



TERMS AND CONDITIONS

VISION TECHNOLOGY SOLUTIONS

PLEASE READ THIS AGREEMENT CAREFULLY TO UNDERSTAND YOUR RIGHTS AND OBLIGATIONS.

[GENERAL TERMS](#)

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This Agreement is between Buyer and Carl Zeiss Vision Inc. ("Zeiss") and fully incorporates these Terms and Conditions together with the information on the front or attached pages ("Face Sheet") constitute an agreement in which the purchaser named on the Face Sheet ("Buyer", "You", "Your" "Customer") will purchase the Products described on the Face Sheet ("Product(s)") ("Agreement"). All purchases of Products are expressly conditioned upon your acceptance of this Agreement. Zeiss reserves the right, from time to time, with or without notice to you, to change these Terms and Conditions. The most current version of this Agreement will supersede all previous versions. Terms on the Face Sheet will supersede the terms below.

ALL PURCHASES ARE EXPRESSLY CONDITIONED UPON YOUR ACCEPTANCE OF THIS AGREEMENT'S TERMS. BY USING YOUR PRODUCTS, YOU REPRESENT THAT YOU ARE CAPABLE OF ENTERING INTO A CONTRACT UNDER THE LAWS OF YOUR JURISDICTION AND AGREE TO BE BOUND BY THIS AGREEMENT'S TERMS.

GENERAL TERMS

- Prices and Taxes.** All prices in this Agreement ("Price(s)") are in U.S. dollars. The Price does not include applicable sales, excise, use, or other taxes in effect or later levied. Carl Zeiss Vision Inc. is licensed and required by law to collect sales tax in all states. Except for those taxes attaching to Zeiss (e.g. income taxes), Buyer is responsible for payment of all taxes associated with its purchase of the Products, including (but not limited to) sales or excise taxes, duties, or property taxes.
- Trade-In Policy.** If Buyer's "trade-in" equipment ("Trade-In(s)") is part of the Price, Buyer warrants that Buyer owns the Trade-In(s) free of any liens, security interests or other encumbrances. Buyer must complete the de-installation of the Trade-In(s). Trade-In(s) must be in the condition as noted on the Quotation, and must include all hardware, software, components, and applicable license(s), and are the model and serial number listed on the Quotation ("Complete"). Trade-In(s) are subject to Zeiss' inspection and acceptance. If Trade-In(s) are not delivered to Zeiss within 60 days of delivery of the Products, are not Complete or otherwise unacceptable to Zeiss, Zeiss may recalculate the Price and Buyer agrees to pay Zeiss the adjusted Price. Buyer will bear the risk of loss for Trade-In(s) until they are delivered to Zeiss or its carrier. If accepted, Zeiss may immediately dispose of the Trade-In and Buyer will have no right to a return of the Trade-In. If this Agreement is terminated, or the Products are returned, then Buyer agrees that Buyer will only receive a credit for the Trade-In(s) value toward Buyer's next purchase of Zeiss Products.
- Payment Terms.** Unless stated otherwise on the face sheet, payment in full will be due thirty (30) days from the date of invoice. Zeiss may require a deposit upon placement of the order, with the balance due on delivery (including applicable sales tax, freight, insurance, etc.). Zeiss reserves the right to require payment in full, in advance or C.O.D., or otherwise modify credit terms either before or after acceptance of any order if for any reason Buyer's credit is or becomes objectionable to Zeiss. Pending correction of any objectionable credit situation, Zeiss may withhold shipments without incurring any liability to Buyer. All balances not paid when due shall be subject to a service charge equal to one-and-one-half percent (1½%) per month, or the highest rate permitted by law, whichever is less. For Zeiss to extend tax exempt status to Buyer, Buyer must provide a tax-exemption certificate based upon the jurisdiction of the installation location prior to acceptance of the order.
- Shipment; Risk of Loss; Shipping Date.** All shipments will be made FCA-Zeiss's shipping points. Absent specific agreement, Zeiss will select the carrier. Title and risk of loss to the Products passes to the Buyer upon Zeiss' delivery to the designated carrier or delivery service. Buyer shall reimburse Zeiss for any insurance proceeds obtained covering losses associated with delivering the Products to the carrier. If a shipment date is indicated on this Agreement, such date is only

an estimated delivery date, and not a material term of this Agreement. Zeiss will make all reasonable efforts to meet the delivery date. If Zeiss does not deliver the Products within sixty (60) days of the delivery date, then Buyer may terminate this Agreement and neither Buyer nor Zeiss will have any further obligations.

5. Acceptance. Buyer will be deemed to have accepted the Products on the earlier of (i) delivery of the Products to the Buyer (if installation is not priced separately on the Face Sheet or (ii) confirmation by Zeiss that the Products have been installed and conform to Zeiss' specifications and requirements for operation or (iii) Buyer's use of the Products.
6. Security Interest. Until the Products are paid for in full, Buyer gives Zeiss a security interest in the Products, all monies received for the Products, or in any chattel paper regarding the Products (e.g. lease agreements).
7. Training. Zeiss may provide training related to certain Products, the form, duration and content of which will be at Zeiss' discretion. Training commitments expire 6 months after the Products are shipped.
8. Return Policy. Unless it has given its written consent, Zeiss will not accept any Product returns. If Zeiss consents to the return, Buyer may be charged a twenty percent (20%) restocking fee for all Zeiss authorized Products returns. Risk of Loss, and Shipping and Handling fees for returned Product are the Buyer's responsibility. Unless Zeiss agrees otherwise, returned Products must be in new condition and packaged in the original packaging. Consumable Products, such as bulbs, lamps, fuses, fiber optic cables, etc., are not returnable.
9. Cancellation Policy. This Agreement can only be cancelled prior to shipment by written agreement of Buyer and Zeiss. If Buyer cancels this Agreement, Buyer may be charged a 20% cancellation fee. If Buyer only cancels part of Buyer's order under this Agreement, Zeiss may adjust the Price of the remaining Products being purchased, which may mean discounts offered on the original order will not be available.
10. Force Majeure. Zeiss will make every reasonable effort to complete shipment, but shall not be liable for any loss or damage for delay in delivery, or any other failure to perform due to causes beyond its reasonable control including but not limited to, fire, storm, flood, earthquake, explosion, accident, acts of a public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine restrictions, labor disputes, labor or material shortages, embargo, failure or delays in transportation, unavailability of components or parts for machinery used for manufacture of its Products, acts of God, acts of the Federal Government or any agency thereof, acts of any state or local government or any agency thereof, and judicial action. Should such a delay occur, Zeiss may reasonably extend delivery or production schedules or, at its option, cancel the order in whole or part without any liability other than to return any unearned deposit or prepayment.
11. Assignment. Buyer shall not assign or transfer any rights, duties, or obligations under this Agreement without Zeiss' prior written consent.
12. Governing Law and Venue. This Agreement shall be construed in accordance with the laws of the State of California, without giving effect to the conflict of laws provisions thereof. Venue of any action brought to enforce or relating to this Agreement shall be brought exclusively in the State of California, San Diego County. Both Parties agree to waive any right to a trial by jury.
13. Disputes. All conferences and discussions which occur in connection with the negotiations, mediation or arbitration conducted pursuant to this Agreement shall be deemed settlement discussions, and nothing said or disclosed, nor any document produced, which is not otherwise independently discoverable shall be offered or received as evidence or used for impeachment or for any other purpose in any current or future arbitration or litigation.
 - 13.1 Negotiation. The Parties shall attempt in good faith to resolve any controversy, claim or dispute arising out of or relating to this Agreement or the construction, interpretation, performance, breach, termination, enforceability or validity thereof, promptly by negotiation between executives who have authority to settle the dispute and who are at a higher level of management than the persons who have direct responsibility for the administration of this Agreement.
 - 13.2 Mediation. If the Dispute has not been resolved by negotiation as herein above provided, the Parties shall make a good faith attempt to settle the dispute by mediation before resorting to arbitration, litigation or any other dispute resolution procedure. Unless otherwise agreed, the mediation shall be conducted in accordance with the Commercial Mediation Rules of the American Arbitration Association (the AAA) in effect on the date of this Agreement, by a mediator who shall be a neutral and impartial lawyer with excellent academic and professional credentials (i) who is or has been practicing law for at least ten (10) years, specializing in either general commercial litigation or general corporate and commercial matters, and (ii) who has had both training and experience as a mediator. The costs of the mediation shall be shared equally between the Parties.
 - 13.3 Arbitration. At the request of either Party, any dispute arising out of this Agreement shall be settled by arbitration in accordance with the Commercial Arbitration Rules of American Arbitration Association ("AAA") in effect at the time

