



iQ-Analyzer

Terms and Conditions

Support Document

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1 PREAMBLE

This Agreement governs the relationship between Licensee, a Business Entity, (hereinafter: Licensee) and Image Engineering GmbH & Co. KG, a duly registered company in whose principal place of business is Augustinusstr. 9d, 50226 Frechen, Germany (hereinafter: Image Engineering). This Agreement sets the terms, rights, restrictions and obligations on using iQ-Analyzer (hereinafter: The Software) created and owned by Image Engineering, as detailed herein.

2 SOFTWARE PROTECTION

Image Engineering maintains its right to protect its intellectual property by using modern advances in software protection against un-authorized use and software piracy.

Along with The Software, Licensee will receive a dongle that will serve as a security measure to enable Licensee's use of The Software (hereinafter: Dongle). In order to use The Software, Dongle must at all times remain connected to the hardware on which The Software is installed. Licensee acknowledges and agrees that The Software will not function properly if Dongle is removed from such hardware.

3 LICENSE GRANT

Image Engineering hereby grants Licensee a limited, non-assignable and non-sub licensable, perpetual, commercial, non-exclusive license, all with accordance with the terms set forth and other legal restrictions set forth in 3rd party software used while running The Software.

4 PERMITTED USES

4.1 INSTALLATION

Licensee may install and use the number of copies of The Software that Licensee has purchased or has been granted a license. If The Software is protected by Dongle, Licensee may install unlimited number of copies of The Software but only use The Software on the hardware with the attached Dongle according to clause 1 "Preamble".

4.2 EVALUATION USE

If Licensee has ordered an evaluation license, Licensee may use The Software only for evaluation purposes and only during the applicable evaluation period. Any other use of The Software or beyond the applicable evaluation period is strictly prohibited.

4.3 SERVER DEPLOYMENT

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Licensee may make copies of The Software solely for backup or archival purposes. Licensee agrees to maintain records of the location and use of each copy, in whole or in part. Each copy of The Software is copyrighted but unpublished by Image Engineering. Licensee agrees to reproduce and apply the copyright notice and proprietary notice of Image Engineering to all copies made hereunder, in whole or in part and in any form, of The Software.

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5 PROHIBITED USES

5.1 REVERSE ENGINEERING

Licensee is not permitted to decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code for The Software (except to the extent applicable laws specifically prohibit such restriction).

5.2 TRANSFER TO A 3RD PARTY

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Licensee recognizes that Image Engineering regards The Software as its proprietary information and as confidential trade secrets of great value. Licensee further agrees to treat the Licensed Programs with at least the same degree of care with which Licensee treats its own confidential information and in no event with less care than is reasonably required to protect the confidentiality of The Software.

7 TERM AND TERMINATION

7.1 TERM

This License Agreement is effective upon installation of The Software and will continue in force until terminated.

7.2 TERMINATION

- a) Licensee Right of Termination: Licensee may terminate the Agreement at any time by destroying all copies of The Software.
- b) Image Engineering Right of Termination: Image Engineering may terminate this Agreement if Licensee violates any of the terms and conditions of this Agreement and fails to correct such violation within ten (10) days after express written notice thereof from Image Engineering.
- c) Effect of Termination: In the event of termination, Licensee will immediately discontinue use of The Software. Within one (1) month after termination of this Agreement, Licensee will furnish a certificate to Image Engineering which certifies that, through its best effort and to the best of its knowledge, the original and all copies, in whole or in part and in any form, of The Software have been destroyed.

8 PAYMENT

In consideration of the License granted under clause 3 "License Grant", Licensee shall pay Image Engineering a fee, via any mean which Image Engineering may deem adequate. Failure to perform payment shall construe as material breach of this Agreement. License fees do not include any shipping, duties, bank fees, sales, use, excise or similar taxes due.

9 UPGRADES, UPDATES AND FIXES

Image Engineering may provide Licensee, from time to time, with Upgrades, Updates or Fixes, as detailed herein and according to his sole discretion. Licensee hereby warrants keeping The Software



up-to-date and installing all relevant updates and fixes, and may, at his sole discretion, purchase upgrades, according to the rates set by Image Engineering. Nothing in this Agreement shall require Image Engineering to provide Updates or Fixes.

