

End User License Agreement (EULA)

1. Entry into Force and Applicability

This Software License Agreement ("Agreement") is between Communardo Austria GmbH ("Communardo Austria") that owns the Software and the Customer and shall automatically enter into force by using or accessing the Software through the Customer.

2. Scope of Agreement

2.1. This Agreement governs the purchase of Communardo Austria's Software including Updates, New Releases, Support and Maintenance Work, and any additional services, as well as any future purchases made by Customer that reference this Agreement. This Agreement includes each Order, Communardo Austria's Policies, the GTC and any other referenced policies and terms.

2.2. The Software will be changed by Communardo Austria from time to time and the corresponding Updates will be made available to the Customer through the internet. The Customer agrees to install these Updates not later than within 30 days after availability on the internet.

2.3. The Customer shall not be entitled to change the Software in whatever form without the express consent of Communardo Austria, unless such changes should have been approved by Communardo Austria expressly or generally.

2.4. It is determined by mutual consent that the Software is intended for joint use with other Software. Such other Software shall be determined by Communardo Austria. The use of any other Software which was not determined by Communardo Austria shall exclude any liability of Communardo Austria whatsoever.

3. Use of the Software

3.1. Subject to the terms and conditions of this Agreement, Communardo Austria hereby grants Customer a non-exclusive, non-sublicensable and non-transferable license to install and use the Software during the license term for its own business purposes pursuant to the terms of this Agreement.

3.2. The Customer shall not be entitled to

- (a) reverse engineer, decompile or disassemble the software, translate or otherwise seek to obtain or derive the source code, except to the extent expressly permitted by applicable law;
- (b) rent, lease, distribute, sublicense, sell, transfer or provide access to the Software to a third party;
- (c) reproduce, modify and adapt the Software;
- (d) incorporate the Software into a product or service you provide to a third party;
- (e) encourage or assist any third party to do any of the foregoing; or
- (f) make more copies of the Software than specified in this Agreement or allowed by applicable law, despite this limitation.

3.3. Customer is solely responsible for ensuring that its system meet the hardware, software and any other applicable system requirements for the Software as specified in the Documentation. Communardo Austria will have no obligations under this Agreement for issues caused by Customer's use of any third party hardware or software not provided by Communardo Austria.

3.4. Customer may decide to use or procure other third party products or services in connection with the Software. Customer acknowledge that Communardo Austria disclaims all liability and responsibility for any third party products or services and for the acts or omissions of any third party providers or vendors.

4. Communardo Austria commitments

Support and Service Policy: During the period for which Customers have paid the applicable support and maintenance fee (excluding training fee), Communardo Austria will provide Support and Maintenance for the Software in accordance with the Communardo Austria Support. Support and Maintenance for the Software includes access to New Releases, if and when available.

5. License Term and Termination

5.1 License Term: This Agreement is effective as of the Effective date and continues until expiration of License Term, which will be indicated in the Order, unless earlier terminated as set forth herein.

5.2. The License Term and Support and Maintenance period will be indicated in the Order and commence on the Order date (unless a different start date is designated in the Order) and expire at the end of applicable License Term, unless earlier terminated as set forth herein. Any renewals must be mutually agreed upon by the parties in writing.

5.3. Termination: Either party shall be entitled to terminate the Agreement (including all related orders) with immediate effect if the other party (a) breaches any material obligation under this Agreement and, where capable of remedy, such breach is not remedied to the reasonable satisfaction of the aggrieved party within thirty (30) days after written notice; (b) if any bankruptcy or insolvency proceedings are commenced against the other party, or any steps are taken with a view to proposing (under any enactment or otherwise) any kind of composition, scheme of arrangement, compromise or arrangement involving the other party or the other party's creditors or any class of them; (c) if other circumstances occur which make a continuation of the Agreement unreasonable for Communardo Austria.

