

# End-User License Agreement For LI-COR® Pearl™ Cam Software

**IMPORTANT - READ CAREFULLY:** This LI-COR End-User License Agreement (EULA), is a legal agreement between you (either an individual or a single entity), ("Licensee"), and LI-COR, Inc., having a principal place of business in Nebraska, ("Licensor" or "LI-COR") for the LI-COR software identified above which includes computer software, associated media, printed materials and "online" or electronic documentation ("SOFTWARE PRODUCT"). By installing, copying, or otherwise using the SOFTWARE PRODUCT, 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 use the SOFTWARE PRODUCT; you may, however, return it to LI-COR, Inc. for a full refund.

## SOFTWARE PRODUCT LICENSE

**THIRD PARTY SOFTWARE:** The SOFTWARE PRODUCT contains third party software ("Third Party Software") which require notices and/or additional terms and conditions. Such required Third Party Software notices and/or terms and conditions are located in the Pearl Cam Software Help System and are made a part of and incorporated by reference into this EULA. By accepting this EULA, you are also accepting the additional terms and conditions set forth therein. THE SOURCE CODE VERSIONS OF THIRD PARTY ORIGINAL CODE ARE AVAILABLE UNDER THE TERMS AND CONDITIONS OF EACH THIRD PARTY LICENSE. ANY WARRANTY MADE AVAILABLE UNDER THIS EULA IS OFFERED BY LI-COR ALONE.

The SOFTWARE PRODUCT is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The SOFTWARE PRODUCT is licensed, not sold.

**1. GRANT AND SCOPE OF LICENSE.** This Agreement grants you the following limited rights:

- 1.1 Applications Software.** You may install and use one copy of the SOFTWARE PRODUCT, or any prior version for the same operating system, on a single computer.
- 1.2 Storage/Network Use.** You may also store or install a copy of the SOFTWARE PRODUCT on a storage device, such as a network server, used only to install or run the SOFTWARE PRODUCT on your other computers over an internal network; however, you must acquire and dedicate a license for each separate computer on which the SOFTWARE PRODUCT is installed or run from the storage device. A license for the SOFTWARE PRODUCT may not be shared or used concurrently on different computers.
- 1.3 Multiple Users License.** If you have acquired this Agreement in accordance with a Multiple User's License from LI-COR, you may make the number of additional copies of the computer software portion of the SOFTWARE PRODUCT as authorized in writing by LI-COR, and you may use each copy in the manner specified above.

**2. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS.** Notwithstanding the license granted above, Licensor retains all of its ownership and license rights in the Licensed Program (and all Modifications and Enhancements).

- 2.1 Not for Resale Software.** The SOFTWARE PRODUCT is not available for resale and therefore, notwithstanding other sections of the Agreement, you may not resell, or otherwise transfer for value, the SOFTWARE PRODUCT.
- 2.2 Limitations on Reverse Engineering, Decompilation, and Disassembly.** You may not reverse engineer, decompile, adapt, translate, disassemble, or create derivative works based up any portion of the SOFTWARE PRODUCT, except and only to the extent that such activity is expressly permitted under a Third Party Software license or by applicable law.
- 2.3 Separation of Components.** The SOFTWARE PRODUCT is licensed as a single product. Its component parts may not be separated for use on more than one computer.
- 2.4 Rental.** You may not rent, lease, or lend the SOFTWARE PRODUCT.
- 2.5 Support Services.** LI-COR may provide you with support services related to the SOFTWARE PRODUCT ("Support Services"). Use of Support Services is governed by LI-COR policies and programs described in the user manual, in "online" documentation, and/or in other LI-COR-provided materials. Any supplemental software code provided to you as part of the Support Services shall be considered part of the SOFTWARE PRODUCT and is subject to the terms and conditions of this Agreement. With respect to technical information you provide to LI-COR as part of the Support Services, LI-COR may use such information for its business purposes, including for product support and development. LI-COR will not utilize such technical information in a form that personally identifies you.
- 2.6 Treatment of Licensor Confidential Information.** Licensee shall maintain all proprietary and confidential information embodied in the Software Product, including, without limitation, the Source Code and any Intellectual Property related thereto ("Confidential Information"), in confidence and shall not use it for any purpose other the purposes contemplated by this Agreement. In addition, Licensee shall hold all information regarding Licensor's operations and business systems in trust

