



ZEISS Apps

End User License Agreement (EULA)

1. Introduction

1.1 General information

This End User License Agreement for Apps ("EULA Apps") is a legal agreement between "you" (either an individual or a legal entity, hereinafter referred to as "licensee" or "customer") and ZEISS ("ZEISS" or "licensor") (each individually a "party" and collectively the "parties") for your temporary limited use of ZEISS software products. ZEISS makes it clear at this point that the provision of software on the basis of this EULA is for a limited period of time.

The agreement sets forth all rights and obligations for both licensee and ZEISS and governs your use of all Software Products installed or provided by ZEISS. Unless the licensor provides compelling reasons for a different procedure and explicitly declares a new EULA to be valid, the EULA version that was the latest version when the customer placed the order shall always apply to the licensee. Any amendment to this agreement must be in writing and in accordance with the terms and conditions contained herein.

By paying the applicable license fee(s) and/or by downloading, installing or (continued) using the software, you agree that this agreement shall be enforceable against you in the same manner as a written, negotiated contract signed by you. If you do not agree to the terms of this agreement, you are not authorized and may not download, install, or use any ZEISS software products.

In order to use the ZEISS software products and services, the licensee must have the following:

- (a) a so-called valid subscription agreement or
- (b) a valid license from ZEISS.

Furthermore, individual software products

- (a) which are based on a subscription agreement and / or
- (b) with a server-based licensing solution

require and use a secure connection of the application computer to the ZEISS infrastructure and/or the "Cloud Services".

1.2 The licensor is ZEISS; the licensee is the end customer. The licensor grants the licensee a non-exclusive, non-transferable right to use the "software product", which includes the specific software program and the subsequent extensions, updates, patches, and associated documentation for internal company operation, as well as the associated manuals and software documentation.

1.3 The software product may contain codes, objects and other intellectual property developed and licensed by licensors or third parties and integrated into the software product ("embedded third party software"). Any embedded third-party software or open-source code and open-source licenses used shall not limit or impair the rights of use granted to licensee and may be accessed at any time within the respective software used. In individual cases, the respective license conditions can be made available by the licensor upon request at any time.

1.4 Any terms and conditions of purchase of the licensee that conflict with or deviate from this agreement shall not become part of the agreement, even if the licensor does not expressly object to them. Amendments to the EULA must be expressly agreed in writing by both parties.

1.5 The licensee grants ZEISS a non-exclusive, sublicensable, irrevocable right to use the data provided, unlimited in time and content. ZEISS uses this data for training, tuning, and testing artificial intelligence (AI) and algorithms from which phase labeling and other analyses can be derived. In this respect, ZEISS is the only authorized user of these AI-based models and is free and unrestricted in their respective use. ZEISS may use the uploaded data, which is provided in particular in the form of training data, for any application purposes in the form of training data for artificial intelligence learning processes and combine it with algorithms or artificial intelligence. In addition to the aforementioned right of use, ZEISS receives the following non-exclusive ancillary rights:

- (a) the right to reproduce the Data or parts thereof by means of digital storage and reproduction media, irrespective of the technical equipment and including all digital or interactive systems;
- b) the right to process and convert the data in whole or in part using all analog, digital and other techniques and/or to have the data processed and converted, in particular the right to modify the data and combine it with other data.

1.6 The customer grants ZEISS, a worldwide, perpetual, irrevocable, transferable, sublicensable, and royalty-free license to use any suggestions, recommendations, feature requests or other feedback related to the ZEISS Software provided by you or on your behalf, and to incorporate or otherwise use such feedback in connection with the ZEISS Software or other products or services.

2. Term and termination / license fees

2.1 The license agreement begins with license activation and ends with the period of use of the Pro Version or with the end of the payment period.

2.2 The Licensor shall be entitled to terminate this license agreement and the corresponding rights of use with immediate effect if the licensee violates any provision of this license agreement or tacitly tolerates a violation of this license agreement by third parties or fails to fulfill its obligations under this license agreement or if the licensee files for insolvency or a change of control occurs at the licensee.

2.3 Notwithstanding the foregoing, and unless otherwise agreed in this license agreement, this license agreement shall terminate automatically upon licensee's breach of any of its provisions.

2.4 Under no circumstances shall license fees be fully or partially refundable upon termination or mutually agreed termination of this agreement unless ZEISS is responsible for the early termination of this agreement.

3. Reproduction rights

3.1 The licensee may reproduce the delivered software to the extent that the reproduction is necessary to use the software. Necessary reproductions of the software include, but are not limited to, the installation of the software product on the mass storage of the device in accordance with this license agreement and the loading of the software into the main memory of the computer.

