

Software License and Maintenance Agreement

Version 2020.0

IMPORTANT INFORMATION – READ CAREFULLY

UNLESS YOU (“CUSTOMER”) HAVE OBTAINED PERMISSION TO USE THE ACCOMPANYING LICENSED PRODUCT UNDER A SEPARATE, DULY SIGNED LICENSE AGREEMENT WITH HERTA SECURITY, S.L. (“HERTA”), BY INSTALLING, COPYING, OR OTHERWISE USING THE LICENSED PRODUCT, AS WELL AS ANY UPDATES OF IT, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS SOFTWARE LICENSE AND MAINTENANCE AGREEMENT (“AGREEMENT”).

IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS AND YOU DO NOT HAVE A SEPARATE LICENSE AGREEMENT AS REFERENCED ABOVE, YOU MAY NOT USE OR COPY THE LICENSED PRODUCT AND YOU MUST DELETE ANY COPIES OF IT FROM YOUR SYSTEMS.

TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1. **“Affiliate”** of a party to this Agreement means another person or entity that, directly or indirectly, controls, is controlled by or is under common control with such party. For the purposes of this definition, “control” means owning a beneficial interest (either directly or indirectly) in more than 50% of the outstanding shares or securities or other ownership interest entitled to vote for the election of directors or similar managing authority. An entity shall be deemed to be an Affiliate under this Agreement for only so long as such requisite conditions are maintained.
- 1.2. **“Applicable Law”** means the laws of Spain.
- 1.3. **“Authorized User”** means a party’s, and its wholly-owned subsidiaries’ or Affiliate’s employees or authorized contractors: (a) whose duties require access to or use of the Licensed Product or Confidential Information for the benefit of that party; and (b) whose legal obligations to protect confidential and proprietary information require protection of the Licensed Product and Confidential Information to at least the same extent as set out in this Agreement.
- 1.4. **“Delivery”** means handing over the Licensed Product to Customer by Herta either (i) electronically, where Delivery will be deemed to occur upon the Licensed Product being available for electronic download as stated in [Section 2.5](#); or (ii) physically, in case of any tangible media, where Delivery will be made F.O.B. point of shipment. In any case, downloading of the present Agreement by Customer shall be deemed as a Delivery of the Licensed Product.
- 1.5. **“Documentation”** means the user documentation, in written, electronic or other format, which describes the Licensed Product and its operation and which Herta may make generally available to its licensed customers for use with the Licensed Product.
- 1.6. **“Effective Date”** means the date on which the Licensed Product has been delivered to Customer, according to abovementioned definition of Delivery.

- 1.7. **“License Term”** means the term during which the Customer is entitled to use, according to the terms of the present Agreement, the Licensed Products. Each Purchasing Agreement shall set forth a License Term applicable to the Licensed Products included in it. In case the Purchasing Agreement does not define any License Term, it shall last until the End of Life (as defined in the Maintenance Services Terms Addendum) of the Licensed Product, unless this Agreement or the relevant Purchasing Agreement is terminated according to Section 7.
 - 1.8. **“Licensed Product”** means the specific products provided by Herta and listed in a Purchasing Agreement and (a) all related Documentation, and (b) all Updates, modifications and maintenance services provided to Customer, according to Herta Maintenance Services Terms attached to this Agreement.
 - 1.9. **“Purchasing Agreement”** is a document that identifies the specific Licensed Product and rights being licensed hereunder, including the quantity, License Term, Territory, or other license constraint, and the fees and payment terms for the Licensed Product licenses. An Affiliate of Customer may purchase licenses to the Licensed Product by executing a Purchasing Agreement, provided that this Agreement governs all such licenses and such Affiliate complies with all Customer obligations referenced in this Agreement and the Purchasing Agreement. Customer agrees that it shall be responsible for the acts and omissions of its Affiliates with respect to any Licensed Product licensed under an applicable Purchasing Agreement. Customer must refer to a copy of the applicable Purchasing Agreement to determine these conditions of the Agreement. The license and/or maintenance term for the specific Licensed Product identified in a Purchasing Agreement may be renewed by the issuance of an invoice by Herta or the corresponding Purchasing Agreement. Customer agrees that Customer purchases under this Agreement and any Purchasing Agreement incorporated herein by reference are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Herta regarding future functionality or features.
 - 1.10. **“Territory”** means the specific country(ies) or geographical areas identified in the applicable Purchasing Agreement to which Customer’s usage of the Licensed Product is limited.
 - 1.11. **“Updates”** means all new releases, programs, temporary fixes or patches to the Licensed Product.
2. **LICENSE**
- 2.1. **License Grant.** Subject to Customer’s compliance with the terms and conditions of this Agreement, Herta grants Customer a nonexclusive, non-transferable license, solely during the License Term and in the Territory set out in the applicable Purchasing Agreement, to (a) use and operate the Licensed Product to the extent permitted by Customer’s payment of applicable fees, solely for the purpose identified in such Purchasing Agreement, and (b) copy the Licensed Product as reasonably necessary to exercise the license rights granted in subsection (a), including making a reasonable number of copies for backup and archival purposes.
 - 2.2. **Applicable Fees.** All applicable fees are owed upon the effective date of the applicable Purchasing Agreement, are non-refundable upon such date, and are payable in accordance with the payment schedule set out in the applicable Purchasing Agreement.
 - 2.3. **Conditions.** The Licensed Product is the proprietary information of Herta or its

