

## SOFTWARE END-USER LICENSE AGREEMENT (EULA) Avizo ToGo

**ATTENTION**: YOU MAY NEED TO SCROLL DOWN TO THE END OF THIS EULA BEFORE YOU CAN AGREE TO THESE TERMS AND CONTINUE WITH THE SOFTWARE INSTALLATION.

**IMPORTANT**: THIS END USER LICENSE AGREEMENT ("EULA" or "AGREEMENT") IS A LEGAL AGREEMENT BETWEEN THE PERSON, COMPANY, OR ORGANIZATION THAT HAS LICENSED THIS SOFTWARE ("YOU" OR "LICENSEE") AND FEI SAS, A PART OF THERMO FISHER SCIENTIFIC LOCATED AT 39 RUE D'ARMAGNAC, IMM E2 - QUAI 8.2, 33800 BORDEAUX, FRANCE ("COMPANY"). READ IT CAREFULLY BEFORE COMPLETING THE INSTALLATION PROCESS AND USING THE SOFTWARE. BY INSTALLING AND/OR USING THE SOFTWARE, YOU ARE CONFIRMING YOUR ACCEPTANCE OF THE SOFTWARE AND AGREEING TO BECOME BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS, OR DO NOT HAVE AUTHORITY TO AGREE TO THESE TERMS, THEN DO NOT INSTALL OR USE THE SOFTWARE AND RETURN THE SOFTWARE TO YOUR PLACE OF PURCHASE.

## 1. Definitions.

(a) "Software" means one or more versions of Avizo TOGO and any extensions supplied by Company, and corresponding documentation, associated media, printed materials, and online or electronic documentation. For purposes of this Agreement, Software includes any updates or upgrades to the Software which Company may provide from time to time in its sole discretion.
(b) "License Key", code provided by Company to Licensee to activate the Software.

- 2. License Grants. Company grants you a limited license to use the Software for a period of twelve (12) months under the following conditions. The license to the Software is limited to use on the single computer owned, leased or otherwise controlled by Licensee on which the Software is initially installed and for which a license key has been issued.
- 3. Third Party Licensor Rights. The Software includes components provided by licensors to Company ("Third Party Licensors"), and may also include Open Source Software ("OSS") components. Licenses from Third Party Licensors may have enforceable rights in the components included in the Software and may be able to enforce such rights directly against Licensee.

## 4. Permitted Use.

(a) You agree that Company may audit your use of the Software for compliance with these terms at any time, upon reasonable notice. In the event that such audit reveals any use of the Software by you other than in full compliance with the terms of this Agreement, you shall reimburse Company for all reasonable expenses related to such audit in addition to any other liabilities you may incur as a result of such non-compliance.

(b) Your license rights under this EULA are nonexclusive, nontransferable, and non-assignable.

(c) Mandatory Product Activation. Any license rights granted under this Agreement may be limited to the first thirty (30) days after you first install the Software unless you supply information required to activate your licensed copy in the manner described during the setup sequence of the Software. You may need to activate the Software through the use of the Internet or telephone; toll charges or other provider charges may apply. There are technological measures in this Software that are designed to prevent unlicensed or illegal use of the Software. You agree to follow any requirements regarding such technological measures. You may also need to reactivate the Software if you modify your computer hardware, alter the Software, or install the Software on another computer. Product activation may be based on the exchange of information between your computer and Company. None of this information contains personally identifiable information nor can they be used to identify any personal information about you or any characteristics of your computer configuration.

## 5. Prohibited Actions.

(a) You may not make or distribute copies of the Software, or electronically transfer the Software from one computer to another or over a network.

(b) You may not alter, merge, modify, adapt or translate the Software, or decompile, reverse engineer, disassemble, or otherwise reduce the Software to a human-perceivable form or modify the Enhanced Compressed Wavelet ("ECW") file format in any way.

(c) Unless expressly permitted by Company, you may not rent, lease, or sublicense the Software.

