

# SOFTWARE TERMS OF USE

## SCOPE SOLUTIONS AG

Updated August 2023

### **1 SUBJECT MATTER OF THE AGREEMENT**

- 1.1 scope solutions AG (hereinafter referred to as "scope") grants the customer the non-exclusive, comprehensive right, unlimited in time and space, to use the software components listed in the agreement (hereinafter referred to as "SW products") for use on a computer system confirmed by scope, subject to the following conditions and in return for remuneration.
- 1.2 Certain SW products require a specific system environment or third-party technical components such as databases. Such environments or components are not the subject matter of the agreement.
- 1.3 These Software Terms of Use serve as an addition to both the General Terms and Conditions (hereinafter referred to as "GTC") of scope. In case of any inconsistency, these Software Terms of Use supersede the GTC.

### **2 INCLUSION OF A SOFTWARE SERVICE AGREEMENT**

- 2.1 Upon acquiring the SW products, the customer has the option to conclude a Software Service Agreement with an initial agreement period of 4 (four) years with scope or a third party authorised by scope for the provision of separate maintenance and support services by scope to the customer, ensuring the delivery of the latest software release.
- 2.2 The Software Service Agreement will be subject to scope's Software Terms of Service.

### **3 DELIVERY AND PERFORMANCE**

- 3.1 scope delivers the SW products in an executable format. The source code is not subject matter of the agreement and is, therefore, not delivered. However, the customer may opt to conclude a separate escrow agreement with scope and LLK Treuhand AG, Basel. This agreement regulates the provision of the source code for the latest SW product release, along with documentation, subject to specific conditions. The prerequisite for the conclusion and existence of an escrow agreement is a valid Software Service Agreement with scope as per Section 2.
- 3.2 The performance of scope is fulfilled upon achieving technical operational readiness. This entails the successful installation and functionality of the SW products on an initial database schema and a client.
- 3.3 Should the customer unjustifiably postpone the establishment of technical operational readiness or if such a delay results from minor defects, scope retains the right to grant the customer a grace period through a registered letter. After expiry of the deadline, the SW products shall be deemed accepted, unless scope chooses to withdraw from the agreement.
- 3.4 Together with the SW products, scope delivers the corresponding user documentation in the agreed languages. The documentation, if available in paper form, may be duplicated up to the quantity of "registered named users."

- 3.5 The SW products (incl. source code) and the user documentation are protected by copyright. The copyright for the SW products and user documentation is wholly owned by the author of the software. The customer is accountable for any copyright violations leading to damages, provided they are responsible for the said damages.

#### **4 GRANTING OF RIGHTS**

- 4.1 The right granted by scope in Section 1.1 is non-transferable, non-sub-licensable and permits the customer solely to use the SW products for their own purposes. The customer shall not receive any rights to the SW products beyond this right of use. scope retains the copyright and all other rights to the SW products.
- 4.2 The customer shall ensure that the SW products are used within the framework of the acquired licence. The SW products may be used to the extent of the rights granted by all companies affiliated with the customer (affiliates). Use by third parties is excluded. The customer must notify scope of any additional necessary licences and acquire them accordingly.
- 4.3 The customer can use the SW products on one database schema and install them on an additional schema for testing and training purposes. This schema can also serve as a temporary backup system during emergency situations.
- 4.4 The customer is not permitted to rent, lend or otherwise distribute or make available the SW products to an unlimited number of users through a public network (e.g. the Internet).
- 4.5 Creating copies, transcripts and reproductions of SW products, documentation and provided documents is solely allowed for backup and archiving purposes. Such duplicates must not be transferred to third parties and shall be returned to scope by the customer at the end of use without being requested to do so or permanently deleted.
- 4.6 The customer is only entitled to reproduce, edit or decompile the SW products
- i. if this is necessary to establish interoperability of the SW products with other software programs or
  - ii. to eliminate defects of the SW products, unless the information required for this purpose is made available by scope within a reasonable period of time upon request of the customer. Moreover, the customer is not entitled to edit, translate, change or otherwise modify the SW products.
- 4.7 The use of the SW products in environments where a threat to human life and safety due to routine, unforeseen or erroneous program outcomes cannot be ruled out is explicitly prohibited.

