



## SOFTWARE LICENSE AGREEMENT

This Software License Agreement (hereafter referred to as the "Agreement") sets forth the terms and conditions under which IDENDEC SOLUTIONS AG (hereafter "IDENDEC", including any and all of its subsidiaries unless explicitly stated otherwise), will license software programs from IDENDEC, for use by its customers (hereafter referred to as the "Customer"). IDENDEC and the Customer are hereinafter collectively referred to as "Parties" and individually as "Party". The Customer's General Terms and Conditions or any other general terms and conditions regarding software, if included in its acceptance offer or offer to IDENDEC, shall not be applicable, even if they were not rejected explicitly in any individual case by IDENDEC. The delivery of any goods or the rendering of any service by IDENDEC shall not imply the acceptance of any conflicting provision, in particular Customer's General Terms and Conditions or any other general terms and conditions regarding software.

### 1. DEFINITIONS.

Defined terms and acronyms with capital letters shall have the meaning defined below. For the avoidance of doubt, the terms and acronyms shall apply only to this Agreement and to no other agreement between the Parties, unless expressly agreed otherwise in this Agreement:

**"Customizations or Modifications"** means Customer-specific development, including changes to the base code as well as interfaces.

**"Documentation"** means any operator and user manuals, training materials, and other materials provided by IDENDEC for use with the Software.

**"Enhancement"** means a generally released revision to or version of the Software that includes features and function enhancements to the Software. The term "Enhancement" shall not include any software revision or version that (i) contains material new features not included in Updates, (ii) may be priced and offered separately as optional additions to the Software and (iii) are not made generally available to similarly situated customers without separate charges. IDENDEC shall determine, at its sole discretion, what does not constitute an Enhancement.

**"Error"** means any failure of the Software to substantially conform to the Documentation.

**"Firmware"** means the software programs that run on non-server based hardware.

**"Functional Specifications"** means the Detailed Functional Specification ("DFS") developed for the Customer in which the process flows, interfaces and hardware requirements are defined. Acceptance of the DFS defines the scope of the Modifications.

**"Hardware"** means the hardware, equipment and other goods to be purchased by the Customer from IDENDEC.

**"Intellectual Property"** means all intellectual property rights, in any jurisdiction, including a) patent rights, rights in circuit layouts, registered designs, trademarks, copyright, and the right to have Confidential Information kept confidential and b) any application or right to apply for registration of those rights.

**"License Fees"** means the license fees set forth in the purchase agreement between IDENDEC and the Customer, if not included in the purchase price.

**"Section"** means a section of this Agreement.

**"Site"** means operational location for which the Software is licensed. The number of sites and or users for which the Customer is licensed to use the Software may be further specified in the purchase agreement between IDENDEC and the Customer.

**"Software"** means the object code version of the software and firmware program(s) purchased by the Customer and includes Updates, Enhancements and Error corrections of such program(s) that may be provided under this Agreement. The term "Software" excludes any Third-Party Software.

**"Specification"** means the functionality set out in the Documentation.

**"Systems"** means the collective software and hardware provided by IDENDEC, according to the Functional Specifications.

**"Third-Party Software"** means any third-party software program(s) required to run licensed Software under this Agreement.

**"Update"** means a generally released revision to or version of the Software that includes updates, Modifications and Error corrections to the Software. Any Update will be made generally available to IDENDEC's customers, at the sole discretion of IDENDEC, and at no cost to the Customer.

### 2. SOFTWARE LICENSE.

**2.1 Grant.** The Software is licensed, not sold. Upon full payment of the License Fees, IDENDEC grants to the Customer for use by the Customer a non-exclusive, non-transferable, non-perpetual license to use the Software and Documentation delivered by IDENDEC to the Customer solely on the basis of the terms and conditions set forth in this Agreement, and only for the Customer's internal business purposes and subject to any limitations described in the relevant detailed functional specification and/or project plan and/or statement of work, whatever the case may be. Upon full payment of all invoices for all deliverables, goods and services under the purchase agreement, the Software license granted to the Customer shall automatically become perpetual and irrevocable. The foregoing shall apply only if the Customer fully complies with all of the terms and conditions of this Agreement.

