

# CAPTURE ONE

## Capture One

### App License Agreement (Mobile Platforms)

Effective as of 1 April 2022

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Please read this app license agreement (“**Agreement**”) carefully before installing or using the app. This Agreement is an agreement between you (also referred to as the “**Licensee**”) and Capture One A/S (“**Capture One**”) and governs your use of the app (as defined below).

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

If you do not agree to the terms of this Agreement, you may not install use or otherwise exploit the App in any manner.

#### **1. LICENSE**

1.1 The Terms and Conditions contained in this Agreement as well as any individual terms which may have been concluded at the time of the Licensee’s purchase of the app shall govern the installation and use by the Licensee (as identified in the Order Confirmation or similar) of the Capture One mobile application or service and any documentation and other materials (if any) accompanying the app and service whether provided on a separate storage media, in read only memory or by means of any other media including by means of electronic distribution (collectively “**App**” or “**Capture One App**”).

1.2 The App is licensed, not sold, to you for use only pursuant to the terms and conditions of this Agreement. Capture One and/or Capture One’s licensor(s) retain any and all right, title and interest in and to the App.

1.3 License to the App can be purchased through one or more mobile app stores, e.g. Apple App Store or Google Play Store, where Capture One has decided to make the App available or via Capture One’s own website (“**Relevant App Store**” shall refer to the one applicable to the situation).

1.4 Your rights under this Agreement will terminate automatically and without notice from Capture One if you fail to comply with any terms and conditions hereof or if the Agreement is otherwise terminated by Capture One as provided for in this Agreement.

#### **2. GRANT OF USE RIGHTS TO THE APP**

##### **2.1 Grant of use rights to the App**

2.1.1 Subject to your compliance with this Agreement including without limitation the restrictions and limitations set out in this Section 2, 3 and 8, as well as payment

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of applicable license fees, Capture One hereby grants to you a limited and non-exclusive right to install and use the App solely for your own internal purposes.

2.1.2 The rights granted to you are personal and non-transferable for your internal use only and further depends on the version of the App for which you have acquired a License as further detailed below.

2.1.3 The use of the App may require your it-systems and communication capabilities to have certain minimum specifications, as set out by Capture One. You are responsible for meeting such requirements and will continue to be so during the Term of the Agreement.

2.1.4 Notwithstanding anything to the contrary set out below, you are only entitled to use the App, if it has been properly activated through the Relevant App Store.

## **2.2 License fee and payment terms**

2.2.1 The Licensee shall pay the License Fee applicable to the App as shown on in the Relevant App Store at the time of purchase and set out in the Order Confirmation.

2.2.2 Capture One may update its pricing at any point in time. Capture One shall notify the Licensee of any changes to the prices of ongoing subscriptions. Capture One may provide such notification by way of a notification in the App.

2.2.3 The License Fee shall be due as of the beginning of each License Term, unless otherwise set out in the App or Relevant App Store.

2.2.4 Capture One may at its discretion disable the Licensee's access to the App and/or terminate the License immediately if

- (i) the License Fee or other fees are not paid on time and remains unpaid 30 (thirty) days after being due; or
- (ii) the Licensee uses the App beyond the agreed scope; or
- (iii) the Licensee permits non-authorized users to use the App; or
- (iv) the Licensee does not fulfill the Representations and Warranties set out in section 10;
- (v) the Licensee fails to comply with any other provision of these Terms and Conditions or the Relevant App Store's terms and conditions in a material manner.

## **2.3 Trial subscription license for the App**

Capture One may make the App available for a trial period through the Relevant App Store. Such trial is a regular subscription license with a free period as set out in the Relevant App Store upon installation. If the subscription is not terminated prior to the expiry of such free period, the subscription will automatically continue as a paid subscription, cf. section 2.4.

## **2.4 Subscription license for the App**

The App is licensed on a subscription basis and subject to this Agreement, the

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terms and conditions applicable to the Relevant App Store as well any specific terms agreed upon during the installation.

The subscription license allows for installation and use of the App by one single individual only or the single user license is purchased by a legal entity for a single and individually named employee only. The individual or employee will be identified through their user in the Relevant App Store as well as their Capture One user required for using the App. A single user license is thus for one individual to install and use only. The single user license may be used on one or more mobile device at a time, but only by the same individual.

