

GENERAL TERMS AND CONDITIONS
For The USE of “Trinity” SOFTWARE
By IT-POWER SERVICES GmbH (Licensor)

PREAMBLE

Licensor offers various software programmes, especially “Trinity” software programme, which shall be the object of these terms and conditions. Licensee shall use “Trinity” for business purposes only. IT-PS, therefore, shall make “Trinity” software available to Licensee for use against payment for the period agreed according to below terms of use (hereinafter referred to as T&Cs). The right to use “Trinity” software programme requires the legal agreement of a service by Licensor according to these T&Cs. (“Software & Service”).

Licensee shall operate “Trinity” either on the IT-PS Cloud (cf. Section 2.2) or on his/her own systems (cf. Section 2.3). Any use of “Trinity” by third parties, especially for third-party systems by Licensee, needs to be previously authorised by Licensor in writing.

SECTION 1
DEFINITIONS

- 1.1 "Programme" denotes “Trinity” software programme developed by IT-Power plus the features resulting from the currently valid user’s manual.
- 1.2 "Royalties" include all return services owed by Licensee for using the programme.

SECTION 2
LICENSE

- 2.1 Programme is copyrighted by IT-Power Services GmbH (Licensor) and shall be licensed not sold to Licensee for the designated use. This License shall comprise only the right of use and related services by Licensor.
- 2.2 If Trinity runs on the IT-PS cloud (“Software as a Service” – SaaS), this right of use shall comprise only the (automated) service rendered by Licensor to Licensee and shall not entitle Licensee to install the Programme (on premise).
- 2.3 If Trinity runs on Licensee’s systems, Licensor shall grant Licensee a non-exclusive and non-transferable license

2.3.1 to download, to install and to use the Programme solely as described in detail in the programme specifications, and

2.3.2 to make a backup file,

provided that

2.3.3 the system software and the Programme are interoperable (see section 3);

2.3.4 Licensee has lawfully obtained the Programme and complies with these T&Cs;

2.3.5 Licensee does not copy (however, see Section 2.2.2), modify, distribute, transfer, sub-license, sell, rent or lease the Programme or does not reproduce the Programme (permanently or temporarily, wired or wireless) by any means in any way in whole or in part;

2.3.6 Licensee does not reverse assemble, reverse compile neither in whole nor in part unless explicitly granted by Licensor in writing;

2.3.7 Licensee does not use any components, files, modules, audio-visual contents of the Programme apart from the Programme.

SECTION 3 DOWNLOAD AND TRIAL VERSION

- 3.1 Licensor offers and recommends Licensee a royalty-free trial version of the Programme to check whether the system software and the Programme are interoperable. Download of the Programme only works if the system and the Programme are interoperable.
- 3.2 No Agreement can be reached if the system software and the Programme are not interoperable. Licensor shall not be liable for damages and/or loss of data, inaccuracies of data or technical failures, in particular incidental, indirect or secondary damages or lost profit, business, turnover, corporate value or anticipated savings caused by the trial version. In this case the Programme should be deleted.
- 3.3 Licensee shall receive an activation code following the payment of the royalties to operate the full version of the Programme.

§ 4 SOFTWARE & SERVICE

- 4.1 The Programme shall be delivered with user manual and, if Trinity runs on the Licensee's systems, installation guidelines. Licensee undertakes to follow the instructions of the user manual and the installation guidelines.
- 4.2 In the context of "Software & Service" Licensor shall render the following services:
- 4.2.1 making the Programme available on Licensee's server,
- 4.2.2 servicing the Programme (see also section 4.5). Programme servicing includes:
- Repair of disturbances and help with avoiding them,
 - Repair of errors and mistakes,
 - Continuous adjustment of the Programme to legal requirements,
 - Continuous actualisation of the documentation,
 - Performing security updates in reasonable intervals.
- Servicing does not include hardware, system software as well as all external products. Servicing shall be performed by the Licensor via remote maintenance through remote access provided by the Licensee

or by a specialist on site. In case Licensor performs the hosting (in cases of section 2.2), this shall be done via secured online accesses.

- 4.3 The following services may be rendered upon separate order by Licensor, Licensor however shall reserve the right to reject order requests without providing reasons:
 - 4.3.1 personal installation of the Programme;
 - 4.3.2 possible modifications and adjustments of the Programme according to Licensee's wishes;
 - 4.3.3 Adjustments needed due to version changes of system software, databank, or other systems (browser, driver, etc.).

- 4.4 Licensee shall not be entitled to independently perform changes on the Programme. The following operations shall be excepted:
 - 4.4.1 Licensee may independently update the used software components of Trinity on the release version approved (recommended) by Licensor.
 - 4.4.2 All parametrisations and adjustments that are made available by default on the graphic surface may be adjusted by Licensee.

