

ANDOR TECHNOLOGY INCORPORATED – END USER
SOFTWARE LICENCE AGREEMENT

PLEASE READ THESE LICENCE TERMS CAREFULLY. THIS LICENCE AGREEMENT IS A LEGAL AGREEMENT BETWEEN YOU AND ANDOR TECHNOLOGY INC.

BY CLICKING THE “AGREE” BUTTON AND INSTALLING THE SOFTWARE YOU ARE AGREEING TO THE TERMS OF THIS END USER SOFTWARE LICENCE AGREEMENT.

THE TERMS OF THIS LICENCE INCLUDE, IN PARTICULAR, LIMITATIONS ON LIABILITY IN CLAUSES 8 AND 9.

IF YOU DO NOT AGREE TO THE TERMS OF THE AGREEMENT, YOU MUST NOT CLICK THE “AGREE” BUTTON AND YOU MAY NOT DOWNLOAD OR INSTALL THE SOFTWARE.

1. DEFINITIONS, INTERPRETATION AND SCOPE

1.1 In the Agreement, **unless otherwise provided:**

“Agreement”	means the terms of this end user software licence agreement, the Quotation, and the Order Acknowledgement;
“Andor”	means Andor Technology Inc., its employees, subcontractors and sub suppliers and its affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out herein;
“Andor 's Licensor”	means any licensor of Andor including a provider of software or third-party libraries in object code or otherwise;
“Customer”	means the person or organisation that originally purchased the applicable licence(s) for the Software from Andor or the Distributor;
“Distributor”	means a distributor named on the Quotation who is duly authorised by Andor to distribute the Software and/or Software Maintenance Agreements;
“Floating Licence Manager”	means a central licence administration system;
“Group”	means any entity within the ownership or control of Oxford Instruments Plc.
“Intellectual Property Rights”	means Patents, utility models, rights in inventions, copyrights and related rights, know-how, trade secrets, domain names, trademarks and trade names, service marks, design rights, rights in get-up, rights in computer software, database rights, chip topography rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights (whether registered or unregistered) and all applications for any of the foregoing, anywhere in the world;
“Imaris XT”	means an application interface that enables the Customer to add functions and transfer data to and from the Software;
“Licence”	means the licence granted by Andor to the Customer in respect of the Software subject to the terms of the Agreement;
“Licence Fee”	means the fees due by the Customer to Andor or the Distributor in respect of the Licence as set out in the Quotation;
“Order Acknowledgment”	means the acknowledgement of order issued by Andor or the Distributor to the Customer;
“Quotation”	means the quotation for the provision of the Software issued by Andor or the Distributor to the Customer;
“Representatives”	means the employees, agents, contractors or representatives of the Customer and other

“Satellite Licence”	persons duly authorised on its behalf in the using of the Software pursuant to the Agreement;
“Site”	shall have the meaning ascribed to it at clause 5.4;
“Software”	means the Customer's address as set out in the Quotation;
“Software Maintenance Agreement” or “SMA”	means the package of computer programs specified in the Quotation and includes any Update;
“Update”	means the maintenance agreement for the Software between the Customer and Andor a copy of which is available via this link https://imaris.oxinst.com/terms/andor-technology-inc-software-maintenance-agreement.pdf
“XTension”	means a maintenance release, correction, amendment, or update of the Software provided to the Customer as part of the SMA; and means a plug-in like functionality.

1.2 In the event of any inconsistency in the terms of the Agreement, the terms of the Quotation shall prevail, then the Order Acknowledgement; then these licence terms, in that order.

2. GRANT OF LICENCE

2.1 In consideration of Customer's payment of the Licence Fee and Customer agreeing to abide by the terms of the Agreement, Andor grants to Customer a non-exclusive, non transferable limited licence to use the Software in accordance with the terms of the Agreement.

3. FEES AND PAYMENT

The following provisions of this clause 3 do not apply to Licence purchases made by the Customer from a Distributor. The terms of payment for Licence purchases made by the Customer from a Distributor shall be provided in the Distributor's Quotation or as otherwise provided by the Distributor.

