End User License Agreement for ZEISS Add-Ons

1. Introduction

1.1 General information

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In order to use the ZEISS software products and services, the Licensee must have the following:

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(b) a valid license from ZEISS.

Furthermore, individual software products require and use

(a) which are based on a subscription agreement and/or

(b) with a server-based licensing solution

a secure connection of the application computer to the ZEISS infrastructure and/or the "Cloud Services".

1.2 The Licensor is ZEISS The Licensee is the end customer. The Licensor grants the Licensee a non-exclusive, non-transferable right to use the "Software Product", which includes the specific software program and the associated licensed software modules, subsequent extensions, updates, patches and associated documentation for internal company operation, as well as the associated manuals and software documentation.

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1.4 Any terms and conditions of purchase of the Licensee that conflict with or deviate from this Agreement shall not become part of the Agreement, even if the Licensor does not expressly object to them. Amendments to the EULA must be expressly agreed in writing by both parties.

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2.1 The license agreement begins with license activation and ends with the period of use of the Pro Version or with the end of the payment period.

2.2 The Licensor shall be entitled to terminate this License Agreement and the corresponding rights of use with immediate effect if the Licensee violates any provision of this License Agreement or tacitly tolerates a violation of this License Agreement by third parties or fails to fulfill its obligations under this License Agreement or if the Licensee files for insolvency or a change of control occurs at the Licensee.

2.3 Notwithstanding the foregoing, and unless otherwise agreed in this License Agreement, this License Agreement shall terminate automatically upon Licensee's breach of any of its provisions.

2.4 Under no circumstances shall license fees be fully or partially refundable upon termination or mutually agreed termination of this Agreement, unless ZEISS is responsible for the early termination of this Agreement.

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4.3 Transfer within legal entities or global groups of Licensee: Provided that the transferring Licensee and the receiving party are part of one legal entity or part of affiliated companies, the transfer is permitted provided that the receiving party agrees to these license terms. "Affiliate" means any

legal entity that is directly or indirectly controlled by a Legal Entity or its parent company. "Control" for purposes of this License Agreement means direct or indirect ownership of more than fifty percent (50%) of the stock of such entity or more than fifty percent (50%) direct or indirect participation in the decision-making body of such entity.

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5.1 As a matter of principle, the Licensee may not make any changes to the Software Product unless this is necessary to correct errors. The prerequisite is that this is done solely for the purpose of correcting errors that impair the functioning of the software.

In the latter case and if important program functions and working methods could be disclosed during the repair process, Licensee may commission a commercially active third party to carry out the repair if this third party is not a potential competitor of Licensor.

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Further, decompilation is permitted in cases to obtain information necessary for interoperability with an independently created computer program and only if such information cannot be obtained otherwise.

5.3 A further prerequisite for the permission to reverse engineer is the performance of reverse engineering or program observation exclusively by means of procedures which Licensee is authorized to perform in accordance with this License Agreement. In particular, the program code may in no case be printed out with the aid of a printer.

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6. Warranty and right of termination

6.1 The Licensor warrants with respect to the Software Product licensed to the Licensee the performance set forth in the Description, provided that the Software Product is installed in the intended system in compliance with the Licensor's guidelines.

6.2 The Licensor shall correct errors in the Software Product, and in all manuals and other documents, within a reasonable period of time after receiving from the Licensee the corresponding information on the error necessary to correct the error. Errors shall be remedied by rectification, which shall not be invoiced, or by replacement of the delivery, at the option of the Licensor.

6.3 The Licensee's right of termination due to the non-executability of the Software Product may only be exercised after rectifications or replacements have been made twice without success.

6.4 The Licensor neither warrants nor guarantees the functionality of the programs created by third parties or the Licensee / Customer, nor the error-free execution of the programs with the Software or on the Licensor's systems.

7. Liability

7.1 If Licensee is unable to use the Software Product in the manner specified in the Agreement and Licensee is responsible for this due to the failure to implement or the incorrect implementation of suggestions and advice before or after signing the Agreement or due to the breach of other contractual obligations, the provisions set forth in this Agreement shall apply mutatis mutandis to the exclusion of any further claims by Licensee.

