

## END USER LICENSE AGREEMENT

This End User License Agreement (the “**Agreement**”) is made between the licensee set forth in the applicable Order Form (as defined below) (the “**Licensee**”), and **D-Pro Innovation Ltd.**, an Israeli company with principal offices at 9 Rav Ashi St., Tel-Aviv-Jaffa 6939543, Israel (the “**Company**”).

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“**Documentation**” means the version of documentation provided to the Licensee with the Software, together with any Updates thereto that Company might make generally available to its customers from time to time.

“**Order Form**” means the order form executed by the Licensee and which is subject to this Agreement.

“**Software License Fees**” mean the amounts that Licensee has paid to Company in consideration for the license to Use the Software.

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“**Maintenance and Support Services**” means the technical information, assistance and Updates provided by Company, including through Reseller or any other service provider at Company’s sole discretion (“**Service Provider**”) to Licensee.

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“**Use**” means to activate the processing capabilities of the Software, load, execute, access, employ the Software, or display information resulting from such capabilities.

### 2. INSTALLATION

Unless otherwise expressly stipulated herein, the Software shall be installed in accordance with the applicable Order Form at Licensee’s requested premises.

### 3. GRANT OF LICENSE

Scope of License. Subject to payment of the applicable Software License Fees and provided that Licensee

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Maintenance and Support Services for the Software shall be provided by the Service Provider in accordance with the terms and conditions of the Order Form. With respect to technical information that the Licensee may provide to the Service Provider as part of the Maintenance and Support Services or otherwise, it is hereby agreed that the Company may use such information, free from all charges, for product support and development.

#### **6. COMPLIANCE WITH LAWS**

Licensee shall Use the Software in accordance with all applicable laws and shall not Use it for any purpose other than that is intended pursuant to this Agreement.

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If Licensee will comply with all of the terms and conditions of this Agreement, the Licensee may continue to Use the Software for the subscription term detailed in the Order Form. However, this Agreement will terminate automatically without further action upon notice by Company (directly or through Reseller) to Licensee following Licensee's breach of this Agreement. Upon such termination, Licensee must

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Subject to Licensee's full compliance with the terms and conditions of this Agreement and the payment of the Software License Fee, Company warrants that, for a period of sixty (60) days following Licensee's receipt and installation of the Software in accordance with the above (the "**Original Warranty Period**"), the Software will substantially perform as described in the Documentation (the "**Limited Warranty**").

Company's sole liability for any breach of this Limited Warranty shall be, at Company's sole discretion, either (i) to replace or repair the Software that does not conform with this Limited Warranty, or (ii) to refund Licensee with the Software License Fee and in such case, this Agreement shall be terminated automatically upon such refund. Any replaced or repaired Software shall be subject to the Limited Warranty for the remainder of the Original Warranty Period or thirty (30) days, whichever is longer. Company and Reseller shall have no duty to honor this Limited Warranty unless Licensee notifies the Company and/or the Reseller in writing during the Original Warranty Period of such nonconformity in detail. No Company's dealer, distributor, reseller (including Reseller) or agent is authorized to make any modification, extension or addition to this Limited Warranty. This is Licensee's sole and exclusive remedy under this Limited Warranty. The Licensee's written notification of any nonconformance must include sufficient detail for the Company to analyze the alleged nonconformance. The Licensee must provide commercially reasonable assistance to the Company in analyzing and remediating any nonconformance of the Software.

The Limited Warranty shall not apply to any problem with the Software caused by (i) any modification or servicing of the Software by any party other than Company (directly or through Reseller) and/or without Company's prior written consent; (ii) Use of the Software other than in accordance with the Documentation; (iii) Use of the Software with hardware or software not specified in the Documentation; (iv) any computer virus or similar malicious code contained in the Software through no fault of Company or Reseller; (v) errors and problems caused by incorrect set up by Licensee or failure to perform required administrative duties; (vi) causes external to the Software, such as but not limited to, power failure, electrical surges, network problems, including without limitation routers, segments, hubs and switches not provided by Company (directly or through Reseller), etc.; or (vii) use of a magnetic medium which has been subject to abuse or misuse.

## **9. INDEMNIFICATION; THIRD-PARTY CLAIMS**

- (A) Indemnification by Licensee. Licensee will defend Company and Reseller, as applicable, their officers, directors, agents and employees, hold them harmless against, and indemnify them with respect to all liabilities, losses, expenses and damages suffered by them in connection with, any suit, proceeding or any other claim brought by a third party against any of the above based on: (i) Licensee's breach of this Agreement; (ii) Licensee's violation of any law or the rights of a third party, including, without limitation, privacy rights and intellectual property rights; or (iii) Licensee's Use of the Software and/or its outputs, save where such Use is solely attributed to the duly Use by Licensee of the intellectual property comprises the Software, as provided by Company, by itself or through Reseller (as the case may be), to Licensee.
- (B) Defense of Licensee. Company will, at its sole discretion, either defend Licensee against or settle any claim brought against Licensee if such claim (i) is brought by any owner of the intellectual property right specified below giving rise to the claim; and (ii) alleges that Licensee's Use of the Software, in accordance with the terms and conditions of this Agreement, constitutes a direct infringement or

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The Company is permitted to control fully the defense and any settlement of any such claim as long as such settlement does not include a financial obligation on or admission of liability by Licensee. In the event The Licensee declines Company's proffered defense or otherwise fails to give full control of the defense to Company's designated counsel, then Licensee waives Company's obligations under this Section 9(B). The Licensee must reasonably cooperate in the defense of such claim and provide Company with all relevant information and reasonable support. Licensee may appear in any proceedings concerning such claim or legal dispute, at its own expense, through counsel reasonably acceptable to Company. Company expressly reserves the right to cease such defense of any claim(s) in the event the Software is no longer alleged to infringe or misappropriate or is held not to infringe or misappropriate, the third party's rights. The Company may settle or mitigate damages from any claim or potential claim by substituting alternative substantially equivalent non-infringing programs and supporting Documentation for the Software. The Licensee must not undertake any action in response to any infringement or misappropriation, or alleged infringement or misappropriation of the Software that is prejudicial to the Company's rights.

