

## END USER LICENSE AGREEMENT ("Agreement")

eM Client is a computer program which, as a result of creative intellectual activity of its authors, is a work protected by copyright; economic rights of the authors in such computer program.

eM Client hereby grants the Customer and the Customer hereby accepts from eM Client, an indefinite, non-exclusive, territorially unrestricted, non-sublicensable and non-transferable right to use the Software (as defined in Section 1 below) on the Designated Hardware (as defined in Section 3 below), subject to the terms and conditions specified below.

### IMPORTANT - READ BEFORE COPYING, INSTALLING, OR USING

Do not use or load this Software and any associated materials until you have carefully read the following terms and conditions.

By loading or using the Software, you agree to the terms and conditions of this End User License Agreement. If you do not wish to so agree, do not install or use the Software.

### GENERAL TERMS AND CONDITIONS

#### 1. SOFTWARE

"**Software**" means (i) the machine-readable object code version of the software that eM Client or its authorized representative makes available, whether embedded on disc, tape or other media ("**Computer Program**"), (ii) the updates or revisions of the Computer Program or Documentation that eM Client or its authorized representative may offer to the Customer pursuant to Section 6 ("**Updates**") and (iii) any copy of the Computer Program or Updates. Nothing in this Agreement will entitle the Customer to receive source code of the Computer Program or Updates, in whole or in part.

#### 2. Documentation

"**Documentation**" means published user manuals and any other documentation that eM Client or its authorized representative makes generally available for the Software.

#### 3. DESIGNATED HARDWARE

"**Designated Hardware**" means one (1) compatible hardware device. The Customer may use the Software only on the Designated Hardware while it possesses and operates the Designated Hardware.

#### 4. USE

4.1 The Customer may use the Software and/or Documentation only in and for Customer's own internal purposes and business operations. The Customer will reproduce all confidentiality and proprietary notices on each of these copies and maintain an accurate record of the location of each of these copies. Business operations means using the software with any account which is not used solely for personal use. For example, use of any account that includes a domain name (e.g. emclient.com) which is registered to a business (or any other organization including non-profit or government organization) that is in any relation with the customer is understood as business operations.

4.2 The Customer may copy and use the Software onto Customer's computers for use subject to these conditions:

- 4.2.1 The Customer may not copy, modify, rent, sell, distribute or transfer any part of the Software except as provided in this Agreement, and agrees to prevent unauthorized copying of the Software.
- 4.2.2 The Customer may not reverse engineer, decompile, or disassemble the Software.
- 4.2.3 The Customer may not sublicense or redistribute the Software.
- 4.2.4 The Software may contain the software and other property of third party suppliers ("**Third Party Software**"), some of which may or may not be identified in, and/or licensed in accordance with, the Agreement, and/or an enclosed license.txt file or other text or file. The use of such Third Party Software is subject to License terms determined by these third parties. You may use such Third Party Software in accordance with license terms that apply to them and which are attached to them.
- 4.2.5 The Customer shall make reasonable efforts to discontinue use of the older version of the Software upon eM Client's release of an update, upgrade, or new version of the Software.
- 4.2.6 The Customer may not make any statement that the Software is certified, or that its performance is guaranteed, by eM Client.
- 4.3 The Customer may use the Software either (i) after inputting an "Activation Code" obtained from eM Client ("**Activating**") or (ii) during one-time initial try out period ("**Demo Period**").
- 4.4 Activation Code obtained from eM Client is designated either for (i) Commercial use ("**Purchase**") or (ii) Non-commercial (free) use.

## 5. **SUPPORT**

- 5.1 The following terms and conditions shall apply (i) during the first year after the Purchase (the "**Initial Support Term**") and (ii) during each Additional Support Term (as defined below) that the Customer has purchased from eM Client or its authorized representative:
  - 5.1.1 Support Agreement: eM Client or its authorized representative will provide support for the Software during the Initial Support Term and each Additional Support term, if any. Support includes configuration assistance, how-tos, problem determinations, reasonable problem resolutions and automatic provisioning of software program temporary fixes. It also includes support during working hours via email or other forms of communication.
  - 5.1.2 Support Terms: Upon expiration of the Initial Support Term, support can be purchased for a 12 month period (an "**Additional Support Term**"), and eM Client will invoice the Customer. Upon expiration of any Additional Support Term, support will automatically renew for another 12 month Additional Support Term, and eM Client will invoice the Customer unless eM Client or its authorized representatives are notified by the Customer 60 days prior to the renewal date. If the Customer allows support to lapse, the Customer will not be entitled to subsequent support except at full fair market value. If the Customer would like to renew the support contract, a new contract will be executed.

