



## PITCH GAUGE® END-USER LICENSE AGREEMENT

**IMPORTANT! BE SURE TO CAREFULLY READ AND UNDERSTAND ALL OF THE RIGHTS AND RESTRICTIONS SET FORTH IN THIS END-USER LICENSE AGREEMENT ("EULA"). YOU ARE NOT AUTHORIZED TO USE THIS SOFTWARE UNLESS AND UNTIL YOU ACCEPT THE TERMS OF THIS EULA.**

This EULA is a binding legal agreement between you (either an individual or an entity) and Prolific Methods, Inc. (herein after "Licensor") for the materials accompanying this EULA, including any accompanying computer software, associated media, printed materials and any "online" or electronic documentation (hereinafter the "Software"). By installing the Software, you agree to be bound by the terms of this EULA. If you do not agree to the terms of this EULA, do not install or attempt to use the Software.

### 1. GRANT OF LICENSE

- A.** This Software is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The Software is licensed, not sold. Conditioned upon your having properly obtained a license to Licensor's mobile application, "Pitch Gauge®" through the Apple App Store, Google Play, Windows Store, or Blackberry App World, this EULA grants you the following rights:
- i.** You may install, use, access, display and run copies of the Software on as many devices as you own so long as each copy is downloaded directly from the Apple App Store, Google Play, Windows Store, or Blackberry App World.
  - ii.** Your license rights under this EULA are non-exclusive. All rights not expressly granted herein are reserved by Licensor.
  - iii.** You may not sell, transfer or convey the Software to any third party without Licensor's prior express written consent.

### 2. PRICE AND PAYMENT

- A.** This Software may be initially downloaded without charge by those who have properly obtained a license through the Apple App Store, Google Play, Windows Store, or Blackberry App World; however, users must pay to obtain additional projects and storage space.

### 3. SUPPORT SERVICES

- A.** Licensor may provide you with support services related to the Software ("Support Services"), in its discretion. Use of Support Services, if any, is governed by Licensor's policies and programs described in any users manual, in online documentation, and/or other Licensor-provided materials. Any supplemental Software code provided to you as a part of Support Services will be considered part of the Software and subject to the terms of this EULA. With respect to technical information you provide to Licensor as part of the Support Services, Licensor may use such information for its business purposes, including for product support and development. Licensor will not utilize such technical information in a form that personally identifies you except to the extent necessary to provide you with support.

#### 4. REPLACEMENT, MODIFICATION, AND/OR UPGRADES

- A. Licensor may, from time to time, and with additional charge when necessary, replace, modify or upgrade the Software. When accepted by you, any such replacement or modified Software code or upgrade to the Software will be considered part of the Software and subject to the terms of this EULA (unless this EULA is superseded by a further EULA accompanying such replacement or modified version of or upgrade to the Software).

#### 5. TERMINATION

- A. You may terminate this EULA at any time by destroying all your copies of the Software. Your license to the Software automatically terminates if you fail to comply with the terms of this agreement. Upon termination, you are required to remove the Software from your computer & device(s) and destroy any copies of the Software in your possession.

#### 6. COPYRIGHT

- A. All title and copyrights in and to the Software (including but not limited to any images, photographs, animations, video, audio, music and text incorporated into the Software), the accompanying printed materials, and any copies of the Software, are owned by Licensor or its suppliers. This EULA grants you no rights to use such content. If this Software contains documentation that is provided only in electronic form, you may print one copy of such electronic documentation. Part of this Software may have been developed by a third party software supplier, which holds copyright and other proprietary rights to the Software.
- B. You may not reverse engineer, de-compile, disassemble, alter, duplicate, modify, rent, lease, loan, sublicense, make copies of, create derivative works from, distribute or provide others with the Software in whole or part, transmit or communicate the application over a network.

#### 7. PRIVACY

- A. In the interest of bringing Licensor's customers better products and services, the Software may, from time to time, gather information about the user.
- B. **Information Gathered** – The information gathered may include the following non-exhaustive list;
  - i. Registration data such as username, company name, password, and e-mail address;
  - ii. Usage & log data, such as location data, project notes, and material lists;
  - iii. Leads information, including status, notes, and phone number and
  - iv. Payment information to support full access to all features.
- C. **Uses of Information** – Licensor may use the information it collects to;
  - i. provide, personalize, and improve your experience with the Software, as well as products and services made available through the Software, for example by providing customized or localized content and advertising;
  - ii. ensure technical functioning of the Software, as well as products and services made available through the Software, develop new products and services, and analyze your use of the Software, including your interaction with applications, advertising, products and services that are made available, linked to or offered in the Software;
  - iii. communicate with you for Software-related purposes, including promotional e-mails or messages;
  - iv. enforce this EULA, including to protect the rights, property or safety of Licensor, users or any other person and the copyright-protected content of the Software; and
  - v. Comply with provisions as otherwise stated in this section 7.
- D. **Information Sharing** – This information will be used solely by Licensor and will not be shared, transferred, or otherwise made known to any third party except in the following circumstances:

