

# SOFTWARE LICENSE AGREEMENT

IMPORTANT- READ CAREFULLY:

IMAGINE THAT, INC. (IMAGINE THAT!<sup>®</sup>) IS WILLING TO LICENSE ITS EXTENDSIM SOFTWARE TO YOU ONLY ON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS IN THE SOFTWARE LICENSE AGREEMENT BELOW. PLEASE READ THE TERMS CAREFULLY. BY DOWNLOADING, INSTALLING, OR USING THE SOFTWARE YOU REPRESENT THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THE AGREEMENT. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS, DO NOT DOWNLOAD, INSTALL, OR USE THE SOFTWARE.

1. **LEGAL AGREEMENT.** This Software License Agreement (the "Agreement") is a legal agreement between you and Imagine That! for the use of ExtendSim software. Any reference to the "Software" in this Agreement means the ExtendSim software, including updates, upgrades, maintenance releases, and accompanying documentation. Any reference to "you" in this Agreement means the individual or the corporation, company, entity, or organization (the "Company") that purchased or acquired a license for the Software.
2. **GENERAL LICENSE GRANT.** Imagine That! hereby grants to you a nonexclusive, nontransferable right to install and use the Software in accordance with this Agreement, in object code form only. All rights not expressly granted to you in this Agreement are retained by Imagine That! and its licensors.
3. **CLOUD LICENSE.** This Agreement allows you to grant access to and remote use of the Software by multiple parties, which may include unrelated third parties, for such parties' or third parties' own business purposes. Access to the Software by such multiple and third parties may be over a local-area network ("LAN") or over the Internet or other wide-area network ("WAN"). Such multiple parties and third parties may not receive a copy of the Software, but may only have access to and remote use of the Software. Imagine That! hereby grants to you a nonexclusive, non-transferable right to install the Software, subject to the control of a single License Manager, on an unlimited number of Cloud Servers for use concurrently by a number of individuals up to the number of Cloud Instances you have purchased. To use the Cloud License under the terms of this Agreement, you must install and activate the License Manager supplied with the Software. You may install the License Manager on any computer with a supported operating system that you designate as the host for the License Manager (the "License Server"). Activation of the License Manager is tied to the License Server and can be accomplished either automatically over the internet or manually. You are restricted to a single installation of the License Manager per Cloud License.
4. **OWNERSHIP.** All right, title, and interest in and to the Software and all intellectual property rights therein or thereto, including, without limitation, all copyrights, trade secret rights, patent rights and trademark rights therein or thereto, shall at all times remain in Imagine That! or its licensors. The following are owners of their respective rights: Reprise Software (RLM) and Geer Mountain Software (Stat::Fit<sup>®</sup>). RLM and Stat::Fit are copyright by their respective owners and are licensed to Imagine That! for distribution with ExtendSim. All other products and portions of products are copyright by Imagine That! The Software is protected by United States copyright laws and international treaty provisions. You agree not to remove or alter any copyright notice, trademark, or other marking or notice contained in the Software.
5. **ACTIVATION.** The Software requires activation using an Activation Key in order to use the Software under the terms of this Agreement. Your licensed use of the Software is bound to the computer(s) you used to complete activation. You may need to reactivate the Software if you upgrade the Software or renew the Maintenance and Support Plan. You may need to reactivate the Software after changing your computer's hardware configuration. You may need to contact Imagine That! to complete the activation or reactivation.
6. **ANNUAL SUBSCRIPTION.** The Software requires subscription to an annual Software Maintenance and Support Plan (the "MSP"). During the time period for which the MSP is active, Imagine That! will provide Technical Support and make available electronic Updates to the Software, as detailed in the ExtendSim

MSP. Once your MSP subscription expires or is cancelled, the Software will move to a disabled state and you will no longer have access to the Software.

