

Software Subscription Agreement (International)

Purpose

In this Subscription Agreement (Agreement), MeetingSphere GmbH, a limited liability company registered in Hamburg HRB 153862, Germany, (hereafter "Vendor") and the Customer define the terms and conditions under which the Customer may run software supplied by the Vendor (hereafter the "Software").

1 Definitions

Terms and concepts used in this Agreement are defined below.

1.1 Authentication

means the process of technically testing the identity of an individual. Circumvention or invalidation of this technical test of identity, for instance by publishing, circulating, or passing on login and password information to individuals other than the named individual to be identified, constitutes a breach of this Agreement.

The passing of login and password information for non-personal Host accounts on Portable Servers is exempt from this rule.

1.2 Documentation

refers to documentation and user manuals supplied by the Vendor with the Software product in printed or electronic format.

1.3 Customer

means the party which purchases a Subscription for the Software and thereby enters into this Agreement.

1.4 Date of Coming into Force

is the day the Agreement comes into force by the Vendor delivering the software or making the software available for download at the Customer's purchase order.

1.5 Host

refers to authenticated individuals who are personally licensed to run Sessions as Host. Host licenses are purchased through a Host Subscription.

On Portable Servers, Host are licensed through non-personal Host Subscriptions.

1.6 Licensor

means a named individual to whom a Subscription Administrator has delegated the personal licensing of users as Host.

1.7 Maintenance

is the making available of upgrades and updates for the Software during the Subscription period.

1.8 Participant

means anyone who interacts with the Service by joining or participating in a Session.

1.9 Server

means the application and, if so, database server which run the Software to support Sessions.

1.10 Session

refers to sessions, meetings, conferences, sittings, or workshops in which Participants make use of the Software to communicate with each

other or to document or disclose results of their work. These sessions meetings, conferences, sittings, or workshops may occur in a single location or remotely over the network at the same time or at different times.

Sessions require control by a Host.

1.11 Software

means the Software that is named in the Subscription Metrics including all Updates, Upgrades, and documentation in both installed and uninstalled form. The term includes the relevant Server and any code retrieved from the Server that is executed on the user's computer.

Expressly excluded from the term 'Software' in this Agreement is the third-party software named in appendices A1-n. Such third-party software is subject only to the terms of the named licences.

Software that is designated 'Beta', 'Trial', 'Evaluation', or 'Demonstration' Software falls under the limitations of subclause 7.2.

1.12 Subscriptions

Subscriptions come in three basic forms:

(1) Software Subscriptions which procure the right to install and run the Software specified in the Subscription Metrics. The Software Subscription must be complemented by a Host Subscription.

(2) Named Host Subscriptions by which Host licenses are purchased for named individuals for a given term. Named Host Subscriptions are defined by (i) the number of individuals who can be licensed by it, (ii) the remaining number of individuals yet to be licensed (iii) the individuals licensed by it, (iv) the Subscription Period (v) the Subscription Fee for that number of licenses and term.

(3) Non-personal Host Subscriptions which license non-personal user accounts for use by several individuals and whose credentials can be shared between these individuals. Non-personal Host Subscriptions are limited by number of participants supported concurrently at any given time.

1.13 Subscription Administrator

means the named individuals appointed by the Customer who coordinate this Agreement and administer the Customer's Subscriptions.

Subscription Administrators can delegate the licensing of named individuals as Host to Licensors.

1.14 Subscription Fee

means the payment due for a given Subscription which is agreed between the Customer and the Vendor.

1.15 Subscription Metrics

means terms set forth in separate writing (such as a quote or written agreement between the Customer and the Vendor) or an invoice describing the Customer's right to use the Software. The Subscription Metrics typically spell out the subject of the Subscription such as a specific type of Server, the number of licences covered by Named Host Subscriptions and the Subscription Period. The Subscription Metrics are incorporated by reference into this Agreement.

1.16 Subscription Period

means the specific term for which the Subscription is valid

1.17 Subscription Store

means the Vendor's system of one or multiple servers used for transactions related to Subscriptions, (e.g. procurement, renewal, termination) and the provisioning of the Software.

