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**exocad GmbH**

# Lease Terms and Conditions for Dental Software

General Terms of Business for Leasing Licenses of Dental Software  
provided by exocad GmbH

## Preamble

- I. exocad GmbH, Julius-Reiber-Str. 37, D-64293 Darmstadt, Darmstadt Local Court: Commercial Register B 88704 ("exocad") is active in the field of software development.
- II. exocad developed certain software as specified in the Performance Specifications as defined in Section 1.21. This agreement governs the use of software that has been ordered by Distributor. Such software consists of a Core Version as defined in Section 1.8 and, if applicable, Modules as defined in Section 1.19, as well as possibly further software components specified during the performance of the contractual relationship (collectively "Contract Software").
- III. These Terms and Conditions do not apply to exocad software that is defined by exocad as a medical device software. The Contract Software is not defined as medical device software. For further information related to medical device software please refer to our separate terms and conditions for medical device software (General Terms of Business for Leasing Licenses of Medical Device Software).
- IV. The recipient of an offer issued by exocad for the lease and distribution of Contract Software ("Distributor") intends to lease and distribute as set forth herein.

In consideration of the foregoing premises and the mutual covenants and agreements set forth herein, the Parties agree as follows:

## 1. Definitions

- 1.1 **"Agreement"** is the contractual relationship between the Parties with regards to the lease and distribution of the Contract Software, consisting of exocad's offer, the Performance Specifications relating to the ordered Contract Software, Distributor's order and these Lease Terms and Conditions for Dental Software ("Terms and Conditions") including the EULA provided in Annex 1.
- 1.2 **"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.
- 1.3 **"Combined Product"** is a product consisting of the Contract Software and other components manufactured or assembled by Distributor or any third party including Distributor's Distribution Partners, Foreign Agencies or End Users (e.g. a system consisting of scanner, CAD software and milling machine or other hardware).
- 1.4 **"Confidential Information"** is technical information, including without limitation the Contract Software, respective documentation and other related materials, as well as information about product plans and strategies, promotions, End Users and related non-technical business information which has been marked as protected or confidential by one of the Parties or otherwise labelled in writing as such, and information which is to be regarded in good faith as protected or confidential on the basis of its content or the circumstances of its disclosure, including information provided by an End User.
- 1.5 **"Contract Term"** is the period during which the Agreement is in force, beginning as of the Effective Date and ending upon the earlier of either the expiration (including extension periods, if applicable) or termination according to these Terms and Conditions.
- 1.6 **"Contractual Industrial Property Rights"** are all present and future, registered and unregistered proprietary rights, including patents, copyrights (including source and object code), data base rights, trade secrets and trademark rights, design rights, utility rights and any other exploitation rights, ancillary rights and know-how, including respective applications, which are related to the Contract Software and its parts.

- 1.7 “Contractual Territory”** is worldwide unless otherwise agreed between exocad and Distributor.
- 1.8 “Core Version”** is the software component that is the prerequisite for running the software licensed under this Terms and Conditions and providing its core functionality. Modules are not included and can be optionally licensed separately.
- 1.9 “Distribution Partners”** are Distributor’s distribution partners that distribute the Contract Software in the name of Distributor to End Users by lease.
- 1.10 “Effective Date”** is the date on which the Agreement is validly concluded, e.g. when exocad receives valid order from Distributor.
- 1.11 “End Users”** are direct, commercial users of the Contract Software who acquired the Contract Software from Distributor or via its Distribution Partners or Foreign Agencies for their own business purposes and not for purposes of resale, sublicense or transfer to others (e.g. dental laboratories).
- 1.12 “EULA”** is the End User License Agreement applicable to all sub-licenses granted from Distributor to End Users in accordance with Section 5.5. The EULA is provided for in Annex 1.
- 1.13 “Exploitation” or “Exploit”** refers to the use (e.g. installing, storing, loading, executing, configuring and displaying), offer, distribution and/or lease of the Contract Software, the Contractual Industrial Property Rights and/or the related know-how.
- 1.14 “Foreign Agencies”** are Distributor’s branch establishments that distribute the Contract Software in the name of Distributor to End Users.
- 1.15 “Initial Activation”** is the activation of the Contract Software for an individual software license, which is protected by a USB Dongle. The Contract Software generally needs to be activated by Distributor or the respective End User before initial usage. This activation is done via the License Server.
- 1.16 “Intended Purpose”** is the purpose the Contract Software is dedicated to being used for as specified by exocad in the respective accompanying documentation, such as the user manual and the Performance Specifications.
- 1.17 “License Server”** is exocad’s server which is used to administrate the licenses for the Contract Software and to conduct the Initial Activation.
- 1.18 “Licensed Industry Property Rights”** are Contractual Industry Property Rights which are owned by third parties (other than exocad) and which are licensed in by exocad and form part of the Contract Software.
- 1.19 “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 Distributor against additional remuneration.
- 1.20 “Party”** is either exocad or Distributor, “Parties” are both exocad and Distributor.
- 1.21 “Performance Specifications”** is 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 exocad’s offer, Distributor’s order or each update of the Contract Software (e.g. Bug Fixes, Updates or newly developed Modules pursuant to Section 7) in accordance with this Agreement (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 10.1. The Performance Specifications are available for download in the secure area of our website. The Distributor is obliged to keep itself informed of new updates to the Performance Specifications at all times and inform its End Users accordingly without undue delay.

