

BETA END USER NON-DISCLOSURE AND LICENSE AGREEMENT

BETA IS CONFIDENTIAL

Effective as of 7th August 2023

By installing and/or using the software, you agree to be bound by the terms of this Agreement.

This end user license agreement (“**Agreement**”) is entered into between Capture One A/S, Roskildevej 39, DK-2000 Frederiksberg, Denmark (“**Licensor**”) and you (“**Licensee**”) and sets out the terms and conditions subject to which Licensee may install and use beta software in connection with Licensee being a participant in Licensor’s beta software test program. By installing and using the beta software, Licensee agrees to the terms and conditions of this Agreement. If Licensee does not agree to the terms and conditions of the Agreement, Licensee may not install and/or use the beta software made available by Licensor.

1. Beta Software test program

- 1.1. This Agreement sets out the terms and conditions subject to which Licensor may make available certain pre-commercial software program releases (“**Beta Software**”) available to Licensee for the purpose of Licensee’s testing and provision of Feedback to Licensor in connection with Licensor’s Beta Software test program in which Licensee participates pursuant to this Agreement.
- 1.2. The release of the Beta Software does not entail whether directly or indirectly that Licensor undertakes any obligation whether explicitly or implied to make any commercial release of the Beta Software including without limitation any specific features hereof.

2. Grant of license

- 2.1. Licensor hereby grants Licensee a limited, royalty-free, non-exclusive, non-perpetual and non-transferable strictly personal right to
 - 2.1.1. install two (2) copies of the Beta Software on two (2) computers and solely for the purpose of enabling Licensee to test the Beta Software and provide Feedback to Licensor concerning Licensee’s test results; and if applicable
 - 2.1.2. install one (1) single copy of the Beta Software on one (1) single iPad mobile device in the test environment supplied by Apple Inc. (TestFlight) solely for the purpose of enabling Licensee to test the Beta Software and provide Feedback to Licensor concerning Licensee’s test results and subject to TestFlight Terms of Service available at: <https://www.apple.com/legal/internet-services/itunes/testflight/sren/terms.html>; and if applicable
 - 2.1.3. install one (1) single copy of the Beta Software on one (1) single iPhone mobile device in the test environment supplied by Apple Inc. (TestFlight) solely for the purpose of enabling Licensee to test the Beta Software and provide Feedback to Licensor concerning Licensee’s test results and subject to TestFlight Terms of Service available at: <https://www.apple.com/legal/internet-services/itunes/testflight/sren/terms.html>.

- 2.2. Except as expressly stated in clause 2.1, Licensee is not allowed to make any copies or otherwise exploit or dispose of the Beta Software in any manner. All rights not expressly granted are reserved by Licensor.

3. Restrictions

- 3.1. Licensee is not entitled to reverse-engineer, disassemble or decompile the Beta Software or in any other way attempt to investigate and discover the source code or the structural framework of the Beta Software except and only to the extent explicitly permitted by applicable and mandatory law.
- 3.2. Licensee is not entitled to alter, modify or otherwise change the Beta Software under this Agreement and Licensee shall thus only install and test the Beta Software solely for the purpose of providing Feedback to Licensor.
- 3.3. Without limiting the generality of any other restrictions and limitations set forth in this Agreement, Licensee expressly acknowledges and agrees that Licensee is not entitled to create any derivative works based directly or indirectly on the Beta Software and/or to create any software programs competing with the Beta Software.
- 3.4. The Licensee is not entitled to change or remove any marks and notices concerning copyright, patents, trademarks, or other rights placed on or implemented in the Beta Software.

