

Maintenance Agreement for "tenfold"

I. Preamble

On this day, the Licensee (section II.6) and the Licensor (section II.5.) enter into this Maintenance Agreement for the purpose of better usability of the Software (section II.4), in particular by providing new versions as well as technical support.

II. Scope of Application and Definition of Terms

1. This Maintenance Agreement shall govern the maintenance of the Software provided by the Licensor to the Licensee by the Licensor. The Licensor and the Licensee shall hereinafter also be referred to each as a "Contracting Party" and together as the "Contracting Parties". The GTC (section II.3, Schedule 1) enclosed to this Maintenance Agreement in its valid version as well as the EULA (section II.8, Schedule 2) enclosed to this Maintenance Agreement in its valid version shall hereby be expressly accepted by the Licensee and shall remain unaffected by this Maintenance Agreement to the extent this Maintenance Agreement does not deviate from the GTC and/or the EULA.
2. Any terms and conditions of business of the Licensee deviating from this Maintenance Agreement 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. "GTC" shall mean the General Terms and Conditions of Business of the Licensor, the valid version of which is set forth in Schedule 1.
4. "Software" as used within this Maintenance Agreement shall mean the "tenfold" Software in executable machine code plus any documentation (user manual).
5. "Licensor" as used within this Maintenance Agreement shall be tenfold Software GmbH, GmbH, Seidengasse 9-11, Top 3.4, 1070 Vienna.
6. "Licensee" shall be the final user of the Software and, at the same time, recipient of the maintenance services.
7. "Distributor" shall mean a party different from the Licensor and the Licensee, who is entitled to conclude a Maintenance Agreement with the Licensee in the name and on behalf of the Licensor.
8. "EULA" shall mean the End User Licence Agreement of the Licensor, the valid version of which is set forth in Schedule 2.
9. "Support Case" shall have the meaning set forth in section V.1.
10. In general, this Maintenance Agreement 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.

III. Maintenance Fee and Term

1. The amount of the maintenance fee to be paid on a monthly basis shall be agreed upon separately. The monthly maintenance fee plus VAT (if applicable) shall be paid by Licensee at the latest on the fifth day of the respective month in advance to (i) the business account indicated to the Licensee by Licensor or (ii) if this Maintenance Agreement is concluded through a Distributor, to the business account indicated by the Distributor. Such payments shall be made exclusively by wire transaction. Any bank charges and/or fees arising out of or in connection with such payments shall be paid and finally borne by the Licensee.
2. This Maintenance Agreement is entered into for a limited point in time; the concrete term shall be agreed upon separately. Therefore, this Maintenance Agreement shall end upon the expiry of the last day of the limited period agreed upon separately; the Licensor and the Licensee must explicitly agree upon a continuation thereof beyond the end of the term.
3. Any ordinary termination of this Maintenance Agreement shall be excluded; however, it can be terminated by written declaration with immediate effect at any time for an important reason which makes it intolerable for the terminating Contracting Party to continue this Maintenance Agreement. Such important reasons shall in particular be
 - a. a Contracting Party's persistent and substantial violation of the provisions of this Maintenance Agreement to the extent the contractual state is not established within a reasonable time period in spite of a prior written request by the terminating Contracting Party;
 - b. default in payment of the Licensee to – as the case may be – the Licensor or respectively a Distributor (section III.1), of more than 30 days calculated from the due date, in spite of a written warning and setting of a grace period of at least 7 days which can be within these 30 days;
 - c. if an out of court settlement for the purpose of averting insolvency of the respective other Contracting Party is initiated or, to the legally permissible extent, bankruptcy proceedings are applied for or initiated against the assets of the respective other Contracting Party;
 - d. if a resolution on the voluntary liquidation of the respective other Contracting Party is taken; or
 - e. if the respective other Contracting Party commits such harmful conduct rendering continued cooperation impossible, including but not limited to discrediting conduct.

