

ProSets Plugin End User License Agreement (EULA)

Please read this EULA carefully, as it sets out the terms and conditions upon which this Software is licensed for use.

By clicking "I accept the End User License Agreement" when you first purchase the Software, you agree to be bound by the terms and conditions of this EULA. If you do not agree to this EULA, you must not use the software for any purpose whatsoever.

1. Definitions and interpretation

1.1 In this EULA:

"Computer" means [a desktop, notebook, netbook or similar computer owned by and in the control of the Licensee];

"Documentation" means the documentation concerning the Software supplied by the Licensor or by the Software supplier to the Licensee with the Software;

"Effective Date" means the date when the Licensee agrees to the terms and conditions of this EULA, as detailed in the preamble to this EULA;

"EULA" means this end user licence agreement (including the preamble), and any amendments to it from time to time;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the "intellectual property rights" referred to above include copyright and related rights, database rights, confidential information, trade

secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

“Licensee” means the licensee of the Software under this EULA;

“Licensor” means Mainframe North Ltd, a limited company incorporated in England and Wales (registration number 6596558);

“Software” means the ProSets plug-in including following the application of any Upgrade; and

“Upgrade” an upgrade, update, enhancement, improvement or patch to the Software supplied by the Licensor.

1.2 In this EULA, a reference to a statute or statutory provision includes a reference to:

(a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and

(b) any subordinate legislation made under that statute or statutory provision.

1.3 The Clause headings do not affect the interpretation of this EULA.

1.4 The ejusdem generis rule is not intended to be used in the interpretation of this EULA.

2. Term of EULA

This EULA will come into force on the Effective Date and will continue in force indefinitely, unless and until terminated in accordance with Clause [9].

3. Licence

3.1 The Licensee may only use the Software for the Licensee’s commercial / own private and non-commercial purposes and in accordance with the provisions of this Clause [3].

3.2 Subject to the payment by the Licensee of the relevant charges and fees in respect of the Software licence(s), and the Licensee's compliance with Clause [3.4] and the other provisions of this EULA, the Licensor grants to the Licensee a non-exclusive non-transferable licence to:

(a) install 1 instance of the Software;

(b) use 1 instance of the Software;

per granted license.

3.3 Subject to the payment by the Licensee of the relevant charges and fees in respect of the Software licence, and the Licensee's compliance with Clause [3.4] and the other provisions of this EULA, the Licensor further grants to the Licensee the rights to:

(a) make not more than 1 back-up copy of the Software.

3.4 The Licensee must not:

(a) copy or reproduce the Software or any part of the Software other than in accordance with the licence granted in this Clause [3];

(b) sell, resell, rent, lease, loan, supply, distribute, redistribute, publish or re-publish the Software or any part of the Software;

(c) modify, alter, adapt, translate or edit, or create derivative works of, the Software or any part of the Software;

(d) reverse engineer, decompile, disassemble the Software or any part of the Software;

(e) circumvent or remove or attempt to circumvent or remove the technological measures applied to the Software for the purposes of preventing unauthorised use,

providing that nothing in this Clause [3.4] will prohibit or restrict the Licensee or any other person from doing any act expressly permitted by applicable law (including any

act expressly permitted by Section 296A of the Copyright, Designs and Patents Act 1988).

3.5 All Intellectual Property Rights in the Software are and will remain, as between the parties, the property of the Licensor.

4. Other Users

The Licensee must not permit any other person to use the Software or to exercise any of the other rights granted by the Licensee to the Licensor in this EULA.

5. Upgrades

5.1 The Licensee may apply to the Software each Upgrade released by the Licensor and provided / made available by the Licensor to the Licensee from time to time.

5.2 Any upgrades not offered free of charge by the Licensor must be purchased in full by the Licensee prior to any installation of said upgrade.

5.3 The Licensor will have no obligation to provide support for the Software under Clause [6] or repair or replace the Software under Clause [7.2(d)] in relation to any version of the Software that does not incorporate the most recent Upgrade to the Software.

6. Support

6.1 The Licensor is under no obligation to provide product support at any time. Any product support offered by the Licensor will be under terms governed by the Licensor and at the Licensor's discretion.

6.2 The Licensee acknowledges that:

(a) the Licensor does not warrant or represent that issues raised will be solved by means of the support services; and

(b) the Licensor will not provide any on-site support under this EULA.

