

ThingMagic, Inc.

End User License and Warranty Agreement



YOU SHOULD CAREFULLY READ THE FOLLOWING TERMS AND CONDITIONS OF THIS THINGMAGIC END USER LICENSE AND WARRANTY AGREEMENT ("AGREEMENT") BEFORE USING THE PRODUCTS WHICH ARE ENCLOSED OR OTHERWISE ASSOCIATED WITH THIS AGREEMENT. USE OF THE PRODUCTS MEANS THAT YOU ARE BINDING YOU AND THE COMPANY YOU REPRESENT TO THIS AGREEMENT. IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU ARE NOT AUTHORIZED TO USE OR OPERATE THE PRODUCTS AND YOU SHOULD PROMPTLY RETURN THE PRODUCTS, ENCLOSURES AND ALL PACKAGING.

The following terms govern use of the Products unless (i) there is a separate signed agreement between you and ThingMagic, in which case the terms and conditions of such agreement will prevail, or (ii) if you received an End User License and Warranty Agreement from an authorized reseller (Reseller EULA), in which case, the terms and conditions of such Reseller EULA shall prevail and you should contact the reseller directly for Support Services and Warranty matters.

1. **INTELLECTUAL PROPERTY RIGHTS.** Any and all intellectual property rights in and to the Products shall remain in ThingMagic, Inc. (ThingMagic) or its licensors. The Firmware is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The Firmware is licensed, not sold. Your use of any service accessible using the Firmware is not covered by this Agreement and may be governed by separate terms of use, conditions or notices.
2. **GRANT OF LICENSE.** Subject to compliance with the terms of this Agreement and payment of the applicable fees, ThingMagic hereby grants you a limited, non-exclusive, non-transferable license to use the Products for your internal business purposes, in any market other than the Transportation Market, according to the terms and conditions contained in this Agreement. This License grants you the following rights:
 - a. **Firmware.** You may use, access, display, run, or otherwise interact with ("Run") the Firmware in connection with operating the Products. The primary user of the Products may make a second copy of the Firmware for his or her exclusive use for backup purposes.
 - b. **Storage/Network Use.** You may also store or install a copy of the Firmware on a storage device, such as a network server, used only to Run the Firmware on your other Products over an internal network; however, you must acquire and dedicate a license for each separate Product on which the Firmware is Run from the storage device. A license for the Firmware may not be shared or used concurrently on different Products.
 - c. **Reservation of Rights.** All rights not expressly granted are reserved by ThingMagic.
3. **RESTRICTIONS.**
 - a. **Copyright Notices:** You must maintain all copyright and other proprietary notices on all copies of the Firmware.
 - b. **Limitations on Modification:** You may not copy, modify, adapt, or translate the Firmware, or create derivative works based on the Firmware.
 - c. **Limitations on Reverse Engineering, Decompilation and Disassembly:** You may not reverse engineer, decompile, or disassemble the Products, except and only to the extent that such activity is permitted by applicable law notwithstanding this limitation.
 - d. **Assignment and Resale:** You may not transfer or assign this Agreement (by operation of law or otherwise) without the advance, written approval of ThingMagic which approval may be withheld for any reason. You agree not to resell, lease, distribute or otherwise transfer the Products to any third party at any time. If you are a potential reseller of the Products, you may demonstrate the Products to your customers solely for evaluation purposes, provided that notwithstanding anything to the contrary in this Agreement, (i) any such use will be "AS IS" with no warranty whatsoever, as more fully set forth in Section 10 below, and (ii) may only be done in countries where ThingMagic has received the necessary regulatory certifications (for a list of countries, please email [customersupport@thingmagic.com]). You may not, however, resell, lease, distribute or otherwise transfer the Products to your customers until you have signed ThingMagic's Reseller Agreement.
 - e. **Additional Restrictions Applicable to Original Equipment Manufacturers (OEMs).** If you purchased embedded Products under this Agreement, you may only use such Products for testing and evaluation purposes, provided that any such use will be "AS IS" with no warranty whatsoever, as more fully set forth in Section 10 below. Prior to incorporating the embedded Products into production units which you will deliver to your customers, you must sign ThingMagic's OEM Agreement.
4. **SUPPORT SERVICES:** ThingMagic provides support to authorized resellers of its Products. ThingMagic may provide you with direct support services related to the Products ("Support Services"), in its sole discretion. Use of Support Services, if any, is governed by the ThingMagic policies and programs described in the Documentation, and/or other ThingMagic provided materials.
5. **TERMINATION:** Without prejudice to any other rights, ThingMagic may terminate this Agreement if you fail to comply with the terms and conditions of this Agreement. The provisions of this Agreement, other than your license to use the Firmware, shall survive the termination of this Agreement. Upon termination, your right to use the Products shall cease. Depending on your location, there may be rules or regulations regarding the disposal of the Products. Please contact ThingMagic for further information.
6. **U. S. GOVERNMENT RESTRICTED RIGHTS:** Distribution and use of the Products and derivative works thereof to and by the United States Government will be subject to the RESTRICTED RIGHTS as set forth in the Federal Acquisitions Regulations Systems (FAR) at 48 CFR 252.7015, as amended from time to time. Any licensed Firmware described or referenced in this Agreement is a commercial computer software program developed at private expense. Use, duplication or disclosure by the Government is subject to restrictions as set forth in FAR 48 CFR 52.227-19(c) where applicable or the applicable provisions of the DOD FAR 48 CFR 227.7202-3, as amended from time-to-time.