IV. Object and Scope of the Maintenance Activities, performance

1. In general, the maintenance activities shall include new versions of the Software (for troubleshooting purposes as well as for the purpose of introducing new functions) and technical support (for the removal of any technical issues arising) for the Software. Such support shall also include the middleware on which the Software is based ("Wildfly Application Server"), however only to the extent required for operation of the Software.
2. In any case, the maintenance activities shall not include separately or collectively
 - a. the removal of software defects covered by the warranty obligation pursuant to the GTC and the EULA;
 - b. new versions for other Services than the Software;
 - c. support for any hardware products;
 - d. support for any problems (not exclusively) in the following areas: network, backup, disaster recovery, monitoring, system operation, network operation, hardware operation, operation of other products of the Licensor than the present Software;
 - e. support for other products of the Licensee, in particular products to which the Licensor's Services have interfaces or with which they work together otherwise technically or organisationally;
 - f. support for the database underlying the Services of the Licensor, in particular but not exclusively, no performance tuning, monitoring, backup, recovery, disaster recovery, tools, replication, high availability;
 - g. disruptions which are the consequence of an unauthorised change or editing of the Software by the Licensee or external influences by third parties; and/or
 - h. other applications not included in the scope of supply of the Licensor's products.
3. The provision of services by the Licensor shall be organised and performed according to the state of the art. The Licensor shall perform the maintenance activities under best possible protection of the business operations of the Licensee and keep as low as possible any impairments of the business operation of the Licensee connected to the maintenance activities.
4. For the maintenance activities, the Licensee shall grant to the Licensor access to its IT system and shall provide the computer time required for the maintenance. The Licensee shall ensure that the Licensor will be provided with the technical infrastructure required for the performance of the maintenance tasks such as, in particular, technical installations, electricity, telephone and data transmission lines, free of charge. Any non-compliance of the Licensee under this section IV.4. shall be communicated by the Licensor in writing to the corresponding person responsible of the Licensee.
5. The Licensee shall be responsible for ongoing and proper data backup as well as for establishing and ensuring data security (ensuring confidentiality, integrity and availability) of its system; the Licensor shall be liable for any data losses only to the extent the Licensor did not perform its services under this Maintenance Agreement in accordance with the state of the art.
6. New versions of the Software as well as patches and bugfixes will only be provided as download. The Licensor shall make reasonable efforts to maintain the availability of the downloads at all times but does not assume any warranty in relation thereto. The Licensee shall be fully free in its decision whether the program sections covered by this section IV.6. or new versions are installed. To the extent the Licensee rejects the installation of such program sections, it shall forfeit its entitlement to the removal of any errors that would have been rectified thereby.
7. It is agreed that the Licensor is obliged to service older program versions for a maximum period of two years. The Licensee shall always only be entitled to maintenance of one version of the Software.
8. The Licensee can either perform the installation of new versions itself or it can initiate a corresponding Support Case (section V.1.) and the Licensor's customer service will perform the installation.

V. Support Case

1. A Support Case shall mean that the Licensee contacts the customer support service of the Licensor for the purpose of dealing with an issue. The following reporting channels are permissible for Support Cases:
 - a. E-mail to support@tenfold-security.com
 - b. Via the web portal <https://tenfoldsoftware.freshdesk.com>
 - c. Telephone on 0800/230010 (Austria) or 00431 6650633 9700 (international) as well as any other (local) phone number listed on the Licensor's website (<https://www.tenfold-security.com>) as a contact option for Support Cases.Each Support Case shall contain a concrete, comprehensible and exact representation of the problem arisen so that the Licensor is able to narrow down the cause and determine remediation strategies. This shall particularly include information on the type of the problem, the description of the system status when the problem occurred, the components affected by the problem as well as on the frequency and reproducibility of the problem.
2. If the Licensee tries to initiate a Support Case through another method, in particular but not limited to, by chat, personal telephone extension or mobile number of an employee, e-mail to a private or otherwise deviating address, post, fax or personal message, it is not guaranteed that the Support Case can subsequently be registered and processed in a proper manner.
3. The Licensee is obliged to provide assistance in the course of a Support Case. This means that it will:

- a. if technically and legally possible, open a support channel for remote maintenance; for such purpose, only the "TeamViewer" product is available on the Licensor's side which is available free of charge for the user on the side of the Licensee (www.teamviewer.com);
 - b. actively provide all available information on its own which might be helpful for the processing;
 - c. obtain and provide any other information needed by the engineer processing/performing the Support Case;
 - d. actively participate in troubleshooting according to the Licensor's instructions, in particular if the problem is probably connected to the Licensee's IT infrastructure (server, database, network, clients, other applications, etc.); and
 - e. provide a suitable employee as contact person during the processing.
4. The Licensor may close a Support Case immediately if one or several of the following events occur:
 - a. The Licensee does not provide the problem required for dealing with the issue within a reasonable time period;
 - b. The problem is not reproduced in spite of reasonable and ongoing efforts or cannot be found in spite of such efforts and the operation of the system is not seriously impaired;
 - c. The Licensee does not dispose about a valid Maintenance Agreement or is in default with payments (in connection with the Maintenance Agreement or other services) for more than 14 days; and/or
 - d. The Licensee is insolvent or an insolvency procedure was rejected due to lack of assets and no advance payment was made or the assumption of costs was not assured by the insolvency administrator.
 5. Once a Support Case is received, it will be included in the queue of the other open Support Cases and prioritised based upon urgency. The Licensor warrants to commence processing no later than on the working day following the day of receipt of the Support Case (taking into account the statutory public holidays in Austria). A completion date is not guaranteed.
 6. Automatically initiated Support Cases: The Licensee agrees that the Software, should it notice a serious error, will automatically initiate a Support Case via an internet connection without any costs for the Licensee which serves the sole purpose of informing the Licensor to be able to proactively fix such serious errors.
 7. Furthermore, the Licensee agrees that in the course of automatically initiated Support Cases (section V.6.), information from the audit as well as statistical (anonymised) use metrics are contained and will be transmitted to the Licensor. 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. However, to the extent the

Licensor determines in this context that improper use by the Licensee has taken place or is taking place, the Licensor shall be entitled to block the affected licence(s)/permissions permanently to the extent of such improper use.

8. If, for reasons on the Licensee's part (for example the general rejection of remote maintenance tools), it is not possible to deal with a problem by remote maintenance and if therefore, the presence of an engineer of the Licensor at the premises of the Licensee is required, apart from the fees payable in this context, the Licensee shall also additionally bear all travel expenses (in particular including the fees regarding travel time, any concrete ticket prices, statutory expenses and any overnight stay costs) for the engineer in full.

VI. Non-Solicitation

1. During the first five years of valid existence of this Maintenance Agreement, the Licensor and Licensee undertake not to solicit or directly or indirectly (via subsidiary companies, contractors, etc.) employ any employees who participate and/or participated in the performance of the Maintenance Agreement without the prior approval of the respective other Contracting Party.
2. For each case of violation, the infringing Contracting Party shall pay to the other Contracting Party a contractual penalty, which is not subject to judicial discretion, in the amount of the last annual gross salary of the employee solicited, however, at least EUR 100,000.00. Apart from that, each Contracting Parties shall be liable towards each other for any damage caused to the other Contracting Party in this context.

VII. Confidentiality, Warranty and Limitation of Liability

1. Regarding confidentiality, section IV. of the EULA shall apply accordingly.
2. The Licensor shall warrant that program sections delivered are in accordance with the state of the art. Apart from that, sections VI. to VIII. of the EULA shall apply accordingly.
3. The Licensor shall only be liable for damages which it could, at the time of conclusion of this Maintenance Agreement, foresee as possible outcome of a breach of essential obligations resulting from this Maintenance Agreement.
4. The Licensor shall be liable for direct material damage only in the event of blatantly gross negligence or intentional conduct.
5. 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.
6. The Licensor's liability against the Licensee for direct material damage shall be limited to the maximum amount of EUR 100,000.00 in total.

7. The Licensor shall be liable without limitation for physical injury or death.
8. 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.
9. 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.
10. 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.
11. The Licensee is expressly prohibited from assigning any claims for damages against the Licensor to third parties.
4. Third parties may not derive any rights from this Maintenance Agreement; 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 Maintenance Agreement 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 Maintenance Agreement. 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 Maintenance Agreement.

Vienna, 07 January 2021

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

1. The present Maintenance Agreement shall be exclusively governed by Austrian law, excluding the conflict-of-law rules and UN Sales Law.
2. The place of performance of this Maintenance Agreement shall be Vienna.
3. All legal disputes arising from present Maintenance 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 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 Licensee is located.

IX. Miscellaneous

1. The provisions of this agreement shall represent the entire Maintenance Agreement between the Contracting Parties. Apart from that, the Licensor's GTC and EULA shall apply. In the event of inconsistencies between the provisions of this Maintenance Agreement and the GTC and the EULA of the Licensor, the respective provisions contained in this Maintenance Agreement shall take precedence.
2. If the Licensor preferred not to assert violations against this Maintenance Agreement 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 Maintenance Agreement, there are no ancillary oral agreements of any kind whatsoever. Changes to this Maintenance Agreement shall be in writing if not specified otherwise herein on an exceptional basis.