

END USER LICENSE AGREEMENT

IMPORTANT: PLEASE READ THIS END USER LICENSE AGREEMENT ("AGREEMENT") CAREFULLY BEFORE OPENING OR INSTALLING THE ACCOMPANYING CRICUT GYPSY™ PORTABLE STORAGE SYSTEM ("CRICUT GYPSY™ SYSTEM") OR THE ACCOMPANYING SOFTWARE ("SOFTWARE"). BY CLICKING ON THE "OK" OR "ACCEPT" BUTTON, OR BY OPENING THE SOFTWARE PACKAGE OR INSTALLING THE CRICUT GYPSY™ SYSTEM, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, CLICK THE "DO NOT ACCEPT" BUTTON TO TERMINATE THE INSTALLATION PROCESS AND PROMPTLY RETURN THE UNOPENED PACKAGE AND DOCUMENTATION TO YOUR SUPPLIER FOR CREDIT OR REFUND.

THIS AGREEMENT IS A LEGAL AGREEMENT BETWEEN YOU INDIVIDUALLY IF YOU ARE AGREEING TO IT IN YOUR OWN CAPACITY, OR IF YOU ARE AUTHORIZED TO ACQUIRE THE CRICUT GYPSY™ SYSTEM AND SOFTWARE ON BEHALF OF YOUR COMPANY OR ANOTHER ORGANIZATION, BETWEEN THE ENTITY FOR WHOSE BENEFIT YOU ACT ("YOU" OR "YOUR"), AND PROVO CRAFT AND NOVELTY, INC. ("PROVO CRAFT") (TOGETHER THE "PARTIES" AND INDIVIDUALLY A "PARTY").

1. Definitions. Unless the context requires otherwise, the defined terms in this Agreement have the meanings set out below:

- 1.1 **"Cartridge"** means CRICUT® cartridge manufactured by or on behalf of Provo Craft, containing fonts, designs, images and other files (collectively, **"Content"**) that may be subject to protection as a work or works of authorship under U.S. or international copyright laws. Content may be owned by Provo Craft, or licensed by third parties to Provo Craft.
- 1.2 **"Documentation"** means the installation guide or standard end user documentation prepared and supplied by Provo Craft for the specific type and version of Software or CRICUT GYPSY™ System. Documentation does not include any installation guide or end-user documentation that is prepared by a person or entity other than Provo Craft.
- 1.3 **"CRICUT GYPSY™ System"** means a CRICUT GYPSY™ portable storage system manufactured by or on behalf of Provo Craft, including any accessories supplied by Provo Craft for such CRICUT GYPSY™ System, exclusive of any Software or Cartridges.
- 1.4 **"Software"** means Provo Craft's proprietary software for use with the CRICUT GYPSY™ System (comprised of software, firmware, interfaces, Content and other data) designed for use on a CRICUT GYPSY™ System that is: (a) loaded on the CRICUT GYPSY™ System as originally shipped by Provo Craft; or (b) transmitted, distributed or otherwise made available by or on behalf of Provo Craft from time to time for use on or in connection with a CRICUT GYPSY™ System in whatever form, medium or manner provided or subsequently installed or used (including any and all updates or upgrades thereto). The term "Software" shall not include any Third Party Component, whether or not the Third Party Component accompanies, is provided with, or operates in conjunction with, the Software and/or any other portion of Your CRICUT GYPSY™ System.
- 1.5 **"Third Party Component" or "Third Party Components"** means software, interfaces, and firmware, licensed by Provo Craft from a third party for incorporation into a CRICUT GYPSY™ System and distribution as an integral part of a CRICUT GYPSY™ System under one or more Provo Craft trademarks.
- 1.6 **"Third Party Content"** means content proprietary to a third party, including, without limitation, fonts, designs, images, and other files.