**1.22 “Serial Number”** is the unique number stored on each USB Dongle in order to allocate this number to an individual software license during Initial Activation.

**1.23 “Updates”** are new versions of or patches to the Contract Software provided by exocad 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.

**1.24 “USB Dongle”** is 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 End User computer in order to run or use the Contract Software. The USB Dongle contains a Serial Number to identify each individual license, which is also displayed by the Contract Software during the Initial Activation.

## 2. Subject and Scope

Distributor will use best efforts to lease and distribute the Contract Software directly to End Users or, as the case may be, to lease and distribute the Contract Software through its Foreign Agencies and its Distribution Partners and/or to manufacture or have manufactured Combined Products and to distribute

these Combined Products. Regardless whether the Contract Software is distributed on a stand-alone basis or as Combined Product in connection with sold, leased or otherwise distributed hardware, the Contract Software must in each case only be distributed as a time-limited, lease sub-license in strict accordance with Section 5.5.

All offers and licenses for the lease of the Contract Software by exocad to Distributor including all Bug Fixes, Updates and Modules Distributor is provided with are solely and exclusively governed by and subject to these Terms and Conditions. Distributor's own terms of business and purchasing terms shall not apply even if not individually opposed by exocad. Individual agreements shall remain unaffected.

## 3. Combined Products

In case that Distributor intends to lease and distribute Combined Products, it shall be solely responsible for testing, validating and ensuring the secure implementation and interaction of all and any individual components of the Combined Products and their freedom from third party rights. exocad does not warrant, covenant or guarantee any fitness for usability to incorporate the Contract Software in Combined Products and does not assume any liability for damages resulting from any interaction of the Contract Software with other components of the Combined Product.

## 4. Labelling Obligation; Copyright Notice

Unless otherwise agreed, Distributor is entitled to market and distribute the Contract Software under the name and trademark provided by exocad. Distributor is obliged to use the name and trademark solely for the Contract Software and in compliance with the corporate design specifications of exocad. The use of the name and trademark of the Contract Software for Combined Products is prohibited, unless the name and trademark is solely used to refer to the included Contract Software and not the Combined Product in whole. In the event of a use of the name and trademark of exocad by Distributor which exocad in its

reasonable discretion deems inappropriate, exocad may object and require Distributor to refrain from such use and/or make future use of the name and trademark subject to prior approval. Copyright references already attached to the Contract Software may not be removed. Distributor will not attach any further notices to the Contract Software and/or market and distribute the Contract Software under names, trademarks and corporate design specifications other than those provided by exocad, unless the name, trademark and corporate design specification has been approved in written form by exocad.

## 5. License

### 5.1 Ownership

Unless explicitly otherwise provided in these Terms and Conditions, exocad will retain full ownership in all right, title and interest in and to the Contract Software, the Contractual Industrial Property Rights and all respective Exploitation and usage rights. To the extent exocad incorporates any Licensed Industry Property Rights in the Contract Software, that third party will retain full ownership in all right, title and interest in and to such Licensed Industry Property Rights except as expressly granted under these Terms and Conditions.

### 5.2 License Scope

Upon payment of the applicable annual license fees according to Section 8, exocad grants to Distributor, subject to these Terms and Conditions, a non-exclusive, non-transferable, non-assignable, non-permanent, limited license for the Contractual Territory to distribute and sub-license the Contract Software separately or as part of a Combined Product to End Users solely for Exploitation in connection with the internal business operations of such End Users. The license is limited to the Contract Term and conditioned on the payment of the annual license fees for the upcoming extension period. Distributor may use Distribution Partners and Foreign Agencies for distributing the Contract

Software by granting respective sub-licenses. Each Distribution Partner and Foreign Agency must be subject to a legally binding written agreement with Distributor that (a) grants the rights according to this Section 5 to the Distribution Partner or Foreign Agency to lease and distribute the Contract Software to End Users, (b) contains or incorporates provisions which are identical or substantially equivalent to these Terms and Conditions, and (c) permits Distributor or an appointed auditor sworn to secrecy to audit the Distribution Partner's or Foreign Agency's activities under such agreement and report such activities to exocad. Any distribution of the Contract Software by such Distribution Partner or Foreign Agency to an End User must be subject to a EULA as provided for in Annex 1. With regards to Licensed Industry Property Rights the license under this Section 5.2 shall only include the right to sublicense to End Users the right to display the Licensed Industry Property Rights solely as part of the Contract Software.

### 5.3 Exploitation by exocad

Nothing in these Terms and Conditions shall restrict exocad's right to Exploit the Contract Software itself and/or to license it to other third parties in the Contractual Territory for any purpose whatsoever and in any form whatsoever.