3.1 Subject to any applicable Quotation, the Licence Fee shall exclude any sales tax and any other applicable taxes and duties. Unless expressly included in an applicable Quotation, Andor may make reasonable additional charges for complying with any special requirements of Customer. Unless Customer provides Andor with appropriate tax exemption certificates, such additional charges shall be billed to Customer as a separate line item on each invoice.

3.2 Andor shall provide Customer with an invoice detailing the Licence Fee and Customer shall pay the invoice within thirty (30) days of the date of such invoice unless stated otherwise in the Quotation or the invoice.

3.3 Payment shall be made in either (i) United States Dollars (USD); (ii) Canadian Dollars (CAD); (iii) Euros (EUR); (iv) Great British Pounds (GBP); (v) Japanese Yen (JPY); or (vi) Swiss Francs (CHF) as set out in the applicable Quotation, clear of any banking transaction charges and without deduction, set off or counterclaim.

3.4 Without limiting any of Andor 's remedies, if payment is overdue Andor at its discretion may suspend or cancel Customer's Licence and use of the Software.

4. DELIVERY, INSTALLATION

4.1 Customer shall have direct access to a customer online portal (via Andor 's webpage) through which they will download the Software. If Customer is not able to access the online portal, Andor or Distributor shall use all reasonable efforts to deliver one (1) copy of the Software (either electronically or in disk or CD-ROM format) to the Site by the date specified in the Quotation or as soon as is possible thereafter.

4.2 Customer shall be responsible at its expense for complying with all applicable laws and regulations and obtaining any applicable licences and consents, relating to the import, export, installation, or use of the Software. Notwithstanding the foregoing, Customer shall not export, directly or indirectly, any technical data acquired from Andor under the Agreement (or any products, including the Software, incorporating any

