

## General Business Conditions of mediCAD Hectec GmbH, Altdorf, Germany

### 1. Definitions

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The following terms shall have the following meanings:

**“Affiliate”** means a corporation, company, or other entity, now or hereafter, directly or indirectly, owned or controlled by, or owning or controlling, or under common control with another entity. For purposes of this definition ‘control’ of a corporation, company or other entity shall mean to have, directly or indirectly, the power to direct or cause the direction of the management and policies of a corporation, company or other entity, whether: (i) through the ownership of voting securities providing for the right to elect or appoint, directly or indirectly, the majority of the board of directors, or a similar managing authority; (ii) by contract; or (iii) otherwise.

**“App”** means software marketed under the name mediCAD<sup>®</sup> Classic, intended for clinical use.

**“App Provider Agreement”** means an agreement between the Licensor and SHC or its Affiliates, respectively, on the Licensor’s distribution of Apps through the Solution Store.

**“Clinical Use”** means the use for the diagnosis and the planning of an orthopaedic operation of patients (man or animal) from whom the used medical images originate.

**“Documentation”** means the technical publications prepared and delivered to Licensee by Licensor relating to the use of the App, such as reference and tutorial manuals.

**“Licensed Material”** means the media containing the App, the App and the documentation.

**“Licensee”** shall mean the holder of the license as specified in the order document issued by mediCAD Hectec GmbH.

**“License Key”** means a code used to activate and/or deactivate Apps running locally on *syngo.via* devices.

**“Licensor”** shall mean mediCAD Hectec GmbH.

**“Party”** means the Licensor or the Licensee, as applicable.

**“Parties”** means the Licensor and Licensee, collectively.

**“Requirements”** means the software necessary for the use of the App, and includes without limitation *syngo.via*.

**“Solution Store”** means the online store for Apps operated by SHC and/or its Affiliates.

“**SHC**” means Siemens Healthcare GmbH.

“**Subscription License**” means a license to use the App during the Subscription License Period for Clinical Use, subject to any further terms and conditions stipulated in this Agreement.

“**Subscription License Period**” means a one-year period, during which the Subscription License is granted.

“**Suspension**” means the suspension of: (i) the Licensee’s use of an App by revoking the License Key; (ii) the provision of any other agreed services; and/or (iii) the granting of rights under the Agreement, in whole or in part.

“**Trial License**” means a license to use the App free of charge during the Trial Period solely for test purposes, subject to any further terms and conditions as stipulated in this agreement.

“**Trial Period**” means a period to be agreed upon between Parties, during which the Trial License is granted.

“**Update**” means an updated or amended version of an App.

## **2. Contractual Relationship**

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Each agreement between Licensee and Licensor on a specific App constitutes a separate agreement for the use of such App. Licensee acknowledges that: (i) Licensee will enter into any agreements regarding its use of Licensor’s Apps with Licensor;

(ii) SHC or its Affiliates will not enter nor be deemed to have entered into any contractual relationships with Licensee in connection with Licensee’s use of Licensor’s Apps and any of Licensor’s other services; (iii) Licensor will provide the use of an App and any of Licensor’s other services to Licensee in Licensor’s own name and for Licensor’s own account; (iv) Licensor is entitled to engage SHC and/or its Affiliates as subcontractor in the fulfilment of Licensor’s obligations under the Agreement with licensee (in which case they will act as Licensor’s vicarious agent) and to authorize them to directly or indirectly exercise rights under the Agreement in relationship to Licensee; and (v) even if SHC and/or its Affiliates provide services or assert rights as per item (iv) in relation to the Agreement, they will not provide any services to Licensee and will not assume any obligations or responsibilities towards Licensee with regard to or in connection with Licensee’s use of the App or any other services under the Agreement.

Licensor may engage its Affiliates and any other business partners, including SHC and its Affiliates, for and in connection with the provision of the App and any other agreed services under the Agreement as our vicarious agents. Licensee agrees to provide all reasonable cooperation required by Licensor should it become necessary or desirable for Licensor to use a new or different business partner.

### 3. License Types, Use of the App

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#### 2.a. Trial License

Under a Trial License, the Licensor grants to the Licensee, who accepts, a personal, royalty-free, temporary and restricted right to use the App exclusively for test purposes.