suppliers who retain exclusive title to their intellectual property rights in the Licensed Product. Customer's rights to the Licensed Product are limited to those expressly granted herein and Herta reserves all rights not expressly granted in this Agreement. The rights granted to Customer above are conditional upon Customer's compliance with the following obligations:

- a. Customer will not copy Herta' Licensed Products or Documentation, in whole or in part, except as expressly authorized in this Agreement.
- b. Customer will not transfer, assign, lease, lend or rent Herta' Licensed Products or Documentation, use them to provide service bureau, time-sharing or other services, or otherwise provide or make the functionality thereof available to third parties except as expressly authorized in this Agreement.
- c. Customer will not disassemble, decompile, reverse engineer, modify or create derivative works of Herta' Licensed Products or Documentation nor permit any third party to do so, except to the extent such restrictions are prohibited by applicable mandatory local law.
- d. Customer will not allow access to or use of the Licensed Product by, and will not display the Licensed Product's user interfaces to anyone other than the Authorized Users without Herta's prior express written consent.
- e. Customer will not disclose to any third party any comparison of the results of operation of Herta' Licensed Products with other products.
- f. Customer will not delete or in any manner alter the copyright, trademark or other proprietary rights notices appearing on the Licensed Product as delivered by Herta. Customer will reproduce such notices on all copies Customer is authorized to make of the Licensed Product.
- g. Customer's use of the Licensed Product is time-limited to the licensed term set out in the applicable Purchasing Agreement, and such use and access may be monitored and regulated through a license management tool (a "**License Manager**"). The License Manager will report such data to Herta. Customer will not install or use the Licensed Product in a manner that circumvents or interferes with the operation of the License Manager or any other technological measure that controls access to the Licensed Product.

- 2.4. **Special Terms for Third Party Software.** The Licensed Product may contain open source or community source software provided under separate license. Customer's use of such open source software in conjunction with the Licensed Product in a manner consistent with the terms of this Agreement is permitted, however, Customer may have broader rights under the applicable open source license terms and nothing in this Agreement is intended to impose further restrictions on Customer's use of such open source software, which is provided "AS-IS", WITHOUT ANY WARRANTY OF ANY KIND, AND HERTA FURTHER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO OPEN SOURCE SOFTWARE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. NEITHER HERTA NOR THE LICENSORS OF OPEN SOURCE SOFTWARE SHALL HAVE ANY LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS), HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OR DISTRIBUTION OF THE OPEN SOURCE SOFTWARE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

The following links contain the license terms of the third-party software included in the Licensed Products. Herta will not execute any type of control of such sites and contents.

Herta under no circumstance will take any responsibility for the contents of links belonging to another web site, nor guarantee the technical availability, quality, reliability, accuracy, veracity, validity or constitutionality of any material or information contained in none of such hyperlinks or other internet sites. Likewise, the inclusion of these external connections will not imply any kind of association, merging or participation with the connected entities.