2. Software.

- 2.1 License Grant. The Software and Third Party Components are licensed and not sold under this Agreement. Subject to the terms and conditions herein, Provo Grant grants You a personal, revocable, non-exclusive, non-transferable license that permits You to use a single copy of the Software that is pre-installed on any CRICUT GYPSY™ System and the associated Documentation. If the Software is not pre-installed on any CRICUT GYPSY™ System, then, subject to the terms and conditions herein, Provo Craft grants You a personal, revocable, non-exclusive, non-transferable license that permits You to install and use the Software on the applicable CRICUT GYPSY™ System.
- 2.2 Restrictions. The licenses granted above are subject to all terms and conditions of this Agreement, including the following restrictions:
- (a) You may not use or allow the use of the Software other than for Your own internal or personal purposes and other than as part of Your use of the CRICUT GYPSY™ System. This license does not imply any rights to: (i) future upgrades or updates of the Software or Third Party Components; or (ii) in the case of Software on a CRICUT GYPSY™ System, the ability to access applications other than those included in the Software, or Content other than Content furnished within Cartridges.
 - (b) The Software may include features that (i) automatically check for updates or upgrades to the Software, (ii) prevent or disable backwards compatibility or downgrades after an update or upgrade is installed, (iii) restrict the use or operation of a CRICUT GYPSY™ System with other CRICUT GYPSY™ Systems or accessories, and/or (iv) register to your CRICUT GYPSY™ System any Cartridges that you use with your CRICUT GYPSY™ System, locking and making such Cartridges unavailable for use with other CRICUT GYPSY™ Systems. Unless You configure Your CRICUT GYPSY™ System to preclude the transmission or use of upgrades or updates to the Software or Third Party Software, You hereby agree that Provo Craft may make such updates or upgrades available to You from time to time. If Provo Craft, either directly or through a distributor makes any updates or upgrades to the Software available to You, such updates or upgrades shall be subject to the terms and conditions of this Agreement unless the Software is expressly provided to You under other, or additional terms and conditions, in which case, those other, or additional terms and conditions (which may include the payment of additional fees), shall apply.
 - (c) You may not print, distribute, rent, lease or modify the Software, in whole or in part. You may not copy, reproduce or in any other manner duplicate the Software or Documentation, except as authorized in this Agreement or in a separate written agreement between You and Provo Craft.
 - (d) **NO REVERSE ENGINEERING.** This Agreement gives You no right to obtain from Provo Craft or its distributors any source code for the Software or CRICUT GYPSY™ System, and, except to the extent that Provo Craft is expressly precluded by law from prohibiting these activities, You agree that neither You nor other users through You will alter, modify, adapt, create derivative works, translate, deface, decompile, disassemble or Reverse Engineer the Software, the CRICUT GYPSY™ System, the Cartridges, or any Third Party Components, or attempt to do so, or permit, acquiesce, authorize or encourage any other party to do the same. For the purposes of this Agreement, "Reverse Engineer" includes any act of reverse engineering, translating, disassembling, decompiling, debugging, decrypting or deconstructing data, software (including interfaces, protocols, and any other data included in or used in conjunction with programs that may or may not technically be considered software code), service, or hardware or any method or process of obtaining or converting any information, data or software from one form into a human-readable form.
 - (e) Export Restrictions. You agree to comply with all laws, rules and regulations applicable to the export of the CRICUT GYPSY™ System, Software, Cartridges, Documentation and Third Party Components. Specifically, you shall not export, re-export or transship the CRICUT GYPSY™ System, Software, Cartridges, Documentation and/or Third Party Components, or the direct

product thereof, in violation of any United States laws and regulations which may from time to time be applicable. None of the Software or Cartridges or underlying Content, information or technology may be downloaded or otherwise exported or re-exported (i) into (or to a national or resident of) Cuba, Iran, Iraq, Libya, Serbia, Montenegro, North Korea, Syria or any other country to which the U.S. has embargoed goods; or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Denial Order. By downloading or using the CRICUT GYPSY™ Systems, Software, Cartridges, Documentation and Third Party Components you are agreeing to the foregoing and you are representing and warranting that you are not located in, under the control of, or a national or resident of any such country or on any such list.

