

MessagePixels LLC - End-User License Agreement

IMPORTANT - READ CAREFULLY: This End-User License Agreement (“**EULA**”) is a legal agreement between licensee (“**you**”) and **MessagePixels LLC** for the MPNews software (the “**Software**”), which includes computer application and associated electronic documentation. By accessing, installing, copying or otherwise using the Software, you agree to be bound by the terms of this EULA. If you do not agree to the terms of this EULA MessagePixels LLC is unwilling to license the Software to you. In such event, you may not access, use or copy the Software and you should promptly contact MessagePixels LLC for instructions on returning the Software.

1. **Grant of License.** MessagePixels LLC hereby grants to you a limited, non-exclusive, non-transferable (except as set forth herein) license to use the Software subject to the terms and conditions described in this EULA and payment of all applicable license fees.
2. **Software Use and Restrictions.** A description of the Software components, including the related licenses, is available at www.messagepixels.com. Your rights and obligations with respect to the use of the Software are as follows:
 - 2.1 You may (a) install and use one copy of the server Software on a single server; (b) install one copy of the Software license keys on a single server; (c) make one copy of the Software solely for back up, one copy for disaster recovery and one additional copy of the Software solely for testing and development purposes; and (d) install the Software license keys on one additional server for development and testing purposes only.
 - 2.2 You may not (a) sublicense, transfer, assign, sell, rent or lease any portion of the Software; (b) host the Software on your server and sell, rent, or lease the software for others to use; (c) reverse engineer, decompile, disassemble, modify, translate, make any attempt to discover the source code of the Software or create derivative works from the Software; (d) disclose the license numbers received from MessagePixels LLC or share the Software with third parties or attempt to make any use of the licenses to expand the number of users who may access the Software in excess of the licenses granted; or (e) install licenses on another server except as set forth in Section 2.1 above.
3. **Ownership of Software.** You acknowledge that the Software is proprietary to and a valuable trade secret of MessagePixels LLC protected by applicable United States patent, copyright laws and other intellectual property laws and international treaty provisions. MessagePixels LLC and its third party licensors, if any, retain all title to and, except as expressly and unambiguously licensed herein, all rights and interest in (a) the Software; (b) the MessagePixels LLC trademarks, service marks, trade names and logos; (c) any and all copyrights, patent rights, trade secret rights and other intellectual property and proprietary rights throughout the world in the foregoing.; and (d) any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided to MessagePixels LLC relating to the Software
4. **Limited Warranty.** MessagePixels LLC warrants (a) that it has the right to grant the license set forth herein; (b) that the media, if any, on which the Software is furnished is free from defects in material and workmanship under normal use for a period of 90 days from the date of shipment of the Software by MessagePixels LLC; (c) if the Software is available via electronic download, that the download will be available for no less than 10 days from time of order; and (d) that for a period of 90 days from the date of order of the Software the Software will perform substantially as described in the Documentation (“**Limited Warranty**”).

EXCEPT FOR THE LIMITED WARRANTY DESCRIBED ABOVE, THE SOFTWARE IS PROVIDED “AS IS” WITHOUT WARRANTIES OR IMPLIED TERMS OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, THE CONDITION OF THE SOFTWARE OR FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTY AGAINST INFRINGEMENT OF

ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY, AND ANY WARRANTY ARISING OUT OF ANY PROPOSAL, SPECIFICATION OR SAMPLE. THE ENTIRE RISK ARISING OUT OF THE USE OR PERFORMANCE OF THE SOFTWARE AND DOCUMENTATION REMAINS WITH YOU.

MessagePixels LLC's entire liability and your exclusive remedy shall be an alternative download location or replacement of any media not meeting the Limited Warranty described herein if MessagePixels LLC is promptly notified. MessagePixels LLC does not warrant the functions contained in the Software will meet your requirements or that operation of the Software will be uninterrupted or error free.

