Terms and Conditions for the use of IBRA from Zubisoft GmbH

Version: 07 October 2015, replacing all previous versions.

By accessing and using the 'Internet Based Refractive Analysis' software ('**IBRA**') you ("**you**" or "**Customer**") acknowledge that you have read, understood and agreed to be bound by the following terms and conditions.

1. Ownership, Copyright and Restrictions

1.1 In these terms and conditions IBRA is used as an umbrella term for any or all versions of Zubisoft's IBRA product.

1.2 IBRA is the exclusive property of Zubisoft GmbH whose address is Birchstrasse 151, CH-8156 Oberhasli, Switzerland ('**Zubisoft**'). Zubisoft shall have sole and exclusive ownership and all rights, title and interest in and to IBRA and all derivative works, modifications and enhancements thereof (including ownership of any and all trade secrets, patents, copyrights and any other intellectual property rights pertaining thereto) subject only to the license rights expressly granted pursuant to this Agreement. Customer hereby assigns to Zubisoft all rights and title to any adaptations, additions, collective works, compilations, derivative works, enhancements, modifications and translations of IBRA regardless of when or by whom created, and shall execute whatever documents are required by Zubisoft to affect such assignment. Customer shall keep IBRA free from all claims, liens and encumbrances.

1.3 Except as set forth in this agreement Zubisoft makes no warranty and expressly disclaims any other warranty, express, implied or statutory, with respect to IBRA including (without limitation) any implied warranty of satisfactory quality, merchantability or fitness for a particular purpose, non-infringement of third party rights, and those arising from a course of dealing or usage of trade. In particular (but without prejudice to the generality of the foregoing) Zubisoft makes no warranty that use of IBRA will be uninterrupted or error free or that any errors or defects in IBRA will be corrected, or that IBRA's functionality will meet the Customer's requirements. The Customer accepts responsibility for the selection of IBRA to achieve its intended results.

1.4 Customer may not use, copy, modify or distribute IBRA (electronically or otherwise) or any copy, adaptation, transcription or merged portion thereof except as expressly authorized by this Agreement. Customer may not (and shall not permit others to) reverse assemble, reverse engineer, reverse compile or otherwise translate IBRA in any manner except to the extent that applicable law specifically prohibits such restrictions. Customer's rights herein may not be transferred, leased, encumbered or assigned. The license granted herein permits Customer to use IBRA solely for its own benefit and its own internal business operations. Customer shall not remove or alter any copyright or other proprietary notices or legends contained in or on IBRA. Customer shall not publish any results from Benchmark tests run on IBRA to a third party without Zubisoft's prior written consent.

1.5 Any enhancements or software upgrades (whether provided under separate maintenance agreement or otherwise) shall be deemed a part of IBRA and are provided subject to the terms hereunder.

2. Registration, Access to IBRA, Availability and Services

2.1 Customers can register for an IBRA license online or via Zubisoft's customer support service. The '**Date of Registration**' is the date of submission of an email from Zubisoft to the customer containing username and password.

2.2 Access to IBRA services is granted only to persons having identified themselves by entering their user identification (username) and password. The Customer and each of his/her authorised agents are obliged to change the initial password sent to him/her by Zubisoft immediately upon receipt. Zubisoft strongly recommends changing the password periodically and to have a password length of at least 8 characters with a combination of numbers, lower and upper case characters.

2.3 Only those identifying themselves in accordance with the provisions of Clause 2.2 above shall be authorised users of IBRA. Furthermore Zubisoft has the right at any time and without stating reasons to refuse to provide information or to accept instructions, orders and communications and to require the customer or his/her agent to identify him/herself by alternative means (for example by signature or in person).

2.4 If an IBRA license is provided for free, or strongly subsidized, to a customer employed or subcontracted by a health institution, for example a surgeon of an eye surgery group, the institution's senior management gains the right to access the customer's data for monitoring and enterprise quality management reasons. If the IBRA user does not agree to this practice the health institution and Zubisoft have to be informed in writing while the customer's access to the IBRA system might be suspended temporarily or permanently.