- Boost Software License: https://www.boost.org/LICENSE_1_0.txt
- OpenBLAS (BSD): <https://github.com/xianyi/OpenBLAS/blob/develop/LICENSE>
- Easylogging++: <https://github.com/amrayn/easyloggingpp/blob/master/LICENSE>
- stb (MIT) Copyright (c) James Willock, Mulholland Software and Contributors: <https://github.com/MaterialDesignInXAML/MaterialDesignInXamlToolkit/blob/master/LICENSE>
- CImg (CeCILL-C, close to LGPL): www.cecill.info/licences/Licence_CeCILL-C_V1-en.txt
www.cecill.info/licences/Licence_CeCILL_V2-en.txt
- FFmpeg (LGPL build): <http://ffmpeg.org/legal.html>
- Castle Core (Apache 2.0): <https://github.com/gluck/Castle.Core/blob/master/License.txt>
- FluentMigrator (Apache 2.0): <https://github.com/fluentmigrator/fluentmigrator/blob/master/LICENSE.txt>
- NHibernate (LGPL): <https://github.com/nhibernate/nhibernate-core/blob/master/LICENSE.txt>
- Npgsql (PostgreSQL): <https://github.com/npgsql/npgsql/blob/main/LICENSE>
- DirectShow .NET (LGPLv2): <https://www.gnu.org/licenses/old-licenses/lgpl-2.1.html>
- WebActivatorEx (Apache 2.0): <https://github.com/davidebbo/WebActivator/blob/master/LICENSE.txt>
- DocumentFormat.OpenXml (MIT): <https://github.com/OfficeDev/OpenXML-SDK/blob/master/LICENSE>
- iTextSharp (AGPL): <https://itextpdf.com/en/how-buy/agpl-license>
- Material Design in XAML Toolkit: <https://github.com/MaterialDesignInXAML/MaterialDesignInXamlToolkit/blob/master/LICENSE>
- Google logging module (glog) / Google flags (gflags): <https://github.com/google/glog/blob/master/COPYING>
- Open Source Computer Vision Library (OpenCV): <https://opensource.org/licenses/BSD-3-Clause>
- PyTorch: <https://github.com/pytorch/pytorch/blob/master/LICENSE>
- Intel(R) Distribution of OpenVINO(TM) toolkit: <https://github.com/openvinotoolkit/openvino/blob/master/LICENSE>

2.5. **Keys and Access.** Herta agrees to provide Customer those authorization keys and/or passwords, which are necessary to permit Customer to gain access to the Licensed Product which has been properly licensed to Customer in accordance with this Agreement. Notwithstanding anything to the contrary in this Agreement, Customer hereby acknowledges that Customer shall have no right or license to any software made available to Customer which has not been properly licensed to Customer pursuant to this Agreement or that has been included therein solely as a matter of convenience, and that Customer agrees not to attempt to gain access to, or permit any third party to attempt to gain access to, such software.

3. CONFIDENTIALITY

- 3.1. **Confidential Information.** “**Confidential Information**” means: (a) each party’s know how, ideas, patents, patent applications, designs, other intellectual property rights, product samples and specifications, processes, applications and any other information or data whether of technical, financial or commercial nature, such as information related to costs, prices, customers, vendors, suppliers, business partners, disclosed either in oral, written, graphic or electronic form or irrespective of the medium in which the Confidential Information is embedded or conveyed or acquired during facilities tours or meetings; (b) each party’s software products, in byte code or source code form (c) any authorization keys and passwords delivered in order to operate such products; (d) Documentation, product road maps and development plans, and product pricing information.
- 3.2. **Exclusions.** Confidential Information does not include information that: (a) is or becomes generally known or available to the public through no act or omission of the party receiving Confidential Information (“**Receiving Party**”); (b) is rightfully known by the Receiving Party prior to receiving such information from the other party (“**Disclosing Party**”) and without restriction as to use or disclosure; (c) is independently developed by the Receiving Party without use of the Disclosing Party’s Confidential Information and without breach of this Agreement; or (d) is rightfully received by the Receiving Party from a third party without restriction on use or disclosure.
- 3.3. **Use and Disclosure Restrictions.** Receiving Party will not use the Disclosing Party’s Confidential Information except as necessary to exercise the rights granted under this Agreement or to evaluate opportunities to license additional Licensed Products pursuant to this Agreement, and will not disclose such Confidential Information to any person or entity except to its Authorized Users. Without limiting the generality of the foregoing, Customer agrees that it will not post the Licensed Product, the Documentation, or any screenshots of the Licensed Product or results generated by the Licensed Product, on any network that is accessible by anyone other than the Authorized Users. The foregoing obligations will not restrict either party from disclosing Confidential Information of the other party: (a) pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the party required to make such a disclosure gives reasonable notice to the other party to contest such order or requirement; and (b) on a confidential basis to its legal or financial advisors that need to know in order to provide business advice to such party. In addition, each party may disclose the terms and conditions of this Agreement: (i) as required under applicable securities regulations; and (ii) on a confidential basis to present or future providers of venture capital and potential private investors in or acquirers of such party.
- 3.4. **Right of Equitable Relief.** The parties acknowledge that violations of the covenants and obligations of this Agreement may cause the non-breaching party irreparable injury for which an adequate remedy at law may not be available. Therefore, the non-breaching party shall be entitled to seek all remedies that may be available under equity, including immediate injunctive relief, in addition to whatever remedies may be available at law.