5.4. After the termination of the Agreement, your license to the Software terminates and Customer must cease using and delete or return (at our request) all Software in your possession. If this Agreement is terminated by Customer in accordance with paragraph 5.3. a) or b) Communardo Austria will refund you any prepaid Software fees covering the remainder of the then-current License Term after the effective date of termination. If this Agreement is terminated by Communardo Austria in accordance with paragraph 5.3. a) or b) Customer will pay any unpaid fees covering the remainder of the then-current License Term after obligation to pay any fees payable to Communardo Austria for the period prior to the effective date of termination.

6. License Fee

Customer will pay all fees in due time and in accordance with each Order. All fees paid are non-refundable, non-cancelable and non-creditable. You agree that we may bill your credit card or other payment method for renewals, expenses and unpaid fees, as applicable.

7. Warranties and Liability

7.1. Customer represents and warrants that it has the legal power and authority to enter into this Agreement and to bind itself to the terms and conditions of this Agreement.

7.2. Communardo Austria represents and warrants that it will take all reasonable commercial efforts to ensure that the Software will be free of any viruses or malware at the time provided to Customer. Communardo Austria sole obligation of breach of before mentioned warranty is to provide a replacement copy of the Software immediately after written notice.

7.3. Notwithstanding paragraph 7.2. all Software and Support and Maintenance are provided "as is" and Communardo Austria expressly disclaim any and all warranties and representations of any kind, including any warranty of non-infringement, title, fitness for a particular purpose, functionality, or merchantability. Communardo Austria will not be liable for delays, interruptions, service failures or other problems inherent in use of the internet and electronic communications outside the reasonable control of Communardo Austria. To the full extent permitted by law, Communardo Austria does not warrant that

- a) the use of Software will be secure, uninterrupted or error-free;
- b) the Software will operate in combination with any other hardware or software;
- c) errors or defects will be corrected; or
- d) except as set forth in paragraph 7.2. the software is free of viruses or malware. The duration of warranty will be limited to 6 (six) months.

7.4. Liability: Neither party will have any liability arising out of or related to this Agreement for any loss of use, lost profits or lost or inaccurate data, interruption of business and any type of special, indirect or consequential loss or damage (including loss or damage suffered by the Customer as a result of an action brought by a third party).

7.5. Notwithstanding the foregoing, Customer will be liable for any amounts owed under any order, breach of paragraph 3.2. and Customer's express indemnification obligation in this Agreement.

7.6. Liability limitation: except for paragraph 7.5., each party's aggregate liability to the other arising out of or related to this Agreement will not exceed the amount actually paid or payable by Customer to Communardo Austria under this Agreement in the twelve (12) months immediately preceding the claim.

8. Intellectual Property Rights

8.1. All copyright, trademarks, rights relating to patents and all other intellectual property used or embodied in or in connection with the Software are the property of Communardo Austria (or its affiliates, as applicable). In the event that Customer challenges the ownership or validity of any of the above rights of Communardo Austria, and without prejudice to any other damages or remedies, Communardo Austria shall be entitled to terminate this Agreement to the extent Customer does not withdraw such challenge within 30 (thirty) calendar days from a written notice served by Communardo Austria expressly pursuant to this paragraph 8.1 demanding such withdrawal.

8.2. Customer shall take all such steps as Communardo Austria may reasonably require to cooperate with and assist Communardo Austria in maintaining the validity and enforceability of the intellectual property of Communardo Austria during the License Term of this Agreement.

8.3. Customer shall, as soon as it becomes aware thereof, give Communardo Austria full details of any actual, threatened or suspected infringement of any intellectual property of Communardo Austria or any claim by any third party that the use of the Software infringes any rights of any other person. Customer shall, at its own expense, do all such things as may be reasonably required to assist Communardo Austria in taking or resisting any proceedings in relation to any such alleged infringement or claim.

8.4. In the event of an intellectual property infringement, Communardo Austria shall be entitled, at its own expense and option either to:

- (a) procure the right for Customer to continue using the Software; or
- (b) make such alterations modifications or adjustments to the Software so that they become non-infringing without incurring a material diminution in performance or function; or
- (c) replace the Software with non-infringing substitutes provided that such substitutes do not entail a material diminution in performance or function.