9.1 UPGRADE

For the purpose of this license, an Upgrade shall be a material amendment in The Software, which contains new features and or major performance improvements and shall be marked as a new version number. For example, should Licensee purchase The Software under version 1x.x, an upgrade shall commence under number 2.0.0.

9.2 UPDATE

For the purpose of this license, an update shall be a minor amendment in The Software, which may contain new features or minor improvements and shall be marked as a new sub-version number. For example, should Licensee purchase The Software under version 1.1.x, an upgrade shall commence under number 1.2.0.

9.3 FIX

For the purpose of this license, a fix shall be a minor amendment in The Software, intended to remove bugs or alter minor features which impair The Software's functionality. A fix shall be marked as a new sub-sub-version number. For example, should Licensee purchase The Software under version 1.1.1, an upgrade shall commence under number 1.1.2.

10 MAINTENANCE

By purchasing The Software, Licensee is granted a one-year standard membership in the Maintenance program (hereinafter: The Maintenance) at no extra charge. The Maintenance is not automatically extended. The optional extension of The Maintenance will involve additional costs. Image Engineering shall contact Licensee in good time prior to expiry of The Maintenance and provide a non-binding offer for a one-year extension. Image Engineering offers two levels of The Maintenance:

10.1 STANDARD MAINTENANCE

Standard Maintenance includes following privileges at no additional charge:

- a) Upgrades of The Software according to clause 9.1 "Upgrade" (if The Maintenance has expired, upgrades of The Software must be purchased under the usual conditions without any discount)
- b) Telephone Support
- c) E-Mail support
- d) Attendance at regularly offered webinars
- e) Supply of chart layout and a reference data files for one (1) custom-made chart per year (the manufacturing of the chart may involve additional costs). The chart layout is considered as "final with no additional modifications required" if the Licensee can analyse a set of images that was provided to Image Engineering showing the custom made chart for the creation process. Image Engineering might refuse additional modifications or provide these modifications on a payed basis only after the status "final" was reached.

10.2 ADVANCED MAINTENANCE

Advanced Maintenance includes following privileges at no additional charge:



- a) Upgrades of The Software according to clause 9.1 "Upgrade" (if The Maintenance has expired, upgrades of The Software must be purchased under the usual conditions without any discount)
- b) Telephone Support
- c) E-Mail support
- d) Attendance at regularly offered webinars
- e) Supply of chart layout and a reference data files for up to five (5) custom-made charts per year (the manufacturing of the charts may involve additional costs). The chart layout is considered as "final with no additional modifications required" if the Licensee can analyse a set of images that was provided to Image Engineering showing the custom made chart for the creation process. Image Engineering might refuse additional modifications or provide these modifications on a payed basis only after the status "final" was reached.
- f) Supply of reference data for up to five (5) individually measured charts.
- g) Two (2) days training course with Licensee specific content. Online training courses and training courses at Image Engineering's office are provided at no additional charge. For training courses at Licensee's location, all travel and accommodation expenses shall be borne by Licensee.

11 SUPPORT

The Software is provided with limited support. Image Engineering shall provide support via electronic mail and on regular business days and hours.

11.1 BUG NOTIFICATION

Licensee may provide Image Engineering of details regarding any bug, defect or failure in The Software promptly and with no delay from such event. Licensee shall comply with Image Engineering's request for information regarding bugs, defects or failures and furnish him with information, screenshots and try to reproduce such bugs, defects or failures.

11.2 FEATURE REQUEST

Licensee may request additional features in The Software, provided, however, that

- a) Licensee shall waive any claim or right in such feature should feature be developed by Image Engineering;
- b) Licensee shall be prohibited from developing the feature, or disclose such feature request, or feature, to any 3rd party directly competing with Image Engineering or any 3rd party which may be, following the development of such feature, in direct competition with Image Engineering;
- c) Licensee warrants that feature does not infringe any 3rd party patent, trademark, trade-secret or any other intellectual property right;
- d) Licensee developed, envisioned or created the feature solely by himself.

