comforte Licence Agreement

Customer fully acknowledges and agrees that acceptance of the Proposal by the Customer includes acceptance of these terms and conditions and the SLA which constitutes an agreement between the parties ("Agreement").

PARTIES

comforte AG whose registered office address is at Abraham-Lincoln-Str. 22, 65189 Wiesbaden, Germany (hereinafter referred to as "**Licensor")**

and

Customer - full details as stated in the Proposal

INTERPRETATION

Annual Subscription Fee ("ASF") means the annual fees paid by Customer to Licensor in consideration for the Customer to use the Software for the duration specified.
Paid up Fees ("PUF") means the paid-up fee paid by Customer to Licensor in consideration for the Customer to use the Software for the duration specified.
License per seat means a copy for a device, e.g. a PC, Workstation, or Mobile Device from which a user may accesses the host system. It does not mean concurrent users.
License per System means a license per system.
License per CPU means a license per CPU.
Affiliate: any entity controlling, controlled by or under common control with Licensor. For purposes of this Agreement, control means operational control in which the controlling entity has either (i) at least fifty percent (50%) of the equity interest, or (ii) the maximum percentage of the equity interest allowed by local law, based on the entity's location or state of incorporation, as applicable, whichever is less..
Commencement Date: the date the Licence Key is sent to the Customer.
Confidential Information: all information which is imparted or obtained under or in connection with this Agreement on, before or after the commencement of this Agreement in confidence (whether in writing, verbally or by other means and whether directly or indirectly) or is of a confidential nature, relating to the business or prospective business, current or projected plans or internal affairs of either Party or its Affiliates, including in particular, but not limited to, information relating to development plans, costs, finances, marketing plans, equipment configurations, data, access or security codes or procedures utilised or acquired, business opportunities, names of existing or potential Licensor customers, research, and development; proprietary software, all pricing provisions contemplated or incorporated into this Agreement, the terms of this Agreement, all know-how, trade secrets, products, operations, processes, product information and information relating to the Licensor's Intellectual Property Rights and Documentation, and any other commercial, financial or technical information relating to the business of either Party. Customer expressly agrees that all information in connection with the Software is confidential information.
Documentation: the published and generally available user and training manuals proprietary to and provided by the Licensor.
Hardware of the Customer: the hardware of the Customer determined with the applicable System-type, CPU-number, System-number, and Node-name in the Proposal on which the Software will be installed by the Customer.
Licence Fee: the licence fee payable by the Customer to the Licensor under the Proposal
Licence Key: a key enabling the Customer to run the Software.
Intellectual Property Rights: all intellectual property rights of any kind existing anywhere in the world whether or not registered and all applications, renewals and extensions of the same including, without limitation, copyright, database rights, design rights, patents, trade marks, service marks, trade names and other rights in goodwill, rights in know-how, trade secrets and other confidential information.
License Term: the period of time during which the Customer shall be entitled to use the particular Software as determined in the Proposal unless terminated earlier in accordance with these Terms and Conditions.
Maintenance Release: release of the Software that corrects faults, adds functionality or otherwise amends or updates the Software, but which does not constitute a New Version.
Modification: any Maintenance Release.
Proposal: the document containing details of the Software to be licensed.
New Version: any new version of the Software which from time to time is publicly marketed and offered for purchase by the Licensor in the course of its normal business, being a version which contains such differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.
Service Level Agreement ('SLA"): the service description available on the homepage of the Licensor and as stated in the Proposal. The always latest version of SLA can be found here: Service Level Agreement
Site: the premises from which the Customer carries out its business as notified to the Licensor in writing from time to time, including the licensed computers as set forth in the respective Proposal, if applicable.
Software: the computer programs in object code as in more detail defined in the Proposal which, may be amended or supplemented by mutual consent of the Parties during the Term of this Agreement. It includes any Maintenance Releases (including corrections, bug fixes, enhancements, updates or other modifications including custom modifications of the Software to be licensed by Licensor to Customer) but it does not include any New Versions.
Term: means the term of this Agreement as set out in the Proposal.

