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## LICENSE TERMS

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### 1. INTRODUCTORY PROVISIONS

- 1.1. These License Terms (“**Terms**”) of the Fyzikální ústav AV ČR, v. v. i., a public research institution incorporated in the Czech Republic, ID No.: 683 78 271, TAX ID No.: CZ68378271, with its registered office at Na Slovance 1999/2, 182 21 Prague 8, Czech Republic, registered in the Public Research Institutions Register maintained by the Ministry of Education, Youth and Sports of the Czech Republic, File No.: 17113/2006-34/FZÚ (“**Licensor**”) regulate mutual rights and obligations of the parties arising from the license agreement.
- 1.2. The license agreement (“**Agreement**”) is concluded by a written (including in e-mail form) acceptance of the Licensor’s offer (“**Offer**”) by a third-party customer who wishes to obtain a license for use of certain intellectual property specified in the Offer (“**Licensee**”) provided that the acceptance does not contain any conditions or reservations that have not been explicitly agreed by the Licensor. These Terms are attached to and form an integral part of the Offer.
- 1.3. The Offer and these Terms govern the rights and obligations to use (i) the software “JANA2020” which has been developed by the Licensor and which is further specified in Schedule A to the Offer (“**Software**”), under the terms and conditions of these Terms.
- 1.4. The Licensor grants to the Licensee a license for use of the Software under the terms and conditions of the Offer and of these Terms.
- 1.5. The Licensee is obliged to pay to the Licensor agreed fees for the License and related services (if any) in the amounts and under the terms and conditions of the Offer and these Terms.
- 1.6. The Licensor is a public research institution focusing on basic and applied research in the field of physics. As part of its mission, the Licensor may cooperate and occasionally cooperates with individuals and entities operating within various industries, however the Licensor is not an entrepreneur or a business corporation engaging primarily in gainful activities.
- 1.7. The Software is an employee work within the meaning of Section 58 of the Copyright Act. In this context, the Licensor declares that it is entitled to exercise in its own name and on its own account the property rights to the Software in accordance with the Copyright Act.
- 1.8. By confirming the Offer, the Licensee acknowledge and agree that no transfer or assignment of any property or ownership, including intellectual property, shall occur based on the Offer and these Terms unless specifically and explicitly agreed and specified with the Licensor.

## 2. DEFINITIONS AND INTERPRETATION

2.1. In these Terms, unless the context otherwise requires:

2.1.1. “**Affiliate**” means:

- a) in respect of any entity (being a corporate), a person that:
  - (i) Controls such entity;
  - (ii) is under Control of such entity; or
  - (iii) is under Control of a person that Controls such entity; and
- b) in relation to a natural person:
  - (i) a person closely affiliated with the natural person (in Czech: *osoba jí blízká*); or
  - (ii) an entity Controlled by the natural person.

2.1.2. “**Act on the Register of Contracts**” means the Act No. 340/2015 Coll., on Special Conditions for Effectiveness of Certain Contracts, Publication of Such Contracts, and the Register of Contracts, as amended.

2.1.3. “**Business Corporations Act**” or “**BCA**” means the Act No. 90/2012 Coll., on Business Companies and Cooperatives, as amended.

2.1.4. “**Civil Code**” means the Act No. 89/2012 Coll., the Civil Code, as amended.

2.1.5. “**Copyright Act**” means the Act No. 121/2000 Coll., Act on Copyright, on Rights Related to Copyright and on Amendments to Certain Acts, as amended.

2.1.6. “**Confidential Information**” means all confidential, scientific, technical, financial, business and other information, all manufacturing, marketing, sales and distribution data, all scientific and test data, documents, methods, techniques, formulations, operations, know-how, experience, skills, trade secrets, computer programs and systems, source codes, processes, practices, ideas, inventions, designs, samples, plans and drawings.

2.1.7. “**Control**” shall have the meaning specified in Section 74 et seq. of the BCA (in Czech: *ovládání* or *ovládat*) and the words “**Controlled**” and “**Controlling**” shall be construed accordingly.