3.2 In addition, licensee shall be entitled to make copies for data backup purposes. This backup copy of the licensed software product must be marked as such.

3.3 If, for reasons of data security or backup, a quick reactivation of the computer system, including the subject matter of the agreement, and the backup of the entire data stock, including the installed software product, are required after a total failure, licensee may create the maximum required number of backup copies. The data media concerned shall be appropriately marked. The backup copies may only be used for archiving purposes.

3.4 The licensee is not entitled to make further copies or to instruct third parties to make further copies, in particular the licensee is not entitled to print out the program code with a printer or to make photocopies of the manual.

4. Resale and transfer

4.1 The licensee is not entitled to rent, lease, lend or make the software product available to third parties within the scope of hosting or download options, unless the Licensor has expressly indicated or permitted this in writing.

4.2 However, it is permitted to grant a right of use to third parties if they have to use the software product to the licensee's specifications (like own employees). Independent third parties are excluded from use in any case. Any remote access (and the associated indirect use) is not permitted, unless the remote access is carried out by the licensor for maintenance purposes.

4.3 It is permissible to order software in the name of and on behalf of a third party for this third party, provided that it is evident that the third party will become the licensee of ZEISS and that the licensee agrees to the EULA. In individual cases (in particular in the case of hardware-bound software), however, this may be made dependent on the conclusion of an additional software maintenance agreement.

4.4 Transfer within legal entities or global groups of licensees: Provided that the transferring licensee and the receiving party are part of one legal entity or part of affiliated companies, the transfer is permitted provided that the receiving party agrees to these license terms. "Affiliate" means any legal entity that is directly or indirectly controlled by a Legal Entity or its parent company. "Control" for purposes of this license agreement means direct or indirect ownership of more than fifty percent (50%) of the stock of such entity or more than fifty percent (50%) direct or indirect participation in the decision-making body of such entity.

5. Back translation and program changes

5.1 The reverse translation of the licensed program code into other code forms (decompilation) and other types of reverse engineering of various different phases of software creation are permitted only to the extent that they serve to correct errors that impair the functioning of the software. However, licensee may perform such decompilation only to the extent necessary for correction and, if applicable, in compliance with the terms and conditions contractually agreed with the owner of the copyright in this program.

Further, decompilation is permitted in cases to obtain information necessary for interoperability with an independently created computer program and only if such information cannot be obtained otherwise.

5.2 A further prerequisite for the permission to reverse engineer is the performance of reverse engineering or program observation exclusively by means of procedures which the licensee is authorized to perform in accordance with this license agreement.

5.3 As a matter of principle, the licensee may not make any changes to the software product unless this is necessary to correct errors. The prerequisite is that this is done solely for the purpose of correcting errors that impair the functioning of the software.

In the latter case and if important program functions and working methods could be disclosed during the repair process, licensee may commission a commercially active third party to carry out the repair if this third party is not a potential competitor of licensor.

Insofar as the licensee makes changes to the software product in order to rectify errors, the licensor shall not assume any liability for the resulting consequences, in particular not through this authorization.

5.4 All property rights and copyrights relating to the software product, the printed accompanying materials and all copies of the software product shall remain with the licensor or its suppliers. This software product is protected under German copyright law, U.S. copyright law and the provisions of international treaties. The licensee is not entitled to reproduce the printed materials accompanying the software.

5.5 The licensee shall not be entitled to remove, modify, or add to any copyright notices or trademark notices placed by licensor. This includes, without limitation, all references in physical and/or electronic media or documents, in "setup wizards" or in "about..." dialog boxes, and/or in other references displayed on or activated via the Internet, in program code or other embodiments originally included in the software or otherwise created by licensor.

6. Warranty and right of termination

6.1 The licensor warrants with respect to the software product licensed to the licensee the performance set forth in the description, provided that the software product is installed in the intended system in compliance with the licensor's guidelines.

6.2 The licensor shall correct errors in the software product, and in all manuals and other documents, within a reasonable period of time after receiving from the licensee the corresponding information on the error necessary to correct the error. Errors shall be remedied by rectification, which shall not be invoiced, or by replacement of the delivery, at the option of the licensor.

6.3 The licensee's right of termination due to the non-executability of the software product may only be exercised after rectifications or replacements have been made twice without success.

6.4 The licensor neither warrants nor guarantees the functionality of the programs created by third parties or the licensee / customer, nor the error-free execution of the programs with the software or on the licensor's systems.

7. Liability

7.1 If the licensee is unable to use the software product in the manner specified in the agreement and the licensee is responsible for this due to the failure to implement or the incorrect implementation of suggestions and advice before or after signing the agreement or due to the breach of other contractual obligations, the provisions set forth in this agreement shall apply mutatis mutandis to the exclusion of any further claims by the licensee.

