

## BEENIUS END USER AGREEMENT

This End User Agreement (“**Agreement**”) is a **binding legal document** between Beenius and you that explains your rights and obligations as End User of Beenius products. “**End User**” means either (a) you as an individual or (b) your company, if you use Beenius products in your professional capacity. “**Beenius**” means Beenius d.o.o., a Slovenian corporation with headquarters at Brnčičeva ulica 45, Ljubljana, Slovenia.

PLEASE READ THE TERMS AND CONDITIONS OF THIS AGREEMENT CAREFULLY, INCLUDING, WITHOUT LIMITATION, ANY SUPPLEMENTAL TERMS AND CONDITIONS APPEARING OR REFERENCED BELOW, WHICH ARE HEREBY MADE PART OF THIS AGREEMENT, BEFORE OBTAINING, USING, OR INSTALLING THE PRODUCTS. YOUR ACCEPTANCE OF THIS AGREEMENT IS A CONDITION FOR OBTAINING, USING, OR INSTALLING THE PRODUCTS.

**BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, PURCHASING OR USING BEENIUS PRODUCTS, YOU ACCEPT THE TERMS OF THIS AGREEMENT AND AGREE THAT YOU HAVE READ AND COMPLY WITH AND ARE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT AND ALL APPLICABLE LAWS AND REGULATIONS IN THEIR ENTIRETY WITHOUT LIMITATION. IF YOU ACCEPT THESE TERMS ON BEHALF OF ANOTHER PERSON, COMPANY, OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY OR LEGAL ENTITY TO THESE TERMS.**

**IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT:**

- **DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, OR USE THE SOFTWARE, AND;**
- **PROMPTLY RETURN THE SOFTWARE AND PROOF OF ENTITLEMENT TO THE PARTY FROM WHOM YOU ACQUIRED THEM;**
- **IMMEDIATELY CLICK ON THE “I DO NOT ACCEPT” OPTION IF YOU HAVE ORDERED PRODUCTS VIA THE INTERNET;**
- **IMMEDIATELY INFORM BEENIUS OF THE FACT THAT YOU DO NOT ACCEPT THE TERMS OF THIS AGREEMENT;**
- **IN EACH SUCH CASE, CANCEL THE INSTALLATION OR DOWNLOAD, AND DESTROY OR RETURN THE SOFTWARE, INSTALLATION MEDIA, AND ACCOMPANYING DOCUMENTATION AND IMMEDIATELY STOP USING THE PRODUCTS.**

If you are an individual representing a legal entity, you acknowledge that you have the appropriate authority to accept these terms and conditions on behalf of such entity.

Products are supplied on a data carrier, sent via electronic mail, downloaded from the internet, downloaded from Beenius’s servers or obtained from other sources.

This Agreement may be subject to modification by Beenius, including any referenced policies and other documents. Any modified version shall be effective at the time it is published on the website <http://www.beenius.tv/>. In order to remain informed of your license rights and relevant restrictions, please bookmark this Agreement and read it periodically. By using any Product after any modifications, the End User agrees to all of the modifications.

**Should you have any questions concerning this Agreement or wish to contact Beenius for any reason, please contact us at: [info@beenius.tv](mailto:info@beenius.tv).**

## 1. INTRODUCTION TO BEENIUS'S PRODUCTS AND LICENSE TERMS

**1.1 “Software”.** Beenius offers different software products. “**Software**” means any Beenius product and corresponding modules that the End User obtains from Beenius (or Beenius Resellers, as described below) or downloads from Beenius or Beenius Resellers. The term also includes (a) related documentation, (b) any Updates (defined below) to the Software, (c) any internet-based components of the Software provided by Beenius (but not third parties) (“**Supplementary Software**”), and (d) any third party software embedded in or provided with Beenius’s software (“**Embedded Software**”). The End User’s detailed rights to use Software are determined in Section 2 below. To be clear, any other code offered by third parties (through Beenius or otherwise) or created by the End User itself is not “Software”, and Beenius is not responsible for and does not offer any warranty, indemnity, or support for such.

**1.2 The “Products”.** This Agreement uses the term “**Products**” to refer to the Software and Services.

**1.3 Limits on Authorized Users.** When buying a license to the Software or a subscription to the Software, the End User pays fees for a specific number of users, which are counted based on the number of then-authorized users for the Software and the number of seats or logins for Hosted Services (“**Authorized Users**”). The End User has to report to Beenius in writing on a quarterly basis the number of Authorized Users. Authorized Users may include the End User’s employees and Customers (note: the detailed rules for Customers are determined in Section 3 below). The End User may add Authorized Users for additional fees. The End User is responsible for all use of the Products by its Authorized Users and their compliance with this Agreement.

