

Leica Geosystems Software License Agreement

Please read this License Agreement thoroughly before using the Software

PLEASE READ THE FOLLOWING TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT (THE "LICENSE AGREEMENT") CAREFULLY BEFORE USING THIS PRODUCT (AS DEFINED IN SECTION 1). THE PRODUCT INCLUDES SOFTWARE, WHICH LEICA GEOSYSTEMS WILL LICENSE TO YOU FOR USE ONLY IN THE MANNER DETAILED BELOW. YOU MUST NOT INSTALL OR USE THE SOFTWARE UNLESS YOU HAVE READ AND ACCEPTED THE TERMS AND CONDITIONS HEREIN; BY PROCEEDING WITH THE INSTALLATION OR THE USE OF THE SOFTWARE OR ANY PART THEREOF, YOU SHALL BE DEEMED TO HAVE AGREED TO ALL THE TERMS AND CONDITIONS OF THE LICENSE, THE WARRANTY, THE LIMITATION OF LIABILITY AND THE OTHER PROVISIONS OF THIS LICENSE AGREEMENT.

IN THE EVENT THAT YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT, YOU SHALL NOT BE PERMITTED TO USE THE SOFTWARE, AND YOU MUST RETURN THE UNUSED SOFTWARE TOGETHER WITH ITS ACCOMPANYING DOCUMENTATION AND THE PURCHASE RECEIPT TO THE DEALER FROM WHOM YOU PURCHASED THE PRODUCT WITHIN TEN (10) DAYS OF PURCHASE TO OBTAIN A FULL REFUND OF THE PURCHASE PRICE.

THIS SOFTWARE MAY INCLUDE PRODUCT ACTIVATION AND OTHER TECHNOLOGY DESIGNED TO PREVENT UNAUTHORISED USE AND COPYING OR TO PROVIDE TECHNICAL OR SUPPORT SERVICES REMOTELY BY LEICA GEOSYSTEMS OR ITS AUTHORIZED RESELLER. THIS TECHNOLOGY MAY CAUSE YOUR COMPUTER OR DEVICE TO AUTOMATICALLY CONNECT TO THE INTERNET. ADDITIONALLY, ONCE CONNECTED, THE SOFTWARE MAY TRANSMIT YOUR SERIAL NUMBER/LICENSE NUMBER TO LEICA GEOSYSTEMS AND IN DOING SO MAY PREVENT USES OF THE SOFTWARE WHICH ARE NOR PERMITTED; ALSO, THE SOFTWARE MAY TRANSMIT OTHER SUPPORT-RELATED INFORMATION, SUCH AS CONFIGURATIONS, USAGE STATISTICS, OR ALLOW OR PUSH DOWNLOADS OF UPDATES TO PRODUCT SOFTWARE.

1 Definitions

- "Product" shall mean (a) the Leica Geosystems instrument you have purchased for use with the Software, if any, or (b) the Software itself, if you have purchased the Software on a stand-alone basis.
- "Purchase Agreement" shall mean the purchase order, agreement or other document pursuant to which you purchased the Product.
- "Software" shall, depending on the case, mean the Leica Geosystems software and the related documentation (in electronic or in paper form) (a) that is supplied to you on a data carrier medium, or (b) that is pre-installed on the Product (if the Product is not the Software itself), or (c) that can be downloaded by you online pursuant to prior authorization from Leica Geosystems.
- "Specifications" shall mean the functionality of the Software as described in the Product description and the help functions, if any, provided in electronic or in paper form by Leica Geosystems in conjunction with the Software.
- "Specified Computer Facility" shall mean the computer or server environment defined in the Product description that is required for the proper functioning of the Software.
- "Updates" shall mean software that correct faults in the Software or that, pursuant to no obligation hereunder, enhances the functionality of the Software by providing additional functions or any other increases in performance.