### 5.4 Testing; Own use by Distributor

Before Distributor commences the leasing or the Contract Software, thorough testing of the scope and functionality of the Contract Software shall be performed by Distributor. For this purpose, exocad shall provide Distributor with a copy of the then current version of the Contract Software in accordance with Section 6. The lease of the Contract Software shall only commence if Distributor has already successfully tested and approved the scope and function of the Contract Software. Regarding future Updates and Modules, Distributor undertakes to test the scope and function of

these on its own, before such Updates and Modules are passed on to the End User. Distributor may further use the Contract Software for providing configuration, integration, training and support services to End Users, as permitted hereunder. After the Contract Term, Distributor is obliged to immediately cease using and distributing the Contract Software, shall permanently delete all copies of the Contract Software and shall return all USB Dongles in its possession in accordance with Section 16.3.

## 5.5 Sub-License; Term and Extension

- 5.5.1** Starting from approval of the Contract Software by Distributor pursuant to Sec. 5.4 and throughout the Contract Term, Distributor is entitled - in connection with the lease and distribution of the Contract Software - to grant End Users a non-exclusive, non-assignable, non-transferrable, non-sublicenseable and time-limited sub-license to Exploit the Contract Software in connection with the internal business operations of such End Users.
- 5.5.2** Distributor may configure the Contract Software only to the extent permitted and in accordance with the applicable specifications and instructions of exocad and the Intended Purpose of the Contract Software, and only as necessary for a specific End User implementation. Such configurations, however extensive, will not affect exocad's title to the Contract Software.
- 5.5.3** Sub-licenses may be granted to End Users only as individual "per-seat" license, not as concurrent user license or floating license, i.e. each sub-license is limited to one End User and one computer at a time. In particular, the Exploitation of the Contract Software in connection with the operation of a computer center for third parties (e.g. with remote access per team-viewer) or the (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 End Users is strictly prohibited.
- 5.5.4** Each End User must be subject to a legally binding agreement between Distributor and the End User incorporating the EULA provided for in Annex 1. Sub-licenses may be granted for a one (1) year period starting from activation by either the End User or Distributor (whichever is earlier) and may be extended for subsequent one (1) year periods.
- 5.5.5** Subject to Section 16.3, existing sub-licenses shall automatically be extended for a subsequent one (1) year period unless the End User sub-license has been deactivated by Distributor in the online system of exocad or by Distributor giving notice to exocad in writing in each case with a four (4) weeks' notice period to the end of the current sub-license period.
- 5.5.6** The sub-license of an End User will automatically expire without further notice if (i) mandatory usage of the USB Dongle is circumvented, (ii) existing USB Dongle protection is impaired, circumvented or tampered with (e.g. by making copies of the USB Dongle, or its contained license data), (iii) the Contract Software is used on any other computer than the computer the Contract Software 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 regarding compensations for fictitious

license fees or any further claims, including damage claims exceeding fictitious license fees, shall remain unaffected.

## 5.6 License Restrictions

- 5.6.1** Apart from the rights granted under Section 5 of these Terms and Conditions, Distributor is not entitled to transfer or grant rights granted under these Terms and Conditions to third parties and/or to legally or commercially affiliated companies (cf. Sec. 15 of the German Stock Corporations Act (Aktiengesetz)).
- 5.6.2** Except as expressly permitted hereunder, Distributor 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.
- 5.6.3** Except as permitted by Sec. 69e of the German Copyright Act (Urheberrechtsgesetz), Distributor 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.
- 5.6.4** Distributor may not encourage, advise or in any other way support its End Users with regards to any action under Section 5.5.6 of these Terms and Conditions.

## 6. Provision of Contract Software

### 6.1 Scope

Without undue delay after the Effective Date, exocad shall surrender to Distributor the Contract Software.

### 6.2 Provision of Object Code

The Contract Software shall be supplied in executable form in object code. Distributor is not entitled to receive any source code form of the Contract Software or any rights thereto.

### 6.3 Provision of the Contract Software

exocad shall deliver the Contract Software to Distributor as download and by providing respective download information to Distributor.

A USB Dongle is used for the individual software license management and must be attached to the computer to start and run the Contract Software. Distributor shall order a USB Dongle from exocad for each individual sub-license. Upon such order, the respective USB Dongle will be shipped to Distributor.

### 6.4 Installation of the Contract Software

Distributor shall install the Contract Software on the computers of its respective End Users.

### 6.5 Initial Activation by USB Dongle

- 6.5.1** Before using the Contract Software with its USB Dongle on a specific End User computer, Initial Activation is required. The Initial Activation will only enable use of the Contract Software on the specific computer where the USB Dongle is connected to during the activation process. The license is activated by using an online internet connection from the Contract Software on the computer with the USB Dongle to exocad's License Server. Should during the activation process no successful connection to exocad's License Server be

established for technical reasons, Distributor shall 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.

**6.5.2** In order to prevent the unauthorized multiple use of the Contract Software with a single USB Dongle, exocad 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, exocad retains the right to agree to a change of a sub-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 exocad and compliance with these Terms and Conditions are ensured to exocad's satisfaction.

**6.5.3** Defective USB Dongles will be replaced against a service fee, provided that a valid lease agreement with the respective End User exists. In order to transmit the configuration of the defective USB Dongle to the new USB Dongle, Distributor has to provide exocad with the Serial Number of the defective USB Dongle in writing (email is sufficient). The defective USB Dongle must be returned to exocad. The new USB Dongle will not be sent before the defective USB Dongle has been received by exocad.

**6.5.4** Lost USB Dongles will be replaced by exocad against a handling fee of two-hundred-and-fifty Euro (EUR 250). The lost USB Dongle will be deactivated after the loss has been notified to exocad.

