

## End User License Agreement for GleamTech ImageUltimate

IMPORTANT: READ CAREFULLY: This GleamTech End User License Agreement ("**Agreement**") is a legal agreement between You and GleamTech and its respective brands for the materials accompanying this Agreement, which may include computer software, printed materials, and "on line" or electronic documentation and resource files, project and solution files for GleamTech Products.

BY INSTALLING, DOWNLOADING, COPYING OR OTHERWISE USING THE PRODUCT, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT INSTALL, DOWNLOAD, COPY OR USE THE PRODUCT.

The Product is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. GleamTech or its suppliers own the title, copyright and other intellectual property rights in the Product. The Product is licensed, not sold.

### 1. DEFINITIONS.

- 1.1. **"API" or "Application Programming Interface"** means a publicly accessible interface defining the ways by which an application program may request services from libraries and/or software.
- 1.2. **"Company"** means GleamTech which includes the brands GleamTech owns.
- 1.3. **"Confidential Information"** is any information marked as confidential. Confidential Information does not include information:(a) which is publicly known; (b) which is disclosed to the other party without restriction by a third party and without any breach of confidentiality by the third party; or (c) which is developed independently by the other party without reliance on any of the discloser's Confidential Information.
- 1.4. **"Derived Works"** means works based upon or using the Product.
- 1.5. **"Developer"** means one of Your employees or third-party consultants authorized to develop Derived Works specifically for You using the Product in accordance with this Agreement. For the avoidance of doubt, the term Developer may include report authors or administrators when referring to Reporting Products.
- 1.6. **"Enhanced Support"** means any paid support package, including Priority Support, Enterprise Support, and Sponsored Support.

- 1.7. **“Evaluation Version”** means use of the Product without a License Key. An Evaluation Version is a fully functional version of the Product except the results produced will include an GleamTech watermark or a feature limitation, specified by the Product documentation.
- 1.8. **“License Key”** means an electronic file which enables the Product to operate without evaluation restrictions. The License Key is generated by GleamTech when the Product is purchased and is provided to You. The License Key contains information about You, the Product, and the license grant.
- 1.9. **“Maintenance Subscription”** means paid access to Product Updates and fixes.
- 1.10. **“Product”** means the Software licensed under this Agreement.
- 1.11. **“SaaS” or “Software as a Service”** means a model of software deployment whereby a provider licenses an application to customers for use as a service on demand.
- 1.12. **“SDK” or “Software Development Kit”** means a set of development tools that allows a software engineer to create applications for a certain software package, software framework, hardware platform, computer system, video game console, operating system, or similar platform.
- 1.13. **“Software”** means computer software, associated media, printed materials, and "on line" or electronic documentation provided under this Agreement.
- 1.14. **“Temporary License Key”** means an electronic file which enables the Product to operate without evaluation restrictions for a limited period of time. The Temporary License Key is generated by GleamTech and is provided to You. The Temporary License Key contains information about You, the Product, and the evaluation period.
- 1.15. **“Updates”** means technical support, new version, new release, and/or supplements to the Product and/or related information.
- 1.16. **“You” or “Your”** means the purchaser, either an individual or a single entity.

## 2. GRANT OF LICENSE.

GleamTech grants You the rights described in this Agreement provided that You comply with all the terms and conditions of this Agreement:

**2.1. General License Grant.** Except for termination for cause, GleamTech hereby grants to You a nonexclusive, nontransferable, perpetual license to use any versions of the Product that were accessible during the term of this Agreement. GleamTech grants use of the Product according to one of the license types below as identified in the Product title. Such use shall be in accordance with the provisions of this Agreement, which provisions shall survive any termination of this Agreement. The means by which You shall have access to the Product shall be in a manner and form substantially equivalent to the means by which access is provided under this Agreement.

## 2.2. LICENSE DESCRIPTIONS

**2.2.1. Professional License.** A Professional License allows using the product on one single domain which you control, and its subdomains which you control, without restrictions based on server, CPU, or core count. The license key is generated with a wildcard domain (e.g. \*.contoso.com) and during runtime the HOST header is checked against this wildcard domain. The domain is not required to be public-facing, internal domains/hostnames (e.g. myserver) are also accepted. Note that developing or running locally (e.g. localhost or 127.0.0.1) is not restricted, the license domain is checked only when you deploy/publish. This license does not allow using the product in non-web applications (i.e. console or desktop apps) as it's bound to one single domain/hostname; consider Enterprise License (or higher) for that purpose.

