

# EDENTITY Software Solutions GmbH

## General Terms and Conditions for fixed-term Licensing of Server-Standardsoftware - version 07/2013



The following constitutes the fixed-term Licensing Terms and Conditions regarding your (hereinafter "Licensee") utilization of the Serversoftware created by Edentity Software Solutions GmbH (hereinafter "EDENTITY")  
EDENTITY delivers the software under these General Licensing Terms and Conditions and its pricelist and conditions. Acceptance by Licensee of the goods and services delivered by EDENTITY constitutes acceptance of these General Licensing Terms and Conditions as well as a waiver of conflicting general terms and conditions. This is also true in cases where there is no express conflict with the General Terms and Conditions of EDENTITY. Any other conditions are binding only upon being accepted in writing by EDENTITY. In such cases, the conditions set by EDENTITY are supplementary.

### 1. Subject Matter of Agreement

- 1.1 This Agreement pertains to (a) a fixed-term license for the Server-Standardsoftware by EDENTITY and (b) user documentation for said Software, in electronically form, where said license shall be subject to a monthly rental fee.
- 1.2 The condition and performance of the software and the released operating environment follow from the respective program description, supplemented by the operating instructions, except as otherwise agreed upon. EDENTITY gives notice to Licensee that this license agreement is based on a fixed hardware configuration, whereby the latter can also be made available by third parties.
- 1.3 The software corresponds with the description in the documentation; EDENTITY is not obligated to warrant any functionality beyond this description. Representations made in the documentation, in test programs, in product and project descriptions, etc. shall not constitute a guaranty of condition.
- 1.4 The software is recorded on a storage medium and delivered in the form of an executable computer program in object code, including operating instructions (user documentation or online help) and installation instructions. Operating and installation instructions may also be made available to the Licensee electronically.
- 1.5 The software shall be installed and put in operation by Licensee. EDENTITY can perform the installation instead of Licensee. All support services by EDENTITY at Licensee's request, in particular preparation for use, installation and demonstration of successful installation, directions, training, and consulting, shall be compensated according to expenditure, except as otherwise agreed upon.
- 1.6 Any maintenance services beyond removal of defects within the guaranty period shall be provided only on the basis of a software maintenance agreement to be entered into separately. EDENTITY is not obligated to produce updates in the future outside such a maintenance agreement.

### 2. Rental fee; license scope

- 2.1 Subject to payment of the licensing fee indicated on the Order Form, each Order Form signed by both parties shall allow for the granting of a separate fixed-term license for the number of Standard Software copies listed on the Order Form, as well as the associated user documentation for such Software.
- 2.2. EDENTITY shall thus grant Licensee a non-exclusive fixed-term license for use, in accordance with this Agreement, of the Standard-Serversoftware listed in the relevant Order Form and for the number of Clients, Users, Servers or other usage modalities indicated in such Order Form. The term of each license for a Standard Software copy shall begin on the "license start date" indicated on the Order Form, but in any case no later than on the date on which the Software is delivered to Licensee.
- 2.3 The Standard Software shall be delivered solely in executable code or object code. Any Licensee right to be supplied with the source code shall be excluded.
- 2.4 The monthly Software rental fee shall be the amount indicated in the relevant Order Form and shall be payable quarterly in advance without any deduction of any kind whatsoever. In the event of any delay in payment on the part of Licensee, EDENTITY shall be entitled to charge statutory interest on arrears. Where the delay in payment exceeds three months, EDENTITY shall be entitled to terminate this Agreement without notice.
- 2.5 Any set-off on the part of Licensee of receivables due from EDENTITY shall only be allowed to the extent that the claim to such receivables has been accepted, or has been upheld in a court of law.

### 3. Right to Operate Software and Retention of Title

- 3.1 EDENTITY grants the Licensee upon payment of a monthly fee a single non-exclusive right to use the subject matter of the Agreement for a fixed-term period (hereinafter referred to as "Server License"). All other rights, in particular rights to the ownership, copyright and brands to the software and documentation shall be held exclusively by EDENTITY, in so far as software parts produced by third parties are not involved.
- 3.2 The Server License entitles the Licensee to install and use the software on one server at a time even if the software includes several copies of the server software (e.g. 32-bit and 64-bit versions). A further precondition for installation and use is that not more than the numbers of devices as allowed under separate agreements are connected to the server in question. The license entitles the Licensee only to use the software for internal and its own business transactions. Extended use is to be agreed in writing before its commencement.

3.3 Any type of use or installation not expressly permitted under Clause 3.2 is not permitted. Not permitted is, but not solely or exclusively, the mere transmitting of parts of the software to other workplaces without having to store the software for this purpose; further the use of the software together with other software or hardware, in so far as this software or hardware directly accesses or uses the software without utilizing an interface provided by EDENTITY, or directly or independently administers such access or use (also known as "multiplexing" or "pooling" software or hardware); further the provision of the software for commercial hosting services.

