



1800 SW First Avenue, Suite 500  
Portland, OR 97201  
Phone: 1-866-725-5211 or 206-652-5211  
Fax: 206-652-0880

## LIZARDTECH COMPUTER SOFTWARE END-USER LICENSE AGREEMENT

*revised October 11, 2017*

**IMPORTANT – READ CAREFULLY.** This Software License Agreement (“Agreement”) is a legal agreement between you (either as an individual or a single entity, and hereinafter referred to as “You”) and Celartem, Inc., doing business as LizardTech (“LizardTech”). This Agreement governs LizardTech’s software products and any associated materials provided to You, including but not limited to, files, media, documentation, updates, upgrades, bug fixes, or patches (collectively “Software”), and any related Software support or services (collectively “Services”) which may be provided by LizardTech in conjunction with Your use of the Software. By installing, copying or using the Software You agree to be bound by the terms and conditions of this Agreement. If You do not agree to the terms and conditions of this Agreement and would like to obtain a refund of the amounts paid for the Software, you must immediately contact the company who sold You the Software license, and comply with its standard return policies and procedures for such Software.

**IF THIS SOFTWARE IS AN UPGRADE**, in addition to the Terms and Conditions set forth below, the terms in this paragraph also apply to Your use of the Software. This Software works in conjunction with a specific LizardTech computer software product previously installed on Your computer or system (“Previous Version”). The terms of this Agreement and the terms of the end-user license for the Previous Version apply jointly to Your use of the Software and the Previous Version. By accepting this license, You indicate that You understand and agree that (i) the license conveyed herein does not permit You to run additional copies of the Software or the Previous Version, and (ii) in the event that any provision of this Agreement conflicts with any provision in the end-user license for the Previous Version, the terms of this Agreement shall control. If You are unsure whether the Software is an upgrade from a Previous Version, please contact LizardTech.

**IF THIS SOFTWARE IS A NOT-FOR-RESALE (NFR) COPY**, in addition to the Terms and Conditions set forth below, the terms in this paragraph also apply to Your use of the Software. NFR copies of Software cannot be, by any means, licensed, sold, or otherwise used for any production or commercial purpose. NFR Software is solely to be used for the purpose of evangelizing the Software and LizardTech, and such use must at all times inure solely to the benefit of LizardTech. If You are unsure whether the Software is an NFR copy, please contact LizardTech.

**IF THIS SOFTWARE IS A DEMONSTRATION COPY**, in addition to the Terms and Conditions set forth below, the terms in this paragraph also apply to Your use of the Software. Demonstration Copies of the Software contain restrictions in time of use, volume of use, or other restrictions not contained in the commercial version of the Software. You may use the Software to determine whether to purchase a commercial version of the Software. If You are unsure whether the Software is a Demonstration Copy, please contact LizardTech.

**IF THIS SOFTWARE IS AN EVALUATION COPY**, you may evaluate the Software for a period of thirty (30) days subject to the Terms and Conditions set forth below. Evaluation copies of Software cannot be, by any means, licensed, sold, or otherwise used for any production or commercial purposes

**IF THIS SOFTWARE IS AN EDUCATIONAL PRICING PROGRAM (EPP) COPY**, in addition to the Terms and Conditions set forth below, the terms in this paragraph also apply to Your use of the Software. EPP copies of Software can only be used for educational and research purposes, and cannot be, by any means, licensed, sold, or otherwise used for any commercial purpose. Any access of the EPP Software or its output by any person outside the educational facility is prohibited. To maintain EPP status, You agree to purchase annual maintenance and support. If You are unsure whether the Software is an EPP copy, please contact LizardTech.

In the event any of the above terms for an Upgrade, NFR, Demonstration, Evaluation or EPP copy of the Software conflicts with any provision in the Terms and Conditions below, the specific terms relating to such Upgrade, NFR, Demonstration, Evaluation or EPP Software shall control.

