

APSS LICENSE AGREEMENT (Version 2016-08-10)

IMPORTANT READ CAREFULLY: This APSS License Agreement (hereinafter referred to as “Agreement”) is a legal agreement between APSS Software & Services AG, Thurgauerstrasse 39, 8050 Zurich, Switzerland (hereinafter referred to as “APSS”) and you to enable you to install and/or use the software program and the associated manuals and other written and audiovisual materials as defined in this Agreement and in the offer enclosed to this Agreement. The software program files, manuals and other materials individually and collectively are referred to as “Licensed Material” in this Agreement, and the term “Employees” refers only to persons actually employed by you, or employed on your behalf by an agency under contract with you, for purposes that require the knowledge provided by this Licensed Material.

By accepting the offer of APSS or an agent authorized by APSS (hereinafter referred to as „Offer“) and returning it to APSS, or to the authorized agent that has submitted the Offer, you agree to be bound by the terms of this Agreement.

1. GRANT OF LICENSE. Subject to your acceptance of the terms of this Agreement and upon payment of the license fees, APSS grants to you the following non-transferable, non-exclusive and limited license:
 - (a) Locally installed version: You may install, on a computer or network server, one copy of the program files included in the Licensed Material, and permit the installed program files on that computer or network server to be accessed by the authorized number of users only for the purpose of training, testing and/or certifying of such users.
 - (b) Hosted version: You may use the access facilitated with the Licensed Material for the authorized number of users for the purpose of training and/or testing from any workstation worldwide (hereinafter referred to as “Hosted Solution”).
 - (c) The Licensed Material is protected by copyright and other intellectual property laws and treaties. This Agreement does not constitute a transfer of title to, or sale of, all or a portion of the Licensed Material or the underlying intellectual property. Rather, it confers a limited license to the Licensed Material. Except for the license granted in this Agreement, all rights in and to the Licensed Material and related services are reserved, and no implied licenses are granted by APSS.
 - (d) The number of authorized users is determined in the Offer. In the Offer, it is also defined whether the Licensed Material may be used for training, certifying and/or testing of your own Employees and/or for staff of other entities (hereinafter referred to as “Other Staff”).
 - (e) You may make copies of any materials expressly intended as student hand-outs or exercises but only to the extent it is necessary for use of the Licensed Material for training and testing purposes for the authorized number of users. You otherwise may not, without prior written permission from APSS, make any copies of any of the other printed or audiovisual materials contained in the Licensed Material.
 - (f) In case you obtain program files from APSS or an authorized agent, you may either (1) make one copy of the program files solely for backup or archival purposes, or (2) if CD-ROM(s) or USB stick(s) are included in the Licensed Material, transfer the program files to the authorized number of computers, provided you use the original CD-ROM(s) or USB stick(s) solely for backup or archival purposes. In case the Offer does not mention the authorized number of computers, the authorized number of computers is the equivalent to the authorized number of users. You may also transfer the installed program files from one computer or network server to another, provided you completely remove those program files from the first computer or network server and that the number of computers or network servers with installed files does not at any time exceed the number of authorized installations. However, you may not make any other copies of the program files. You may not reverse engineer, decompile or disassemble program files or otherwise attempt to reconstruct or discover any source code or underlying ideas or algorithms contained in program files of the Licensed Material or generated using the Licensed Material, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. Any such created works are derivative works. Because the Licensed Material is only licensed and not sold to you, you may not, without the prior written permission of

APSS, either (i) sell, rent, lease, distribute or otherwise transfer, or give any permission to use, the Licensed Material or any of its contents to any other person, agency or company, or (ii) make error corrections, modify, adapt, translate, or prepare derivative works from the Licensed Material, or (iii) decrypt data or extract portions of the program files for use in other applications, or (iv) remove, obscure or alter APSS' or any third party's product names, trademark or patent, copyright, or other proprietary rights notices, or ownership attribution statements affixed to or contained within or accessed in conjunction with or through the Licensed Material, or (v) make the Licensed Material available for training to any other person, agency or company except for your Employees or if permitted in the Offer to Other Staff, whether for a fee or otherwise or (vi) publicly disseminate performance information or analysis (including, without limitation, benchmarks) from any source relating to the Licensed Material.

