

**GENERAL TERMS AND CONDITIONS OF
AGREEMENT RELATING TO THE USE OF SOFTWARE**

entered into between

University of Innsbruck

Innrain 52

6020 Innsbruck, Austria

represented by Univ.-Prof. Dr. Sabine Schindler, Vice Rector for Research,
– in the following referred to as “licensor”

and

Institution: _____

Street: _____

Place: _____

represented by: _____

– in the following referred to as “licensee”

as follows:

PREAMBLE

Licensor offers the successful software program EBRA (abbr.: Ein Bild Röntgen Analyse), which is utilized to compare radiogram series for medical scientific reasons.

Licensee wishes to use this X-ray-measurement software program EBRA including

the subprogram EBRA-Cup (which allows the measurement of cup migration of total hip replacements in standard radiographs) and/or

the subprogram EBRA-FCA (which allows the measurement of migration of femoral components in standard radiographs)

for scientific medical use only.

§ 1
DEFINITIONS

- 1.1 “Program” denotes the software program EBRA consisting of the subprograms as selected above developed by the University of Innsbruck for scientific medical x-ray-measurements in Research Version as described in detail online on the website under the domain “www.ebra.info”.
- 1.2 “Royalties” encompasses all the consideration owed by Licensee for the Program.

§ 2
LICENSE GRANT

- 2.1 The Program is copyrighted by the University of Innsbruck and licensed to Licensee, not sold.
- 2.2 Licensor grants Licensee a nonexclusive, non-transferable license to
 - 2.2.1 download, install and use the Program solely for the use of scientific medical publications (esp. academic dissertations) and
 - 2.2.2 make a back-up copy

on condition that

- 2.2.3 the system software and the Program are interoperable (see § 3);
- 2.2.4 Licensee has lawfully obtained the Program and complies with the terms of this Agreement;
- 2.2.5 Licensee ensures that the Program is used only for scientific medical use (e.g. publications or dissertation) and not for medical treatment or diagnostic purposes;
- 2.2.6 Licensee does not copy (but see § 2.2.2), modify, distribute, transfer, sublicense, sell, rent or lease the Program as well as does not reproduce the Program (permanent or temporary, wired or wireless) by any means in any form in part or in whole;

- 2.2.7 Licensee does not reverse assemble, reverse compile, otherwise translate or reverse engineer the Program;
- 2.2.8 Licensee does not use components, files, modules, audio-visual content of the Program apart that Program.

§ 3
DOWNLOAD AND TRIAL VERSION

- 3.1 To check, if the system software and the Program are interoperable, Licensor offers and recommends Licensee a royalty-free trial version of the Program. The download of the Program is executed with the trial version.
- 3.2 The Program is only operable if the system and software are interoperable.
- 3.3 If the system software and the Program are not interoperable, the contract cannot be effected. Licensor is not liable for any damage and/or loss of data, inaccuracy of data or technical faults, special, incidental, indirect or consequential damages or lost profits, business, revenue, goodwill or anticipated savings caused by the trial version. The Program should be deleted in this case.
- 3.3 To run the full version of the Program Licensee receives an activation code in between two weeks upon payment of the royalties.

§ 4
INSTRUCTIONS

- 4.1 Upon Licensee's request Licensor may offer (as far as available)
 - 4.1.1 personal installation of the Program,
 - 4.1.2 on-line help for handling the Program and
 - 4.1.3 instruction courses for Licensee and his personnel.
- 4.2 Licensor is not obliged to supply Licensee with documentation to use the Program, such as an instruction manual or an installation guide.

§ 5
SCOPE OF USE / NOTIFICATIONS

- 5.1 Licensee has the right to use the Program on one computer only. This includes loading and running, storing the program in the working memory and other storage processes associated with use as intended. The Licensee does not receive the right to grant user rights to third parties. In case of hardware failure or other mandatory required hardware upgrade, the Program may be used on a new hardware, provided that Licensee ensures that the Program is fully deleted on the old hardware and not operated simultaneously. Licensor is not liable that the Program is operable on the new hardware.
- 5.2 Licensee does not have the right to use the Program in a network configuration, in the Internet, a network or modem application exceeding his own operation or to make further copies thereof beyond those mentioned in § 2.2.2. Licensee further does not have the right to provide the Program to third parties or to modify it in any way, in particular to remove the software protection.
- 5.3 In scientific publications of results won by the Program Licensee is obliged to make the following reference (at least in a footnote):

“The EBRA Method developed by the University of Innsbruck and the Medical University of Innsbruck (former part of the University of Innsbruck), copyrighted by the University of Innsbruck, has been applied“.