ThingMagic, Inc.

End User License and Warranty Agreement



7. **EXPORT RESTRICTIONS:** The Products are subject to regulation by agencies of the U.S. Government, including without limitation the Department of Commerce, which prohibit or restrict export or diversion of certain technical products and technical data to certain countries and may be subject to export or import regulations in other countries. You shall comply with such laws and regulations governing use, import, export, re-export, and transfer of the Products and acknowledge your responsibility to obtain such licenses as may be required after delivery to you.
8. **LIMITED WARRANTY:** Subject to the conditions in the following paragraph, ThingMagic warrants for a period of twelve (12) months from the date of original shipment the Products will be free from defects in material and workmanship and will operate in substantial conformance with applicable specifications and drawings set forth in the Documentation. If the Products fail to meet this warranty, ThingMagic (at its sole option) will either replace or repair the nonconforming Product. If neither of those can be done on a commercially reasonable basis, ThingMagic may, at its sole option, pay you an amount based on depreciation of the Product over a three (3) year useful life. In the event of repair pursuant to the foregoing warranty, the validity of the foregoing warranty will be twelve (12) months from the date of shipment of the repaired Product less the period of time between the date of original shipment and the date on which ThingMagic received return of the Product for repair. The foregoing is your sole and exclusive remedy if a Product fails to meet the limited warranty above.
9. **WARRANTY CONDITIONS:** In order for the warranty to apply, you must first obtain a written return authorization from ThingMagic. Returned Products must be shipped, transportation prepaid, by the most practical method of shipment. Shipping costs will be credited to you for all Products found to be subject to warranty adjustment. Excessive transportation costs will not be allowed. This warranty shall not apply to any custom work performed by ThingMagic. This warranty shall also not apply to defects or substantial non-conformance with the Specifications which result from: (1) improper installation, use, storage, care or maintenance by the buyer; (2) wear resulting from normal use of parts subject to wear; (3) modification, alteration or retiming of a product, or combination with another product; (4) use with products (including supplies) or software not furnished by ThingMagic; or (5) accident, neglect, misuse or abuse or where the trademark has been defaced or obliterated.
10. **DISCLAIMER OF WARRANTIES:** THINGMAGIC AND ITS SUPPLIERS PROVIDE THE PRODUCTS "AS IS" AND WITH ALL FAULTS, AND HEREBY DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, EITHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, LACK OF VIRUSES, AND LACK OF NEGLIGENCE OR LACK OF WORKMANLIKE EFFORT. ALSO, THERE IS NO WARRANTY OR CONDITION OF TITLE, QUIET ENJOYMENT, OR NONINFRINGEMENT FOR THE PRODUCTS. THE ENTIRE RISK ARISING OUT OF THE USE OR PERFORMANCE OF THE PRODUCTS IS WITH YOU. THINGMAGIC DOES NOT WARRANT THAT THE OPERATION OF THE FIRMWARE WILL BE UNINTERRUPTED OR ERROR FREE.
11. **LIABILITY DISCLAIMER:** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THINGMAGIC OR ITS SUPPLIERS BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, DIRECT, INDIRECT, SPECIAL, PUNITIVE, OR OTHER DAMAGES OF ANY KIND WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE PRODUCTS, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF THINGMAGIC OR ANY SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS EXCLUSION OF DAMAGES SHALL BE EFFECTIVE EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
