GENERAL TERMS AND CONDITIONS

for the purchase and maintenance of
ONEPOINT Projects software licenses

Contents

Section A

Parties to this Contract

This agreement is contracted between

ONEPOINT Projects GmbH

Dietrich-Keller-Strasse 24/6, A-8074 Raaba-Grambach, Austria

legally represented by Gerald Aquila

- referred to hereinafter as "the licensor" -

and the

contract partner named in the license agreement

- referred to hereinafter as "the contract partner" -

Definitions

- **Licensor** includes ONEPOINT Projects GmbH and any enterprise affiliated with it.

- **Contract partner** refers to the enterprise that, though the signing of this contract, is the primary counterpart in all matters pertaining to this agreement, as well as any enterprises affiliated with the aforementioned company which are entitled to use the contract products in accordance with the license agreement; referred to collectively as "**licensee or licensees**."

- **Affiliated enterprise**: An enterprise is deemed affiliated with a contract partner if that contract partner holds a majority share (more than 50%) in said enterprise or if the contract partner is, on the basis of an affiliation agreement, the controlling company with respect to an enterprise.

- **Contract product** refers to the licensor's software products named in the license agreement.

- If the license granted in the license agreement is a **Perpetual License**, the licensee is granted a perpetual right to use the contract product as stated in Section B-1 of this agreement.

- If the license granted in the license agreement is a **Rental License**, the licensee is granted a non-perpetual, time limited right to use the contract product as stated in Section B-1 of this agreement.

- If the license granted in the license agreement is a **SaaS**, the licensee is granted a non-perpetual, time limited right to use the contract product as stated in Section B-1 of this agreement via remote use over internet as "Software as a Service".

- **License fee** means the agreed license fee, which is paid as a one-time fee (Perpetual License) or as a recurring, yearly fee (Rental License or SaaS).

- **Open-source components** are components, including libraries, for which the intellectual property rights are held by a third party or by the licensor, for which use and sales licenses are granted free of charge, and to which the licensee has full access and whose source code the licensee is permitted to modify.

- A **version** of a contract product is the product status represented by the first digit of the respective build number (e.g. build number: **06**.1.001).

- An **edition** is identified within a version of a given contract product by a suffix that designates a specific use variant of said product (e.g. ONEPOINT Projects Group or ONEPOINT Projects Enterprise).

- If one or more upgrade licenses have subsequently been purchased for a legally purchased full version, the original full version in combination with the purchased upgrade licenses shall be deemed a single **full license**.

- **User** means the number of person(s) and type of use, which is granted under the relevant type of license.

- **Option** means the options of the software, which are part of the relevant type of license and have to be ordered separately.

- A **version upgrade** is an upgrade from an earlier version of a contract product to a later version of the same product.

- An **edition upgrade** is an upgrade from a lower edition of a contract product to a higher edition within the same product version.

- The term **product life cycle** refers to the process whereby a product of the licensor becomes no longer generally available because it is either superseded by newer versions or it is discontinued. Appropriate information is generally available on the licensor's website.

  Licensees are obligated to obtain, on their own initiative, information about the product life cycle of each contract product they use; the licensor undertakes to supply the licensee with the appropriate information at all times on request.

- The terms **maintenance and support** refer collectively to services to which a licensee of a perpetual license is entitled in exchange for a special payment, and which are outlined in Section C.

- The **contractual availability** refers to the average of each contract year, but excluding maintenance windows. Maintenance window will be announced to the licensee by 5 days ago via the log-in screen

- The **contract year** is the period of 12 calendar months from the day of commencement of the contract, not including the calendar day on which the contract commences.

Section B

1. Scope, Subject Matter

(1) This agreement applies to the contract partner named in the license agreement and to companies affiliated with said contract partner inasmuch as they are entitled to use the contract product in accordance with the respective license agreement (referred to collectively as "licensees").

(2) In accordance with the provisions and conditions of the license agreement and the conditions set forth herein, the licensor hereby grants the respective licensee a non-exclusive license, which is transferable only in accordance with these terms and conditions, to use the contract products on the data processing units named in the license agreement as follows:

    (a) If the use of a software product is granted as perpetual license, the licensee is granted the right for permanent use of the software in the specified number of users and the purchased options as agreed on in the license agreement.

    (b) If the use of a software product is granted as rental license, the licensee is granted the right for non-permanent use of the software in the specified number of users and the purchased options as agreed on in the license agreement.

