

# Terms & Conditions of the ZEISS Health Data Platform and Applications

**Carl Zeiss Ltd** hereinafter referred to as "ZEISS", operates the ZEISS Health Data Platform, a cloud-based platform ("Platform") used in conjunction with various software applications offering various services related to supporting medical professionals in their clinical workflows for managing various diseases and administrative processes (hereinafter also referred to as "**Services**"), which are intended to make it possible to use various content.

These terms and conditions govern access to the platform and the use of applications, content, services, and workflows. The terms and conditions apply to all users. Furthermore, the supplementary terms of use listed in the annexes shall apply to the use of ZEISS software components provided by ZEISS.

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## **A. GENERAL CONDITIONS**

### **A.1 DEFINITIONS**

A.1.1 Capitalised terms used in this Agreement shall have the meanings ascribed to them hereinafter:

- "Account" means a Customer's individual access to the Platform via a web interface or otherwise.
- "Account Application" means the Customer's online application for access to the ZEISS Services through a ZEISS ID account in accordance with the terms and conditions of this Agreement and ZEISS's acceptance of such application.
- "Affiliate(s)" means, in respect of the relevant party, any undertaking which is on or after the date of this Agreement from time to time a subsidiary undertaking (as defined by Section 1162 of the Companies Act 2006) of that party, a parent undertaking (as defined by Section 1162 of the Companies Act 2006) of that party, or a subsidiary undertaking of a parent undertaking of that party.
- "Agreement" means this agreement between ZEISS and Customer, including these terms of use, comprising the General Conditions and the annexes.
- "Authorised Users" means those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Platform pursuant to this Agreement.
- "Business Day" means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open to the public to conduct business.
- "Compliance Standards" means the following requirements: Customer Content will (i) comply with applicable laws; (ii) not violate the intellectual property rights, trade secrets or other rights of third parties or restrictions on third parties, such as confidentiality obligations; and (iii) not be subject to a licence that requires, as a condition of use, access or modification of such Customer Content, that other software or services of ZEISS, ZEISS Affiliates, or business partners that interact with such Customer Content: (a) be disclosed or distributed in source code form; (b) be licensed to recipients for the purpose of creating derivative works; (c) not be used for commercial purposes; or (d) be encumbered in any other manner.
- "Confidential Information" means all information disclosed by one party to the other party under or in connection with this Agreement including information which, if disclosed, is marked "confidential" or consists of information which, by its nature or context, is sufficient to alert the receiving party to its confidential nature. All information and materials received by the Customer in connection with this Agreement and the Customer's receipt of ZEISS Services, including but not limited to the ZEISS Licensed Materials, Platform, information about the business strategies and practices of ZEISS, its Affiliates and business partners, methodologies, trade secrets, know-how, pricing, technology, software, interfaces, product plans, services, customer lists, and information about employees, customers, suppliers, consultants and Affiliates, shall be deemed to be ZEISS Confidential Information.
- "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity (whether through ownership of voting securities, by agreement or otherwise) by any person directly or indirectly.
- "Customer" means the natural or legal person who registers on the Platform.
- "Customer Content" means data owned by and/or input via the Platform by the Customer (or Authorised Users) pursuant to this Agreement.
- "Data Protection Laws" means the GDPR; the Data Protection Act 2018; the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended, and all other applicable data protection and privacy legislation in force from time to time.
- "Downtime" means a period of time during which the Platform is unavailable to Customer due to a) testing, development and maintenance windows related to the Platform or b) technical issues, system failures, network outages, or other unscheduled or emergency interruptions that are not caused by scheduled maintenance (including Force Majeure events).

"Force Majeure"	shall mean any event caused by circumstances beyond the reasonable control of the respective party, including acts of God, epidemics, pandemics, earthquakes, fire, flood, embargo, riot, sabotage, attacks on IT systems, labor shortages or disputes, acts or omissions of civil or military authorities, war, terrorism, even if such circumstances apply to a supplier, subcontractor, agent or Affiliate.
"GDPR"	means, as relevant: a) the EU GDPR (Regulation (EU) 2016/679) and b) the UK GDPR, as defined in s.2 of the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations SI 2019/419.
"Licensed Materials"	means the online software applications, tools, platforms and interfaces (including the Platform) provided by ZEISS under this Agreement for access and use by Customer as part of the Services.
"Platform Availability "	means the average percentage of time, calculated in minutes, that a Platform is available to Customer during a given calendar month, excluding Downtime.
"Recipient"	means a party that receives access to Confidential Information of the other party.

#### A.1.2 Interpretation:

- a) Clause, annex and paragraph headings are used for ease of reference only will not affect the interpretation of this Agreement.
- b) A **person** includes a natural person corporate or unincorporated body (whether or not having separate legal personality).
- c) Any words following the terms **including, include, in particular, for example** or any similar expression will be construed as illustrative and will not limit the sense of the words, description, definition, phrase or term preceding those terms.
- d) A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- e) Any reference to the singular includes a reference to the plural and vice versa and any reference to the masculine includes a reference to the feminine and vice versa.

## A.2 SUBJECT MATTER AND SCOPE

- A.2.1 This Agreement is formed between Customer and ZEISS upon successful registration of an Account Application. ZEISS may, in its sole discretion, accept or reject any application for registration.
- A.2.2 The ZEISS Services may contain third party software, including open source components, which may be subject to additional terms and conditions (which will be made available to Customer in an appropriate manner), which will always prevail with respect to such third party software.
- A.2.3 The ZEISS Services are provided on an „as is“ basis. ZEISS will use reasonable endeavours to make the Platform available for the purpose of providing Services in accordance with the terms of this Agreement.
- A.2.4 Customer shall notify ZEISS promptly in writing of any breach and with a detailed description of the breach. Customer shall cooperate with ZEISS by providing ZEISS with all necessary information and documentation and by providing any other assistance that is reasonable to remedy the particular breach.

- A.2.5 ZEISS' obligations to rectify defects under section A.14 do not apply to the extent that a claim is based on modifications to the ZEISS Services by or on behalf of Customer and/or other customers, unless this is expressly approved by ZEISS in writing.
- A.2.6 ZEISS may provide hosting services to Customer on server resources under the control of ZEISS or its subcontractors during the term of this Agreement.
- A.2.7 ZEISS will use commercially reasonable efforts to provide Customer with platforms with a Platform Availability of at least 95.1%. ZEISS will use reasonable efforts to perform scheduled maintenance between 6 p.m. and 8 a.m. CET. These times are subject to change upon reasonable notice.
- A.2.8 The use of ZEISS services is subject to technical requirements, such as necessary hardware, operating system or uninterrupted, adequate internet connection. ZEISS is not liable for the consequences to the extent they arise from Customer's failure to use the ZEISS Services in accordance with these technology requirements.
- A.2.9 Unless expressly agreed otherwise, ZEISS provides the ZEISS Services as standard services and enables Customer to use the ZEISS Services agreed and generally provided by ZEISS. ZEISS is entitled to update and further develop the ZEISS Services in terms of technology, features, and functionalities. With the provision of a new version, Customer is no longer entitled to use earlier versions. If significant changes are made to the ZEISS Services that affect Customer's use, or if agreed ZEISS Services are restricted, ZEISS will, to the extent reasonable, notify Customer at least two (2) Business Days before the changes take effect (e.g., by notice via the Platform). This notice period will not apply if ZEISS reasonably believes that changes are necessary to avoid: (i) compromising the security or functionality of the ZEISS Services; or (ii) adversely affecting ZEISS, its Affiliates, customers or third parties. To the extent that Customer is materially deprived of the benefits of this Agreement as a result of such changes, Customer shall have the right to terminate this Agreement in writing no earlier than the effective date of the change.
- A.2.10 At the WAN output of the data center ZEISS uses (demarcation point), ZEISS offers Customer access to the ZEISS services to be provided via the Internet.
- A.2.11 Customer is obligated to provide ZEISS with reasonable cooperation for the proper performance of the ZEISS Services. Customer acknowledges that the proper performance of the ZEISS Services by ZEISS depends on the timely and proper fulfillment of Customer's cooperation obligations. In particular, Customer shall: (i) provide ZEISS with all data and information necessary to perform the agreed ZEISS Services in an appropriate format and in a timely manner, (ii) take reasonable steps to ensure that personnel involved in the receipt and use of the ZEISS Services on Customer's behalf are sufficiently qualified, and (iii) (if applicable) provide timely instructions, approvals or releases. If Customer fails to cooperate in accordance with this Agreement, ZEISS will not be responsible for any consequences resulting from such failure. Specifically, the Platform Availability affected by such failure to cooperate will be suspended for a period equal to the duration of Customer's failure to cooperate plus a reasonable time to resume. ZEISS also reserves the right to change the ZEISS Services and the access conditions and to shut down the ZEISS Services in whole or in part at any time for operational reasons. If such changes occur, ZEISS will use reasonable endeavours to inform the Customer in advance.
- A.2.12 It is Customer's responsibility to ensure that Customer's use of the ZEISS Services is in compliance with applicable law, and ZEISS assumes no responsibility accordingly.
- A.2.13 ZEISS may engage third parties (including ZEISS Affiliates) for and in connection with the provision of ZEISS Services.