Any other use of the App, even occasional is absolutely prohibited. For sake of clarity, Clinical Use is absolutely prohibited.

Upon conclusion of the Agreement on a Trial License, Licensor will enable Licensee to download the App along with any available Documentation and activate the App for Licensee's use as agreed under the Trial License for the Trial Period using a License Key. The Trial Period begins upon activation.

Following the conclusion of an Agreement on a Trial License, Licensor is entitled, but not obligated, to offer Licensee to continue to use the App under a Subscription License. Unless Parties enter into an Agreement on a Subscription License, Licensee will not have the right to claim continued use of the App beyond the Trial Period.

Licensor is entitled to Suspension at any time at Licensor's sole discretion, without giving prior notice or giving any reasons. Licensee acknowledges that the entitlement to Suspension under this section extends to SHC at SHC's sole discretion.

#### 2.b. Subscription License

Under a Subscription License, the Licensor grants the Licensee, who accepts, the right to use the App for Clinical Use, explicitly excluding all commercial purposes.

#### 2.c. Terms, conditions and restrictions applicable to all licenses

The Licensee understands that any use of the App, which is different than described by the applicable type of license, is not allowed under this Agreement and requires a different type of license. The Licensor remains the sole and exclusive owner of the App and reserves the right at all times to modify the App.

The following restrictions of use of the App apply to all types of licenses:

- All types of licenses are non-exclusive, non-transferable and non-sublicensable.
- The Licensee may not reverse assemble, reverse compile or otherwise translate the App or any part thereof.
- The Licensee may not assign, sub license, transfer, pledge, lease, rent or share any rights proceeding from this Agreement.
- The Licensee may not sell Licensed Material or any part or copy thereof.
- Without prejudice to Licensor's responsibility for the legal compliance of the App and other agreed services in accordance with the Agreement, Licensee shall before and at all times during the use of the App and other services review and comply with any applicable law, including but not limited to tax and export control law, in particular, at Licensee's own

expense, obtain and maintain all necessary permits and registrations.

- Without prejudice to Licensor's responsibility for the legal compliance of the App and other agreed services in accordance with the Agreement, Licensee shall ensure that its use of the App and other services will not subject Licensor, SHC, their Affiliates, or any third party to liability.

#### **4. Floating Licenses**

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A floating license authorizes use of the App by an agreed upon number of concurrent end-users on one or several computers under following conditions:

1. All computer equipment (including server) is owned, leased or otherwise controlled by Licensee.
2. The floating license is installed on a server.
3. Computer equipment (incl. server) is connected by a Local Area Network (LAN) and is located in one physical location and in one legal entity.

Any modification to the number of concurrent users must be applied for and will necessitate an agreement between the Parties under which such additional seats can be granted.

#### **5. Licensers rights**

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Licensor or its representative will have the right to monitor the usage of the App, e.g. the number of users, for Licensor's and SHC's internal business purposes, in particular: (i) for security and availability reasons; (ii) to the extent required to ensure compliance with the Agreement, (iii) to detect, prevent, and suspend any use of the App exceeding the permitted use under the Agreement, to charge you for such excess use, and otherwise as necessary for payment and billing related tasks; and (iv) to provide you with reports in your use of the App.

Licensor may change and/or issue additional Requirements at any time by notifying Licensee. Licensor will maintain the App's compatibility with the previous Requirements for a period of at least twelve (12) months following the date of Licensor's respective notice to Licensee. Licensor will notify Licensee at least six (6) months before Licensor no longer provides for the App's compatibility with the previous Requirements. Unless Licensor enables Licensee to maintain compatibility by downloading an Update, Licensee will then be entitled to terminate the Agreement as soon as Licensee is no longer able to use the App due to the change to and/or issuance of the additional Requirements.

Licensee acknowledges and agrees that the App and Documentation are proprietary products of Licensor protected under copyright law. Licensee further acknowledges and agrees that all right, title and interest in and to the Licensed Material, associated intellectual property rights, are and shall remain with the Licensor. This Agreement does not convey to Licensee any interest in or to the

Licensed Material, but only a limited right of use, revocable in accordance with the terms of this Agreement.

