



**RODIAS**

YOUR DIGITAL TRANSFORMATION SPECIALIST

# SOFTWARE END USER LICENSE AGREEMENT (EULA)

## Insight Control Panel (ICP)

### V1.1

Weinheim, 20.07.2022

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## 1 Definitions

- 1.1 “Affiliates” are those companies which are affiliated with the Licensee according to sec. 15 of the German Stock Corporation Act (AktG).
- 1.2 “Agreement” means this *Software License Agreement* which applies to the purchase and use of the Licensed Software.
- 1.3 „Concurrent User“ means a user who may access and use the Licensed Software on behalf of Licensee as long as the number of Concurrent Users using the Licensed Software at the same time does not exceed the number of Concurrent Users purchased in the License Schedule. Unlike the Named User, the Concurrent User is not a user defined by name. Neither groups of persons nor machines of any kind can be a Concurrent User.
- 1.4 “Defect” is a collective term that encompasses (a) defects in quality [*Sachmängel*] (e.g. an error in the Licensed Software) and (b) defects in title [*Rechtsmängel*] (e.g. infringement of intellectual property rights).
- 1.5 “License” means the fee-based right to use the Licensed Software according to the terms and conditions of this Agreement and the relevant License Schedule.
- 1.6 “License Key” means a unique code or license file supplied by RODIAS required to activate and use the Licensed Software.
- 1.7 “License Schedule” means a separate, individual agreement, which is legally independent from other contracts and which grants the Licensee a License in the Licensed Software on the basis of this Agreement and more specified in the License Schedule.
- 1.8 “Licensed Software” means the (a) proprietary computer programs which consists of various Modules and for which RODIAS grants a License to Licensee based on the Agreement and the License Schedules and (b) the accompanying User Documentation.
- 1.9 “Module“ means a computer program that Licensee purchases from RODIAS as part of the Licensed Software.
- 1.10 „Named User“ is an individual user defined by name who may access and use the Licensed Software on behalf of Licensee. Neither groups of persons nor machines of any kind may be Named Users.
- 1.11 “Parties” or “Party” means Licensee and RODIAS, or either of them.
- 1.12 “Software Specification” means a description of the general functionality, compatibility and system requirements of the Licensed Software.
- 1.13 “User Documentation” means the user handbooks and other documents furnished by RODIAS which serve to explain the functions of the Licensed Software.
- 1.14 „Software lease“ or „Subscription“ regulates a time-limited license which is valid as long as the corresponding license fee is paid.

## 2 Subject Matter of the Agreement

- 2.1 The subject matter of the Agreement is the License grant for Licensed Software. The Licensed Software covered by this Agreement consists of various Modules that are listed in the individual License Schedules.
- 2.2 The nature and scope of the performance owed by both Parties hereunder is governed under the following terms and conditions in the order set forth below:
  1. the License Schedules
  2. the terms and conditions of this Agreement
- 2.3 The provisions of this Agreement govern exclusively. Standard terms and conditions of Licensee do not apply, even if RODIAS has not expressly rejected the application of such terms and conditions.
- 2.4 Other work such as advice in selecting software, installation, implementation, modification, parameterization, customization, software maintenance, support, etc. or familiarization and training are not covered by this Agreement. Such services are subject to other contractual terms and conditions which are independent of this Agreement.

## 3 Order Process

The right to use the Licensed Software will be formally granted only if and when RODIAS accepts in writing Licensee's order. Each order accepted by RODIAS will be put into writing in a License Schedule a copy of which RODIAS then forwards to Licensee. Irrespective of the inclusion of this Agreement, each License Schedule constitutes a separate and independent contract.