- A.2.14 The use cases relating to the ZEISS Services delivered by the applications are described in Annex 2.
- A.2.15 This Agreement provides the framework for a wide range of services. Individual contractual provisions shall be governed in each case by any terms and conditions attached as an annex. Insofar as such terms and conditions contradict the general condition of this Agreement, the annex terms and conditions (including the EULA at Annex 1) shall take precedence.
- A.2.16 ZEISS shall not be responsible for any Customer Content on the application or any outcome or result being accurate, complete or up-to-date, as further set out in section A.3.

### **A.3 USE OF THE SERVICES OF ZEISS**

- A.3.1 Subject to the terms and conditions of this Agreement, ZEISS hereby grants to the Customer a non-exclusive, non-transferable right and licence, without the right to grant sublicences, to permit the Authorised Users to use the Services and the Platform during the term of this Agreement solely for the Customer's internal business operations.
- A.3.2 Customer shall pay to ZEISS all fees specified in the Transaction Document in relation to the Services, at the timeframes and in accordance with the payment terms specified therein.
- A.3.3 Customer shall: (i) ensure that its use of the ZEISS Services does not pose a threat to the security or functionality of the ZEISS Services and/or adversely affects ZEISS, its Affiliates, other customers, partners or third parties; (ii) before accessing the Platform and during use, take all reasonable precautions against security attacks on Customer's system and to prevent viruses, Trojan horses or other programs that may damage the Platform; (iii) not interfere with or disrupt the integrity or performance of the Platform or any other device or network connected to the Platform and, in particular, not transmit any Customer Content that contains viruses, Trojan horses or other programs that may damage the Platform; and (iv) not use the Platform in any manner that could damage, disable, overburden, impair or compromise ZEISS systems or security or interfere with any other Customer.
- A.3.4 Customer shall also: (i) review and comply with all applicable laws prior to and at all times during Customer's use of the ZEISS Services, including, without limitation, obtaining and maintaining, at Customer's own expense, all required permits and registrations; (ii) not provide ZEISS with any Customer Content, the use of which under this Agreement would result in a violation of applicable law, intellectual property, trade secrets, other third party rights or restrictions on third parties, such as, but not limited to, confidentiality obligations; (iii) not use the ZEISS Services for any purpose other than as expressly permitted in this Agreement; (iv) not copy, translate, disassemble, decompile, reverse engineer, download, create derivative works from or otherwise modify the Services and/or software contained in the Platform or attempt to discover the source code of the Platform (except to the extent permitted by applicable law or as otherwise expressly permitted); (v) not access all or any part of the Services and Platform in order to build a product or service which competes with the Services and/or the Platform; (vi) not license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Platform available to any third party; and (vii) ensure that Customer's use of the ZEISS Services does not expose ZEISS, its Affiliates, other customers, partners or any third party to any liability.
- A.3.5 Customer will use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Platform and will notify ZEISS immediately: (i) if Customer becomes aware of circumstances, and in particular incidents, that indicate: (a) the security and/or Compliance Standards under this Agreement may not be met, or (b) use of the Platform may pose a risk of personal injury or risk to the security and stability of ZEISS, Customer's, another customer's, or a partner's

systems; (ii) of any governmental action or court order that may interfere with Customer's use of Customer Content under this Agreement; (iii) of any change in Customer's name or contact information; and (iv) if Customer learns of any unauthorised access to Customer's account or the Platform.

- A.3.6 Customer is obligated to provide all Customer Content and related information and data accurately and completely and to keep it up to date at all times (e.g., contact information).
- A.3.7 Customer is solely responsible for the accuracy, content, integrity, legality, use and quality of its Customer Content and the means by which Customer acquired such content. For example, Customer is solely responsible for: (i) making and maintaining independent backup copies of all Customer Content; and (ii) any document retention or archiving obligations imposed by applicable law or company policy.
- A.3.8 Customer hereby represents that all Authorised Users that submit statements and/or notifications through the Customer's account with ZEISS are acting on Customer's behalf and have the ability to bind Customer.
- A.3.9 ZEISS does not monitor and is not responsible for Customer Content or its storage, communication or transmission. Customer agrees not to upload any content or data to the Platform that is: (i) libelous, defamatory, obscene, pornographic, abusive, harassing, or threatening; (ii) contains malicious code; (iii) violates the rights of others, such as content or data that infringes intellectual property rights or violates rights of privacy or publicity; or (iv) violates any applicable laws. ZEISS reserves the right to delete Customer Content that ZEISS reasonably determines to be in violation of this Agreement.
- A.3.10 Customer will receive access data (e.g., logins and passwords) that Customer's Authorised Users can use in connection with ZEISS Services. Customer will change the passwords regularly in accordance with ZEISS' relevant password guidelines. Customer and each Authorised User are fully responsible for maintaining the confidentiality and security of Customer's credentials, and Customer is solely responsible for all activities that occur under Customer's account(s) to the extent such activities were authorised by Customer or an Authorised User or were not authorised by Customer or an Authorised User but could have been prevented by Customer if Customer had exercised due care. Passwords may not be used by more than one Authorised User, and Customer is prohibited from transferring or sharing passwords with anyone who is not an Authorised User. Customer must ensure that Authorised Users exit or log out of their account at the end of each usage session.
- A.3.11 Notwithstanding any additional responsibility under applicable law, Customer is solely responsible for ensuring that all of Customer's employees, partners and third parties Customer engages in the use of the ZEISS Services, and their employees, comply with the terms of this Agreement and applicable law.
- A.3.12 All publications of Customer Content must be provided using the full name of the Customer or the name of his/her institution/affiliation. If the Customer Content contains links to internet sites, the Customer must limit such links to home pages owned or operated by the Customer or to which the Customer is otherwise authorised to link, or that do not contain information or materials protected by copyright or other intellectual property rights, the use of which would require permission from third parties. The Customer may not edit, delete or otherwise modify any content of other Customers or of ZEISS as use in connection with ZEISS services.
- A.3.13 ZEISS will not be responsible in respect of any transactions between the registered Customers of the ZEISS services.

- A.3.14 The ZEISS services may contain links to other websites. ZEISS is not responsible for the content of the platforms linked to the ZEISS services, nor for these platforms' compliance with statutory data protection provisions. ZEISS disclaims any express or implied warranty for the accuracy, legality, reliability or validity of the content of other platforms. Platforms to which the ZEISS services links may contain information or materials protected by copyright or other intellectual property rights, the use of which may require a licence or permission from third parties. Customers are responsible for obtaining any such required licence or permission.

