

## Software End User License Agreement

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1. Definitions. For purposes of this Agreement, the following terms have the following meanings:

"**Authorized Users**" means solely those individuals authorized to use the Software pursuant to the license granted under this Agreement, as set forth on the Order Form.

"**Documentation**" means Licensor's user manuals, handbooks, and installation guides relating to the Software provided by Licensor to Licensee either electronically or in hard copy form/end user documentation relating to the Software available on the download portal on Licensor's website .

"**Intellectual Property Rights**" means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

"**Fees**" means the fees, including all taxes thereon, paid or required to be paid by Licensee for the license granted under this Agreement.

**“Major Version”** means a version of the Software which was released by Licensor and could have extensive functional changes, innovations, technological changes and features, where interfaces and functions may change or be omitted or be replaced by alternative functions. A Major Version is identified by the second digit of the version number (e.g. 1.2 or 1.5).

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**"Order Form"** means the order form filled out and submitted by or on behalf of Licensee, and accepted by Licensor, for Licensee's purchase of the license for the Software granted under this Agreement.

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**"Software"** means the product described in the Order Form in object code format, including any Updates provided to Licensee pursuant to this Agreement.

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(b) The number of managed persons is defined by all active users created in the tenfold database that can be assigned to a real person. This includes active personal data records that have at least one IT-resource (application, hardware-Section, mobile equipment, user account in a third-party system or similar) assigned to them. Also included are Active Directory-user accounts and Microsoft 365 user accounts that are not assigned to a personal data record but can be assigned to a physical person. Deactivated persons deleted persons and functional- or service-users are excluded from the licenses used.

(c) The scope of the Licensee's Software license is determined by the specifically licensed functions. In case functions that exceed the licensed scope of use have been activated inadvertently or erroneously, Licensee must notify the Licensor of this in writing immediately upon becoming aware of it. The Licensee is prohibited from using these unlicensed additional functions without the prior written consent of the Licensor; a breach of this provision shall entitle the Licensor to claim damages.

(d) Use and run the Software as properly installed in accordance with this Agreement and the Documentation, solely as set forth in the Documentation and solely for Licensee's internal business purposes, in particular in connection with the processing and administration of user accounts and access rights within Licensee's own network. Included in Licensee's network shall be all companies (i) which the Licensee directly or indirectly controls (subsidiaries); (ii) which directly or indirectly control the Licensee (parent company); and (iii) companies which are under common control (directly or indirectly) as Licensee (sister companies).

(e) Download or otherwise make one (1) copy of the Documentation and use such Documentation, solely in support of its licensed use of the Software in accordance herewith. All copies of the Documentation made by Licensee:

- (i) will be the exclusive property of Licensor;
- (ii) will be subject to the terms and conditions of this Agreement; and
- (iii) must include all Intellectual Property Rights notices contained in the original.

(f) Transfer any copy of the Software from one computer to another, provided that the number of users does not exceed the number of registered users

(g) If the delivery and installation of the Software is delayed at the request of the Licensee or due to circumstances for which the Licensee is responsible, the Licensor

shall be entitled to charge the Licensee for the additional costs incurred (e.g. for the provision of personnel).

3. Third-Party Materials. The Software may include software, content, data, or other materials, including related documentation, that are owned by Persons other than Licensor and that are provided to Licensee on license terms that are in addition to and/or different from those contained in this Agreement ("**Third-Party Licenses**").

4. Use Restrictions. Licensee shall not, and shall require its Authorized Users not to, directly or indirectly:

(a) use (including make any copies of) the Software or Documentation beyond the scope of the license granted under Section 2;

(b) provide any other Person, including any subcontractor, independent contractor, affiliate, or service provider of Licensee, with access to or use of the Software or Documentation;

(c) modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the Software or Documentation or any part thereof;

(d) combine the Software or any part thereof with, or incorporate the Software or any part thereof in, any other programs;

(e) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Software or any part thereof;

(f) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices provided on or with the Software or Documentation, including any copy thereof;

(g) except as expressly set forth in Section 2(a) and Section 2(c), copy the Software or Documentation, in whole or in part;

(h) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software, or any features or functionality of the Software, to any Third Party for any reason, whether or not over a network or on a hosted basis, including in connection with the internet or any web hosting, wide area network (WAN), virtual private network (VPN), virtualization, time-sharing, service bureau, software as a service, cloud, or other technology or service;

(i) use the Software or Documentation in, or in association with, the design, construction, maintenance, or operation of any hazardous environments or systems, including:

(i) power generation systems;

(ii) aircraft navigation or communication systems, air traffic control systems, or any other transport management systems.

