exocad

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exocad GmbH

End User License Agreement for the Sale of Perpetual Licenses of exocad Dental Software

exocad.com

1. DEFINITIONS

1.1 For the purpose of this End User License Agreement, the following terms shall have the meaning as ascribed to them in this Section:

a **"Affiliate"** shall mean an entity, firm, or corporation, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with exocad.

b **„Bug Fixes"** intend to address bugs and/or known limitations of the Contract Software without altering or extending its attributes and/or scope of functioning.

c **"Contract Software"** shall mean the software developed by exocad consisting of the Core Version and/or the Modules and/or potential future software components developed by exocad and licensed by the Distributor to the End User under the Sales Agreement. This EULA does not apply to exocad software that is defined by exocad as a medical device software. The Contract Software does not qualify as medical device software.

d **"Core Version"** shall mean the software component that is the prerequisite for running the software licensed under this EULA and providing its core functionality. Modules are not included and can be optionally licensed separately.

e **"Distributor"** shall mean the entity selling the Contract Software to the End User under the Sales Agreement.

f **"End User"** shall mean the direct, commercial user of the Contract Software that is licensed to him by the Distributor under the Sales Agreement.

g **"EULA"** shall mean this End User License Agreement, which is part of the Sales Agreement. The relationship between this EULA and the Sales Agreement is governed by Section 2 of this EULA. This EULA is only directed towards commercial users of the Contract Software and does not grant any rights to any consumer End User.

h **"exocad"** shall mean exocad GmbH, a limited liability company under the laws of Germany who has licensed the Contract Software to the Distributor.

i **"Head License Agreement"** shall mean the license agreement in place between the Distributor and exocad entitling the Distributor to distribute the Contract Software in connection with this EULA.

j **"Initial Activation"** " shall mean the activation of the Contract Software for an individual software License, which is protected by a USB Dongle or other licensing mechanism. The Contract Software generally needs to be activated by the Distributor or the End User before initial usage. This activation is conducted via the License Server.

k **"Intended Purpose"** " shall mean the purpose the Contract Software is dedicated to be used for as specified by exocad in the respective accompanying documentation, such as the user manual and the Performance Specifications.

l **"License"** shall mean the End User's right to use the Contract Software as specified in this EULA.

m **"License Server"** shall mean exocad's server which is used to administrate the Licenses for the Contract Software and to conduct the Initial Activation.

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n **"Modules"** are major extensions to the Core Version which need to be ordered separately for each individual software License and are usually made available to the End User against additional remuneration.

o **"Party"** is the Distributor or the End User or exocad, **"Parties"** are the Distributor, the End User and exocad

p **"Performance Specifications"** shall mean a document that includes a technical description of the Contract Software. Changes to the Contract Software may result in an update of the Performance Specifications. The relevant version of the Performance Specifications is the one valid at the time of Distributor's offer, End User's order or each upgrade of the Contract Software (e.g. Bug Fixes, Upgrades or newly developed Modules) in accordance with this EULA (whichever is later). Additionally, an update of the Performance Specifications may be required with immediate effect if this is necessary for safety reasons or to remedy an alleged infringement of third party rights in accordance with Section 8.2. The Performance Specifications will be made available by the Distributor to the End User and Distributor will inform the End User of new updates to the Performance Specifications without undue delay.

q **"Sales Agreement"** shall mean the sales agreement entered into between the Distributor and the End User, including this EULA and the terms individually agreed between the Distributor and the End User. The relationship between this EULA and the Sales Agreement is governed by Section 2 of this EULA.

r **"Upgrades"** shall mean new versions of or patches to the Contract Software provided by the Distributor in the sense of minor extensions to the Contract Software and/or replacements of the manner of functioning of the Contract Software by a newer functionality which has improved characteristics but which does essentially retain the original functional scope and/or implements it in a different way.

s **"Upgrade Contract"** means a contract in accordance with Section 6 for obtaining Upgrades. An Upgrade Contract is either concluded when purchasing a new Core Version license or by separate agreement for an already activated Core Version.

t **"USB Dongle"** shall mean a USB hardware device for the purpose of license management and copyright protection which is required for each use of the Contract Software including the Initial Activation. The USB Dongle must at all times be connected to the respective computer in order to run or use the Contract Software.

2. CONTRACT DOCUMENTS

2.1 This EULA is a license agreement between the Distributor and the End User and forms an integral part of the Sales Agreement.