- (f) Confidentiality. You acknowledge and agree that the CRICUT GYPSY™ System, Software, Cartridges, Documentation and Third Party Components were developed at considerable time and expense by Provo Craft and are confidential to and contain trade-secrets of Provo Craft and its licensors. You agree to maintain the CRICUT GYPSY™ Systems, Software, Cartridges, Documentation and Third Party Components in strict confidence and not to disclose or provide access thereto to any person except to users with a need for access to exercise the license rights conferred hereby.

2.3 Use of Your CRICUT GYPSY™ System, Software and Cartridges. You are responsible for all activities with respect to Your CRICUT GYPSY™ System, Software and Cartridges including all users though You of Your CRICUT GYPSY™ System, Software and Cartridges. You will ensure that:

- (a) You and any users will only use Your CRICUT GYPSY™ System, Software and Cartridges, in accordance with this Agreement, all applicable laws and regulations, the appropriate Documentation for Your CRICUT GYPSY™ System, Software and Cartridges, and the End User License Agreement for Cartridges;
- (b) You have the right and authority to enter into this Agreement, either on Your own behalf or on behalf of a company or other entity, or minor, and that You are over the age of majority;
- (c) You and Your users will not knowingly use or permit others to use Your CRICUT GYPSY™ System, Software Cartridges or portion thereof in isolation or with any other software or data in a manner that in Provo Craft's judgment, interferes with, degrades or adversely affects any software, system, network or data used by any person including Provo Craft or otherwise has a detrimental effect upon Provo Craft or any of its licensors, customers or products or services. You will immediately cease any such activity upon Provo Craft delivering notice of same to You;
- (d) You and Your users will not use Your CRICUT GYPSY™ System, Software, Cartridges or any portion thereof, to commit or attempt to commit a crime or facilitate the commission of any crime or other illegal or tortious acts, including any breach of privacy or infringement, violation or misappropriation of any intellectual property rights and/or other proprietary rights of any third party (including, without limitation, unlawfully circumventing any digital rights management protections);
- (e) You and Your users will not sell, rent, lease, or transfer, or attempt to sell, rent, lease, or transfer, the Software or Cartridges or any portion thereof (including operating a software-as-service, application service provider, service bureau or equivalent service using the Software or Cartridges to any other person, without the prior express written permission of Provo Craft);
- (f) You and Your users will not transfer, or attempt to transfer, any Software, Cartridges or any portion thereof pre-installed by or on behalf of Provo Craft on a CRICUT GYPSY™ System for use on any other product or device without the prior written permission of Provo Craft; and
- (g) You and Your users will cooperate with Provo Craft and provide information requested by Provo Craft to assist Provo Craft in investigating or determining whether there has been a breach of this Agreement and provide Provo Craft with access to the premises and computers where Your

CRICUT GYPSY™ Systems, Software and/or Cartridges are or have been used. You hereby authorize Provo Craft to cooperate with: (1) law enforcement authorities in the investigation of suspected criminal violations; (2) third parties in investigating acts in violation of this Agreement; and (3) system administrators at Internet service providers, networks or computing facilities in order to enforce this Agreement. Such cooperation may include Provo Craft disclosing Your or Your users' name, IP address, or other personal information.

2.4 Third Party Components.

- (a) To enhance Your experience with Your CRICUT GYPSY™ System and Software, the CRICUT GYPSY™ System and Software may include Third Party Components when originally shipped by Provo Craft or that may subsequently be transmitted, distributed or otherwise made available to You from time to time. The use of the Third Party Components (including any updates or upgrades thereto) may be subject to separate or additional terms and conditions. These separate or additional terms and conditions, if any, may be made available in a text file accompanying Third Party Component or may be made available when You use or install the Third Party Components for the first time.
- (b) With respect to Third Party Components provided to You, Provo Craft is only able to provide the same with Your understanding, acknowledgment and agreement that such Third Party Components are: (i) provided as a convenience to You only; and (ii) unless it is accompanied by a separate end user license agreement, are subject to the terms and conditions of this Agreement as though it were Software, except that such Third Party Components are provided by Provo Craft "AS IS" with no express or implied conditions, endorsements, guarantees, representations or warranties.
- (c) If a separate end user license agreement applies to any Third Party Components provided by Provo Craft, then the provisions of this Agreement related to Third Party Components will still apply and in no event shall such separate end user license agreements between You and the supplier be binding on Provo Craft or impose any additional obligations, or obligations inconsistent with the terms of this Agreement, whatsoever. To the extent that any particular Third Party Component is covered by an end user license agreement that provides You with rights to use, copy, distribute, or modify all or part of such Third Party Component broader than the rights afforded You under this Agreement for the Software then, solely to the extent You can exercise such broader rights without breaching the terms of this Agreement for the remainder of the Software, You obtain the benefit of such broader rights.

