

**TEOS END-USER LICENSE AGREEMENT**  
**REV June 2022**

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**PREAMBLE**

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- C. If You do not accept the terms of this AGREEMENT: DO NOT install and/or use the Software, or use the Hardware or a Virtual Machine on which the Software is pre-installed.

**LICENSE TERMS AND CONDITIONS**

1. DEFINITIONS

As used in this AGREEMENT, Capitalized terms not defined above shall have the following definitions:

- 1.1 "Add-On Software" means any Software or Software components that function or execute with one or more Third-Party Programs.
- 1.2 "Blue and Red" means Blue and Red B.V. with the following address details: Pallasweg 14, 8938 AS, Leeuwarden the Netherlands.
- 1.3 "TEOS SAAS or TEOS Lite environment" means the Software As A Service environment hosted in the S3 cloud of Amazon with the data stored in Frankfurt, Germany
- 1.4 "TEOS Communication Protocol" means the digital communication protocol developed by Blue and Red to provide communication between TEOS Manage and connected devices which run the Software.
- 1.5 "Hardware" or a "Virtual Machine" means hardware or a virtual machine on which the Software is pre-installed.
- 1.6 "Develop" (or any conjugation thereof) means author, conceive, create, discover, design, engineer, prepare, reduce to practice, or otherwise develop.
- 1.7 "Device" means computer network compatible devices.

- 1.8 “Distribute” (or any conjugation thereof) means sale, license, distribute, provide online access or otherwise make available (or such conjugation as the context may require).
- 1.9 “Effective Date” means the date that the End-User has accepted this AGREEMENT, such as by checking the “I Agree” checkbox.
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  - (b) *only as authorized in this AGREEMENT and in accordance with any related explanatory files and written materials provided by Blue and Red, directly or indirectly (via distributors) in the download file package containing the Software (or on a USB disk or other file transfer means)*
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- 3.1 *Authorized Parties.*
- (a) You must be an End-User of a Device obtained in the normal course of business from manufacturer, or a manufacturer's authorized representative or dealer, who is licensed to implement the TEOS Communication Protocols in order to install or use the Software.
- (b) If you are a business or organization, you agree that upon request from Blue and Red or its authorized agent, you will within thirty (30) days of the request fully document and certify that use of any and all Software at the time of the request is in conformity with your valid license(s) from Blue and Red.

- 3.2 *Restrictions.* You or any third party may not:
- (a) sell, lease, lend, rent, or distribute (including through the Internet) the Software;
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  - (d) Remove, alter, or obscure any product identification, copyright, trademark, or other intellectual property notices embedded within the Software or included in any related explanatory files and written materials provided by Blue and Red.

#### 4. PRIVACY POLICY

- 4.1 *Software Registration.* Download and/or operation of Software requires you to register by providing certain information and to accept this AGREEMENT.
- 4.2 *End-User Data Base.* Blue and Red will maintain a database of all registered End-Users including contact information.
- 4.3 Blue and Red's privacy policy is accessible at <http://www.blueandred.nl/privacystatement.pdf>

#### 5. WARRANTY DISCLAIMER AND LIMITATION OF LIABILITY

- 5.1 *Warranty Disclaimer.*
- (a) Blue and Red specifically disclaims any and all representations and warranties, either express or implied, including those of MERCHANTABILITY, MERCHANTABILITY QUALITY, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, and FITNESS FOR A PARTICULAR PURPOSE.
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- 5.2 *Limit of Liability.* In no event will Blue and Red be liable to You for any loss of use, interruption of business, or any direct, indirect, special, incidental, or consequential damages of any kind (including lost profits) regardless of the form of action whether in contract, tort (including negligence), strict product liability or otherwise, even if Blue and Red has been advised of the possibility of such damages.
- 5.3 *Interpretation of Warranty Disclaimer and Liability Limitation.* If the disclaimer of warranty and limitation of liability provided herein cannot be given local legal effect according to their terms, a reviewing court shall apply local law that most closely approximates an absolute waiver of all civil liability in connection with the Software.

#### 6. GENERAL PROVISIONS

- 6.1 **Governing Law and Dispute Resolution.** This AGREEMENT shall be governed and construed in accordance with the laws of the Netherlands, without regard to conflicts of laws principles. In any action to enforce this AGREEMENT, the prevailing Party shall be entitled to reasonable costs and reasonable attorneys' fees from the non-prevailing Party. In the event of any dispute arising between the Parties under this AGREEMENT, the Parties agree that such dispute shall be resolved informally, if possible, and failing an informal resolution, then through binding arbitration.
- (a) For the avoidance of doubt, nothing in this Section (Governing Law and Dispute Resolution) shall prevent either Party from seeking injunctive relief from a court of appropriate jurisdiction.
  - (b) All disputes arising out of or in connection with this AGREEMENT shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.
  - (c) The arbitration proceeding shall be conducted in Leeuwarden, the Netherlands.
  - (d) The language to be used in the arbitration proceeding shall be English.
  - (e) The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this AGREEMENT.
- 6.2 ***Injunctive Relief.*** Each Party acknowledges that its breach of this AGREEMENT may cause irreparable damage to the other Party and hereby agrees that the other Party shall be entitled to seek injunctive relief under this AGREEMENT by a court of competent jurisdiction.
- 6.3 **Entire Agreement.**
- (a) This AGREEMENT constitutes the entire agreement between you and Blue and Red with respect to the subject matter hereof and supersedes all prior and contemporaneous representations, understandings, and/or agreements, whether oral or written, relating to the subject matter hereof.
  - (b) All prior or contemporaneous representations, understandings or agreements, whether oral or written, that are not expressly set forth within this AGREEMENT are hereby deemed waived, superseded, and abandoned.
- 6.4 ***Severability.*** The invalidity or unenforceability of any provision of this AGREEMENT shall not affect any other provision of this AGREEMENT, and the remaining provisions shall continue with the same effect as if such unenforceable or invalid provision had not been included in this AGREEMENT.
- 6.5 ***No Third Party Beneficiaries.*** This AGREEMENT is for the benefit of, and will be enforceable by, the Parties only. This AGREEMENT is not intended to confer any right or benefit on any third party. No action may be commenced or prosecuted against a Party by any third party (including, without limitation, affiliates) claiming as a third party beneficiary of this AGREEMENT or the licenses granted herein.

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