REFRAME Program End User License Agreement (EULA)

between

Aesculap AG

Am Aesculap-Platz, 78532 Tuttlingen, Germany

     (hereinafter referred to as "Licensor")

and

     "Licensee" as defined below

collectively called the "Parties" or individually the "Party".

Preamble

Licensor has developed a unique Program to optimize the alignment of kinematic data reference frames, the goal of which is to provide all researchers in the field of orthopaedics and biomechanics a possibility to reliably and accurately compare kinematic datasets, for which the reference frames are not consistently aligned, for model validation and research on kinematics (hereinafter "REFRAME Program" or "REFRAME Software").

The Licensee wishes to acquire rights in the REFRAME Program in accordance with the terms of this licensing agreement ("Agreement").

1. Definitions

REFRAME Software or REFRAME Program	Software developed by Aesculap AG and made available through the ETH Zurich and B.Braun websites.
Effective Date	Shall be defined as the date of the last signature of the Parties on this Agreement.
License	Shall be defined as the rights granted by the Licensor under the terms of this Agreement.
Licensee	Shall be the person (1) who has been specified in the download registration mask, (2) who has read and agreed to these terms and conditions, or (3) who used the download link or (4) who use the software.
Principle Investigator	Shall be defined as the scientist responsible for the management and execution of the Licensee's Project.

2. Grant of License

Subject to the terms of this Agreement, Licensor grants Licensee a non-exclusive, royalty-free, non-sub-licensable, non-assignable license to use the REFRAME Software under the rights of copyright for non-commercial projects within their institute.

Licensor is at no time under any obligation to provide any kind of update to the REFRAME Program. Licensor is also at no time under any obligation to provide Hardware or Operating System to run the Application. It is understood and agreed that it is the sole and exclusive responsibility of the Licensee to utilize appropriate hard- and software to run the REFRAME Program.

3. Obligations of the Licensee

Licensee has the right to use the REFRAME Program within the scope of this Agreement under the following conditions.

Licensee shall:

(i) use the REFRAME Program solely for non-commercial projects and only within Licensee's institute;

(ii) not use the REFRAME Program for any patient related, neither diagnostic nor therapeutic, means;

(iii) not sub-license, make available, market, sell, offer for sale, rent, lease, or loan the REFRAME Program in whole or in part to a different facility or organizational unit of the Licensee or to any third party;

(iv) acknowledge the sources of the REFRAME Program (represented by the Laboratory for Movement Biomechanics of ETH Zurich and the Aesculap AG Tuttlingen) in any publication reporting use of it.

(v) a copy of the complete citation and/or reference the relevant scientific papers (found here: link) and any kind of report that is for public or general release that uses the REFRAME Program must be made available to the licensor upon release for dissemination on the REFRAME website;

(vi) shall not decompose or reverse engineer the REFRAME Program;

(vii) shall agree to be contacted through the provided email address or phone number by the Licensor regarding REFRAME related topics.

4. Obligations of the Licensor

The Licensor shall, for the duration of this Agreement make any relevant updates to the REFRAME Program available to the Licensee via the REFRAME website.

5. Confidentiality

The Licensee shall hold confidential all the contractual know-how that was made available by the Licensor in the course of the execution of this Agreement, as well as any and all supplementary communicated data, documents and information transferred, even if they have not been explicitly defined as being secret or confidential. This confidentiality obligation also continues to be valid subsequent to an ordinary or extraordinary termination or expiration of this Agreement. The Licensee shall oblige its employees, to comply with the same confidentiality obligation.

The above confidentiality obligation of the Licensee shall not apply to information for which the Licensee can demonstrate upon request that the information:

(i)   has been known to the general public prior to disclosure by the Licensor or becomes public domain thereafter;

(ii)   came to the knowledge of the Licensee through a third party which obtained such information without breach of any agreement or contract and which was or is authorized to have such information or which obtained such information by an authorized party;

(iii)   has been known by the Licensee prior to communication or disclosure by the Licensor.

