

# END USER LICENSE AGREEMENT

DGMR Software B.V., a company incorporated and existing under the laws of the Netherlands, with its registered seat and office at Van Pallandtstraat 9-11 (6814GM) in Arnhem, the Netherlands, (hereinafter to be referred to as: "DGMR") hereby grants to the Customer a license to use its software under the following conditions:

## Article 1: Definitions

- 1.1 Customer: the Company that has obtained the Free, Pro or Company License(s) from DGMR or its Reseller.
- 1.2 Company: a legal entity, registered and existing in 1 country, including its Users.
- 1.3 Documentation: the user documentation regarding the Software as provided by DGMR.
- 1.4 Basic Support: support provided by DGMR or Reseller to Customers, which entails providing answers to such Customers concerning questions regarding the installation of the Software and error messages during use of the Software. Basic Support is provided by email in the English language. Questions can be send to the reseller or to [helpdesk@dgmr.nl](mailto:helpdesk@dgmr.nl).
- 1.5 Premium Support: support provided by DGMR or Reseller to Customers, which entails providing answers to such Customers concerning questions regarding the general use of the Software. Premium Support includes an account for using the on-line iNoise self-service desk. Premium Support is provided in the English language. Questions can be send through the service desk or to [helpdesk@dgmr.nl](mailto:helpdesk@dgmr.nl).
- 1.6 Free unregistered License: the right provided by DGMR to any person to install, run and use the iNoise Free Software on 1 computer, subject to the terms and conditions stated in the License Agreement.
- 1.7 Free registered License: the right provided to Customer by DGMR to install, run and use the iNoise Free Software on 1 computer and by 1 named employee of the Customer, subject to the terms and conditions stated in the License Agreement.
- 1.8 Pro License: the right provided to Customer by DGMR to install, run and use the iNoise Pro Software on 1 computer of the Customer and by 1 named employee of the Customer, subject to the terms and conditions stated in the License Agreement.
- 1.9 Company License: the right provided to Customer by DGMR to install, run and use the iNoise Company Software on all networks and computers of the Customer and by all employees of the Customer, in 1 country, subject to the terms and conditions of this License Agreement.
- 1.10 Intellectual Property Rights: All rights of intellectual property, such as but not limited to copyrights, database rights, trademark rights, know-how, patent rights.
- 1.11 License: a time limited Free, Pro or Company License.
- 1.12 Reseller: an official reseller/distributor of DGMR Software.
- 1.13 Software: the iNoise Free, iNoise Pro or iNoise Company software developed by DGMR, including the Documentation and all Updates and/or Upgrades of the Software.
- 1.14 Support: Basic Support and/or Premium Support.
- 1.15 Update: a new version of the Software in which a possible error has been resolved.
- 1.16 Upgrade: a new version of the Software, which contains a change in functionality or new functions of the Software.
- 1.17 User: an end user of the Software.

## Article 2: Grant of License and license conditions

- 2.1 Subject to full compliance by Customer of the terms and conditions under this License Agreement DGMR hereby grants to Customer a non-exclusive and non-transferable License. The Customer may only use the Software in its own company or organization.
- 2.2 The Customer may not distribute, sell, copy, transfer or in any other way lose control over the Software or the relevant License(s).
- 2.3 Customer is not entitled to make any changes to the Software or parts thereof. Customer furthermore is not allowed to reverse engineer or decompile the Software or parts thereof, except for those circumstances that are allowed under mandatory copyright law and under the condition that Customer has obtained prior written approval of DGMR to do so. DGMR is entitled to attach conditions to such approval.

### Article 3: Maintenance, Updates and Upgrades

- 3.1 DGMR shall exclusively maintain the latest (current) version of the Software to the best of its ability and do its utmost to correct possible errors by providing Updates. Furthermore, DGMR may develop – as it sees fit and appropriate – Upgrades of the Software.
- 3.2 Updates and Upgrades can be obtained by Customers with a valid License from DGMR for free.
- 3.3 DGMR and/or the Reseller will inform Customer about Updates and/or Upgrades and in doing so use the provided (electronic) address information of Customer.

### Article 4: Support

- 4.1 DGMR and its Resellers will provide Support to the Customer. In the event the License(s) have been acquired through a Reseller, Customer is entitled to Support from this Reseller. In the event the License(s) have been acquired at DGMR, Customer is entitled to Support from DGMR.
- 4.2 Support is only provided for the latest version of the Software and all other versions of the Software released within the last twelve (12) months.
- 4.3 Although best efforts are made to resolve each issue, Support is provided "as is" and without any warranties. DGMR or Reseller cannot guarantee that the provided answers are correct.
- 4.4 Support is provided during normal office hours of the Reseller and/or DGMR by email.