of the arbitration (the "Rules"), except as such Rules may be modified herein. If there is any inconsistency between the Rules and this Section, this Section shall govern. Awards from arbitration shall be binding and enforceable in any court of competent jurisdiction. All proceedings under this Section shall be held in San Diego, California. Each Party shall be given at least fifteen (15) days advance notice of the time and place of arbitration.

- 13.4 **No Class Action.** The Parties agree that (i) no arbitration proceeding hereunder whether a consumer dispute or a business dispute shall be certified as a class action or proceed as a class action, or on a basis involving claims brought in a purported representative capacity on behalf of the general public, other customers or potential customers or persons similarly situated, and (ii) no arbitration proceeding hereunder shall be consolidated with, or joined in any way with, any other arbitration proceeding. The tribunal shall have the power to rule on any challenge to its own jurisdiction or to the validity or enforceability of any portion of the agreement to arbitrate. The Parties agree to arbitrate solely on an individual basis, and that this agreement does not permit class arbitration, or any claims brought as a plaintiff or class member in any class or representative arbitration proceeding.
14. **Limitation of Liability.** Notwithstanding anything contained in this or any other agreement between Zeiss and Buyer, neither Party will be liable to the other for any loss, damage, cost of repairs, incidental, punitive, exemplary, indirect or consequential damages of any kind, including (without limitation) loss of profit, revenues or business opportunity, (all of which each Party expressly waives to the fullest extent permitted by law) even if either Party has been advised of the possibility of such damages, whether or not based upon express warranty or implied warranty (except for the obligations assumed by Zeiss under the Limited Warranty Clause), contract, tort, negligence, strict liability or other cause of action arising in connection with this Agreement or with the design, manufacture, sale, use or repair of the Products. This provision may not affect third Party claims for bodily injury or death arising in products liability or from Zeiss' gross negligence. Some states do not allow the exclusion or limitation of consequential or incidental damages, so the above limitation or exclusion may not apply.
15. **Patent Indemnity.** Zeiss will defend or settle any claim, suit or proceeding brought against Buyer based on allegations that the Products infringe on a third-Party patent, provided that: Zeiss is notified timely of such claim, suit or proceeding; Buyer renders all reasonable cooperation to Zeiss; Buyer gives Zeiss the sole authority to defend or settle the same. If the Products are held to infringe on any patent and the use of the Products is enjoined, Zeiss will have the option, at its discretion (i) to procure Buyer the right to use the Products or (ii) to modify the Products so that they no longer infringe or (iii) upon the return of the Products, refund Buyer the depreciated value of the Products and accept the return thereof. This indemnification will not apply to changes made by Zeiss at Buyer's instruction or by Buyer, or by the use of third-Party items in conjunction with the Products (unless sold or directed by Zeiss). In no event will Zeiss' total liability to Buyer with respect to any infringement or misappropriation exceed the depreciated value of the Products.
16. **Export / Re-Export.** The Products and Software may be subject to United States Export Administration Regulations, and diversion contrary to U.S. law is prohibited.
17. **Entire Agreement.** This Agreement constitutes the final and complete agreement between the Parties and supersedes all prior agreements and understandings, whether written or oral, relating to the purchase or sale of the Products. The terms and conditions of this Agreement shall prevail over any variance with the terms and conditions of any order submitted by the Buyer for the Products, regardless of any provisions to the contrary. No claimed additions to or modifications or amendments of this Agreement, nor any claimed waiver of any of its terms or conditions, shall be effective unless in writing and signed by the Party against whom the same may be asserted.
18. **Modification.** You are bound by this Agreement's most current version. Zeiss may modify this Terms and Conditions at any time. You can print and save this document located at www.zeiss.com/vtstermsconditions at any time. Please check this URL from time to time for changes to this Agreement. Your continued access to or use of the Products will signify your acceptance of the latest version of this Agreement.
19. **Severability.** If any provision of this Agreement is held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Agreement are not affected or impaired in any way. You acknowledge that your breach of this Agreement would cause irreparable injury to Zeiss for which monetary damages would not be an adequate remedy and that Zeiss is entitled to equitable relief in addition to any other remedies it may have under law.

HARDWARE LIMITED WARRANTY

20. **Limited Warranty.** Zeiss warrants to the original purchaser ("you") that the Vision Technology Solutions Equipment hardware, which includes components contained in the retail box with this Product hardware will be free from material defects in material and workmanship for a period of one year from the original date of purchase (the "Warranty Period"). This warranty is valid only in the United States and Canada. IF THIS PRODUCT IS DETERMINED TO BE MATERIALLY DEFECTIVE DURING THE WARRANTY PERIOD, YOUR SOLE REMEDY AND ZEISS'S SOLE AND EXCLUSIVE

LIABILITY IS LIMITED TO: (A) THE REPAIR OR REPLACEMENT OF THIS PRODUCT WITH A FACTORY-RECERTIFIED PRODUCT, AT ZEISS'S OPTION, AT NO CHARGE TO YOU; AND (B) RETURN SHIPPING OF THE CONSOLE (NOT ANY PERIPHERAL, CONTROLLER, ACCESSORY OR CABLE) TO THE ZEISS-AUTHORIZED SERVICE FACILITY, VIA A SHIPPING BOX WITH A PREPAID SHIPPING LABEL PROVIDED BY ZEISS, AND SHIPPING OF THE REPAIRED CONSOLE OR A FACTORY-RECERTIFIED REPLACEMENT CONSOLE TO YOU, AT NO CHARGE TO YOU. For purposes of this Limited Hardware Warranty and Liability, "factory recertified" means a product that has been returned to its original specifications.

