

End User License Agreement

for regular 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 license for the PEAXACT software and/or an Analyzer App and use it for the extraction of information from data 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.

Now, therefore, the Parties agree as follows:

1. Subject of this Agreement

- 1.1. Subject matter of the Agreement is the PEAXACT software 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"). The exact specifications of the Contract Software are described in the written quotation provided with this Agreement.
- 1.2. The Contract Software shall be made available to Licensee in object code via web download at www.s-pact.com or (on special request only) on a customary data medium. The Analyzer App may also be provided by other electronic means, e.g., by electronic mail or file upload to Licensee's file server. The license file shall be provided by electronic mail or web 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 be obliged to provide advisory support, adjustment, implementation, training, or software maintenance services only if such services are expressly and separately agreed between the parties in writing in this Agreement or under a separate contract.

2. Granting of rights

- 2.1. Subject to the condition precedent of complete payment of the compensation agreed according to § 4, S-PACT shall grant Licensee the non-exclusive (simple) right to 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 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.
- 2.2. Licensee shall be entitled to use the Contract Software according to the conditions of the selected license option. Conditions of the different license options are as follows:
 - 2.2.1. *Individual License:* Contract Software use is restricted to a single, designated named user. The Contract Software may be installed and operated on not more than two (2) individual computers, provided the Contract Software is only accessible to, and operated by, the named user for that license. The physical locations of the computers are not limited; the computers may be located at work, home, in a laboratory, or mobile. Licensee may only designate one named user access to the Contract Software. A computer login of a named user may not be shared with any other individual. Licensee may redesignate the named user for the Contract Software, whether temporarily or not, no more than once on any twelve (12) month period.
 - 2.2.2. *Group License:* The Contract Software may be installed and operated only on as many designated computers at any given time as the number of licenses acquired for the Contract Software. The physical locations of the computers are not limited; the computers may be located at work, home, in a laboratory, or mobile, and may be accessed locally or remotely (Remote Desktop), provided the Contract Software is only operated by one user per computer at any given time.
 - 2.2.3. *Network License.* The Contract Software may be installed only on a single designated network computer, and, at any given time, may be operated simultaneously only by as many users as the number of licenses acquired for the Contract Software.
 - 2.2.4. *Automation License.* The Contract Software may be installed and operated only on as many designated computers as specified by the number of licenses acquired for the Contract Software, provided the Contract Software is only operated locally (not remotely). The number of simultaneous users is not limited.
- 2.3. The Contract Software contains technology for the prevention of unlicensed use. The Contract Software requires activation to exercise Licensee's rights under this Agreement. Activation associates the use of the Contract Software with a specific computer. A License file will be provided to complete activation. Licensee may redesignate the computer for the Contract Software to a different computer, whether temporarily or not, no more than once in any twelve (12) month period.

- 2.4. 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.
- 2.5. 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 shall be permitted only to the extent that such acts are performed to obtain the information required to achieve interoperability of a computer programme created independently and to the extent such information cannot be obtained otherwise. Licensee shall initially request the required information from S-PACT.
- 2.6. Licensee shall be entitled to distribute / sell the Contract Software, including the user documentation and other associated materials, to a third party once. In that case Licensee shall surrender the Contract Software and any copies made thereof to the buyer and/or acquirer or delete the Contract Software. In the event of a transfer of the Contract Software, Licensee shall notify such third party of the applicability of these conditions of use. Licensee shall not lease the Contract Software to third parties or lend it free of charge for a limited period of time. Licensee shall not provide the Contract Software to third parties if there is substantiated suspicion that such third party may violate the provisions of the Agreement, in particular produce unauthorised copies. This also applies with regard to any employees of Licensee.
- 2.7. 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.
- 2.8. 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. Beyond the regulations on quality and deficiency in § 6, S-PACT offers Software Maintenance Service specified hereunder.
- 3.2. During any paid Software Maintenance Service term, if applicable, S-PACT shall provide services for the Contract Software which consist of:
 - 3.2.1. Exerting reasonable efforts to both (a) provide, within a reasonable time, workarounds for any material programming errors in the Contract Software that are directly attributable to S-PACT, and (b) correct such errors in the next available maintenance release, provided Licensee provides S-PACT with sufficient information to identify the errors.