2.2 In case of inconsistencies or contradictions between this EULA and the Sales Agreement, the provisions of this EULA shall take precedence.

3. LICENSE TERMS

3.1 Under the Head License Agreement, the Distributor has obtained from exocad the right to grant sublicenses to End User for the use of the Contract Software in accordance with the terms of this EULA. Nothing in this EULA shall affect exocad's right in and to the Contract Software, and the End User is granted only the rights explicitly awarded by this EULA.

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3.2 Upon Initial Activation, the Distributor grants to the End User, subject to this EULA, a non-exclusive, non-transferable, non-assignable, non-sublicensable, perpetual, limited license to install, store, load, execute, configure and display the Contract Software on its computers which are connected to a USB Dongle or other licensing mechanism solely for internal business operations, i.e. the provision of its services. This License is granted as "per seat" license, not as concurrent user license or floating license, i.e. each License is limited to one End User and one computer at a time.

3.3 In particular, the use of the Contract Software in connection with the operation of a computer center for third parties (e.g. with remote access per team-viewer) as well as publishing, copying (except where required under Section 3.2), leasing, lending, or any other form of (temporary) making available of the Contract Software to third parties (e.g. as application service providing or as desktop-as-a-service) are not permitted. The commercial distribution or making available of the Contract Software by the End User is strictly prohibited. The End User is not entitled to transfer or grant rights granted under this EULA to third parties and/or to legally or commercially affiliated companies (cf. Sec. 15 of the German Stock Corporations Act (Aktiengesetz)).

3.4 Except as expressly permitted hereunder, the End User is not entitled to make any modifications or enhancements to the Contract Software, or create any derivative work based on the Contract Software or configure the Contract Software to create new applications or new material functionality not provided by the Contract Software or contemplated by the relevant Performance Specifications. Sec. 69d of the German Copyright Act (Urheberrechtsgesetz) remains unaffected.

3.5 Except as permitted by Sec. 69e of the German Copyright Act (Urheberrechtsgesetz), the End User is not entitled to decompile, disassemble, reverse engineer or otherwise attempt to reconstruct or discover the source code or underlying programming sequences, methodologies and techniques of the Contract Software.

End User shall not (and shall not assist or allow any third party to) use the Contract Software to develop products and services that compete with exocad's products or services by using output data of the Contract Software, or by extracting or reverse-engineering data contained in the Contract Software or the Contract Software itself. This includes using any output data generated by, or designs created by, using the Contract Software, for training machine learning algorithms to analyse or generate tooth shapes and structures. This also includes the usage of library data licensed for usage with exocad software (e.g. implant libraries, in conjunction with third party software, even if these libraries were not shipped with the exocad software), but obtained otherwise (e.g. through download from the exocad website).

4. ACTIVATION AND PROVISION OF CONTRACT SOFTWARE

4.1 The Distributor shall provide the End User with and install and configure the Contract Software on the computers of the End User. The Contract Software shall be supplied in executable form in object code. The End User is not entitled to receive any source code form of the Contract Software or any rights thereto.

4.2 The USB Dongle or other licensing mechanism is used for the individual software license management and must be attached to the computer to start and run the Contract Software. The Distributor will provide the End User with the USB Dongle or licensing mechanism.

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4.3 Before using the Contract Software with its USB Dongle or other licensing mechanism on a specific computer, Initial Activation is required. The Initial Activation will only enable use of the Contract Software on the specific computer the USB Dongle or other licensing mechanism is connected to during the activation process. The License is activated by using an online internet connection to exocad's License Server from the Contract Software on the computer with the USB Dongle or other licensing mechanism. If a successful connection is not established to exocad's License Server during the activation process due to technical reasons, the Distributor may optionally perform the Initial Activation, e.g. by manual activation at the End User's computer using activation codes provided by exocad or its License Server.

4.4 In order to prevent the unauthorized multiple use of the Contract Software with a single USB Dongle or other licensing mechanism, the Distributor reserves the right to refuse the Initial Activation of the Contract Software on more than five (5) computers in whole until the question of the further authorization for use by the End User has been clarified. In addition, the Distributor retains the right to agree to a change of a License to another computer than the Contract Software was originally activated for only in exceptional cases if comprehensible reasons for such change are provided to the Distributor and compliance with this EULA is ensured to the Distributor's satisfaction.

