

End-User Software License Agreement

This End-User Software License Agreement (the "Agreement") is a license agreement between you (the "Licensee") and IMSWorkX, Inc. ("IMSWorkX"), a Delaware corporation with offices in Rochester, NY, USA in which you are granted a license to use certain IMSWorkX software products in return for your acceptance of the terms and conditions set forth herein. You should read the Agreement carefully before opening this package or extracting the software from the media, as these acts constitute your acceptance of this Agreement. If you do not agree with the terms of this Agreement, you should promptly return the complete package, with any media unopened, to IMSWorkX or your supplier.

In the context of this Agreement, the term "Software" refers to the machine-executable object code contained in the accompanying media or detailed in an exhibit attached to this Agreement.

1. License Grant

The licenses granted in this Section are subject to the terms and conditions set forth in this AGREEMENT:

In return for the associated fee, IMSWorkX hereby grants to Licensee a non-exclusive license to use one copy of the Software on a single NIU and up to two AS machines to form an XpressWorkX Application Server instance. The following exceptions apply:

- XpressWorkX Service Creation Environment software may be installed and used on any and all computers necessary for the development of applications
- XpressWorkX Console software may be installed and used on any and all computers necessary for the monitoring of the XpressWorkX Application Server

The license terms set forth in this paragraph may be superseded by terms set forth in an exhibit attached to this Agreement, or in a customer specific Agreement

1.2. You agree that IMSWorkX may audit your use of the Software for compliance with these terms at any time, upon reasonable notice. In the event that such audit reveals any use of the Software by you other than in full compliance with the terms of this Agreement, you shall reimburse IMSWorkX for all reasonable expenses related to such audit in addition to any other liabilities you may incur as a result of such non-compliance.

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12.2. IMSWorkX may terminate this Agreement upon Licensee's failure to pay promptly any fees or other payments associated with his Agreement or comply with the terms or conditions of this Agreement, provided that Licensee shall have 30 days to cure any such failure, unless Licensee's noncompliance is incurable, in which event IMSWorkX shall have the right to terminate this Agreement immediately.

12.3. Upon termination, the original master and all copies of the Software, including manuals and other documentation, must be destroyed and/or returned to IMSWorkX, and IMSWorkX shall have the right to receive from Licensee a certificate attesting to the return or destruction of the same.

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13.2. Software releases provided by IMSWorkX to Licensee to correct non-conformities may contain updates, upgrades, and enhancements in addition to the corrected Software. Licensee may not activate or use such updates, upgrades, or enhancements unless specifically authorized to do so under additional license.

14. General

14.1. Any changes in the terms and conditions contained herein must specifically be agreed to in writing by authorized representative of both parties before becoming binding on either party.

14.2. If any provision of this Agreement is held to be unenforceable, the enforceability of the remaining provisions shall in no way be affected or impaired.

14.3. IMSWorkX's failure to exercise any of its rights under this Agreement shall not constitute a waiver or forfeiture of such rights.

14.4. This Agreement, along with any exhibits or schedules thereto, supersedes all prior agreements and understandings, oral or written, between IMSWorkX and Licensee and is intended as the complete and exclusive statement of this Agreement.

14.5. The prevailing party in any action or proceeding brought in connection with a breach of this Agreement will be entitled to reimbursement by the other party for reasonable costs and reasonable attorney's fees.

14.6. Any controversy or claim arising out of or relating to the Agreement or the breach thereof shall be settled in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The location of such arbitration proceedings shall be Rochester, New York, USA for actions brought by the Licensee or, for actions initiated by IMSWorkX, a U.S. city specified by the Licensee. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

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