## 6. **Limitations of em Client for Free/non-commercial Use**

- 6.1 The Software Activated using Non-commercial (free) Activation Code ("**eM Client for Free/Non-Commercial Use**") may not be used for business operations.
- 6.2 Users of eM Client for Free/Non-Commercial Use are entitled to use only two (2) e-mail accounts.

- 6.3 Users of eM Client for Free/Non-Commercial Use are entitled to use only community based support available at <http://forum.emclient.com>.
- 6.4 Users of eM Client for Free/Non-Commercial Use are not entitled to Support as described in Section 5.

## **7. MAINTENANCE**

- 7.1 Maintenance Agreement: eM Client will provide maintenance for the Software provided that the Customer has purchased the relevant maintenance services. Maintenance includes version upgrades and product enhancements.
- 7.2 Program Enhancements and Updates: Unless expressly agreed between the parties otherwise, eM Client, or its authorized representative, shall provide the Customer during the Initial Support Term and each Additional Support Term, if any, at no additional charge, with upgrades and enhancements to the Purchased version of the Software. These may under the sole discretion of eM Client include (i) enhancements to the Software, (ii) Updates due to Designated Hardware manufacturers releases (will be available to the Customer within 30 days of Designated Hardware manufacturer's announcement of their new release), and (iii) any special "fixes" that may be required in order for the Software to operate in a specific business environment.

## **8. OWNERSHIP OF SOFTWARE AND COPYRIGHTS**

Title to the Software and/or the Documentation and all copies thereof remain with eM Client or its suppliers. The Software and/or the Documentation is copyrighted and is protected applicable copyright laws and international treaty provisions. The Customer shall not remove any copyright notice from the Software. The Customer agrees to prevent any unauthorized copying of the Software and/or the Documentation. Except as expressly provided herein, eM Client does not grant any express or implied right to the Customer under any applicable patents, copyrights, trademarks, trade secret information or any other similar intellectual property rights. The Customer will not take any action that jeopardizes eM Client's rights in the Software and/or Documentation or acquire any right in the Software and/or Documentation, except the limited use rights specified in Section 4. eM Client will own all rights in any copy, translation, modification, adaptation or derivation of the Software, including any improvement or development thereof. The Customer will obtain, at eM Client's or its authorized representative's request, the execution of any instrument that may be appropriate to assign these rights to eM Client.

## **9. LIMITED WARRANTIES**

- 9.1 Warranty: eM Client warrants to the Customer that during the first 30 days after Purchase of the Software (i) the Software will conform to eM Client's published specifications in effect on the date of delivery and (ii) the Software will perform substantially as described in the accompanying Documentation. eM Client does not warrant that (i) the Software will satisfy or may be customized to satisfy all of Customer's requirements or (ii) the use of the Software will be uninterrupted or error-free. Laws from time to time in force may imply warranties that cannot be excluded or can only be excluded to a limited extent. This Agreement shall be read and construed subject to any such statutory provisions.
- 9.2 Remedies: In case of breach of Warranty, eM Client or its authorized representative will correct or replace any defective Software or, if not practicable, eM Client or its authorized representative will accept the return of the defective Software and refund to the Customer the amount paid for the Software, less depreciation based on a 3-year straight line schedule. The Customer acknowledges that this Paragraph sets forth Customer's exclusive remedy, and eM Client's and its authorized representatives' exclusive liability, for any breach of warranty or other duty related to the quality of the Software.

