



## General Terms and Conditions for ZADD Model Training

ZEISS offers a Platform-based Model Training Service connected to our product "ZADD" ("ZEISS Automated Defection Detection") for model training and optimization in the field of industrial quality inspection. These terms also include individual regulations that are only made available in part.

### 1. DEFINITIONS

Capitalized terms used in this Agreement have the meaning ascribed to them below:

- "Account"** means a Customer's individual access to the Platform via a web interface or otherwise.
- "Affiliate(s)"** means affiliated enterprise(s) within the meaning of Sec. 15 et seq. German Stock Corporation Act (AktG).
- "Agreement"** means this agreement between ZEISS and you.
- "Authorized User"** means any person authorized by the Customer to access the Account in accordance with this Agreement.
- "Business Day"** means Monday through Friday, except for public holidays observed throughout the State of Bavaria, Germany.
- "Confidential Information"** means any information shared by a Party with the respective other Party under or in connection with this Agreement and which is – when disclosed – identified as "Confidential" or consists of information that, by its nature or context, is sufficient to put the receiving Party on notice of its confidential nature. Any information and materials obtained by the Partner in connection with this Agreement and the Partner's receipt of ZEISS Services, including, but not limited to, the ZEISS Licensed Material, the Platform and its underlying technology, information regarding ZEISS's, its Affiliates' and business partners' business strategies and practices, methodologies, trade secrets, know how, pricing, technology, software, interfaces, product plans, services, client lists, and information regarding employees, clients, vendors, consultants and Affiliates, are deemed to be Confidential Information of ZEISS.
- "Customer"** means the natural person or legal entity registering to the Platform, in particular, in order to license as a user a Add-On. For the avoidance of doubt: All Partners are Customers.
- "Customer Content"** means any information, electronic data and content (including comments, data sets, source code, object code and documentation, pictures, processing results, images, logs) stored, uploaded, shared, processed or transmitted by Customer in or through the Platform as part of Customer's use of or in connection with the ZEISS Services.
- "Force Majeure"** means any event caused by circumstances beyond the respective Party's reasonable control, including acts of God, epidemics, earthquake, fire, flood, embargo, riot, sabotage, attacks on IT systems, labor shortage or dispute, acts or omissions of civil or military authorities, war, terrorism, even if these circumstances occur with a supplier, subcontractor, vicarious agent or an Affiliate.
- "Modified Materials"** means derivative works or materials created by or for you that are derived from, based upon or incorporate any ZEISS Licensed Material.

- “Add-On”** means a computer program, including any corresponding documentation (as made available), made available to Customer through the Platform.
- “Other Customer”** means a third party with access to the Platform.
- “Other Customer’s Agreement”** means the agreement between ZEISS and an Other Customer on this Other Customer’s access to the Platform.
- “Party” and “Parties”** means us and/or you in the capacity as a party to this Agreement.
- “Planned Downtime”** shall mean a period of time in which the Platform is unavailable to you due to testing, development and maintenance windows with regard to the Platform.
- “Platform”** means the online store for Add-Ons operated by ZEISS.
- “Platform Availability”** is the average percentage of time, calculated in minutes, during which the Platform is available to you during any given calendar month, excluding Planned Downtimes and Unplanned Downtimes.
- “Recipient”** means a Party receiving access to Confidential Information of the other Party.
- “Registration”** means Customer’s online application for access to the ZEISS Services under the terms of this Agreement and ZEISS’ acceptance of such application.
- “Security Standards”** means the following requirements: Add-Ons and any Distribution Content will not: (i) constitute a threat to the security or functionality of the Platform or the ZEISS Services; (ii) adversely impact ZEISS, ZEISS Affiliates, Customers, or any third party, in particular, not present any risk of personal injury; (iii) contain viruses, trojan horses, or other programs that may damage software; and (iv) contains unsigned software or software from an undefined source.
- “Suspension”** means the suspension of: (i) a Customer’s access to the Platform, (ii) the provision of ZEISS Services; or (iii) the granting of rights under this Agreement, in whole or in part.
- “Unplanned Downtime”** shall mean a period of time not within our possession or reasonable control, including force majeure, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving our employees), computer, telecommunications, internet provider or hosting facility failures or delays involving hardware, software or power systems, network intrusions and denial of service attacks.
- “Update”** means an updated or amended version of a Add-On.
- “Update of Terms”** means an update of or modification to the terms of this Agreement. Changes to Technology Requirements do not constitute an Update of Terms.
- “you”, “your”** means the Customer in its capacity as a Party to this Agreement.
- “ZEISS”, “us”, “we”, “our”** means Carl Zeiss Microscopy GmbH in its capacity as a Party to this Agreement.
- “ZEISS Add-On”** means a Add-On distributed through the Platform by and in the name of ZEISS.
- “ZEISS Add-On Agreement”** means a contract on the Customer’s use of a ZEISS Add-On concluded between ZEISS and a Customer.
- “ZEISS Licensed Material”** means all software development kits, documentation, documents, sample code, scripts, libraries, technology, and other material or information made available by ZEISS as part of or in connection with the ZEISS Partner Services, but excluding open source components.