**1.4 Purchase through Resellers.** Fees are payable directly to Beenius as described in other documents or individual orders unless the End User ordered the Products from an authorized Beenius Reseller. If the End User ordered Products from Beenius Resellers, then the above payment does not apply for those Products. Instead, the End User agrees to pay the Beenius Reseller the fees separately agreed on with the Beenius Reseller. No Beenius Resellers may change the terms of this Agreement (but they may impose additional restrictions on the use of the Products). No promises, warranties, or agreements by Beenius Resellers are binding on Beenius.

## 2. LICENSE TO USE BEENIUS SOFTWARE

**2.1 Software.** Provided that Beenius receives timely payment for use of the Software and the End User complies with the terms, conditions, and restrictions of this Agreement, Beenius grants the End User a worldwide, non-exclusive, non-transferable, non-sublicense right to use the Software, subject to the terms and conditions of this Agreement. Only Authorized Users may use the Software, and only up to the permitted number of concurrent Authorized Users (except for Non-Production Purposes, as described below). All use of Software must be in accordance with the relevant Beenius documentation and policies. The End User may make a limited number of copies of the Software as is strictly necessary for the purposes of data protection, archiving, backup, and testing and internal development (“**Non-Production Purposes**”). For clarity, the End User’s employees may use the Software for these Non-Production Purposes, and the End User shall be responsible for their compliance with this Agreement on all the same terms as for Authorized Users, except that these users will not count against the End User’s limit of Authorized Users, and the End User will not need to pay additional fees for these users. Unless Beenius agrees otherwise in writing, the End User may only install, use, or make available the Software on the End User’s hardware systems, whether owned, leased, or controlled. The End User shall be responsible for any use of the Software on any hardware systems not owned, leased, or controlled by the End User (“**Uncontrolled Systems**”).

**2.2 Conditions of Use of Products.** The End User shall not, and shall not allow any Authorized User or other third party to: (a) resell, assign, rent, give, transfer, transfer title to, lease, copy, provide access to, or sublicense any Product to any third party (for use in its business operations or otherwise), or

permit anyone besides Authorized Users to use any data or information not owned by the End User that is generated by the Products; (b) use any Product to provide or incorporate any Product into any product or service provided to a third party except as expressly permitted above for Customer Use; (c) reverse engineer, decompile, disassemble, decipher, decrypt, or otherwise seek to discover or obtain the source code, except to the extent expressly permitted by applicable law despite this prohibition (and then only upon advance notice to Beenius); (d) modify, adapt, or create derivative works of a Product; (e) remove or obscure any proprietary or other notices of Beenius or any third party contained in any Product (including any information or data generated by the Products); (f) publicly disseminate information regarding the performance of the Products; (g) use any Product for commercial solicitation purposes or spam; (h) use the Beenius name or any Beenius trademarks or logos; or (i) commit any act or omission that could result in damage to Beenius's or its suppliers' or licensors' reputations. The End User shall not attempt to do any of the foregoing, encourage others to do so, or otherwise attempt to bypass or circumvent any usage restrictions in this Agreement.

**2.3 Updates and Supplementary Software.** The terms for Software in this Agreement apply to any Updates and Supplementary Software, unless Beenius provides different terms. Beenius may cease to make available Supplementary Software and services used with the Software at any time.

**2.4 Open Source Software.** The Software may contain or be provided with components subject to the terms and conditions of "open source" software licenses ("**Open Source Software**"). To the extent required by the license that accompanies the Open Source Software, the terms of such license shall apply in lieu of the terms of this Agreement with respect to such Open Source Software, including any provisions governing access to source code, modification, or reverse engineering.

**2.5 Evaluation Software.** This paragraph applies to any Software that Beenius makes available on an evaluation basis ("**Evaluation Software**"). The End User may only use the Evaluation Software for internal evaluation purposes for the period specified by Beenius (or, if not specified, for 30 days), and only permit a limited number of users specified by Beenius (or, if not specified, for three users) to access the Evaluation Software. After the evaluation period, the End User must delete all copies of the Evaluation Software. The End User acknowledges that Evaluation Software may not be fully functional. Notwithstanding anything else in this Agreement, Beenius does not offer any warranty, indemnity, or support for any Evaluation Software. All restrictions from Section 2 herein apply also for this Evaluation Software.

