

## SOFTWARE-AS-A-SERVICE AGREEMENT

This is a legal agreement between you and Leica Biosystems Division of Leica Microsystems, Inc., including its corporate affiliates, ("Service Provider"), a Delaware corporation with its principal offices located at Buffalo Grove, Illinois. Your use of Service Provider's Internet site (the "Site") or any of the other services offered through the Site including any off-line or third party components, data, lists, reports, dashboards, templates, documentation, software, applications or services (collectively, the "Services") is subject to this agreement (this "SaaS Agreement"). If you do not agree to this SaaS Agreement, you agree not to use or access the Services or the Site. If you are agreeing to this SaaS Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to this SaaS Agreement. Your registration for, or use of, the Site or the Services will be deemed to be your acceptance of this SaaS Agreement. Service Provider may modify this SaaS Agreement at any time by providing ten (10) days' prior written notice to you by posting a revised SaaS Agreement on the Site. Your continued use of the Site constitutes your binding acceptance of this SaaS Agreement, including any modifications that Service Provider makes. If you send Service Provider written notice of your objection to the revised SaaS Agreement within ten (10) days of that revised agreement being posted, Service Provider may elect to continue offering you the Services under the old terms of the SaaS Agreement or Service Provider may terminate this Agreement by providing you ten (10) days' prior written notice. In that case, the terms of the old SaaS Agreement will apply until termination. You are responsible for regularly reviewing this SaaS Agreement.

### 1. Additional Terms; Service Communications

1.1 Some of the Services may be subject to additional conditions posted on the Site. Your use of the Services is subject to those conditions, which are incorporated into this SaaS Agreement by reference. In the event of an inconsistency between this SaaS Agreement and any additional conditions, the provisions of such additional conditions will prevail.

1.2 You understand and agree that the Services may include communications such as service announcements and administrative messages from Service Provider or Service Provider's partners. You will not be able to opt out of receiving these service announcements and administrative messages while using the Site and Services until you send Service Provider a specific written notice pursuant to Section 12.2 requesting the termination of your subscription. After termination of this SaaS Agreement information about you will be eliminated from the Site and Service Provider's mailing list. But Service Provider may retain copies of information related to you or this Agreement for its business and legal records. You also understand that Service Provider's Services may include sending or displaying advertisements to you.

### 2. License Grant; Your Content

2.1 Service Provider hereby grants you a non-exclusive, non-transferable right to access the Site and Services for the term for which you have paid the applicable subscription fees ("SaaS Term"), subject to this SaaS Agreement. If any subscription based Services are granted on a Named User basis (as defined below), rights of any user to access the Services cannot be shared or used by more than one individual. In addition, a Named User may not be transferred from one individual to another unless the original user is no longer permitted access to the Services.

2.2 The Site includes a combination of content that Service Provider creates, that Service Provider's partners create, and that Service Provider's users create. You may use the content on the Site only in connection with the Services and/or your licensed use of Service Provider's products. Except for the foregoing, you may not modify, publish, transmit, participate in the transfer or sale of, reproduce, create derivative works of, distribute, publicly perform, reverse engineer, publicly display, or in any way exploit any of the software, materials or content on the Site in whole or in part.

2.3 You are solely responsible for all materials, whether publicly posted or privately transmitted, that you upload, post, e-mail, transmit, or otherwise make available on the Site or through the Services ("Your Content"). You have the sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of Your Content.

2.4 You warrant that you own or have sufficient legal right to the intellectual property and other rights in Your Content and that Your Content, including any use of Your Content by Service Provider as described in this SaaS Agreement, does not violate applicable law or the rights of any third party. You will indemnify and hold Service Provider harmless from and against any violation of this warranty.

2.5 You may be exposed to content that you find offensive, indecent, or objectionable or that is inaccurate, and you bear all risks associated with using that content. Service Provider has the right, but not the obligation, to remove any content that may, in Service Provider's sole discretion, violate this SaaS Agreement or that is otherwise objectionable.

