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7. RIGHT OF INSPECTION, AUDIT

- a) The Software may contain or require a license key to prevent unauthorized installation or to enforce limits of the License and may contain devices or functionality to monitor Licensee's compliance with this EULA.
- b) NavVis' Software may be subject to a limited Term and Volume. Licensee acknowledges that the Software may be delivered with embedded Time Clocks and mechanisms for Volume Check and agrees that NavVis is permitted to retrieve information regarding Licensee's compliance with this EULA and the Quotation. Licensee further acknowledges and agrees that Time Clocks and Volume Checks are not considered a defect of the Software and, to the extent permitted by applicable law, NavVis is not liable for any and all claims, however characterized, arising from or related to Time Clocks or Volume Checks or their operation.
- c) Compliance with the use rights granted under this EULA is the sole responsibility of Licensee. During the Term of this EULA and for twelve (12) months after, Licensee will maintain electronic and other records sufficient to confirm compliance with this EULA.
 - (i) Licensee will promptly and accurately complete and return any self-audit questionnaires, along with a certification by an authorized representative confirming that its responses to the questionnaire accurately and fully reflect its usage of the Software.
 - (ii) NavVis may once per year or upon reasonable concerns about Licensee's compliance with this EULA - audit Licensee's records and computer systems (including servers, databases, and all other applicable software and hardware) to ensure compliance with this EULA. Licensee shall cooperate with the NavVis audit team and promptly and accurately respond to, database queries, location information, system reports, and other reports as requested and provide a certification by an authorized representative of Licensee confirming that information provided accurately reflects its usage of the Software. Audits will be conducted during regular business hours. NavVis will provide Licensee with minimum five (5) days' prior notice of an audit. Licensee will allow NavVis to make copies of relevant records and copies which will be handled in compliance with all applicable data protection regulations.
 - (iii) If Licensee is not in compliance with this EULA, Licensee will be deemed to have acquired the use rights and must immediately pay the applicable fees of the then current list price and taxes, and respective support fees, if applicable, for the past and the future to become compliant and reimburse all costs incurred by NavVis in performing the audit.

8. LIMITED WARRANTY

a) Licensee is advised that based on the current state-of-the-art technology, program errors cannot be excluded with complete certainty in spite of exercising greatest conscientious care and diligence. The parties acknowledge that NavVis Software is inherently complex and may not be completely free of errors.

b) **No warranty.** NavVis is not liable for any warranty or representation made by a reseller or any party other than NavVis. Notwithstanding other provisions of this EULA, NavVis' obligations for warranty for NavVis Software directly licensed from NavVis or from a third party as permitted by NavVis shall be limited solely and exclusively to the warranties and obligations under this Section 3 (Limited Warranty).

Except as expressly provided herein or in an individual agreement signed by both parties, NavVis disclaims and Licensee waives all representations, warranties, conditions or other terms (whether express, implied, or statutory), including in particular any warranty, condition, or term (a) of any implied warranties of merchantability, fitness for a particular purpose, reasonable care and skill, non-infringement, satisfactory quality, accuracy, or system integration, or (b) arising from any course of dealing, course of performance, or usage in the industry. To the extent permitted by law, if a warranty, condition, or term cannot be disclaimed, such warranty, condition, or term shall be limited in duration to the applicable express warranty period.

c) **Warranty.** NavVis warrants that the Software at the time of first delivery will be free from (i) defects as to quality and title and (ii) known viruses.

i. NavVis will rectify the defect through elimination of the defect/repair or provision of a defect-free substitute at NavVis' choice and free of charge within an appropriate period. It is Licensee's responsibility to backup any data, software, or other material associated with the Software. NavVis will not be responsible for any data, software or material that is lost or reformatted. To the extent reasonable for Licensee and provided it does not considerably impair the agreed use, NavVis may rectify the defect by providing an update, upgrade or more recent version of the Software or a technical workaround by means of written or remote instructions and/or by way of corrective tool or software, whereas Licensee is obliged to implement such instructions, to enable remote data transmission or remote access by NavVis as necessary. The Licensee may refuse to remote data transmission and remote access for good reason. In such case Licensee must provide other means for implementing the instructions and/or corrective tool or software.

ii. If a defect cannot be rectified within a reasonable period, or if repair or delivery of a substitute can be deemed to have failed for other reasons, then Licensee may demand reduction of the fee. Supplementary performance has not failed until NavVis has unjustifiably refused to rectify or has been given adequate opportunities to rectify the defect considering the complexity of the matter and the circumstances, but at least three (3) opportunities. NavVis may refuse to rectify the defect and refer Licensee to its right to rescind or terminate the contract if it is only possible for NavVis at unreasonable expenses.

