

**Subscription License**

**Licensing Terms and Conditions including maintenance**

**Theobald Software GmbH**

**1. Scope of Application**

- 1.1 These Licensing Terms and Conditions (Subscription License) shall apply to all deliveries, services and offers of Theobald Software GmbH, Kernerstr 50, 70182 Stuttgart, Germany (hereinafter referred to as "**TS**") in relation to the temporary licensing of software and the provision of related services.
- 1.2 These Licensing Terms and Conditions (Subscription License) are an integral part of all contracts concluded by TS with its contractual partners (hereinafter referred to as "**Customer**") in relation to the temporary licensing of software and the provision of related services. They shall also apply to all future contracts of such nature, even if they are not separately agreed again.
- 1.3 Terms and conditions of the Customer or third parties shall not apply, even if TS does not separately object to their application in individual cases. Even if TS refers to any correspondence that contains or refers to the terms and conditions of the Customer or a third party, this shall not constitute an acceptance of those terms and conditions.
- 1.4 The legal relationship between TS and the Customer shall be governed solely by (i) an order form executed between the Parties specifying the Software, the Subscription Fee and other details (the "**Order Form**"), (ii) these Licensing Terms and Conditions (Subscription License) and, where relevant, (iii) any other documents referred to in the Order Form (hereinafter collectively referred to as the "**Subscription Agreement**"). In general, the Subscription Agreements will be executed based on quotes provided by TS to the Customer and which become binding upon acceptance by the Customer.
- 1.5 All quotes of TS are subject to change and non-binding, unless they are expressly marked as binding or contain a specific acceptance period. TS may accept orders or commissions from the Customer within (14) days of receipt.

**2. Subject of the Subscription Agreement**

- 2.1 The subject of the Subscription Agreement is the temporary provision of the software products described in the Order Form together with user documentation (the "**Software**").
- 2.2 The Software is provided to the Customer as an "on premise" solution. TS does not perform any hosting service, e.g. as part of a Software-as-a-Service model, to the Customer.
- 2.3 The Customer shall receive the Software in object code form only. The Customer shall not be entitled to the source code of the Software.
- 2.4 The Subscription Agreement shall apply, if applicable, in addition to all other software licensing, software maintenance and other service contracts between TS and the Customer.

**3. Delivery of the Software**

- 3.1 TS shall provide the Customer with a copy of the Software.
- 3.2 The Customer may receive the copy, at the Customer's request via TS' customer portal.

3.3 The Software must be carefully examined by the Customer immediately after receipt by the Customer.

#### 4. Rights of Use

4.1 All rights to the provided Software, to work or training results, studies and adaptations as well as other rights to any materials made available to the Customer hereunder are and shall remain the exclusive property of TS.

4.2 TS grants the Customer a non-exclusive, non-transferable and non-sublicensable right, limited to the term of the Subscription Agreement, to use the Software in accordance with the terms of the Subscription Agreement.

4.3 The Software is licensed by way of a (i) Server License, (ii) a Cluster License, or (iii) a Desktop License (each as defined below) as ordered by the Customer under the Order Form.

4.4 **Server License.** In the case of a Server License, the Customer acquires license authorization(s) equal to the number of server(s) specified in the Order Form. For each Server License, Customer is entitled to use the Software on one server, unless specifically agreed otherwise in the Order Form. The Subscription Fees will be calculated and charged depending on the number of server(s) specified in the Order Form.

4.5 **Cluster License.** In the case of a Cluster License, the Customer acquires license authorization(s) equal to the number of SSIS Integration Runtimes specified in the Order Form. For each Cluster License, Customer is entitled to use the Software on one SSIS Integration Runtime, unless specifically agreed otherwise in the Order Form. The Subscription Fees will be calculated and charged depending on the number of SSIS Integration Runtimes specified in the Order Form.

4.6 **Desktop License.** In the case of a Desktop License, the Customer acquires license authorization(s) equal to the number of desktop(s) specified in the Order Form. For each Desktop License, Customer is entitled to use the Software on one desktop. The Subscription Fees will be calculated and charged depending on the number of desktop(s) specified in the Order Form.

4.7 As soon as Customer uses more copies of the Software than specified in the Order Form, Customer shall immediately notify TS Software and purchase the corresponding number of licenses. Any further rights and remedies of TS shall remain unaffected.

4.8 The right of use is limited to the number of copies of the Software agreed in the Order Form.

4.9 The Customer's right of use is limited to the use of the Software as described in the online documentation made available by TS (via the OnlineHelp). The permitted use includes the installation as well as loading, displaying and running of the installed Software.