1.18 Unlimited Participants

The Subscription Metrics of Named Host Subscriptions do not set a contractual limit to the number of Participants in a Session. There are, however, technological limits to the number of concurrent Participants especially in a voice or video conference. As these limits are, at least in

part, outside the Vendor's control, the term 'unlimited participants' does not include any assurance that the Software or the conferencing service can actually support 'unlimited' or even many Participants at any one time.

1.19 Update

means a fix or compilation of fixes released by the Vendor to correct operation defects (program bugs) in the Software.

1.20 Upgrade

means any new version of the Software which bears the same product name, including version changes evidenced by a number immediately to the left or right of the decimal (e. g. version 5.1 vs. 5.2 or version 3.5 vs. 5.0). If a question arises as to whether a product offering is an Upgrade or a new product, the Vendor's opinion will prevail, provided that the Vendor treats the product offering the same for its Customers generally.

1.21 Use

means the preparation, execution and wrap-up of Sessions by Hosts and the participation in Sessions by Participants.

Technically, Use means loading the Software into the temporary memory (e. g. RAM) of a computer or computing device.

2 Contract Coordination

The Customer appoints at least one Subscription Administrator. Subscription Administrators are responsible for the Subscription-related day-to-day business of the Customer organisation and all parental, subsidiary or otherwise affiliated organisations that participate in this Agreement under that organisation's Customer number. The Subscription Administrators are the addressees of all correspondence from the Vendor regarding this Agreement.

It is the Customer's responsibility to provide the Vendor with valid contact information for Subscription Administrators.

2.1 Participation of Paternal, Subsidiary or Affiliated Organisations, Externals

Subsidiary organisations of the Customer, its paternal organisation or affiliated organisations may participate in this Agreement through the Customer.

If a Customer purchases Subscriptions on behalf of parental, subsidiary or affiliated organisations, it will be held accountable by the Vendor for these organisations as to all rights and responsibilities under this Agreement. Process, amount, and contractual arrangement of cross charging Subscription Fees is determined by the Customer. There are no restrictions on charging for related services (e. g. support) or other outlays or effort.

The Customer may license individuals who are not member of the organisations defined in clause 2.1 as Host to enable these persons to host and support Sessions on behalf of the Customer. Commercial dissemination to or Use by externals for other purposes than those of the Customer are prohibited.

2.2 Changes of Programme, Price or Product

The Vendor is free to add, change or discontinue types of Subscription, product or service.

The Vendor is also free to change the price of its offerings.

3 Subscribing

For the Subscription Period, within the Subscription Metrics, the Vendor provides the Customer with a non-exclusive, non-transferable, and worldwide license to use the Software. All rights of ownership of the Software (including adaptations and copies) remain with the Vendor or its licensors. Copies will only be provided to enable the Customer to execute its Subscription to Use.

3.1 Purchase

Purchases of Subscriptions may be conducted online, provided that the Vendor provides the necessary infrastructure, and the Customer does not exclude its participation in electronic order processing.

The Vendor provides Software Subscriptions and User Subscriptions in an appropriate, digital format.

3.2 Licensing of named individuals as Host

Subscription Administrators and Licensors assign the licenses included in Named Host Subscriptions to individuals so that they can set up and run Sessions as a Host. Re-assignment of licenses from one individual to another is permitted after that has held the license for 12 months. Re-assignment is also permitted to accommodate natural fluctuations of personnel or changes in individual job definitions. The re-assignment of licenses for sharing a limited number of licenses between a greater number of individuals is a severe breach of this Agreement.

3.3 Sale of Subscriptions to a third party

This Agreement may be transferred (sold) to any paternal, subsidiary, or affiliated organisation that, according to clause 2.1, could participate in this Agreement through the Customer.

A splitting of this Agreement is possible if an organisation which has hitherto participated through the Customer leaves that group of affiliated organisations and wants to continue to use its Host Subscriptions on a separately subscribed Server. The Vendor will withhold its agreement to such a new Agreement and to the transferral of Host Subscriptions only for good cause.

The migration of content or user data to the new Server rests with the Customers concerned.

The Agreement cannot be transferred to unaffiliated third parties.

3.4 Technical implementation of Subscriptions

While the licensing of individuals as Host occurs on the Server, Subscriptions are administered in the Subscription Store which also keeps track of changes of the Subscription status.