4. WARRANTY

- 4.1. **Limited Licensed Product Warranty.** Subject to the remainder of this [Section 4](#), for a period of forty-five (45) days since Delivery of the Licensed Product to the Customer, Herta represents and warrants that, (a) the media on which the Licensed Product is delivered will be free of defects in material and workmanship, (b) the Licensed Product will substantially conform to the functional specifications set forth in the applicable Documentation, and (c) it has used commercially available virus-detection software to

scan the Licensed Product, and it has not knowingly introduced into the Licensed Product any virus, Trojan horse, trap door, or other code that is intended to cause harm to the Customer systems.

- 4.2. **Sole Remedy.** If, during the warranty period set forth in Section 4.1, Herta receives written notice from Customer of non-conformity of the Licensed Product with the warranty set forth in Section 4.1, Herta will, as Customer's sole and exclusive remedy and Herta's entire liability for such non-conformity: (a) deliver a Workaround for the non-conformity; or (b) if Herta is unable to deliver such a Workaround, provide written notice to Customer and, upon Customer's return or confirmed destruction of all copies of the non-conforming Licensed Product to Herta, refund the license fees paid by Customer for such non-conforming Licensed Product. THE FOREGOING STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR WARRANTY CLAIMS RELATED TO THE LICENSED PRODUCT.
- 4.3. **Disclaimer.** Herta does not warrant that the Licensed Product will meet Customer's requirements, that the Licensed Product will operate in combinations with equipment, devices, software or systems provided by persons other than Herta, or that the operation of the Licensed Product will be error-free or uninterrupted. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, HERTA AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES, CONDITIONS AND REPRESENTATIONS, EXPRESS, IMPLIED OR STATUTORY, INCLUDING THOSE RELATED TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, ACCURACY OR COMPLETENESS OF RESULTS, CONFORMANCE WITH DESCRIPTION, COMPLIANCE WITH APPLICABLE LAW AND NON-INFRINGEMENT. HERTA AND ITS SUPPLIERS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, CONDITIONS AND REPRESENTATIONS ARISING OUT OF COURSE OF DEALING, USAGE OR TRADE.

5. INTELLECTUAL PROPERTY WARRANTY

- 5.1. **Limited Intellectual Property Infringement Indemnity.** In the event that Herta receives a written notice from Customer of a third-party claim alleging that the Product infringes the patents, trademarks, copyrights, or other intellectual property rights of such third party, according to the terms of Section 5.2 below ("**Intellectual Property Claim**"), Herta will, as Customer's sole and exclusive remedy and Herta's entire liability for such alleged infringement: (i) procure for Customer the right to continue using such Licensed Product; (ii) replace or modify such Licensed Product so that it is non-infringing and substantially equivalent in function to the original Licensed Product; or (iii) if options (i) and (ii) above are not accomplished despite Herta's reasonable efforts, terminate Customer's rights and Herta's obligations hereunder with respect to such Licensed Product and refund the unamortized portion of the license fees paid for such Licensed Product, based upon a straight-line depreciation over the term of the license commencing as of the date of Delivery. THE FOREGOING STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR INTELLECTUAL PROPERTY RIGHTS CLAIMS RELATED TO THE LICENSED PRODUCT.
- 5.2. **Intellectual Property Claim Requirements.** Herta's obligations under this Section 5 are subject to the following conditions: (a) Customer must promptly notify Herta in writing of the action; (b) Customer grants Herta sole control of the defence and settlement of the action; and (c) Customer must provide Herta, at Herta's expense, with all assistance, information and authority reasonably requested for the defence and settlement of the action. Herta will not be responsible for any compromise made or expense incurred without its consent.