    (c) If the use of a software product is granted as SaaS, the licensee is granted the right for non-permanent use the software via remote use over internet as "Software as a Service" in using the functionalities and the storage-resources for the specified number of users and with the purchased options as agreed on in the license agreement.

2. Conditions, Prices, Terms of Payment

(1) For the use rights granted in accordance with the license agreement and section B-1 above, the licensee shall pay the licensor the license fee agreed therein.

(2)   All prices indicated in the license agreement are net prices in the named currency, not including the legally required value-added tax. No bonuses or cash discounts will be granted.

(3)   Bills will be issued and sent to the licensee on delivery or provision for disposal of the contract product. Unless otherwise agreed, the payment deadline shall be 14 days from the billing date.

(4)   The licensee assumes full responsibility for the proper customs clearance of contract products in those countries outside the country of origin in which it is deployed, and for all taxes, tariffs and charges incurred through the export of purchased licenses and media from the original place of purchase to third countries. The licensee undertakes to indemnify the licensor fully against all liabilities arising from any present or future infringement by the licensee of the obligations set forth in this paragraph.

3. Delivery

(1)   With the delivery of the software in cases of perpetual license or rental license in accordance with the license agreement, the licensee shall receive a license key to enable the purchased contract products. The latest software version can be obtained via electronic means.

(2)   In case of ordering SaaS the access data will be electronically delivered to the licensee.

(3)   A license certificate for the purchased full perpetual licenses, as well as the bill for the license fee and the maintenance and support fee, will be issued and sent to the licensee together with the respective delivery.

4. Conditions of Use

(1)   Any renting out (including sub-rental), loaning to third parties for use against payment or free of charge, or commercial resale outside of the group of entitled enterprises of the contract products purchased on the basis of this agreement is only permitted with the prior written consent of the licensor.

(2)   Provided that the licensee observes the provisions of this agreement, said licensee is entitled to use the contract products according to the number of purchased user licenses (the number/type of purchased user licenses is specified in the license agreement). Additionally, the licensee is entitled to make 1 (one) backup copy of the contract products for each full perpetual or rented license.

(3)   The purchase of one perpetual or rented user license entitles the licensee to install and use the contract products on one data processing unit with one processor - be it a workstation or a laptop computer.

(4)   A software copy is in use, or is deemed to be used on a computer, when it is loaded into the computer's temporary memory (e.g. RAM) or installed on a permanent storage medium (hard disk, CD-ROM, DVD, ROM or other permanent storage media).

(5)   A contract product licensed (perpetually or rented) must only be installed on a data processing unit used as a server if the license purchased by the licensee is expressly described as a server license. If the contract product is used on a network, the licensee must ensure that a license has been purchased for each user that has access to the server and is able to use the respective contract product.

(6)   The licensee is permitted to use the contract products on any hardware and in conjunction with any software provided that and inasmuch as the system environment corresponds to the operating systems and their successors on which the use of the contact products is intended.

(7)   Porting to other system environments is prohibited unless the licensor is obliged by statutory requirements to consent in good faith to a change to the program.

(8)   The contract products or parts thereof must not be copied, modified, decompiled, or integrated with other programs without the express consent of the licensor. The appropriate stipulations of the EU directive of 14 May 1991 remain unaffected.

(9) In order to use a product that is identified as an upgrade, the licensee must own a full license for the product designated by the licensor as eligible for upgrade. Having performed the upgrade, the licensee is no longer entitled to use or transfer to third parties the product (including the license) on which the upgrade rights were based.

(10) If the respective software license agreement permits the use of the contract products by the licensee on behalf of third parties ("end customers"), the licensee must pay an appropriate license fee for each end customer for which services are provided by means of the contract products. If such a license fee has not been agreed, it shall be set on the basis of the licensor's general price list as the licensor reasonably sees fit.

(11) The licensee must not without the express consent of the licensor transfer or resell the permanent license key for a contract product outside of the group of entitled enterprises. The licensee is however permitted to permanently transfer the title to the contract products in their entirety (i.e. all licenses and use rights, including all previous versions, as named in the license agreement) provided all documents and media are handed over, and no copies are retained, and the licensee ensures that the general conditions of use of the respective contract product are applied. The licensee shall notify the licensor via e-mail of the permanent transfer of title, indicating the name of the receiving entity.