3.4.1 Process for updating Subscription information

As changes to the Server's Subscription status occur over time, by changes to its technical environment or by deliberate changes to Subscription entities such as the licensing or un-licensing of individuals, the Vendor may require an update of the Subscription records maintained in the Subscription Store. Such an update may occur, depending on product, either by direct online connection between the systems or by the up- and download of Subscription files to and from those systems. If the exchange of status information occurs online, acknowledgement of updates will occur automatically on receipt. If the exchange of status information is file-based, the implementation of changes or the acknowledgement of a required status update may require the Customer to conclude a multi-step process which typically involves (a) download of status information from the relevant Server, (b) upload of that information to the Subscription Store, (c) processing and possibly changing of that information on the Subscription Store, (d) download of the resulting Subscription information from the Subscription Store, (e) upload to and implementation of that information on the relevant Server.

3.4.2 Occasions requiring the exchange of Subscription information

The Vendor may require an update of status information from the Server to the Subscription Store. If file-based, the update cycle must be completed i.e. implemented on the relevant Server in the given time frame:

(a) on initiation of Subscription procedures such as the purchase, renewal, termination or change of Subscriptions. File-based update-cycles must be completed within 7 days.

(b) on occurrence of certain reportable events which bear on the Subscription status or the integrity of the Subscription system. Such events include but are not limited to (i) the renaming of Hosts, (ii) the change

of email address of Hosts, (iii) the licensing or un-licensing of individuals as Host, (iv) the appointment of Subscription Administrators or Licensors, (v) changes to the Server's MAC address, (vi) changes to the Server machine's time keeping.

When such changes occur, the Server will inform the user who makes the change that these changes constitute a reportable event which requires an update of the Subscription status and require confirmation. The status update-cycle must be completed within 7 days of the event.

c) by elapsed time. To protect the integrity of its Subscription system, namely against the proliferation of its software by illicit copying of installers or backups, the Vendor may require the Customer to provide an update of the Server's Subscription status. If administration of Subscriptions occurs online, both the reporting of the event and its acknowledgement by the Subscription Store will occur automatically at the given time. If administration of Subscriptions is file-based, the Customer's Subscription Administrators are notified of the Subscription status update requirement by email or at login.

3.4.3 Information exchanged in Subscription administration

The Vendor limits the information exchanged in Subscription procedures to information required for an effective implementation of its Subscription scheme and for an efficient execution of the Subscription procedure agreed with the Customer.

Information exchanged between the Customer's Server and the Subscription Store includes but is not limited to, (1) user data records i.e. name, first name and email of Hosts, Subscription Administrators and Licensors (2) the type, term and status of Subscriptions, (3) the time and originator and nature of reportable events, (4) cryptographic secrets for authentication of the Server and the Subscription Store (5) the Server's technical specification, including software release, (5) certain non-personal data such as checksums giving evidence to the integrity of the Subscription data on the Server, (6) technical information and tokens that facilitate an effective, ordered and secure exchange of information between the systems.

Status updates will not communicate user passwords or content on the Server nor any information pertaining to the activity or non-activity of individual users on that system except for actions that constitute or result in reportable licensing events.

(4) Subclauses 3.4.2(b), 3.4.2(c) and 3.4.3 and 3.4.4 do not apply to Servers designated as 'SCIF Edition'. Such Servers are not required to report their Subscription status to the Subscription Store.

3.4.4 Consequences of not updating Subscription-status information

Failure to perform required status updates constitutes a breach of this Agreement. It will also impair the functioning of the Server. Required status updates are deemed performed when they have been acknowledged by the Subscription Store either online or by upload of a Subscription status file that contains that acknowledgement to the Customer's Server.

(1) If Subscription-status updates required by reportable events or by elapsed time are not provided in time, the Customer's Server may suspend support of Sessions until the required Subscription-status update has been performed. The Vendor will not compensate the Customer for use or service that has been withheld during such a cut-off period.

(2) If Subscription-status information is not provided on commencement of Subscription procedures on the Subscription Store, the Vendor may refuse changes to the Subscription status, especially terminations unless the Customer provides plausible cause why such an update is impossible in writing. The Vendor may require the Customer to substantiate such claims.