4.5 Defective USB Dongle and other licensing mechanisms will be replaced, provided that the License is under a valid Upgrade Contract. In order to transmit the configuration of the defective USB Dongle to the new USB Dongle the End User has to provide the Distributor with the serial number of the defective USB Dongle in writing (email is sufficient). The defective USB Dongle must be returned to the Distributor. The new USB Dongle will not be sent before the defective USB Dongle has been received by the Distributor. Distributor will send the new licensing mechanism after Distributor has received the defective licensing mechanism.

4.6 Lost USB Dongles and other licensing mechanisms will not be replaced by the Distributor.

4.7 Even after the Initial Activation, the Contract Software can only be used on a computer when the USB Dongle or other licensing mechanism that has been used for the Initial Activation on that specific computer is connected to this computer. Changing the hardware, the operating system, or user accounts in the operation system of the computer may re-trigger the Initial Activation process for copyright protection reasons.

4.8 It is highly recommended to have a valid internet connection while using the Contract Software. In case that the Contract Software was not used for an extended period on a computer with a USB Dongle or other licensing mechanism, a confirmatory Initial Activation process may be triggered automatically for the computer and its USB Dongle or other licensing mechanism.

5. INFRINGEMENT OF LICENSE TERMS

Should the Distributor become aware of any infringement of this EULA, it may in its reasonable discretion deactivate the Contract Software (i.e. the USB Dongle or other licensing mechanism cannot be used for running the Contract Software) activated for the infringing End User and used for the infringement.

6. UPGRADE CONTRACT

6.1 Upgrades are provided to the End User by the Distributor under an Upgrade Contract. An Upgrade Contract is concluded either automatically when purchasing a new Core

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Version license or by separate contract conclusion for an already existing Core Version license without an active Upgrade Contract. An Upgrade Contract for a specific License always covers both the Core Version as well as all activated Modules. The purchase of individual Upgrades (Releases) or the purchase of an Upgrade Contract for individual Modules is not possible.

6.2 When purchasing a new license for a Core Version the End User is entitled to use available Upgrades for that individual Core Version license as well as, if applicable, activated Modules during the first year following the Initial Activation of the particular Core Version license free of charge (initial term). After this initial term the Upgrade Contract shall become fee bearing.

6.3 Access to cloud-based services from within the Contract Software may provide the End User with more powerful features, added functionality and other benefits not available to an end user who does not use the cloud-based services. Access to those cloud-based services is available to the End User who has an Upgrade Contract. These cloud-based services shall also be subject to this EULA unless exocad provides separate, additional terms and conditions specifically applying to the cloud-based services.

6.4 The End User is free to enter into a fee-bearing Upgrade Contract for each Core Version license (incl. Modules) at any time during the term of the Core Version license. During the term of such Upgrade Contract the End User is entitled to use all available Upgrades.

6.5 The Upgrade Contract can be terminated by the End User to the end of the initial term upon one (1) month prior notice to the Distributor. If the Upgrade Contract is not terminated respectively it will be automatically extended for additional one (1) year periods and can then be terminated by the End User to the end of each additional one (1) year term by one (1) month prior notice to the Distributor. An Upgrade Contract also automatically expires upon termination of the respective Core Version license.

6.6 Upon receipt of such termination notice by the Distributor the End User shall not be entitled to receive any more Upgrades. Already installed/ received Upgrades are not affected. The End User is not entitled to a full or partial refund of fees for the respective term (initial or additional) the Upgrade Contract was terminated in.

7. BUG FIXES / MODULES

7.1 Unless otherwise agreed, Bug Fixes published by exocad during the License Term shall be provided to the End User by the Distributor free of charge for all valid Core Version licenses (to the extent the respective End User is entitled to receive Upgrades).

7.2 Modules offered by the Distributor can be purchased for each valid and active Core Version license and are subject to a separate order by the End User and their use by the End User will be subject to this EULA. Activated Modules cannot be deactivated retroactively.

7.3 If exocad publishes Bug Fixes or Upgrades which remedy critical defects or malfunctions of the Contract Software or are otherwise required for using the Contract Software securely, the Distributor will inform the End User accordingly. Upon such information, the End User will immediately stop using the Contract Software without the required Bug Fixes or Upgrades being installed on the relevant computers of the End User by the Distributor. The continued use without Bug Fix or Upgrade is the End User's sole risk and responsibility.