- 3.2.2. Technical support for the Contract Software, which means assistance by telephone and electronic mail with the installation and/or use of the Contract Software, including all available bug fixes and patches, and their interaction with supported hardware and operating systems ("Platforms").
- 3.2.3. If applicable, two (2) service days in every twelve (12) months period for the re-validation of the Analyzer App's performance, including (a) minor adjustments of the Analyzer App, if necessary, to meet the target specifications, (b) an upgrade of the Contract Software to the latest version, and (c) an optional visit at Licensee's site (travel costs not included). Major adjustments of the Analyzer App (e.g., re-calibration or calibration transfer) are not included and subject to a separate offer.
- 3.3. S-PACT reserves the option to discontinue, in whole or in part, and at any time, offering Software Maintenance Service and/or technical support for any Platform.
- 3.4. Software Maintenance Service is provided to registered end users only. For registration, licensee shall communicate names of end users to S-PACT.

4. Remuneration

- 4.1. For the surrender of the Contract Software, for the granting of rights, and for the provision of Software Maintenance Service, Licensee shall be obliged to pay the remuneration as invoiced by S-PACT or its authorized reseller.
- 4.2. Payment of the remuneration shall be in compliance with the invoice payment conditions. In the event of default, S-PACT or its authorized reseller will charge the statutory interest for default.

5. Term and Termination

- 5.1. This Agreement commences with the provision of the license file according to § 2.3 and shall continue until the earlier of (a) termination by S-PACT or Licensee as provided hereunder, or (b) such time as Contract Software is not licensed to Licensee hereunder.
 - 5.1.1. *Perpetual License:* Licensee shall have the right to use the Contract Software indefinitely, subject to the termination provisions in this Agreement. Licensee acknowledges and agrees that the Software Maintenance Service for each Perpetual License will terminate automatically upon expiration of the initial Software Maintenance Service term included with the acquisition of the License. Thereafter, the Software Maintenance Service term may be renewed for the then-current Contract Software, at the then-current price, and for the then-applicable term, as long as S-PACT offers such service.
 - 5.1.2. *License Subscription:* Licensee shall have the right to use the Contract Software and associated Software Maintenance Service during the corresponding subscription period licensed. Except when otherwise stipulated, each License Subscription will renew automatically immediately after the current period, unless Licensee cancels the License Subscription in writing beforehand. Licensee acknowledges and agrees that the

Contract Software will stop operating promptly after expiration of the subscription unless Licensee pays the renewal fee and is provided new license files.

- 5.1.3. *Short-term License:* Licensee acknowledges and agrees that each Short-term License and associated Software Maintenance Service will expire automatically, and the Contract Software will stop operating promptly after the corresponding period of the term licensed, unless Licensee renews the license.
- 5.2. The Parties' right for extraordinary termination for good cause remains unaffected. S-PACT shall be entitled to terminate this Agreement for good cause, in particular, if Licensee breaches its duties as set forth herein in § 4 or if insolvency proceedings are brought in respect of Licensee's assets or if such proceedings are rejected because the Licensee's assets are insufficient to cover their cost.

6. Defects of quality and deficiency in title

- 6.1. Defects of quality are deemed to exist only if the Contract Software does not have the contractually agreed qualities or is unsuitable or only limitedly suitable for the contractually intended use. The contractually agreed qualities and the contractually intended use of the Contract Software are derived from the provisions of this Agreement and the specifications set forth in the written quotation and the software documentation.
- 6.2. Licensee shall document any arising defects in a manner to render them as transparent and replicable for S-PACT as possible and report such defects to S-PACT immediately after they are discovered. Licensee shall provide S-PACT in reasonable measure with all information which S-PACT might require for the evaluation and rectification of any defect. Licensee shall furthermore be obliged to cooperate in localising and/or containing the defect.
- 6.3. If Licensee reports any defect according to the above provision, S-PACT shall provide subsequent performance as follows: S-PACT shall be entitled and, if the subsequent performance does not entail unreasonable effort, also obliged to discharge itself of its obligation of subsequent performance by either curing the defect or new delivery. Should S-PACT fail, within an appropriate period of time allowing for at least two attempts at rectification, to rectify the defect or to provide a workaround to enable Licensee to use the Contract Software as contractually agreed, then Licensee shall be entitled to the further statutory claims regarding defects of quality.
- 6.4. The period allowed for rectification shall be reasonable taking into account the measures customary in software license contract relationships and the particularities of software. If Licensee grants S-PACT a grace period for the curing of any defects, Licensee shall state in writing immediately after the fruitless expiry of such period how the Agreement is to be operated from thereon. Should Licensee fail to make such statement or to make it immediately, then S-PACT may assume that the Agreement is to continue without change.
- 6.5. In the case of deviances which interfere only slightly with the suitability of the Contract Software in respect of its contractually intended use, Licensee shall not be entitled to claim for defects of quality (immaterial deviances). However, deviances affecting any saved data in a manner so as to make the appropriate and economically reasonable use of major parts of the

