

# Software License Agreement

between

PeriData Software GmbH, Odinweg 42, D-51429 Bergisch Gladbach, Germany

and

– hereinafter known as "Customer" –

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AT YOUR COMPUTER**

Name of Institution: .....

Legal form .....

Address of institution: .....

Unit(s): .....

## § 1 Subject matter

1.1 (License) PeriData Software GmbH grants to the Customer the non-transferable, non-exclusive and time-limited license for the use of standard software (software license) and its documentation (hereinafter known as "Software"). The license only refers to the Software explicitly mentioned in the object code.

## § 2 Delivery and updates

2.1 (Delivery) PeriData Software GmbH supplies the Customer with a single copy of the Software in machine-readable format. Delivery is also deemed effected if the Customer has obtained a complete copy of the Software in another way, even if this copy was made without data carriers, for example by copying from another computer (e.g. Internet download).

2.2 (Substitute delivery) If the Software in the possession of the Customer is damaged wholly or in part or deleted inadvertently, PeriData Software GmbH shall supply a replacement free of charge.

2.3 (Electronic registration) PeriData Software GmbH transmits the codes to the Customer for the electronic registration of the Software on his system in so far as this is required for use in accordance with the granted license.

2.4 (Update service) PeriData Software GmbH provides the Customer with improved versions of the Software without extra charge for the data carrier.

2.5 (Installation) Unless explicitly stated, the installation of the Software is not covered by the royalty.

## § 3 Scope of license

3.1 (Type and scope) The type and scope of the granted license, and particularly the type of standard software, the number of eye specialists (surgeons and optometrists), the number of workstations, use in a network, the number of perimeters at the Customer's business premises are defined in the declared Data of Health Care Unit, which is integral to this Agreement. Changes resulting in a number higher than declared must be reported to PeriData Software GmbH in advance and require a supplementary license; the supplementary application also becomes integral to this Agreement. If the number is exceeded without a sufficient supplementary license, the license as a whole is terminated.

3.2 (Right of reproduction) Copying the licensed Software (including the documentation and the help function) is only permitted in machine-readable or printed form on the scale of the proper use of the program. This includes in particular loading from the original data carrier, installation on the hard disk, storage in the main (working) memory and in intermediate memories such as caches in so far as this is technically associated with use. The supplied original data carrier (CD-ROM, DVD) serves as a backup copy. The Customer is not authorized to produce an additional backup copy of his own.

3.3 (Right of modification) The Customer is not authorized to make any modifications to the program code, not even to eliminate faults or defects.

3.4 (Decompilation) Decompilation or other kinds of reverse engineering of the program is not permitted.

3.5 (Third-party use) The Customer must neither transfer the license, nor grant sublicenses, nor let the Software for a limited time or make it accessible in any other way to third parties without the prior written consent of PeriData Software GmbH. The Customer's use of the Software for his own purposes by assigning employees or authorized persons remains unaffected, on the condition that the Customer binds the persons concerned to these license provisions.

#### **§ 4 Warranty**

4.1 (Definition of warranty) PeriData Software GmbH warrants that the licensed Software displays the agreed characteristics. The warranty only applies if the Software is put to contractual use.

4.2 (Warranted characteristics) Warranted characteristics are only binding if expressed or confirmed in writing by PeriData Software GmbH.

4.3 (Notice of defects) The Customer must inform PeriData Software GmbH of the lack of a warranted characteristic within two weeks. The Customer's warranty rights relating to such defects expire in the event of failure to observe this time limit.

4.4 (Warranty rights) In the event of a defect, PeriData Software GmbH can choose either to rework the Software or terminate the contract with retroactive effect from the date of notice of defect with refund of the royalties paid beyond this date. No further claims are admitted.

4.5 (Limitation of actions) The Customer's warranty claims are limited to a period of six months from delivery of the respective Software version. If defects arise with this period, the warranty period is extended by the time necessary for defect rectification.

4.6 (Exclusion of warranty) PeriData Software GmbH does not warrant that the licensed Software satisfies the Customer's special requirements, runs trouble-free on the Customer's special computer system or is compatible with certain third-party programs.

4.7 (Long-term use) To ensure the long-term use of the Software, PeriData Software GmbH ensures that a Software copy not restricted by the computer's system date can be generated any time.

#### **§ 5 Third-party property rights**

5.1 (Exemption) PeriData Software GmbH exempts the Customer from all third-party claims against the Customer resulting from violation of property rights relating to the licensed programs in their contractual version in so far as the Customer immediately informs PeriData Software GmbH of such claims in writing.

5.2 (Elimination measures) PeriData Software GmbH is authorized to carry out necessary Software modifications at its own expense on the Customer's premises in response to third-party property right claims.

#### **§ 6 Software property and property rights**

6.1 (Software property) The Software licensed to the Customer, including the complete documentation, remains the property of PeriData Software GmbH.

6.2 (Software rights) PeriData Software GmbH remains the holder of all rights relating to the Software licensed to the Customer including the required materials even if the Customer modifies them or connects them to his own programs or those of a third party. In the event of such modifications or connections or in the event of the generation of copies, the Customer shall affix an originator's mark.