## 4 Scope of Rights to Use the Software

- 4.1 After paying the license fees stipulated in the respective License Schedule, RODIAS shall grant to the Licensee a non-exclusive, worldwide, perpetual or - as regards the software lease (subscription) - limited (to the contractually defined duration of the lease) right to use the Licensed Software listed in the License Schedule (a) with the number of Named Users or Concurrent Users agreed therein and (b) in accordance with the terms and conditions of this Agreement and the relevant License Schedule.
- 4.2 The permissible and intended use includes installing the Licensed Software together with a copy thereof on a productive and a staging system, the running thereof, the processing of data and the creation of the necessary backup copies of the Licensed Software. Any use beyond the foregoing requires an express, separate written agreement; the text form (e.g., telefax or e-mail) [*Textform*] will not suffice in these cases.
- 4.3 The Licensee is not permitted to rent out the Licensed Software. The same applies to the provision of cloud services to the extent Licensee intends to use the Licensed Software for this purpose.
- 4.4 Licensee shall provide prior written notice before agreed restrictions of use are exceeded in order to contractually cover the License extensions required for such use, provided that RODIAS offers such extensions. The use of the Licensed Software beyond the

previously agreed scope of use or for other exploitation methods that were not previously agreed will be permissible only after both Parties have concluded a corresponding new License Schedule and the fees agreed to therein have been paid. The new License Schedules will apply independently of the previous License Schedules.

## 5 Concurrent User

If Licensee purchases a Concurrent User License through a License Schedule, the concurrent use of the Licensed Software is limited to the number of users that Licensee has purchased in the License Schedule(s) for use by Concurrent Users. The use of the Licensed Software by Concurrent Users is permitted exclusively for the Licensee's own purposes and those of its Affiliates. Thus, no user, including no Concurrent User, may access and use the Licensed Software for the purposes or on behalf of third parties. Simultaneous access to the Licensed Software by more than one person as one single Concurrent User is not permitted.

## 6 Named User

- 6.1 If Licensee purchases a Named User License through a License Schedule, exclusively the Named Users are permitted to use the Licensed Software and only for the Licensee's own purposes and those of its Affiliates. Thus, no user, including no Named User, may access and use the Licensed Software for the purposes or on behalf of third parties or other Named Users. The access to the Licensed Software by more than one person as a registered Named User is not permitted.
- 6.2 Named Users must not disclose their credentials (including password) to any other person. However, Licensee may transfer the right to access and use the Licensed Software from one Named User to another Named User. After such a transfer, a further transfer shall be permitted at the earliest after the expiry of 4 weeks; this restriction shall not apply if the employment of a Named User ends and the Named User thereafter neither works for Licensee nor for an Affiliate. Each transfer must be documented by the Licensee in an audit-proof manner and Licensee shall provide RODIAS with proof of the transfer within the scope of an audit upon request.

## 7 License Protection Duties

- 7.1 Licensee agrees to prevent unauthorized third party access to the Licensed Software by taking suitable precautionary measures.
- 7.2 If an employee of Licensee or a third party coming from Licensee's sphere of responsibility infringes the copyright to the Licensed Software, then Licensee shall use its best efforts to help clarify the copyright infringement, and above all promptly inform RODIAS about the violation.
- 7.3 Licensee shall not attempt to uncover or decode the source code of the Licensed Software either through disassembly, de-compilation, reverse engineering or some other method unless and to the extent that one of the aforesaid methods is indispensable to obtain information necessary for the establishment of interoperability of another independently created computer program with the Licensed Software. Licensee shall, however, request RODIAS for, and give RODIAS an opportunity to provide within a

reasonable time, the necessary information and documents for establishing interoperability before Licensee carries out any disassembly, de-compilation, reverse engineering or the like in accordance with sec. 69 e par. 1 of the German Copyright Act (UrhG)<sup>1</sup>. Licensee may exercise its rights under sec. 69 e par. 1 of the German Copyright Act (UrhG)\* only if RODIAS fails to comply with the aforesaid request. However, information obtained by way of disassembly, de-compilation, reverse engineering or the like must not be used or passed on to third parties for any other purpose than establishing interoperability of the other independently created computer program with the Licensed Software and must not be used to develop, produce or market a computer program substantially similar in its expression or for any other acts which infringe copyrights.