2.1.8. “**Documentation**” means any user guides, manuals and other documentation to be provided by the Licensor for the purposes of using the Software and implementation of the Agreement.

2.1.9. “**Effective Date**” is the date specified in the Offer.

2.1.10. “**Invoice**” means a tax document which must contain all information and data in accordance with applicable legislation, reference to these Terms and, where applicable, other requisites required by these Terms and the Offer.

2.1.11. “**License**” means a right to use and exercise certain intellectual property rights towards the Software in the scope and under the terms, conditions and limitations set out in these Terms.

2.1.12. “**License Fee**” means any and all amounts referred to or expressed in the Offer and these Terms, and as specifically set out in Clause 5 and Schedule B to the

Offer, to be payable by the Licensee to the Licensor for the License to use the Software and the Documentation.

- 2.1.13. “**Software**” means the JANA2020 software specified in Schedule A to the Offer.
  - 2.1.14. “**Support Services**” means support services referred to or expressed in the Offer and these Terms, and as specifically set out in Clause 4 that shall be provided by the Licensor to the Licensee as specified in Schedule B to the Offer.
  - 2.1.15. “**Support Fee**” means the amounts referred to or expressed in the Offer and in these Terms, and as specifically set out in Clause 4.3 and Schedule B to the Offer, to be payable by the Licensee to the Licensor for the Support Services.
- 2.2. Unless the context requires otherwise, words in the singular shall include the plural and, in the plural, shall include the singular.

### 3. THE LICENSE

- 3.1. The Licensor grants to the Licensee, under the terms, conditions and limitations and in the scope set out in the Offer and these Terms a non-transferrable, non-assignable, revocable, for the territory agreed in the Offer and non-exclusive License to use the Software, including all related Documentation provided to the Licensee under the Terms.
- 3.2. The License granted under these Terms entitles and authorizes the Licensee to use the Software within the following scope and limits:
  - 3.2.1. The Licensee may use the Software for the purpose to solve, refine and interpret crystal structures from diffraction data.
  - 3.2.2. The Licensee is not entitled to grant any sublicenses to the Software.
  - 3.2.3. The Licensee may not make any number of copies of the Software as deemed necessary for the proper use of the Software by the Licensee under these Terms.
  - 3.2.4. The Licensee is not entitled to modify, alter, develop, process, or otherwise interfere with the Software or its source codes.
  - 3.2.5. The Licensee is not entitled to decompile, disassemble, or reverse engineer the Software or its source codes.
  - 3.2.6. The Licensee is entitled to use the Software solely for its own internal purposes. The Software may be used free of charge for scientific and research purposes. Any commercial use of the Software is prohibited. This provision shall not affect the limitations set out in Clause 3.2.4 above.
  - 3.2.7. The Licensee may not transfer or assign the License or grant Sublicenses to the Software to any third party (including Affiliates of the Licensee) without the prior written consent of the Licensor. If the Licensee violates the obligation under the previous sentence, then such violation shall be considered a Default in the sense of Clause 12.1 and shall entitle the Licensor to revoke the License in its entirety and terminate the Agreement based on the Offer and these Terms in accordance with Clause 13.1.
- 3.3. The License is granted as non-exclusive. The Licensor is entitled to unlimitedly use, modify and develop the Software and offer and grant licenses to the Software to any third parties; the Licensor may also offer and grant a free-of-charge license to third parties for

non-commercial purposes, particularly for scientific, research, educational, academic or pedagogical purposes, and use (e.g., to research institutions, universities, etc.).