## **TERMS AND CONDITIONS**

### **1. General License Terms and Conditions.**

**1.1** The Software is licensed, not sold. LizardTech and its licensors retain all title to, and full ownership of the Software. You acknowledge that the structure, organization and code to the Software are the valuable trade secret(s) of LizardTech and its licensors. Except as expressly stated herein, this Agreement does not grant You any rights to patents, copyrights, trade secrets, trademarks, or any other rights with respect to the Software. In addition, the Software utilizes other certain third-party Software components and programs ("Third-Party Software") which are also subject to their respective licensor's applicable terms and conditions. You will find such Third-Party Software terms and conditions in the installed documentation accompanying Your copy of the Software, if applicable. Such Third-Party Software terms and conditions work in conjunction with this Agreement and together are complete statements of Your rights and restrictions as they apply to Your use of the Software. It is Your responsibility to review such Third-Party Software terms and conditions and comply with its terms. In the event that any provision of this Agreement is deemed inconsistent with the Third-Party Software terms and conditions, the Third-Party Software terms and conditions shall control.

**1.2** In consideration of Your purchase of the Software license, LizardTech grants to You a nonexclusive, nontransferable, limited and perpetual license to use the Software for Your internal business use only, solely in accordance with the terms and conditions of this Agreement. Your Software license is dedicated to one central processing unit ("CPU") on which the Software is loaded at any one time. You may install and use a copy of the Software on one additional portable computer for the exclusive use of the primary user of the first copy of the Software.

**1.3** The Software is unpublished software, trade secret and confidential or proprietary information of LizardTech or its licensors and is commercial software developed at private expense. The Software is a "commercial item," as that term is defined in 48 C.F.R. 2.101 (Oct. 1995), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Sept. 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995), any use, modification, reproduction, release, performance, display, or disclosure of the Software by the U. S. government shall be solely in accordance with the terms of this Agreement.

**1.4** You may not modify, reverse engineer, disassemble or decompile, or otherwise seek to discover the source code of the Software. Except as otherwise expressly permitted under this Agreement, You may not duplicate the Software except for a sufficient and reasonable number of copies for your licensed use and may only have one copy of each Software media. Any and all copies of the Software must bear all copyright, trademark, trade secret and other intellectual property rights notices accompanying the Software as received from LizardTech. LizardTech retains title to and ownership of any and all copies of the Software whether transmitted electronically or recorded as diskette, CD, or on other forms of media. You may not assign, transfer, rent, sublicense, sell, download, display or otherwise provide unlicensed third parties access to any version(s) of the Software. You may not publish or disclose any results of any benchmark tests run on the Software. You may permanently transfer all of Your rights under this Agreement only after You receive written authorization from LizardTech. LizardTech shall have the right to inspect and audit your records pertaining to the Software to ensure ongoing compliance with this Agreement.

### **2. Additional License Terms and Conditions.**

**2.1** If the Software requires that You initially contact LizardTech for a specific key code before it will operate, You are permitted to move the Software from the CPU onto which You initially install it, to another CPU, only one (1) time per year without incurring any additional charges from LizardTech. Thereafter, each time You contact LizardTech requesting a key code You will incur LizardTech's then-current service and handling charge.

**2.2** The Software may employ Data Cartridges ("Cartridges"). Cartridges work in conjunction with specific Software previously installed on a user's system. Cartridges may be installed on a single central processing unit or on a network server that permits access by as many users as You have purchased Software licenses. If the Software employs Cartridges: (i) the portion of the Software that enables Cartridges is licensed under this Agreement as part of the Software to which it applies, and the license conveyed herein with regard to Your use of the Software (and, as applicable, its corresponding Cartridge or Cartridges) is cumulative; and (ii) You are expressly prohibited from attempting to separate a Cartridge from its corresponding Software, or from running these components separately.

**2.3** If the Software is the Express View Browser Plug-in for viewing MrSID format files via a standard web browser ("Plug-in"), You are permitted to copy and redistribute the Plug-in directly from Your web site or on tangible media, provided the Plug-in You redistribute is the then current version of the Plug-in as found on LizardTech's web site and includes all files that came with the Plug-in, including but not limited to the installer and click wrap end-user license agreement. If You redistribute the Plug-in on tangible media, You must affix a permanent label with the following:

The Express View Browser Plug-in is property of Celartem, Inc dba LizardTech. Copyright © 1995–2017. All rights reserved. Use permitted only under license from LizardTech.