#### **A.4 EXCHANGE AND COMMENT**

- A.4.1 ZEISS may provide Customer with the ability to share Customer Content with other customers free of charge, for example by uploading, transferring, sharing or otherwise publishing Customer's Customer Content via the Platform, including the ability to comment on content of other users. Customer will have the option to revoke and delete Customer's own comments at any time. For the avoidance of doubt, ZEISS will have no liability or responsibility in respect of such activities or for the legal compliance, usability, or functionality of Customer Content shared or published on the Platform.
- A.4.2 Customer understands and acknowledges that ZEISS is not obligated to provide and publish Customer Content on or via the Platform.
- A.4.3 Customer is solely responsible (to ZEISS, its Affiliates, other customers and any other third parties) for all publishing activities that occur in respect of the Customer's account with ZEISS, including any Customer Content shared or published via Customer's account.
- A.4.4 For the purpose of sharing and publishing data, the Customer has the option of either making Customer Content available to all other customers or making it available only to individual other customers selected by Customer. Customer is solely responsible for checking and verifying the identity and contact details (e.g. email address) of the customers with whom the Customer Content is shared. In either case, by sharing and publishing Customer Content on the Platforms, Customer: (i) grants to the applicable other users a limited, personal, transferable, non-exclusive license to use such Customer Content in accordance with this Agreement, including, without limitation, the right to further share, comment on, and make available to other customers such Customer Content; and (ii) warrants that Customer has (and will have in place for the entire period that Customer's Customer Content is published through Customer's account) all necessary licenses, rights, consents, and permissions.
- A.4.5 Customer shall indemnify ZEISS and its Affiliates in respect of all claims brought by third parties, in particular claims for copyright, competition, trademark, data protection and personal rights infringements against ZEISS in connection with Customer's uploading, publishing, transmitting, or sharing of Customer Content. Customer is obligated to inform ZEISS immediately of any claims by third parties of which Customer becomes aware in connection with the use, sharing or publication of the Customer Content. ZEISS is entitled to take appropriate measures to defend itself and its Affiliates against third party claims or to pursue ZEISS's rights and Customer must co-operate with and provide reasonable assistance to ZEISS accordingly. This indemnification also includes the reimbursement of reasonable costs incurred or suffered as a result of the legal prosecution/defence of claims.
- A.4.6 ZEISS reserves the right (but is not obligated) to refuse to post and to remove any Customer Content that violates this Agreement, applicable law, or the rights of ZEISS, other customers, or other third parties at any time (before, during, and after posting of Customer's Customer Content) without prior notice and in ZEISS sole discretion.
- A.4.7 Customer is aware that the access to or the disclosure of personal data from/to third countries, i.e. countries outside the European Economic Area (EEA), will be subject to the provisions on the transfer

of personal data to third countries set forth in Art. 44 GDPR and that the Customer must not access or disclose personal data from/to third countries if has not ensured compliance with Art. 44 GDPR and Data Protection Laws.

## **A.5 INTELLECTUAL PROPERTY**

A.5.1 All right, title, interest, intellectual property rights and know-how in and to:

- a) the ZEISS Licensed Material, Platform, and Services including all developments, additions, enhancements, improvements or derivatives thereof will belong to or will automatically vest in ZEISS upon creation; and
- b) the Customer Content will belong to or will automatically vest in the Customer upon creation.

A.5.2 Customer grants ZEISS, its Affiliates and subcontractors a limited, personal, transferable, royalty-free, irrevocable, non-exclusive license to use, host, link, publish, transmit, display, sublicense and reproduce Customer Content as necessary for the purpose of providing the ZEISS Services to Customer and/or other customers under this Agreement. ZEISS may make copies of Customer Content in anonymous form, analyse and evaluate it, including for statistical purposes and to improve and further develop the ZEISS Services.

A.5.3 Customer grants ZEISS, its Affiliates, subcontractors and business partners a worldwide, perpetual, irrevocable, transferable, sublicensable and royalty-free right to use and incorporate into or otherwise use the ZEISS Services, the Platform or other products or services, any suggestions, recommendations, feature requests or other feedback in connection with the Platform or the ZEISS Services provided by Customer or on Customer's behalf.

## **A.6 EXPORT CONFORMITY**

A.6.1 Customer is responsible for using and accessing the ZEISS Services provided by ZEISS in accordance with applicable import and export laws. Customer may not import or (re-)export the ZEISS Services in violation of national or international law, in particular export or import regulations of the European Union or the United States of America.

A.6.2 Without limiting the foregoing, (i) each party represents and warrants that it is not on any government list of persons or entities prohibited from receiving exports, and (ii) Customer shall not access or use the ZEISS Services in violation of any export embargoes, prohibitions or restrictions.

## **A.7 UPDATES TO TERMS AND CONDITIONS**

A.7.1 ZEISS reserves the right to update this Agreement at any time at ZEISS sole discretion, in particular due to changes in applicable law or further developments of the ZEISS Services. ZEISS will notify Customer of any update to the Agreement at least thirty (30) days in advance, e.g. by email. The update will become binding on the parties after the expiry of the notification period, unless Customer objects to the update in writing before the expiry of the notification period.

A.7.2 In the event of Customer's objection, ZEISS may terminate this Agreement with effect from the end of the notification period if it is impossible or unreasonable for ZEISS to continue this Agreement without updating the Agreement. ZEISS will inform Customer of these consequences as part of the notification.



## **A.8 SUSPENSION**

- A.8.1 ZEISS shall be entitled to immediately suspend the Services if, in ZEISS reasonable discretion, Customer breaches any provision of this Agreement. In addition, ZEISS may impose a suspension if the suspension is required by law, by a court order, or at the request of a governmental entity. ZEISS will notify Customer of any suspension as soon as possible. If and to the extent a reason for suspension no longer applies, ZEISS will restore Customer's access to the ZEISS Services within a reasonable period of time.
- A.8.2 ZEISS right to suspension is in addition to any other rights and remedies ZEISS may have, and restoration is without prejudice to any other rights and remedies ZEISS may have.

## **A.9 DATA PROTECTION**

- A.9.1 Both parties shall agree to a separate Data Privacy Framework Agreement regarding the processing of personal data linked to the HDP platform for the term.
- A.9.2 Customer is responsible for ensuring that there is a legal justification, e.g., Customer has obtained the required individual informed patient consent or the Customer can justify other legal grounds for the processing of patient's personal data in accordance with applicable data protection and other laws.
- A.9.3 Customer is solely responsible for obtaining any required valid patient consent on ZEISS' behalf for the pseudonymization of the patient's personal data and secondary use thereof in accordance with applicable data protection laws. When collecting individual patient consent, Customer shall use the then current template provided by ZEISS for such purposes and comply with all legal requirements for obtaining valid consent under applicable data protection laws. Customer shall inform ZEISS about every patient who has granted consent. However, Customer remains free whether to collect consent from individual or all patients on ZEISS behalf.
- A.9.4 ZEISS shall have the unrestricted right to request from Customer the original consent forms for individual patients at any time, giving reasonable advance notice.

## **A.10 CONFIDENTIALITY**

- A.10.1 Each party agrees to maintain the other party's Confidential Information in confidence and shall disclose it only to those employees or other personnel who have a need to know and who are bound to confidentiality by their employment contract or otherwise not less stringent provisions than the provisions herein. Each party may use Confidential Information of the other party only for the purpose authorised by this Agreement or as otherwise set out in this clause A.10.
- A.10.2 The confidentiality obligations of this section do not apply if the Recipient can demonstrate that: (i) the information is generally known or later became known through no fault of the Recipient; (ii) the same information was known to the Recipient prior to the confidentiality obligation or the same information can be shown to have been independently developed by the Recipient; (iii) the information was provided to the Recipient by a third party without a confidentiality obligation; (iv) the information was released in writing for publication by the other party; or (v) the information is required to be disclosed pursuant to a binding governmental or court order.
- A.10.3 The Confidential Information and any copies made thereof shall be returned (or destroyed at the request of the other Party) upon termination of this Agreement without further request. The obligation to return/destroy such Confidential Information shall not apply to the extent that Confidential

Information or copies thereof are required by mandatory law to be kept in safe custody by the Recipient, provided, however, that such Confidential Information or copies thereof shall be subject to a duty of confidentiality under the terms of this Agreement during the retention period provided by such mandatory law.

## **A.11 LIABILITY**

A.11.1 This section A.11 sets out the entire financial liability of ZEISS (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Customer in respect of:

- a) any breach of this Agreement;
- b) any use made by the Customer of the Services, Platform or Licensed Materials; and
- c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

A.11.2 Nothing in this Agreement excludes or limits the liability of either party for:

- a) death or personal injury caused by its negligence;
- b) fraud or fraudulent misrepresentation; or
- c) any other liability which cannot lawfully be excluded or limited.