- 5.3. **Exclusions.** Notwithstanding the terms of Section 5.1, Herta will have no liability for any infringement or misappropriation action or claim of any kind to the extent that it results from: (a) modifications to the Licensed Product made by a party other than Herta, if the infringement or misappropriation would not have occurred but for such modifications; (b) the combination, operation or use of the Licensed Product with equipment, devices, software, systems or data not supplied by Herta, if the infringement or misappropriation would not have occurred but for such combination, operation or use; (c) Customer's failure to use the Updated or modified Licensed Product provided by Herta to avoid infringement or misappropriation; (d) Herta's compliance with any designs or specifications provided by Customer; and / or (e) Customer's use of the Licensed Product other than as authorized by this Agreement.
- 5.4. **Sole Remedy.** THE PROVISIONS OF THIS SECTION 5 SET FORTH HERTA'S SOLE AND EXCLUSIVE OBLIGATIONS, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND. EXCEPT AS SET FORTH ABOVE, HERTA AND ITS SUPPLIERS DISCLAIM ALL IMPLIED OBLIGATIONS WITH RESPECT TO INTELLECTUAL PROPERTY INDEMNIFICATION.

6. LIMITATION OF LIABILITY

- 6.1. **Exclusion of Damages.** Notwithstanding anything to the contrary and to the extent permitted by Applicable Law, this Agreement does not limit liability due to death or personal injury caused by gross negligence, or liability due to fraudulent misrepresentations or wilful misconduct, or liability arising from breaches of confidentiality obligations or license grants or conditions hereunder. SUBJECT TO THE FOREGOING SENTENCE, IN NO EVENT WILL EITHER PARTY, OR ITS SUPPLIERS, BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS OR PROFITS, REVENUE, GOODWILL, ANTICIPATED SAVINGS) OR FOR THE COST OF PROCURING SUBSTITUTE PRODUCTS OR SERVICES ARISING OUT OF THIS AGREEMENT, WHETHER BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), FAILURE OF A REMEDY TO ACCOMPLISH ITS PURPOSE, STRICT LIABILITY OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Customer acknowledges that Herta would not be able to provide the Licensed Product without the limitations set forth in this Section 6.
- 6.2. **Cap on Liability.** IN NO EVENT WILL HERTA, ITS AFFILIATES OR ITS SUBSIDIARIES, OR ITS SUPPLIERS' AGGREGATE LIABILITY UNDER THIS AGREEMENT, OR RELATING TO ITS SUBJECT MATTER, EXCEED WITH RESPECT TO ANY LICENSED PRODUCT, THE AMOUNT PAID BY CUSTOMER FOR THE LICENSED PRODUCT GIVING RISE TO THE CLAIM, AND WITH RESPECT TO SERVICES, THE AMOUNT PAID BY CUSTOMER FOR THE SERVICES GIVING RISE TO THE CLAIM.

7. EXPIRATION AND TERMINATION

- 7.1. **Term of Agreement.** The term of this Agreement shall begin on the Effective Date of this Agreement and will end when this Agreement or the Purchasing Agreement is terminated by either party in accordance with this Section 7, or in case of expiration of the License Term in the applicable Purchasing Agreement.

