

## Terms of Use & End-User License Agreement

This Mobile Application End-User License Agreement ("**Agreement**") is a binding agreement between you ("**End-User**" or "**you**") and Variable, Inc. ("**Company**"). This Agreement governs your use of the Variable, Inc. mobile application for Apple iOS or Google Android operating systems (including all related documentation, the "**Application**").

BY DOWNLOADING/INSTALLING/USING THE APPLICATION, YOU (A) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT; (B) REPRESENT THAT YOU ARE OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT; AND (C) ACCEPT THIS AGREEMENT AND AGREE THAT YOU ARE LEGALLY BOUND BY ITS TERMS. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT DOWNLOAD/INSTALL/USE THE APPLICATION.

1. License Grant. Subject to the terms of this Agreement, Company grants you a limited, non-exclusive and non-transferable license to:

(a) download, install, and use the Application for your personal, noncommercial use on a single mobile device owned or otherwise controlled by you ("**Mobile Device**") strictly in accordance with the Application's documentation.

2. License Restrictions. Licensee or End User shall not:

(a) copy the Application, except as expressly permitted by this license;

(b) modify, translate, adapt or otherwise create derivative works or improvements, whether or not patentable, of the Application;

(c) reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain access to the source code of the Application or any part thereof;

(d) remove, delete, alter or obscure any trademarks or any copyright, trademark, patent or other intellectual property or proprietary rights notices from the Application, including any copy thereof;

(e) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Application or any features or functionality of the Application, to any third party for any reason, including by making the Application available on a network where it is capable of being accessed by more than one device at any time; or

(f) remove, disable, circumvent or otherwise create or implement any workaround to any copy protection, rights management or security features in or protecting the Application.

3. Reservation of Rights. Except as expressly provided for herein, nothing in this Agreement grants any right, title, or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the Company's services, materials, or Third-Party materials. All right, title, and interest in and to the services, the materials, and the Third-Party materials are and will remain with the Company and the respective rights holders in the Third-Party Materials. End-User's Intellectual Property Rights, End-User's Confidential Information each remain the sole and exclusive property of the End-User.

4. Updates. Company may from time to time in its sole discretion develop and provide Application updates, which may include upgrades, bug fixes, patches, and other error corrections and/or new features (collectively, including related documentation, "**Updates**"). Updates may also modify or delete in their entirety certain features and functionality. You agree that the Company has no obligation to provide any Updates or to continue to provide or enable any particular features or functionality. Based on your Mobile Device settings, when your Mobile Device is connected to the internet either:

(a) the Application will automatically download and install all available Updates; or

(b) you may receive notice of or be prompted to download and install available Updates.

You shall promptly download and install all Updates and acknowledge and agree that the Application or portions thereof may not properly operate should you fail to do so. You further agree that all Updates will be deemed part of the Application and be subject to all terms and conditions of this Agreement.

5. Collection and Use of Your Information. You acknowledge that when you download, install or use the Application, Company may use automatic means (including, for example, cookies and web beacons) to collect information about your Mobile Device and about your use of the Application. You also may be required to provide certain information about yourself as a condition to downloading, installing or using the Application or certain of its features or functionality, and the Application may provide you with opportunities to share information with others. All information we collect through or in connection with this Application is subject to our Privacy Policy [https://www.variableinc.com/assets/variable\\_privacy\\_policy.pdf](https://www.variableinc.com/assets/variable_privacy_policy.pdf). By downloading, installing, using, and providing information to or through this Application, you consent to all actions taken by us with respect to your information in compliance with the Privacy Policy.

6. Term and Termination. The term of Agreement commences when you download/install the Application and will continue in effect until terminated by you or Company as set forth in this Section 6.

(a) You may terminate this Agreement by deleting the Application and all copies thereof from your Mobile Device.

(b) Company may terminate this Agreement at any time without notice if it ceases to support the Application, which Company may do in its sole discretion. In addition, this Agreement will terminate immediately and automatically without any notice if you violate any of the terms and conditions of this Agreement.

(c) Upon termination:

(i) all rights granted to you under this Agreement will also terminate; and

(ii) you must cease all use of the Application and delete all copies of the Application from your Mobile Device and account.

(iii) End-User data generated within the Application remains and is expressly owned by the Company, including but not limited to, scan data, saved colors, compare, and other materials produced within our mobile application.

(d) Termination will not limit any of the Company's rights or remedies at law or in equity.

(e) End-Users may contact [support@variableinc.com](mailto:support@variableinc.com) to terminate their mobile account. Please allow up to 30 calendar days for the account to be fully terminated within our system.

7. Payment Terms. Access to professional color libraries may be licensed through In-App and Company's direct website. All prices are purchased in United States dollars and are subject to change throughout the term at Company's sole discretion.

