

## **XTRASSENS SOFTWARE END USER LICENSE AGREEMENT**

**Revision 01/2005**

### **IMPORTANT:**

THIS SOFTWARE END USER LICENSE AGREEMENT ("EULA") IS A LEGAL AGREEMENT BETWEEN YOU AND XTRASSENS. READ IT CAREFULLY BEFORE COMPLETING THE INSTALLATION PROCESS AND USING THE SOFTWARE. IT PROVIDES A LICENSE TO USE THE SOFTWARE AND CONTAINS WARRANTY INFORMATION AND LIABILITY DISCLAIMERS.

IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS, THEN SELECT THE "CANCEL" BUTTON, DO NOT INSTALL, COPY OR USE THE SOFTWARE AND CONTACT XTRASSENS FOR A FULL REFUND. THIS EULA SHALL APPLY ONLY TO THE SOFTWARE SUPPLIED BY XTRASSENS HEREWITH REGARDLESS OF WHETHER OTHER SOFTWARE IS REFERRED TO OR DESCRIBED HEREIN.

BY INSTALLING AND USING THIS SOFTWARE, INCLUDING ANY THIRD PARTY SOFTWARE MADE AVAILABLE IN CONJUNCTION WITH THIS SOFTWARE, ("XTRASSENS SOFTWARE") YOU AGREE TO ACCEPT A LICENSE UNDER AND BE BOUND BY THE FOLLOWING TERMS AND CONDITIONS (THE "AGREEMENT").

### **Software Description ("XtraSens Software")**

The XtraSens Plug In is a downloadable software module which runs ONLY in conjunction with Adobe Photoshop® in a Microsoft Windows XP® environment. The Software enables you to enhance pictures using advanced algorithms and picture analysis methods, you should understand that image analysis and classification are inherently statistical processes; that recognition errors are inherent in the processes; and that it is your responsibility to monitor the enhancement processes and correct any errors. XtraSens shall not be liable for any damages arising out of errors in the image enhancement processes.

### **XtraSens End User License Agreement (the "AGREEMENT")**

#### **License Grants**

XtraSens grants you a non-exclusive license to install and use the XtraSens Software on a single computer. This license agreement gives you permission to make one backup copy for each copy of the XtraSens Software you have purchased, provided that the backup copy is not installed or used concurrently on different computers. Any such copy must reproduce all copyright notices and any other proprietary legends on the original copy of the XtraSens Software.

#### **License Restrictions**

The License Grant gives you limited license to use the XtraSens Software. You may not rent, lease, or sublicense the Software. You may permanently transfer all of your rights under this Agreement as part of a sale, provided you retain no copies or serial numbers, and the recipient agrees to the terms of this Agreement. All rights not specifically granted in this Agreement are reserved by XtraSens and its suppliers.

#### **Mandatory Activation and License Validation**

The XtraSens Software uses technological measures for copy protection and requires on-line activation in order to install and run the software. Reconfiguring the computer hardware or software environment or an installation on a new computer will require you to activate the XtraSens Software online again.

During the activation process you will be asked to enter your unique Product Key which is supplied by e-mail after the online purchase. The XtraSens Software may also communicate with XtraSens's servers to reauthorize installed software or check for available updates. The Installation, the Product Activation and the License Management System do not collect or utilize personal information, such as your name or contact information, and do not associate machine specific activation or license monitoring data with registration data.

### **Intellectual Property**

You acknowledge that XtraSens or third parties retain all right, title and interest in and to the XtraSens Software and all copies thereof, including without limitation all copyrights and all intellectual property rights.

You agree not to modify, adapt, translate, prepare derivative works from, decompile, reverse engineer, disassemble or otherwise attempt to derive source code from XtraSens Software. You also agree to not remove, obscure, or alter copyright notice, trademarks, or other proprietary rights notices contained in the XtraSens Software. This Agreement does not authorize you to use XtraSens's or its licensors' names or any of their respective trademarks.

### **Limited Warranty and Disclaimer**

XtraSens warrants that, for a period of ninety (90) days from the date of delivery (as evidenced by a copy of your receipt): when used with a recommended hardware and software configuration, the XtraSens Software will perform in substantial conformance with the documentation supplied with the Software.