- 3.4. The Licensor is entitled, in its own discretion, to revoke the License by delivering a written notice to the Licensee if a material breach of the payment obligations under the Offer and these Terms by the Licensee occurs. For the purpose of this Clause, a material breach of the payment obligation shall mean particularly (but not exclusively) a delay in payment of any amount for at least 60 (sixty) days.
- 3.5. The Licensee does not acquire any intellectual property or other proprietary rights, including patents, copyrights, trademarks (both registered and not registered), industrial designs, moral rights, trade secret or confidential information, mask work rights, service marks, design rights, registered designs, topography rights, database rights, rights of confidence, know-how and all other similar intellectual property or proprietary rights anywhere in the world, whether or not registered or statutory and including, without limitation, all applications and registrations (or rights to file all applications and registrations) with respect to the foregoing (“**Intellectual Property Rights**”), in or relating to the Software. The Licensee shall not refute or otherwise challenge the Licensor’s ownership of any such Intellectual Property Rights. Unless stated expressly in writing in these Terms, neither party will acquire any ownership interest in or license of the other’s Intellectual Property Rights by virtue of these Terms.

#### **4. THE SUPPORT SERVICES**

- 4.1. The Licensor shall provide the Licensee with Support Services including, but not limited to, installation, commissioning, technical support, maintenance, development and provision of updates and upgrades, solely as part of the Support Services provided by the Licensor to the Licensee. The specifications, scope and other terms and conditions of the Support Services (including the various types or levels of Support Services) are set forth in Schedule B to the Offer.
- 4.2. Specification, scope and further terms and conditions for providing the Support Services (including various types or levels of Support Services) are set out in Schedule B to the Offer.
- 4.3. The Licensee shall pay to the Licensor the Support Fee in the amount and under the conditions specified in the Offer.
- 4.4. The Support Fee shall be paid quarterly based on the number of hours of providing Support Services in the immediately preceding calendar quarter unless stipulated otherwise in Schedule B to the Offer.
- 4.5. The Support Fee shall be paid on the basis of an Invoice. The Invoice shall be sent in writing by post or e-mail (in PDF format) to the address of the Licensee’s contact person. The due date of the Invoice is 30 (thirty) days from the date of receipt of the relevant Invoice of the Licensor to the Licensee. The Support Fee shall be paid by wire transfer of the amount of the Support Fee to the Licensor’s bank account specified in the Invoice. The Invoice shall be considered paid by crediting the amount due to the Licensor’s account. VAT will be added to the amount of the Support Fee in the Invoice if so required under valid and effective legal regulations on the date of the taxable supply (if applicable).
- 4.6. The Support Fee paid under these Terms does not include any bank fees or other costs associated with the transfer of the respective amounts. The Licensee shall pay the bank

fees associated with debiting the amount of money from its account to the Licensor's account and the Licensor shall pay the bank fees associated with crediting the amount of money to its account.

- 4.7. The Licensor shall issue the Invoice no earlier than the first day following the end of the respective calendar quarter. Upon receipt of the Invoice, the Licensee has 15 (fifteen) days to assess whether it meets the conditions of these Terms and meets all requirements of the tax document in the sense of applicable law and to return it if it contains any errors or fails to meet the requirements. By returning the Invoice, the due date and the deadline for assessing the accuracy of the Invoice are halted and after the delivery of the corrected Invoice, a new period begins to run.

## **5. THE LICENSE FEE**

- 5.1. The Licensee shall pay to the Licensor the License Fees in the amount and under the conditions specified in the Offer.
- 5.2. Unless the Offer explicitly states otherwise, the License Fee shall be paid by the Licensee to the Licensor as a one-time (lump sum) payment based on an invoice delivered by the Licensor to the Licensee. In case the Offer sets forth an administration fee payable upon the Effective Date (in addition to the License Fees), the Licensee shall pay such administration fee in the amount and under the conditions specified in the Offer.
- 5.3. The Invoice shall be sent in writing by post or e-mail (in PDF format) to the address of the Licensee's contact person. The due date of the Invoice is thirty (30) days from the date of receipt of the relevant Invoice of the Licensor to the Licensee. The License Fee shall be paid by wire transfer of the amount of the License Fee to the Licensor's bank account specified in the Invoice. The Invoice shall be considered paid by crediting the amount due to the Licensor's account. VAT will be added to the amount of the License Fee in the Invoice if so required under valid and effective legal regulations on the date of the taxable supply (if applicable).
- 5.4. The License Fee paid under these Terms does not include any bank fees or other costs associated with the transfer of the respective amounts. The Licensee shall pay the bank fees associated with debiting the amount of money from its account to the Licensor's account and the Licensor shall pay the bank fees associated with crediting the amount of money to its account.
- 5.5. The Licensor shall issue the Invoice after the confirming of the Offer by the authorized representatives of both parties.
- 5.6. The Licensee shall be obliged to pay the License Fee to the Licensor in the full amount specified in the Offer and in these Terms irrespective of the fact whether the Licensee uses the Software fully or only partially (e.g. in case the Licensee decides to use only selected elements or components of the Software).
- 5.7. The fee for provision of the Documentation is already included in the License Fee. In case the Offer sets forth a particular fee for provision of the Documentation, the Licensee shall pay such fee in the amount and under the conditions specified in the Offer.

