1.   Scope of the License Agreement

1.1 All license agreements / purchase orders (the "Order") concluded between BM&T GbR (the "Licensor") and the customer (the "Customer") are exclusively subject to the following terms and conditions (the "Agreement").

1.2 The Licensor objects to any general terms and conditions of the Customer which deviate from this Agreement or the provisions of law as well as to any supplementary provisions in the terms and conditions of the Customer, except where the Licensor gives its express prior written consent to the applicability of the Customer's general terms and conditions.

2.   Software

2.1 "Software" shall mean the software as described in the offer of the Licensor, consisting of one or more of the following products of the "Virtual Physiology" series: "Sim Nerv", "Sim Heart", "Sim Muscle", "Sim Neuron", and "Sim Vessel"(each a "Product").

2.2 The term "Software" shall include the documentation that is provided by the Licensor in connection with the respective Software, as revised by the Licensor from time to time. The documentation may include user manuals, operation instructions, installation guides, release notes, and help files.

3.   Granting of Use Rights

3.1 The Licensor grants the Customer a non-exclusive, non-transferable right, unrestricted in time, to use the Software solely for the purpose of academic training of students and scientists of the Customer (the "License").

3.2 Demo Versions. The Licensor may make demo versions of the Software with limited features (each a "Demo Version") available for download by individual persons (also referred to as "Customers" for the purpose of this Agreement). The License regarding the Demo Version is free of charge but limited to a 2-month-period from the date of the download of the Demo Version. Each Customer may only download and use a Demo Version once. The Demo Version may be installed on any PC / Laptop or other device of the Customer. The Demo Version is provided "as is" without warranty of any kind, whether express or implied. The Licensor may not be held responsible for any defects of the Demo Versions or any damages caused by its download or use by the Customer or by any infringement or misappropriation of third-party IP Rights. The other terms and conditions of this Agreement apply to the Demo Version.

3.3 The License is restricted to the place of business of the Customer that is set forth in the offer. If the offer states that the License is granted only for a certain institute / division of the Customer, the License is restricted to the use of the Software by persons employed at this institute / division or students enrolled at this institute. In case the offer states the the License is limited to a certain number of users, the Software may only be used by this number of students and/or scientists at the same time.

3.4 The License comprises the right to install and execute the Software on personal computers or other electronic devices of the Customer.

3.5 The Customer is entitled to make a backup copy of the Software. The copy has to be marked as "Backup Copy" of the Software of the Licensor.

3.6 The Customer must not sublicense, rent, lease, transfer, host, duplicate, publish, make available for public access, publicly reproduce, make accessible to the public or distribute the Software in any other way, including by way of application service providing or as "Software-as-a-Service".

3.7 The Customer is not entitled to reverse engineer, disassemble or decompile the Software, except as expressly provided by statutory law.

4.   Ownership

4.1 The Software and all improvements, modifications and derivative works thereof, and all intellectual property rights therein, are and shall remain the sole and exclusive property of Licensor. The use rights regarding the Software are limited to those rights expressly granted in this Agreement and no other rights with respect to the Software are implied.

4.2 Copyright notices, serial numbers, other proprietary notices and features that serve as product identification may not be removed or changed.

5.   Support

5.1 The Licensor will provide updates of the Software that may be available from time to time to the Customer during the period of time set forth in the offer. In case the offer does not contain a period of time for updates, the available updates will be provided to the Customer during a period of two (2) years from the delivery of the Software. Besides that, the Licensor is not obliged to provide updates, upgrades, extensions or enhancements to the Software unless separately purchased by the Customer.

5.2 Except as expressly specified in this Agreement or the offer of Licensor, no support or subscription services for the Software will be provided to the Customer.

6.   Purchase Price, Taxes

6.1 The purchase price for the Software and, if applicable, for the Support, is set forth in the offer of Licensor.

6.2 The Customer shall pay to the Licensor the purchase price without deductiouns within thirty (30) days of the issuance of the invoice. Payment shall be made to the bank account of the Licensor as specified in the invoice. All bank charges that arise in connection with the bank transfer have to be borne by the Customer.

6.3 Payments not received when due will bear a late payment charge of 12 % per year.

6.4 The Customer may offset counterclaims or withhold payment based on such counterclaims only if such counterclaims are uncontested in writing or non-appealable.

6.5 Any amounts payable by the Customer are exclusive of any taxes. The Customer shall pay any applicable value added, goods and services, sales, or like taxes that are owed with respect to any Orders and which are permitted to be collected from the Customer by the Licensor under applicable law. The Customer shall be responsible for any applicable stamp taxes and for all other taxes that it is legally obligated to pay. The Licensor shall be responsible for all taxes based upon its net income or its property ownership.