4.10 The documentation made available by TS (via the OnlineHelp website) also specifies the hardware and Software environment which the Software is released. If the Customer uses another hardware and/or software environment, TS shall not assume any warranty or liability for the continued functionality of the Software to that extent that any defects are attributable to the use of such other hardware and/or software environment.

4.11 The Customer may use the Software on any hardware available to him, provided that it complies with the above specifications and the number of license authorization(s) specified in the Order Form. Unless specifically agreed otherwise, each copy of the Software runs only on one server or desktop, as applicable, any may not be used on any other device.

4.12 The Customer is not entitled to transfer the copy of the Software provided to him or the backup copy, if any, to third parties. In particular, the Customer is not permitted to sell, lend, lease or otherwise sublicense the Software or to reproduce or make the Software publicly available.

4.13 If the Customer violates any of the above provisions, all rights of use granted within the scope of the Subscription Agreement shall become immediately invalid and automatically revert to TS. In this case, the Customer shall immediately and completely discontinue the use of the Software, delete all versions or copies of the Software installed on his systems and delete the backup copy, if any, or hand it over to TS.

4.14 The Customer may not use the Software to provide computer center services for third parties.

4.15 The Software may only be copied to the extent necessary for its intended use within the scope of the right of use granted to the Customer; backup copies must be marked with TS' copyright notice.

4.16 The Customer may not connect, extend or change the Software with other software than those for which the corresponding interfaces are provided without the consent of TS. Decompilation of the Software is permitted to the extent expressly authorized under the mandatory provisions of the German Copyright Act and only if TS does not provide the information and/or documents necessary to establish interoperability of the Software with other programs free of charge within a reasonable period following a written request by the Customer.

4.17 Any extension of the Customer's right of use beyond the scope determined above- in particular use by third parties- requires a separate written agreement with TS.

4.18 The Customer is obliged to take suitable measures to protect the Software from access by unauthorized third parties, in particular to keep all copies of the Software in a protected place.

4.19 Copyright notices, serial numbers and other features serving the identification of the program may not be removed or changed under any circumstances. The same applies to a suppression of the screen display of corresponding features.

**5. Subscription Fee, Invoicing and Payment**

5.1 For the provision of the Software under the Subscription Agreement, the Customer shall pay to TS the remuneration agreed in the Order Form which shall also cover the provision of the maintenance services as per Section 6 below (the "**Subscription Fee**").

5.2 The Subscription Fee must be paid annually in advance. The first invoice will be issued upon execution of the Subscription Agreement.

5.3 All agreed prices are net price plus the statutory value added tax.

5.4 Invoices issued by TS are due for payment within thirty (30) days of receipt of the invoice without deduction.

5.5 Without prejudice to further rights, TS is entitled to withhold services in the event of default of payment by the Customer until the amounts due have been paid by the Customer.

5.6 If the Customer defaults on a payment in whole or in part, all claims that TS has against the Customer from the business relationship with the Customer shall become due.

5.7 A set-off of claims of the Customer against claims of TS is – with the exception of undisputed or legally awarded claims – not permitted.

- 5.8 TS may increase the Subscription Fee once a year, at the earliest twelve months after the commencement of the Subscription Agreement, at its reasonable discretion. The increase may not exceed the increase of the comparative index of the last twelve months prior to the request for adjustment by more than two percentage points. The comparative index shall be the index of average gross monthly earnings of full-time employees in Germany for the economic sector of the provision of information technology services (currently published in quarterly figures by the Federal Statistical Office in Fachserie 16, Reihe 2.2, Gruppe J 62) (*Index der durchschnittlichen Bruttonomona*tsverdienste der vollzeitbeschäftigte

*n Arbeitnehmer in Deutschland für den Wirtschaftszweig Erbringung von Dienstleistungen der Informationstechnologie (derzeit in Quartalszahlen veröffentlicht vom Statistischen Bundesamt in Fachserie 16, Reihe 2.2, Gruppe J 62)*) or- if this index is no longer officially calculated- the comparative index which replaces it.

- 5.9 The Customer may have the reasonableness of the increase of the Subscription Fees reviewed by the competent courts. The Customer shall initiate the judicial review no later than six months after the price adjustment takes effect. The date of the court's receipt of the claim shall be decisive for the timeliness.
- 5.10 The Parties shall, irrespective of the above clauses, enter into discussions on the reasonableness of the amount of the Subscription Fee every two years at the request of one of the Parties.

## 6. Maintenance

- 6.1 Under the Subscription Agreement, TS is obliged to provide the Software to the Customer in a condition suitable for use in accordance with the specifications of the Subscription Agreement and to maintain the Software in this condition during the term of the Subscription Agreement (cf. Sec. 535 German Civil Code (BGB)). The Customer's statutory rights under Sec. 535 German Civil Code (BGB) are subject to any deviating agreements under the Subscription Agreement. In addition, TS undertakes to provide the maintenance services to the Customer as specified in this Section 6.
- 6.2 Defects in the delivered Software including the user documentation and other documents will be remedied by TS after the Customer has notified TS of such defects.
- 6.3 Subject to the receipt of a corresponding notice, TS shall remedy the defect, at TS' option, by rectifying the defect (rectification of defects) or by delivering defect-free Software (replacement delivery).
- 6.4 TS shall provide the maintenance services accordance with this Section 6 as services (*Dienstleistungen*) within the meaning of sections 611 et seq. German Civil Code (BGB) and shall not assume any responsibility for the successful elimination of the defect. Defect handling services may also be provided by way of a workaround, patch or update, at the option of TS.
- 6.5 TS shall inform the Customer about the status and success of the elimination of defects at regular intervals.
- 6.6 The rights of the Customer under this Section 6 shall lapse if the Customer significantly impedes the detection or elimination of defects by violating its obligation to cooperate. The same applies if the Customer has modified the Software himself or through third parties or if restrictions of use or defects are or can be caused or contributed to by the improper or faulty operation of the Software by the Customer or his system environment. This shall also apply if the Customer has taken inadequate security precautions, in particular insufficient data backup. The right to request an elimination of defects shall not lapse if the actions or omissions of the Customer described above do not have a significant influence on the expenditure necessary for the detection or elimination of defects.
- 6.7 TS is entitled to provide the elimination of defects by means of remote maintenance or remote diagnosis.

- 6.8 TS shall provide an online ticket system for the contact person named by the Customer to receive the Customer's reports.
- 6.9 TS shall provide the maintenance services in accordance with this Section 6 within the service time from Monday to Friday between 09:00 and 17:00 hours (with the exception of national holidays and other public holidays at the headquarters of TS).

## **7. Patches, Updates, Upgrades and New Releases**

- 7.1 During the term of the Subscription Agreement, TS will, as part of its maintenance obligations, provide the Customer with all patches and/or updates, which TS generally makes available via download through TS website and Customer Portal to its customers to maintain the Software.
- 7.2 TS' obligation to provide those patches and/or updates does not apply to extensions of the Software which TS offers and markets separately as a new and independent product or as an additional module (hereinafter or "**Upgrades and New Release**"). Should the Customer order any such Upgrades and New Release, such Upgrades and New Release will be charged and invoiced separately to the Customer according to the then current price list of TS.

## **8. Additional Services**

- 8.1 Not subject of the Subscription Agreement and not covered by the agreed Subscription Fee are all services which are not explicitly mentioned in the Subscription Agreement.
- 8.2 This includes in particular the following services:
  - a) Changes to the Software that are not subject matter of the Subscription Agreement, in particular adaptation to new products and services as well as to changed operating procedures of the Customer;
  - b) Adaptation of the Software to a changed hardware and/or software environment of the Customer, including to new program versions (e.g. new releases, updates/upgrades) of third-party software;
  - c) Support for products supplied by third parties if they are not explicitly included in the Subscription Agreement.
  - d) Elimination of malfunctions that have occurred due to improper operation of the Software by the Customer, force majeure, interventions by third parties or other influences not caused by TS;
  - e) Other adaptations, additions and extensions of the Software according to Customer requirements;
  - f) Consulting and/or training of the Customer,
  - g) Telephone support,
  - h) Hardware and hardware parts, hardware extensions, fault diagnosis and elimination of hardware defects.
- 8.3 Should the Customer order any such additional services, such services will be charged and invoiced separately to the Customer according to the then current price list of TS.

## **9. Limitation of Liability**

- 9.1 In case of wilful misconduct and gross negligence, TS shall be liable according to the statutory provisions of applicable law.