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7.4 For all other Bug Fixes or Upgrades published by exocad, Distributor shall make such Bug Fixes and Upgrades available without undue delay to the End User entitled to receive them.

7.5 Bug Fixes, Upgrades and new Modules may require an update of the Performance Specifications to the extent necessary to reflect the changes to the Contract Software and its use as implemented by the respective Bug Fix, Upgrade or new Module.

8. DISPUTES

8.1 In the event that any third party asserts a claim against the End User with regards to the Contract Software, the End User will (i) immediately inform the Distributor, (ii) not take any steps towards such third party without prior written approval from the Distributor and (iii) provide reasonable assistance to the Distributor for the solution of such dispute.

8.2 In case of such alleged claim the Distributor may in particular, at its option and expense (and in coordination with exocad), have the right but not the obligation to either (i) procure for the End User the right to continue using the allegedly infringing materials; (ii) replace or modify the same so that they become non-infringing; (iii) reduce the scope of functionality of the Contract Software so that it becomes non-infringing; (iv) terminate the End User's right to use the Contract Software.

9. OTHER OBLIGATIONS OF THE END USER

9.1 The Distributor will provide the End User with all relevant data, information and training required for the operation and use of the Contract Software.

9.2 The End User is obliged and shall ensure that its employees and any other persons handling the Contract Software:

a Comply with the applicable provisions on the launch, operation and use of the Contract Software;

b Not use the Contract Software outside the Intended Purpose and the Performance Specifications;

c Strictly follow all installation and servicing (including necessary Upgrades and/or Modules) instructions provided by the Distributor or exocad and return required records and reports of the performed activities to the Distributor;

d Engage only the Distributor to conduct the servicing, maintenance and inspections of the Contract Software; and

e Notify the Distributor without undue delay about any material malfunctions or errors of the Contract Software.

9.3 The Contract Software may be subject to export laws and regulations of the European Union and other countries. The End User shall be responsible for complying with all applicable export, import and regulatory laws and requirements.

a End User represents that is not named on any U.S. government denied-party list. End User will not: (i) provide or otherwise permit others to access or use the Contract Software in a U.S.-embargoed country or in violation of any European Union or U.S. export law or regulation; or (ii) provide the Contract Software to users located in the following countries/territories: Crimea region of Ukraine, Cuba, Iran, North Korea, Sudan, South Sudan, Syria. This list of countries/territories may be amended from time to time based on regulatory,

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compliance, or other concerns. End User will be provided with an updated list in the event of such change, which may have entries specific to certain products or Modules, and shall apply immediately after being provided.

b End User's failure to comply with these requirements will be considered a material breach of this EULA.

10. AUDIT AND COOPERATION

The End User understands and accepts that the Distributor and exocad have a fundamental interest in detecting and preventing product piracy and other forms of unlawful use of the Contract Software in the license chain in order to ensure product safety. For this purpose, the End User shall reasonably assist and cooperate with the Distributor to investigate where the Distributor suspects that product piracy or other unlawful use of the Contract Software may exist. For this purpose, the End User shall in particular upon request provide relevant information on its use of the Contract Software. To the extent Distributor has any such information provided by End User, End User hereby consents and authorizes the Distributor to provide such information to exocad. Furthermore, End User accepts that during the course of such investigation exocad and/or Distributor may collect from the End User's installation(s), retain and use information relative to product piracy and/or the unlawful use and/or distribution of the Contract Software. End User hereby consents to and permits Distributor to share with exocad End User's personal data (such as End User's name and full contact details) previously provided by End User to Distributor. End User's failure, or unreasonable delay in providing any such information when requested, or intentionally providing incorrect information, shall be deemed a material breach of this EULA.

If Distributor suspects that product piracy or other unlawful use of the Contract Software may exist, then End User shall allow Distributor to use a trustworthy third party who is sworn to secrecy by contract or professional obligations and to be agreed on between the Parties ("Auditor") to conduct onsite and/or offsite inspections and audits of the End User's business and practice that relate to the End User's use of the Contract Software. The Auditor will not inform Distributor about all records, books and practices that Auditor has inspected during the audit, but only about documents supporting specific contractual breaches and compliance concerns under this EULA, including related evidence, that Auditor has identified as a result of such audit. The Distributor shall be entitled to such audit for as long as the End User retains confidential information, copies of the Contract Software or other material of the Distributor. Unless otherwise stated in this EULA, each such inspection and audit will be conducted during reasonable business hours, for a reasonable duration, and at exocad's expense, no more than once per year. The Distributor will give the End User reasonable prior notice of such audit.

