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| Optional contractual provision: (Provisions marked as “optional contractual provisions”   can, at the user’s option, be kept or omitted without replacement)  [\_\_\_\_] Alternative clauses and comments by industry partners / the public research institution  [\_\_\_\_] Options, alternatives to be selected directly in the contract text  (\_\_\_\_) Guidance for input fields, options, alternatives  **SOFTWARE EVALUATION LICENCE AGREEMENT**  **1. OBJECT OF THE AGREEMENT**  1.1 [Please insert the Licensor’s company name plus details, including telephone number, e-mail address, company register number (if any), company register court (if any) and VAT registration number (if any) ], hereinafter “**Licensor**”, is the person authorised to dispose over (based, in whole or in part, on own programming work and/or, in whole or in part, on the acquisition of the licence for) the software called [please insert the name of the software], version [please insert version number] (hereinafter “**Software**”) used for [please provide a brief description of the purpose the software is used for].  1.2 Full ownership of the Software’s source code and all rights in it shall remain with the Licensor. This Software Evaluation Licence Agreement therefore does not grant you as “**Licensee**” any rights whatsoever in the source code nor, with respect to the program, any rights beyond the evaluation licence rights governed by the present agreement (see in particular Clause 3. below).  1.3 The Licensee acknowledges and agrees that the Software [is still at the development stage, does not yet have the full scope of functions as planned and that the Software also **OR**, while fully developed from the point of view of its author,] may still feature bugs.  1.4 The Licensor and the Licensee (jointly hereinafter referred to as the “**Parties**” and each of them individually as “**Party**”) acknowledge and agree that this Software Evaluation Licence Agreement pursues only the following goals:  (i) installation of the Software on those of the Licensee’s terminals or infrastructure items that meet the technical minimum requirements for operating the Software [as set out in Annex ./A to this Agreement] (in particular, processor, RAM, operating system or operating system version); [provided that the evaluation at least partly pursues the goal of fathoming the minimum requirements for operating the Software, the Licensee has the right to install the Software on any items of the Licensee’s infrastructure that the Licensee considers suitable for that purpose],  and  (ii) execution of the Software on the above-mentioned terminals or the above-mentioned infrastructure of the Licensee as well as corresponding use of the Software by the Licensee, exclusively for the Licensee’s own in-house evaluation purposes (i.e. for the purposes of evaluating in-house whether the Software meets the purposes the Licensee has in mind, hereinafter “**Evaluation**”).  **2. Licensee: Businesses and consumers within the meaning of the Austrian Consumer Protection Act**  2.1 The present Software Evaluation Licence is available to businesses within the meaning of section 1 (1) (1) of the Austrian Consumer Protection Act (“**KSchG**”)as well as to consumers within section 1 (1) (2) KSchG.  2.2 This Software Evaluation Licence Agreement contains **special provisions which apply only to consumers, but *not* to businesses**. The provisions in this Software Evaluation Licence Agreement which apply only to consumers are marked “***Applicable only to consumers***”, and any provisions not marked as such shall be deemed to apply equally to businesses and consumers.  **3. Granting of a licence for the Software**  3.1 For the duration of this Software Evaluation Licence Agreement, the Licensor herewith grants to the Licensee a non-exclusive, non-transferable, non-sublicensable, strictly personal, worldwide licence to install, run and use the Software on the Licensee’s above-mentioned terminals or infrastructure for the sole purpose of entirely in-house Evaluation by the Licensee. The Licensee warrants that the Licensee will install and run the Software only on such terminals or such infrastructure over which the Licensee has full authority to dispose.  3.2 The Licensee shall be strictly forbidden to make the Software available to third parties in any way (e.g. by remote access via a wired or wireless network).  3.3 The Licensee may make backup copies of the Software and of the installation program (“**Installer**”) that may have been provided by the Licensor only for backup purposes.  3.4 This licence shall expire automatically as soon as this Software Evaluation Licence Agreement is terminated, expires or is ended in any other manner. As per the effective date of any such termination, the Licensee must  (i) immediately cease running and using the Software, and  (ii) delete the Software immediately, including all backup copies thereof, irrevocably and completely from all storage media.  **4.** **Installing and running the Software**  4.1 The Licensee shall, on its own and under its own responsibility, install the Software on the Licensee’s above-mentioned terminals or infrastructure in conformity with the Software’s system requirements. Apart from providing the Software and/or the relevant Installer and the present Software Evaluation Licence, the Licensor shall be under no obligation whatsoever to provide any further services or deliveries to the Licensee, including, without limitation, training, consulting, documentation, manuals, maintenance services, support services (on site or remote), IT security services, etc.; the same shall apply to updates, upgrades and bug fixes of the Software, provided, however, that the Licensor may, in the Licensor’s sole discretion and of its own volition, make such updates and/or upgrades and/or bug fixes available to the Licensee during the term of this Software Evaluation Licence Agreement.  **5. Licence fees and non-disclosure**  5.1 For the term of the Software Evaluation Licence Agreement, the Licensor shall not charge any licence fees to the Licensee. The licence fees are set out in Annex ./B to this agreement.  5.2 The Licensee undertakes to keep any and all Software errors (bugs, including security problems, such as security gaps) strictly secret and to use them only for the purposes of (i) its own in-house Software Evaluation and (ii) its own feedback obligations under this Agreement and not to exploit them or have them exploited for its own use, nor to disclose them without the prior written consent of the Licensor or tolerate such disclosure. Such non-disclosure obligations shall not apply to information for which it is verifiably true that it   * was known to the recipient already before it was disclosed; * was already in the public domain when it was disclosed; * entered the public domain after it was disclosed without this being attributable to the Licensee; * was, after it was disclosed, made accessible to the recipient by a third party in a legitimate manner and without any restrictions in terms of non-disclosure or non-exploitation being applicable; * was independently developed by the Licensee; or * must be disclosed based on statutory provisions, court decisions or orders by a public authority; in such an event, the Licensee must notify the Licensor of such disclosure without delay.   The above-mentioned non-disclosure and non-exploitation obligations of the Licensee shall remain in force even after termination of the Agreement as long as the relevant information has not entered the public domain.  **6. Feedback obligations on the part of the Licensee**  6.1 In return for being granted a licence for Evaluation purposes, the Licensee undertakes to regularly, and at least once per [please insert period of time], provide the Licensor with reasonably detailed and understandable feedback in writing on the Licensee’s use of the Software, which covers at least the following information:  (i) a reasonably detailed and understandable description of the terminal(s) or the infrastructure on which the Software is being run and used (e.g. processor, RAM, graphic card, operating system plus version number);  (ii) a reasonably detailed and understandable description of the Software’s technical functionality, including any technical problems, such as bugs, that occurred when using the Software, the circumstances under which this occurred, and whether such problems/bugs are reproducible (and if so, how).  6.2 Feedback shall be provided as follows:  (i) by e-mail [please insert e-mail address]; or  (ii) online using the feedback form at [please insert URL].  6.3 By submitting such feedback, the Licensee shall grant the Licensor a worldwide, exclusive (**Applicable only to consumers**: the Licensee shall, in spite of having granted an exclusive licence in its feedback, remain entitled to use its feedback for its own purposes), transferable and sublicensable licence, unrestricted in terms of time and subject matter, to use and exploit the feedback itself and its contents (such as, in particular, technical ideas, design proposals, troubleshooting suggestions and proposals for further development relating to the Software) in any and all manners of exploitation currently known and becoming known in future and to also have third parties use and exploit the same. This shall include the right of the Licensor to register and keep registered, in its own discretion and at its own expense, intellectual property rights (such as patents or utility models) in relation to the feedback in all countries of the world.  **7.** **Exclusion of warranty and liability (Clause 7.5 applies to consumers)**  7.1 Given that the purpose of the present Software Evaluation Licence is solely Evaluation, the Licensee acknowledges and expressly accepts that the Licensor is under no warranty obligation whatsoever; the Licensor’s warranty is thus expressly excluded to the extent permitted by law.  7.2 The scope of exclusion of warranty shall include, without limitation:  (i) the Software being suitable and able to fulfil the purpose intended by the Licensee;  (ii) the Software being free of errors/defects; and  (iii) the Software being free of third-party patent and/or utility model rights.  7.3 The Licensor’s liability shall likewise be excluded, provided, however, that such exclusion of liability shall apply neither to wilful intent or gross negligence on the part of the Licensor nor to personal injury.  7.4 In addition, the Parties agree to exclude the applicability of reversal of the burden of proof as set out in section 1298 of the Austrian Civil Code (“**ABGB**”) and of the possibility of recourse set out in section 12 of the Austrian Product Liability Act (“**PGH**”).  7.5 **Applicable only to consumers:** The following shall apply, replacing 7.1, 7.2, 7.3 and 7.4 above:  7.5.1 The Licensee’s rights under warranty as a consumer shall be governed by the applicable provisions as set out in sections 922 to 933 of the Austrian Civil Code (“**ABGB**”).  7.5.2 The Licensor’s liability for slight negligence shall be excluded, provided, however, that such exclusion shall not apply to personal injury.  **8.** **Duration, end or termination of the Agreement**  8.1 This Software Evaluation Licence Agreement shall be concluded for the duration of [please enter period of time] (hereinafter “**Licence Period**“) and shall expire automatically following the end of the Licence Period.  8.2 It shall not be possible to terminate this Software Evaluation Licence Agreement by giving regular notice. This shall not affect the right of either Party to termination without notice for cause.  8.3 Any extension or renewal of the Licence Period shall require a separate agreement.  **9.