(d) Unless expressly permitted by Company, you may not modify the Software or create derivative works based upon the Software.

In the event that you fail to comply with this EULA, Company may terminate the license and you must destroy all copies of the Software. All other rights of both parties and all other provisions of this EULA will survive such termination.

- 6. Reservation of Rights. Title to and ownership of Software, and all proprietary rights or intellectual property rights with respect to the Software, remains exclusively with Company or its licensors. The license does not constitute a sale of the Software or any portion or copy of it. Ownership of the source form of Licensee's Application Software that makes calls to but does not contain all or any portion of Software remains the property of Licensee.
- 7. Confidentiality. Software is a trade secret and is proprietary to Company. Licensee shall maintain Software in confidence and prevent disclosure of Software using at least the same degree of care it uses for its own similar proprietary information, but in no event less than a reasonable degree of care. Licensee shall not disclose Software or any part thereof to anyone for any purpose, other than to employees or authorized end users for the purpose of exercising the rights expressly granted under this Agreement. The obligation under this Section shall survive any termination of the Agreement.
- 8. Warranty. SOFTWARE IS PROVIDED "AS-IS" AND Company DISCLAIMS ALL WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT OF THIRD PARTIES' RIGHTS, AND FITNESS



FOR A PARTICULAR USE. WITHOUT LIMITING THE FOREGOING, Company DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN SOFTWARE WILL OPERATE IN THE COMBINATION LICENSEE SELECTS OR THAT OPERATION OF SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE.