12. **GOVERNING LAW:** The laws of the Commonwealth of Massachusetts shall govern this Agreement and the parties hereby irrevocably agree that they submit themselves to the personal jurisdiction of the state and federal courts of Massachusetts for purposes of resolving any and all disputes arising under or related to these terms and conditions. The parties agree that the U.N. Convention on Contracts for the International Sale of Goods shall not govern this Agreement.
13. **DEFINITIONS.**
 - a. **Documentation** means any written information pertaining to the Products including but not limited to user manuals, technical documentation, and training guides, whether in paper or electronic format.
 - b. **Electronic Toll and Traffic Management** means the market for equipment and services which allow for toll collection and traffic monitoring utilizing vehicles equipped with RFID transponders, wireless communication, in road / roadside sensors, and a computerized system (hardware and software) to uniquely identify each vehicle, electronically collect the toll, and provide general vehicle / traffic monitoring and data collection.
 - c. **Federal Vehicle Registration, Inspection and Licensing Programs** means those vehicle registration, inspection, licensing and permitting programs administered by an agency of the United States government under federal law or regulations.
 - d. **Firmware** is the machine readable (object code) version of computer programs developed or marketed by ThingMagic and related Documentation. Firmware includes all modifications, enhancements, versions, releases, bug fixes and work-arounds.
 - e. **Local Vehicle Registration, Inspection and Licensing Programs** means those vehicle registration, inspection, licensing and permitting programs administered by county or municipal governmental under county or municipal laws or regulations.
 - f. **Mobile Payment Applications** means fast-food drive thru and fuel dispensing (gasoline, etc.) applications where the RFID sticker/tag is initially attached to the vehicle but not incorporated at the point of vehicle manufacture.
 - g. **National Vehicle Registration and Inspection Programs** means those vehicle inspection programs administered by a national, multi-national or regional government other than the United States and other than any state, local, regional, or other governmental entity within the United States.
 - h. **Products** shall mean any and all ThingMagic RFID and RFID-related products, including the embedded Firmware.
 - i. **Public Sector Vehicle Registration, Inspection and Licensing Programs** means National, Federal, State or Local Vehicle Registration, Inspection and Licensing Programs using RFID products to electronically identify and register vehicles, including passenger

ThingMagic, Inc.
End User License and Warranty Agreement



data directly related to a specific vehicle, and validate the identity, status and authenticity of vehicle identity data, including passenger data directly related to a specific vehicle and the corresponding back office and violation processing systems and services.

- j. **Railroad Locomotive and Wagon Tracking** means railroad locomotive and railcar / wagon identification and tracking using RFID products anywhere in the world except Japan and Europe.
- k. **State Vehicle Registration, Inspection and Licensing Programs** means vehicle registration, inspection, licensing and permitting programs administered by state governmental agencies within the United States government under state laws or regulations.
- l. **Transportation Market** means (i) Electronic Toll and Traffic Management, (ii) Public Sector Vehicle Registration, Inspection and Licensing Programs, (iii) Railroad Locomotive and Wagon Tracking, (iv) airport based ground transportation management systems and taxi dispatch, (v) revenue based parking, and (vi) vehicle initiated mobile payment applications, where the RFID sticker / tag is initially attached to the vehicle but not incorporated at the point of vehicle manufacture.