2.5 Zubisoft is authorised to block access by the customer and/or one or all of his/her agents to individual or all services at any time, without stating reasons and without prior notification, if it feels that there are reasonable grounds for doing so. Zubisoft accepts no liability for any loss or damage incurred by Customer as a result of such action by Zubisoft.

2.6 The Customer acknowledges and agrees that a single user IBRA license allows the collection and analysis of patient and treatment data from one surgeon only. A multi-user IBRA license is required if the data recorded is from different surgeons.

2.7 Zubisoft may record and analyse all Customer's activities on IBRA and Zubisoft reserves the right to audit use of IBRA for the purpose of verifying Customer's compliance with the terms of this Agreement and for the purposes of analysis, forecasting, clinical research, security, system monitoring, sales and marketing.

2.8 In addition to Zubisoft's rights under Clause 2.7 above, Zubisoft may grant third parties access to anonymized data for the purposes of research, postmarket surveillance incl. safety and effectiveness monitoring, treatment review, and the creation of treatment nomograms and outcome predictions. Customer and patient identities will be kept confidential except for the case Zubisoft is obliged to release such data, for example the mandatory reporting of adverse events, under- or malperformance and other safety problems in relation with the use of a medical device. Zubisoft will contribute to benefit-risk assessments whenever possible.

2.9 For the proper use of IBRA the availability of the Zubisoft master servers may be necessary. Zubisoft will take measures to ensure a high availability of the server. However, it is not possible to guarantee an uninterrupted, timely or error-free availability.

2.10 IBRA's data is stored in Switzerland in high secure data centres fulfilling the international ISO 9001 quality management and ISO 27001 information security standards. Most of the HIPAA security, privacy and notification rules are also met, however, Zubisoft cannot guarantee 100% HIPAA compliance. Data is subject to the Federal Data Protection Act.

2.11 The Customer shall implement appropriate technical and organisational measures to ensure that all data entered into IBRA is anonymized or de-identified.

2.12 Customer acknowledges and agrees that it shall be solely responsible for its use of IBRA including ensuring that such use complies with all applicable laws, including, without limitation, data protection and privacy laws. Customer further acknowledges and agrees that IBRA is not designed to achieve

or contribute to Customer's compliance with these or other laws or regulations of any jurisdiction.

2.13 IBRA may access and upload data from third party databases, such as electronic medical record ('EMR') systems. In such situations IBRA works as an 'add-on' and the uploaded data will only be stored temporarily without data backup; the EMR system operates as the primary and permanent database and any permanent change to data must be processed on the primary system. Zubisoft accepts no liability for the accuracy of third party data nor for any loss or corruption of data caused by technical malfunction either before, during or after data transfer or upload.

2.14 IBRA can be setup for automatic upload of extracted data from third party EMR systems. The Customer acknowledges that every automatic upload may completely and irreversibly replace pre-existing data stored in IBRA.

2.15 IBRA, and in particular the 'laser performance' or the 'IOL performance' tool, is intended to serve as an adjunct tool to assist physicians with decision making processes. IBRA is intended to be used in conjunction with a comprehensive eye examination and the appropriate diagnostic tests and measurements necessary for surgery.

2.16 The results obtained by using performance analyses are not intended to serve as medical or surgical instruction from Zubisoft, or be definitive; nor can Zubisoft guarantee that the results will be accurate in every case. Physicians who use performance tools must arrive at their own independent conclusions regarding the proper use and are solely responsible for the patient safety and the refractive and visual outcomes. Physicians should also ensure that patients are informed of and have consented to treatments been analysed with IBRA.

2.17 The activation of certain links on IBRA may cause the customer to leave Zubisoft's services. Zubisoft does not review any linked sites and does not warrant or guarantee, either expressly or implicitly, the quality, pertinence, accuracy, completeness, availability or legality of the content of these sites, nor shall it be in any way responsible for the products, services, information and other content offered via these linked sites.

3. Disclaimer of Warranties

3.1 IBRA is an internet-based software application which is accessed remotely and while Zubisoft implements appropriate security measures it does not guarantee absolute security and Zubisoft accepts no responsibility for the integrity of the Customer's or user's terminal equipment.