#### **5 REMUNERATION AND TERMS OF PAYMENT**

- 5.1 scope charges a licence fee as remuneration. The licence fee is specified in the agreement. In the event of changes to the SW products listed in the agreement, the corresponding license fees become immediately payable. Licence fees for extensions are due upon conclusion of the agreement.
- 5.2 The licence fee is calculated on the basis of the list prices and the number of users.
- 5.3 Special remuneration arrangements, as per the agreement, remain reserved.

## **6 COOPERATION OBLIGATIONS OF THE CUSTOMER**

- 6.1 The customer is accountable for providing the necessary system environment and third-party components (specifically the operating system and database), as well as installing the SW products and ensuring their operability.
- 6.2 It is the duty of the customer to prepare the database schema and client according to the technical requirements of the SW products, as detailed and periodically updated on the website [www.scope.ch](http://www.scope.ch).
- 6.3 For services outside the scope of the standard program, the customer must assess the operational efficiency of the contractual extended SW products within its business processes prior to acceptance. In the event of errors, a troubleshooting-compatible error log must be provided to scope. Should the customer fail to submit an error log within 30 (thirty) days of receiving the contractual extended SW products, outlining errors related to the contractual extended SW products and significantly hindering their contractual use, the acceptance of such extensions shall be considered granted.

## **7 PROHIBITION OF SOFTWARE USE**

If the customer breaches these Software Terms of Use, scope may prohibit the customer from further use of the SW products until the breach is terminated or rectified. This action can be taken if scope has previously set the customer a reasonable deadline in writing for the termination or rectification of the breach and has informed the customer of the potential prohibition of software use if non-compliance persists.

## **8 WARRANTY**

- 8.1 Proper functionality of the SW products within a system environment can only be warranted if the installation of such components is approved by scope. To uphold the warranty, the customer must confirm compatibility of changed components (e.g., a new operating system or a new database release or third-party software) with the SW products by consulting scope when making such alterations.
- 8.2 Considering current technological advancements, it is impossible to eliminate errors in SW products and their related materials across all possible application scenarios. Hence, scope's warranty is limited to the functionality of the SW products outlined in the documentation. scope assures suitability for usage within the meaning of the program description issued by scope, effective at the time of delivery to the customer. The customer can conclude a Software Service Agreement as per Section 2 in order to obtain further maintenance and support services.
- 8.3 Should a SW product be deemed unsuitable for use within the meaning of Section 8.2 or found to be defective, scope shall take back the delivered software and replace it with a new program package of the same title within a warranty period of 12 (twelve) months, starting from the delivery date of the SW product. If this also proves to be unsuitable for use within the meaning of Section 8.2 or to be defective, and scope is unable to rectify the defect with reasonable effort and within a reasonable period of time, the customer can choose to either reduce the remuneration or return the SW product, receiving a refund of the remuneration. The customer may only claim damages in accordance with Section 9 of these Software Terms of Use.
- 8.4 There is no further warranty. In particular, there is no warranty that the SW product will meet the customer's specific requirements. In particular, scope does not

guarantee error-free and uninterrupted operation of the SW products on all computer hardware, nor complete elimination of all program errors.

- 8.5 Claims arising from title and quality defects will not be applicable if the customer fails to adhere to these Software Terms of Use or personally changes the SW products or has third parties change them. This shall apply unless the customer can demonstrate that the errors are unrelated to the mentioned circumstances and that scope's error analysis and troubleshooting are unaffected by these factors.
- 8.6 Should the customer damage or delete SW products, scope will provide a new and current set of the licensed SW product(s) upon customer request. Production and shipping costs will be charged accordingly. If the customer has not concluded a Software Service Agreement as per Section 2 and if an outdated program release was in use at the customer's premises, scope shall be entitled to charge an additional fee.

## **9 LIABILITY**

- 9.1 The liability of scope shall be governed in accordance with Section 7 of the GTC of scope.
- 9.2 The customer shall indemnify scope against third-party claims that surpass this liability, provided the customer is at fault.

## **10 FINAL PROVISIONS**

- 10.1 If any provision of these Software Terms of Use is found to be invalid or incomplete, the validity of all other provisions remains unaffected. The invalid provision will be substituted by a provision that closely approximates its economic intent and purpose in a legally effective manner. The same principle applies in cases of regulatory gaps.
- 10.2 scope is entitled to change these Software Terms of Use. The customer will be informed of any changes at least 3 (three) months before they take effect. If the new version of the Software Terms of Use includes substantial unfavourable changes, the customer shall be entitled to object to the changes within 1 (one) month from being notified of the changes.