Software License Agreement

between the

Helmholtz-Zentrum Dresden - Rossendorf e. V.

Bautzner Landstraße 400, 01328 Dresden, GERMANY

represented by the Board of Directors

- hereinafter referred to as **LICENSOR** -

and the

represented by

- hereinafter referred to as **LICENSEE** -

- hereinafter referred to as **PARTNERS** -

Preamble

WHEREAS, the LICENSOR is a German research institute that conducts research in the sectors health, energy and matter. The LICENSOR has developed the computer program TRIDYN on which the LICENSOR is entitled to exercise all economic rights. TRIDYN simulates ion irradiation effects in amorphous multicomponent materials, and keeps track of the depth-dependent dynamic modification of the material due to ion implantation and atomic relocation.

WHEREAS, the LICENSEE is a
and is interested in the use of the LICENSOR´s Software for

WHEREAS, the PARTNERS want to regulate the terms and conditions for the making available and the use of the Software distributed by the LICENSOR.

NOW, therefore, the PARTNERS agree as follows:

§ 1 Purpose

This Agreement grants a license to use the software described in **Annex 1** (hereinafter referred to as **SOFTWARE**) developed by the LICENSOR to the LICENSEE for scientific and other non-commercial purposes.

§ 2 Granting of Rights

(1) The LICENSOR grants to the LICENSEE a non-exclusive right to use the code TRIDYN for its own calculations on non-commercial base within the framework of own research projects and for educational purposes. Any third party shall not be given access to the code TRIDYN without prior written permission of the LICENSOR. Any commercial use of the SOFTWARE is not allowed without written permission of the LICENSOR. Commercial use includes any use of the SOFTWARE for which the LICENSEE is paid by a third party. In the case of commercial use an additional agreement on the involvement of the LICENSOR has to be concluded.

(2) The LICENSOR is entitled to draw copies of the SOFTWARE for back-up purpose only. The LICENSOR shall become the owner of all and any rights to such copies, unless they were assigned to the LICENSEE pursuant to § 7 (1) of this Agreement. The LICENSEE is entitled to use the SOFTWARE - subject to utilization in accordance with the provisions - on its DP system, even though intermediary copies are made in the primary memory.

(3) After the complete signing of this Agreement the LICENSOR will send the SOFTWARE package by suitable electronic means to be agreed between LICENSOR and LICENSEE.

§ 3 License fee

The LICENSEE shall pay the LICENSOR a license fee of 0,00 € for the granting of rights to use the SOFTWARE.

§ 4 Term

(1) The Agreement shall take effect on the date when signed by both PARTNERS with legally binding effect and shall expire ten years after its signing. A PARTNER may terminate this Agreement by a written notice given 4 weeks in advance of the date of the termination. This right shall not be exercised on untimely manner.

(2) The PARTNERS are entitled to extraordinarily terminate the contract for good cause by written notice. Good cause shall be deemed to exist, in particular, in case of

> a) the initiation of insolvency proceedings by one of the PARTNERS, if initiation is rejected due to insufficiency of assets or the liquidation of one of the PARTNERS or

> b) an event of a material breach of the contract, especially if the breach has a substantial disadvantage for the other PARTNER or the SOFTWARE.

(3) In case of termination of the Agreement or after the end of the indicated period the LICENSEE is obligated to delete the SOFTWARE and to destroy all material received from LICENSOR and to inform the LICENSOR about this in written form within 30 days after termination.

§ 5 Modifications

LICENSEE has no right to modify the SOFTWARE.

§ 6 Up-Dates und Improvements

LICENSEE acknowledges that the SOFTWARE is being supplied "as is," without any accompanying support services, maintenance or future updates by the LICENSOR.

§ 7 Errors

In the event that LICENSEE discovers any error in the SOFTWARE or experiences any malfunction attributable to the SOFTWARE, LICENSEE shall promptly notify LICENSOR of such error or malfunction.

§ 8 Publications and Reports

(1) In all publications, reports and materials of LICENSEE for which the SOFTWARE has been employed and/or which refer to the SOFTWARE, the origin and the authors of the code must be clearly indicated.

(2) LICENSEE shall inform LICENSOR by written notice about a publication referring to the SOFTWARE.

(3) All credits in the SOFTWARE, both in listings and/or documentation, whether names of individuals or organisations, will be retained in place by LICENSEE. LICENSEE shall acknowledge in any published copy or in any other use of the SOFTWARE the authorship of the SOFTWARE and the fact that the SOFTWARE was developed by the LICENSOR. In particular in publications and presentations of results obtained by the SOFTWARE the authorship will be acknowledged by the LICENSEE.

§ 9 Warranty

(1) The LICENSOR is entitled to grant the license specified hereunder. THE SOFTWARE IS PROVIDED TO THE LICENSEE "AS IS". THE LICENSOR MAKES NO FURTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR THAT THE SPECIFICATIONS OR FUNKTIONS CONTAINED IN LICENSORS SOFTWARE WILL MEET LICENSEES REQUIREMENTS, THAT THE OPERATION OF THE SOFTWARE WILL BE CORRECTED OR THAT THE USE OF THE SOFTWARE WILL NOT INFRINGE ANY PATENT OR COPYRIGHT. LICENSOR IS NOT RESPONSIBLE FOR FAILURE TO BACK UP DATA, THE LOSS OR CORRUPTION OF DATA OR THE FAILURE OF ANY ENCRYPTION ALGORITHMS; ASSOCIATED KEYS OR OTHE SECURITY MEASURES.

(2) The LICENSOR does not know of any third party rights which may prevent the use of the SOFTWARE delivered or provided by the LICENSOR in accordance with this Agreement.