3.2 Zubisoft offers no guarantee of the accuracy and completeness of the IBRA data that it makes available to the Customer. In particular, all the data provided including (but not limited to) mathematical results, performance outcomes, predictions and analyses published by IBRA, transmitted to the Customer or obtained via the selection and decision-making tools provided by Zubisoft, is provided for information purposes only and should not be relied upon as advice or a recommendation. All of the Customer's decisions shall be based exclusively on the Customer's own assessment and the Customer is solely responsible for all decisions.

3.3 Zubisoft makes no warranties or representation and customer shall not rely on information or advice, whether oral or written, from Zubisoft or from subcontracted Zubisoft agents.

4. Limitation of Liability

4.1 Neither party excludes or limits liability to the other party which cannot lawfully be excluded or limited including, without limitation, for death or personal injury caused by its negligence.

4.2 Subject to Clause 4.1, in no event will Zubisoft be liable to Customer (whether in contract, tort (including negligence) or otherwise) for any loss of or corruption of data, loss of profits or of contracts, loss of business or of revenues, loss of operation time, wasted management time, loss of goodwill or reputation, in each case whether caused directly or indirectly, or for any indirect, incidental, punitive, exemplary or consequential loss, damage, cost or expense whatsoever and whether or not Zubisoft has been advised of their possibility.

4.3 Subject to Clauses 4.1 and 4.2, to the extent permitted by applicable law, Zubisoft's liability hereunder is limited to CHF50. In cases where applicable state or country law does not allow such limitation Zubisoft's liability under this Clause 4.3 shall be limited to the price paid for the relevant license.

4.4 No action, regardless of form, arising out of this Agreement may be brought by either party more than one (1) year after that party knew or should have known of the event which gave rise to the cause of action.

5. Fees, Payment and Termination

5.1 This Agreement shall take effect on the Date of Registration and shall remain in force until terminated by either party.

5.2 A party may terminate this Agreement immediately if the other party commits a material breach and fails to cure such breach within thirty (30) days after written notice thereof from the non-breaching party; or (ii) the other party enters bankruptcy proceedings, becomes insolvent or otherwise becomes generally unable to meet its obligations under this Agreement.

5.3 User license fees cover initial software and database setup. The Customer agrees to pay the charges for the user license(s) and other services in advance.

5.4 The minimum term for an IBRA user license is 12 months ('**Standard Term**'). Zubisoft may agree alternative licensing models with individual customers (e.g. monthly payments and shorter minimum terms) which arrangements shall be subject to written agreement.

5.5 Customer agrees to pay in addition to the license fees all applicable duties, tariffs and similar charges which may apply or be charged under applicable laws and regulations as well as all taxes at the appropriate rate resulting from any transaction under this Agreement including, without limitation, sales, use, excise, value-added, goods and services, consumption, business and other similar taxes, except taxes based on Zubisoft's income or property.

5.6 Sales are seen as export business-to-business deals. The Customer must account for VAT and/or sales taxes on the services received (reverse charge). Zubisoft will add MWST to the fees for sales within Switzerland.

5.7 IBRA licenses can be purchased and renewed via online payments. Online credit card transactions are Zubisoft's preferred payment method and will be handled by payment service providers (e.g. Datatrans, SIX) with 3-D Secure processes (e.g. Verified by Visa, MasterCard Secure Code). Zubisoft will not store credit card details. Processing fees may apply.

5.8 IBRA licenses can be renewed via TopUp Voucher codes. Vouchers have an expiry date and are not refundable. Additional "Voucher Terms and Conditions" may apply. Zubisoft does not act as partner or agent on behalf of the voucher seller and the voucher seller does not act as partner or agent on behalf of Zubisoft.

5.9 Individual online training, webinar sessions, data processing and consulting services may be charged extra.

5.10 Zubisoft will refund IBRA license payments within 30 days after registration provided the IBRA software was not accessed and used. A refund service fee of CHF 25/USD 30 may apply. No refund will be provided after the initial 30 day period. Generally no refund will be provided after the Customer has attended a training or webinar session. If Zubisoft cancels a service, training or webinar, the relevant registration fees will be refunded in full. Zubisoft does not offer refunds for non-attendance due to illness, emergency or events beyond Zubisoft's control.