**“ZEISS Services”** means the services specified in this Agreement provided by ZEISS to a Customer as described in Section 3.1. For the avoidance of doubt: ZEISS Partner Services are ZEISS Services.

## **2. SUBJECT MATTER AND SCOPE**

- 2.1 This Agreement is concluded between you and us by a successful Registration. We may, in our sole discretion, accept or reject any application for Registration.
- 2.2 ZEISS Services exclude: (i) any hardware or software necessary to use the ZEISS Services. You shall be solely responsible for securing and maintaining suitable hardware and software and an internet connection at your own expense.; (ii) the transmission of data to and from the data center on which the respective ZEISS Services are provided; (iii) any external websites (including embedded widgets or other means of access) linked to or in the Platform.
- 2.3 The ZEISS Services may contain third-party software, including open source components, which may be subject to additional terms and conditions (made available to you in an appropriate manner) that shall always prevail with respect to such third-party software.
- 2.4 The use of these and related services is governed exclusively by the Global Price List as amended from time to time.
- 2.5 In order to use this service, the Add-On must be licensed for the Zeiss Quality Suite and the corresponding End User License Agreement must be accepted in addition to these Terms.

## **3. GENERAL PROVISIONS FOR ZEISS SERVICES**

- 3.1 ZEISS Services includes when fully implemented:
  - Annotating of data in the browser
  - Annotating of pictures in the browser
  - Training of machine learning models
  - iterative improvement of model
  - Management of annotated data and models
  - Viewing of images in the browser
  - Uploading of files
  - Downloading of files and trained models Sharing of images
  - Sharing of models
- 3.2 ZEISS Services do not include:
  - Publishing of models
- 3.3 We provide any ZEISS Services “as is”. We warrant that the ZEISS Services are free from material defects. The ZEISS Services are free from material defects if they are in accordance with these terms. Minor deviations which do not materially impact the usability of the ZEISS Services do not constitute a material defect. In case of a material defect, we will, in our sole discretion, use commercially reasonable efforts to remedy the material defect either by repair or replacement.

