

EAM MaaS AG System Usage Agreement

(End-User Licence Agreement EULA for EAM Maximo as a Service)

Version 1.2

§ 1 Contractual Object

The customer receives the non-exclusive and non-transferable **usage rights** for the program system in accordance with the accepted offer or a written order. The program system corresponds to the specifications in the service description (software, add-ons, accompanying documentation (hard copy or online) services and any data centre services). The software, the add-ons and documentation are protected by copyright and subject to copyright protection. As soon as the customer uses the program system, he accepts the contents of this agreement. The customer is not authorised to make this program system available for use, at a charge or no charge, by third parties. The customer is therefore expressly forbidden from undertaking any subleasing. The customer may only copy and use the software, insofar as this is covered by the intended use of the software as given in the current performance description. The necessary copying of the software includes loading the software into random access memory (RAM), however not even the temporary installation or storage of the software on the data carriers (hard disks or similar) of hardware used by the customer.

§ 2 Scope of services

EAM MaaS AG provides services in accordance with the customer-specific service description.

§ 3 Usage cost

This is based on a monthly fee per leased licence. In the first year this will be invoiced from lease commencement until the end of the current year. Thereafter, invoicing will take place on the 1st of January of the following year for one year in advance. Lease fee increases will not apply within the first two years after lease commencement. Thereafter, these will be notified by EAM MaaS AG three months before the end of the year. In the event of unauthorised use by the lessee or third parties at any time until the end of the lease period, the lessee shall be liable for an amount equivalent to, at least, the annual lease fee.

§ 4 Scope of Use

A licence must be leased for every task in Maximo and also for every user. – The “IBM Licensing Information and Usage Restrictions” apply. EAM MaaS AG must be informed and the lease fees adjusted accordingly in the event of a change in the number of tasks or users. Non-compliance with these provisions will result in an immediate blocking of usage of the program system, a early contract termination, as well as a subsequent lease correction based on twice the lease fee. EAM MaaS AG will always make the most up-to-date versions of the leased software products available to the customer. Any necessary system updates will take place after consultation with the customer regarding agreed maintenance windows. EAM MaaS AG has the right to verify legal compliance with the agreed scope of use at any time.

§ 5 Licence Termination

The standard minimum contract period for each leased licence is 3 years from lease commencement. Thereafter, a contract may be terminated in writing three months before the end of the year, by stating the number, the type and the desired early contractual end of the leased licences. Not terminated licenses are extended automatically for a period of one year. If an early termination takes place, a final payment per leased and prematurely terminated licence will become due according to the following formula:

Basic lease fee x (12 + shortfall months to the standard contract expiration) / 3

§ 6 Confidentiality

The parties undertakes to maintain the strictest confidentiality regarding all confidential processes, in particular commercial and operational secrets that it may have acquired knowledge of within the scope of the preparation, realisation and fulfillment of this contract, and not to pass on or use this information in any way. This applies to all employees of EAM MaaS AG, the customer as well as involved third parties, except the information is not necessary for the proper performance of the contractual obligations. In cases of doubt, EAM MaaS AG is obliged to ask the customer for consent prior to such disclosure.

§ 7 Copyright

The customer may not change or remove copyright notices. The provision of the products for a different number of users other than those specified in the order is prohibited without the explicit, written permission of EAM MaaS AG. Reverse translations (reverse engineering, decompilation, disassembling) of the software are not allowed. The software products may not be leased out, nor rented nor lent.

§ 8 Warranty

Both EAM MaaS AG and IBM disclaim any and all warranties. The solution is provided "as is", i.e. without any explicit or implicit guarantee of being completely flawless, error free or being suited for any specific application. EAM MaaS AG and IBM will not guarantee or accept any responsibility for the accuracy or completeness of results, information, texts, graphics, links or notices in connection with the software. This applies in respect of all authorised users as well as all third parties.

§ 9 Disclaimer of Liability

EAM MaaS AG and IBM shall in no event be liable for any damages whatsoever (direct, indirect, consequential damage, financial loss, business interruption, loss of data or damaged data, etc.), regardless of whether such damage was caused by unauthorised users or by incorrect use – even if EAM MaaS AG were made aware of the possibility of such damages. In no case shall EAM MaaS AG be responsible for the software or parts thereof, including but not limited to errors contained therein or omissions, defamation, breaches of public or private law, trademark protection, service interruptions, data protection, moral rights, disclosure of confidential information.

§ 10 Obligations of the Customer

The customer is obliged to prevent any unauthorised access by third parties to the program system by putting appropriate measures in place. For the purposes of this, and where necessary, the customer will oblige its employees to fulfill the abidance of copyright. In particular, the customer will request that its employees do not make any unauthorised copies of the software.

If the customer does not use data centre services, the customer itself take full responsibility for the security of the data. It is strongly recommended that the customer makes a daily mobile data backup, e.g. on a tape streamer, removable disks or an equivalent system. EAM MaaS AG shall not be liable for malfunctions or data losses attributable to missing or inadequate data backups. The customer itself is responsible for entering and maintaining the data and information necessary for the usage of MaaS services. Before entering its data and information, the customer is obliged to check this for the presence of viruses or other malicious components and to employ state-of-the-art anti-virus programs to do this.

The customer undertakes to indemnify EAM MaaS AG against any claims asserted by third parties that are based on data it has stored, and to reimburse EAM MaaS AG for any costs incurred that result from possible legal infringements. EAM MaaS AG is entitled to immediately block allocated storage space where there is reasonable suspicion that the stored data is unlawful and/or infringes the rights of third parties. A reasonable suspicion of illegality and/or a legal violation will exist when courts, authorities and/or third parties notify EAM MaaS AG of this. EAM MaaS AG must inform the customer about the blocking and the reason for this without delay. The block must be lifted as soon as any suspicion has been invalidated.

§ 11 Force Majeure

EAM MaaS AG shall be exempted from the obligation to perform under this contract, if and where the non-fulfillment of performance is attributable to the occurrence of circumstances of force majeure following the conclusion of the contract. Circumstances of force majeure include i.e. wars, strikes, unrest, expropriation, storm, flooding and other natural disasters and other circumstances (in particular water leaks, power outages and the disruption or destruction of data-carrying cables) that are beyond the control of EAM MaaS AG. Each party to the contract must inform the other contractual party without delay and in writing of the occurrence of a case of force majeure, and also inform the other contractual partner in the same manner as soon as the force majeure event no longer exists.

§ 12 Recognition of General Terms and Conditions

By accepting a legally binding offer or placing an order, the lessee accepts without restriction the current General Terms and Conditions of EAM MaaS AG in the version in force at such time.

§ 13 Severability Clause

Should any provisions of this contract be invalid or unenforceable or become invalid or unenforceable after the conclusion of the contract, the validity of the remaining provisions of the contract shall remain unaffected. The invalid or unenforceable provision shall be replaced by a valid and enforceable clause that most closely corresponds to the commercial objective that the parties to the contract had been planning to pursue with the invalid or unenforceable provision. The above provisions also apply accordingly if the contract proves to contain omissions.

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