## 6.6 License validation

**6.6.1** Even after the Initial Activation, the Contract Software can only be used by the

End User on a computer when the USB Dongle 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.

**6.6.2** The Contract Software will require a technical license validation every two (2) weeks, to ensure that the End User's sub-license for a specific computer is still valid. The technical requirements for this validation are the same as for the Initial Activation. 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 a period of two (2) weeks or longer on a computer with a USB Dongle, a confirmatory Initial Activation process may be triggered automatically for the computer and its USB Dongle.

## 6.7 Infringement

Should exocad become aware of any infringement of these Terms and Conditions and/or the EULA, it may in its reasonable discretion deactivate the Contract Software (i.e. the USB Dongle cannot be used for running the Contract Software) activated for the infringing End User and used for the infringement.

## 7. Maintenance of the Contract Software

### 7.1 Bug Fixes

Unless otherwise agreed, Bug Fixes published by exocad during the Contract Term shall be provided to Distributor free of charge.

## 7.2 Updates

Unless otherwise agreed, Updates published by exocad during the Contract Term shall be provided to Distributor for every individual End User license free of charge.

## 7.3 Modules

Modules offered by exocad during the Contract Term are subject to a separate order by Distributor on the basis of the then applicable price list and these Terms and Conditions. The license term for such Modules will be individually defined in each case to match the remaining term of the individual license of the Core Version (congruent term principle).

## 7.4 Critical Bug Fixes and Updates

**7.4.1** If exocad publishes Bug Fixes or Updates which remedy critical defects or malfunctions of the Contract Software or are otherwise required for using the Contract Software securely, exocad will inform Distributor accordingly. Upon such information, Distributor shall be obliged to distribute the respective Bug Fix or Update immediately to its End Users and shall install it on their respective computers that are used for the Contract Software. Distributor shall further without undue delay inform its End Users that the use without the respective Bug Fix or Update is insecure and the Contract Software may not be used without the respective Bug Fix or Update anymore and that the continued use without Bug Fix or Update is End User's sole risk and responsibility.

**7.4.2** Bug-Fixes, Updates 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, Update or new Module.

## 8. License Fees; Taxes

### 8.1 License Fees

Distributor is obliged to pay to exocad the annual license fees specified in the price list provided in the offer issued by exocad for each ordered license. The twelve months of the annual license period start with the Initial Activation of each license. The fees for Modules subsequently licensed by Distributor will be calculated on a pro rata temporis basis for the remainder of the license term of the Core Version and will be invoiced separately by exocad.

### 8.2 Adjustment of License Fees

exocad is entitled to adjust its price list during the Contract Term upon a minimum of four (4) weeks prior notice to Distributor if such amendment appears reasonable. In this case exocad shall give Distributor the right to object to the license fee adjustment until the new fees shall apply. Should Distributor not object to the license fee adjustment, the adjustment is deemed to be approved by Distributor for the leasing of new licenses and the extension of existing leasing licenses. Should Distributor object within the above deadline, exocad shall be entitled to terminate this Agreement. exocad will inform Distributor of this right to object and the consequences along with the fee adjustment notice above.

### 8.3 Turnover Tax and Direct Taxes

All license fees payable according to these Terms and Conditions and other payments of Distributor to exocad do not include VAT or any other form of tax or duties. To the extent the payments within the scope of international payments are not subject to turnover tax as defined by the German Turnover Tax Act (Mehrwertsteuergesetz) and provided that a corresponding turnover tax identification number has been presented by Distributor, no turnover tax shall be charged. Any sales, use,

property, license, value added, excise or similar tax, federal, state or local (other than exocad's income tax (Einkommensteuer)), or any import duties or other fees or charges that may be imposed upon or in relation to Contract Software shall be borne by Distributor.

## 9. Due Date and Settlement of the License Fees

### 9.1 Due Date of the License Fees

The annual license fees are due with the order of each license or subsequent Module and will be invoiced by exocad. The respective annual fees are payable by Distributor within 30 days after receipt of the respective invoice from exocad. Any bank and transaction costs shall be borne by the Distributor.

### 9.2 Set-off, default

**9.2.1** Distributor may only set-off the license fees against undisputed claims or claims which have been finally and bindingly awarded against or recognized by exocad.

**9.2.2** If exocad has not received payment of the license fees within thirty (30) days after receipt of an invoice, Distributor shall owe default interest for the unpaid license fees in the amount of nine (9) percentage points above the applicable basic interest rate of the European Central Bank without any further reminder being necessary.

## 10. Disputes and Indemnification

### 10.1 Rights of exocad

In the event that any third party asserts a claim against an End User, Distributor or exocad with regards to the Contract Software, exocad shall have the right but not the obligation to fight this claim off or settle the dispute on its own costs and at its own discretion. exocad may in

particular, at its option and expense, either (i) procure for Distributor 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; or (iv) terminate Distributor's right to use the Contract Software. Distributor shall inform exocad of any claim asserted against Distributor and, if exocad chooses the above option, provide reasonable assistance to exocad.

