



SOFTWARE LICENCE AGREEMENT

Version 09-2020

PREAMBLE

The purpose of this Agreement is to set forth the mutual rights and obligations between the Licensor Commend International GmbH and the Licensee mentioned below.

DEFINITIONS

CONSUMER - any natural person engaging in any activity for purposes outside his/her trade, enterprise, profession or occupation.

DEVICE - a (physical or virtual) hardware system with an internal memory capable of running the Software.

DOCUMENTATION - the description of features of the Software and/or Devices and/or instructions for the same provided in writing by Commend.

EMBEDDED SOFTWARE - the Software built into the physical devices by Commend.

ENTREPRENEUR - any natural or legal person engaging in any activity for purposes in connection with his/her trade, enterprise, profession or occupation, no matter whether publicly or privately owned ("Entrepreneur" pursuant to sec. 1 of the Austrian Business Code ("UGB")).

LICENCE - the present Agreement

ORDER - a contract between yourself and Commend and/or its affiliated companies as agreed upon.

SOFTWARE - the computer programs of Commend in their executable object code format, as well as any and all digital contents (e.g. files, data or manuals) related thereto, issued, distributed or provided to you in any other way by Commend or its affiliated companies. "Software" shall be deemed to include Upgrades, bug fixes or patches.

SPECIAL RISK AREAS - Areas requiring trouble-free, reliable, and/or permanent operation of the Software and/or Devices where failure of the Software and/or Devices may cause direct danger to life and limb, to the health or safety of individuals or to public health or safety, private or public property or the environment. Such risk areas shall include but not be limited to nuclear power plants, hospitals, prisons or emergency call systems.

UPDATE - a data set or executable programs to modify the Software for the purpose of minor improvements, error correction and bug-fixing. Updates are free of charge.

UPGRADE - a major Software modification usually including new features and functionalities. Upgrades are not free of charge.



WARRANTY - the statutory liability for delivering goods and services free from defects and shortfalls ("Warranty") pursuant to sec. 922 et seq. of the Austrian General Civil Code ("ABGB"); it shall not be interpreted as constituting a guarantee.

SCOPE OF APPLICATION

This Licence shall regulate the use of Commend Software as described in the Order and Documentation. It shall also apply to Updates, Upgrades and any other extension of Software unless they are subject to other conditions of licensing.

LICENSING

It is recorded that this Licence shall be valid only in conjunction with the sale of Software and in connection with the use of this Software for its intended purpose. This scope is described in the product data sheets. Therefore, any sublicensing is explicitly prohibited unless agreed upon in writing in any specific case. Making copies of Software for the purpose of passing them on to third parties is also prohibited.

Commend reserves any and all rights not explicitly granted to you in the Order or in this Licence. By this Licence you shall not acquire any rights other than the right to use the said Software according to the conditions of the Order or of this Licence.

PERMITTED USE

You shall have the limited right to use the software exclusively for your business activities and according to the Documentation, the conditions of this Licence and subject to any individual regulations contained in the Order.

LICENCE METRIC - Depending on your individual Order the following licence metric shall apply:

- 1) **NODE LOCKED (Licence per Device):** The Licence is tied to a specific Device permitting to use the Software for this Device. By activating the Software via Commend Licence Server the registration code is tied to the host ID (the unique serial number of your Device). The Licence can be transferred to another Device by performing the activation process for the new Device after deactivating and deleting the Software from the previous Device.
- 2) **NAMED USER:** Using the Licence is reserved to a person named in the Order. You are allowed to install the Software (in "user mode") on several Devices provided that it is used



on these systems exclusively by the named person. Simultaneous and/or parallel use of the Software on various systems is not permitted. The Licence can be transferred to another individual by email to Commend at order@commend.com provided that it can be proven that the initial user to whom the Licence has been granted is not in a position to use the Software any more.

- 3) **CONCURRENT USER (Floating User Licence):** The Licence is granted to a number of users (Devices and/or persons) specified in the Order. The users are entitled to use the Software simultaneously subject to the condition that you do not exceed the number of simultaneous users for which you acquired the Licence at any time.
- 4) **EVALUATION LICENCE:** You are allowed to use the Software as standalone exclusively for demonstration and evaluation purposes for a period of up to 30 days from installation. You are not allowed to use the Software for your business (commercial or profit making purposes).

Depending on your Order the Software may be tied to one or several Licence metrics.

BACKUPS: You are allowed to make Software backups, however only to the extent required for data security. The backups shall be used exclusively for re-installation of the Software. You are not allowed e.g. to pass on any such backups to third parties or to install and/or run the Software on a backup server or mirror server in order to improve the security of your IT infrastructure.