**2.2 Scope of Rights.** The Customer may:

**2.2.1** Install, use and execute the Software on the server on which it is initially installed for operational use. The Customer may, upon prior written notice to IDENDEC, move the Software to a different server, or, in the event of a disaster, run the Software on a back-up server.

**2.2.2** Use and execute the Software only in connection with internal business operations as defined.

**2.2.3** Use the Software only at the specified Site.

**2.2.4** Make copies of the Software for backup and archival purposes, provided that (a) no more than two (2) copies of the Software are in existence at any one time, and (b) IDENDEC's copyright and other proprietary legends are reproduced on each copy. The Customer shall keep appropriate records of the number and location of all copies and make such records available to IDENDEC upon request. All copies that are made by the Customer shall be the property of IDENDEC.

**2.2.5** Make copies of the Documentation for the Customer's internal use only, provided that IDENDEC's copyright and other proprietary legends are reproduced on each copy.

**2.3 Restrictions.** IDENDEC reserves all rights (such as rights under intellectual property laws) not expressly granted in this Agreement. In addition to other restrictions set forth in this Agreement, the Customer may not:

**2.3.1** Use, copy, modify or distribute the Software (electronically or otherwise) or any copy, adaptation, transcription or merged portion thereof, except as expressly authorized under this Agreement;

**2.3.2** Except as expressly permissible under Section 2.1, use the Software for the benefit of third-parties in a commercial, retail, service bureau or similar enterprise;

**2.3.3** Publish, rent, lease, or lend the Software;

**2.3.4** Work around any technical restrictions or limitations in the Software;

**2.3.5** Except as permitted pursuant to applicable law not capable of variation by contract, reverse assemble and/or decompile the Software or otherwise examine the Software for purposes of reverse engineering; or

**2.3.6** Remove the labels or any proprietary legends from the Software or its Documentation.

**2.4 Title.** IDENDEC reserves all rights not expressly granted. The Customer understands that the license granted herein transfers neither title nor proprietary rights to the Customer with respect to the Software, Documentation, and all material relating to the Software.

2.5 **Right to Audit.** IDENTEC shall have the right, at any time, to audit the Customer's use of the Software and Documentation, including all material relating to the Software, to monitor compliance with this Agreement. Notwithstanding the provisions of Section 4. and 11., if an audit reveals that the Customer has exceeded the restrictions on use, the Customer shall pay for the cost of the audit and any additional license fees and support fees charged by IDENTEC for such established usage.

2.6 **Third-Party Software.** The Customer acknowledges and agrees that each Third-Party Software product is the property of the respective third-party owner or licensor and that the Customer has no right or title, nor will it assert any right or title, in the same except as expressly granted in writing by the terms and conditions of such third-party's license or purchase agreement. All Third-Party Software provided to the Customer under this Agreement shall be used only in accordance with the applicable license from the third-party and only in conjunction with Software.

2.7 **Ownership of Customizations.** IDENTEC shall own all right, title and interest (including all associated intellectual property rights) in and to any Customizations, Enhancements, Modifications, improvements, derivations, extensions or other changes to the Software and/or Documentation, including any that result from the joint efforts or collaboration of IDENTEC and the Customer. In no event, however, shall the Customer have any right to make such changes to the Software and the Documentation.

2.8 **Services.** The License Fees shall not cover any fees for providing any services, including without limitation, training, support and maintenance, and implementation services. Services to be provided by IDENTEC shall be set forth in a separate written agreement mutually agreed by the Parties.

### 3. TERM.

This Agreement shall begin once the purchase agreement between IDENTEC and the Customer, in connection with the Software, becomes effective, or usage of the Hardware, Software, Documentation and/or any other goods supplied by IDENTEC, whatever occurs first. This Agreement shall remain in full force and effect until the purchase agreement between IDENTEC and the Customer, in connection with the Software or this Agreement, has been terminated.

