

End User Licence Agreement for “tenfold”

I. Scope of Application and Definition of Terms

1. This End User Licence Agreement (hereinafter referred to as "EULA") shall govern the use of the Software “tenfold” (section I.3.) to be provided by the Licensor (section I.4) to the Licensee (section I.5; the Licensor and the Licensee each a "Contracting Party" and together the "Contracting Parties"). The General Terms and Conditions of Business of the Licensor (hereinafter referred to as “GTC”) are expressly accepted by the Licensee and shall remain unaffected by this EULA to the extent this EULA does not deviate from the GTC.
 2. Any terms and conditions of business of the Licensee deviating from this EULA shall only be valid on an exceptional basis if they are expressly accepted by the Licensor in writing. This shall also apply if the Licensor delivers products or performs services without reservation being aware of or subject to conditions not specified in the General Terms and Conditions of Business of the Licensor.
 3. “Software” as used within this EULA shall mean the “tenfold” Software in executable machine code plus any documentation (user manual).
 4. “Licensor” as used within this EULA shall be tenfold Software GmbH, Seidengasse 9-11, Top 3.4, 1070 Vienna.
 5. “Licensee” shall mean the final user of the Software.
 6. “Licence Volume” shall mean the number of persons managed under the Software Licence and shall be based upon section II.8.
 7. In general, this EULA shall only apply to legal transactions between enterprises pursuant to Sec. 1 UGB [Austrian Business Code]. If they are, on an exceptional basis, also taken as a basis for legal transactions with consumers pursuant to Sec. 1 para 1 no. 2 *KSchG* [Austrian Consumer Protection Act], the mandatory provisions of the Austrian Consumer Protection Act shall be applicable.
- the purposes of its business in the scope of the licenced functions (section II.7.) and in the course of the agreed Licence Volume.
4. In the event of a subscription under section II.3., the maintenance for the Software during the Use Period is already included in the compensation to be paid by the Licensee.
 5. If the Licensee is in default regarding the agreed payments, it shall be obliged to pay to the Licensor default interest pursuant to section 456 of the Austrian Business Code at the rate of 9.2 percentage points p.a. above the respective applicable base interest rate. If the Licensee is a consumer, the Licensee shall only pay the statutory interest as default interest. The Licensor shall be entitled to terminate this EULA with immediate effect if an amount exceeding EUR 10,000.00 (or, if the Licensor and the Licensee have explicitly agreed that payments shall be made in another currency than EUR, an amount which – calculated at the end of the due date – exceeds the equivalent of EUR 10,000.00) remains unpaid for more than 30 days in spite of a written reminder and setting of a grace period of at least 7 days.
 6. In the moment of expiry of the Use Period or termination pursuant to section II.5, the Licensee’s right to continue to use the Software shall expire and the Licensee shall irrevocably delete the Software from its system and prove such delete to the Licensor. If the Licensee wishes to continue to use the Software beyond the Use Period, the Software shall be licensed by the Licensor again subject to the currently valid conditions. If the Licensee continues to use the Software without authorisation after the Use Period, it shall be obliged to obtain a licence for the Software with retroactive effect from the end of the Use Period subject to the currently valid conditions.
 7. The scope of the Licensee’s Software licence shall be based upon the concrete functions licenced. If functions exceeding the licenced scope of use were enabled accidentally or by mistake, the Licensee shall inform the Licensor thereof in writing immediately after becoming aware thereof. In any case, the Licensee shall not be allowed to use such non-licenced additional functions without the Licensor’s consent; any violation against this provision shall entitle the Licensor to damages.

II. Software Licence

1. The right to use the Software shall always be limited to the particular functions licenced (section II.7.) and the Licence Volume (section 8) acquired by the Licensee.
 2. Upon purchasing a Software Licence, the Licensee obtains the non-exclusive right to use the Software permanently against one-time payment under this EULA for the purposes of its business in the scope of the licenced functions (section II.7.) and in the course of the agreed Licence Volume.
 3. In the event of software leasing (“subscription”), the Licensee obtains the non-exclusive right to use the Software within a time period defined in advance (“Use Period”) against payment of the agreed software rent for
8. The Licensee may licence, load and run the Software for a certain number of persons managed (“Licence Volume”); the Licensee shall be expressly prohibited from reproducing the Software beyond the Licence Volume. The number of persons managed is defined by all active persons entered in the tenfold database which are each assigned to a physical person to whom at least one IT service (application, hardware item, mobile equipment or the like) is allocated on the product side. Specifically, this means that all active entries in the PERSON table where the PERSON_MASTER-DATA_ID field is placed and for which there is an active

