

## End User License Agreement for exocad Medical Device Software

## 1. DEFINITIONS

For the purpose of this End User License Agreement, the following terms shall have the meaning as ascribed to them in this Section.

1.1 **“Activation”** means the activation of the exocad Software by the License Server.

1.2 **“Core Version”** means the exocad Software product which is the base functionality required to run Modules.

1.3 **“exocad Software”** means the medical device software developed by exocad, including the Core Version, any Modules or other software components specified in an Order, and any Updates thereto provided by exocad during the Term. The exocad Software may include software licensed from third parties (“Third Party Software”). Third Party Software is subject to the license terms and disclaimers provided by the licensor.

1.4 **“Distributor”** means the entity licensing the exocad Software to the End User under the Software License Agreement.

1.5 **“End User”** means the purchaser of the exocad Software that is authorized by Distributor pursuant to and in accordance with this EULA to use the exocad Software.

1.6 **“EULA”** means this End User License Agreement, which is part of the Software License Agreement. The relationship between this EULA and the Software License Agreement is governed by Section 2 of this EULA.

1.7 **“exocad”** means exocad America, Inc., a corporation under the laws of Massachusetts, which has licensed the exocad Software to the Distributor. exocad America is an initial importer for the exocad Software, as produced by exocad GmbH, the registered manufacturer of the exocad Software in accordance with the Federal Food, Drug, and Cosmetic Act (FDCA), and its implementing regulations at Title 21, Code of Federal Regulations (CFR), and the Medical Device Regulation 2017/745 EC.

1.8 **“Intended Purpose”** means the intended use of the exocad Software as specified in the materials and documentation produced by exocad regarding the exocad Software, including the user manual, reference guides, installation manuals, the Performance Specifications, and other written documentation pertaining to the installation, use, features, or performance of the exocad Software.

1.9 **“License”** means the End User’s right to use the exocad Software as specified in this EULA.

1.10 **“License Server”** means a server operated by or on behalf of exocad to activate and administer licenses for the exocad Software.

1.11 **“Modules”** means an add-on module providing additional information, features, or functionality to the Core Version (e.g., tooth libraries; specific designs for implants, bars, and night guards; functionality to import data from other products; etc.) which need to be ordered separately for each individual software License by written agreement by the Parties and may be made available to the End User for additional compensation.

1.12 **“Party”** is either the Distributor or the End User, **“Parties”** are both the Distributor and the End User.

1.13 **“Performance Specifications”** means the most current version of the documents maintained by exocad that include a technical description of the exocad Software.

1.14 **“Software License Agreement”** means the software license agreement entered into between the

Distributor and the End User, including this EULA and the terms individually agreed between the Distributor and the End User. The relationship between this EULA and the Software License Agreement is governed by Section 2 of this EULA.

1.15 **“Term”** means the period commencing on the effective date specified in the first Order executed by the Parties or, if a date is not specified in the Order, the later of the two signature dates on the Order and continuing until this EULA is expired or is terminated as set forth herein

1.16 **“Territory”** means the U.S. and its territories and possessions and any other country where the exocad Software has been approved, authorized, and/or sale and use by applicable regulatory authorities and specified in the Software License Agreement or mutually agreed to by the Parties in writing.

1.17 **“Updates”** means an alteration, addition, or revision (including to fix any error or defect) to the Core Version that is not made available by exocad as a separate product (e.g., a Module).

1.18 **“USB Dongle”** means a USB hardware device required in order to use the exocad Software and which must be connected to the computer on which the exocad Software is installed in order for the exocad Software to operate. The USB Dongle contains a Serial Number to identify each software license which is displayed by the exocad Software during the Activation.

## 2. CONTRACT DOCUMENTS

2.1 This EULA is a license agreement between the Distributor and the End User and forms an integral part of the Software License Agreement.

2.2 In case of inconsistencies or contradictions between this EULA and the Software License Agreement, the provisions of this EULA shall take precedence.

## 3. LICENSE TERMS

3.1 Distributor has obtained from exocad the right to grant sublicenses to End User for the use of the exocad Software in accordance with the terms of this EULA. Nothing in this EULA shall affect exocad’s right in and to the exocad Software, and the End User is granted only the rights explicitly awarded by this EULA.