### 4. TERMINATION FOR BREACH.

4.1 This Agreement may be terminated by either Party upon written notice with immediate effect, if the other Party:

4.1.1 is in material or persistent breach of any of its obligations under this Agreement and either that breach is incapable of remedy, or that Party has failed to remedy such breach within 20 (twenty) days after receiving written notice requiring it to do so; or

4.1.2 ceases trading, is unable to pay its debts, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer is appointed over all or any substantial part of its assets, or is subject to any analogous act or proceeding under foreign law to any of those mentioned in this Section 4.1.2, or in each case, if the other Party has reasonable cause to suspect that any of the events in this Section 4.1.2 is likely to happen.

4.2 The Software license granted pursuant to Section 2.1 shall lapse immediately on written notice,

- a) if the Customer is in material or persistent breach of any of its obligations under this Agreement and either that breach is incapable of remedy, or that the Customer has failed to remedy such breach within 20 (twenty) days after receiving written notice requiring it to do so; or
- b) if the purchase agreement between IDENTEC and the Customer in connection with the Software has been terminated or otherwise becomes ineffective.

### 5. POSTTERMINATION RIGHTS.

5.1 Upon the termination of this Agreement, all rights granted to the Customer under this Agreement shall forthwith terminate and immediately revert to IDENTEC and the Customer shall discontinue all use of the Software, the Documentation, and the like.

5.2 Upon termination of this Agreement, IDENTEC may require that the Customer transmits to IDENTEC, at no cost, the Software, all material relating to the Software, including any documentation, or destroy it and furnish definite proof of its destruction. This shall also apply to Software that has been modified or combined with other programs.

### 6. FEES AND PAYMENT TERMS.

6.1 The Customer shall pay IDENTEC the License Fees set forth in IDENTEC's *General Terms of Delivery* or as otherwise agreed between the Parties in a purchase agreement. Unless otherwise explicitly agreed, the License Fees shall be payable in full by the Customer upon the execution of this Agreement, or usage of the Hardware, Software, Documentation and/or any other goods supplied by IDENTEC, whatever occurs first.

6.2 The License Fees do not include any amounts for taxes and/or customs. The Customer shall pay all applicable taxes and/or customs levied by any tax authority or any other competent authority based upon this Agreement, the Software and/or for any services performed by IDENTEC.

### 7. ADDITIONAL RESPONSIBILITIES OF THE CUSTOMER.

The Customer shall allow remote access, on each server on which the Software is installed, and at the Customer's sole expense, for IDENTEC's use on a twenty-four hour, seven-days-per-week basis.

### 8. WARRANTIES.

8.1 **Software.** IDENTEC warrants that the Software will operate in substantial conformance with its then-current Documentation for a period of ninety (90) days after the Software is installed by IDENTEC on the server. IDENTEC agrees to correct or replace a material non-conformity of which it receives written notice during the warranty period. Notwithstanding the foregoing, the warranty set forth in this Section 8.1 shall not apply to Updates, Enhancements and Error corrections. IDENTEC's sole obligation to the Customer, and the Customer's exclusive remedy for breach of this warranty, is the correction or replacement of any non-conformity. The Customer shall provide IDENTEC with written notice that non-conformity exists, and IDENTEC shall have a reasonable period of time, based on the severity of the non-conformity, to correct the Software. IDENTEC further warrants that to the best of its knowledge, the Software does not contain any viruses.