entry in the ADS_OBJECT or SERVICE_ASSIGNMENT table are regarded as persons managed. Thus, inactive persons, deleted persons and function/service users are excluded from the licences used. This exception shall not apply to persons which use a collective user for one or several external systems or external applications connected to the Software; in this case, all physical persons using the collective user shall be licenced separately.

9. The Licensor shall be entitled to subject the Licensee's system to an audit at any time to determine to which extent the Licensee actually uses the Software. In such case, the Licensor shall preserve the Licensee's business operations to the highest possible degree. If it turns out in the course of an audit that the Licensee is under licenced, i.e. has exceeded the licence volume, a licence for the Software with retroactive effect from the point in time of first under licencing shall be obtained subject to the currently valid conditions. Any fees arising from Maintenance Agreements must be paid with retroactive affect subject to the respective currently valid conditions. If the Licensee resists retroactive obtaining of a licence or payment of retroactive maintenance fees, it undertakes to consent to the deletion of as many persons from the system as required so that the licence volume is no longer exceeded. Any further claims for damages of the Licensor shall remain unaffected.
10. Any improper use by the Licensee shall entitle the Licensor to block the affected licence(s) permanently to the extent of such improper use; any further claims for damages of the Licensor shall remain unaffected.

III. Limits of the Use

1. To the extent the Licensee permanently ceases to use the Software, it shall irrevocably destroy any copies of the Software in its possession and completely and irrevocably delete the Software from its system.
2. To the extent the Licensee replaces the hardware used by it, the Licensee undertakes to completely and irrevocably remove the Software from the replaced devices.
3. In general, the Licensee shall not be entitled to decompile the Software or to reverse engineer it in any other manner to a human-readable form, to change it, to use it in whole or in part in deviation from the agreed scope of use, to provide it to direct competitors of the Licensor in any other manner, to use it improperly or to configure it incorrectly in a negligent manner. However, the cases defined by mandatory law for the purposes of troubleshooting or establishing interoperability with other computer programs shall be excluded from the ban on editing or changing the Software. The Licensee shall inform the Licensor immediately in writing about any need for editing or change existing in this context; the Licensee undertakes to engage the Licensor for such editing or change against payment of a reasonable remuneration; if the Licensor does not accept the order within two weeks under reasonable conditions, the Licensee shall be entitled to perform the editing or

change itself and/or to have it performed by third parties at its own expenses. Apart from that, Sec. 40e UrhG [Austrian Copyright Act] shall apply.

IV. Confidentiality/Security/Copyright Notices

1. The Licensor undertakes towards the Licensee to keep secret all business-relevant information provided to the Licensor by the Licensee. Furthermore, the Licensor undertakes to impose such confidentiality agreement upon its employees.
2. The Licensee undertakes, for its part, to keep secret all business-relevant information provided to the Licensee by the Licensor. Furthermore, the Licensee undertakes to impose such confidentiality agreement upon its employees.
3. The Licensee shall keep the Software safe and take all necessary measures to prevent the Software from falling into the hands of non-authorized third parties.
4. The Licensee undertakes not to remove or manipulate copyright notices and control characters of the Licensor under any circumstances.

V. Delivery – Delivery Time – Extension of the Delivery Periods

1. Unless expressly agreed otherwise, any agreed time specifications regarding the Licensor's performance of Services are no fixed dates (Sec. 919 sentence 1 ABGB) in general.
2. The performance period for the Licensor shall only commence as soon as all details have been clarified and both Contracting Parties have agreed upon all conditions of the business transaction.
3. If the delivery and installation of the Software is delayed at the Licensee's request or due to circumstances for which the Licensee is responsible, the Licensor shall be entitled to invoice to the Licensee any additional costs caused (e.g. due to personnel provision).