3.2 Upon Activation, the Distributor grants to the End User, subject to this EULA, a non-exclusive, non-transferable, non-assignable, non-sublicensable, non-permanent, limited license to install, store, load, execute, configure and display the exocad Software on its computers which are connected to a USB Dongle or other licensing mechanism solely for the Intended Purpose in accordance with the Performance Specifications and only for the End User’s internal business operations in the Territory. This License is granted as “per-seat” software license (not as concurrent user license) and with a license term of no longer than one year from Activation.

3.3 End User is not permitted to distribute, resell, sublicense, rent, transfer, use, or make the exocad Software available to or for the benefit of any third party including by acting as a service bureau or a provider of a time sharing service (e.g., with remote access per team-viewer, as desktop-as-a-service, etc.).

3.4 End User shall not (and shall not assist or allow any third party to) extract data contained in the exocad Software or use the exocad Software to develop products

and services that compete with exocad's products or services. This includes using any output data generated, or designs created by using the exocad Software, for training machine learning algorithms to analyze or generate tooth shapes and structures.

3.5 End User shall not (and shall not permit any third party to) do or attempt any of the following: (a) circumvent mandatory usage of the USB Dongle or other licensing mechanism; (b) impair, circumvent, or tamper with any USB Dongle or other licensing mechanism protection (e.g., by making copies of the USB Dongle or other licensing mechanism, or any license data); (c) use the exocad Software on any computer other than the authorized computer(s); (d) use the exocad Software in any manner that is not described in this EULA, does not comply with all applicable laws, or infringes the Intellectual Property Rights of exocad or any third party; (e) make any modifications, alterations, translations, derivative works of, or enhancements to the exocad Software, including creating new applications or new material functionality not provided by the exocad Software or contemplated by the relevant Performance Specifications; (f) block, circumvent, impair, or tamper with the connection between the computer where the exocad Software is running and the License Server; or (g) decompile, disassemble, decode, reverse-engineer or otherwise attempt to reconstruct or discover the source code or underlying programming sequences, methodologies and techniques of the exocad Software.

3.6 End User acknowledges and agrees that the License will automatically terminate (without notice) if End User engages in any activity that is prohibited by this EULA and that Distributor or exocad may disable the End User's license key and cause the exocad Software to cease operating.

#### **4. ACTIVATION AND PROVISION OF EXOCAD SOFTWARE**

4.1 Distributor will provide the End User with and install and configure the exocad Software on the computers of the End User. The exocad Software will be supplied in executable form in object code. End User is not entitled to receive any source code form of the exocad Software or any rights thereto.

4.2 In order for the exocad Software to operate, a USB Dongle or other licensing mechanism must be attached to the computer upon which the exocad Software is installed at all times. Distributor will deliver the USB Dongle or other licensing mechanism to the End User with the exocad Software. Distributor will replace broken or defective USB Dongles and other licensing mechanisms subject to a service fee; provided the defective USB Dongle or other licensing mechanism is returned to Distributor, the End User has a valid license to the exocad Software, and Distributor provides exocad with the Serial Number of the defective USB Dongle or other licensing mechanism in writing (email is sufficient). Distributor will replace lost USB Dongles or other licensing mechanisms subject to a service fee; provided that End User provides Distributor with the Serial Number of the lost USB Dongle or other licensing mechanism in writing (email is sufficient). Distributor has the right to deactivate any USB Dongle or other licensing mechanism if the End User notifies Distributor that it is lost.

4.3 Before using the exocad Software with the USB Dongle or other licensing mechanism on an End User's computer, Activation is required. Activation only enables use of the exocad Software on the specific computer with

the USB Dongle or other licensing mechanism connected while Activation is performed. Activation requires an internet connection in order for the exocad Software on the computer to connect with the License Server. If a connection between the License Server and the End User's computer cannot be established for technical reasons, Distributor may perform the Activation manually on the End User's computer using activation codes provided by exocad. exocad reserves the right to refuse the Activation of the exocad Software on more than five computers of a single End User licensee (person or entity) until End User provides Distributor with sufficient explanation and documentation to support the request for additional Activations. End User acknowledges and agrees that changing the hardware, the operating system, or user accounts in the operating system of any computer that has completed Activation may re-trigger the Activation process and that the exocad Software regularly requires license validation in order to continue to operate following Activation; therefore, the exocad Software will cease operation if the computer does not have a USB Dongle or other licensing mechanism, and is not able to connect with the License Server.

4.4 The exocad Software will require a technical license validation every two (2) weeks, to ensure that the End User's License for a specific computer is still valid. The technical requirements for this validation are the same as for the Activation. It is highly recommended to have a valid internet connection while using the exocad Software. In the event the exocad Software was not used for a period of two (2) weeks or longer on a computer with a USB Dongle or other licensing mechanism, a confirmatory activation process may be triggered automatically for the computer and the corresponding USB Dongle or other licensing mechanism.

#### **5. VIOLATION OF LICENSE TERMS**

In the event either the Distributor or exocad becomes aware of any violation of this EULA, each may in its sole discretion disable the exocad Software, the USB Dongle(s) or other licensing mechanism of the infringing End User which was used for the violation.

#### **6. MAINTENANCE / BUG FIXES / UPDATES / MODULES / CLOUD-BASED ACCESS**

6.1 Unless otherwise agreed, during the Term, Distributor will provide validly licensed End User with Updates to the exocad Software at no additional charge.

6.2 Modules offered by the Distributor during the Term are subject to a separate order by the End User and the use by the End User will be subject to this EULA. The Term for such Modules will be defined in each case to match the remaining Term for the Core Version.

6.3 If exocad publishes any Updates which remedy critical errors or defects in the exocad Software or are otherwise required for using the exocad Software securely ("Fix"), the Distributor will inform the End User accordingly. End User must promptly stop using the exocad Software without the required Fix being installed on the relevant computers of the End User by the Distributor. The continued use of the exocad Software without the Fix is the End User's sole risk, responsibility and liability. If exocad publishes Updates which remedy non-critical errors or defects in the exocad Software, Distributor shall make such Updates available without undue delay to the End User entitled to receive them.

6.4 Access to cloud-based services from within the exocad Software may provide End User with more powerful features, added functionality and other benefits not available to an end user who does not use the cloud-based services. Access to those cloud-based services is available to the End User who has purchased a subscription or flex license seat for exocad Software. These cloud-based services shall also be subject to this EULA unless exocad provides separate, additional terms and conditions specifically applying to the cloud-based services.

## 7. DISPUTES

7.1 In the event that any third party asserts a claim against the End User with regards to the exocad Software (“**Software Claim**”), the End User will (i) immediately inform the Distributor; (ii) not take any steps towards such third party without prior written approval from the Distributor; and (iii) provide reasonable assistance to the Distributor for the solution of such dispute.

7.2 In case of such alleged Software Claim the Distributor may in particular, at its option and expense (and in coordination with exocad), have the right but not the obligation to either (i) procure for the End User the right to continue using the allegedly infringing materials; (ii) replace or modify the same so that they become non-infringing; (iii) reduce the scope of functionality of the exocad Software so that it becomes non-infringing and in the event the functionality of the exocad Software is materially decreased by this reduction, the End User shall be entitled to a reasonable refund for the remaining Term; or (iv) terminate the End User's right to use the exocad Software and give the End User a refund or credit (at the Distributor's discretion) for the fees actually paid by the End User to the Distributor for the current Term less a reasonable allowance for the period of time the End User actually used the exocad Software.

7.3 If, during the Term, the End User's usage rights to the exocad Software are amended, restricted or annulled due to third party claims in accordance with Section 7.2, this shall not affect the validity and effect of the License and the license fees due unless the License is terminated in accordance with the provisions of this EULA.

## 8. REGULATORY REQUIREMENTS

8.1 Distributor will provide the End User with all relevant data, information and training required for the operation and use of the exocad Software.

8.2 The End User will reasonably support the Distributor and exocad to comply with their obligations as medical device manufacturer and Distributor under the legal framework applicable in the respective region (e.g., based on Medical Device Regulation 2017/745 EC, US Code of Federal Regulations Title 21 (FDA)), e.g., by providing required documents or information, in particular with regards to any product recall, implementing field safety corrective actions, general corrective and preventive actions, in any investigation of customer complaints, or in the event of a (potential) medical device-related incident investigation.

8.3 The End User will ensure that its employees and any other persons handling the exocad Software will:

- (a) Comply with the applicable provisions on the Activation, operation and use of the exocad Software as a medical device;
- (b) Use the exocad Software solely for the Intended Purpose, in accordance with the Performance

Specifications, and for the End User's internal business purposes;

(c) Strictly follow all Activation, installation and servicing (including necessary Bug Fixes, Updates and/or Modules (if any)) instructions provided by the Distributor or exocad and return required records and reports of the performed activities to the Distributor;

(d) Engage only the Distributor to conduct the servicing, maintenance and inspections of the exocad Software;

(e) Participate in trainings on the usage of the exocad Software, where required;

(f) Promptly notify the Distributor about any material malfunctions, errors or defects of the exocad Software.