**2.2.2. Enterprise License.** An Enterprise License grants enterprise-wide rights (including subsidiaries) but can also be purchased by an individual. Redistribution is restricted to bespoke, custom software, i.e. internal software that your organization uses. This license allows using the product on multiple domains and their subdomains which your organization owns. This license allows using the product in non-web applications (i.e. console or desktop apps).

***Redistribute as part of bespoke/custom software:***

Custom software (also known as bespoke software or tailor-made software) is software that is specially developed for some specific organization or other user. As such, it can be contrasted with the use of software packages developed for the mass market, such as commercial off-the-shelf (COTS) software.

**2.2.3. Distribution License.** A Distribution License is the license you need if you wish to sell or distribute a product which contains this product. This license is very similar to the Enterprise License but does not restrict redistribution and sub-licensing to bespoke, custom software, it allows redistribution in turnkey/package/OEM software. This license allows using the product on multiple domains and their subdomains which your organization and your customers owns.

***Redistribute in turnkey/package/OEM software:***

A turnkey software (also spelled turn-key) is a type of software that is constructed so that it can be sold to any buyer as a completed product. A packaged software is a type of software that has been developed to sell to many different types of customer, rather than being specially developed for one particular customer. OEM stands for "original equipment manufacturer" and OEM software is a phrase that refers to software that is sold to computer builders and hardware manufacturers (OEMs) in large quantities, for the purpose of bundling with computer hardware.

**2.2.4. Source License.** A Source License is very similar to the Distribution License, but in addition it provides full source code for the product.

**2.3. Evaluation Versions and Temporary Licenses.** When using an Evaluation Version or a Temporary License, You MAY NOT use the Product to produce any Derived Works with the exception of Works produced exclusively for the purpose of Product evaluation. If You use the Product in any other Derived Works, You must purchase the applicable license or You may be sued for collection and punitive damages. If You do not agree to these terms, then do not evaluate the Product and remove it from Your computer immediately. Temporary licenses are limited to three (3), thirty (30) day licenses per customer per twelve (12) month period.

**2.4. Documentation.** You may make any number of copies of the electronic and other documentation provided with the Product or downloaded from the GleamTech website, provided that all copies must be used only for internal purposes and may not be republished or distributed externally.

**2.5. Disassembly.** You may not reverse engineer, decompile, disassemble or in any other way try to gain access to information regarding the construction of the Product(s).

**2.6. Transfer.** You may not rent, lease, lend, sub-license, sell, assign, transfer or pledge the Product in a standalone fashion or this Agreement, on a temporary or permanent basis, unless you first receive written permission from GleamTech.

**2.7. Reservation of Rights.** GleamTech reserves all rights not expressly granted herein.

### **3. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS.**

#### **3.1. Redistribution Restrictions for all Products**

**3.1.1.** GleamTech will not provide support for Derived Works, GleamTech will only provide support for the Product.

**3.1.2.** Derived Works may not use any of the brands of the Company in their naming nor may any of the brands of the Company appear in their name, without prior written permission from GleamTech.

**3.1.3.** The name "GleamTech" or "ImageUltimate" must not be used to endorse or promote products derived from the Product without prior written permission. For written permission, please contact GleamTech sales.

**3.2. Term.** The term of this Agreement shall continue perpetually from the date of purchase unless terminated according to Section 3.4.

**3.3. Termination.** Without prejudice to any other rights, either party may terminate this Agreement if the opposite party materially fails to comply with the terms and conditions of this Agreement and fails to cure such material breach within thirty (30) days of written notice of same from the other party. In such event, You must destroy all copies of the Product, including but not limited to backups.

**3.4. Survival.** Unless by its nature a provision cannot survive this Agreement, the provisions of this Agreement shall survive the expiration or any termination of this Agreement.

**3.5. Consent to Use of Data.** You agree that GleamTech and its affiliates may collect and use technical information, excluding any Confidential Information, gathered as part of the Product support services provided to You on an anonymous and aggregated basis only. GleamTech may use this information solely to improve Our Products or to provide customized services or

technologies to You. No information is collected by the Product; technical information must be provided to GleamTech by You through the support process.

#### **4. CONSIDERATION.**

- 4.1. Consideration for Products.** For the rights and license granted in this Agreement, You will pay GleamTech the currently published price available at GleamTech.com or another mutually agreed upon amount to appear on a valid invoice.
- 4.2. Taxes.** The license fees and any other amounts payable pursuant to the terms and conditions herein are exclusive of any taxes or duties, now in force or enacted in the future, in the jurisdiction where the payment is either made or received. To the extent that any such taxes or duties (except those based on GleamTech's income) are payable by GleamTech, You must pay to GleamTech the amount of such taxes or duties in addition to any fees owed under this Agreement.