1. OBJECT OF AGREEMENT; DELIVERY AND INSTALLATION

1.1. This agreement governs the offering, sale and delivery of all Products and/ or Services from or on behalf of the Licensor to its Customer and apply to all similar dealings between Licensor and Customer. In the event of any conflict or inconsistency between these Terms and Conditions and an underlying written agreement between the parties, the terms of the underlying written agreement shall control and prevail.

1.2. Upon receiving the Purchase Order accepting the Proposal provided by the Licensor, the Licensor shall send by email the access data to the Customer enabling the Customer to download the Software from the Licensor's website at www.comforte.com. Risk in any tangible media on which the Software is delivered shall pass on delivery. If applicable, the Licensor shall send the License Key by email to the Customer to enable the Customer to run the Software.

1.3. The Licensor is not responsible for the installation and configuration of the Software, which is to be done by the Customer in accordance with the Documentation or other instructions provided to the Customer by the Licensor.

2. LICENCE

2.1. In consideration of the Fee paid by the Customer to the Licensor, the Licensor grants to the Customer a non-exclusive licence, non-transferable and non-assignable limited licence to install and use the Software on the Hardware of the Customer in accordance with the terms of this Agreement. The Customer may not use or install the Software on any other hardware than the Hardware of the Customer.

2.2. In relation to scope of use:

a) for the purposes of clause 2.1, the use of the Software shall be restricted to use of the Software in object code form for the purpose of processing the Customer's data for the normal business purposes of the Customer (which shall not include allowing the use of the Software by, or for the benefit of, any person other than an employee of the Customer).

b) the Customer may not use the Software other than as specified in this Section 2 without the prior written consent of the Licensor, and the Customer acknowledges that additional feed may be payable on any change of use approved by the Licensor.

c) except as stated in this clause 2 and as may be permitted by law, the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software or the Documentation in whole or in part except where is expressly permitted to do so by law.

d) The Customer shall ensure that the Software is installed on designated equipment only.

e) The Customer shall notify the Licensor as soon as it becomes aware of any unauthorized use of the Licensed Software by any person.

f) The Customer shall pay, for broadening the scope of the licenses granted under this license to cover the unauthorized use, an amount equal to the fees which the Licensor would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorized use on the date when such use commenced.

2.3. The Customer shall permit the Licensor to inspect and have access to any premises (and to the computer equipment located there including the Hardware of the Customer) at or on which the Software is being kept or used, and have access to any records kept in connection with this licence, for the purposes of ensuring that the Customer is complying with the terms of this Agreement, provided that the Licensor provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times.

3. MAINTENANCE RELEASES AND SERVICES

3.1. During the Term of this Agreement, the Licensor will provide the Customer with all Maintenance Releases generally made available to its customers. The Licensor warrants that no Maintenance Release will adversely affect the then existing facilities or functions of the Software. The Customer shall install all Maintenance Releases as soon as reasonably practicable after receipt.

3.2. The standard support and maintenance to be provided by the Licensor to Customer is as outlined in the SLA. If Customer requires Platinum support as defined in the SLA, then additional fees shall be payable.

4. FEES

4.1. The Customer shall pay to the Licensor the Licence Fees as set out in the Proposal and any other fees due and payable within 30 days of the relevant Licensor's invoice date.

4.2. Customer shall be responsible for Sales Tax, Use Tax, Value added Tax, any import, export, federal, state or local tax, sales or similar tax, however designated, which arise or are imposed by the transactions contemplated by this Agreement. All payments shall be made in the agreed currency and by the nominated payment method as set out in the Proposal.

4.3. The Licensor may elect to increase the license fees of any license granted under this Agreement annually, on each anniversary of the effective date of the applicable Proposal, by up to 7% of the License Fee as set forth in the Proposal as compensation for innovation investments and inflation.

4.4. In addition, if the annual percentage increase in the U.S. Bureau of Labor Statistics' Producer Price Index (PPI) for Software Publishing (NAICS Code 5112) exceeds seven percent (7%) for the twelve-month period preceding such anniversary date, the Licensor shall be entitled to adjust the license fee by the exact percentage increase reflected in the PPI instead of the up to seven percent (7%) baseline increase.