- 9. Liability Limitations. COMPANY AND ITS LICENSORS SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES RESULTING FROM USE OF SOFTWARE OR FOR THE RESULTS OBTAINED THROUGH THE USE OF THE SOFTWARE, INCLUDING ANY LICENSEE APPLICATION SOFTWARE. COMPANY'S CUMULATIVE LIABILITY FOR DAMAGES HEREUNDER, WHETHER IN AN ACTION IN CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, INDEMNITY, OR OTHERWISE, SHALL IN NO EVENT EXCEED THE AMOUNT OF LICENSE FEES PAID BY THE LICENSEE FOR THE SOFTWARE LICENSED UNDER THIS AGREEMENT. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.
- **10. Termination**. This Agreement and the license may be terminated (i) by Company, in addition to other remedies, if Licensee is in default and fails to cure within 30 days following notice; (ii) on notice by either party hereto if the other party ceases to do business in the normal course, becomes insolvent, or becomes subject to any bankruptcy, insolvency, or equivalent proceedings. Upon termination for any reason, Licensee shall immediately return Software and all copies to Company and delete all Software and all copies.
- 11. Non-Waiver. The delay or failure of either party to exercise any right provided in the Agreement shall not be deemed a waiver. If any provision is held invalid, all others shall remain in force.
- 12. Choice of Law. This Agreement, interpretation of this Agreement and any claims or disputes arising out of this Agreement shall be governed by the laws of France, exclusive of its conflicts of laws provisions and without regard to the United Nations Convention on Contracts for the International Sale of Goods. Any suit arising out of or relating to this Agreement shall be exclusively brought in the Bordeaux Court, France. Any action against Company under this Agreement must be commenced within one year after such cause of action accrues.
- **13.** Notice. All notices that are required under this Agreement will be in writing and will be considered effective upon receipt, provided that there is proof of delivery by a third party or written acknowledgement by the recipient. The notices addressed to Company shall be sent to its address set out above. The notices addressed to Licensee shall be sent to its address set forth in the applicable price quotation.
- 14. Government Restricted Rights. This provision applies to all Software acquired directly or indirectly by or on behalf of the United States Government. The Software is a commercial product, licensed on the open market at market prices, and was developed entirely at private expense and without the use of any U.S. Government funds. If the Software is supplied to the Department of Defense, the U.S. Government acquires only the license rights customarily provided to the public and specified in this Agreement. If the Software is supplied to any unit or agency of the U.S. Government other than the Department of Defense, the license to the U.S. Government is granted only with restricted rights. Use, duplication, or disclosure by the U.S. Government is subject to the restrictions set forth in the Commercial Computer Software License clause of FAR 52.227-19. Manufacturer is FEI SAS, a part of Thermo Fisher Scientific, 39 rue d'Armagnac, Imm E2 Quai 8.2,, Bordeaux, F-33800, France.
- 15. Miscellaneous. This Agreement contains the entire understanding of the parties and supersedes all other agreements, oral or written, including purchase orders submitted by Licensee, with respect to the subject matter covered in this Agreement. Any other terms and conditions contained in a Licensee purchase order will not apply. This Agreement may be modified only by a writing executed by Company and Licensee. Licensee may not assign, pledge, or otherwise transfer this agreement, nor any rights or obligations hereunder in whole or in part to any entity. Paragraph headings are for convenience and shall have no effect on interpretation. In the event that it is necessary to undertake legal action to collect any amounts payable hereunder, Company shall be entitled to recover its costs and expenses including, without limitation, reasonable attorneys' fees.
- 16. Export Controls. Licensee acknowledges that the provision by Company of products (including components and spare parts), software, services (including warranty services), technology or intellectual property, including technical information supplied by Company or contained in documents (collectively Items), is subject to applicable export controls of the U.S. government and other jurisdictions, including but not limited to the European Union. These controls may require Company or Licensee to first obtain a license (or similar requirement) from the relevant authority, or regulatory body. Company shall not be liable to Licensee for any delay or failure to obtain the licenses or approvals that Company reasonably believes are necessary. Licensee shall comply with all applicable export laws and regulations. Licensee shall not, without first obtaining from the relevant authority or regulatory body any license required to do so lawfully, export or re-export any Item (either directly or indirectly), to: (i) any restricted or embargoed country or any person or organization whose privilege to participate in exports has been denied or restricted by the applicable authority; or (ii) any person or organization who is involved in improper development or use of nuclear weapons, or of chemical/biological weapons (CBW) or missiles, or in terrorist activities. Licensee agrees not to use any supplied Item in restricted or prohibited activities such as nuclear explosives, unsafeguarded nuclear activities, chemical or biological weapons development, restricted rocket or missile systems, or restricted military purposes. Licensee will, on request (i) promptly provide written information correctly identifying the end user and end use of any Items (including any information as it may relate to a subsequent transfer of such Items by Licensee); and (ii) cooperate fully with Company in any official or unofficial audit or inspection arising in respect of the Items under applicable export or import control laws or regulations. Licensee will ensure that the customers and end users to whom Licensee re-sells or transfers the Items agree in writing to the provisions of this Section and Licensee covenants to use its best efforts to enforce such provisions against customers and end users. Licensee shall indemnify and hold Company harmless from, or in connection with, any violation of this Section by Licensee or its employees, consultants, agents and/or representatives. In addition, failure of Licensee to comply with this Section shall be a material breach of this Agreement and shall entitle Company to immediately terminate this Agreement. Company shall be entitled to terminate this Agreement without prior notice if such termination is necessary in order to comply with applicable export laws and regulations.



17. Use of Collected Data. Company and our agents may monitor the Software and collect data regarding your use of and the performance and operation of the Software, associated equipment, devices and peripherals, and use such data to provide support to users, detect and address threats to the functionality, security, integrity and availability of the Software, detect and address violations of this Agreement, and improve the Software ("Collected Data"). Collected Data shall exclude any personal information and output data generated by the Software, associated equipment, devices and peripherals. We and our agents will only use Collected Data on your behalf to provide the Software as permitted by applicable law. You hereby grant to Company and our agents a worldwide, royalty-free, fully paid, non-exclusive, license to copy, modify, and distribute internally and to you Collected Data in furtherance of the purposes stated in this Agreement. This license ends when Collected Data is no longer stored with Company. In addition, Company shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Software any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you relating to the features, functionality or operation of the Software.