

Photo Communications Corp.

Click-Thru Software End User License Agreement (EULA)

Any modification or alterations to this Agreement shall be void unless contained in an instrument duly executed by both parties.

This Software License is made of the date this Agreement is provided by Photo Communications Corp. "The Company" (DBA "Meridia Interactive Solutions"), with offices at 5 Great Valley Pkwy, Suite 218, Malvern, PA 19355, and accepted by the Licensee who has licensed an authorized version of the application directly from The Company or its authorized distributors. By installing the EZ-VOTE Connect software ("Software"), The Company and Licensee agree to be bound to the term and conditions that follow in this Agreement.

Licensee and The Company agree that this Software License is deemed to be part of, and subject to, the terms of the Agreement applicable to both parties. This is a contract. Please read it carefully. By installing the software, you are indicating your acceptance, and agree to be bound by all the terms and conditions of this Agreement. If you do not agree with the Terms and Conditions of this Agreement, do not install the software.

BACKGROUND

1. The Company has developed and intends to license *EZ-VOTE Connect* software program(s) directly to users (licensees) of such programs.
2. Licensee wishes to license from The Company *EZ-VOTE Connect* software program(s) for use in its operations.
3. This Agreement pertains only to software and specifically to the *EZ-VOTE Connect* application.
4. All references to "software", "application" or "program" within this Agreement pertain to the *EZ-VOTE Connect* application.

SECTION 1: DEFINITIONS

- 1.1 "Effective Date" shall mean the date the Licensed Product(s) are shipped to Licensee.
- 1.2 "Hardware" shall mean the RF Keypads, Base (interface) Units and other components or parts sold by The Company as an integral part of the system.
- 1.3 "EZ-VOTE" shall mean the proprietary software developed by The Company with the primary purpose of enabling and facilitating audience response (voting) polling and measurement in group settings.
- 1.4 "Support" shall mean enhancements, maintenance, telephone support and Internet support of the Company Programs.
- 1.5 "Updates" shall mean enhancements and defect corrections incorporated within the licensed programs and delivered to the licensee by The Company through industry accepted delivery processes.

SECTION 2: LICENSE GRANT AND OWNERSHIP

- 2.1 The Company hereby grants to Licensee a perpetual, non-exclusive, non-transferable license of *EZ-VOTE* software for Licensee's use in connection with the establishment, use, maintenance and modification of the system implemented by The Company. *Software* shall mean executable object code of software programs and the patches, scripts, modifications, enhancements, designs, concepts or other materials that constitute the software programs necessary for the proper function and operation of the system as delivered by The Company and accepted by the Licensee.
- 2.2 Except as expressly set forth in this paragraph, The Company shall at all times own all intellectual property rights in the software. Any and all licenses, product warranties or service contracts provided by third parties in connection with any software, hardware or other software or services provided in the system shall be delivered to Licensee for the sole benefit of Licensee.
- 2.3 This license is granted for the use of the software with the Company's hardware and no other hardware that is or may come available from other manufacturers or vendors.

SECTION 3: SOFTWARE LICENSE

- 3.1 The individual accepting the terms and conditions of this Agreement is authorized by Licensee to enter into and execute this Agreement on Licensee's behalf.
- 3.2 The Company shall provide a replacement copy of The Company Programs if Licensee loses or damages such and requests such replacement copy. The Company shall invoice Licensee for the related media, shipping and handling costs.
- 3.3 The Company shall provide Updates (the nature of and timing at the discretion of The Company) and Support, accompanied by documentation, which describes the nature of the Updates and Support and instructions for licensee on how to incorporate them into the licensed product. Licensee shall be responsible for incorporating such Updates and Support into the Licensed Product.
- 3.4 MS PowerPoint® is a registered trademark and licensed application from the Microsoft Corporation. No support or ancillary activities (including program updates) will fall under The Company's obligations under the terms of this Agreement as it pertains to the performance of MS PowerPoint®.

SECTION 4: COPIES, MODIFICATION, AND USE

- 4.1 Licensee may make copies of the software for archival purposes and as required for modifications to the system. All copies and distribution of the software shall remain within the direct control of Licensee and its representatives.
- 4.2 Licensee may not make modifications to the source code version of the software. In no way does this Software License confer any right in Licensee to license, sublicense, sell, or otherwise authorize the use of the software, whether in executable form, source code or otherwise, by any third parties, except in connection with the use of the system as part of Licensee's business.
- 4.3 All express or implied warranties relating to the software shall be deemed null and void in case of any modification to the software made by any party other than The Company.
- 4.4 The Licensee affirms that the Software (and hardware purchase from the Company) will be used for internal corporate purposes only. The Licensee shall not incorporate, or in any way, use the software to provide Audience Response Services for any other commercial purpose or activity without the express written consent of the Company. You may not reverse engineer, decompile, disassemble or otherwise

attempt to discover the source code of the software. Trademarks shall be used in accordance with accepted trademark practice, including identification of trademark owners' names.

- 4.5 The software and any copies that you make are owned by The Company and its structure, organization and code are valuable trade secrets of Meridia. The software is also protected by United States Copyright Law and International Treaty provisions.