## **6. PROVISION OF THE SOFTWARE**

- 6.1. The Licensor shall make the Software available to the Licensee as of the Effective Date, particularly (but not limited to) in the form files for download and/or data carriers

containing the Software or other parts or accessories of the Software (including necessary access codes or passwords but excluding the source codes of the Software) and Documentation necessary to use the Software and exercise all rights set out in the Agreement. A written hand-over protocol confirming that the Software was taken over by the Licensee shall be executed, unless these Terms agreed otherwise.

6.2. The Documentation to be provided with the Software shall include:

- The Manual.

6.3. The Licensee has the right to reproduce all Documentation supplied by the Licensor under these Terms, provided that such reproductions shall be solely for use by the Licensee or any of its successors that shall use the License upon the approval of the Licensor (i.e., the right to use the Documentation is transferrable exclusively together and under the same conditions as the License). Such reproductions shall be subject to the same restrictions on use and disclosure as are contained in these Terms with respect to the original Documentation, and any copyright notices or markings contained on the Documentation shall not be removed from any reproduced copies.

6.4. The Licensee shall implement sufficient security measures to prevent any unauthorized access to or use of the Software or the Documentation by third parties.

6.5. The Licensee shall refrain from using the Software and the Documentation in any countries and territories which are subject to sanctions or embargoes imposed by (i) the Czech Republic, (ii) the European Union, (iii) the United States of America, or (iv) the United Nations.

## 7. THE SOURCE CODES

7.1. The Licensor shall not provide the source codes of the Software to the Licensee.

## 8. INDEMNITY AND LIMITATION OF LIABILITY

8.1. The parties acknowledge that the Licensor is a public research institution and provides the Software “AS IS”. In addition, the Licensee declares that it had a proper opportunity to inspect and test the Software whether it meets the Licensee’s needs and requirements in order to use the Software for its needs.

8.2. Following the facts stated in Clause 8.1, the parties agrees in connection with the Software and the Documentation as follows:

8.2.1. The Licensor shall not be liable to the Licensee, to the maximum extent allowed by the applicable legal regulations, for any damage, harm, expense, cost or loss (including loss of revenue or profits, loss of goodwill or injury to reputation, loss of business opportunity, indirect financial loss or damage, loss of expected savings, increase in debt or failure to reduce debt, reduction in the value of an asset, special, incidental, punitive or consequential damages) (“**Damage**”) nor any claim arising thereof regardless of the form of action or theory of liability, whether in contract, strict liability, product liability, or tort (including negligence) and regardless of whether the Licensor knew or had reason to know of the possibility of any such Damage in question. Notwithstanding the foregoing, no limitation of liability shall apply if the Damage is caused by the Licensor intentionally or by gross negligence.