8.5. If Communardo Austria in its reasonable judgement is not able to exercise any of the options set out in paragraph 8.4. within 180 (one hundred eighty) calendar days of the date it received notice of the intellectual property infringement, then Customer shall be entitled to terminate this Agreement by 30 (thirty) day prior written notice to Communardo Austria.

8.6. Communardo Austria shall have no liability to the Customer in respect of an intellectual property infringement if the same results from any breach of Customer's obligations under this Agreement. In such case, Customer shall indemnify and hold harmless Communardo Austria against any claims, costs, damages, losses or expenses incurred in or arising out of any infringement or alleged infringement by Customer of the intellectual property rights relating to the Software.

9. Confidentiality

9.1. Each party represents and undertakes to the other party that at all times during the License Term and after its termination it shall keep all codes, inventions, know-how and business, technical and financial information confidential(Confidential Information) and accordingly, except as strictly required for the performance of its obligations under this Agreement, it shall not disclose any Confidential Information to any other person or use any Confidential Information for any purpose whatsoever. Each party shall adopt from time to time all the necessary measures to ensure compliance with this paragraph 9. by its employees, agents and sub-contractors (if any).

9.2. The obligations under paragraph 9.1. shall not apply in relation to information which:

- (a) is at the date of this Agreement, or becomes thereafter, of public knowledge other than as result of a breach of paragraph 9.1;
- (b) the disclosing party proves, to the reasonable satisfaction of the other party, that it was already known by the disclosing party at the time of disclosure by the other party;
- (c) either party is required to disclose under applicable law or by any court of competent jurisdiction, any government agency or regulatory body lawfully requesting the same or by the regulations of any recognised stock exchange, provided that the disclosing party promptly notifies the other party and consults with the other party in advance in relation to the timing and content of such disclosure.

9.3. In addition to the above confidentiality obligations, Customer shall:

- (a) keep confidential the Communardo Austria technology and any performance information and limit access to the same to those of its employees, agents and sub-contractors who either have a need to know or who are engaged in the lawful use of the Software and the documentation in accordance with this Agreement;
- (b) immediately notify Communardo Austria if Customer becomes aware of any unauthorized use of the whole, or any part of the, Software by any third party; and
- (c) without prejudice to the foregoing, take all such other steps as shall be necessary to protect the Confidential Information and intellectual property rights of Communardo Austria in the Software.

10. Applicable Law and Jurisdiction

All relations arising out of this Agreement shall be governed by and construed in accordance with the laws of the Republic of Austria, specifically excluding international private law or conflict of law rules. The UN Convention on Sale of Goods shall not apply. The parties agree that any legal action, suit or proceeding arising out of or related to this Agreement must be brought in the court which has competent jurisdiction for the first district of Vienna.

11. Force Majeure

Neither party to this Agreement shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including, but not limited to, fires, strikes (of its own or other employees), insurrection or riots, embargoes, container shortages, wrecks or delays in transportation, inability to obtain supplies and raw materials, or requirements or regulations of any civil or military authority.

12. Waiver

The waiver by either party of a breach or default of any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions, nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

13. Severability

If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect.

The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

14. Entire Agreement

This Agreement contains the entire Agreement between the parties with respect to its subject matter and supersedes any and all previous agreements and understandings between the parties concerning its subject matter.

15. Assignment

Communardo Austria shall have the right, without Customer's consent, to assign all or a portion of its interest in this Agreement to (i) any of its affiliates, (ii) any successor of Communardo Austria that may result from any merger, consolidation, or reorganization; or (iii) any entity that acquires all or substantially all of the business and assets of the operations of Communardo Austria and its affiliates in relation to the Software. The assignee must assume and agree to be bound by all of the terms and provisions of this Agreement, in the event of an assignment of all of Communardo Austria's interest in this Agreement, or by the applicable terms and provisions of this Agreement, in the event of an assignment of less than all of Communardo Austria's interest. This Agreement is personal to Customer, which cannot – without the prior written consent of Communardo Austria (which can be given or refused at Communardo Austria's absolute discretion) – assign, mortgage, charge or dispose of any of its rights, or sub-contract or otherwise transfer (also in case of transfer of going concern or branches of going of concern) any of its obligations, under this Agreement.