SECTION 5: WARRANTIES AND REPRESENTATIONS

The Company represents and warrants to Licensee that:

- 5.1 It has all necessary rights and authority to execute and deliver this Software License and perform its obligations hereunder and to grant the rights granted under this Software License to Licensee;
- The software, as delivered as part of the system, will not infringe or otherwise violate the rights of any third party, or violate any applicable law, rule or regulation.
- 5.2 The Company further represents and warrants that, the executable object code of software and the system will perform substantially in accordance with - the EZ-VOTE User's Guide. **No warranty of any type or nature is provided for the source code version of the software which is delivered as is.**
- 5.3 All warranties will become void or invalid in instances where the software (source code) has been modified by the Licensee (or its agents, vendors) or used in manner that the software was not intended for in the opinion of The Company.
- 5.4 **Except as expressly stated in this Agreement, there are no warranties, express or implied, including, but not limited to, the implied warranties of fitness for a particular purpose, of merchantability, or warranty of no infringement of third party intellectual property rights.**
- 5.5 In no event shall either party have any liability with respect to its obligations hereunder for consequential, exemplary, punitive or incidental damages. The Company liability in tort or contract shall be limited to the fees paid by the Licensee to license the application. It is the Licensees responsibility to test the software and hardware prior to being used in any live meeting or event. Testing also includes evaluation of physical environment that the live meeting or event will be conducted in order to determine if there are any factors that may affect the performance of the system. In no event shall the Company be liable (or accountable) for failure to perform to the Licensee's expectations when the system is operated in, or outside of, the Licensee's environment(s).

SECTION 6: INDEMNIFICATION

- 6.1 The Company hereby indemnifies and shall defend and hold harmless Licensee, its parent companies and its and their subsidiaries, affiliates, officers, directors, employees, agents and subcontractors from and against all liability, damages, loss, cost or expense, including but not limited to reasonable attorneys' fees and expenses, arising out of or in connection with any breach or alleged breach of the Agreement or any third party claims that the software or system here provided by The Company infringes or otherwise violates any rights of any such third party.
- 6.2 Licensee hereby indemnifies and shall defend and hold harmless The Company, its and their subsidiaries, affiliates, officers, directors, employees, agents and subcontractors from and against all liability, damages, loss, cost or expense, including but not limited to reasonable attorneys' fees and expenses, arising out of or in connection with any third party claims that Licensee's use of the software in contravention of the grant of rights infringes or otherwise violates any rights of any such third party.

- 6.3 Upon the assertion of any claim or the commencement of any suit or proceeding against an indemnitee by any third party that may give rise to liability of an indemnitor hereunder, the indemnitee shall promptly notify the indemnitor of the existence of such a claim and shall give the indemnitor reasonable opportunity to defend and to settle the claim at its own expense and with counsel of its own selection. The indemnitee shall cooperate with the indemnitor, shall at all times have the right full to participate in such a defense at its own expense and shall not be obligated, against its consent, to participate in any settlement which it reasonably believes would have an adverse effect on its business.

SECTION 7: ASSIGNMENTS

- 7.1 Licensee shall not assign this Agreement or the Licensed Product(s) without The Company's prior written consent. Such consent shall not be required if assignment is to a Parent Company, Subsidiary Company, Affiliate, or to an entity that is not a competitor of The Company that acquires all of, or substantially all of, Licensee's business or to an entity that is not a competitor of The Company whose business Licensee acquires all of, or substantially all of, provided that Licensee is not in breach of this Agreement and the Licensed Product(s) are not moved to new Hardware and Licensee promptly notifies The Company in writing after such assignment. If The Company assigns the Licensed Product(s) or this Agreement, The Company shall promptly notify Licensee in writing after such assignment. The Licensed Product(s) shall not be made the subject of any leasing arrangement. Except as provided above, this Agreement shall be binding on, and inure to the benefit of, the heirs, successors and assigns of the parties to this Agreement.

SECTION 8: GENERAL PROVISIONS

- 8.1 The Company is a Pennsylvania Corporation; therefore this Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Pennsylvania without regard to conflict of law provisions. This choice of law is made to ensure uniform procedures and interpretations for all of Photo Communication's licensees, no matter where they may be located or where they may use the licensed product(s).
- 8.2 The parties shall use reasonable efforts, including, without limitation, face-to-face negotiations, to resolve any differences arising between them as a result of this Agreement prior to exercising their respective rights at law or equity. No action, regardless of form, arising out of this Agreement shall be brought more than one (1) year after the cause of action accrued.
- 8.3 Products provided under this Agreement may be subject to U.S. and other government export control regulations. Licensee assures that it will comply with all applicable export laws and regulations related to the use, disclosure, export, or re-export of these Licensed Product(s).
- 8.4 The waiver or failure of a party to exercise any of its rights hereunder shall not be deemed a waiver of any future right regarding the same matter or any other matter.
- 8.5 If any provision of this Agreement is found to be invalid, illegal or unenforceable under any applicable statute or law, it is to that extent deemed to be omitted, and the remaining provisions of this Agreement shall not be affected in any way.
- 8.6 The 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. Unpublished rights reserved under the copyright laws of the United States. Meridia Interactive Solutions, 5 Great Valley Pkwy, Suite 218, Malvern, PA 19355.

- 8.7 All notices required or permitted to be given hereunder by one party to the other shall be deemed given if sent by registered or certified mail, with proof of delivery, or by hand or courier, with proof of delivery. Notices shall be sent or delivered to the address set forth above for The Company to the attention of "Contracts Administrator" and to the address indicated below for Licensee.
- 8.8 The headings of the Sections of this Agreement are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.
- 8.9 Each party acknowledges that it has read and understands this Agreement and shall be bound by its terms. The parties further agree that this Agreement - contain the entire understanding and agreement of the parties with respect to the matters contained herein, and supersedes all prior proposals, understandings and agreements between the parties relating to the subject matter of this Agreement. There are no promises, covenants or undertakings contained in any other written or oral communication.

SECTION 9: TRANSFER AND TERMINATION

- 9.1 The Company may terminate this license upon notice for failure to comply with any of terms set forth in this Software License. Upon termination, Licensee is obligated to immediately destroy the software, including all copies and modifications.