3.4 The Licensee shall ensure compliance with the agreed rights of use and prove the same to EDENTITY upon request. If the Licensee fails to comply with this, EDENTITY shall be entitled to revoke the Licensee's entire rights of use as per the provisions of Clause 5.3 without this entitling the Licensee to any claims to a refund from EDENTITY. Alternatively EDENTITY can at its discretion demand the license fees accruing for the inadmissible use.

3.5 If the licensed software is equipped with copy protection or another protection routine (hardkey or softkey), the Licensee is obliged to use the software only in conjunction with this protection routine and not to use any bypass program. This protection routine may only be removed if it would adversely affect or impair the trouble-free use of the software. The burden of proof resides with the Licensee.

3.6 To the extent that the software provided contains copy protection or other safety routine (Hard- or Softkey), Licensee is obligated to use the software only in conjunction with this safety routine and to not use any circumvention programs. The safety routine may be deleted only if it would inhibit or prevent the error-free use of the software. Licensee is obligated to provide proof of such situation.

3.7 Title to the duplicate pieces is retained until complete payment of the compensation due. Prior to that, right of use is granted always by EDENTITY merely temporarily and is freely revocable. Licensee is obligated to notify EDENTITY in writing immediately if third parties gain access to the reserved property, and to notify the third party of the rights of EDENTITY.

### 4. Protection against Unauthorized Use, Duplication Rights

- 4.1 Licensee may copy software, documents and documentation only to the extent required for its operation pursuant to this Agreement. Licensee is further entitled to make a backup copy of the software and documentation provided. Any backup copy made on a moveable storage medium must be identified as such.
- 4.2 EDENTITY is entitled to take appropriate technical measures to protect against use not in accordance with the Agreement. The use of software on an alternate or subsequent configuration may not be materially impaired by such measures.

### 5. Temporary Provision, Transmittal

- 5.1 Licensee may not provide the software to another user even for temporary use, regardless of whether it is provided for temporary use with or without charge. The mere transmittal of individual data or components of the software to another user, even if the complete software does not need to be saved for such use, is equivalent to impermissible provision for temporary use.
- 5.2 The Licensee may transfer the right of use per software subject to the following conditions (Clauses 5.2.1–5.2.4) to another user:
  - 5.2.1 A precondition for permitted transmittal is the final abandonment of one's own use and prior written consent for transmittal from EDENTITY, which EDENTITY may not refuse unfairly. Licensee must assure EDENTITY in writing that Licensee will immediately transmit to the third party all originals, software copies and documents and will delete all copies made by the Licensee directly after transmittal. These declarations shall be made to EDENTITY prior to transmittal. Licensee is further obligated to inform EDENTITY of the name and complete address of the new licensee with the request for EDENTITY's written consent.
  - 5.2.2 In the case of a transfer, the Licensee must hand over to the new licensee all software copies including any backup copies in existence and all related documents (manuals, etc.) together with all copies or destroy all copies not supplied and show proof that all software or software components copied on hardware (hard drive, streamer) has been deleted.
  - 5.2.3 The third party is entitled to exercise contractual rights of use only after the third party has stated to EDENTITY its agreement in writing to the continued validity of these license terms and conditions, including in relation to the third party.
  - 5.2.4 As a result of transmittal the old Licensee's right to use the software shall lapse in full.
- 5.3 EDENTITY may revoke the Licensee's right of use if the said use is in material violation of the restrictions on use or other provisions to protect against unauthorized use (see also Clauses 6.6 and 6.7). EDENTITY must first give the Licensee a deadline for ceasing the non-compliant use. In the case of repeated violation or in particular circumstances in which after due consideration of both parties' interests immediate revocation is justified, EDENTITY shall be entitled to revocation without the setting of a deadline. The Licensee shall confirm in writing that it has ceased to use the software after any such revocation.

## 6. Duties of the Licensee

6.1 Licensee shall designate a responsible contact person. This person can and shall without delay make or cause to be made binding decisions for Licensee. The contact person shall be available to EDENTITY to provide required information.

6.2 Licensee shall see to that competent personnel are available for operation of the software no later than the time of delivery.

6.3 The Licensee shall immediately inform EDENTITY about any changes in the field of use. Clauses 1.2 Sentence 2 and 7.2. shall remain unaffected.

6.4 Licensee shall give written notice of defects in understandable and detailed form including specifying all information useful for recognizing and analyzing defects. In doing so, the work steps that led to the defect appearing, the form of appearance and the impact of the defect shall be specified.

6.5 Licensee acknowledges that the software, including operating instructions and other documents, in future versions as well, is protected by copyright. In particular source programs are trade secrets of EDENTITY. Licensee shall take precautions for an indefinite period of time to ensure that source programs do not become accessible to third parties without the consent of EDENTITY.