- 3.4 You shall give notice to us in writing of every breach without delay and with a detailed description of any breach. You shall cooperate with us by providing any required information and documentation and to provide all other assistance that might be reasonable in order for us to remedy the respective defect.
- 3.5 Our warranty obligations shall not apply to the extent that a claim is based on any modifications of the ZEISS Services by or on behalf of you unless this is expressly permitted by us in writing.
- 3.6 Except for the express obligations set forth in this Agreement, we assume no obligations to you, and any statements about the ZEISS Services and their respective functionality in any communication with you are for information purposes only and do not constitute obligations of us. None of our obligations under this Agreement shall be deemed to constitute a guaranteed quality or other guarantee. In addition, we disclaim any no-fault liability for defects and non-conformance already existing when this Agreement was concluded. Section 536 para. (1) sent. 1 Alt. 1 German Civil Code is excluded.
- 3.7 We will provide to you during the term of this Agreement hosting services on server resources that are under the control of ZEISS or its subcontractors.
- 3.8 We will use commercially reasonable efforts to make the Platform available to you with a Platform Availability of at least 95 %. We will use reasonable efforts to perform scheduled maintenance between 8 am and 8 pm CET. These times are subject to change upon reasonable notice.
- 3.9 The use of the ZEISS Services is subject to necessary hardware or operating system. We shall not be liable for any consequences to the extent they are caused by your failure to use the ZEISS Services.
- 3.10 Unless expressly agreed otherwise, we provide the ZEISS Services as standard services and enable you to use the agreed ZEISS Services made generally available by us. We may update and further develop the technology, features, and functionalities of the ZEISS Services and upon the provision of a new version you are no longer entitled to use previous versions. Should material changes to the ZEISS Services be implemented which have an impact on your use or should agreed ZEISS Services be restricted, we will to the extent reasonable notify you at least five (5) Business Days before the changes become effective (e.g. by notice through the Platform). Such notice period does not apply if, based on our reasonable judgment, we believe that changes are necessary in order to avoid any: (i) threat to the security or functionality of the ZEISS Services; or (ii) adverse impact on us, our Affiliates, Customers or any third party. To the extent you are, due to such changes, materially deprived of the benefits of this Agreement, you are entitled to terminate this Agreement in writing with effect upon effectiveness of the change at the earliest.
- 3.11 We provide you access to the ZEISS Services to be provided over the internet at the exit of the data center used by us or a local ZEISS Service and Support Company (demarcation point).
- 3.12 You shall render to us any cooperation that is reasonable and appropriate for the proper performance of the ZEISS Services. You acknowledge that our proper performance of the ZEISS Services depends on your timely and proper performance of your cooperation obligations. In particular you shall (i) make available to us, in a reasonable format and in a timely manner, all data and information that is necessary for rendering the agreed ZEISS Services, (ii) use reasonable measures to ensure that any personnel involved on your behalf in receiving and using the ZEISS Services is adequately qualified, and (iii) (if applicable) provide timely instructions, approvals or sign-offs. If you fail to cooperate in accordance with this Agreement, we shall not be responsible for any consequences caused by such failure. In particular, Platform Availability affected by such failure

to cooperate shall be suspended for a period that equals the duration of your failure to cooperate plus a reasonable time to resume.

- 3.13 It is your responsibility to ensure, and we will not assume any responsibility, that your use of the ZEISS Services complies with applicable law.
- 3.14 We may engage any third parties (including our Affiliates) for and in connection with the provision of ZEISS Services.

#### **4. USE OF ZEISS SERVICES**

- 4.1 You shall: (i) ensure that your use of the ZEISS Services will not constitute a threat to the security or functionality of the ZEISS Services and/or adversely impact us, our Affiliates, Other Customers, Partners or any third party; (ii) before accessing the Platform and during use, you shall take all reasonable precautions against security attacks on your system and to prevent viruses, trojan horses, or other programs that may damage software; (iii) not interfere with or disrupt the integrity or performance of the Platform or other equipment or networks connected to the Platform, and in particular not transmit any Customer Content containing viruses, trojan horses or other programs that may damage software; and (iv) not use the Platform in a way that could damage, disable, overburden, impair, or compromise our systems or security or interfere with Other Customers.
- 4.2 You shall: (i) before and at all times during the use of the ZEISS Services review and comply with any applicable law, in particular, at your own expense, obtain and maintain all necessary permits and registrations; (ii) not provide us with any Customer Content the use of which in accordance with this Agreement and/or the applicable ZEISS Add-On Agreement results in a violation of applicable law, intellectual property, trade secrets, other third-party rights, or restrictions towards third parties, such as confidentiality obligations; (iii) not use the ZEISS Services for any purpose except as expressly permitted by this Agreement and/or the applicable ZEISS Add-On Agreement; (iv) not translate, disassemble, decompile, reverse engineer, or otherwise modify or attempt to discover the source code of any software contained in the Platform (except to the extent permitted pursuant to applicable law or expressly permitted otherwise); and (v) ensure that your use of the ZEISS Services will not subject us, our Affiliates, Other Customers, Partners, or any third party to liability.
- 4.3 You shall inform us without undue delay: (i) if you become aware of any circumstances, and in particular of any incidents, indicating that: (a) the security and/or compliance standards pursuant to Sections 4.1 and 4.2 are possibly not satisfied, or (b) the use of the Platform or a Add-On possibly presents risk of personal injury or to the security and stability of our, your, an Other Customer's; (ii) about any measures of authorities or court decisions which may possibly hinder use of any Customer Content in accordance with this Agreement and/or the applicable ZEISS Add-On Agreement; (iii) about any change to your name or contact details; and (iv) if you learn of any unauthorised access to your Account or the Platform.
- 4.4 You shall state all information and data truthfully and completely and keep these up to date at all time (e.g., contact information).
- 4.5 You are solely responsible for the suitability, content, use, and quality of your Customer Content and the means by which you acquired such content. For example, you are solely responsible for: (i) the creation and maintenance of independent backup copies of all Customer Content; and (ii) any document retention or archiving obligations resulting from applicable laws or company policies.

