

PRE-RELEASE EVALUATION AND/OR TESTING AGREEMENT

Preamble. Upon registration by the User under the pre-release program and acceptance of the User into the program by Corel, the User hereby agrees to the following terms and conditions.

1. **Products.** Corel Corporation ("Corel") having its principal place of business at 1600 Carling Avenue, Ottawa, Ontario, K1Z 8R7, Canada shall provide to **Company or Individual** ("User") having its principal place of business at or, if an Individual, residing at the address provided at the time of application ("User Location") at no charge to User pre-release versions of hardware and/or software products and related technical information or documentation of Corel (collectively the "Products").

2. **Term.** User shall be entitled to use the Products from the date on which User is accepted into the pre-release program (the "Effective Date") until this Agreement is terminated pursuant to Section 18 below (the "Term").

3. **Location.** Corel shall, at Corel's expense, transport the Products to the User Location.

4. **License.** Corel grants User a non-exclusive, royalty-free, non-transferable, non-assignable right, for the Term, to use the Products solely at the User Location and solely for the purpose of testing the Products for the benefit of Corel ("Testing") and, if applicable, to determine if User desires the Products if and when the Products are made commercially available by Corel ("Evaluation"), (collectively the "Purpose").

5. **Evaluation and Testing.** In consideration of the license granted and other terms and conditions of this Agreement, and without charge to Corel, User acknowledges and agrees as follows:

(a) User shall provide all operating system software necessary to enable User to effectively conduct Evaluation and/or Testing of the Products;

(b) User will begin Testing of the Products when the Products are delivered to the User, and will make reasonable efforts to use the Products on a regular basis, solely in accordance with the Purpose, in a manner consistent with the normal use of products of this type;

(c) User will use reasonable efforts to provide verifiable reports in the manner, format and quantity set out either in the beta testing notes, if any, as provided by Corel in the first Product shipment ("Beta Notes") or as directed by Corel from time to time concerning Testing of the Products and to provide feedback and to identify problems encountered. Users shall not submit bug reports through normal technical support channels; and

(d) All feedback, regardless of source, provided by User will be monitored by Corel for inappropriate language/comments, both in the newsgroups and in all reports submitted. Any feedback not submitted in a professional and ethical manner by User will result in the removal from the Testing program of the User who submitted it and termination of this Agreement without further notice.

Where the Purpose is solely for Evaluation of the Products, 5(b), (c) and (d) shall not apply.

6. **Technical Support.** Corel may provide an updated version of the Products, but is not obligated to correct errors or omissions in the Product or ensure proper operation with any other products. Although Corel may from time to time provide technical support, User understands and agrees that Corel has not, and does not thereby, commit to any level of effort or availability. The Product provided by Corel to User may be an earlier version(s) than the Products ultimately made commercially available.

7. **Title.** (a) The Products shall remain the personal property of Corel throughout the Term, and title is and shall remain vested in Corel. User shall do nothing inconsistent with Corel's title. User shall not transfer, sell, assign, sublicense, pledge or otherwise dispose of, encumber or suffer a lien or encumbrance upon or against any interest in the Products.

(b) Any information or feedback provided by User to Corel, including suggestions for the Products made by User shall be the exclusive property of Corel, together with all rights therein.

8. **Return of Products.** Upon termination of this Agreement, User shall promptly (i) destroy all software; and (ii) return all hardware to Corel at Corel's expense.

9. **Disclaimer of Warranties.** **USER ACKNOWLEDGES THAT THE PRODUCTS ARE PRE-RELEASE PRODUCTS, AND THAT THE PRODUCTS AND CONFIDENTIAL INFORMATION ARE PROVIDED BY COREL ON AN "AS IS" BASIS AND WITHOUT WARRANTY. THE PRODUCTS MAY CONTAIN BUGS, ERRORS AND OTHER PROBLEMS THAT COULD CAUSE SYSTEM FAILURES OR MAY NOT PERFORM ALL FUNCTIONS FOR WHICH THEY ARE INTENDED OR REPRESENTED AND THE USE OF SUCH PRODUCTS IS ENTIRELY AT THE USER'S RISK. THIS DISCLAIMER IS IN LIEU OF ALL WARRANTIES WHETHER EXPRESS OR IMPLIED, ARISING BY STATUTE, OPERATION OF LAW USAGE OF TRADE, COURSE OF DEALING OR OTHERWISE, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, MERCHANTABLE QUALITY, SATISFACTORY QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE.**

10. **Future Availability.** Corel reserves the right at any time not to release the Products or, if the Products are released, to alter prices, features, specifications, capabilities, functions, release dates, general availability, or other characteristics of the Products.