3. Intellectual Property. You do not acquire hereby any intellectual property or other proprietary rights, including patents, designs, trademarks, copyrights, or rights in any confidential information or trade secrets, in or relating to Your CRICUT GYPSY™ System, Software, Cartridges or Third Party Components or any portion thereof. You also do not acquire any rights in or related to the CRICUT GYPSY™ System, Software, Cartridges or Third Party Components or any component thereof, other than the revocable non-exclusive rights expressly licensed to You under this Agreement or in another mutually agreed upon written agreement that You may have with Provo Craft. No title and/or any right of possession to the CRICUT GYPSY™ System, Software, Cartridges or Third Party Components (if any) is granted by virtue of this Agreement. Any rights not expressly granted herein are reserved by Provo Craft or its licensors. The Software, Cartridges, Content, Documentation and Third Party Components and Third Party Content are protected by U.S. and international copyright and patent laws and international treaty provisions. There are severe civil and criminal penalties for intellectual property infringement, misappropriation and circumvention of digital rights protection measures. You agree that nothing in this Agreement shall adversely affect any rights, recourse or remedies, including, without limitation, injunctive relief, that Provo Craft may have under any applicable laws relating to the protection of Provo Craft's intellectual property or other proprietary rights.

4. Term and Termination.

- 4.1 Term. This Agreement shall be effective upon Your agreeing to be bound by the terms and conditions of this Agreement (as described in the preamble above) and shall continue in effect unless terminated in accordance with the provisions set out herein.
- 4.2 Remedies and Termination for Default. If You or Your users breach this Agreement Provo Craft may, in addition to all other rights and remedies provided by this Agreement or by law, immediately terminate this

Agreement and any other license agreement between You and Provo Craft by providing notice of termination. Without limiting the generality of the foregoing sentence, You will be deemed to be in breach of this Agreement and Provo Craft will have the right to terminate this Agreement if: (1) You or Your users fail to comply with or perform a term or condition herein; (2) You materially contravene any other end user license agreement or terms of service that You may have with Provo Craft for any portion of Your CRICUT GYPSY™ System, Software, Cartridges or Third Party Components used by You or Your users, including, without limitation, the terms of any click-wrap or shrink-wrap agreement that You have agreed to on Provo Craft's website or otherwise; or (3) You or any of Your users interfere with Provo Craft's customer service or business operations. Nothing herein shall be construed to require Provo Craft to seek a waiver of any law, rule, regulation, or restriction, or seek judicial review or appeal of any court order. Provo Craft shall not have any liability to You or Your users arising from or related to the termination of this Agreement in accordance with this Section 4.2 (Remedies and Termination for Default).

- 4.3 Effect of Termination. Upon termination of this Agreement, You will cease all use of the CRICUT GYPSY™ System, Software, Cartridges and/or Third Party Components and, if possible, destroy and/or permanently delete all copies of the Software in Your and/or Your users' possession or control. Upon termination of any account You may have with Provo Craft, You authorize Provo Craft to delete any files, programs, data and email messages associated with such account, without notice to You. In the event of the termination of this Agreement by Provo Craft pursuant to provisions of this Agreement, You agree to pay to Provo Craft all fees and costs (including attorney fees) and related expenses expended or incurred by Provo Craft in the enforcement of any right or privilege hereunder.