- 4.6 You hereby declare that all Authorized Users who are technically enabled to submit declarations and/or notifications via your Account, act on your behalf and have the capacity to bind you. Notwithstanding any additional responsibility under applicable law, as between you and us, you are solely responsible to ensure that any of your Authorized Users, employees, representatives, vicarious agents (other than us), Affiliates, and third parties which you engage when making use of the Platforms, comply with the provisions of this Agreement and/or the applicable ZEISS Add-On Agreement and applicable law.
- 4.7 You are solely responsible for the accuracy, quality, integrity and legality of your Content. We do not monitor the Customer Content and we shall not be responsible for the Customer Content, its storage, communication or transmission. You agree not to upload any content or data which (i) is libelous, defamatory, obscene, pornographic, abusive, harassing or threatening; (ii) contains malicious code; (iii) violates the rights of others, such as content or data which infringes on any intellectual property rights or violates any right of privacy or publicity; or (iv) violates any applicable laws. We reserve the right to delete any Customer Content that we may determine, in our reasonable discretion, violates this Agreement.
- 4.8 You will be given access credentials (e.g., logins and passwords via ZEISS ID) for your Authorized Users to use in connection with the ZEISS Services. You shall change the passwords on a regular basis in accordance with appropriate password policies. You, and each Authorized User, are entirely responsible for maintaining the confidentiality and security of your access credentials, and you are solely responsible for any and all activities that occur under your Account(s) to the extent such activities have been authorized by you or an Authorized User, or have not been authorized by you or an Authorized User but could have been prevented by you when exercising due care. Passwords may not be used by more than one Authorized User and you are prohibited from transferring or sharing passwords with any person that is not an Authorized User. You shall ensure that Authorized Users exit or log-off from their Account at the end of each session of use.
- 4.9 Notwithstanding any additional responsibility under applicable law, you are solely responsible to ensure that any of your employees, Affiliates, and third parties which you engage when making use of ZEISS Services, as well as their employees, comply with the provisions of this Agreement and the applicable law.
- 4.10 The Customer grants ZEISS a non-exclusive, sublicensable right, unlimited in time and content, to use the data provided. ZEISS shall use this data, among other things, for training, tuning and checking artificial intelligence (AI) as well as algorithms from which phase labeling and other analyses can be derived. ZEISS shall be the sole authorized user of these AI-based Models in this regard and shall be free and unrestricted in their respective use. ZEISS may use the uploaded data provided in particular in the form of training data for any application purposes in the form of training data for artificial intelligence learning processes and combine it with algorithms or artificial intelligence. In addition to the aforementioned right of use ZEISS shall receive the following non-exclusive ancillary rights:
- a) the right to reproduce the data or parts thereof using digital storage and reproduction media, regardless of the technical equipment and including all digital or interactive systems;
  - b) the right to process and transform the Data in whole or in part with the aid of all analogue, digital and other techniques and/or to have the Data processed and transformed, in particular the right to modify the Data and to combine it with other Data.
- 4.11 We are entitled to remove any Add-On from the Platform and/or suspend your access to any Add-On at any time, resulting in you not being able to use the Add-On permanently or during

suspension respectively if in our reasonable judgement there is a risk that your use of the Add-On will: (i) constitute a threat to the security or functionality of the Platform or any other of our systems; (ii) adversely impact us, our Affiliates, any Other Customers, or any third party, including any risk of personal injury; or (iii) subject us, our Affiliates, any other Customers, or any third party to liability.

