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- b) A registration or activation with NavVis may be required for Licensee to utilize the full benefits of the Software.

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- a) Any technical support required shall be subject to an active support program procured by Licensee in accordance with the then current NavVis support policy.
- b) **Limited warranty.** Subject to compliance with this EULA and the support policy, NavVis warrants to Licensee that software maintenance and support services delivered to Licensee as described in the then current version of the support policy will be performed in a professional and workmanlike manner.
- c) NavVis shall have no responsibility to provide support services with respect to any problem caused by: (i) any software, device or other product not supplied by NavVis; (ii) use for a purpose other than the purpose for which it was designed; (iii) use on a platform or in an environment other than authorized by NavVis; or (iv) failure to promptly install any Upgrade or other support software provided by NavVis.

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- 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

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- c) **Sole and exclusive remedy.** This Section IV. 8 (Limited Warranty) states NavVis's total obligation and the sole remedy available to Licensee regarding any claims for defect.

#### 9. LIMITATION OF LIABILITY - GENERAL

- a) THE MAXIMUM LIABILITY OF NAVVIS ARISING OUT OF OR RELATING TO THIS EULA, REGARDLESS OF THE CAUSE OF ACTION (WHETHER IN CONTRACT, TORT, BREACH OF WARRANTY OR OTHERWISE) SHALL NOT EXCEED THE TOTAL AGGREGATE AMOUNT OF THE FEES ACTUALLY RECEIVED BY NAVVIS FROM CUSTOMER IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM. NOTWITHSTANDING THE FOREGOING, NAVVIS EXPRESSLY DISCLAIMS ANY LIABILITY FOR ANY LOSS, DAMAGE, OR MISAPPROPRIATION OF DATA INFORMATION PROVIDED BY THE LICENSEE UNDER ANY CIRCUMSTANCES OR FOR ANY CONSEQUENCES RELATED TO CHANGES, RESTRICTIONS, SUSPENSIONS, OR TERMINATION TO/OF LICENSEE'S ACCESS TO OR USE OF THE NAVVIS PLATFORM OR CAUSED BY USER GENERATED CONTENT OR NON-NAVVIS APPLICATIONS.
- b) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS EULA, NAVVIS WILL BE NOT LIABLE FOR ANY: (I) SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGE; (II) LOSS OF: PROFITS, BUSINESS, REVENUE, ANTICIPATED SAVINGS, USE OF ANY PRODUCTS OR SERVICE, (BUSINESS) OPPORTUNITY, GOODWILL OR REPUTATION; (III) LOST OR

DAMAGED DATA; OR (IV) ANY EXPENDITURES THAT ARE NOT REQUIRED TO BE INCURRED TO DISCHARGE THE INNOCENT PARTY'S DUTY OR TO MITIGATE ITS LOSSES).

- c) **Indemnification by NavVis.** NavVis will defend Licensee 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 against all damages finally awarded against Licensee (or the amount of any settlement NavVis enters into) with respect to these claims, provided that Licensee satisfies the following conditions: Licensee will (a) immediately notify NavVis in writing about any third party claim asserted and its reasons; (b) 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; (c) provide all reasonable assistance, information and authority to NavVis which is required to enforce the actions mentioned in (b); (d) 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 (e) 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.
- d) **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 Licensee against all damages finally awarded against Licensee (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 does 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 the contract this EULA relates to if the other party: (i) becomes insolvent; and (ii) 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) Further, NavVis may terminate the contract this EULA relates to without notice period in case Customer is non-compliant with restrictions agreed on use of NavVis Products, including NavVis Cloud Services.
- c) If Customer has 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.

- d) 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 extends beyond termination or expiration of this EULA will remain in full force and 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) Notwithstanding the foregoing, each party acknowledges and agrees that any and all breaches or threatened breaches of a party's intellectual property or proprietary rights under this EULA would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such a breach or threatened breach, the other party will be entitled to seek equitable relief in any court of appropriate jurisdiction, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.
- c) 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 V. 2 (Other) and 3 (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.