9.3 Exclusion of Other Warranties: THE SOFTWARE IS PROVIDED AS IS WITHOUT ANY EXPRESS OR IMPLIED WARRANTY OF ANY KIND INCLUDING WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. eM Client does not warrant or assume responsibility for the accuracy or completeness of any information, text graphics, links or other items contained in the Software.

## **10. SOFTWARE DEFECTS**

During the term of this Agreement, eM Client's sole obligation regarding Software defects shall be limited to repair of any program defect which prevents normal use of the Software at no cost to the Customer. The Customer shall give eM Client prompt notice of any alleged Software defect. eM Client will make every effort to correct the program defect within 30 days. eM Client's obligations shall be waived in the event of (i) any problem with data on disk files or tapes/cds have been caused by deficiencies in Designated Hardware, any third party hardware and/or software, or by improper handling or use by the Customer, or (ii) an unauthorized alteration or revision to the System by the Customer or its employees.

## **11. LIMITATION OF LIABILITY**

11.1 IN NO EVENT SHALL eM CLIENT OR ITS SUPPLIERS BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, BUSINESS INTERRUPTION, OR LOST INFORMATION) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE, EVEN IF eM CLIENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS PROHIBIT EXCLUSION OR LIMITATION OF LIABILITY FOR IMPLIED WARRANTIES OR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO THE CUSTOMER. THE CUSTOMER MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION.

11.2 No Consequential Damages: UNDER NO CIRCUMSTANCES WILL eM CLIENT OR ITS AUTHORIZED REPRESENTATIVES BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON CUSTOMER'S CLAIMS OR THOSE OF CUSTOMER'S (INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LOSS OF DATA, GOODWILL, PROFITS, USE OF MONEY OR USE OF THE SOFTWARE, INTERRUPTION IN USE OR AVAILABILITY OF DATA, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS), ARISING OUT OF BREACH OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE, EXCEPT ONLY IN THE CASE OF PERSONAL INJURY WHERE AND TO THE EXTENT THAT APPLICABLE LAW REQUIRES SUCH LIABILITY. IN NO EVENT WILL THE AGGREGATE LIABILITY INCURRED IN ANY ACTION OR PROCEEDING BY eM CLIENT OR ITS AUTHORIZED REPRESENTATIVE EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY THE CUSTOMER FOR THE SPECIFIC PRODUCT THAT DIRECTLY CAUSED THE DAMAGE.

## **12. LIMITATION OF LIABILITY IF the Customer is A BUSINESS USER**

12.1 The Customer acknowledge that the Software has not been developed to meet Customer's individual requirements, and that it is therefore Customer's responsibility to ensure that the facilities and functions of the Software as described in the Documentation meet Customer's requirements.

12.2 eM Client only supply the Software and Documentation for internal use by Customer's business, and unless expressly agreed between the parties otherwise the Customer agrees not to use the Software or Documentation for any re-sale purposes.

## **13. INDEMNITY**

The Customer shall indemnify, hold harmless, and defend eM Client, and its suppliers from and against any claims or lawsuits, including attorney's fees, that arise or result from Customer's distribution and/or dissemination of the Software. eM Client shall have no indemnity obligation to the Customer if the patent, copyright or trade secret infringement claim results from (i) a correction or modification of the Product not provided by eM Client or its authorized representative, (ii) the failure to promptly install an Update or (iii) the combination of the Product with other non-client software.

#### **14. CONFIDENTIALITY**

14.1 Confidentiality: The Customer acknowledges that the Software and/or the Documentation incorporate confidential and proprietary information developed or acquired by or licensed to eM Client. The Customer will take all reasonable precautions necessary to safeguard the confidentiality of the Software and/or the Documentation, including (i) those taken by the Customer to protect Customer's own confidential information and (ii) those which eM Client or its authorized representative may reasonably request from time to time. The Customer will not allow the removal or defacement of any confidentiality or proprietary notice placed on the Software and/or the Documentation. The placement of copyright notices on these items will not constitute publication or otherwise impair their confidential nature.

14.2 Disclosure: If an unauthorized use or disclosure occurs within the Customer's enterprise, the Customer will immediately notify eM Client or its authorized representative and take, at Customer's expense, all steps which may be available to recover the Software and/or the Documentation and to prevent their subsequent unauthorized use or dissemination.