- 8.2.2. The Licensor shall not be liable for any Damage incurred or allegedly incurred by the End Users in connection with their use of the Products or incurred or allegedly incurred by any other third party in connection with such use, regardless of the form of action or theory of liability, whether in contract, strict liability, product liability, or tort (including negligence) and regardless of whether the Licensor knew or had reason to know of the possibility of the Damage in question. The Licensee shall indemnify, defend and hold the Licensor harmless against any and all such liability, claims, suits, actions, demands, and any proceedings of any kind, threatened, asserted or filed in this connection against the Licensor by any third party (“**Claims**”) and any damage, losses, expenses, liabilities or costs incurred including attorneys’ fees, in connection with such Claims raised against the Licensor.
- 8.3. The Licensee acknowledges that the Software may include third-party works (such as frameworks, libraries, modules, application interfaces, tools, graphic objects, etc.; “**Third-party works**”) protected by such third party’s Intellectual Property Rights. A list of such Third-party works and the respective terms and conditions (including its licensing terms, or links to them) shall be disclosed in the Documentation provided to the Licensee by the Licensor. The Licensor shall timely update the list of Third-party works (including the respective terms and conditions (including its licensing terms, or links to them) and inform the Licensee of any change or update of the list by providing updated Documentation to the Licensee. Use of such Third-party works is governed by the respective terms and conditions (including its licensing terms) for such Third-party works and the Licensee is obliged to familiarize itself in advance with such terms and conditions and comply with them. The Licensee is solely responsible for complying with the terms and conditions relating to such Third-party works in connection with the use of the Software. The Licensor shall not be liable for any Damage incurred or allegedly incurred by the Licensee, End Users or any third-party that is a result of the Licensee’s failure to comply with the terms and conditions relating to the Third-party works, regardless of the form of action or theory of liability, whether in contract, strict liability, product liability, or tort (including negligence). The Licensee shall indemnify, defend and hold the Licensor harmless against any and all such Claims, threatened, asserted or filed in this connection against the Licensor by any third party and any damage, losses, expenses, liabilities or costs incurred including attorneys’ fees, in connection with such Claims raised against the Licensor. However, if the Licensor fails to provide or timely update the list of Third-party works (including the respective terms and conditions (including its licensing terms, or links to them), the relevant responsibility shall be borne by the Licensor.
- 8.4. Maximum liability to the Licensee under these Terms or otherwise for any cause whatsoever shall be for direct costs and damage only due to Licensor’s provable breach of its obligations under these Terms.
- 8.5. Licensor’s maximum liability to the Licensee under this Agreement shall be limited to the sum of the License Fees and Support Fees actually paid by the Licensee to the Licensor in the calendar year in which the alleged costs or damage occurred; this limit shall apply in aggregate to any costs or damage allegedly incurred by the Licensee in the respective calendar year.
- 8.6. The Licensor shall provide the Licensee with reasonably prompt written notice of any third-party Claims and reasonable information and assistance to help the Licensee to defend such Claims. The Licensor’s failure to give prompt notice shall not constitute a

waiver of the Licensor's right to indemnification and shall affect the Licensee's indemnification obligations only to the extent that the Licensee's rights are prejudiced by such failure or delay. The Licensee shall provide the Licensor with reasonably prompt written notice of any third-party Claims related to the Software of the Invention of which the Licensee becomes aware of and shall consult with the Licensor any material action related to such Claims.

- 8.7. The limitations and indemnification obligations contained in this Clause 8 are reasonable in the light of all the circumstances.

## **9. DISCLAIMER OF WARRANTIES**

9.1. The Licensee expressly agrees that the use of the Software, the Invention or the Documentation is at the Licensee's own risk. All licensed Software, Documentation, information or materials provided by the Licensor are provided "AS IS". The Licensor specifically disclaims all warranties, whether express or implied, whether by statute, common law, custom or usage or otherwise, including warranties of merchantability, fitness for a particular purpose, title, and non-infringement, and all warranties arising from course of dealing, usage, or trade practice. Without limiting the foregoing, the Licensor makes no warranty of any kind that the licensed Software, Documentation, information, materials or any results of the use thereof, will meet the Licensee's or other persons' requirements, operate without interruption, achieve any intended result, be compatible or work with any software, systems, or other services, or be secure, accurate, complete, free of harmful code or error free or that any errors or defects can or will be corrected. The Licensor disclaims any and all warranties, whether express or implied, of absence of actual or potential conflict with third parties' Intellectual Property Rights in connection with the Licensee's use of the Software, the Invention or the Documentation or the End Users' use of the Products, particularly (but not exclusively) regarding the fact that this Agreement does not limit the Licensee as to the territory of People's Republic of China and markets in the territory of People's Republic of China where the Software, the Invention or the Documentation shall be used and where the Products shall be distributed; the Licensee shall be solely responsible for verifying compliance of use of the Software, the Invention or the Documentation and distribution of the Products in all territories and markets with the applicable legal regulations, including third-party Intellectual Property Rights or any other third-party rights.