## **5. LICENSING AND USE OF ZEISS ADD-ONS**

- 5.1 Through the Platform, we enable you to order ZEISS Add-Ons by entering into an further ZEISS Add-On Agreement with us. We may offer any ZEISS Add-On against payment accordingly to the Global Price List.
- 5.2 By entering into a ZEISS Add-On Agreement you will be granted a non-exclusive, non-sublicensable right, timely limited right to access and use this Platform. The Usage of the respective ZEISS Add-On is further specified in their End User Licence Agreement.

## **6. SHARING**

- 6.1 We open to you – without acknowledging a legal obligation – the technical opportunity to gratuitously share with Other Customers your Customer Content by transferring or sharing your Customer Content on the Platform For the avoidance of doubt this shall by no means lead to a liability of us for the legal compliance, freedom of error, usability or functionality of any Customer Content shared or published on the Platform.
- 6.2 You will be solely responsible (*vis-à-vis* ZEISS, its Affiliates, Other Customers and all other third parties) for all publishing activities that occur under your Account, including all Customer Content shared by your Account.
- 6.3 Customer Content may only be shared and published in compliance with these terms. We are not obliged to review the Customer Content shared by you for compliance.
- 6.4 For the purposes of sharing, you have the option to make it available to individual Other Customers selected by you. By sharing Customer Content on the Platform, you (i) grant to the applicable Other Users, a limited, personal, transferable, non-exclusive license to use any such Customer Content in accordance with this Agreement, in particular, the right to further share, comment and make available to Other Customers any such Customer Content; and (ii) warrant that you have (and will have for the entire period of your Customer Content will be published by your Account) all necessary licenses, rights, consents and permissions necessary. In individual cases, the distribution may be subject to further restrictions.
- 6.5 Upon first request, you shall indemnify us against all claims by third parties, in particular claims for copyright, competition, trademark, data protection and personal rights infringements, which should be brought against us in connection with your transferring or sharing of Customer Content. You must immediately notify us of any claims by third parties that become known to you in connection with the use of the Customer Content shared or published by you. We are entitled to take appropriate measures to defend yourselves against claims by third parties or to pursue our rights. You must coordinate your own measures with us in advance. This indemnity also includes the reimbursement of reasonable costs that incur or have incurred as a result of legal prosecution/defense.
- 6.6 We reserve the right (but shall not be obliged) to at any time (before, during and after the sharing of your Customer Content), without prior notice and at our sole discretion, refuse to publish and

remove Customer Content that violates this Agreement, the applicable ZEISS Add-On Agreement, applicable law or the rights of ZEISS, Others Customers or other third parties.

## **7. INTELLECTUAL PROPERTY**

- 7.1 All rights, title, interest and know how in and to the ZEISS Licensed Material, the Platform, Add-Ons, Customer Content, Distribution Content, and any other information and content and any part and improvement of the aforementioned, other than those expressly granted in this Agreement, shall remain wholly vested in the relevant Party or its third-party business partners or licensors.
- 7.2 You grant us, our Affiliates, and our subcontractors, a limited, personal, transferable, non-exclusive license to use, host, link, publish, transmit, display, sub-license, and reproduce Customer Content as reasonably required for the purpose of providing the ZEISS Services to you and/or to Other Customers in accordance with this Agreement or the applicable ZEISS Add-On Agreement. We may, irrespective of Sec. 4.10, create, analyze and evaluate copies of Customer Content in anonymized form, including for statistical purposes as well as for improving and further developing the ZEISS Services. We will fully respect your preexisting intellectual property rights.
- 7.3 You grant us, our Affiliates, subcontractors and business partners, a worldwide, perpetual, irrevocable, transferable, sub-licensable, and royalty-free license to use any suggestion, recommendation, feature request, or other feedback related to the Platform or the ZEISS Services provided by or on behalf of you, and to incorporate into or otherwise use any such feedback in connection with the ZEISS Services, the Platform or any other products or services.

## **8. EXPORT COMPLIANCE**

- 8.1 You are responsible for ensuring that you may use and access the ZEISS Services as provided by us in compliance with any applicable import or export laws. You shall not import or (re-)export the ZEISS Services in violation of any national or international law, in particular any export or import regulation of the European Union or the United States of America.
- 8.2 Without limiting the foregoing, (i) each Party represents that it is not named on any government list of persons or entities prohibited from receiving exports, and (ii) you shall not access or use the ZEISS Services in violation of any export embargo, prohibition or restriction.

