

# **Conditions of Use for Software of Matrix42 Marketplace GmbH**

**(hereinafter Matrix42)**

## 1. Application to procured licenses of third parties

These Conditions of Use shall not apply to the procurement of licenses for software produced by third-party companies; this shall be regulated by the conditions of use of the respective copyright owner.

## 2. Definitions / LICENCE METRICS

An **"Active Management Record"** in the case of devices includes data for devices or mobile terminals that exist within the customer's domain and for which a data record exists in Matrix42. It shall be considered active if the customer cannot prove that the device has been stolen or scrapped, is defective or has otherwise left the customer's area of disposal. In the case of users, an administration record includes all users recorded in the Matrix42 database. The record shall be deemed active if the Customer cannot prove that a user is no longer working for the Customer in the area of use of the software.

**"Concurrent User Licenses"** are not personal and can be used by any number of users, but only one user may work with a license at the same time. The license is only required for those users who also work with the management consoles of the Matrix42 applications. End users who contact the Matrix42 applications via the portals, by e-mail or in any other way are not subject to licensing.

**"Device"** shall be each computing device used to collect, process or display digitalized information that, regardless of who owns the device, exists within the field of activity of the customer and for which an active administrative record exists in the Matrix42 software. It is irrelevant whether a computing device is operated in a virtualized environment. Examples of devices: server, desktop computers, notebooks, thin clients, tablets, smartphones, handheld devices. Infrastructure devices (such as a network printer, router, bridge or hub), peripheral devices (such as a monitor, desktop printer or mobile storage device) and other IT objects (such as a SIM card or universal asset) shall not be considered computing devices.

**"Named User License"** means the licensing to a specific user. By providing a "Named User License", the use of the respective Matrix42 applications and services is limited to a single named user. The legal relationship between the user and the customer is irrelevant. The license is only required for those users who also work with the management consoles of the Matrix42 applications. End users who contact the Matrix42 applications via the portals, by e-mail or in any other way are not subject to licensing.

**"User"** shall be every natural person, regardless of the legal relationship to the customer, for which an active administrative record exists in the Matrix42 software.

### **3. Rights of use to the Matrix42 software**

- 4.1 The customer shall be granted a single, non-transferable license, unlimited in terms of space, to use the software solely for its own business purposes on the number of devices (rights of use per device) specified in the invoice and/or service license or for the number of users (rights of use per user) specified therein in the manner described below. This right shall in the case of a software purchase be unlimited in terms of time and, in the case of a software lease, be limited in terms of time to the contract term specified in the invoice and/or service license.
- 4.2 Subject to Matrix42's written consent, Customer may transfer the Rights of Use to affiliated companies.
- 4.3 The customer shall be allowed to reproduce the software if the respective reproduction is necessary for the use of the software. Necessary reproductions shall include the installation of the program from the original data media into the bulk memory of the hardware, loading the program into the main memory, running the software and the production of a reasonable number of back-up copies. The customer shall mark every back-up copy with the following: Copyright by Matrix42.
- 4.4 A simultaneous use of the software for more than the agreed number of managed devices or users – and/or in the case of a software lease beyond the term of the lease – is an overuse of the software in breach of the contract. In the case of an overuse, the customer shall notify its contracting partner immediately in writing. The customer shall pay additional remuneration to Matrix42 for the overuse. The amount of remuneration is based on the MATRIX42 price list valid at the time the overuse becomes known. Additional claims by Matrix42 shall remain unaffected.

### **4. Copyright notices**

- 5.1 The customer acknowledges that the software and the user manual are protected by copyright. Copyright notices, serial numbers and other markings used to identify the software must not be removed or altered by the customer.
- 5.2 The customer shall be obliged to take appropriate measures to prevent third parties from gaining unauthorized access to the software. The original disks supplied and the back-up copies, license keys and license certificates shall be stored in a secured location to protect against unauthorized access by third parties. The employees of the customer shall be expressly instructed to observe these contractual conditions as well as the provisions of German copyright legislation.

## **5. Technical protective measures**

- 6.1 Matrix42 shall be entitled to take appropriate technical measures to protect against a non-conforming use of the software. It may be necessary to activate a license key before using the software. The use of the Software on an alternate or subsequent configuration of the customer may not be significantly affected by this.
- 6.2 The customer shall be obliged to treat the license key as confidential and store it in a secured location to protect against unauthorized access by third parties. The customer is not entitled to disclose the license key to third parties during the term of this agreement or after the end of this agreement.
- 6.3 Any removal of copy protection or similar protective routine measures by the customer shall only be permitted where these protective measures compromise or prevent faultless operation of the software. The customer shall bear the burden of proof for demonstrating the compromised or prevented faultless operation due to the protective measures.

## **6. Resale of the software**

The software may be resold or given to third parties in the purchased usage type. A resale or transfer shall also be subject to the purchaser expressly consenting to these Conditions of Use and the customer showing evidence to Matrix42, for example, by means of a notarial deed, that it has deleted the software on its servers/computers and transferred all back-up copies to the purchaser.

## **7. Transfer of the software to third parties**

If the software has been purchased and not leased, the customer may transfer the software and user manual to third parties temporarily, only if this is part of a service provided by the third party for the customer and the third party declares its agreement to the continued application of these Conditions of Use and the customer transfers all program copies, including any possible back-up copies made, or destroys the copies not handed over. For the period of the transfer of the software to third party, the customer shall have no right to use the software. In the case of a software lease, transfer to third parties shall not be permitted.

## **8. No usage in high security areas**

The software is not intended for use or distribution as equipment in high security areas. These excludes, but not limited to, nuclear facilities, aviation navigation and communication equipment, direct life support or weapon systems, and in security critical areas where the failure of the software could lead directly or indirectly to death or bodily injury or serious environmental or other physical damage. The customer shall not use maintenance and support services for these high-risk areas.

## **9. Governing law and jurisdiction**

- 10.1 The legal relationship between the Customer and Matrix42 shall be subject to substantive German law under exclusion of the United Nations Convention for Contracts for the International Sale of Goods (CISG).
- 10.2 The place of performance shall be the registered office of Matrix42.
- 10.3 The place of exclusive jurisdiction for all disputes between the parties arising from or in conjunction with the business relationship shall be Frankfurt am Main, insofar as a different jurisdiction is not mandatorily prescribed by the law.