## **10. DURATION OF THE AGREEMENT**

- 10.1. The Agreement based on the Offer and these Terms is concluded for the period specified in the Offer and shall commence on the Effective Date.
- 10.2. The License is granted by the Licensor to the Licensee with effect from the Effective Date and shall remain effective for the whole duration specified in the Offer.

## **11. FORCE MAJEURE**

- 11.1. In these Terms, "force majeure" shall mean any cause preventing any party from performing any or all of its obligations which arises from or is attributable to circumstances beyond its reasonable control including without limitation strikes, lock-outs or other industrial disputes (whether involving the workforce of the party so

prevented or of any other party), act of God, government actions, war, riot, hostilities (whether war be declared or not), armed conflict, terrorist attack, terrorist activity, nuclear, chemical or biological contamination, sonic boom, civil commotion, invasion, revolution malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, power failure, internet failure, breakdown of machinery, fire, flood, storm, disease, epidemic, or import or export regulations or embargoes.

- 11.2. If any party is prevented or delayed in the performance of any of its obligations under these Terms by force majeure, it shall immediately serve notice in writing on the other party specifying the nature and extent of the circumstances giving rise to force majeure, and shall subject to service of such notice and having taken all reasonable steps to avoid such prevention or delay have no liability in respect of the performance of such of its obligations as are prevented by the force majeure events during the continuation of such events, and for such time after they cease as is necessary for that party, using all reasonable endeavors, to recommence its affected operations in order for it to perform its obligations.
- 11.3. If either of the parties is prevented from performance of its obligations for a continuous period in excess of three months by reason of force majeure or, acting reasonably, the other party believes that the first party will be prevented from performing its obligations for a continuous period in excess of three months by reason of force majeure, the other party may terminate the Agreement immediately on service of written notice upon the first party, in which case neither party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.
- 11.4. The party claiming to be prevented or delayed in the performance of any of its obligations under these Terms by reason of force majeure shall use reasonable endeavors without being obliged by these Terms to incur any expenditure to bring the force majeure event to a close or to find a solution by which the Agreement may be performed despite the continuance of the force majeure event.

## 12. DEFAULT

- 12.1. A material breach or default by either party of any of the terms, conditions, warranties or representations provided in these Terms or in carrying out any of its obligations under these terms shall give rise to an event of a material default by such party (“**Default**”). The affected party may, at its option, terminate the rights and obligations under the Offer and these Terms and, in case of the Licensor, revoke the License, upon giving the other party a notice in writing of the specific details of the alleged Default and where the other party has not remedied such Default to the satisfaction of the affected party within 15 (fifteen) days of receipt of such notice. In case of the Licensee, terminate the Agreement, upon giving the other party a notice in writing of the specific details of the alleged Default and where the other party has not remedied such Default to the satisfaction of the affected party within 15 (fifteen) days of receipt of such notice. For the purposes of this Clause, termination for Default will be effective 15 (fifteen) days after receipt of the Default notice by the party in breach, unless the Default has been remedied to the satisfaction of the affected party or the party in breach is diligently pursuing the completion of the remedy to the Default to the satisfaction of the affected party and setting a date for completion of that remedy.