### 10.2 Indemnification by Distributor

Distributor shall fully indemnify exocad from and shall pay to exocad on demand a sum equal to any claims, liabilities, costs, expenses, damages and losses (including reasonable attorneys' fees and costs or damages agreed to in a monetary settlement) suffered or incurred directly or indirectly by exocad after the Effective Date and arising out of or in connection with (a) Distributor's marketing or distribution, except for third party infringement claims as set forth in Section 10.1, (b) any use of the Contract Software not in accordance with these Terms and Conditions, (c) any use of Combined Products or other use of the Contract Software in combination with components not furnished by exocad, (d) any modification of the Contract Software made by or content provided by any person other than exocad, (e) failure to use the most current version of the Contract Software available, including all Updates and Bug Fixes, (f) any representation, warranty or agreement, express or implied, made by Distributor to any third party regarding the Contract Software, unless such representation, warranty or agreement has been authorized by exocad in writing, or (g) exocad's incorporation or use of any designs, features or materials in the Contract Software at the request of Distributor.

### 10.3 Exclusive Remedy

This indemnification section states exocad's sole liability to, and Distributor's exclusive remedy against, exocad for any type of third party claim for infringement or otherwise.

### 10.4 Effects on License Fees

If during the Contract Term Distributor's usage rights to the Contract Software are restricted or annulled due to third party claims in accordance with Section 10.1 (iii) or (iv), this shall not affect the validity and effect of this Agreement (unless the Agreement is terminated in accordance with the provisions of this Agreement) and the license fees due until this time. However, exocad undertakes to adjust future license fees in its reasonable discretion (Section 315 of the German Civil Code (Bürgerliches Gesetzbuch)).

## 11. Other Obligations of Distributor

**11.1** The Contract Software does not qualify as medical device software. Distribution of the Contract Software as medical device software or similarly regulated software is prohibited.

**11.2** The Distributor shall be responsible for and bear all costs connected with complying with all export, import and regulatory requirements. Distributor shall additionally be obliged to obtain necessary authorizations required for the distribution in the respective country. exocad will, at its sole discretion, reasonably support Distributor to comply with these requirements provided that it approves the sale to the relevant country.

**11.3** Distributor will inform exocad without undue delay as soon as Distributor becomes aware of any material malfunctions or errors of the Contract Software.

**11.4** Distributor is obliged to contractually bind its End Users, Distribution Partners and Foreign Agencies (which shall pass on these provisions to their respective sub-distributors, etc. until each party of the distribution chain is bound to these provisions):

To comply with the applicable provisions on the launch, operation and use of the Contract Software;

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

To strictly follow all installation and servicing (including necessary Updates and/or Modules) instructions provided by exocad and return required records and reports of the performed activities;

To engage only trusted service agents which are sufficiently qualified and skilled to conduct the servicing, maintenance and inspections of the Contract Software;

To notify Distributor without undue delay about any material malfunctions or errors of the Contract Software.

**11.5** Distributor shall be responsible for installing and implementing the Contract Software in its Combined Products and/or End User's computers ensuring that applicable data security provisions are complied with and personal health information can be stored and processed in compliance with applicable laws (e.g. under the US Health Insurance Portability and Accountability Act).

## 12. Warranty and Liability of exocad

**12.1 No Liability outside Intended Purpose**  
exocad assumes no liability where the Contract Software is used outside the Intended Purpose of the Performance Specifications. exocad assumes no liability for any defects or third party claims relating to Combined Products except where such liability can be evidenced to

be based on the Contract Software itself, exactly as it was delivered by exocad to Distributor.

## 12.2 No Liability for Security Failures

exocad assumes no liability for any damages incurred by Distributor or any End User due to Distributor's or End User's use of IT systems which do not comply with up-to-date security standards or technical devices or computers being infected by viruses, worms, Trojan horses or other malware except where such infection can be evidenced to be based on the Contract Software itself, exactly as it was delivered by exocad to Distributor.

## 12.3 Further Warranty and Liability

### 12.3.1 Definition of a Defect

A material defect shall be applicable if the Contract Software contains faults which cancel or not inconsiderably reduce its suitability to meet the purposes of the contract. A defect shall especially be applicable if the surrendered Contract Software does not meet the functions stated in the Performance Specifications, meaning that the use of the surrendered Contract Software is impossible or is not just insignificantly restricted. exocad explicitly advises Distributor that it is not yet technically possible to develop complex software products which are completely free of technical problems. It is therefore agreed that the quality of the Contract Software is not such that no defects whatsoever may occur but merely that no defects may occur which limit the usability of the Contract Software to an extent which is not insignificant. exocad does not give any explicit or implied warranty (Gewährleistung) for fitness or usability of the Contract Software beyond its Intended Purpose. Distributor will not rely on any fitness or usability of the Contract Software other than for the Intended Purpose and will not make any such statement to its End

Users, Foreign Agencies or Distribution Partners. A defect shall also not apply if the usability of the Contract Software is impaired due to insufficient technical protection measures applied to End User's technical devices or computers or infection of those with viruses, worms, Trojan horses or other malware. exocad cannot warrant usability on unsecure or infected devices. It is Distributor's and End User's sole responsibility to provide and maintain up-to-date and market standard IT systems and IT security measures.

### 12.3.2 Warranty in the Case of Material Defects

**12.3.2.1** All claims based on material defects whose object is not compensation for damages or reimbursement of expenses are subject to the following provisions.