(12) The licensee undertakes not to use the contract products in a way or in a country that would infringe upon locally applicable laws. The licensee undertakes to indemnify the licensor fully against all liabilities arising from any present or future infringement by the licensee of the obligations set forth in this paragraph.

(13) The licensor has obtained from the entitled party or via the applicable license conditions the necessary rights for the use of any open-source components that are supplied with the contract product and are activated, used, linked or otherwise referenced by the contract product, via technical or other means; in addition to this agreement, the licensee shall observe the license conditions applicable to said components, as expressly listed and reproduced with the respective component.

(14) The licensee itself shall obtain from the originator or other copyright holder the necessary rights for the use of any open-source components that are supplied with the contract product but not activated, used, linked or otherwise referenced by the contract product, via technical or other means, and shall comply with the applicable licenses conditions for said components.

5. Third-Party Proprietary Rights

(1) The licensor guarantees that the contract products are free of third-party proprietary rights (including commercial patents and copyrights) that would restrict or exclude the utilization of the product by the licensee in accordance with this contract at the agreed place of installation.

(2) Inasmuch as third-party proprietary rights are applicable to a contract product or are asserted, the licensor is entitled either to modify the contract products to a degree that is acceptable to the licensee and in such a way that there is no longer an infringement of proprietary rights, or to obtain legally correct authorization for the contract products to be used in accordance with the agreement and without restriction or additional costs.

(3) The licensor shall fully indemnify the respective licensee against all justifiable claims of third parties regarding infringement of commercial patents through the use of contract products and against any reasonable associated costs. The licensor assumes the primary liability with respect to the entity asserting an infringement of its proprietary rights. The licensor is in particular entitled and obliged at its own cost to conduct the legal defense against third-party proprietary rights claims. Inasmuch as is necessary, and to a reasonable extent at the expense of the licensor, the licensee may at its own discretion support the licensor in the defense against proprietary rights claims asserted by third parties. With the consent of the licensor, the licensee itself is also entitled to conduct the legal defense. In such case, the licensor is obliged to bear any reasonable costs incurred inasmuch as an infringement of proprietary rights in the sense of this subsection has taken place.

(4) The licensor shall indemnify the licensee against all claims asserted against the licensor by originators involved in the creation of the contract products.

(5) The above does not apply to open-source components; in this case the licensor guarantees only that the licensor has obtained from the entitled party or via the applicable license conditions the necessary rights for the use of any open-source components that are supplied with the contract product and are activated, used, linked or otherwise referenced by the contract product, via technical or other means.

6. Commencement, Duration, Termination

(1) This agreement shall become valid on signing of the license agreement, where the day of the last signature by a contract party is decisive.

(2) In case of rental of the software or use of the Software as SaaS this agreement is valid for a period of one year from the effective date.

(3) In case of rental of the software or use of the Software as SaaS this will renew automatically for a further period of one (1) year at a time, subject to termination by either of the parties with three (3) months' notice to the end of contract year. This does not affect the right of extraordinary termination.

(4) The licensor is entitled to increase the license fee defined for Software Rental and SaaS with at least 60 days written notice to the end of the current contract year, where the increase will take effect from the beginning of the following contract year. However, the increase must not exceed 5 percent of the agreed license fee. The licensee has the right of extraordinary termination of the maintenance and support agreement within 30 days of receiving notification of an increase.

7. Acceptance of Customizing

The contract partner automatically accepts ordered customizing or consulting services after 30 days starting with the delivery of the customized component or service, unless the contract partner does not veto within this period.

Section C

Maintenance and Support for perpetual license

1. Scope, Subject Matter

(1) The agreements regarding maintenance and support set forth herein apply to the contract partner named in the license and/or maintenance agreement and to companies affiliated with said contract partner inasmuch as they are entitled to use the contract product in accordance with the respective license agreement (referred to collectively as "licensees") if the maintenance and support service is agreed in the license and/or maintenance agreement.

(2) In accordance with the provisions and conditions of the license and/or maintenance agreement and with the conditions set forth herein, the licensor hereby entitles the respective licensee to maintenance and support for the contract products.

(3) The licensor is entitled within the scope of the product life cycle of each contract product to discontinue maintenance support for earlier versions. If the respective licensee requires support and/or troubleshooting after discontinuation of maintenance, the licensee must exchange the installed version for a supported version/edition to which rights of use are accorded within the framework of this agreement

2. Maintenance and Support

(1) The licensor shall in accordance with the provisions of this agreement provide maintenance and support services for the full licenses purchased by the licensee; the services shall include the following:

- maintenance, including version upgrade rights

and

- support,

which the licensor may provide either directly or via the agency of third parties.