Licensee shall inform Licensor promptly: (i) if Licensee becomes aware of any circumstances indicating that the App or any agreed services may: (a) constitute a threat to the security or functionality of Licensee's, Licensor's, SHC's, Licensee's, Licensor's or SHC's Affiliates, Licensor's business partners, or any third parties' system or of the services to be provided by us under the Agreement; (b) adversely impact Licensee, Licensor, SHC, Licensee's, Licensor's, or SHC's Affiliates, or any third party, in particular, without limitation, present any risk of personal injury; and (ii) about any measures of authorities or court decisions which may possibly hinder use of the App or any agreed services.

## **6. Security**

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Without prejudice to Licensor's responsibility for the conformance of the App and other agreed services with the standards in accordance with the Agreement, Licensee shall ensure that its use of the App and other services will not: (i) constitute a threat to the security or functionality of Licensor's, SHC's, Licensor's or SHC's Affiliates, Licensor's business partners, or any third parties' systems or of the services to be provided by Licensor under the Agreement; (ii) adversely impact Licensor, SHC, Licensor's or SHC's Affiliates, or any third party, in particular, without limitation, not present any risk of personal injury.

## **7. Indemnification**

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Licensee will indemnify Licensor and hold Licensor harmless and SHC will be entitled to claim from Licensee that Licensee will indemnify SHC and its Affiliates and hold them harmless against any claims, damages, and costs (including reasonable legal fees) arising out of or in connection with a breach of the Agreement or applicable law, including without limitation, export control law, by Licensee.

## **8. License Fees**

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The license fees paid by Licensee are paid in consideration of the licenses granted under this Agreement. A valid License Key shall only be provided to the Licensee upon full payment of the license fees.

## **9. Training**

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### **9.a. On-Site-Training**

If training is arranged independently, it will take place at mediCAD Hectec's discretion either at the customer or a venue to be determined in consultation with the customer. When training takes place at

the customer, he will provide appropriate premises and technical equipment in consultation with mediCAD Hectec. When training takes place at another venue, the customer takes care of the necessary facilities and will provide the necessary hardware and software at the venue.

In case of cancellations of booked training less than 48 hours prior to the appointment, all incurring costs will be passed on from mediCAD Hectec to the customer.

Important reasons may cause mediCAD Hectec to cancel training appointments. Hectec will notify the customer of the cancellation in time and offer alternative dates. Travel expenses are excluded.

#### 9.b. Remote-Training

If a remote-training is arranged independently, it will take place via remote-connection between the licensee and the mediCAD Hectec GmbH. The licensee takes care of the necessary facilities and will provide the necessary hardware and software at the trainee.

Important reasons may cause mediCAD Hectec to cancel training appointments. Hectec will notify the customer of the cancellation in time and offer alternative dates.

## 10. Term and Termination

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The Subscription License Period begins upon activation, or upon expiry of an agreed Trial Period, whichever is later.

This Agreement shall automatically expire upon the first anniversary. Thereafter, the Subscription License shall only be renewed in accordance with what has been agreed upon in the ordering documents.

Licenser is entitled to immediate Suspension, in whole or in part, if according to Licenser's reasonable judgement there is a risk that Licensee's use of the App will: (i) threaten the security or functionality of Licensee's systems; (ii) adversely impact Licensee, Licenser, SHC, Licensee's, Licenser's or SHC's Affiliates, Licenser's business partners, or any third party, including, without limitation, any risk of personal injury; or (iii) subject Licensee, Licenser, SHC, Licensee's, Licenser's or SHC's Affiliates, Licenser's business partners, or any third party to liability. In addition, Licenser is entitled to Suspension, if: (i) according to Licenser's reasonable judgment, Licensee's use of the App or any other agreed upon service, may not comply with the provisions of this Agreement; (ii) payment owed under the Agreement owed by Licensee is overdue by more than thirty (30) days; (iii) Suspension is required by law, a court decision, or a request from a governmental body; (iv) for security or compliance reasons or requests from a governmental body, Licensee's access to the Solution Store has been suspended or your Solution Store Agreement has been terminated by SHC; or (v) SHC has suspended its services to Licenser under the App Provider Agreement or terminated the App Provided Agreement, rendering the continued provision of the App or any other agreed services by Licenser impossible or unreasonable. Licenser shall inform Licensee at its earliest convenience about any such Suspension. Licensee acknowledges that the entitlement to Suspension under this paragraph sentence 1, and sentence 2 item (iii) extends to SHC at SHC's reasonable judgement.