**12.3.2.2** In cases where defects are fraudulently concealed or where a guarantee of quality (Beschaffenheitsgarantie) has been assumed, Distributor's rights and the limitation period for such rights are based exclusively on the statutory provisions.

**12.3.2.3** exocad is not liable for claims related to (i) the Contract Software having been used for purposes other than the Intended Purpose, (ii) Distributor having continued to use the Contract Software after having been informed in writing by exocad that it should cease to do so, (iii) Distributor having combined Contract Software with other software or hardware product, program or data and having failed to observe exocad's specifications, (iv) Distributor having modified or altered the Contract Software without the modifications or alterations being carried out by exocad or (v) any person or entity other than Distributor or its Distribution Partners, Foreign Agencies or End Users having

used the Contract Software in violation of the terms of this Agreement (vi) defects which have or should have been identified in the course of testing the Contract Software pursuant to Sec. 5.4.

- 12.3.2.4** Distributor must immediately notify exocad in writing of any defects which become apparent during the Contract Term as soon as they are discovered.
- 12.3.2.5** Defects which Distributor raises with exocad during the Contract Term will be remedied by exocad. exocad will have the right to choose whether to remedy the defect or deliver new, non-defective software. Distributor will assist during this period of subsequent performance by providing the necessary information and documents and any other reasonable support.
- 12.3.2.6** In case exocad does not rectify by means as exocad sees fit in its own discretion (e.g. by providing an Update, workaround or other assistance) a defect for which exocad is responsible and which does not only temporarily and/or immaterially impair the general ability to be used for the Intended Purpose of the Contract Software as soon as appropriate, usually until the next scheduled Update, the license fees payable by Distributor shall be reduced during the material impairment in appropriate relation to the extent the usability is impaired. This does not affect Distributor's right to terminate this Agreement in accordance with Section 16.2.1 or to claim damages or reimbursement of expenses as further detailed in Section 12.4.
- 12.3.2.7** If exocad can prove that the defect in question was not one it was obliged to rectify according to the provisions of this Section, it can demand reimbursement

at its normal rates for the time and effort expended in rectifying it.

- 12.3.2.8** Claims under this Section do not apply if Distributor or its End Users, Foreign Agencies or Distribution Partners modify or cause a third party to modify the Contract Software without exocad's consent, unless Distributor can prove that the defects in question were not caused by the modifications made by Distributor or the third party.
- 12.3.2.9** All claims Distributor has against exocad under this Section become statute-barred after one (1) year from delivery.
- 12.3.2.10** The Parties agree that, under this Agreement, exocad does not give any guarantee for the characteristics of products, services or goods (Beschaffenheitsgarantie oder sonstige Garantie) that could lead to an unlimited liability irrespective of fault (verschuldensunabhängig) under German law. The mere use of words such as "warrant", "ensure", "guarantee" or similar words may not be interpreted to create such liability. Rather, such words shall be interpreted to create a binding legal obligation within the contractually agreed warranty (Gewährleistung) and liability (Haftung) provisions.

### **12.3.3 Alteration of the software by Distributor**

Claims arising from warranty due to defects shall cease to be applicable if such claims relate to Combined Products or alterations of the Contract Software by Distributor, its Foreign Agencies, Distribution Partners or End Users (in particular deleting files, using unofficial or wrongly applied configuration options, adding or removing incompatible library files, or using work-arounds which

shall circumvent the license restrictions in these Terms and Conditions) except where such defect can be evidenced to be based on the Contract Software itself.

liability is limited to compensation for typical and foreseeable damage. In all other cases of ordinary negligence, liability is excluded.

## 12.4 Liability

**12.4.1** For claims regarding compensation for damages or reimbursement for wasted expenses (Aufwendungsersatz), exocad shall only be liable vis-à-vis Distributor to the extent laid out in the following provisions of this Section. This applies to any damages which may arise, regardless of their legal grounds, and in particular those arising as a result of breach of contract, defects or tort.

**12.4.2** Strict liability for initial defects (anfängliche Mängel) is excluded. exocad shall only be liable for negligently and intentionally incurred damages according to the following provisions.

**12.4.3** In cases of intent, claims based on product liability legislation, the fraudulent concealment of a defect, loss of life, bodily injury or damage to health resulting from negligence of exocad or intent or negligence of its legal representatives and agents in performance and in other cases of statutory liability, exocad's liability is governed exclusively by the statutory provisions and not limited in any way by the provisions of this Section.

**12.4.4** In cases of gross negligence, exocad's liability is limited to compensation for typical and foreseeable damage; this limitation does not apply where damage was caused by managerial staff or legal representatives of exocad.

**12.4.5** In cases of ordinary negligence, exocad is only liable if a material contractual obligation was breached. In this case,

**12.4.6** In cases of strict liability (verschuldensunabhängige Haftung) for impediments to performance which occur while exocad is in default, exocad's liability is also limited to compensation for typical and foreseeable damage.

**12.4.7** All claims against exocad to compensation for damages or reimbursement for expenditure are time-barred two (2) years after they arise.

