

End User Agreement for “tenfold” as a Software-as-a-Service solution

I. Scope of Application and Definition of Terms

1. This End User Agreement (hereinafter "EUA SaaS") shall govern the use of the Software “tenfold” (section I.3) respectively the functions associated with it by the End User (section I.5) to whom such Software and/or functions are provided by the Licensee (section I.6). The Licensor (section I.4) and the End User shall hereinafter also be referred to each as a "Contracting Party" and together as 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 the End User and shall remain unaffected by this EUA SaaS to the extent this EUA SaaS does not deviate from the GTC.
 2. Any terms and conditions of business of the Licensee or the End User deviating from this EUA SaaS 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 GTC of the Licensor.
 3. "Software" as used within this EUA SaaS shall mean the “tenfold” Software in executable machine code plus any documentation (user manual).
 4. "Licensor" as used within this EUA SaaS shall be tenfold Software GmbH, GmbH, Seidengasse 9-11, Top 3.4, 1070 Vienna.
 5. End User is anyone who uses the functions of the Software under a Software-as-a-Service solution without being the Licensee of the Software.
 6. "Licensee" is a third party who is not the Licensor and passes on the Software/its functions by way of a Software-as-a-Service solution to End User(s)
 7. "Licence Volume" shall mean the number of persons managed under the Software Licence and shall be based upon section II.7..
 8. In general, this EUA SaaS 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 Software permanently under the License Agreement for Software-as-a-Service solutions (hereinafter "LA SaaS"), against a one-time payment, for the purposes of its business in the extent of the licensed functions (section II.6) and in the course of the agreed license volume and to make the Software or its functions available to the End User accordingly by way of a Software-as-a-Service solution (against payment by the End User). The Software or functions associated with the Software made available to the End User by the Licensee by way of a Software-as-a-Service solution may be used by the End User only in accordance with this EUA SaaS.
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”) under the LA SaaS against payment of the agreed software rent, for the purposes of its business in the extent of the licensed functions (section II.6.) and in the course of the agreed license volume and to make the Software or its functions available to the End User accordingly by way of a Software-as-a-Service solution (against payment by the End User). The Software or functions associated with the Software made available to the End User by the Licensee by way of a Software-as-a-Service solution may be used by the End User only in accordance with this EUA SaaS.
 4. 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 Licensor is a consumer, the customer shall only pay the statutory interest as default interest. The Licensor shall be entitled to terminate this EUA SaaS with immediate effect if an amount exceeding EUR10,000.00 (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 by the Licensee for more than 30 days in spite of a written reminder and setting of a grace period of at least 7 days.
 5. Upon expiration of the agreed Use Period for a software subscription or in the event of a termination pursuant to section II.4, the right of the Licensee and consequently also that of the End User to continue to use the Software (respectively its functions) expires, the Licensor must deprive the End User of the use of the Software/functions, irretrievably delete the Software from its systems and provide evidence thereof to the Licensor. If the Licensee or the End User wishes to continue using the software (or its functions) beyond the Use Period, the Licensee must re-license the Software under the currently valid conditions. If the Licensee or the End User continues to use the Software (or its functions) after expiration of the Use Period, he/she is obliged to license the software retroactively from the time of the end of the Use Period according to the currently valid conditions.

II. Right of Use

1. The right to use the Software is always limited to those functions which the Licensee has licensed from the Licensor for the specific End User and to the license volume acquired by the Licensee from the Licensor and made available to such End User.
2. Upon purchase of a software license, the Licensee acquires the non-exclusive right from the Licensor to use

6. The scope of the right to use shall be based upon the concrete functions licenced. If functions exceeding the licenced scope of use were enabled accidentally or by mistake, the End User shall inform the Licensor thereof in writing immediately after becoming aware thereof. In any case, the End User shall not be allowed to use such non-licenced additional functions without the Licensor's prior written consent; any violation against this provision shall entitle the Licensor to compensation of damages against the End User.
7. The End User may use the Software or its functions for a certain number of managed persons ("License Volume") in accordance with the Software-as-a-Service agreement to be entered into between him/her and the Licensee; the End User is expressly prohibited from copying the Software.
8. The Licensor shall be entitled to subject the End User's system to an audit at any time to determine to which extent the End User actually uses the Software (or its functions). In such case, the Licensor shall preserve the End User's business operations to the highest possible degree. If it turns out in the course of such an audit that the End User is under-licenced, the Licensee is obliged to remedy the excess use by the End User without delay by means of subsequent licensing corresponding to the extent actually used, which will be granted under the currently valid conditions and retroactively from the time of the first under-licensing; any fees from Maintenance Agreements SaaS must be paid retroactively under the currently valid conditions. If the Licensee does not comply with these obligations within 14 days at the latest from receipt of the Licensor's notice, the Licensee and the End User undertake to agree to the deletion of so many persons from the system that the authorization volume is no longer exceeded; further claims for damages by the Licensor remain unaffected.
9. Any improper use by the End User shall entitle the Licensor to block the affected licence(s)/permissions 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 End User ceases to use the Software/its functions, it shall irrevocably destroy any copies thereof in its possession and completely and irrevocably delete it from its system.
2. To the extent the End User replaces the hardware used by it, the End User undertakes to completely and irrevocably remove the Software/its functions from the replaced devices.
3. In general, the End User 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 End User shall immediately inform the Licensor in writing of any need for editing or modification in this context, if necessary by way of a detour via the Licensee; the End User undertakes to commission the Licensor for the editing or modification against payment of an appropriate fee; 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 End User to keep secret all business-relevant information provided to the Licensor by the End User. Furthermore, the Licensor undertakes to impose such confidentiality agreement upon its employees.
2. The End User undertakes, for its part, to keep secret all business-relevant information provided to the End User by the Licensor. Furthermore, the Licensee undertakes to impose such confidentiality agreement upon its employees.
3. The End User shall keep the Software/the functions associated with it safe and take all necessary measures to prevent the Software/the functions associated with it from falling into the hands of non-authorized third parties.
4. The End User undertakes not to remove or manipulate copyright notices and control characters of the Licensor under any circumstances.