(2) The services will be provided according to the following service hours.

Mon.-Fri. 09:00-17:00 hours CET

(with the exception of the public holidays listed in Appendix 1)

(3) The services listed above do not include the following:

(d) Maintenance and support services outside of the defined service hours;

(e) Maintenance and support services for contract products that have been purchased by the licensee and not used according to the operating conditions specified by the licensor, or used on data processing systems other than those recommended by the licensor as a prerequisite for their operation;

(f) Maintenance and support services for supplied contract products that the licensee has modified by programming or other means;

(g) Maintenance and support services for program parts that do not belong to the original version of the contract products as supplied by the licensor;

(h) Maintenance and support services for programs and program parts whose functioning depends directly and/or indirectly on other contract products, unless there is also a written maintenance agreement between the licensee and licensor pertaining to such other programs;

(i) Creation and provision of software, or consulting services regarding such activities or regarding the deployment of data processing equipment, except for provision of upgrades for contract products purchased by the licensee;

(j) Installation of contract products or their components/sub-programs (especially patches), including upgrades;

(k) Additional services, especially with regard to the services named in items (f) and (g), are subject to a separate, prior, written agreement between the parties.

(l) Use of any open-source components that are supplied with the contract product but not activated, used, linked or otherwise referenced by the contract product, via technical or other means.

(4) In determining, isolating and reporting errors or other defects, the licensee shall observe the user documentation belonging to the program and any instructions given by the licensor or the licensor's partners. The licensee shall make every reasonable effort to determine, isolate and document such errors or other defects. The latter includes creation of a defect report, system logs and storage snapshots, provision of the affected files, input and output data, interim and test results, and of any other documentation suitable to illustrate the error report.

(5) On contracting of this agreement, the licensee shall bindingly nominate one of its employees as the contact for the licensor's service staff. If the contact changes, the licensee shall in good time, i.e. at least a week before the change, give the licensor written notification and nominate a new contact.

(6) As payment for the services according to Paragraph 1 in the above, the licensee shall pay the licensor a maintenance and support fee to be calculated as defined in the following:

(a) The amount of the **annual** maintenance and support fee is defined as 18% of the general purchase price of the contract products listed in the license agreement at the time of calculation of the maintenance and support fee. The annual maintenance and support fee will be calculated and billed in advance for the respective contract year

on the first day of each contract year. The formula for the annual calculation is as follows:

Maintenance and support fee percentage x license price

(b) The maintenance and support fee for user licenses ordered retrospectively in addition to the contract products listed in the license agreement will be calculated **pro rata** in accordance with item (a) for the residual term of the contract year in which the retrospective delivery takes place. The residual term commences at the beginning of the first full month after placement of the respective order, and ends at the end of the contract year. The maintenance and support fee calculated in each case will be billed in advance in addition to the license price, and will be calculated according to the following formula:

$$\frac{\textit{Maintenance and support fee percentage x license price x residual term in months}}{12}$$

The follow-on fee will be calculated annually at the beginning of following contract year according to paragraph (a) in the above.

(7) The licensor shall be entitled to freely dispose of any ideas, procedures, designs and other technologies which arise in the course of provision of contractually agreed services and which are incorporated in work results within the scope of maintenance/support. The same applies to skills and experience gained in the course of execution of contractually agreed service tasks and the use of the results thereof. However, the licensor grants the licensee the simple, non-exclusive, temporally and spatially limited right to use the results of work performed within the scope of maintenance and support services as a part of the purchased contract products for the duration of the applicable license agreement and in accordance with the conditions set forth in the license agreement and herein. Any further utilization by the licensee is not permitted. The licensor retains all other rights of utilization, in particular the right to make the results of work performed within the scope of this agreement available to third parties.

3.   Commencement, Duration, Termination

(1) This maintenance and support agreement shall become valid on signing of the license and/or maintenance agreement, where the day of the last signature by a contract party is decisive.

(2) This maintenance and support agreement is valid for a period of one year from the effective date.

(3) The maintenance and support agreement will renew automatically for a further period of one (1) year at a time, subject to termination by either of the parties with three (3) months notice to the end of contract year. This does not affect the right of extraordinary termination.