5. Indemnity/Liability. You agree to defend, indemnify, and hold harmless Provo Craft, Provo Craft's licensors, affiliates, suppliers, successors, assigns, agents, and authorized distributors and each of their directors, officers, employees and independent contractors (each an "**Indemnified Party**") from any claims, damages, losses, costs or expenses (including, without limitation, legal fees and costs) incurred by an Indemnified Party in connection with all claims, suits, judgments and causes of action: (i) for infringement of patents or other intellectual property or proprietary rights arising from combining with or using any device (other than a CRICUT GYPSY™ System), system or service in connection with Your CRICUT GYPSY™ System, Software, Cartridges and/or any Third Party Component or any portion thereof; (ii) for damages arising from the breach of this Agreement; (iii) for any injury, death or property damage arising from Your or Your users' negligence or misconduct in connection with Your or Your users' use of Your CRICUT GYPSY™ System, Software, Cartridges, and/or Third Party Components or any portion thereof; or (iv) for claims made by third persons against Provo Craft arising from or related to Your or Your users' use of the Software or Third CRICUT GYPSY™ System, Software, Cartridges, Third Party Components or any portion thereof (other than such claims that arise solely from the use of the CRICUT GYPSY™ System, Software, Cartridges, and/or Third Party Components strictly in accordance with the terms of this Agreement and the Documentation which specifically pertains to such version of the CRICUT GYPSY™ System, Software, Cartridges, and/or Third Party Components). No remedy herein conferred upon Provo Craft is intended to be, nor shall it be construed to be, exclusive of any other remedy provided herein or as allowed by law or in equity, but all such remedies shall be cumulative.

6. Limited Warranties.

- 6.1 Software. If during the ninety (90) day period following delivery of the Software to You (the "**Warranty Period**"), the Software as made available by Provo Craft or any Provo Craft authorized distributor is not capable of performing the functions described in the standard end user Documentation ("Specifications") when used as specified by Provo Craft in the Documentation applicable to the specific type and version of the Software in conjunction with other unaltered portions of Your CRICUT GYPSY™ System, Provo Craft will, at its sole option and discretion, either (a) make reasonable efforts to correct or provide You with a workaround for such problem (which fix or workaround may be provided to You at Provo Craft's reasonable discretion in one of a variety of forms, including in the course of telephonic or email customer support provided to You, in a generally available Software fix release, on Provo Craft's website or in any other form of which Provo Craft advises You), or (b) provide You with a credit or refund for the one time fees paid by You for the applicable Software, if any, if You cease to use the Software and the media on which the Software was provided to You and all packaging related thereto is returned to Provo Craft in accordance with Your normal warranty return mechanism within the Warranty Period together with proof of purchase. Notwithstanding anything to the contrary in this Agreement, the above obligation does not apply to updates of the Software. **ALL UPDATES ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND.**

THE FOREGOING IS PROVO CRAFT'S ONLY OBLIGATION AND IS YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY DEFECTS, ERRORS, OR PROBLEMS YOU MAY EXPERIENCE RELATED TO THE SOFTWARE. The above obligation will not apply if the failure of the Software to perform the functions described in the Specifications is due to: (i) use of the CRICUT GYPSY™ System, Cartridges or Software in a manner inconsistent with any of Your obligations set out in this Agreement or in a manner inconsistent with the Documentation applicable to the specific type and version of the CRICUT GYPSY™ System, Cartridges or Software; or (ii) a malfunction or other problem related to any hardware (including those arising from defective CRICUT GYPSY™ Systems), network, software or communication system; or (iii) to any external causes affecting the Cartridges, Software, including the media upon which the Cartridges or Software are provided, such as accident, disaster, electrostatic discharge, fire, flood, lightning, water or wind, or correction of errors attributable to software other than the Software. This paragraph sets out Your sole remedies in respect of the Software and any breach of the warranty for the Software set out herein.

