End User License Agreement

for *free* software licenses
by and between

S-PACT GmbH
Burtscheider Str. 1
52064 Aachen
Germany
(hereinafter referred to as "**S-PACT**")

and

the End User
(hereinafter referred to as "**Licensee**")

(S-PACT and Licensee hereinafter each referred to as "**Party**" and together as "**Parties**")

Preamble

S-PACT has developed the software PEAXACT which is a software product for the visualization, modelling, calibration, and analysis of data, originating e.g., in a measurement such as spectroscopy or chromatography. S-PACT also provides pre-configured PEAXACT models files (Analyzer Apps) for application-specific data analysis.

Licensee desires to obtain a *free license* for the PEAXACT software and/or a pre-configured PEAXACT model file and use it, *with limitations*, for the extraction of information from data. A regular license would be required for unlimited purposes, in particular for exploiting the extracted information scientifically, commercially, or otherwise.

Now, therefore, the Parties agree as follows:

1. Subject of this Agreement

1.1. Subject matter of the Agreement is the PEAXACT software in its latest release version and/or a pre-configured PEAXACT model file (both together hereinafter referred to as the "Contract Software"; pre-configured model file on its own referred to as "Analyzer App").

1.2. The Contract Software shall be made available to Licensee in object code via web download at www.s-pact.com. The Analyzer App may also be provided by other electronic means, e.g., by electronic mail or file upload to the customer's file server. The license file shall be provided by electronic mail or download. The user documentation shall be provided in the English language and in digital format only. Software source code is not a subject of this Agreement.

1.3. S-PACT shall not be obliged to provide advisory support, adjustment, implementation, training, or software maintenance services for free versions of the Contract Software.

2. Granting of rights

2.1. S-PACT shall grant Licensee the non-exclusive (simple) right to use the Contract Software for the duration of this Agreement and for the purpose dependent on the license type as follows:

    2.1.1. *Viewer License*: Licensee may use the Contract Software for viewing model files and data files, extracting information from the viewed data, originating, e.g., in a measurement such as spectroscopy or chromatography, and use the information for whatever subsequent purpose, e.g., gaining chemical, physical, or other knowledge about the measured system, monitoring and improving the measured process, exploiting the gained information scientifically, commercially, or otherwise.

    2.1.2. *Trial License*: Licensee may use the Contract Software for the extraction of information from data, originating, e.g., in a measurement such as spectroscopy or chromatography, and use the information for the sole purpose of testing and purchase evaluation. License shall not be obliged to exploit or distribute the extracted information for any other purpose, e.g., for patents, for scientific publications, or for commercial benefit. Licensee shall have the right to use the Contract Software to create model files, report files, and other files necessary to extract the information, but any kind of distribution of these files is prohibited.

    2.1.3. *Internal License*: Licensee may use the Contract Software for the extraction of information from data, originating, e.g., in a measurement such as spectroscopy or chromatography, and use the information for internal purposes only, i.e., for Licensee's own benefit. Any material created with the Contract Software under an Internal License (1) must not be used for external purposes (e.g., providing external analytical services or trainings using the Contract Software, writing a patent or scientific paper involving results obtained with the Contract Software, releasing such material into the public domain), and (2) must not be passed on to external parties if it could bring an economic or scientific benefit to the third party (e.g., selling, renting, giving away models or analysis results to customers, releasing screenshots to stock photo dealers). Licensee shall have the right to create Contract Software-supported presentations, feasibility reports, etc., and to pass these materials on to Licensee's customers as part of a sales process, whereby it must be clear to the third party that they do not receive any right to commercial or scientific exploitation of these materials but may only use them for the purpose of making a purchase decision, regardless of whether this decision includes or not a purchase of the Contract Software.

2.2. The Contract Software contains technology for the prevention of unlicensed use. The Contract Software requires activation to exercise Licensee's rights under this Agreement. A License file will be provided to complete activation.

2.3. Licensee may reproduce the Contract Software only to the extent this is necessary for the contractual use of the Contract Software. Necessary reproductions therefore include the installation of the Contract Software on the mass memory of the used hardware as well as loading the Contract Software into the random-access memory (RAM). Furthermore, Licensee may reproduce the Contract Software in the essential number of copies for backup purposes. Backup copies may be used for archival purposes only. Licensee shall not produce any further

copies, including a printout of the programme code on a printer or the production of copies of the user documentation or material parts thereof.

