

## **License Agreement for the Leasing of Software**

### **(„Software Licensing Agreement“)**

This is an Agreement for all offers regarding the licensing of arivis software ("Arivis Software") of the Carl Zeiss Microscopy GmbH, Carl-Zeiss-Promenade 10, 07745 Jena ("**Licensor**") and the party purchasing a license of such software directly or through an authorized distributor ("**Licensee**") are based on these Terms and Conditions. Arivis Software includes all former products of the arivis AG, Erika-Mann-Str. 23, 80636 München, especially arivis Pro, arivis Hub, arivis VR, arivis Vision4D, arivis VisionHub, arivis InviewR, arivis Large Data Viewer.

#### **§ 1 Subject Matter of the Agreement**

1. This Agreement is for the licensing of Licensor's standard software ("Software").
2. The hardware and software environment which the Software is to be used in is defined in the associated documentation and the website of the Licensor. The Licensee is responsible for providing a system environment that meets the respective requirements.
3. Unless agreed otherwise, the Software shall be installed by the Licensee. Installation and configuration services do not form part of this Agreement unless explicitly agreed.

#### **§ 2 Granting of Rights**

1. Licensor grants the Licensee a non-exclusive non-transferable right to use the Software and Documentation for the duration of the Lease Agreement. The Licensee may only install and use the Software on the agreed number of computers.
2. The right to use terminates with the end of the duration of the Lease Agreement notwithstanding the right of termination without notice. The use of the Software by the Licensee after termination of the Lease Agreement is not allowed.
3. Licensee may only use the Software for its own business purposes within the agreed license model. Under no circumstances does the Licensee have the right to rent out the Software or to sub-license the Software in any other way, to publish the Software or to make it available to third parties hardwired or wirelessly, free or against payment, e.g. as part of

providing application services or as "software as a service".

4. To the extent that the Software contains Open-Source-Components, Licensee has the right to use these within the scope as defined in this Agreement.
5. Copyright notices, serial numbers, and any other features identifying the program may not be removed from the Software and may not be changed.
6. No further rights of use or exploitation rights to the contractual software are granted to the Licensee.
7. The right of use is granted subject to the Licensee having paid in full the remuneration due to the Licensor in exchange for the lease of the Software.
8. If the Licensee uses the Software in a manner that goes beyond the scope of the granted rights of use either qualitatively (with regard to the nature of the permitted use) or quantitatively (with regard to the number of licenses), the Licensee must inform the Licensor of this immediately and no later than four weeks of becoming aware of the situation. In this case, the Licensee will immediately acquire the rights of use necessary to use the Software in this way. If the Licensee fails to do this, the Licensor will assert his rights.
9. The use of the Software is restricted to the following licensed territory: USA and Canada.
10. The use of the Software is solely permitted for the purpose of research. In particular, it is not permitted to be used together with applications which may, regardless of the respective kind, cause damages to objects or persons.

#### **§ 3 Remuneration**

1. The remuneration for the lease of the contractual software and granting of associated rights of use is specified on the quotation.
2. All prices are net and are thus subject to the addition of the respectively applicable statutory VAT.
3. The invoiced amount is due in full 30 days after invoicing.

4. The Licensee is only entitled to offset legally determined or uncontested receivables against the receivables of the Licensor.

#### **§ 4 Offers and Term**

1. All offers made by Licensor are subject to confirmation. Purchase orders are only deemed accepted if they are confirmed by Licensor or if Licensor fulfils the purchase order, particularly if Licensor fulfils the purchase order by rendering the service.

2. The term of this License Leasing Agreement is subject to the Agreement between the parties. Have the parties agreed upon a limited term, the Agreement automatically starts and ends with the date agreed. In this case the right to terminate the Agreement with notice is excluded.

#### **§ 5 Warranty**

1. The Licensor warrants that the Software is of the agreed quality. Licensor shall remedy any defects in the Software. Licensor is free to choose whether to remedy the defect by improving or replacing the Product free of charge.

2. Where possible, defects must be demonstrated to the Licensor by means of the comprehensible description of the symptoms of the defect in writing, with written records of the type and occurrence of defects, hard copies, or other materials illustrating the defect or defects. A defect report should enable the reproduction of error.