4.5. Any such adjustment shall be calculated on a compound basis from the original License Fee, and the Licensor shall provide the Licensee with written notice of the intended fee increase no less than thirty (30) days prior to its effective date.

4.6. If the Customer fails to pay any amount payable by it under this licence the Licensor may charge the Customer interest on the overdue from the due date up to the date of actual payment, at the rate of 8 % per annum or such higher amount as may be permitted by law. Such interest shall accrue on a daily basis and be compounded quarterly. Non-payment by Customer of the Licence Fees when due and payable shall constitute a material breach of this Agreement.

5. CONFIDENTIALITY AND PUBLICITY

5.1. The Customer shall, during the term of this Agreement and thereafter, keep confidential all, and shall not use for its own purposes nor without the prior written consent of the other disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) any Confidential Information which may become known to it from the Licensor and which relates to the Licensor or any of its Affiliates, unless that information is public knowledge or already known to the Customer at the time of disclosure, or subsequently becomes public knowledge lawfully other than by breach of this Agreement, or subsequently comes lawfully into the possession of the Customer from a third party. The Customer shall use its reasonable endeavours to prevent the unauthorised disclosure or copying of any Confidential Information and limiting the disclosure of Confidential Information to those employees of Customer with a bona fide need to know.

5.2. The terms of this Agreement are confidential and may not be disclosed by the Customer without the prior written consent of the Licensor.

6. EXPORT

6.1. Neither Party shall export or re-export, directly or indirectly, any software, technology or technical data acquired from the other Party under this Agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations (**Export Control Laws**) to any country for which the competent export control authorities or any agency thereof at the time of export require an export license or other governmental approval or consent without first obtaining such license, approval or consent. If the Customer has declared in connection with the purchase of the Licensed Software vis-à-vis any competent export control authority that it will not re-export the Licensed Software without prior license, approval or consent (e.g. in an end-use certificate), the Customer ensures vis-à-vis the Licensor that it will comply with this requirement.

6.2. Each Party undertakes:

a) Contractually to oblige any Third Party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and

b) If requested, to provide the other Party with any reasonable assistance, at the reasonable cost of the other Party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

7. LICENSOR'S WARRANTIES

7.1. The Licensor warrants by way of agreement on the specification (German legal term "Beschaffenheitsvereinbarung") that the Software will conform in all material respects with the specification according to the Product Data Sheets. Other technical descriptions or information contained in offers, prospectus or advertising materials are not binding and will not be incorporated into the Agreement unless explicitly referred to.

7.2. The Licensor shall be legally responsible for the agreed specification of the Software pursuant to clause 7.1, like a seller, provided that the relevant delivery time occurs when the Licensor has sent the access data and/or Licence Key by email to the Customer enabling the Customer to run the Software. Any right of the Customer to withdraw from the Agreement shall be replaced by the right to terminate the Agreement with immediate effect. If, during the Licence Term, the Customer notifies the Licensor in writing of any defect or fault in the Software, whereby it fails to conform in all material respects to the Documentation, (and such defect or fault does not result from the Customer, or anyone acting with the authority of the Customer, having amended the Software or used it outside this Agreement), the Licensor shall, at the Licensor's sole option, do one of the following:

a) repair the Software; or

b) replace the Software;

provided the Customer provides all the information that may be necessary to assist the Licensor in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable the Licensor to re-create the defect or fault.

7.3. The Licensor warrants to apply the due care customary in the software industry. The Licensor does not warrant (and the Customer acknowledges) that the use of the Software will be uninterrupted or error-free.

7.4. The warranty given in section 7.1 above is subject to and dependant upon the Customer making prompt and timely payments of all Licence Fees and other fees as may be due and owing under this Agreement.

7.5. The Customer accepts responsibility for the selection of the Software to achieve its intended results and acknowledges that the Software has not been developed to meet the individual requirements of the Customer.

7.6. All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

8. PROVISION OF SERVICES

8.1. The Licensor warrants that any services to be performed under this Agreement (or the SLA) by the Licensor shall be performed with skill and care customary in the software industry.