- 5. Indemnification.** If you receive notice of any claim that your use of any part of the Software directly infringes the rights of a third party in or to any patent, copyright, trademark or trade secret, or violates any other intellectual property right, MessagePixels LLC shall defend or settle any such claim, and shall indemnify and hold you harmless by paying any resulting costs and damages finally awarded to the third party by a court with respect to any such claim provided that you: (a) notify MessagePixels LLC in writing promptly upon becoming aware of the claim; (b) at MessagePixels LLC's request and expense, give MessagePixels LLC such information and assistance as is reasonable under the circumstances; and (c) give MessagePixels LLC the right, at MessagePixels LLC's sole discretion, to settle the claim at MessagePixels LLC's expense. This indemnification does not extend to any claim based upon any alleged infringement arising from the combination of the Software with other elements not under MessagePixels LLC's sole control such as any part of the Software that you or a third-party modify, or that incorporates specifications, designs or formulas that you provide. If you are prevented from using the Software because of an actual or claimed infringement, then at MessagePixels LLC's option, MessagePixels LLC shall promptly either obtain for you the right to continue using the affected part of the Software, replace or modify the affected part of the Software so that it becomes non-infringing, or if none of the foregoing alternatives are possible after MessagePixels LLC's commercially reasonable efforts, you may return to MessagePixels LLC all copies of the Software that you have in your possession or under your control and MessagePixels LLC shall remit to you a pro rata portion of the license fee you paid (up to the suggested list price) for the Software based on the commercially reasonable life of the Software, which shall not be less than three (3) years, calculated from the date that MessagePixels LLC provided the activation code to enable you to begin to exercise MessagePixels LLC rights. THIS SECTION SETS OUT THE ENTIRE EXPOSURE OF MESSAGEPIXELS LLC AND YOUR SOLE REMEDY FOR INDEMNIFICATION HEREUNDER.
- 6. Limitation of Liability.** Because computer software is inherently complex and may not be free from errors, you are advised to verify the work produced by the Software. NEITHER MESSAGEPIXELS LLC NOR ITS SUPPLIERS SHALL BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM ANY DEFECT IN THE SOFTWARE OR MEDIA, EVEN IF MESSAGEPIXELS LLC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS MEANS MESSAGEPIXELS LLC IS NOT RESPONSIBLE OR LIABLE FOR DAMAGES OR COSTS INCURRED AS A RESULT OF LOSS OF TIME, LOSS OF DATA, LOSS OF ANTICIPATED PROFITS OR BENEFITS RESULTING FROM USE OF THE SOFTWARE OR LOSS OF USE OF THE SOFTWARE, NOR FOR DAMAGES OR COSTS INCURRED IN CONNECTION WITH OBTAINING SUBSTITUTE SOFTWARE, CLAIMS BY OTHERS OR SIMILAR COSTS. IN NO EVENT SHALL MESSAGEPIXELS LLC'S LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE SOFTWARE OR THIS EULA, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED MESSAGEPIXELS LLC'S SUGGESTED LIST PRICE OF THE LICENSE FOR THE SOFTWARE.

MessagePixels LLC will have no responsibility under the Limited Warranty for any Software or media that has been modified, lost, stolen or damaged by accident, abuse or misapplication. No employee, agent or representative of MessagePixels LLC, nor any reseller (including a channel partner) or any other third party, is authorized to make any warranty with respect to the Software, except those expressly stated in this EULA, and you may not rely on any such unauthorized warranty.

7. Allocation of Risk. This EULA allocates risk between you and MessagePixels LLC as authorized by applicable law, and that the pricing of MessagePixels LLC's products reflects this allocation of risk and the limitations of liability contained in this EULA. If any remedy hereunder is determined to have failed of its essential purpose, all limitations of liability and exclusion of damages set forth in this EULA shall remain in full force and effect.

8. Local Laws and Export Control. This EULA gives you specific legal rights, and you may also have other rights, which vary. Some jurisdictions do not allow the exclusion or limitation of implied warranties or of liability for incidental or consequential damages, so some of the above may not apply to you.

The Software may include technology that may be subject to United States export controls administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and other U.S. agencies and the export control regulations of the European Union. You acknowledge and agree that the Software shall not be used, and none of the underlying information or technology may be transferred or otherwise exported or re-exported to countries as to which the United States and/or the European Union maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Software, you represent and warrant that you are not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. You agree to comply strictly with all U.S. and European Union export laws and assume sole responsibility for obtaining any necessary licenses to export or re-export.

9. Term/Termination. This EULA continues in effect until terminated, whether as a result of your acceptance of a superseding EULA or otherwise as set forth below. At any time that you choose, you may terminate this EULA and all MessagePixels LLC rights that had been granted to you hereunder and under any prior EULA. This EULA and the license granted herein will terminate automatically and without notice if you fail to comply with any term or condition of this EULA. Upon termination, you will destroy all copies of the Software and any prior version thereof under your control. Any provision in this EULA that when reasonably read is intended to survive the termination of this EULA shall survive, including without limitation, the disclaimer of warranties and limitations on liability.

10. General. This EULA sets forth the complete agreement between you and MessagePixels LLC regarding your license and the Software, and supersedes any prior EULA, purchase order, confirmation, advertising, representation, or other communication. MessagePixels LLC has your permission to send you information regarding MessagePixels LLC's products and services, including via facsimile and e-mail. This EULA may not be modified except by a written agreement signed by an authorized MessagePixels LLC representative. If any provision of this EULA is found to be void, invalid, or unenforceable, it shall be severed from and shall not affect the remainder of this EULA, which shall remain valid and enforceable. Any such severed provision shall be replaced with a similar provision, which conforms to applicable law and embodies as closely as possible the original intent of the parties. This EULA will be governed by the laws of the State of Florida, U.S.A. without regard to the conflict of laws provisions thereof. The exclusive judicial forum for any action that may be brought to enforce this EULA shall be in Florida in an appropriate state court in Pinellas County or federal court in Tampa.

Product Information: www.messagepixels.com, info@MessagePixels.com.

Support Information: www.messagepixels.com/Support/, support@MessagePixels.com.

Open Source Software

MessagePixels LLC has made use of the following Open Source software libraries:

- Bplusdotnet (licensed under BSD License: <http://sourceforge.net/projects/bplusdotnet/>)
- Lucene.Net (licensed under Apache License: <http://lucene.apache.org/java/docs/>)
- Xindice (licensed under Apache License: <http://xml.apache.org/xindice/>)
- GnuPGWrapper (licensed under GNU General Public License: <http://www.gnu.org/copyleft/gpl.html>)
- XML-RPC.Net (licensed under MIT X11 License: <http://www.xml-rpc.net/>)