- 7.4 Licensee is obligated not to modify any intellectual property right symbols or notations contained in the Licensed Software such as copyright symbols and other disclaimers.
- 7.5 Apart from the rights to use the Licensed Software as granted to Licensee under sections 4 to 6, RODIAS retains all other rights to the Licensed Software *vis-à-vis* Licensee. Neither this Agreement nor any License Schedule will be deemed to convey to Licensee the title in the Licensed Software, which RODIAS and its licensors will always retain. Licensee will, however, still retain title to its own machine-readable media, data storage or data processing devices.
- 7.6 Without the prior written consent of RODIAS, Licensee shall neither in whole nor in part copy the Licensed Software or allow the Licensed Software to be copied by a third party, unless the relevant reproduction is necessary for the intended use in accordance with the terms and conditions of this Agreement and the relevant License Schedule. Licensee may make the necessary copies for backup and archival purposes. Any and all copies must include the same intellectual property right symbols and notations (e.g., copyright symbol, trademarks) that are used in the original.
- 7.7 Licensee is not allowed to adapt, modify, translate, arrange or otherwise change or revise the Licensed Software unless (a) such acts are necessary for the use of the Licensed Software in accordance with its intended purpose, including for error correction, by any person authorized to use a copy of the Licensed Software concerned and (b) RODIAS does not offer to remedy the error under customary market terms and conditions or the offered remedy has failed twice due to the same Defect or to Defects which are directly related thereto. Apart from that, Licensee is authorized to adjust the customization and parameterization options contemplated in the Licensed Software in order to meet its own needs. Beyond that, RODIAS reserves the exclusive right to adapt, modify, translate, arrange or otherwise change or revise the Licensed Software. Notwithstanding the foregoing, Licensee's rights under sec. 69 d par. 1 of the German Copyright Act (UrhG)\* remain unaffected.

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<sup>1</sup> Translations of the relevant sections of German law can be found at [http://www.gesetze-im-internet.de/Teilliste\\_translations.html](http://www.gesetze-im-internet.de/Teilliste_translations.html).

## 8 Software Asset Management, Audit Right

- 8.1 Licensee shall duly keep records about the use of the Licensed Software and shall, supported by a comprehensible software asset management (SAM), ensure the lawful and contractually use of the Licensed Software.
- 8.2 Licensee grants RODIAS the right to audit whether the Licensed Software is being used in compliance with the terms of this Agreement and with the terms of the License Schedules based thereon. For this purpose, RODIAS shall be entitled to require Licensee once per calendar year that Licensee has to grant a certified public accountant (CPA) (a) remote access to Licensee's computer systems concerned, (b) access to Licensee's business premises during its normal business hours and (c) access to the relevant books, records, electronic records as well as onsite access to the relevant computer systems of Licensee for this review. Although RODIAS is authorized to determine the certified public accountant (CPA) as an auditor, the auditor must perform the audit autonomously and independently, even towards RODIAS. RODIAS shall notify Licensee of any upcoming review in text form at least fourteen (14) days in advance.
- 8.3 All information of Licensee which the auditor receives or learns during an audit shall be considered as confidential information of Licensee being subject to the professional secrecy of the auditor. Accordingly, RODIAS has to agree with the auditor in the context of the assignment that the auditor is allowed to disclose details of the audit results to RODIAS only as far as RODIAS requires such details to track license violations, if any, and to enforce the resulting claims. Insofar as Licensee has confessed license infringements to the auditor and has satisfied the resulting claims for damages of RODIAS, details of the audit results shall not be disclosed to RODIAS.
- 8.4 Licensee shall inform the commissioned auditor to the extent necessary and request its employees to provide the required information. The transmission or disclosure of personal data is not allowed in this context and in the course of the audits without the prior consent of the data subjects concerned unless such transmission or disclosure is permitted by applicable law. RODIAS is not entitled to request any audit that would violate the statutory data protection law.
- 8.5 RODIAS shall bear the costs of any such audit unless the inspection reveals that the license fees incurred for the detected scope of use exceed the agreed fees by at least four percent (4%) or that Licensee is using the Licensed Software for other exploitation methods than licensed. RODIAS reserves the right to enforce any more extensive claims.