**2.6 Protection Mechanisms.** The Software has license protection mechanisms designed to manage and protect Beenius's and its suppliers' and licensors' intellectual property rights. Whether using Source Code or not, the End User must not modify or alter these mechanisms or try to circumvent them or the usage rules they are designed to enforce.

**2.7 End User Responsibility for Systems.** Beenius is not responsible for any End User or Authorized User data lost, altered, or intercepted.

### **3. THE END USER'S CUSTOMERS**

**3.1 Use by the End User's Customers.** The End User's customers ("**Customers**") may be Authorized Users. The End User's customers are customers using hosted services of the End User that are offered to customers and include the use of Beenius products or services. In the event Beenius allows the End User to use a Product for hosting such for the End User's customers, the End User shall be responsible for the Customers the same as any other Authorized User and must enter into valid, binding agreements with the Customers consistent with this Agreement, including the additional conditions below. A Customer's permitted use of the Products under this Agreement is termed "**Customer Use**".

In addition to all other terms in this Agreement, the following conditions apply to Customer Use:

(a) The End User may not distribute or make available any Product on a standalone basis. Instead, the End User may only make available the Product to Customers in order to support the Customers' use of content and features that are part of the End User's own existing offer.

(b) The End User may not resell any Product or part of the Product, but may allow the use Product to Customers for purpose of hosting as part of the overall End User's offer.

(c) Customers may interact with the Products, but may not receive any administrator, configuration, or similar access to the Products.

(d) In making available Products to Customers, the End User may not violate any other term or condition in this Agreement, such as reverse engineering and anti-circumvention restrictions.

Beenius does not have any direct or indirect liability or obligation to any Customers, and Customers do not acquire any rights under this Agreement.

Beenius understands that Product usage may be flexible and that End Users may identify new proposed uses for the Products. If the End User has questions about whether a proposed use complies with these rules, please contact Beenius at <http://www.beenius.tv/>.

## 4. OBLIGATIONS

**4.1 Information.** The End User shall provide accurate, current, and complete information when ordering Products and agrees to update its information if it changes. This is important, because Beenius or Beenius Resellers may send notices, statements, and other information to the End User by email or through the End User's account. The End User is responsible for all actions taken through its accounts.

**4.2 Embedded Software.** All of the other restrictions regarding Software in this Agreement also apply to Embedded Software, with the addition of the following terms. The End User receives restricted licenses to Embedded Software and may use Embedded Software only for its internal purposes (including for Customer Use as permitted below) in conjunction with the applicable Product as provided by Beenius, and only use the Embedded Software as part of and through that Product. The End User may not install, access, configure, or use any Embedded Software separately or independently of the rest of the Product, whether for production, technical support, or any other purposes, or otherwise attempt to gain direct access to any Embedded Software components, or permit anyone else (including Customers) to do any of these things. Notwithstanding any other terms of this Agreement, the End User may not modify any Embedded Software. The End User shall be financially responsible to the applicable third party licensor ("**Embedded Software Licensor**") for all damages and losses resulting from the End User's or its Customers' breach of this Agreement. The End User may not "benchmark" or otherwise analyze performance information for individual Embedded Software elements. Some Embedded Software may include source code provided as part of the Embedded Software Licensor's standard shipment. That source code shall be governed by the terms regarding Embedded Software

The End User understands that the applicable Embedded Software Licensor retains all ownership and intellectual property rights to the Embedded Software. Embedded Software Licensors (and any other third party licensors of any components of the Products) are intended third party beneficiaries of this Agreement with respect to the items they license and may enforce this Agreement directly against the End User; but, to be clear, the Embedded Software Licensor does not assume any of Beenius's obligations under this Agreement. In addition, the End User agrees to the Embedded Software-related audit provisions in the section *License Certifications and Audits* below.

Embedded Software may include or be accompanied by third party technology that may be appropriate or necessary for use with some Embedded Software. Such technology may be specified in the Documentation or otherwise specified by Beenius, and is licensed to the End User only for use with the Product with which it is provided under the specified third party license terms, and not this Agreement. Beenius may also provide additional or substitute terms for the Embedded Software if required by the Embedded Software Licensor, and the End User shall comply with those terms.

