

# Designtech General Agreement – Software as a Service

Version 2.0, last modified 2011-09-07

## 1 DEFINITIONS

1.1 In addition to the terms elsewhere defined in this Agreement and its Appendices, the following terms used in this Agreement and its Appendices shall have the following meanings;

**“Agreement”** means the Sales Agreement between the Customer and Designtech;

**“Agreed Availability”** means the availability level of the Designtech Product, to the Customer between 8:00 -17:00 during weekdays, as expressly set forth under Section 9;

**“Availability Interruption”** means an interruption of the Agreed Availability of the Designtech Product during weekdays between 8:00-17:00;

**“Confidential Information”** means any information disclosed by one Party (the “Disclosing Party”) to the other Party (the “Recipient”) in connection with this Agreement which is disclosed in writing, verbally or by inspection and is identified as “confidential” or “proprietary” by the Disclosing Party, or which the Recipient has reason to believe is treated as confidential or proprietary by the Disclosing Party;

**“Connection Point”** means the point where the Customer accesses the Designtech Product, the login-page on the agreed URL-address;

**“Customer”** means the party defined as Customer in the Sales Agreement;

**“Customer’s Data”** means the data or other information that the Customer, or End Users, or other party at the request of the Customer or End Users place in trust to be hosted by Designtech and its affiliates;

**“Designtech Products”** means the Software or any other Designtech Products as well as the Documentation applicable thereto, as the same may be modified by Designtech from time to time;

**“Documentation”** means the End User documentation published by Designtech relating to the use of and accompanying the Designtech Products in the form of manuals and function descriptions in printed or electronic format, which may be modified by Designtech from time to time;

**“End User”** means a third party that is licensed under this Agreement through the Customer to use the Designtech Product(s) specified in this Agreement for its own internal purposes as defined in the End User License Agreement and not for redistribution;

**“Error”** means any failure of the Designtech Products to perform in any material respect in accordance with the Documentation;

**“Error Correction”** means any modification, fix, or addition, delivered within a new Release or a new Version of the Designtech Product, that brings the Designtech Products into material conformity with the Documentation, or a procedure or routine that, when observed in the regular operation of the Designtech Products, avoids the practical adverse effect of such nonconformity;

**“EULA”** means the Software End User License Agreement pursuant to which the End User is licensed to use the Designtech Products;

**“Force Majeure Event”** means any circumstance or occurrence beyond the reasonable control of a Party, including without limitation an act or omission by a public authority, newly enacted or amended legislation, an employment dispute or strike, blockade, act of terrorism, storm, earthquake, explosion, fire, flood, or loss or destruction of data or property of major significance whether by accident or otherwise;

**“Maintenance”** means the services Designtech shall execute in accordance with the Sales Agreement;

**“Maintenance Objects”** means the Designtech Product or feature that is subject to maintenance from time to time;

**“Services”** means the professional services Designtech offers to the Customer, in form of implementation, training, customisation, web design, software development, hosting, and Drupal hosting;

**“Start Date”** means the date set forth in the Sales Agreement, stating when Designtech’s Maintenance obligation begins under this Agreement;

**“Service Request”** means the request for service by the Customer to Designtech;

**“Support”** means the support services for Designtech Products provided to the Customer and/or End Users as specified in this Agreement;

**“Support Request”** means the request by the Customer and/or End User of a Designtech Product to get Support, which shall be filed as stated under Sections 7 in this agreement.

**“Software as a Service”** means that the Designtech Product(s) is delivered to the Customer, where Designtech is hosting the Designtech Product(s) which is accessed by the Customer through the agreed connection point.