4. Certain restrictions regarding the use of cloud-based services

- 4.1. Some parts of the Beta Software may contain cloud-based services based on Microsoft Azure integrated into the Beta Software that add certain features to the Beta Software including sharing, storing, transmitting, and/or syncing Licensee's images, metadata, and edits ("**Content**").
- 4.2. Licensee agrees that the Licensor has no obligation to store such Content, except to the extent necessary for the Licensor to perform the applicable Beta Software testing. In addition, the Licensor has no responsibility or liability for the deletion or accuracy of the Content, including the failure to store, transmit, or receive transmission of the Content. The Licensor reserves the right in its sole discretion to remove any and all stored Content with a short notice.
- 4.3. The Licensor may set certain usage limits or quota on the storage of the Content, including but not limited to number of transferred images, data size of transferred image, or total data size of transferred images. Such limitations will be communicated to the Licensee via channel determined by the Licensor.

5. Intellectual property rights

- 5.1. The Beta Software is protected by copyright laws and international copyright treaties and other applicable legislation on proprietary rights and intellectual property rights.
- 5.2. Licensor and Licensor's partners are the sole and exclusive proprietors and own and retain any and all intellectual property rights including without limitation any copyrights, rights in inventions, patent rights, trademark rights, mask work rights, design rights etc. in and to the Beta Software, Feedback related hereto and to all copies and derivative works hereof.

6. Feedback

- 6.1. Licensee acknowledges and agrees that Licensee shall on a regular basis and continuously throughout the term provide Licensor with Feedback based on Licensee's experiences obtained using and testing the Beta Software. For the purpose of this Agreement "Feedback" means any and all information including without limitation any information concerning usability, bug, defects, fault, errors, features including possible new features, user applicability, user friendliness, functionality including possible new functionality etc. with respect to the Beta Software experienced by Licensee ("**Feedback**").
- 6.2. Licensee agrees that Licensor may free of charge and without any restrictions, obligations or conditions use, improve, develop, modify, alter, disclose, reproduce, make available, license, sub-license, transfer, distribute, market, sell and in any other manner exploit Feedback for whatever purpose deemed appropriate by Licensor whether in connection with a subsequent commercial release of the Beta Software or in connection with any other software, product, technology or other service made available now or in the future in connection with Licensor's business operations.
- 6.3. If Licensee's Feedback includes material subject to intellectual property right protection, Licensee hereby assigns and transfers free of charge, irrevocably, perpetually, exclusively and globally any and all intellectual property rights and proprietary rights vested in such Feedback to Licensor.

7. No support or remediation of defects etc.

- 7.1. Licensor undertakes no obligation to provide Licensee with any support or any technical assistance or information under this Agreement.
- 7.2. Licensee acknowledges and accepts that it is the sole responsibility of Licensee to investigate and assess the risks associated with installation and use of the Beta Software and to ensure that the Beta Software can operate and function in conjunction with Licensee's IT systems including without limitation Licensee's hardware, software etc. and that the Beta Software may be installed and operated by Licensee in such a way that no risk of damage on Licensee's IT systems including without limitation Licensee's hardware, software etc. may occur.
- 7.3. Licensee acknowledges that the Beta Software is a prerelease product which is under development and that the Beta Software therefore will contain defects, malfunctioning features and bugs and that installation and use may be associated with certain problems. Accordingly, Licensee acknowledges and accepts that because of the fact that the Beta Software is a prerelease product Licensor shall not be liable for and may choose not to correct or remedy any faults, defects, malfunctioning features and bugs or any other problems experienced by Licensee in relation to the Beta Software.

8. Confidentiality

- 8.1. The Licensee must keep in strict confidence any and all information received from Licensor including without limitation information concerning the Beta Software (e.g. features, icons, images and other elements of the Beta Software), the Beta Software test program and any other information, documentation, media, know-how, Feedback etc. related hereto provided by Licensor to Licensee ("**Confidential Information**") and Licensee agrees not to disclose any Confidential Information to any third party.
- 8.2. Licensee is obliged to take precautionary measures that may be necessary with the aim of protecting Confidential Information against any unauthorized access, use, copying and/or disclosure and at least in accordance with regulatory requirements.

- 8.3. Licensee shall notify Licensor in case of any unauthorized access, use, copying and/or disclosure of Confidential Information which Licensee becomes made aware of and shall cooperate with Licensor to mitigate and prevent any damages in this respect.