(3) Failure to apply a changed Subscription status to the concerned Server, especially if that change includes terminations or changes to Subscriptions that result in lower Subscription Fees (downgrades), the concerned Subscriptions are deemed used as implemented on the Server. Failure to technically implement such terminations or downgrades is deemed a culpable neglect to purchase used Subscriptions and, if intentional, fraudulent.

3.5 Invoicing

Subscriptions will be invoiced when made available. Renewals will be invoiced at the time of renewal for the next Subscription Period.

The Customer will pay invoices when due without deductions. Any fees that are not paid when due will accrue interest at a rate of 6% p. a. above the basic interest rate published by the European Central Bank.

In case that the Customer has culpably neglected to procure Subscriptions, the Customer agrees that applicable Subscription Fees become due on the day on which the Subscription or renewal would have had to be procured.

The Customer declares its willingness to pay any reasonable cost including legal cost incurred by the Vendor in collection of overdue payments. Should the Customer be in arrears with due payments, the Vendor is entitled to cut off the Customer from further delivery including support. The cut-off shall be lifted upon payment of arrears. The Vendor will not compensate the Customer for deliveries or benefits that have been withheld during the cut-off period.

3.6 Servers

On purchase order, the Vendor provides a cryptographically individualised installer for the Server available to the Customer.

It falls to the Customer to procure licences for software deployed with but not included in the Software, e. g. operating system, database, backup or clustering software.

The Vendor is entitled to forestall the illegitimate propagation of its Software by technical means, e. g. cryptographic hardware or software components or online activation procedures which may be required for installing and running a Server. The deployed cryptographic mechanisms may also serve for secure authentication with the Subscription Store.

Servers must be physically located in a way that enables the Customer to comply with its duty to take care. This prevents any placement of the Server in unprotected public networks.

3.7 Maintenance

The Vendor will make commercial releases of Updates or Upgrades available for download. The Vendor is free as to the features and specification of such Updates or Upgrades.

3.8 Outsourcing

The Customer may outsource the operation and administration of its Server, provided it exercises due diligence in the selection, contracting and supervision of the outsourcing supplier to assure compliance with its obligations under this Agreement.

4 Limitations

Subject to the explicit authorisation in this Agreement, the Software may not be hired out, leased, sub-licensed, disseminated, transferred, copied, reproduced, changed, adapted, deconstructed, compiled backwards, reverse engineered, imitated or emulated. The Vendor reserves all not explicitly granted rights. In case of a legal entitlement to adapt, deconstruct or decompile the Software to gain information required to achieve interoperability with other applications, the Customer will not exercise this right unless the Vendor has failed to provide the required information within 60 days of the Customer's written request.

These limitations are not valid for third-party libraries shipped with the Software and marked as such in the Software's program code. These libraries are subject to special Subscription terms and conditions which are included with each library.

5 Diligence

In executing the provisions of this Agreement, the Customer will match the diligence it exercises in protection of its own property rights.

5.1 Authentication of Users

The Customer will secure by suitable processes, briefings and pledges that the protective measures implemented in the Software – in particular the mechanisms for the personal authentication of users as well as the role concept and licensing model based thereon – are not undermined, e. g. by the dissemination of passwords.

5.2 Access

The Customer must undertake suitable and customary precautions to safeguard the Server and the Software.

5.2.1 Restriction of Access to Systems

The Customer is required to restrict physical access and data connection to systems on which the Software is stored or installed in an appropriate and customary way to personnel that is authorised and for whose adherence to this Agreement the Customer assumes responsibility. Such authorised persons may be employed by the Customer or by contracted providers of (outsourcing) services.

These restrictions do not apply to user access to the Server as the application is safeguarded through the personal authentication and authorisation of users based on the Server's role concept. Subject to further procedural or technical restrictions by the Customer, this role concept arranges for general access by anyone in the role of Participant provided (a) the person has been invited to a Session by a Host and (b) the Session's authentication requirements have been met.

5.2.2 Lock and Key

The Customer commits itself to keep copies of the Software, cryptographic hardware components or other material safety provisions that are not (yet) deployed or no longer deployed with a Server and that are consequently unprotected by access restrictions to Servers (cf. 5.2.1) under lock and key.

Likewise, access information for downloads and electronic transactions as well as activation keys, Subscription-binaries etc. are to be protected effectively against unauthorised access or dissemination.

The information and safeguards may only be issued to authorised staff who have been instructed as to the illegality of dissemination and the creation of copies.

