

# SUBLICENSEE END USER LICENSE AGREEMENT

## 1. DEFINITIONS

The following capitalized terms, if used in this Agreement, will have the following meanings:

**1.1. "App Technology"** means any mobile application technology used to deliver, or in conjunction with, other Sublicensed Materials. For purposes of this Agreement, "App Technology" shall not include modifications and/or customizations to existing mobile application technology made specifically for Sublicensee. App Technology is alternatively described as Software.

**1.2. "Carry-Over"** means the Sublicensed Materials for a certain Model Year vehicle that are used as Sublicensed Materials for a vehicle from a different Model Year.

**1.3. "CGI Model"** means computer models representing the outside or inside shape or form of an object or a scene. Such computer models may be created by any method or combination of methods at EVOX's sole discretion.

**1.3.1 "Persistent CGI Imagery"** means computer generated images resulting in a fixed digital file that may be saved and viewed in the future without regeneration.

**1.3.2 "Dynamic CGI Imagery"** means computer generated images resulting in the momentary display of such computer generated images generated at the time of display, is not saved, and must be regenerated each time it is viewed.

**1.4. "Consumer"** means a Third Party that uses or views the Sublicensed Materials, other than EVOX or Sublicensor.

**1.5. "Effective Date"** is the effective date of this Agreement as identified in Schedules 1 and/or 2 of this Agreement.

**1.6. "Images"** means any of the following:

**1.6.1. "In-Studio Images"** means a standardized set of images for a quantity of vehicles created in an enclosed and artificially lit environment (actual or simulated) other than images sourced through an OEM.

**1.6.2. "Colorized Photos"** means a set of images with different colors created in post-production to represent different color options for the vehicle.

**1.6.3. "360-Degree-Images"** means a combined set of images capable of showing a sequence of either interior or exterior view angles of the same vehicle.

**1.6.4. "In-Studio-Video"** means video (or a set of videos) or multi-frame animations created for a quantity of vehicles in an enclosed and artificially lit environment (actual or simulated); showing either interior or exterior (or combined) views of the vehicles, except for video's that also contain a ninety percent (90%) or more running footage of the vehicle being driven over the road.

**1.6.5. "Enhanced Images"** means In-Studio Images, Colorized Photos, 360-Degree-Images and/or In-Studio-Videos.

**1.7. "Image Updates"** means any revisions to the Sublicensed Materials such as fixes, corrections, enhancements (including, without limitation, any and all CGI and newly created Enhanced Images, revisions and also additional images of current Model Year automobiles that EVOX includes, at its sole discretion).

**1.8. "Sublicensed Materials"** means all vehicle images and/or video, CGI Models, Persistent CGI Imagery, Dynamic CGI Imagery and/or App Technology created by any method or combination of methods as described in the Sublicense Agreement whether or not such images and/or videos have been created as of the Effective Date, together with all Image Updates with respect thereto.

**1.9. "Model Year" or "MY"** means the automotive manufacturing industry new model introduction year (e.g., Model Year 2014)

automobiles are available in the calendar year of 2013).

**1.10. "OEM"** means an original equipment manufacturer of automobiles (e.g., Ford Motor Company).

**1.11. "Sublicensor"** means the holder of a license from EVOX to the Sublicensed Materials.

**1.12. "Sublicensee"** means the holder of a sublicense from the Sublicensor as permitted by this Agreement.

**1.13. "Sublicense Agreement"** means any license or contract between Sublicensor and Sublicensee granting a sublicense to, and governing Sublicensee's use of, the Sublicensed Materials.

**1.14. "Term"** means the term specified in the Sublicense Agreement.

**1.15. "Third Party"** means any individual or entity other than EVOX and Sublicensee.

## 2. NO SUB-LICENSING RIGHTS

**2.1.** Sublicensee shall not have the rights to sublicense or distribute the Sublicensed Materials.

## 3. ADDITIONAL RIGHTS AND LIMITATIONS

**3.1.** No license is granted to use the Sublicensed Materials in any manner in any present or future format except for uses and formats expressly permitted by Sublicensor.

**3.2.** Sublicensee will not use the Sublicensed Materials in any way that could be considered defamatory, pornographic, libelous, immoral, obscene, fraudulent, or illegal.

**3.4.** Sublicensee may not use the Sublicensed Materials in any way not expressly permitted by its Sublicense Agreement.