### 12.4.8 Data Loss

The liability for the recovery of lost data of Distributor is restricted to the costs of the typical recovery efforts for data backed up using conventional backup technology or to the costs to reconstruct lost data from another machine-readable data source at reasonable expense.

### 12.4.9 Contributory Negligence of Distributor

exocad is free to raise objection for contributory negligence (Mitverschulden) of Distributor.

### 12.4.10 Force Majeure

If exocad is impeded in the performance of its obligations by the occurrence of unforeseeable, exceptional circumstances which can reasonably be deemed to be beyond the control of exocad and for which exocad cannot be held accountable, e.g. operational breakdowns, official intervention, energy supply difficulties, illegal strikes, unrest, uprisings, fire, floods, storms, explosions, natural disasters, war, terrorism and earthquakes, regardless if these circumstances occur in the sector of exocad or in the sector of its suppliers, the

period for performance shall be extended to a reasonable degree if performance does not become impossible. If performance becomes impossible on account of the aforementioned circumstances, then exocad shall be released from its performance obligations. Distributor is not obliged to render any counter-performance for the period exocad was released from performance or performance was impossible.

#### **12.4.11 Change of Intended Purpose**

exocad disclaims any liability for damages which result from a use of the Contract Software outside its Intended Purpose.

## **13. Training and Advice**

### **13.1 Training, Advice**

exocad offers technical advice and product training against remuneration at its current hourly and daily rates to the extent this advice or training is necessary for the installation, operation or use of the Contract Software and provided that the scope of the requested advice and training services is reasonable for exocad.

### **13.2 Commissioning and Scope**

Each commission to provide technical advice or product training requires a separate written agreement between the Parties specifying the scope, content, timing, payment and other details of each additional advice or training.

## **14. Confidentiality**

**14.1** During the Contract Term, either party may receive or have access to Confidential Information of the other Party.

**14.2** The Parties will keep each other's Confidential Information strictly confidential and are bound to strict secrecy vis-à-vis third parties regarding all the Confidential Information. Confidential Information may be used by the receiving Party only with respect to performance of its obligations under this Agreement, and only by those employees of the receiving party or third parties who have a need to know such information for purposes related to this Agreement and have been personally sworn to secrecy in writing. The receiving party shall protect the Confidential Information of the disclosing party by using the same degree of care (but not less than a reasonable degree of care) to prevent the unauthorized use, dissemination or publication of such Confidential Information, as the receiving party uses to protect its own Confidential Information of like nature. Should a Party find itself legally obliged to disclose Confidential Information to third parties and/or official authorities, it must inform the other Party in writing immediately, i.e. as soon as it learns of this obligation.

**14.3** The foregoing obligation shall not apply to any information which is: (i) already known by the receiving party prior to disclosure; (ii) publicly available through no fault of the receiving party; (iii) rightfully received from a third party without a duty of confidentiality; (iv) disclosed by the disclosing party to a third party without a duty of confidentiality on such third party; (v) independently developed by the receiving party prior to or independent of the disclosure; (vi) disclosed under operation of law; or (vii) disclosed by the receiving party with the disclosing party's prior written approval. The burden of proof lies with the Party pleading for the exemption of the confidentiality obligation.

**14.4** The Parties are bound and will abide by all applicable statutory data protection provisions. This means, among other things, that they will adhere to the principle of data economy, comply with statutory data security standards,

only use personal data for the specified purpose and delete personal data once the specified purpose has ceased to exist. Personal data will only be collected, processed and used to the extent that the execution of this Agreement requires. Should one of the Parties suspect or become aware of a data protection breach in connection with the execution of this Agreement, it will notify the other Party immediately.

## 15. Audit and Cooperation

Distributor understands and accepts that exocad has 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, Distributor shall reasonably assist and cooperate with exocad to investigate where exocad suspects that product piracy or other unlawful use of the Contract Software may exist. For this purpose, Distributor shall in particular upon request provide relevant information on its licensees, End Users and distribution chain. If exocad suspects that product piracy or other unlawful use of the Contract Software may exist, then Distributor shall allow exocad 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 Distributor’s business, operations, books and records, procedures and practices that relate to Distributor’s performance under and in compliance with this Agreement. The Auditor will not inform exocad 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 Agreement, including related evidence, that Auditor has identified as a result of such audit. exocad shall be entitled to such audit during the Contract Term and for as long as Distributor retains Confidential Information, copies of the Contract Software or other material of exocad. Unless otherwise stated in this Agreement, 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. exocad will give Distributor reasonable prior notice of such audit. Distributor shall bind its Distribution Partners, Foreign Agencies and End Users to contractual clauses identical to this Section 15. exocad will solely use the obtained information to investigate the alleged case of product piracy or any other unlawful use of the Contract Software and to avoid such infringing use in the future as well as bringing forward claims against the infringing entity.

## 16. Contract Term; Termination

### 16.1 Contract Term

- 16.1.1** This Agreement enters into force on the Effective Date and shall remain in force for an initial period of two (2) years unless otherwise agreed or terminated in accordance with the provisions of this Section.
- 16.1.2** The Agreement will be extended automatically by subsequent one (1) year extension periods unless it is terminated by either Party or by both Parties upon twelve (12) months prior notice to the end of the initial or current extension period. Unless otherwise agreed, exocad’s offer shall be valid for the duration of one (1) year from receipt and may be accepted by Distributor during this term.