(j) use the Software or Documentation in violation of any law, regulation, or rule; or

(k) use the Software or Documentation for purposes of competitive analysis of the Software, the development of a competing software product or service, or any other purpose that is to the Licensor's commercial disadvantage.

5. Responsibility for Use of Software. Licensee is responsible and liable for all uses of the Software and Documentation through access thereto provided by Licensee, directly or indirectly. Specifically, and without limiting the generality of the foregoing, Licensee is responsible and liable for all actions and failures to take required actions with respect to the Software and Documentation by its Authorized Users or by any other Person to whom Licensee or an Authorized User may provide access to or use of the Software and/or Documentation, whether such access or use is permitted by or in violation of this Agreement.

6. Compliance Measures.

(a) The Software may contain technological copy protection or other security features designed to prevent unauthorized use of the Software, including features to protect against any use of the Software that is prohibited under Section 4. Licensee shall not, and shall not attempt to, remove, disable, circumvent, or otherwise create or implement any workaround to, any such copy protection or security features.

(b) On Licensor's written request, Licensee shall conduct a review of its and its Authorized Users use the Software and certify to Licensor in a written instrument signed by an officer of Licensee that it is in full compliance with this Agreement or, if Licensee discovers any noncompliance:

(i) Licensee shall immediately remedy such noncompliance and provide Licensor with written notice thereof. Licensee shall provide Licensor with all access and assistance as Licensor requests to further evaluate and remedy such noncompliance.

(ii) If Licensee's use of the Software exceeds the number of copies or Authorized Users permitted under the license, Licensor shall have the remedies set forth in Section 6(d).

(c) During the Term, Licensor may, in Licensor's sole discretion, audit Licensee's use of the Software to ensure Licensee's compliance with this Agreement, provided that (i) any such audit shall be conducted on not less than 21 days' prior notice to Licensee, and (ii) no more than 1 audit may be conducted in any 12-month period except for good cause shown. Licensor also may, in its sole discretion, audit Licensee's systems within three months after the end of the Term to ensure Licensee has ceased use of the Software and removed all copies of the Software from such systems as required hereunder. The Licensee shall fully cooperate with Licensor's personnel conducting such audits and

provide all reasonable access requested by the Licensor to records, systems, equipment, information, and personnel, including machine IDs, serial numbers, and related information.

(d) If the audit or any of the measures taken or implemented under this Section 6 determines that the Licensee's use of the Software exceeds or exceeded the use permitted by this Agreement then:

(i) Licensee shall, within 14 days following the date of such determination by Licensee or Licensor's written notification thereof, pay to Licensor the retroactive Fees for such excess use and, unless Licensor terminates this Agreement pursuant to Section 6.1(d)(iii), obtain and pay for a valid license to bring Licensee's use into compliance with this Agreement. In determining the Licensee Fee payable pursuant to the foregoing, unless Licensee can demonstrate otherwise by documentary evidence, all excess use of the Software shall be deemed to have commenced on the commencement date of this Agreement or, if later, the completion date of any audit previously conducted by Licensor hereunder, and continued uninterrupted thereafter, and the rates for such licenses shall be determined without regard to any discount to which Licensee may have been entitled had such use been properly licensed prior to its commencement (or deemed commencement).

(ii) If the use exceeds or exceeded the use permitted by this Agreement by more than 10%, Licensee shall also pay to Licensor, within 14 days following the date of Licensor's written request therefor, Licensor's costs incurred in conducting the audit.

(iii) If the use exceeds or exceeded the use permitted by this Agreement by more than 20%, Licensor shall also have the right to terminate this Agreement and the license granted hereunder, effective immediately upon written notice to Licensee.