8.2 **Exclusions/Disclaimer.** IDENTEC's warranty obligations and other obligations under this Agreement with respect to the Software, are expressly conditioned upon the Customer's proper use of the Software, as well as the Customer's compliance with the warranty conditions as specified in clause 8.3 of IDENTEC's *General Terms of Delivery*, and do not include:

8.2.1 Support or correction of errors or increases in service time that result from (a) accident, neglect, misuse or use other than ordinary use; (b) failure of electrical power, air conditioning, or humidity controls that cause a computer failure; and (c) modifications made to the Software by other than a representative of IDENTEC;

8.2.2 Problems and errors that IDENTEC cannot reproduce;

8.2.3 Problems relating to or caused by any hardware, Third-Party Software, or software that was not supplied or authorized in writing by IDENTEC. Problems relating to or caused by any hardware, Third-Party Software, or software that was not supplied or authorized in writing by IDENTEC. For purposes of clarification, IDENTEC shall not be responsible or incur any liability hereunder, on whatever grounds, for any error, defect, or malfunction of the Software which is caused by, or results from, any installation or delivery of the Software by any other third-party, or by the Customer prior to the effective date of this Agreement;

8.2.4 Problems relating to or caused by changes in, or modifications to, the operating characteristics of any computer hardware or operating system for which the Software is procured.

8.2.5 Errors, defects, and malfunctions that are traceable to the Customer's errors or system changes shall be billed at IDENTEC's time-and-material charges, including out-of-pocket expenses.

8.2.6 THE ABOVE ARE LIMITED WARRANTIES AND THEY ARE THE ONLY WARRANTIES MADE BY IDENTEC WITH RESPECT TO THE SOFTWARE, EXCEPT THAT IDENTEC AGREES TO PASS THROUGH ANY WARRANTIES EXTENDED FOR THIRD-PARTY SOFTWARE INCORPORATED INTO THE SOFTWARE. IDENTEC MAKES AND THE CUSTOMER RECEIVES NO OTHER WARRANTY WITH RESPECT TO THE SOFTWARE, EXPRESS OR IMPLIED AND IDENTEC DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IDENTEC SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT FOR CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR INCIDENTAL DAMAGES EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE CUSTOMER AGREES THAT IDENTEC'S LIABILITY IN CONNECTION WITH THE SOFTWARE, WHETHER ARISING IN CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT OR WARRANTY OR ANY OTHER LEGAL THEORY SHALL NOT EXCEED THE AMOUNT PAID BY THE CUSTOMER TO IDENTEC FOR THE LICENSING OF THE SOFTWARE.

## 9. CONFIDENTIAL INFORMATION.

9.1 As used in this Section 9., "Confidential Information" means and includes the Software Specifications, Documentation, terms of this Agreement, and any information regarding either Party's business, operations or activities. Both Parties understand that the Software and Documentation comprise Confidential Information and know-how that are the exclusive property of IDENDEC.

9.2 Except as otherwise provided in this Agreement, each Party agrees that it shall not use or disclose to any third-party any Confidential Information of the other Party for any reason, except to its employees, subcontractors or advisors who require such knowledge in the ordinary course of their employment or service for such Party. Each Party shall take all necessary action to ensure that its employees, subcontractors or advisors comply with the confidentiality provisions of this Section 9..

9.3 The receiving Party shall promptly inform the other Party if any confidential information has been in possession of the receiving Party prior to its disclosure, such information has become known, or is required to disclose such information by order of court, competent authority or a third-party. Either Party shall be obliged to impose the same confidentiality obligations, as set forth in this Section 9., to any third-party used for the fulfillment of their services.

9.4 Both Parties shall be authorized to take actions that are necessary to ensure compliance with the terms of this Agreement, including, without limitation, inspection of premises.

9.5 The obligations set forth in this Section 9. shall not apply to any information that (a) is publicly available; (b) is obtained by the receiving Party from a third-party as a matter of right; (c) is already known or independently developed by the receiving Party; or (d) is required to be disclosed by law. Furthermore, it is agreed that IDENDEC may disclose any Confidential Information to, and exchange the same between its affiliates, as it deems necessary under the condition that the affiliate will treat such information as stated under this Section 9..

9.6 Section 9. will continue for an indefinite period, at minimum, however, for a period of five (5) years from the date the contract between IDENDEC and the Customer became effective and will inure to the benefit of and bind the successors and assigns of the Parties hereto.