- i. to allow for a merger, acquisition, or sale of all or a portion of Licensor's assets;
- ii. to respond to legal process (e.g. a court order or subpoena), if Licensor believes in good faith that it is necessary to do so; to protect the safety of any person; to protect the rights and property of Licensor, including to enforce this EULA; and to address fraud, security or technical issues;
- iii. to inform business partners about use of the Software and products and services made available through the Software, in the form of aggregated statistics or otherwise in a format which does not reveal your identity; or
- iv. if you expressly opt in to such sharing.

#### **E. Other Sharing**

- i. Licensor may from time to time engage other third party service providers to perform functions and process user data, consistent with section C above. The processing of user data performed by third-party service providers will always be subject to security and confidentiality obligations consistent with this EULA and applicable law.

#### **F. Security**

- i. Prolific Methods is committed to protecting the information of its users' information. Your password protects your user account, so you should use a unique and strong password, limit access to your computer and browser, and sign off after having used the Pitch Gauge® Software. While Licensor takes reasonable data protection precautions, no security measures are completely secure, and Licensor **does not guarantee** the security of user information at any time.

#### **G. Children**

- i. The Software is not directed to children under the age of 13, and Licensor does not knowingly collect personal information from children under 13. If you are under 13 years of age, do not use the Software and do not provide any personal information to Licensor. If Licensor discovers that a child under 13 has provided Licensor with personal information, Licensor will delete it.

#### **H. Accessing and updating user information**

- i. You can access and amend some of the information Licensor keeps on you through your settings. To learn more about the information Licensor stores about you, e-mail support@prolificmethods.com. Licensor will respond within a reasonable period of time upon verification of your identity.

#### **I. Changes to this section**

- i. Licensor may make changes to this Section 5 from time to time, so please review this EULA regularly. If Licensor makes changes which it believes are material, Licensor will inform you through the Software. Your continued use of the Software thereafter constitutes acceptance of the changes.

### **8. EXPORT RESTRICTIONS**

- A.** You may not export, ship, transmit or re-export Software in violation of any applicable law or regulation including but not limited to Export Administration Regulations issued by the U. S. Department of Commerce.

### **9. U.S. GOVERNMENT RESTRICTED RIGHTS**

- A.** The Software and the documentation are "commercial items" as that term is defined in 48 C.F.R. 2.101 consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, if the licensee hereunder is the U.S. Government or any agency or department thereof, the Software and the documentation are licensed hereunder (i) only

as a commercial items, and (ii) with only those rights as granted to all other end users pursuant to the terms and conditions hereof.