- 4.5 Trinity shall be serviced by Licensor (section 2.4). Licensor shall make available new versions with functional enhancements or improvements, which can be implemented by Licensee. Licensee shall decide whether to perform an upgrading. Licensee shall reserve the right to provide problem fixes only in the latest major release.

SECTION 5
SCOPE OF USE /NOTIFICATIONS

- 5.1 Licensee shall be entitled to install the Programme one time (cf. section 2.3) and to use it only on one device or on the number of devices agreed upon. This shall include loading and processing, storing the Programme in the main memory and other storage processes linked to the use intended. Licensee shall not be entitled to grant third parties the right of use. Licensee, therefore, cannot transfer the right of use without the explicit approval of Licensor in writing.
- 5.2 Licensee shall not be entitled to use the Programme on a public network configuration, on the internet, on a network application beyond licensee's own operation or to produce copies other than the one specified in section 2.2.2. Further, Licensee shall not be entitled to provide third parties with the Programme to or to modify it in any way, in particular to remove the software protection.
- 5.3 Following a reasonable advance notice licensee undertakes to provide Licensor with information s/he needs to control whether Licensee observes the scope of the license granted herein. Following a reasonable advance notice Licensor shall be entitled to conduct a yearly audit on-site in order to confirm the Licensee's compliance with the T&Cs. Licensee undertakes to fully cooperate in such an audit provided Licensor is bound to secrecy as well as to protect all data received during such an audit by a separate agreement concluded prior to the audit. In case the audit uncovers an unauthorised use of the Programme or third-party software, Licensee shall be responsible to supply additional licenses to correct this unauthorised use notwithstanding other rights of Licensor transferred to him/her by law or this agreement.

SECTION 6
ROYALTIES

- 6.1 The cost for the first download of the Program and for the annual license and support renewal shall be determined by individual offer.
- 6.2 The additional services according to Section 4.3 – as far as available – shall be paid by Licensee under the then valid fees of Licensor.

- 6.3 The Licensor reserves the right to adjust the royalties, especially the annual license renewal fee, at regular intervals.

SECTION 7 GUARANTEE, LIABILITIES OF LICENSEES

- 7.1 Licensor shall guarantee that the Programme – other than its open-source components - is not subject to the rights of third parties, in particular that its use does not infringe patents, copyrights or other intellectual property rights of third parties. Licensee accepts that the Programme contains open-source components whose use by Licensee is admissible without further payment if applied accordingly.
- 7.2 Licensee shall instruct all employees and agents having access to the Programme about the obligations under this Agreement. Licensee is obliged to prevent the unauthorized access to as well as the copying and decompiling of the Programme by appropriate measures.
- 7.3 Licensee shall have the obligation to cooperate in order to eliminate possible flaws of the programme. Licensee shall pay special attention to possible security flaws and security vulnerabilities. In case such flaws become apparent, in particular with the open-source components used (e.g., such as the 2021 Log4J security vulnerability), which could affect the security of Trinity, Licensor shall immediately perform a risk evaluation and if necessary, provide a patch. If possible flaws are detected at Licensee during a security audit, Licensee shall immediately inform Licensor about these.

SECTION 8 LIMITATION OF LIABILITY

Licensor is not liable for any failures eventually held in the Programme, damages and/or loss of data, inaccuracies of data or technical failures, in particular incidental, indirect, secondary damages or lost profit, business, turnover, corporate value or anticipated savings; further Licensor shall not be liable for attainment of the purpose intended by the Licensee. Moreover, Licensor shall not be liable for any inaccuracies caused by the Programme.

**SECTION 9
IMPROVEMENTS**

- 9.1 Licensor shall be entitled (but not obliged thereto) to offer Licensee all innovations, improvements, and new features of the Programme as well as new developed subprogrammes of the Programme for licence. The price shall be determined by individual offer.
- 9.2 Licensor may offer Licensee (but is not obliged thereto) updates to guarantee functionality of the Programme beyond the respective term of Agreement.

**SECTION 10
TERM AND TERMINATION**

- 10.1 The Agreement shall be concluded for one year of the initial license and shall be extended successively for a period of one year upon the annual renewal of the license in due time. If Licensee does not terminate the Agreement three months prior to the annual renewal date at the latest in writing, the License shall be renewed for another year. Licensor reserves the right not to offer a license renewal.
- 10.2 Licensor may terminate the Agreement and therefore Licensee's license if Licensee fails to comply with the terms of these T&Cs.
- 10.3 If the license is terminated or not renewed for any reason by either party hereto, Licensee agrees to promptly discontinue use of and destroy all of Licensee's copies of the Programme. Any terms of this Agreement that by their nature extend beyond termination of this Agreement remain in effect until fulfilled, and apply to both parties' respective successors and assignees.