21. Items Not Covered by Warranty. THIS WARRANTY DOES NOT APPLY: (A) TO DAMAGE CAUSED BY USE OF THIS PRODUCT WITH PRODUCTS THAT ARE NOT COMPATIBLE WITH THIS PRODUCT; (B) TO DAMAGE CAUSED BY USE OF THIS PRODUCT WITH ANY PERIPHERAL(S) THAT ZEISS DOES NOT LICENSE OR SELL, INCLUDING NON-LICENSED ENHANCEMENT DEVICES, CONTROLLERS, ADAPTORS AND POWER SUPPLY DEVICES; (C) IF THIS PRODUCT IS MODIFIED TO ALTER CAPABILITY OR FUNCTIONALITY WITHOUT ZEISS'S WRITTEN PERMISSION; (D) TO DAMAGE CAUSED BY ACTS OF GOD, MISUSE, ABUSE, NEGLIGENCE, ACCIDENT, UNREASONABLE USE, OR BY CAUSES UNRELATED TO DEFECTIVE MATERIALS OR WORKMANSHIP; (E) IF THIS PRODUCT HAS HAD THE SERIAL NUMBER ALTERED, DEFACED OR REMOVED; OR (F) TO DAMAGE CAUSED BY (1) SERVICE (INCLUDING UPGRADES AND EXPANSIONS) PERFORMED BY ANYONE WHO IS NOT A REPRESENTATIVE OF ZEISS OR AN ZEISS-AUTHORIZED SERVICE PROVIDER, OR (2) OPENING THE PRODUCT OR ANY ACTION TAKEN WITHIN IT BY ANYONE WHO IS NOT A REPRESENTATIVE OF ZEISS OR AN ZEISS-AUTHORIZED SERVICE PROVIDER. THIS WARRANTY DOES NOT COVER PRODUCTS SOLD AND CLEARLY MARKED "AS IS" OR WITH FAULTS. ZEISS MAY VOID THIS WARRANTY IF ZEISS REASONABLY BELIEVES THAT THE PRODUCT HAS BEEN USED IN A MANNER THAT VIOLATES THE TERMS OF AN END USER LICENSE AGREEMENT FOR SYSTEM SOFTWARE BELOW.
22. Warranty Disclaimer. THIS WARRANTY IS PROVIDED TO YOU IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE FOR THIS PRODUCT, WHICH ZEISS DISCLAIMS UNDER THESE TERMS. HOWEVER, IF APPLICABLE LAW REQUIRES ANY OF THESE WARRANTIES, THEN THEY ARE LIMITED IN DURATION TO THE WARRANTY PERIOD.
23. Warranty Rights. This warranty gives you specific legal rights. You may also have other rights which vary from state to state or province to province. The warranty offered by ZEISS on this Product is the same whether or not you register your product. This warranty does not apply to any system software that is preinstalled in the Product hardware or is subsequently provided via update or upgrade releases. Product system software is licensed to you under the terms set forth in the Software License section below.
24. Warranty Service. Call **1-800-201-4143** for warranty service, to receive a return authorization if applicable, and shipping instructions. A VALID PROOF OF PURCHASE IN THE FORM OF A BILL OF SALE OR RECEIPT FROM THE SELLER WITH THE DATE OF THE ORIGINAL PURCHASE MUST BE PRESENTED TO OBTAIN WARRANTY SERVICE. You understand and acknowledge that any time Zeiss services this Product (either within the Warranty Period or under a separate service arrangement), Zeiss may need to provide certain services to ensure this Product functions properly and according to Zeiss guidelines and specifications. These services may include the installation of the latest system software or firmware updates, or service or replacement of the Product system's system storage or the Product system with a new or factory recertified product. You acknowledge and agree that some services may change your current settings, cause a removal of cosmetic stickers or system skins, cause a loss of data or content, or cause some loss of functionality. You should back up your system storage regularly to prevent loss of data, although some content cannot be backed up and must be reinstalled by the user. You should also remove any peripherals, non-Product system components, and any content that you consider proprietary, private, or confidential before you send in your Product for service. Zeiss is not liable for damages resulting from your failure to comply with the foregoing, or any instructions that Zeiss provides to you. After Zeiss services the Product and returns it to you or returns a factory-recertified product to you under this warranty, this warranty applies to the returned product for the longer of (i) 90 days from the date that ZEISS ships the Product or the factory-recertified product or (ii) the original Warranty Period. Except as this Limited Hardware Warranty and Liability provides, Zeiss is not be liable for any direct and indirect, consequential, or special damages, including any damages that may arise from loss of data or functionality. The foregoing limitation applies to the extent permitted by law.

SOFTWARE LICENSE AND WARRANTY DISCLAIMER

25. Software License Application. This Agreement applies to any system software, firmware and Internet browser software and other application software included in your Product and any patches, updates, upgrades or new versions of that system software, firmware and Internet browser software and other application software provided to or made available for your Product through Zeiss. All software and firmware described in this paragraph is referred to collectively as "System Software" throughout this Agreement.
26. License Grant. Subject to the terms herein, Zeiss grants to Buyer a non-exclusive, non-commercial right to use System Software solely on your Products. Your rights to use previous versions of System Software other than the current

version of System Software terminates as soon as you can receive or have the most current version of System Software installed on your Products' system. All rights to use System Software are granted by license only, and you are not granted any ownership rights or interests in System Software. Zeiss and its licensors retain all intellectual property rights in System Software. All use of or access to System Software is subject to this Agreement's terms and applicable intellectual property laws. Except as this Agreement expressly grants, Zeiss and its licensors reserve all rights in System Software.

27. Restrictions. You may not lease, rent, sublicense, publish, modify, patch, adapt or translate System Software. You may not reverse engineer, decompile or disassemble System Software, create System Software derivative works, or attempt to create System Software source code from its object code. You may not (i) use any unauthorized, illegal, counterfeit or modified hardware or software with System Software; (ii) use tools to bypass, disable or circumvent any Product system encryption, security or authentication mechanism; (iii) reinstall earlier versions of the System Software ("downgrading"); (iv) violate any laws, regulations or statutes or rights of Zeiss or third Parties in connection with your access to or use of System Software; (v) use any hardware or software to cause System Software to accept or use unauthorized, illegal or pirated software or hardware; (vi) obtain System Software in any manner other than through Zeiss's authorized distribution methods; or (vii) exploit System Software in any manner other than to use it with your Product system according to the accompanying documentation and with authorized software or hardware, including use of System Software to design, develop, update or distribute unauthorized software or hardware for use in connection with your Product system. These restrictions will be construed to apply to the greatest extent permitted by the law in your jurisdiction.
28. Service and Update; Third-Party Agreements and Content. Zeiss may provide you with certain System Software updates, upgrades or services. Some updates, upgrades or services may be provided automatically without notice to you when you sign in to your Product's system and others may be available to you through Zeiss' website or authorized channels. You consent to Zeiss providing you these automatic updates, upgrades and services. Services may include the latest update or download of a new release of System Software containing security patches, new technology or revised settings and features that may prevent access to unauthorized or pirated content or prevent use of unauthorized hardware or software in connection with your Product system. These updates, upgrades and services may have effects on the functionality of your Product system, and Zeiss is not responsible to you for any such effects or any harm caused by the installation process.
29. Software Installation. You must install or have installed the most current version of System Software as soon as you reasonably can. Some updates, upgrades or services may change your current settings, cause a loss of data or content or cause functionality or feature loss. Zeiss recommends that you regularly back up all data that you can.
30. Third-Party Content. Third Parties may make other services or content available to you, and they may require you to accept their separate terms and conditions and privacy policy. System Software may refer to, display or provide you with links to websites or content that third Parties independently operate or maintain ("Third-Party Content and Links"). Zeiss and its affiliated companies do not control or direct Third-Party Content and Links nor do Zeiss and its affiliated companies monitor, approve, endorse, warrant or sponsor any Third-Party Content and Links. Zeiss and its affiliated companies have no liability to you for any Third-Party Content and Links. Your reliance on any Third-Party Content and Links is at your own risk, and you assume all responsibilities and consequences resulting from your reliance.
31. Collection of Information / Authentication. In order to operate Zeiss's businesses and deliver products and services, Zeiss may collect and retrieve information about your hardware and software. This information may be used for system monitoring/diagnostics, marketing purposes, tracking user behavior anonymously, authentication, copy protection and other purposes. Zeiss will also be able to know your console unique ID and your console IP address which is automatically assigned to your Product system by your internet service provider when you connect your Product system to the internet. When you sign-in to your account from your Product system, we may be able to link this information with your account and other information associated with your account.
32. Internet Features. Using System Software features that require access to an Internet connection ("Internet Features") may require you to obtain wired or wireless Internet service from a third-Party internet service provider ("Internet Service Provider"). Some Internet Features may also require you to be signed in to the Product. Internet access may NOT be available at your location, be free of charge or free from interruption or disconnections. If you wish to obtain Internet Service Provider services for your Product system, you must enter into the necessary Internet Service Provider agreements for those services. You are responsible for all fees incurred in connection with access to or use of the Internet. Certain Internet Features may operate depending upon Internet connection factors not under Zeiss's control. Browsing websites, playing programs or downloading programs or data may result in viruses, loss or corruption of data or other problems, and you assume all responsibilities and consequences resulting from engaging in these activities through your Product system.
33. Warranty Disclaimer & Limitation of Liability. System Software is provided "AS IS" without any express or implied warranties. Zeiss, its affiliated companies and licensors expressly disclaim any implied warranty of merchantability,