Licensor's remedies set forth in this Section 6(d) are cumulative and are in addition to, and not in lieu of, all other remedies the Licensor may have at law or in equity, whether under this Agreement or otherwise.

7. Maintenance and Support. Notwithstanding anything to the contrary herein, Maintenance and Support Services will only be provided by Licensor pursuant to this Section 7 if Licensee has purchased Software Maintenance Services separately or has an active software subscription.

(a) Subject to Section 7(c), if Licensee entered into a Subscription model (Software rental) with Licensor as set forth on the Order Form or has purchased Software Maintenance Services separately from Licensor, the subscription license granted thereunder entitles Licensee to the software maintenance and support services described on Schedule A hereto:

(i) for the subscription period as set forth on the Order Form following the date set forth on the Order Form provided however, that Licensee timely pays all subscription fees when due; and

(ii) thereafter, solely if Licensee purchases additional support services.

Such support services shall be provided on the terms and conditions set forth in Schedule A hereto.

(b) Maintenance and support services will include provision of Updates if Licensee enters into a separate Software Maintenance Agreement with Licensor or if the Licensee has an active software subscription. Licensor may develop and provide Updates in its sole discretion, and Licensee agrees that Licensor has no obligation to develop any Updates at all or for particular issues. Licensee further agrees that all Updates will be deemed Software, and related documentation will be deemed Documentation, all subject to all terms and conditions of this Agreement. Licensee acknowledges that Licensor may provide some or all Updates via download from a website or plug-ins designated by Licensor and that Licensee's receipt thereof will require an internet connection, which connection is Licensee's sole responsibility. Licensor has no obligation to provide Updates via any other media. Maintenance and support services do not include any new version or new release of the Software that Licensor may issue as a separate or new product, and Licensor may determine whether any issuance qualifies as a new product or Update in its sole discretion.

(c) Licensor reserves the right to condition the provision of maintenance and support services, including all or any Updates, on Licensee's registration of the copy of Software for which support is requested. Licensor has no obligation to provide maintenance and support services, including Updates:

(i) for any but the most current or immediately preceding version or release of the Software;

(ii) for any copy of Software for which all previously issued Updates have not been installed;

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(iv) for any Software that has been modified other than by or with the authorization of Licensor, or that is being used with any hardware, software, configuration, or operating system not specified in the Documentation or expressly authorized by Licensor in writing.

## 8. Collection and Use of Information.

(a) Licensee acknowledges that Licensor may, directly or indirectly through the services of Third Parties, collect and store information regarding use of the Software and about equipment on which the Software is installed or through which it otherwise is accessed and used, through:

- (i) the provision of maintenance and support services; and
- (ii) security measures included in the Software as described in Section

6.

(b) Licensee agrees that the Licensor may use such information for any purpose related to any use of the Software by Licensee or on Licensee's equipment, including but not limited to:

- (i) improving the performance of the Software or developing Updates;  
and
- (ii) verifying Licensee's compliance with the terms of this Agreement and enforcing the Licensor's rights, including all Intellectual Property Rights in and to the Software.

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10. Payment. All Fees are payable in advance in the manner set forth in the Order Form and are non-refundable, except as may be expressly set forth herein. Any renewal of the license or maintenance and support services hereunder shall not be effective until the fees for such renewal have been paid in full.

11. Term and Termination.

(a) This Agreement and the license granted hereunder shall remain in effect for the term set forth on the Order Form or until earlier terminated as set forth herein (the "**Term**").

(b) Licensor may terminate this Agreement, effective upon written notice to Licensee, if Licensee, materially breaches this Agreement and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured seven (7) days after Licensor provides written notice thereof.

(c) Licensor may terminate this Agreement, effective immediately, if Licensee files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant



to any other insolvency law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver, or custodian for a substantial part of its property.

(d) Upon expiration or earlier termination of this Agreement, the license granted hereunder shall also terminate, and Licensee shall cease using and destroy all copies of the Software and Documentation. No expiration or termination shall affect Licensee's obligation to pay all Licensee Fees and Support Fees that may have become due before such expiration or termination, or entitle Licensee to any refund, in each case except as set forth in Section 12(c)(ii).