6.6 The Licensee may not do anything that may aid or help unauthorized use. In particular, it may not attempt to decompile the software unless authorized to do so under Clause 1.5. The Licensee shall immediately inform EDENTITY if it learns that there has been or may be unauthorized access within its area of responsibility.

6.7 Upon termination of right of use, Licensee shall surrender all goods and copies, to the extent Licensee has not passed on the same to a third party within the framework of permitted transmittal. Licensee shall delete all saved software to the extent Licensee is not obligated by statute to retain it for a longer period of time. Licensee shall assure EDENTITY in writing of completion. In the event that Licensee breaches an essential condition of this Agreement, EDENTITY shall be entitled to terminate Licensee's rights to use the software immediately by a unilateral written declaration. In this event, Licensee shall have no rights to counterclaims.

6.8 EDENTITY makes express reference to the fact that Licensee shall be liable for all damages based on infringements of industrial property rights, in particular copyrights and trademarks, incurred by EDENTITY due to a violation of the provisions of this Agreement by Licensee.

## 7. Claims of Licensee due to Defects

7.1 EDENTITY guarantees that the software complies with the agreements at Clause 1.2 if it is used as agreed. However, EDENTITY accepts no guarantee for the licensed software meeting the Licensee's requirements and purposes or being compatible with other programs or system environments or operating systems selected by the Licensee, unless this is specifically stated in the manual or service specification. The time bar for warranty claims commences with delivery or completion of installation if this is carried out by EDENTITY. An expansion of the scope of use (Clause 3.2 Sentence 3) shall be without influence on the prolongation of the time bar.

7.2 The Licensee shall be entitled to warranty claims only in so far as the software has been used in the environment released in the License Agreement and any reported faults are reproducible or otherwise demonstrable by the Licensee. Notification of faults is governed in particular by Clause 6.4.

7.3 To the extent required, Licensee shall support EDENTITY in eliminating defects, in particular at EDENTITY's request by supplying a storage medium with the software concerned and making resources available.

7.4 If Licensee has claims due to defects, Licensee shall initially have a right only to subsequent fulfillment within a reasonable time period. Subsequent fulfillment shall include at EDENTITY's choice either remediation of the defect or delivery of replacement software. In making this choice, Licensee's interests shall adequately be taken into account.

7.5 In the event that subsequent fulfillment fails definitively or it cannot be carried out for other reasons, Licensee can reduce compensation or rescind the Agreement under statutory preconditions. Licensee can assert more extensive default, damage and expenditure compensation claims only under consideration of Section 8. Licensee shall exercise its right of selection for claims due to defects within a reasonable time period, as a rule within 14 calendar days.

7.6 In regard to material defects or defect of title, Section 5 respectively Section 6 of the EDENTITY General Terms and Conditions for Contracts of business version 07/2013 shall apply in supplement.

7.7 EDENTITY can demand compensation for its expenditures to the extent that

1. It takes action based on a report and no defect is present,
2. A reported disturbance cannot be reproduced or otherwise proven as a defect by Licensee, or
3. Additional expenditures are incurred because of lack of proper fulfillment of obligations by Licensee (see Section 5 as well).

## 8. Liability

EDENTITY shall be liable pursuant to the provisions of Section 7 of the EDENTITY General Terms and Conditions for Contracts of business version 07/2013.

## 9. Duration and termination of fixed-term license agreements

9.1 Unless otherwise state, the license agreement shall become effective on being signed by both parties on the date specified in the Order Form ("Effective Date") and shall remain in effect for a period of three (3) years. On expiration of said minimum term, the Agreement shall be renewed automatically for an additional twelve (12) months, provided that the Agreement is not terminated with three (3) months' notice prior to the Agreement's expiration date.

9.2 EDENTITY shall be entitled to terminate this Agreement for good cause with immediate effect if

- 9.2.1 Licensee exceeds the scope of the contractually authorized usage despite having received a notice in this regard; or
- 9.2.2 Licensee is in arrears on the Licensee's rental payments; or
- 9.2.3 Licensee violates any contractual provision related to non-disclosure and/or confidentiality; or

insolvency proceedings are initiated in respect of Licensee's assets.

9.3 If this Agreement is terminated, Licensee shall (a) immediately return to EDENTITY the Software on such media as were originally delivered to Licensee, as well as the associated user documentation; (b) delete any copy of the Software that is not suitable for handing over; (c) delete any backup copies of the Software; and (d) immediately submit written proof to EDENTITY that all copies of the Software have been completely deleted. On termination of this Agreement, Licensee shall forfeit all Software usage rights that were granted to the Licensee.

9.4 Immediately upon termination of this Agreement, Licensee shall discontinue all use of the Software. Licensee shall be subject to a contractual penalty amounting to EUR 1000 per day for any further use of the Software in violation of the provisions of this Agreement.

## 10. Applicability of EDENTITY GTC of business

The EDENTITY General Terms and Conditions for Contracts of Business – version 07/2013 shall apply in supplement.