6.3 The Licensor may subcontract any of its obligations under this Clause [6] to any third party.

7. Warranties

7.1 The licensee accepts that this software is provided “as is”, without warranty of any kind, express or implied, including but not limited to any warranties of merchantability, fitness for a particular purpose and non-infringement of copyright, patent, trademark, or other right. In no event shall the Licensor be liable for any claim, damages or other liability, including any general, special, indirect, incidental, or consequential damages, whether in an action of contract, tort or otherwise, arising from, out of the use or inability to use the software or from other dealings in the software.

7.2 The Licensee acknowledges that:

(a) the Software may not be error-free and that non-material errors in the software will not constitute a breach of this EULA;

(b) the Software has not been developed to meet the specific requirements of the Licensee, and accordingly the Licensee will be responsible for ensuring that the Software is suitable to meet the Licensee’s requirements.

7.3 All of the parties’ liabilities and obligations in respect of the subject matter of this EULA are expressly set out herein. To the maximum extent permitted by applicable law, no other terms concerning the subject matter of this EULA will be implied into this EULA or any related contract.

8. Limitations and exclusions of liability

8.1 Nothing in the EULA will:

(a) limit or exclude the liability of a party for death or personal injury resulting from negligence;

(b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;

(c) limit any liability of a party in any way that is not permitted under applicable law; or

(d) exclude any liability of a party that may not be excluded under applicable law,

and, if you are a consumer, any statutory rights which you have, which cannot be excluded or limited, will not be affected by the EULA.

8.2 The limitations and exclusions of liability set out in this Clause [8] and elsewhere in the EULA:

(a) are subject to Clause [8.1]; and

(b) govern all liabilities arising under the EULA or in relation to the subject matter of the EULA, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty.

8.3 The Licensor will not be liable to the Licensee for any losses arising out of a Force Majeure Event.

8.4 The Licensor will not be liable to the Licensee in respect of any business losses, such as loss of or damage to profits, income, revenue, use, production, anticipated savings, business, contracts, commercial opportunities or goodwill.

8.5 The Licensor will not be liable to the Licensee in respect of any loss or corruption of any data, database or software.

8.6 The Licensor will not be liable to the Licensee in respect of any special, indirect or consequential loss or damage.

8.7 The Licensor's aggregate liability to the Licensee will not exceed the total amount paid for the License(s) by the Licensee.

9. Termination

This EULA will terminate immediately and automatically if:

- (a) the Licensee breaches any provision of this EULA;
- (b) the Licensee is unable to make payment of any license fees due;
- (c) the Licensee: (i) is dissolved; (ii) ceases to conduct all (or substantially all) of its business; (iii) is or becomes insolvent or is declared insolvent;
- (d) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the Licensee;
- (e) an order is made for the winding up of the Licensee, or the Licensee passes a resolution for its winding up; or
- (f) (where the Licensee is an individual) the Licensee dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.

10. Effects of termination

10.1 Upon termination all the provisions of this EULA will cease to have effect, save that the following provisions will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses [1, 8 and 11].

10.2 Termination of this EULA will not affect either party's accrued rights and liabilities.

10.3 Save as expressly provided in this EULA, the Licensee will not be entitled to a refund upon the termination of this EULA.

10.4 Upon termination of this EULA the Licensee must ensure that all installations and copies of the Software granted to and held by the Licensee will be deleted immediately.

11. General

11.1 No breach of any provision of this EULA will be waived except with the express written consent of the party not in breach.

11.2 If a Clause of this EULA is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of this EULA will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).

11.3 The Licensor may freely assign this EULA and/or its rights and/or obligations under this EULA without the Licensee's consent. Save as expressly provided in this EULA, the Licensee must not assign, transfer, charge, license or otherwise dispose of or deal in this EULA and/or any its rights and/or obligations under this EULA.

11.4 This EULA is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this EULA are not subject to the consent of any third party.

11.5 This EULA constitutes the entire agreement and understanding of the parties in relation to the subject matter of this EULA, and supersedes all previous agreements, arrangements and understandings between the parties relating to the subject matter of this EULA. Subject to Clause [8.1], each party acknowledges that no representations or promises not expressly contained in this EULA have been made by or on behalf of the other party.

11.6 This EULA will be governed by and construed in accordance with the laws of England and Wales; and the courts of England will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this EULA.