Software License Agreement for HAPTICORE Products

This Software License Agreement ("Agreement") is between the downloading, using or executing customer ("CUSTOMER") of XEELTECH Software and/or Third Party Software made accessible by XEELTECH under this Agreement and XeelTech GmbH ("XEELTECH"), an Austrian corporation with offices in Montafonerstraße 68, 6771 St. Anton im Montafon, Austria.

CUSTOMER and XEELTECH shall be individually referred to as a "Party" and collectively referred to herein as the "Parties". This Agreement covers the use of XEELTECH Software and Third Party Software provided by XEELTECH to Customer. The Software may be used together with XEELTECH Products and/or in CUSTOMER Products. NOW, THEREFORE, in consideration of the premises and the mutual covenants, agreements and undertakings set forth herein and subject to the terms and conditions hereof, the Parties hereby agree as follows:

WITNESSETH

WHEREAS, XEELTECH develops and provides Software together or for the use with its MR Products.
WHEREAS, CUSTOMER integrates XEELTECH Products into CUSTOMER Products and uses XEELTECH Software with CUSTOMER Products or integrates XEELTECH Software Components in CUSTOMER Software. WHEREAS, this Agreement establishes the terms for the license to the XEELTECH Software NOW, THEREFORE, in consideration of the premises and the mutual covenants, agreements and undertakings set forth herein and subject to the terms and conditions hereof, the Parties hereby agree as follows:

1. Definitions

Affiliates

Affiliates means a business entity that directly or indirectly controls, is controlled by or is under common control with an entity. For purposes of this definition, "control" means ownership of at least fifty percent (50%) of the voting stock or other voting ownership interest in an entity, or the possession, directly or indirectly, of the power to direct the management and policies of such party whether through the ownership of voting securities or otherwise.

Agreement

Agreement means this Software License Agreement, as it may be amended, modified or supplemented from time to time by mutual agreement, and all appendices, exhibits and schedules attached hereto.

Defect

Defect means the defect, malfunction or failure of any Product, or a component thereof, to comply with or perform in accordance with its applicable Specifications.

Effective Date

Effective Date means the Effective Date defined in section 3 of this Agreement.

End-Users

End Users means users that have bought CUSTOMER Products and use them.

Haptic Mode

Haptic Mode means Software for the control of Product, which provides specific haptic feedback to the user.

Improvement

Improvement means Intellectual Property created by one Party or jointly by both Parties based on XEELTECH Intellectual Property or using XEELTECH's Proprietary Information.

Intellectual Property (IP)

Intellectual Property (IP) means any and all of the following as may be recognized by law in any jurisdiction throughout the world: (a) rights under any patents and foreign patents, patent applications, and certificates of invention, and all continuations, continuations in part, extensions, renewals, divisions, reissues and reexaminations relating to the same; (b) moral rights and copyrights in any work of authorship recognized by statute or at common law or otherwise, including all copyright registrations issued by the United States Register of Copyrights and copyright applications, together with any renewal or extension, and all rights deriving from such registration or application; (c) rights to any trademarks, service marks, domain names, trade names or trade dress, and all related goodwill; (d) rights to any trade secrets, know-how, and confidential information; and (e) other intellectual property or proprietary rights recognized under any laws or international conventions and in each case including the right to apply for registrations, certificates, or renewals with respect to those intellectual

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property or proprietary rights and the right to prosecute, enforce, obtain damages relating to, settle or release any past, present, or future infringement or misappropriation of those intellectual property or proprietary rights.

Improvements

Improvements shall have the meaning as set forth in section 12 of this Agreement.

Product(s)

Product(s) means product defined in a separate order document, Supply- or Master-Supply-Agreement between the Parties.

Proprietary Information

Proprietary Information shall have the meaning as set forth in section 6 of this Agreement.

CUSTOMER Assembler

CUSTOMER Assembler means a Third Party that manufactures or assembles CUSTOMER Products on behalf of CUSTOMER.

CUSTOMER Customer

CUSTOMER Customer means a customer of a CUSTOMER Product.

CUSTOMER Product

CUSTOMER Product means product in which a Product is integrated by CUSTOMER, CUSTOMER's Affiliates or CUSTOMER Assembler.

CUSTOMER Software

CUSTOMER Software means embedded in CUSTOMER Product, or Software to be used together with CUSTOMER Product by customers of CUSTOMER Product.

Software

Software means all computer programs embedded in the Product and the collection of computer programs set forth in Appendix 1, including all machine-readable object code, source code (unless otherwise specified in the applicable Order), firmware, haptic modes, documentation, and other programming codes, graphics, HTML code, plugins, forms, icons, data, methodologies, processes, records, works of authorship, content and Enhancements related thereto.

Software Interface

Software Interface means a dedicated component of the XEELTECH Software that interacts via data, libraries, data streams, filters, and via methods with CUSTOMER Software, the Product or CUSTOMER Product. XEELTECH will provide a detailed documentation and manual for making the interface useable to CUSTOMER.

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Software Customizing Tool

Software Customizing Tool means a XEELTECH Software made accessible by XEELTECH to CUSTOMER for customizing the user experience and functions of XEELTECH Products. For example, haptic modes could be customizable over this tool.

Software Specification

Software Specification means the technical and functional requirements and operating and performance standards for the Software, as applicable, as defined in Appendix 1.

Third Party

Third Parry means a person or entity not a Party to this Agreement nor an Affiliate to a Party of this Agreement.

Third Party Software

Third Party Software means Software of a Third Party integrated in XEELTECH Software.

Third Party Software License Terms

Third Party Software License Terms means License terms Third Party Software to be accepted upon the use, installation or integration of XEELTECH Software.

XEELTECH Intellectual Property

XEELTECH Intellectual Property means Intellectual Property Rights owned or licensed to XEELTECH by its licensors.

XEELTECH Software

XEELTECH Software means Software provided by XEELTECH together with XEELTECH Products, or for download from its website and/or download platform (e.g. SecureDocs) for the use together with XEELTECH Products.

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2. Use of XEELTECH Software

2.1.   CUSTOMER is, subject to the terms and conditions of this Agreement, entitled to use the XEELTECH Software and Improvements only for the use together with or for the development of CUSTOMER Products that have integrated, or embedded Products delivered by XEELTECH.

2.2.   XEELTECH shall provide Software Interfaces for the use in the CUSTOMER Product or CUSTOMER Software.

2.3.   CUSTOMER shall not have access to the Source Code of the Software. Any Changes or Improvements to the XEELTECH Software shall be requested at XEELTECH. XEELTECH may decide to implement the requested Changes or Improvements at no further costs or to offer a Service to CUSTOMER. Improvements or the exclusive right to use shall vest in XEELTECH.

3. Effective Date

CUSTOMER agrees to the terms of this Agreement and the Third Party Software License Terms available on the installation media by downloading, using the XEELTECH Product or by executing the XEELTECH or Third Party Software. The Effective Date shall be the day of the first download by CUSTOMER or if integrated into a XEELTECH Product the day on which the XEELTECH Product was handed over to Customer.

4. Rights to use the XEELTECH Software / Rights granted:

Subject to the terms of this Agreement, XEELTECH grants CUSTOMER, CUSTOMER Affiliates and CUSTOMER Customers the nonexclusive, non-transferable, non-sublicensable license to use the XEELTECH Software and Improvements for running the CUSTOMER Product that the XEELTECH Software is installed upon at the time of delivery for the intended purpose in CUSTOMER Field. This list of authorized use is exhaustive, safe for any actions allowed by mandatory laws, subject to the preconditions stated therein.

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5. Intellectual Property

5.1. **Intellectual Property Ownership and Restrictions. CUSTOMER acknowledges that XEELTECH or its licensors retain exclusive ownership of all right, title and interest in and to the Products, including, but not limited to, copyrights and other Intellectual Property, and no such rights are conveyed to CUSTOMER by virtue of this Agreement.**

5.2. **CUSTOMER shall not, directly or indirectly, modify or make derivative works of the Products, reverse engineer, disassemble or decompile XEELTECH Software, nor shall it assist End Users in any such endeavor.**

5.3. **CUSTOMER shall be responsible to XEELTECH for ensuring that CUSTOMER Customers and End-Users comply with the license terms of this Agreement. CUSTOMER shall ensure that neither CUSTOMER nor any person or entity to whom CUSTOMER discloses the Products, in any code form, shall (i) modify, translate, reverse engineer, decompile or disassemble the Products by attempted recreation of source code for any reason, or (ii) attempt to obtain or derive the object or source code of the Products or create any derivative works based on the Products. CUSTOMER acknowledges that the Products, whether in source code, object code, generic code or other code form is XEELTECH' Proprietary Information, as defined in the section below.**

6. Confidentiality

6.1. **CUSTOMER acknowledges that the parts of XEELTECH Software which are not Third Party Software are Proprietary Information of XEELTECH. CUSTOMER undertakes to treat any such Proprietary Information, in particular information CUSTOMER may learn via an allowed integration into CUSTOMER Software, confidential, not pass it on to any Third Party, and not use it for any other purpose but for running the XEELTECH Software on the device it is meant for or was delivered on solely.**

6.2. **CUSTOMER agrees to keep confidential and not to disclose Software, except for the intended purpose of use, in any form, to any other person or entity or to allow any other person or entity to copy or view Software code or components except as expressly licensed herein. CUSTOMER agrees that it will not cause or permit the use of the Software except as expressly licensed herein.**

6.3. **During the term of this Agreement and after it expires, each party will maintain in strict confidence all technical and other data, purchase quantities, code, components, libraries and terms covered in this Agreement and disclosed by XEELTECH ("Proprietary Information") and will not use or reveal this information without the prior written authorization of XEELTECH.**

6.4. **This restriction will not apply to information (i) that is or becomes part of the public domain other than by means of a breach of this Agreement; (ii) that a party can prove by written documentation, was known to it before the disclosure by the other party; (iii) that a party subsequently rightfully receives from a Third Party not in violation of any trust or duty; or (iv) that was independently developed by the non-disclosing party.**

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6.5. Upon termination of this Agreement, each Party shall return to the other Party all Proprietary Information regarding the affected Party or its business, operations or otherwise which exists in written, electronic, pictorial, graphic or other material form.

7. Copyright Notices

CUSTOMER agrees not to remove or obliterate any copyright, trademark, or other Intellectual Property notice of XEELTECH or its licensors and shall reproduce such notices at an appropriate location on CUSTOMER Product documentation, manuals, software download areas on CUSTOMER website or CUSTOMER Product Packaging. CUSTOMER further agrees to include a copyright and patents notice in the startup or "About" box if such graphical interface is available to CUSTOMER Customers and End Users of the CUSTOMER Software indicating that portions of the Software includes technology used under license from XEELTECH Software.

8. Material defects

8.1. For the duration of 6 months from delivery of the physical data carrier to CUSTOMER or an entitled download from XEELTECH's website, XEELTECH shall be liable for material defects and defects of title which have existed on the delivery date. A material defect exists if the XEELTECH Software does not comply with the Software Specification, if and to the extent the XEELTECH Software is used and run in the recommended environment and accordance with the instructions in the respective User Documentation and Manual, and if and to the extent the alleged defect is reproducible. Any expressed or implied warranty or commitment, including the warranties of marketable quality or usually assumed properties and/or the fitness for particular purposes, is disclaimed. Insignificant defects not impairing the functioning are expressively excluded from the defects liability.

8.2. Any material defect of the XEELTECH Software shall be notified to XEELTECH within a reasonable period of time, yet no later than 30 days after the defect occurred. Any notification must be made in writing and describe the defect in a manner that allows XEELTECH to evaluate whether this defect triggers XEELTECH's liability for material defects. Should a defect that XEELTECH is obliged to remedy under its defects liability occur, CUSTOMER agrees to grant XEELTECH at least two opportunities to correct that defect by defect remedy or subsequent delivery of an error-free program version. For the purpose of remedy of defects, CUSTOMER shall enable XEELTECH to remote access the XEELTECH Software to the extent and for the period as necessary.

9. Liability

XEELTECH shall only liable for damages caused to the XEELTECH Software as such. In particular, XEELTECH does neither assume liability for infringement of Third Party intellectual property rights, consequential damages, defect damages ("Mangelschaden"), futile expenditures, indirect damages and/or purely financial loss (i.e. loss without damage to any absolute rights), nor for loss of interest, legal costs and further related costs. This shall not apply in case of personal injury, and/or if the damage is caused by XEELTECH intentionally or by gross negligence. Even in case of grossly negligent behavior, the amount of the payable compensation shall be restricted to the amount of twice the license fee paid. XEELTECH shall not be liable for any damages caused by the CUSTOMER Software or the integration of XEELTECH Software in other Software.

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10. Third Party Software:

XEELTECH Software may use software or software components from Third Parties, including open source software, to the extent necessary or useful for the running or the use of the XEELTECH Software. Such "Third Party Software" if included is listed in Appendix 2. Specified Third Party Software License Terms are included in Appendix 2 CUSTOMER explicitly confirms his awareness of the respective specific terms in view of individual parts of Third Party Software that the XEELTECH Software communicates with, or that is contained/embedded in or used by the XEELTECH Software, whereas CUSTOMER agrees to these Third Party Software License Terms by accepting the present License Agreement, however by putting into operation the respective device containing the XEELTECH Software and Third Party Software at the latest, and undertakes and is liable to comply with these terms.

11. Services

11.1.   CUSTOMER may order Services related to the Software with XEELTECH according to separate agreements to be concluded or concluded between the parties.

12. Software Customizing Tool

12.1.   Settings and/or haptic modes (Improvements) created by using the Software Customizing Tool are owned by XEELTECH or - where a transfer of ownership is not possible - the exclusive, worldwide, perpetual, unlimited and royalty free license under those Improvements is granted to XEELTECH.

13. Bug-Fixing, Updates

From time to time and as may be reasonable, XEELTECH may make available hot-fixes, service-packs and/or similar updates (hereinafter together referred to as "Update") to correct possible failures of the XEELTECH Software to CUSTOMER and notify CUSTOMER in an appropriate manner. CUSTOMER is obliged to install the respective Update within 14 days after receipt of the notification. Should CUSTOMER fail to install the Update in time, XEELTECH shall be released from any defects and/or other liability to the extent such liability would not have occurred by installing the respective Update. These Updates are provided to CUSTOMER under the terms of this Agreement, regardless of whether a respective reference is made in each individual case.

14. Termination of the Agreement

14.1.   Should CUSTOMER breach any of his material obligations under this agreement and fail to correct such breach within 30 days as of receipt of the written notification of the breach, XEELTECH may terminate this Agreement with immediate effect. In such case, CUSTOMER is obliged to discontinue the use of the XEELTECH Software immediately. End Users may continue on using the XEELTECH Software installed or used together with CUSTOMER Products at the time of termination of this Agreement.

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14.2.   Regardless of a possible termination of the Agreement, any terms meant to survive a termination of the Agreement shall remain in force unaffected. This shall particularly apply to the provisions on liability, confidentiality and Third Party Software.

15. Dispute Resolution

15.1   Mediation. If a dispute arises out of or related to this Agreement or the breach thereof and if the dispute cannot be settled through negotiation, the Parties agree first to try in good faith to settle the dispute by mediation administered by an independent mediator selected by both Parties before resorting to arbitration.

15.2.   Arbitration. All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with the said Rules. The place of arbitration shall be Vienna. The language of Arbitration shall be English.

16. Miscellaneous

16.1.   GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF AUSTRIA APPLICABLE TO AGREEMENTS MADE AND TO BE ENTIRELY PERFORMED THEREIN.