## 13. TERMINATION

13.1. The Agreement based on the Offer and these Terms may be terminated in the following circumstances:

13.1.1. by either party in case of force majeure as provided in Clause 11;

13.1.2. by the Licensor in case defined in Clause 3.4;

13.1.3. by either party in case of Default as provided in Clause 12; or

13.1.4. by the one party with immediate effect from the date of delivery to the other party of a written notice if other party:

- i. makes any voluntary arrangement or settlement with its creditors or becomes subject to an administration order (compulsory administration) or documents are filed with a court of competent jurisdiction for the appointment of an administrator or its statutory body (director) issues a notice of intention to appoint an administrator;
- ii. goes into bankruptcy (otherwise than for the purposes of reorganization);
- iii. becomes insolvent or ceases or threatens to cease, to carry on business;
- iv. suffers any analogous proceedings under any applicable law; or

13.1.5. by either party upon a written notice without cause with a 3 (three) months prior notice. To avoid any doubt, the parties may not claim any compensation or damages as a result of the other party exercising its right to terminate the Agreement pursuant to this Clause 13.1.5.

## **14. CONSEQUENCES OF TERMINATION**

14.1. Immediately on termination of the Agreement or revocation of the License, each party shall return to the other all materials, assets, data carriers and other information provided to each party by the other, or if requested by any party, the other party shall destroy the same and certify in writing that the same has been destroyed.

14.2. Any termination of the Agreement or revocation of the License (howsoever occasioned) shall not affect any accrued rights or liabilities of either party, nor shall it affect the coming into force or the continuance in force of any provision of these Terms which is expressly or by implication intended to come into or continue in force on or after termination.

14.3. If the Agreement is terminated, then the License shall be considered revoked in its entirety. The Licensor shall be entitled to keep all fees paid by the Licensee under these Terms before the termination of the license agreement or revocation of the License. However, for the license fees that have been paid by the Licensee to the Licensor but have not yet occurred, the Licensor shall return them to the Licensee within 10 working days from the date of termination of the Agreement.

14.4. Immediately on revocation of the License, the Licensee must refrain from any further use of the Software.

## **15. CONFIDENTIALITY**

- 15.1. Both parties undertake, except as provided below, to treat as confidential and keep secret all Confidential Information and information marked ‘confidential’ or which may reasonably be supposed to be confidential supplied by the Licensor or the Licensee (in these Terms collectively referred to as the “**Confidential Information**”) with the same degree of care as it employs with regard to its own Confidential Information of a like nature and in any event in accordance with best current commercial security practices, provided that this Clause shall not extend to any Information which was rightfully in the possession of either party prior to the commencement of the negotiations leading to these Terms (as shown by the receiving party’s then-contemporaneous written records) or which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this Clause).
- 15.2. Neither party shall without the prior written consent of the other party divulge any part of the other party’s Confidential Information to any person except:
  - 15.2.1. to their own and its Affiliates’ employees, consultants or sub-contractors and then only to those employees, consultants or sub-contractors who need to know the Information for the purposes of the Agreement;
  - 15.2.2. to either party’s auditors, a court of competent jurisdiction, governmental body or applicable regulatory authority and any other persons or bodies having a right, duty or obligation to know the business of the other party and then only in pursuance of such right, duty or obligation, provided however, that prior to such disclosure, the party so compelled to disclose shall provide prior written notice to the disclosing Party, unless expressly prohibited by the applicable legal regulations; and
  - 15.2.3. in cases required by applicable legal regulations (e.g., obligatory publication in the Register of Contracts under the Act on Register of Contracts).
- 15.3. Both parties undertake to ensure that persons and bodies referred to in Clause 15.2 are made aware prior to the disclosure of any part of the Information that the same is confidential and that they owe a duty of confidence to the other party.
- 15.4. Each party shall promptly notify the other party if it becomes aware of any breach of confidence by any person to whom it divulges all or any part of the Information and shall give the other party all reasonable assistance in connection with any proceedings which the other party may institute against such person for breach of confidence.
- 15.5. The obligations in this Clause 15 as to confidentiality shall remain in full force and effect notwithstanding any termination of the Agreement.