2.4. The decompilation of any provided programme codes into any other code format or any other forms of reverse engineering of the different production stages of the Contract Software is expressly prohibited.

2.5. Licensee shall not be entitled to make the Contract Software, including the user documentation and other associated materials, accessible in any way to a third party. This especially includes any leasing, lending, or any other conveying for a certain period of time.

2.6. Licensee requires additional rights for any more extensive use of the Contract Software. Any individual instance of such excess use constitutes a breach of contract and must immediately be notified to S-PACT.

2.7. Licensee shall not be entitled in any circumstances to remove, modify, or make illegible any copyright notice, serial numbers, or other programme identification features. This also applies to the suppression of the display of respective notices and features on the monitor.

3. Software Maintenance Service

3.1. S-PACT does not provide Software Maintenance Service for free versions of the Contract Software.

4. Remuneration

4.1. Use of free versions of the Contract Software is free of charge for the duration of this Agreement.

5. Term and Termination

5.1. This Agreement commences with the provision of the license file according to § 2.2 and is terminated automatically when the license expires.

5.2. S-PACT may terminate this license grant, by written notice to Licensee if Licensee breaches any material term of this license.

5.3. Licensee may terminate this Agreement at any time by destroying the Contract Software and documentation together with all copies and merged portions in any form.

6. Limited Liability

6.1. Parts of the Contract Software are compiled under use of the software MATLAB that was licensed from The MathWorks Inc. In no event shall The MathWorks Inc. be liable for any damages that occur in connection with the use of the Contract Software.

6.2. Neither S-PACT nor its suppliers shall be liable for incidental, consequential, indirect, special, or punitive damages of any kind, loss of information or data, or other financial loss arising out

of or in connection with the use of the Contract Software, whether based in contract, tort (including negligence) or any other theory, even if S-PACT has been advised of the possibility of such damages.

6.3. Any potential liability on the part of S-PACT for any warranties, infringements of third-party copyrights and for claims based on the German Product Liability Act shall not be affected.

7. Limited Warranty

7.1. S-PACT makes no warranty or representation that the operation of the software products will be uninterrupted or error free, or that all defects in the Contract Software will be corrected. Any third-party products, including software, included with S-PACT products are not covered by the S-PACT warranty and S-PACT makes no representations or warranties on behalf of such third parties. Any warranty on such products is from the supplier or licensor of the product.

8. Confidentiality

8.1. The Parties undertake to treat as trade secret any confidential information and documents of the respective other party which is either recognised as obviously confidential or has been identified by the other party as such.

8.2. Licensee understands that the calibration of Analyzer Apps requires measured data provided by Licensee to S-PACT. Licensee acknowledges that any information that S-PACT gains from the modelling and calibration of the Analyzer App involving Licensee's data, but not the data itself, is not subject to confidentiality, but may be used freely for the modelling and calibration of Analyzer Apps for third parties. If S-PACT also desires to use Licensee's data for third-party Analyzer Apps, S-PACT shall approach Licensee to negotiate a separate contract.

8.3. Licensee shall treat all programmes, codes and documentations, passwords and concepts as trade and business secrets of S-PACT.

8.4. Licensee's employees and any other third parties contracted by Licensee (including subcontractors, freelancers, etc.) shall be accordingly obliged.

9. General provisions

9.1. Any agreements and understandings containing a change, supplementation, or substantiation of these contractual provisions as well as special covenants, guarantees and arrangements shall be set forth in writing. If made by representatives or vicarious agents of S-PACT, they shall be binding only if S-PACT gives its respective consent in writing.

9.2. Licensee shall be entitled to offset only if there is a sentential counterclaim or if such counterclaim is recognised and unchallenged by S-PACT. Licensee may exercise any right of retention only to the extent it pertains to claims in connection with this Agreement.

9.3. The contracting parties may transfer any rights and obligations under this Agreement only with the prior written consent of the respective other party.

9.4. The parties agree that any legal relationship resulting from this contract relationship shall be governed by the laws of the Federal Republic of Germany; the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

9.5. The courts of the city of Aachen, Germany, shall have sole jurisdiction in the event of dispute arising from or in connection with this Agreement.

9.6. Should one of the provisions of this Agreement be or become invalid, this shall not affect the validity of the other provisions of the Agreement. To the extent reasonable, the contracting parties shall in good faith replace the invalid provision with one that is equal in terms of economic success as long as this does not cause a substantial change to the contents of this Agreement.