6.2 CRICUT GYPSY™ System. The limited warranty, if any, for the CRICUT GYPSY™ System ("**Limited Product Warranty**") is set forth in the applicable Documentation. **THE LIMITED PRODUCT WARRANTY IS THE EXCLUSIVE WARRANTY FOR ANY CRICUT GYPSY™ SYSTEM SOLD UNDER THE TERMS OF THIS AGREEMENT AND SETS OUT YOUR SOLE REMEDIES IN RESPECT OF THE CRICUT GYPSY™ SYSTEM AND ANY BREACH OF THE LIMITED PRODUCT WARRANTY.** By indicating Your acceptance of this Agreement as provided above, You acknowledge that You have read the limited product warranty set forth in this Section 6 (Limited Warranties) and the disclaimers contained in Section 7 (Limitation of Liability) and agree to its terms.

6.3 Disclaimers.

- (a) General Warranties. Except as expressly set out in this Agreement, all conditions, endorsements, guarantees, representations, or warranties of any kind, expressed or implied, including without limitation, any conditions, endorsements, guarantees, representations or warranties of durability, fitness for a particular purpose or use, merchantability, merchantable quality, non-infringement, satisfactory quality, or title, or arising from a statute or custom or a course of dealing or usage of trade are hereby excluded. The parties also agree that the Uniform Computer Information Transactions Act ("UCITA") as enacted in any state shall not apply to this Agreement and to the maximum extent performed by law UCITA is hereby excluded in its entirety from application to this Agreement. The limited warranties set out in this Agreement give You specific legal rights. You may also have other rights that vary by state. Some jurisdictions may not allow the exclusion or limitation of implied warranties and conditions. To the extent permitted by law, any implied warranties or conditions relating to the Software to the extent they cannot be excluded as set out above, but can be limited, are hereby limited to ninety (90) days from the date You first installed any portion of the Software on any computer.
- (b) Third Party Content and Third Party Components. Except to the extent specifically prohibited by applicable law in Your jurisdiction, all Third Party Content, Third Party Components and access to linked sites and other websites are provided or made accessible by Provo Craft "AS IS" and "AS AVAILABLE" and Provo Craft shall have no liability whatsoever to You or any third party claiming by or through You, for any issue relating to the linked sites, other sites, Third Party Content or Third Party Components, including, without limitation: (i) the accuracy, transmission, timeliness or continued availability of such Third Party Components or Third Party Content, linked sites or other websites; (ii) the performance or non-performance of the Third Party Components; or (iii) the interoperability of the Third Party Components with all or a portion of Your CRICUT GYPSY™ System. You specifically agree that Provo Craft is not responsible or liable for any viruses, or any threatening, defamatory, obscene, tortious, offensive or illegal Third Party Content or for content that infringes any third party intellectual property rights or the transmission thereof. Your recourse in the event of any such claim with respect to any Third Party Component or Third Party Content, shall be solely against the relevant third parties.
- (c) Use of CRICUT GYPSY™ System, Software, Documentation, Third Party Components and Third Party Content. By accepting the terms of this Agreement, You acknowledge and agree that any

use of the CRICUT GYPSY™ System, Software, Documentation, Third Party Components and/or Third Party Content except as expressly permitted in this Agreement or the Documentation will void the limited warranties set forth above.

7. Limitation of Liability.

7.1 Limitation of Liability. Without expanding on the specific remedies set out in Section 6 (Limited Warranties) above, in no event shall the aggregate liability of Provo Craft arising from or related to this Agreement or the CRICUT GYPSY™ System, Software, Cartridges, Documentation, Third Party Components and/or Third Party Content exceed the amount paid by You for the specific portion of the CRICUT GYPSY™ System, Software, Cartridges, Documentation, Third Party Components and/or Third Party Content that gave rise to the claim.

