

Capture One Live

Terms and Conditions

Version 1.0, July 2021

1. GENERAL

- 1.1 These Terms and Conditions as well as any individual terms which may have been concluded at the time of the Licensee's purchase of the licenses shall govern the use by the Licensee (as identified in the Order Confirmation or similar) of Capture One Live ("**COL**") provided by Capture One A/S ("**Capture One**"). Deviations from these Terms and Conditions shall only apply to the extent they have been accepted by the parties in writing.
- 1.2 COL is an add-on to Capture One's software named Capture One (the "**Capture One Software**") that adds certain features to the Capture One Software, including
- (a) uploading of images from Capture One Software to the cloud;
 - (b) sharing the uploaded images with external users through a link;
 - (c) enabling the external users to view, comment and rate the images; and
 - (d) showing the external users' comments and ratings inside the Capture One Software.
- 1.3 The right to use the Capture One Live is contingent on the Licensee having acquired a separate and valid software license to the Capture One Software.
- 1.4 Licensee agrees to be bound by the terms and conditions of these Terms and Conditions by subscribing to and/or using COL. If the Licensee does not agree, the Licensee is not allowed to use or otherwise exploit COL in any manner.

2. GRANT OF LICENSE

2.1 License to COL

- 2.1.1 Subject to the Licensee's acceptance of and compliance with the these Terms and Conditions, Capture One hereby grants the Licensee a limited, personal, revocable, non-exclusive, non-perpetual, and non-transferable right to use COL solely for the purpose of using the features of COL with Content that fulfils the Representations and Warranties set out in section 9 ("**License**").
- 2.1.2 Capture One may at its discretion disable the Licensee's access to COL and/or terminate the License immediately if

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- (i) the Licensee uses COL beyond the agreed scope; or
- (ii) the Licensee permits non-authorized users to use COL; or
- (iii) the Licensee does not fulfill the Representations and Warranties set out in section 9; or
- (iv) if the Licensee fails to comply with any other provision of these Terms and Conditions in a material manner.

2.1.3 Except as expressly stated in section 2.1, the Licensee is not granted any rights whether directly or indirectly to access, use or otherwise exploit COL in any manner. All rights not expressly granted are reserved by Capture One.

2.1.4 Capture One shall be entitled to amend and change COL for updates, patches, and technical reasons, without the Licensee's prior consent. A current description of COL and key functionality may be found at Capture One's website. Capture One shall notify the Licensee of planned, significant changes to COL a reasonable time in advance. In case of critical and/or time sensitive patches and fixes, Capture One may perform the changes without prior notification, but shall notify the Licensee as soon as possible after the change.

2.1.5 The Licensee is aware and accepts that COL is "as is" without any guarantee or warranty for the function of COL or correctness of the output content.

2.1.6 The use of COL may require the Licensee's it-systems and communication 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.

2.2 License to Content

2.2.1 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 COL as necessary to provide COL and to enable the Licensee to use the features of COL.

3. TERM AND TERMINATION

3.1 The License is initially granted from the day on which COL has been made available to the Licensee (the "**Effective Date**") and until terminated by either Party ("**License Term**").

3.2 Either Party may terminate the License for convenience with one (1) days' notice to the end of a Month.

3.3 Capture One shall at any time be entitled to turn COL into a subscription-based add-on. In this case, this will be subject to a separate agreement and subject to Licensee's acceptance hereof..

3.4 The Parties agree that those provisions in these Terms and Conditions that by their nature are intended to survive termination or expiration of the License shall so survive.

4. RESTRICTIONS AND LIMITATIONS

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4.1 The Licensee shall not be entitled to work around any technical limitations in COL or to reverse engineer, decompile or disassemble COL or in any other way attempt to investigate, tamper with and/or discover the source code and/or the structural framework and/or the principles on which COL is based, except as otherwise expressly permitted under mandatory applicable law.

4.2 The Licensee is not entitled to resell, make available, sub-license, rent, lend or otherwise dispose of the access to COL except as otherwise expressly set out in these Terms and Conditions.

5. AVAILABILITY, MAINTENANCE, AND DATA

5.1 Capture One intends that COL shall be available to the Licensee 24 hours each day, 365 days a year, except when Capture One is performing maintenance on COL. Capture One does not guarantee any minimum availability.

5.2 Capture One intends for all Content uploaded to COL to be available during the License Term. However, Capture One makes no guarantees in respect of the integrity or retention of Content uploaded to COL, and COL shall not be regarded as a backup solution. Capture One shall not be liable for any loss of Content. Consequently, the Licensee is encouraged ensure to perform backup of the Licensee's images and other content, including the Content uploaded to COL, locally or with dedicated cloud backup solutions.

6. PERSONAL DATA

6.1 Capture One collects and processes personal data on behalf of the Licensee as part of Capture One's provision of COL according to the terms set out in the data processing agreement that may be found via the following link [<https://www.captureone.com/legal/en-data-processing>] and which is considered an integral part of these Terms and Conditions.

6.2 Capture One's processing of personal information is further regulated by the "Capture One Privacy Policy" (<https://www.captureone.com/en/terms-conditions/privacy-policy>) and the "Capture One Cookie Policy" (<https://www.captureone.com/en/terms-conditions/cookie-policy>) applicable at any time.

7. SUPPORT

7.1 Capture One shall provide support for COL as set out in this section. Capture One's support includes:

- (a) Submission of issues relating to COL, i.e. bugs, errors or other situations where COL 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 COL, if such is not already covered by any accompanying documentation in which case Capture One may refer hereto.

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- 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.
- 7.3 Outside of working hours Capture One only provides support in case of system failures of COL 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 Customer shall provide initial support for the Licensee's users in relation to COL, 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 COL.
- 7.5 Capture One shall have the right to access the Licensee's data on COL, if required to ensure the continuous operations of COL 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. COMPLIANCE WITH RULES AND LEGISLATION

- 8.1 The Licensee shall comply with all rules set out by Capture One for use of COL.
- 8.2 The Licensee shall comply with all relevant legislation in the Licensee's jurisdiction.
- 8.3 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 COL is compliant with any relevant legislation or applicable guidelines.

9. REPRESENTATIONS AND WARRANTIES

- 9.1 By uploading Content to COL, the Licensee represents and warrants that
- (a) the Licensee owns and controls or otherwise have the unconditional right to upload the Content to COL;
 - (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 COL 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;

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- (e) the Content conforms with and does not violate any rules set out by Capture One for use of COL; and
- (f) the Content complies in all respects with the rules set forth in these Terms and Conditions.

10. INDEMNIFICATION

10.1 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 COL;
- (b) the viewing of the Licensee's Content;
- (c) the violation of laws, rules, regulations or terms these Terms and Conditions, including the Representations and Warranties in section 9,
- (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.

10.2 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.

11. LIMITATION OF LIABILITY

11.1 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 COL, 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.

11.2 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.

12. MATERIAL BREACH

12.1 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.

13. ASSIGNMENT

13.1 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

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obligation so assigned. Capture One's use of sub-contractors does not release Capture One from its obligations vis-à-vis the Licensee.

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

14. SEVERABILITY

- 14.1 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.

15. NOTICES

- 15.1 Capture One may provide the Licensee with information and notices about COL electronically, including via email, through COL, or through a website that Capture One identifies. Notice is given as of the date it is made available by Capture One.

16. GOVERNING LAW AND VENUE

- 16.1 This Agreement shall be governed by the laws of Denmark. This applies whether or not international private law and choice of law rules may lead to the application of another country's laws.
- 16.2 Any dispute shall be settled by the District Court of Copenhagen, Denmark, as the court of first instance.