12 REPLACEMENT POLICY FOR DAMAGED, LOST AND STOLEN DONGLES

12.1 DEFECTIVE DONGLE (LICENSEE WITH CURRENT MAINTENANCE)

If a Dongle fails or becomes defective, it may be replaced as follows:

- a) There are no fees for the replacement of a defective Dongle.
- b) Licensee shall return the defective Dongle to Image Engineering by registered mail as soon as possible, but not later than three (3) months after express written declaration of damage. Once the Dongle has been received by Image Engineering, a replacement Dongle will be issued



with the corresponding license to authorize the software products that are covered under the current maintenance contract for the Dongle being replaced.

- c) If Licensee fails to return the defective Dongle within the allotted time period, Image Engineering, in its sole discretion, may refuse the replacement.

12.2 DEFECTIVE DONGLE (LICENSEE WITH EXPIRED MAINTENANCE)

If a Dongle fails or becomes defective, it may be replaced as follows:

- a) Licensee shall pay Image Engineering a fee of 200.00 EUR for the replacement of a defective Dongle.
- b) Licensee shall contact Image Engineering for a sales quotation for a replacement Dongle. The sales quotation is to be used to generate a purchase order for the necessary amount plus any applicable costs, i.e. taxes and shipping. When Image Engineering receives the purchase order or required form of payment, the replacement Dongle file will be shipped to the Licensee.

12.3 LOST OR STOLEN DONGLE

If a Dongle is lost or stolen the following shall apply:

- a) Licensee shall contact Image Engineering without undue delay to notify Image Engineering that the Dongle is no longer in its possession.
- b) Licensee shall pay Image Engineering a penalty fee in the amount of ten (10) percent of the current list price of the lost or stolen license without any discount plus any applicable costs, i.e. taxes and shipping.
- c) When Image Engineering receives the penalty fee payment, the replacement Dongle will be shipped to the Licensee.
- d) If a Dongle reported as lost or stolen is found after the replacement Dongle has been shipped to Licensee, Licensee shall return it to Image Engineering without undue delay.
- e) If a Dongle reported as lost or stolen is in use again for any reason at any location, Licensee shall pay Image Engineering a penalty fee in the amount of two hundred (200) percent of the current list price of the license in use without any discount.

13 LIABILITY

The Software is provided under an "AS-IS" basis. Image Engineering shall never, and without any limit, be liable for any damage, cost, expense or any other payment (including, without limitation, incidental, direct, indirect, special or consequential damages, damages for loss of business profits, business interruption, loss of business information, or other pecuniary loss) incurred by Licensee as a result of Software's actions, failure, bugs and/or any other interaction between The Software and Licensee's end-equipment, computers, other software or any 3rd party, end-equipment, computer or services. Moreover, Image Engineering shall never be liable for any defect in source code written by Licensee when relying on The Software.

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Licensee hereby states that he inspected The Software thoroughly and found it satisfactory and adequate to his needs, that it does not interfere with his regular operation and that it does meet the standards and scope of his computer systems and architecture. Licensee found that The Software interacts with his environment and that it does not infringe any of End User License Agreement of any software Licensee may use in performing his services. Licensee hereby waives any claims regarding The Software's incompatibility, performance, results and features, and warrants that he inspected The Software.

15 NO REFUNDS

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16 INDEMNIFICATION

Licensee hereby warrants to hold Image Engineering harmless and indemnify Image Engineering for any lawsuit brought against it in regards to Licensee's use of The Software in means that violate, breach or otherwise circumvent this license, Image Engineering's intellectual property rights or Image Engineering's title in The Software. Image Engineering shall promptly notify Licensee in case of such legal action and request Licensee's consent prior to any settlement in relation to such lawsuit or claim.

17 GOVERNING LAW, JURISDICTION

Licensee hereby agrees not to initiate class-action lawsuits against Image Engineering in relation to this license and to compensate Image Engineering for any legal fees, cost or attorney fees should any claim brought by Licensee against Image Engineering be denied, in part or in full.

18 SEVERABILITY

If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.