## **2.5 License for Capture One Cloud File Transfer**

2.5.1 Capture One Cloud File Transfer (“**CFT**”) adds certain features to the Capture One App, including

- (a) uploading of images and their adjustments from Capture One App to the cloud; and
- (b) importing those images and their adjustments from the cloud into the Capture One Pro software.

2.5.2 CFT functionality is integrated into the App. Any reference to the App in this Agreement also applies to CFT. If you use CFT in any version, your right to install and use the App is – in addition to and without limiting any other terms and conditions set out in this Agreement – subject to additional restrictions and limitations below and where reference is explicitly made to CFT.

2.5.3 Capture One may provide CFT free-of-charge for a time but may at any point in time convert CFT into a paid for subscription-based add-on to the App or require additional fees for more CFT cloud storage.

2.5.4 The right to use the CFT in any version is contingent on the Licensee having acquired a separate and valid subscription license for the App.

2.5.5 The Licensee hereby grants Capture One a royalty-free, perpetual right and license to host, reproduce, distribute, display, perform, manipulate, synchronize, create derivative works of and otherwise use the images or other content (“**Content**”) uploaded to CFT as necessary to provide CFT and to enable the Licensee to use the features of CFT.

## **3. RESTRICTIONS AND LIMITATIONS**

3.1 Except as permitted by applicable mandatory law you may not (i) decompile, reverse engineer, or disassemble the App; (ii) modify, rent, lease, loan, distribute, sublicense, create derivative works of, communicate and/or make the App available to the public; (iii) let any third-party access, install and/or use the App for any purpose including without limitation any outsourcing, hosting, business process outsourcing or any other arrangements pursuant to which any third-party accesses, installs and/or uses the App for any purpose.

3.2 To use the App on a subscription basis you must have and maintain an Internet connection allowing for communication between your equipment and Capture One’ equipment via the Internet for the purpose of Capture One being able to validate and reconfirm your valid subscription license including payment of

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applicable subscription license fees from time to time during the subscription period. You are solely responsible for establishing and maintaining an Internet connection throughout the subscription period including paying all costs incurred in this respect.

3.3 You may not use the App in any application or situation where any failure of the App could lead directly or indirectly to death, personal injury, or severe physical or environmental damage, including without limitation using the App for controlling the operation of equipment in any nuclear facilities; aircraft navigation, communications or flight control systems; air traffic control systems; mass transit systems; applicable medical equipment; or weapons systems.

3.4 Capture One may apply technical protection measures of whatsoever nature to ensure compliance with this Agreement, e.g. by utilizing licensing restriction mechanisms built-in to the relevant mobile application platforms and/or Relevant App Stores.

3.5 This Agreement only grants you limited rights to install and use the App and Capture One reserves all rights not explicitly granted.

## **3.6 Usage limits of CFT**

3.6.1 Capture One may set certain usage limits or quotas of CFT, including but not limited to number of transferred images, data size of a transferred image, or total data size of transferred images. Such limits or quotas will be displayed in the App.

3.6.2 In case Capture One detects an unfair usage of the CFT service, Capture One reserves the right to suspend the service and will contact the Licensee to solve the issue.

3.6.3 For further information regarding the use of CFT incl. usage restrictions, we refer to the App.

## **4. NEW VERSIONS, RELEASES, UPDATES, PATCHES, FIXES ETC.**

4.1 A current description of the App and key functionality may be found at Capture One's website and/or in the Relevant App Store.

4.2 Capture One may from time to time decide in the sole discretion of Capture One to release new versions, releases, updates, patches, fixes etc. to the App without the Licensee's prior consent.

4.3 To support the general performance of the App, Capture One suggests that you install and use such new versions, releases, updates, patches, fixes etc. to the App to the extent released by Capture One. New versions, releases, updates, patches, fixes etc. of the App are included in the subscription license for the App and Licensee may download and install such subject to payment of the applicable subscription fee.

4.4 Notwithstanding the preceding sections, Capture One reserves the right to develop and launch new features and functionality as paid-for add-ons which are subject to separate one-off or subscription fees.

## **4.5 End of support of CFT**

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4.5.1 Notwithstanding the above, CFT specifically is only backwards compatible with the two latest releases of the App. Notwithstanding the above, Capture One does not support older versions of CTF than version 15.3 and the App will therefore not be compatible with older versions of CTF than version 15.3.

4.5.2 Use of CFT on unsupported versions might offer a degraded user experience and some features may not work as expected.