16.2.   Independent Contractor. Neither Party is, nor shall either Party hold itself out to be, vested with any power or right to contractually bind or act on behalf of the other Party as its contracting broker, agent or otherwise for committing, selling, conveying or transferring any of the other Party's assets or property, contracting for or in the name of the other Party, or making any contract binding such Party. Nothing in this Agreement shall be construed as creating a joint venture, partnership, association or other common business relationship or an agency relationship by and between XEELTECH and CUSTOMER, and neither Party shall be held responsible for the acts or omissions of the other Party. No employee or agent of either Party performing services under this Agreement shall be deemed an employee or agent of the other, and each Party is solely responsible for payment of all such employees' and agents' compensation, benefits, employment taxes, workmen's compensation and withholdings as required by law.

16.3.   Changes/Waiver. Unless otherwise provided herein, this Agreement or any portion thereof may be amended, waived or terminated only by an instrument in writing duly executed by the Parties by hand in ink. Any waiver by any Party of any breach of or failure to comply with any provision of this Agreement by the other Party shall not be construed as, or constitute, a continuing waiver of such provision, or a waiver of any other provision hereof. The Parties understand and agree that any rate, term, or condition of this Agreement that becomes part of any tariff may only be modified or waived by a formal decision of the regulatory body itself.

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16.4. **Successors.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their respective assigns (as permitted hereunder), heirs, successors and legal representatives. It is not the intent of either Party that there be any Third Party beneficiaries of this Agreement, and this Agreement is exclusively for the benefit of the Parties hereto or their respective assigns.

16.5. **ENTIRE AGREEMENT.** THIS AGREEMENT, TOGETHER WITH THE APPENDICES ATTACHED HERETO AND ANY ORDER ISSUED PURSUANT TO THIS AGREEMENT, SETS FORTH THE ENTIRE UNDERSTANDING OF THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF AND SUPERSEDES ALL PRIOR AGREEMENTS AND COLLATERAL COVENANTS, ARRANGEMENTS, COMMUNICATIONS, REPRESENTATIONS AND WARRANTIES, WHETHER ORAL OR WRITTEN, BY PARTY (OR ANY OFFICER, EMPLOYEE OR REPRESENTATIVE OF EITHER PARTY) WITH RESPECT TO THE SUBJECT MATTER HEREOF.

16.6. **Assignment.** Neither Party may assign any of its rights or delegate any of its duties pursuant to this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any attempted assignment without such consent shall be void.

16.7. **Severability.** If any provision or provisions of this Agreement are determined to be invalid or contrary to any existing or future law of any jurisdiction or any rule or regulation of a federal or state regulatory authority, such invalidity shall not impair the operation of or affect those provisions in any other jurisdiction or any other provisions hereof which are valid, and the invalid provisions shall be construed in such manner as shall be similar in terms to such invalid provisions as may be possible, consistent with applicable law.

16.8. **Covenants.** The Parties covenant to each other to execute and deliver such further instruments and do such further reasonable acts and things as may reasonably be required to carry out the intent and purposes of this Agreement.

16.9. **Counterparts.** This Agreement may be signed in any number of counterparts, each of which shall be an original for all purposes, but all of which taken together shall constitute only one Agreement.

16.10. **Notices.** Any notice required or permitted to be given hereunder shall, except where specifically provided otherwise, be given in writing to the person listed below by personal delivery, registered or certified mail or email and the date upon which such notice is so personally delivered (or if notice is given by registered or certified mail, the date that is three (3) business days from sending, or if by email the date of receipt) shall be deemed to be the date of such notice, irrespective of the date appearing thereon.

16.11. **Use of Name.** XEELTECH may use the name or logo of CUSTOMER in any advertising, trade display, public statement, or for any other commercial purposes.

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16.12. Survival. Sections 6, 7, 9, 10, 12, 15 and 16 shall survive the termination of this Agreement for whatever cause.

16.13. Headings. The headings of the Articles of this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement in any way.

Appendix 1

See actual list of software, tools and documentation provided by XeelTech

       https://www.xeeltech.com/download-center/

       https://www.xeeltech.com/customer-area/

Appendix 2

See actual Third Party software document "Third_party_software.txt"

       https://www.xeeltech.com/licenses/

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