

# End User License Agreement for the OD-OS Navigate Application Provided Free of Charge

By registering for the OD-OS Navigate Application (hereinafter: "App") on our website [www.od-os.com/navigate/registration/](http://www.od-os.com/navigate/registration/), or by clicking "Accept" when this End User License Agreement is first shown when starting the App, or when downloading the App from an App-Store whereby this EULA is included in the contractual relationship according to the terms and conditions of that App-Store (whichever comes first), a contract is concluded between you (hereinafter: "Licensee", "You" or "User") and us, OD-OS GmbH, Warthestraße 21, 14513 Teltow, Germany (hereinafter: "Licensor" or "OD-OS"), for the use of the App under the following terms and conditions (hereinafter: "Agreement").

Access to the Navigate app is restricted to a dedicated professional user group. The App is therefore expressly not made available to consumers within the meaning of Sec. 13 of the German Civil Code (BGB).

## 1. The App

### 1.1. Features and contents

- 1.1.1. The App provides an interactive platform where users can teach themselves or each other in decision making for retina laser treatments. For this purpose, the App allows to import and to annotate Retina-images to find an approach to retinal laser treatment. The self-created treatment concepts can be shared with other users. In addition, the app contains demo content provided by doctors on which various initial treatment scenarios (in the form of various eye diseases) can be seen. The app does not contain user training in the sense of suggestions that teach an optimal treatment approach.
- 1.1.2. The appearance of the graphic editing function for retina images, which is included as a tool in the App, may differ from the user interface of real retina laser systems. OD-OS makes no claim to transferability of the functions. Furthermore, the App is only to be understood as an orientation aid for self-training and does not replace professional medical guidance or training.
- 1.1.3. In no way does the App constitute a treatment recommendation. Also, the App does not show any correlation between the planned treatment and a possible treatment outcome.
- 1.1.4. The demo content provided also does not show any sample treatments, but only provides the source material for a self-guided treatment approach.
- 1.1.5. Users can share their self-created treatment concepts with other users within the App. Again, OD-OS has no influence on these treatment concepts and is therefore not responsible for the planning or medical outcome of any actual treatment.

### 1.2. Technical requirements

- 1.2.1. The App has been developed for the use via Web-browser (Google Chrome and Apple Safari), iOS (Version 14.0 or higher) and Android OS (Version 11.0 or higher) devices (hereinafter: qualified devices).
- 1.2.2. The Licensor provides the App via Web-browser on its website, available at [www.od-os.com/navigate/registration/](http://www.od-os.com/navigate/registration/), as well as for download in the App-Stores of Apple and Google. The mobile phone provider may charge for the data transfer to the qualified device. Delays in the provision of the software by the respective App-Store are outside the Licensor's sphere of responsibility and therefore do not justify any claims by the Licensee against the Licensor or any right of the Licensee to terminate the contract.
- 1.2.3. Even though the Licensor intends to keep the App updated so that it complies with modified/new versions of operating systems and mobile devices, no right to claim such update is granted to you.
- 1.2.4. In order to be able to fully use the functions of the App, the qualified device on which the App runs must have an internet connection. This must be provided by the user and is not the subject of the App.

## **2. Scope of License**

- 2.1. The Licensor provides the App to the Licensee and grants the Licensee a non-exclusive, non-sublicensable, revocable, non-transferable right to install and use the App in the form of the object code on qualified devices in accordance with the terms of this Agreement.
- 2.2. Your right to use the App extends to all the associated functions within the scope agreed in this Agreement. No further rights are granted to the App. In this respect, Licensor remains the sole proprietor of all rights.
- 2.3. Licensor reserves the right to modify or discontinue the App at any time in whole or in part and to terminate your access to the App at any time. Licensor may also terminate or suspend your user account for inactivity, which is defined as failing to sign-in to the App for an extended period of time, as determined by Licensor. The termination of your access to the App or your user account also terminates this end user license agreement and thereby terminates the license at any time as determined by Licensor.
- 2.4. This Agreement will also govern any updates of the App provided by Licensor that replace and/or supplement the original App, unless such update is accompanied by a separate license agreement in which case the terms of that license agreement will govern.
- 2.5. You may not distribute or make the App available to third parties, lend, rent, lease, sell or otherwise redistribute the App.
- 2.6. You may not copy or modify, decompile, reverse engineer, disassemble, translate, integrate, adapt, create derivative works or updates of, or attempt to derive the source code of the App, or any part thereof. Furthermore, you are not permitted to remove or damage any protective mechanisms on the App.

