



## **End-User License Agreement**

**This Software License and Maintenance Agreement (“Agreement”) is a legal agreement between you, the Licensee (either an individual or an entity, hereinafter referred to as “you” or “Customer”) and ProLion GmbH as the Licensor (“ProLion”). Please read this Agreement carefully prior to installing or using the Software. By opening the packaging, downloading, indicating your acceptance on-screen or on-line, or installing and/or using the Software (as defined below), you are agreeing to be bound by the terms of this Agreement and that this Agreement is enforceable like any written agreement negotiated and signed by you.**

**IF YOU DO NOT AGREE WITH THE TERMS OF THIS AGREEMENT (a) you may not use the Software and you must terminate the installation of the Software, and (b) you must promptly return to ProLion the uninstalled software copy and all accompanying items together with proof of payment. If you return all items within fifteen (15) days of your receipt of the Software, ProLion will refund in full any license fees and unused maintenance fees paid for the software.**

### **1. Object and Scope of the License**

- 1.1. The term “Software” as used in this Agreement includes a) the computer software copy contained in the package or file(s) to which this Agreement is annexed, b) the associated media, c) any related printed or electronic documentation and materials provided by ProLion, d) any replacements, updates, patches, additions, or enhancements thereof or thereto that may be provided by ProLion, e) any ProLion Customer Support as defined below (except with regard to any preexisting material of Customer incorporated therein), and f) any backup copy of any of the foregoing made in compliance with this Agreement.
- 1.2. Subject to the terms and conditions of this Agreement, ProLion hereby grants you a nonexclusive, nontransferable, non-sublicensable right and license (“License”) to use the Software within the Territory in accordance with the term, licensing configuration and use specified in the applicable purchase document. The term “Territory” as used in this Agreement means, the geographic area for which the Software has been authorized for use by ProLion, and for which the applicable fees have been paid. The Software License granted herein is conditional on timely payment in full of all applicable invoices and charges. If the Software is an upgrade of a previous version of the product, you may use that upgraded Software only in accordance with this Agreement and you must discontinue the use of the previous version.
- 1.3. If the Software was provided to you on a no-charge basis (a “Trial Version”), then the Software may be used solely for evaluation purposes for the period specified by ProLion at the time of delivery, and if no such period has been specified, then for a period of fourteen (14) days (the “Trial Period”). Trial Version Software may not be used for any development, commercial, or production purpose. If at the end of the Trial Period you do not purchase a license for a Full-Use Version of the Software, you must discontinue all use of the Software and destroy any and all copies of the Software and all of its component parts. The terms and conditions of the license for a Full-Use Version of the Software are the terms and conditions set forth in this Agreement.

- 1.4. This Agreement shall also apply to any maintenance, support, training, implementation, consulting or other professional services (collectively, "Customer Support") that may be provided to Customer by ProLion in accordance with the terms of the separate Customer Support Guide. ProLion reserves the right to terminate or suspend Customer Support if applicable invoices are not paid when due. All Customer Support is provided subject to the limitations on warranties, remedies and liability set forth in this Agreement.
- 1.5. You will comply with applicable law and ProLion's instructions regarding the use of the Software. You agree to notify your employees and agents who may have access to the Software of the restrictions contained in this Agreement and to ensure their compliance with these restrictions.