### Article 5: Intellectual Property and indemnification

- 5.1 All intellectual property rights to the Software and Documentation are held solely by DGMR, its licensors or its suppliers. The Customer shall only acquire the rights of use expressly granted in this License Agreement and subject to the terms and conditions as stated in this License Agreement.
- 5.2 The Customer shall not be allowed to remove or modify any designation concerning copyrights, trademarks, business names or other intellectual or industrial property rights from the Software or Documentation.
- 5.3 DGMR and/or its Reseller on behalf of DGMR shall be allowed to take technical measures to protect the Software or with a view to agreed restrictions regarding the License. The Customer is not allowed to remove or evade such technical measures.
- 5.4 DGMR shall indemnify Customer against any third party claim stating that the Software, Documentation or other relevant materials developed by DGMR infringe intellectual property rights of third parties, on the condition that Customer immediately informs DGMR in writing about the existence and contents of such claim and will let DGMR handle the matter completely, including but not limited to negotiating and agreeing to any settlements. In this respect Customer shall provide - at first request by DGMR – all necessary powers of attorney, information and cooperation to DGMR to defend - if necessary, in the Customer's name - against such third party claims. This indemnification obligation is not applicable in the event alleged infringement relates to changes to the Software, Documentation and other relevant material, which the Customer has made or caused third parties to make.
- 5.5 If it has been established in court as an incontrovertible fact that the Software, Documentation or other materials developed by DGMR and provided to Customer infringe any intellectual property right held by a third party, DGMR shall – at its sole discretion – (a) change the Software to the extent that it does not infringe such third party rights, (b) provide different software to with similar functionality that does not infringe such third party rights, (c) at its expense acquire a license from such third party in order for the Customer to continue using the Software, (d) or provide any other reasonable solution to Customer. Any further liability of DGMR with respect to infringement of third party rights is excluded.

### Article 6: Term, termination and consequences of termination

- 6.1 This Agreement is entered into as of the date the Customer purchased the License and shall continue indefinitely unless sooner terminated in accordance with the provisions set out herein. In case of a time limited License the Agreement is automatically terminated at the end of the time limited period. Both parties can terminate this agreement by written notice, taking into account a notice period of three (3) months.
- 6.2 DGMR is allowed to terminate this Agreement with immediate effect in writing in the event:
  - a. Customer becomes bankrupt or insolvent and/or if the business of Customer is placed in hands of a receiver, assignee or trustee, whether by voluntary act of Customer or otherwise; or
  - b. Customer enters into liquidation or shall enter into an arrangement or composition with its credit or

- c. Customer fails to perform its obligations under this agreement.
- 6.3 Upon termination - on whatever grounds and for whatever cause - all rights granted to Customer under this License Agreement will expire automatically. All fees paid by the (previous) Customer remain due and payable.

#### Article 7: Liability

- 7.1 Notwithstanding other conditions concerning DGMR's liability, DGMR's total liability for failing to perform its obligations under this License Agreement shall be limited to compensating direct damage, up to at most the license fee(s) paid by Customer for the License(s) (exclusive of VAT). The total compensation for direct damage shall not, however, in any case exceed EUR 25.000 (twenty five thousand Euros). Direct damage solely entails:
- a. reasonable expenses which the Customer would have to incur to make DGMR's performance conform to the Agreement. This alternative damage shall not be compensated, however, if the Agreement is rescinded by the Customer;
  - b. reasonable expenses incurred to determine the cause and scope of the damage, insofar as the determination relates to direct damage within the meaning of this License Agreement;
  - c. reasonable expenses incurred to prevent or mitigate damage, insofar as the Customer demonstrates that these expenses resulted in mitigation of direct damage within the meaning of this License Agreement.
- 7.2 DGMR's liability for consequential damage, consequential loss, lost profits, lost savings, loss of goodwill, damage through business interruptions, damage ensuing from claims by the Customer's customers, mutilation or loss of data and all other forms of damage or injury not mentioned in article 7.1, is excluded.
- 7.3 DGMR's liability concerning an imputable failure to perform its obligations under this License Agreement shall in all cases only arise if Customer immediately and properly provides a written notice of default to DGMR, with a reasonable time period for remedying the failure being given and DGMR still imputably failing to perform its obligations after that period as well. The notice of default must contain a description of the breach which is as complete and specific as possible, so that the Supplier can respond adequately.
- 7.4 For any right to damages to exist, the Customer must always report the damage or injury to DGMR in writing as soon as possible after it occurs. Any claim for damages shall be extinguished by the mere lapse of twelve (12) months after the claim arises.

#### Article 8: Warranty

- 8.1 The Software, including Updates and Upgrades, are provided to Customer "as is". DGMR does not warrant that the Software, including Updates and Upgrades, shall operate without interruption, will be error-free or that it is fit for any particular purpose, or that errors or other defects shall be corrected in Updates and/or Upgrades.

#### Article 9: Miscellaneous

- 9.1 If any provision of the License Agreement shall be found to be invalid or unenforceable by any court or administrative body of competent jurisdiction, the invalidity or unenforceability of such provision shall not affect the other provisions of the License Agreement and all provisions not effected by such invalidity or unenforceability shall remain in full force and effect.
- 9.2 The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.
- 9.3 This License Agreement constitutes the entire agreement between the parties. Additions or changes to this License Agreement shall only be binding on the parties if they have been agreed upon in writing.
- 9.4 Customer shall not assign or purport to assign or transfer any of its rights or obligations under this License Agreement, without prior written consent of DGMR. DGMR is entitled to assign or purport to assign or transfer its rights and obligations under this License Agreement to any third party. Customer agrees (now for then) to such assignment or transfer by DGMR and will provide all necessary cooperation to DGMR with respect thereto.

#### Article 10: Applicable law and jurisdiction

10.1 This License Agreement is governed exclusively by the laws of the Netherlands. The Vienna Sales Convention of 1980 does not apply. Any dispute between the parties arising from this License Agreement or in connection with further agreements that might result there from, shall be resolved by the competent court in Amsterdam, the Netherlands.