7. **OTHER RESTRICTIONS.** You may not alter or modify the Software nor merge the Software or any part thereof into other program material. You may not create derivative works of the Software. You agree that you will not, to the fullest extent permitted by applicable law, reverse engineer, decompile, reverse assemble, list, print or display the Software or otherwise attempt to obtain the source code of the Software or permit any third party to do so.
8. **COPIES.** The Software may not be copied, in whole or in part, without the prior written consent of Imagine That! except to make a backup copy. This exception does not allow copies to be made for others. Any copy you make must contain all copyright and other notices and legends included in the original provided by Imagine That! All copies of the Software, whether provided by Imagine That! or made by you, shall remain the property of Imagine That! or its licensors. **BY UNAUTHORIZED COPYING OR BY ACQUIRING AND USING UNAUTHORIZED COPIES YOU MAY BE COMMITTING BOTH CRIMINAL AND CIVIL OFFENSES AND MAY BE LIABLE FOR FINES, DAMAGES, AND ATTORNEYS' FEES.**
9. **NO WARRANTY ON SOFTWARE.** IMAGINE THAT! AND ITS LICENSORS DO NOT AND CANNOT WARRANT THE PERFORMANCE OF THE SOFTWARE OR THE RESULTS THAT MAY BE OBTAINED BY USING THE SOFTWARE. ACCORDINGLY, THE SOFTWARE IS PROVIDED ON AN **"AS IS"** BASIS. IMAGINE THAT! AND ITS LICENSORS EACH HEREBY SPECIFICALLY EXCLUDES AND DISCLAIMS ANY AND ALL WARRANTIES WITH RESPECT TO THE SOFTWARE, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTY OF NON-INFRINGEMENT, AND ANY WARRANTY OR GUARANTY OF ABSENCE OF HIDDEN DEFECTS, AND ANY WARRANTY THAT MAY ARISE BY REASON OF USAGE OF TRADE, CUSTOM OR COURSE OF DEALING. Some jurisdictions do not allow the exclusion of implied warranties, so the above exclusion may not apply to you.
10. **LIMITED WARRANTY ON MEDIA ONLY.** Imagine That! warrants the media on which the Software is recorded to be free from defects in material or workmanship under normal use for 30 days after the date of initial delivery. During the 30-day period, you may return the media to Imagine That! and it will be replaced, without charge, with other media containing the Software. Such replacement of the media is your **SOLE AND EXCLUSIVE REMEDY** in the event of a defect. The above limited warranty gives you specific legal rights and you may also have other rights that vary from state to state.
11. **LIMITATION OF LIABILITY.** UNDER NO CIRCUMSTANCES SHALL IMAGINE THAT! BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOST DATA, LOSS OF OTHER PROGRAMS, OR OTHERWISE, AND WHETHER ARISING OUT OF BREACH OF WARRANTY, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR IF SUCH DAMAGE COULD HAVE BEEN REASONABLY FORESEEN, EXCEPT ONLY IN CASE OF PERSONAL INJURY WHERE, AND THEN ONLY TO THE EXTENT THAT, APPLICABLE LAW REQUIRES SUCH LIABILITY. Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you. **IN NO CASE SHALL THE LIABILITY OF IMAGINE THAT! EXCEED THE LIST PRICE PUBLISHED BY IMAGINE THAT! FOR A COPY OF THE SOFTWARE.** The limitations in this Section shall apply even if an exclusive remedy provided in the Agreement fails of its essential purpose.
12. **TERM AND TERMINATION.** This Agreement shall continue until terminated. This license terminates automatically if you violate any term of this Agreement. You may terminate this Agreement at any time. Upon termination all rights granted to you hereunder cease, and you must promptly permanently delete all copies of the Software. Sections 4, 7, 8, 9, 11, 13, and 14 shall survive termination.
13. **U.S. GOVERNMENT USE.** The Software is a "commercial item" as that term is defined in 48 CFR 2.101 consisting of the commercial computer software "ExtendSim" and commercial computer software documentation. If this Software is acquired by or on behalf of an agency, department, or other entity of the United States Government or by a United States Government prime contractor or subcontractor at any tier ("Government"), the use, duplication, reproduction, release, modification, disclosure, or transfer ("use") of this Software, and any related documentation of any kind, including technical data or manuals

no matter how received by the Government, is restricted in accordance with Federal Acquisition Regulation 12.212 for civilian agencies and Defense Federal Acquisition Regulation Supplement 227.7202 for military agencies. Therefore, this Software and related documentation can only be used in accordance with the terms in this Agreement, or any modification hereto. All other such use is prohibited. ExtendSim is a commercially available off-the-shelf ("COTS") item, no portion of which has been developed at government expense.

14. **GOVERNING LAW.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California, excluding conflict of law rules and principles and excluding the application of the United Nations Convention on Contracts for the International Sale of Goods. No action arising under this Agreement may be brought more than one (1) year after the cause of action has accrued.
15. **TRADEMARKS.** Imagine That! and ExtendSim are registered trademarks and ExtendSim CP, ExtendSim DE, ExtendSim Pro, ARM, and RelySim are trademarks of Imagine That Inc. RLM is a trademark of Reprise Software. Stat::Fit is a registered trademark of Geer Mountain Software.
16. **EXPORT.** You agree that the Software is subject to all pertinent import and export laws of the United States, including specifically the U.S. Export Administration Regulations from time to time in effect. You agree that it will be solely your responsibility to comply with all such laws.
17. **GENERAL.** If any provision is held invalid or unenforceable it shall be reformed only to the extent necessary to make it enforceable. This Agreement sets forth the entire agreement between you and Imagine That! relating to the subject matter hereof. The terms and conditions of this Agreement will supersede all pre-printed terms and conditions contained in any purchase order form for the Software. This Agreement may be amended only by a writing executed by Imagine That! and agreed to by you.

To contact Imagine That! or if you have any questions about this agreement:

Imagine That Inc.  
1165 Minnesota Ave, Ste 200  
San Jose, CA 95125 USA  
Telephone 408.365.0305  
[info@extendsim.com](mailto:info@extendsim.com)

BY CLICKING ON THE "ACCEPT" BUTTON WHEN INSTALLING THE SOFTWARE OR BY USING THE SOFTWARE YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT.