

**§ 1 Subject Matter of the Agreement**

(1) Unless expressly governed otherwise in a separate agreement, InBetween Deutschland GmbH (hereinafter referred to as "InBetween") hereby grants the Client - with the exception of affiliated companies according to § 15 AktG - a non-transferable, non-sublicensable, and non-exclusive right of use to the software and to the documentation thereof in accordance with the rules provided below for the agreed upon duration of use.

"Software" refers to the computer programs listed in the Software License Agreement under no. 1 as well as any new releases and new development states (release, updates, etc.) of the software that are provided Client for use. "Licensed Material" refers to the software plus the corresponding documentation.

- (2) The software shall be made available to the Client in an object code on a machine-readable data carrier.
- (3) InBetween shall supply application documentation in German (user manual) and in English language (Specialty Chapters) along with the software. It shall be provided to the Client in printed form or on a machine-readable recording medium. The manner in which it shall be provided is defined in the Software License Agreement. Additional copies of the documentation may be purchased for a separate fee from InBetween.
- (4) All other performances, maintenance performances in particular or general services, shall be exclusively in accordance with separate agreements and according to the relevant Special Terms and Conditions of InBetween.

**§ 2 Scope of Use**

- (1) Rights to the licensed material that were not expressly granted the Client or to which Client is not legally entitled to shall remain with InBetween.
- (2) Details about the system environment that are required for the use of the software can be found in the functional description.
- (3) If and insofar as not agreed upon otherwise in the Software License Agreement, the software must only be used as a single-user version. It shall not be permitted to import, store or use the software on more than one computer or workstation at the same time, thus allowing the simultaneous use by multiple users through networks or otherwise multiple station computer systems.
- (4) "Usage" or "use" of the software as understood in this Agreement shall entail duplicating (copying) the software in full or in part by loading, displaying, running, transferring or saving the software for the purpose of running it or processing the datasets it includes, in each case for the Client's own purposes. Use shall also include running the activities listed above for the purpose of allowing the Client to review, inspect or test the software.
- (5) If the application documentation is provided on a machine-readable data carrier, the rules relating to the scope of use shall apply to the software accordingly.

- (6) The Client must maintain the copyright notes and other legal reservations unchanged and shall transfer these in unchanged form to any complete or partial copies made by the Client.
- (7) The Client shall only be permitted to re-translate (decompile) the software code into another form of presentation to the extent required to establish interoperability with independently created computer programs and in accordance with the provisions defined in Section 69e UrhG [German Copyright Act]. Another prerequisite is that the Client has requested the necessary information from InBetween in advance and InBetween has not made this information available immediately. For such notification, InBetween may demand that the necessary expenses be reimbursed.
- (8) The Client shall not be allowed to modify or re-process the software in any other way. If any errors must be remedied in order for the software to be used as intended, InBetween shall remedy such in accordance with the provisions of the Maintenance Agreement; otherwise, Section 69d (1) UrhG shall apply.
- (9) For testing purposes without any productive use of an officially release InBetween software version the customer may continue to use the software in parallel for a maximum period of one month after receipt of the latest development state of the software. However, for permanently operating a test environment, a special license for an InBetween test environment is required (available at 50% of the regular license price). For third-party software the licensing terms of the respective software provider apply.

**§ 3 Assignment to a Third Party**

- (1) The Client agrees to not allow any third party - with the exception of affiliated companies according to § 15 AktG - access to the original software, nor to full or partial copies thereof, without the express written consent from InBetween. This shall also apply in the event of a complete or partial sale or dissolution of the Client's company and generally also to affiliated companies as understood under Section 15 AktG [German Stock Corporation Act].
- (2) The Client must not assign or lease the software to any third party temporarily.
- (3) Where the right of use is time-limited, the Client shall not have the right to assign the rights of use granted to any third party or to grant any third party rights to such.
- (4) Where the Client's right of use is not time-limited, the ultimate transfer of the software to a third party shall only be allowed under the condition precedent that InBetween is notified of the name and address of said party immediately and that the third party agrees to the rules of use and transfer in writing vis-a-vis InBetween as such rules exist for the Client at the time of transfer. Moreover, the Client must hand over all copies it had received, including any back-up copies, to said third party, or it must immediately destroy any copies not handed over.

The Client must declare vis-a-vis InBetween that it has either handed over to the third party all of the software it had received, including documentation and back-up copies, or that such have been deleted. In the event of any culpably untruthful declaration or handing over of the software prior to the third party having agreed to the rules of use and transfer, the Client shall be obligated to pay InBetween a reasonable contract penalty, the amount of which shall be defined by InBetween at its discretion and the reasonableness of which may be reviewed by the responsible district court.

InBetween shall have the right to contract a certified public accountant to review the hardware and hardware systems used by the Client during Client's regular business hours to ensure that the Client is meeting its obligations as defined in paragraph 4. The Client hereby authorizes said certified public accountant to notify InBetween upon completion of the review whether and to what extent the software is still being used at the Client's location. The Client shall be responsible for the costs of the certified public accountant if it has been established that the Client is still using the software in full or in part despite having handed it over to a third party. InBetween shall be responsible for the costs of the certified public accountant in any other event.

- (5) The Client shall guarantee InBetween until the end of the original agreement term agreed upon between InBetween and the Client

that the third party to whom it has permanently transferred the software shall comply with the rights of use and transfer assumed.