A.11.3 Except as expressly and specifically provided in this Agreement:

- a) the Customer assumes sole responsibility for liabilities arising from the use of the Services, Platform and Licensed Materials by the Customer, and for any conclusions drawn from such use;
- b) ZEISS will have no liability for any damage caused by i) errors or omissions in any Customer Content, information, instructions or scripts provided to ZEISS by the Customer in connection with the Services, Platform or any actions taken by ZEISS at the Customer's direction; or ii) any failure or error in or of any hardware or software of the Customer; and
- c) all conditions, warranties, terms and undertakings (whether express or implied), statutory or otherwise relating to the delivery, performance, quality, accuracy, uninterrupted availability and use, fitness for purpose or reliability of the Platform and/or the Services are hereby excluded to the fullest extent permitted by applicable laws.

A.11.4 ZEISS's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with or under this Agreement will be limited to EUR 5,000.

A.11.5 Neither party shall be liable for indirect or consequential damages, including: a) loss of profits (where considered to be a direct or indirect loss), b) loss of revenue, c) loss of business, d) loss of data, e) loss of anticipated savings, f) loss of contact, g) loss of use, h) business interruption, i) loss of goodwill and/or damage to reputation, and j) any special, indirect or inconsequential loss, in each case arising from or in connection with this Agreement.

A.11.6 All limitations and exclusions of liability provided in this Agreement shall also inure to the benefit of ZEISS Affiliates, directors, employees, agents, business partners, subcontractors and any other

persons used by ZEISS in the performance of its obligations and to the benefit of their Affiliates, directors, employees, agents, business partners, subcontractors and any other persons used by them.

## **A.12 INDEMNITY**

- A.12.1 ZEISS will indemnify and hold Customer harmless against any claim that the Platform or Services infringes the intellectual property rights of any third party ("**IPR Claim**") for any amounts awarded against the Customer in judgment or settlement of such IPR Claim, provided such indemnity will be subject to the Customer (a) promptly notifying ZEISS in writing of the IPR Claim, (b) providing ZEISS with sole control of the defence and settlement of the IPR Claim, (c) providing ZEISS with all reasonable assistance in defending the infringement claim, and (d) taking all steps reasonably necessary to mitigate its loss in respect of the IPR Claim. The Customer may not settle or acknowledge any Infringement Claim without ZEISS's prior written consent. Notwithstanding the foregoing, ZEISS shall have no obligation to defend or indemnify or otherwise with respect to any claim or demand based on (a) any use of the ZEISS Services not in accordance with this Agreement; (b) any use of the ZEISS Services or interaction of the ZEISS Services with any third party services not expressly authorized by ZEISS; (c) any modification of the ZEISS Services by anyone other than ZEISS or its subcontractors; (d) any content provided by anyone other than ZEISS or its subcontractors; or (e) the Customer continuing the allegedly infringing activity after ZEISS has notified Customer and provided modifications, replacements or other remedies that would have prevented the alleged infringement.
- A.12.2 If Customer is prohibited from using the agreed ZEISS Services in accordance with this Agreement due to an infringement of an intellectual property right, ZEISS will procure for Customer the right to continue to access and use the ZEISS Services or, at ZEISS discretion, replace or modify the ZEISS Services so that there is no longer an infringement; or, if such remedies are not reasonable, ZEISS may terminate this Agreement in whole or in part.
- A.12.3 Customer is obligated to inform ZEISS immediately of any third-party claims of which Customer becomes aware in connection with the use of the ZEISS Services. ZEISS is entitled to take appropriate measures to defend itself against third-party claims or to pursue its rights. Customer must coordinate its own measures with ZEISS in advance.
- A.12.4 Any provision or term of this Agreement which by its express terms extends beyond the termination or expiration of this Agreement, or which by its nature should be so extended, shall remain in full force and effect after any termination or expiration of this Agreement.

## **A.13 TERM AND TERMINATION**

- A.13.1 This Agreement shall enter into force upon installation at the Customer's cost of software components in the Customer's network necessary to provide the ZEISS services and shall remain in force for the period specified in a quote, order, subscription order or other commercial transaction document ("Transaction Document"). The term of this Agreement shall be extended for the period specified in the Transaction Document, unless terminated by either party with the notice period specified in the Transaction Document prior to the expiration of the respective term.
- A.13.2 Either party may terminate this Agreement with immediate effect by providing written notice to the other party if:
- a) the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;

- b) the other party commits a material breach of any other term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- c) the other party ceases, or threatens to cease, to trade;
- d) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding up order in relation to the other party;
- e) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of schedule B1 to the Insolvency Act 1986);
- f) a receiver is appointed of any of the other party's assets or undertakings, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of, or sells, the other party's assets;
- g) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or
- h) the other party takes or suffers any action similar or analogous to those in sections A.13.2c)-g).

A.13.3 ZEISS may terminate this Agreement with immediate effect by providing written notice to the Customer if:

- a) i) ZEISS is or becomes subject to applicable law or requests of any governmental entity, or ii) the termination or lapse of ZEISS relationship with any of its suppliers or subcontractors occurs (unless caused by Zeiss's default), in each case which makes it impossible or commercially unfeasible (in Zeiss's reasonable opinion) for ZEISS to continue to provide Services; or
- b) a change of Control of the Customer or Customer's direct or indirect parent company occurs that adversely affects ZEISS's position, rights or interests (in ZEISS's sole opinion).

A.13.4 All termination rights must be exercised by written notice to the other party, and notice by email is sufficient.

A.13.5 Except as otherwise provided upon termination of this Agreement, regardless of the reason: (i) ZEISS will permanently disable Customer's access to the Platform and cease providing the ZEISS Services; (ii) Customer shall cease all use of the ZEISS Services; (iii) Customer shall promptly destroy or delete all ZEISS Materials and confirm this to ZEISS in writing; (iv) the Customer will pay all fees and charges outstanding at, and resulting from, termination (whether or not due at the date of termination) and (v) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, will not be affected or prejudiced.

A.13.6 Upon Customer's request, made within thirty (30) days of the effective date of termination, ZEISS make available for download the Customer Content at Customer's cost. Details of the costs are specified in the Transaction Document. After such thirty (30) day period, ZEISS shall have no

obligation to retain or make available any Customer Content and shall thereafter, unless otherwise required by applicable law, delete all Customer Content in ZEISS systems or otherwise in ZEISS possession or control.

#### **A.14 SERVICE**

A.14.1 The aim of error correction is to establish or maintain the functionality of the Platform. For the purpose of this section A.14, an “error” will be deemed to exist if the functionality of the Platform is impaired and not functioning as intended pursuant to the Transaction Document and this Agreement, producing more than an insignificant effect on the Customer.

A.14.2 ZEISS shall use reasonable endeavours to rectify errors in the Platform reported by the Customer within a reasonable period of time in accordance with this section A.14. “Reasonable” will mean a period within which ZEISS has the opportunity to analyze and eliminate the reported errors, taking into account its order situation and the availability of suitable employees.

A.14.3 The type of error correction is at the discretion of ZEISS and is regularly carried out by providing software in the form of updates and/or patches, which ZEISS installs independently and automatically via the systems provided.

A.14.4 ZEISS shall provide the error correction services with due level of care customary in the industry. ZEISS does not guarantee that errors will be corrected at all or within a certain period of time. There is also no obligation to guarantee availability of the Platform.

A.14.5 Errors must be reported by the Customer via the ticket system set up by ZEISS, stating the priority the Customer considers necessary. If the error reaches a higher priority level, the Customer must inform ZEISS immediately. In addition to the priority assessment, the error message should contain the following information (if not specified by the system):

(a) client;

b) in which module did the error occur?

c) the work steps in the course of which the error occurred or which caused the error;

d) the description of the error using screenshots, logs or similar information;

e) the date and time the error was detected;

f) Indication of reproducibility (yes/no).