8.2. Any dates for the provision of services shall be estimates only. Time shall not be of the essence for the provision of any services.

9. LIMITS OF LIABILITY

9.1.

a) The Licensor shall only be liable for wilful misconduct (German legal term "Vorsatz") or gross negligence (German legal term "grobe Fahrlässigkeit").

b) In case of slight negligence, the Licensor shall only be liable for breach of material obligations (German legal term: "Kardinalpflichten") and the liability of the Licensor shall be limited to the typically foreseeable losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer). In the latter case, the Licensor shall have no liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence but not gross negligence) or otherwise howsoever, which fall within any of the following categories:

i) typically unforeseeable, special damage even though the Licensor was aware of the circumstances in which such special damage could arise;

ii) loss of profits;

iii) loss of anticipated savings;

iv) loss of business opportunity;

v) loss of goodwill;

vi) loss or corruption of data.

Except as expressly stated in 9.2, the total liability of the Licensor (including the liability for defective or delayed delivery of the Software), whether in contract, tort (including negligence) or otherwise and whether in connection with this Agreement or any collateral contract (such as the SLA), shall in no circumstances exceed a sum equal to the Licence Fees paid in the 12 months preceding the month in which the liability arose for the Software affected.

c) The Customer agrees that, in entering into this Agreement, it did not rely on any representations (whether written or oral) of any kind or of any person other that those expressly set out in this Agreement.

9.2. The Licensor does not exclude liability for:

a) death or personal injury caused by the negligence of the Licensor;

b) fraud or fraudulent misrepresentation;

c) wilful misconduct (German legal term "Vorsatz") or

d) or gross negligence (German legal term "grobe Fahrlässigkeit")

e) any other liability which may not be excluded by law.

9.3. All dates supplied by the Licensor for the delivery of the Software or the provision of services (if any) shall be treated as approximate only. The Licensor shall not be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.

9.4. All references to "the Licensor" in this clause 9 shall, for the purposes of this clause be treated as including all employees, subcontractors and Licensors of the Licensor and its Affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause.

10. INTELLECTUAL PROPERTY RIGHTS

10.1. The Customer acknowledges that all Intellectual Property Rights in the Software and any Modifications belong and shall belong to the Licensor, or its Affiliates (or other third parties who have granted Licensor permission to sub licence the Software) and the Customer shall have no rights in or to the Software other than the right to use it in accordance with this Agreement.

10.2. The Licensor shall defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that the possession, use, development, modification, or maintenance of the Software (or any part thereof) in accordance with this Agreement infringes any Intellectual Property Rights of a third party (Claim). The Licensor shall be responsible for any reasonable losses,

damages, costs (including legal fees) and expenses awarded against the Customer under final judgment as a result of or in connection with any such Claim. For the avoidance of doubt, this clause shall not apply where the Claim in question is attributable to possession, use, development, modification, or maintenance of the Software (or any part thereof) by the Customer other than in accordance with this Agreement, use of the Software in combination with any hardware or software not specified by the Licensor if the infringement would have been avoided by the use of the Software not so combined, or use of a non-current release of the Software.

10.3. If any third party makes a Claim, or notifies an intention to make a Claim against the Customer, the Licensor's obligations under clause 10.2 are conditional on the Customer:
   a) as soon as reasonably practicable, giving written notice of the Claim to the Licensor, specifying the nature of the Claim in reasonable detail;
   b) not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Licensor (such consent not to be unreasonably conditioned, withheld or delayed);
   c) giving the Licensor and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable the Licensor and its professional advisers to examine them and to take copies (at the Licensor's expense) for the purpose of assessing the Claim; and
   d) subject to the Licensor providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as the Licensor may reasonably request to avoid, dispute, compromise or defend the Claim.

10.4. If any Infringement is made, or in the Licensor's reasonable opinion is likely to be made, against the Customer, the Licensor may at its sole option and expense terminate this Agreement immediately by notice in writing to the Customer and refund any of the Licence Fees paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Software to the date of termination) on return of the Software and all copies thereof.