12. Limited Warranties, Exclusive Remedy, and Disclaimer/Warranty Disclaimer].

(a) Solely with respect to Software for which Licensor receives a License Fee, Licensor warrants that, for a period of one hundred and eighty (180) days following the delivery date set forth on the Order Form:

(i) the Software will substantially contain the functionality described in the Documentation, and when properly installed on a computer meeting the specifications set forth in, and operated in accordance with, the Documentation, will substantially perform in accordance therewith.

THE FOREGOING WARRANTIES DO NOT APPLY, AND LICENSOR STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY MATERIALS.

(b) The warranties set forth in Section 12(a)(i) will not apply and will become null and void if Licensee breaches any provision of this Agreement, or if Licensee, any Authorized User, or any other Person provided access to the Software by Licensee or any Authorized User, whether or not in violation of this Agreement:

(i) installs or uses the Software on or in connection with any hardware or software not specified in the Documentation or expressly authorized by Licensor in writing;

(ii) modifies or damages the Software, including abnormal physical or electrical stress; or

(iii) misuses the Software, including any use of the Software other than as specified in the Documentation or expressly authorized by Licensor in writing.

(c) If, during the period specified in Section 12(a), any Software covered by the warranty set forth in such Section fails to perform substantially in accordance with the Documentation, and such failure is not excluded from warranty pursuant to the Section 12(b), Licensor will, subject to Licensee's promptly notifying Licensor in writing of such failure, at its sole option, either:

(i) repair or replace the Software, provided that Licensee provides Licensor with all information Licensor requests to resolve the reported failure, including sufficient information to enable the Licensor to recreate such failure; or

(ii) refund the Fees paid for such Software, subject to Licensee's ceasing all use of and, if requested by Licensor, returning to Licensor all copies of the Software.

If Licensor repairs or replaces the Software, the warranty will continue to run from the initial date specified on the Order Form, and not from Licensee's receipt of the repair or replacement. The remedies set forth in this **Section 12(c)** are Licensee's sole remedies and Licensor's sole liability under the limited warranty set forth in **Section 12(a)**.

(d) EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 12(a), THE SOFTWARE AND DOCUMENTATION ARE PROVIDED TO LICENSEE "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, LICENSOR, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE SOFTWARE AND DOCUMENTATION, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, THE LICENSOR PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE LICENSED SOFTWARE WILL MEET THE LICENSEE'S REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE, OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS, OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

13. Limitation of Liability. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW:

(a) IN NO EVENT WILL LICENSOR OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR ANY USE, INTERRUPTION, DELAY, OR INABILITY TO USE THE SOFTWARE; LOST REVENUES OR PROFITS; DELAYS, INTERRUPTION, OR LOSS OF SERVICES, BUSINESS, OR GOODWILL; LOSS OR CORRUPTION OF DATA; LOSS RESULTING FROM SYSTEM OR SYSTEM SERVICE FAILURE, MALFUNCTION, OR SHUTDOWN; FAILURE TO ACCURATELY TRANSFER, READ, OR TRANSMIT INFORMATION; FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION; SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION; OR

BREACHES IN SYSTEM SECURITY; OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE LICENSOR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) IN NO EVENT WILL LICENSOR'S AND ITS AFFILIATES', INCLUDING ANY OF ITS OR THEIR RESPECTIVE LICENSORS' AND SERVICE PROVIDERS', COLLECTIVE AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO THE LICENSOR PURSUANT TO THIS AGREEMENT FOR THE TO TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR ONE HUNDRED THOUSAND US DOLLARS (\$100,000.00) WHICHEVER IS LESS.

(c) THE LIMITATIONS SET FORTH IN SECTION 13(a) AND SECTION 13(b) SHALL APPLY EVEN IF THE LICENSEE'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

14. Export Regulation. The Software may be subject to US export control laws, including the Export Control Reform Act and its associated regulations. Licensee shall not, directly or indirectly, export, re-export, or release the Software to, or make the Software accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. Licensee shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Software available outside the US.