#### **5. MAINTENANCE, UPDATES AND DISCONTINUATION.**

- 5.1. Maintenance for Products.** Initial purchase of a Product includes a one-year Maintenance Subscription. Thereafter, You may renew Your Maintenance Subscription annually. A Maintenance Subscription entitles the purchaser to Updates of the Product and access to Product fixes for a period of one (1) year (365 days).
- 5.2. Updates.** Except where explicitly included with a Maintenance Subscription, GleamTech may, in its sole discretion, provide technical support and/or Updates to You hereunder.
- 5.3. Technical Support.** Technical Support, whether free or through a paid Enhanced Support subscription is provided with the following conditions:
- 5.3.1.** Technical support is provided through GleamTech Support Portal (Tickets via Email/Web and Community Forums). You agree not to attempt to bypass the Support Portal via phone, or other means.
- 5.3.2.** GleamTech does not guarantee that any fix will be provided in any given time period. Any estimates provided are estimates only and are not binding or enforceable.



- 5.3.3.** Updates and fix notifications are posted in the GleamTech Support Portal; also, they will be provided to You via email notifications.
- 5.3.4.** GleamTech will provide support status updates when You request them.
- 5.3.5.** GleamTech will typically provide support for the Product throughout the license subscription period whether the Product has been discontinued or not. However, GleamTech reserves the right to cancel support, unless provided as Enhanced Support for a fee, at any time and for any reason.
- 5.4. Enhanced Support.** Enhanced Support services will be provided substantially as described in the description of services available at <http://www.GleamTech.com>. In addition to the terms in Section 5.4, the following shall apply:
- 5.4.1.** GleamTech shall use reasonable efforts to solve problems identified by You; however, GleamTech does not warrant that it will solve any particular problem in a given timescale, or at all.
- 5.4.2.** Enhanced Support packages are subject to fair use policies as described on the Enhanced Support product descriptions.
- 5.5. Discontinuation of Product.** GleamTech reserves the right to discontinue the Product at any time, whether it is offered individually or as a part of a Product suite.
- 5.5.1.** If GleamTech discontinues the Product, they will announce Product discontinuation through the Monthly GleamTech Customer Newsletter ("**Newsletter**"), which You may subscribe to or access at <http://www.GleamTech.com>. It is Your responsibility to check the Newsletter contents for notice of Product discontinuation. Notice will be given at least fifteen (15) days prior to the discontinuation of the Product. If the Product is discontinued because it is made part of another GleamTech Product, then a license for the subsequent merged Product will be made available to You at no additional fee. If the Product is discontinued and not made part of another GleamTech Product, then You shall retain the right to use the Product pursuant to the perpetual license granted herein and in accordance with the terms of this Agreement.

**5.6. Close of Business.** If for any reason, including insolvency or dissolution, GleamTech is unable to remain in business under the GleamTech name or another name they will provide the following remedy to each license owner:

**5.6.1.** GleamTech will make a reasonable effort to notify You at least thirty (30) days prior to close of business.

**5.6.2.** You will be provided with the option of purchasing source code for the Product for which You own current Maintenance Subscription at a cost of no more than the cost of a single Distribution license at that time. Some proprietary portions of the source code may be provided in compiled form only.

## **6. DELIVERY.**

The Product and any associated materials are provided in electronic format only. Upon purchase, GleamTech shall deliver to You download links for the Product and a License Key which will enable the Product to function in the purchased license capacity. If You are distributing software that includes GleamTech Software then it is Your responsibility to protect Your License Key to ensure no unauthorized access or unintended distribution is possible. Previous versions of the Product will only be available for a twelve (12) month period from the date of publishing; access to previous versions once removed will only be available to customers who hold a current subscription for the Product. CUSTOMERS ARE ADVISED TO KEEP A BACKUP COPY OF ANY DOWNLOADED PRODUCT FOR FUTURE USE.

## **7. INTELLECTUAL PROPERTY RIGHTS.**

All title and intellectual property rights in and to the Product (including but not limited to any images, photographs, animations, video, audio, music, text and "applets" incorporated into (but not those displayed via) the Product and any copies of the Product that You are expressly permitted to make herein) are owned by GleamTech or its suppliers. All rights not expressly granted are reserved by GleamTech.

