

PROSARIS

Prosaris OL1™

# **Important Product Information**

PRO-LGL-DOC-A0003-R01

## Important Product Information

### **Prosaris Solutions Ltd.**

READ THE TERMS OF THIS LICENSE AGREEMENT AND LIMITED WARRANTY ("AGREEMENT") GOVERNING THE USE OF THE SOFTWARE AND RELATED FIRMWARE AND DOCUMENTATION (COLLECTIVELY, THE "SOFTWARE") PROVIDED TO YOU BY PROSARIS SOLUTIONS LTD ("PROSARIS") CAREFULLY BEFORE USING THE APPLICABLE PROSARIS PRODUCT (SUCH HARDWARE, TOGETHER WITH THE SOFTWARE, REFERRED TO AS THE "PRODUCT"). BY OPENING THIS PACKAGE, INSTALLING AND USING THE PRODUCT, YOU ARE

1. REPRESENTING THAT YOU ARE OVER THE AGE OF 18;
2. REPRESENTING THAT YOU HAVE THE RIGHT AND AUTHORITY TO LEGALLY BIND YOURSELF OR YOUR COMPANY, AS APPLICABLE; AND
3. CONSENTING TO BE LEGALLY BOUND BY ALL OF THE TERMS OF THIS AGREEMENT.

IF YOU DO NOT AGREE TO ALL THESE TERMS OR CANNOT MAKE SUCH REPRESENTATIONS, DO NOT USE THE PRODUCT. IF YOU ELECT NOT TO ACCEPT THE TERMS OF THIS AGREEMENT, YOU MAY INITIATE A RETURN FOR A FULL REFUND (LESS RETURN SHIPPING) BY CONTACTING [RETURNS@PROSARIS.CA](mailto:RETURNS@PROSARIS.CA) WITHIN THIRTY (30) DAYS OF RECEIPT OF THE PRODUCT. THE PRODUCT MUST BE NEW, UNUSED, AND IN ITS ORIGINAL PACKAGING.

## Important Product Information

### **1. GRANT OF LICENSE**

- a) Subject to the terms and conditions of this Agreement, Prosaris grants to You a worldwide, non-exclusive, non-transferable, personal license (without the right to sub-license) to
  - i) use the Software as embedded in the Product for the purpose of operating the Product; and
  - ii) use the mobile application portion(s) of the Software on any computing device owned or controlled by You during the Term. Except as provided above, You may not transfer the Software to any other computing device or otherwise remove the Software from the Product. Notwithstanding any license granted herein by Prosaris, You acknowledge and agree that it is Your sole responsibility to comply with U.S. and international copyright laws with respect to Your use of the Software.
- b) You agree not to copy, modify, reverse engineer, decompile or disassemble the Product to the extent that such restriction is not prohibited by law. Except for the limited license granted herein, Prosaris and its suppliers hereby retain all right, title and interest in and to all worldwide intellectual property rights embodied in the Software. All other rights are reserved by Prosaris. You acknowledge and agree that the technology embedded in and used to create the Product constitute the valuable trade secrets and know-how of Prosaris, and to the extent you discover any such trade secrets, You will not disclose them to any third party.
- c) Prosaris shall have no obligation to provide any updates or upgrades to the Product, but in the event that it does, such updates, upgrades and any

## Important Product Information

documentation shall be deemed the "Product", and shall be subject to the terms and conditions of this Agreement.

## **2. TERM OF AGREEMENT**

- a) You may terminate this Agreement at any time by notifying Prosaris, discontinuing use of the Product and purging the Software from Your computing device.
- b) This Agreement will automatically terminate if You violate any of its terms.
- c) Sections 1(b), 3, 4, 6(c), 7 and 9 shall survive termination or expiration for any reason.

## **3. COMPLIANCE WITH COPYRIGHT LAWS**

Prosaris complies with Canadian and international copyright laws and in consideration of the licenses granted herein, You agree to do the same. You acknowledge that unauthorized copying or distribution of music or other content accessed using the Product ("Content") is prohibited by such copyright laws, and You agree that You Important Product Information 2 will not, directly or indirectly, copy or distribute any Content without the express written authorization of the copyright holder. You agree to indemnify and hold harmless Prosaris and its licensors from and against any and all claims, suits, losses, damages, liabilities, costs and expenses incurred by Prosaris or its licensors arising out of or related to Your failure to comply with the terms of this Section 3.