8. Mobile "In-App" Purchases. The mobile application offers "**In-App**" purchase options which will provide End-User access to professional color licenses through the application. This is offered on an annual or monthly basis.

a). Payments will be processed through the Google Play or iTunes app store from which you originally downloaded the application. More information about how you may be able to switch off and/or manage in-app purchases, and general access to the applicable "in-app" purchase rules and policies directly from the corresponding app stores.

b). You acknowledge and agree that all billing and transaction processes are handled by the App Store Provider from whose platform you downloaded the mobile application and are therefore governed by the App Store Provider's terms and conditions/ EULA. If you have any payment related issues with In-App Purchases, then you need to contact the App Store Provider directly.

c). End-User's are responsible for paying all taxes and fees associated with your In-App purchases and subsequently manage taxes or other fees directly with the App Store Provider.

9. Website Purchases. If the End-User purchases via the Company's website, [www.variableinc.com](http://www.variableinc.com), the End-User can manage your subscription at any time by contacting us at [support@variableinc.com](mailto:support@variableinc.com). End-User's must cancel your monthly or annual subscription before it renews to avoid the billing fees for the next Subscription period. Purchases made on Company's website less than 30 calendar days are eligible for refunds on Professional Color License by contacting our customer support. Please allow up to 14 calendar days to issue the refund back onto the original payment method.

10. Restrictions. If you are under 18 years of age, you must have your parents' or guardians' permission to make any In-App or Website Purchases. By completing an In-App or Website purchase, you are confirming to us that you have any and all permission that may be necessary in order to allow you to make that In-App or Website Purchase.

11. Indemnification. You agree to indemnify, defend and hold harmless Company and its officers, directors, employees, agents, affiliates, successors and assigns from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, arising from or relating to your use or misuse of the Application or your breach of this Agreement. Furthermore, you agree that the Company assumes no responsibility for the content you submit or make available through this Application.

12. Intellectual Property. All right, title, and interest in and to the Application, including all Intellectual Property Rights therein, are and will remain with Company and, with respect to Third-Party Materials, the applicable third-party providers own all right, title, and interest, including all Intellectual Property Rights, in and to the Third-Party Materials. End-User has no right, license, or authorization with respect to any of the Company's Application except as expressly set forth in Section 1. All other rights in and to the Company's Application are expressly reserved by Company.

13. Disclaimer of Warranties. THE APPLICATION IS PROVIDED TO END-USER "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, COMPANY, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE APPLICATION, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, COMPANY

PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE APPLICATION WILL MEET YOUR REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, COMPATIBLE OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR-FREE OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF OR LIMITATIONS ON IMPLIED WARRANTIES OR THE LIMITATIONS ON THE APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO SOME OR ALL OF THE ABOVE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO YOU.

14. Limitation of Liability. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL COMPANY OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, HAVE ANY LIABILITY FOR DAMAGES ARISING FROM OR RELATED TO YOUR USE OF OR INABILITY TO USE THE APPLICATION. IN NO EVENT IS EITHER PARTY THEIR REPRESENTATIVES LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF: (A) WHETHER THE DAMAGES WERE FORESEEABLE; (B) WHETHER OR NOT THE BREACHING PARTY WAS ADVISED OF THE POSSIBILITY OF THE DAMAGES; AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) ON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

THE FOREGOING LIMITATIONS WILL APPLY WHETHER SUCH DAMAGES ARISE OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW CERTAIN LIMITATIONS OF LIABILITY SO SOME OR ALL OF THE ABOVE LIMITATIONS OF LIABILITY MAY NOT APPLY TO YOU.

15. Severability. If any provision of this Agreement is illegal or unenforceable under applicable law, the remainder of the provision will be amended to achieve as closely as possible the effect of the original term and all other provisions of this Agreement will continue in full force and effect.

16. Governing Law. This Agreement is governed by and construed in accordance with the internal laws of the State of Tennessee without giving effect to any choice or conflict of law provision or rule. Any legal suit, action or proceeding arising out of or related to this Agreement or the Application shall be instituted exclusively in the federal courts of the United States or the courts of the State of Tennessee in each case located in Hamilton County. You waive any and all objections to the exercise of jurisdiction over you by such courts and to venue in such courts.

17. Entire Agreement. This Agreement and our Privacy Policy constitute the entire agreement between you and Company with respect to the Application and supersede all prior or contemporaneous understandings and agreements, whether written or oral, with respect to the Application.

18. Waiver. No failure to exercise, and no delay in exercising, on the part of either party, any right or any power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or power hereunder preclude further exercise of that or any other right hereunder. In the event of a conflict between this Agreement and any applicable purchase or other terms, the terms of this Agreement shall govern.