Breaches of these lock and key requirements must be immediately reported to the Vendor.

5.3 Information of Employees and Agents

The Customer is required to exert adequate and customary effort to inform employees, agents or other users of the Server or the Software that the Software must not be used, copied or disseminated in any way that is not authorised by this Agreement.

5.4 Copies

The Software and documentation may only be copied for the Customer's own use. All references to property rights must be truthfully reproduced and included in all copies and adaptations.

5.5 Incident Reporting

On gaining knowledge of such an incident, the Customer will inform the Vendor without undue delay of all breaches or attempted breaches of the limitations and access restrictions defined in clauses 4. and 5.2.

5.6 Self-Audit

Up to once per year the Vendor may require the Customer to conduct a self-audit of its adherence to the provisions of this Agreement.

With such a request for a self-audit, the Vendor will provide the Customer with the Subscription information on record with the Vendor. This information will include but will not be limited to (a) Customer master data and account information including Subscription Administrators, Licensors, Subscriptions, and individuals licensed as Host.

The Customer will inform the Vendor of its findings within 30 days of the self-audit request. The Customer assures the Vendor of its best

efforts to resolve any discrepancies between records kept by the Vendor and the self-audit declaration.

5.7 Formal Audit

The Vendor will have the right, at its expense and upon no fewer than 10 working days prior written notice, to audit the Customer's self-audit report, its Use of the Software and its related records and payments. As part of such audit, the Vendor is entitled to obtain physical and electronic data concerning all Software usage at each of the Customer's offices, regardless of the countries or regions in which these offices are located (the audit may be at the Customer's facilities or from a remote location, at the Vendor's option). An audit may be conducted either by the Vendor or by its authorised representative, will not interfere unreasonably with the Customer's business activities, and will be conducted no more often than once per calendar year, unless a previous audit disclosed a material discrepancy.

If such audit shows that the Customer has understated its Use of the Software or has otherwise underpaid amounts owing, the Customer must immediately purchase from the Vendor sufficient licenses and maintenance to support the actual use and pay all amounts owing.

If such audit shows that the Customer has understated its use of the Software or underpaid amounts owing by more than five percent, the Customer will also pay the reasonable expenses of the audit. The Vendor will use the information received during the audit solely for the purposes of this Agreement and will honour any applicable privacy/data protection laws and otherwise maintain the confidentiality of such information.

The Customer may request that the formal audit described above be carried out by an independent third party who must be an accountant or qualified auditor approved by the Vendor. The Vendor will not unreasonably withhold its approval. In such a case, the expense of the audit will be borne entirely by the Customer. Subject to the provisions of this clause, the Vendor will have the right to determine the audit scope and required audit testing and to review the audit work prior to finalization of the audit.

5.8 Export

In case of re-export and regardless of any declaration by the Customer to the Vendor as to the final destination of the Software, the compliance with applicable national or international rules and requirements for export rests solely with the Customer. The Customer will refrain from exporting the Software or any part of the Software, directly or indirectly, unless all export control regulations have been met that may have been imposed on the Software by the European Union, the government of other countries or organisation of states under whose jurisdiction the Customer conducts business.

Regardless whether these obligations apply to the Customer, it assures the Vendor that it will not export, directly or indirectly, any part of the Software or any system containing parts of the Software to anyone outside the United States of America or the European Union before all export regulations of the European Union have been met. In case the Customer has received the Software outside the European Union, these rules apply also for re-export.

6 Terms of Delivery

6.1 Delivery Terms

In case of delivery to countries outside the European Union, the payment of customs duties, applicable taxes or dues on goods and services is solely the Customer's responsibility.

6.2 Ownership and Passing of Risk

In the case of pre-installed appliances, risk passes to the Customer on physical handover to the Customer's authorised agent. In case of download, the completion of the download on the Vendor's download server is defined as the time of handover.

Regardless of this clause, there is no transfer of ownership of the Software.