## **8. NONDISCLOSURE.**

Both Parties recognize that the other Party may obtain proprietary and/or Confidential Information in the course of their business. Each Party agrees to protect each other's Confidential Information as follows:

**8.1. Time and Method.** Both during the term of this Agreement and for a period of five (5) years after termination or expiration of this Agreement to hold each other's Confidential Information in confidence and to protect the disclosed Confidential Information by using the same degree of



care to prevent the unauthorized use, dissemination or publication of the Confidential Information as they use to protect their own confidential information of a like nature.

**8.2. Permitted Disclosure to Employees.** Each Party agrees that it will only disclose Confidential Information to its responsible employees, contractors, professional advisors and similarly situated individuals who have a bona fide need to know and who are bound by agreement or by law to keep such information confidential.

**8.3. Other Permitted Disclosures.** Each Party may disclose Confidential Information (i) as authorized by the other Party in writing or (ii) to the extent required by applicable law, court, or government agency, provided that the Party required to disclose Confidential Information promptly notifies the other Party and cooperates with any efforts by the other Party, at the other Party's expense, to limit such disclosure by means of seeking a protective order or requesting confidential treatment. Other than those expressly allowed under this Section 8 of the Agreement, no other disclosures of Confidential Information are permitted.

## **9. LINKS TO THIRD PARTY SITES.**

You may be linked to third party sites through the use of the Product documentation. The third-party sites are not under the control of GleamTech, and GleamTech is not responsible for the contents of any third-party sites, any links contained in third party sites, or any changes or updates to third party sites. GleamTech is not responsible for webcasting or any other form of transmission received from any third-party sites. GleamTech provides the links to third party sites to You only as a convenience, and the inclusion of any link does not imply an endorsement by GleamTech of the third-party site.

## **10. LIMITED WARRANTY AND DISCLAIMER.**

**10.1.** Except with respect to an Evaluation Version of the Product, GleamTech warrants that, for a period of thirty (30) days from the date of purchase (as evidenced by a copy of Your receipt) when used with a recommended hardware configuration, the Product will perform in substantial conformance with the documentation supplied with the Product. This warranty applies only on initial Product purchases and does not apply to Maintenance Subscription renewals or Updates.

**10.2.** GLEAMTECH PROVIDES NO REMEDIES OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, FOR EVALUATION VERSIONS OF THE PRODUCT. THE EVALUATION VERSION OF THE PRODUCT IS PROVIDED "AS IS".

**10.3.** GLEAMTECH AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. GLEAMTECH DOES NOT WARRANT THAT THE PRODUCT IS ERROR-FREE OR WILL

OPERATE WITHOUT INTERRUPTION. THE PRODUCT IS NOT DESIGNED, INTENDED OR LICENSED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS, INCLUDING WITHOUT LIMITATION, THE DESIGN, CONSTRUCTION, MAINTENANCE OR OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS. GLEAMTECH SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH PURPOSES.

**10.4.** IF APPLICABLE LAW REQUIRES ANY WARRANTIES WITH RESPECT TO THE PRODUCT, ALL SUCH WARRANTIES ARE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE OF DELIVERY.

**10.5.** NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY GLEAMTECH, ITS DEALERS, DISTRIBUTORS, AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY PROVIDED HEREIN.

## **11. EXCLUSIVE REMEDY.**

Your exclusive remedy for breach of warranty is to return the Product to the place You acquired it, with a copy of Your receipt and a description of the problem. If You report a breach of warranty to GleamTech no more than thirty (30) days from the date of purchase, then GleamTech will use reasonable commercial efforts to supply You with a replacement copy of the Product that substantially conforms to the documentation, or refund to You Your purchase price for the Product, at its option. GleamTech shall have no responsibility if the failure arises out of use of the Product with other than a recommended hardware configuration. THIS REMEDY IS THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO YOU FOR BREACH OF EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE PRODUCT.

## **12. LIMITATION OF LIABILITY.**

Except with regard to: (i) breach of confidentiality obligations; and (ii) any costs associated with the defense chosen by GleamTech pursuant to Section 13 "Indemnification," and (iii) settlement, to the infringed upon party, of an intellectual property right claim or moral right claim, liability shall be limited as follows:

**12.1.** NEITHER GLEAMTECH, ITS SUPPLIERS, YOU OR YOUR AFFILIATES OR SUBSIDIARIES SHALL BE LIABLE TO THE OTHER PARTY TO THIS AGREEMENT OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, COVER OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR THE INABILITY TO USE EQUIPMENT OR ACCESS DATA, LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION OR THE LIKE), ARISING OUT OF THE USE OF, OR INABILITY TO USE,

THE PRODUCT OR ANY DERIVED WORKS AND BASED ON ANY THEORY OF LIABILITY INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF THE PARTY OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

**12.2.** EXCEPT WITH REGARD TO (i), (ii), AND (iii) IN SECTION 12, GLEAMTECH'S TOTAL LIABILITY TO YOU FOR ACTUAL DAMAGES, FOR ANY CAUSE WHATSOEVER WILL BE LIMITED TO THE AMOUNT PAID BY YOU FOR THE PRODUCT THAT CAUSED SUCH DAMAGE.

