



DIGITAL MEDIA UNIFICATION AND DISTRIBUTION

## **i-Showcase End User License Agreement**

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## I-SHOWCASE END USER LICENSE AGREEMENT

NOTICE TO USER: PLEASE READ THIS AGREEMENT CAREFULLY. BY USING ALL OR ANY PORTION OF THE SOFTWARE YOU ACCEPT ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT.

This agreement (the "**Agreement**") is between i-Showcase, Inc. (the "**Service Provider**" or "**Provider**" or "**i-Showcase**") and the end user (the "**User**" or "**You**" "**Your**" or the "**Company**").

### 1. ACCEPTANCE OF TERMS

The Service Provider provides its service to the User subject to the following Terms of Service ("**TOS**"). The Service Provider may also offer other services that are governed by different Terms of Service. The date of the first payment or first use, whichever is first, shall indicate the date this Agreement becomes operative. The User agrees to all terms of this TOS by making a payment and/or using the services and/or products offered by Service Provider.

### 2. DESCRIPTION OF SERVICE

The Service Provider grants User a personal, non-transferable and non-exclusive right and license to use i-Showcase Remote Content Management System (RCMS) (the "**Software**" or "**Service**") to unify and distribute User's digital content on compatible platforms like User's website ("**i-Web**"), ecommerce, mobile webs ("**i-MWeb**"), and retailer websites ("**i-Mini**"). i-Showcase RCMS is utilized to manage content, collections, products, and ecommerce, as well as content on mobile webs and retailer websites. The Software allows instantaneous changes and updates to the content on all available and connected platforms.

### 3. ICP ON CLIENTS' WEBSITES

In order to establish communication between the Software and User's clients' websites ("**Retailer Websites**"), i-Showcase Communication Protocol (ICP) should be installed on each of Retailer Websites. User's clients or retailers ("**Clients**") must agree with the terms of usage of ICP before they install it on their websites. ICP is property of the Service Provider and feeds contents from different brand manufacturers to Retailer Websites and it remains independently on each of Retailer Websites so long as Retailer desires to receive content from i-Showcase network. Each Retailer may choose to continue to use ICP individually at his/her own discretion. The ICP agreement is entirely independent from this Agreement and is strictly between the Service Provider and User's Clients.

**ICP Compatibility:** It is agreed and understood that the ICP is optimized and tested for the latest versions of the following web browsers at the time of design and development of your i-Mini template. For example, if a template is designed in 2009, it is optimized for the latest versions of the following browsers in 2009, unless you request an update on your i-Mini template for current browser optimization.

Compatible web browsers are Internet Explorer, Mozilla Fire Fox, Google Chrome, and Safari.

### 4. MEMBER ACCOUNT, PASSWORD, SECURITY



User will receive an i-Showcase password and account ("**i-Showcase Account**") designation upon completing the Service's registration process. User is responsible for maintaining the confidentiality of the password and account and is fully responsible for all activities that occur under User's password or account. User agrees to: (a) immediately notify the Service Provider of any unauthorized use of User's i-Showcase Account or any other breach of security, and (b) ensure that User exits from User's i-Showcase Account at the end of each session. The Service Provider cannot and will not be liable for any loss or damage arising from User's failure to comply with this Section or any other part of this Agreement.

## 5. SYSTEM BACKUPS AND RECOVERY

If the Software is installed on User's own web server, then the User is responsible for hardware and data recovery in case of any failure that is not caused by the Software. Therefore, User is responsible to create hardware and software backup system on the designated web server to regularly backup the content and the database.

User shall also perform beta testing to ensure that Software and/or Services provided by Service Provider are compatible with User's computer and/or electronic systems before launching the Software and/or Services on its systems.

In the event that a crash or error occurs on User's server due to the Software and/or Service failure, then User shall notify Service Provider who may assist User in restoring the server. User shall provide access to Service Provider of the server so that Service Provider may diagnose, repair, and/or restore such systems as needed.

## 6. CONFIDENTIALITY

The Service Provider hereby acknowledges that User has made, or may make, available to the Service Provider certain pricing data, supply sources, techniques, computerized data, methods, product design information, market information, performance standards and other confidential and/or proprietary information of, or licensed to, the User or User's Clients, including without limitation, trade secrets, inventions, patents, and copyrighted materials (collectively, the "**Confidential Material**").

