

End User License Agreement

§ 1 Scope of this Agreement

- (1) Licensor has agreed with Licensee to grant Licensee a license to use and exploit the software "TimeFlex group calendar for Microsoft Exchange & IBM Notes" subject to the terms and conditions of this End User License Agreement (hereinafter referred to as „Agreement“). Subject to this Agreement are the object code and documentation of said software (hereinafter referred together to as "Software").
- (2) Specifications of the characteristics and functionality of the Software as well as of the hardware and software environment, in which the software shall be installed, are laid down exhaustively in the License Certificate, **Annex 1**.
- (2) Licensor has sold the Software and documentation to subject to the terms and conditions of a separate contract of purchase, **Annex 2**.

§ 2 Grant of Rights

- (1) Licensor hereby grants, upon full payment of the fee according to section 4 of this Agreement, to Licensee the non-exclusive, non-transferable right to use, to copy, to revise and to decompile the Software without limitation in time, manner or place subject to the terms of this Agreement and the License Certificate.
- (2) The right to use and exploit is limited to the purposes of use described in **Annex 1**. TimeFlex Group Calendar is licensed on a per user basis. A license is required for each user or resource configured in a group calendar. If a user or resource is included in more than one TimeFlex Group Calendar it will still only require one license for this user. There is no server license and licenses can be used across locations within the same legal entity.
- (3) The right to copy the Software granted to Licensee herein is limited to the installation of the Software on a computer system which is in Licensee's immediate possession and to fulfill the purpose of use and a copy thereof which is required for the loading, display, running, transfer or storage of the Software as well as to the right for an authorized person to make a copy for security backup purposes. Licensee shall label backup copy as such and visibly place a copyright note on the copy.
- (4) The right to revise the Software granted to Licensee herein is limited to the maintenance or reinstatement of the agreed functionality of the Software.

- (5) The right to decompile the Software granted to Licensee herein is only granted under the terms and limits of the German Copyright Act and under the condition that Licensor has not made the necessary information available at Licensee's request within reasonable time.
- (6) No more extensive rights to use and exploit the Software are granted to Licensee. Licensee shall not be authorized to disseminate to Software by means of rental or other sub-licenses, by making them available to the public, either by wire or wireless means, or by making them available to third parties, e.g. as ASP or SaaS. Licensee may sell the Software to a third party for permanent use and exploitation. In this event, Licensee shall refrain entirely from any use or exploitation, delete the Software and all other copies from his system and confirm this in written at Licensor's option. Third parties shall be obligated by Licensee to observe the grant of right according to this section. Splitting up the volume license into several volume and/or single user licenses is not admissible.
- (7) Licensee undertakes to allow Licensor or an agent of Licensor to audit whether Licensee's use of the Software is consistent with the rights granted to Licensee herein upon request by Licensor and provided there is a legitimate interest therein and to give full co-operation to Licensor or its agent carrying out such audit. In the event Licensee's use exceeds the scope of this Agreement as to the purpose of use or as to the number of licenses sold as volume license, Licensee shall immediately obtain the necessary rights from Licensor, who will otherwise assert his rights.

§ 3 Delivery and Installation of the Software

- (1) Licensor shall deliver the Software for the exercise of the rights to use and exploit granted to Licensee herein in machine readable form by remote data transfer ("download link"). Licensee shall receive software documentation as electronic document in English and one copy of the user manual per copy of the Software as electronic document in English.
- (2) The Software is protected by means of a license key. Licensor makes license key available to Licensee for use and exploitation of the Software subject to the terms and conditions of this Agreement, the License Certificate (**Annex 1**) and documentation.
- (3) Licensee is responsible for providing the system environment in accordance with the system requirements set forth in **Annex 1**.
- (4) The Software shall be installed by Licensee. Licensee must notify Licensor in writing of the respective installation locations of the copies of the Software. This shall also apply to any later change of installation locations.
- (5) All copies of the Software shall remain in the sole ownership of Licensor until the complete payment of the license fees. Upon breach of contract by Licensee, in particular on default of payment, Licensor shall be entitled to require at Licensee's expense the return of all copies of the Software in which Licensor has retained ownership, or if applicable, to demand the assignment of Licensee's right of return against third parties. In such case upon Licensor's request Licensee shall con-

firm in writing that no copies of the Software or copies thereof were retained and that all installations of the Software have been irrevocably deleted from Licensee's or third party's systems. Before the unconditional transfer of ownership, Licensee shall only dispose of rights in the Software with the written consent of Licensor.

§ 4 License Fees

The license fees owed by Licensee to Licensor for the grant of rights hereunder are set forth and shall be invoiced by Licensor in accordance with the contract of purchase, **Annex 2**. The license fees represent a one-time license fee.