4.5.3 If Licensee exceeds the end of support period (i.e., is not using the two latest releases of the App), the Licensee will be prompted to update to a relevant newer version of the App to the extent released by Capture One.

## **4.6 End of life for CFT**

4.6.1 End of life (i.e., the time at which the CFT functionality cannot be used any longer) occurs 3 months after a new major version of the App has been released AND / OR when a breaking change (a significant change to the core of the App that makes it incompatible with previous versions of the App) is introduced.

4.6.2 For further information regarding when and how to upgrade the App, we refer to our website at: [www.captureone.com](http://www.captureone.com).

## **5. DISCLAIMER OF WARRANTY ON APP**

5.1 You expressly acknowledge and agree that use of the App is at your sole risk.

5.2 The App is provided “AS IS” and without warranty of any kind and Capture One expressly disclaims all representations and warranties, express or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose. Capture One does not warrant or make any representations regarding the use of or the results of use of the App or related documentation in terms of their correctness, accuracy, reliability, or otherwise. No oral or written information or advice given by Capture One or its authorized representative shall create a warranty. Should the App prove defective, you (and not Capture One or a Capture One authorized representative) assume the entire cost of all necessary servicing, repair or correction. Some jurisdictions do not allow the exclusion, so this limitation may not apply to you.

5.3 The use of the App may require the Licensee’s mobile device’s capabilities to have certain minimum specifications, as set out by Capture One. The Licensee is responsible for meeting such requirements and will continue to be so during the Term of the License.

## **6. AVAILABILITY, MAINTENANCE, AND DATA**

6.1 Capture One intends that CFT shall be available to the Licensee 24 hours each day, 365 days a year, except when Capture One is performing maintenance on CFT. Capture One does not guarantee any minimum availability. This is subject to the Licensee observing any requirements as to the mobile device’s capabilities and similar required for the App and CFT to function properly, as set out by Capture One from the time to time.

6.2 Capture One intends for all Content uploaded to CFT to be available during the License Term. However, Capture One makes no guarantees in respect of the integrity or retention of Content uploaded to CFT, and CFT shall not be regarded as a backup solution. Capture One shall not be liable for any loss of Content.

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Consequently, the Licensee is encouraged ensure to perform backup of the Licensee's images and other content, including the Content uploaded to CFT, locally or with dedicated cloud backup solutions.

## 7. SUPPORT

7.1 Capture One shall provide support for the App as set out in this section.

Capture One's support includes:

- (a) Submission of issues relating to the App, i.e. bugs, errors or other situations where the App does not work as intended or in accordance with any accompanying documentation;
- (b) Status of issues previously submitted by the Licensee;
- (c) Capture One's suggestion for a temporary workaround until the issue has been resolved; and
- (d) Advice and guidance on the use of the App, if such is not already covered by any accompanying documentation in which case Capture One may refer hereto.

7.2 Capture One provides support on workdays excluding weekends and public holidays via the following link: <https://support.captureone.com> or through such other means that Capture One may have informed the Licensee of. There may be exceptions to the support hours, in which case such exceptions will be posted on Capture One's website.

7.3 Outside of working hours Capture One only provides support in case of system failures of CFT or other critical issues of similar severity as a system failure, and only if such failure or issue is caused by Capture One or Capture One's sub-contractors.

7.4 The Licensee shall provide initial support for the Licensee's users in relation to the App, including but not limited to, questions relating to login, user access rights, roles, registrations, organizational aspects, and the general guidance of the users in the use of Capture One in the Licensee's own organization, including attempting to use different browsers to access CFT.

7.5 Capture One shall have the right to access the Licensee's data on CFT, if required to ensure the continuous operations of CFT or to provide support or maintenance.

7.6 The Parties may agree that Capture One shall provide support outside the scope of Capture One's support obligation set out herein. Such support will be subject to separate agreement and fees.

## 8. LIMITATIONS AND EXCLUSIONS OF LIABILITY

8.1 Capture One disclaims and shall not be liable for any indirect loss including without limitation any loss of goodwill, consequent losses, business interruption, loss of data, loss caused by non-availability of the App or incorrect information in the App, operating loss, loss of profits or any other indirect economic losses and irrespective of the basis and nature of the liability.

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8.2 The liability of Capture One shall in any circumstances and in addition to any other limitations and exclusions of liability be limited to a total aggregated amount equal to the fee paid by you for the license to the App and irrespective of the basis and nature of such liability.

8.3 Some jurisdictions may not allow this limitation of incidental, consequential or other damages so this limitation may not apply to you.