** **Applicable only to consumers: Statutory right of withdrawal**  9.1 As a consumer, the Licensee shall have the right to withdraw from this Software Evaluation Licence Agreement within fourteen days of such agreement having been entered into, without stating reasons. To exercise such right of withdrawal, the Licensee must inform the Licensor of their decision to withdraw from this agreement by submitting an unequivocal statement to this effect (e.g. a letter sent by post, fax or e-mail). The Licensee may use the model withdrawal form as set out in Clause 9.4, but it is not obligatory to do so.  9.2 To meet the withdrawal deadline, it is sufficient for the Licensee to send the notice concerning the exercise of the right of withdrawal before the withdrawal period has expired.  9.3 As the present Software Evaluation Licence is granted free of charge and the Licensor has therefore not received any payment from the Licensee for the present Software Evaluation Licence, no payments and no delivery costs shall have to be reimbursed should the Licensee withdraw from the agreement.  **OR**  If the Licensee withdraws from this agreement, the Licensor shall reimburse to the Licensee all payments received from the Licensee, including the costs of delivery (with the exception of the supplementary costs resulting from the Licensee’s choice of a type of delivery other than the least expensive type of standard delivery offered by the Licensor), without undue delay and in any event no later than fourteen days from the day on which the Licensor received notice of the Licensee’s withdrawal from this Agreement. The Licensor will carry out such reimbursement using the same means of payment as the Licensee used for the initial transaction, unless the Licensee and the Licensor have expressly agreed otherwise; in any event, the Licensee will not incur any fees as a result of such reimbursement.  9.4. Model withdrawal form  **Withdrawal form**  (Should the Licensee want to withdraw from this agreement, the form below must be filled out and returned to the Licensor)  To: [(Company) Name of Licensor] [Address of Licensor] [Post code and city of Licensor] Austria E-mail: [e-mail address of Licensor]  I/We (\*) hereby give notice that I/we (\*) withdraw from my/our (\*) Software Evaluation Licence Agreement for the Software [please insert name of the Software].  I/we (\*) ordered the Software on the following day: \_\_\_\_\_.\_\_\_\_\_\_\_.\_\_\_\_\_\_\_\_\_  I/we (\*) received the Software on the following day: \_\_\_\_\_.\_\_\_\_\_\_\_.\_\_\_\_\_\_\_\_\_  Name of consumer(s): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Address of consumer(s): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature of consumer(s) (only for notices supplied on paper): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_.\_\_\_\_\_\_\_.\_\_\_\_\_\_\_\_\_  (\*) Please delete as appropriate.  **10. Applicable law and venue**  10.1 This Software Evaluation Licence Agreement shall be governed exclusively by the laws of the Republic of Austria, excluding its conflict-of-law provisions under private law and the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980.  10.2 Any dispute arising out of or in connection with this Software Evaluation Licence Agreement, its existence, termination, expiry and/or nullity or enforceability shall be subject to the jurisdiction of the court in Austria which has subject-matter and territorial competence for the Licensor’s registered business address. However, the Licensee acknowledges and explicitly accepts that the Licensor may also assert any and all claims on its part also before a court which has subject-matter and territorial competence for the Licensee’s registered business address and/or place of residence (including, without limitation, cases where a decision handed down by an Austrian court would not be enforceable in the Licensee’s home country).  10.3 **Applicable only to consumers:** Clause 10.2 is replaced by the following provision: The place of performance and the venue shall be the registered business address of the Licensor. Where the Licensor files a complaint against the Licensee, the court which has territorial jurisdiction for the Licensee’s place of residence, place of habitual abode or place of employment shall be competent.  **11. Final provisions**  11.1 This Software Evaluation Licence Agreement constitutes the entire agreement and the entire intent of the Parties with respect to the subject matter of the agreement and shall supersede in full any earlier agreements made in this respect. There are no oral side agreements. While the Parties may enter into other agreements or may already have done so, the Parties are agreed that such agreements shall have no impact on the present Software Evaluation Licence Agreement, except as otherwise provided for in such agreements.  11.2 Any amendment of this Software Evaluation Licence Agreement shall have to be made in writing and the same shall apply to any waiver of the requirement of the written form.  11.3 Should any of the provisions of this Software Evaluation Licence Agreement be or become invalid or unenforceable, this shall not affect the remaining provisions thereof, and a valid and enforceable provision shall be deemed as having been agreed which best reflects the economic intentions of the Parties. The same shall apply to any gaps in the agreement.  **12. Applicable only to consumers: Alternative dispute resolution**  12.1 The Licensor being under no obligation to participate in alternative dispute resolution proceedings and also not being willing to participate in such proceedings, the following information must nevertheless be provided:  12.2 The European Union’s Online Dispute Resolution platform can be accessed here:<http://ec.europa.eu/consumers/odr/>.  12.3 The two Austrian dispute resolution bodies for online consumer transactions can be found here: <https://ombudsmann.at/> and <http://www.verbraucherschlichtung.or.at/>.  \*\*\*  [This Software Evaluation Licence Agreement is entered into electronically which is why it does not contain any signature lines] |