and confidence for Licensor and shall not use and disclose such information to any person, and Licensee shall require the same of all of Licensee personnel who engage in work under this Agreement. This obligation shall survive the expiration and termination of this Agreement. To ensure that this responsibility is met, Licensee shall instruct all of Licensee personnel and the personnel of Licensee's agents or permitted assigns who engage in work under this Agreement that they shall keep such information confidential regardless of whether their relationship with Licensee is terminated at some future time.

**2.6.1. Exceptions.** Notwithstanding Section 2.5:

**2.6.1.1.** Licensee may disclose Confidential Information: (a) to those persons who have a need to know such information to accomplish the purposes of this Agreement; or (b) upon the prior written approval of Licensor.

**2.6.1.2.** The obligations of Section 2.5 shall not apply to information that is: (a) in the possession of Licensee without obligation of confidence to Licensor before receipt thereof from Licensor; (b) available to the public without fault of Licensor; or (c) is disclosed to Licensee, without restriction, by a third party who is not under any legal obligation (either by agreement with Licensor or otherwise) prohibiting such disclosure.

**2.6.1.3.** Licensee may disclose Confidential Information to governmental agencies or in litigation, as required by law. Licensee will give Licensor the greatest practicable notice of any such compelled disclosure.

**2.7 Treatment of Licensee Confidential Information by Licensor.** Licensor will have no confidentiality obligation with regard to confidential material or information that is: (a) in the possession of Licensor without obligation of confidence to Licensor before receipt thereof from Licensee; (b) available to the public without fault of Licensor; or (c) is disclosed to Licensor, without restriction, by a third party who is not under any legal obligation (either by agreement with Licensee or otherwise) prohibiting such disclosure. Licensor may disclose Licensee confidential material to governmental agencies or in litigation, as required by law. Licensor shall give Licensee the greatest practicable notice of any such compelled disclosure.

**2.8. Return of Confidential Information.** Upon expiration or termination of this Agreement, each party shall deliver to the other Confidential Information that is in its possession.

**2.9. Irreparable Harm.** The parties agree that breach of the above obligations shall be deemed to cause irreparable harm.

**3. UPGRADES/ENHANCEMENTS.** If the SOFTWARE PRODUCT is labeled as an upgrade, you must be properly licensed to use a product identified by LI-COR as being eligible for the upgrade in order to use the SOFTWARE PRODUCT. A SOFTWARE PRODUCT labeled as an upgrade replaces and/or supplements the product that formed the basis for your eligibility for the upgrade. You may use the resulting upgraded product only in accordance with the terms of this Agreement. If the SOFTWARE PRODUCT is an upgrade component of a package of software programs that you licensed as a single product, the SOFTWARE PRODUCT may be used and transferred only as part of that single product package and may not be separated for use on more than one computer.

**4. COPYRIGHT.** All title and copyrights in and to the SOFTWARE PRODUCT (including but not limited to any images, photographs, animations, video, audio, and text incorporated into the SOFTWARE PRODUCT) are owned by LI-COR or its suppliers. The SOFTWARE PRODUCT is protected by copyright laws and international treaty provisions. Therefore, you must treat the SOFTWARE PRODUCT like any other copyrighted material except that you may install the SOFTWARE PRODUCT on a single computer provided you keep the original solely for backup or archival purposes. Also, you may not copy the printed materials accompanying the SOFTWARE PRODUCT.

**5. U.S. GOVERNMENT RESTRICTED RIGHTS.** The SOFTWARE PRODUCT and documentation are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software - Restricted Rights at 48 CFR 52.227-19, as applicable. Manufacturer is LI-COR, Inc./4647 Superior Street/Lincoln, NE 68504.