- 9.2 In case of simple negligence, TS shall only be liable for breach of material contractual obligations (material contractual obligations are obligations the breach of which endangers the purpose of the agreement and the fulfilment of which the Customer may reasonably rely on); in this case TS's liability shall be limited to the typical damages that were reasonably foreseeable. Therefore, indirect and consequential damages resulting from defects of the delivered goods and/or work are only eligible for compensation if such damages are typical and reasonably foreseeable and when the goods and/or work are used in conformity with its intended purpose.
- 9.3 The limitations of liability under this Section do not apply to
  - a) damages resulting from injury to life, body or health;
  - b) liability pursuant to the German Product Liability Act (*Produkthaftungsgesetz*);
  - c) to the extent TS has fraudulently concealed a defect; and/or
  - d) to the extent TS has assumed a guarantee for the condition of delivered goods and/or work (*Beschaffenheitsgarantie*).
- 9.4 The limitations of liability under this Section shall – subject to the provisions of the preceding paragraph – apply to (i) any liability claims for whatever legal reason but in particular due to impossibility, default, defective or incorrect delivery, breach of contract, breach of obligations in contractual negotiations and tort, as far as such claims are subject to fault, and (ii) any breach of duty by vicarious agents or any other person for whose conduct TS can be held liable according to the statutory provisions of applicable law.
- 9.5 In case the standard of liability is limited according to statutory provisions of applicable law (such as any limitation to the duty of care observed in own affairs), the above provisions shall not be deemed to create a higher standard of liability.
- 9.6 The strict liability for initial defects according to Sec. 536a para. 1 German Civil Code (BGB) is excluded.
- 9.7 The Customer is obliged to back up data at intervals appropriate to the application. In the event of a loss of data for which TS is responsible, TS is only liable for the expenditure normally required for recovery.

## **10. Obligations of the Customer**

- 10.1 The Customer supports TS by making data available free of charge and by ensuring the free use of office space, hardware, software and telecommunications when providing services at the Customer's premises.
- 10.2 The Customer is solely responsible for regular and complete data backups according to the state of the art.
- 10.3 Within the scope of the detection and elimination of defects, the Customer shall
  - a) to inform TS immediately of any defects occurring in the Software,
  - b) to document the defects in such a way that they are reproducible for TS,
  - c) to allow TS sufficient time for maintenance work, if necessary, and
  - d) to participate in the care service itself, if necessary (demonstrating the defects, granting access to the facility, providing personnel, etc.).

10.4 The Software made available by TS to the Customer under the Subscription Agreement facilitates the integration of SAP systems with non-SAP systems of the Customer. The Customer acknowledges and agrees that solely the Customer shall be responsible for procuring the relevant licenses from SAP and any other third party provider at its own costs and for complying with the applicable license terms of such third party providers. The Customer undertakes to use the Software only in compliance with the license terms of such third party providers. The Customer shall indemnify and defend TS and each of its past, present and future directors, officers, employees and agents, in each case, in their respective capacities as such, from and against any and all third party suit, claim, action or demand to the extent relating to, arising out of or resulting from, directly or indirectly, any violation of its obligations and/or undertakings under this provision.

## **11. Data Protection**

- 11.1 The parties shall observe the relevant data protection regulations, in particular the GDPR and the Federal Data Protection Act.
- 11.2 The parties oblige their employees to observe data secrecy in accordance with the GDPR and the German Federal Data Protection Act.
- 11.3 Insofar as TS processes personal data on behalf of the Customer, this shall be done on the basis of a data processing agreement to be concluded separately

## **12. Confidentiality**

- 12.1 "**Confidential Information**" means any information, documents, items, materials, substances or electronic files disclosed by one Party to the other Party in written, electronic, oral or any other form, which is marked confidential by the disclosing Party or is by its nature to be treated as confidential.
- 12.2 The Parties undertake to treat the Confidential Information of the other Party as confidential and to use them exclusively for the purposes of the performance of the Subscription Agreement.
- 12.3 The disclosure of the Confidential Information of the disclosing Party by the respective recipient to third parties is only permitted to the extent that this is necessary for the performance of the Subscription Agreement provided that the third party has committed itself to confidentiality vis-à-vis the Party making the Confidential Information available to the third party or is bound to confidentiality for professional reasons. Legal disclosure obligations remain unaffected. The respective Party making the Confidential Information available to the third party shall be responsible for ensuring that the obligations of the Subscription Agreement are also observed by such third parties. The Party making the Confidential Information available to the third party shall be liable for breaches of the confidentiality obligations under the Subscription Agreement by such third parties as if they were its own breach.
- 12.4 Each Party undertakes to protect the Confidential Information of the respective other Party by taking appropriate security measures.
- 12.5 The foregoing obligations shall not apply to information of which the receiving Party can prove that it (i) was or is available to the public in a lawful manner and in a manner not in breach of the provisions of the Subscription Agreement, (ii) was previously known to the receiving Party and was available to it without restriction, (iii) was disclosed to the receiving Party by a third party authorized to do so, or (iv) was developed by the receiving Party independently and without use of the Confidential Information disclosed by the disclosing Party.