warranty of fitness for a particular purpose and warranty of non-infringement. IN NO EVENT ARE ZEISS, ITS AFFILIATES AND LICENSORS LIABLE FOR ANY LOSS OF DATA, LOSS OF PROFIT, OR ANY LOSS OR DAMAGE, WHETHER DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL, HOWEVER ARISING, AS A RESULT OF ACCESSING OR USING SYSTEM SOFTWARE. SO LONG AS THIS PROVISION IS ENFORCEABLE IN YOUR JURISDICTION, THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS APPLY TO THE FULLEST EXTENT PERMITTED BY LAW EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

34. Violation of Agreement; Termination of Rights and Zeiss Remedies. If Zeiss determines that you have violated this Agreement's terms, Zeiss may itself or may procure the taking of any action to protect its interests such as disabling access to or use of some or all System Software, disabling use of this Product system online or offline, termination of your access to the Product, denial of any warranty, repair or other services provided for your Product system, implementation of automatic or mandatory updates or devices intended to discontinue unauthorized use, or reliance on any other remedial efforts as reasonably necessary to prevent the use of modified or unpermitted use of System Software. Zeiss, its affiliates and licensors reserve the right to bring legal action in the event of a violation of this Agreement. Zeiss may participate in governmental or private legal action or investigation relating to your use of System Software.

BUSINESS ASSOCIATE APPLICABILITY

35. Applicability. In instances where a Zeiss is receiving protected health information (PHI) from a covered entity (such as Buyer) related to treating a patient with its Product, or when it provides support and guidance on the proper use of its Products, or sizing or calibration of its Products, the manufacturer qualifies as a "non-covered" "health care provider" engaged in "treatment," which expressly does not give rise to a business associate relationship under HIPAA. In other words, when exchanging PHI with physicians related to treatment of a patient, Zeiss is not acting as business associate and does not meet the legal definition of business associate under HIPAA. On the other hand, if a device is capable of storing PHI, a business associate relationship applies whenever Zeiss accesses or services the Product. In that event, you acknowledge that you have read and hereby agree to the terms of the Business Associate Agreement is located [here](#), the terms of which are incorporated as though fully set forth herein and made an integral part hereof.

EQUIPMENT SERVICE AGREEMENT EXTENDED WARRANTY

1. Equipment. The Equipment considered in this Agreement includes only Zeiss brand equipment as set forth and more detailed the VTS Quote, incorporated herein and made a part hereof by reference (hereinafter individually or collectively referred to as the "Equipment").
2. Service Level. Zeiss shall provide technical level support and preventive maintenance services for the Equipment ("Services"). Services shall include, but not necessarily be limited to, inspection of Equipment, verification that Equipment is in proper operating condition, lubrication, and calibration of Equipment according to manufacturer's recommendations and specifications, including applicable preventive maintenance and repairs as necessary to ensure the proper operating condition of the Equipment. Service shall be performed at the Customer's facilities at the address specified above at mutually agreed upon hours. Compensation for the Service shall be the amount set forth in the VTS Quote.
3. Parts. Zeiss will provide and Customer shall be responsible for the cost of all replacement parts, which are required to maintain the Equipment. Customer shall pay all applicable taxes and shipping charges for parts. Such replacement parts, when furnished, will be new parts or rebuilt parts that are equivalent, in the reasonable judgment of Zeiss, to the new parts when used in connection with the Equipment. All replaced parts, except for those obtained by the Customer, shall become the property of Zeiss.
 - 3.1 Parts for Discontinued or Obsolete Equipment. Zeiss does not stock parts for Equipment that has been discontinued or is obsolete and, although Zeiss may have a limited number of such parts on hand, it makes no guarantee that parts for such Equipment will be available. Zeiss will use compatible replacement parts whenever possible. In the event a replacement part is required for such Equipment but is unavailable, Zeiss will make commercially reasonable efforts to locate such parts and if successful, Customer, at its sole cost and expense shall purchase and obtain the parts. Zeiss makes no warranty whatsoever regarding the performance of such replacement parts obtained by the Customer.
4. Additional Services. Upon Customer's request, Zeiss may, at its option, provide services other than those described in Section 2 above ("Additional Services"). Additional Services may include, among others, conducting additional safety tests, performing emergency repairs that are not part of the scheduled preventive maintenance visits, performing factory modifications, or installing attachments or optional features on the Equipment.