## 9 Transfer of the Software

- 9.1 The right of Licensee to use the Licensed Software in accordance with this Agreement may be transferred or otherwise passed on to a third party only after first notifying RODIAS thereof in writing. The aforementioned right of use may not be transferred or passed on unless
- Licensee discontinues its use, forwards a copy of the Licensed Software being used by Licensee to the new licensee, deletes all Modules of the Licensed Software including any and all copies or partial copies thereof, and

- the new licensee states in writing to RODIAS that it is willing to assume all rights and duties of the original Licensee based on the license agreement existing with respect to the relevant Licensed Software.
- 9.2 Before any such rights are transferred or passed, Licensee must provide RODIAS with written notice about the name of the recipient and the company's address.
- 9.3 RODIAS shall supply the new licensee with the requisite License Key, if all of the conditions set forth in this section 9 have been met. The License Key cannot be generated unless or until the new licensee first discloses the requisite system data.

## 10 User Documentation

Only an electronic version of the User Documentation for the respective Licensed Software will be made available to Licensee. There is no duty to supply an additional User Documentation in hardcopy form. Should Licensee request User Documentation in hardcopy form, it is recommended that a corresponding copy be printed out and carefully retained before working with the Licensed Software. Section 7.6 applies *mutatis mutandis* to the User Documentation.

## 11 Agreed Quality

- 11.1 The agreed quality of the Licensed Software is determined conclusively (a) in the User Documentation, which was applicable at the time the License Schedule was signed and which had been supplied to Licensee at the time of delivery, and (b) in the related Software Specification. RODIAS shall, upon request, provide to Licensee for its review the relevant User Documentation and Software Specification prior to signing a License Schedule.
- 11.2 Representations in the User Documentation or in the Software Specifications are not considered to be a certain quality guaranteed [*Beschaffenheitsgarantie*] by RODIAS.

## 12 Warranty [Mängelhaftung]

- 12.1 RODIAS warrants that the Licensed Software purchased by Licensee is free from defects in quality and free from defects in title at the time when the risk passes to Licensee.
- 12.2 In the event a Defect emerges, RODIAS shall, in the first instance, cure the Defect [*Nacherfüllung*]. RODIAS may, at its discretion, provide Licensee with a non-defective Licensed Software instead of remedying the Defect. In case of a defect in title, RODIAS has the right either (a) to modify the Licensed Software in such a manner that the defect in title does no longer exist and, nevertheless, the contractually-conforming use is provided, or (b) to obtain the rights and authority to permit Licensee to use the Licensed Software as contractually agreed and without any additional costs for Licensee.
- 12.3 Licensee shall grant RODIAS a reasonable period of time to cure the Defects.
- 12.4 If RODIAS fails to cure a Defect related to the purchase of the Licensed Software, then Licensee shall, in each case only in accordance with the applicable statutory provisions, be entitled to withdraw from the purchase, i.e. from the License Schedule concerned, or to reduce the license fee. Subject to the limitation of liability stipulated in section 16,



Licensee may demand damages or reimbursement of wasted expenditures provided that the statutory prerequisites are fulfilled.