- (a) To the maximum extent permitted by applicable law in Your jurisdiction and subject to the specific remedies set out in the Section 6 (Limited Warranties) above, in no event shall Provo Craft be liable for any: consequential, exemplary, incidental, indirect, special, punitive, or aggravated damages, damages for loss of business profits or revenues, failure to realize any expected savings, business interruption, loss of business information, loss of business opportunity, or corruption or loss of data, failures to transmit or receive any data, problems associated with any applications used in conjunction with Your CRICUT GYPSY™ System, Software, Cartridges, Documentation, Third Party Components and/or Third Party Content, downtime costs, loss of the use of Your CRICUT GYPSY™ System, Software, Cartridges, Documentation, Third Party Components and/or Third Party Content, or any other third party products, cost of substitute goods, costs of cover, facilities or services, cost of capital, or other similar pecuniary losses arising out of or related to this Agreement or the licenses granted herein including the use or inability to use, performance or nonperformance thereof, whether or not such damages were foreseen or unforeseen, and even if Provo Craft has been advised of the possibility of such damages.
- (b) Provo Craft shall be liable to You only as expressly provided in this Agreement. Provo Craft, to the maximum extent permitted by applicable law in Your jurisdiction, shall have other obligation, duty, or liability whatsoever in contract, tort, or otherwise to You or Your users, including any liability for negligence or strict liability. The limitations, exclusions, and disclaimers in this Agreement shall apply: (i) irrespective of the nature of the cause of action, demand, or action by You including but not limited to breach of contract, negligence, tort, strict liability, or any other legal theory and shall survive a fundamental breach or breaches or the failure of the essential purpose of this Agreement or of any remedy contained herein; and (ii) to Provo Craft and its affiliated companies, their successors, assigns, agents, licensors, suppliers, authorized distributors and their respective directors, employees and independent contractors.
- (c) You acknowledge and agree that the disclaimers, exclusions and limitations set forth in this Agreement constitute an essential element of the Agreement between the parties and that in the absence of such disclaimers, exclusions and limitations: (i) the fees and other terms in this Agreement would be substantially different; and (ii) Provo Craft's ability to offer and Your ability to purchase Your CRICUT GYPSY™ System, Software, Cartridges, Documentation, Third Party Components, Third Party Content or any portion thereof under this Agreement would be impacted. In addition to the limitations and exclusions set out above, in no event shall any director, employee, agent, distributor, supplier, independent contractor of Provo Craft or any affiliates of Provo Craft have any liability arising from or related to this Agreement.

8. Assignment and Delegation. Provo Craft may assign this Agreement without notice to You. You shall not assign this Agreement without the prior written consent of Provo Craft (such consent may be withheld or conditioned at Provo Craft's discretion). Any assignment by You without Provo Craft's prior written consent shall be null and void and of no effect. Provo Craft may perform all obligations to be performed under this Agreement directly or may have some or all obligations performed by its contractor or subcontractors.

9. Notices. Except as otherwise provided in this Agreement, all notices or other communications hereunder shall be deemed to have been duly given when made in writing and delivered in person, by courier or deposited in the mail, postage prepaid, registered mail, return receipt requested, and addressed to You at the billing address supplied to Provo Craft by You, and addressed to 151 East 3450 North, Spanish Fork, UT 84660, ATTN: CRICUT GYPSY™ Customer Service, with a copy to Provo Craft's General Counsel at the same address. In addition to the foregoing, Provo Craft may, at its option, give You any

notice under this Agreement electronically. Electronic notice to You shall be deemed to have been duly given when transmitted to an address furnished by You to Provo Craft.

10. Force Majeure. Notwithstanding any other provision of this Agreement, neither Party shall be deemed in default of this Agreement for failure to fulfill its obligations when due to causes beyond its reasonable control. This provision shall not be construed as excusing nonperformance of any obligation by either Party to make payment to the other Party under this Agreement.