## 4. EXCLUSIVE AND PROHIBITED USE

**4.1.** During the Term of any Sublicense Agreement Sublicensee will not distribute, market, promote, develop or produce (for the purposes of licensing or sublicensing or providing Sublicensed Materials to any Third Parties) any Enhanced Images or the Sublicensed Materials, and will not work as an agent or partner with any other company or individual for the purpose of using, distributing, marketing, promoting, developing or producing (for the purposes of licensing or sublicensing or providing Sublicensed Materials to any Third Parties) Enhanced Images or the Sublicensed Materials, other than as authorized under this Agreement.

## 5. TRADEMARKS

**5.1.** SUBLICENSEE ACKNOWLEDGES THAT NEITHER SUBLICENSOR NOR EVOX CONVEY TO SUBLICENSEE ANY PERMISSIONS, CLEARANCES, RELEASES OR OTHER RIGHTS RELATED TO THE ENTITIES, PRIVATE PROPERTIES, PRODUCTS, TRADEMARKS, TRADE NAMES, LOGOS OR BRANDS DEPICTED IN THE SUBLICENSED MATERIALS, IF ANY, ALL OF WHICH SUBLICENSEE IS OBLIGATED TO OBTAIN, IF NECESSARY.

**5.1.1.** NO PORTION OF ANY OF THE SUBLICENSED MATERIALS SHALL BE INCORPORATED INTO A LOGO, TRADEMARK OR SERVICE MARK OF SUBLICENSEE OR ANY THIRD PARTY. COPYRIGHTS

**5.2. Copyright Notice.** Sublicensee will include on each image of the Sublicensed Materials that Sublicensee uses, EVOX's copyright notice, as follows:

## 6. COPYRIGHTS

**6.1.1. Display of Copyright.** The Sublicensed Materials will be delivered and/or made available to Sublicensee with EVOX's copyright notice included on such Sublicensed Materials. Sublicensee shall clearly display, retain and maintain such copyright notice on any and all permitted uses of the Sublicensed Materials

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and related materials, or any portion thereof, and will not alter, remove, hide or otherwise modify such notice.

**6.1.2. Copyright Notice.** The following copyright notice will also be included in the legal notices section of any website or system and shall also be included in all the metadata/meta tags where Sublicensed Materials are displayed by Sublicensee or a Sublicensee: "NOTICE: The automotive images or video contained herein are owned by EVOX Productions LLC ("EVOX") and are protected under United States and international copyright law."

**6.1.3. Changes to Copyright Notice Requirements.** Such notice shall not be modified or altered by Sublicensee or any Sublicensee or any Third Party users of Sublicensed Materials under this Agreement without the prior written consent of EVOX.

**6.1. EVOX Copyright Logo.** Sublicensed Materials delivered by Sublicensor to Sublicensee shall be delivered with the EVOX copyright logo as part of the Sublicensed Material image. Sublicensee agrees not to remove such logo.

### 7. UNAUTHORIZED USE/FURTHER RESTRICTIONS

**7.1. Unauthorized Use.** The parties agree that upon any unauthorized use by Sublicensee, or as a result of other violations of this Agreement, EVOX and/or Sublicensor shall be entitled to exercise all rights and remedies available to it, including, as applicable, any claims for copyright infringement. Sublicensee further acknowledges that any infringement, misappropriation or other violation by Sublicensee of EVOX's proprietary rights is likely to cause immediate and irreparable injury to EVOX and that, in the event of any such breach, EVOX shall be entitled to seek injunctive relief in addition to any and all other remedies available at law or in equity.

**7.2. Notice of Unauthorized Use.** Sublicensee will notify EVOX immediately of any unauthorized possession or use of the Sublicensed Materials, or any part thereof, or EVOX's trademarks or EVOX's confidential information of which Sublicensee becomes aware.

### 8. OWNERSHIP OF SUBLICENSED MATERIALS

**8.1. No Claim by Sublicensee.** Sublicensee agrees not to claim any title to the Sublicensed Materials or any derivative works thereof, and any EVOX Trademarks or any OEM's trademarks, trade names or services marks, trade secrets, or other EVOX intellectual property; nor shall Sublicensee claim any right to use or otherwise exploit such rights except as expressly permitted by this Agreement.

### 9. SUBLICENSEES GENERAL DUTIES, REPRESENTATIONS, WARRANTIES AND COVENANTS

**9.1. Compliance with Laws.** Sublicensee shall comply with all laws, regulations and other legal requirements applicable to Sublicensee and Sublicensee's performance of this Agreement.