**“Software”** means that certain proprietary project management, and/or document management software developed and owned by Designtech and its affiliates and licensed under the mark ProjectCoordinator®, DocumentCoordinator®, and iCoordinator™, which may be modified by Designtech and its affiliates from time to time;

**“Third Party Products”** means any product or service the Customer has bought via Designtech, that is a property of any of Designtech’s affiliates;

**“Trademarks”** means the registered marks ProjectCoordinator®, DocumentCoordinator®, and iCoordinator™ (and all registrations and applications for registration with respect thereto) together with any other trademarks, service marks, trade names, logos, designs, or slogans registered to Designtech and/or its affiliates;

**“Update”** means an update of a Designtech Product to the latest Version of the product;

**“User License”** means the Customer’s right to use the Designtech Product(s) for the equivalent number of End Users;

**“Version”** means a uniquely built version of a Designtech Product, e.g. Version 12 compared to Version 11.

## 2 GRANT

2.1 Designtech hereby grants the Customer the right to use the specified Designtech Product(s) and/or Service(s) in accordance with and subject to the terms and conditions of this Agreement and the Customer hereby agrees to act accordingly to this Agreement.

## 3 DESIGNTECH’S OBLIGATIONS

3.1 Designtech shall from the agreed Start Date in this Agreement deliver the Product(s) to the Customer via the Connection Point, and additionally agreed Service(s), in accordance with the Sales Agreement.

- 3.2 Designtech guarantees the Customer access to maintenance and support during the period of this Agreement. The maintenance and support cases will be handled as expressly set forth in Section 7 and 8 below.
- 3.3 Designtech shall execute all its obligations in a professional manner.
- 3.4 Designtech will only have direct technical access to the Customer's Data in the event of;
- a) it is required by law to obtain such information;
  - b) it needs to access the Customer's data in order to fulfil its obligations under this Agreement.
- 3.5 Designtech is not obliged to deliver any product or service to the Customer outside the scope of this Agreement.

#### **4 THE CUSTOMER'S OBLIGATIONS**

- 4.1 The Customer hereby undertakes to;
- a) pay all applicable costs and fees to Designtech when due and as stated in the Terms of Payment;
  - b) The Customer shall provide all required information to Designtech during implementation of the Product(s) and/or Service(s), audit documents and notify decisions, to enable Designtech to meet the terms and conditions of this Agreement,
  - c) The Customer is responsible for the connection between the Customer and the Connection Point as well as that the Customer warrants that it holds the necessary equipment and software in order to use the Designtech Product(s),
  - d) The Customer is responsible for errors in or omissions in the Customers software,
  - e) The Customer shall make sure that (i) the Customer's Data is free from viruses, Trojans, worms or other harmful software or code, (ii) the Customer's Data is in agreed format, and (iii) that the Customer's Data can't in other way harm or negatively affect Designtech's Product(s),
  - f) The Customer information for login data, security methods and other information that Designtech provides for access to the Designtech Product(s), shall be handled as confidential information as expressly set forth in Section 18 – Confidentiality. The Customer shall immediately notify Designtech in the event that any unauthorized user and/or person have gained knowledge about information in accordance with this Section.
- 4.2 The Customer is bound to make sure that all users use the Designtech Product in accordance with and subject to the terms and conditions specified in the Software End User License Agreement (EULA), Appendix 2, in this Agreement.
- 4.3 The Customer agrees that any of the Designtech Products, covered in this agreement between the Customer and Designtech, are not used in illegal activities.
- 4.4 All Third Party Products used by the Customer are subject to the specific terms and conditions of each Designtech's affiliates.
- 4.5 The Customer shall appoint at least one (1) technical contact person (the "Technical Contact"), who shall maintain a level of familiarity with and knowledge of the operation and use of Designtech Products. The Customer shall provide Designtech with name and contact information to the Technical Contact(s), and the Customer shall notify Designtech in writing of any changes in the identity of or contact information for the Technical Contact(s).
- 4.6 The Customer shall report any problems with a Designtech Product to Designtech without any delay. The Service Request shall be conducted through the channels agreed upon in this Agreement.

- 4.7 The Customer shall, when notifying Designtech about a problem, state and when necessary demonstrate how the problem appears.
- 4.8 A representative from the Customer will be available during Maintenance task when required by Designtech. The Customer shall make all Maintenance Objects available to Designtech.
- 4.9 An Availability Interruption is reported when registered in Designtech's Support and Maintenance Program. Registration of an Availability Interruption can occur by automatic alarm, Customer's own notification to Designtech as stated in Section 4.6, or after Designtech's discovery of the Availability Interruption.
- 4.10 The Customer will deliver the Service Request by the agreed contact channels stated under Section 7.5 in this Agreement. The Service Request shall contain a relevant problem description, and contact information of the user(s) concerned.