15. US Government Rights. Each of the Documentation and the Software is a "commercial product" as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. § 12.212. Accordingly, if Licensee is an agency of the US Government or any contractor therefor, Licensee only receives those rights with respect to the Software and Documentation as are granted to all other end users under license, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other US Government licensees and their contractors.

16. Confidentiality. In connection with this Agreement, either Party (the "Receiving Party") may obtain access to information that is not generally known, or readily accessible, either in its entirety or in the precise arrangement and composition of its components, to persons in the circles that normally deal with this type of information, including but not limited to ideas, concepts, know-how, developments, analyses, designs, descriptions, plans, software, technology,

documentation, reports, concepts, sales and pricing information, and any other information that the other Party (the "Disclosing Party") provides or makes available in writing, electronically, orally or in any other form, regardless of whether such information is marked as confidential ("Confidential Information").

(a) The Receiving Party undertakes to keep all Confidential Information strictly secret from third parties and to use it only for the purposes of this Agreement. Internal access to Confidential Information shall be restricted to those employees and, where applicable, external consultants who absolutely require such access within the scope of this Agreement ("need-to-know basis") who are bound by written confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth here-in. Documents containing Confidential Information may only be used for the purposes of this Agreement.

(b) The obligations arising from this Section V do not apply to confidential information that

(i) has been made publicly available without violating this Agreement,

(ii) is already in the lawful possession of the Receiving Party without any obligation of confidentiality,

(iii) was demonstrably acquired by the Receiving Party through an independent discovery/creation or developed/created independently, and/or

(iv) has been published or disclosed by the Receiving Party with the prior written consent of the Disclosing Party.

(c) If a recipient of Confidential Information under this Agreement is requested to disclose any of the Confidential Information pursuant to any judicial or governmental order, the recipient will not disclose the Confidential Information without first giving the discloser of the Confidential Information written notice of the request and sufficient opportunity to contest the order.

(d) The confidentiality obligation shall apply irrespective of the manner in which the Disclosing Party's Confidential Information was disclosed or made available under this Agreement or whether it otherwise became known through this Agreement, whether in written, electronic or oral form.

(e) The Receiving Party shall take all appropriate and necessary measures to ensure the confidentiality of the Confidential Information provided.

(f) The Receiving Party shall be liable for compliance with the confidentiality obligations in accordance with this Section V by its employees and, if external consultants are engaged, also for compliance by these external consultants. This confidentiality obligations pursuant to this Section V shall be demonstrably transferred to these employees and external consultants in the event that information is passed on, but this shall not reduce the party's own liability for its own employees and external consultants. Any duplication,

use, disclosure, or other act or omission by any person that obtains access to or possession of Confidential Information through the recipient that would be a breach of this Agreement if committed by the recipient is deemed a breach of this Agreement by the receiving party for which the recipient shall be responsible.

(g) The confidentiality obligations shall continue indefinitely beyond the termination of this Agreement.

17. Duty to cooperate and provide information

(a) The Licensee has informed himself about the essential functionalities of the Software and bears the risk as to whether these correspond to his wishes and requirements; in case of doubt, he has sought advice from employees of the Licensor or from expert third parties before concluding this Agreement.

(b) The establishment of a functional hardware and software environment for the Software and the associated IT security processes – which is also sufficiently dimensioned taking into account the requirements of the Software – is solely the Licensee's responsibility.

(c) The Licensee shall test the Software thoroughly before using it to ensure that it is free of defects and can be used in the existing hardware and Software configuration.

(d) The Licensee shall take appropriate precautions in the event that the Software does not work properly in whole or in part (e.g. through daily data backups, fault diagnosis, regular checks of the functionality of the Software).

18. Miscellaneous.

(a) All matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule. Any legal suit, action, or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby shall be instituted in the federal courts of the United States of America or the courts of the State of New York in each case located in New York City and New York County, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such legal suit, action, or proceeding. Service of process, summons, notice, or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action, or other proceeding brought in any such court.