§ 5 Material Defects

- (1) The Software provided by Licensor shall be substantially in accordance with the product description. Rights in case of material defects shall be excluded in case the requirements for software and hardware environment (**Annex 1**) were not observed by Licensee or in case of adjustments and modifications of Software by Licensee which cause the defect and to which Licensee was not authorized – either by this Agreement or by Licensor's written consent. Licensor shall also not be responsible for defects, which are caused by improper use or improper operation or the use of unsuitable means of operation by Licensee. In respect of updates, upgrades and the delivery of new versions, Licensee's rights in case of defects shall be limited to the new features of the update, upgrade or new version compared to the previous version release.
- (2) Licensee's rights in case of material defects are limited to 12 months and the period shall begin on the date of notice and activation of access codes for downloading the Software. In respect of the delivery of updates, upgrades and new versions, the period for such deliverables shall in each case begin on the date of delivery.
- (3) Any claims for damages are subject to the limitations set forth under § 7.
- (4) The parties have entered a Service Level Agreement, which shall apply to the remedying of defects. Ancillary services according to said Service Level Agreement (**Annex 3**) are subject to separate contracts setting forth Licensor obligations for remedying material defects.

§ 6 Legal Defects

- (1) The software delivered or provided by Licensor shall be free from third party rights, which prevent the use in accordance with the contract.
- (2) If third parties are entitled to such rights and they pursue these, then Licensor shall do everything in its power in order to defend the Software against the third party rights claimed. Licensee shall

inform Licensor in writing without delay of the claiming of such rights by third parties and shall give Licensor all powers of attorney and authorizations which are necessary in order to defend the Software against the third party rights claimed.

- (3) To the extent that there are legal defects, Licensor is (a) entitled at its option to either (i) take legitimate measures to remove the third party rights, which impair the contractual use of the software, or (ii) remedy the enforcement of such claims, or (iii) change or replace the software in such a manner, that it no longer infringes the rights of third parties, provided and to the extent that this does not substantially impair the warranted functionality of the software, and (b) under an obligation to reimburse Licensee for its necessary refundable costs incurred in the enforcement of legal claims.
- (4) If a release under para. 3 fails within a reasonable time limit set by Licensee, then Licensee may, at its option, withdraw from this Agreement subject to statutory prerequisites or claim reduction of the price and claim damages.
- (5) In all other respects section 5 para. 2 and 3 apply accordingly.

§ 7 Liability, Damages

- (1) Licensor has unlimited liability
 - for intent and gross negligence
 - for injury of life, body or health
 - in accordance with the law on product liability
 - in the scope of a guarantee by Licensor
- (2) In case of negligence with regards to an obligation that is essential for achieving the purpose of this agreement (essential obligation), Licensor's liability is limited to the amount of those damages, which are typical and foreseeable for the type of business concerned. Essential obligations are such basic duties which form the essence of the Agreement, which were decisive for the conclusion of the Agreement and for the performance of which Licensee may rely.
- (3) Licensor has no further liability.
- (4) The liability provisions of this section also apply to the personal liability of employees, representatives and bodies of the Licensor.
- (5) Licensor shall be liable for loss of data only up to the amount of typical recovery costs which would have arisen had proper and regular data backup measures been taken.
- (6) Any more extensive liability of Licensor is excluded on the merits.

§ 8 Confidentiality

- (1) Both parties shall observe strict confidentiality of all information gained in carrying out this agreement. This obligation shall continue for 2 years upon termination of this agreement. "Confidential information" means any information or document of the other party which are designated as such or must be treated as such in view of the circumstances, in particular information about business operations, trade relations and know-how.
- (2) Said obligation does not include confidential information
 - a) That was verifiably already known to the recipient before it was obtained pursuant to this agreement, or that was disclosed after conclusion of the agreement by third parties without a breach of confidentiality agreements, statutory requirements or official order;
 - b) That becomes publicly known at the time of conclusion of this agreement or afterwards, as long as such disclosure does not constitute a breach of this contract;
 - c) That must be disclosed by statutory obligation, court order or official order. To the admissible and possible extent, the recipient meeting such obligation to disclose shall, in advance, inform and enable the other party to challenge the disclosure.
- (3) Both parties shall only grant access to consultants which are bound by the obligation of professional secrecy and which have been obliged to confidentiality in the same way as by this agreement. Further, both parties shall disclose confidential information only to employees entrusted with the business operations necessary for carrying out this agreement and shall oblige these employees beyond the term of their employment to confidentiality to the legally admissible temporal extent .

§ 9 Final Provisions

- (1) Amendments or additions to this Agreement must be made in writing to be effective. This shall also apply to amendments of this written form requirement.
- (2) The parties agree on Licensor's registered office as the place of performance for the delivery of the Software. Exclusive place of jurisdiction shall be Düren, Germany, if each party is a merchant or a corporate body under public law.
- (3) Both parties' General Terms and Conditions shall not be applied.
- (4) On this agreement, German law is applicable with the exception of the United Nations Convention on Contracts for the International Sale of Goods, 11 April 1980 (CISG). Both parties acknowledge, that IT-services can be subject to export and import restrictions. In particular, the use of the Soft-

ware and related technologies can be subject to obligations to obtain a permit or other restrictions in third countries. Fulfillment of contract by Licensor being under the restriction that no national or international provisions on export and import or other statutory requirements run contrary to such fulfillment.

- (5) Should any provision of this Agreement be or become invalid, this shall not affect the validity of the remaining terms. The parties shall in such an event be obliged to cooperate in the creation of terms which achieve such legally valid result as comes closest commercially to that of the invalid provision. The above shall apply accordingly to the closing of any gaps in the Agreement.
- (6) All Annexes mentioned in this Agreement are integral parts of this Agreement.