8.4 The exocad Software may be subject to export laws and regulations of the United States and other countries. The End User shall be responsible for complying with all applicable export, import and regulatory laws and requirements.

(a) End User represents that it is not named on any U.S. government denied-party list. End User will not: (i) provide or otherwise permit others to access or use the exocad Software in a U.S.-embargoed country or in violation of any European Union or U.S. export law or regulation; or (ii) provide the exocad Software to users located in the following countries/territories: Crimea region of Ukraine, Cuba, Iran, North Korea, Sudan, South Sudan, and Syria. exocad may amend this list of countries/territories from time to time based on regulatory, compliance, or other concerns. In such cases, End User will be provided with an updated list, which shall apply immediately after provided.

(b) End User's failure to comply with these requirements will be considered a material breach of this EULA.

8.5 End User may submit complaints and feedback to Distributor by email.

## 9. ASSISTANCE AND COOPERATION

End User acknowledges and agrees that the Distributor and exocad have a fundamental interest in detecting and preventing exocad product piracy, the use and/or distribution of pirated exocad products and any other forms of unlawful use and/or distribution of the exocad Software. End User will assist and cooperate with the Distributor and exocad to investigate where the Distributor or exocad suspects that exocad product piracy, the use and/or distribution of pirated exocad products or any other unlawful use and/or distribution of the exocad Software may exist. End User will, if requested, provide relevant information on its use of the exocad Software, and any relevant information End User has on any exocad product piracy, the use and/or distribution of pirated exocad products, and/or any other forms of unlawful use and/or distribution of the exocad Software (End User shall ensure that it is legally entitled to share potential personal data for this purpose with exocad). To the extent Distributor has any such information provided by End User, End User hereby consents and authorizes the Distributor to provide such information to exocad. Furthermore, End User accepts that, during the course of such investigation, exocad and/or Distributor may collect from the End User's installation(s), retain and use information relative to product piracy and/or the unlawful use and/or distribution of the exocad Software. End User hereby consents to and permits Distributor to share with exocad End User's personal data (such as End User's name and full contact details) previously provided

by End User to Distributor. End User's failure or unreasonable delay in providing, any such information, assistance or cooperation, or intentionally providing inaccurate information, shall be deemed a material breach of this EULA.

End User will further allow the Distributor to use a third party to be agreed on between the Parties to conduct onsite and/or offsite inspections of the End User's business and practices that relate to End User's use of the exocad Software. Distributor will be permitted to such inspection during the Term and for as long as the End User retains confidential information, copies of the exocad Software, or other material of the Distributor. Unless otherwise stated in this EULA, each such inspection will be conducted during reasonable business hours, for a reasonable duration, and at exocad's expense, no more than once per year. Distributor will give End User reasonable prior notice of such inspection.

#### **10. DISCLAIMER OF WARRANTIES; LIMITATIONS OF LIABILITY**

10.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE EXOCAD SOFTWARE, USB DONGLES AND OTHER LICENSING MECHANISMS ARE PROVIDED "AS IS," AS AVAILABLE, AND WITH ALL FAULTS, AND DISTRIBUTOR AND ITS AFFILIATES HEREBY DISCLAIM ANY AND ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, AND DISTRIBUTOR SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, AND NON-INFRINGEMENT. IN PARTICULAR, EXOCAD MAKES NO WARRANTIES OF ANY KIND THAT THE EXOCAD SOFTWARE WILL OPERATE WITH ANY OTHER PRODUCT (INCLUDING A COMBINED PRODUCT), MEET DISTRIBUTOR'S OR END USER'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, OR BE SECURE, ACCURATE, COMPLETE, COMPATIBLE, FREE OF HARMFUL CODE, OR ERROR FREE. NOTWITHSTANDING ANY OTHER PROVISION OF THESE TERMS, END USER'S USE OF EACH ITEM OF THIRD PARTY SOFTWARE IS GOVERNED BY ITS APPLICABLE TERMS AND CONDITIONS, AND DISTRIBUTOR ASSUMES NO RESPONSIBILITY FOR, AND MAKES NO WARRANTY WITH RESPECT TO, THIRD PARTY SOFTWARE.