## **9. COMPLIANCE WITH RULES AND LEGISLATION**

9.1 The Licensee shall comply with all rules set out by Capture One for use of the App.

9.2 The Licensee shall comply with all relevant legislation in the Licensee's jurisdiction.

9.3 Any advice or information given by Capture One in this respect shall be given without any warranty or liability for its correctness or completeness and the Licensee shall be responsible for making the necessary inquiries with relevant authorities and bodies to ensure that the Licensee's use of the App is compliant with any relevant legislation or applicable guidelines.

## **10. REPRESENTATIONS AND WARRANTIES**

10.1 By uploading Content to CFT, the Licensee represents and warrants that

- (a) the Licensee owns and controls or otherwise have the unconditional right to upload the Content to CFT;
- (b) the Licensee has obtained all necessary third-party rights and permissions to upload and use such Content;
- (c) the uploading and use of the Content in connection with CFT does not and will not infringe upon or violate the rights of any third party, including without limitation any copyright, right of privacy or right of publicity, or violate any applicable law, rule or regulation;
- (d) the Content does not contain any viruses, trojan horses, worms, time bombs, or other code intended to harm or obtain unauthorized access to data;
- (e) the Content conforms with and does not violate any rules set out by Capture One for use of CFT; and
- (f) the Content complies in all respects with the rules set forth in these Terms and Conditions.

## **11. INDEMNIFICATION**

11.1 The Licensee agrees to indemnify and hold Capture One and sub-contractors, and each of its respective parents, subsidiaries, affiliates, officers and employees, harmless from any liabilities, claims, expenses or demands, including reasonable attorneys' fees and costs, made by any third party due to or arising out of

- (a) The Licensee's use or misuse of the App;
- (b) the viewing of the Licensee's Content;

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- (c) the violation of laws, rules, regulations or terms these Terms and Conditions, including the Representations and Warranties in section 10,
- (d) infringement by the Licensee's Content or by someone using the Licensee's account, of any intellectual property or any other right of any person or entity.

11.2 Capture One reserves the right, at its own expense, to assume the exclusive defence and control of any matter otherwise subject to indemnification by the Licensee, in which event the Licensee must cooperate with Capture One in asserting any available defences.

## 12. LIMITATION OF LIABILITY

12.1 In no event shall Capture One, its officers, agents, employees or sub-contractors be liable to any person or entity for the loss of profits or for indirect, special, incidental or consequential damages arising out of or related to the App, even if Capture One or its officers, agents, employees, or sub-contractors have been advised of the possibility of such damages. Loss of data, including Content, and the cost of restoration thereof shall be considered indirect damages hereunder.

12.2 In no event shall the total, cumulative liability, including without limitation damages, proportional reductions and indemnifications, of Capture One and its sub-contractors exceed fee invoiced by Capture to the Licensee in the preceding 12 (twelve) months.

## 13. TERMINATION

13.1 Notwithstanding anything to the contrary set out in this Agreement, Capture One may terminate this Agreement with immediate effect upon serving written notice to you in the event of:

- (i) an intellectual property infringement claim relating to the App from any third-party if Capture One assesses in its sole discretion that Capture One is unable to remedy the infringement by working around such infringement or by obtaining the required license rights on commercial reasonable terms; or
- (ii) your breach of this License. The aforesaid shall apply irrespective of whether the App is licensed on a perpetual or non-perpetual basis.

13.2 The license is initially granted from the day on which the Licensee installs the App from the Relevant App Store and signs up for a subscription license (the "**Effective Date**") and for the duration of the license term ("**License Term**") the duration of which is dependent on the subscription chosen by the Licensee in the Relevant App Store.

13.3 Upon expiry of the License Term, the license will automatically renew for an additional License Term of the same length as the previous, unless the Licensee has terminated the subscription prior to its expiry.

13.4 Licensee may terminate the license for convenience prior to the expiry of a License Term, cf. section 13.2 by observing the process set out in the Relevant App Store.



