ImageKit10 ActiveX License Agreement

IMPORTANT- READ CAREFULLY BEFORE INSTALLING THE SOFTWARE.

This License Agreement (this "AGREEMENT") contains the terms and conditions regarding your use of the SOFTWARE (as defined below) and material limitations to your rights in that regard. You should read this AGREEMENT carefully.

By installing the ImageKit10 ActiveX software (hereinafter the "SOFTWARE"), you are accepting the following AGREEMENT.

I. THIS AGREEMENT.

1. Software Covered by this AGREEMENT.

This AGREEMENT governs your use of the Newtone Corporation ("Newtone") SOFTWARE enclosed either as part of a SOFTWARE installer or otherwise accompanied herewith. The term "SOFTWARE" includes, to the extent provided by Newtone: 1) any revisions, updates and/or upgrades thereto; 2) any data, image or executable files, databases, data engines, computer software, or similar items customarily used or distributed with computer software products; 3) anything in any form whatsoever intended to be used with or in conjunction with the SOFTWARE; and 4) any associated media, documentation (including physical, electronic and online) and printed materials (the "Documentation").

2. This AGREEMENT is a legal agreement between you and Newtone.

If you are acting as an agent of a company or another legal person, such as an officer or other employee acting for your employer, then "you" and "your" mean your principal, the entity or other legal person for whom you are acting. However, importantly, even if you are acting as an agent for another, you may still be personally liable for violation of laws such as copyright infringement.

This AGREEMENT is a legal agreement between you and Newtone. You intend to be legally bound to this AGREEMENT to the same extent as if Newtone and you physically signed this AGREEMENT. By installing, copying, or otherwise using the SOFTWARE, you agree to be bound by the terms and conditions contained in this AGREEMENT. If you do not agree to all of the terms and conditions contained in this AGREEMENT, you may not install or use the SOFTWARE. If you have already installed or begun to install the SOFTWARE you should cancel any install in progress and uninstall the SOFTWARE. If you do not agree to all of these terms and conditions, then you must promptly return the uninstalled SOFTWARE to the place from which you purchased it in accordance with the return policies of that place.

II. YOUR LICENSE TO DEVELOP AND TO DISTRIBUTE.

Detailed below, this AGREEMENT pertains to three licenses: 1) a license to use the SOFTWARE to develop other software products (the "PC Developer License"); 2) a license to use and/or distribute the Developed Software (the "Runtime Distribution License"); and 3) a license to use and/or distribute the Developed Software on a Network Server (the "Server Runtime License"). All of these licenses (individually and collectively, the "Licenses") are explained and defined in more detail below.

1. Definitions. Terms and their respective meanings as used in this AGREEMENT:

"Developer" means a person using the SOFTWARE in accordance with the terms and conditions of this AGREEMENT.

"Network Server" means a computer with one or more computer central processing units (CPU's) that operates for the purpose of serving other computers logically or physically connected to it, including, but not limited to, other computers connected to it on an internal network, intranet or the Internet. "Server" means a type of Network Server that serves other computers more particularly connected to it over an intranet or the Internet.

"Developed Software" means those computer software products that are developed by or through the use of the SOFTWARE. "Developed Server Software" means those Developed Software products that reside logically or physically on at least one Server and are operated (executed therein) by the Server's central processing unit(s) (CPU). "Developed Desktop Software" means those Developed Software products that are not Developed Server Software, including, for example, standalone applications. "Redistributable Files" means the SOFTWARE files or other portions of the SOFTWARE that are provided by Newtone and are identified as such in the Documentation for distribution by you with the Developed Software. "Developer" means a person using the SOFTWARE in accordance with the terms and conditions of this AGREEMENT.

"PC" is a computer on which the SOFTWARE is installed.

"PC Developer" is the use of one licensed copy of the SOFTWARE on one PC by one concurrent Developer.

"PC Developer License" defines the right to use the SOFTWARE for development purposes. Every machine installing, running and/or using the SOFTWARE for development purposes must have a licensed copy and its appropriate license.

2. Your PC Developer License.

You are hereby granted a limited, royalty-free, non-exclusive right to use the SOFTWARE to design, develop, and test Developed Software, on the express condition that, and only for so long as, you fully comply with all terms and conditions of this AGREEMENT.