**4.3 Attribution.** In any use of the Software, the End User must include the following attribution to Beenius on all user interfaces in the following format: “Powered by Beenius”, which must in every case include a hyperlink to <http://www.beenius.tv/>, and which must be in the same format as delivered in the Software.

**4.4 Indemnification.** The End User shall indemnify, defend, and hold harmless from and against any and all claims, costs, damages, losses, liabilities, and expenses (including reasonable attorneys’ fees and costs) arising from or in connection with any claim arising from or relating to (a) any breach by the End User (including any Authorized Users) of this Agreement, (b) any End User Data, (c) any End User Modifications or other modifications of or combinations with a Product, or any service or product offered by the End User in connection with or related to a Product, (d) any Uncontrolled Systems, or (e) any representations or warranties made by the End User (including any Authorized User) regarding a Product to third parties. This indemnification obligation is subject to the End User receiving (i) prompt written notice of such claim (but in any event, notice in sufficient time for the End User to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense, or settlement of such claim, provided that Beenius may participate in the claim at its own expense and the End User may not settle any claim without Beenius’s prior written consent; and (iii) all reasonable necessary cooperation of Beenius at the expense of the End User.

## 5. LICENSE CERTIFICATIONS AND AUDITS

Upon Beenius’s written request, the End User shall provide Beenius with a signed certification certifying that all Products are being used pursuant to the terms of this Agreement, including any access and user limitations. With prior reasonable notice of at least thirty (30) days, Beenius (or its authorized agent) may audit the use of the Products by the End User and its Authorized Users and any Customers, provided that such audit is carried out during regular business hours. The End User shall provide reasonable assistance and access to information in the course of any audit. The End User is responsible for such audit costs only in the event the audit reveals that the End User’s use of the Products is not in accordance with the permitted scope of use. In the event that any certification or audit reveals that the End User has exceeded its permitted number of Authorized Users, Beenius may invoice the End User for any past or ongoing excessive use and the End User shall pay such invoice. This remedy is without prejudice to any other remedies available to Beenius at law or equity or under this Agreement.

The End User understands that Beenius may report audit results to any applicable Embedded Software Licensor or may assign the right to audit the End User to Embedded Software Licensors.

## 6. BEENIUS’S OWNERSHIP RIGHTS AND FEEDBACK

Beenius and its licensors reserve all rights not expressly granted to the End User in this Agreement. The Products (including any content or information contained therein) and all copies thereof are protected by copyright and other intellectual property laws and treaties. Beenius or its licensors own the title, copyright, and other intellectual property rights to the Products and all copies, modifications, and derivative works of the Products and underlying software (including any incorporated Feedback) (“**Beenius Technology**”), and the End User does not acquire any ownership rights to Beenius Technology. All Products are licensed, not sold.

“**Feedback**” means any feedback, comments, suggestions, or materials (including, to the extent disclosed to Beenius, any End User Modifications) that the End User may provide to Beenius about or in connection with the Products, including any ideas, concepts, know-how, or techniques contained therein. The End User may provide Feedback in connection with maintenance, support, and otherwise. The End User hereby grants Beenius a worldwide, royalty-free, non-exclusive, perpetual, and irrevocable license to use, copy, modify, and otherwise exploit the Feedback for any purpose, including incorporating or implementing the Feedback in the Products. The End User agrees that

Beenius may exploit all Feedback without any restriction or obligation on account of intellectual property rights or otherwise. For clarity, no Feedback will be deemed to be the End User's Confidential Information, and nothing in this Agreement, including the *Confidentiality* section, limits Beenius's right to independently use, develop, evaluate, or market products, whether incorporating Feedback or otherwise.

## 7. CONFIDENTIALITY

Except as otherwise set forth in the section *Beenius's Ownership Rights and Feedback* above, each party agrees that all code, inventions, know-how, business, technical, and financial information it obtains (as the "**Receiving Party**") from the disclosing party ("**Disclosing Party**") constitutes the confidential property of the Disclosing Party ("**Confidential Information**"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be Confidential Information due to the nature of the information disclosed and the circumstances surrounding the disclosure. Any Beenius Technology, performance information relating to the Products, and the terms and conditions of this Agreement shall be deemed Confidential Information of Beenius without any marking or further designation. Except as expressly authorized herein, the Receiving Party shall hold in confidence and not use or disclose any Confidential Information. The Receiving Party's nondisclosure obligation shall not apply to information that the Receiving Party can document as: (i) being rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) being or becoming public knowledge through no fault of the Receiving Party; (iii) being rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; (iv) being independently developed by employees of the Receiving Party who had no access to such information; or (v) being required to be disclosed pursuant to a regulation, law, or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party). The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party shall be entitled to appropriate equitable relief in addition to any other remedies it might have at law.