The Service Provider acknowledges that this information has independent economic value, actual or potential, that is not generally known to the public or to others who could obtain economic value from their disclosure or use, and that this information is subject to a reasonable effort by the User to maintain its secrecy and confidentiality. Except as essential to the Service Provider's obligations under this Agreement, the Service Provider shall not make any disclosure of this Agreement, the terms of this Agreement, or any of the Confidential Material. Except as essential to the Service Provider's obligations pursuant to their relationship with the User, the Service Provider shall not make any duplication or other copy of the Confidential Material.

The Service Provider shall not remove Confidential Material or proprietary property or documents without written authorization. Immediately upon request from User, the Service Provider shall return to User all Confidential Material or proprietary property or documents. The Service Provider shall notify each person to whom any disclosure is made that such disclosure is made in confidence, that the Confidential Material shall be kept in confidence by such persons, and that such persons shall be bound by the provisions of this Agreement.



## 7. INDEMNITY

You agree to indemnify and hold the Service Provider and its subsidiaries, affiliates, officers, agents, employees, partners, shareholders, and licensors harmless from any claim or demand, including but not limited to actual, potential or reasonable damages, attorneys' fees, and costs, due to or arising out of the Service, User's use of the Service, User's connection to the Service, User's violation of the TOS, or User's violation of any rights of another.

## 8. NO RESALE OF SERVICE

User agrees not to reproduce, duplicate, copy, sell, trade, resell or exploit for any commercial purposes or private purposes any portion of the Software and the Service, use of the Software and the Service, or access to the Software and the Service.

## 9. TERMINATION

User understands and reserves the right to cancel this contract at any time at Users sole discretion with no penalty as long as all proper and applicable service charges and payments for the Service are paid in full to the Service Provider.

User agrees that the Service Provider may, *under certain circumstances*, immediately terminate User's i-Showcase Account and Service, and access to the Software. Cause for such termination shall include: (a) breaches or violations of the TOS or other incorporated agreements or guidelines; (b) requests by law enforcement or other government agencies; (c) a request by User (self-initiated Service termination); (d) nonpayment of any fees owed by User in connection with the Services.

Termination of User's i-Showcase Account includes (a) removal of access to all offerings within the Service, including but not limited to i-Showcase Remote Content Management System Software and Database, and (b) barring of further use of the Service. This will cut off the distribution of User's data to its Clients as well.

## 10. I-SHOWCASE'S PROPRIETARY RIGHTS

User acknowledges and agrees that the Software and any other necessary software used in connection with the Software contain proprietary and confidential information that is protected by applicable intellectual property and other laws. Except as expressly authorized by the Service Provider, User agrees not to modify, rent, lease, loan, sell, distribute, decompile, or create derivative works based on the Service or the Software, in whole or in part.

The Service Provider grants User a personal, non-transferable and non-exclusive right and license to use the Software and Service; provided that User does not (and does not allow any third party to) copy, modify, create a derivative work from, reverse engineer, reverse assemble or otherwise attempt to discover any source code, sell, assign, sublicense, grant a security interest in or otherwise transfer any right in the Software. User agrees not to modify the Software in any manner or form, nor to use modified versions of the Software, including (without limitation) for the purpose of obtaining unauthorized access to the Software. User agrees not to access the Software by any means other than through the interface that is provided by the Service Provider for use in accessing the Software.

## 11. DISCLAIMER OF WARRANTIES



YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

- a. THE SERVICE PROVIDER AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS, OWNERS, AND LICENSORS MAKE NO WARRANTY THAT (i) THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; (ii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE; (iii) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SOFTWARE WILL MEET YOUR EXPECTATIONS.
- b. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM THE SERVICE PROVIDER OR THROUGH OR FROM THE SOFTWARE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE TOS.

## 12. LIMITATION OF LIABILITY

YOU EXPRESSLY UNDERSTAND AND AGREE THAT THE SERVICE PROVIDER AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS SHALL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, RESULTING FROM: (i) THE USE OR THE INABILITY TO USE THE SERVICE; (ii) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICE; (iii) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (iv) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICE; OR (v) ANY OTHER MATTER RELATING TO THE SERVICE. IN THE EVENT OF LITIGATION, ARBITRATION, OR MEDIATION THE MAXIMUM AMOUNT OF DAMAGES THAT USER MAY CLAIM IS LESS THAN OR EQUAL TOTAL AMOUNT OF LICENSE FEES PAID BY THE USER TO THE SERVICE PROVIDER.