Alternative to reduction of the fee, Licensee may rescind the contract provided that the claimed defect is not immaterial. In case of rescission, NavVis will refund payment less compensation for use (limited use due to defect for which NavVis is liable) and deterioration.

iii. NavVis will at its absolute discretion rectify defects in title by way of (a) obtaining for Licensee a non-exclusive license to continue using the Software; (b) replacing the infringing portion to the extent reasonable for Licensee in consideration of the agreed purpose of use; or (c) modifying the infringing portion without unreasonable degradation in functionality in order to make it non-infringing. In case rectification is not possible, NavVis will take back the infringing portion thereof and refund payment less compensation for use and deterioration.

d) **Warranty exclusion.** The following errors are excluded from NavVis' warranty: (i) insignificant defects, including but not limited to errors that can be easily corrected (by workaround to the extent reasonable) and will not show up as a performance defect; (ii) defects that result from modification, alteration or enhancement by anyone other than NavVis itself in provision of maintenance and support services or as otherwise agreed; (iii) defects that result from Licensee's use of an operating and/or installation environment, software, hardware, firmware, data, or technology not provided or approved in writing by NavVis; (iv) or from any telecommunications medium used by Licensee.

Further, warranty does not cover claims (v) resulting from neglect and misuse, (vi) resulting from any use in violation of this EULA, Documentation and instructions by NavVis, including but not limited to, if any unauthorized User is granted access to and use of the Software, (vii) resulting from use of a superseded version provided the infringement would have been avoided by the use of a then-current release for which Licensee was eligible for and (viii) for Upgrades, updates, patches etc. for which the Software was not eligible.

- e) Licensee is not authorized to rectify defects itself or have them rectified by any third party and claim reimbursement for expenses without prior confirmation from NavVis in writing.
- f) The warranty for the Software, including any eligible Upgrades, updates, patches etc. is in any case limited to twelve (12) months from the date of first delivery of the original Software and claims based on defects of quality or defects of title become time-barred thereafter. Software is deemed delivered when it is made available by NavVis for electronic download or delivered by NavVis on physical media (e.g. IMMS). Warranty work performed by NavVis creates neither an extension of the warranty period nor does it start a new warranty period afresh. In the event of willful act or gross negligence of NavVis, in case of malicious concealment of a defect, physical injury, guarantees and claims in accordance with mandatory product liability laws, the statutory limitation periods apply.
- g) Notwithstanding section 377 of the German Civil Code, defects shall be documented by Licensee in a manner comprehensible to NavVis (e.g. in the case of defects as to quality by means of screenshots, pictures, error messages and defect records) and shall be reported in writing immediately after determination of any such defect. NavVis requires that all warranty claims are accompanied by a proof of purchase or subscription (sales receipt or order confirmation), Licensee name and contact information to allow verification of the date of purchase or subscription and delivery. Where proof of purchase or subscription is not provided, NavVis reserves the right to classify the defect a non-warranty case and to charge a service fee and/or charge for parts replaced or repaired.
- h) Licensee is obliged to mitigate damages and loss.
- i) Unless otherwise expressly agreed, the place of performance shall be Licensee's registered business address specified in the Quotation or order confirmation.
- j) NavVis reserves the right to invoice Licensee for costs (i) arising as a result of allocation or reallocation of the Software by Licensee to a location other than the contractually agreed; (ii) arising as a result of Licensee culpably failing to comply with its obligations to cooperate in accordance with this EULA; (iii) based on defects as to quality in the Software which are asserted by Licensee but do not exist; (iv) exclusively arising as a result of culpable faulty operation (including defects as to quality in the Software); and/or (v) based on non-observance of the Documentation and instructions.
- k) This Section (Limited Warranty) states NavVis's total obligation and the sole remedy available to Licensee regarding any claims for defect.