- 7.2. **Termination for Breach.** Either party will have the right to terminate this Agreement and/or any Purchasing Agreement if the other party breaches any material term of the Agreement or Purchasing Agreement, as the case may be, and if such breach is capable of cure, the breaching party fails to cure such breach within thirty (30) days after receiving written notice thereof. Either party will have the right to terminate this Agreement if the other becomes insolvent or makes an assignment for the benefit of creditors, or a trustee or receiver is appointed for such other party or for a substantial part of its assets, or bankruptcy, reorganization or insolvency proceedings shall be instituted by or against such other party. Termination of this Agreement under this Section 7 terminates all Purchasing Agreements and licenses granted hereunder.
- 7.3. **Effect of Termination or Expiration.** Upon termination or expiration of this Agreement or a Purchasing Agreement, all Licensed Product licenses and rights to use Confidential Information that are granted thereunder shall terminate. Upon termination of this Agreement or expiration of the License Term in any Purchasing Agreement, Customer will: (a) promptly return to Herta or destroy the applicable Licensed Product and Confidential Information and all copies and portions thereof, in all forms and types of media; and (b) promptly pay all fees owing up to the date of termination.
- 7.4. **Survival.** Sections 1, 2.3, 2.4, 3, 4.3, 5, 6 and 8 of the Agreement will survive the termination or expiration of this Agreement or of any Purchasing Agreement.
8. **GENERAL**
- 8.1. **Promotion.** Unless otherwise provided in the Purchasing Agreement, Customer agrees that Herta may use Customer's name and logo (in a form approved by Customer) to identify Customer as a customer on Herta's website or in marketing or publicity materials or in any filings made in connection with Applicable Law.
- 8.2. **Export Restrictions.** Each party hereby agrees to comply with all applicable export laws and regulations, and not to export or allow the export or re-export, directly or indirectly, of any proprietary information or software or any copy or direct product thereof in violation of any such restrictions, laws or regulations, to any destination to which such export or re-export is restricted or prohibited by applicable export laws.
- 8.3. **Assignment.** Customer shall not assign this Agreement, or any licenses granted under it, in whole or in part, by operation of law or otherwise. Any attempt to so assign without Herta's consent will be void and of no effect. Subject to the foregoing, this Agreement will bind and inure to the benefit of each party's permitted successors and assigns.
- 8.4. **Governing Law and Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of Spain excluding that body of laws known as conflicts of law. The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply. Any legal action or proceeding arising under this Agreement will be brought exclusively in the competent courts of Barcelona (Spain) and the parties irrevocably consent to the personal jurisdiction and venue therein.
- 8.5. **Verification and Audit.** In addition to the data collected by the License Manager, Customer will monitor and track access to and use of the Licensed Product. At Herta's written request, Customer will furnish Herta with (a) a certification signed by an authorized representative of Customer providing user or access information that identifies whether the Licensed Product is being used in accordance with the terms of this Agreement, and (b) log files from any license manager that regulates access to the Licensed Product. Upon at least thirty (30) days prior written notice, Herta may engage,

at its expense, an independent auditor to audit Customer's use of the Licensed Product to ensure that Customer is in compliance with the terms of this Agreement and the applicable Purchasing Agreements. Audits will be conducted during regular business hours at Customer's facilities and will not unreasonably interfere with Customer's business activities. Customer will provide the auditor with access to the relevant records and facilities. If an audit reveals that Customer has underpaid fees to Herta during the period audited, then Herta will invoice Customer, and Customer will promptly pay Herta for such underpaid fees based on Herta's price list then in effect. If the underpaid fees exceed five percent (5%) of the license fees paid by Customer for the Licensed Product, then Customer will also pay Herta's costs of conducting the audit.