2.6 Service Provider will be entitled to adjust the features of the Services and Site and the underlying technical infrastructure used to provide them to reflect the continuing development of the Services and technical advances.

2.7 If you exceed the maximum number of cases/slides permitted under your subscription package, you will be charged pro rata for each case/slide exceeding the maximum number permitted by your subscription package. Any such additional charges will be billed to you and payment will be due thirty (30) days from receipt of invoice.

### 3. Usage Rights

3.1 Subject to the terms of this SaaS Agreement, Service Provider grants to you the nontransferable and nonexclusive right to permit individuals authorized by you up to the number authorized in your quote or similar document or actual subscription package (each a "Named User") to remotely access the Services solely to the extent necessary to enter, access and manage Your Content for your own internal business purposes as permitted in this Agreement. As used in this Agreement, "you" and "your" will include all Named Users authorized under your account. You are responsible for all Named Users and all other individuals that are directly or indirectly authorized by you to access the Services. In addition, you are responsible for managing any changes to such Named Users.

3.2 You will not be entitled to license, sell, lease, rent, outsource or otherwise make available the Services to third parties, other than Named Users for which you have subscribed. You will be responsible for the acts and omissions of all such Named Users as if they were your acts and omissions.

3.3 You will not remove notices and notations on or in the Services or Service Provider content that refer to copyrights, trademark rights, patent rights and other intellectual property rights. Unless expressly agreed otherwise in this Agreement, Service Provider owns all right, title and interest in any and all patent rights, copyrights, trademark rights and other rights in the Services, as well as any improvements, design contributions or derivative works to the Services conceived or created by either party to this SaaS Agreement. Except for the limited rights expressly granted in this SaaS Agreement, this SaaS Agreement does not transfer from Service Provider any proprietary right or interest in the Services.

3.4 Other than the rights granted under Section 3.1, you will not be granted a separate license to any software products or content utilized by Service Provider for the provision of the Services. In particular, such software products or content (i) will not be installed on any computer, server or other device of yours and (ii) you have no claim to being provided with such software products or content in physical form.

3.5 The technology and the software underlying the Site and the Services are the property of Service Provider and/or Service Provider's affiliates, suppliers and partners. You will not translate, de-compile, reverse-engineer or otherwise modify any parts of the Services. You will not, and will ensure that Named Users do not: (i) circumvent the user authentication or security of the Site or Services or any host, network, or account related thereto; (ii) use any application programming interface to access the Services other than those made available by Service Provider; (iii) mirror the Site on any server; (iv) make any use of the Services that violates any applicable local, state, national, federal, international or foreign law. You will use commercially reasonable efforts to prevent the unauthorized license, sale, transfer, lease, transmission, distribution or other disclosure, or third party use of your user identification(s), code(s), password(s), procedure(s) and user keys issued to, or selected by you for entry into the Services. But this restriction will not apply to Named Users access to the Services as permitted in this SaaS Agreement.

#### **4. Confidentiality/Intellectual Property Rights**

4.1 Your Content will be protected from disclosure to third parties by Service Provider with at least the same protective precautions that Service Provider takes to protect its similar proprietary information from unauthorized disclosure. Service Provider will not, without your prior written consent, disclose any of Your Content to any third party, except to those bona fide individuals whose access is necessary to enable Service Provider to perform its obligations hereunder or as necessary to comply with any legal or governmental order or similar requirement. But Service Provider may disclose Your Content to the buyer, by sale, merger, operation of law, or otherwise, of Service Provider's business related to the Site or Services.