9. LIMITATION OF LIABILITY

- a) Both parties are liable with regards to this EULA and each individual order pursuant to the following conditions:
 - i. Both parties are liable without restriction for loss or damage caused by intent (Vorsatz) by the respective party, its legal representatives or officers, and of subcontractors or other auxiliary persons (Erfüllungsgehilfen).
 - ii. Both parties are liable without restriction for loss or damage resulting from death, physical injury or health impairment caused by the respective party, its subcontractors, legal representatives or officers or other auxiliary persons.
 - iii. Both parties are liable for loss or damage arising from the absence of assured characteristics (zugesicherte Eigenschaften) up to the amount encompassed by the purpose of the assurance and which was identifiable by the respective party at the time of giving the assurance.
- b) Liability under the German Product Liability Act is not affected.
- c) Both parties are liable for loss or damage caused by gross negligence (grobe Fahrlässigkeit) by the respective party, its legal representatives or officers and of subcontractors or other auxiliary persons, however with respect to indirect loss and indirect damage limited to losses and/or damages reasonably foreseeable by the respective party at the time of the performance and

that would typically arise out the performance of the respective service. In any event consequential damages (Ersatz von Folgeschäden) (e.g. due to production downtime) and damages for lost profit shall be excluded.

- d) Both parties are liable for loss or damage caused by negligence (Fahrlässigkeit) by the respective party, its legal representatives or officers and of other auxiliary persons, however limited to direct losses and/or direct damages reasonably foreseeable by the respective party at the time of the performance and that would typically arise out the performance of the respective service. In any event consequential damages (e.g. due to production downtime) and damages for lost profit shall be excluded. The aggregate liability for any and all such loss or damage arising out of the performance under or in connection with this EULA shall not exceed the total aggregate value of all orders according to this EULA. The liability for individual order shall be limited to the respective value of that order.
- e) Both parties are liable for loss and damage arising from the breach of material obligations by the respective party, its legal representatives or officers or auxiliary persons. Material obligations are the main obligations that form the basis of the contract, were crucial for the conclusion of the contract, and upon whose fulfilment the other party can reasonably rely (Kardinalpflichten). If a party is in breach of these material obligations through negligence, its liability shall be limited to the amount reasonably foreseeable by the respective party at the time of the performance of the respective service. In any event consequential damages (e.g. due to production downtime) and damages for lost profit shall be excluded.
- f) All claims under this Section IV. 8 for loss or damage against NavVis shall become time-barred after twelve (12) months from their origination with the proviso that the statutory limitation period applies to claims with unlimited liability.
- g) **Indemnification by NavVis.** NavVis will support Licensee in defense against any third party claim in a court of competent jurisdiction that NavVis Products infringe third party patents or copyrights (or similar intellectual property rights) and will indemnify Licensee - in full or in case of negligence on behalf of NavVis for loss of profits limited to the annual Fee amount for subscription or the total contract value for purchase - against a final judgment entered by a court of competent jurisdiction or any settlements arising out of such claim, provided that Licensee satisfies the following conditions: Licensee will (i) immediately notify NavVis in writing about any third party claim asserted and its reasons; (ii) grant NavVis sole control over the litigation and all associated actions with respect to such claim as far as reasonable; and support NavVis to the extent reasonably necessary; (iii) provide all reasonable assistance, information and authority to NavVis which is required to enforce the actions mentioned in (ii); (iv) not make any admission against NavVis' interests or agree to any settlement of any claim without the prior written consent of NavVis in writing, unless made pursuant to a judicial request or order, and (v) enable NavVis to choose and instruct a lawyer. NavVis's obligations under this Section will not apply if the claim results from (i) Licensee's breach of this EULA, (ii) use of the NavVis Product in conjunction with any product or service not provided by NavVis, or (iii) use of the NavVis Product provided for no fee. In the event a claim is made or likely to be made, NavVis may (i) procure for Licensee the right to continue using the NavVis Product under the terms of this EULA, or (ii) replace or modify NavVis Product to be non-infringing without a material decrease in functionality. If these options are not reasonably available, NavVis or Licensee shall have the right terminate this EULA upon written notice to the other.
- h) **Indemnification by Licensee.** Licensee will defend NavVis against any and all third-party claims arising out of or reasonably relating to: (i) User Generated Content or (ii) Licensee's gross negligence or willful misconduct ((i) and (ii) collectively, "Licensee Claims"). Licensee will indemnify NavVis against all damages finally awarded against NavVis (or the amount of any settlement NavVis enters into) with respect to any and all Licensee Claims, provided that NavVis satisfies the following conditions: NavVis will (a) immediately notify Licensee in writing about any third party claim asserted and its reasons; (b) grant Licensee sole control over the litigation and all associated actions with respect to such claim as far as reasonable; and support Licensee to the extent reasonably necessary; (c) provide all reasonable assistance, information and authority to Licensee which is required to enforce the actions mentioned in (b); (d) not make any admission against Licensee' interests or agree to any settlement of any claim without the prior written consent of Licensee in writing, unless made pursuant to a judicial request or order, and (e) enable Licensee to choose and instruct a lawyer.