A.14.6 The error symptoms are classified as follows:

Priority	Classification	Description	Response time (R)
I.	urgent; operations are interrupted	The application is not executable Program crashes occur Data is not saved or read correctly or completely	R = Max 4 hrs, with an aim to triage and offer support at point of initial contact

Priority	Classification	Description	Response time (R)
II.	high; the operating process is impaired	<p>The functionality of the application is impaired or malfunctions occur, in particular:</p> <p>Messages are incomprehensible or are not in the correct context for the called function</p> <p>Functionalities do not show the expected results</p> <p>The response time behavior prevents normal use of the software</p>	R = 8 hrs
III.	low; the operating process is not impaired	<p>It is possible to work with the software, even if not consistently within the agreed parameters</p> <p>User-friendliness is in need of improvement</p> <p>Malfunctions can be bypassed</p>	R = 48 hrs

A.14.7 The response time will begin when ZEISS receives the error message from the Customer. The time of receipt is determined by the information in the ticket system. The response time shall run during ZEISS operating hours from 08:00 to 17:30 and shall be deemed to have been met if ZEISS initiates measures to rectify the error within the response time.

A.14.8 ZEISS shall be entitled, but not obliged, to rectify errors outside its business hours; however, this shall only apply if the Customer provides sufficient assurance of its cooperation and bears the additional costs incurred.

A.14.9 ZEISS may, at its own discretion and taking into account the prioritisation carried out, rectify any errors that occur by means of the following measures:

(a) providing updates and/or patches that are automatically transferred to the systems; and/or

b) suggesting to the Customer how the errors in the use of the Platform can be circumvented or rectified.

A.14.10 In the case of errors of urgency level III, if the relevant resolution is to provide an update and/or patch, this may be postponed to the next suitable time at which the Customer makes other changes to its software/systems, as agreed by the parties.

A.14.11 A breach of the ZEISS obligations under this section A.14 due to non-compliance with the response time shall be determined according to the objective assessment of the classification of the error, irrespective of the Customer's assessment.

## **A.15 MISCELLANEOUS**

A.15.1 This Agreement may not be assigned or transferred by Customer, nor may any rights or obligations be assigned or delegated, without ZEISS's prior written consent. ZEISS may assign this Agreement or any of its rights or obligations, in whole or in part, without Customer's consent, or extend this Agreement to any of ZEISS Affiliates or to a third party successor in interest of all or any part of the

business to which this Agreement relates: (i) as a result of a change in ownership (including by stock purchase, merger or consolidation); (ii) as a result of the sale of all or substantially all of the assets or all or a portion of the business to which this Agreement relates; or (iii) in connection with any spin-off, (de)merger, consolidation, divestiture, dissolution and any other type of business combination or corporate reorganization, including the formation of joint venture companies or otherwise.

- A.15.2 All amendments to this Agreement must be made in writing to be effective.
- A.15.3 A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given. No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law will constitute a waiver of that or any other right or remedy, nor will it prevent or restrict the further exercise of that or any other right or remedy.
- A.15.4 Nothing in this Agreement is intended to, or will, operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party will have the authority to act in the name or on behalf of, or otherwise to bind, the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- A.15.5 Whenever notice by email is sufficient, as expressly set forth in this Agreement, notices to ZEISS will be sent to [customerpartner.med.uk@zeiss.com](mailto:customerpartner.med.uk@zeiss.com), and notices to Customer will be sent to Customer's then-current email address provided at registration or recently updated by Customer. If this Agreement requires that any notice or document be "in writing" unless notice by email is sufficient, as expressly set forth in this Agreement, such notice or document must be duly signed by the sender, and the signed notice or document must be delivered, sent or transmitted to the other party by email in original or facsimile copy or scanned copy. For the avoidance of doubt, other electronic communication shall not be deemed to be a written notice or document.
- A.15.6 This Agreement together with the annexes constitutes the entire agreement of the parties with respect to the subject matter of this Agreement and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover. General terms and conditions of the parties shall not apply.
- A.15.7 Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.
- A.15.8 If any provision of this Agreement is found to be illegal, invalid or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The parties shall replace the illegal, invalid or unenforceable provision with a legal, valid or enforceable provision that comes as close as possible to the original commercial intent of the parties.
- A.15.9 Nothing in this Agreement confers or will be deemed to confer on any person who is not a party to it a right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.
- A.15.10 Neither party shall be liable for any failure or delay in performance under this Agreement due to Force Majeure, provided that the delayed party (i) promptly notifies the other party of such cause and (ii) uses commercially reasonable efforts to promptly cure such failure or delay in performance.

- A.15.11 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation will be governed by and construed in accordance with the law of England and Wales.
- A.15.12 Each party irrevocably agrees that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.



## **Annexes:**

### **A.16     Annex 1 EULA**

# **End User License Agreement ("EULA")**

## **1. Introduction**

### **1.1 General Information**

This End User License Agreement ("EULA" or "License Agreement") is a legal agreement between "you" (either an individual or a legal entity, hereinafter referred to as "Licensee" or "Customer") and ZEISS ("ZEISS" or "Licensor") (each individually a "Party" and collectively the "Parties") for your use of ZEISS software products. The Agreement sets forth all rights and obligations for both Licensee and ZEISS and governs your use of all Software Products installed or provided by ZEISS. Any amendment to this Agreement must be in writing and in accordance with the terms and conditions contained herein. By paying the applicable license fee(s) and by downloading, installing or using the Software, you agree that this Agreement shall be enforceable against you in the same manner as a written, negotiated contract signed by you. If you do not agree to the terms of this Agreement, you are not authorized and may not download, install or use any ZEISS Software Products.

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

- (a) a so-called valid Subscription Agreement; or
- (b) a valid license from ZEISS.

Furthermore, individual software products require and use software:

- a) based on a subscription agreement; and/or
- b) with a server-based license solution,

and 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.

**1.3** The Software Product may contain codes, objects and other intellectual property developed by licensors or third parties and licensed by them and integrated into the Software Product ("Embedded Third Party Software"). Any Embedded Third Party Software or open source code and open source licenses used shall not limit or impair the rights of use granted to Licensee and may be accessed at any time within the respective software used. In individual cases, the respective license conditions can be provided by the Licensor upon request at any time.

**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.

## **2. Term and Termination / Royalties**

**2.1** The License Agreement begins with the activation of the respective software and runs for an indefinite period, unless otherwise agreed between the parties.

**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.

## **3. Reproduction Rights**

**3.1** The Licensee may reproduce the delivered Software to the extent that the reproduction is necessary to use the Software. Necessary reproductions of the Software include, but are not limited to, the installation of the Software Product on the mass storage of the device in accordance with this License Agreement and the loading of the Software into the main memory of the computer.

Changes to the hardware may require additional effort for subsequent licensing, repair of the license or re-licensing by the Licensee and/or Licensor. This applies in particular to changes or extensions of computer hardware components or the replacement of a computer system as a whole with/without network access (MAC address). If the Software Product is transferred by the Licensor to other computer hardware, the Licensee may no longer use the transferred software on the "old" system.

**3.2** In addition, Licensee shall be entitled to make copies for data backup purposes. This backup copy of the licensed Software Product must be marked as such.

**3.3** If, for reasons of data security or backup, a quick reactivation of the computer system, including the subject matter of the EULA, and the backup of the entire data stock, including the installed Software Product, are required after a total failure, Licensee may create the maximum required number of backup copies. The data media concerned shall be appropriately marked. The backup copies may only be used for archiving purposes.

**3.4** The Licensee is not entitled to make further copies or to instruct third parties to make further copies, in particular the Licensee is not entitled to print out the program code with a printer or to make photocopies of the manual.

## **4. Resale and Transfer**

**4.1** The Licensee is not entitled to rent, lease, lend or make the Software Product available to third parties within the scope of hosting or download options, unless the Licensor has expressly indicated or permitted this in writing.

**4.2** However, it is permitted to grant a right of use to third parties if they have to use the Software Product as specified by Licensee. This usually concerns employees of Licensee, but not independent service providers, in particular, however, it is not limited to service technicians, subcontractors of Licensee, etc.

**4.3** Transfer within legal entities or global groups of Licensee:

If 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 this EULA (acknowledgement to the email

address provided by the licensor)<mailto:>. "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.