## **9. UPDATE OF TERMS**

- 9.1 We reserve the right to conduct an Update of Terms at any time in our own reasonable discretion, in particular, due to changes in applicable law or further developments of ZEISS Services. We will inform you about any Update of Terms by giving you at least thirty (30) days' prior notice, e.g., by email. The Update of Terms shall become binding upon the Parties upon expiry of the notification period, unless you object to the Update of Terms in text form prior to the expiry of the notification period.
- 9.2 In case you object, we may terminate this Agreement with effect upon the expiry of the notification period if the continuance of this Agreement without the Update of Terms is impossible or unreasonable for us. We will point out these consequences to you as part of the notification.

## **10. SUSPENSION**

- 10.1 We are entitled to immediate Suspension, if according to our reasonable judgment, you may be in material breach of any other provision of this Agreement and/or the applicable ZEISS Add-On Agreement. In addition, we are entitled to perform a Suspension if the Suspension is required by law, a court decision, or a request from a governmental body. We shall inform you at our earliest convenience about any Suspension. If and to the extent a reason for the Suspension no longer exists we will restore your access to the ZEISS Services within a reasonable time.
- 10.2 Our Suspension right is in addition to and restoration is without prejudice to all other rights and remedies we may have.

## **11. DATA PROTECTION**

- 11.1 Each Party shall comply with all data protection laws, regulations, requirements that apply to the performance of each Party's obligations under this Agreement, including but not limited to ensuring that it complies with applicable notification requirements under such laws.
- 11.2 Should we process personal data on your behalf (in particular as part of hosting services), the Parties will duly execute the then-current data processing agreement to be provided by us.

## **12. CONFIDENTIALITY**

- 12.1 Each Party undertakes to treat confidential the Confidential Information of the other Party and may disclose it only to those employees or other personnel who have a need to know and who are bound to confidentiality by their employment contract or otherwise not less stringent than the provisions herein. Each Party may use Confidential Information of the other Party only for the purpose authorized by this Agreement.
- 12.2 The confidentiality obligations of this Section shall not apply if the Recipient can prove that: (i) the information is generally known or later became known through no fault of the Recipient; (ii) the Recipient already knew the same information before the obligation to maintain secrecy or the same information was verifiably developed by the Recipient independently; (iii) the information was supplied to the Recipient by a third party without the obligation to maintain secrecy; (iv) the information was released in writing for publication by the other Party; or (v) to the extent the information must be made public on the basis of a binding official or judicial directive.
- 12.3 The Confidential Information and any copies made of it shall be returned (or upon the other Party's request destroyed) without further request after the termination of this Agreement. The obligation to return/destroy such Confidential Information does not apply to the extent that Confidential Information or copies thereof have to be stored by the Recipient in safe custody according to mandatory law, provided however that during the retention period provided by such mandatory law this Confidential Information or the copies thereof are subject to an the obligation to secrecy according to the provisions of this Agreement.

## **13. LIABILITY**

- 13.1 We are fully liable for damages: (i) to the extent that liability cannot be limited or excluded according to applicable law, in particular applicable product liability law; (ii) caused by intent or gross negligence; (iii) in cases of damage to life, body or health caused by ordinary negligence; and (iv) in cases of our failure to comply with an agreed guarantee.

- 13.2 Without prejudice to Section 13.1, we are not liable for damages or frustrated expenses caused by ordinary negligence, except in cases of a violation of material contractual obligations in a manner jeopardizing the purpose of this Agreement or of contractual obligations the fulfillment of which is indispensable for the proper and due performance of this Agreement and which you will and may usually rely on (*Kardinalpflichten*), provided that, in each such case, our liability shall be limited to the damage or frustrated expenses which is reasonably foreseeable in connection with contracts of the type of this Agreement at the time of its conclusion. The Parties agree that the reasonably foreseeable damages or frustrated expenses within the meaning of this Section shall, in no event, exceed in aggregate EUR 1000.
- 13.3 Unless otherwise agreed by the Parties, any liability of us for damages or frustrated expenses caused by ordinary negligence exceeding the reasonably foreseeable damages as per Section 13.2 is excluded.
- 13.4 Neither Party shall be liable for indirect or consequential damages, including loss of profit, loss of revenue, business interruptions and loss of goodwill. Except for claims under Section 13.1, any rights, claims and remedies for damages and indemnities arising out of or related to this Agreement, whether in contract, tort or otherwise, shall expire no later than two (2) years.
- 13.5 Any limitations and exclusions of liability provided in this Agreement also apply to the benefit of any of our Affiliates, directors, employees, agents, business partners, subcontractors, and any other persons used by us in performing any of our obligations as well as their Affiliates, directors, employees, agents, business partners, subcontractors and any other persons used by them.