- 12.6 The respective receiving Party undertakes to completely and permanently destroy all documents and records containing Confidential Information of the respective other Party or, in the case of electronic data, to permanently delete such data immediately after termination of the Subscription Agreement. This shall not affect any statutory storage and archiving obligations.
- 12.7 After termination of the Subscription Agreement, all rights and obligations of each Party with respect to the Confidential Information of the respective other Party shall continue to apply for a period of ten (10) years.

### 13. Term and Termination

- 13.1 The Subscription Agreement comes into force upon execution of the Order Form by both Parties (i.e. at the date of the last signature provided) (the “**Effective Date**”).
- 13.2 Unless specifically agreed otherwise under the Order Form, the Subscription Agreement shall have an initial term of one (1) year from the Effective Date. Thereafter, the Subscription Agreement shall be automatically renewed for successive renewal periods of one (1) year each unless terminated by either Party with three (3) months’ notice to the end of the Initial Term or the respective renewal period.
- 13.3 The right to terminate the Subscription Agreement for good cause remains unaffected.
- 13.4 A right to terminate for good cause shall be deemed to exist in particular if one party commits a breach of a material contractual obligation under the Subscription Agreement, provided that the other party cannot reasonably be expected to continue the Subscription Agreement for this reason. A prerequisite for termination under this provision is that the terminating party gives the other party a detailed written explanation of the reasons for termination, sets a reasonable period of at least thirty (30) days for the other party to eliminate the important reason for termination and expressly threatens termination if the important reason for termination is not eliminated in due time. The warning notice is not required if the breach of contract cannot, by its nature, be remedied.
- 13.5 Furthermore, a right to terminate for good cause shall be deemed to exist in particular if the other party suffers or threatens to suffer substantial losses in its economic circumstances, in particular if the other party itself files for the opening of insolvency proceedings against its assets or if insolvency proceedings are opened against its assets and/or the other party suspends payments.
- 13.6 Declarations of termination must be in writing to be effective and must be sent to the other party by registered mail/advice of receipt or postal delivery certificate or delivered personally.
- 13.7 With the termination of the Subscription Agreement all rights of the Customer to use the Software automatically end.
- 13.8 Each Party shall have the right to demand the return of the documents, materials and other items provided by the other party immediately after termination of the contractual relationship if and to the extent that they have not been used as intended or are intended to remain with the other party even after termination of the Subscription Agreement. Statutory storage and archiving obligations shall remain unaffected.
- 13.9 Claims of the Parties arising before the termination date shall remain unaffected by the termination of the Subscription Agreement.
- 13.10 The provisions of the Subscription Agreement, which, as intended, shall continue to apply beyond the termination of the Subscription Agreement, shall remain unaffected by the termination of the Subscription Agreement. This applies in particular to the confidentiality obligations agreed under the Subscription Agreement.

## 14. Final Provisions

- 14.1 Each Party shall bear its own costs incurred in connection with the execution and performance of the Subscription Agreement, unless expressly agreed otherwise in the Subscription Agreement.
- 14.2 The Subscription Agreement fully reflects the agreement between the Parties regarding the subject matter; no oral or other side agreements exist. Unless expressly agreed otherwise in the Subscription Agreement, all previous agreements between the Parties regarding the subject matter shall be fully replaced by the Subscription Agreement with effect from the effective date of the Subscription Agreement.
- 14.3 Amendments or additions to the Subscription Agreement shall require written form to be effective, unless a stricter form is required under mandatory law. The same applies to the waiver of this written form requirement. Unless expressly agreed otherwise in the Subscription Agreement, e-mails do not comply with this written form requirement. The written form requirement under the Subscription Agreement shall be deemed to have been met when the copy of a declaration is being transmitted by telecommunications (e.g. as an attachment to an e-mail) and that copy contains the signature of the person making that declaration, unless a stricter form is required under mandatory law.
- 14.4 Neither Party is entitled to transfer the Subscription Agreement to a third Party without the prior written consent of the other Party.
- 14.5 The Subscription Agreement shall be governed by the laws of the Federal Republic of Germany, excluding the conflict of laws rules of private international law. The applicability of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.
- 14.6 Exclusive place of jurisdiction for all disputes arising out of or in connection with the Subscription Agreement shall be the registered seat of TS, unless otherwise required by mandatory law.
- 14.7 The Customer agrees to be named as a reference customer by Theobald Software.

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