10. HIGH RISK ACTIVITIES

- a) Licensee acknowledges and agrees that the Software, the Documentation, the NavVis Platform or the Service is not fault tolerant and is not designed, manufactured, or intended for use or resale for control, maintenance or any other purpose in any hazardous environments requiring fail-safe performance, such as but not limited to any use in nuclear facilities, communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the Software, the Documentation, the NavVis Platform or the Service could lead to death, personal injury, or severe physical or environmental damage ("**High Risk Activities**"). Accordingly, NavVis and its suppliers specifically disclaim any express or implied warranty of fitness for any High Risk Activities and by no means endorse or recommend use of the Software for High Risk Activities. In case Licensee do use the Software for High Risk Activities, Licensee does so at its own risk and responsibility.
- b) Licensee hereby agree to indemnify, defend and hold harmless NavVis, its officers, employees and agents from and against any and all claims, demands and causes of action whatsoever, including without limitation those arising on account of any injury or death of persons or damage to property caused by, arising out of or resulting from, Licensee's or Licensee's Affiliates' or the respective officers', employees', agents' or representatives' use of the Software for High Risk Activities.

11. TERMINATION

- a) Either party may terminate this EULA if the other party: (a) becomes insolvent; and (b) has a receiver or receiver manager appointed with respect to it or any of its assets. Without prejudice to each right or remedy of a non-breaching party, either party may terminate this EULA for material breach by notice in writing, with ten (10) business days' notice period unless the other party first cures the breach.
- b) If You have received access to the Software based on an agreement with a NavVis reseller (such agreement, an "**End Customer Agreement**"), this EULA shall automatically terminate, in case the End Customer Agreement is terminated, revoked or otherwise rescinded, by legal act or statute and for whatever reason, on the date such termination, revocation or other rescindment of the End Customer Agreement becomes effective.
- c) Upon any termination of this EULA or upon expiration of a Term: (a) all rights granted hereunder will immediately terminate; (b) Licensee will immediately cease all use of the Software or SaaS; and (c) Licensee must either deliver to NavVis or destroy all copies of Software, Documentation, and other confidential information in Licensee's possession or control, and shall certify such destruction in writing upon NavVis' request. Any term in this EULA which by its nature extend beyond termination or expiration of this EULA will remain in effect after termination of this EULA.

V. MISCELLANEOUS

1. CHOICE OF LAW, DISPUTE RESOLUTION

- a) This EULA shall be governed by and construed under the laws of the country (and state if applicable) where NavVis as contractual party to this EULA is established, excluding the principles of conflicts of law and the UN Convention on Contracts for the International Sale of Goods. All claims arising out of or relating to this EULA will be held exclusively in the courts of the country (and state and city as applicable) where NavVis as contractual party to this EULA is established and registered except where Licensee's local jurisdiction and venue will apply to the extent the applicable mandatory law and/or courts in Licensee's country prohibits consent to the venue of the courts and jurisdiction.
- b) NavVis wishes to address Licensee's concerns in good faith. Before filing a claim to a court or any authority parties agree to informal dispute resolution by contacting the other party's management in writing at the registered business address. If a dispute is not resolved within fifteen (15) business days following receipt of such notice, either party may proceed formally as set forth in this section.

2. OTHER

- a) There are no oral side agreements regarding the subject matter of this EULA.
- b) Section 19 (Other) and Section 20 (Data Processing Agreement) of the GTC are hereby incorporated into this EULA by reference, provided however, that references to the GTC therein shall be understood to refer to this EULA.