4.2 You agree not to reproduce any Service Provider Confidential Information to which you are provided access through the Site or Services in any form except as authorized at the time of disclosure. Any reproduction of Service Provider Confidential Information will remain the property of Service Provider and you will reproduce and not obscure any and all confidential or proprietary notices or legends which appear on the original. You agree to (a) take all reasonable steps (defined below) to keep all Service Provider Confidential Information strictly confidential; (b) to use Service Provider Confidential Information solely as authorized at the time of disclosure and (c) not to disclose any Service Provider Confidential Information to any party without the prior written consent of Service Provider. You do not acquire any rights in Service Provider Confidential Information except the limited rights as described above. In no event will you use Service Provider Confidential Information to create, enhance, modify, rent, lease, loan, sell, distribute or create derivative works based on the Services or the software used to provide the Services, or compete with Service Provider software or the Services in whole or in part. As used in this Section 4, "Service Provider Confidential Information" will mean all trade secrets and other information or Services which Service Provider or third parties protect against unrestricted disclosure to others which is either labeled "Confidential," or which is accessed through a restricted area of the Site, or which is reasonably identifiable as confidential based on the type of information and the manner of its disclosure, and "reasonable steps" means those steps you and/or your company take to protect your own Confidential Information similar to Service Provider's Confidential Information, which steps will not constitute less than a reasonable degree of care.

4.3 Service Provider and/or its Service Providers own(s) all rights, title and interests, including all intellectual property rights, in and to the Site and the Services, the software, materials and other related content (excluding Your Content), and any derivatives relating to the Site or the Services. In addition, all content published on the Site, are protected by Service Provider's copyrights or trademarks or those of Service Provider's customer, suppliers or users.

4.4 You may provide, or Service Provider may solicit, your input regarding the Services, including, without limitation, comments or suggestions regarding the possible creation, modification, correction, improvement or enhancement of Services or any other Service Provider site, service or product, or input as to whether you believe Service Provider's development direction is consistent with your own business and IT needs, the technology marketplace in general, and the like (collectively "Feedback"). You acknowledge and

agree that any information disclosed by Service Provider during discussions related to Feedback will be considered Service Provider Confidential Information and will be protected from disclosure in accordance with the terms of this SaaS Agreement. In order for Service Provider to utilize such Feedback, you grant to Service Provider a non-exclusive, perpetual, irrevocable, worldwide, royalty free license, with the right to sublicense to Service Provider's licensees and customers, under all relevant proprietary rights, to use, publish, and disclose that Feedback in any manner Service Provider chooses and to display, perform, copy, make, have made, use, sell, and otherwise dispose of Service Provider's and its sub-licensee's products or services embodying Feedback in any manner and via any media Service Provider chooses, without reference to the source. Service Provider will be entitled to use Feedback for any purpose without restriction or remuneration of any kind with respect to you and/or your representatives. You acknowledge that the information related to the Services disclosed to you under this SaaS Agreement, is only intended as possible strategies, developments, and functionalities of the Services and is not intended to bind Service Provider to any particular course of business, product strategy, and/or development.

## **5. Third-Party Sites, Products, and Services**

5.1 Service Provider is only responsible or liable for the content posted on the Site to the extent created by Service Provider. You agree, Service Provider is not responsible for the Content of other users of the Site or the Services. The Site may contain links to external Web sites and information provided on such external websites by Service Provider partners and third-party service providers. Service Provider will not be responsible for the contents of any linked Web site, or any changes or updates to such sites. You further agree that Service Provider will not be directly or indirectly responsible or liable for any damage or loss caused or alleged to be caused by or in connection with your use of or reliance on any content, goods or services available on or through any such linked Web site. Any article, information, data, code, text, software, documentation, graphics, image, marketing material, video, photograph, message, or posting to any forum, wiki, or blog or any other location on the Site, whether publicly posted or privately transmitted, is the sole responsibility of the person or entity providing the content

## **6. Privacy Policy**

6.1 All of the information that Service Provider collects from you, such as registration information, is subject to Service Provider's privacy policy and applicable privacy laws. Please go to [Http://www.leicamicrosystems.com/company/legal-notice/to](http://www.leicamicrosystems.com/company/legal-notice/to) see Service Provider's full privacy policy. This policy is expressly incorporated into and made a part of this SaaS Agreement.

