Software license contract

Release 4.2

§ 1 Subject of the Agreement

(1) The subject of this Software License Agreement ("Agreement") is the grant of rights of use in the Software described in Appendix A ("Subject of the License") by the Licensor to the Licensee.

(2) The Subject of the License is composed of the components described in Appendix 1 and of the object code of the Software.

§ 2 Grant of Rights

(1) Licensor hereby grants the Licensee the simple, non-transferrable and non-exclusive right to use, copy, edit and decompile the Subject of the License in accordance with this Agreement, this License being granted for an unlimited period of time.

(2) The right of use shall be limited to the purposes set forth in Appendix 1 ("purpose of use").

a) Licensee shall be allowed to make the Software available at the work stations of users selected by the Licensee for the purpose of use agreed, either by installation or by making it available within the company network Licensee shall ensure that only the selected users have access to the Software. In the agreed purpose for use, the number of licenses is also specified. The maximum number of individuals with the right to simultaneously use the licenses may be stated in the purpose of use as well. The prescribed number of licenses and the nature and extent of use and the other terms of the license remain valid even if the licensee is acquired by a third party or sold to a third party.

b) Any type of use or installation not allowed within the agreed purpose of use shall be prohibited. Prohibited use shall therefore include, without limitation, the mere transmission of parts of the Software to other work stations without the need of installing the Software on these work stations. Furthermore, it shall be prohibited to use other software or hardware that directly accesses or uses the Software without using an interface provided by the Licensor. Furthermore, it shall be prohibited to use other software or hardware that directly accesses or uses the Software or directly or independently manages such access or use. Furthermore, it shall be prohibited to make the Software available for commercial hosting services.

(3) The right to copy the Subject of the License shall be limited to installing the Subject of the License on a computer system in the Licensee's direct possession for fulfilling the purpose of use, and to making copies as may be necessary for loading, displaying, running, transmitting and storing the Subject of the License, and to the right to have a person authorised under Art. 69 d para.2 of the German Copyright Act (UrhG) create a backup copy of the Subject of the License.

(4) The right to edit the Subject of the License shall be limited to maintaining or restoring the agreed functionality of the Subject of the License.

(5) The right to decompile the Subject of the License shall only be granted under the condition of Art. 69 e para. 1 nos. 1 to 3 of the German Copyright Act and within the scope of Art. 69 e para. 2 nos. 1 to 3 of the German Copyright Act. Prior to any decompilation, Licensee shall first request the required information from the Licensor.

(6) No further rights of use and exploitation in the Subject of the License shall be granted to the Licensee.

(7) Upon request and to the extent that a justifiable interest exists, Licensee shall allow the Licensor or a third party agent of the Licensor to verify that the Subject of the License is used within the scope of the rights granted hereunder; Licensee shall use its best efforts to support the Licensor in the execution of such verification.

(8) Licensee acknowledges that the Software and the user manual – including any future versions thereof – are protected by copyright. In particular, all source programs are the Licensor's trade secrets. Licensee shall take precautions for an unlimited period of time to make sure that neither the Software nor the user manuals become disclosed to third parties without the Licensor's consent.

(9) To the extent that the Software provided is equipped with copy protection or any other protective routine, Licensee shall be obliged to use the Software only in conjunction with this protective routine and not to use any circumvention program. The protective routine may not be removed unless it would adversely affect or prevent the trouble-free use of the Software. The burden of proof therefor shall rest with the Licensee.

§ 3 Delivery and Installation of the Subject of the License

(1) Licensor shall provide to Licensee the number of copies of the Subject of the License required for exercising the rights of use granted hereunder in a machine-readable form, upon the Licensee's choice either on a data storage medium that is common at that time, by email or by data transmission. The Parties agree that the place of fulfillment for the delivery of the Subject of the License shall be the Licensor's registered office. Licensee shall bear all costs and risks in connection with the delivery. The transport risk (in particular the risk of accidental loss or destruction) of the copies of the Subject of the License shall pass to the Licensee upon delivery of the Subject of the License.

(2) Licensee shall be responsible for providing the system environment in accordance with the requirements specified in Appendix 1.