For damages that do not occur to the software product, respectively not to the hardware and the connected device, the liability obligation of the licensor applies exclusively in the following cases, regardless of the respective legal ground:

- willful misconduct,
- gross negligence of its executive bodies or officers,
- culpable damage to life, limb and health, in the event of errors, which the licensor has fraudulently concealed or which it has excluded under warranty,
- software errors within the scope of liability for personal injury and property damage due to personally implemented objects, as set out in the product liability regulations applicable to them

7.2 In the event of culpable breach of material contractual obligations, the licensor shall also be liable for gross negligence on the part of non-executive employees and for slight negligence. In the latter case, liability shall be limited to damages that are foreseeable and typical for this type of contract.

7.3 In addition, the licensor, its employees, and its vicarious agents shall be liable for data loss or changes due to program errors, limited to the extent that this would have been unavoidable if the licensee had complied with its obligation to make back-up copies regularly and at least once a day.

7.4 In the event of claims based on copyright infringement, the licensor shall grant the licensee the right to continue using the software product or to make modifications to the software product so that copyright protection is ensured. If this is not commercially reasonable, the licensor shall take back the subject matter of the agreement and refund the license fee paid, less an amount corresponding to the duration of the previous use. This shall apply provided that the licensee notifies the licensor of this type of claim in writing without delay and allows licensor all legal remedies and out-of-court settlements.

7.5 The licensee or its IT provider shall be liable for server interruptions, interruption of license allocation and other support cases that are not clearly attributable to an incorrectly created license.

The licensee or its IT provider is responsible for maintaining the necessary number of licenses to provide its services. The licensor is not liable for interruptions in use and subsequent work / production stoppages.

7.6 Further liability claims of the licensee are expressly excluded.

7.7 The licensee is responsible for all problems arising from the use of the software product that are not directly caused by the licensor. Therefore, licensee is responsible for all data generated and produced during the use of the software product. Accordingly, licensee is obligated and responsible for compliance with the terms and conditions set forth in this license agreement.

8. Security measures

The licensee shall take suitable measures to secure the software and, if applicable, the access data for online access against access by unauthorized third parties. In particular, all copies of the software as well as the access data shall be kept in a protected place.

9. Industrial property rights and copyrights

9.1 If a third-party assert claims for infringement of an industrial property right or a copyright against the customer because the customer uses a software version, firmware supplement or associated documentation supplied by ZEISS, ZEISS shall be obligated to pay any cost and damage compensation amounts awarded to the owner of the property right by a court or awarded with the prior consent of ZEISS. This is subject to the condition that the customer informs ZEISS immediately in writing of such claims and that ZEISS reserves the right to all defensive measures and out-of-court settlements. The customer is obligated to support ZEISS in the defense to the best of its ability. Under these conditions, ZEISS shall generally procure for the customer the right to continue using the software version, firmware supplement or documentation. If this should not be possible under economically reasonable conditions, ZEISS shall be obligated, at its own discretion

and at its own expense, either to modify or replace the relevant item in such a way that the property right is not infringed, or to take back the item and refund the remuneration paid for it less an amount taking into account the benefits derived.

9.2 ZEISS shall have no obligations if property right infringements are caused by the fact that software versions, firmware supplements or documentation supplied by ZEISS are not used in the intended manner or are not used on the specific systems.

10. Export Control

Licensee assumes responsibility for compliance with all applicable rules and regulations, including but not limited to the export control and sanctions regulations of the Federal Republic of Germany, the European Union, and the United States of America. In particular, licensee agrees not to provide the software or any related technology or documentation (including but not limited to electronic licenses) or any part thereof, directly or indirectly, to any sanctioned country or to any sanctioned person or entity in violation of the foregoing.

Licensee represents and guarantees that it will not use the software or any related technology or documentation or any portion thereof in violation of any applicable law or regulation. The licensee further agrees to indemnify and hold harmless licensor from and against any and all claims resulting from licensee's failure to comply with any of the foregoing applicable provisions.

11. Miscellaneous

11.1 All verbal agreements, amendments, extensions, or concretizations of these license conditions as well as the special characteristics of the assurances or agreements or arrangements made must be in writing to be legally effective. If these are drafted by representatives or vicarious agents of the Licensor, they shall only become legally binding upon approval by the Licensor.

11.2 Should parts of this contract become invalid, this shall not affect the validity of the remaining parts of this contract. The ineffective part of this contract shall be replaced by its parties with legally permissible provisions that come as close as possible to the intention of the ineffective provisions.

11.3 The laws of the Federal Republic of Germany shall apply to this contract, excluding the law on the international sale of goods and the rules of conflict of laws.

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