11. **Final Release Version.** Should Corel, in its sole discretion, provide User with a final release version of the software, User acknowledges and agrees that Corel shall be under no obligation to provide User with maintenance releases for the final release version, whether or not such maintenance releases are made commercially available by Corel.

12. **Limitation of Liability.** **NEITHER COREL NOR ITS SUPPLIERS SHALL BE LIABLE FOR ANY LOSS OR DAMAGE TO USER, ITS CUSTOMERS, OR ANY THIRD PARTIES CAUSED BY THE PRODUCTS, CONFIDENTIAL INFORMATION OF COREL OR BY COREL'S PERFORMANCE OF THIS AGREEMENT. NEITHER COREL NOR ITS SUPPLIERS SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, ARISING OUT OF ANY USE OF THE PRODUCTS OR ANY PERFORMANCE OF THIS AGREEMENT WHETHER COREL OR ITS SUPPLIERS IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES ARE FORESEEABLE.**

13. **Risk of Loss.** Where the Products consist of hardware, User is responsible for any loss or damage to such Products from the time of delivery of the Products to User until they are returned to Corel.

14. **Indemnity.** User shall fully defend, indemnify, and hold harmless Corel from all claims, losses, costs, damages, expenses (including attorney's fees), and other liabilities arising out of User's use, operation, or possession of the Products, to the fullest extent permitted by law.

15. **Intellectual Property Rights.** All right, title and interest to all intellectual property with respect to the Products, including that which may be or become protectable by patent, copyright, trademark, trade secret, or similar laws, shall remain exclusively with Corel. No license or other right of any kind is granted by Corel's furnishing the Products to User, except for the limited right to use and test the Products as expressly provided in this Agreement. User shall not use Corel's copyrights, trademarks, trade names or other intellectual property in any way.

16. **U.S. Government Rights.** The Product under this Agreement is "commercial computer software" as that term is described in 48 C.F.R. 252.227-7014(a)(1). If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this License as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the Federal Acquisition Regulations ("FAR") and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this License as specified in 48 C.F.R. 227.7202 of the DOD FAR Supplement ("DFAR") and its successors.

17. **Confidentiality of Information.**

17.1 **Confidential Information**

(a) "Confidential Information" means nonpublic information that Corel designates as being confidential or which, under the circumstances surrounding disclosure ought to be treated as confidential and includes, without limitation, the Products, information relating to the Products including features, functionality and performance, Corel's business policies or practices, and information received from others that Corel is obligated to treat as confidential. Confidential Information disclosed to the User by any Corel subsidiary and/or agent is covered by this Agreement.

(b) Confidential Information does not include any information which the User can conclusively establish (i) was in the possession of the User without any obligation of confidentiality at the time of the disclosure; (ii) prior to or after the time of disclosure becomes publicly available without the act or omission of the User; (iii) is disclosed to the User by a third party under no legal obligation to maintain the confidentiality of such information; or (iv) was independently developed by or on behalf of the User.

17.2 **Restrictions**

(a) The User covenants to COREL that it will not at any time, other than in accordance with the terms of the Agreement, disclose the Confidential Information to any person or entity without the prior written approval of COREL, or use any Confidential Information for any purpose, other than for the specific purpose set out in Section 4, unless specifically approved in writing by COREL. However, the User may disclose Confidential Information in accordance with judicial or other governmental order, provided the User shall give Corel reasonable notice prior to such disclosure and shall assist Corel in obtaining a protective order or the equivalent to prevent or minimize disclosure of the Confidential Information, and provided further that the disclosure permitted shall only be to the extent required by the relevant order and then only in the context of the subject proceeding.