You need to use the LizardTech logo “LT\_LizardTech\_LOGO\_1115.png” found at <https://www.lizardtech.com/company/gallery/> on any website where you reference the Plug-ins. Such use of the logo may establish a link to the location on LizardTech’s website where end-users may download Plug-in(s) for the purpose of viewing MrSID-formatted files. You acknowledge and agree that You are granted no further rights or license to use the LizardTech logo, or any other LizardTech trademarks or logos and that You will not alter or modify such logo in the course of such permitted use, nor will You use the logo in any way that disparages the name or reputation of LizardTech.

If You are unsure whether the Software is a Plug-in, contact LizardTech at [licensing@lizardtech.com](mailto:licensing@lizardtech.com).

**2.4 WARNING.** The Software is not designed nor tested for a level of reliability suitable for use in any information system the failure of which can reasonably be expected to cause personal injury. The Software may contain bugs and inaccuracies and You can expect errors, anomalies, and incorrect results under normal use. This Software performs “lossy” data compression. You agree to take precautions to offset these risks such as to maintain full backups of storage media and to not use the Software where personal injury or property damage may result. LizardTech recommends that You retain the original image files or documents from which You create MrSID-formatted or JPEG 2000-formatted files.

**2.5 Consent to Use of Data.** You agree that LizardTech may collect and use technical data and related information, including but not limited to technical information about your device, system and application software, and peripherals, that is gathered periodically to facilitate the provision of updates, product support and other services to you (if any) related to the Software. LizardTech may use this information, as long as it is in a form that does not personally identify you, to improve its products or to provide services or technologies to you.

**3. Term.** This Agreement is effective until terminated. You may terminate this Agreement by destroying all copies of the Software. This Agreement shall terminate automatically upon failure by You to comply with any of its terms. Upon any such termination and/or notification by LizardTech of such termination, You must destroy the original and any copies of the Software. However, You agree that any provisions of this Agreement that operate to protect LizardTech and/or its rights shall remain in full force and effect.

**4. LIMITED WARRANTY.** With the exception of Cartridges or Third-Party Software which may come without warranty of any kind, including no right of refund or return, LizardTech warrants that the Software will perform substantially in accordance with its published specifications for ninety (90) days following Your receipt of the Software, regardless of whether You opened the packaging in which You received the Software, or otherwise used the Software. In addition, any media on which the Software is provided will be free from defects in materials and workmanship under normal use and service for a period of ninety (90) days from the date of receipt. EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTIES, THE SOFTWARE AND ANY SERVICES WHICH MAY BE PROVIDED BY LIZARDTECH ARE PROVIDED “AS IS,” WITHOUT WARRANTY OF ANY KIND. LIZARDTECH DISCLAIMS ALL OTHER WARRANTIES ON THE SOFTWARE AND SERVICES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, USAGE OR TRADE, OR NONINFRINGEMENT. LIZARDTECH DOES NOT WARRANT THAT THE SOFTWARE WILL BE (a) UNINTERRUPTED OR ERROR FREE IN OPERATION, (b) FREE FROM DEFECTS, (c) WILL MEET YOUR REQUIREMENTS, OR (d) WILL BE COMPATIBLE WITH OR OPERATE IN ANY COMBINATION WITH YOUR EQUIPMENT AND OTHER SOFTWARE PROGRAMS SELECTED BY YOU FOR USE WITH THE SOFTWARE. During the Warranty Period, LizardTech’s entire liability and Your exclusive remedy with respect to any nonconforming Software shall be either, at LizardTech’s option, the replacement of the Software or the refund of the license fee paid for the Software if You return the Software to LizardTech together with proof of purchase. LizardTech will not accept returns based on “buyer’s remorse,” or any other grievance unrelated to a material flaw or defect with the Software. IN NO EVENT WILL LIZARDTECH REFUND ANY LICENSE FEES MORE THAN FOURTEEN (14) DAYS AFTER THE DATE YOU FIRST USED THE SOFTWARE, WITHIN THE NINETY (90) DAY WARRANTY PERIOD NOTED ABOVE. YOU AGREE THESE ARE YOUR ONLY REMEDIES EVEN IF THEY FAIL OF THEIR ESSENTIAL PURPOSE(S). Any express warranty as provided above is void if failure of the Software has resulted from any alteration, modification, accident, abuse, misapplication, abnormal use or a virus. Some states may not allow the above exclusion or limitation of warranties so the above exclusions or limitations may not apply to You. This warranty gives You specific legal rights. You may have other rights which vary from state to state or province to province.