6.6 If any taxes are required to be withheld on payments made by the Customer to the Licensor, the Customer may deduct such taxes from the amount owed to the Licensor and pay them to the appropriate taxing authority, provided however, that the Customer promptly secures and delivers an official receipt for those withholdings and other documents reasonably requested by the Licensor to claim a foreign tax credit or refund.

7.   Delivery

7.1 The software will be delivered electronically. The Licensor will send an email to which the license files and a delivery note with the download links of the programs, including installation information, will be attached.

7.2 The Software is deemed to be delivered when the Customer has downloaded the Software.

8.   Audit Rights

8.1 The Customer shall maintain records of its use of the Software. Licensor is entitled to audit the Customer's use of the Software to confirm compliance with the terms of this Agreement (the "Audit"). The Audit may be conducted once in each calendar year.

8.2 The Audit is subject to one week's notice by Licensor and will not unreasonably interfere with the activities of the Customer. The Customer will reasonably cooperate with Licensor and any third-party auditor.

8.3 The Customer will reimburse the Licensor for all reasonable costs of the Audit if the Audit reveals (i) a material infringement of the License or (ii) a material infringement of the obligation to to maintain accurate records of the use of the Software.

9.   Limited Warranty

9.1 The Licensor warrants that the Software will substantially conform to the specifications in the applicable documentation. This warranty does not apply if (i) the Software was not properly installed or was not used in accordance with the documentation, (ii) the Software was modified by the Customer or other persons or (iii) the non-conformity was caused by third-party software or hardware.

9.2 The Customer shall inform the Licensor of any substantial non-conformity to the specification or other material defect (the "Non-Conformity") without undue delay, submitting a detailed description of the Non-Conformity.

9.3 In case of a Non-Conformity the Licensor will, at its own expense and as its sole discretion either (i) repair the Software or (ii) return an appropriate portion of any payment made by the Customer with respect to the affected portion of the Software.

9.4 In case a Product cannot reasonably be used due to the Non-Conformity and the Licensor determines that it is unable to correct the Non-Conformity, the Customer is entitled to rescind the Order regarding this Product and the Customer will refund the purchase price for the Product. In case the Customer had purchased a package of more than one Product, the refund will amount to the difference to the purchase price of a package without the respective product (as applicable at the time of purchase). For each complete year of use of the Product by the Customer, the amount of the refund will be reduced by 20 %.

9.5 Any claims of the Customer for Non-Conformity and defects of title become statute-barred twelve (12) months after the delivery of the Software.

9.6 The remedies set forth in this section 9 are the sole and exclusive remedy for any breach of the warranty by the Licensor.

9.7 EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 9, THE LICENSOR MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, REGARDING ANY MATTER, INCLUDING THE MERCHANTABILITY, FINESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, OR THAT THE SOFTWARE WILL OPERATE UNINTER-RUPTED OR THAT IT WILL BE FREE FROM DEFECTS.

10. Intellectual Property Indemnification

10.1 The Licensor will defend the Customer against any third-party claims brought against the Customer alleging that the Customer's use of the Software, in accordance with the terms and conditions of this Agreement, constitutes a direct infringement or misappropriation of a patent, copyright, trade secret rights or other intellectual property rights (together the "IP Rights"), and the Licensor will compensate any damages finally awarded against the Customer or the amount of any settlement between the Customer and the third-party with respect to such claims.

10.2 The obligation under section 10.1 shall not apply if the alleged infringement or misappropriation results from (i) the use of the Software in conjunction with any other software or service, (ii) the use of the Software in violation of this Agreement or (iii) the use of the Software under a free / trial use of the Software.

10.3 The obligation under section 10.1 is only applicable if the Customer promptly notifies the Licensor in writing of the third-party claim within 30 days after the Customer has become aware of the claim. The Customer grants the Licensor sole control over the defense for the claim and any settlement negotiations and uses its best efforts to assist the Licensor in the defense of the claim. The Customer is not entitled to settle or compromise any third-party claim without the prior written consent of the Licensor.

10.4 In case the Software infringes, or in the Licensors opinion likely infringes, third-party IP Rights, the Licensor will, at its sole discretion and expense either (i) procure the rights necessary to avoid the infringement of the third-party IP Rights, (ii) modify the affected Software or (iii) rescind the Order regarding the Software or the respective Product and refund the purchase price as set forth in section 9.3 above.