§ 6
ROYALTIES

- 6.1 For the first activation of the full version of the Program, Licensee pays to Licensor the sum of Euro 2.000 for EBRA-Cup or EBRA-FCA or the sum of Euro 4.000 for EBRA-Cup and EBRA-FCA. Licensor offers the activation code in between two weeks upon payment of the royalties.
- 6.2 For the annual license renewal Licensee pays to Licensor the sum of Euro 200 for EBRA-Cup or EBRA-FCA or the sum of Euro 400 for EBRA-Cup and EBRA-FCA. It is due upon license renewal and does not include any Program improvements according to § 9.

- 6.3 The personal installation of the Program, the on-line help and instruction courses (see § 4) – as far as available - shall be paid by Licensee under the then valid fees of Licensor.
- 6.4 The Licensor reserves the right to adjust the royalties, esp. the annual license renewal fee, at regular intervals.

§ 7 GUARANTEE

- 7.1 Licensor guarantees that the Program is not subject to the rights of third parties, in particular that its use does not infringe patents, copyrights or other intellectual property rights of third parties.
- 7.2 Licensee shall instruct all employees and agents having access to the Program about the obligations under this Agreement. Licensee is obliged to prevent the unauthorized access to as well as the copying and decompiling of the Program by appropriate measures.
- 7.3 Licensee shall further subject any legal successor to the obligations under this agreement, if the Program is sold or provided to third parties in any way.

§ 8 LIMITATION OF LIABILITY

- 8.1 Licensee is fully aware, that the Program is still in a stage of development. Therefore Licensor is not liable for any failures eventually held in the Program, damage and/or loss of data, inaccuracy of data or technical faults, special, incidental, indirect or consequential damages or lost profits, business, revenue, goodwill or anticipated savings; further Licensor is not liable for attainment of the purpose intended by the Licensee. In addition, Licensor is not liable for any inaccuracies caused by the EBRA method itself. For further information about the EBRA Method see various publications, e.g. see “Krismer M., Bauer R., Tschupik J.P., Mayrhofer P.: EBRA: A METHOD TO MEASURE MIGRATION OF ACETABULAR COMPONENTS - TECHNICAL NOTE, J.Biomechanics, Vol. 28, No. 10, pp. 1225-1236, Pergamon, 1995.” and others under “www.ebra.info”.

8.2 As Licensor grants the use of the Program only for scientific medical use (e.g. publications or dissertation) and expressly not for medical treatment or diagnostic purposes, Licensor is not liable for any damages caused by the licensee due to inappropriate use for medical treatment or diagnostic purposes.

§ 9
PROGRAM IMPROVEMENTS

Licensor may offer to Licensee (but is not obliged thereto) all innovations and improvements of the Program as well as new developed EBRA subprograms for license. The price shall be in accordance with the price list of Licensor and is not included by paying the royalties according to § 6.

§ 10
TERM AND TERMINATION

10.1 The Agreement is entered into for the duration of the first license (one year upon transmission of the activation code) and is extended year by year upon the annual available renewal of the license in due time. The renewed license is also granted for one year upon the due renewal date. Licensor reserves the right not to offer a license renewal.

10.2 Licensor may terminate the agreement and therefore Licensee's license if Licensee fails to comply with the terms of this Agreement.

10.3 If the license is terminated or not renewed for any reason by either party, Licensee agrees to promptly discontinue use of and destroy all of Licensee's copies of the Program. Any terms of this Agreement that by their nature extend beyond termination of this Agreement remain in effect until fulfilled, and apply to both parties' respective successors and assignees.

§ 11
NO-CHALLENGE CLAUSE

During the time of this Agreement, Licensee shall not challenge the validity of the licensed Program or file an action for this purpose or support third party in such a challenge.

§ 12
SEVERABILITY CLAUSE

If a provision of this agreement should be invalid or become invalid, or if this agreement contains an omission, then the legal effect to the other provisions shall remain unchanged. Instead of an invalid provision, a valid provision shall be deemed to be agreed which comes closest to what the parties intended economically; the same applies in the case of an omission.

§ 13
MODIFICATIONS OF THE AGREEMENT

Any modification of this agreement shall be effective only when agreed upon by the parties in writing, collateral agreements to this agreement have not been entered into.

§ 14
JURISDICTION AND APPLICABLE LAW

- 14.1 This Agreement is governed by and construed in accordance with the laws of the Republic of Austria. The parties irrevocably agree that the competent court of Innsbruck shall have exclusive jurisdiction to settle all disputes that may arise out of or in connection with this Agreement and, accordingly, any proceeding arising out of or in connection with this Agreement is to be brought in this court. The parties irrevocably submit to the jurisdiction of this court and waive any objection to the proceedings in this court on the ground of venue or that the proceedings have been brought in an inconvenient forum.
- 14.2 The United Nations Convention on Contracts for the International Sale of Goods and the Austrian International Private Law do not apply.

Licensee acknowledges by his signature that this Agreement has been read carefully and is agreed to in all parts.

Place and date

Signature and stamp