Events that entitle Licenser to terminate the Agreement for cause include, without limitation: (i) acts or omissions by Licensee that entitle Licenser to a Suspension for a continuous period of at least thirty (30) days; (ii) Licensee's breach of any obligation or provision of the Agreement which remains uncured for a period of thirty (30) days after receipt of notice hereof; (iii) a material breach of the obligations under the Agreement by Licensee; (iv) Licenser's obligation to comply with applicable laws or requests

by a governmental body, rendering the continued provision of the App or any other agreed services by Licensor impossible or unreasonable; (v) the termination of Licensor's App Provider Agreement, rendering the continued provision of the App or any other agreed services by Licensor impossible or unreasonable.

Licensee may terminate this Agreement at any time by destroying any Licensed Material in his possession or by returning the Licensed Material and any copies or extracts therefrom to Licensor. No refund of any amount paid will be made, except as granted in accordance with paragraph 9 'Warranty' hereunder.

When the license expires or is terminated by Licensor, the Licensee must stop using the App and the App will automatically become non-functional.

If the Licensee fails to comply with the terms and conditions and in particular if the Licensee does use the App for purposes that are explicitly excluded in this Agreement, Licensor will be entitled to issue an invoice to the Licensee for an amount equal to a license fee, according to the customary retail price, increased with a penalty of 10% of the price.

## **11. Warranty**

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Licensor warrants, for Licensee's benefit alone, for a period of ninety days from the effective date of the License Agreement with which the App was firstly activated (hereinafter referred to as the "Warranty Period") the App shall operate substantially in accordance with the functional specifications in the Documentation. If during the Warranty Period, it appears that any part of the App does not function in accordance with its specifications, Licensee may return the Licensed Material to Licensor for replacement or refund of amounts paid under this License Agreement, at Licensee's choice. Licensee agrees that the foregoing constitutes his sole and exclusive remedy for breach by Licensor of warranties made under this Agreement. Except for the warranties set forth above, the Licensed Material, and the App contained therein, are licensed "as is", and Licensor disclaims any and all warranties, whether express or implied, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

In case of evaluation licenses, the App is distributed and provided "AS IS" and with no warranties of any kind, whether express or implied, including, without limitation, any warranty of merchantability or fitness for a particular purpose. Licensor does not warrant, guarantee, nor makes any representations regarding the use of, or the results of the use of the App. Licensor does not warrant that the operation of the App will be uninterrupted or error-free.

## **12. Limitation of liability**

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In no event will Licensor, its affiliated companies, or any of its licensors, directors, officers or employees be liable to the Licensee for any consequential, incidental, indirect or special damages whatsoever, including without limitation, any damages for downtime, loss of data or information, arising out of (1) the use or inability to use the App or (2) the failure to respect its suggestions or recommendations concerning the App or (3) the computer's, the internet's or any other network's

failure to operate. LICENSER'S ENTIRE LIABILITY FOR ANY DIRECT DAMAGES BASED ON ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION WILL BE LIMITED TO THE TOTAL AMOUNTS WHICH THE LICENSEE HAS PAID FOR THE LICENSED APP HEREUNDER.

### **13. Changes to this agreement**

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Licensor reserves the right to change the terms of this Agreement at his own discretion. Changes to this Agreement will be communicated to Licensee, who will have the responsibility to communicate the change to all relevant end- users in case of a floating license. Changes to the Agreement will be applicable as from the first day of the month following the month in which the changes have been communicated. The continued use of the App by Licensee or by end-users expresses assent with the changed agreement.

### **14. Governing law and jurisdiction**

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This Agreement shall be governed by the laws of the registered office of mediCAD Hectec GmbH. Any dispute shall be submitted to the exclusive jurisdiction of the courts of the registered office of mediCAD Hectec GmbH.

### **15. Severability**

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Should any court or competent jurisdiction declare any term of this Agreement void or unenforceable, such declaration shall have no effect on the remaining terms hereof.

### **16. No Waiver**

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The failure of either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach hereunder shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.