

Software License and Maintenance Contract

Contract No:

Between

**SQL Projekt AG
Franklinstraße 25 A
01069 Dresden**

(Hereinafter referred to as "SQL")

and

(Hereinafter referred to as "Licensee")

the following shall be agreed upon:

A. Licensing Terms and Conditions

Section 1 Object of the Contract

- (1) The object of the contract is the provision of the computer program along with its documentation (hereinafter referred to as software), on a long-term basis, unless the rights are limited in time or in some other way.
- (2) SQL provides the licensee with user documentation that allows retrieving and printing notes on the features while operating the software.
- (3) Introductory courses in the use of the software can be booked at the SQL training center at the prices valid at the time of booking. Courses are not included in contractual services.

- (4) The software shall be provided electronically, either on a data carrier or via a download link.
- (5) The software shall be installed by the licensee, unless otherwise agreed.

Section 2 Granting of Rights

- (1) SQL grants the Licensee the simple (non-exclusive), non-transferable, and perpetual right to use the software including its documentation (hereinafter referred to as "software"), as specified in the system specifications and the proposal attached as Annex A, for its own internal purposes and in accordance with the following detailed terms. For the purposes of this Software License and Maintenance Contract, to use the software means to download, access, use or save it.

The right to use may be restricted by a separate agreement, in particular in case of test versions or where the software is provided as a service.

A software license includes the right to access the software through the type of use specified in the system specifications (Annex A) or in the proposal.

- (2) In particular, the Licensee shall not be entitled to use the software and the processing technologies contained therein, as a whole or in part, as well as the SQL know-how and software of SQL suppliers, in the following ways:
 - To reproduce (copy), with the exception of producing the number of copies arising from the system specifications (Annex A) or from the order pursuant to paragraphs 1 and 3, as well as of copies for the purpose of archiving or backup;
 - To disseminate (to make available to third parties either directly or indirectly);
 - To change, or
 - To disassemble.

However, the Licensee is entitled to duplicate the code and to translate the code form in accordance with and in the context of Section 69e of the German Copyright Act (decompilation).

- (3) Notwithstanding paragraph 1, all rights, in particular copyright, for the software and its documentation shall remain with SQL. The Licensee is not entitled to be provided with the source code. The Licensee undertakes, also beyond the term of this contract, not to make the software and the processing technologies contained therein, as well as the know-how of SQL and software used by SQL suppliers, accessible to third parties, as a whole or in part.

- (4) The Licensee may not sell, give away, lend or lease the software to third parties.
- (5) The Licensee is not entitled to remove or to bypass the existing safety features of the program to prevent unauthorized use, unless this is necessary to achieve trouble-free use of the program.
- (6) Copyright notices, serial numbers and other features used to identify the program must not be removed or altered. The same applies to suppressing the display of such features on the screen.
- (7) Rights are granted exclusively to the Customer and, in accordance with other agreements, are subject to the condition precedent that the full purchase price is paid, or the lease is paid on time. Until that condition is fulfilled, SQL is entitled to revoke the use of the software at any time.

Section 3 Contract Term and Termination

- (1) The term of this Contract begins on the date it is signed by SQL. The License Agreement is concluded for an unlimited period, unless the rights are limited in time or in any other way. Software maintenance is specified in Part B (Maintenance and Service).
- (2) Termination for good cause shall remain unaffected. A good cause shall arise, in particular, if:
 - The Licensee violates one of the provisions pursuant to Part A Sections 1 and 2, or
 - Part C Section 4 (5), or
 - An application for insolvency has been filed against the assets of the Licensee, or a corresponding application has been rejected due to insufficient assets, or
 - Insolvency proceedings have been opened, or the Licensee is in liquidation, or
 - If it is unreasonable for SQL Projekt AG to adhere to the Contract, or
 - The performance of the Contract is not possible or cannot be reasonably expected due to force majeure or events which are beyond SQL's control (strikes, riots, armed conflicts among other things), or
 - The performance of the Contract would be contrary to supranational or national law, in particular international or statutory provisions of third countries.
- (3) Terminations shall only be valid in written form.
- (4) SQL may also withdraw from the Contract, at its own discretion, in the cases listed in paragraph 2.