(4) The licensor is entitled to increase the percentage for calculation of the maintenance and support fee defined in **the above Section C, Subsection 2, Item a)** with at least 60 days written notice to the end of the current contract year, where the increase will take effect from the beginning of the following contract year. However, the increase must not exceed 2 percent of the purchase price as per paragraph (a) in the above (i.e. an increase from 18% to 20%). The licensee has the right of extraordinary termination of the maintenance and support agreement within 30 days of receiving notification of an increase.

Section D

General Conditions

1.   Liability for Defects

(1)   In order to assert warranty claims, the licensee must have properly and immediately fulfilled its obligation to examine and give notice of defects.

(2)   The statutory provisions regarding liability for defects are applicable, bearing in mind the following special stipulations:

    (a)   The period of limitation for warranty claims for perpetual licenses is one year from the time of installation of the respective contract product.

    (b)   For software rental Licensor will maintain the operational readiness during the contract period through the provision of new releases and updates.

    (c)   For the provision of the software as a service (SaaS) the Licensor will provide a contractual availability during the contract period of 99.7%.

    (d)   Within the scope of liability for defects, the licensor will first attempt to rectify the defect either directly or via the agency of a third party.

    (e)   Inasmuch the defect is not rectified within a reasonable period of time, the licensee is entitled to withdraw from the agreement or to assert a claim for reduction of the license fee in accordance with the statutory provisions. As far as faulty services under this agreement cannot be rescheduled, reduction claims have priority.

    (f)   If the licensee asserts claims for damages arising from defects, the licensor shall be liable in accordance with the statutory requirements inasmuch as such claims are based on wrongful intent or gross negligence on the part of the licensor or its representatives or vicarious agents. Inasmuch as the licensor or its representatives or vicarious agents cannot be accused of wrongful intent or gross negligence, the licensor's liability for damages shall be limited to foreseeable, typically occurring damages.

    (g)   The licensor shall be liable in case of any culpable infringement of a material contractual obligation, even in case of ordinary negligence, whereby the licensor's liability shall be limited to foreseeable, typically occurring damages.

    (h)   In the absence of wrongful intent, gross negligence or infringement of a material contractual obligation, the licensor's liability to the licensee shall not exceed the limit of indemnity of its public liability insurance in each case. The limit of indemnity of the licensor's public liability insurance is € 1,500,000.00 for personal injury and material damage, € 500'000.00 for IT property damage, damages due to data deletion or data impairment, infringement of data privacy regulations, loss of production, business interruptions and/or loss of profits, and € 250,000.00 for other general pecuniary damages. The licensor will maintain its public liability insurance at the level described in the above for the duration of this agreement.

    (i)   Inasmuch as the licensee in entitled to compensation for damages in lieu of performance, the licensor's liability shall, within the scope of the above Paragraph 2, Item c, also be limited to compensation for foreseeable, typically occurring damages.

    (j)   The licensor's liability for expressly agreed properties of the contract products is not limited by the above stipulations inasmuch as the expressly agreed property is intended to specifically protect the respective licensee against the damage that has occurred. The above stipulation does not limit the liability of the licensor (including representatives or vicarious agents) with regard to legal claims based on product liability legislation or with regard to claims arising from culpable harm to human life, the body or health.

    (k)   Unless otherwise agreed in the above, no further liability of the licensor can be assumed within the scope of liability for defects. Liability for defects is in particular excluded inasmuch as the contract products have been incorrectly handled or used in a defective or incompatible hardware or software environment by the licensee. The same also applies in case of unauthorized modifications to the contract products by the licensee.

(3) In case of rectification of defects, in particular via additional delivery or error correction, the expenses thus incurred by the licensor or it's third-party agents, including any transport costs advanced by the licensee, shall be borne or reimbursed by the licensor. The latter shall not apply inasmuch as the expenses are increased by the contract products having been transferred to a location other than the initial place of delivery.

(4) No liability of the licensor can be assumed for use of any open-source components that are supplied with the contract product but not activated, used, linked or otherwise referenced by the contract product, via technical or other means.

2. Liability in Other Cases

(1) The licensor's liability for defects is defined exclusively in the previous subsection.

(2) The following liability stipulations apply to other damage claims of the licensee:

    (a) If the licensee asserts claims for damages in other cases, the licensor shall be liable in accordance with the statutory requirements inasmuch as such claims are based on wrongful intent or gross negligence on the part of the licensor or its representatives or vicarious agents. Inasmuch as the licensor or its representatives or vicarious agents cannot be accused of wrongful intent or gross negligence, the licensor's liability for damages shall be limited to foreseeable, typically occurring damages.