V. Liability

1. The Licensor shall only be liable for damages which it could, at the time of conclusion of this EUA SaaS, foresee as possible outcome of a breach of essential obligations resulting from this EUA SaaS.
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 End User 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 towards the End User for direct material damages 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 End User is a consumer pursuant to the Austrian Consumer Protection Act, the Licensor shall not be liable for material damage caused to the End User in a slightly negligent manner; apart from that, the statutory liability provisions shall apply thereto.
8. In case the Software/its functions is/are changed, manipulated, inappropriately configured or used in deviation from its intended purpose in any manner by the End User, the Licensor shall not be liable under any circumstances.
9. The End User is expressly prohibited from assigning any claims for damages against the Licensor to third parties.

VI. Warranty

1. The Licensor warrants exclusively to the Licensee 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, both the Licensee and the End User bear any risk of using the Software/its functions. 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 to the Licensee, 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 End User has no contractual claims against the Licensor and must therefore deal with the Licensee on the basis of the agreement made with the Licensee. The warranty period shall be 12 months as of the day of complete delivery of the Software to the Licensee; 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 and the End User 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. Any claims for warranty shall be forfeited if the Software/its functions are changed by or on behalf of the Licensee and/or the End User without the Licensor's prior 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 End User 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 VI. shall not be applicable, if the infringement of property rights of a third party is caused by the End User's behaviour beyond the use permitted under this EUA SaaS, as well as by a change and/or addition to the Software/its functions carried out by the End User on his own responsibility (including the connection with the work results of third parties).

VII. Statistical Information and Use Metrics

1. The End User agrees that the Software will transmit information from the audit (see section II.8.) 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 and/or the End User has taken place or is taking place, the Licensor shall, pursuant to section II.8., be entitled to permanently block the affected rights to use to the extent of such improper use.

VIII. Plug-Ins

1. Certain functions of the Software such as the technical connection to external systems are performed via so-called plug-ins. 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 – on the premises of the Licensee or the End User – 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 Licensee's/End User's IT system administrator has to perform an inspection manually.
5. If the End User 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 End User 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.

IX. Ongoing Adjustment of the EUA SaaS

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

X. Termination

1. The Licensor can terminate this EUA SaaS for good cause at any time. A good cause shall particularly exist if the End User persistently and substantially violates the provisions of this EUA SaaS.
2. In the event of such termination, the End User must immediately cease further use of the Software or its functions, respectively irretrievably delete the it from its system and provide evidence thereof to the Licensor.

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

1. The present EUA SaaS shall be exclusively governed by Austrian law, excluding the conflict-of-law rules and UN Sales Law.
2. The place of performance of this EUA SaaS shall be Vienna.
3. All legal disputes arising from present EUA SaaS, 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 End User is a consumer pursuant to the Austrian 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 End User is located.

XII. Miscellaneous

1. The provisions of this Agreement shall represent the entire EUA SaaS between the Contracting Parties. However, apart from that, the Licensor's GTC shall apply. In the event of inconsistencies between the provisions of this EUA SaaS and the GTC of the Licensor, the respective provisions contained in this EUA SaaS shall take precedence.
2. If the Licensor preferred not to assert violations against this EUA SaaS 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 EUA SaaS, there are no ancillary oral agreements of any kind whatsoever. Changes to this EUA SaaS shall be in writing if not specified otherwise herein.
4. Third parties may not derive any rights from this EUA SaaS; it shall particularly not give rise to any protection in favour of third parties.
5. Any legal transaction fees shall be borne by the End User.
6. Should one or several provisions of this EUA SaaS 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 EUA SaaS. Instead of the invalid provision or in order to fill a contractual gap, the Licensor and the End User shall be obliged to agree upon a provision coming as close as possible to the intended contents of this EUA SaaS.

Vienna, 07 January 2021