## **5. Back Translation and Program Changes**

**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.

**5.2** The reverse translation of the licensed program code into other code forms (decompilation) and other types of reverse engineering of various different phases of software creation are permitted only to the extent that they serve to correct errors that impair the functioning of the software (in accordance with Section 6.1). However, Licensee may perform such decompilation only to the extent necessary for correction and, if applicable, in compliance with the terms and conditions contractually agreed with the owner of the copyright in this Program.

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.

**5.4** All property rights and copyrights relating to the software product, the printed accompanying materials and all copies of the software product shall remain with the Licensor or its suppliers. This software product is protected under German copyright law, U.S. copyright law and the provisions of international treaties. The Licensee is not entitled to reproduce the printed materials accompanying the Software.

**5.5** Licensee shall not be entitled to remove, modify or add to any copyright notices or trademark notices placed by Licensor. This includes, without limitation, all references in physical and/or electronic media or documents, in "Setup Wizards" or in "About..." dialog boxes, and/or in other references displayed on or activated via the Internet, in program code or other embodiments originally included in the Software or otherwise created by Licensor.

## **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 Operating Instructions, provided that the Software Product is installed in the intended system in compliance with the Licensor's guidelines.

**6.2** Errors (bugs) in the software product or its software modules shall be deemed to be errors (bugs) that can be reproduced at any time.

**6.3** The Licensor shall correct errors in the Software Product, and in all manuals and other documents, within a reasonable period of time after receipt of the corresponding information from the Licensee on the error

necessary for the correction of 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.

**6.4** 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.

**6.5** The Licensor neither guarantees nor warrants 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,
- culpable damage to life, limb and health, in the event of errors, which the Licensor has fraudulently concealed or which it has excluded under warranty,
- Software errors 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 Concurrent Use / Floating Licenses.

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. Data Acquisition

Upon installation of the Software Product, depending on the Software Product, diagnostic as well as technical, usage-relevant and related information, including unique system and hardware identifiers, as well as information about the system software used, software license and modules, as well as all devices and communications controlled by the Software (collectively referred to as "Systemic Data") will be collected locally on Licensee's computer, or the technical prerequisite for the collection of the aforementioned information by Licensee will be prepared, if necessary; at the respective specified website or in the respective software product, a detailed overview of the recorded data can be viewed. Depending on the application and configuration case, this data can also be stored locally in the network or on servers located in the network to enable further products or services of the Licensor.

The Licensor is entitled to use this systemic data for diagnostic purposes or for Licensor Services and to record the data, provided that it is collected and stored for the purposes described above in a form that does not allow any conclusions to be drawn about individuals.

Depending on the software product, data collection can be prevented by uninstalling the analysis software.

## 9. Safeguards

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.

## 10. Industrial Property Rights and Copyrights

**10.1** 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.

**10.2** ZEISS shall have no obligations if property right infringements are caused by software revisions or updates, firmware supplements or documentation supplied by ZEISS not being used in the intended manner or not being used on the specific coordinate measuring machine including peripheral devices.

## 11. Additional Conditions for - Beta Software

Deviation from this End User License Agreement - EULA applies to Beta Software for liability:

Beta software may regularly still contain defects. The granting of a license for beta software was made for the purpose of an early use of new software functions and the transmission of feedback regarding the quality and usability or also identification of defects. Beta software is provided "AS IS" and "AS AVAILABLE". It may contain errors or inaccuracies that may cause Licensee's equipment and peripherals connected to it (including, in particular, servers and computers) to fail, be impaired, or lose data and/or information. Licensor strongly recommends that you make backup copies of all data and information residing on your device and any peripheral devices before Licensee downloads, installs or uses Beta Software. Licensee expressly acknowledges and agrees that use of Beta Software is at Licensee's own risk.

LICENSEE SHALL BEAR ALL RISKS AND ALL COSTS ASSOCIATED WITH ITS USE OF BETA SOFTWARE ON ANY PROGRAM, INCLUDING, WITHOUT LIMITATION, ANY COSTS FOR INTERNET ACCESS, COSTS FOR BACKUP COPIES, COSTS FOR THE USE OF ITS EQUIPMENT AND PERIPHERAL DEVICES, AND FOR ANY DAMAGE TO EQUIPMENT, SOFTWARE, INFORMATION OR DATA OF ANY KIND.

The Licensor is liable for foreseeable damages in case of intent and only for malfunctions for which the Licensor is responsible in case of gross negligence. Liability in case of simple negligence is excluded for indirect damages, loss of data or damages lying in the area of responsibility of the user of the innovation release or Beta Software. Further claims of the licensee are excluded.

Licensee understands and agrees that no legal partnership, agency, or working relationship is created between Licensee and Licensor by downloading, installing, and using Innovations Software or Beta Software, and that Licensor is under no obligation to provide any Innovations Software to Licensee.

## **12. Export Control**

In the event Licensee exports the Software from the country in which Licensee first received it, Licensee assumes responsibility for compliance with all applicable import, export and re-export regulations, including but not limited to those of the U.S. Department of Commerce's Office of Export Administration, the U.S. Treasury Department's Office of Foreign Assets Control and other U.S. agencies, and the export control regulations of the European Union and Switzerland. Licensee acknowledges and agrees that neither the Software nor any underlying information or technology may be transferred in any manner to countries currently under embargo by the United States, Switzerland and/or the European Union. Licensee agrees to strictly comply with all applicable laws and assumes sole responsibility for obtaining any import, export or re-export licenses that may be required.

The Software may use encryption technology that is subject to licensing under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-744 and Council Regulation (EC) No. 1334/2000.

Licensee represents and warrants to Licensor that it will not use the Software or any portion thereof in violation of any applicable law or regulation, and Licensee agrees to indemnify and hold Licensor harmless from any and all claims.

## **13. Evaluation of User Behavior in Anonymous Form**

The Licensee agrees to an evaluation of the user behavior in anonymized form by the Licensor for purposes of improvement and further development of its products.

## **14. Miscellaneous**

**14.1** 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.

**14.2** Should parts of this contract become invalid, this shall not affect the validity of the remaining parts of this contract. The invalid 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 invalid provisions.

**14.3** 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.

## **A.17     Annex 2 Applications**

**ZEISS Surgical Cloud Application  
ZEISS Livestream Application  
ZEISS Surgery Optimizer Application  
ZEISS Cloud Viewer Application  
ZEISS Collaborative Care Application  
ZEISS Data Analyzer Application  
ZEISS Surgery Planner Application  
ZEISS CLINIC 360 Application  
ZEISS Research Data Platform**

## **ZEISS Surgical Cloud Application**

### **1. Application Description**

The ZEISS Surgical Cloud provides a central access point for all imaging data recorded with a ZEISS Visualization System. It automatically synchronizes patient and imaging data for viewing, organizing and sharing from anywhere, anytime.

### **2. Supplemental Terms and Conditions**

None.



## **ZEISS Livestream Application**

### **1. Application Description**

ZEISS Livestream enables easy broadcasting and recording of live surgeries and treatments for teaching and education purposes. Participants of the event can actively engage over chat.

### **2. Supplemental Terms and Conditions**

None.

## **ZEISS Surgery Optimizer Application**

### **1. Application Description**

The ZEISS Surgery Optimizer is an application which allows users to view the surgical cases from leading surgeons and experience state-of-the-art surgery technique insights from the segmented phases. The application enables the users to upload their surgical case videos upon which the AI-based algorithm is run to segment the case by its various phases. These segmented videos can then be reviewed or compared with the cases from leading surgeons to facilitate surgical learning. The application allows the user to view the metadata from the connected Zeiss visualization devices, which includes data on the patient and their biometry data.

### **2. Supplemental Terms and Conditions**

None.

## **ZEISS Cloud Viewer Application**

### **1. Application Description**

The ZEISS Cloud Viewer application provides eye care professionals with a tool to view images and reports.

### **2. Supplemental Terms and Conditions**

In addition to the Terms and Conditions, the subject matter of these Supplemental Terms and Conditions are applicable to the use of the ZEISS Cloud Viewer application.

#### **2.1 Use of the Zeiss Services**

2.1.2 The use of ZEISS Cloud Viewer will happen at the Customer's own operational risk. In particular, ZEISS will have no operational responsibility for the Customer's medical evaluations, medical decisions, medical operations or other medical activities.