(b) In no event shall Licensor be liable to Licensee, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement, if and to the extent such failure or delay is caused by any circumstances beyond Licensor's reasonable control, including but not limited to: (i) acts of God; (ii) flood, fire, earthquake, OTHER POTENTIAL DISASTER(S) OR CATASTROPHE(S), SUCH AS EPIDEMICS, or explosion; (iii) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (iv) government order, law, or actions; (v)

embargoes or blockades in effect on or after the date of this Agreement; (vi) national or regional emergency; (vii) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (viii) shortage of adequate power or transportation facilities.

(c) All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (i) when delivered by hand (with written confirmation of receipt); (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by facsimile or email (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (iv) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth on the Order Form (or to such other address as may be designated by a party from time to time in accordance with this Section 18(c)).

(d) This Agreement, together with the Order Form, all schedules, and exhibits attached hereto and all other documents that are incorporated by reference herein, constitutes the sole and entire agreement between Licensee and Licensor with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

(e) Licensee shall not assign any of its rights under this Agreement without Licensor's prior written consent. Any purported assignment in violation of this Section 18(e) is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

(f) This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein shall confer on any other Person any legal or equitable right, benefit, or remedy under or by reason of this Agreement.

(g) This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(h) If any term or provision of this Agreement is invalid or unenforceable in any jurisdiction, such invalidity, or unenforceability shall not affect any other term or provision of this Agreement.

(i) This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Order Form and all Annexes, Schedules, and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

(j) The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

## Schedule A

# Software Support Services Addendum to the End User License Agreement

WHEREAS, Customer is licensing the Software from Provider under an End User License Agreement (the “EULA”); and

WHEREAS, the Customer has either purchased Software Maintenance Services from Provider by separate order form or has an active software subscription where the support services provided hereunder are part of the subscription package and already included in the subscription fee.

WHEREAS, Customer desires to obtain software support services from Provider for the Software as set forth in the Order Form and Section 7(a) of the EULA and subject to the terms and conditions of this Addendum and the EULA (the Addendum and the EULA together shall be “**this Agreement**”).

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

“**Support Case**” shall mean any instance wherein the Licensee initiates contact with the Licensor’s customer service team for the purpose of addressing technical problems in connection with the Software or questions about the Software.

As far as this Addendum does not provide otherwise, software maintenance is subject to the provisions and definitions of the EULA.

## 1. Object and Scope of Maintenance Support Services

(a) Maintenance includes maintenance of the Software in the current version and technical support for the Software. The (new) version contains the latest updates. New versions are identified by a number (e.g. "4.1"). Support shall also include the middleware on which the Software is based ("Wildfly Application Server"), but only to the extent required to operate the Software. In any case, maintenance does not include, separately or together, (i) new versions for services other than the Software; (ii) support for all hardware products; (iii) support for any problems (not exclusively) in the areas of network, backup, disaster recovery, monitoring, system operation, network operation, hardware operation, operation of the Licensor's products other than the Software in question; (iv) support for other products of the Licensee, in particular also products to which the Licensor's services have interfaces or with which they cooperate technically or organizationally in any other way; (v) support for the database on which the Licensor's services are based, in particular, but not exclusively: performance tuning, monitoring, backup, recovery,



disaster recovery, tools, replication, high availability; (vi) malfunctions which are the result of unauthorized modification or processing of the Software by the Licensee or external influences by third parties; and/or (vii) other applications that are not included in the scope of delivery of the Licensor's products.

(b) The provision of services by the Licensor shall be organized in accordance with the state of the art and carried out with the care customary in the business. The Licensor shall carry out the maintenance while maintaining the continuity of the Licensee's business operations to the best possible extent and shall keep any impairment of the Licensee's business operations caused by the maintenance to a minimum.

(c) The Licensee shall grant the Licensor access to its IT system for maintenance purposes and provide the computing resources required for maintenance. Failure of the Licensee under this Section X.3 shall be reported in writing by the Licensor to the Licensee's responsible person.

(d) The Licensee shall be responsible for ongoing, proper data backup and for establishing and guaranteeing data security (ensuring confidentiality, integrity and availability) of its systems.