## Important Product Information

### **4. PROSARIS PRIVACY POLICY**

Use of Prosaris Products is subject to the Prosaris Privacy Policy, which can be found at [www.prosaris.ca/privacy](http://www.prosaris.ca/privacy) and by reference is made a part of this Agreement. The Prosaris Privacy Policy outlines the type of information that may be collected from you by Prosaris and how such information may be used by Prosaris. It is important that you read and understand the terms of the Privacy Policy.

### **5. OPERATING PARAMETERS**

The Prosaris Product is designed and certified for operation within certain conditions, tolerances, and environments ("the Parameters"). These Parameters are set out in the included User's Manual and must be read and understood before using the Product for the first time. OPERATION OUTSIDE OF THE PARAMETERS MAY CAUSE SERIOUS INJURY OR DEATH. OPERATION OUTSIDE OF THESE PARAMETERS CONSTITUTES A BREACH OF THIS AGREEMENT. YOU ACKNOWLEDGE THAT YOU AGREE TO USE THE PRODUCT IN A MANNER WITHIN THESE PARAMETERS AND PROSARIS SHALL NOT BE HELD LIABLE FOR ANY OPERATION THEREOF.

## Important Product Information

### 6. WARRANTY AND DISCLAIMER

- a) **Limited Warranty.** Prosaris warrants to You that for a period of ONE (1) YEAR after the date of original purchase of the Product, the Product will be free from defects in materials and workmanship. Prosaris does not warrant any non-Prosaris branded product, even if packaged or sold with Prosaris products. Manufacturers, suppliers, or publishers, other than Prosaris, may provide their own warranties to you – please contact them for further information. Software distributed by Prosaris with or without the Prosaris brand (including, but not limited to system software) is not covered by this Warranty. Please refer to the licensing agreement accompanying the software for details of your rights with respect to its use. PROSARIS DOES NOT WARRANT THAT THE PRODUCT WILL OPERATE WITHOUT INTERRUPTION OR WILL BE ERROR-FREE, OR THAT ALL ERRORS MAY BE CORRECTED. EXCEPT AS SET FORTH IN SECTION 6(C), THE SOLE LIABILITY OF PROSARIS, AND YOUR SOLE REMEDY, FOR BREACH OF THE FOREGOING WARRANTY WILL BE, AT THE SOLE DISCRETION OF PROSARIS, REPAIR OR REPLACEMENT OF THE PRODUCT, OR, IF NEITHER OF THE FOREGOING ARE REASONABLY AVAILABLE, A REFUND OF THE AMOUNT YOU PAID, LESS AMOUNTS ATTRIBUTABLE TO YOUR PRIOR USE.
- b) **Limitations.** The foregoing warranty does not extend to problems in the Product that result from:
- i) Your failure to implement all bug fixes or error corrections to the Product which are made available by Prosaris;

## Important Product Information

- ii) any use of the Product in a manner for which it was not designed or as not authorized under this Agreement; or
  - iii) any use of the Product with other products, hardware or products not supplied by, and/or inconsistent with the documentation provided by, Prosaris.
- c) Disclaimer. EXCEPT AS EXPRESSLY SET FORTH ABOVE, PROSARIS MAKES NO WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE PRODUCT. PROSARIS AND ITS SUPPLIERS HEREBY SPECIFICALLY DISCLAIM ALL OTHER EXPRESS, STATUTORY AND IMPLIED WARRANTIES AND CONDITIONS, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND THE IMPLIED CONDITION OF SATISFACTORY QUALITY. EXCEPT AS EXPRESSLY STATED IN SECTION 6(A), THE PRODUCT IS SUPPLIED ON AN "AS IS" BASIS WITHOUT WARRANTY. YOU ASSUME ALL RESPONSIBILITIES FOR SELECTION OF THE PRODUCT TO ACHIEVE YOUR INTENDED RESULTS, AND FOR THE INSTALLATION AND USE OF THE PRODUCT. Some jurisdictions do not allow a limitation on implied warranties, and so the foregoing disclaimer may not apply to You. In any event, any implied warranties that may exist under the laws of Your jurisdiction are limited to the one (1) year period set forth in the limited warranty given under subsection (a) above.