10.5. This clause 10 constitutes the Customer's exclusive remedy and the Licensor's only liability in respect of Claims and, for the avoidance of doubt, is subject to clause 10.1.

11. TERM AND TERMINATION

11.1. This Agreement will commence on the Commencement Date and, subject to the provisions of clause 11.2 will continue for an initial license term defined in the Proposal. After the initial license term, this Agreement shall automatically renew for successive one (1) year periods unless either party provides written notice of non-renewal at least three (3) months prior to the end of the then-current term. Such notice must be in writing and shall be deemed effective upon receipt.

11.2. Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, either Party may at any time terminate this Agreement with immediate effect by giving written notice to the other Party if:
   a) the other Party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
   b) the other Party commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
   c) the other Party terminates or suspends its business, or becomes subject to any bankruptcy or insolvency proceedings, becomes insolvent or subject to direct control by a trustee, receiver or similar authority, or has been wound up or been liquidated voluntary or otherwise.

11.3. Termination by either Party in accordance with the rights contained in this clause 11 shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

11.4. Licensor may terminate this Agreement upon written notice to the Customer at any time, in the event that the Customer undergoes a change of control, management or ownership.

11.5. On termination for any reason:
   a) all rights granted to the Customer under this Agreement shall cease;
   b) the Customer shall cease all activities authorised by this Agreement;
   c) the Customer shall immediately pay to the Licensor any sums due to the Licensor under this Agreement; and
   d) the Customer shall immediately destroy or return to the Licensor (at the Licensor's option) all copies of the Software, Documentation and all Licensor's Confidential Information then in its possession, custody or control and, in the case of destruction, certify to the Licensor that it has done so and that the Software has been uninstalled from the Customer's computer equipment by a provided formular, signed by a duly appointed officer of the Customer.

11.6. Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall survive termination of this Agreement.

12. WAIVER

No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

13. INSURANCE

Each Party undertakes to the other to ensure that it has adequate insurance in place in respect of its obligations under this Agreement.

14. ENTIRE AGREEMENT

This Agreement and the related Proposal contains the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter

15. VARIATION

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

16. SEVERANCE

If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

17. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any Party the agent of another party, nor authorise any Party to make or enter into any commitments for or on behalf of any other Party.

18. FORCE MAJEURE

Neither Party shall be liable for any delay or failure to meet any of its obligations (other than a payment obligation) under this Agreement due to any circumstances or causes beyond its reasonable control, including (but without limitation to) Acts of God, public enemy, civil disobedience, governmental regulations or decrees, labour disputes, unavailability of materials, default or failure of any sub contractor, or supplier, acts of Governments, war, riot, malicious acts of damage, industrial dispute, terrorism or the threat of terrorism.

19. DATA PROTECTION

19.1. The Parties shall have the obligation to observe the provisions of the applicable privacy laws.

19.2. The Licensor may collect, store and process data of the Customer and its directors, officers, employees and consultants for purposes of this Agreement in compliance with the laws and regulations applicable in Germany. The Licensor will not have any access, store or process the Customer's data to be protected by using the comforte Software.

19.3. comforte will not transfer personal data of Customer to Third Parties unless the Customer has consented to such a transfer of data or another legal justification exists and the data subject has been informed about the processing (see privacy policy on our website: https://www.comforte.com/privacy-policy). Notwithstanding the foregoing, the Licensor is entitled at all times to disclose data and/or any other information to third parties as necessary to satisfy any applicable law or governmental request.

20. NOTICES

Any notice required to be given under this Agreement shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to the receiving party's registered office address. It shall be marked for the attention of the Chief Financial Officer.

21. GOVERNING LAW AND JURISDICTION

21.1. This Agreement shall be governed in all respects by the laws of Germany and the place of jurisdiction for all claims shall be the city of Wiesbaden. The Licensor shall also be entitled to take legal action before the competent court having jurisdiction at the Customer's registered office.

21.2. Notwithstanding Clause 20.1, nothing in this Agreement is intended to be construed as prohibiting a Party from applying to any Court for injunctive relief.