## 8. TERMINATION

This Agreement shall continue so long as the End User has a license to the Software, unless terminated earlier.

Beenius may suspend or terminate this Agreement **immediately without prior notice** and, with respect to one or more of the Products, if the End User or Authorized User fails to comply with the terms and conditions of this Agreement, including any failure to pay fees when due. Beenius may terminate any free account or evaluation usage at any time at its sole discretion. In each such case of agreement termination Beenius is not obliged to return already paid amounts for the software or its use. Furthermore Beenius is in no case responsible or bound to repay the damage or costs of any sort which are connected with the software disconnection or prohibition of software use.

Immediately upon termination of any license or subscription right granted under this Agreement, the End User's license to Software and the End User's hosted services for Beenius Products shall cease, and the End User must at its own cost: (a) cease using (and require all Authorized Users and anyone else to cease using) all the terminated Products; (b) remove all copies of the Software from its computer systems and any Uncontrolled Systems; and (c) return to Beenius all Software or provide Beenius with written certification that it has destroyed all copies of the Software and other Beenius Confidential Information in its possession, custody, or control. Upon termination of this Agreement for whatever reason, the End User will not be entitled to credit or a refund for any unused portion of this Agreement, including but not limited to unused maintenance and support.

All payment and other obligations accrued as of the date of any expiration or termination of this Agreement, and the following sections: Conditions of Use of Products, Indemnification, License Certifications and Audits, Beenius's Ownership Rights and Feedback, Confidentiality, Termination, Warranties and Disclaimer of Warranties, Limitation of Liability, Publicity Rights, Assignment, Governing Law and Arbitration, and General, shall be deemed to survive expiration or termination.

## **9. BEENIUS INFRINGEMENT IDEMNIFICATION**

Subject to the rest of this section, Beenius shall indemnify, defend, and hold End User harmless against any claim to the extent based on an allegation that the End User's use of a Product (in the form provided by Beenius) in compliance with this Agreement infringes a United States or European Union patent or registered copyright ("Claim"), and shall pay those damages and costs finally awarded against the End User by a court of competent jurisdiction, or agreed to in writing by Beenius as a settlement, as a result of such Claim, provided that Beenius is (i) promptly notified and furnished a copy of such Claim, (ii) given all relevant evidence in the End User's possession, custody, or control, and (iii) given reasonable assistance in and sole control of the defense thereof and all negotiations for its settlement. Beenius shall have no obligation to defend and no liability for any damages or costs to the extent that a Claim is based upon: (i) use of a Product in combination with any non-Beenius product, software, or equipment; (ii) use of a Product in a manner or for an application other than that for which it was designed or intended to be used, regardless of whether Beenius was aware of or had been advised of such use; (iii) modifications to a Product by any person or entity other than Beenius (including any End User Modifications); or (iv) other circumstances or occurrences that are covered in the End User's indemnification obligations.

If a Product becomes, or in the opinion of Beenius may become, the subject of a Claim, Beenius may, at its discretion: (i) procure for the End User the right to use the Product free of any liability; (ii) replace or modify the Product to make it non-infringing; or (iii) terminate the End User's right to continue using such Product and refund, in the case of Software, any license fees related to this Software paid by the End User (depreciated on a three-year straight line basis) or, in the case of a Hosted Service, any prepaid amounts for the service no longer being provided.

This section states the sole liability of Beenius and the exclusive remedy of the End User for any infringement of intellectual property rights in connection with any Product or other items provided by Beenius under this Agreement.

## **10. WARRANTIES AND DISCLAIMERS OF WARRANTIES**

**10.1 General.** Each party represents and warrants that it has the legal power and authority to enter into this Agreement, and that, if the End User is an entity, this Agreement and each order is entered into by an employee of such party with all necessary authority to bind such party to the terms and conditions of this Agreement.