**9.2. Security Requirements.** Sublicensee agrees to implement and maintain at all times during the Term the following Security Requirements:

**9.2.1.** Sublicensee will protect the Sublicensed Materials using an industry standard firewall to safeguard against unauthorized third-party access to the Sublicensed Materials.

**9.2.2.** In no event will Sublicensee use measures less protective than those deemed as reasonable practices in its industry, and in no event will Sublicensee use any less care for or provide any less protection for the Sublicensed Materials than it uses to care for and protect Sublicensee's own digital and printed properties.

### 10. WARRANTY DISCLAIMERS

**10.1. NO WARRANTY.** SUBLICENSEE ACKNOWLEDGES AND AGREES THAT EXCEPT AS MAY OTHERWISE BE EXPRESSLY PROVIDED HEREIN, THE SUBLICENSED MATERIALS ARE PROVIDED "AS IS"; THAT EVOX AND SUBLICENSOR MAKE NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE ACCURACY OR COMPLETENESS OF THE SUBLICENSED MATERIALS; AND THAT EXCEPT AS MAY OTHERWISE BE EXPRESSLY PROVIDED IN THIS AGREEMENT ALL WARRANTIES, CONDITIONS, REPRESENTATIONS AND GUARANTEES, WHETHER EXPRESS OR IMPLIED, AND WHETHER ARISING BY LAW, CUSTOM, ORAL OR WRITTEN STATEMENTS OF EVOX OR SUBLICENSOR OR THEIR AGENTS, EMPLOYEES OR OTHER REPRESENTATIVES, OR OTHERWISE (INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT), ARE HEREBY EXCLUDED AND DISCLAIMED. WITHOUT LIMITING THE FOREGOING, EVOX AND SUBLICENSOR EXPRESSLY DISCLAIM ANY WARRANTY OR LIABILITY WITH RESPECT TO DEFECTS IN THE DESIGN OR OPERATION OF ANY OF THE SUBLICENSED MATERIALS. SUBLICENSEE ACKNOWLEDGES THAT IT IS A SOPHISTICATED PARTY AND THAT IT RECOGNIZES AND AGREES THAT THE TERMS OF THIS SECTION ARE AN IMPORTANT FACTOR IN SUBLICENSOR'S WILLINGNESS TO ENTER INTO THIS AGREEMENT.

**10.2. Additional Materials, Unauthorized Alterations, Etc.** Without limiting other disclaimers set forth in this Agreement, EVOX and Sublicensor have no responsibility for discrepancies, inaccuracies, incompleteness or other problems in the Sublicensed Materials that are caused by alterations or modifications made by Sublicensee, Consumers or any Third Party (including "hackers" and malicious Third Party code) or that are caused by hardware or software not provided by Sublicensor as part of the Sublicensed Materials in accordance with this Agreement.

**10.3. Additional Disclaimers.** Without limiting other disclaimers set forth in this Agreement, with respect to the Sublicensed Materials, EVOX and Sublicensor do not guarantee or warrant that (a) the specifications of the automobiles obtained for photography/Imagery meet OEM specifications or any other vehicle specifications; (b) the image or video files are representative of exact OEM products; (c) the accuracy of Carry-Over information; (d) the accuracy of the vehicle colors; (e) the vehicles covered or included within Sublicensed Materials; or (f) the manufacturers of the vehicles that are the subject of the Sublicensed Materials grant the requisite permissions to take the copyrighted images. The vehicles included in the Automotive Image Library shall be determined by EVOX at its sole discretion.

**10.4. Carry-Over Information.** Selection of Carry-Overs is made at EVOX's sole discretion based in part on analysis of information from third parties. Carry-Overs may not be accurate for later Model Year trim or option level they are representing.

**10.5. CGI Model Disclaimer.** Each CGI Model represents a rendition of the vehicle for image creation purposes and is not intended for purposes requiring dimensional accuracy.