## 6. REPRESENTATIONS AND WARRANTIES

### 6.1. Warranty.

**6.2. Licensor warrants that** (a) the Software Product will perform substantially in accordance with the accompanying written materials for a period of ninety (90) days from the date of receipt.

**6.3. Limitations:** SUBJECT TO THE ABOVE PROVISION IN SECTION 6.2, LICENSOR DISCLAIMS ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL LI-COR OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE PRODUCT OR THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES, EVEN IF LI-COR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, LI-COR'S ENTIRE LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT SHALL BE LIMITED TO THE GREATER AMOUNT OF ACTUALLY PAID BY THE LICENSEE FOR THE SOFTWARE PRODUCT OR U.S. \$5.00; PROVIDED, HOWEVER, IF YOU HAVE ENTERED INTO A LI-COR SUPPORT SERVICES AGREEMENT, LI-COR'S ENTIRE LIABILITY REGARDING SUPPORT SERVICES SHALL BE GOVERNED BY THE TERMS OF THAT AGREEMENT.

**6.4. Exclusive Remedy:** TO THE EXTENT THAT THE LICENSOR IS LIABLE, THE EXCLUSIVE REMEDY, AT LI-COR'S OPTION SHALL BE EITHER (A) RETURN OF THE PRICE PAID, IF ANY, OR (B) REPAIR OR REPLACEMENT OF THE LICENSED PROGRAM THAT DOES NOT MEET LI-COR'S LIMITED WARRANTY AND WHICH IS RETURNED TO LI-COR WITH A COPY OF PROOF OF PURCHASE. This Limited Warranty is void if failure of the Software Product has resulted from accident, abuse, or misapplication. Any replacement Software Product will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer. Outside of the United States, neither of these remedies nor any product support services offered by LI-COR are available without proof of purchase from an authorized international source.

## 7. DISPUTE RESOLUTION

**7.1.** In the event of a dispute involving the interpretation or application of any provision of this Agreement, the parties agree not to commence litigation until they have first notified each other of their intent to implement the terms of this Section after first having employed their best efforts to jointly resolve such dispute. If the parties cannot resolve their differences in such fashion within thirty (30) days of either party's receipt of such notice of the intent of the other party to implement the terms of this Section, the following alternative dispute resolution process (the venue of which shall be Lincoln, Nebraska) shall be immediately implemented:

**7.2.** Upon written request of either party, the dispute will be referred for negotiation to representatives of the parties who have no direct operational responsibility for the matters involved in the dispute and who have authority to resolve the dispute.

**7.3.** If these representatives have not agreed on a resolution of such dispute within ten (10) Business Days of its referral to them, the dispute shall be promptly submitted to a neutral adviser (the "Adviser") who shall be chosen from the list of arbitrators registered with the American Arbitration Association. For purposes of this Section, "Business Day" shall mean each weekday and the hours of such weekday in which Licensee is open for business. The Adviser shall, within fourteen (14) days of the submission, recommend, in writing, a procedure for resolving the dispute and shall specify in such writing whether such procedure shall be binding, non-binding or involve a combination of binding and non-binding procedures.

**7.4.** If the parties do not mutually agree upon the process recommended by the Adviser within ten (10) Business Days of their receipt of the Adviser's written recommendation, they shall promptly convene a non-binding hearing (the "Mediation"). The rules for Mediation will be established by the Adviser, after consultation with the parties.

**7.5.** If the dispute cannot be resolved, either through the procedure recommended by the Adviser or through the Mediation, within such period as the Adviser shall deem reasonable, the Adviser shall, at the request of either party, certify to the parties that the matter is incapable of resolution.

**7.6.** No litigation may be commenced concerning the dispute until the Adviser has certified in writing that the dispute is incapable of resolution, provided that any party may commence litigation: (a) on any date after which such litigation could be barred by an applicable statute of limitations; or (b) if litigation is otherwise necessary to prevent irreparable harm to the moving party.