10.2 IN NO EVENT WILL DISTRIBUTOR BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF DATA OR INFORMATION, BUSINESS INTERRUPTION, AND THE LIKE) FOR ANY CLAIM ARISING UNDER THIS EULA, REGARDLESS OF THE CAUSE OF ACTION AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW AND NOTWITHSTANDING ANY DIRECT

DAMAGES THAT END USER MIGHT INCUR FOR ANY REASON WHATSOEVER, THE ENTIRE LIABILITY OF EXOCAD IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR BREACH OF STATUTORY DUTY), MISREPRESENTATION, RESTITUTION, OR OTHERWISE (WHETHER AT LAW OR IN EQUITY) ARISING OUT OF OR IN CONNECTION WITH THE EXOCAD SOFTWARE OR THE EULA WILL IN NO CASE EXCEED THE FEES PAID BY END USER TO DISTRIBUTOR DURING THE 12-MONTH PERIOD PRECEDING THE DATE ON WHICH THE CLAIM AROSE. ALL CLAIMS AGAINST DISTRIBUTOR ARE TIME-BARRED AFTER TWO YEARS AFTER THEY ARISE.

#### **11. DATA COLLECTION AND USAGE**

As between the Parties, exocad may collect (from Distributor and directly from the End User), use, and share:

- (a) with exocad's affiliates and contractors: (i) where applicable, data related to medical device safety issues; (ii) software licensing data required to track piracy and illegal use of the exocad Software; (iii) software usage data, including cloud-based software and/or library access; and (iv) anonymized case data, including 3D data files and intermediate data (in compliance with E.U. and U.S. applicable regulations);
- (b) with exocad's affiliates and Distributor, unless specifically prohibited by applicable local laws or regulations: (i) license serial number, installation details, online access information (e.g., IP addresses, PC hardware identification, driver and software versions and signatures), and other customized installation details of each sub-license; and (ii) End User, Registered Owner, and/or Subscriber legal entity name and address/e-mail (obtained by exocad, for example, through mandatory online registration by the End User as a prerequisite to use the licensed software). End User's failure, or unreasonable delay in providing any such information when requested, or intentionally providing incorrect information, shall be deemed a material breach of this EULA.

#### **12. LICENSE TERM AND TERMINATION**

12.1 The Term is one (1) year from Activation and shall automatically be extended for subsequent one (1) year periods unless (i) the License is terminated in accordance with the Software License Agreement or (ii) the License is terminated or expires in accordance with the provisions of this EULA.

12.2 The License of the End User will automatically and immediately expire without further notice if (i) mandatory usage of the USB Dongle or other licensing mechanism is circumvented; (ii) existing USB Dongle or other licensing mechanism protection is impaired, circumvented or tampered with (e.g., by making copies of the USB Dongle or other licensing mechanism, or its contained license data); (iii) the exocad Software is used on any computer other than authorized computer(s) of End User; (iv) the connection between the computer where the exocad Software is running and the License Server is blocked, circumvented, impaired or tampered with; or (v) any attempt, preparation or support measure for any of the above actions is undertaken. The right to terminate the License outside Section 12.1 for any other reason than for cause shall be excluded. For cause will mean if



(a) A Party materially breaches its obligations under this EULA and does not cure the respective breach within a reasonable period of time after being informed about the breach by the other Party in writing. No cure period is required if (i) cure is impossible; (ii) the Party in breach refuses to perform its obligations under the EULA or the Software License Agreement as required; or (iii) other special circumstances have arisen which, once the interests of both sides have been weighed, justify an immediate termination. This does not apply to the End User's obligation to pay the license fees.

(b) A Party has suffered a material adverse change in its financial situation which endangers the viability of the Software License Agreement.

Termination for cause requires written notice.

12.3 The End User will, in no event later than fifteen (15) days from the end of the Term, either return to the Distributor or delete from any computer system and destroy, as directed by the Distributor, all copies of the exocad Software in its possession and provide a certificate to that effect. Likewise, the End User will return, in no event later than fifteen (15) days from the end of the Term, all USB Dongles and other licensing mechanisms provided by the Distributor to the End User.

### 13. THIRD PARTY BENEFICIARY CLAUSE

13.1 The rights of the Distributor under this EULA shall also apply in favor of exocad as third-party beneficiary. This means that all rights attributed to the Distributor under this EULA may also be executed by exocad.

### 14. BINDING ARBITRATION; CLASS ACTION WAIVER

14.1 Distributor and exocad (each a "Licensor" and collectively "Licensors") and each End User agree to be bound by the procedures set forth in this Section 14. This Section outlines how Licensors and End Users are agreeing to resolve any and all disputes or claims arising out of or relating to any aspect of this EULA, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory, including but not limited to claims related to the exocad Software. Each such claim is referred to individually as a "Claim" and collectively as "Claims."