- such data) in breach of any applicable laws or regulations.
- 4.3 Customer shall be deemed to have accepted the Software when Customer commences operational use of the Software. Unless otherwise specified in the Quotation, Customer is solely responsible for installation of: (i) the Software; and (ii) any Update.
5. **PERMITTED USE**
- 5.1 Customer may be licenced to use the Software for a trial period to allow Customer to test the functionality of the Software subject to the applicable terms of this document. Trial use of the Software will be permitted for a short-term period as set out in writing by Andor at the time of issuing the Software for trial purposes. Software issued for trial purposes contains an automated system that will cause the Software to cease working after the trial period expires. If Customer is using Software on a trial basis, Customer hereby acknowledges and agrees not to or attempt to circumvent or defeat the automatic Software cessation system and to immediately curtail all use of the Software at the end of the trial period.
- 5.2 If Customer has purchased a Floating Licence Manager, Customer may install and use any existing or additionally purchased Licence on and from any computer provided that all such computers on which the Software is installed are connected to a single local area network that is within the Site.
- 5.3 If Customer has not purchased a Floating Licence Manager, Customer shall only install and use the Software on one (1) computer within the Site. For the avoidance of doubt, use of the Software in conjunction with any sever to server operating system and/or by concurrent users is strictly prohibited and doing so will constitute a material breach of the Agreement.
- 5.4 Notwithstanding the foregoing, Customer may install and use the Software on one (1) additional computer for data analysis only, provided that such use is away from the Site ("**Satellite Licence**"). Use of a Satellite Licence at the Site is strictly prohibited and doing so shall constitute a material breach of the Agreement.
- 5.5 A Satellite Licence will be granted for a period determined by Andor which shall be no more than 30 days, following which the Satellite Licence shall automatically expire.
- 5.6 A Satellite Licence shall only be used by one (1) user at any time and shall not be used by the same user for consecutive periods.
- 5.7 Customer agrees to Andor monitoring License usage and Andor reserves the right to suspend or terminate Customer's use of the Software or of the issuing of further Licences to Customer in the event of Customer violating the provisions of the Agreement.
- 5.8 Customer's use of the Software shall be restricted to use of the Software in object code form for the purpose of processing Customer's data for the normal purposes of the Customer.
- 5.9 Customer shall procure that its Representatives are aware of the obligations and/or restrictions imposed on Customer by the Agreement and Customer hereby undertakes to be responsible and liable for all acts, omissions, fault, default or negligence of, or by, its Representatives arising in respect of, or in connection with, the obligations or restrictions imposed on Customer pursuant to the Agreement, to the extent that it would be liable had such act, omission, fault, default or negligence been caused by Customer under the Agreement, and be responsible for all losses, damages or expenses incurred by Andor as a result of any use of the Software in breach of the Agreement.
6. **RESTRICTIONS ON USE**
- 6.1 Except to the extent required to be permitted by applicable law or as expressly allowed in the Agreement, Customer shall not:
- 6.1.1 translate, adapt, disassemble, reverse engineer, decompile or copy the whole or any part of the Software, nor, without the prior written consent of Andor (except where such copying is incidental to normal use of the Software, or where it is necessary for the purpose of back-up or operational security), arrange or create derivative works based on the Software (save in relation to XTensions to be used with Andor 's Imaris XT);
- 6.1.2 make for any purpose including (without limitation) error correction, any modifications, additions or enhancements to the Software (save in relation to XTensions to be used with Andor 's Imaris XT);
- 6.1.3 permit the whole or any part of the Software to be combined or merged with or become incorporated in any other program;
- 6.1.4 assign, distribute, licence, sell, charge or otherwise deal in or encumber the Software;
- 6.1.5 provide or otherwise make available the Software in whole or in part, in any form to any person other than Customer's Representatives at the Site without prior written consent from Andor; or
- 6.1.6 remove or alter any copyright or other proprietary notice on any of the Software.
7. **INTELLECTUAL PROPRIETARY RIGHTS ("IPR")**
- 7.1 Customer acknowledges and agrees that all IPR in the Software anywhere in the world belongs to Andor or Andor 's Licensor (as the case may be), and Customer shall have no rights in or to the Software other than the right to use it in accordance with the terms of the Agreement. Nor shall Customer acquire in any way any title, rights of ownership, IPR of whatever nature in the Software or in any copies of it. All such interests and rights are and shall remain the exclusive and absolute property of Andor or Andor 's Licensor as applicable.
- 7.2 Customer shall effect and maintain adequate security measures to safeguard the Software from unauthorised access, use or copying by any person.
- 7.3 Customer shall notify Andor as soon as reasonably practicable if Customer becomes aware of any unauthorised access to, use or copying of any part of the Software by any person.
- 7.4 Andor undertakes at its own expense to defend Customer, or at its option, settle any claim or action brought against Customer alleging that the possession or use of the Software (or any part thereof) in accordance with the terms of this Licence infringes the IPR of a third party ("**Claim**") and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Customer as a result of or in connection with any such Claim. For avoidance of doubt, this clause 7.4 shall not apply where the Claim in question is attributable to possession or use of the Software (or any part thereof) by the Customer other than in accordance with the terms of this Licence, use of the Software in combination with any hardware or software not supplied or specified by Andor if the infringement would have been avoided by the use of the Software not so combined, or use of a non-current release of the Software.
- 7.5 If any third party makes a Claim, or notifies an intention to make a Claim against the Customer, Andor 's obligations under clause 7.4 are conditional upon Customer:
- 7.5.1 promptly giving written notice of the Claim to Andor, specifying the nature of the Claim in reasonable detail;
- 7.5.2 not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of Andor;
- 7.5.3 giving Andor and its professional adviser's access to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of Customer so as to enable Andor and its advisers to examine them and to take copies for the purpose of assessing the Claim; and
- 7.5.4 taking such action as Andor may reasonably request to avoid, dispute, compromise or defend the Claim.
- 7.6 If any Claim is made, or in Andor 's reasonable opinion is likely to be made, against Customer, Andor may at its sole option and expense:
- 7.6.1 procure for Customer the right to continue to use the Software (or any part thereof) in accordance with the terms of the Agreement;
- 7.6.2 modify the Software so that it ceases to be infringing;
- 7.6.3 replace the Software with non-fringing software; or
- 7.6.4 terminate the Agreement immediately by notice in writing to Customer and refund any fees paid by Customer as at the date of termination (less a reasonable sum in respect of the Customers' use