## **2. Transfer to Third Parties, Backups**

- 2.1. Except for backup or archival copies as provided in Section 2.5. herein, no copies shall be made of the Software, and the Software shall not be transferred to or installed on a computer other than as specified in accordance with the applicable licensing configuration. Furthermore, you may not transfer, sell, assign or otherwise convey the Software to any third party, without ProLion's prior written consent.
- 2.2. Software provided by ProLion may require a serialized key for operation ("Serialized Version"). The license for Serialized Version Software is restricted to the specific computer(s), node(s) and/or configurations as specified by ProLion in connection with such key.
- 2.3. ProLion may provide versions of the Software which do not require a serialized key for operation ("Unserialized Version"). You may install such Unserialized Version Software on any computer within your organization and copy the Unserialized Version Software for the sole purpose of such installation, provided that each and every such installation and copy shall remain subject to all terms and conditions of this Agreement. Unserialized Version Software may only be used by you for testing and development purposes and may be functionally limited to prevent any other use.
- 2.4. If the applicable Software licensing configuration has been authorized by ProLion for your use with an installation of a cluster-based environment ("Licensed Framework"), this Agreement shall apply to every instance of the Software automatically distributed by the Licensed Framework. You agree that you will not use any RPM or other installation package for the Software provided in connection with installation of the Licensed Framework for installing or operating the Software outside of the Licensed Framework.
- 2.5. You may make backups and archival copies of the Software (other than Trial Version Software per Section 1.3. hereof) as required by applicable government regulations or a commercially reasonable archival backup policy, provided that such backups or archival copies are not installed or used on any computer and further provided that all such copies shall bear the original and unmodified copyright, patent and/or other intellectual property markings that appear on the Software.
- 2.6. You may request permission from ProLion for a transfer of the Software or this Agreement not provided for herein, and such permission shall not be unreasonably withheld, subject to payment of any applicable additional fees. If such permission is granted by ProLion, you may transfer the Software License to: (a) a replacement computer or (b) a transferee of the originally licensed computer, provided that the transferee agrees to and accepts in writing all the terms of this Agreement and that you do not keep any part or copy of the Software as defined in Section 1.1. of this Agreement. You may not under any circumstances effect any transfer authorized under this Section 2.6. or any other provision of this Agreement by means of communication over the Internet or any other public network (other than an initial authorized download of the Software from ProLion).
- 2.7. If you grant a security interest in the programs and/or any resulting Customer Support, the secured party has no right to use or transfer the programs and/or any work resulting from Customer Support.

### **3. Permitted Use and Restrictions**

- 3.1. You may use the Software solely as authorized and provided by ProLion for your internal data processing operations. Without limiting your obligations under any other provision herein, or under any applicable law, you further agree to the following additional restrictions on use:
- 3.2. You will not conceal or remove any markings or notices such as product identification, copyright or any other proprietary restrictions contained in or on the Software.
- 3.3. You will not make the Software available for commercial timesharing, rental, or any service provider use without ProLion's prior written consent.
- 3.4. You will not modify the Software, incorporate it into or with other software, or translate or create any derivative works of any part of the Software or based thereon.
- 3.5. You will not disclose any information related to the Software (other than information in the public domain not as a result of any act or omission on your part), including, but not limited to diagnostic tests, screen images, printed output, results of any performance or benchmark tests, scripting languages or program interfaces defined by ProLion in connection with the Software, (including, without limitation, Customer-created scripts or routines incorporating or reflecting any portions or elements of such languages or interfaces) to anyone other than the employees and agents specified above, without ProLion's prior written consent.
- 3.6. You will not use the Software in any way to develop or market a competing product.
- 3.7. You will not make any attempt to bypass or disable product serialization, keying, or time limit mechanisms or otherwise circumvent any access controls incorporated in the Software.
- 3.8. You will not transfer or use the Software outside of the Territory without ProLion's prior written consent and without paying any applicable additional fees. You agree that, in the event that ProLion consents to such transfer, you will fully comply with all applicable laws and regulations to assure that neither the Software nor any direct product thereof is exported, directly or indirectly, in violation of any laws or regulations.
- 3.9. You will not reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, underlying ideas, underlying user interface techniques or algorithms of the Software by any means whatsoever, directly or indirectly, or disclose any of the foregoing, except to the limited extent you may be expressly permitted to decompile under applicable law in the European Union, if a) it is essential to do so in order to achieve operability of the Software with another software program, b) you have first requested the information necessary to achieve such operability from ProLion, and c) ProLion has not made such information available. ProLion has the right to impose reasonable conditions and to request a reasonable fee before providing such information. Any information supplied by ProLion or obtained by you, as permitted hereunder, may only be used by you for the purpose described herein and may not be disclosed to any third party or used to create any software which is substantially similar to the Software.
- 3.10. You will take all reasonably necessary precautions to safeguard the Software from any unauthorized disclosure or use by any person.
- 3.11. You may make the Software and related information available to your employees and agents who require such access and information in order for you to exercise the rights granted to you hereunder, provided that you require such employees and agents to fully safeguard the Software and information from unauthorized use and disclosure as provided herein. You may not permit or assist any employee, agent, contractor or other person to do anything that is prohibited under this Agreement.