14.2 **Binding Arbitration.** END USER AGREES THAT, EXCEPT FOR THE CLAIMS IDENTIFIED IN SECTION 14.4 BELOW, ANY AND ALL CLAIMS SHALL BE FINALLY SETTLED BY BINDING ARBITRATION. The arbitration shall take place in Middlesex County, Massachusetts, and shall be administered by the American Arbitration Association ("AAA") pursuant to the AAA's then-current rules, including (if applicable, the AAA's Supplementary Procedures for Consumer-Related Disputes. PLEASE BE AWARE THAT THERE IS NO JUDGE OR JURY IN ARBITRATION. Arbitration procedures are simpler and more limited than the rules applicable in court, and review of the arbitrator's decision by a court is limited.

14.3 **Class Action Waiver.** END USER AND LICENSORS FURTHER AGREE THAT END USER AND LICENSORS MAY BRING CLAIMS AGAINST EACH OTHER ONLY ON AN INDIVIDUAL BASIS AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION OR PROCEEDING. The arbitrator may not consolidate or join more than one person's claim and may not preside over any consolidated, representative or class proceeding. Also, the arbitrator may award relief (including

monetary, injunctive, or declaratory relief) only on an individual basis and may not award any form of consolidated, representative or class-wide relief. Notwithstanding any provision in these terms to the contrary, if the class-action waiver in this provision is deemed invalid or unenforceable, or if an arbitration is allowed to proceed on a class basis, then neither End User nor Licensors are entitled to arbitrate the Claims. This arbitration is subject to the Federal Arbitration Act. The arbitrator's award shall be binding on End User and Licensors and may be entered in any court of competent jurisdiction.

14.4 **Exceptions.** Section 14 does not apply to claims involving intellectual property rights (such as its patent, copyright, trademark, trade secret, and moral rights, but not including its privacy or publicity rights).

14.5 **Arbitration Fees.** Payment of all filing, administration and arbitrator fees will be governed by the AAA rules. End User is required to pay AAA's initial filing fee, but Licensor will reimburse End User for this filing fee at the conclusion of the arbitration to the extent it exceeding the fee for filing a complaint in a federal or state court in End User's county of residence or in Middlesex County, Massachusetts. Licensor will not seek to recover the administration and arbitration fees that it is responsible for paying under the AAA Rules or this EULA, unless the arbitrator finds that either the substance of End User's claim or the relief sought in End User's Demand for Arbitration was frivolous or was brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)).

14.6 **Changes.** Notwithstanding any provision in this EULA to the contrary, End User agrees that, if Licensors seek to delete or materially modify the arbitration provisions described in this Section 14, any such deletion or modification will not apply to any individual Claim of which End User has notified the Licensors of prior to such modification.

14.7 **Jurisdiction.** If this Section 14 is determined to be invalid, unenforceable or inapplicable to a given Claim, then End User agrees that Section 15.3 applies.

14.8 **End User's 30-Day Right to Refuse Arbitration.** End User has the right to inform Licensors that End User does not agree to arbitration by sending a written notice of End User's decision to the following address: exocad America, Inc., Attn: Larry Bodony, President, 7 Wheeling Ave #1, Woburn, MA 01801 USA; provided that, with respect to Claims related to exocad Software, such notice must be postmarked on or before the 30th day after the date End User purchased such software. This notice should include End User's full name, current postal address, telephone number and email address. If End user timely sends a notice in compliance with this Section 14.8, the agreement to arbitrate will not apply to either End User or Licensors. If End User does not timely send such written notice, then End User agrees to arbitrate.

### 15. FINAL PROVISIONS

15.1 The EULA is exhaustive in its regulation of the End User's use of the exocad Software. All prior understandings or agreements in this regard are superseded by this EULA. No supplements to this EULA have been entered into verbally. All amendments to, additions to and cancellations of contractual provisions must be made in writing, just as this requirement itself can only be rescinded in writing.

15.2 If any part of this EULA is held to be illegal, invalid, or unenforceable, that part will be enforced to the fullest extent permissible to effect the Parties' intent, and the remainder will continue in full force.

15.3 This EULA will be governed by and construed in accordance with the laws of the State of New York. The UN Convention on Contracts for the International Sale of Goods will not apply to this EULA. The Parties to this EULA agree to jurisdiction and venue in the state and federal courts located in New York City, New York.

exocad America, Inc.  
as of: March 2021