

EULA (End User License Agreement) for empower software products

This EULA consists of 2 main sections, section 1 for paid usage (commercial license), section 2 for unpaid usage (e.g. trial license).

Section 1 – EULA for paid usage (commercial usage) _____

USE OF THE SOFTWARE PROVIDED WITH THIS AGREEMENT CONSTITUTES YOUR ACCEPTANCE OF THESE TERMS. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, PROMPTLY DELETE OR RETURN THE SOFTWARE AND THE ACCOMPANYING ITEMS (INCLUDING WRITTEN MATERIALS AND CONTAINERS) TO THE LOCATION WHERE YOU OBTAINED THEM. IN CASE A CONTRACT INCL. LICENSE AGREEMENT HAS BEEN SIGNED ON CORPORATE LEVEL FOR THE SOFTWARE, THEN THAT CONTRACT SUPERSEEDS THIS AGREEMENT.

Preamble

You as a user (also referred to as “Licensee” in this Agreement) intend to install and use a Software product from empower GmbH (Im Mediapark 8, 50670 Cologne, Germany – “Licensor”). Under the terms of this Agreement, the Licensor shall grant the Licensee the use of its Software product.

Order of Interpretation

In case of conflict between or among documents for the purpose defined in the preamble, the following order of precedence shall apply:

1. A License Agreement explicitly accepted and signed by Licensor and Licensee on corporate level.
2. This EULA

1 Definitions

1.1 “Software” is the computer program you are about to install, created as an extension of Microsoft Office, named “empower” in object code, including the related documentation.

2 Subject of the Agreement

2.1 Subject of this Agreement is the lease of the Software, limited to the term of the Agreement, as well as the granting of the rights necessary to use said Software according to the Agreement against payment of a fee on corporate level.

3 Granting of rights

3.1 The quality of the Software shall be defined solely in the documentation relating to the offered product edition. The documentation is integrated directly into the Software of the relevant version and edition in electronic form (in the form of hyperlinks to webpages).

3.2 The Licensee shall be granted the non-exclusive, non-transferable and non-sublicensable right, limited to the term of the Agreement, to use the Software as per Agreement. Use as per the terms of the Agreement includes installing, loading, displaying and running the installed Software.

3.3 The Licensee shall be entitled to make back-ups of the provided Software.

3.4 The Licensee shall not be entitled to forward to third parties the copy of the Software provided to it or any copies made by it. In particular, it shall not be permitted to sell, loan or rent the Software, sublicense it in any other manner, or make it accessible to the general public.

3.5 The overall maximum number of users is to be observed for the entire user group that pays for a number of named user licenses. The Software may be distributed to such licensed named users.

3.6 The Licensee shall not be entitled to make copies of the Software in cases not covered in the previous sections 3.3 and 3.5.

3.7 The Licensee shall not be entitled to edit or decompile the Software. Excepted from this is § 69e UrhG. However, the Licensor should be involved in any attempt to establish interoperability.

3.8 If the Licensee violates one of the above provisions (3.4 through 3.7), the Licensor can, in its sole discretion, decide to either charge e.g. for extra usage or (in case of willful intent or repeated violation) to immediately terminate the Agreement. In case of termination all usage rights granted within the scope of this Agreement shall become invalid with immediate effect and shall revert automatically to the Licensor. In such cases the Licensee must immediately and completely refrain from using the Software, delete all copies of the Software installed on its systems and, if applicable, delete any back-ups or hand them over to the Licensor.

3.9 The Software contains an activation logic component (copy protection). By way of a short connection to an activation server of the Licensor, the Software will at regular intervals verify the validity of the license used. No other data is transmitted, the connection is made solely to validate the license.

3.10 If the Licensee receives access to a "Template Library" (part of some customizing packages), it shall, in addition to the templates that may be adapted to its corporate design, receive the nonexclusive, non-transferable (apart from the provisions of this Agreement) right, unlimited in terms of time, to utilize and edit the templates in all known types of use.