**7.7.** Each party shall bear its own expenses in connection with the alternative dispute resolution procedures set forth in this Section, except that the parties shall split equally the fees and expenses of the Adviser, including the costs associated with any Mediation, and the fees and expenses of any other person designated by the Adviser to assist the parties.

**7.8.** All communications made in connection with the alternative dispute resolution procedure set forth in this Section shall be treated as communications for the purpose of settlement and as such shall be deemed to be confidential and inadmissible in any subsequent litigation by virtue of Rule 408 of the Federal Rules of Evidence, as the same may be amended from time-to-time.

## 8. TERMINATION

### 8.1. Termination:

**8.1.1. By Licensor:** Licensor may terminate this Agreement: (a) immediately upon Licensee's copying, or modification of the Licensed Program, transfer of possession of any copy of the Licensed Program to any third party, other than as contemplated under this Agreement or otherwise authorized in writing by Licensor, or other failure to comply with the terms and conditions of this Agreement; or (b) upon thirty (30) days prior written notice for non-payment results from a good faith dispute between the parties. In such event, Licensee must destroy all copies of the Software Product and all of its component parts.

**8.1.2. By Licensee:** Licensee may terminate this Agreement: (a) immediately, upon Licensor's breach of the obligations in Article 7; or (b) upon thirty (30) days prior written notice thereof to Licensor.

**8.2. Bankruptcy Termination:** In the event Licensor enters bankruptcy, the laws and rules of the Bankruptcy Code will govern the enforceability of this agreement.

## 9. MISCELLANEOUS

**9.1. Headings:** Unless otherwise stated, all references to Articles and Sections refer to the articles and sections of this Agreement. The headings of the Articles and Sections of this Agreement are for convenience only and in no way limit or affect the terms or conditions of this Agreement.

**9.2. Governing Law:** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Nebraska (without regard to the principles of conflicts of laws embodied therein) applicable to contracts executed and performable in such state if the product was acquired in the United States. If the product was acquired outside the United States, then local law may apply.

**9.3. Severability:** If any provision or any portion of any provision of this Agreement is construed to be illegal, invalid or unenforceable, such provision or portion thereof shall be deemed stricken and deleted from this Agreement to the same extent and effect as if it were never incorporated herein, but all other provisions of this Agreement and the remaining portion of any provision that is construed to be illegal, invalid or unenforceable in part shall continue in full force and effect; provided that the resulting construction of the Agreement does not frustrate the main purpose of the Agreement.

**9.4. Entire Agreement:** This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, between the parties with respect to the subject matter hereof. Any modification and/or amendment to this Agreement must be in writing and executed by both parties.

**9.5. Survival:** The provisions of Articles 1,2,6 and 7 shall survive termination or expiration of the Agreement.

**9.6. Successors and Assigns; Change of Control:** All the terms and conditions of this Agreement are binding upon and inure to the benefit of the parties hereto, their successors, legal representatives, and permitted assigns. Licensee may transfer, lease, assign or sublicense its entire right, interest and obligation hereunder to any third party who enters into a substitute version of this Agreement.

**9.7. No Relationship Between the Parties:** Neither party shall represent itself as the agent or legal representative of the other or joint venture for any purposes whatsoever, and neither shall have any right to create or assume any obligations of any kind, express or implied, for or on behalf of the other in any way whatsoever.

**9.8. Non-Waiver:** A failure of either party to enforce at any time any term, provision, or condition of this Agreement, or to exercise any right or option herein, shall in no way operate as a waiver thereof, nor shall any single or partial exercise preclude any other right or option herein, in no way whatsoever shall a waiver of any term, provision or condition of this Agreement be valid unless in writing, signed by the waiving party, and only to the extent set forth in such writing.

**9.9. Notices:** Unless expressly stated otherwise, all notices required herein shall be given in writing and shall be delivered (and notice shall be deemed effective upon delivery) in person, by courier, or sent by certified United States mail, postage prepaid, return receipt requested, to the following address:

LI-COR, Inc. 4647 Superior Street P.O. Box 4000 Lincoln, Nebraska 68504 USA

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