2. **DUAL-MEDIA SOFTWARE.** If the program files contained in the Licensed Material are provided in more than one medium, you may use only one of the media for your computer or network server. You may retain the other media as an archival copy. However, you may neither use nor install the other media on any other computer or network servers, nor loan, rent, lease, distribute or otherwise transfer the other media to anyone, except as part of any permitted permanent transfer in writing of the entire Licensed Material.
3. **SHARED ACCESS.** You may not charge fees or receive remuneration of any kind in exchange for training anyone on the Licensed Material unless you enter into a separate license agreement with APSS expressly for that purpose. Contact APSS to obtain information about such a shared access license.
4. **DEMONSTRATION.** If the Licensed Material is labeled "DEMO VERSION," your rights to use the Licensed Material extend only to demonstration or evaluation of the Licensed Material and the Licensed Material is subject to return to APSS at any time on request by APSS.
5. **PURCHASE OF HARDWARE AND SOFTWARE FROM THIRD PARTY MANUFACTURERS.** To use the Licensed Material, you may need an internet connection and additional equipment. It is your responsibility to provide and pay all necessary connections and equipment needed to use the Licensed Material. APSS may undertake to supply you with the hardware equipment and systems listed in the accepted Offer, including previously installed software or software from third party manufacturers (hereinafter referred to as 'Third Party Software') that has yet to be installed, hereinafter referred to as 'Equipment'. As long as no additional rules pertaining to the Equipment are subsequently incorporated into the Offer (including its annexes), third party manufacturer's contractual conditions (guarantee rules, license conditions etc.) shall apply to this.
6. **SOFTWARE SERVICE.** If software service is part of the accepted Offer, APSS shall provide the following services for the software (not including Third Party Software) licensed under this Agreement (hereinafter referred to as "Software"):
 - (a) Software errors that hamper or substantially limit your business activities and which cannot be circumvented by you after employing reasonable organizational resources shall be resolved by APSS as soon as possible. Any required measures shall be taken no later than the third working day following notification of the error. It is the entire discretion of APSS of how to repair any error and/or defect (e.g. Patch, Hotfix, Update, Workaround etc.)
 - (b) APSS shall provide a telephone support service during office hours on weekdays between 9.00 am to 12.00 am and 2.00 pm to 5.00 pm (Central European Time). APSS shall strive – as permitted by its business resources - to find a solution as quickly as possible.
 - (c) New hardware, versions or upgrades of Third Party Software such as operating systems, databanks etc. upon which the Licensed Material depends will not be supplied free of charge but must be acquired separately by you. It is the entire discretion of APSS if the system requirements shall be updated in case of a contractual product update.
 - (d) APSS is entitled to select which version of the required software is supplied by third parties. Any special adaptations, supplements or installation of applications specifically developed for you shall be invoiced separately.
7. **CONFIDENTIALITY.** The Licensed Material contains sensitive security information and other confidential information. The Licensed Material and related information are licensed to you pursuant to a confidential relationship. You expressly acknowledge this confidential relationship and agree to hold in confidence and not disclose any of the contents of the Licensed Material to anyone other than your Employees expressly authorized

by you or if permitted in the Offer to Other Staff to the extent it is necessary using at least the same degree of care you use for your own most critical proprietary information, but in no event less than a reasonable degree of care.

8. **GRANT OF USE.** By using the Licensed Material, you may upload pictures to servers of APSS. You agree that APSS may use such pictures without any restrictions. You confirm that you are the owner of such pictures and that no intellectual property rights, license rights or any other rights of other parties are infringed by uploading and granting use of such pictures to APSS.
9. **USE AND CONDUCT.** By accepting APSS' Offer, you represent and warrant that you have the legal capacity and authority to enter into this binding Agreement and adhere to this Agreement and that you will use the Licensed Material and related services only in accordance with the Agreement and with all applicable laws. You will take the necessary steps and warrant that all of your obligations under this Agreement extend to you and your Employees or Other Staff who have access to the Licensed Material, and you agree to inform all such Employees or Other Staff of their obligations. Those obligations under this Agreement also include and may be enforced by suppliers to APSS for all of their supplied portions of the Licensed Material, including any images, "applets," photographs, animations, video, audio, music, and text incorporated into the Licensed Material. APSS SHALL HAVE THE ABSOLUTE AND UNILATERAL RIGHT IN ITS SOLE DISCRETION TO DENY USE OF AND ACCESS TO ALL OR ANY PORTION OF THE LICENSED MATERIAL AND RELATED SERVICES TO YOU OR OTHER USERS WHO ARE DEEMED OR SUSPECTED BY APSS TO BE USING THE LICENSED MATERIAL OR RELATED SERVICES IN A MANNER NOT REASONABLY INTENDED BY APSS OR IN VIOLATION OF LAW OR THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO SUSPENDING OR TERMINATING YOUR LICENSE.
10. **LIMITED WARRANTY; REMEDIES.**
 - (a) License acquired by one off payment: For a period of thirty (30) days after your receipt of the Licensed Material, APSS warrants that the Licensed Material contains no material manufacturing defects and will perform substantially as designed by APSS. The warranty period of thirty days also applies for supplements or updates of the Licensed Material. Your sole remedy under this limited warranty is - subject to your providing APSS with your proof of having paid for the use of the Licensed Material to APSS or to an authorized agent or distributor of APSS - at APSS's option, either (a) to refund your price paid (directly by APSS or at APSS discretion via an authorized agent or distributor) provided that you have returned or destroyed the Licensed Material as stipulated under section 13 of this Agreement or (b) to repair or replace the Licensed Material.
 - (b) License based on regular payments: Subject to immediate reporting of a defect and punctual payment of all license fees to APSS or to an authorized agent or distributor, APSS may at its own discretion (a) within the necessary period of time, repair material defects or provide you with a workaround solution enabling you to use main functions of the Licensed Material or (b) terminate this Agreement with immediate effect and refund license fees (directly by APSS or at APSS discretion via an authorized agent or distributor) you have paid after reporting the material defect and provided that you have returned or destroyed the Licensed Material as stipulated under section 13 of this Agreement.
 - (c) It is the entire discretion of APSS of how to repair any error and/or defect (e.g. Patch, Hotfix, Update, etc.) and if the system requirements shall be updated in case of a software update. This limited warranty is available only to you if you are the original contracting party to this Agreement and is void if failure of the Licensed Material has resulted from accident, abuse, or misapplication.
 - (d) SUBJECT TO FRAUDULENTLY OR GROSS NEGLIGENTLY CAUSED DEFECTS, ALL OTHER WARRANTIES AND REMEDIES, WHETHER EXPRESS OR IMPLIED, ARE HEREBY DISCLAIMED BY APSS AND ITS SUPPLIERS, INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. APSS MAKES NO WARRANTIES OR REPRESENTATIONS THAT THE FUNCTIONS CONTAINED IN THE LICENSED MATERIAL OR RELATED SERVICES WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE LICENSED MATERIAL WILL BE UNINTERRUPTED OR ERROR-FREE.
11. **LIMITATION OF LIABILITY.** EXCEPT FOR DIRECT DAMAGES WHICH OCCURRED DUE TO UNLAWFUL INTENT OR GROSS NEGLIGENCE OF APSS, APSS OR ITS AFFILIATES SUCH AS