- 8.6. **Nonexclusive Remedy.** Except as expressly set forth in this Agreement, the exercise by either party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.
- 8.7. **Force Majeure.** Neither party will be responsible for any failure or delay in its performance under this Agreement (except for any payment obligations) due to causes beyond its reasonable control, including, but not limited to, labour disputes, strikes, lockouts, shortages of or inability to obtain labour, energy, raw materials or supplies, war, terrorism, riot, natural disasters or governmental action ("**Force Majeure Event**"). A party claiming to be affected by a Force Majeure Event shall notify the other party without delay on the start and on the cessation of the Force Majeure Event. If the Force Majeure Event continues for more than three (3) months starting on the day the Force Majeure Event starts, the party not affected by the Force Majeure Event may terminate this Agreement by giving not less than thirty (30) days' notice to the other party.
- 8.8. **Notices.** All notices required or permitted under this Agreement will be in writing. Notices will be effective upon delivery if delivered in person and upon mailing if delivered by courier service, overnight delivery services or by a form of certified or express mail. Notices affecting this Agreement as a whole will be sent to the primary corporate addresses set forth in the Purchasing Agreement or to such other address as Customer or Herta may notify the other party in writing.
- 8.9. **Entire Agreement; Modification; Interpretation.** This Agreement, including any addendum hereto, and all accepted Purchasing Agreements, constitute the complete and exclusive understanding and agreement between the parties regarding its subject matter and supersedes all prior or contemporaneous agreements or understandings, written or oral, relating to its subject matter. Customer agrees that additional or different terms on Customer's purchase order shall not apply. Failure to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. Any waiver, modification or amendment of this Agreement will be effective only if in writing and signed by Customer and an authorized representative of Herta. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect. The word "including" when used in this Agreement will mean including without limitation of the generality of any description, definition, term or phrase preceding that word.

MAINTENANCE SERVICES TERMS ADDENDUM**1. DEFINITIONS**

- 1.1. **“End of Life”** means the date in which Herta will stop to provide any Maintenance Service, as well as authorization keys, passwords or any other means of access to a Licensed Product or some of its versions. Herta shall provide to Customers a previous written notice at least 3 months in advance of the End of Life of a Licensed Product or some of its versions.
- 1.2. **“Maintenance Services”** means the following assistance services provided by Herta to Customer as further described below. Provision of such services shall depend on the Maintenance Service level agreed with Customer (Enterprise or Standard as defined below) and to Customer’s payment of applicable fees for the period agreed by the parties in the corresponding Purchasing Agreement.
- 1.3. **“Major Release”** means a specific edition of the Licensed Product that contains major functionality changes. The content and timing of all Major Releases will be determined by Herta in its sole discretion. Major Releases are signified by version changes to the left of the decimal point (e.g. 2.0 -> 3.0) following the Licensed Product name.
- 1.4. **“Minor Release”** means a specific edition of the Licensed Product that contains minor, but significant functionality changes. The content and timing of all Minor Releases will be determined by Herta in its sole discretion. Minor Releases are signified by version changes to the right of the decimal point (e.g. 2.5 -> 2.6) after Licensed Product name.
- 1.5. **“Service Issue”** is a Customer inquiry regarding the functionality or use of the Licensed Product. Customer agrees that Herta’ Support obligations concerning the Licensed Product’s use with third party products and other Licensed Product, shall be limited to those items set forth in the Documentation. Service Issues shall be classified by Herta at the time of Customer’s initial contact with Herta, as provided below:
 - **Critical Business Impact:** Licensed Product is not functioning or is stopped or severely impacted so that Customer cannot reasonably continue use of Licensed Product and no Workaround is available.
 - **Major Business Impact:** Licensed Product is functioning inconsistently causing significantly impaired Customer usage and productivity, such as periodic work stoppages and feature crashes.
 - **Minor Business Impact:** Licensed Product is functioning inconsistently causing slightly impaired Customer usage and productivity but Customer can work around such inconsistency or impairment.
 - **No Business Impact:** Licensed Product is functioning consistently but Customer requests minor changes in Licensed Product such as Documentation updates, cosmetic defects or enhancements.
- 1.6. **“Support”** means the e-mail and telephone technical services that Herta offers regarding the use and function of the Licensed Product. Herta will provide Support and respond to Service Issues as further described below. Support Availability and scheduled times for initial response shall be detailed below in the Service Level Agreement chart. Herta will provide Support for each Release for up to twelve (12)



months after the subsequent Release is first made commercially available. After such period, Herta will provide Support, as needed, to Customer to update its use of the Licensed Product to the latest Release of the Licensed Product.

- 1.7. **“Workaround”** means a Licensed Product patch, error correction, or feasible change in operating procedures whereby the Licensed Product is made sufficiently functional so that Customer can continue to use the Licensed Product. Herta may provide Workarounds for a Release to resolve a Service Issue for up to twelve (12) months after the subsequent Release is first made commercially available. After such twelve (12) month period, Herta is not obligated to provide Workarounds but will support Customer’s Update of the Licensed Product to the latest Release.

