



## Terms and Conditions of Use – License Agreement

**SCHWIND Foresight** – An assistant to visualize the estimated postoperative topography

### END USER LICENSE AGREEMENT (EULA)

This EULA agreement governs the use of the SCHWIND Foresight Software ("Foresight" or "Software") directly from Schwind eye-tech-solutions ("SCHWIND") or indirectly through a Schwind eye-tech-solutions authorized distributor ("Distributor").

By using the SCHWIND Foresight Software for post-operative corneal visualization you (the "Customer") acknowledge that you have read carefully, reviewed and understood the following terms and conditions and that you accept these terms in their entirety prior to the first use of the Software Foresight. The document remains effective for every use of the Software and this End-User License Agreement ("EULA") is a legal agreement between you and SCHWIND.

If you are entering into this EULA agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity and its affiliates to these terms and conditions. If you do not have such authority or if you do not agree with the terms and conditions of this EULA agreement, do not log-in this Software and do not use the Software, and you must not accept this EULA agreement.

This EULA agreement shall apply only to the Software Foresight provided by SCHWIND herewith, regardless of whether other Software is referred to or described herein. The terms also apply to any SCHWIND updates, supplements, further services, and support services for the Software, unless other terms accompany those items on delivery. If so, those terms apply.

### Purpose and Acknowledgement

Foresight is a software system capable of virtually applying correction profiles to a computer copy of a patient's cornea and displaying the estimated post-operative corneal shape. It is intended to be used by the surgeon to educate themselves as well as for patient education to visualize how the patient's cornea is estimated to look after surgery (the "Purpose"). It is not intended and not suitable to be used as a surgical planning tool, and it is not intended and not suitable to be used for any medical purpose.

The outputs generated by using the Software are not intended to serve as medical or surgical instruction from SCHWIND, or be definitive; nor does SCHWIND warrant that the results will be accurate.

You acknowledge to only use the Software for the Purpose and never as a surgical planning tool or for any other medical purpose. You undertake to procure that the Software is only used for the Purpose and in line with the terms and conditions of this EULA. You agree not to utilize any information generated by the Software for patient care and/or surgical planning.

## License Grant

SCHWIND hereby grants you a non-transferable, non-exclusive, limited, revocable license to install and use the Software on one SCHWIND-approved computer owned and controlled by you at a time in accordance with the terms of this EULA agreement.

You are permitted to:

- Use the SCHWIND Foresight Software on a SCHWIND-approved computer under your control. You are responsible for ensuring the hardware requirements by SCHWIND, i.e. a SCHWIND-approved computer that is in line with the minimum requirements of the SCHWIND Foresight Software.
- Physicians and other members are allowed to use this Software only under the direct supervision and control of a qualified, licensed Customer. By agreeing to the terms of this License, you certify that you are a qualified and licensed Customer or are an entity that employs a qualified licensed physician who will be responsible for the supervision of the Software and its use.

You are not permitted to:

- Edit, alter, modify, adapt, translate or otherwise change the whole or any part of the Software nor permit the whole or any part of the Software to be combined with or become incorporated in any other Software, nor decompile, disassemble or reverse engineer the Software or attempt to do any such things.
- Reproduce, copy, distribute, resell or otherwise use the Software for any commercial purpose.
- Allow any third party to use the Software on behalf of or for the benefit of any third party.
- Make the Software available over a network or other environment permitting access or use by multiple devices or users at the same time.
- Use the Software in any way which breaches any applicable local, national or international law.
- Use the Software for creating a product, service or software that is, directly or indirectly, competitive with or in any way a substitute for any services, product or Software offered by SCHWIND.
- Use the Software for any purpose in breach of this EULA agreement.

## **Intellectual Property and Ownership**

SCHWIND shall at all times retain ownership. The Software (and the copyright, and other intellectual property rights of whatever nature in the Software, including any modifications made thereto) are and shall remain the property of SCHWIND.

SCHWIND shall have the right to change and/or add to the terms and conditions of this License at any time and to change, discontinue or impose conditions on any aspect of the Software. Such changes shall be effective upon notification by any means reasonable to give you actual or constructive notice or upon posting of such terms on the Software.

SCHWIND reserves the right to grant licenses to use the Software to third parties.

## **Warranty**

Except as otherwise agreed between SCHWIND and you, the Software is provided "as is" and SCHWIND disclaims all warranties, express or implied, with respect to the Software, including, without limitation, any warranties of merchantability or fitness for a particular purpose. SCHWIND does not warrant that the Software will meet the requirements of the Customer or that the Software will be free of errors. SCHWIND does not warrant the freedom of third party rights. You expressly acknowledge and agree that this Software may contain Software errors or "bugs" that could cause unanticipated consequences through its use.