**SECTION 11
IT-SECURITY, PRIVACY AND DATA PROTECTION**

- 11.1 Licensor shall ensure that his/her services rendered in the sector of information and communication technologies comply with state-of-the-art IT security standards. Licensor shall comply with legal provisions, official directives, and generally recognised standards of good practice while rendering a service.

- 11.2 Trinity retrieves only technical performance and configuration information which are made available by default on part of the manufacturer of the infrastructure components (e.g., CPU resources, storage space, data on response times, etc.). Access to application data is technically not possible via the ports used. If the user's rights are defined correctly on the end systems (users are managed by Licensee), Trinity does not have any rights to access application data. All accesses are in read-only mode, data on the supervised systems cannot be altered. Therefore, personal data as defined by data privacy laws cannot be processed.
- 11.3 Property in or use of all data and documents made accessible or communicated either verbally, in writing or any other form by Licensor under this Agreement, or data and documents that have been gathered or processed by Licensee, stay with Licensee unless otherwise specified in these T&Cs. Licensor shall acquire only the rights in the mentioned data and documents which are specifically referred to in this Agreement. Data and documents which Licensor receives or ends up in his/her field of authority and which Licensor produces or processes to fulfil this Agreement, may be used by Licensee to perform this Agreement. Licensor shall return all data and documents received by Licensor from Licensee or a third party immediately after the expiration of this Agreement (for whatever legal reason). In case a return is inappropriate or impossible, Licensor shall destroy the concerned documents and data supervised by and on request of Licensee or produce a copy.
- 11.4 Licensor shall be bound by confidentiality as to insights acquired through the respective business relation – also through third parties - unless Licensee relieves Licensor of this duty in a specific case in writing. Regardless of Section 11.2 (last sentence), Licensor shall only appoint employees and assistants that have explicitly been bound by confidentiality according to the Data Protection Regulations (GDPR and DPR). Licensor agrees to use all data provided by the Client only in compliance with the order and to make sure that this data is not accessible to unauthorised persons.

SECTION 12

RESULTS, REGISTRATION OF PROPERTY RIGHTS

- 12.1 Results as defined by this agreement are inventions subject to property rights, qualified know-how pursuant to the Commission Regulation (EC) No 772/2004 of 7 April 2004 or as defined by the Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed

know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure as well as know-how not subject to property rights. Joint results are results achieved by both parties hereto, with each party providing a creative share.

- 12.2 If Licensor or employees of Licensor develop inventions subject to property rights in the course of the order, Licensor shall exclusively be entitled to these inventions.
- 12.3 If the joint results are employee inventions (joint invention), the parties hereto undertake to assert, in time, all rights to the inventions against their employees. Internally, the rights to the invention shall be divided between the employees proportionally to the respective contribution in the invention.
- 12.4 Licensee shall be granted the non-exclusive and unlimited exploitation right to inventions developed during the implementation of the order and to the property rights registered and granted by the Licensor for the contractual purpose.
- 12.5 Concepts, software etc. by Licensor are copyrighted. Licensor shall solely be entitled to the copyright in these works. Unless expressly agreed otherwise, Licensor only grants non-exclusive exploitation rights, but not exploitation rights. Non-exclusive exploitation rights to be granted to the Licensee need to be approved in writing by Licensor unless it is implied in the scope of the contract. Unless agreed otherwise, the non-exclusive exploitation right in copyrighted works of Licensor granted to Licensee shall be confined to the application range specified herein. Exclusive Exploitation rights or non-exclusive exploitation rights in favour of the Licensee shall only be granted after full payment of the fee agreed.

SECTION 13

JURISDICTION AND APPLICABLE LAW

- 13.1 This Agreement is governed by and construed in accordance with the laws of the Republic of Austria. The parties hereto irrevocably agree that the competent court of Wiener Neustadt shall have exclusive jurisdiction to settle all disputes that may arise out of or in connection with this Agreement and, accordingly, any proceeding arising out of or in connection with this Agreement is to be brought before this court. The parties hereto irrevocably submit to the jurisdiction of this court and waive any objection to place of venue or incompetence of the court.

- 13.2 The United Nations Convention on Contracts for the International Sale of Goods and the Austrian IPR shall not apply.

SECTION 14
FINAL CLAUSE

- 14.1 Any amendments and modifications of these T&Cs must be in writing to be legally applicable. This shall also apply to agreements to change this formal requirement.
- 14.2 The invalidity or unenforceability of any provision of these T&Cs or agreements amended by such provisions shall not affect the validity or enforceability of this Agreement. The parties hereto agree to replace any invalid provision with a provision that is valid and comes closest to the original intention of the invalid provision.