

**END-USER LICENSE  
AGREEMENT**

PRODUCT:  
***PERCEPTION STUDIO***

**Perception Park GmbH**

Nikolaipplatz 4,  
A-8010 Graz  
Austria

Email: <[info@perception-park.com](mailto:info@perception-park.com)>

WEB: <<http://www.perception-park.com>>

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These End-user License Agreement governs the legal framework regarding the licensing and use of the product “*Perception Studio*” (defined below) and related software applications, products and/or technologies (*as the case may be*) – the “**EULA Perception Studio**” – by customers of Perception Park as end users. The EULA Perception Studio form an integral part of the General Terms and Conditions of Perception Park as amended from time to time (the “**General Terms and Conditions**”) <http://www.perception-park.com>

Please note that nothing herein shall render the provision of the General Terms and Conditions inoperative, unless explicitly stated otherwise. Particular provisions in these EULA Perception Studio that refer to the product “*Perception Studio*” only, may replace controversy, more generic provisions in the General Terms and Conditions, if any. In any other case, the EULA Perception Studio and the General Terms and Conditions shall mutually apply.

**I.  
Definitions**

*Irrespective of and in addition to the definitions made hereunder and used repeatedly, the following important shall have the meaning indicated below.*

- Customer** means customers of Perception Park licensing Perception Studio and related product/software applications and/or –tools, plug-ins in particular (see Licensed Software below), subject to the framework conditions set forth herein.
  
- Contractual Conditions** mean the EULA Perception Studio and the General Terms and Conditions mutually applicable to the Customers hereunder.
  
- Customer Plug-Ins** mean plug-ins for the Perception Studio created by Customers using the Software Development Kit. Customer Plug-Ins may lead to Customer Enhancements.
  
- Customer Enhancements** mean any enhancement or other progression of the Licensed Software (e.g. Customer Plug-Ins) by Developer.
  
- Developer** means a Customer using the Software Development Kit to create new Customer Plug-Ins to the Perception Studio.
  
- Demo Software** means Licensed Software temporarily available to Customers for test- and demonstration purposes. Demo-Software will be free of charge for a period of one month upon a formal request / order from Customer.
  
- Documentation** means all materials in written, computer readable or other form containing information about the Licensed Software that accompany the Licensed Software, or that Perception Park discloses to Customers (e.g. user manuals).
  
- Licensor** means Perception Park.
  
- Licensee** means any Customers being granted a license to the Licensed Software subject to this EULA Perception Studio.
  
- License** means the license to the Licensed Software granted to user subject to the Contractual Conditions.
  
- Licensed Software** means any of the software and related software application referring to the Perception Studio, including but not limited to the Demo-Software, basis plug-ins such as “Acquire”, “Select”, “Edit”, “Explore”, “View”, “Configure”, “Setup” being selected by Customer, the Perception System, Perception Wiki and Perception Park Enhancements as well as Customer Plug-Ins. Once available and relevant for Customer, Perception Data shall also form part of the Licensed Software, thus be subject of a license granted by Perception Park hereunder.

**Perception**

**Data** means any data made available to customer or created by Customer, using the Perception Studio. Perception Data will be collected and customized via databases, which may also serve for interactions and communications between Customers. Customization of Perception Data by Customer to third parties (any person that is not a Customer) may only be effected through Perception Park.

**Perception Studio**

*Operating environment and/or plug-in platform for combined Software applications and use of Perception Tools.*

**Software Development**

**Kid** means specific tools and software application relevant for Developers to create and/or develop Customer Plug-Ins.

**Perception Park**

**Enhancements** mean any enhancement or other progression of the Licensed Software (plug-ins etc) by Perception Park.

**Perception**

**Box:** means a data processing unit (hardware) which enables real-time processing of hyperspectral data.

**Perception**

**System** consists of the Perception Box and the Perception Studio including the plug-ins "ACQUIRE" and "MODEL". By configuring the Perception Box with the Perception Studio the Perception System allows Chemical Color Imaging. (<http://www.perception-park.com>).

**Perception**

**Wiki** means the user manuals to the Perception Studio and related plug-ins, the Perception System as well as reference manuals, technical notes and application notes including but not limited to customized information on the use the Licensed Software and underlying technologies (by means of training documents, FAQs, data etc), as amended from time to time. The Perception Wiki may as well include relevant contacts to component manufacturers and –suppliers, as the case may be.