#### **14. INDEMNIFICATION**

- 14.1 We will indemnify you and hold you harmless from and against any losses or damages (including reasonable attorney's fees) finally awarded by a court of final jurisdiction or settled/acknowledged with our prior written approval resulting out of, and defend you (both in and out of court) at our own cost against, any claim of a third party alleging that your use of the agreed ZEISS Services in accordance with this Agreement and/or the applicable ZEISS Add-On Agreement infringes upon that third party's intellectual property rights, provided that you (i) promptly give us written notice of the infringement claim, (ii) give us sole control of the defense and settlement of the infringement claim, and (iii) provide to us all reasonable assistance to defend such infringement claim. You shall not settle or acknowledge any infringement claim without our prior written consent. Notwithstanding the foregoing, we will have no obligation of defense or indemnification or otherwise with respect to any claim or demand based upon (a) any use of the ZEISS Services not in accordance with this Agreement and/or the applicable ZEISS Add-On Agreement; (b) any use or interaction of the ZEISS Services with any third party services not explicitly authorized by us, (c) any modification of the ZEISS Services made by any person other than us or our subcontractors, (d) any content provided by any person other than us or our subcontractors; or (e) where you continue the allegedly infringing activity after we have notified you thereof and provided modifications, replacements or other remedies that would have avoided the alleged infringement.
- 14.2 If you are deprived of your use of the agreed ZEISS Services as permitted under this Agreement and/or the applicable ZEISS Add-On Agreement due to an infringement of such use upon an intellectual property right, then we will obtain for you the right to continue accessing and using the ZEISS Services, or will at our sole discretion replace or modify the ZEISS Services so they become non-infringing; or, if such remedies are not reasonably available, we are entitled to terminate this Agreement and/or the applicable ZEISS Add-On Agreement in whole or in part. We,

in our sole discretion, may provide the remedies specified in this Section 14.3 prior to your deprivation of your use of the applicable ZEISS Services.

- 14.3 You will indemnify us and hold us harmless from and against any losses and/or damages (including reasonable attorney's fees), and defend us (both in and out of court) at your own cost against any claims, arising out of or in connection with the following circumstances: (i) an allegation by a third party, including an authority, that your use of the ZEISS Services violates the security and/or compliance standards pursuant to Section 4; (ii) an allegation by a third party that any Customer Content infringes upon that third party's rights, including without limitation intellectual property rights or privacy rights; (iii) any failure to comply with your obligations under Section 8; and/or (iv) a breach of this Agreement, the applicable ZEISS Add-On Agreement and/or applicable law, by you. This indemnity also includes the reimbursement of reasonable costs that incur or have incurred as a result of legal prosecution/defense. This Section 14.3 also applies accordingly in favor of our Affiliates.
- 14.4 You must immediately notify us of any claims by third parties that become known to you in connection with the use of the ZEISS Services. We are entitled to take appropriate measures to defend ourselves against claims by third parties or to pursue our rights. You must coordinate your own measures with us in advance.
- 14.5 Any terms or conditions of this Agreement, which by their express terms extend beyond the termination or expiration of this Agreement or which by their nature should so extend shall survive and continue in full force and effect after any termination or expiration of this Agreement.