### 16.2 Extraordinary Termination Rights

- 16.2.1** Each Party is entitled to extraordinarily terminate this agreement for good cause. Good cause shall in particular apply for one Party if:
- The respective other Party materially breaches its obligations under these Terms and Conditions and does not rectify the respective breach within a reasonable period of time after being informed about the breach by the other Party in writing. No rectification period is required if (a)

rectification is impossible, (b) the Party in breach seriously and definitively refuses to perform as required or (c) other special circumstances have arisen which, once the interests of both sides have been weighed up, justify an immediate termination. This shall not apply to Distributor's obligation to pay the license fees. For this case, the statutory provisions of the German Civil Code (Bürgerliches Gesetzbuch) apply.

- The respective other Party has suffered a material adverse change in its financial situation which endangers the viability of the Agreement.

- 16.2.2** Termination for good cause requires written form; sending the written termination declaration by fax is sufficient.

### 16.3 Effects of Expiration and Termination

- 16.3.1** Existing End User sub-licenses granted by Distributor or its Distribution Partners and Foreign Offices shall remain in force for their remaining term (without the possibility to extend this term). For this purpose, the provisions of these Terms and Conditions shall survive termination and expiration only to the extent necessary to enable Distributor to fulfill its obligations towards the respective End Users and to comply with the requirements under Section 11. For avoidance of doubt, the right of Distributor to enter into new sub-licenses with Distribution Partners, Foreign Agencies and End Users and to extend existing sub-licenses is not extended beyond the Contract Term.

- 16.3.2** exocad shall be entitled to re-allocate a USB Dongle ordered by Distributor to another distribution partner of exocad enabling the respective End User to order additional Modules or extend the current sub-license term solely via the new distribution partner, e.g. if (i) Distributor

does not provide sufficient technical support to certain or all of its End Users or ii) Distributor is in breach of its payment obligations towards exocad under this Agreement. For avoidance of doubt, such re-allocation will not affect the sub-license agreement in place between Distributor and the respective End User for the current sub-license term.

- 16.3.3** Under the condition subsequent of extraordinary termination for good cause, all sub-licenses granted to Distribution Partners and Foreign Agencies by Distributor terminate with immediate effect.
- 16.3.4** After the Contract Term has ended, each Party will, in no event later than thirty (30) days from the end of the Contract Term, return to the other Party without exception all data, information and documents in its possession which are attributable to the other Party (including all Confidential Information). The Parties will agree in advance on a suitable format for the transfer of the data. Each Party will after return irreversibly delete the data attributable to the other Party from its systems. Data protection regulations and statutory data retention obligations remain unaffected.
- 16.3.5** Distributor will further, in no event later than thirty (30) days from the end of the Contract Term, either return to exocad or delete from any computer system and destroy, as directed by exocad, all copies of the Contract Software in its possession and provide a certificate from an officer of Distributor to that effect. Likewise, Distributor will return, in no event later than thirty (30) days from the end of the Contract Term, all USB Dongles provided by exocad to Distributor.

**16.3.6** The return obligations according to sections 16.3.4 and 16.3.5 above shall be extended to thirty (30) days after the last End User sub-license granted by Distributor has expired to the extent that certain data, information and documents, copies of the Contract Software or USB Dongles are required to fulfill Distributor's obligations under the End User sub-licenses.

## 17. Price Recommendations for Distribution Partners and End Users

exocad reserves the right to issue price recommendations on a non-binding basis for orientation purposes for the Contract Software which is offered per licence (individual license) by Distributor, its Distribution Partners and Foreign Agencies to End Users.

## 18. Contact; Single Point of Contact

Each of the Parties will nominate one person to act as the point of contact for the other Party in connection with this Agreement. This person will be authorized to make binding statements and to receive statements made by the other Party.

Notifications which can or must be effected according to this Agreement are to be transmitted to the other Party to the addresses stated in the offer (contact data) issued by exocad by post, e-mail or fax.

## 19. Final Provisions

### 19.1 Written Form

The Agreement is exhaustive in its regulation of the contractual relationship between the Parties with regard to the lease and distribution of the Contract Software. All prior understandings or agreements in this regard are superseded by this Agreement. No supplements to this Agreement 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.

### 19.2 Adaptation Clause

**19.2.1** Should any provision of this Agreement be or become wholly or partially invalid, the validity of the remaining provisions shall not be affected. The Parties shall in this case endeavour 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.

**19.2.2** If the Parties have not reached an agreement on the replacement within three months after the invalidity became apparent, both Parties are entitled to terminate the Agreement 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 Agreement which were previously not expressly addressed in this contract.

### 19.3 Choice of law

The Agreement shall be solely governed by substantive laws of the Federal Republic of Germany with the exception of its provisions on the conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

### 19.4 Place of performance

Place of performance is exocad's registered office.

## 19.5 Place of jurisdiction

The exclusive place of jurisdiction for all disputes arising from and in connection with this Agreement is exocad's registered office. If exocad raises an action, then it is also entitled to select the place of jurisdiction at Distributor's domicile. The right of both Parties to request temporary relief before the competent courts according to the statutory provisions shall remain unaffected.

exocad GmbH  
as at: 1. November 2018