10.5 THIS SECTION 10 IS THE SOLE AND EXCLUSIVE REMEDY FOR THE CUSTOMER FOR ANY INFRINGEMENT OF IP RIGHTS OF THIRD PARTIES.

11. Limitation of Liability

11.1 NEITHER PARTY SHALL, UNDER ANY CIRCUMSTANCES AND REGARDLESS OF THE NATURE OF THE CLAIM, BE LIABLE TO THE OTHER PARTY, FOR ANY OF THE FOLLOWING TYPES OF LOSS OR DAMAGE ARISING UNDER OR IN RELATION TO THIS AGREEMENT OR ANY ORDER: LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF BUSINESS, LOSS OF ANTICIPATED SAVINGS, LOSS OF BUSINESS OPPORTUNITY, LOSS OF REVENUE, LOSS RESULTING FROM WORK STOPPAGE, LOSS OF DATA, LOSS RESULTING FROM COMPUTER FAILURE, OR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY OR OTHERWISE, WHETHER OR NOT THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

11.2 In any case, the Licensors liability for any claims of the Customer under or in connection with this Agreement and any Order, irrespective of whether such claims are based on contract, tort or otherwise at law, shall be limited in total to the amount of the purchase price that has been paid by the Customer to the Licensor for the Software.

11.3 The limitation of liability set forth in this Agreement shall only apply if and to the extent permitted by applicable law.

12. Termination

12.1 The term of this Agreement begins on the date when the (first) Order between the Licensor and the Customer is concluded.

12.2 The Licensor is entitled to terminate this Agreement and any Order effective immediately upon written notice to the Customer if (i) the Customer fails to pay any portion of the purchase price under an applicable Order within thiry (14) days after receiving written notice from the Licensor that payment is past due, (ii) the Customer breaches any other provision of this Agreement and fails to cure the breach (if a cure is possible) within thirty (30) days after receipt of the Licensor's written notice thereof, or (iii) the Customer becomes insolvent, becomes subject to control of a trustee, receiver or similar authority or becomes subject to any bankruptcy or insolvency proceeding.

12.3 Upon termination of this Agreement or an Order all rights of the Customer to the respective Software immediately cease and the Customer must cease its use of the Software and return or certify destruction of all Software and license keys (including any copies).

12.4 The notice of termination must be in writing (including fax and email).

12.5 Any provision of this Agreement will survive any termination or expiration if by its nature and context it is intended to survive.

13. Confidentiality

13.1 "Confidential Information" means any information which, during or prior to the term of this Agreement, is disclosed or otherwise made available by the Licensor to the Customer in any form, directly or indirectly, whether provided in writing or in other tangible form, orally, visually, electronically or in other intangible form, and which is expressly marked as "confidential" or similarly or which would be regarded as confidential information by a reasonable person.

13.2 The Customer (i) shall not make any use of the Confidential Information other than for the purpose or the use of the Software according to the terms of this Agreement, (ii) shall keep in confidence the Confidential Information according to the terms of this Agreement, using at least the same degree of care in keeping such Confidential Information in confidence as it uses for its own confidential information of a similar nature but in no event less than reasonable care; (iii) shall not disclose to any third party such Confidential Information unless otherwise expressly permitted in writing by the Licensor; (iv) shall not use any Confidential Information for the development of own software; and (v) shall not reverse engineer, decompile, disassemble or analyze the Software.

14. Miscellaneous

14.1 The place of performance for all payments is the place of business of Licensor.

14.2 The Customer shall not, without the Licensor's prior written consent, assign, delegate, pledge or otherwise transfer this Agreement or any Order, or any of its rights or obligations under this Agreement or Order to any party, whether voluntarily or by operation of law.

14.3. This Agreement shall be governed by and construed in accordance with the law of the Federal Republic of Germany, without giving effect to its conflict of law provisions and without giving effect to the UN Convention on Contracts for the International Sale of Goods (CISG).

14.4 The place of jurisdiction, also for actions on checks and bills of exchange, shall be the the place of business of Licensor. However, Licensor shall be entitled to recourse in any court having jurisdiction as to the respective legal action under the laws of Germany or under the laws of the country in which the Customer has its registered place of business.

14.5 In case any provision of this Agreement should be or become invalid or unenforceable, the Parties shall substitute such invalid or unenforceable provision by a provision which achieves the same or a similar effect in a valid and enforceable manner. If this should not be possible, the invalidity of one or several provisions of the Agreement shall not affect the validity of the Agreement as a whole, unless the invalid or unenforceable provisions are of such essential importance to the Agreement that it is to be reasonably assumed that the Parties would not have entered into the Agreement without the invalid provisions.