2 Scope of the License

Leica Geosystems AG, Heinrich-Wild-Strasse, CH-9435 Heerbrugg, Switzerland (alternatively, the "Licensor" or "Leica Geosystems") hereby grants to you (the "Licensee") subject to payment of the applicable license fee and to continuous compliance with all the provisions hereinafter, the non-exclusive, non-transferable, non-sublicenseable and non-assignable right, to use in the manner set forth herein the Software on one (1) application, unless otherwise agreed upon in the Purchase Agreement. The use of the Software for a purpose other than as licensed herein shall not be permitted.

The foregoing license is limited as follows: (a) the Software will only be used on such permitted number of applications and in a mechanically readable form; (b) the Software will as a whole or in part be installed, saved and run only on the Specified Computer Facility in accordance with the installation instructions of Licensor; and (c) one (1) copy of the Software may be made exclusively for security and archiving purposes, provided that such copy carries a comprehensive copyright notice together with all additional references to the rights of

- when it has to be right



Licensor to the Software and the designation of the original version. In the event that the Software is an update or an additional module for an already licensed system, instrument or facility, Licensee may make only as many copies as previously authorized by Licensor. Certain Software supplied by Licensor may contain a special program that regulates and monitors the number of simultaneous users of the Software in a network environment together with the number of the licensed copies of the Software, excluding back-up copies (the "Special Program"). Licensee hereby consents to the inclusion and operation of such Special Program and to the use of other security devices in connection with the Software and Licensee shall be prohibited from circumventing, reverse-engineering or copying such Special Program or any other security devices.

Licensee will only use the Software in the manner permitted under the foregoing license and will not (a) alter the Software or any part thereof in any manner (including, without limitation, through modifications, adaptations, translations, or second-hand versions.), (b) decompile the Software or any part thereof, (c) reverse-engineer or disassemble the Software or any part thereof or manipulate the Software in any other way into a form that persons can read, (d) transfer the Software or any part thereof to another operating system, (e) pass on the Software or any part thereof to a third party or make it available to a third party in any other manner (including, without limitation, for testing or by gift, lease, loan or sublicense, or via a service bureau) without the prior written consent of Licensor, (f) use the Software or any part thereof on a computer facility other than the Specified Computer Facility, or on more than one work station, on networks, on a client server system or on mobile additional instruments without the prior written consent of Licensor, (g) remove, alter, or obscure any proprietary notices, labels, or marks from the Software, (h) use any equipment, device, software, or other means designed to circumvent or remove any form of copy protection used by Leica Geosystems in connection with the Software, or use the Software together with any authorization code, serial number, or other copy-protection device not supplied by Leica Geosystems directly or through an authorized distributor; or (i) use any equipment, device, software, or other means designed to circumvent or remove any usage restrictions, or to enable functionality disabled by Leica Geosystems.

Installation, access, and continued use of the Software may require an entitlement number. Registration may be required for certain features or before an entitlement number is issued by Leica Geosystems. Licensee agrees that Leica Geosystems may use data and information provided by Licensee, an authorized reseller, or any other third party acting on behalf of Licensee in connection with the purchase of the software license to register the Software. Licensee agrees to provide Leica Geosystems, an authorized reseller, or any other third party acting on Licensee's behalf with accurate and current registration information, and Licensee further agrees to maintain and update this registration information through customer data registration processes that may be provided by Leica Geosystems. By installing and using the Software, Licensee consents to Leica Geosystems using any personal information provided at registration, or updated thereafter, to issue entitlement numbers, to manage Leica Geosystems's relationship with Licensee (including automating the issuance of entitlement numbers for future purchases), and to otherwise use any such personal information in conformance with its privacy policy –if applicable- , which is available on request.

The activation security mechanisms may disable the Software if Licensee attempts without Leica Geosystems' consent or authorisation to transfer it to another computer or device, if the date-setting mechanisms on the computer or devise is tampered with, if Licensee uses the Software past an applicable evaluation period or limited term, or if Licensee undertakes certain other actions that may offset the security mode.