6.2 Because Service Provider operates globally, you understand and agree that any personal information that you may provide may be processed by Service Provider and Service Provider may, for example, transfer such information within Service Provider's global operations. If it is necessary for the purposes for which you have shared personal information with Service Provider for Service Provider to share your information within Service Provider's global operations, Service Provider will do so consistent with Service Provider's privacy policy.

6.3 The Site is hosted in certain countries. If you are visiting from regions with laws governing data collection and use, please note that by uploading your Content or information you may be transferring Your Content to any jurisdiction and by providing Your Content to Service Provider you represent, warrant, and covenant to Service Provider that: (i) you have the authority and right to enter into this SaaS Agreement, to transfer any Content or other information you submit to the Services, to grant the rights granted by you under this SaaS Agreement, and to perform your obligations under this SaaS Agreement; (ii) any consents or approvals required from any third party or governmental authority with respect to the entering into or the performance of this SaaS Agreement by such party, are in place, or will be obtained by you as may be necessary for either party to perform its obligations, (iii) you are authorized to distribute Your Content to Service Provider, and (iv) you are not breaching any applicable data privacy rules or regulations, any of your contractual obligations, or any of your internal privacy policies.

6.4 You acknowledge and agree that certain of the Services may be provided by Service Provider's partners, and that your contact information may be provided to such partners in order for them to provide the Services, and such partners may contact you directly regarding other service offerings (you may opt out of receiving information about a partner's other service offerings by following the notice procedure set forth below).

## **7. Your Conduct on the Site and other Restrictions**

7.1 If Service Provider requests registration information from you, you will provide Service Provider with true, accurate, current, and complete information. You will promptly update your registration to keep it accurate, current, and complete. If Service Provider issues you a password, you may not reveal it to anyone else. You may not use anyone else's password. You are responsible for maintaining the confidentiality of your accounts and passwords. You agree to immediately notify Service Provider of any unauthorized use of your passwords or accounts or any other breach of security. You also agree to properly log out of your accounts at the end of each session. Service Provider will not be responsible for any loss or damage that may result if you fail to comply with these requirements.

7.2 If Service Provider provides you with an administrator user ID and password for accessing the Service, you will assign them to your administrator. You will be responsible, through your administrator, for setting and modifying your and your users' profile and preferences for the Services, authorizing and terminating individual user ID's and passwords and specifying the access rights of those individuals to the Services. The administrator will notify Service Provider if the administrator needs to change the administrator's or any user's ID, and the administrator may do so only by contacting Service Provider at the email address for technical support specified by Service Provider from time to time.

7.3 You will be responsible for all activity occurring under your accounts and will comply with all applicable local, state, and foreign laws, treaties and regulations in connection with your use of the Services, including without limitation, laws and regulations governing data privacy, international communications and transmission of technical or personal data.

7.4 If offered as part of the Services, you agree to use Service Provider's bulletin board services, chat areas, news groups, forums, communities and/or message or communication facilities (collectively, the "Forums") only to send and receive messages and material that are proper and related to that particular Forum.

7.5 If you choose a username that, in Service Provider's sole discretion, is obscene, indecent, deceptive, abusive or that might otherwise subject Service Provider to public disparagement or scorn, Service Provider reserves the right, without prior notice to you, to automatically change your username, delete your posts from Service Provider's sites, deny you access to Service Provider's sites, or any combination of these options.

7.6 Unauthorized access to the Site is a breach of this SaaS Agreement and a violation of the law. You agree not to access the Site by any means other than through the interface that is provided by Service Provider for use in accessing the Site. You agree not to use any automated means, including, without limitation, agents, robots, scripts, or spiders, to access, monitor, or copy any part of the Site, except those automated means that Service Provider has approved in advance in writing.

7.7 You may not access the Services for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

7.8 Use of the Site is subject to existing laws and legal process. Nothing contained in this SaaS Agreement will limit Service Provider's right to comply with governmental, court, and law-enforcement requests or requirements relating to your use of the Site, which may include disclosing Your Content to the applicable authorities.