7 Limited Warranty

Within the limits of the legal warranty period, the Vendor warrants that the Software (including upgrades) will conform substantially to the specifications in the documentation, provided: (a) the Software is not modified by anyone other than the Vendor, unless authorised by the Vendor in writing; (b) the Customer notifies the Vendor in writing of the nonconformity within 90 days after the Customer first acquires a subscribed copy of the Software version.; and (c) the Software is installed in a compatible environment. In this clause, 'conform substantially' means that the Software conforms to the overwhelming majority of all specifications in the documentation. The Vendor's only obligation under this warranty, at its option, is to either cause the Software to conform substantially with its specifications or to refund the amount paid for the current Subscription to the Software upon the Customer's return of all the Software. To cause the Software to conform substantially to its specifications, the Vendor may opt to deliver an update or a new program version; there is no claim for a rectification of defects in the current version. In the event of a refund, the Subscription to use the Software will automatically expire.

7.1 Storage Media, Hardware Components, Documentation

Storage media, hardware components and documentation are covered by the implied (legal) warranty.

7.2 Beta and Demonstration Software

Any beta or demonstration Software is provided to the Customer 'as is' under the exclusion of all warranty. The Customer accepts that such Software has not been fully tested and may therefore contain errors and so-called bugs. The Vendor explicitly advises the Customer that it is solely the Customer's responsibility to determine whether the use of such Software is suitable for any given purpose. The Vendor does not render support for such Software and gives no assurance that such software will eventually be marketed as a product.

7.3 Third-party software

The Vendor does not warrant third-party products. Any such products are provided on an 'as is' basis. Any technical or warranty service for third-party products is provided by the product manufacturer in accordance with any applicable manufacturer's warranty.

7.4 Disclaimer of Warranties

Except as expressly stated in these limited warranty sub clauses, the Vendor makes no warranty or representations regarding any Software or services. To the extent allowed by applicable law, the Vendor disclaims and excludes all other express, implied, and statutory warranties or conditions, including implied warranties of merchantability, fitness for a purpose, good title, and non-infringement. The Vendor does not warrant that the Software or services will be without defect or error, satisfy specific requirements, or provide uninterrupted use of the Software.

8 Liability Limitations

8.1 Indirect Damages

To the extent allowed by applicable law, the Vendor will not be liable for any untypical consequential damages that are not related to the risk immanent in this contract.

This subclausal does not apply to violations by either party of the other party's intellectual property rights.

8.2 Direct Damages

The Vendor's liability for damages of any type arising out of or related to this Agreement shall be limited to the greater of 1.25 times the actual amounts paid by the Customer for the current Subscriptions, service, or deliverable in question, or €15,000.

At any rate, with the infringement of cardinal obligations and simple negligence, the Vendor shall only have limited liability for the typical and foreseeable loss. Cardinal obligations or substantial contractual obligations within the meaning of this paragraph shall be all obligations the fulfilment of which is essential for the proper execution of this contract and compliance with which the contractual parties are able to rely on consistently.

This sub clause does not apply to the Vendor's liability for intellectual property indemnification described below, nor does it apply to any damages for personal injury or tangible property caused by gross negligence or intent.

9 Intellectual Property Indemnification

9.1 Scope

The Vendor will defend any claim brought against the Customer by a third party to the extent that it is based on an allegation that the Software infringes such third-party's patent or copyright of the country in which the Customer has taken delivery of the Software. The Vendor will pay any damages, costs, and expenses finally awarded (or agreed to by settlement) for any such claim. The Customer must promptly notify the Vendor of the claim, give the Vendor control of the defence and related settlement negotiations, and provide the Vendor with the reasonable assistance (for which the Vendor shall pay the Customer reasonable out-of-pocket costs) in defending the claim. If the Customer desires separate legal representation in any such action, it will be responsible for the costs and fees of that separate counsel.

9.2 Remedies

If the Software is held to infringe and its use is prohibited or if, in the Vendor's reasonable opinion, is likely to become the subject of an infringement claim, the Customer will permit the Vendor, at the Vendor's option and expense, to (a) procure for the Customer the right to continue to use the Software, or (b) replace or modify it so that it becomes non-infringing and has the same or additional functionality and comparable or improved performance characteristics, or (c) upon the Customer's return of the infringing Software, refund the Subscription fees for the current term of the Subscription.