### 13 Co-operation Duties in Case of Warranty

- 13.1 Licensee shall without undue delay inform RODIAS of any noticed Defect, specifying the nature of the error and the program execution in which the error occurs. Such notification must also be in writing if RODIAS so requires. If the Defect is a defect in title, Licensee must notify RODIAS in writing without undue delay and Licensee shall inform RODIAS of any claims asserted in connection with the infringements of intellectual property rights.
- 13.2 To the extent required for purposes of correcting the Defect, Licensee shall accept patches, service packs or a new release of the Licensed Software, unless this would lead to unreasonable adaptation and conversion problems or efforts on Licensee's part.
- 13.3 Licensee shall gratuitously provide reasonable assistance to RODIAS in connection with localizing and correcting the Defect. In particular, Licensee shall make available all data, information and files necessary for correction of the error.
- 13.4 A precondition for warranty based on a defect in title is that (a) Licensee without undue delay informs RODIAS in writing of any third party claims based on an intellectual property rights infringement, (b) that it does not recognize the alleged infringement, and (c) that it conducts any dispute (including any out-of-court settlement) only with the consent of RODIAS. If Licensee discontinues using the Licensed Software in order to mitigate damages or for some other reasons, then it shall notify the allegedly infringed third party that any such discontinuation of use shall not be deemed a recognition or admission of the alleged intellectual property rights infringement. In the event of an unauthorized recognition or admission or a failure to provide the aforementioned notice, a claim for damages or reimbursement of wasted expenditures, to which Licensee is entitled, will be reduced by the amount of detriment that RODIAS suffers as a result of the unauthorized recognition or failed notice.
- 13.5 To the extent Licensee is itself responsible for the intellectual property right infringement, claims for defect in title against RODIAS are excluded.

### 14 Warranty Period

- 14.1 The warranty period for Defects is one (1) year.
- 14.2 The warranty period commences according to the applicable statutory provisions.
- 14.3 Notwithstanding section 14.1, the regular statutory limitation periods apply if RODIAS is liable for any intentional acts or omissions, fraud, gross negligence, product liability according to the German Product Liability Act (ProdHaftG)<sup>2</sup>, the lack of a certain quality guaranteed by RODIAS as well as for losses based on an injury to life, body or health.

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<sup>2</sup> Translations of the relevant sections of German law can be found at [http://www.gesetze-im-internet.de/Teilliste\\_translations.html](http://www.gesetze-im-internet.de/Teilliste_translations.html).

## 15 Prices and Terms of Payment

- 15.1 Licensee must pay RODIAS in full each of the amounts shown in the License Schedules immediately after receiving the invoice (with no deductions). Payments shall be remitted to an account designated by RODIAS and shall not incur any fees or costs.
- 15.2 All prices are shown as net prices, on which the statutory value added tax (as amended) will be charged, if applicable.
- 15.3 Only counterclaims that are undisputed, ripe for adjudication or reduced to final non-appealable judgment may be set-off against any receivables held by RODIAS. Licensee may enforce a right to withhold counter-performance only on the basis of claims that are undisputed, ripe for adjudication or reduced to final non-appealable judgment and that are based on the same contractual relationship.

## 16 Liability

- 16.1 RODIAS will be liable in accordance with the statutory provisions for any intentional acts or omissions, fraud, product liability according to the German Product Liability Act (ProdHaftG)<sup>3</sup>, the lack of a certain quality guaranteed by RODIAS as well as for losses based on an injury to life, body or health.
- 16.2 If the conduct of RODIAS constitutes gross negligence, then the liability will be limited to the damages considered foreseeable for contracts of that type [*vertragstypischer vorhersehbarer Schaden*].
- 16.3 In the event of simple negligence, RODIAS is liable based on whatever legal reason, only if a material contractual duty has been breached, i.e., a duty, the fulfillment of which makes the ordinary performance of the contract even possible and the compliance with which Licensee can and should regularly rely on (e.g., duty to deliver a non-defective Licensed Software). In this case, the liability will be limited to the damages considered foreseeable for contracts of that type at the time the relevant License Schedule was concluded.
- 16.4 In the event RODIAS is liable, Licensee's contributory fault must be reasonably taken into consideration, including insufficient error reports or insufficient data backup, insufficient protection against damaging programs (computer viruses, Trojan horses, spyware, ransomware, etc.) or a lack of precautionary measures to safeguard information security.
- 16.5 To the extent that liability is limited to the damages considered foreseeable for contracts of this type in accordance with sections 16.2 and 16.3, RODIAS is assuming that the sum of twenty thousand euros (EUR 20,000) per event of damage and a maximum amount of one hundred thousand euros (EUR 100,000) in total per License Schedule are sufficient, in order to cover the damages considered foreseeable for contracts of this type in this particular event of damage. Should this amount not suffice to cover the foreseeable damages, then Licensee must inform RODIAS thereof in writing in order to ensure that any corresponding adjustment to the liability sums will be made by the