2.7. The granting of the rights of use is conditional upon compliance with the terms of this Agreement. In the event of a breach of these terms by the user, the rights of use to the App, including its content, shall automatically expire. Any violation of the aforementioned obligations as well as the attempt of such violation entitles the Licensor to terminate the Agreement immediately. The right to further claims remains reserved.

### **3. Fee**

The use of the App is free of charge.

### **4. Acceptable use, prohibited contents and behavior**

- 4.1. "Contents" refers to all the data and information uploaded by you (including but not limited to images, files, graphics, etc.).
- 4.2. Sole responsibility for all Contents stored or transmitted by the user using the App is borne by the user who transmits the Contents to OD-OS. OD-OS does not check Contents stored and/or transmitted by the user. For this reason, OD-OS disclaims all warranty for the accuracy, appropriateness, and quality of such Contents.
- 4.3. OD-OS only stores Contents entered by the user during the term of the Agreement. These Contents will be deleted upon termination of the Agreement with the respective user.
- 4.4. The App is intended for medical training and education. For this reason, you may only upload content that is suitable for this purpose (in particular, images of the Retina).
- 4.5. You are prohibited from uploading to or entering in the App any Contents which are contrary to the purpose of the App, the law, official orders or public policy or morality. OD-OS will investigate any information from You relating to such Contents and will take corresponding steps following such investigation.

When using the App the user may not, in particular:

- 4.5.1. provide incorrect personal data about his/her user account;
- 4.5.2. grant other unauthorized persons access to his/her user account;
- 4.5.3. upload or publish contents which contain viruses, worms, trojans or other malicious code; or use the App to transmit such code;
- 4.5.4. store, publish and/or transmit any data, texts, images, videos, files, links or other contents which, under the applicable law, incite hatred, are illegal, damaging, threatening, harassing, defamatory, vulgar, obscene, racist or which may cause offence in any other way or which might be injurious in any way to minors including but not limited to material which is pornographic, glorifies violence or is otherwise harmful to young people;
- 4.5.5. store, publish and/or transmit contents which violate the rights of third parties, including but not limited to patents, trademarks, copyrights or ancillary copyrights, business secrets, personal rights or privacy or proprietary rights;
- 4.5.6. store, publish and/or transmit contents which he/she is not entitled to do;

- 4.5.7. falsify data or manipulate in any other way distinctive features to conceal the origin of content transmitted using the App;
- 4.5.8. store, publish and/or transmit unsolicited advertising, promotional material, junk or mass emails (“spam”), chain letters, pyramid schemes or other advertising;
- 4.5.9. harass, insult, threat, vilify, distress or embarrass anyone, whether a natural or legal person or corporation, or make or spread false statements relating to a natural or legal person or corporation;
- 4.5.10. collect, store, or transmit personal data on other users without the data subject’s permission.

The App may only be used if use and access does not breach the Agreement or the law and does not impair the functioning and security of the App.

## **5. Rights and duties**

- 5.1. Regardless of any further provisions in this Agreement, OD-OS is entitled to block a user from using the App if there is reasonable suspicion that the user has culpably infringed any of the provisions of this Agreement. Instead of blocking use, in such cases OD-OS will also be entitled to delete the user’s account in compliance with data protection regulations and legal retention periods. The user may prevent this by submitting suitable evidence which refutes such suspicion. OD-OS will only grant the user renewed access after the user’s infringement of the relevant provision has been permanently rectified and this has been demonstrated to OD-OS by the user. At the discretion of OD-OS a user who has committed an infringement as detailed in sentence 1 may not necessarily be granted access to use the App.
- 5.2. OD-OS is entitled to change, expand, and temporarily or permanently discontinue the functionalities of the App at any time. The user has no claim to the use of individual or all functionalities of the app, in particular to constant availability.