9. Personal Data

- 9.1. Licensor collects and processes information, including personal data, provided by you in relation to Licensor's supply of the Beta Software to you. Such collection and processing are regulated by the terms set out in the Capture One Privacy Policy, Privacy Notice for Beta Testers and Capture One Data Processing Agreement, as updated from time to time.
- 9.2. The referenced policies and agreements form an integrated part of this Agreement.
- 9.3. For the latest versions of these referenced documents, please refer to <https://www.captureone.com/en/terms-conditions>.

10. Indemnification

- 10.1. The Licensee shall promptly notify Licensor in writing in the event that Licensee becomes aware of any breach or alleged breach of confidentiality undertaking as set forth in clause 7 and/or of any claim of infringement of intellectual property rights from any third party regarding the Beta Software
- 10.2. In the event of any breach by Licensee of the terms and conditions of this Agreement, Licensee shall by way of liquidated damages pay to Licensor the sum of EUR 10.000 for each individual breach. Licensee is further obliged to indemnify Licensor for any documented loss that Licensor may have incurred as a result of such breach of the terms and conditions of this Agreement.

11. Disclaimer of warranties

- 11.1. The Beta Software is provided on an "as-is" basis with all fault and defects and any express or implied warranties including but not limited to implied warranties of merchantability and fitness for a particular purpose and/or other liabilities of Licensor are explicitly disclaimed to the maximum extent permitted pursuant to applicable law.

12. Limitation and exclusion of liability

- 12.1. The entire risk in relation to the installation and use of the Beta Software shall remain entirely and exclusively with Licensee. Licensee acknowledges that Licensee assumes the entire responsibility for ensuring that Licensee's IT systems including without limitation hardware, software etc. are in place and suited for use in conjunction with the Beta Software and that appropriate back-up procedures and other security related features are in place before the Beta Software is installed and used.
- 12.2. In no event shall Licensor be liable for any direct, indirect, incidental and/or consequential damages or losses including without limitation any business interruption, operating losses, loss of profit, loss of image and loss of data howsoever caused and irrespective of any theory of liability whether in contract, strict liability or tort including without limitation based on gross or simple negligence arising in any way out of Licensee's installation and use of the Beta Software.
- 12.3. In addition to any other exclusions and limitations of liability set forth in this Agreement, the entire liability of Licensor shall in any circumstances be limited to a total

aggregate amount of EUR 1.000 covering any and claims throughout the term of this Agreement and irrespective of the basis of such claims.

13. Term and Termination

- 13.1. This Agreement will commence upon Licensee's installation of the Beta Software and will remain in force until (i) expiration of the beta testing period applicable to the Beta Software to be decided by Licensor in its sole discretion at which date of expiration access to the Beta Software will be discontinued or (ii) the date that this Agreement is terminated for convenience or breach by either party in accordance with this Clause 11, whichever is the earlier date.
- 13.2. Either party may terminate this Agreement for convenience with immediate effect upon serving written notice to the other party.
- 13.3. In the event of a party's material breach of this Agreement the other party is entitled to terminate this Agreement for breach with immediate effect.
- 13.4. Upon termination of this Agreement and irrespective of the reason for such termination, Licensee shall immediately cease to use the Beta Software and effectively delete all copies of the Beta Software (on all desktop and mobile devices) made pursuant to this Agreement.
- 13.5. Clauses 3, 4, 5, 6, 8, 10, 12 and 14 shall survive any termination or expiration of this Agreement and irrespective of the reason to such termination or expiration.

14. Governing law and venue

- 14.1. This Agreement shall be governed by Danish law and any disputes shall be subject to the exclusive jurisdiction of the ordinary Danish courts.

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Privacy Notice for Beta Testers

Effective as of 7th August 2023

We at Capture One A/S, Roskildevej 39, 2000 Frederiksberg, Denmark, respect your privacy and are committed to protecting your personal data. This Privacy Notice will give you a better understanding of how we use the personal data we collect from you when you participate in the beta software test program (“**Beta Program**”). It supplements our general Privacy Policy on our website, available at: <https://www.captureone.com/en/terms-conditions/privacy-policy>.