Section 4 License Fees and Retention of Title

- (1) The Licensee is obliged to pay license fees for the use of the software. The fees are listed in the system specifications (Annex A) or in the proposal. Fees listed there do not include shipping costs and the applicable VAT.
- (2) Invoices shall be settled in full within 15 days of the invoice date. In case of late payment, the customer enters into default 10 days of due date regardless of whether or not it has been sent a reminder. SQL shall be entitled to charge interest on arrears in the amount of 8 percentage points above the respective base interest rate of the European Central Bank.
- (3) The Customer is not entitled to offset payments against counterclaims that are disputed or have not been legally established. This also applies to the right of retention.
- (4) If the Customer violates the contract, particularly if there is default on payment, SQL Projekt AG shall be entitled to request the return of the contractual object. The return of the contractual object shall not constitute a withdrawal from the Contract. SQL Projekt AG shall be entitled to dispose of the contractual object following its return.
- (5) SQL is entitled to render performance in instalments and to issue partial invoices if the type of service allows this.

Section 5 Defective Performance

- (1) If the Licensee sets a deadline for performance or subsequent performance, it may use a fruitless expiry of that deadline to withdraw from the Contract, or to assert a claim for damages instead of performance only if it has notified SQL Projekt AG, when setting the deadline, that it no longer wishes to use their services following a fruitless expiry of that deadline. If the Licensee issues a warning instead of setting a deadline, it shall also inform SQL at the same time that it does not wish to avail of services of SQL Projekt AG if the warning does not bring the desired effect.
- (2) In case of a breach of duty that is not due to a defect in the software, the Licensee may only withdraw from the Contract if SQL Projekt AG is responsible for this breach of duty.
- (3) SQL is not obliged to inspect the system environment of the Licensee for compatibility with the software.

Section 6 Liability for Defects in Quality and Title

- (1) Technical specifications and performance specifications in public statements, especially in advertising materials, are not quality specifications. Software features are based on the description in the user documentation and the supplementary agreements.
- (2) Claims for defects are time-barred after 12 months from the date of delivery, unless the defect was fraudulently concealed.
- (3) SQL Projekt AG may refuse subsequent performance as long as the Licensee has not paid the compensation owed for the services rendered in full, and the Licensee has no legitimate interest in withholding the outstanding compensation.
- (4) SQL Projekt AG is not liable in cases where the Licensee has made changes to the services provided by SQL Projekt AG, unless such changes did not in any way give rise to the defects.
- (5) The Licensee undertakes to support SQL Projekt AG in the determination and rectification of defects, and to grant immediate access to the documentation which reveals the circumstances of the defect's occurrence.
- (6) If an examination has established that an alleged defect is not covered by warranty obligations of SQL (false defect), the Licensee may be charged for the services provided by SQL in connection with the verification and troubleshooting, at the applicable rates, plus expenses incurred. The Licensee shall not be charged if it would not have been able to recognise the defect was false even if it had exercised due diligence.

Section 7 Liability for Other Damages

- (1) SQL shall only be liable for damage caused intentionally or by gross negligence. SQL shall be liable for slight negligence only if it violates material contractual obligations, the fulfilment of which is a fundamental prerequisite for the proper implementation of the contract in the first place, and on which the Licensee can reasonably expect to be able to rely. SQL shall also be liable for damages resulting from loss of life, bodily injury or damage to health, or if it enlists a particularly high degree of trust.
- (2) SQL is obliged to exercise due diligence according to the standards applied in the industry. When determining whether SQL is at fault, it should be taken into account that, for technical reasons, software cannot be created fully free of defects.
- (3) Insofar as SQL is responsible for the damage, the liability shall be limited to the value of the foreseeable damage which typically is to be expected. Additional damages can

only be compensated if it is proportionate to the contractual risk usual for the respective kind of contract.

- (4) SQL shall not be liable for loss of data and/or programs to the extent that the damage is due to the Licensee failing to perform backups, and thereby failing to ensure that lost data could be recovered with a reasonable effort.
- (5) The above provisions shall apply mutatis mutandis to vicarious agents of SQL.

Section 8 Rights of Third Parties

- (1) SQL undertakes, at its own expense, to indemnify Licensee from all third-party claims arising from the breach of intellectual property rights for which SQL is responsible. The Licensee shall notify SQL immediately of any claims asserted by third parties. This exemption claim shall expire if the Licensee does not notify SQL immediately about the asserted claims.
- (2) In case of breach of intellectual property rights, SQL may - without prejudice to any claims for damages of the Licensee - perform the following, at its own discretion and at its own expense:
 - (a) Make changes to the service in question, after prior agreement with the Licensee. These changes, while safeguarding interests of SQL, shall ensure that a breach of intellectual property rights no longer exists; or
 - (b) Acquire the required rights of use for the Licensee.
- (3) If claims have been asserted in accordance with paragraph 1, or if SQL expects that such claims will be asserted, SQL may, at its own expense, modify or exchange the software, or obtain a right of use for the Licensee.
- (4) If it is not possible to modify or exchange the software or to acquire a right of use with reasonable effort, both parties may terminate the contract without notice. In any case, SQL shall be liable for any damage incurred by the Licensee only within the limits of Sections 6 and 7.
- (5) SQL shall be exempt from any of the above obligations if third party claims are based on circumstances where the software has not been used in its valid, unaltered form, or it has been used along with other software that was not provided by SQL, or it has been used in violation of the terms of this Contract.