**12.3.** THE FOREGOING LIMITATIONS ON LIABILITY ARE INTENDED TO APPLY TO THE WARRANTIES AND DISCLAIMERS ABOVE AND ALL OTHER ASPECTS OF THIS AGREEMENT.

**12.4. Force Majeure.** GleamTech is not liable hereunder by reasons of failure or delay in the performance of its obligations hereunder on account of strikes, shortages, riots, insurrection, war, acts of terrorism, fires, flood, storm, explosions, earthquakes, acts of God, government action, labor conditions, or any other cause which is beyond its control.

### **13. INDEMNITY.**

You agree to hold GleamTech harmless against, and at Your expense handle and defend, any claim and defend any third-party suit brought against You based upon an allegation that any software developed by You and included in Derived Works produced using the Product constitutes an infringement of any international patent, or any copyright or other proprietary or intellectual property right on the condition that GleamTech notifies You promptly of the claim and gives You sole control of the defense and negotiations for its settlement or compromise. You shall pay all damages and costs awarded in such suit.

GleamTech will indemnify, defend and hold You, and/or Your and/or its affiliated and/or subsidiary companies harmless against any claims, legal actions, losses and other expenses arising out of or in connection with any claims that the Product and/or related documentation infringes or violates any intellectual property right of any third party ("Claim"), on the condition that You notify GleamTech promptly of the Claim and give GleamTech sole control of the defense and negotiations for its settlement or compromise. If You become, or may become, prohibited from continued use of the Product by reason of an actual or anticipated Claim, GleamTech will use its reasonable efforts to do the

following: (a) obtain for You the right to use the Product, or (b) replace or modify such Product so that it is no longer subject to a Claim, but performs the same functions in an equivalent manner.

In the event that GleamTech determines, in its sole discretion, that neither (A) nor (B) is commercially reasonable, GleamTech shall refund all license fees paid by You for the infringing Product and all amounts paid for Your Maintenance Subscription for the Product.

**14. NO WAIVER.**

No action taken by either party pursuant to this Agreement, and no waiver by either party, whether express or implied, of any provision or right in this Agreement or any breach thereof, and no failure of either party to exercise or enforce any of its rights under this Agreement, will constitute a continuing waiver with respect to such provision or right or as a breach or waiver or any other provision or right, whether or not similar.

**15. SEVERABILITY.**

If any covenant or provision of the Agreement is determined to be void or unenforceable in whole or part, then such void or unenforceable covenant or provision shall be deleted from this Agreement and shall not effect or impair the enforceability or validity of any other covenant or provision of this Agreement or any part thereof.

**16. GOVERNING LAW.**

This Agreement is made in the State of New York, USA and shall be governed and interpreted according to the laws of the State of New York, USA. Any lawsuit filed regarding this Agreement shall be filed in the State of New York, USA. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

**17. CAPTIONS.**

All indexes, titles, subject headings, section titles, and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive, or to affect the meaning or scope of this Agreement.

**18. UPDATES.**

GleamTech may make updates and changes to this license Agreement in conjunction with any Updates and additional Products. Such changes will be posted on our website at <http://www.GleamTech.com> as well as distributed with the Updates or additional Products. You are bound by the terms of the Agreement as it is posted or distributed at the most recent time you install

the additional Product or Updates. If You do not wish to be bound by the terms of this license Agreement You should not install any Updates or additional Product(s).

**19. PUBLICITY.**

You grant GleamTech the right to use Your name and logo in press releases, brochures, case studies, marketing materials, the GleamTech website and similar materials indicating that You are a customer of GleamTech, providing that You have reviewed and approved of such materials in advance in writing.

**20. ENTIRE AGREEMENT.**

This Agreement is the entire agreement between You and GleamTech relating to the license of the Product and the support services (if any) You purchase hereunder and it supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to the Product or any other subject matter covered by this Agreement. This Agreement includes and encompasses materials referenced herein from the GleamTech.com website. To the extent the terms of any GleamTech policies or programs for support services conflict with the terms of this Agreement, the terms of this Agreement shall control.