9.3 Exceptions

The Vendor will have no obligation of defence or indemnity to the extent the infringement claim arises from (a) the Vendor's compliance with the Customer's designs, specifications or instructions, (b) use of other than the Software's current release, if the infringement would have been avoided by use of the current Software and if the infringement occurs more than 30 days after the Vendor notifies the Customer that a previous release may infringe, (c) a modification of the Software or deliverable not requested or authorised in writing by the Vendor, (d) its use or combination with third-party software, equipment, or data, other than as specified in the documentation or otherwise approved by the Vendor in writing, (e) the furnishing to the Customer of any information, service, or technical support by a third party, (f) non-subscribed use of the Software.

9.4 Indemnification Limitation

To the extent allowed by applicable law, the Vendor's aggregate liability for any infringement claim is limited to the lesser of €100,000 or the amount paid by the Customer for the Software giving rise to the claim. This limit does not apply to expenses incurred by the Vendor in defending the claim.

9.5 Exclusive Remedy

This clause 9 states the exclusive obligation of the Vendor to the Customer regarding any claim of infringement or misappropriation of any third party's intellectual property rights.

10 Term of Validity, Termination

10.1 Term of Validity

The term of validity of this Agreement begins on the date of its coming into force. The term of validity is indefinite and ends by termination.

10.2 Termination of the Agreement

Both the Customer and the Vendor may terminate the participation in the Agreement at any time. Termination results in the expiration of Subscriptions at the end of their respective Subscription Periods.

Termination of this Agreement is for all legal or practical purposes identical with termination or expiration of the Subscription for the Software: Termination of the Agreement implies non-renewal of the Software's Subscription Period. Termination or non-renewal of the Software Subscription terminates this Agreement at the end of the current Subscription Period.

At the end of the contract the Customer will either return all articles that are required to be kept under lock and key (cf. 5.2.2) to the Vendor by registered mail or comparable service or declare their assured destruction in writing.

On the effective date the Customer number and all access codes to resources of the Vendor will become inoperable. Any continued technical availability does not imply the right to Use.

10.3 Termination without Notice

10.3.1 Immediate Termination for Breach of Contract

In case of a severe breach of contract by the other party, both the Customer and the Vendor may terminate the Agreement without notice, provided that the breach has not been demonstrably healed within 30 days of receiving the other party's written notification of that breach.

In case of termination without notice by the Vendor, the right to Use the Software ends immediately. The Vendor will not refund, neither complete nor pro rata, any Subscription fees. The Customer will immediately return to the Vendor by registered mail or comparable service all articles that are required to be kept under lock and key (cf. 5.2.2).

The Vendor reserves the assertion of damages.

In case of termination by the Customer for breach of contract, the Customer's right to Use the will end immediately. The Vendor will refund Subscription Fees for the remainder of the Subscription Period on a pro rata basis. The Customer will immediately return to the Vendor by registered mail or comparable service all articles that are required to be kept under lock and key (cf. 5.2.2) or declare in writing their assured destruction.

The Customer number and all access codes to resources of the Vendor will become inoperable on termination. Any continued technical availability does not imply the right to use.

10.3.2 Immediate Termination for Other Reasons

The Agreement may be terminated without any rectification period should the other party (a) close or suspend its business, (b) be subjected to proceedings of bankruptcy or insolvency, (c) become insolvent or unable to honour its financial obligations or (d) be placed under receivership.

On such termination, the Customer will be cut off from further delivery including support. However, the Customer's right to use all fully paid Subscriptions until the expiration of their respective Subscription Periods remains intact. The Agreement can be resurrected with all rights and obligations as soon as the receiver or the trustee formally recognises the effectiveness of the Agreement even in the state of insolvency or trusteeship and all invoices outstanding are paid.

On expiration of the last Subscription or on closing of the business, whichever comes first, the Customer will immediately return to the Vendor by registered mail or comparable service all articles that are required to be kept under lock and key (cf. clause 5.2.2).

The Customer number and all access codes to resources of the Vendor become inoperable on termination. Any continued technical availability does not imply the right to use.

11 Final clauses

11.1 Law

This Agreement is governed by German law. To the extent allowed by applicable law, the terms of the United Nations Convention on the International Sale of Goods will not apply.

Each party will, at its own expense, comply with any applicable law, statute, administrative order, or regulation. An action at law under this Agreement may only be brought before a court of appropriate jurisdiction in the state whose law governs this Agreement under the terms of this clause 11. If a party initiates legal proceeding related to this Agreement, the prevailing party will be entitled to recover reasonable attorney's fees.