5.11 The Customer or Zubisoft may terminate this Agreement at any time on 31 days' notice, during which period IBRA services may continue and fees may apply. Unused license periods will not be reimbursed in the event of early termination.

5.12 Notwithstanding anything to the contrary in this Agreement, any termination of this Agreement shall not relieve either party of any of its obligations or liabilities accrued hereunder prior to such termination. On termination for any reason: (a) all rights granted to Customer under this Agreement shall cease; (b) Customer shall cease all activities authorized by this Agreement; (c) Customer shall immediately pay to Zubisoft any sums due to Zubisoft under this Agreement; and (d) Customer shall immediately cease using and destroy or return to Zubisoft (at Zubisoft's option) all copies of IBRA or any derivatives thereof then in Customer's possession, custody or control and, in the case of destruction, certify to Zubisoft that it has done so.

6. Confidentiality

Each party acknowledges that in the course of this business relationship it may have access to information which is proprietary and/or confidential ("**Confidential Information**") and which belongs to the other party. Without limitation, IBRA and the terms of this Agreement are Confidential Information of Zubisoft. Each party agrees not to disclose any Confidential Information (subject to clause 2.9) of the other received as a result of this Agreement to any third party without the written consent of the other party provided, however, each party may permit access to Confidential Information to employees and agents of that party under confidentiality obligations consistent with this Agreement. Confidential Information does not include any information which: (a) is or becomes generally available to the public through no disclosure in breach of this Agreement; (b) is wholly and independently developed by the receiving party without the use of the disclosing party's Confidential Information; (c) becomes available to the receiving party from a source not a party to this Agreement, provided that such source is not violating any contractual or legal obligation; (d) was known on a lawful, non-confidential basis by the receiving party prior to disclosure; or (e) is required, based upon the reasonable advice of counsel, to be disclosed by any applicable law, regulation or competent judicial, governmental, or other authority. If the receiving party becomes legally required to disclose any Confidential Information, the receiving party shall, to the extent practicable, provide the disclosing party with prompt written notice of such requirement so that the disclosing party may seek a protective order or other appropriate remedy and/or waive compliance with respect to that disclosure. Each party will exercise commercially reasonable efforts not to disclose any personal data to the other party and to restrict the other party's access to its personal data, but if a party is given access to the other party's personal data, the receiving party will protect such personal data using a reasonable standard of care.

7. Foreign legal provisions / Import and export restrictions

7.1 Notwithstanding any other provision of this Agreement the Customer shall retain responsibility for compliance with all applicable regulatory requirements and laws.

7.2 The customer acknowledges that the use of IBRA from abroad may constitute an infringement of import and export restrictions governing encryption algorithms.

8. Miscellaneous

8.1 Zubisoft reserves the right to alter these terms and conditions, change or remove IBRA and Zubisoft products and prices at any time and without any prior notice.

8.2 If any of the terms in this contract are not valid or legally enforceable the other terms will not be affected.

8.3 Except for payment obligations, each party shall be excused from failure to perform its obligations under this Agreement if such failure results from causes beyond its reasonable control including (without limitation) Acts of God, terrorism, civil unrest, riots, war, boycott, economic sanctions or other "force majeure" events.

8.4 This Agreement may not be assigned or transferred by Customer without the prior written consent of Zubisoft.

8.5 Nothing in this Agreement is to be construed as creating an agency, partnership, or joint venture relationship between the parties hereto.

8.6 All legal relations between Zubisoft and the customer are governed by Swiss law. The sole place of jurisdiction for all legal proceedings is Zurich. Zubisoft also reserves the right to take legal action against the Customer before any other competent court.

8.7 This Agreement, including all Schedules and Appendices hereto (which form part of this Agreement), constitutes the entire agreement between the parties pertaining to the subject matter hereof and merges all prior agreements and discussions of the parties with regard to the transactions contemplated herein. Customer acknowledges that it is entering into this Agreement solely on the basis of the agreements and representations contained herein, and for its own purposes and not for the benefit of any third party.