#### **4. Intellectual Property**

- 4.1. You acknowledge that the Software and any copies that you are authorized by ProLion to make are the intellectual property of and are owned by ProLion and its suppliers. You acquire only the right to use the Software and you do not acquire any rights, express or implied, in the Software or media containing the Software other than those specified in this Agreement.
- 4.2. ProLion and its suppliers shall retain all rights, title, and interest, including intellectual property rights, in the Software and its media at all times. You agree not to challenge the validity of ProLion's or its suppliers' copyright or trademark rights in and to the Software. All rights in the Software not expressly licensed to Customer herein are reserved to ProLion.
- 4.3. The structure, organization and code of the Software are the valuable trade secrets and confidential information of ProLion and its suppliers. You acknowledge that ProLion retains the ownership of all patents, copyrights, trade secrets, trademarks and other intellectual property rights pertaining to the Software, and that ProLion's ownership rights extend to any images, photographs, animations, videos, audio, music, text and "applets" incorporated into the Software and all accompanying printed materials. You will take no actions which adversely affect ProLion's intellectual property rights in the Software.
- 4.4. Trademarks shall be used in accordance with accepted practice, including identification of trademark owners' names, and such use of any trademark does not give you any rights in connection with the trademarks.

#### **5. Limited Warranty and Limitation of Liability**

- 5.1. ProLion warrants that for 90 days from date of delivery to you: (a) enclosed media (if any) is free of defects in materials and workmanship under normal use; and (b) unmodified Software will substantially perform the functions described in documentation provided by ProLion when operated on the designated licensed configuration in accordance with this Agreement. ProLion and its suppliers do not warrant that: (i) the Software will meet your requirements, (ii) the Software will operate in combinations you may select for use, (iii) operation of the Software will be uninterrupted or error-free, or (iv) all Software errors will be corrected. Furthermore, the warranty only covers malfunctions that are reproducible and verifiable and does not extend to third party software or other items not provided by ProLion. Abuse, misuse, unskilled operation, transport damage, modifications or unauthorized use or installation, as determined by ProLion, shall void any warranty hereunder. ProLion further warrants that its Customer Support will be performed in a professional and workmanlike manner. If you report an error in the Software within the 90-day period, ProLion shall, at its option, correct the error, provide you with a reasonable procedure to circumvent the error, or, upon return of the Software to ProLion, refund the Software License fees and Maintenance fees if applicable. ProLion will replace any defective media without charge if it is returned to ProLion within the 90-day period. THESE WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Some jurisdictions restrict limitations on how long an implied warranty, guarantee or condition lasts and may grant you additional rights. To the extent that any such restrictions are applicable, the limitations of this Agreement affected by those restrictions (including, without limitation, the duration of express or implied warranties) shall not apply to you. To the extent applicable law requires a minimum warranty period of greater than 90 days, then such minimum period shall be controlling herein in lieu of the 90-day period stated above. You further acknowledge your understanding that if the Software is a Trial Version, ProLion does not make any commitment to you to provide any support, and notwithstanding the foregoing provisions of this paragraph, such Software is provided "AS IS."
- 5.2. ProLion reserves the right to cease support of the Software and to alter prices, features, specifications, capabilities, functions, licensing terms, release dates, general availability or other characteristics of the

Software.