This Software may cause the Specified Computer Facility to automatically connect to the Internet and to communicate with Leica Geosystems and or with third parties' connected with the development and/or the validation of the Software.

This Software license does **not** cover or include the use of **third party software**. Licensee's right to use any such software shall be governed by the provisions set forth by such third party.

This Software license shall also apply to **Open Source Software (OSS)**. In case of conflict with the terms of this Software License Agreement, the terms of the respective OSS license agreement shall govern.

3 Warranty

Express Warranty. Licensor warrants to the original Licensee that (a) the data carrier medium on which the Software is stored shall be free from defects in workmanship and material at the time of delivery to Licensee, and (b) for the warranty period specified in the relevant Purchase Order, the Software (but not Updates) shall function in material accordance with the Specifications, provided the Software is used in the manner permitted in the foregoing license, on the Specified Computer Facility and in accordance with the conditions of installation, use and operation set forth in the Product description. Licensor does not warrant that the Software will be free of defects, run without interruption, meet the expectations of Licensee, or function in combination with the hardware or software products of third parties, or that all program errors will be corrected. In addition to the foregoing, in order for a defect in the Software to be sufficiently material so as to violate the warranty set forth in letter (b) above of this paragraph, the defect must cause the Software - while being used in the manner permitted in the foregoing license - to function in a way so divergent from the Specifications that it is unsuitable for the purpose described in the Product description. Furthermore, if the required functionality can be achieved by the Licensee indirectly (through a so called "work-around"), then the applicable impairment shall not constitute a defect giving rise to duties under the foregoing warranty. Licensor's sole obligation under the foregoing warranty shall be, at Licensor's sole option and expense, to either (a) replace the data carrier and/or the Software, so as to materially conform with the Specifications (including, without limitation, replacement with a more recent version or equivalent software); or (b) repair the Software by providing, correction codes, work-around solutions and/or Updates, including updated documentation and other documents; or (c) terminate this License Agreement and refund all license fees received following the return of the Software in accordance with Section 7 below. The foregoing warranty will apply to any replaced data carriers and Software until expiry of the original warranty period.

- when it has to be right



The costs and risk of any delivery of Software to the service point nominated by Licensor shall be borne by Licensee.

Obtaining warranty service. If Licensee detects a defect in the Software that may give rise to a duty under the foregoing warranty, it will cease using the Software immediately and notify Licensor or its local sales partner in writing of the defect and provide sufficient supporting documentation within the period for notifying defects. Such period for notifying defects is ninety (90) days from the date of delivery of the data carrier medium (for a defect in the data carrier medium) and one (1) year from the date of delivery of the Software (for a defect in the Software). The written supporting documentation relating to the defect will be sufficient if it permits the defect detected by Licensee to be capable of reproduction by Licensor. Licensee will annex the relevant purchase receipt so that Licensor can determine compliance with the periods for notifying defects. Licensee will not carry out modifications or repairs itself or permit such modifications or repairs to be carried out by unauthorized third parties. If requested by Licensor, Licensee will support Licensor in the analysis of the causes and conditions giving rise to the defect, as well as in the development and testing of correction codes or a work-around solution.

Warranty exclusive. Licensee's sole remedy for Software defects is set forth in the foregoing express warranty. The Software is licensed with its current features "as is" and with no warranty or guarantee of whatever nature, other than the foregoing express warranty. Such express warranty is in lieu of all other warranties, express or implied, either in fact or by operation of law, statutory or otherwise, including warranties, terms or conditions of merchantability, fitness for a particular purpose, satisfactory quality and non-infringement, all of which are expressly disclaimed. Licensee acknowledges that Licensor's sales partner or dealers are not allowed to provide any warranty, guarantee or assurance with regard to the use, suitability, or results of use of the Software, or with regard to the precision, accuracy or reliability thereof, and any such warranty, guarantee or assurance is of no effect. It shall be the responsibility of Licensee to select the Software that fulfils its requirements. Licensee shall bear the full risk for the performance of and results achieved by the Software and for its suitability for the use that Licensee has planned for it, even when Licensor has been informed of the planned use of the Software.