## **6. Warranty**

- 6.1. The App is provided free of charge and “as is” without any warranty of any kind, whether express or implied, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, non-infringement, or course of performance – except in the case of defects caused by OD-OS intentionally or through gross negligence.
- 6.2. Licensor, its subsidiaries, affiliates, and its licensors do not warrant that a) the App will function uninterrupted, secure or is available at any particular time or location; b) any errors or defects will be corrected; c) any function will remain unchanged or available or d) the results of using the App will meet your requirements.

## **7. Liability**

- 7.1. OD-OS shall be liable without limitation in accordance with the statutory provisions:
  - 7.1.1. in the event of intent or gross negligence;

- 7.1.2. within the scope of any guarantee expressly given by OD-OS;
- 7.1.3. for injury to body, life or health;
- 7.1.4. to the extent applicable: for claims under the Product Liability Act, but only in accordance with the provisions therein.
- 7.2. Since the app is provided free of charge, liability for ordinary negligence is excluded.
- 7.3. Insofar as liability for ordinary negligence cannot be excluded due to mandatory statutory provisions, liability for ordinary negligence shall be limited to the foreseeable damage typical for the contract. Liability for loss of profit is excluded in this case.
- 7.4. Insofar as and for as long as a case of force majeure exists which temporarily impedes or makes impossible the proper execution of the agreement, OD-OS shall be released from its performance obligation in this respect.
- 7.5. The above limitation of liability also applies in case of your claims for damages against Licensor's employees, statutory representatives [gesetzliche Vertreter] or agents [Erfüllungsgehilfen].
- 7.6. Any further liability is excluded.

## 8. Indemnification

The user must indemnify OD-OS, its representatives, employees and partners against all claims, demands, losses or damages, including appropriate legal (defence and court) costs arising from or in connection with the illegal or non-contractual use of the App. This shall not apply if the user is not responsible for the legal violation.

## 9. Contact Information

In case of questions, complaints or claims with respect to the App please contact:

Name: OD-OS GmbH  
Address: Warthestr. 21, 14513 Teltow, Germany  
E-Mail: [marketing@od-os.com](mailto:marketing@od-os.com)

## 10. Termination

- 10.1. The Agreement is effective until either
  - you terminate the Agreement by email; or
  - Licensor terminates your access to the App in accordance with this Agreement; or
  - Licensor removes the App from the app store and webpage.
- 10.2. Your rights under this Agreement will terminate automatically and without notice from Licensor if you fail to comply with any term(s) of this Agreement.
- 10.3. Upon termination of the Agreement, you shall cease all use of the App and destroy all copies, full or partial, of the App.

## 11. Data Protection

OD-OS observes all applicable national and European data protection regulations. Personal data of users is treated confidentially and in a manner compliant with data protection law. The data protection declaration, available at <https://www.od->

[os.com/privacy-policy/navigate/](https://os.com/privacy-policy/navigate/), provides more detailed information on the collection, processing and use of personal data in or in connection with the app.

## 12. Applicable Law

This Agreement is governed by the laws of the Federal Republic of Germany excluding its conflicts of law rules. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.

## 13. Miscellaneous

- 13.1. If any of the provisions of this Agreement should be or become invalid, the validity of the remaining provisions shall not be affected. Invalid provisions shall be replaced by valid provisions, which, as closely as possible, reflect the intended purpose of the invalid provisions.
- 13.2. Any ancillary agreements to this agreement shall only be effective if they have been confirmed in writing by OD-OS. This also applies to the cancellation of this provision.
- 13.3. The place of jurisdiction for all disputes arising from and in connection with the use of the App and this Agreement shall be the registered office of OD-OS. Legally mandatory places of jurisdiction shall remain unaffected.

## 14. Additional terms for the iOS and Android versions of the App

Depending on the platform from which the App has been downloaded (Apple AppStore/Google PlayStore), additional terms and conditions may apply to the use of the App. It is the sole responsibility of the user to identify these additional or (possibly) prevailing terms and conditions. The user is obligated to only act in accordance with said terms and conditions.