Technical data and other specifications in public statements, in particular in advertising media, are not statements of quality and SCHWIND does not provide any warranty for same.

## **Limitation of Liability**

SCHWIND shall be liable without limitation, including for its legal representatives and vicarious agents, only in the event of (a) intent or gross negligence, (b) injury to life, limb or health, (c) to the extent of a warranty assumed by it and (d) under the Product Liability Act.

The liability of SCHWIND for slightly negligent breaches of obligations, which are essential for the achievement of the purpose of the contract, is limited to the amount of damage which is foreseeable and typical according to the nature of the transaction. SCHWIND shall not be liable for any other reasons.

The limitation period for liability claims is 12 months. The start of the period is determined by § 199 para. 1 BGB

SCHWIND shall not be liable for the loss of any data arising from omitted data backups.

## **Indemnity**

You agree to indemnify and hold harmless SCHWIND, the manufacturer, the developer and/or the distributor of the Software and its officers, shareholders, employees and agents from and against any claim and from and against all costs which may be related to any claim, including all defense costs and reasonable legal fees, which arise from or are related to any use of the Software for any purpose other than the Purpose.

## **Registration**

By using the SCHWIND Foresight Software, you are confirming your acceptance of the Software and agreeing to become bound by the terms of this EULA agreement. Customers can apply/register for a Foresight license online or via SCHWIND or its distributors.

## **Termination**

This EULA agreement is effective from the date you first use the Software and shall continue until your right to use the Software has expired.

It will also terminate immediately and automatically without any notice or other action by SCHWIND if you fail to comply with any term of this EULA agreement. Upon such termination, the licenses granted by this EULA agreement will immediately terminate and you agree to stop all access and use of the Software. The provisions that by their nature continue and survive will survive any termination of this EULA agreement.

No refund of license fees or other compensation will be due to the purchaser or user(s) in the event of termination of the license. SCHWIND assumes no liability for costs incurred, data lost, or other expenses or damages that may result from the termination of the license.

Termination does not preclude SCHWIND from taking further legal action against users and/or purchasers for licensing violations.

Upon termination, you will cease to use the Software.

## **Payment and license fee**

User license fees cover initial software. The Customer agrees to pay the charges for the user license(s) in advance.

The minimum term for a Foresight user license is 12 months. SCHWIND may agree alternative licensing models with individual customers (e.g. monthly payments and shorter minimum terms) which arrangements shall be subject to written agreement.



Sales are seen as export business-to-business deals. The Customer must account for VAT and/or sales taxes on the services received (reverse charge). SCHWIND will add MWST to the fees for sales within Germany. SCHWIND's VAT number (Ust-Id-Nr.) is DE 310 388 711.

Individual online training, webinar sessions, data processing and consulting services may be charged extra.

SCHWIND refers to their General Terms and Conditions which can be downloaded at [www.eye-tech-solutions.com](http://www.eye-tech-solutions.com).

### **Support, Availability, Registration**

Foresight related Software support provided by SCHWIND will be limited to non-patient related issues, such as Licensing installation(s) and guidance with any "Error Codes" and "Error Messages" which appear on the client(s) screen within the Software only. This assistance will be limited specifically to the "Error Message" or "Error Code" as stated on the screen.

### **Privacy**

Compliance with General Data Protection Regulation GDPR, HIPAA and other Privacy Regulations: You assume full responsibility for compliance with General Data Protection Regulation GDPR, HIPAA and any other privacy requirements associated with use of the Software. SCHWIND is not to be listed or considered, reported, or otherwise held as an affiliated business under before mentioned regulations. You agree not to transmit, send, or otherwise convey information that violates any of these privacy regulations to SCHWIND, its officers, shareholders, employees and agents.

Customer acknowledges and agrees to be solely responsible for Customer's use of Foresight including ensuring that such use complies with all applicable laws, including, without limitation, data protection and privacy laws. Customer further acknowledges and agrees that Foresight is not designed to achieve or contribute to Customer's compliance with these or other laws or regulations of any jurisdiction.

### **Miscellaneous**

SCHWIND reserves the right to alter these terms and conditions, change or remove Foresight products, Foresight services and prices at any time and without any prior notice.

If any of the terms in this contract are not valid or legally enforceable, the other terms will not be affected.



## **Governing Law**

This EULA agreement, and any dispute arising out of or in connection with this EULA agreement, shall be governed by and construed in accordance with the laws of Germany.

### **Note:**

For the sake of readability, we use only one wording for all personal names in the text that applies to all genders and gender identities.

The manufacturer of the Software is:           SCHWIND eye-tech-solutions GmbH;  
Mainparkstrasse 6-10,  
D-63801 Kleinostheim,  
Germany.

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