6. Warranty and liability

6.1. It is agreed and understood that the REFRAME Program is provided "as is" and the Licensors make no representations or warranties of any kind, expressed or implied. By way of example, but without limitation, the Licensors make no representations or warranties of merchantability, or fitness for any particular purpose or that the functions contained in the REFRAME Program will meet Licensee's requirements. Furthermore, the Licensors do not warrant or make any representations regarding the use or the results of the use of the REFRAME Program in terms of correctness, accuracy, reliability, or otherwise or that defects in the REFRAME Program will be corrected.

It is the Licensees responsibility to check the Software is returning appropriate results before reporting any scientific findings. The Licensor will not accept any responsibility for incorrect results.

Licensor has not performed any searches or investigations into the existence of any third-party rights that may affect the use of the REFRAME Program. Licensor does not give any warranty that the exercise of any of the rights granted under this Agreement will not infringe any other intellectual property or other rights of any third party.

The above provisions regarding representations and warranties also apply, to the extent possible, to information regarding ideas, sources of materials, customer lists, formulas, files, drawings, specifications, patterns, devices, inventions, processes, methods, tools, materials, equipment, technology, documentation, printouts, reports, evaluation and/or other information on the REFRAME Project Website and within the REFRAME Program ("know-how").

6.2. The Licensee acknowledges and agrees that the use of the REFRAME Program is at the Licensee's sole risk. The Licensors shall not be liable for any direct or indirect damages, including, but not limited to, damages resulting from the use of the REFRAME Program or the results generated through the use of the REFRAME Program. In the event of a statutory liability of the Licensor for third party damages, Licensee shall indemnify and hold the Licensor harmless against any and all claims of third parties resulting from damages caused by use of the REFRAME Program or the results of such use.

For direct damages incurred by the Licensee in connection with this Agreement, the Licensor is liable only if they are caused by unlawful intent or gross negligence. Any further liability shall be excluded to the extent legally admissible.

7. Knowledge gained in use

If either Party becomes aware of any fact, complaint or hazard associated with the use of the REFRAME Program that could cause or contribute to any injury, harm or dissatisfaction with the REFRAME Program, Licensee shall use its best efforts to provide Licensor with all information which is available to Licensee with regard to such complaint in the best time limit.

8. Title and Ownership

Title, ownership rights, copyrights and intellectual property rights in and to the REFRAME Program shall exclusively and fully remain with the Licensor.

9. Term of the Agreement

9.1. This Agreement enters into force on the Effective Date.

9.2. This Agreement may be terminated by Licensee or the Licensor with two (2) months' written notice.

9.3. Any termination shall not relieve Licensee of any obligation or liability accrued under this Agreement prior to termination.

9.4. The Licensor may terminate this Agreement without previous notice upon material breach of any of the terms under this Agreement by Licensee.

10. Compliance with Applicable Laws and Regulations

The Licensee undertakes to comply with all applicable laws and regulations when implementing and/or using the REFRAME Program.

11. Applicable law and Place of Jurisdiction

This Agreement is subject to German law, with the exception of those provisions relating to intangible property rights, which are necessarily subject to foreign law. The place of jurisdiction shall be Kassel, Germany.

12. Final provisions

12.1. Advertising: Nothing contained in this Agreement confers any right to use in advertising, publicity, or other promotional activities any name, trade name, trademark, signs, symbols or other designation of either party hereto unless mutually agreed in writing.

12.2. Intellectual Property: Nothing in this Agreement is intended to be or shall be construed as a transfer of ownership of any intellectual property right owned by Licensor, including, but not limited to, patents, copyrights, trademarks, trade secrets, or other proprietary information owned by Licensor.

12.3. Severability clause: Should any provision of this Agreement be invalid or unenforceable or should the Agreement contain any omission, the remaining provisions shall remain valid. In the place of an invalid provision, a valid provision is presumed to be agreed upon by the Parties which comes closest to the one actually agreed upon.

12.4. Entire Agreement and amendments: This Agreement embodies the entire understanding of the Parties and supersedes all previous communications, representations or understandings, either oral or written, between the Parties relating to the subject matter hereof. No amendment or modification of this Agreement shall be valid or binding on the Parties unless made in writing and signed by each Party.

The Parties shall not infer from this Agreement any other rights than those that are explicitly stated herein.

Address for correspondence:

NAME, FUNCTION, EMAIL, Aesculap AG, Am Aesculap-Platz, 78532 Tuttlingen, Germany