LIMITATIONS: The following shall be prohibited:

- Publication of the Software;
- Passing on the Software to any third party unless required for ensuring proper functioning of the communication system in the operations of the buyer or its customer;
- Any adjustment, modification and/or preparation of any derived work constituting derivatives of the Software as a whole or in part;
- Renting out, letting or leasing the Software to third parties with the exception of temporary disclosure to third parties and use by third parties exclusively for putting the communications system into operation, maintenance and presentation thereof, strictly limited to the period during which any such service is provided;
- Sublicensing to third parties;
- Circumvention of technical measures within the software;
- Making more copies than explicitly permitted by this Licence;



- Reverse engineering, decompiling or disassembling the Software and/or Devices or any attempt to do so. If this is permitted by law and you intend to reverse engineer, decompile or disassemble the Software in order to obtain any information you need in order to achieve interoperability with any other program created independently you have to contact Commend in advance and request the required information. If Commend provides the required information within a reasonable period of time you shall be prohibited from reverse engineering, decompiling or disassembling the Software.
- Removing, changing or concealing any copyright, trademark or any other information on property rights, serial numbers and/or labels on or within the software.

SPECIAL RISK AREAS: It is prohibited to use the Software and/or Devices in Special Risk Areas unless you have obtained the explicit prior consent of Commend or if the use in such areas is explicitly recorded in the Order or in the Documentation of the Software.

THE SYSTEM ENVIRONMENT IS YOUR OWN RESPONSIBILITY

It is exclusively your responsibility

- to provide a hardware and software environment in proper working order meeting the system requirements of the Software according to the Documentation,
- to prevent data loss by regular backups,
- to ensure the desired security of your hardware and software environment.

PRODUCT ACTIVATION AND VALIDATION OBLIGATIONS

The **ACTIVATION PROCESS:** Your Commend Software product may include an activation obligation tying the use of the Software to a specific Device and preventing any unauthorised use. Where activation is mandatory you will not be in a position to use the Software before performing the activation process as described in the Documentation. During the activation process the Software transmits information about the Software (version ID, Licence version, registration code) and about the Device (IP address, host ID, hardware and software configuration, customer information including your name, project name and email address) to Commend.

VALIDATION: The Software may require validation from time to time in order to check whether you hold a licence to use it - and if so - whether it has been activated. During the validation process the Software transmits information about the Software, the Device and the result of the validation check to Commend. This includes Software version ID, Licence version, registration



code, hardware and software configuration and the IP address of the Device. If the validation check is unsuccessful the software is disabled until you have re-established the Licence status.

PROVIDING INFORMATION & UPDATES

CRITICAL SECURITY ISSUES: Commend will keep you informed with respect to any critical security issues relating to the Software and/or Devices becoming known to it on its website www.commend.com for a period of two years from the date of release.

UPDATES: Commend is in a position to offer updates, bug fixes or patches for the Software free of charge for a period of two years from the date of release (see release note in the Documentation).

LIMITED MAINTENANCE: Commend shall under no circumstances be obliged to provide maintenance for the Software and/or Devices, report any security issues or provide any Updates for a period exceeding two years from the date of release (see release note in the Documentation).

LIMITED WARRANTY

The Software is in proper working order as agreed upon and meets the requirements of normal use as described in the Order and Documentation. It has the usual quality of software of this type and is in accordance with generally accepted engineering rules.

The Warranty period shall be limited to 12 months from the date of delivery by Commend or its affiliated companies.

SPECIAL RISK AREAS

Commend does not warrant or guarantee that the Software and/or Devices are suitable for application in Special Risk Areas unless such use is explicitly permitted by Commend according to the Order or Documentation.

UNAUTHORISED MODIFICATION:

Any unauthorised modification of the Software and/or Devices shall void any Warranty or guarantee.



OBLIGATION OF INSPECTION AND GIVING NOTICE OF DEFECTS

YOU ARE OBLIGED TO CHECK THE SOFTWARE AND TO REPORT ANY DEFECTS OR FAULTS TO COMMEND PURSUANT TO SEC. 377 OF THE BUSINESS CODE. IN ORDER TO COMPLY WITH THIS OBLIGATION CHECK WHETHER THE DEVICES AND/OR SOFTWARE ARE COMPLETE AND IN PROPER WORKING ORDER WITHIN 10 WORKING DAYS FROM DELIVERY. ANY DEFECTS AND FAULTS YOU DISCOVER OR WHICH WOULD BE DISCOVERED BY A THOROUGH AND CAREFUL INSPECTION MUST BE REPORTED TO COMMEND IN WRITING WITHOUT DELAY ("NOTICE OF DEFECTS") DESCRIBING THE DEFECTS OR FAULTS DISCOVERED. THIS OBLIGATION SHALL ALSO EXTEND TO ANY AND ALL UPDATES OR UPGRADES OF THE SOFTWARE AND CORRECTIONS AS WELL AS ANY REPLACEMENT SOFTWARE DELIVERED UNDER THE LIMITED WARRANTY IN THIS LICENCE. PROOF THAT ANY DEFECT OR FAULT EXISTED AT THE TIME OF DELIVERY MUST BE FURNISHED BY YOU.

YOUR EXCLUSIVE REMEDIES:

IN CASE OF ANY BREACH OF WARRANTY YOUR EXCLUSIVE REMEDY SHALL BE AT THE ELECTION OF COMMEND: A) CORRECTION OR B) REPLACEMENT OF THE FAULTY SOFTWARE AND/OR DEFECTIVE DEVICE, OR C) REIMBURSEMENT OF THE LICENCE FEE PAID SUBJECT TO THE CONDITION THAT YOU SHALL DELETE THE SOFTWARE FROM ANY AND ALL DEVICES WHERE IT HAS BEEN INSTALLED AND RETURN ALL DATA CARRIERS CONTAINING THE SOFTWARE AND/OR THE DEVICES TO COMMEND. IF CORRECTION OR REPLACEMENT OF THE FAULTY SOFTWARE IS NOT POSSIBLE WITHIN A REASONABLE PERIOD OF TIME OR IF CORRECTION OR REPLACEMENT WOULD ENTAIL UNREASONABLE INCONVENIENCE FOR YOU YOU SHALL BE ENTITLED TO CANCEL THIS AGREEMENT. IN THIS CASE COMMEND WILL REIMBURSE THE LICENCE FEE SUBJECT TO THE CONDITION THAT YOU SHALL DELETE THE SOFTWARE FROM ANY AND ALL DEVICES WHERE IT HAS BEEN INSTALLED AND RETURN ALL DATA CARRIERS CONTAINING THE SOFTWARE AND/OR THE DEVICES TO COMMEND.

LIMITATION OF LIABILITY

Commend does not assume liability for any loss or damage caused by slight negligence. In case of gross negligence the liability of Commend shall be limited to three times the licence fee paid by you for the faulty Software and/or defective Device.

RELEASE FROM LIABILITY AND ACCUSATIONS BY THIRD PARTIES

You shall indemnify and hold harmless Commend and its affiliated companies, managing directors, staff and agents with respect to any loss, damage or costs directly or indirectly incurred



due to A) your actions and omissions in connection with running the Software and/or operating the Devices, or B) any violation of this Licence Agreement on your part.

In the event that any third party accuses you of violation of its intellectual property rights as a result of using the Software and/or Devices you shall inform Commend without delay. Commend will provide you with information including documentation for the purpose of defending any such claims to the extent that Commend is in a position to do so without infringing against its obligations vis-à-vis third parties while safeguarding its own interests with respect to secrecy.

THIRD PARTY SOFTWARE PRODUCTS

The Software may contain third-party software already now or at a later date requiring notification and/or additional terms and conditions. These notifications and/or terms and conditions of third-party manufacturers are valid. Furthermore, attention is drawn to the Open Source Compliance Information on the Commend website.

SECRECY

When this Licence is issued you may have access to confidential information (e.g. the source code of the Software, information on prices, knowhow). You shall keep any such information secret. Furthermore, you shall carefully and securely store any data and documents which are clearly marked confidential in order to prevent any access by unauthorised parties.

CONSENT TO THE USE OF DATA

Commend and its affiliated companies may collect and use any technical information recorded in the course of the software activation process, validation process and/or as part of support services for testing and analysing purposes. Commend may use this information exclusively for verifying compliance with the Licence on your part and for improvement of its products and services. This data will be disclosed exclusively in anonymised form. For using Commend online services the **Privacy Policy** is specified in detail under the following link:

<https://symphony.commend.com/en/resources/symphony-privacy-policy.html>

TERMINATION

This Licence may be terminated by Commend if you do not comply with the applicable provisions and fail to discontinue any infringement within one month after having been requested to do so by Commend in writing. In this case you shall refrain from any further use of



the Software and/or Devices and return any and all data carriers on which the Software is stored and/or the Devices without delay. Termination shall not affect your obligation to pay the licence fee, and the provisions on the limitation of Warranty or liability, indemnity, and all the other provisions intended by their nature to survive termination of the contract shall remain in force and effect.

MISCELLANEOUS

MODIFICATIONS OF THE LICENCE: Deviating provisions in an Order shall supersede the corresponding provision in this Licence. Any modifications of or amendments to this Licence including this clause shall be valid only when executed in writing.

FORCE MAJEURE: Commend does not assume liability for non-performance or delayed performance in case of unforeseen circumstances or events beyond the reasonable control of Commend, including but not limited to Acts of God, wars, hostile acts, sabotage, strikes and labour conflicts, embargos, orders from governmental authorities, as well as any interruptions of power supply, internet or telecommunications services not caused by Commend or, any other events of Force Majeure.

SEVERABILITY CLAUSE: Should any provisions of this Licence be or become invalid or unenforceable or should this Licence contain any loopholes this shall not affect the validity of the remaining provisions of the contract. The invalid provision shall be replaced with a valid provision deemed agreed upon between the parties with effects coming as close as possible to the commercial intention of the provision actually agreed upon.

CHOICE OF LAW: This Licence shall be subject to the laws of the Republic of Austria excluding the conflict of law rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

PLACE OF JURISDICTION: For all purposes of this Licence and/or in connection with the said licence (e.g. in case of any dispute or claims) each party submits to the exclusive jurisdiction of the Bezirksgericht Salzburg (Salzburg District Court) or Landesgericht Salzburg (Salzburg Regional Court).