VI. Inspection and Complaint Obligation

1. The Licensee undertakes to inspect the Software for completeness and functional capability within five working days immediately after delivery thereof.
2. Any complaints must be notified to the Licensor in writing and by email in advance within a reasonable period, but at the latest within 14 days after delivery (in case of obvious defects) or discovery of the defect and include specific details of the defect. Otherwise, the Licensee shall forfeit its claims to warranty, damages for the defect itself as well as error on the absence of defects of the item.
3. To the extent defects are determined in the course of the inspection under this section VI, the Licensee shall be obliged to provide to the Licensor immediately a written complaint, stating the defects identified in an exact manner.
4. If the Licensee violates its complaint obligation for defects pursuant to this section VI, it shall forfeit its claims to warranty, damages for the defect itself as well as error on the absence of defects of the item.

VII. Liability

1. The Licensor shall only be liable for damages which it could, at the time of conclusion of this EULA, foresee as possible outcome of a breach of essential obligations resulting from this EULA.
2. The Licensor shall be liable for direct material damage only in the event of blatantly gross negligence or intentional conduct.
3. The Licensor shall not be liable for any consequential damage of material damage, lost profit or indirect material damage of the Licensee including any such material damage arising due to or in connection with a business interruption or as a result of lost profits or revenues, lost data or of any capital costs that arise.
4. The Licensor's liability for direct material damage shall be limited to the net amount which the Licensee paid or has to pay to the Licensor under the respective agreement; if it is a continued obligation, the amount of the damages shall be limited to the threefold annual net remuneration. However, in any case the Licensor's liability towards each Licensee shall not exceed EUR 100,000.00 in total.
5. The Licensor shall be liable without limitation for physical injury or death.
6. All limitations of liability shall apply to the same extent if the Licensor is liable for vicarious agents and servants. Licensor shall not be liable for damage caused by the Licensor's agents in the course of fulfilment of the Licensor's contractual obligations.
7. If the Licensee is a consumer pursuant to the Austrian Consumer Protection Act, the Licensor shall not be liable for material damage caused to the Licensee in a slightly negligent manner; apart from that, the statutory liability provisions shall apply thereto.
8. In case the Software is changed, manipulated, inappropriately configured or used in deviation from its intended purpose in any manner by the Licensee, the Licensor shall not be liable under any circumstances.
9. The Licensee is expressly prohibited from assigning any claims for damages against the Licensor to third parties.

VIII. Warranty

1. The Licensor warrants that the Software is free from software defects, meets the agreed requirements and reliably performs the agreed functions in the system environment communicated to the Licensor by the Licensee. However, the Licensor gives no contractual guarantee in relation to the Software. The Software is licensed "as is" and therefore, the Licensee bears any risk of using the Software. To the extent permitted under applicable laws, the Licensor hereby excludes all implied warranties, especially including merchantability and fitness for a particular purpose.
2. If defects covered by the warranty obligation occur, the Licensor shall be obliged to provide a replacement delivery or rectification within a reasonable time period in the case of a software purchase; to the extent these measures are not suitable to remove the defect and two

attempts at rectification fail or are not performed within a reasonable time period, the Licensee shall be entitled to reduce the remuneration appropriately or – in the event of substantial defects – to withdraw from the acquisition of the Software. The warranty period shall be 12 months as of the day of complete delivery of the Software; if the Licensee is a consumer pursuant to the Austrian Consumer Protection Act, it shall be 24 months as of the day of complete delivery of the Software.

3. If the Licensor and the Licensee entered into a subscription agreement and defects covered by the warranty obligation occur, the Licensor shall be obliged to maintain the functionality and operational readiness of the Software for the duration of such subscription agreement without separate invoicing and to remedy defects of the Software within a reasonable time period. To the extent a defect can be removed by installing a new or improved version of the Software, the Licensee shall be obliged to accept the remedy of defects by such reinstallation to the extent it cannot present any important reasons to the contrary. The costs of any reinstallation shall be fully borne by the Licensor.
4. The Licensee shall forfeit any claims for warranty if it changes or edits the Software without authorisation.
5. The Licensor guarantees that the Software is free from any property rights of third parties which would limit or preclude contractual use of the Software. The Licensor and Licensee shall notify each other in writing without any delay if they receive any claims for a violation of property rights. The warranty under this section VIII. shall not be applicable, if the violation of property rights of third parties is caused by a conduct of the Licensee exceeding the use contractually permitted under this EULA as well as by a change and/or extension of the Software (including any combination with work results of third parties) performed by the Licensee in its own responsibility.

IX. Statistical Information and Use Metrics

1. The Licensee agrees that the Software will transmit information from the audit (see section II.9.) as well as statistical (anonymised) use metrics to the Licensor automatically via the internet on a regular basis. Such information and use metrics shall be used by the Licensor mainly for information purposes to be able to provide better support for the Software; under no circumstances will personal data be transferred or processed.
2. However, to the extent the Licensor determines in this context that improper use of the Software and/or licences by the Licensee has taken place or is taking place, the Licensor shall be entitled to block the affected licence(s) permanently to the extent of such improper use.

X. Plug-Ins

1. Certain functions such as the technical connection to external systems are performed via so-called plug-ins

in the Software. Such plug-ins can be installed and configured via the user interface of the Software.

2. For the installation and updating of plug-ins, an internet connection (http and https protocols) between the Software-server with the Licensee and the central server used by the Licensor for distributing the plug-ins is required.
3. The Licensor recommends that all plug-ins are updated regularly to the respective latest available version.
4. If the update takes place via an internet connection, it is displayed automatically via the Software which plug-ins need to be updated and a subsequent direct update is possible via the user interface. If no internet connection is available, the information regarding the current versions cannot be retrieved. In such case, the IT system administrator has to perform an inspection manually.
5. If the Licensee is not able or willing to enable automatic updating of plug-ins via an internet connection, the plug-ins need to be reviewed and updated on a regular basis. The Licensee shall be solely responsible for the regular review regarding new versions and corresponding updates. The Licensor shall not assume any liability for any damage arising from the use of outdated plug-ins.

XI. Ongoing Adjustment of the EULA

1. The Licensee authorises the IT administrator working for the Licensee at the respective point in time to agree with the Licensor on behalf of the Licensee upon the applicability of the respective latest version of this EULA to the contractual relationship existing between the Licensor and Licensee. Such IT administrator is expressly entitled by the Licensee to do so.
2. For a valid agreement as set forth in section XI.1., it shall suffice that the IT administrator working for the Licensee provides the declaration necessary for such purpose electronically, e.g. by clicking a button emerging in the course of an update.

XII. Termination

1. The Licensor can terminate this EULA for good cause at any time. A good cause shall particularly exist if the Licensee persistently and substantially violates the provisions of this EULA.
2. In the event of such termination, the Licensee shall irrevocably delete the Software and demonstrate such deletion to the Licensor.

XIII. Place of Performance – Place of Jurisdiction – Applicable Law

1. The present EULA shall be exclusively governed by Austrian law, excluding the conflict-of-law rules and UN Sales Law.
2. The place of performance of this EULA shall be Vienna.
3. All legal disputes arising from present Agreement, including in connection to its establishment, validity, termination or invalidity, shall be subject to the exclusive jurisdiction of the materially competent court for the

seventh district of Vienna. However, to the extent the Licensee is a consumer pursuant to the Consumer Protection Act, it can be sued by the Licensor only before the court in the district of which the place of residence, the habitual residence or the place of employment of the Licensee is located.

XIV. Miscellaneous

1. The provisions of this Agreement shall represent the entire EULA between the Contracting Parties. However, apart from that, the Licensor's GTC shall apply. In the event of inconsistencies between the provisions of this EULA and the GTC of the Licensor, the respective provisions contained in this EULA shall take precedence.
2. If the Licensor preferred not to assert violations against this EULA at a certain point in time or was not able to do so, this shall not constitute a waiver of any of the Licensor's rights to assert such claim at a later point in time.
3. At the point in time of conclusion of this EULA, there are no ancillary oral agreements of any kind whatsoever. Changes to this EULA shall be in writing if not specified otherwise herein.
4. Third parties may not derive any rights from this EULA; it shall particularly not give rise to any protection in favour of third parties.
5. Any legal transaction fees shall be borne by the Licensee.
6. Should one or several provisions of this EULA prove to be invalid in whole or in part or should a contractual gap become obvious, this shall not affect the validity of the remaining provisions of this EULA. Instead of the invalid provision or in order to fill a contractual gap, the Licensor and the Licensee shall be obliged to agree upon a provision coming as close as possible to the intended contents of this EULA.

Vienna, 07 January 2021