(3) The Subject of the License shall be installed by the Licensee.
a) Licensor may perform the installation in the Licensee's stead. All supportive services provided by the Licensor upon the Licensee's request, including preparation for use, installation and demonstration of successful installation, instruction, training, and consulting services shall be remunerated on a time and material basis unless otherwise agreed.

(4) Licensor shall reserve its proprietary rights in all copies of the Subject of the License until full payment of the licensing fees. In the event of a violation of the Agreement by the Licensee, including but not limited to default of payment, Licensor shall have the right to demand that all copies of the Subject of the License to which the Licensor has reserved

its proprietary rights be surrendered at the Licensee's cost, or, if applicable, to demand that such claims against a third party to which Licensee is entitled be assigned to Licensor. In such a case and upon Licensor's request, Licensee shall confirm in writing to the Licensor that no copies of the Subject of the License have been retained and that all installations of the Subject of the License have been irrecovably deleted from the Licensee's or the third party's systems. Prior to the final transfer of ownership, Licensee shall not dispose of the rights in the Subject of the License without the Licensor's prior written approval.

§ 4   License Fees

(1) The license fees for the grant of the rights granted hereunder are set forth in Appendix 1. The license fees shall be paid in lumpsum amounts.

(2) Licensor shall invoice the license fee in accordance with the payment plan set forth in Appendix 1. Invoices shall be due for payment without any deductions within 14 days of the invoice date. If Licensee comes into default of payment, the outstanding amount shall be subject to interest of 8 percentage points above the base rate applicable at the time. The assertion of further rights shall not be affected thereby.

(3) Unless expressly provided otherwise, all of the amounts specified in Appendix 1 shall be net amounts, i.e., plus applicable value added tax. Licensor shall state the tax rate and the amount of the value added tax separately in each invoice.

§ 5   Claims in Case of Material Defects

(1) The Software provided by the Licensor shall substantially comply with the product specification. No claims for defects shall exist in the event of a minor deviation from the agreed or assumed quality and in the event of only minor impairment of the fitness for use. In the absence of any separate written agreement, product specifications shall not be deemed to be a guaranty; in particular any representations in the user manual, in test programs and in product and project specifications shall not constitute a guaranty of quality. In the case of the delivery of any updates, upgrades or new versions, any claims for defects shall be limited to the alterations in the delivered update, upgrade or new version over the previous version status.
a) Licensor shall not guarantee that the Software provided fulfills the Licensee's requirements and purposes or works in conjunction with the programs and system environments or operating systems chosen by the Licensee, unless this is expressly specified in the user manual, program description, or in Appendix 1.

(2) If Licensee requests supplementary performance because of a defect, Licensor shall have the right to choose between subsequent improvement, replacement or compensation. If, after the fruitless lapse of a first period, Licensee has set the Licensor a further reasonable grace period and this period has likewise lapsed without any result, Licensee may, upon its choice, withdraw from the Agreement or reduce the price subject to the legal requirements. Subsequent improvement may also be performed by delivering or installing a new program version or a workaround. If the defect causes only minor or no

impairment to the functionality, Licensor shall have the right to remedy the defect by delivering a new version or an update within Licensor's version, update and upgrade schedule. Any further claims for defects shall be excluded thereby.

a) Licensee shall exercise any right of choice it may be entitled to with regard to any claims for defects within a reasonable period, as a rule within 14 calendar days.

(3) Any defects shall be notified to the Licensor in writing in the form of a comprehensible description of the error symptoms, if possible substantiated by written records, hard copies or other documents illustrating the defects. The notification of a defect should enable the error to be reproduced. This includes in particular a description of the work steps leading to the occurrence of the defect, the nature and the effects of the defect. Any inspection and notification duties of the Licensee stipulated by law shall not be affected.

a) To the extent necessary, Licensee shall support Licensor in removing any defects, including but not limited to sending a data storage medium with the relevant Software and providing work equipment upon the Licensor's request.

(4) The limitation period for claims for defects shall be 12 months. This period shall commence upon delivery of the first copy of the Subject of the License including the user manual. In case of the delivery of updates, upgrades and new versions, the period shall commence for each of these parts upon delivery.