3.11 The Licensor assures the Licensee,

1. that the Software does not infringe any patent rights, trademark rights, copyrights, brand names, corporate secrets, licenses or other industrial property rights of third parties.

2. that it is in possession of the necessary rights and the power of disposition to grant the Licensee the licenses to the intellectual property (in particular, patent rights, trademarks, copyrights, brand names, corporate secrets, licenses and other industrial property rights) with regard to each individual component of the Software.

3.12 The Licensor shall indemnify the Licensee against all damage, claims and costs, and any reasonable expenses in connection with this, and hold it harmless from any allegations by third parties that the Software infringes any patent rights, trademark laws, copyrights, trade names, operational or corporate secrets, trademarks or other rights or industrial property rights of any third party.

3.13 The Licensee shall inform the Licensor immediately in writing of any such claim. The Licensor shall avert any such demands and claims at its own expense. The Licensee shall provide every reasonable assistance requested by the Licensor in connection with such a claim.

3.14 If the Licensee fails to inform the Licensor in time, such failure shall release the Licensor from its duties under the previous sections only to the extent that it has suffered a disadvantage as a result.

3.15 If it should be determined that the Software provided under the terms of this Agreement constitutes an infringement and the use of such is prohibited, the Licensor shall, at its own expense, either:

1. obtain a license for the use of the contested components; or
2. either replace the contested components with a functional equivalent that is not subject to any industrial property rights or alter the Software accordingly.

4 Servicing, maintenance and future development

4.1 The corporation of Licensee has to establish and announce an in-house support for the Software in case of queries or problems. The in-house support has to offer assistance for any queries regarding the operation of the Software and, in the first instance, for any problems with the Software itself (hereinafter referred to as first-level support).

4.2 The Licensee shall report any queries or defects in the Software to the Licensor via this designated first-level support only. Defects shall be reported by describing the defect and the specific circumstances (for the purpose of reproducing the error) as precisely as possible

4.3 The Licensor shall guarantee that the contractually agreed quality of the Software is maintained during the term of this Agreement and that the use of the Software as per Agreement does not conflict with any third-party rights. The Licensor shall rectify any material defects or defects of title with regard to the leased Software within a reasonable time.

5 Term

5.1 The start of license is defined by the License Agreement on corporate level or by a separate order issued by Licensee and accepted by Licensor.

5.2 For the entire term of license, the Licensee shall be entitled to maintenance or rectification of defects in accordance with this Agreement.

5.3 The Agreement shall be concluded for an indefinite period. It may be terminated by either party on corporate level with a notice period of six (6) weeks to the end of any year of term.

5.4 The Agreement can also be terminated without notice by the Licensor in writing for good cause. Good cause entitling the Licensor to terminate the Agreement shall be deemed to exist, in particular, if the Licensee violates any usage rights of the Licensor by using the Software above and beyond the scope of the usage permitted under the terms of the Agreement and fails to cease said violation within a reasonable time after receiving a warning from the Licensor to that effect. A pro rata reimbursement of the license fee shall be excluded in such cases.

5.5 If the Licensor refuses to remedy a problem relating to the Software or, after being granted a reasonable time to perform remedy, such remedy ultimately fails, the Licensee may terminate the Agreement in writing with a notice period of 30 days. If the Licensor also fails to remedy the problem within this 30-day period, the termination shall be effective. The Licensee shall then be entitled to reimbursement of the license fee from the moment the problem occurred.

5.6 If the Licensor fails to resolve an existing infringement of industrial property rights by the Software in accordance with this Agreement within a reasonable time, the Licensee may terminate the Agreement in writing with a notice period of 30 days. If the Licensor also fails to resolve the infringement of industrial property rights within this 30-day period, the termination shall be effective. The Licensee shall then be entitled to reimbursement of the license fee from the moment the Software could no longer be used. The obligation on the part of the Licensor to indemnify and hold harmless as defined in this Agreement shall remain hereby unaffected.