- 4.1 All labor and parts costs associated with performing Additional Services shall be at Zeiss's then-current rates for parts and labor.
- 4.2 Additional Services shall be performed only in conjunction with a scheduled service call unless requested otherwise by Customer, in which case Customer agrees to additionally reimburse Zeiss for all travel related expenses.
5. Training. Zeiss shall provide training to cover Equipment daily maintenance, operation and testing when on-site or by phone.
6. Scheduling; Access; Acceptance of Services. Zeiss shall provide the Services annually to Customer and use reasonable commercial efforts in scheduling the Services. Customer shall ensure that the Equipment is available for all such scheduled Services. Customer shall provide Zeiss reasonable access to the Equipment for the purposes of performing the Service. Customer shall provide a knowledgeable representative on site with signature authority to accept satisfactory completion of Services performed hereunder.
7. Exclusions to Services. Services hereunder shall not include, and Zeiss shall have no obligation to provide, service or parts on Equipment in connection with:
 - 7.1 Electrical work external to the Equipment.
 - 7.2 Maintenance, repair, or replacement of accessories (including, but not limited to, batteries, pressure transducers, flow sensors, air sensors, transducers, fuel cells, or safety chambers), attachments, machines, or any other devices not originally included by the Equipment manufacturer.
 - 7.3 Repair of damage resulting from accident, neglect, misuse, failure of electrical power, air conditioning, deionized water supply, or any other cause other than ordinary use.
 - 7.4 Any service, which, in the sole opinion of Zeiss, is impractical to perform due to alterations in the Equipment or its connections.
 - 7.5 Repair, replacement or maintenance arising from any intentional acts or commissions, or negligence of Customer, its employees, agents or invitees;
 - 7.6 Attempts to repair or service the Equipment made by persons other than Zeiss, without the prior written approval of Zeiss;
 - 7.7 Use of special attachments or devices not provided by Zeiss, or the use of process and consumables other than those specified herein;
 - 7.8 Use of accessories, attachments, supplies, machines or other devices not furnished by Zeiss
 - 7.9 Misuse of the Equipment, including, without limitation, use of the Equipment for any application or function for which it is was not designed or intended;
 - 7.10 Maintenance required due to damage of the Equipment resulting from transportation by the Customer, caused (other than ordinary use) within the reasonable control of the Customer, or any other exclusion as listed in this section.
8. Equipment Upgrades. Systems upgrades applicable to the Equipment will be performed by Zeiss, upon the written request of the Customer, at fair and reasonable market prices including travel expenses and shipping charges.
9. Excused Performance. Zeiss shall not be liable for any failure to perform or delayed performance of any part of this Agreement if such performance is prevented, hindered, or delayed by reason of any cause beyond the reasonable control of Zeiss ("Excusing Event") including, without limitation, labor disputes, strikes, other industrial disturbance, Acts of God, floods, shortages of materials, earthquakes, casualty, war, acts of the public enemy, riots, insurrections, embargoes, laws, blockages, actions, restrictions and regulations or orders of any government, government agency or subdivision.
10. Payment Terms. Unless stated otherwise on the face sheet, payment in full will be due thirty (30) days from the date of invoice. Zeiss may require a deposit upon placement of the order, with the balance due on delivery (including applicable sales tax, freight, insurance, etc.). Zeiss reserves the right to require payment in full, in advance or C.O.D., or otherwise modify credit terms either before or after acceptance of any order if for any reason Buyer's credit is or becomes objectionable to Zeiss. Pending correction of any objectionable credit situation, Zeiss may withhold shipments without incurring any liability to Buyer. All balances not paid when due shall be subject to a service charge equal to one-and-one-half percent (1½%) per month, or the highest rate permitted by law, whichever is less. For Zeiss to extend tax exempt status to Buyer, Buyer must provide a tax-exemption certificate based upon the jurisdiction of the installation location prior to acceptance of the order.

11. Term of Agreement. This Agreement shall be valid for a period of one (1) year from the date of invoice of the VTS Quote and shall automatically renew for additional one (1) year periods unless terminated by either Party pursuant to Section 12.
12. Termination without Cause. At any point in time, this Agreement may be terminated by either Party without cause, on no less than ninety (90) days prior written notice to the other Party.
13. Immediate Termination. This Agreement may be terminated by either Party with immediate effect upon the material breach of any provision hereof if such breach is not cured within ten (10) days after prior written notice thereof; or by Zeiss with immediate effect in the event of (i) Customer failure to perform or adhere to the terms of this Agreement (ii) the substantial deterioration of Customer's financial position (iii) Customer ceases to do business, terminates its existence, dissolves or liquidates (vi) Customer becomes insolvent or fails to pay its obligations (including its obligations to Zeiss or Zeiss' representatives hereunder) when they become due (v) a receiver is appointed to hold, manage or operate Customer's property or business (vi) there is a general assignment of Customer's property or business for the benefit of its creditors or (vii) proceedings are instituted by or against Customer under any bankruptcy or insolvency law (viii) Customer changes ownership in any manner without written notice and the express written consent of Zeiss.
14. Termination Rights. Upon termination of this Agreement, all rights granted to Customer under this Agreement shall automatically revert to Zeiss and Customer shall execute any and all documents evidencing the automatic reversion. Customer shall, at Zeiss's discretion, either deliver to Zeiss all documents, specifications, manuals, and all other confidential materials, or give to Zeiss satisfactory proof of their destruction. Customer shall, at Zeiss's discretion, either deliver to Zeiss all patterns, proofs, and any other material that reproduce the Trademark or give to Zeiss satisfactory proof of their destruction.
15. Warranty; Disclaimer of Warranty. Except for repairs and replacement parts for discontinued or obsolete Equipment pursuant to Section 7.1, Zeiss warrants that the Services will be free from defects in material and workmanship at the time of installation. EXCEPT AS SET FORTH HEREIN, Zeiss MAKES NO OTHER WARRANTIES, CONDITIONS OR REPRESENTATIONS, WRITTEN, ORAL, EXPRESS OR IMPLIED, IN FACT OR IN LAW, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES, CONDITIONS OR REPRESENTATIONS OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ALL OF WHICH ARE, TO THE EXTENT PERMISSIBLE BY LAW, HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED, WITH RESPECT TO SERVICE OR PARTS PROVIDED BY Zeiss PURSUANT TO THIS AGREEMENT.
16. Remedy; Limitation of Liability. In the event of Zeiss' breach of any warranty or obligation under this Agreement, Zeiss' sole obligation shall be to make all necessary adjustments, repairs and replacements in accordance with the terms of this Agreement and to replace any parts installed pursuant to this Agreement, which are defective at the time of installation. Zeiss shall have no liability for damages under this Agreement in connection with any non-functioning or malfunctioning unit of Equipment unless such Equipment fails to function properly for a period of three (3) consecutive months. In that event, Zeiss' total liability under this Agreement shall be limited to general money damages in an amount not to exceed three (3) months of the Service Fee Payments paid by Customer. Zeiss SHALL IN NO EVENT BE LIABLE TO CUSTOMER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL, PUNITIVE, RELIANCE LOSSES OR DAMAGES OF ANY NATURE WHATSOEVER INCLUDING, BUT NOT LIMITED TO LOSS OF USE OF EQUIPMENT, LOSS OF PROFITS OR BUSINESS OPPORTUNITIES, REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT OR TORT OR ANY OTHER THEORY OF LIABILITY.
17. Indemnification. Customer agrees to indemnify, defend and hold Zeiss harmless from and against all claims, expenses, liabilities, losses and damages (collectively "Damages"), which are asserted against Zeiss, resulting from or arising out of a Customer's (a) performance of or failure to perform any of its obligations pursuant to the terms of this Agreement; (b) misrepresentation (c) negligent actions, provided that Damages are not attributable to the negligence or willful misconduct of Zeiss; (d) breach of any representation, warranty, covenant or agreement contained in this Agreement; or (e) conduct, omission or commission of any unlawful act, regardless whether resulting Damages arise in tort (including negligence), contract, or otherwise. Customer shall pay any and all reasonable costs and damages, including reasonable attorneys' fees, incurred in the defense of any such claims.
18. Location of Equipment. All Equipment is located at Customer's address as set forth in the VTS Quote. Any subsequent resale or removal to a new location, without prior written approval from Zeiss, may result in automatic cancellation of this Agreement.
19. Confidential Information. Any specifications, drawings, sketches, models, samples, data, computer programs, documentation, or technical or business information furnished or disclosed between the Parties hereunder shall be deemed Confidential Information and, when in tangible form, shall be returned to the disclosing Party upon completion or termination of authorized work unless otherwise indicated by the disclosing Party. Unless such Confidential

Information was previously known to the Parties free of any obligation to keep it confidential, or has been or is subsequently formally made public by the disclosing Party, it shall be held in confidence by the Parties, and shall be used only for the purposes hereunder, and may be used for other purposes only upon such terms and conditions as may be mutually agreed upon in writing. Neither Party shall advertise, market or otherwise make known to others any Confidential Information relating to the work performed under this Agreement, including mentioning or implying the name of either Party, their subsidiaries or affiliates, without written authorization from the other Party.