Licensor shall be relieved of its obligations under the foregoing express warranty to the extent that any defect is caused by circumstances for which it is not responsible, including, without limitation, (a) non-compliance with the conditions of use and operation contained in the Product description or the documentation; (b) non-compliance with the provisions of this License Agreement; (c) unauthorized modifications to or interference with the Software by Licensee or third parties; (d) errors in the operation of the Software by Licensee or by third party staff; (e) influences from systems or programs that have not been supplied by Licensor; or (f) use on a computer facility other than the Specified Computer Facility.

In the event that Licensor is not responsible for a defect pursuant to these warranty provisions or that Licensor incurs additional expenditure as a result of the failure of Licensee to comply fully with its obligations under this Section 3 (including, without limitation, its obligation to support and provide documentation to Licensor), Licensor shall have the right to charge Licensee for the costs that it incurs for the analysis and rectification of the defect according to the time and materials required and in accordance with the applicable rates charged by Licensor at the time.

4 Intellectual Property Rights

Licensee shall only hold those rights to the Software that are expressly described in Section 2 of this License Agreement. Any other rights with regard to the Software, including without limitation, ownership rights and patent, copyright, trademark, trade secret and other intellectual property rights, shall remain the sole property of Licensor. Licensee will not remove from the Software any references to copyrights, trademarks or other ownership rights, or cover up or alter any such references. Licensee will take all reasonable steps to prevent any unauthorized use, reproduction, sale, or publication of the Software or the unauthorized provision of access thereto. Licensee will indemnify and hold harmless Licensor from any losses, damages, claims and expenses (including, without limitation, reasonable legal expenses) relating to any infringement of the rights of Licensor caused by Licensee, Licensee's breach of this License Agreement or Licensee's use of the Software in a manner not authorized under this license agreement.

In the event that Licensee faces legal proceedings based on the allegation that Licensee's use of a valid, unmodified version of the Software in accordance with the terms and conditions of this License Agreement infringes an existing intellectual property right in Switzerland, the European Union, Japan, the USA or in any other countries where Licensor sells the Software, or that such use constitutes unfair competition, Licensor shall defend any such proceedings at its own expense, provided that Licensee has informed Licensor immediately in writing of the proceedings raised, has granted Licensor a Power of Attorney authorizing it to conduct and settle the legal proceedings, and, if requested by Licensor, has provided Licensor with reasonable support in the defence of such proceedings.

In the event that, in the sole opinion of Licensor, the valid, unmodified version of the Software could infringe the intellectual property rights of third parties, it shall at its own exclusive discretion (a) either obtain authorization from such third party for the continued use of the Software by Licensee, (b) replace the Software, (c) modify it in such a manner that there is no longer any infringement of intellectual property rights, or (d) if the foregoing measures are not within the bounds of what is reasonably possible, terminate this Agreement effective immediately and refund to Licensee a portion of the license fees paid (after deduction of an appropriate payment for the use already made of the Software by Licensee).

Notwithstanding the foregoing, Licensor shall be relieved of its obligations under the prior two paragraphs of this Section 4 if the infringement claim is based on the allegation or fact that the Software (a) has been modified by Licensee, or (b) is being used with other programs or data and such combination has led to an infringement of a third party right, (c) has been used on a computer facility other than the Specified Computer Facility, or (d) has been used and operated under conditions other than those specified in the Product description.