7.9 You acknowledge the minimum capabilities for a Web Browser and other specifications in the documentation for the Services. If you are a "Collaborating Institution," you agree to provide pathology collaborations ("Collaborations Service") in accordance with this Agreement and any other Statement of Work or similar document provided by Service Provider to implement your access to the Site and Service. If you are a Requesting Institution, you will have access to the Collaborating Institutions set forth in the applicable quote or similar document.

7.10 Service Provider is not responsible for the actions of any Named User set up by you to access Services under your account.

7.11 Digitized images, the relevant metadata, and any attachments will be stored by Service Provider for sixty (60) days from the time a case is first uploaded or thirty (30) days from the date when the case is marked as completed by the reviewer, whichever comes first, and will be deleted thereafter, subject to any other storage terms previously agreed upon in writing and subject further to any applicable laws.

## **8. Indemnification**

8.1 You will defend Service Provider and its service providers and other affiliated entities from any third party claim, and will pay all damages awarded against Service Provider in such claim or amounts agreed to in settlement, arising out of:

1. Your use of the Site; 2. Any use or alleged use of your accounts or your passwords by any person, whether or not authorized by you;
3. The content, the quality, or the performance of content that you submit to the Site; or 4. Your violation of this SaaS Agreement.

8.2 Service Provider will defend you from any third party claim that your use of Service Provider's proprietary software underlying the Site infringes such third party's United States copyright, patent or trademark, and will pay all damages finally awarded against you in such claim. If Service Provider settles the claim, Service Provider will pay all settlement amounts on your behalf. In exchange, you must (i) promptly notify Service Provider if such a claim is asserted against you, (ii) allow Service Provider sole defense of the claim, and (iii) cooperate with Service Provider's requests for reasonable assistance, at Service Provider's expense. Service Provider will not be obligated to indemnify you if you are in violation of this SaaS Agreement. If as a result of the infringement or misappropriation your use of Service Provider's proprietary software underlying the Site is enjoined by a court of law, Service Provider will modify the software to make it non-infringing, acquire a license for you to continue using the software, or if neither option is possible, refund to you the applicable subscription fees paid by you during the twelve (12) month period preceding the injunction. This is your exclusive remedy for a third party's infringement or misappropriation claim against your use of the software hosted on the Site.

## **9. Warranty; Disclaimers**

9.1 Service Provider warrants that during the SaaS Term, the Site will materially conform to the documentation provided by Service Provider. In the event the Site does not materially conform to the documentation, if you promptly notify Service Provider, Service Provider will modify the Site and/or the documentation so that it materially conforms. This is your exclusive remedy for a breach of the warranty set forth in this Section 9.1.

9.2 EXCEPT FOR THE WARRANTY PROVIDED IN SECTION 9.1, THE SITE AND THE SERVICES, ITS SOFTWARE, CONTENT AND OTHER MATERIALS, ARE PROVIDED ON AN "AS IS, AS AVAILABLE" BASIS. SERVICE PROVIDER AND ITS AFFILIATES, SUPPLIERS AND PARTNERS MAKE NO WARRANTY, REPRESENTATION, GUARANTY OR CONDITION OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE OR NONINFRINGEMENT, OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SITE OR ANY OF THE CONTENT, SERVICES, PRODUCTS, SOFTWARE OR OTHER MATERIALS AVAILABLE THROUGH THE SITE.

## **10. LIMITATION OF LIABILITY**

10.1 YOU AGREE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER SERVICE PROVIDER NOR ITS AFFILIATES, SUPPLIERS OR PARTNERS WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THE

SERVICES OR THE SITE, ITS SOFTWARE, CONTENT OR OTHER MATERIALS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE OR LOSS OF DATA OR OTHER INTANGIBLE LOSSES.

10.2 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SERVICE PROVIDER AND ITS AFFILIATES, SUPPLIERS AND PARTNERS WILL NOT BE LIABLE FOR ANY DAMAGES THAT EXCEED THE TOTAL AMOUNTS PAID BY YOU TO SERVICE PROVIDER FOR THE SPECIFIC SERVICES FROM WHICH THOSE DAMAGES ARISE DURING THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.