For damages that do not occur to the software product, respectively not to the hardware and the connected device, the liability obligation of the licensor applies exclusively in the following cases, regardless of the respective legal ground:

- willful misconduct,

- gross negligence of its executive bodies or officers,

- culpably caused damage to life, body and health, in the case of defects which the Licensor has fraudulently concealed or which it has excluded under warranty,

- Software defects within the scope of liability for personal injury and property damage due to personally implemented objects, as set out in the product liability regulations applicable to them

7.2 In the event of culpable breach of material contractual obligations, the Licensor shall also be liable for gross negligence on the part of non-executive employees and for slight negligence. In the latter case, liability shall be limited to damages that are foreseeable and typical for this type of contract.

7.3 In addition, the Licensor, its employees and its vicarious agents shall be liable for data loss or changes due to program errors, limited to the extent that this would have been unavoidable if the Licensee had complied with its obligation to make back-up copies regularly and at least once a day.

7.4 In the event of claims based on copyright infringement, the Licensor shall grant the Licensee the right to continue using the Software Product or to make modifications to the Software Product so that copyright protection is ensured. If this is not commercially reasonable, the Licensor shall take back the subject matter of the agreement and refund the license fee paid, less an amount corresponding to the duration of the previous use. This shall apply provided that Licensee notifies Licensor of this type of claim in writing without delay and allows Licensor all legal remedies and out-of-court settlements.

7.5 The Licensee or its IT provider shall be liable for server interruptions, interruption of license allocation and other support cases that are not clearly attributable to an incorrectly created license with respect to the respective licenses (e.g. concurrent use, floating).

The Licensee or its IT provider is responsible for maintaining the necessary number of licenses to provide its services. The licensor is not liable for interruptions in use and subsequent work / production stoppages.

7.6 Further liability claims of the Licensee are expressly excluded.

7.7 The Licensee is responsible for all problems arising from the use of the Software Product that are not directly caused by the Licensor. Therefore, Licensee is responsible for all data generated and produced during the use of the Software Product. Accordingly, Licensee is obligated and responsible for compliance with the terms and conditions set forth in this License Agreement.

8. Security measures

The Licensee shall take suitable measures to secure the Software and, if applicable, the access data for online access against access by unauthorized third parties. In particular, all copies of the software as well as the access data shall be kept in a protected place.

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9.1 If a third party asserts claims for infringement of an industrial property right or a copyright against the customer because the customer uses a software revision, firmware supplement or associated documentation supplied by ZEISS, ZEISS shall be obligated to pay any cost and damage compensation amounts awarded to the owner of the property right by a court or awarded with the prior consent of ZEISS. This is subject to the condition that the customer informs ZEISS immediately in writing of such claims and that ZEISS reserves the right to all defensive measures and out-of-court settlements. The customer is obligated to support ZEISS in the defense to the best of its ability. Under these conditions, ZEISS shall generally procure for the customer the right to continue using the software revision, firmware supplement or documentation. If this should not be possible under economically reasonable conditions, ZEISS shall be obligated, at its own discretion and at its own expense, either to modify or replace the relevant item in such a way that the property right is not infringed, or to take back the item and refund the remuneration paid for it less an amount taking into account the benefits derived.

9.2 ZEISS shall have no obligations if property right infringements are caused by the fact that software revisions or updates, firmware supplements or documentation supplied by ZEISS are not used in the intended manner or are not used on the specific systems.

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11. Miscellaneous

11.1 All verbal agreements, amendments, extensions or concretizations of these license conditions as well as the special characteristics of the assurances or agreements or arrangements made must be in writing to be legally effective. If these are drafted by representatives or vicarious agents of the Licensor, they shall only become legally binding upon approval by the Licensor.

11.2 Should parts of this contract become invalid, this shall not affect the validity of the remaining parts of this contract. The ineffective part of this contract shall be replaced by its parties with legally permissible provisions that come as close as possible to the intention of the ineffective provisions.

11.3 The laws of the Federal Republic of Germany shall apply to this contract, excluding the law on the international sale of goods and the rules of conflict of laws.