Contract Software impossible or allow a severely restricted use of the Contract Software only shall not be deemed to be immaterial deviances. When in doubt, a mere slowing down of the programme shall be deemed to constitute an immaterial deviance.

- 6.6. If a review of an error report submitted by Licensee should reveal that in reality there is no defect and/or that the defect is not caused by the Contract Software, S-PACT may request the reimbursement of costs incurred through the analysis efforts and any other work in connection with the unjustified error report based on the customary hourly rates of S-PACT.
- 6.7. There shall be no entitlement to claims for defects of quality in the event of defects resulting from the non-observance of operating conditions for the Contract Software as specified in the written quotation and software documentation.
- 6.8. S-PACT is entitled to copyrights according to Sect. 69a et seq. of the German Copyright Act (UrhG) in respect of the Contract Software. A deficiency in title is deemed to exist only in the event that Licensee could not effectively be granted the rights required for the contractual use of the programme codes.
- 6.9. If any third-party claims are asserted against Licensee for the infringement of any proprietary rights to the programme codes of the Contract Software, Licensee shall immediately notify S-PACT accordingly in writing and leave the defence against such claims to S-PACT to the extent possible. However, Licensee shall render all reasonable support to S-PACT at its own cost. In particular, Licensee shall provide S-PACT with any required information regarding the use and possible modifications of the Contract Software in writing, where possible, and supply any related documents necessary.
- 6.10. If any third-party rights are infringed, S-PACT may at its own choice and in its sole discretion provide subsequent performance by:
 - acquiring to the benefit of Licensee a right of use sufficient for the purposes of this Agreement from the party having the right to dispose of such proprietary right; or
 - modifying the Contract Software infringing upon the proprietary right without any or with only such impacts on the functions of the Contract Software that are deemed to be reasonable for Licensee; or
 - supplying a new version of the programme the contractual use of which will not infringe upon any third-party proprietary right to the programme codes of the Contract Software.
- 6.11. For the rest, the provisions of this § 6 shall be applicable mutatis mutandis in the case of any deficiency in title.
- 6.12. If Licensee itself should modify the Contract Software or have it modified by any third parties, Licensee shall not be entitled to any claims because of defects of quality or deficiency in title, unless Licensee proves that any defects that occurred were not caused by such modification and the defect analysis and rectification on behalf of S-PACT is not affected thereby.
- 6.13. Any claims based on defects of quality and deficiency in title shall become time-barred after twelve (12) months from delivery of the Contract Software. In the case of bad faith and

acceptance of guarantees, which must be identified as such, as well as in any other cases of imperative liability on the part of S-PACT the statutory provisions relating to material defects and deficiencies in title shall remain unaffected.

7. Liability

- 7.1. 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.
- 7.2. S-PACT shall be fully liable for intent and gross negligence as well as damages caused by injury to life, body, or health.
- 7.3. In an event of slight negligence, S-PACT shall be liable only for breaches of a material contractual obligation (cardinal duty).
- 7.4. In a case according to § 7.2, S-PACT shall not be liable for any lack of commercial success, lost profits, and indirect damages.
- 7.5. Liability in accordance with the above § 7.2 and § 7.3 shall be limited to the typical, foreseeable damages. Typical, foreseeable damages are limited to a maximum amount equalling one half of the compensation paid under this Agreement.
- 7.6. Licensee shall be responsible for the regular backup of its data. According to the preceding provision, S-PACT shall therefore be liable in the event of any loss of data incurred through S-PACT's fault only for the costs of data replication, the backup copies to be produced, and for the recovery costs for the data that would also have been lost had they been backed up properly.
- 7.7. The limitation of liability shall apply mutatis mutandis to the benefit of the employees and agents of S-PACT.
- 7.8. 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.

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 and agrees 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.
- 8.5. Without prejudice to the above provisions, S-PACT shall be entitled to publicly name Licensee as customer (e.g. on websites) with its full company name.

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.