The SOFTWARE is licensed to you on a per PC Developer License basis.

The Single PC Developer License means that one Developer may install one copy of the SOFTWARE for use in designing, testing and creating Developed Software on one computer with a single set of input devices, restricting the use of the SOFTWARE to a maximum of one concurrent user. Conversely, you may not install or use the SOFTWARE on a computer that is a network server or a computer at which the SOFTWARE is used by more than one Developer. You may not network the SOFTWARE or any component part of it, where it is or may be used by more than one Developer unless you purchase an additional PC Developer License for each Developer. You must purchase another separate license to the SOFTWARE in order to add additional developer seats if the additional developers are accessing the SOFTWARE on a computer network. If the SOFTWARE is used to create Developed Server Software, then you must have a seperate Server Runtime License for each Server where copies of the Developed Server Software exist. (See 4. Your Server Runtime License below)

In all cases, you may not use Newtone's name, logo, or trademarks to market your Developed Software without the express written consent of Newtone; agree to indemnify, hold harmless, and defend Newtone, its suppliers and resellers, from and against any claims or lawsuits, including lawyer's fees that may arise from the use or distribution of your Developed Software; you may use the SOFTWARE only to create Developed Software that is significantly different than the SOFTWARE.

3. Your Runtime Distribution License.

License to Distribute Developed Desktop Software. Subject to the terms and conditions in this AGREEMENT, you are granted the license to use and to distribute Developed Desktop Software on a royalty-free basis, provided that the Developed Desktop Software incorporates the SOFTWARE as an integral part of the Developed Software in machine language compiled format (customarily an ".exe", or ".dll", etc.). You may not distribute, bundle, wrap or subclass the SOFTWARE as Developed Software which, when used in a "designtime" development environment, exposes the programmatic interface of the SOFTWARE. You may distribute, on a royalty-free basis, Redistributable Files with Developed Desktop Software only.

4. Your Server Runtime License.

Subject to the terms and conditions in this AGREEMENT, you are granted the license to use and to distribute Developed Server Software, provided that you purchase one Server Runtime License for each Network Server operating the Developed Server Software (and/or Redistributable Files called or otherwise used directly by the Developed Server Software).

5. License Serial Number.

Upon purchase of the SOFTWARE a unique serial number (the "Serial Number") is provided by Newtone either electronically or via the delivery channel. The Serial number provides a means to Register the SOFTWARE. The Serial Number is subject to the restrictions set forth in this AGREEMENT and may not be disclosed or distributed either with your Developed Software or in any other way. The disclosure or distribution of the Serial Number shall constitute a breach of this AGREEMENT, the effect of which shall be the automatic termination and revocation of all the rights granted herein.

6. Updates/Upgrades.

Subject to the terms and conditions of this AGREEMENT, the Licenses are perpetual. Updates, bug fixes and upgrades to the SOFTWARE may be provided by Newtone at their discretion at timely intervals though Newtone does not commit to providing such updates or upgrades, and, if so provided by Newtone, are provided upon the terms and conditions offered at that time by Newtone.

7. Evaluation, Trial, or Beta Copy.

If you are using an "evaluation copy", a "trial" copy, a "Beta" copy, or similar version of the SOFTWARE, specifically designated as such by Newtone on its website or otherwise, then the Licenses are limited as follows: a) you are granted a license to use the SOFTWARE for a period of thirty (30) days counted from the day of installation (the "Evaluation Period"); b) upon completion of the Evaluation Period, you shall either i) delete the SOFTWARE from the computer containing the installation, or you may ii) contact Newtone or one of its authorized dealers to purchase a license of the SOFTWARE, which is subject to the terms and limitations contained herein. The "evaluation copy", "trial" copy, "Beta" copy, or similar version of the SOFTWARE is for evaluation purposes only and may not be used to created any Developed Software and if created may not be distributed or used for any purpose including commericial purposes.

III. INTELLECTUAL PROPERTY.

1. Copyright.

You agree that all right, title, and interest in and to the SOFTWARE (including, but not limited to, any images, photographs, code examples and text incorporated into the SOFTWARE), and any copies of

the SOFTWARE, and any copyrights and other intellectual properties therein or related thereto are owned exclusively by Newtone, except to the limited extent that Newtone may be the rightful license holder of certain third-party technologies incorporated into the SOFTWARE. The SOFTWARE is protected by copyright laws and international treaty provisions. The SOFTWARE is licensed to you, not sold to you. Newtone reserves all rights not otherwise expressly and specifically granted to you in this AGREEMENT.