## 10. INTELLECTUAL PROPERTY INDEMNIFICATION.

10.1 **Scope.** IDENDEC, at its sole discretion, reserves the right to indemnify and defend the Customer against any claim or action brought by any third-party for actual or alleged infringement of any patent, copyright, or trade secret based upon the Customer's own internal use of the Software in accordance with this Agreement. IDENDEC shall have the sole right to conduct the defense of any claim or action and all negotiations for its settlement, unless the Parties agree otherwise in writing.

10.2 **Notice.** IDENDEC shall give the Customer prompt written notice of any threat, warning, or notice of any claim or action that could have an adverse impact on IDENDEC's rights in the Software.

10.3 **Alternatives.** IDENDEC shall not be responsible for any settlement entered into without its consent. In the event of a claim or action under Section 10.1, IDENDEC may, at its sole discretion, (a) procure for the Customer, the right to continue using the Software; (b) provide a substitute, non-infringing Software; or (c) terminate any contract between the Parties in connection with the Software and refund the License Fees paid by the Customer, less depreciation using a five-year, straight-line method of calculation.

10.4 **Exclusions.** IDENDEC shall have no obligation under this Section 10. with respect to any claim or action that is based upon or caused by: (a) the Customer's use of the Software in breach of any term or condition of this Agreement; (b) use of the Software in combination with any equipment, product, software, data or system not provided or authorized in writing by IDENDEC; (c) modification of the Software other than by a representative of IDENDEC; (d) use of any version of the Software other than the most current version of the Software, where use of the most current version would have avoided the claim of infringement.

10.5 **Sole Remedy.** This Section 10. states IDENDEC's sole responsibility and obligation, and the Customer's sole and exclusive remedy for any infringement claim.

## 11. PENALTIES.

If the Customer fails to comply with the provisions laid down in this Agreement, the Customer will be liable to a penalty in the amount stipulated below. Thus, the Customer shall pay IDENDEC a penalty per week of default with the terms of conditions of this Agreement, of 1% (one percent) of the total charges to be paid under the purchase agreement between IDENDEC and the Customer in connection with the Software. The Customer's total liability for penalties in such a

case shall be limited to a maximum of 15% (fifteen per cent) of the total price payable under the aforesaid purchase agreement.

## 12. MISCELLANEOUS.

12.1 **Customer List; Press Release.** The Customer hereby authorizes IDENDEC to use the Customer's name in its list of customers, which IDENDEC may publish from time to time. IDENDEC shall not use the Customer's name in any press release that is not approved in advance by the Customer.

12.2 **Assignment.** The license granted hereunder is personal to the Customer and may not be assigned by any act of the Customer or by operation of law unless in connection with a transfer of all or substantially all of the assets of the Customer or with the written consent of IDENDEC.

12.3 **Changes.** IDENDEC reserves the right to amend, change or modify this Agreement at any time at its sole discretion.

12.4 **Notices.** Any notice or other communication required or permitted under this Agreement in writing shall be deemed delivered when mailed, by certified mail-return receipt requested, postage prepaid to the principal place of business address of the Party concerned.

12.5 **Excusable Delays.** Neither Party shall incur liability to the other Party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement, excluding payment obligations, where such failure is caused in whole or in part by events, occurrences, or causes beyond the reasonable control of the Party.

12.6 **Statute of Limitations.** No Party may commence an action under this Agreement in the event of a breach, more than one (1) year after the occurrence of the breach, or, in the event the breach is not discovered by the injured Party when it has occurred, more than one (1) year after the breach could, in the exercise of due diligence, have been discovered by such Party.

12.7 **Export Controls.** Both Parties acknowledge that the laws and regulations of Austria, Norway, Germany, the European Union, the United States of America and other applicable countries may restrict the export and re-export of commodities and technical data of the respective origin. Both Parties acknowledge and agree to comply with all applicable local and international export and re-export restrictions and regulations ("Export Controls Laws") with respect to the use of the Software. Each Party shall indemnify and hold the other Party harmless from and against any liability, losses, demands, damages, claims and expenses arising out of or connected with any violation or breach of any Export Controls Laws.