**Perception**

**Park:** Perception Park GmbH, Nikolaiplatz 4, 8010 Graz, Austria.

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**§ 1****Scope of application,  
Conclusion of Contract**

- (1) **Contractual Conditions.** Even if not expressly incorporated by reference, this EULA Perception Studio applies in coexistence with the General Terms of Conditions mutually forming the Contractual Conditions. By contracting with Perception Park, Customer acknowledges its notice of these Contractual Conditions and confirms acceptance to the legal- and commercial terms therein.
- (2) **Execution of Contract.** Contractual relations between the Customer and Perception Park are established by virtue of the Customer's written (electronic) order of Licensed Software and formal confirmation of acceptance of the Contractual Conditions.

AS CUSTOMER, YOU ACCEPT AND AGREE TO BE BOUND BY THE TERMS OF THIS EULA PERCEPTION STUDIO AND THE CONTRACTUAL CONDITIONS BY SELECTING THE "ACCEPT" OPTION AND DOWNLOADING, INSTALLING, USING, OR COPYING THE LICENSED SOFTWARE. YOU MUST AGREE TO ALL CONTRACTUAL CONDITIONS BEFORE YOU WILL BE ALLOWED TO DOWNLOAD OR OTHERWISE EXECUTE A RESPECTIVE LICENSE. IF YOU DO NOT AGREE TO THE CONTRACTUAL CONDITIONS, YOU MUST NOT INSTALL, USE, OR COPY THE LICENSED SOFTWARE WHATSOEVER.

- (1) **Rejection.** Perception Park may reject a Customer order if
  - (a) there is reasonable doubt with regard to the Customer's identity, legal capacity or legal personality;
  - (b) there is reasonable suspicion that the Licensed Software or other Software/products made available by Perception Park in the context of processing the order are abusively used;
  - (c) circumstances exist that would render a contractual relationship with the Customer unreasonable from Perception Park point of view.

- (2) **Proprietorship.** The Licensed Software is intellectual property of Perception Park and may neither be reproduced nor made available to third parties (as the case may be). If no contractual relation occurs, any (pre-) contractual items, documentations, proposals, test programs etc. provided to the Customer shall be returned or deleted at request and may no longer be used.
- (3) **No customized Software.** The Customer is aware of the essential functional features of the Licensed Software and therefore shall bear the risk that it may not meet its desires and/or (operational) requirements, as the case may be.

*If and to the extent relevant, section 1 and 2 of the General Terms and Condition apply accordingly.*

## § 2 Grant of License

- (1) **License.** On the terms and conditions of this Agreement, Perception Park as Licensor grants to Customer as Licensee and such Licensee accepts a non-exclusive, nontransferable, non-sublicensable right and license to install and use the Licensed Software in machine-readable object code form only in the configuration and to the scope identified in the Documentation being sent to Licensee electronically upon placing an order according to section 1 para (2).
- (2) **Documentation.** Subject to all Contractual Conditions, Licensor further grants Licensee a nonexclusive, nontransferable, non-sublicensable right and license to the Documentation only in connection with Licensee's use of the Licensed Software.
- (3) **Back-Up Copies.** Licensee may make one copy of the Licensed Software solely for back-up or archival purposes, provided that such copy must contain all proprietary notices affixed to or appearing in the original copy.
- (4) **Limitations.** Licensed Software may only be used for Licensee's internal business purposes. Unless Licensor expressly permits a greater number, Licensee (but not any other person) may install and use the Licensed Software on one computer/working fluid, provided the same Licensee is the primary user of these computers and does not share the license with any unauthorized person. Use of any copy of the Licensed Software shall otherwise comply with the Contractual Conditions. No copies of the Licensed Software may be installed, used or retained on any computer for which Licensee is not (or is no longer) the primary user.
- (5) **License Control.** Licensee acknowledges that the Licensed Software may contain code or require devices that detect or prevent unauthorized use of, or disable, the Licensed Software, and Licensee agrees not to circumvent or disable such code or devices.
- (6) **Payments.** Licensee shall pay (or cause to be paid to) Licensor any and all initial and recurring fees for the Licensed Software, excluding the Demo-Software, which will be offered as free test version for one month, in the amounts and at the times agreed by Licensor during the purchase process (see section 9). In case of a customization of Perception Data by Customer to third parties (any person that is not a Customer) additional license fees might occur.
- (7) **Hazardous Environments.** The Licensed Software is not designed or intended for use in online control equipment in environments requiring fail-safe performance, such as the operation of nuclear facilities, aircraft communication or control systems or life support systems, in which software failure could lead to personal injury or severe property or environmental damage. Licensee warrants that it will not use or allow the use of the Licensed Software for such purposes.
- (8) **License to Perception Park Enhancements** Subject to the Contractual Conditions, Licensor grants to Licensee a non-assignable, nontransferable, royalty-free license, without the right to sublicense, to use the Perception Park Enhancements solely with the Licensed Software for Customer's internal business, research, or educational purposes. In addition, subject to the Contractual Conditions, Licensor grants to Licensee a non-assignable, nontransferable, royalty-free license to modify, reproduce, and distribute the Perception Park Enhancements to create Customer Enhancements (see below) solely for use with the Licensed Software.