## 5 INTELLECTUAL PROPERTY RIGHTS

- 5.1 All intellectual property rights and other rights, including without limitation design rights, trademarks, copyright, trade secrets and know-how, relating to the Designtech Products shall at all times be the exclusive property of Designtech and its affiliates or its licensors, and all use of Designtech's intellectual property rights shall accrue to the benefit of Designtech and its affiliates. The Customer will not challenge Designtech's and its affiliates' title to such intellectual property, oppose any registration thereof, or challenge the validity of this Agreement or the license granted herein. Furthermore, the Customer will not register, nor attempt to register, any trade name, trademark, service mark or design which, in whole or in part, incorporates or is confusingly similar to the Trademarks.
- 5.2 Nothing contained in this Agreement shall constitute or be construed as a transfer of ownership of any of the intellectual property rights of Designtech or its affiliates or licensors or to otherwise give the Customer any proprietary rights to the Designtech Products or any of the intellectual property rights of Designtech or its affiliates or licensors. The Customer will have no right, title or interest in the Designtech Products except as expressly set forth in this Agreement.
- 5.3 The Customer shall not (nor shall it permit any third party to):
- a) copy or manufacture the Designtech Products or any portion thereof;
  - b) translate, examine, modify, adapt, enhance, extend, decompile, disassemble or otherwise reverse engineer or otherwise attempt to derive the source code of the Software by any means whatsoever;
  - c) use the Designtech Products to provide any hosting facility management or bureau service or otherwise use the Software to process the data of any third party; or
  - d) lend, rent, or resell any Designtech Product to a third party; or
  - e) transfer the rights of usage of this Agreement to any third party.
- 5.4 The Customer shall promptly notify Designtech of any and all material breaches of the EULA that may come to the Customer's attention to the extent that such breach affects the Designtech Products or the intellectual property rights of Designtech and its affiliates and the Customer will assist Designtech in all steps necessary to terminate any breached license if the breach is not curable or if it is not cured promptly after notice.
- 5.5 The Customer shall promptly notify Designtech of any actual, threatened or suspected infringement of the Trademarks or Designtech's other intellectual property rights, as well as any claims or allegations that the Designtech Products infringe the rights of any third party.

5.6 The Customer agrees to use reasonable efforts to protect Designtech's intellectual property rights and to cooperate in Designtech's efforts to protect its intellectual property rights.

## **6 TERMS OF PAYMENT**

6.1 Upon signature of the Sales Agreement between the Customer and Designtech;

a) Designtech will invoice the Customer in terms of the Sales Agreement and in accordance with Section 6 of this Appendix;

b) The Customer will pay the fixed monthly fee for Designtech's hosting solution (SaaS) in advance for the whole period of this Agreement;

c) Product Training fees will be invoiced upon order from the Customer;

d) Additional services are invoiced in advance for the term of the whole period;

e) For the Third Party Client Xythos, the start-up cost is invoiced together with the 20 percent mandatory software assurance and support fee for the first year. Upon renewal of this Agreement, only the mandatory software assurance and support fee is invoiced 30 days in advance;

f) Additional storage space is invoiced quarterly in advance;

g) For travel at the request of the Customer, Designtech reserves the right to invoice the Customer for travel, living and allowance expenses.

6.2 All prices are exclusive of all taxes, including sales, use or value added taxes where applicable.

6.3 The prices are fixed for the initial term of this Agreement of one (1) year.

6.4 Designtech reserves the right to change the license fees at any time during the term of this Agreement. The new license fees shall be effective upon renewal of this Agreement.

6.5 The Customer agrees to pay all license fees as specified in this Agreement within thirty (30) days from the date of Designtech's invoice.