    (b) The licensor shall be liable in accordance with the regulatory requirements in case of any culpable infringement of a material contractual obligation, even in case of ordinary negligence, whereby the licensor's liability shall be limited to foreseeable, typically occurring damages.

    (c) In the absence of wrongful intent, gross negligence or infringement of a material contractual obligation, the licensor's liability to the licensee shall not exceed the limit of indemnity of its public liability insurance in each case. The limit of indemnity of the licensor's public liability insurance is € 1,500,000.00 for personal injury and material damage, € 500'000.00 for IT property damage, damages due to data deletion or data impairment, infringement of data privacy regulations, loss of production, business interruptions and/or loss of profits, and € 250,000.00 for other general pecuniary damages. The licensor will maintain its public liability insurance at the level described in the above for the duration of this agreement.

    (d) Unless otherwise agreed in the above, no further liability of the licensor can be assumed within the scope of liability for damages in other cases.

3. General Liability Stipulations

(1) For the sake of clarity, please note that the liability limitations in the above in no way limit legal claims based on product liability legislation. Liability for damages arising from harm to human life, the body or health as the result of a culpable breach of duty on the part of the licensor or as the result of a willful or grossly negligent breach of duty on the part of a representative or vicarious agent of the licensor is not affected by the above liability stipulations.

(2) Within the scope of its duties of care, the licensee is required before the first use of the license products to check whether the installation of the contract products could give rise to particular interference with software that is already installed, to ensure that the licensee's data is backed up prior to the first installation and during productive use, and to take all additional protective action that can be reasonably expected in case of a suspected software error.

(3) Any further liability for damages going beyond the bounds of the above liability stipulations is excluded, regardless of the legal nature of the asserted claim. The latter applies in particular with regard to damage claims arising from culpa in contrahendo, other breaches of duty, or from tortious claims for material damages.

(4) Inasmuch as the licensor's liability for damages is excluded or limited, the same applies to the personal liability of the licensor's employees, partners, representatives and vicarious agents.

4. Confidentiality

(1) The parties, including all affiliated enterprises, subsidiary companies, branch offices, consultants, employees and all similar persons, corporations or natural or legal entities, undertake with regard to confidential information of the other party in each case (as defined in the following and regardless of the date of first disclosure of such information) to keep such information secret for an unlimited period and neither to exploit it or have it exploited within the party's own enterprise, including all affiliated enterprises, subsidiary companies, branch offices, consultants, employees and all similar persons, corporations or natural or legal entities, nor to use it any other way, be it either directly or indirectly via the agency of a third party.

(2) Within the scope of this agreement, the following information is deemed confidential, whereby the list is merely intended to provide examples and is not considered a complete list: in particular any business secret, and any and all information and data that is treated confidentially and is not publicly accessible concerning products, processes, know-how, designs, formulae, developments, research, computer programs databases, other copyright-protected works, customer lists, business plans, marketing plans and strategies, financial plans and information, as well as any other information regarding the business activities of the parties and their employees, consultants, licenses or other persons associated with the parties, that is disclosed or otherwise communicated, whether orally or in writing, within the framework of this agreement.

(3) The licensee acknowledges that confidential information disclosed by the licensor within the scope of this agreement in direct connection with a contract product (e.g. interface information, source code, etc.) represents a material value or business interest for the licensor, and an infringement of this confidentiality stipulation could cause substantial damage to the licensor. Each licensee hereby undertakes individually to reimburse the licensor for damages arising from willful or negligent infringement of the confidentiality obligation included in this agreement. Furthermore, the licensor is entitled to claim compensation from the respective licensee for all damages caused by infringement of the said confidentiality obligation, whereby such damages also include any and all consequential damages, tangible and intangible damages, as well as loss of profits. The liability limitations included in this agreement do not apply in case of infringement of the confidentiality obligation by one of the parties or an associated third party.

(4) Any information disclosed by a party in accordance with this agreement shall remain the sole and exclusive intellectual property of that party, including all rights of exploitation and use. No rights of any kind are transferred, either expressly or tacitly, to the other parties with the disclosure of information.

(5) The above confidentiality obligation does not apply if a party is legally obliged, either by a legally binding judgment of a German court or by an official body, to disclose information, provided the party entitled to confidentiality is given written notice prior to disclosure. Furthermore, the above confidentiality obligation does not apply to open-source components inasmuch as the applicable license conditions permit or require disclosure.

(6) The parties shall ensure that the above confidentiality stipulations are observed by concluding appropriate contracts with employees and consultants involved in the execution of this agreement.

(7) Contract parties are only permitted with prior written consent of the other party to make reference to the business relations between the parties in advertising or other documents. The same applies to the use of brands, trademarks and other designations owned by the respective other party.

5. Immediate Termination

Notwithstanding any other claims (e.g. claims for damages) each of the parties has the right to terminate the license agreement or the maintenance and support agreement with immediate effect by written notification to the other party, without having to observe any other period of notice or to give any other notification, in case of a breach of contract of such gravity that the terminating party can no longer be reasonably expected to honor these agreements between the parties, in particular if the party in breach of contract:

- has committed a remediable breach of its obligations according to the conditions of the agreements existing between the parties and has failed to provide remedy within 45 days of receiving notification of the breach from the injured party,

- has committed an irremediable breach of its obligations according to the conditions of the agreements existing between the parties.

6. Protection of Data

(1) The licensees hereby grant express permission for the licensor to gather, store, use and process data and information about the licensees (such as name, address and e-mail address). Please note that, inasmuch as the licensor engages the services of third parties to meet its obligations within and beyond the bounds of this agreement, the gathered data may be passed to the third party in order to fulfill such obligations. For example, such third parties can be: resellers, suppliers, marketing agents and financing companies. The licensor will provide more detailed and current information on data protection on request.

(2) In compliance with data protection rules for the content that Licensee processed with the software, especially when using SaaS, the Licensee shall be solely responsible. The licensee is obliged to inform the licensor on peculiarities of data protection in connection with his use of software and take appropriate precautions.

7. Force Majeure

(1) Impediments to performance, delivery or acceptance as a result of natural disasters, acts of war, industrial action, interruptions in the supply of raw materials or other cases of force majeure within a party's own enterprise, an affiliated enterprise or an enterprise entrusted with the execution of subcontracts, or as a result of an act of state or other circumstances that are beyond the control of the contract parties and which cannot be overcome or compensated at a reasonable technical effort or economic expense shall exempt the contract parties for the duration of the event from their contractual obligations in accordance with this agreement.

(2) The party that is prevented from fulfilling its contractual obligations shall immediately notify the other party, indicating the circumstances that are preventing it from doing so, and shall furthermore undertake every reasonable and economically justifiable effort to overcome the impediment to performance and/or delivery as quickly as possible.

8. Transferability

This agreement must not be transferred or assigned, in whole or in part, by one of the parties without the prior written consent of the other party, whereby the said other party must not refuse consent for inequitable reasons. Subject to the above, the legal successors and acquirers of the parties are also bound by the provisions and conditions of this agreement.

9. Concluding Provisions

(1) Alterations and amendments to this agreement must be made in writing. A waiver of the written form is also subject to formal requirements.

(2) Failure of one of the parties to comply with an obligation under this agreement may not be deemed a waiver of the said obligation or of the agreement as a whole or of any other obligation under the agreement.

(3) If individual provisions of this contract are or become legally invalid, the validity of the remaining provisions shall be unaffected. The invalid provision shall be replaced or any

gaps in the agreements shall be filled with a valid and appropriate stipulation that is as close as possible to the original economic intent of the parties.

(4)   The place of fulfillment and jurisdiction is Graz.

(5)   This agreement is subject to the laws of the Republic of Austria, under exclusion of conflict law and UN purchase law. The Convention for the International Sale of Goods (CISG) of 11 April 1980 in its valid version shall not be applied.

(6)   All parties have each received one copy of this agreement.

Appendix

1.   Public Holidays

The public holidays in Austria as of January 1, 2007 are Neujahrstag (Jan 1), Heilige Drei Könige (Jan 6), Ostermontag, Tag der Arbeit (May 1), Christi Himmelfahrt, Pfingstmontag, Fronleichnam, Mariä Himmelfahrt (Aug 15), Nationalfeiertag (Oct 26), Allerheiligen (Nov 1), Mariä Empfängnis (Dec 8), Weihnachtsfeiertag (Dec 25) and Stephanitag (Dec 26). Dec 24 and Dec 31 are also considered public holidays in this context.