**10.2 DISCLAIMER OF WARRANTIES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT AS EXPRESSLY SET FORTH HEREIN, BEENIUS AND ITS THIRD PARTY SUPPLIERS/LICENSORS PROVIDE THE PRODUCTS (INCLUDING THE HOSTED SERVICES, SOFTWARE, AND ANY MAINTENANCE) AS IS AND WITH ALL FAULTS, AND HEREBY DISCLAIM ALL OTHER REPRESENTATIONS, WARRANTIES, AND GUARANTEES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR ANY PURPOSE. WITHOUT LIMITING THE FOREGOING, BEENIUS AND ITS THIRD PARTY SUPPLIERS/LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY (1) AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY, OR COMPLETENESS OF ANY PRODUCTS OR ANY CONTENT THEREIN OR GENERATED THEREWITH, (2) THAT (A) THE USE OF ANY PRODUCTS WILL BE SECURE, TIMELY, UNINTERRUPTED, OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY

OTHER HARDWARE, SOFTWARE, SYSTEM, OR DATA, (B) THE PRODUCTS WILL MEET THE END USER'S REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE OR THAT ANY STORED DATA WILL NOT BE LOST OR CORRUPTED, (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY THE END USER THROUGH THE PRODUCTS WILL MEET THE END USER'S REQUIREMENTS OR EXPECTATIONS, (E) ERRORS OR DEFECTS WILL BE CORRECTED, OR (F) THE PRODUCTS (OR ANY SERVER(S) THAT MAKE A HOSTED SERVICE AVAILABLE) ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. WITHOUT LIMITING THE FOREGOING, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BEENIUS AND ITS THIRD PARTY SUPPLIERS/LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO, AND ASSUME NO LIABILITY FOR, ANY PRODUCTS PROVIDED ON AN EVALUATION BASIS. IN ADDITION, BEENIUS AND ITS THIRD PARTY LICENSOR/SUPPLIERS SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF BEENIUS.

THE END USER MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, TO THE FULL EXTENT PERMITTED BY LAW, THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE LIMITED WARRANTY PERIOD.

## **11. LIMITATION OF LIABILITY**

**11.1 MAXIMUM LIABILITY.** EXCEPT WITH RESPECT TO AMOUNTS PAYABLE TO THIRD PARTIES PURSUANT TO THE PARTIES' INDEMNIFICATION OBLIGATIONS IN THE SECTION *INDEMNIFICATION* AND IN THE SECTION *INFINGEMENT IDEMNIFICATION* OR THE END USER'S BREACH OF ANY LICENSE OR USE RESTRICTIONS RELATING TO THE PRODUCTS, NOTWITHSTANDING ANY DAMAGES EITHER PARTY MIGHT INCUR FOR ANY REASON WHATSOEVER, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE ENTIRE LIABILITY OF EITHER PARTY TO THIS AGREEMENT UNDER ANY PROVISION OF THIS AGREEMENT AND THE OTHER PARTY'S EXCLUSIVE REMEDY HEREUNDER SHALL BE LIMITED TO THE ACTUAL DAMAGES SUCH PARTY INCURS, UP TO THE AMOUNT ACTUALLY PAID BY THE END USER FOR SUCH SOFTWARE OR SUCH HOSTED SERVICE, DEPRECIATED ON A THREE-YEAR STRAIGHT LINE BASIS, PRECEDING THE DATE ON WHICH THE CLAIM AROSE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EMBEDDED SOFTWARE LICENSORS SHALL NOT BE LIABLE TO THE END USER FOR ANY DAMAGES WHATSOEVER, INCLUDING DIRECT DAMAGES OR THE TYPES OF DAMAGES DISCLAIMED IN THE SECTION BELOW.

**11.2 OTHER DISCLAIMERS.** NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT FOR THE END USER'S BREACH OF ANY LICENSE OR USE RESTRICTIONS RELATING TO PRODUCTS, IN NO EVENT SHALL EITHER PARTY (OR THEIR RESPECTIVE THIRD PARTY SUPPLIERS/LICENSORS) BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS OR REVENUE) WHATSOEVER ARISING FROM OR IN ANY WAY RELATED TO THIS AGREEMENT. THE END USER SPECIFICALLY UNDERSTANDS AND AGREES THAT BEENIUS (ON BEHALF OF ITSELF AND ITS THIRD PARTY SUPPLIERS/LICENSORS) DISCLAIMS ALL WARRANTIES AND LIABILITY WITH RESPECT TO LOSS, LOSS OF USE, OR CORRUPTION OF ANY END USER DATA (OR OTHER DATA THE END USER MAY PROVIDE) AND THE COSTS OF PROCUREMENT OF ANY SUBSTITUTE GOODS.