10.3 NEITHER SERVICE PROVIDER, NOR ITS AFFILIATES, SUPPLIERS AND PARTNERS WILL BE RESPONSIBLE FOR DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND IN ANY WAY ARISING OUT OF CONTENT YOU ACCESS OR ENCOUNTER ON THE SITE THAT IS SUPPLIED BY THIRD PARTIES.

10.4 SOME STATES/JURISDICTIONS DO NOT ALLOW EXCLUSION OF IMPLIED WARRANTIES OR LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. IN SUCH STATES/JURISDICTIONS, SERVICE PROVIDER'S LIABILITY AND THAT OF ITS AFFILIATES, SUPPLIERS AND PARTNERS WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

## **11. Miscellaneous**

11.1 The Site features trademarks, service marks, and logos that are the property of Service Provider and/or its affiliates, suppliers, partners and Service Providers. The Site also may include trademarks, service marks or logos of other third parties. All of these trademarks, service marks and logos are the property of their respective owners, and you agree not to use them in any manner without the prior written permission of the applicable owner.

11.2 Service Provider may be required by state or federal law to notify you of certain events. You hereby acknowledge and consent that such notices will be effective upon Service Provider's posting them on the Site or delivering them to you through e-mail. You may update your e-mail address by visiting the Services where you have provided contact information. If you do not provide Service Provider with accurate information, or if you do not keep your e-mail contact information up-to-date, Service Provider cannot be held liable if Service Provider fail to notify you. You may have the right to request that Service Provider provide such notices to you in paper format, and may do so by contacting Leica Biosystems Division of Leica Microsystems, Inc., Attn: Counsel, 1700 Leider Lane, Buffalo Grove, IL 60089. Any other communication to Service Provider should also be sent to that address.

11.3 Service Provider's failure to exercise or enforce any right or provision of this SaaS Agreement will not constitute a waiver of such

right or provision. This SaaS Agreement and your right to use the Services may not be assigned by you without the prior written approval of Service Provider.

11.4 This SaaS Agreement, including any and all terms, conditions, and policies that are incorporated into these terms by reference, constitute the entire agreement between you and Service Provider and govern your use of the Site and Services, superseding any prior agreements that you may have with Service Provider. Notwithstanding the foregoing, in the event you and Service Provider have separately executed a mutually agreed upon written agreement for access to the Service and you acquired the right to use the Services pursuant to such written agreement, the terms of the written agreement will govern your use of the Services and the terms of this SaaS Agreement will be superseded by the written agreement. Any conflicting terms in your ordering documentation such as purchase orders are hereby deemed to be material alterations and notice of objection to, and rejection of, them is hereby given.

11.5 This SaaS Agreement will be construed in accordance with the laws of the State of Illinois, excluding its conflicts of law principles, and the federal laws of the United States.

11.6 You may not use, import or export materials on this Site in violation of United States, or any other applicable country's, import and export laws and regulations. Service Provider assumes no responsibility or liability for your failure to obtain any necessary export approvals. Without limiting the foregoing, you agree that the Site will not be used, and none of the underlying content, information, software, or technology may be transferred or otherwise exported or re-exported to persons subject to restrictions, destinations subject to embargo, or to prohibited proliferation-related end-users or end-uses, without obtaining any export license or other approval that may be required under United States, and any other applicable country's, laws, regulations and requirements. You hereby certify that none of the content on the Site, nor any information acquired through the use of the Services, is or will be used for nuclear activities, chemical or biological weapons or missile projects, unless specifically authorized by the United States government or appropriate European body for such purposes.

11.7 If any part of this SaaS Agreement is determined to be invalid or unenforceable pursuant to applicable law, the invalid or unenforceable provision will be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties and the intent of the original provision. Where a court is unable to construe any unenforceable or invalid provision to make it binding, the court will sever and delete the provision. In any event, all other terms which remain valid and enforceable will survive and remain in full force and effect.