(3) If third parties are entitled to such rights and they pursue these, LICENSOR shall do everything in its power, in order to defend the SOFTWARE at its own expense against the third party rights claimed. LICENSEE shall inform LICENSOR in writing without delay of the claiming of such rights and shall give LICENSOR all powers of attorney and authorisations

which are necessary in order to defend the SOFTWARE against the third party rights claimed.

§ 10 Restriction of Liability

(1) In case of claims of the LICENSEE against the LICENSOR the LICENSOR, including its legal representatives, senior executives and assistants in performance, shall only assume liability in the case of fraud, intent and gross negligence. All indirect and consequential damages, especially damages resulting from loss of production and loss of profit are also excluded in case of gross negligence.

(2) (1) shall not be applicable for death, personal injury or damage to health caused by the intent or negligence of the LICENSOR, its legal representatives or assistants in performance.

(3) The LICENSEE shall release the LICENSOR from all claims of third parties of damages to lives, bodies and health accrued out of the utilization, testing, production, sale, distribution and other use of the SOFTWARE. It is recommended that the LICENSEE takes out liability insurance.

(4) The LICENSOR shall be liable for losses caused by the breach of its primary obligations, its legal representatives or assistants in performance. Primary obligations are such basic duties which form the essence of the Agreement, which were decisive for the conclusion of the Agreement and on the performance of which LICENSEE may rely. If LICENSOR breaches its primary obligations through simple negligence, its ensuing liability shall be limited to the amount which was foreseeable by LICENSOR at the time the respective service was performed.

§ 11 Non-Disclosure of Information

(1) All information, directly or indirectly disclosed to a PARTNER in connection with this Agreement, shall be treated by the receiving PARTNER as confidential and shall not be disseminated without prior written consent of the disclosing PARTNER or be used for any purpose other than the carrying out of the receiving PARTNER's obligations under this Agreement.

(2) This restriction shall not extend to any information which:

a) has been in the possession of the receiving PARTNER prior to receipt from the disclosing PARTNER, or,

b) is or has been published or otherwise has become public knowledge, otherwise than through any act of omission on the part of the receiving PARTNER, or,

c) was rightfully acquired by the receiving partner from others without any undertaking of confidentiality imposed by the disclosing PARTNER, or,

d) was developed by the receiving PARTNER independently of the work of the project, or,

e) the receiving PARTNER is specifically required to disclose pursuant to an order of a court of competent jurisdiction in order to fulfil the court order.

(3) Confidential information will be flagged according to the following:

a) if the information is written, a "confidential" mark shall be put on each page, or the document concerned shall be communicated under a sealed envelope;

b) if the information is spoken, the confidential parts will be flagged as such by the disclosing PARTNER. The disclosing PARTNER and the receiving PARTNER shall record this exchange of information in a written form within the next fifteen (15) working days.

(4) Upon completion of the project each PARTNER shall return to the other PARTNER any background information communicated by them for the purpose of the project.

(5) In view of the above, the confidential nature of information shall not constitute a reason for a PARTNER not to disclose such information.

§ 12 Export and Civil Purpose

(1) The export of the SOFTWARE may be subject to authorisation by export control authorities. If an authorisation is withheld this Agreement will be terminated retroactively.

(2) LICENSEE is obliged to use the SOFTWARE only for civil purposes. Any military uses including armaments are strictly forbidden.

§ 13 Persons in Charge

(1) At the time of the conclusions of this Agreement, Persons in charge are:

a) for the LICENSOR, Prof. Dr. Wolfhard Möller, w.moeller@hzdr.de, +49 351 260 2245

b) for the LICENSEE,

(2) In case of any change of the Person in Charge at the LICENSOR, the LICENSOR will publicise the new connections through the HZDR webpage which addresses the SOFTWARE and its licensing.

§ 14 Conflict Resolution

If any dispute arises in connection with this Agreement the PARTNERS agree to take on immediately consultations or negotiations to settle these disputes amicably.

§ 15 Choice of Law and Venue

(1) This Agreement will be exclusively governed by German law. The application of the UN Sales Convention (CISG) is explicitly excluded.

(2) Exclusive venue for both PARTNERS shall be Dresden, Germany.

§ 16 Miscellaneous

(1) If any provision of this Agreement should be invalid, ineffective or unenforceable, that will not affect the validity of the remaining provisions. In such case the PARTNERS shall replace such invalid provisions by mutual consent by another legally effective provision meeting the purpose of the abolished provision to the greatest extent possible. If the PARTNERS fail to reach an Agreement in this respect, any of the partners may request the court to replace the abolished provision.

(2) Any modification of and/or amendments to this Agreement or its annexes, as well as any further amendments and all legal transactions during this performance shall only be effective if made in writing. Both PARTNERS acknowledge that in addition to this document there is no further oral or implicit acceptance.

(3) The original copy of this Agreement shall be made out in English language. The Agreement shall be drawn up in duplicate, one counterpart for each PARTNER hereto.

(4) All annexes und amendments are part of this Agreement.

Signature Page to the Software License Agreement

Dresden, _____

Helmholtz-Zentrum Dresden - Rossendorf e. V.

_____   _____

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Annex 1 to the Software License Agreement

The SOFTWARE package to be send to LICENSEE includes

(i)   The executable codes of the TRIDYN programme in its most recent version (tridyn2017), for execution under WINDOWS and under LINUX systems

(ii)   A User Manual with a detailed description of the code, instructions for its use and recommendations for the choice of suitable input parameters

(iii)   Sample input and output data sets

For the avoidance of doubt the SOFTWARE package does not include the transfer of the source code.