(5) Licensee shall immediately inspect the delivered items for any transport damage or other external defects, secure the relevant evidence, and shall assign any claims for recourse to the Licensor and hand over the documents.

(6) All claims for damages shall be subject to § 7 below.

(7) If the defect is due to the defectiveness of a supplier's product and if the supplier is not acting as the Licensor's vicarious agent, but the Licensor merely passes on a third-party product to the Licensee, the latter's claims for defects shall initially be limited to the assignment of the Licensor's claims for defects against its supplier. This shall not apply if the defect is due to improper handling of the supplier's product that can be attributed to the Licensor. If Licensee is unable to enforce its claims for defetcs against the supplier out of court, the Licensor's subsidiary liability for claims for defects shall not be affected thereby.

(8) Any changes or extensions to the services or delivered items that are made by the Licensee itself or that the Licensee has made shall invalidate the Licensee's claims for defects, unless the Licensee can furnish proof that the change or extension is not the cause of the defect. Also, Licensor shall not be liable for defects caused by improper operation, or improper operating conditions, or by the Licensee's use of unsuitable resources.

(9) Licensor may refuse supplementary performance until Licensee has paid the agreed remuneration less a portion corresponding to the economic impact of the defect to the Licensor.

(10) Licensor may request remuneration for its expenditure if and to the extent that: (i) Licensor acts on account of a notification without a defect being present; (ii) a notified malfunction is not reproducible or cannot otherwise be proven to be a defect by the

Licensee; or (iii) additional expenditure arises from Licensee's improper discharge of its duties.

§ 6   Claims in Case of Defects of Title

(1)   The Software delivered or provided by the Licensor shall be free from any third-party rights that may be in conflict with using the Subject of the License in accordance with this Agreement. This provision shall not apply to reservations of title customary in the trade.

(2)   If and to the extent that any third parties are entitled to and claim such rights, Licensor shall be obliged to do everything in its power to defend the Software at its own cost against such third-party rights claimed. Licensee shall immediately notify the Licensor in writing of any such claim of third-party rights and shall vest the Licensor with all powers of attorney and all authority necessary to defend the Software against the third-party rights claimed.

(3)   If and to the extent that any defects of title exist, Licensor (a) shall have the right, upon its own choice, (i) to eliminate by legal measures those third-party rights that impair the use of the Software under this Agreement, or (ii) to stop their assertion, or (iii) to alter or replace the Software such that it no longer infringes upon any third-party rights, if and to the extent that the Software functionality owed under this Agreement is not substantially impaired thereby; and (b) shall have the duty to reimburse any necessary reimbursable costs of prosecution accruing to the Licensee.

(4)   If indemnification according to para. 3 above fails within an appropriate grace period set by the Licensee, Licensee may, upon its choice, withdraw from the Agreement or request compensation subject to the legal requirements.

(5)   § 5 para. 4, 6 and 9 shall apply accordingly in addition.

§ 7   Liability, Indemnity

(1)   Under this Agreement, Licensor shall not be liable except under the following provisions (a) to (e):

a) Licensor shall have unlimited liability for any damage or loss caused by wilful intent or gross negligence by the Licensor, its representatives or officers and for damage or loss caused by wilful intent by other vicarious agents; in the event of gross negligence by other vicarious agents, liability shall be governed by the regulations for slight negligence set forth below in (e).

b) Licensor shall have unlimited liability for any damage or loss arising out of injury to life, body or health caused by wilful intent or gross negligence by the Licensor, its representatives or vicarious agents.

c) Licensor shall be liable for any loss or damage arising out of a lack of warranted properties up to the amount comprised within the purpose of the warranty and foreseeable to the Licensor at the time of giving the warranty.

d) Licensor shall be liable for any damage or loss relating to product liability in accordance with the regulations of the German Product Liability Act.

e) Licensor shall be liable for any damage or loss arising out of breach of any cardinal duties by Licensor, its representatives or vicarious agents; cardinal duties are the fundamental contractual obligations that form the basis of this Agreement, that were decisive for concluding this Agreement, and the fulfillment of which the Licensee may rely on. If Licensor's breach of these cardinal duties is slightly negligent, Licensor's liability shall be limited to the amount foreseeable for the Licensor at the time of the performance in question.