20. Infringement of Patents, Trademarks, or Copyrights. Customer agrees to report promptly to Zeiss any infringement or attempted infringement of Zeiss patents, trade secrets or trademarks which come to Customer's attention. Customer shall not take any action against persons making such infringement without prior written authority from Zeiss in each instance. Customer agrees to report promptly to Zeiss any suit, action, or claim against Customer alleging that the sale of the products or use of Equipment under this Agreement infringes any patent, trade secret, or trademark, and Zeiss shall, at its discretion, assume control of and pay the expenses incident to any such litigation.
21. Relationship of the Parties; Assignment. The Parties are independent contractors. The relationship between the Parties shall not be construed to be that of a partnership, joint venture, or agency of any kind. Neither Party may enter into any contracts or promises for the other Party. No rights or interest in this Agreement shall be assigned by Customer without the prior written consent of Zeiss.
22. Notices and Communications. All notices given under this Agreement must be in writing. Notice may be given by hand, by mail, or by courier service. Notices will be effective as follows (a) immediately, if delivered personally; (b) when transmitted by facsimile or electronic mail to an authorized representative of the respective Party, with confirmed receipt; (c) five (5) days after being sent by registered or certified mail, return receipt requested, postage pre-paid; or (d) one (1) day if sent via nationally recognized overnight courier service. The following addresses must be used:

If to Customer:	As set forth on the VTS Quote
If to Zeiss;	Carl Zeiss Vision, Inc. 12121 Scripps Summit Drive, Suite 400 San Diego, CA 92131 Attn: Jens Boy, President North America Attn: Legal

23. Governing Law and Venue. This Agreement shall be construed in accordance with the laws of the State of California, without giving effect to the conflict of laws provisions thereof. Venue of any action brought to enforce or relating to this Agreement shall be brought exclusively in the State of California, San Diego County. Both Parties agree to waive any right to a trial by jury.
24. Disputes. All conferences and discussions which occur in connection with the negotiations, mediation or arbitration conducted pursuant to this Agreement shall be deemed settlement discussions, and nothing said or disclosed, nor any document produced, which is not otherwise independently discoverable shall be offered or received as evidence or used for impeachment or for any other purpose in any current or future arbitration or litigation.
- 24.1 Negotiation. The Parties shall attempt in good faith to resolve any controversy, claim or dispute arising out of or relating to this Agreement or the construction, interpretation, performance, breach, termination, enforceability or validity thereof, promptly by negotiation between executives who have authority to settle the dispute and who are at a higher level of management than the persons who have direct responsibility for the administration of this Agreement.
- 24.2 Mediation. If the Dispute has not been resolved by negotiation as herein above provided, the Parties shall make a good faith attempt to settle the dispute by mediation before resorting to arbitration, litigation or any other dispute resolution procedure. Unless otherwise agreed, the mediation shall be conducted in accordance with the Commercial Mediation Rules of the American Arbitration Association (the AAA) in effect on the date of this Agreement, by a mediator who shall be a neutral and impartial lawyer with excellent academic and professional credentials (i) who is or has been practicing law for at least ten (10) years, specializing in either general commercial litigation or general corporate and commercial matters, and (ii) who has had both training and experience as a mediator. The costs of the mediation shall be shared equally between the Parties.
- 24.3 Arbitration. At the request of either Party, any dispute arising out of this Agreement shall be settled by arbitration in accordance with the Commercial Arbitration Rules of American Arbitration Association ("AAA") in effect at the time of the arbitration (the "Rules"), except as such Rules may be modified herein. If there is any inconsistency between the Rules and this Section, this Section shall govern. Awards from arbitration shall be binding and enforceable in any court of competent jurisdiction. All proceedings under this Section shall be held in San Diego, California. Each Party shall be given at least fifteen (15) days advance notice of the time and place of arbitration.

- 24.4 No Class Action. The Parties agree that (i) no arbitration proceeding hereunder whether a consumer dispute or a business dispute shall be certified as a class action or proceed as a class action, or on a basis involving claims brought in a purported representative capacity on behalf of the general public, other customers or potential customers or persons similarly situated, and (ii) no arbitration proceeding hereunder shall be consolidated with, or joined in any way with, any other arbitration proceeding. The tribunal shall have the power to rule on any challenge to its own jurisdiction or to the validity or enforceability of any portion of the agreement to arbitrate. The Parties agree to arbitrate solely on an individual basis, and that this agreement does not permit class arbitration, or any claims brought as a plaintiff or class member in any class or representative arbitration proceeding.
25. No Waiver. A failure or omission of either Party hereto to insist, in any instance, upon strict performance by the other Party of any term or provision of this Agreement, or to exercise any of its rights hereunder, shall not be deemed a modification of any term or provision hereof, or a waiver or relinquishment of the right to insist upon future performance or enforcement of any such term or provision by such Party, nor shall such failure or omission constitute a waiver of the right of such Party to insist upon the performance by the other Party of any term or provision or any other term or provision of this Agreement. No waiver or modification of any provision of this Agreement shall be valid unless in writing and signed by the Party against whom the same is sought to be enforced.
26. Headings. The headings in this Agreement are for convenience only and used for ease of reference and shall not be used to interpret or limit the scope or intent of any clause.
27. Severability. If any part of this Agreement is held invalid or unenforceable, the remainder of this Agreement will still be considered valid and enforceable, and the Parties will work in good faith to modify the invalid provision, to the extent permitted by law, to best achieve the goals of that provision.
28. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.
29. Entire Agreement. This Agreement and its Exhibit(s) which is attached hereto and incorporated herein by reference, and any additional agreements executed by the Parties, constitute the entire agreement between the Parties in connection with the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the Parties. Any modification or amendment to this Agreement must be in writing and signed by both Parties to be effective.
30. Construction. This Agreement or any uncertainty or ambiguity that may be found herein shall not be construed against any one Party but shall be construed as if all Parties to this Agreement jointly prepared this Agreement.
31. Electronic Signatures. Signatures transmitted by facsimile transmission, by electronic mail in portable document format (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same force and effect as physical execution and delivery of the paper document bearing the original signature.

HIPAA BUSINESS ASSOCIATE AGREEMENT

1. Scope.
- A. This Agreement sets forth the terms and conditions that shall govern Covered Entity's disclosure of Protected Health Information to ZEISS and its subsidiaries and affiliates, to the extent ZEISS meets the definition of, and in its capacity as, a Business Associate (defined below), in connection with the provision of certain Services (defined below) to Covered Entity as set forth in any agreement as described under Paragraph 2(P) of this Agreement. This Agreement is not intended to amend, modify, or otherwise alter the rights, duties, and obligations of the Parties under any other agreements between them. This Agreement only applies to the extent ZEISS is a Business Associate to Covered Entity under the HIPAA Rules (defined below). ZEISS does not, by signing this Agreement, concede it is a Business Associate to Covered Entity under the HIPAA Rules in any instance other than when ZEISS meets the legal definition of Business Associate.
- B. This Agreement is intended for compliance with applicable requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the Health Information Technology for Economic and Clinical Health Act, Division A of Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-005 (the "HITECH Act" and collectively referred to as "HIPAA") and applicable implementing regulations ("HIPAA Rules").