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- 13.4.1 If Licensee terminates a license to CFT for convenience, Licensee will retain access to existing CFT sessions until the expiry of the License Term, but Licensee will not be able to create any new sessions from the time at which the termination request is processed by Capture One.
- 13.5 Capture One may terminate a license for convenience with one (1) months' notice to the end of a License Term, cf. section 13.2.
- 13.6 The Parties agree that those provisions in this Agreement that by their nature are intended to survive termination or expiration of a license shall so survive.
- 14. MATERIAL BREACH**
- 14.1 If a party is in material breach of its obligations under this Agreement, the non-breaching party may terminate this Agreement with immediate effect by giving the other party written notice.
- 15. EXPORT RULES**
- 15.1 The App is subject to applicable import and export laws and regulations. You must comply with all applicable import and export laws and regulations that apply to the App, including its components.
- 16. THIRD-PARTY SOFTWARE**
- 16.1 The App includes certain third-party software. Such third-party software may be subject to and governed by separate third-party license terms and you accept such third-party license terms when you install or use the App.
- 16.2 Credits and separate license terms applicable to third-party software are included in the license and credits file available in the "About" section of the App via the "Credits" button.
- 16.3 You agree that certain third-party software licensors may be third-party beneficiaries and thus may rely in their sole discretion on their applicable third-party app license terms instead of and/or in addition to the terms of this Agreement. If separate third-party software license terms are not referenced in the license and credit file, the third-party app licensor may in its sole discretion decide to rely on the terms and conditions set out in this Agreement.
- 16.4 Without limiting the generality of any other provisions of this Agreement, Capture One may at any time request that you discontinue use and delete any third-party software components (or portions hereof) with immediate effect upon Capture One's notice to you in this respect, if Capture One assesses in its sole discretion that Capture One's right to include the third-party software components is or may be cancelled, withdrawn or terminated for whatever reason.
- 16.5 You agree not to take any actions that may prevent or otherwise impair any such third-party app licensors' exercise of their rights to such third-party app.
- 17. PERSONAL DATA**
- 17.1 Capture One collects and processes information, including personal data, provided by you in relation to Capture One's supply of App and services to you. Such collection and processing is regulated by the terms set out in the

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“Capture One Privacy Policy, Cookie Policy, and applicable at any time. The policies form an integrated part of this License. Data Processing Agreement, applicable at any time, and are considered an integral part of these Terms and Conditions.

17.2 For the latest version please refer to <https://www.captureone.com/en/terms-conditions>

## **18. MISCELLANEOUS**

18.1 The parties explicitly agree that the language of this Agreement (and if applicable any user guides and documentation) is English, and the English language will prevail in terms of any disputes between the parties. You explicitly disclaim any right to request that this Agreement (and if applicable any user guides and documentation) should be interpreted into any other language than the English language to be valid and enforceable. The aforesaid applies to the maximum extent permitted by applicable law.

18.2 If you purchased a license to use the App from a third-party reseller or distributor, you may be subject to additional terms and conditions imposed by such third party, including terms and conditions of the Relevant App Store.

## **19. ASSIGNMENT**

19.1 Any or all of Capture One’s rights and obligations under this Agreement may be assigned by Capture One without the Licensee’s consent, and upon any such assignment, Capture One shall have no further obligation towards the Licensee, and shall no longer be liable to the Licensee in respect of any obligation so assigned. Capture One’s use of sub-contractors does not release Capture One from its obligations vis-à-vis the Licensee.

19.2 The Licensee’s rights and obligations under the License may not be assigned by the Licensee without Capture One’s prior written approval.

## **20. SEVERABILITY**

20.1 If any section of this Agreement is deemed unenforceable or invalid for any reason, the remaining parts of this Agreement shall not be affected hereby. The parties shall enter negotiations for the purpose of substituting such section with a corresponding valid and enforceable wording, if possible.

## **21. NOTICES**

21.1 Capture One may provide the Licensee with information and notices about the App electronically, including via email, through the App, through a website that Capture One identifies or similar means.

## **22. CONTROLLING LAW, VENUE AND SEVERABILITY**

22.1 This Agreement shall be governed by the laws of the Kingdom of Denmark save that any rules concerning choice of law and venue and the UN Convention on Contracts for the International Sale of Goods (“CISG”) are explicitly excluded and will not apply.

22.2 Any dispute shall be settled by the District Court of Copenhagen, Denmark, as the court of first instance.

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## **23. ENTIRE AGREEMENT**

- 23.1 This Agreement constitutes the entire agreement between the parties with respect to the use of the App and supersedes all prior or contemporaneous understandings regarding such matter. No amendment to or modification of this Agreement will be legally valid and binding unless in writing and signed by Capture One. Capture One may however amend the terms and conditions of this Agreement applicable to the App in connection with any new update, patch, fix, release or version of the App (if any).