(e) New versions of the Software as well as patches and bug fixes are only made available as downloads. The Licensor shall make every effort to maintain the availability of the downloads at all times but does not assume any liability for this. The Licensee is completely free to decide whether to install the Program Parts or new versions covered by Sections IX et seq. If the Licensee refuses to install such new versions, Licensee shall lose his claim to the correction of those errors that would have been corrected by them. Licensor will not be liable for any claims, liability, damages, or obligations under this Agreement to the extent such claim is arising from or based up-on Licensee's use of a prior version of the Software.

(f) It is agreed that older versions of the Software are only to be maintained and serviced by the Licensor for a maximum period of two years. The Licensee is only ever entitled to maintenance of one Major Version of the Software but not of a Minor Version of the Software. The Licensee can either install the new version himself or he can open a corresponding Support Case and the Licensor's customer service will take care of the installation.

(g) Licensor represents, warrants, and covenants to Licensee that Licensor will perform services in connection with Support Cases using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement.

## **2. Maintenance Fee**

(a) If the Licensee has an active Software Subscription, the Software Support Services hereunder are already included in the Software Subscription and no separate maintenance fee will be owed.

(b) If the Software has been purchased by the Licensee, the amount of the maintenance fee to be paid by the Licensee shall be agreed separately on the Order Form.

(c) The maintenance fee for the term as set forth on the Order Form shall be paid by the Licensee within thirty (30) days upon receipt of the invoice from either (i) the Licensor or (ii) a Partner who entered with the Licensee into a maintenance agreement on behalf of and for the account of the Licensor, becomes due.

### **3. Term of the Maintenance Agreement**

(a) The maintenance agreement is concluded for a fixed term, set forth in the Order Form. The maintenance Agreement therefore ends at the end of the last day of the separately agreed fixed-term period; any continuation beyond the end of the term must be expressly agreed in writing between the Licensor and the Licensee.

(b) Termination for convenience of the maintenance Agreement is excluded; however, it may be terminated with immediate effect by written notice at any time for good cause which makes it unreasonable for the terminating party to continue to adhere to the maintenance agreement. Such good cause shall include in par-titular but shall not be limited to:

(i) the breach of provisions by Licensee of the maintenance agreement, if the contractual condition is not restored within a reasonable period of time despite a prior written request by Licensor;

(ii) Delay in payment by the Licensee to the Licensor or the Distributor for more than 30 days calculated from the due date, despite a written reminder and the setting of a grace period of at least 7 days, which may fall within these 30 days;

(iii) that an out-of-court settlement is initiated to avert the insolvency of the other party, or, to the extent permitted by law, bankruptcy proceedings are applied for or initiated against the assets of the other party;

(iv) that a resolution is passed to voluntarily liquidate the other party; or

(v) that the other party engages in such detrimental behavior that makes further cooperation impossible, for example, but not exclusively, behavior that damages credit.

### **4. Support Cases**

(a) Support cases may only be reported via email to [support@tenfold-security.com](mailto:support@tenfold-security.com) or through the web portal <https://tenfoldSoftware.freshdesk.com>

If the Licensee attempts to open a Support Case by other means, including but not limited by chat, personal telephone extension or mobile number of an employee, email to a personal or otherwise different address, post, fax or personal message, the Licensor does not guarantee that the Support Case can subsequently be properly registered and processed.

(b) Each Support Case must contain a concrete, comprehensible and precise description of the problem that has occurred, which enables the Licensor to narrow down the cause and determine strategies for rectification. This includes, in particular, information about the type of problem, the description of the system status when the problem occurred, the components affected by the problem and the frequency and reproducibility of the problem.

(c) The Licensor shall process the Support Case by means of remote maintenance. On-site resolution of a Support Case is not included in the maintenance fee; however, the Licensee may do so for a separate fee in accordance with Section 4 (k);

The Licensee is obliged to cooperate while on a Support Case. This means that he will:

(i) if technically and legally possible, open a support channel for remote maintenance, for which the Licensor only supports the product "TeamViewer", which is available to the participant free of charge ([www.teamviewer.com](http://www.teamviewer.com));

(ii) actively and on its own initiative provide all available information that could be helpful for processing;

(iii) extract and provide all other information required by the technician processing/performing the Support Case;

(iv) actively cooperate in troubleshooting in accordance with the Licensor's instructions, in particular if the problem may be related to the Licensee's IT infrastructure (server, database, network, clients, other applications, etc.); and

(v) provide a suitable employee as a contact person for the duration of the processing.