Section 9 Return Policy

- (1) In the event of a termination of the Contract (for example for cause), the Licensee shall immediately return the software in its original form, along with all copies made or modified software, to SQL or, at the discretion of SQL, it must delete the above. The Licensee shall confirm that the return or cancellation has been completed in full in writing.
- (2) The Licensee shall not have the right to assert rights of retention with respect to the above obligations.

B. Service and Maintenance

- (1) Service and maintenance of the software are an integral part of this Contract, in the scope specified in system specifications (Annex A) and the attached performance specifications, for a period of one year after the software has been delivered.
- (2) Service and maintenance do not cover developing new functions, which significantly expand the scope of the software.
- (3) Software shall be excluded from service and maintenance if it has been used contrary to Part A Sections 1 and 2, if it has been manipulated, or if it has not been updated to the latest version.
- (4) Maintenance fees for software maintenance and service are recurring fees. The fees are listed in the system specifications (Annex A) or in the proposal. Fees listed there do not include the applicable VAT. They are due each year in advance. If maintenance fees are not paid, SQL shall have the right to suspend service and maintenance until the payment is received. If the respective maintenance contract is extended, the prices of SQL valid at the time of expiry of the period of notice shall apply for the respective extension period.
- (5) SQL shall be entitled to commission third parties with the provision of the service.
- (6) If the Maintenance Contract is not terminated with a three months' notice before the end of a contract year, it shall be extended for a further year. Termination for good cause shall remain unaffected. Terminations shall only be valid in written form. A termination of the maintenance contract shall have no impact on the validity of this Contract as a whole.
- (7) Section 4 (2) (payment) and Paragraph 3 (offsetting and rights of retention), as well as Sections 5, 6 and 7 (defective performance, liability for defects in quality and title, and other liabilities) shall apply mutatis mutandis.

C. Common Provisions

Section 1 Confidentiality

- (1) SQL and the Licensee undertake to treat as confidential all information and insights concerning business and business strategy, which become known in connection with the execution of the Contract, and not to disclose them to third parties. Confidentiality shall not cover any information, insights or documentation that is publicly known, has been developed or created independently by the other Contracting Party, or has already been known to the other Contracting Party.
- (2) The non-disclosure obligation shall cover the term of the Contract and the following 5 years.

Section 2 Commitments and warranties

SQL employees shall not be entitled to deviate from the contents of this Contract and its annexes by way of verbal or written commitments or warranties, or to amend the contents of the Contract. The above shall not apply to commitments or warranties by the Executive Board of SQL.

Section 3 Non-assignability

The Licensee shall not have the right to transfer any rights or to assign claims from this Contract to third parties.

Section 4 Other Provisions

- (1) This Contract shall be governed by the laws of the Federal Republic of Germany; the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.
- (2) Terms and Conditions of Business of SQL complement this Contract. They are an integral part of the Contract, but are subordinate to it.

- (3) The place of performance shall be the SQL headquarters. If the Licensee is a trader registered under the German Commercial Code, or if its place of general jurisdiction is outside Germany, or if it moves its place of residence or habitual residence from the territory of the Federal Republic of Germany after the Contract has been concluded, or if its residence or habitual residence is unknown at the time proceedings are brought against it, then the exclusive place of jurisdiction for all disputes arising from this Contract shall be the headquarters of SQL. However, SQL may sue the Licensee at the court of its general jurisdiction.
- (4) Amendments or additions to this Contract shall only be valid in written form. This shall also apply to a waiver of the written form requirement.
- (5) Should individual provisions of this Contract be or become ineffective, or should there be a loophole in the Contract, the validity of the remaining provisions of the Contract shall remain unaffected. Such invalid provision or omission shall be replaced by a provision that, to the extent permissible by law, shall approximate as closely as possible what the parties wanted or would have wanted in keeping with the intention and purpose of this Contract if they had been aware of such a point.
- (6) The Licensee undertakes to observe export control provisions of the Federal Republic of Germany and the United States of America.

_____, **on** _____

Licensee

_____, **on** _____

SQL Projekt AG