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<sup>3</sup> Translations of the relevant sections of German law can be found at [http://www.gesetze-im-internet.de/Teilliste\\_translations.html](http://www.gesetze-im-internet.de/Teilliste_translations.html).

contracting Parties and RODIAS can in fact cover the increased risk, if necessary, by taking out an appropriate liability insurance policy.

- 16.6 The liability limitation agreed to under this section 16 also applies in favor of RODIAS' statutory representatives and vicarious agents.
- 16.7 The foregoing provisions under this section 16 apply *mutatis mutandis*, where RODIAS must reimburse wasted expenditures instead of compensate damages.
- 16.8 Any liability claims of Licensee that are more extensive than those expressly stated in this section 16 and that relate to compensatory damages and reimbursement of wasted expenditures, based on whatever legal reason, are excluded and disclaimed. The foregoing also applies, above all, to liability that is not based on fault.

## 17 References and Publicity

RODIAS may publicize the fact that Licensee uses its software. RODIAS is therefore authorized to report internally and externally about its business relations with Licensee subject to the usual duties of confidentiality. The aforesaid right includes, for RODIAS, press releases, success stories, project reports and presentations together with any naming of Licensee. Each publication must be structured and designed such that it does not infringe any of Licensee's rights.

## 18 Miscellaneous

- 18.1 Any modifications and amendments to this Agreement and any License Schedules executed on its basis must be identified as such and must be in writing and include the signature of both Parties. The text form is not sufficient here, unless otherwise specifically stipulated in this Agreement or in the License Schedules. The aforementioned also applies when the Parties decide to cancel the written form requirement. Otherwise, the presumption under sec. 127 par. 2 of the German Civil Code (BGB)<sup>4</sup> apply to the written form requirement prescribed in this Agreement and in the License Schedules, unless the text form has been expressly prohibited.
- 18.2 Place of performance is Weinheim.
- 18.3 Other than as specifically provided for in the present Agreement, neither this Agreement nor any License Schedule based thereon may be assigned in whole or in part by Licensee except with prior written consent of RODIAS.
- 18.4 Should any provision of this Agreement or of the License Schedules based thereon be or become invalid or unenforceable, then the validity of the remaining provisions will not be affected thereby. In such case the remainder of this Agreement or the relevant License Schedule shall be deemed valid and binding as if such provision was not included herein and the Parties shall agree upon any necessary and reasonable adjustments in order to secure the vital interests of the Parties. The latter applies also in cases where

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<sup>4</sup> Translations of the relevant sections of German Law can be found at [http://www.gesetze-im-internet.de/Teilliste\\_translations.html](http://www.gesetze-im-internet.de/Teilliste_translations.html)

in performing the Agreement or a License Schedule an omission or contractual gap becomes apparent.

- 18.5 This Agreement and the License Schedules executed on the basis thereof are governed by the laws of the Federal Republic of Germany to the exclusion of the conflict of laws principles and of the UN Sales Convention (Convention on Contracts for the International Sale of Goods of 11 April 1980).
- 18.6 Exclusive jurisdiction and venue for all disputes arising from or connected with this Agreement and all the License Schedules executed on the basis thereof shall lie with the courts of Weinheim, Germany.