11. General.

- 11.1 Third Party Beneficiaries. Provo Craft's affiliates and Provo Craft and its affiliates' directors, officers and employees thereof are intended third party beneficiaries for the purpose of Sections 6 (Limited Warranties) and 7 (Limitation of Liability). Except as otherwise specifically stated in this Section, the provisions herein are for the benefit of the Parties and not for any other person or entity.
- 11.2 Waivers of Default. No Party is to be deemed to have waived or forfeited any right under this Agreement, whether on the basis of failure, delay or any other legal or equitable doctrine, unless such waiver is made in writing signed by an authorized signatory of the Party against whom the waiver is sought to be enforced. Waiver of any provision, or any breach of any provision, of this Agreement in one instance shall not constitute a waiver as to any other instance.
- 11.3 Survival. The terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the performance hereof shall so survive the completion of performance, cancellation or termination of this Agreement.
- 11.4 Governing Law. This Agreement is to be governed by and construed under the laws of the State of Utah, excluding any body of law governing conflicts of law. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods is hereby excluded in its entirety from application to this Agreement. You irrevocably waive any objection on the grounds of venue, forum non-conveniens or any similar grounds and irrevocably consent to service of process by mail or in any other manner permitted by applicable law and irrevocably consent and attorn to the exclusive jurisdiction of the courts located in the State of Utah for any such claims arising from or related to this Agreement. The Parties specifically agree that, in the event that there is a dispute under this Agreement and such dispute is to be resolved in a court of law, such dispute shall not be resolved by jury trial. The Parties hereby waive all rights to a trial by jury in any matter related to or arising from this Agreement.
- 11.5 Severability. To the extent any provision or portion thereof of this Agreement is determined to be illegal, invalid or unenforceable by a competent authority in any jurisdiction, then such determination of that provision or portion thereof will not affect: (a) the legality, validity or enforceability of the remaining provisions of this Agreement; or (b) the legality, validity or enforceability of that provision in any other jurisdiction, and that provision (or portion thereof) will be limited if possible and only thereafter severed, if necessary, to the extent required to render the Agreement valid and enforceable.
- 11.6 Conflict with other Agreements. If there is any inconsistency between this Agreement and any end user agreement (other than this Agreement) provided in the packaging or accompanying materials of any portion of Your CRICUT GYPSY™ System, the provisions of this Agreement shall apply to the extent of the inconsistency. If there is any inconsistency between this Agreement and any end user agreement provided in connection with any upgrades or updates to the Software, the provisions of such other license or end user agreements shall apply to the extent of the inconsistency. In the event of any inconsistency between any documentation provided with Your CRICUT GYPSY™ System and the Documentation for the appropriate CRICUT GYPSY™ System or item of Software, the provisions of the Documentation shall apply to the extent of the inconsistency. If there is any inconsistency between this Agreement and an end user license agreement for the Cartridges, the provisions of this Agreement shall apply to the extent of the inconsistency.
- 11.7 Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and there are no provisions, understandings, communications, representations, warranties,

undertakings, collateral agreements or agreements between the Parties relating to the CRICUT GYPSY™ System or Software other than as set out in this Agreement. This Agreement supersedes any prior or contemporaneous provisions, understandings, communications, representations, warranties, undertakings, collateral agreements and agreements between the Parties, whether oral or written, with respect to the subject matter hereof, and You acknowledge that You have not relied on any of the foregoing in agreeing to enter into this Agreement.

- 11.8 Amendments and Modifications. This Agreement may be amended at any time upon mutual agreement by the Parties. Except to the extent that Provo Craft is expressly precluded by applicable law, Provo Craft further reserves the right to make changes to this Agreement either to reflect changes in business practices, or to reflect changes in or required by law, by providing You with reasonable notice of the change either electronically (as contemplated by the Notice provision above) or by posting notice of the change at www.provocraft.com/GYPSY/EULA. If You continue to use the CRICUT GYPSY™ System or Software more than sixty (60) days after notice of the change has been given or You do not contact Provo Craft, ATTN: GYPSY Customer Service, 151 East 3450 North, Spanish Fork, UT 84660 sixty (60) days after notice of the change has been given to inquire as to Your options, You shall be deemed to have accepted each such change.
- 11.9 Compliance With Laws. You will, at Your expense, obtain and maintain all licenses, registrations and approvals required by the government authorities or applicable law in Your jurisdiction for the execution and performance of this Agreement or any related license agreements. In particular and for the avoidance of doubt, You will comply with all applicable laws and regulations and will obtain any necessary license, registration and approval from competent government authorities for the importation and use of any Software that contains commercial encryption or other security functions. You will provide Provo Craft with the assurances and official documents that Provo Craft periodically may request to verify Your compliance with this obligation.