- 5.3. THE SOFTWARE IS NOT INTENDED FOR USE IN OR IN CONNECTION WITH THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION, COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL EQUIPMENT, MEDICAL DEVICES OR LIFE SUPPORT SYSTEMS, MEDICAL OR HEALTH CARE APPLICATIONS, OR OTHER APPLICATIONS WHERE THE FAILURE OF THE SOFTWARE OR ERRORS IN DATA PROCESSING COULD LEAD TO DEATH, PERSONAL INJURY OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE. PROLION DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH USES AND SHALL NOT BE LIABLE FOR ANY COSTS, LIABILITIES OR DAMAGES RESULTING FROM THE USE OF THE SOFTWARE IN SUCH AN ENVIRONMENT. CUSTOMER AGREES THAT IT WILL NOT USE OR LICENSE THE HARDWARE OR SOFTWARE FOR SUCH PURPOSES.
- 5.4. CUSTOMER IS SOLELY RESPONSIBLE FOR ITS USE OF THE SOFTWARE AND ANY DATA GENERATED OR PROCESSED BY THE SOFTWARE FOR THE INTENDED USE AND CUSTOMER WILL DEFEND, INDEMNIFY AND HOLD PROLION, ITS OFFICERS AND EMPLOYEES HARMLESS FROM ANY THIRD-PARTY CLAIMS, DEMANDS, OR SUITS THAT ARE BASED UPON CUSTOMER'S USE OF THE SOFTWARE ANY DATA GENERATED BY THE SOFTWARE IN CUSTOMER'S USE.
- 5.5. EXCEPT FOR THE LIMITED WARRANTIES DESCRIBED ABOVE, THE SOFTWARE AND ANY CUSTOMER SUPPORT ARE PROVIDED "AS IS", AND TO THE FULLEST EXTENT PERMITTED BY LAW, PROLION AND ITS SUPPLIERS DISCLAIM ANY AND ALL OTHER WARRANTIES WITH RESPECT TO THE SOFTWARE AND CUSTOMER SUPPORT, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND/OR FITNESS FOR A PARTICULAR PURPOSE. YOU ASSUME THE ENTIRE RISK ARISING OUT OF THE USE OR PERFORMANCE OF THE SOFTWARE OR THE RESULTS OF THE CUSTOMER SUPPORT.
- 5.6. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF A REMEDY FAILS ITS ESSENTIAL PURPOSE, IN NO EVENT SHALL PROLION OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, DIRECT, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE OR THE PROVISION OF OR FAILURE TO PROVIDE CUSTOMER SUPPORT, EVEN IF PROLION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, PROLION'S ENTIRE LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY YOU FOR THE SOFTWARE.
- 5.7. Some jurisdictions restrict the exclusion or limitation of warranties and liability, particularly but not limited to consumer protection laws. In such jurisdictions, ProLion's liability shall be limited to the greatest extent permitted by law.
- 5.8. ProLion will indemnify and hold you harmless and will defend or settle any claim, suit or proceeding brought against you by a third party that is based upon a claim that the content contained in the Software infringes a copyright or violates an intellectual or proprietary right protected by European Union law ("Claim"), but only to the extent the Claim arises directly out of the use of the Software and subject to the limitations set forth in this Agreement except as otherwise expressly provided. You must notify ProLion in writing of any Claim within ten (10) business days after you first receive notice of the Claim, and you shall provide to ProLion at no cost such assistance and cooperation as ProLion may reasonably request from time to time in connection with the defense of the Claim. ProLion shall have sole control over any Claim (including, without limitation, the selection of counsel and the right to settle on your behalf on any terms ProLion deems desirable in the sole exercise of its discretion). You may, at your sole cost, retain separate counsel and participate in the defense or settlement negotiations. ProLion shall pay actual damages, costs, and attorney fees awarded against you (or payable by you pursuant to a settlement agreement) in connection with a Claim to the extent