5.7 Notice of termination must be given in writing.

5.8 If the Agreement is terminated, the Licensee shall cease using the Software at the end of the license term or upon the termination becoming effective and shall remove all installed copies of the program from its computers.

6 Renumeration

6.1 All fees and payment terms are specified in the offer / order accepted by both parties on corporate level.

7 Liability

7.1 The Licensor shall not be liable, irrespective of the legal basis, for indirect, non-foreseeable or special damage, or for consequential damages or damages of a punitive nature; it shall, in particular, not be liable for loss of revenue or loss of profit, loss of business opportunity, loss of image or loss of data, even if the Licensor was warned about such risks.

7.2 In no event shall the Licensor be liable to the Licensee or its successors and assignees for damages that are higher than the annual license fee on corporate level.

7.3 The above-mentioned limitations of liability shall not apply in the case of liability for death, injury or impaired health, for gross negligence, intent or deceit or if liability can be neither excluded nor limited by law (e.g. Product Liability Law).

8 Confidentiality

8.1 The parties hereby agree to disclose no confidential information.

8.2 This obligation shall not include such confidential information

1. of which the recipient was already demonstrably aware at the time of concluding the Agreement or of which it was made aware by a third party at a later stage without this constituting a violation of a non-disclosure Agreement, statutory regulations or official directives;

2. that was public knowledge at the time of concluding the Agreement or became public knowledge at a later stage, provided that this was not due to a violation of this Agreement;
3. that must be disclosed due to legal obligations or on grounds of an official or judicial directive.

To the extent that disclosure is permissible and possible, the recipient obligated to disclose the information shall inform the other party in advance and provide it with the opportunity to take action against said disclosure.

9 Miscellaneous

9.1 The Licensee may transfer rights or obligations arising from or in connection with this Agreement to third parties solely with the written approval of the Licensor.

9.2 Any alterations or amendments to the Agreement must be made in writing. This shall also apply for the alteration or cancellation of this clause. Electronic documents in text form do not fulfil the written form requirement.

9.3 General Terms and Conditions of Business of the Licensee and the Licensor shall not apply.

9.4 German law shall apply exclusively to this Agreement, excluding the United Nations Convention on Contracts for the International Sale of Goods from 11 April 1980.

9.5 Data required for order fulfilment (name and contact details as well as other data provided for order fulfilment) may be saved electronically by both parties, however both parties are required to handle such data in accordance to applicable data privacy laws.

9.5 Should individual provisions of this Agreement be ineffective, the validity of the remaining provisions shall remain hereby unaffected. The contracting parties shall endeavour to replace the invalid provision with one that best meets the objective of the Agreement both legally and economically.

Section 2 – EULA for unpaid usage (e.g. trial usage) _____

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Preamble

You as a user (also referred to as “Licensee” in this Agreement) intend to install and use a Software product from empower GmbH (Im Mediapark 8, 50670 Cologne, Germany – “Licensor”). Under the terms of this Agreement, the Licensor shall grant the Licensee the use of its Software product free of charge for a limited time.

1 Definitions

1.1 “Software” is the computer program you are about to install, created as an extension of Microsoft Office, named “empower” in object code, including the related documentation.

2 Subject of the Agreement

2.1 Subject of this Agreement is the lease of the Software, limited to the term of the Agreement, as well as the granting of the rights necessary to use said Software according to the Agreement free of charge. The Software is transferred in the status in which it is available to Licensor at the point in time of the transfer ("as is").

3 Granting of rights

3.1 The Software is legally protected. The copyright, patent rights, trademark rights and all other ancillary copyrights in the Software, as well as all other items which Licensor provides or makes available to Licensee remain the sole property of Licensor. Where such rights are held by third parties, Licensor has the corresponding rights of use and exploitation.