(2) Licensor shall be liable for any loss of data only up to the amount that would have accrued for their recovery in the case of proper and regular backup of the data.

(3) Any further liability of the Licensor shall be excluded irrespective of the reasons.

§ 8   Temporary Provision, Transfer

(1)   Licensee may not make the Software available for temporary use by other users that are not selected users as set forth in § 2 No. 2a, irrespective of whether such temporary use is allowed against payment or free of charge. It shall be deemed to be equivalent to allowing temporary use in a prohibited manner if merely individual file or parts of the Software are transmitted to other users without the need of installing the complete Software.

(2)   Licensee may not transfer the right of using the Software to any third parties, except under the following conditions:

a) The prerequisite for an allowable transfer is the irrevocable waiver of the Licensee's own use and the Licensor's prior written approval of the transfer. Licensor shall not unreasonably withhold such approval. Licensee must provide the Licensor with a written declaration that all originals, Software copies and all associated documents and their copies will be immediately transferred to the third party and that all copies created by the Licensee will be deleted directly after such transfer. These declarations shall be submitted to the Licensor prior to the transfer. Furthermore, Licensee shall be obliged to provide the name and full address of the third party when obtaining the written approval.

b) In the case of a transfer, Licensee shall hand over to the third party all originals, Software copies and all associated documents and their copies, or shall destroy any copies that have not been handed over and delete all Software or Software parts copied onto hardware in a verifiable manner.

c) The third party shall not have the right to exercise the contractual rights of use until it has provided the Licensor with its written acknowledgement that the licensing provisions shall continue to apply and that it agrees to be bound by them.

d) As a result of the transfer, the Licensee's right to use the Software shall expire fully.

(3)   Licensor may revoke Licensee's right of use if the Licensee has breached any limitations of use or other regulations for preventing unauthorized use to a considerable extent. Licensor shall first set the Licensee a grace period to remedy the breach. In the case of a repeated breach and in special circumstances that justify immediate revocation upon consideration of mutual interests, Licensor may declare revocation without setting a grace period. Following revocation, Licensee shall confirm to Licensor in writing that it has ceased using the Subject of the License.

§ 9   Differentiation between Software License and Software Maintenance Agreement

(1)   Any maintenance services on the Software going beyond the remedy of defects within the guaranty period shall be performed on the basis of a Software Maintenance Agreement to be concluded for this purpose. Without such Maintenance Agreement, P+Z shall not be obliged to create updates in the future.

§ 10   Final Provisions

(1)   Any changes to this Agreement must be made in writing to become effective. The same applies to any amendment of the requirement of the written form. In particular, electronic documents in text form, such as faxes, shall not satisfy the requirement of the written form.

(2)   This Agreement shall be governed by the law of the Federal Republic of Germany, excluding UN purchase law.

(3)   The Parties agree that the exclusive place of jurisdiction for any disputes arising from and in connection with this Agreement shall be the Licensor's registered office, if the Licensee is a merchant within the meaning of the German Commercial Code or if the Licensee does not have a registered office in the Federal Republic of Germany at the time of filing the lawsuit.

(4)   Any invalidity of any individual regulations of this Agreement shall not affect the validity of the remaining regulations. In this case, the Parties undertake to agree on valid regulations that best approximate the intended economic purposes of the invalid regulations. The same applies accordingly for closing any gaps that may exist in this Agreement.

_____   _____
Place, date   Place, date

_____   _____
Licensor   **Licensee**

Appendix 1 of the Software License Agreement

Parts of the agreement

1) The subject of this Agreement is the maintenance of the Software as described in offer no. Angebotsnummer dated Datum Angebot:

   - Symbio Standard

Commencement of Service and Term

1) The obligation to provide the Services shall commence on Beginn Laufzeit.

2) The Agreement shall be effective for an unlimited period of time.

Publisher

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