(d) A Support Case can be closed immediately by the Licensor if one or more of the following points should occur:

(i) The Licensee does not provide the information required to process the problem within a reason-able period of time;

(ii) The problem is not reproduced or cannot be found in spite of honest, persistent efforts and the operation of the system is not seriously affected;

(iii) The Licensee does not have a valid maintenance agreement or is more than 14 days in delay with payments (in connection with the maintenance agreement or other services); and/or

(iv) The Licensee is insolvent, or insolvency proceedings have been rejected for lack of sufficient assets and no advance payment has been made or the insolvency administrator has agreed to assume the costs.

(e) The manner in which a Support Case is resolved shall be at the reasonable discretion of the Licensor. If the Licensor offers the Licensee new versions, in particular patches, bug fixes, updates, upgrades, new releases, new versions, etc. to avoid or eliminate Support Cases, the Licensee must accept these and install them on its hardware in accordance with the Licensor's installation instructions.

(f) The Licensee may refuse to resolve a Support Cases in the form of new Updates, patches, bug fixes etc. if these do not have at least the same compatibility and functionality as the replaced Program Part or if the Licensee cannot reasonably be expected to use them for other important reasons.

(g) The resolution of a Support Case may also take the form of instructions to the Licensee or the Licensee's employees. The Licensee must follow such instructions. Support Cases shall be processed to the best efforts of Licensor.

(h) The Licensee agrees that if the Software detects a serious error, it will automatically open a Support Case via an Internet connection, which is in no way associated with costs for the Licensee and serves purely to inform the Licensor in order to be able to proactively correct such serious errors. However, the Licensee is not entitled to such error detection and the Licensor does not warrant the automatic triggering of such a Support Case.

(i) The Licensee further agrees that in the course of automatically triggered Support Cases pursuant to this Section, all necessary information to open a Support Case is transferred to the Licensor. This information is used by the Licensor primarily for the purpose of providing better support for the Software; in no case will personal data be transmitted or processed. However, should the Licensor determine in the context of a Support Case that misuse of the Software or the licenses by the Licensee has taken place or is taking place, Section 6(d) of the EULA shall apply.

(j) If, for reasons within the Licensee's control (e.g. the general rejection of remote maintenance tools), it is not possible to deal with a problem via remote maintenance and if the presence of a technician of the Licensor at the Licensee's premises is therefore necessary, the Licensee shall, in addition to the fees incurred for this, also bear all travel expenses incurred (in particular including the remuneration attributable to the travel time, any specific ticket prices, statutory expenses and any accommodation costs) for the technician in full.

## **5. New developments/delivery of new programs and versions**

(a) The Licensor shall provide the Licensee with all updates/upgrades/releases/versions (collectively "Updates") of the Software released by the Licensor. The classification of the respective Update under the terms "update", "upgrade", "release", and "version" is at the reasonable discretion of the Licensor.

(b) The Licensor plans to further develop the Software and to make the further development available to the Licensee in the form of new Updates. However, the Licensee has no claim against the Licensor for further development of the Software.

(c) The Licensor grants the Licensee rights of use to the program components and documentation supplied in fulfilment of the maintenance agreement in accordance with this Agreement on which the provision of the Software is based. The rights of use granted to the Licensee remain unaffected by a termination of the maintenance agreement.

(d) For a period of five years from the conclusion of a maintenance agreement, Licensee undertakes not to entice away any Licensor employees who are or were involved in the implementation of the maintenance agreement without the prior consent of Licensor and not to employ them directly or indirectly (via subsidiaries, plant service managers, etc.). For each case of infringement, Licensee shall pay Licensor a contractual penalty not subject to judicial mitigation in the amount of the last annual gross salary of the poached employee, but at least \$100,000. In addition, Licensee shall be liable to Licensor for all damages incurred by Licensor in this connection.