**5. LIMITATION OF LIABILITY.** IN NO EVENT SHALL LIZARDTECH BE LIABLE TO YOU FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES, INCLUDING ANY LOST DATA, DATA USE, PROFITS, REVENUE OR OPPORTUNITIES, EVEN IF A LIZARDTECH REPRESENTATIVE HAS BEEN

ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LIZARDTECH'S LIABILITY FOR ANY OTHER DAMAGES SHALL IN NO EVENT EXCEED THE AMOUNT YOU PAID UNDER THIS AGREEMENT. THIS LIMITATION OF LIZARDTECH'S LIABILITY FOR SOFTWARE AND SERVICES WILL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT INCLUDING BY NEGLIGENCE OR ANY OTHER BASIS. Some states may not allow the above exclusion or limitation of remedies or damages, so the above exclusions or limitations may not apply to You. You may have other rights which vary from state to state or province to province.

**6. Relationship between the Parties.** The relationship between the parties shall be that of licensee and licensor. Neither party will represent that it has any authority to assume or create any obligation, express or implied, on behalf of the other party, nor to represent the other party as agent, employee, franchisee, or in any other capacity.

**7. Open Source.** "Open Source" software—software available without charge for use, modification and distribution—is often licensed under terms that require the user to make the user's modifications to the Open Source software or any software that the user 'combines' with the Open Source software freely available in source code form. If You use Open Source software in conjunction with the Software, You must ensure that Your use does not: (a) create, or purport to create, obligations for LizardTech or its third-party licensors with respect to the Software; or (b) grant, or purport to grant, to any third party any rights to or immunities under LizardTech or its third-party licensors' intellectual property or proprietary rights in the Software. For example, You may not develop a software program using a Software program and an Open Source program where such use results in a program file(s) that contains code from both the Software program and the Open Source program (including without limitation libraries) if the Open Source program is licensed under a license that requires any "modifications" be made freely available. You also may not combine the Software with programs licensed under the GNU General Public License ("GPL") in any manner that could cause, or could be interpreted or asserted to cause, the Software or any modifications thereto to become subject to the terms of the GPL.

**8. Third-Party Beneficiaries.** You acknowledge that third-party licensors of all or any part of the Software are intended beneficiaries of this Agreement including those provisions that address the protection of intellectual property rights in the Software. If LizardTech fails to enforce any provisions, herein such third-party licensors may enforce such provisions against You.

**9. Export Control.** You agree that You will not export or re-export the Software or any direct product thereof without the appropriate United States or foreign government export licenses, notifications or approvals. By agreeing to this Agreement, You are certifying that You are not a national of an embargoed country, or otherwise a person with whom the U.S. government has prohibited trade.

**10. Severability.** Should any provision of this Agreement be deemed by a court of competent jurisdiction to be invalid, void, ineffective, unenforceable, or unlawful, under present or future laws, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated. The failure of either party to enforce any provision of this Agreement shall not be deemed a waiver of that party's right to later enforce that provision or any other provision.

**11. Governing Law.** This Agreement will be governed by the laws in force in the State of Oregon, U.S.A., and shall exclude that body of law known as conflicts of law and the United Nations Convention on Contracts for the International Sale of Goods.

**12. Entire Agreement.** You acknowledge that You have read this Agreement, understand it and that it is the complete and exclusive statement of Your Agreement with LizardTech, which supersedes any prior agreement, oral or written, between LizardTech and You for the Software. No variation of the terms of this Agreement will be enforceable against LizardTech unless LizardTech gives its express consent, in writing signed by an officer of LizardTech.