## **10. DISCLAIMER OF WARRANTIES**

**A.** THIS SOFTWARE AND ANY TECHNICAL SUPPORT IS PROVIDED “AS-IS,” AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LICENSOR DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, BY STATUTE OR OTHERWISE, REGARDING THE SOFTWARE AND RELATED MATERIALS AND SERVICES, INCLUDING THEIR FITNESS FOR A PARTICULAR PURPOSE, THEIR QUALITY, THEIR MERCHANTABILITY, AND NONINFRINGEMENT. WITHOUT LIMITING THE FOREGOING, LICENSOR DOES NOT WARRANT THAT THE SOFTWARE WILL BE FREE OF BUGS, ERRORS, VIRUSES OR ANY OTHER DEFECTS, AND LICENSOR SHALL HAVE NO LIABILITY OF ANY KIND FOR THE USE OF OR INABILITY TO USE THE SOFTWARE, OR ANY OTHER PRODUCT OR SERVICE ASSOCIATED THEREWITH. LICENSOR DOES NOT REPRESENT, WARRANT, OR GUARANTEE THE ACCURACY AND TIMELINESS OF THE DATA CONTAINED IN THE SOFTWARE AND LICENSOR SHALL HAVE NO LIABILITY OF ANY KIND WHATSOEVER TO YOU, OR TO ANY OTHER PARTY, ON ACCOUNT OF ANY INACCURACIES IN OR UNTIMELINESS OF THE DATA, OR FOR ANY DELAY IN REPORTING SUCH DATA CONTAINED IN THE SOFTWARE OR FOR YOUR LOSS OF DATA AS A RESULT OF YOUR USE OF THE SOFTWARE OR THE USE BY A THIRD PARTY OR YOUR INABILITY OR A THIRD PARTY’S INABILITY TO USE THE SOFTWARE OR THE COMPUTER OR DEVICE ONTO WHICH IT IS INSTALLED. LICENSOR DOES NOT WARRANT THAT THE SOFTWARE WILL ALWAYS FUNCTION PROPERLY AND IT SHOULD NOT BE USED IN RISKY OR INHERENTLY DANGEROUS ACTIVITIES DUE TO THE POSSIBILITY THAT IT WILL NOT FUNCTION OR WILL FUNCTION SLOWLY OR INTERMITTENTLY AND ITS FUNCTIONALITY MAY BE SUBJECT TO INTERFERENCE. SIMILARLY, LICENSOR DOES NOT WARRANT THAT THE PRODUCT WILL NOT INTERFERE WITH OTHER ELECTRONIC DEVICES. LICENSOR DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. LICENSOR IS NOT RESPONSIBLE FOR PROBLEMS CAUSED BY ACCIDENT, ABUSE, MISHANDLING, ALTERATION, OR IMPROPER USE. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. IN THAT EVENT, ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE OF PURCHASE OF THE SOFTWARE. IF YOU ARE A CALIFORNIA RESIDENT, YOU WAIVE CALIFORNIA CIVIL CODE SECTION 1542, WHICH SAYS “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”

## **11. LIMITATION OF DAMAGES**

**A.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LICENSOR AND ITS SUPPLIERS SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF DATA, LOSS OF CONNECTIVITY, PERSONAL INJURY OR DEATH, LOSS OF LABOR OR OPPORTUNITY, LOSS OF OR DAMAGE TO PROPERTY, OR THE LIKE), WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF LICENSOR OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. LICENSOR SHALL NOT BE LIABLE FOR DAMAGES RESULTING FROM USE OF THE PRODUCT IN RISKY OR INHERENTLY DANGEROUS ACTIVITIES DUE TO THE POSSIBILITY THAT IT WILL NOT FUNCTION OR WILL FUNCTION SLOWLY OR INTERMITTENTLY AND ITS FUNCTIONALITY MAY BE SUBJECT TO INTERFERENCE. SIMILARLY, LICENSOR SHALL NOT BE LIABLE IN THE EVENT THAT THE PRODUCT RESULTS IN INTERFERENCE WITH OTHER ELECTRONIC DEVICES. LICENSOR’S TOTAL LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER WILL BE LIMITED TO THE AMOUNT PAID BY YOU FOR THIS PRODUCT.

SOME STATES DO NOT ALLOW THE LIMITATION OF EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

## **12. JURISDICTION**

- A. If you acquired this Software in the United States, this EULA is governed by the laws of the State of Georgia and you consent to exclusive jurisdiction and venue in the federal courts sitting in Barrow County, Georgia, unless no federal jurisdiction exists, in which case you consent to exclusive jurisdiction and venue in the Superior Court of Barrow County, Georgia. You waive all defenses of lack of personal jurisdiction and forum non convenient.

## **13. SEVERABILITY**

- A. If any term of this EULA is found to be unenforceable or contrary to law, it will be modified to the least extent necessary to make it enforceable, and the remaining portions of this Agreement will remain in full force and effect.

## **14. NO WAIVER**

- A. No waiver of any right under this EULA will be deemed effective unless contained in writing signed by a duly authorized representative of the party against whom the waiver is to be asserted, and no waiver of any past or present right arising from any breach or failure to perform will be deemed to be a waiver of any future rights arising out of this EULA.

## **15. FEEDBACK**

- A. If you provide Licensor with any feature requests, comments, suggestions or other feedback ("Feedback"), you hereby: (i) agree that such Feedback is provided on a non-proprietary and non-confidential basis, and (ii) grant Licensor a perpetual, non-exclusive, worldwide, fully paid-up, irrevocable license, with the right to sublicense through multiple levels of sublicenses, to incorporate, disclose, and use without limitation the Feedback for any purpose.

## **16. ENTIRE AGREEMENT**

- A. This EULA constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all prior agreements, proposals, negotiations, representations or communications relating to the subject matter. Both parties acknowledge that they have not been induced to enter into this EULA by any representations or promises not specifically stated herein.