11. USAGE DATA

By activating or using the Contract Software, the End User acknowledges that anonymous user statistics and USB Dongle or other licensing mechanism serial-specific online access information (e.g. IP addresses, PC hardware identification, driver/software versions and signatures) might be collected in the Contract Software for improving the software experience, for software license protection purposes, for software upgrades and for software recall checks. In order to support the anonymity of the patient, the End User shall work in a correctly configured environment of the Contract Software (e.g. non-identifiable naming of patient design cases/files).

As between the Parties, exocad may collect (from Distributor and directly from End User), use, and share:

a With exocad's affiliates: (i) where applicable, data related to dental device safety issues; (ii) software licensing data required to track piracy and illegal use of the contract software; (iii) software usage data, including cloud-based software and/or library access; and (iv) anonymized case data, including 3D data files and intermediate data (in compliance with EU and U.S. applicable regulations).

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b With exocad's affiliates and Distributor(s), unless specifically prohibited by applicable local laws or regulations: (i) license serial number, installation details, online access information (e.g. IP addresses, PC hardware identification, driver and software versions and signatures), and other customized installation details of each sub-license; and (ii) End User, Registered Owner, and/or Subscriber legal entity name and address/e-mail (obtained by exocad, for example, through mandatory online registration by the End User as a prerequisite to use the licensed software). End User's failure, or unreasonable delay in providing any such information when requested, or intentionally providing incorrect information, shall be deemed a material breach of this EULA.

12. LICENSE EXPIRATION

12.1 The License of the End User will automatically and immediately expire without further notice if (i) mandatory usage of the USB Dongle or other licensing mechanism is circumvented, (ii) existing USB Dongle or other licensing mechanism protection is impaired, circumvented or tampered with (e.g. by making copies of the USB Dongle or other licensing mechanism, or its contained license data), (iii) the Contract Software or the USB Dongle or other licensing mechanism is used on any other computer than the computer the Contract Software or the USB Dongle or other licensing mechanism has been successfully activated for, (iv) the connection between the computer where the Contract Software is running and the License Server is blocked, circumvented, impaired or tampered with or (v) any attempt, preparation or support measure for any of the above actions is undertaken. Any potential claims of exocad or the Distributor regarding compensations for fictitious license fees or any further claims, including damage claims exceeding fictitious license fees, shall remain unaffected.

12.2 The End User will, in no event later than fifteen (15) days after termination or expiration of the License, either return to the Distributor or delete from any computer system and destroy, as directed by the Distributor, all copies of the Contract Software in its possession and provide a certificate to that effect. Likewise, the End User will return, in no event later than fifteen (15) days after termination or expiration of the License, all USB Dongles and/or other licensing mechanisms provided by the Distributor to the End User.

13. THIRD PARTY BENEFICIARY CLAUSE

13.1 The rights of the Distributor under this EULA shall also apply in favor of exocad as third-party beneficiary (echter Vertrag zugunsten Dritter). This means that all rights attributed to the Distributor under this EULA may also be executed by exocad.

14. FINAL PROVISIONS

14.1 The EULA is exhaustive in its regulation of the End User's use of the Contract Software. All prior understandings or agreements in this regard are superseded by this EULA. No supplements to this EULA have been entered into verbally. All amendments to, additions to and cancellations of contractual provisions must be made in writing, just as this requirement itself can only be rescinded in writing.

14.2 Should any provision of this EULA be or become wholly or partially invalid, the validity of the remaining provisions shall not be affected. The Parties shall in this case endeavor to replace the invalid provision by a legally effective provision which corresponds as far as possible to the original intention in legal and commercial terms. If the Parties have not reached an agreement on the replacement

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within three months after the invalidity became apparent, both Parties are entitled to terminate the License with a wind-up period of three further months. The same shall apply if a gap exists or arises and if other circumstances occur which are fundamental at least in the opinion of one Party for the continued existence of the License which were previously not expressly addressed in this EULA

14.3 This EULA is governed by and construed under the laws of the Federal Republic of Germany without regard to its provisions on the conflict of laws, and the United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly and entirely excluded.

exocad GmbH
as at: 1 April 2021

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