### 14.1. Additional terms and conditions for iOS (Apple, AppStore)

#### 14.1.1. Acknowledgement

This End-User License Agreement (EULA thereafter) is concluded between the User and OD-OS only. OD-OS and not Apple is solely responsible for the Licensed Application and the content thereof. If Terms of this EULA are in conflict with the [Apple Media Service Terms and conditions](#) or the [Volume Content Terms](#) as of the Effective Date (which the user acknowledges he has had the opportunity to review), the terms and conditions set forth in the Apple Media Service Terms and conditions or the Volume Content Terms shall prevail.

#### 14.1.2. Scope of License

The License granted to the end-user under clause 2 of this Agreement for the licensed application is limited to a non-transferable license, under which the end-user may use the licensed application on any Apple-branded Products that the end-user owns or controls and as permitted by the Usage Rules set forth in the Apple Media Service Terms and conditions, except that such licensed application may be accessed, acquired and used by the other accounts associated with the purchaser via Family Sharing or volume purchasing.

#### 14.1.3. Maintenance and Support

The user acknowledges that OD-OS is solely responsible for providing any maintenance and support services with respect to the Licensed Application, as specified in this Agreement (if any), or as required under applicable law. Both parties of this Agreement acknowledge that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Licensed Application.

14.1.4. Warranty

The user acknowledges that OD-OS is solely responsible for any product warranties, whether expressed or implied by law, to the extent not effectively disclaimed. In the event of any failure of the Licensed Application to conform to any applicable warranty, the end-user may notify Apple, and Apple will refund the purchase price (if any) for the Licensed Application to that end-user. To the maximum extent permitted by applicable law, Apple has no other warranty obligation whatsoever with respect to the Licensed Application. OD-OS is also solely responsible for any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty.

14.1.5. Product Claims

Both parties of this Agreement acknowledge that OD-OS and not Apple is responsible for addressing any claims of the end-user or any third party relating to the Licensed Application or the end-user's possession and/or use of that Licensed Application, including, but not limited to:

- (i) product liability claims;
- (ii) any claim that the Licensed Application fails to conform to any applicable legal or regulatory requirement; and
- (iii) claims arising under consumer protection or similar legislation, including in connection with the Licensed or Custom Application's use of the HealthKit and HomeKit frameworks.

14.1.6. Intellectual Property Rights

Both parties of this Agreement acknowledge that, in the event a third party claims that the Licensed Application or the end-user's possession and use of that Licensed Application infringes that third party's intellectual property rights, OD-OS and not Apple will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim. The right of indemnification against the user under clause 8 of this Agreement remains unaffected.

14.1.7. Legal Compliance

The end-user represents and warrants that

- (i) he is not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and
- (ii) he is not listed on any U.S. Government list of prohibited or restricted parties.

14.1.8. Third Party Terms of Agreement

Both parties of this Agreement acknowledge and agree that Apple, and Apple's subsidiaries, are third party beneficiaries of this agreement, and that, upon the user's acceptance of the terms and conditions of this agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this agreement against the user as a third party beneficiary thereof.

**14.2. Additional terms and conditions for Android (Google, PlayStore)**

- 14.2.1. This End-User License Agreement is concluded between the User and OD-OS only. OD-OS, not Google is solely responsible for the Licensed Application and the content thereof.
- 14.2.2. In case and to the extend of any conflict between this EULA and the [Google Play Developer Distribution Agreement](#), the latter shall prevail.
- 14.2.3. Google will not be responsible for and will not have any liability whatsoever under this EULA.
- 14.2.4. OD-OS is solely responsible for the support and maintenance of the app and for any complaints regarding your products. Google is under no obligation to provide any maintenance or support services in relation to the App.
- 14.2.5. Users may reinstall the App as many times as they wish, unless the App is removed from the Google Play Store by OD-OS or Google. If the App is completely removed from the Play Store, users no longer have the right or option to reinstall.