THE PERCEPTION PARK ENHANCEMENTS ARE PROVIDED TO CUSTOMER ON AN 'AS IS' AND 'WHERE IS' BASIS AND WITHOUT WARRANTY OF ANY TYPE OR KIND. PERCEPTION PARK AND ITS THIRD-PARTY LICENSORS HEREBY EXPRESSLY DISCLAIM AND EXCLUDE ALL WARRANTIES AND CONDITIONS, WHETHER STATUTORY, EXPRESS, IMPLIED OR OTHERWISE, WITH RESPECT TO THE PERCEPTION PARK ENHANCEMENTS, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS.

- (9) **License to Customer Enhancements.** If Customer Enhancements are developed on the basis of the Software Development Kit or any other software of Licensor, including but not limited the Licensed Software (e.g. Customer Plug-Ins), such Customer Enhancements shall, as far as legally permissible, transfer to Perception Park to become part of the Licensed Software. However, Customer Enhancements that are eventually created without any use of or reference to the Licensed Software (“Independent Customer Enhancements”), Customer/Developer retains full legal ownership to such Customer Enhancements, however, grants to Perception Park a perpetual, irrevocable, transferable, royalty-free license to modify, reproduce, and distribute the Customer Enhancements, with the right to sublicense through multiple tiers of distribution. Customer herewith warrants that it is the unlimited and unencumbered sole legal owner or legitimate user, and owns or possesses sufficient legal rights without any conflict with or infringement of the rights of others to the Independent Customer Enhancements and that such Independent Customer Enhancements are free of third party rights and maybe

*If and to the extent relevant, section 6 of the General Terms and Condition shall apply.*

### **§ 3 Support Services**

- (1) **Support.** Licensor will use commercially reasonable efforts to provide Licensee with maintenance and support for the Licensed Software in accordance with its standard practices, as amended from time to time (Support Services). Licensor shall have no obligation to support any version other than the current and immediate prior version of the Licensed Software. Licensee agrees that Licensor may charge in accordance with its then current policies for any support services resulting from (a) problems, errors or inquiries relating to any non-Licensor-provided hardware, system, service or other content or software or (b) use of any unsupported version of the Licensed Software.
- (2) **Updates.** Licensor will provide Licensee with any update that it makes generally available to its other licensees.
- (3) **Issue Tracking.** Licensor reserves the right, at its own discretion, to implement an issue tracking system<sup>1</sup> to facilitate support and maintenance services, as the case may be.

*If and to the extent relevant, section 9 of the General Terms and Condition shall apply.*

### **§ 4 Confidentiality & Privacy Policy**

- (1) **Scope.** The term Confidential Information means all trade secrets, know-how, software and other financial, business or technical information of Licensor or any of its suppliers that is disclosed by or for Licensor in relation to this Agreement, but not including any information Licensee can demonstrate is (a) rightfully furnished to it without restriction by a third party without breach of any obligation to the Licensor, (b) generally available to the public without breach of this Agreement or (c) independently developed by it without reliance on such information. The Licensed Software forms part of Licensor’s Confidential Information.
- (2) **Confidentiality.** Except for the specific rights granted by the Contractual Conditions, Licensee shall not possess, use or disclose any Confidential Information, including in particular, information disclosed with regard to the Perception System or Perception Wiki, without Licensor’s prior written consent, and shall use reasonable care to protect the Confidential Information. Licensee shall be responsible for any breach of confidentiality by its employees or vicarious agents.
- (3) **Data Protection.** Perception Park respects privacy and protection of personal data, thus complies with applicable data protection provisions. With respect to lawful use / processing of data, Customers shall declare themselves as follows:

BY USING SERVICES OF PERCEPTION PARK I CONFIRM AND AGREE TO THE COLLECTION AND USE OF PERSONAL DATA AND OTHER INFORMATION. CUSTOMERS WHICH DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS PRIVACY POLICY, SHALL NOT USE THE WEBSITE OF PERCEPTION PARK.

*If and to the extent relevant, section 11 of the General Terms and Condition shall apply.*

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<sup>1</sup> Such system provides an interface where Customer may directly interact with Perception Park and place questions to with regard to a software issues or particular problems that eventually arise.

