

TimeXtender DWA Subscription T&C

This "TimeXtender DWA" License Schedule describes the specific terms and conditions under which Agilos grants a license on the "TimeXtender DWA" Software to End User. This User License Agreement contains the terms and conditions under which you (the "Licensee") agrees to license the Software from TimeXtender.

1. DEFINITIONS.

The following terms shall have the meanings set forth below:

"Documentation" means all and any electronic and written aids and specifications developed by TimeXtender in relation to the Software, for which the Licensee has acquired the right of use from time to time, and any descriptions developed by TimeXtender in relation to the Software. "Education Materials" means all existing TimeXtender manuals, books, presentations, computer-based training and tools in relation to the Software and all revisions thereof. "Software" means (i) all software products identified in a Supplemental Schedule; (ii) the related Documentation; (iii) the related Updates and Upgrades to such Software and Documentation; (iv) modifications and improvements of such Software, Documentation, Updates and Upgrades; and (v) all copies of the foregoing. "Software Assurance" shall have the meaning set forth in Section 4, below. "TimeXtender" means TimeXtender A/S, a company incorporated under the laws of Denmark with company registration number 29216711. "Updates" means error corrections and Software Assurance releases to the Software which have been developed by TimeXtender. "Upgrades" means software enhancements that accomplish incidental, structural, functional, and performance improvements.

2. OWNERSHIP.

Licensee acknowledges that the Software, Documentation and Education Materials and all copyright, trade secrets and other right, title and interest therein, are the sole property of TimeXtender and that Licensee shall gain no right, title or interest in the Software, Documentation and Education Materials by virtue of this Agreement other than the non-exclusive right of use granted in Section 3.

3. LICENSE OF SOFTWARE

Agilos grants to Licensee a personal, non-transferable, and non-exclusive right and license to use the Software. Licensee warrants and agrees that the Software will be used only in accordance with the terms, conditions and limitations set forth in the Agreement, and only for the benefit of Licensee and its subsidiaries.

4. SOFTWARE ASSURANCE.

Provided that the Licensee has purchased Software Assurance, the Licensee has the right to receive Updates and Upgrades to the software. When Software Assurance is purchased with a perpetual license, the Software Assurance will run for one year (12 months) and will automatically renew, unless Licensee in writing have terminated the renewal with 60 days' notice to the anniversary date. When a license is obtained through subscription, the Software Assurance is included during the period the subscription is obtained. Nothing in this Section shall entitle Licensee to receive Software which is separately priced and licensed by TimeXtender as a new product.

5. WARRANTY.

TimeXtender warrants to Licensee that the Software does not violate any copyright or patent or other third party intellectual property right. TimeXtender's sole obligation and liability in respect to a breach of this warranty shall (to the extent possible) be to modify or replace the Software to eliminate the infringement.

6. DISCLAIMER OF OTHER WARRANTIES.

Except as provided in Section 5, all warranties, conditions, representations and guarantees, whether express or implied, arising by law, custom, oral or written statements of TimeXtender or Agilos (including, but not limited to, any warranty or condition as to merchantability, satisfactory quality or fitness for particular purpose or of error-free and uninterrupted use of any Software including Updates and Upgrades) are hereby superseded, excluded and disclaimed.

7. REMEDY LIMITATIONS - LIMITATIONS OF LIABILITY.

In no event, shall Agilos be liable to the Licensee for any: (a) loss of profits or loss of revenue; (b) loss of production or loss of contracts; (c) loss of goodwill; (d) third party claims; (e) loss of data or interruption in its use or availability; or (f) consequential, incidental or indirect loss; incurred by Customer. Furthermore, Agilos shall not be liable for any decision made by Licensee based on the results of the use of the Software made by Licensee.

In any event (including without limitation if any exclusion or other provision contained in this Section shall be held ineffective for any reason), the maximum aggregated liability of Agilos whether arising from negligence, breach of contract, misrepresentation or otherwise shall not in any circumstances exceed the fees payable by Customer to Agilos under this Agreement for a one (1) year period.

The limitations of Agilos' liability set out in this Section 7 shall apply to the furthest extent permitted by applicable law.

8. ASSIGNMENT.

This Agreement is personal to Licensee and neither this Agreement nor any of Licensee's rights or duties hereunder shall be assigned, sublicensed, sold or otherwise transferred by Licensee, including to any successor- in-interest to Licensee's rights without Agilos' prior written consent (which consent shall not be unreasonably withheld).

9. TERMINATION.

This Agreement will be cancelled on 60 days written notice together with all license rights granted herein should the Licensee failed to pay any sum of money owing to the Licensor within 60 days of the contractually due date

10. GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and interpreted in accordance with Luxembourgish law. Any controversies or disputes arising out of or relating to this Agreement that cannot be settled amicably

shall be resolved by binding arbitration in accordance with the Luxemburgish legislation.

11. SEVERANCE.

Each of the provisions of this Agreement is distinct and severable from the others and if at any time one or more of such provisions is or becomes invalid, unlawful or unenforceable (whether wholly or to any extent), the validity, lawfulness and enforceability of the remaining provisions (or the same provision to any other extent) of this Agreement shall not in any way be affected or impaired.

12. FORCE MAJEURE.

Neither party shall be liable for any delays or failures to the extent that such delay or failure is caused, directly or indirectly, in whole

or in part, by fire, flood, explosion, casualty, accident, acts of God or natural catastrophe, war, riot, strike, lock-out or other labour dispute or industrial disturbance, embargo, law, regulation, ruling, order or requirement of any government or government agency or authority, court, tribunal or military authority, shortage or failure of, or any other cause or circumstance beyond Agilos reasonable control.

13. ENTIRE AGREEMENT.

This Agreement contains the entire agreement and understanding of the parties as to the subject matter hereof and merges and supersedes all prior discussions and agreements with respect thereto.