software, but you may transfer your rights under this license agreement on a permanent basis provided you transfer all copies of the software and all written materials, and the recipient agrees to the terms of this

agreement. You may not reverse engineer, decompile or disassemble the software. Any transfer must include the most recent update and all prior versions.

## **V. UPDATE AND CROSS-UPDATE LICENSES**

Upon setting up an update or cross-update license you are obliged and agree to uninstalling any previous version of the software that entitled you for the update or cross-update within a period of 3 months after registering the update license.

## **VI. HOSTING SERVICES AND ASP LICENSES**

This section VI applies to FSI Server and FSI Viewer software only.

"Hosting Services" means using the software or a part of the software to offer services to third parties. This includes but is not limited to publishing digital assets owned by third parties, like running hosting services or other ASP (Application Service Provider) solutions.

(a) Non-ASP Editions (Basic, Standard, Enterprise Edition licenses)

By accepting this license agreement you acknowledge that offering Hosting Services using NeptuneLabs software (including image hosting services, publishing services or any other kind of service that covers publishing third party assets with NeptuneLabs software) is strictly forbidden.

(b) ASP Edition licenses

The restriction described in (a) does not apply if you obtained an ASP (Application Service Provider) license. ASP licenses entitle you to use the software to setup and provide hosting services with NeptuneLabs software for the number of images and end customers as indicated in the description of your ASP edition software license.

## **VII. Third party software notices**

NeptuneLabs software may contain third party software or certain components bundled with the software are provided by third parties. Such third party software and components are subject to additional terms and conditions which can be reviewed in the thirdparty.txt file of the software setup and are made part of and incorporated by reference into this agreement.

## **VIII. WARRANTIES**

NEPTUNELABS MAKES NO WARRANTIES TO YOU IN CONNECTION WITH THIS LICENSE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NEPTUNELABS IS NOT AWARE OF ANY RIGHTS OF THIRD PARTIES WHICH WOULD OPPOSE THE REGULAR USE OF NEPTUNELABS SOFTWARE. NEPTUNELABS IS NOT LIABLE FOR THE SOFTWARE BEING FREE OF RIGHTS OF THIRD PARTIES. NEPTUNELABS WARRANTS TO YOU THAT THE SOFTWARE WILL PERFORM AS DESCRIBED IN THE SOFTWARE USER MANUAL FOR A PERIOD OF 12 MONTH BEGINNING FROM THE DAY OF PURCHASE. IN CASE THE SOFTWARE DOES NOT PERFORM AS WARRANTED ABOVE THE LIABILITY OF NEPTUNELABS AND YOUR EXCLUSIVE REMEDY SHALL BE LIMITED, AT NEPTUNELABS OPTION, TO EITHER THE REPLACEMENT OF THE SOFTWARE OR THE REFUND OF THE LICENSE FEE PAID TO NEPTUNELABS FOR THE SOFTWARE WHEREUPON THE LICENSE TO SUCH SOFTWARE SHALL AUTOMATICALLY TERMINATE.

## **IX. NO LIABILITY FOR CONSEQUENTIAL DAMAGES**

IN NO EVENT SHALL NEPTUNELABS OR ITS SUPPLIERS BE LIABLE FOR ANY OTHER DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THIS PRODUCT, EVEN IF NEPTUNELABS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NEPTUNELABS AGGREGATE LIABILITY AND THAT OF ITS AFFILIATES AND SUPPLIERS UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT PAID FOR THE SOFTWARE, IF ANY. THIS LIMITATION WILL APPLY EVEN IN THE EVENT OF A FUNDAMENTAL OR MATERIAL BREACH OR A BREACH OF THE FUNDAMENTAL OR MATERIAL TERMS OF THIS AGREEMENT.

#### **X. APPLICABLE LAW AND VENUE**

Any disputes and claims arising from this agreement which involve NeptuneLabs shall be settled in accordance with German law and legal action shall be brought before the venue of NeptuneLabs, which is Amtsgericht Detmold in Detmold, Germany.

#### **XI. SEVERABILITY**

If an arbitrator or a court of competent jurisdiction determines that any term or provision hereof is invalid or unenforceable, (a) the remaining terms and provisions hereof shall be unimpaired and (b) such arbitrator or court shall have the authority to replace such invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision.

NeptuneLabs GmbH, 2010