5 Limitation of Liability

To the extent permitted under applicable law, Licensor shall not be liable for any direct, indirect or consequential loss or damage, including, without limitation, loss of income, loss of business profits or loss of contracts, unrealized cost reductions, loss of data, business interruption, or increased costs on the part of Licensee or any other financial losses, that result from or in connection with the purchase, license, use, breakdown or interruption of operation of the Software. The foregoing limitation of liability shall also apply in the event that Licensor has been notified of the possibility of such losses being incurred. Licensor shall only be liable for loss or damage caused by Licensor's gross negligence or wilful misconduct. This limitation of liability shall apply to all claims for loss and damage irrespective of their legal grounds, including, without limitation, claims based on tort, contract, pre- contract or quasi-contract. This limitation of liability shall also apply to any officers, directors or employees of Licensor, or any representatives or agents of Licensor that are involved in the development, marketing or supply of the Software.

It shall be the exclusive duty of Licensee to ensure that it and its staff possesses the required knowledge to properly install and use the Software. Licensor shall not be liable for problems and defects that arise from insufficient knowledge on the part of the users of the Software.

6 Exclusion of other Assurances

Licensee hereby agrees that no verbal or written assurances, declarations, statements, recommendations or advertising messages have been made by Licensor, its employees, sales partners, agents, dealers or downstream distributors that could give rise to an amendment or extension of the foregoing warranties and limitation of liability. Licensee is hereby given notice that none of the forenamed persons is authorized by Licensor to make any such amendments or to provide any such assurances.

7 Duration and Termination

This License Agreement shall come into force on the agreement of Licensee to the provisions hereof and shall remain in force for the term indicated in the Purchase Order.

In addition to any other right of termination provided in this License Agreement, each party shall be entitled to terminate this License Agreement at any time with immediate effect:

- a) in the event of a material violation of a contractual duty by the other party, including, without limitation, default in payment of the license fee, if the party in breach does not remedy such violation within forty-five (45) days after being served with a notice in writing:
- b) is unable to pay its debts, or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction.

On any termination of this License Agreement, all rights of use of the Software held by Licensee shall expire. Within thirty (30) days from the date of termination of the License Agreement Licensee will return to Licensor or destroy (and confirm such destruction in writing to Licensor) the Software and all copies or partial copies thereof that have been made, as well as all modified parts of the Software or interfacing parts linking to other programs or data systems, and to the extent available, all security devices.

8 Import, Export and Use of the Software

Licensee shall be exclusively responsible for ensuring compliance with the relevant legislation relating to its rights to import, export or use the Software.

9 General Provisions

If any term or provision of this agreement shall be or shall become invalid or unenforceable for any reason, such term or provision shall be ineffective to the extent of such invalidity or unenforceability without invalidating the remaining terms and provisions hereof, provided, however, that the parties shall replace any such invalid or unenforceable provision by a valid and enforceable provision as comes nearest to the original provision in economic impact and intent. This agreement may only be modified in writing, signed by an authorized officer of Leica Geosystems. This is the entire agreement between Leica Geosystems and Licensee regarding the Software and it supersedes any prior representation, discussions, undertakings, communications or advertising relating to the Software.

- when it has to be **right**



10 Third Party Beneficiary

The parties expressly agree that subsidiaries of Leica Geosystems, including the entity from whom the Customer purchased the Product, is a third party beneficiary of this Software License Agreement, and, without limiting the foregoing, such subsidiaries shall have all defences available to Leica Geosystems under this Software License Agreement.

11 Governing Law and Place of Jurisdiction

This Agreement shall be governed by the laws of Switzerland, excluding all conflicts of laws principles and excluding the United Nations Convention on Contracts for the International Sale of Goods. The ordinary courts at the headquarters of Leica Geosystems AG in Balgach, Switzerland shall have jurisdiction. Licensor shall, in its sole discretion, also have the right to invoke the courts of law having jurisdiction at the domicile or place of business of Licensee.

Leica Geosystems AG Heinrich-Wild-Strasse 201 CH - 9435 Heerbrugg (Switzerland)

Heerbrugg, 25 March 2013