**§ 5**  
**Proprietary Rights**

- (1) **Restrictions.** Except and only to the extent expressly specified in this Agreement, Licensee shall not (a) use any Confidential Information (section 3) to create any software, content or documentation that is similar to the Licensed Software, (b) disassemble, decompile, reverse engineer or otherwise try to discover any source code or underlying structures, ideas or algorithms of the Licensed Software or encryption for the content (except and only to the extent these restrictions are expressly prohibited by applicable statutory law), (c) encumber, lease, rent, loan, sublicense, transfer or distribute the Licensed Software, (d) copy, adapt, merge, create derivative works of, translate, localize, port or otherwise modify the Licensed Software, (e) use the Licensed Software in an automated process, (f) use the Licensed Software, or allow the transfer, transmission, export or re-export of all or any part of the Licensed Software or any product thereof, in violation of any export control laws or regulations or (g) permit any third party to engage in any of the foregoing proscribed acts. Licensee shall not use the Licensed Software for the benefit of any third party (e.g., time-share or service bureau arrangement) without Licensor's prior written consent, at its discretion.
- (2) **No Implied License.** Except for the limited rights and license expressly granted hereunder, no other license is granted, no other use is permitted and Licensor (and its suppliers) shall retain all right, title and interest in and to the Licensed Software (and all patent rights, copyright rights, trade secret rights and all other intellectual property and proprietary rights embodied therein).
- (3) **Markings.** Licensee shall not alter, obscure or, unless confirmed by Licensor, remove any trademark, patent notice or other proprietary or legal notice displayed by or contained in the Licensed Software or packaging.
- (4) **Third Party Software.** The Licensed Software may operate or interface with software or other technology ("In-Licensed Technology") that is in-licensed from, and owned by, third parties (Third Party Licensors). Licensee agrees that (a) it will use In-Licensed Technology in accordance with this Agreement and any other restrictions specified in the applicable license set forth or referenced in the Documentation, (b) no Third Party Licensor makes any representation or warranty to Licensee concerning the In-Licensed Technology or Licensed Software and (c) no Third Party Licensor will have any obligation or liability to Licensee as a result of this Agreement or Licensee's use of the In-Licensed Technology or Licensed Software.

*If and to the extent relevant, section 6 of the General Terms and Condition shall apply.*

**§ 6**  
**Warranty and Disclaimers**

THE LICENSED SOFTWARE AND SUPPORT SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. LICENSOR DOES NOT WARRANT THAT THE LICENSED PRODUCTS OR SUPPORT SERVICES WILL MEET LICENSEE'S REQUIREMENTS OR THAT THEY WILL BE UNINTERRUPTED OR ERROR-FREE. TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSOR HEREBY DISCLAIMS (FOR ITSELF AND ITS SUPPLIERS) ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE LICENSED SOFTWARE AND SUPPORT SERVICES INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, QUIET ENJOYMENT, INTEGRATION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

*If and to the extent relevant, section 8 of the General Terms and Condition shall apply.*

**§ 7**  
**Infringement**

If a third party initiates a formal lawsuit against Licensee, claiming that the Licensed Software directly infringe any copyrights or misappropriate any trade secrets, Licensor will pay the costs and damages that a court (having final jurisdiction) awards against Licensee in the lawsuit, to the extent that the costs and damages directly relate to the claim. Alternatively, Licensor will pay the costs and damages that Licensor agrees to in a written settlement of the lawsuit. Licensor's obligations under this Section apply only if Licensee (a) promptly notifies Licensor of the lawsuit in writing, (b) allows Licensor to control the defense of the lawsuit and any related settlement negotiations and (c) cooperates with Licensor and, at Licensor's request and expense, assists Licensor in the defense or settlement of the lawsuit. Also, Licensor's obligations under this Section do not apply to any infringement claim based upon: (i) any use of the Licensed Software not in accordance with the Contractual Condition; (ii) any use of the Licensed Software in combination with other products, equipment, software, or data that Licensor does not supply; (iii) any use of any release of the Licensed Software other than the most current release made available to Licensee or (iv) any modification of the Licensed Software by any person other than Licensor. This Section states Licensor's entire liability and Licensee's sole and exclusive remedy for infringement claims and actions.