SUPPLIERS AND RESELLERS SHALL IN NO EVENT BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, SPECIAL, INCIDENTAL, DIRECT, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOSS OF PROFITS, WORK INTERRUPTION, LOSS OF INFORMATION, OR ANY OTHER PECUNIARY LOSS), EVEN IF APSS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12. VIOLATION OF THE AGREEMENT. You understand that a violation of your obligations as contained in this Agreement will cause APSS serious damage. Thus, in case of any violation of one or several of your obligations as contained in this Agreement, APSS shall be entitled to seek judicial enforcement of the said obligations and/or the elimination of the violation of the said obligations. The right of APSS to claim for damages is expressly reserved.
13. TERMINATION. Without prejudice to any other rights or remedies that APSS and its suppliers may have, APSS or its suppliers or agents may terminate your rights under this Agreement if you fail to comply with any terms and conditions of this Agreement or with no cause within one month by the end of each calendar month. Immediately upon any such termination, you must destroy or return to APSS the original Licensed Material and all copies, and delete all program files from all computer or network server disks and memory devices. However, you and your Employees and any Other Staff remain obligated to keep all information and materials confidential as provided by this Agreement.
14. CONSENT TO USE OF DATA. You agree that APSS may collect and use training data and test results for scientific purposes and for facilitation to provide software updates, product support and other services. For scientific purposes, such data and test results will only be used in an anonymized form, which means that the information does not reveal the identity of you or of individual users. For providing software updates, product support and other services, data including personal data collected will not be used in anonymized form. You agree that APSS may collect, store and/or process data received from you, your Employees or Other Staff in jurisdictions with a lower level of data protection as provided in Switzerland or in your jurisdiction. By accepting the Offer you agree to the use, collecting, storing and processing of said data by APSS as defined in this Agreement and you undertake to inform Employees, Other Staff and entities which are using the Licensed Material or parts thereof about the rights of APSS of collecting, using, storing and processing of data.
15. ENTIRE AGREEMENT. This Agreement supersedes all prior contracts, agreements and understandings between the parties of this Agreement with regard to the matters contained herein and may not be modified or terminated orally. No modification, termination or attempted waiver shall be valid unless agreed in writing (including fax and email).
16. NO WAIVER. The failure of APSS to exercise or enforce any right or provision of this Agreement does not constitute a waiver of such right or provision. Any waiver of any provision of this Agreement will be effective only if in writing and signed by APSS.
17. ASSIGNMENT. The Parties acknowledge that this Agreement is a personal contract between the Parties. The Agreement and all rights and obligations may not be transferred, assigned or delegated by you without the prior written consent of APSS.
18. SEVERABILITY. If for any reason a court of competent jurisdiction finds any provision or portion of this Agreement to be unenforceable, the remainder of this Agreement will continue in full force and effect
19. GOVERNING LAW/JURISDICTION. This Agreement is governed by the laws of Switzerland under exclusion of its conflicts of laws provisions and without regard to the United Nations Convention on Contracts for the International Sale of Goods. The exclusive jurisdiction of this agreement is Zurich (Switzerland).
20. CONTACT: You may contact APSS with questions about this Agreement.