12.8 **Additional Terms.** Depending on the capabilities of the product which the Customer has purchased from IDENDEC, how it is configured, and how the Customer uses it, additional IDENDEC and third-party terms may apply to the use of certain features and services regarding the Software. For all conditions not covered by this Agreement, IDENDEC's *General Terms of Delivery* shall apply. In case of a conflict between the provisions of this Agreement and those of the IDENDEC's *General Terms of Delivery*, including any referenced documents thereto, or any other documents the provisions of this Agreement shall take precedence.

12.9 **Severability.** If any provision of this Agreement is prohibited or unenforceable by any applicable law, the provision shall be ineffective only to the extent and for the duration of the prohibition of the unenforceability, without invalidating any of the remaining provisions.

### 12.10 Anti-Corruption.

12.10.1 Without limiting the obligation to comply with applicable laws and regulations in accordance with this Agreement, the Parties represent, warrant, covenant and agree that either Party and their officers, directors, employees, agents, representatives and sub-suppliers and their contractors and subcontractors will not, directly or indirectly, in any way that relates to this Agreement (1) offer, promise, pay, give, or authorize any financial or other advantage, or anything else of value, to any other person or organization, with the intent to exert improper influence over the recipient, induce the recipient to violate his or her duties, secure an improper advantage, or improperly reward the recipient for past conduct; (2), offer, promise, pay, give, authorize, request or receive an improper advantage, or accept an offer thereof, in connection with a position, office or assignment; or (3) request, receive or accept, for the benefit of himself or anyone else, any financial or other advantage, or anything else of value, as an inducement or a reward for violating a duty of loyalty to IDENDEC or the Customer, or improperly performing a function that relates in any way to this Agreement or to the Parties.

12.10.2 All financial settlements, billings and reports rendered to a Party from the other Party shall properly reflect the facts about all activities and transactions handled for the account of the other Party. The data may be relied upon as being complete and accurate in any further recordings and reporting made by a Party or its representatives for whatever purpose.

12.10.3 A Party shall, upon the other Party's request, give a written statement to the other Party confirming that it has complied with all requirements of Section 12.10.

12.10.4 A Party shall immediately report to the other Party, any act or omission which could possibly be seen as a breach of Section 12.10. In such instances the Party giving notice shall give the other Party access to all documents which in the Party's reasonable opinion may be relevant to determine whether such a breach has occurred. Either Party shall also immediately report to the other Party, any requests or solicitations for advantages or anything of value as mentioned in Section 12.10.1.

12.10.5 Both Parties shall require their sub-suppliers and their suppliers and sub-suppliers, contractors and subcontractors to agree to and comply with contractual provisions substantially identical to those contained in Section 12.10.

12.11 **Jurisdiction and Governing Law.**

12.11.1 All disputes or claims arising out of or in connection with this Agreement, including disputes relating to its validity, breach or nullity, shall fall within the exclusive jurisdiction of the competent court at IDENDEC's domicile. This Agreement is subject to Austrian law, excluding any referral rules. The UN Convention on Contracts for the International Sale of Goods (CISG) and any other international convention shall not apply with regard to this Agreement.

12.11.2 In the event the Customer is incorporated in a country which is not a member state of the European Union (EU) or the European Economic Area (EEA), the following shall apply within Section 12.11:

All disputes or claims arising out of or in connection with this Agreement, including disputes relating to its validity, breach, termination or nullity, shall be finally settled under the rules of Arbitration of the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna ("Vienna Rules") by one (1) arbitrator appointed in accordance with the said Vienna Rules. The provisions on expedited proceedings shall be applicable. The governing law of this Agreement shall be the substantive law of Austria. The UN Convention on Contracts for the International Sale of Goods (CISG) and any other international convention shall not apply with regard to this Agreement. The seat, or legal place, of arbitration shall be Vienna, Austria. The language to be used in the arbitral proceedings shall be English.

12.12 **Agreement binding on Successors.** This Agreement shall be binding on and shall inure to the benefit of the Parties hereto, and their heirs, administrators, successors, and assigns.

(Effective from 01.01.2016)