- (6) With the exception of the aforementioned prohibitions in paragraphs (1) to (5), the Client shall be permitted to allow access or to assign use of the software to its employees, provided this is required for the use of the software in accordance with its intended and contractually agreed upon use.

#### **§ 4 Collaboration by the Client**

- (1) The Client shall be solely responsible for selecting the software and the hardware on which said software will be installed. The Client shall ensure that the infrastructure specified for the use of the software is available. In particular, this shall include the proper system platform and the required additional programs.
- (2) The Client must acknowledge receipt of the licensed material forthwith. The Client shall test the licensed material in-depth to ensure it is free of defects and can be used in the specific situation prior to commencing use thereof in its operation. This shall also apply to the licensed material that it receives during the warranty period.
- (3) The Client shall take the appropriate precautions to safeguard against a scenario in which the software does not work properly, either in full or in part, e.g. by backing up data, diagnosing trouble and/or regular verification of the results.

- (4) When faults are being remedied, the Client shall provide support to InBetween to a reasonable extent by, for example, sending data carriers with the affected software, or by providing access to work tools and employees familiar with the licensed material as contacts.

#### **§ 5 Warranty**

- (1) The software was developed for use on a specific system platform and for interoperability with other specific software. These conditions of use can be found in the functional description.  
InBetween GmbH guarantees use of the software as contractually agreed in accordance with the functional description as amended on the date the agreement came into effect. The warranty shall not include such faults caused by conditions of use that deviate from those specified for the software and defined in the functional description. Properties of the licensed material shall only be deemed as agreed upon if agreed upon expressly and in writing.
- (2) The Client agrees to review the licensed material immediately upon delivery by InBetween to ensure it is free of faults and complete and to notify InBetween within a reasonable time, as a rule within 3 months, of any faults discovered in said review. Should the Client fail to review the software in due time or to notify of any faults, the delivered product shall be deemed as approved, unless said fault was undetectable during the review. InBetween must also be notified immediately of any faults detected at a later time; otherwise, the product shall be deemed as approved even with regard to said faults. The notification of faults must be submitted in writing and the faults being notified must be described in detail. Section 377 German Commercial Code [HGB] shall apply otherwise.
- (4) InBetween shall primarily guarantee the product with two options to subsequently improve the faults. The subsequent improvement may consist of remedying the fault, by identifying a solution by which to circumvent the fault that does not affect the software's function or by providing a new version of the program. Until a new program version has been delivered, InBetween may also provide subsequent improvement by showing options by which the effects of a fault can be avoided or circumvented, inasmuch as this can be considered reasonable for the Client. The Client shall support InBetween in accordance with Section 4.
- (5) As long as InBetween meets its obligations to remedy the faults, the Client shall not have the right to demand a reduction to the amount of compensation owed or to rescind from the agreement, unless the subsequent improvement solutions have failed.  
Once a rescission from the agreement has been declared, the Client shall lose the rights of use to the relevant licensed material.
- (6) If the fault is limited to individual parts of the licensed material, then the right to rescind from the agreement or to reduce compensation owed shall be limited to the parts of the licensed material, which the Client is unable to use in accordance with the agreement due to the fault, provided the remaining parts of the licensed material allow the software as a whole to be reasonably used.

- (7) Irrespective of the aforementioned rules, InBetween shall have the right at any time, even after expiration of the warranty period and any other period of limitation, to make subsequent improvements to the licensed material and/or to service said licensed material, in particular by providing a new release or updates. If the Client should deny InBetween access to the licensed material for the aforementioned purpose, the Client shall lose any other existing warranty rights in place vis-a-vis InBetween in connection with the licensed material, including any subsequent claims.
- (8) InBetween's warranty obligations shall become void if any changes to the source code are made to the software that InBetween has not expressly approved, unless the Client is able to demonstrate that changes were not in connection with the faults that occurred and that they do not require any increased effort when subsequent improvement work is being performed. The above shall not give the Client the right to modify the software.
- (9) InBetween shall not guarantee reported faults that can neither be reproduced nor can be shown in computer-generated reports.
- (10) InBetween's liability for damages shall be based on the provisions defined in InBetween's General Terms and Conditions.

#### **§ 6 Term, Return, and Deletion of Licensed Material**

- (1) InBetween may terminate the Client's right of use for good cause if the Client is culpably and gravely in violation of the limitations of use as defined in Sections 2 and 3 and has refused to remedy said violation despite a warning within a reasonable deadline. Should the Client repeat said violation, no additional warning shall be required. Any other rights of rescission or termination provided for by law or contractually agreed upon shall remain unaffected by the above.
- (2) Once its right of use has ended, the Client shall be required to return the original and all copies or partial copies of the licensed material to InBetween or to destroy such material upon request by InBetween. The Client shall confirm that the material has been destroyed in writing.
- (3) If the Client replaces the terminated software with new versions of the software offered by InBetween, it shall have the right to keep the terminated software as an alternative option for up to three months. Retaining an archived copy shall require a written agreement.

#### **§ 7 Other Provisions**

The General Terms and Conditions of InBetween Deutschland GmbH shall apply in addition to the above.

InBetween Deutschland GmbH  
Friedrichstrasse 39  
70174 Stuttgart, Germany