## § 8

### Limitation of Liability

IN NO EVENT SHALL LICENSOR (OR ITS SUPPLIERS) BE LIABLE CONCERNING THE SUBJECT MATTER OF THIS EULA PERCEPTION STUDIO, REGARDLESS OF THE FORM OF ANY CLAIM OR ACTION (WHETHER IN CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), FOR ANY (A) MATTER BEYOND ITS REASONABLE CONTROL, (B) LOSS OR INACCURACY OF DATA, LOSS OR INTERRUPTION OF USE OR COST OF PROCURING SUBSTITUTE TECHNOLOGY, GOODS OR SERVICES, (C) INDIRECT, PUNITIVE, INCIDENTAL, RELIANCE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF BUSINESS, REVENUES, PROFITS OR GOODWILL OR (D) AGGREGATE DAMAGES, IN EXCESS OF THE AMOUNT PAID TO LICENSOR FOR THE LICENSED SOFTWARE OR SUPPORT SERVICE THAT GAVE RISE TO THE CLAIM DURING THE PRIOR 12-MONTH PERIOD, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS ARE INDEPENDENT FROM ALL OTHER PROVISIONS OF THIS EULA PERCEPTION STUDIO AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF ANY REMEDY PROVIDED HEREIN. LICENSOR SHALL BEAR NO LIABILITY WHATSOEVER FOR SERVICES PROVIDED TO ENDUSERS / CUSTOMERS ON THE BASIS OF THE LICENSED SOFTWARE INCLUDING BUT NOT LIMITED TO SYSTEM PROGRESSIONS OR CONFIGURATIONS OFFERED TO AND USED BY CUSTOMER.

*If and to the extent relevant, section 10 of the General Terms and Condition shall apply.*

## § 9

### Fees and Payment

- (1) **Fees.** The applicable license fee for the Licensed Software is either specified on the website of Perception Park ([www.perception-park.com](http://www.perception-park.com)) in the specific price proposal provided by Licensor to Licensee upon placing an order according to section 1 para (2). The payment terms and conditions for the license fee payable are further specified on the invoice or in the specific price proposal provided by Licensor to Licensee.
- (2) **Payment terms and conditions.** All fees paid by Licensee are non-refundable except as explicitly permitted by Licensor. Licensor may terminate this Agreement and immediately stop any services to Licensee if the billing or contact information is false, fraudulent, or invalid.

*If and to the extent relevant, section 7 of the General Terms and Condition shall apply.*

## § 10

### Term and Termination

- (1) **Term.** The agreement between Perception Park and Customer underlying the Contractual Conditions shall commence upon placement of an order according to section 1 para (2) and continue in effect until terminated as provided herein.
- (2) **Termination.** Perception Park and Customer may terminate this Agreement at any time for their convenience upon written notice. This Agreement shall automatically terminate without further action by any party, immediately upon any material breach by Licensee of any limitation or restriction set forth herein.
- (3) **Effects of Termination.** Upon termination of this Agreement for any reason, all rights, obligations and licenses of the parties hereunder shall cease, except that (a) all obligations that accrued prior to the effective date of termination (including without limitation, any payment obligation) and any remedies for breach of this Agreement shall survive any termination, (b) Licensee shall promptly return or destroy all of the Licensed Software and other tangible Confidential Information, and permanently erase all Confidential Information from any computer and storage media and (c) the provisions of sections 2 para 4 (Limitations), 2.5 (Payments), 4 (Confidentiality), 5 (Proprietary Rights), 6 (Warranty Disclaimers), 8 (Limitation of Liability), 9.3 (Effects of Termination), 10 (General Provisions) shall survive.

**§ 11**  
**No Assignment**

The transfer or assignment of rights and obligations hereunder by Customer shall require Perception Parks' written consent.

**§ 12**  
**General Provisions**

- (1) **No assignment.** The transfer of this contract and the assignment of rights and obligations hereunder shall require the other party's written consent.
- (2) **Applicable Law.** The EULA Perception Studio shall be governed by and construed in accordance with Austrian law, to the exclusion of the UN Sales Convention. All disputes arising out of or in connection with the EULA Perception Studio shall be referred to the court in Graz having jurisdiction in commercial matters.
- (1) **Amendments.** Perception Park may amend the EULA Perception Studio at any time and shall notify the Customer in writing of the amendments' content and the proposed entry into force at least one month prior to the proposed entry into force of the amended EULA Perception Studio. The Customer may object to these amendments. Unless it raises its objection prior to the proposed entry into force, the amended EULA Perception Studio shall become effective as of the disclosed date. Any amendment of and modification to the EULA Perception Studio and to any other agreement shall be valid only if confirmed by Perception Park in writing.
- (2) **Severability.** Should any term hereof be or become ineffective, invalid or non-enforceable, this shall not affect the effectiveness, validity or enforceability of the remaining terms hereof. The invalid or non-enforceable term shall be replaced by a valid and enforceable term, the economic purpose and economic result of which closest reflects the invalid term and the parties' original intent. The parties undertake to immediately record in writing and sign such replacing term.