#### **15. TERMINATION**

The Customer may terminate this Agreement, without right to refund, by delivering a written notification to eM Client. The written notification shall be delivered to e-mail sales@emclient.com. eM Client may terminate this Agreement by delivering a written notification to the Customer to the e-mail address, that the Customer has entered when activating the Software, at will, or without refund obligation, if the Customer breaches this Agreement and fails to cure such breach to eM Client's satisfaction within 30 days of eM Client's demand for cure. In case of Free/Non-Commercial Use, eM Client may terminate this agreement at any time without specifying a reason. Upon the termination of this Agreement for any reason, all rights granted to the Customer hereunder will cease, and the Customer will promptly (i) purge the Software, the Documentation and any related Updates from the Designated Hardware and all of Customer's other computer systems, storage media and other files, (ii) destroy the Software and the Documentation and all copies thereof and (iii) deliver to eM Client an affidavit which certifies that the Customer has complied with these termination obligations. The following paragraphs shall apply also after the termination of this Agreement: 6, 8, 9, 10, 11, 12.

#### **16. LEGAL FEES AND ENFORCEABILITY**

If any action at law or inequity is brought to enforce or interpret any of the provisions of this Agreement, the prevailing party shall be entitled to reasonable legal fees. In the event any provision of this Agreement is held by any court to be invalid, void, or unenforceable by notion of law or inequity, the remaining provisions shall continue in full force and effect.

#### **17. AUDIT**

During the period of validity of this Agreement and for the period of three (3) years after the termination of this Agreement, eM Client may audit, upon reasonable notice to you, and at eM Client's expense, your compliance with this Agreement.

#### **18. APPLICABLE LAWS**

Claims arising under this Agreement shall be governed by the laws of Czech Republic. All disputes, controversy or claims, contractual as well as non-contractual, arising out of or in connection with this Agreement or the breach, termination or invalidity thereof (which the Parties fail to agree upon by negotiations), shall be finally settled by competent courts in the Czech Republic.

## **19. MISCELLANEOUS**

- 19.1 Copyright, economic rights of the authors of such computer program alongside with all other rights consequent from this Agreement are exercised by eM Client s.r.o., a company with the registered seat at Thámova 18, Praha 8, postal code 186 00, Czech Republic, registered in Commercial Register of the Municipal Court in Prague, Reference No.: C 178930, Company ID: 248 36 940 ("**eM Client**").
- 19.2 The Customer understands and consents that eM Client will receive and store (i) usage information, (ii) data related to validity of license based on the unique ID generated on the Designated Hardware, (iii) primary e-mail address being set up within the Software and (iv) information from alphanumeric identifiers (cookies) transferred to the Customer through the Customer's browser to enable to keep track of a life cycle of customers.
- 19.3 If eM Client has justified doubts about non-commercial use of software activated with Free/Non-Commercial Use Activation key (as defined in 6.1), it may contact the customer at the e-mail address registered with his license or the e-mail address mentioned in 19.2 (iii) to resolve the issue.
- 19.4 The Customer shall not assign, delegate or otherwise transfer this Agreement or any of its rights or obligations hereunder without eM Client's prior approval. All notices or approvals required or permitted under this Agreement must be given in writing. Any waiver or modification of this Agreement will not be effective unless executed in writing and signed by eM Client. This Agreement will bind Customer's successors-in-interest.
- 19.5 This Agreement constitutes the entire agreement between the Customer and eM Client and supersedes all prior oral or written agreements concerning the subject matter of this Agreement. The Customer represents, that when entering this Agreement on behalf of another person or entity, the Customer has all necessary authority to enter into this Agreement and has the legal capacity to enter into this Agreement and bind such entity or person by this Agreement. The Customer and eM Client have agreed that eM Client may change or modify this Agreement at any time. The Customer shall be provided with the proposed amendment to this Agreement via e-mail address that the Customer has entered when activating the Software, at least one (1) month before the expected effective date of the amendment. The Customer may reject the proposed amendment and terminate the Agreement in accordance to Clause 15 of this Agreement.