#### **2.2 Data Privacy**

2.2.1 The Customer shall use ZEISS Cloud Viewer only in compliance with all provisions on professional secrecy to which the Customer and/or their legal representatives, employees or vicarious agents are subject to.

## **ZEISS Collaborative Care Application**

### **1. Application Description**

The ZEISS Collaborative Care application provides healthcare professionals with the functionality to share complex cases for second opinion and allows Customers to collaborate and discuss cases via chat with other Customers or invited users.

### **2. Supplemental Terms and Conditions**

In addition to the Terms and Conditions, the subject matter of these Supplemental Terms and Conditions are applicable to the use of the ZEISS Collaborative Care application.

#### **2.1 Subject Matter and Scope**

2.1.1 If a Customer from one region, for example in the EU shares his/her Data with another Customer residing in another region, for example in the US, Customer in the US will be able to access the shared Customer Data and provide the Customer in the EU with a second opinion. However, this is only possible via the European domain, meaning that a Customer in the US will not be able to see his/her Customer Data stored in the US or shares he/she has created via the US domain. In order to access his/her Customer Data stored in the US, the Customer will need to use the link to ZEISS Collaborative Care via the US domain.

#### **2.2 Use of the Zeiss Services**

- 2.2.1 If a Customer leaves an institution and his/her access to the application gets removed (via ZEISS ID Management Portal), he/she will no longer have the access to chats created/shared by him/her (while he/she was assigned to an agreement), but this Customer will have access to the ZEISS Collaborative Care and the chats he/she was invited to. In addition, this Customer will have access only to the chat view, but not to the patient view. This change is reflected in the ZEISS services by the fact that the status of this Customer changes from “subscriber” to “non-subscriber”.
- 2.2.2 The use of ZEISS Collaborative Care will happen at the Customer’s own operational risk. In particular, ZEISS will have no operational responsibility for the Customer’s medical evaluations, medical decisions, medical operations or other medical activities.

#### **2.3 Data Privacy**

2.3.1 The Customer shall use ZEISS Collaborative Care only in compliance with all provisions on professional secrecy to which the Customer and/or their legal representatives, employees or vicarious agents are subject to.

## **ZEISS Data Analyzer Application**

### **1. Application Description**

ZEISS Data Analyzer is an application that displays a set of visual graphs of the user's HDP data as single data points or in aggregated form. The data may come from connected medical devices, including 3rd party devices, their log files, manually uploaded data, or data created by other applications, including the results of AI algorithms. The user can select the graph types and data types to display.

### **2. Supplemental Terms and Conditions**

None

## **ZEISS Surgery Planner Application**

### **1. Application Description**

The ZEISS Surgery Planner is a cloud and browser-based digital assistant that brings all relevant data from devices and EMR automatically together in one location and automates much of the planning process, with a focus on the anterior segment surgeries. The primary objective is to save time and prevent errors that could adversely affect outcomes.

### **2. Supplemental Terms and Conditions**

#### **2.1 Subject Matter and Scope**

In addition to the Terms and Conditions, the subject matter of these Supplemental Terms and Conditions are applicable to the use of the ZEISS Surgery Planner application.

The provision herein applies to all versions of the ZEISS Surgery Planner delivered to the Customer including future updates.

#### **2.2 Use of the ZEISS Services**

##### **2.2.1 Software Modification and Add-On Management**

ZEISS reserves the right to modify the ZEISS Surgery Planner software at any time and at its sole discretion, including the addition or removal of add-ons.

##### **2.2.2 Additional Functionalities**

ZEISS Surgery Planner incorporates functionalities such as ZEISS AI IOL Calculator (ZAIC), in countries where this is available. ZAIC is an intraocular lens (IOL) calculation algorithm for cataract surgeries and some other anterior segment surgeries (ROW only) that uses AI techniques (i.e. supervised machine learning) to predict the residual SE for a given eye biometry, IOL model and power, and eye status (prior corneal surgery and lens status).

##### **2.2.3 Operational risk and Responsibility Disclaimer**

The use of the ZEISS Surgery Planner is undertaken at the Customer's own operational risk. ZEISS disclaims any operational responsibility for the Customer's medical evaluations, medical decisions, medical operations, or any other medical activities. It is the sole responsibility of the Customer to ensure that all medical practices comply with applicable regulations and standards.

### **2.3 Data Privacy**

The Customer shall use ZEISS Surgery Planner only in compliance with all provisions on professional secrecy to which the Customer and/or their legal representatives, employees or vicarious agents are subject to.

## **ZEISS CLINIC 360 Application**

### **1. Application Description**

ZEISS CLINIC 360 is a web-based software solution that integrates diagnostic devices and electronic medical records (EMRs) into a single platform. It provides centralized access to patient data, supports multi-modality imaging, and offers advanced tools for data analysis and clinical visualization. Designed to assist in the diagnosis and management of eye diseases, ZEISS CLINIC 360 presents information in a clinically meaningful way, streamlining access, review, and exam documentation—ultimately enhancing clinical efficiency and decision-making.

### **2. Supplemental Terms and Conditions**

#### **2.1 Subject Matter and Scope**

In addition to the Terms and Conditions, the subject matter of these Supplemental Terms and Conditions are applicable to the use of the ZEISS CLINIC 360 application.

The provision herein applies to all versions of the ZEISS CLINIC 360 delivered to the Customer including future updates.

#### **2.2 Use of the Zeiss Services**

##### **2.2.1 Software Modification and Add-On Management**

ZEISS reserves the right to modify the ZEISS CLINIC 360 software at any time and at its sole discretion, including the addition or removal of add-ons.

##### **2.2.2 Additional Functionalities**

ZEISS CLINIC 360 incorporates functionalities such as ZEISS CIRRUS PathFinder, in countries where this is available. CIRRUS PathFinder is a fully integrated deep learning, AI-based support tool that streamlines the review of macular OCT scans by automatically identifying scans that may need closer review.

##### **2.2.3 Operational risk and Responsibility Disclaimer**

The use of the ZEISS CLINIC 360 is undertaken at the Customer's own operational risk. ZEISS disclaims any operational responsibility for the Customer's medical evaluations, medical decisions, medical operations, or any other medical activities. It is the sole responsibility of the Customer to ensure that all medical practices comply with applicable regulations and standards.

#### **2.3 Data Privacy**

The Customer shall use ZEISS CLINIC 360 only in compliance with all provisions on professional secrecy to which the Customer and/or their legal representatives, employees or vicarious agents are subject to.

## **ZEISS Research Data Platform**

### **1. Application Description**

The ZEISS Research Data Platform provides a cloud-based platform to support clinical researchers to manage de-identified data and execute their research projects. It enables processing of uploaded data with pre-defined algorithms and the training of new algorithms with a machine learning toolkit. The data can be shared on demand by the user with other users on the platform.

### **2. Supplemental Terms and Conditions**

In addition to the Agreement, the subject matter of these Supplemental Terms and Conditions are applicable to the use of the ZEISS Research Data Platform application. The aim is to ensure compliance with statutory data protection requirements and to guarantee that the data is used exclusively for clinical research purposes. In addition, the user's responsibilities with regard to data security and compliance with data protection regulations are described in detail.

#### **2.1. Data use and processing**

**2.1.1. Anonymization obligation:** The user is obliged to upload only sufficiently anonymized or pseudonymized data that is permissible in accordance with the respective data protection regulations.

**2.1.2. Consent of the patients:** The user shall ensure that all patients concerned have given their express consent to the use of their data for clinical research purposes.

**2.1.3. Revocation of consent:** If a patient withdraws their consent, the user is obliged to delete the relevant data immediately.

**2.1.4. Secondary Data Use:** Section A.9.2 and A.9.3 of the Agreement are not applicable for the use of the ZEISS Research Data Platform. ZEISS does not make secondary use of patients' personal data on the ZEISS Research Data Platform.

**2.1.5. Data retention after deletion:** Deleted data will only be retained to the extent provided for in the applicable data processing agreement.

**2.1.6. Earmarking of the data:** All data and the toolkit provided on the platform, including the prototype algorithms, may only be used for clinical research purposes.

#### **2.2. Data Deletion and Storage**

**2.2.1.** After termination of the contractual relationship or termination of the platform contract, all user data will be deleted on the last day of the subscription.