EXCEPT AS SET FORTH IN THE FOREGOING LIMITED WARRANTY NO WARRANTIES ARE PROVIDED WHATSOEVER. XTRASSENS, ITS LICENSORS AND SUPPLIERS EXPRESSLY DISCLAIM TO THE FULLEST EXTENT PERMITTED BY LAW ALL EXPRESS, IMPLIED, AND STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS OR QUIET ENJOYMENT.

XTRASSENS DOES NOT WARRANT THE SECURITY, RELIABILITY, AND PERFORMANCE OR THAT THE SOFTWARE IS ERROR-FREE AND WILL OPERATE WITHOUT INTERRUPTION.

IF APPLICABLE LAW REQUIRES ANY WARRANTIES WITH RESPECT TO THE SOFTWARE, ALL SUCH WARRANTIES ARE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE OF DELIVERY. SOME COUNTRIES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY DEPENDING ON YOUR COUNTRY OF RESIDENCE.

### **Exclusive Remedy**

Your exclusive remedy under this Agreement is to notify XtraSens in writing with a description of the problem. Provided that any non-compliance with the above warranty is reported in writing to XtraSens no more than ninety (90) days following delivery to you and you have included a copy of your receipt and the software license key, XtraSens will use reasonable commercial efforts to supply you with a replacement copy of the Software that substantially conforms to the documentation, or refund to you your purchase price for the Software, at its option. This does not imply that XtraSens is obligated to provide maintenance, support, or updates to you for the XtraSens Software.

XtraSens shall have no responsibility if the Software has been altered in any way, or if the failure arises out of use of the Software with other than the recommended software and hardware configuration. Any modification or misapplication of the Software will void the warranty above.

THIS REMEDY IS THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO YOU FOR BREACH OF EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE SOFTWARE AND RELATED DOCUMENTATION.

#### **Limitation of Liability**

NEITHER XTRASENS NOR ITS SUPPLIERS SHALL BE LIABLE TO YOU 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 SOFTWARE AND BASED ON ANY THEORY OF LIABILITY INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF XTRASENS 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.

XTRASENS'S TOTAL LIABILITY TO YOU FOR ACTUAL DAMAGES FOR ANY CAUSE WHATSOEVER WILL BE LIMITED TO THE AMOUNT PAID BY YOU FOR THE SOFTWARE THAT CAUSED SUCH DAMAGE. SOME COUNTRIES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OF CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY DEPENDING ON YOUR COUNTRY OF RESIDENCE.

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

#### **U.S. Government Restricted Rights**

The XtraSens Software and Documentation are "Commercial Items," as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein.

#### **Basis of Bargain**

The Limited Warranty and Disclaimer, Exclusive Remedies and Limitations of Liability set forth above are fundamental elements of the basis of the agreement between XtraSens and you. XtraSens would not be able to provide the Software on an economic basis without such limitations. Such Limited Warranty and Disclaimer, Exclusive Remedies and Limited Liability inure to the benefit of XtraSens's licensors.

#### **Miscellaneous Provisions**

This Agreement will be governed by and construed in accordance with the laws of England, without giving effect to the conflict of laws provisions of your country of residence. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

The failure or delay of XtraSens to exercise any of its rights under this Agreement or upon any breach of this Agreement shall not be deemed a waiver of those rights or of the breach.

If for any reason a court of competent jurisdiction finds any provision or portion of this Agreement to be unenforceable, the remainder of this Agreement will continue in full force and effect.

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. Any waiver of any provision of this Agreement will be effective only if in writing and signed by XtraSens.

#### **TERMINATION**

Without prejudice to any other rights, XtraSens may terminate this Agreement if you fail to comply with the terms and conditions of this SOFTWARE END USER LICENSE AGREEMENT. In such event, you must destroy all copies of the Software and all of its component parts.

IF YOU WISH TO TERMINATE THIS AGREEMENT, YOU MAY SIMPLY CEASE USING THE XTRASSENS SOFTWARE AND FOLLOW THE UNINSTALL INSTRUCTIONS.

Should you have any questions concerning this Agreement, or if you desire to contact XtraSens for any reason visit XtraSens on the World Wide Web at <http://www.xtrasens.com>.