### 11. LIMITATION OF LIABILITY.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT OR OTHERWISE, OTHER THAN LIABILITY WITH RESPECT TO DEFENSE AND INDEMNITY OBLIGATIONS SET FORTH IN THIS AGREEMENT OR A

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VIOLATION BY EITHER PARTY OF SECTIONS 5 (TRADEMARKS), 6 (COPYRIGHTS) OR 7 (UNAUTHORIZED USE/FURTHER RESTRICTIONS), IN NO EVENT SHALL EVOX OR SUBLICENSOR, OR ANY OF THEIR SUBCONTRACTORS, EMPLOYEES, REPRESENTATIVES OR AFFILIATES BE LIABLE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY, WHETHER ARISING UNDER THIS AGREEMENT OR ANY OTHER AGREEMENT BETWEEN THE PARTIES, FOR (I) ANY CONSEQUENTIAL, INDIRECT, PUNITIVE, INCIDENTAL, EXEMPLARY OR SPECIAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE (AND WHETHER OR NOT EVOX OR SUBLICENSEE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), WHETHER BASED UPON LOST GOODWILL, LOST PROFITS, LOSS OF USE OF MONEY, LOSS OF DATA OR INTERRUPTION IN ITS USE OR AVAILABILITY, STOPPAGE OF WORK, IMPAIRMENT OF ASSETS OR OTHERWISE; (II) ANY COST OF PROCUREMENT OF SUBSTITUTE PRODUCTS, SERVICES OR RIGHTS; OR (III) ANY AMOUNT IN EXCESS OF THE AGGREGATE AMOUNT OF FEES PAID TO SUBLICENSOR HEREUNDER DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE THAT THE CLAIM GIVING RISE TO LIABILITY AROSE; PROVIDED, HOWEVER, THE LIMITATION OF THIS SUBSECTION (III) SHALL NOT SERVE TO LIMIT SUBLICENSOR'S RIGHT TO RECOVER FOR FEES OWED BUT NOT PAID NOR SHALL THE RECOVERY OF SUCH OWED AND UNPAID FEES COUNT AGAINST SUCH CAP ON SUBLICENSOR'S RECOVERABLE DAMAGES. NOTWITHSTANDING ANY OF THE FOREGOING, EVOX AND SUBLICENSOR SHALL NOT BE LIABLE FOR ANY CLAIMS ARISING OUT OF FALSE ADVERTISING OR TRUTH IN ADVERTISING CLAIMS REGARDING THE SALE OR LEASE OF AN AUTOMOTIVE VEHICLE.

### 12. INDEMNITY

Sublicensee agrees to defend, indemnify and hold Sublicensor and EVOX, its employees, officers, directors, subcontractors and agents harmless from and against any and all losses, costs, damages, claims, demands, liabilities, actions, judgments and expenses (including, without limitation, reasonable attorneys' fees) suffered or incurred by Sublicensor or EVOX arising out of (i) any Third Party claim related to Sublicensee's or any Sublicensee's use of the Sublicensed Materials in violation of this Agreement or infringement by any of the Sublicensees products of a Third Party's intellectual property rights; or (ii) any act or omission by Sublicensee or any Sublicensee relating to any infringement of EVOX's intellectual property rights.

### 13. GENERAL

**13.1. Governing Law/Venue.** This Agreement is made under and will be construed under the laws of the State of California without regard to the conflicts of laws provisions of those laws. The parties hereby submit to the sole and exclusive jurisdiction of the state and federal courts located in Los Angeles County, California.

**13.2. Agreement/Amendment.** This Agreement as well as any amendments, modifications, or supplements to this Agreement shall not be binding on any Party unless in writing and signed by an authorized representative of such Party. The authorized representative of EVOX shall only be its Chief Executive Officer.

**13.3. Waiver.** The waiver of any breach hereunder will not constitute the waiver of any other or subsequent breach.

**13.4. Severability.** If any term contained in the Agreement is found to be invalid, illegal or unenforceable for any reason, the

remainder of the provisions shall continue in full force and effect, and it is in the intent of the parties that a valid, legal and enforceable provision with the same intent and economic effect be substituted.

**13.5. Headings.** The descriptive headings of the several Sections of this Agreement are inserted for convenience only and do not constitute a part of this Agreement and will not affect the interpretation hereof.

**13.6. Construction.** The Parties further acknowledge that they have thoroughly reviewed this Agreement and bargained for the terms herein. Accordingly, this Agreement will be construed without regard to the party or parties responsible for its preparation and will be deemed to have been prepared jointly by the parties.

**13.7. Entire Agreement.** This Agreement and its Schedules, Exhibits and Appendices, if any, are the entire agreement of the Parties hereto in relation to the subject matter hereof and supersede any and all prior and contemporaneous agreements, understandings, and representations, whether oral or written, and all course of conduct in relation to the subject matter hereof.

### END OF SUBLICENSEE EULA