ANDOR TECHNOLOGY LIMITED – END USER LICENCE AGREEMENT

PLEASE READ THESE END USER LICENCE AGREEMENT (“EULA”) TERMS CAREFULLY. THIS EULA IS A LEGAL AGREEMENT BETWEEN YOU AND ANDOR TECHNOLOGY LIMITED.

BY CLICKING THE “AGREE” BUTTON AND INSTALLING THE SOFTWARE YOU ARE AGREEING TO THE TERMS OF THIS EULA.

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

IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, 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 licence agreement, the Quotation, and the Order Acknowledgement;

“Andor” means Andor Technology Limited., 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; shall have the meaning ascribed to it at clause 7.4;

“Claim” 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;

“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; means an application interface that enables the Customer to add functions and transfer data to and from the Software;

“Imaris XT” means the licence granted by Andor to the Customer in respect of the Software subject to the terms of the Agreement;

“Licence” means the fees due by the Customer to Andor or the Distributor in respect of the Licence as set out in the Quotation;

“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;

“Representatives” means the employees, agents, contractors or representatives of the Customer and other persons duly authorised on its behalf in the using of the Software pursuant to the Agreement;

“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;

“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 Acknowledgment; 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 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. INSTALLATION

4.1 On payment of the Licence Fee, Customer shall have access to a customer online portal (via Andor’s website) through which Customer can download the Software. If Customer is not able to access the customer online portal, Andor or Distributor shall use all reasonable endeavours to deliver one (1) copy of the Software (either electronically or in disk or another format) to the Site by the date specified in the Quotation or as soon as is possible thereafter.

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...
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 end user licence agreement. Trial use of the Software will be permitted for a short-term period only as set out in writing by Andor at the time of making the Software available 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 purposes, provided that the Software and all such computers on which the Software is installed are connected to a single local area network that is within the Site.

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 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 affect 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 the 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 the 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 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 and 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, 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;

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 any and any other applicable costs).
IMPLIES WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO CUSTOMER. THE TERMS OF THIS DISCLAIMER DO NOT AFFECT OR PREJUDICE 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 concerning the Licence;

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 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.

11.3 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.

11.4 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.

11.5 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 send a notice on Customer, it will do so by email or by prepaid post to the address Customer provided in its order for the Software or to the Site.

11.6 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.

11.7 This Agreement shall be governed by and construed and
interpreted in accordance with the laws of England and all disputes arising out of or in connection with the Agreement shall be subject to the exclusive jurisdiction of the courts of England.