3.2 The Licensee shall be granted the non-exclusive, non-transferable and non-sublicensable right, limited to the term of the Agreement, to use the Software as per Agreement. Use as per the terms of the Agreement includes installing, loading, displaying and running the installed Software.

3.3 The Licensee shall be entitled to make back-ups of the provided Software.

3.4 The Licensee shall not be entitled to edit or decompile the Software. Excepted from this is § 69e UrhG. However, the Licensor should be involved in any attempt to establish interoperability.

3.5 The Licensee shall not be entitled to forward to third parties the copy of the Software provided to it or any copies made by it. In particular, it shall not be permitted to sell, loan or rent the Software, sublicense it in any other manner, or make it accessible (tangible or intangible form) to any third party or the general public.

3.6 In the event of any breach of these provisions (3.2, 3.4 or 3.5) by the user, Licensor reserves the right to claim damages. Further Licensor can, in its sole discretion, decide to immediately terminate the Agreement. In case of termination all usage rights granted within the scope of this Agreement shall become invalid with immediate effect and shall revert automatically to the Licensor. In such cases the Licensee must immediately and completely refrain from using the Software, delete all copies of the Software installed on its systems and, if applicable, delete any backups.

3.7 The Software contains an activation logic component (copy protection). By way of a short connection to an activation server of the Licensor, the Software will at regular intervals verify the validity of the license used. No other data is transmitted, the connection is made solely to validate the license.

3.8 If the Licensee receives access to a "Template Library", it shall, in addition to the templates, receive the nonexclusive, non-transferable (apart from the provisions of this Agreement) right, unlimited in terms of time, to utilize and edit the templates in all known types of use.

4 Duties of Licensee

4.1 The Licensee shall be obliged to test the Software thoroughly as to its usability in the specific situation before commencing any productive use.

4.2 The Licensee shall be obliged to take reasonable precautions (e.g. through data backups, fault diagnosis, regular examination of the results, emergency planning) in order to deal with a situation in which the Software, either in whole or in part, does not work properly. It is the responsibility of the Licensee to ensure the functionality of the working environment of the Software.

5 Material defects and liability

5.1 The Licensee shall have no claim to have any defects rectified by Licensor or to receive any kind of support as the Software is provided free of charge.

5.2. The Licensor shall not be liable, irrespective of the legal basis, for indirect, non-foreseeable or special damage, or for consequential damages or damages of a punitive nature; it shall, in particular, not be liable for loss of revenue or loss of profit, loss of business opportunity, loss of image or loss of data, even if the Licensor was warned about such risks.

5.3 The liability of Licensor as towards the Licensee for material defects in the Software provided shall be restricted to the case of Licensor fraudulently concealing from the Licensee any material defect in the Software.

5.4 The Licensee shall inform the Licensor in writing without delay if any third party asserts industrial property rights (e.g. copyright or patent rights) against him in respect of the Software. The Licensee authorises the Licensor to conduct the dispute with the third party alone. So long as the Licensor avails itself of this authorisation, the Licensee may not of his own initiative acknowledge the claims of the third party without the consent of the Licensor; the Licensor shall then at its own expense avert the claims of the third party and shall indemnify the user from all costs associated with averting such claims except in so far as these result from conduct on the part of the Licensee in breach of duty (e.g. use of the Software in breach of this Agreement).

5.5 With the exceptions of liability for material defects and flaws in legal title (as defined in 5.3 and 5.4), the Licensor shall only be liable for death, injury or impaired health, intent or deceit or if liability can be neither excluded nor limited by law.

6 Term

6.1 The start and end of license is defined by the Licensor as communicated to Licensee via email (e.g. trial definition).

6.2 Licensor may terminate this Agreement and thereby revoke the rights to use the Software for any or no reason at any time. Notification of termination will be provided via email.

6.3. Licensee may also terminate this Agreement for any or no reason at any time. Notification of termination will be provided via email.

6.4 If the Agreement is terminated, the Licensee shall cease using the Software and shall remove all copies of the Software from its computers.

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