## 13. EXCLUSIONS AND LIMITATIONS

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS OF SECTIONS 11 AND 12 MAY NOT APPLY TO YOU.

## 14. LAWSUITS BY THIRD PARTIES

If User's Clients or 3<sup>rd</sup> parties file a lawsuit, arbitration, and/or mediation proceedings against User due to use of the ICP, then Service Provider shall defend User against such lawsuits, if the following terms are met:

- a) The Client/3<sup>rd</sup> party was allowed to use Software or Services legally;
- b) The Client/3<sup>rd</sup> party properly used Software or Services and properly downloaded and installed ICP;
- c) Service Provider was unable to successfully recover the Client/3<sup>rd</sup> party's system to operating condition within 10 business days after Client/3<sup>rd</sup> party gave Service Provider full access to its web server to allow Service Provider the opportunity to diagnose, repair, and/or restore such system(s);
- d) The Client/3<sup>rd</sup> party properly and regularly backs up the data and content;
- e) The Client/3<sup>rd</sup> party can prove that Software or Service in not properly operating and/or causing a crash to the web server; and



- f) The Client/3<sup>rd</sup> party's equipment was suitable to handle the Software and/or Services offered by Service Provider.

In any case, the maximum amount that Service Provider will be financially responsible for will be less than or equal the total amount of license fees paid by the User to the Service Provider as Clients/3<sup>rd</sup> parties understand that they are obtaining such services for free or at very little cost.

The Clients are required to agree to these terms and conditions prior to downloading and installing ICP on their web server.

## 15. SERVICES TO RETAILERS/CUSTOMERS/3<sup>RD</sup> PARTIES

User understands that Service Provider may offer and/or provide services to User's retailers, customers, and 3<sup>rd</sup> parties during the term of this Agreement and after the expiration and/or termination of this Agreement.

## 16. GENERAL INFORMATION

**Entire Agreement.** This Agreement and the TOS contained therein constitute the entire agreement between User and the Service Provider and govern User's use of the Service, superseding any prior agreements between User and the Service Provider with respect to the Software. User also may be subject to additional terms and conditions that may apply when User uses or purchases certain other i-Showcase services, affiliate services, third-party content or third-party software.

**Non-Refundable Payments.** All payments made under this Agreement or any other related Agreement to Service Provider by User are non-refundable.

**Choice of Law and Forum.** This Agreement and the TOS and the relationship between User and the Service Provider shall be governed by the laws of the State of California without regard to its conflict of law provisions. User and the Service Provider agree to submit to the personal and exclusive jurisdiction of the courts located within the county of Los Angeles, State of California, and California law shall apply.

**Waiver.** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement will be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy will be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless the writing so specifies.

**Severability of Agreement.** If a court or an arbitrator of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.

**Waiver and Severability of Terms.** The failure of the Service Provider to exercise or enforce any right or provision of this Agreement and/or the TOS shall not constitute a waiver of such right or provision or any other right or provision. If any provision of the TOS is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of this Agreement and the TOS remain in full force and effect.



**Statute of Limitations.** You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or the TOS must be filed within one (1) year after such claim or cause of action arose or be forever barred.

**Modification of Agreement.** This Agreement may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Agreement will be binding unless it is in writing and signed by both parties. No provisions in either party's correspondence or other business forms used by either party will supersede or add to the terms and conditions of this Agreement.

**Word Usage.** Unless the context clearly requires otherwise, (a) the plural and singular numbers are each deemed to include the other; (b) the masculine, feminine, and neuter genders are each deemed to include the others; (c) "shall," "will," or "agrees" are mandatory, and "may" is permissive; (d) "or" is not exclusive; and (e) "includes" and "including" are not limiting.

**Inconsistency.** Should any inconsistency exist or arise between a provision of this Agreement and a provision of any exhibit, schedule, or other incorporated writing, the provision of this Agreement will prevail.

**Time of the Essence.** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing may not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.

**Survival.** Except as otherwise expressly provided in this Agreement, all representations, warranties, and covenants contained in this Agreement, or in any instrument, certificate, exhibit, or other writing intended by the parties to be a part of their Agreement, will survive the termination of this Agreement forever or until the maximum time allowed by either Federal, State, or local law, whichever is longer.