- of the Software to the date of termination) on return of the Software and all copies thereof,
- 7.7 Notwithstanding any other provision in the Agreement clause 7.4 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession or use of any third-party software or through the breach of any third party additional terms by the Customer.
- 7.8 This clause 7 constitutes Customer's exclusive remedy and Andor's only liability in respect of Claims and, for the avoidance of doubt, is subject to clause 8.
- 8. LIMITATION OF LIABILITY**
- 8.1 Nothing in the Agreement shall exclude or restrict either Party's liability for:
- 8.1.1 fraud;
- 8.1.2 death or personal injury resulting from the negligence of a Party or its employees while acting in the course of their employment; or
- 8.1.3 any other liability that cannot be limited or excluded by law.
- 8.2 Subject to clause 8.1, Andor's liability to Customer in contract, tort (including negligence), misrepresentation (whether innocent or negligent) breach of statutory duty or otherwise arising out of or in connection with the Software or other performance or non-performance of Andor's obligations under the Agreement shall:
- 8.2.1 be limited to 150% of the aggregate of all Licence Fees, paid by the Customer under the Agreement for the preceding twelve months in respect of any one incident or any series of connected incidents;
- 8.2.2 not extend to any:
- (a) loss of profits;
- (b) loss of revenue;
- (c) loss of business;
- (d) loss of goodwill or reputation;
- (e) loss of contracts;
- (f) loss of anticipated savings;
- (g) loss of production;
- (h) loss of or corruption to data; or
- (i) any other special, indirect or consequential loss or damage whatsoever, whether sustained by Customer or any other person and even if foreseeable or if Andor has been advised of their possibility.
- 8.3 Customer hereby acknowledges and agrees that the Software has not been developed to meet Customer's individual requirements, including any cybersecurity requirements Customer may be subject to under law or otherwise, and that it is therefore Customer's responsibility to ensure that the facilities and functions of the Software as described in the Agreement meet Customer's requirements.
- 8.4 Andor only supplies the Software for internal use by Customer's business, and Customer hereby agrees not to use the Software for any re-sale purposes.

9. DISCLAIMER OF WARRANTY

Customer acknowledges and agrees that use of the Software is at Customer's sole risk. The Software is provided "AS IS" and without warranty of any kind and Andor and Andor's Licensor EXPRESSLY DISCLAIM ALL WARRANTIES AND/OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY OR SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. ANDOR DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS, NOR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED, MALWARE OR ERROR FREE, NOR THAT DEFECTS IN THE SOFTWARE WILL BE CORRECTED. FURTHERMORE, ANDOR DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SOFTWARE OR RELATED DOCUMENTATION IN TERMS OF THEIR CORRECTNESS, RELIABILITY, OR OTHERWISE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY ANDOR OR ANDOR'S AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO CUSTOMER. THE TERMS OF THIS DISCLAIMER DO

NOT AFFECT OR PREDJUDICE THE STATUTORY RIGHTS OF CONSUMER ACQUIRING ANDOR PRODUCTS OTHERWISE THAN IN THE ORDINARY COURSE OF BUSINESS.

10. TERMINATION

- 10.1 Andor may terminate the Agreement at any time forthwith by notice in writing to Customer if Customer or its Representatives:
- 10.1.1 infringe Andor's or Andor's Licensor's Intellectual Property Rights;
- 10.1.2 are in breach of any of the obligations specified in the Agreement; or
- 10.1.3 a voluntary arrangement is approved, or an administration order is made, or receiver or administrative receiver is appointed over any of Customer's assets or undertaking or resolution or petition to wind up Customer is passed or presented (other than for the purposes of amalgamation or reconstruction) or if any circumstances arise which entitle a court or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding up petition or make a winding up order.
- 10.2 Termination of the Agreement for any reason, shall be without prejudice to the rights and liabilities of either Andor or Customer which may have accrued on or at any time up to the date of termination nor affect the coming into or continuance in force of any provision of the Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.
- 10.3 Any provision of the Agreement that expressly or by implication is intended to come into or continue in force after termination or expiry of the Agreement shall remain in full force and effect.
- 10.4 In the event of termination of the Agreement for any reason:
- 10.4.1 all rights granted to Customer under the Licence granted under clause 2.1 shall immediately cease;
- 10.4.2 Customer must immediately cease all activities authorised by the Licence; and
- 10.4.3 Customer must immediately and permanently delete or remove the Software from all computer equipment in Customer's possession, and immediately destroy or return to Andor (at Andor's option) all copies of the Software then in Customer's possession, custody or control and, in the case of destruction, certify to Andor that Customer has done so.