2. SERVICE LEVEL AGREEMENT

Items		Service Level			
		1 st Year included	Enterprise	Standard	No Maintenance ¹
Major Release		✓	✓	✗	✗
Minor Release		✓	✓	✓	✗
Workaround		✓	✓	✓	✗
No End of Life ³		✓	✓	✗	✗
Response to Services Issues (according to Support Availability)	Critical	Immediately	Immediately	Upon availability	✗
	Major	12 hours	12 hours	Upon availability	✗
	Minor	48 hours	48 hours	Upon availability	✗
	No Impact	3 days	3 days	Upon availability	✗
Support Availability		24/5 ²	24/5 ²	24/5 ²	✗

¹ Where no Maintenance Services are purchased by Customer, Support may be provided by Herta at the then-current technician/hour, materials, etc. rates for the requested services.

² From Monday to Friday.

³ Customers with Standard Service Level or no Maintenance Service purchased, will not receive any Maintenance Service after End of Life unless they update the affected Licensed Product at a price to be agreed with Herta.

Failure to contact Customer within the response time period because Customer is unavailable (e.g., phone busy, no answer, in a meeting, or out of the office, etc.) does not constitute Herta’s noncompliance with the response commitment. Customer shall cooperate with Herta to provide reproducible results for any errors reported. Herta’s ability to provide Support may depend on the ability of Customer’s representatives to provide accurate and detailed information and to aid Herta in handling a Service Issue. Customer shall provide Herta with reasonable access to Customer systems, premises and staff as needed to provide Support.

3. EXCLUSIONS TO MAINTENANCE SERVICES

Herta will not have any obligation to provide Maintenance Services for problems in the operation or performance of the Licensed Product to the extent caused by any of the

following: (a) modifications to the Licensed Product made by a party other than Herta; (b) Customer's use of the Licensed Product other than as authorized by this Agreement; (c) Customer's use of Releases other than those Releases of the Licensed Product covered by Maintenance Services; or (d) Customer's failure to use any Workaround thereto provided by Herta to address such problem. If, in its sole discretion, Herta determines that a problem in the operation or performance of the Licensed Product is caused by the foregoing, then Herta will notify Customer promptly and have no further Maintenance Service obligations related to such problem. If Customer requests services beyond standard Maintenance Services, Herta will have the right to invoice Customer at Herta's then-current technician/hour, materials, etc. rates for the provision of such services.

4. ACCESS TO DATA BY HERTA

In case the Products installation and/or the Maintenance Services provided by Herta require Herta to get access to Customer systems and/or databases, Herta shall (i) hold strictly in confidence any and all Confidential Information and/or personal data to which it may accede, (ii) protect the Confidential Information and/or personal data with at least the same degree of care as it exercises to protect its own proprietary information of like importance, but in no event less than reasonable care; and (iii) not use Confidential Information and/or personal data for any other purpose than the performance of the Agreement. In addition to the liability limits set forth in the Agreement, HERTA SHALL NOT BE LIABLE (I) FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, AS WELL AS ANY LOSS OF USE, DATA, BUSINESS, PROFITS, REVENUE, GOODWILL AND/OR ANTICIPATED SAVINGS, OR FOR THE COST OF PROCURING SUBSTITUTE PRODUCTS OR SERVICES ARISING OUT OF THE PRODUCTS INSTALLATION AND/OR THE MAINTENANCE SERVICES PROVIDED BY HERTA; (II) NEITHER FOR ANY DAMAGE ARISING DIRECTLY OR INDIRECTLY FROM THE ACTS OR OMISSIONS OF THE CUSTOMER OR OF ANY THIRD PARTY WITH REGARDS TO THE CUSTOMER'S SYSTEMS AND/OR DATABASES (including but not limited to lack of backups, lack of storage space, loss of data, corrupt files, virus, Trojan horse, trap door, or other code that is intended to cause harm that may be in the Customer systems).

5. GENERAL

These terms and conditions contain the parties' entire agreement concerning Maintenance Services. Customer agrees that additional or different terms on Customer's purchase order shall not apply. Any waiver, modification or amendment of these terms and conditions will be effective only if in writing and signed by an authorized representative of both parties.