2. Definitions. Except as otherwise defined herein, any and all capitalized terms in this Agreement shall have the definitions set forth in the HIPAA Rules:

- A. "Breach" has the meaning set forth in 45 C.F.R. § 164.402.
- B. "Breach Notification Rule" has the meaning set forth in 45 C.F.R. Parts 160 and 164, Subpart D.
- C. "Business Associate" has the meaning set forth in 45 C.F.R. § 160.103.
- D. "Covered Entity" shall generally have the same meaning as the term "covered entity" as set forth in 45 C.F.R. § 160.103, and in reference to the Party to this agreement, shall mean the entity named as the Covered Entity in the introductory paragraph above.
- E. "Designated Record Set" has the meaning set forth in 45 C.F.R. §164.501.
- F. "Electronic Protected Health Information" or "ePHI" has the meaning set forth in 45 C.F.R. §160.103.
- G. "HIPAA Rules" shall mean the Privacy, Security and Breach Notification Rules.
- H. "Individual" has the meaning set forth in 45 C.F.R. § 160.103.
- I. "Limited Data Set" has the meaning set forth in 45 C.F.R. § 164.514(e)(2).
- J. "Privacy Rule" has the meaning set forth in the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- K. "Protected Health Information" or "PHI" has the meaning set forth in 45 C.F.R. § 160.103, provided, however that it is limited to PHI created, maintained or received by Business Associate from or on behalf of Covered Entity.
- L. "Required by Law" has the meaning set forth in 45 C.F.R. § 164.103.
- M. "Secretary" means the Secretary of the Department of Health and Human Services or his or her designee.
- N. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- O. "Security Rule" has the meaning set forth in the Security Standards at 45 C.F.R. Parts 160, 162, and 164, Subparts A and C.
- P. "Services" means those services Business Associate provides to Covered Entity and documented by a written agreement between Covered Entity and Business Associate, under which Business Associate provides services involving access to or the exchange of PHI and are of the nature that render ZEISS a "Business Associate" under HIPAA.
- Q. "Subcontractor" shall have the same meaning as the term "subcontractor" in 45 C.F.R. § 160.103. If not capitalized herein, "subcontractor" shall have its general meaning in this Agreement.

3. Obligations and Activities of Business Associate.

- A. Legal Compliance; Appropriate Safeguards. Business Associate agrees to (1) not use or disclose Protected Health Information other than as permitted or required by this Agreement, including Section 4, or as Required By Law, and (2) use appropriate safeguards, and comply with applicable provisions of the Security Rule with respect to ePHI, to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- B. Reporting of Unauthorized Use and Disclosures. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement, including Breaches of unsecured PHI and Security Incidents, of which it becomes aware, as described below.
- C. Reporting of Breaches. Business Associate agrees to notify Covered Entity without unreasonable delay and in no case later than 60 calendar days after the discovery of any Breach of Unsecured Protected Health Information. A Breach shall be treated as discovered by Business Associate as of the first day on which the Breach (i) is known to an employee, officer, or other agent of Business Associate (except the person committing the Breach), or (ii) by exercising reasonable diligence, would have been known to an employee, officer, or other agent of Business Associate (except the person committing the Breach). The notice shall include, to the extent possible, the identification of each individual whose unsecured Protected Health Information has been or is reasonably believed by Business Associate to have been, accessed, acquired, used or disclosed during the Breach, as well as any other available information set forth in 45 C.F.R. §164.410(c)(2).

- D. Reporting of Security Incidents. Business Associate shall report any Security Incident promptly (but in no event later than 15 business days) upon becoming aware of such incident. However, the Parties acknowledge and agree that this section constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which no further notice to Covered Entity shall be required. "Unsuccessful Security Incidents" shall include, but not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI.
 - E. Prohibition on Fundraising and Sale of PHI. Business Associate shall not use or disclose PHI for fundraising. Except as permitted under 45 C.F.R. § 164.502(a)(5)(ii), Business Associate agrees that it shall not directly or indirectly receive remuneration in exchange for PHI from or on behalf of the recipient of such PHI.
 - F. Subcontractors. Business Associate agrees, per 45 C.F.R. §§ 164.502(e)(1)(ii) (Privacy Rule) and 164.308(b)(2) (Security Rule) to ensure that any Subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of Business Associate agree to the same restrictions, conditions and requirements that apply to Business Associate with respect to such information.
 - G. Documentation of Disclosures. Business Associate agrees to document any disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528 as amended, and, within 15 business days of receiving such request from Covered Entity, provide such information to Covered Entity. If an Individual submits a request for an accounting to Business Associate, Business Associate shall, within 15 business days of receipt, forward the request to Covered Entity.
 - H. Access to Records. Within 10 business days of a request by Covered Entity, Business Associate shall make available to Covered Entity for inspection and duplicating any PHI in a Designated Record Set, so that Covered Entity may meet its access obligations under the Privacy Rule at 45 C.F.R. § 164.524. If an Individual submits a request for access to Business Associate, Business Associate shall, within 10 business days of receipt, forward the request to Covered Entity.
 - I. Amendment of Records. Business Associate shall inform Covered Entity within 10 business days of receipt of any request by or on behalf of an Individual who is the subject of the PHI to amend the PHI that Business Associate maintains for or on behalf of Covered Entity in a Designated Record Set. Business Associate shall, within 20 business days of receipt of a written request, make the subject's PHI available to Covered Entity as may be required to fulfill Covered Entity's obligations to amend PHI pursuant to the HIPAA Rules, including, but not limited to, 45 C.F.R. § 164.526. Business Associate shall incorporate any amendments to Covered Entity's PHI into copies of such PHI maintained by Business Associate.
 - J. Designated Record Set. Covered Entity and Business Associate agree that PHI received by Business Associate in connection with providing the Services described herein is not intended to, and as a general matter does not, qualify as a Designated Record Set.
 - K. Compliance with 45 C.F.R. part 164 Subpart E. In the event Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. part 164 (Privacy of IIHI), Business Associate will comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).
 - L. Availability of Books and Records. Business Associate will make its internal practices, books and records relating to its use and disclosure of Protected Health Information it creates, receives, transmits or maintains for or from Covered Entity available to the Secretary to determine compliance with the HIPAA Rules.
4. Permitted Uses and Disclosures; Minimum Standard of Privacy Rule.
- A. Permitted Uses and Disclosures by Business Associate. Business Associate may only use and disclose PHI as necessary to perform Services set forth in any agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity, except for the specific uses and disclosures set forth in Subsections (1) through (4) below:
 - (1) Use and Disclosures Permitted by Law. Business Associate may use and disclose PHI as Required by Law.
 - (2) Use and Disclosures for Administrative and Internal Purposes. Business Associate may use PHI for the proper management and administration of its business and to carry out the legal responsibility of Business Associate. Business Associate may disclose PHI for the proper management and administration of its business and to carry out the legal responsibility of Business Associate, provided the disclosures are

required by law, or Business Associate obtains from any recipient of such PHI reasonable assurances that the PHI will remain confidential and be used or further disclosed as required by law or for the purposes for which it was disclosed and the recipient will notify Business Associate of any instances of which it is aware in which confidentiality of the PHI was breached.