## **7. LIMITATION OF LIABILITY**

- a) TO THE MAXIMUM EXTENT ALLOWED UNDER LAW, IN NO EVENT WILL PROSARIS OR ITS SUPPLIERS BE LIABLE FOR ANY DAMAGES, INCLUDING BUT NOT LIMITED TO, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR INDIRECT DAMAGES, AND INCLUDING BUT NOT LIMITED TO, COST OF COVER, LOSS OF DATA, LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS ARISING FROM THE USE OF (OR INABILITY TO USE) THE PRODUCT, NO MATTER HOW CAUSED AND ON ANY THEORY OF LIABILITY. BECAUSE SOME STATES/ JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU, BUT THEY SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY LAW.
- b) IN NO EVENT WILL EITHER YOU OR PROSARIS HAVE ANY LIABILITY TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.
- c) IN NO EVENT SHALL THE TOTAL LIABILITY OF PROSARIS TO YOU FOR ALL DAMAGES IN ANY ONE



## Important Product Information

OR MORE CAUSES OF ACTION EXCEED THE AMOUNT PAID BY YOU FOR THE PRODUCT.

- d) The limitations in Section 7 will apply even if Prosaris, its suppliers or dealers have been advised of the possibility of such damage or of any type of use intended by You. These limitations shall apply notwithstanding the failure of essential purpose of any limited remedy. You acknowledge that these limitations reflect a reasonable allocation of risk.

## 8. INFRINGEMENT INDEMNITY

- a) Indemnity. Prosaris shall defend or settle any claim, demand, suit, proceeding or action ("Claim") against You to the extent that such Claim is based on an allegation that any portion of the Product, as furnished to You under this Agreement and used as authorized in this Agreement, infringes any third party's U.S. copyright or misappropriates such third party's trade secrets, provided that You:
  - i) give prompt written notice of the Claim to Prosaris;
  - ii) give Prosaris the exclusive authority to control and direct the defense or settlement of such Claim; and
  - iii) give Prosaris, at the expense of Prosaris (except for the value of Your time), all necessary information and assistance with respect to the Claim. Prosaris shall pay all settlement amounts, damages and costs finally awarded to the extent attributable to such Claim. You may participate in the defense of Claim at Your expense. Prosaris will not be liable for any costs or expenses incurred without its prior written authorization.

## Important Product Information

- b) Limit on Indemnity. The foregoing notwithstanding, Prosaris shall have no liability for a Claim to the extent based on:
  - i) the use by You of any Product more than thirty (30) days after Prosaris notifies You in writing that continued use of the Product may give rise to such Action;
  - ii) the combination of the Product, or any part thereof, with other hardware or products not provided by Prosaris, which Claim would have been avoided if the Products had not been so combined; or
  - iii) use of the Products other than as authorized under this Agreement.
- c) Entire Liability. THE FOREGOING PROVISIONS OF THIS SECTION 8 STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF PROSARIS, AND YOUR EXCLUSIVE REMEDY, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHT BY THE PRODUCT.

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### **9. MISCELLANEOUS**

You acknowledge that the Product is subject to the export control law and regulations of Canada, and any amendments thereto. You warrant that You will comply in all respects with Canadian exports laws and regulations. This Agreement shall be governed by the laws of Canada in general and the Province of Nova Scotia in particular, without reference to its conflict of law principles. You consent to the jurisdiction of the federal and provincial courts sitting in the Province of Nova Scotia. This Agreement constitutes the entire agreement between You and Prosaris with respect to the subject matter hereof, and supersedes all prior oral or written understandings, communications or agreements not specifically incorporated herein. If any provision of this Agreement is found to be invalid or unenforceable pursuant to judicial decree or decision, the remainder of this Agreement shall remain valid and enforceable according to its terms. The waiver by either party of any default by the other party shall not waive subsequent defaults by such other party of the same or different kind. You may not assign this Agreement, or any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of Prosaris. Any attempted assignment by You without prior written consent shall be void. For inquiries or questions regarding this Agreement, please send an e-mail to [support@prosaris.ca](mailto:support@prosaris.ca).