11. GENERAL

- 11.1 Customer shall not be entitled to assign or sub-licence to any third party any of its rights or obligations under the Agreement without Andor's prior written consent.
- 11.2 Andor, after giving written notice to Customer, may assign any or all of its rights and obligations under this Agreement to a member of its Group without the consent of Customer.
- 11.3 Each of the conditions of the Agreement operates separately. If any court or competent authority decides that any of them are unlawful or unenforceable, the remaining conditions will remain in full force and effect.
- 11.4 The Agreement is the entire agreement between the parties in relation to its subject matter. To the fullest extent permitted by law no other terms apply. Customer shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement.
- 11.5 Unless otherwise agreed in writing, no delay, act or omission by Andor in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.
- 11.6 Andor may update the terms of the Agreement at any time on notice to Customer. Customer's continued use of the Software shall constitute its acceptance of the Agreement, as varied. If Customer does not wish to accept the terms of the Agreement (as varied) Customer must immediately stop using the Software on the deemed receipt and service of the notice. If Andor has to serve notice on Customer, it will do so by email or by prepaid post to the address Customer provided in its order for the Software.
- 11.7 A person who is not a party to the Agreement shall not have any right to any benefit or to enforce any term of the Agreement.

11.8 Subject to clause 12, Andor and Customer each hereby irrevocably submits to the exclusive jurisdiction of the federal and state courts located in the State of Massachusetts. Customer hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding relating to the Agreement in Massachusetts and further irrevocably waives any claim that Massachusetts is not a convenient forum for any such suit, action or proceeding.

12. **SPECIFIC PROVISION FOR US GOVERNMENT DEPARTMENTS AND US UNIVERSITIES ONLY**

As a matter of law and/or their articles of incorporation, Andor recognises that US Government funded institutions and US Universities are prevented from agreeing contracts which are governed and construed in accordance with the laws of any State other than the State in which they are based. Accordingly, where Customer is a US Government funded institution or a US University (as confirmed in an Order Acknowledgement and/or Quotation), the Agreement shall be governed and construed in accordance with the internal laws of the State in which Customer is located (as confirmed in an Order Acknowledgement and/or Quotation), and Customer irrevocably agrees that the courts of the State where Customer is located shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement.

13. **COMPLIANCE WITH REQUIREMENTS OF 41 CFR §§ 60 1.4(a), 60-300.5(a) and 60-741.5(a)**

ANDOR IS AN EQUAL OPPORTUNITY EMPLOYER AND FEDERAL CONTRACTOR OR SUBCONTRACTOR. AS APPLICABLE, THE PARTIES AGREE THAT THEY SHALL ABIDE BY THE REQUIREMENTS OF 41 CFR SECTION 60-1.4(A); 41 CFR SECTION 60-300.5(A); 41 CFR SECTION 60-741.5(A); AND 29 CFR PART 471, APPENDIX A TO SUBPART A WITH RESPECT TO AFFIRMATIVE ACTION PROGRAM AND POSTING REQUIREMENTS, AND THAT THESE REQUIREMENTS ARE INCORPORATED HEREIN. THESE REGULATIONS REQUIRE THAT COVERED PRIME CONTRACTORS AND SUBCONTRACTORS ENSURE NONDISCRIMINATION AND TAKE AFFIRMATIVE ACTION IN EMPLOYMENT TO EMPLOY AND ADVANCE QUALIFIED INDIVIDUALS WITHOUT REGARD TO SEX, GENDER IDENTITY, SEXUAL ORIENTATION, RACE, COLOR, RELIGIOUS CREED, NATIONAL ORIGIN, PHYSICAL OR MENTAL DISABILITY, AND PROTECTED VETERAN STATUS. THESE REGULATIONS ALSO PROHIBIT COVERED CONTRACTORS FROM TAKING ADVERSE ACTION AGAINST APPLICANTS OR EMPLOYEES BECAUSE THEY HAVE INQUIRED ABOUT, DISCUSSED, OR DISCLOSED THEIR OR THEIR CO-WORKER'S COMPENSATION INFORMATION IN CERTAIN SITUATIONS.