(b) The User shall maintain the confidential nature of the Confidential Information in its possession by taking commercially reasonable steps to protect it from unauthorized use, access and disclosure. The User may disclose Confidential Information only to its own employees and consultants who shall have a need-to-know same for the purposes of this Agreement. The User shall execute appropriate written agreements with its employees and consultants sufficient to enable it to comply with all of the provisions of this Agreement.

(c) Other than as necessary for the User's evaluation of the Products, the User shall not record, make notes of, copy or reproduce the Confidential Information by any means without the written permission of Corel. All copies, records, notes or reproductions, in whole or in part, shall contain notices identifying them as containing the Confidential Information of Corel and shall be protected from unauthorized disclosure or access. The User agrees to segregate all Confidential Information from its own confidential materials or the confidential materials of others in order to prevent commingling.

(d) The User shall not reverse engineer, decompile or disassemble any software hereunder provided to it.

17.3 **Rights and Remedies**

(a) The User acknowledges and agrees that all Confidential Information and all worldwide right, title, and interest whatsoever therein and thereto, both legal and equitable shall belong to and shall remain the sole and exclusive property of Corel. Other than the license granted to User pursuant to Section 4, nothing in this Agreement shall be construed as granting User any right or interest, by license or otherwise, in the Confidential Information disclosed to User.

(b) The User agrees to return all originals, copies, reproductions and summaries of Confidential Information at Corel's request or, at Corel's option, certify destruction of the same.

(c) The User agrees to notify Corel immediately upon discovery of any unauthorized use or disclosure of Confidential Information or breach of this Agreement.

(d) The User acknowledges that any breach of the terms and conditions of this Agreement by it would result in significant damage to Corel, not completely compensable monetarily, and agrees that Corel shall be entitled to apply for injunctive relief in a court of appropriate jurisdiction in the event of the breach or threatened breach of any of the terms of this Agreement. The User shall not oppose any such application on the basis that damages would be a satisfactory or sufficient remedy.

18. **Termination.** Upon completion of the pre-release program Corel shall notify Users via (i) email directed to the User's email address as provided to Corel in accordance with Section 19(f) and (ii) posting a general message to all Users on the administrative newsgroup for the applicable pre-release program that the cycle has come to an end. At that time the licenses granted to User pursuant to Section 4 shall terminate immediately and User shall immediately discontinue use and/or testing of all copies of the Product. Corel may at its sole discretion, terminate this Agreement at any time upon notice to the User. User may terminate this Agreement on fifteen (15) days' prior written notice to Corel. The rights and responsibilities of the parties pursuant to sections 7 to 19 inclusive of this Agreement shall survive the expiration or earlier termination of this Agreement.

19. **Miscellaneous.** (a) This Agreement contains the entire understanding and agreement of the parties relating to the subject matter hereof and supercedes any and all prior arrangements, whether oral or written, with respect to the Products and Confidential Information. Any representation, promise or condition not explicitly set forth in this Agreement shall not be binding on either party. Any amendments to this Agreement shall be in writing and signed by the authorized representatives of each party.

(b) If any term of this Agreement shall be held to be illegal or unenforceable by a court of competent jurisdiction, the remaining terms shall remain in full force and effect.

(c) This Agreement is personal, indivisible, and non-transferable and may not be assigned, encumbered by security interest or otherwise transferred in whole or in part by the User without the prior written consent of Corel. Corel may assign this Agreement at any time upon notice to this effect to User.

(d) This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario. Each party hereby attorns to the exclusive jurisdiction of the courts of the Province of Ontario and agrees not to oppose any action brought in Ontario on the basis that the courts of Ontario are not an appropriate or convenient forum for same.

(e) The parties hereby confirm that it is their wish that this Agreement, as well as all other documents relating hereto, including all notices, have been and shall be drawn up in the English language. Les parties aux présentes confirment leur volonté que cette convention, de même que tous les documents qui s'y rattachent, y compris tout avis, soient rédigés en langue anglaise.

(f) User agrees that it is the sole responsibility of the User to provide Corel with current email address information.