11.2 Confidentiality Obligations

The receiving party of confidential information will exercise reasonable care to protect any confidential information from unauthorised disclosure or use. The receiving party may disclose confidential information only to its employees or agents with a need to know such information and will inform such employees and agents by way of policy or agreement that they are bound by confidentiality obligations. 'Confidential information' means information that (i) if disclosed in tangible form, is marked in writing as confidential, or (ii) if disclosed orally or visually, is designated orally at the time of disclosure as 'confidential'. Confidential information will not include information (a) already in the receiving party's possession without obligation of confidence; or (b) independently developed by the receiving party; or (c) that becomes available to the general public without breach of this Agreement; or (d) rightfully received by the receiving party from a third party without obligation of confidence; or (e) released for disclosure by the disclosing party with its written consent; or (f) required to be disclosed by law, regulation, or court order. These confidentiality obligations will survive three (3) years after expiration or termination of this Agreement. The Vendor retains the right to use its knowledge and experience (including processes, ideas, and techniques) learned or developed by providing any services to the Customer.

11.3 Reference

The Customer agrees that the Vendor may use the fact of its participation in this Agreement as a commercial reference unless the Customer otherwise informs the Vendor in writing.

11.4 Force Majeure

Neither party will be liable for any delay or failure to perform that arises out of causes beyond the reasonable control and without the fault or negligence of such party. A party will give prompt notice of any condition likely to cause any delay or default.

11.5 Notices

Notices to a party must be in writing and sent to the party's address on the membership form or such other address as a party may provide in writing. Notices may be delivered in a format reasonably chosen by the notifying party.

11.6 Storage of Personal Data

The Vendor maintains licensing information in the Subscription Store which is located in Dublin, Ireland, as part of its business records in compliance with the GDPR of the European Union and good commercial practice. This information includes the name and email address of individuals licensed as Host, appointed Subscription Administrators and Licensors.

This subclause 11.6 does not apply to Servers designated as 'SCIF Edition'

11.7 Survival

The provisions of this Agreement, which by their nature extend beyond termination of the Agreement, will survive termination of the Agreement.

11.8 Intellectual Property/Remedies.

Nothing in this Agreement waives or limits extra-contractual rights or remedies available to the Vendor to protect its rights in the Software, including those available under copyright law of Germany and the European Union, the United States of America, international treaties, or national copyright and intellectual property laws of the countries in which the Customer may use the Software.

11.9 Assignment

Neither party may transfer or assign any right or obligation set forth in this Agreement without the prior written consent of the other. Neither party will unreasonably withhold or delay its consent to an assignment of the Agreement by the other party to another entity in the same group of companies. Subject to the provisions of clause 3.3, either party may, with written notice to the other party, assign the Agreement to the surviving entity in the case of a merger or acquisition.

Should the Vendor elect to sell the works that make up the Software to a third party, it may cede its rights and obligations under this Agreement to that third party.

11.10 Severability Clause

If a provision is invalid or unenforceable, the remaining provisions will remain in effect and the parties will amend the Agreement to reflect the original Agreement to the maximum extent possible.

11.11 Changes

Subject to any explicit provision in this Agreement, all changes to the Agreement must be in written form and must be signed by authorised representatives of the parties. The Agreement is not alterable through procurement conditions, standard business conditions or other provisions of a purchase order.

11.12 Waiver Declaration

No waiver of any contractual right will be effective unless in writing by an authorised representative of the waiving party. No waiver of a right arising from any breach or failure to perform will be deemed a waiver of any future right.

11.13 Entire Agreement

This Agreement sets forth the entire agreement and understanding between the parties as to its subject matter. It supersedes all prior and contemporaneous agreements, proposals, and statements on this subject matter. Except as otherwise stated herein, this Agreement may only be modified in a writing signed by authorised representatives of each party. Purchase order terms will not modify the Agreement unless the parties agree otherwise in writing.

Software_Subscription_Agreement_International_01-2021.pdf

Annex A1: Apache Licence 2.0

The following third-party software may be shipped with the Software.

- "Apache Derby" (database)
- "Apache Tomcat" (application server)

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The Software integrates functionality of Apache Tomcat in its server under the Apache License 2.0.

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