**2.2.2.** Data will only be stored after termination within the scope of the retention obligations set out in the data processing agreement.

#### **2.3 Algorithms and their use**

**2.3.1.** The algorithms provided on the platform are intended to support research and are to be regarded exclusively as prototype tools.

**2.3.2.** The user is solely responsible for the functionality and correctness of the algorithms uploaded by him.



## **2.4 Data transfer and responsibility of the user**

2.4.1. The user is solely responsible for ensuring that all persons with whom he shares data on the platform have the appropriate access rights.

2.4.2. The disclosure of data to third parties without sufficient authorization is prohibited.

2.4.3. The platform operator assumes no liability for unauthorized data transfer by the user or third parties.

## **2.5 Final provisions**

2.5.1. This agreement forms an integral annex to the platform agreement and comes into force upon signature.

2.5.2. Amendments and additions to this contract must be made in writing.

2.5.3. German law applies.

## **A.18 Annex 3 - Addendum to the Terms & Conditions of the ZEISS Health Data Platform and Applications – ZEISS Collaborative Care**

### **1. Preamble**

This Addendum supplements the Terms & Conditions of the ZEISS Health Data Platform and Applications (“HDP Terms & Conditions”) with specific provisions for the use of ZEISS Collaborative Care (“ZCC”).

In case of any conflict, the provisions of this Addendum shall prevail over the HDP Terms & Conditions.

### **2. Definitions**

- **Referring HCP:** The healthcare professional (incl. eyecare professionals) who initiates a Consultation, Referral, or Co-Management by sharing patient data.
- **Receiving HCP:** The healthcare professional (incl. eyecare professionals) who receives patient data within ZCC.
- **Consultation:** Scenario in which the Receiving HCP only views patient data received via ZCC and may provide comments in text form without downloading or storing the original data.
- **Referral:** Scenario in which the Receiving HCP may download and store patient data in their own system (e.g. ZEISS FORUM) in order to assume treatment.
- **Co-Management:** Joint treatment of a patient by Referring and Receiving HCP that includes Referral and further includes exchange of newly generated patient data, without modifying the original data.
- **Freemium User:** Invited HCP with limited free access, also bound by these Terms & Conditions. Limited access means that the Freemium User can receive a Consultation and Referral but cannot download patient data. Freemium User means an invited user as introduced in the Terms of Use for ZEISS Services for Invited Users, whereby the invited user is defined there under “User”.

### **3. Modes of Use and Responsibilities**

#### **3.1 Consultation**

- Original data remain with the Referring HCP.
- The Receiving HCP may only provide text comments.
- Downloading of patient data or sharing with third parties is prohibited.

#### **3.2 Referral**

- The Receiving HCP may store patient data in their own system (ZEISS FORUM or equivalent).
- The patient data may only be used for the agreed treatment of the patient.
- Any onward disclosure to third parties is prohibited.

#### **3.3 Co-Management**

- Both HCPs share responsibility for the treatment.
- Only copies of datasets may be transmitted; original datasets may not be altered.
- A separate contractual agreement between the involved HCPs is required for Co-Management (Art. 26 GDPR – joint controllership).

## 4. Data Protection and Patient Consent

4.1 The Referring HCP must obtain **valid patient consent** prior to initiating a Consultation, Referral, or Co-Management related to the respective patient.

4.2 In case of a Referral, the consent must also cover the transfer of contact details (e.g. phone number, e-mail address) for scheduling purposes.

4.3 For Co-Management, explicit written consent is required, informing the patient about the joint responsibility of multiple HCPs.

4.4 ZEISS may provide model texts for patient consent but assumes no responsibility for their legal validity or application.

## 5. Roles under Data Protection Law

- In a **Consultation**, the Referring HCP remains the sole data controller.
- In a **Referral**, the Receiving HCP becomes an independent controller for the transferred data.
- In **Co-Management**, both HCPs qualify as joint controllers under Art. 26 GDPR and must enter into a joint controllership agreement.
- ZEISS is not a party to such agreements in any of these scenarios.

## 6. Obligations of Freemium Users

- Freemium Users must comply with the same data protection and purpose limitation requirements as paying users.
- They may only use the data for the specific purpose of the Consultation or Referral.
- Storage or further sharing beyond that purpose is prohibited.

## 7. Liability and Indemnification

7.1 The Referring HCP shall be liable to ZEISS for ensuring the existence of valid patient consent.

7.2 The Receiving HCP shall indemnify and hold ZEISS harmless against any third-party claims arising from unlawful or improper processing of the transferred data.

7.3 ZEISS assumes no responsibility for the legal admissibility of cooperation between HCPs, in particular with regard to medical or professional law requirements in the respective jurisdictions.

## 8. Final Provisions

- This Addendum forms an integral part of the HDP Terms & Conditions.
- Unless otherwise provided in this document, the provisions of the HDP Terms & Conditions shall remain unaffected and continue to apply.

## **A.19 Annex 4 Addendum to the Terms & Conditions of the ZEISS Health Data Platform and Applications – ZEISS Surgical Cloud**

### **1. Preamble**

This Addendum supplements the Terms & Conditions of the ZEISS Health Data Platform and Applications (“HDP Terms & Conditions”) with specific provisions for the use of the ZEISS Surgical Cloud (“ZSC”).

In case of any conflict, the provisions of this Addendum shall prevail over the HDP Terms & Conditions.

### **2. Definitions**

**Educational Use:** Use of ZSC for teaching and training of healthcare professionals, in particular by sharing surgical videos and related additional data.

**Collaborative Use:** Use of ZSC for collaboration between healthcare professionals (e.g., discussion of rare cases, peer feedback), not necessarily related to a treatment scenario.

**Sharing User:** The healthcare professional (HCP) who uploads data to ZSC and determines to what extent the data is shared with other users. The Sharing User may specify whether the data is shared in full, with selected additional information, or in anonymized/pseudonymized form.

**Receiving User:** The HCP with whom the data is shared. This may be a ZEISS customer or an invited external user who must accept the “Invitation T&Cs” or Freemium T&Cs.

**Freemium User:** Invited HCP with limited free access to ZSC, subject to the same purpose limitation and data protection obligations as paying users.

### **3. Modes of Use and Responsibilities**

#### **3.1 Educational Use**

- Data may only be used for teaching and training purposes.
- Disclosure to third parties or storage outside of ZSC is prohibited unless expressly permitted by the Sharing User and covered by valid patient consent.

#### **3.2 Collaborative Use**

- Data may be used for collegial exchange, discussion of rare cases, or scientific purposes.
- Original datasets must not be altered. Only copies may be created if and to the extent permitted by patient consent.

### **4. Data Protection and Patient Consent**

4.1 The Sharing User must obtain valid patient consent before uploading and sharing data in ZSC, unless the data has been fully anonymized.

4.2 ZEISS recommends anonymization or pseudonymization of patient data wherever possible in the context of Educational Use or Collaborative Use.

4.3 ZEISS may provide model texts for patient consent but assumes no responsibility for their legal validity or applicability.

## **5. Roles under Data Protection Law**

- The Sharing User remains the data controller for the data uploaded.
- The Receiving User becomes an independent controller for the data he or she is entitled to access or store.
- ZEISS acts solely as platform provider and is not a controller with respect to data shared between HCPs.

## **6. Obligations of Freemium Users**

- Freemium Users are subject to the same data protection and purpose limitation requirements as paying users.
- Any use of the data beyond Educational Use or Collaborative Use is prohibited.

## **7. Liability and Indemnification**

7.1 The Sharing User is responsible for ensuring that valid patient consent exists and/or that sufficient anonymization of the shared patient data has been applied.

7.2 The Receiving User shall indemnify and hold ZEISS harmless against any third-party claims arising from unlawful or improper processing of the shared data.

7.3 ZEISS assumes no responsibility for the legal admissibility of cooperation between HCPs, in particular with regard to medical or professional law requirements in the respective jurisdictions.

## **8. Final Provisions**

This Addendum forms an integral part of the HDP Terms & Conditions.

Unless otherwise expressly provided in this document, the provisions of the HDP Terms & Conditions shall remain unaffected and continue to apply.