3. Licensor has first been given sufficient opportunity to remedy the defect and has definitively failed. Remedy of the defect is deemed to have failed if remedy is impossible, if Licensor has refused to remedy or if remedy is delayed in a manner which is unreasonable, if there is good reason to doubt the prospects of success or if the Licensee cannot be reasonably expected to accept remedy for other reasons.

4. All claims for compensation for damages and expenses on the part of the Licensee are governed by the liability clauses outlined in § 7 of this Agreement.

5. Warranty rights do not apply to errors in the operating system of the Licensee or to third-party products which do not form part of the scope of delivery of the Licensor. Warranty rights do not apply in the case of defects due to the Software being used in a hardware or software environment that does not meet the requirements specified in the documentation.

6. Any changes or enhancements to the contractual software carried out by the Licensee or third parties invalidate the warranty of the Licensor unless the Licensee can prove that the change or enhancement was not responsible for a defect.

7. Licensee is only entitled to terminate the License Leasing Agreement due to non performance by Licensor after Licensor has been given a reasonable period for cure of defects and Licensor has failed to cure such defects. Licensee is not entitled to reduce the price by deducting certain amounts from the price agreed between the parties except for defects which are undisputed or recognized by declaratory judgment.

#### **§ 6 Property Rights of Third Parties**

1. The Licensor warrants that the Software is free from any rights of third parties which might prevent the use of the Software in accordance with the terms of this Agreement in the licensed territory.

2. If the property rights of third parties are infringed upon by the Licensee using the contractual software in accordance with the terms of this Agreement in the licensed territory, the Licensor shall release the Licensee from all legally determined payment obligations and all comparable payment obligations agreed with the previous written approval of the Licensor. The obligation of the Licensor to release the Licensee from his payment obligations is restricted to those expenses incurred inevitably by the Licensee as a result of and in conjunction with the claim of the third party and is limited to the liability agreed in § 7 of this Agreement. Any warranty claims by the Licensee remain unaffected by this and are governed by the following para. 4 and 5.

3. The Licensee is obliged to immediately inform the Licensor of any claims lodged against him and of the subsequent proceedings in writing, to grant or award the Licensor the authority and authorization required to handle the legal dispute, and to provide a reasonable level of support.

4. If using the Software in accordance with the Agreement should infringe upon the rights of third parties within the licensed territory, then the Licensor is entitled to decide either to give the Licensee permission to continue using the contractual software, to exchange the contractual software, or to change the contractual software so that using it no longer infringes upon the rights of others.

5. If the measures in para. 4 above require effort which is grossly disproportionate to the Licensee's interest in performance as specified in the content of this Agreement, the Licensor can refuse subsequent performance.

6. If the Licensee is liable for the infringement of intellectual property rights, the Licensee shall release the Licensor from all claims of third parties and shall reimburse the Licensor for the costs required for a legal defense.

## **§ 7 Liability**

1. The Licensor shall be liable in accordance with this Agreement only as per the following stipulations:

(2) In the case of the grossly negligent infringement of an obligation which results in personal injury (or death) or damage to physical property, the Licensor shall be liable to the amount of typical damages foreseeable at the time at which the Agreement was entered into.

(3) In the case of slight / simple negligence, the Licensor is liable for compensation for damages or futile expenses - regardless of the legal basis - only in the case of the infringement of a fundamental contractual obligation. Fundamental contractual obligations are obligations which must be fulfilled to enable the proper execution of the contract and upon whose observance the Licensee routinely relies and is entitled to rely. In these cases, the liability of the Licensor as per this Agreement shall be limited to the total remuneration paid according to this Agreement.

Liability limitations and exclusions as per § 7 para. 1 item (2) and (3) do not apply in the case of damages relating to violation of life, limb, or health and to claims relating to product liability law.

2. Licensor will not be liable for indirect damages and consequential damage, such as lost profit and damages relating to operational interruptions / lost savings/ lost profit / lost opportunity.

3. In cases where the liability of the Licensor is excluded or restricted, this shall apply to the personal liability of salaried employees, workers, job holders, representatives, and vicarious agents of the Licensor.

4. The period of limitation for claims by the Licensee - in particular for warranty claims for defects and claims for compensation for damages - shall be one year from the start of

the statutory period of limitation. This does not apply in the case of claims caused by intent or gross negligence, damages due to violation of life, limb, or health, as well as claims in tort, and claims relating to product liability law.