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#### **11. LIMITATION OF LIABILITY**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL COMPANY AND/OR RESELLER, AND ANY OF THEIR OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES, BE LIABLE TO LICENSEE UNDER ANY LEGAL THEORY (INCLUDING, WITHOUT LIMITATION, CONTRACT, TORT, NEGLIGENCE, OR STRICT LIABILITY) FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, CORRUPTION OR LOSS OF DATA, COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES, OR TECHNOLOGY) ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT, OR ANY RELATED MAINTENANCE AND SUPPORT SERVICES, EVEN IF ANY OF THE ABOVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, THE ABOVE MENTIONED ENTITIES' MAXIMUM LIABILITY FOR DAMAGES ARISING UNDER THIS AGREEMENT SHALL BE LIMITED TO THE SOFTWARE LICENSE FEE RECEIVED FROM LICENSEE DURING A PERIOD OF TWELVE (12) MONTHS PRECEDING SUCH EVENT.

#### **12. CONFIDENTIALITY**

Except as expressly allowed in this Agreement, Licensee will hold in strict confidence, and will not disclose to any third party, any confidential and/or proprietary information disclosed to Licensee by Company or Reseller (or anyone acting on their behalf), including with respect to the Software and any related technology, idea, algorithm or information, all, except with respect to the disclosure of such information (i) to Licensee's employees in order for them to Use the Software; or (ii) to the extent that Licensee can prove in writing that such disclosed material is generally available for use and disclosure by the public without any charge (including the confidentiality obligations hereunder) or license and through no fault by Licensee and/or anyone acting on its behalf. This obligation of confidentiality shall survive the termination of this Agreement. It is agreed that either party hereto may disclose the existence of this Agreement or that Licensee is an existing customer of Company.

Licensee further agrees to treat as confidential and not to disclose to any third party any information related to an alleged defect, bug or malfunction of the Software or related technology. Licensee acknowledges that unauthorized disclosure or Use of such information will diminish the value of the Software and Company's proprietary rights and might cause irreparable harm to Company.

If Licensee breaches any of Licensee's obligations hereunder, in addition to any other right or remedy that it may have available to it, Company will have the right to seek and obtain an immediate injunctive relief to enforce obligations under this Section without the necessity of proving actual damage and without the necessity of posting bond or making any undertaking in connection therewith.

#### **13. MISCELLANEOUS**

Preamble and Headings. The preamble to this Agreement is an integral part hereof. The paragraph headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

Independent Contractor. The relationship between Company and/or Reseller and the Licensee shall be that of independent contracting parties. Nothing herein shall be construed to create a relationship of principal and agent, employer and employee, or any other relationship other than as explicitly specified herein.

Governing Law and Exclusive Jurisdiction. This Agreement shall be governed and construed in accordance with the laws of the State of Israel without regard to conflict of laws principles. The Licensee agrees to the exclusive jurisdiction of the courts located in Tel-Aviv-Jaffa, Israel, for all disputes relating to or arising out of this Agreement, including issues relating to the Software.

No Assignments. Licensee may not sell, lease, assign, or otherwise transfer, in whole or in part, Licensee's rights under this Agreement without the express written consent of Company, provided, however, that such consent shall not be unreasonably withheld if Licensee assigns this Agreement in connection with a merger, acquisition, or sale of all or substantially all of its assets (to the extent applicable). Company may assign this Agreement, without obtaining Licensee's approval, to any of its affiliates or to any acquirer of all or substantially all of such its share capital, business assets whether by merger, acquisition or otherwise. Subject to the foregoing, this Agreement will bind and inure to the benefit of each party's successors and permitted assigns.

Entire Agreement. This Agreement constitutes the final and complete understanding between Company and the Licensee and replaces and supersedes all previous oral or written agreements, understandings, or arrangements between the Company and Licensee with respect to the subject matter contained in this Agreement. In case of contradiction between the provisions of this Agreement and any other written agreement between Company and Licensee, the provisions of this Agreement shall prevail, unless explicitly stated otherwise in a written agreement signed by Company and Licensee.

Modifications. Company may amend this Agreement at any time by providing Licensee a reasonable notice, including without limitation by posting an amended version of this Agreement on its website at [D-Pro.biz/Legal/EULA/](http://D-Pro.biz/Legal/EULA/) in such case, Licensee shall have the sole responsibility to review such amended version of Agreement. The amended terms and conditions of this Agreement shall bind Licensee as of such amendment effective date. It is agreed by the parties hereto that in case that Company shall employ any material amendment to the Agreement which adversely affects Licensee's rights hereunder, then the Company shall notify Licensee by email (as provided in the Order Form) and if Licensee strongly objects to such change, then the parties shall enter into a good-faith negotiation with respect to the option of terminating this Agreement by Licensee pursuant to such amendment which shall be Licensee's sole and exclusive remedy.

Severability. If any provision of this Agreement is found to be invalid or unenforceable by a court of law of competent jurisdiction, such a finding shall not affect the other provisions of this Agreement and all provisions of this Agreement unaffected by such a finding shall remain in full force and effect.

Failure to Enforce Does Not Constitute Waiver. The failure of either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach hereunder shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

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