## **15. TERM AND TERMINATION**

- 15.1 This Agreement takes effect upon Registration or after receipt of an order confirmation by an ZEISS Service and Support Company or after installation on premise and remains in place for twelve (12) months. The term of this Agreement will be extended by another twelve (12) months each unless it is terminated by one of the Parties upon 1 month's notice before expiration of the applicable term.
- 15.2 Either Party may terminate this Agreement for cause. Events that entitle us to terminate this Agreement for cause include, in particular: (i) acts or omissions by you that entitle us to a Suspension for a continuous period of at least thirty (30) days; (ii) your breach of any obligation or provision of this Agreement which remains uncured for a period of thirty (30) days after receipt of notice thereof; (iii) a material breach of the obligations under this Agreement by you; (iv) our obligation to comply with applicable law or requests by a governmental body, rendering the continued provision of services by us impossible or unreasonable; (v) a change in control of you or your direct or indirect parent company which, as suggested by objective reasons, adversely affects our position, rights or interests; and (vi) the termination or expiration of our relationship with a supplier or subcontractor for the provision of the agreed ZEISS Services or material software or services, rendering their continued provision by us impossible or unreasonable, unless culpably caused by us, and (vi) if you materially or repeatedly breach your obligations regarding the use of a ZEISS Add-On under a ZEISS Add-On Agreement.
- 15.3 All termination rights must be exercised by written notice to the other Party, notice in the Support Forum being sufficient.
- 15.4 Except as provided otherwise, upon the termination of this Agreement, regardless of the reasons: (i) we will permanently suspend your access to the Platform and to discontinue provision of the ZEISS Services; (ii) you are obliged to cease all use of ZEISS Services; and (iii) you are obliged to

destroy or delete all ZEISS Material without delay and to provide us with written confirmation to this effect.

- 15.5 We shall have no obligation to maintain or provide any Customer Content and shall thereafter, unless otherwise required by applicable laws, delete all Customer Content in our systems or otherwise in our possession or under our control.

## 16. ADVERTISING

- 16.1 Unless this has been agreed in writing, you are not entitled to use trademarks, trade names and other content of us or our Affiliates.

## 17. MISCELLANEOUS

- 17.1 This Agreement may not be assigned or transferred, nor may any rights or obligations be assigned or delegated, by you without the prior written consent. We may assign this Agreement in whole or in part or its rights and obligations hereunder without your consent or extend this Agreement to any of our Affiliates, or to a third-party successor in interest of all or part of the business to which this Agreement relates, whether: (i) as a result of a change of ownership (including by stock purchase, merger or consolidation); (ii) as a result of the sale of all or a substantial part of the assets or all or a part of the business to which this Agreement relates; or (iii) in connection with any type of spin-off, (de)merger, consolidation, divestiture, dissolution and any other type of business combination or business reorganization, including, the establishment of joint venture companies or otherwise.
- 17.2 Any amendments to this Agreement must be in writing in order to be effective. A waiver of form shall be effective only if agreed upon in writing.
- 17.3 Whenever notice by email is sufficient as expressly set forth in this Agreement, notices to us shall be sent to **support@...** and notices to you shall be sent to your then-current email address as provided by you in the process of Registration or as recently updated by you. If this Agreement requires a notice or a document to be „in writing“ or „in written form“, unless notice by email is sufficient as expressly set forth in this Agreement, such notice or document shall be duly signed by the sender and the signed notice or document shall be delivered, sent or transmitted to the other Party in its original form or as a telefax copy or scanned copy per email. For the avoidance of doubt other electronic communication shall not qualify as a written notice or document.
- 17.4 This Agreement shall constitute the entire understanding of the Parties regarding the subject matter hereof. Any general terms and conditions of the Parties shall not apply.
- 17.5 If any provisions of this Agreement should be held to be illegal, invalid or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. The Parties shall substitute the illegal, invalid, or unenforceable provision by a legal, valid or enforceable one, approximating as closely as possible the original commercial intent of the Parties.
- 17.6 Neither Party shall be liable for any failure or delay in its performance under this Agreement due to Force Majeure, provided that the delayed Party: (i) gives the other Party prompt notice of such cause; and (ii) uses commercially reasonable efforts to promptly correct such failure or delay in its performance.

- 17.7 Insofar as the Customer is a businessperson, legal entity established under public law or a special fund under public law, the place of jurisdiction shall be the registered offices of the ZEISS Group company which is using these Terms and Conditions. However, ZEISS shall also be entitled to assert a claim against the Customer at their registered offices.
- 17.8 This Agreement is governed by German law without reference to any other law. The United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 shall not apply.