1. What personal data will be processed?

- 1.1. Capture One will collect, store, and otherwise process personal data obtained from you during the Beta Program, including:
 - *personal data provided by you in the onboarding screening survey*: including your name, last name, email address, primary and secondary photography genre, location, level of proficiency and type of device you use;
 - *personal data contained in the Feedback*: including data on your experience with the Beta Software, bug reports, any personal data included in the screenshots you provide, such as when a screenshot includes your photos or image and likeness;
 - *usage data on how you use the Software*: while testing, we track your behavior in the Beta Software, such as how and how often you use certain features, information about your device, including but not limited to various unique device identifiers, hardware and operating system specifications, performance statistics, and data about how you use your device, system and application software, networking information, peripherals; etc. For further information about general usage data, please refer to our general [Privacy Policy](#); the Feedback
- 1.2. When you agree to use TestFlight, you agree to share some information with Apple and with us. This is explained when you install the app. When you sign up for the Beta Program, Apple Inc. will be sharing certain data with us <https://testflight.apple.com/#privacy-data>. When you use TestFlight and the Beta Software, details will be provided regarding what data is sent to Apple and shared with Capture One and how the information may be used. You can learn more by visiting <https://testflight.apple.com/#privacy-data>.

2. Personal data we process on your behalf

- 2.1. When using the sync function in the Beta Software, you will be acting as data controller with respect to any images and metadata you sync including personal data and/or any other personal information you process as part of your use of the sync function, whereas Capture One will be acting as data processor in this context.

3. The purpose of the processing

- 3.1. We process your data for the purpose of conducting Beta Program and improve Capture One’s Software and Services by gathering feedback from the Beta testers and inviting them for further user research interviews. User research interviews are covered by a separate data privacy notice that will be communicated to Beta testers if they are invited for a user research interview.

4. The legal basis for processing

- 4.1. The lawful basis we rely on for processing your personal data is contract under article 6(1)(b) of the GDPR.

5. Do we share data with other organizations?

- 5.1. Capture One respects your privacy and will treat your data confidentially. Your personal data will not be disclosed to any third parties, except that we may use external service providers to store and host personal data on our behalf, including service providers located in third countries, such as Microsoft Corporation, Formagrid Inc (Airtable), or Atlassian Corp Plc. Moreover, when you sign up for the Beta Program, your email will be shared with Apple Inc. by uploading it to the TestFlight App (beta testing platform for iOS) to enable your participation in the Beta Program.
- 5.2. We have entered into appropriate agreements with our service providers to ensure that they will process any personal data only in accordance with our instructions and not for any other purposes, and that they implement appropriate technical and organizational safeguards to protect your data.

6. Do we intend to transfer your personal data to third countries?

- 6.1. In certain situations, your personal data may be transferred to a country outside of EU/EEA. If your personal data is transferred to data processors or data controllers located in countries outside the EU/EEA which do not have an adequate level of protection, such transfer will be safeguarded by the EU Commission's standard contractual clauses. The required technical and organisational security measures have been ensured when transferring personal data to third countries.

7. How long is your personal data kept?

- 7.1. Your data will be stored as long they are necessary for the abovementioned specific purposes. However, the data may be processed and stored for a longer period in anonymized form.

8. Your rights in relation to your data

- 8.1. Details about your rights are set out in our [Privacy Policy](#) under Section 11 'Your Rights'. Our [Privacy Policy](#) also explains how to ask any questions you may have about how your personal data is used, exercise any of your rights or complain about the way your data is being handled.

9. Contact

- 9.1. Questions, comments and requests regarding this privacy notice are welcomed and should be addressed to legal@captureone.com.

10. Complaints

- 10.1. If you wish to appeal against the processing of your personal data, please contact us at legal@captureone.com. You may also contact the Danish Data Protection Agency, Carl Jacobsens Vej 35 2500 Valby.