such direct damages and costs are not reimbursed to you by insurance or a third party, to an aggregate maximum equal to the purchase price of the Software. If the Software or its use becomes the subject of a Claim or its use is enjoined, or if in ProLion's opinion the Software is likely to become the subject of a Claim, ProLion shall attempt to resolve the Claim by using commercially reasonable efforts to modify the Software or obtain a license to continue using the Software. If in the Claim, the injunction or potential Claim cannot be resolved through reasonable modification or licensing, ProLion, in its sole discretion, may terminate this Agreement without penalty, and will refund to you on a pro rata basis any fees paid in advance by you to ProLion. THE FOREGOING CONSTITUTES PRO LION'S SOLE AND EXCLUSIVE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT. This indemnity does not apply to any infringing combinations arising from the integration or combination of ProLion's Software with other products provided by Customer or any third party.

## **6. Termination**

Without prejudice to any other rights, ProLion may terminate this Agreement if you fail to comply with any of its terms and conditions. In the event of any expiration or termination of the License grant herein, you must discontinue any use of the Software and destroy any and all copies of the Software and all of its component parts, except insofar as such parts remain in archival copies made in accordance with Section 2.5., provided that no Production Use shall thereafter be made of such parts and that such parts shall otherwise remain subject to this Agreement for so long as they shall continue to exist. The obligations imposed by Sections 1.4., 1.5., 2.1., 2.6., 3, 4, 7-12, and all other provisions which by their nature are intended to survive termination or expiration of this Agreement shall survive and continue in full force and effect.

## **7. Severability, Cumulative Remedies**

If any provision, or portion thereof, of this Agreement is invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted; provided, that notwithstanding such omission, the remaining provisions of this Agreement shall continue in effect and the omitted term shall be replaced with a term consistent with the purpose and intent of this Agreement. Except as otherwise expressly herein provided, the remedies provided hereunder are cumulative and not exclusive, and the fact that this constitutes a binding contractual agreement shall not preclude enforcement of ProLion's legal rights under applicable law, including, but not limited to, intellectual property laws.

## **8. Applicable Law and Jurisdiction**

- 8.1. This Agreement shall be governed and construed in accordance with the internal substantive laws of Austria, excluding its conflict of law provisions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.
- 8.2. The Parties shall endeavor to amicably settle any disputes arising out of or in connection with the performance of this Agreement. If an amicable settlement cannot be reached, the Parties agree that all disputes arising out of or in connection with the present Agreement or its validity shall be submitted to the court having jurisdiction over the domicile of ProLion as the Licensor.



## **9. Export Restrictions**

ProLion's Software is subject to European Union (EU) export control laws and may be subject to export or import regulations in other countries. Customer must comply with all applicable regulations and obtain licenses to export, re-export, or import the Software. Customer shall comply with such laws and regulations governing use, export, re-export, and transfer of ProLion Products and technology and will obtain all required EU and local authorizations, permits, or licenses. ProLion and Customer each agree to provide information, support documents, and assistance as may reasonably be required by the other party in connection with securing authorizations or licenses. Information regarding compliance with EU use, export, re-export, and transfer laws may be located at the following URL: <http://ec.europa.eu/trade/>.

## **10. Right to Audit**

ProLion has the right to audit your compliance with the authorized use of the Software, the licensed configuration and the licensing terms authorized by ProLion. The audit may include site visits by a ProLion representative. ProLion will provide commercially reasonable notice of any such audit and shall conduct any audit during commercially reasonable business hours, and you agree to provide reasonable cooperation to allow the audit to be properly completed. ProLion shall bear the expense incurred by its representative in conducting the audit.

## **11. Force Majeure**

Neither ProLion nor Customer shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export or other license); other event outside the reasonable control of the obligated party. Both ProLion and Customer will use commercially reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 90 days, either party may cancel unperformed Customer Support upon written notice. This Section 8 does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Customer's obligation to pay for Software delivered or Customer Support provided.

## **12. Interpretation**

The headings provided herein are for convenience only and shall not be considered in the interpretation of this Agreement.