2. Backups.

You may make one copy the SOFTWARE solely for backup or archival purposes.

3. General Limitations.

You may not reverse engineer, decompile, or disassemble the SOFTWARE.

4. Software Transfers.

You may not rent or lease the SOFTWARE. You may transfer the SOFTWARE to another computer, provided that it is completely removed from the computer from which it was transferred. You may permanently transfer all of your rights under the AGREEMENT, provided that you obtain expressed written permission from Newtone and that you retain no copies, that you transfer all the SOFTWARE (including all component parts, the media and printed materials, any dates, upgrades, this AGREEMENT and, if applicable, the Certificate of Authenticity), and that the recipient agrees to the terms and conditions of this AGREEMENT as provided herein. Newtone must be notified in writing prior to the license transfers where the company of the recipient is different to that of the original licensee. If the SOFTWARE is an update or upgrade, any transfer must include all prior versions of the SOFTWARE.

5. Termination.

Without prejudice to any other rights it may have, Newtone may terminate this AGREEMENT and the Licenses if you fail to comply with the terms and conditions contained herein. In such an event, you must destroy all copies of the SOFTWARE and all of its component parts.

IV. DISCLAIMER and WARRANTIES

1. Disclaimer

Newtone's entire liability and your exclusive remedy under this AGREEMENT shall be, at Newtone's sole option, either (a) return of the price paid for the SOFTWARE; (b) repair the SOFTWARE through updates distributed online. Newtone cannot and does not guarantee that any functions contained in the Software will meet your requirements, or that its operations will be error free. The entire risk as to the Software performance or quality, or both, is solely with the user and not Newtone. You assume responsibility for the selection of the component to achieve your intended results, and for the installation, use, and results obtained from the SOFTWARE.

2. Warranty.

Newtone makes no warranty, to the maximum extent permitted by law, either implied or expressed, including with-out limitation any warranty with respect to this Software documented here, its quality, performance, or fitness for a particular purpose. In no event shall Newtone be liable to you for damages, whether direct or indirect, incidental, special, or consequential arising out the use of or any defect in the Software, even if Newtone has been advised of the possibility of such damages, or for any claim by any other party. All other warranties of any kind, either express or implied, including

but not limited to the implied warranties of merchantability and fitness for a particular purpose, are expressly excluded.

V. MISCELLANEOUS.

1. This is the Entire Agreement.

This AGREEMENT (including any addendum or amendment to this AGREEMENT included with the SOFTWARE) is the final, complete and exclusive statement of the entire agreement between you and Newtone relating to the SOFTWARE. This AGREEMENT supersedes any prior and contemporaneous proposals, purchase orders, advertisements, and all other communications in relation to the subject matter of this AGREEMENT, whether oral or written. No terms or conditions, other than those contained in this AGREEMENT, and no other understanding or agreement which in any way modifies these terms and conditions, shall be binding upon the parties unless entered into in writing executed between the parties, or by other non-oral manner of agreement whereby the parties objectively and definitively act in a manner to be bound (such as by continuing with an installation of the SOFTWARE, "clicking-through" a questionnaire, etc.) Employees, agents and other representatives of Newtone are not permitted to orally modify this AGREEMENT.

2. You Indemnify Newtone.

You agree to indemnify, hold harmless, and defend Newtone and its suppliers and resellers from and against any and all claims or lawsuits, including attorney's fees, that arise or result from this AGREEMENT.

3. Interpretation of this AGREEMENT.

If for any reason a court of competent jurisdiction finds any provision of this AGREEMENT, or any portion thereof, to be unenforceable, that provision of this AGREEMENT will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this AGREEMENT will continue in full force and effect. Formatives of defined terms shall have the same meaning of the defined term. Failure by either party to enforce any provision of this AGREEMENT will not be deemed a waiver of future enforcement of that or any other provision. Except as otherwise required or superseded by law, this AGREEMENT is governed by the laws of JAPAN. If the SOFTWARE was acquired outside of JAPAN, then local law may apply.