#### **§ 7 Remuneration and terms of payment**

7.1 (Royalty) The Customer is obliged to pay a time-dependent royalty. The scale of remuneration is based, failing any agreement to the contrary, on the currently valid price list. The remuneration calculated always depends on number of practicing eye specialists (surgeons and optometrists) and the number perimeters which are available on the Customer's business premises, even if they are not connected.

7.2 (Start and end of payment obligation) The payment obligation starts as soon as the Agreement becomes effective and a copy of the Software has been sent to the Customer or he has obtained the copy in other way (see §2(1)). The payment obligation ends upon termination of the Agreement.

7.3 (Change of terms of use) The Customer is obliged to notify PeriData Software GmbH any changes at his business premises that lead to an exceed of the numbers given in the license bill within 2 weeks. The PeriData Software GmbH will adjust the license fee accordingly. In case of delayed notification the royalty is subsequently charged for the time period in which the number had been exceeded.

7.4 (Changes in royalties) The recurrent rates of remuneration (royalties) for the Software can be changed by PeriData Software GmbH if the Customer is informed in writing with three months' notice. In the event of an increase, the Customer has the right to terminate the Agreement with effect from the date of the increase. Termination must be given in writing within one month of the notification of the increase.

7.5 (Due date) The royalty is due in advance for the agreed license period.

7.6 (Set off) The Customer is only permitted to set off undisputed or non-appealably established demands.

7.7 (Delay in payment) If the Customer fails to observe the granted payment deadlines, interest on the royalty at the legal rate is charged from the due date without the requirement of a reminder. PeriData Software GmbH has the right to prove a higher loss due to delay in payment, and the Customer the right to prove a lower loss due to delay in payment.

7.8 (Performance obligations during delay) PeriData Software GmbH is released from his performance obligations under this contract as long as payments from the Customer are overdue.

**§ 8 Liability of PeriData Software GmbH**

- 8.1 (Scope of liability) PeriData Software GmbH accepts liability for direct personal injury and damage to property (direct loss) incurred by the Customer by intent or gross negligence of essential contractual obligations. Direct loss is the expense required for the restoration of the damaged asset.
- 8.2 (Exclusion of liability) PeriData Software GmbH is not liable for data errors, data loss or for the ambiguous presentation of data. In particular, the user must assure himself of the correctness of data transmission. Liability for loss due to faulty data or data presentation, and particularly the resultant medical action, is excluded.
- 8.3 (Third-party software) PeriData Software GmbH is not liable for co-supplied third-party software.
- 8.4 (Data manipulation) PeriData Software GmbH is not liable for the consequences of modifications to data outside the standard Software, irrespective of whether the change concerns the data structure or the file name.
- 8.5 (Limitation of liability) The liability for damage to property is limited to the total of the amounts to be paid in the course of a year.

**§ 9 Duties of the Customer**

- 9.1 (Copyright marks) The Customer must not change identifications, copyright marks or property details of PeriData Software GmbH on the programs in any way.
- 9.2 (Documentation) The Customer is obliged to keep records on all program installations at workstations, the connection of perimeters, and changes to these installations.
- 9.3 (Data saving) The Customer is obliged to save the data and programs in machine-readable form at intervals adapted to the application and at least once per day.

**§ 10 Duration of Agreement**

- 10.1 (Start) The Agreement becomes effective upon signing by the two parties hereto for the duration of the agreed license period.
- 10.2 (Extension of license period) The Agreement is extended by one more license period in each case if it is not terminated in writing at the end of the last license period with notice of 3 months.
- 10.3 (Termination without notice) In the event of serious violations of contractual duties, both parties are entitled to terminate the Agreement without notice.
- 10.4 (Program erasure) At the end of the Agreement, the Customer is obliged to erase all copies of the program in the Customer's possession and to return all other associated materials such as the user documentation. PeriData Software GmbH is entitled to demand from the Customer an affidavit in this connection. The Customer data produced with the program remain the Customer's property.

**§ 11 General provisions**

- 11.1 (Completeness clause) This Agreement defines all the rights and duties of the parties hereto. Changes and additions are only effective in writing and with reference to this Agreement and must be signed by both parties hereto. Terminations must be made in writing.
- 11.2 (Changes and replacements) This Agreement replaces all earlier agreements between the parties on the same standard Software; in particular, no further rights can be derived from any earlier purchases.
- 11.3 (Applicable law, place of performance, place of jurisdiction) The contractual relationship is subject to the terms of this Agreement and, in addition, the law of the Federal Republic of Germany. The place of performance and place of jurisdiction for all disputes under this Agreement are the registered office of PeriData Software GmbH, provided that the Customer is a businessman or legal person under public law. The application of the UN Convention on Contracts for the International Sale of Goods of 4-11-1980 (CISG) is contracted out.
- 11.4 (Severability clause) Should individual terms of this Agreement be ineffective or lose their effectiveness due to later circumstances or should a loophole emerge in this Agreement, the legal effectiveness of the other provisions is not affected. The invalid contractual provision shall be replaced or the loophole filled by an appropriate provision which comes as close as possible to what the parties to the Agreement would have wanted, had they considered the point.

**Amendment**

The contractors agree to set the beginning of the first license period to ..... (if empty = invalid)

Date .....  
.....

Date .....  
.....

Signature  
Customer

Signature  
PeriData Software Company