5. The Licensor's liability will be limited by Licensee's action or inaction which contributed to the claimed damage. In particular, the Licensee is obliged to back up data and use virus protection measures at least in accordance with the latest industry standard. In the case of data loss, the Licensor shall only be liable if the Licensee has used proper data backup measures to ensure that the data can be reconstructed by means of a reasonable amount of effort. This liability shall be limited to the reasonable costs of restoring the data.

## **§ 8 Validation of the Contractual Software**

If the contractual software requires validation for use at the Licensee's premises due to industry-specific requirements, the Licensee shall carry out this validation and assumes sole responsibility for it. The Licensee is solely responsible for ensuring that the validation process is carried out properly and successfully and - in particular - for ensuring the observance / fulfilment of all requirements for a successful validation process.

## **§ 9 Confidentiality**

1. This applies to all information exchanged / imparted verbally, in writing, or by means of data carriers, including knowledge and results gained, written documents, drawings, plans, specifications, trade secrets, methods, formulae, know-how, as well as material and any other information made available to the recipient and specified or labelled as being confidential. These shall be referred to below as "confidential information".

2. Confidential information acquired from one party must be kept confidential by the other party. Each party shall protect confidential information acquired from the other party with the same level of care used to protect his own business and trade secrets and with at least the level of care to be expected from a prudent businessman.

3. The recipient shall only make confidential information available within his organisation to those persons who need to work with and have access to it. The recipient shall inform these persons about this Agreement and shall ensure that the information is duly treated as confidential. Third parties may only be allowed access to confidential information with

written permission from the party providing the information. In such cases, the recipient must ensure that the third party in question observes the stipulations of this Agreement.

4. The recipient is released from the obligation to handle the confidential information confidentially if:

(1) The information is common knowledge at the time of disclosure;

(2) The information becomes common knowledge without the recipient infringing upon his obligation to maintain confidentiality;

(3) The information was already in the possession of the recipient at the time of disclosure or was not acquired directly or indirectly from the disclosing party;

(4) The information is lawfully acquired from a third party at the same time as or after disclosure by a party to this Agreement and the third party did not directly or indirectly acquire the information from the disclosing party or was authorized by the disclosing party to pass on the information;

(5) The information was acquired through the own work of the recipient or is acquired later on without persons who were involved in this work having access to the disclosed confidential information;

(6) The information must be disclosed due to a mandatory official demand, whereby the recipient must inform the disclosing party of this demand without delay and must make available the information required for an appeal if requested to do so.

Any publications relating to confidential information must be agreed with the party in question in good time beforehand.

#### **§ 10 Audit**

The Licensor is entitled to arrange for an inspection of the compliance of the actual use of the contractual software delivered by the Licensor at the Licensee's premises. The inspection may only be carried out by an independent third party (official expert) who has also been obliged by the Licensor to maintain confidentiality and who may only disclose information to the Licensor if and to the extent which license infringements exist and only to the extent that enables the Licensor to assert claims. Sufficient advance notice of the inspection must be given.

#### **§ 11 Data Protection**

Licensor and Licensee will comply with applicable data protection rules and regulations.

#### **§ 12 General Information**

1. The Licensee consents to be named as a reference Licensee.

2. Any additional Agreements and contract changes must be made in writing in order to be effective. The written form may only be rescinded in writing. At the point of conclusion of this contract, no additional verbal Agreements exist.

3. Any other general terms of business of the parties shall not apply for the purposes of this Agreement.

4. If individual stipulations of this Agreement should infringe upon mandatory legal provisions or be or become ineffective for any other reason, this shall not affect the applicability of any of the other stipulations of this Agreement. The ineffective stipulations shall be replaced by stipulations which are as close as possible to the intended economic objectives with retroactive effect from the point at which the original stipulations became ineffective. The same applies correspondingly if a gap is found in the stipulations.

5. Buyer is hereby advised that the products, technical data/technology and services included in this quotation, order confirmation or sales contract may be subject to U.S., European Union, or other export control regulations. This document will only be effective if not prohibited by regulatory ban, embargo or sanction and/or if any necessary licenses are granted. An export license or other government authorization may be required to complete this transaction. Your assistance may be required to complete export licensing requirements such as providing an EUC (End User Certificate). Neither party will be responsible for performance or liable for damages if this transaction is determined to be restricted by regulation and/or denied a license or permission by applicable export controls authorities.

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Signature and date, the Licensor

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Signature and date, the Licensee