**11.3 Failure of Essential Purpose.** The parties agree that the limitations specified in this section will survive and apply even if any limited remedy specified in this Agreement is found to have failed its essential purpose.

**11.4 Force Majeure.** Neither party shall be liable hereunder by reason of failure or delay in the performance of its obligations hereunder (except for the non-payment of money) on account of strikes, shortages, riots, insurrection, war, acts of terrorism, fires, flood, storm, explosions, earthquakes, acts of God, governmental action, labor conditions, or any other cause which is beyond the reasonable control of the party.

## **12.PUBLICITY RIGHTS**

Beenius may identify the End User as a customer in Product promotional material. The End User may request that Beenius cease identifying the End User at any time by submitting an email to Beenius. Requests may take 30 days to process.

## **13.ASSIGNMENT**

The End User may not assign this Agreement without the prior written consent of Beenius (whose consent will not be unreasonably withheld), provided that the assignee agrees to be bound by the terms and conditions contained in this Agreement. Beenius may assign its rights and obligations under this Agreement in whole or in part without the consent of the End User. Any permitted assignee shall be bound by the terms and conditions of this Agreement.

## **14.GOVERNING LAW AND ARBITRATION**

All disputes arising from or related to this Agreement or the breach thereof shall be first attempted to be settled by conciliation administered by the Permanent Court of Arbitration attached to the Chamber of Commerce and Industry of Slovenia under its Rules of Conciliation. If the dispute is not settled by conciliation (in accordance with the mentioned Rules) within 60 days, such dispute shall be finally resolved by a sole arbitrator in accordance with the Rules of Arbitration of the same Court.

- The law of Slovenia shall apply to the substance of the dispute.
- The language(s) to be used in the arbitral proceedings shall be English.
- The arbitral tribunal shall be composed of a sole arbitrator.

Any dispute resolution proceedings, whether in arbitration or court, shall be conducted only on an individual basis and not in a class or representative action or as a named or unnamed member in a class, consolidated, representative, or private attorney general legal action.

## **15.DATA AND DATA PROTECTION**

The End User allows Beenius to use its own means to check whether the End User is using the Software in accordance with the provisions of this Agreement. The End User allows Beenius to transmit the necessary data, during communication between the End User and Beenius, only for the purpose of ensuring all functionality and authorization to use the Software and for the protection of Beenius's rights and property. Beenius shall be entitled to transfer, process, and store essential data identifying the End User, for billing purposes and the performance of this Agreement.

## **16.EXPORT AND RE-EXPORT CONTROL**

The Software, Documentation, or components thereof, including information about the Software and components thereof, shall be subject to import and export controls under legal regulations that may be issued by governments responsible for the issuance thereof under the applicable law. The End User agrees to comply strictly with all applicable import and export regulations.

## **17.NOTICES**

Notice to Beenius under this Agreement must be in writing and sent to the address below and shall be effective upon receipt. Address: BEENIUS d.o.o., Brnčičeva ulica 45, 1000 Ljubljana, Slovenia.

## **18.GENERAL**

This Agreement is the entire agreement between the End User and Beenius relating to the Products and supersedes all prior or contemporaneous oral or written communications, proposals, and representations with respect to the Products or any other subject matter covered by this Agreement. If any provision of this Agreement is held to be void, invalid, unenforceable, or illegal, the other provisions shall continue to be in full force and effect. This Agreement may not be modified or amended except as described on the first page of this Agreement or otherwise with the written agreement of Beenius (which may be withheld at its sole and complete discretion without any requirement to provide reasons). As used herein, “including” (and its variants) means “including without limitation” (and its variants). If either party to this Agreement breaches any provision of this Agreement relating to Confidential Information or intellectual property rights, there may not be an adequate remedy available solely at law; therefore, an injunction, specific performance, or other form of equitable relief or monetary damages or any combination thereof may be sought by the injured party to this Agreement. No failure or delay by the injured party to this Agreement in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power, or privilege hereunder at law or equity. The parties are independent contractors. This Agreement shall not be construed as constituting either party as a partner of the other or creating any other form of legal relation that would give one party the express or implied right, power, or authority to create any duty or obligation of the other party.