- (3) Use for Data Aggregation Services. Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B) and 164.501.
 - (4) De-Identification Permitted by Law. Business Associate may de-identify PHI as permitted by 45 C.F.R. § 164.514 and may use and disclose de-identified information.
- B. Compliance with Minimum Standard of Privacy Rule. Business Associate agrees to comply with the minimum necessary standard for Business Associates as set forth in the Privacy Rule, 45 C.F.R. § 164.502(b).
- C. Individual Authorization. Business Associate may possess, use and disclose the PHI in any manner permitted consistent with a HIPAA-compliant authorization signed by or on behalf of the individual.
5. Obligations of Covered Entity.
- A. Notification of Limitation in Notice of Privacy Practices. Covered Entity shall notify Business Associate in writing of any limitations in its notice of privacy practices in accordance with 45 C.F.R. § 164.520, to the extent that the limitations may affect Business Associate's use or disclosure of Protected Health Information.
 - B. Notification of Changes with Regard to Permissions Given by Individual. Covered Entity shall notify Business Associate in writing of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that the changes or revocation may affect Business Associate's use or disclosure of Protected Health Information.
 - C. Notification of Restrictions on Use. Covered Entity shall notify Business Associate in writing of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to or is required to abide by under 45 C.F.R. § 164.522, to the extent that the restriction may affect Business Associate's use or disclosure of Protected Health Information.
 - D. No Requests in Violation of HIPAA. Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the HIPAA Rules, HIPAA or the HITECH Act if done by Covered Entity.
 - E. Duty to Minimize Disclosure. Covered Entity shall use its best efforts to minimize the disclosure of Protected Health Information to Business Associate where the disclosure of that information is not needed for Business Associate to provide products or services to Covered Entity.
6. Term and Termination.
- A. Term. This Agreement shall be effective as of the date set forth above and it shall continue in effect until terminated as provided in Paragraphs 6(B) or 6(C).
 - B. Termination. This Agreement shall terminate when Business Associate no longer provides any Services set forth in any agreement with Covered Entity or on the date Covered Entity terminates this Agreement for cause as set forth below, whichever is sooner.
 - C. Termination for Cause. If Covered Entity has reason to believe that Business Associate has violated a material term of this Agreement, Covered Entity shall notify Business Associate of the claimed violation and provide Business Associate with an opportunity to explain why no violation has occurred or to cure the violation. If Business Associate does not explain why no violation has occurred or cure the alleged violation within thirty (30) days after receiving Covered Entity's notice, Covered Entity may immediately terminate this Agreement by written notice to Business Associate.
 - D. Obligations upon Termination. Upon termination of this Agreement for any reason, Business Associate with respect to all Protected Health Information received from Covered Entity, or created, maintained or received by Business Associate on behalf of Covered Entity, shall:
 - (1) Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 - (2) Return to Covered Entity or destroy, if feasible, the remaining PHI that Business Associate still maintains in any form, and if return or destruction is not feasible extend the protections of this Agreement to the PHI and limit further uses and disclosure to those purposes that make the return or destruction infeasible;

- (3) Continue to use appropriate safeguards, and comply, where applicable, with the Security Rule with respect to ePHI, to prevent use or disclosure of the PHI, other than as provided for in this Section of the Agreement, for as long as Business Associate retains the PHI;
 - (4) Not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set forth in Section 4(A)(2) above, which applied prior to termination; and
 - (5) Return to Covered Entity or destroy, if feasible, the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities, and if return or destruction is not feasible extend the protections of this Agreement to the PHI and limit further uses and disclosure to those purposes that make the return or destruction infeasible.
7. Notices. Any notice required or permitted to be given hereunder shall be in writing and shall be (i) personally delivered, (ii) transmitted by postage pre-paid first class certified United States mail, (iii) transmitted by pre-paid, overnight delivery with delivery tracking service, or (iv) transmitted by facsimile transmission. All notices and other communications shall be deemed to have been duly given, received and effective on (i) the date of receipt if delivered personally, (ii) 3 business days after the date of posting if transmitted by mail, (iii) the business day after the date of transmission if by overnight delivery with proof of delivery, or (iv) if transmitted by facsimile transmission, the date of transmission with confirmation by the originating facsimile transmission machine of receipt by the receiving facsimile machine of such transmission, addressed to the Covered Entity on the Face Sheet of the purchase or service agreement and to Business Associate at:

Carl Zeiss Vision Inc.
Attn: HIPAA Officer, Legal
12121 Scripps Summit Drive, Suite 400
San Diego, CA 92131

8. Miscellaneous.

- A. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules, the Privacy Rule, the Security Rule, the Breach Notification Rule, HIPAA, or the HITECH Act means the section as in effect or as amended.
- B. Amendment. Upon the effective date of any final regulation or amendment to final regulations promulgated by HHS with respect to Protected Health Information, the HIPAA Rules, HIPAA, or the HITECH Act, this Agreement will automatically amend the obligations of Business Associate and Covered Entity to the extent necessary to remain in compliance with such regulations.
- C. Assignment. Neither Party shall assign any of the rights granted by this Agreement nor delegate any of its duties under this Agreement without the prior written consent of the other Party, except that either Party may assign this Agreement to a parent, subsidiary, affiliate, or purchaser who acquires all or substantially all of the business operations of the assigning Party.
- D. Governing Law. This Agreement shall be construed in accordance with the laws of the State of California, without giving effect to the conflict of laws provisions thereof. Venue of any action brought to enforce or relating to this Agreement shall be brought exclusively in the State of California, San Diego County. Both Parties agree to waive any right to a trial by jury.
- E. Section Headings. The Section headings used in this Agreement are for purposes of convenience or reference only. They shall not be used to explain, limit, or extend the meaning of any part of this Agreement.
- F. Severability. In the event that any one or more of the provisions contained in this Agreement shall for any reason be held by a court of competent jurisdiction to be unenforceable in any respect, such holding shall not affect any other provisions of this Agreement, and this Agreement shall then be construed as if such unenforceable provisions are not a part hereof.
- G. Counterparts. This Agreement may be executed in counterparts, any of which is considered to be an original agreement.
- H. Survival. Any provision of this Agreement, which by its terms is intended to survive the termination or expiration of this Agreement shall so survive.
- I. Independent Contractors. Covered Entity and Business Associate agree that the relationship between them is solely that of independent contractors and nothing in this Agreement is intended to create a partnership, agency, or joint venture between Covered Entity and Business Associate.

- J. Entire Agreement. This Agreement represents the entire agreement between the Parties relating to the subject matter hereof, and shall supersede any other agreements, whether written or oral. There are no understandings, representations, or warranties of any kind between the Parties relating to the subject matter hereof, except as expressly set forth herein. No alteration or modification of any of the provisions of this Agreement shall be binding on any Party unless in writing and signed by the Party against whom enforcement of such alteration or modification is sought. Nothing in this Agreement shall be deemed to have amended or modified the terms or conditions of any other agreement between the Parties, nor shall this Agreement be deemed to have created any rights or obligations except as specifically set forth in this Agreement

- K. No Third-Party Beneficiaries. Nothing express or implied in this Agreement is intended or shall be deemed to confer upon any person other than Covered Entity and Business Associate, and their respective successors and assigns, any rights, obligations, remedies or liabilities.