## **16. CONTRACTUAL PENALTIES; DEFAULT INTEREST**

- 16.1. If the Licensee breaches any of its obligations under Clause 3, in particular (but not limited to) if the Licensee violates the conditions of the License or unauthorizedly grants the sublicense or transfers the License or uses the Software, or uses the Documentation in violation of the License granted hereunder, and the Licensee does not remedy the breach within a reasonable period of time after the Licensor notifies the Licensee in writing, the Licensee shall be obliged to pay the Licensor a contractual penalty in the amount of EUR 2,000 for each individual case of breach of the respective obligation.

- 16.2. If the Licensee breaches any of its obligations under Clauses 6, the Licensee is obliged to pay the Licensor a contractual penalty of EUR 1,000 for each individual case of breach of the respective obligation.
- 16.3. If the Licensee breaches any of its obligations under Clause 7 the Licensee shall be obliged to pay the Licensor a contractual penalty of EUR 1,000 for each individual case of breach of the respective obligation.
- 16.4. If the Licensee breaches any of its obligations under Clause 15, the Licensee is obliged to pay the Licensor a contractual penalty of EUR 1,000 for each individual case of breach of the respective obligation.
- 16.5. The contractual penalty is payable within 15 (fifteen) working days of the date of delivery of the written request for payment to the obliged party. Payment of the contractual penalty under this Agreement shall not extinguish or terminate any obligations or liabilities under this Agreement. The Licensor shall have the right to seek full compensation for damage incurred as a result of a breach of the obligation covered by the contractual penalties; the parties agree to exclude the application of Section 2050 of the Civil Code.
- 16.6. In the event that the Licensee fails to pay any amount payable by it hereunder, even within a reasonable period of time after the Licensor notifies the Licensee in writing, the Licensee shall be obliged to pay to the Licensor the interest on late payment at the rate of 15% p.a. unless the Agreement stipulates otherwise.

## **17. DISPUTE RESOLUTION AND GOVERNING LAW**

- 17.1. Any disputes arising from or in connection with the Agreement shall be subject to the exclusive jurisdiction of the competent Czech court.
- 17.2. Rights and obligations of the parties arising out of or in connection with the Agreement shall be governed by and construed in accordance with laws of the Czech Republic.

## **18. FINAL PROVISIONS**

- 18.1. The Agreement constitutes the entire and only agreement and understanding between the parties relating to its subject matter and supersedes and extinguishes any drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing, between the parties, in connection with the subject matter of the Agreement whether existing prior to or at the same time as the Agreement, unless otherwise anticipated or stated in the Agreement.
- 18.2. The rights under the Agreement of either party are independent, cumulative and without prejudice to all other rights available to it whether as a matter of law, statute, custom or otherwise.
- 18.3. Each party shall be obliged to handle any personal data according to applicable laws, including the laws of the European Union (if applicable to such party upon a law or a contract).
- 18.4. No amendment to or modification of the Agreement is effective unless it is in writing and signed by an authorized representative of each party and published in the Register of Contracts under the Act on the Register of Contracts.
- 18.5. Each of the provisions of the Offer and of these Terms is severable, unless agreed otherwise. If any provision is or becomes illegal, invalid or unenforceable in any respect

under the law of any jurisdiction, the legality, validity or enforceability in that jurisdiction of the remaining provisions shall not in any way be affected or impaired by it subject to the operation of this Clause not negating the legitimate intent of the parties under the Agreement.

- 18.6. The Licensee shall obtain written approval from the Licensor prior to making any press release or public statement or announcement regarding the Agreement or any ancillary matter unless the release, statement or announcement is required by law or the rules of any recognized stock exchange, or unless the release, statement or announcement made by the Licensor is part of the Licensor's regular/periodical publications, such as annual reports, and the content of such release, statement or announcement is reasonable, factual and absent of any harmful mentions regarding the Licensee. Any such required announcement shall in any event be issued only after prior consultation with the Licensor as to its contents. This Clause 18.6 shall be without any prejudice to the agreed confidentiality obligation.
- 18.7. In case of any discrepancies between the Offer and of these Terms, the Offer shall prevail.