6.6 If the Customer fails to make any payment when due, then Designtech has the right to obtain interest on overdue payment, and such an occurring event withhold the whole delivery, or parts of the same.

6.7 If the Customer has not paid within thirty (30) days, Designtech reserves the right to provide written notice of our intention to terminate this Sales Agreement. If Designtech terminates this Agreement as a result of this section, the Customer has no right what so ever to any compensation from Designtech.

6.9 All prices and other monetary amounts referred to herein are in the currency set forth in the Sales Agreement, and all payments within this Agreement should be made in that currency.

## **7 SUPPORT SERVICES**

7.1 Designtech shall provide the Customer with off-site troubleshooting, other technical assistance and support concerning the installation and operation of the then-current Version of Designtech Products and the immediate preceding Version thereof, as expressly set forth in Section 7.5 below.

7.2 Designtech shall provide the Customer with Error Corrections for Errors reported in the then-current Version of the Designtech Product and the immediate preceding Version thereof, when such Error Corrections become available.

- 7.3 Support is provided during office hours 8.00-17.00, CET. Exceptions to the normal office hours can occur. The Support process is handled in accordance with Designtech's Support Process, which may be modified by Designtech from time to time. The then current Designtech's Support Process is available through Designtech's website.
- 7.4 Designtech may, on request from the Customer, use additional support services for which Designtech shall charge the Customer, and the Customer agrees to pay, Designtech's then-current standard consulting fees.
- 7.5 Support described in this section is provided without any additional charge to the Customer. User support is provided in the following order:
- a) Online help is found on Designtech's website via a helpdesk management system, frequent questions and downloading of files;
  - b) A support ticket can be submitted via Designtech's website or via e-mail to support@designtech.se;
  - c) Telephone support is available to the Customer and End Users. Please call +46(0)920 – 377 37;
  - d) Any errors experienced by the user should be promptly reported via Designtech's website.
- 7.6 The Customer agrees to submit the Support Request through channels outlined above. The Service Request shall among others contain a relevant problem description, and contact information to the concerned user(s).
- 7.7 Designtech shall have no obligation to provide Support to the Customer in connection with Errors or operational disruptions caused by:
- a) the use of Designtech Products with software or hardware which has not been approved by Designtech; or
  - b) changes, modifications, or alterations to the Designtech Products not approved by Designtech or its authorized representatives; or
  - c) use of the Designtech Products other than in accordance with the Documentation and the terms and conditions expressly set forth in the Agreement; or
  - e) the negligence of the Customer or its employees and agents or any third party.

## **8 MAINTENANCE SERVICES**

- 8.1 Designtech guarantees the Customer access to maintenance during the period of this Agreement. Designtech shall provide the Customer with the latest Updates automatically during the term of this Agreement, based on the condition that the Customer has paid all applicable fees.

## **9 AGREED AVAILABILITY-LEVEL**

- 9.1 Designtech guarantees the Customer an Availability-level to the Designtech Product of 99.70 % during the term of this Agreement, between 08:00 – 17:00 during weekdays, Monday through Friday.

## **10 MEASURING**

- 10.1 Designtech shall measure the Customer's Availability to the Designtech Product. Upon the Customer's request shall Designtech present to the Customer the Availability-level for the current term.
- 10.2 The measuring shall be conducted and presented over a period of 30 days (one month).
- 10.3 The point of measurement shall be the Connection Point; the access page to the Designtech Product.

## 11 AVAILABILITY INTERRUPTION THAT DESIGNTech DOES NOT ANSWER FOR

11.1 Designtech are not responsible for any Availability Interruptions or other insufficient fulfilment of the Agreed Service-level and/or Availability-level, if Designtech can show that the problem have been caused by any of the circumstances listed below and under the condition that the circumstance is not direct assigned to Designtech:

- a) any problems in the Customer's software may occur; or
- b) any circumstances outside of Designtech's responsibility; or
- c) any other circumstance that the Customer is responsible for in accordance with this Agreement; or
- d) virus or other attack on the security thus Designtech has taken all necessary actions in order to prevent such event or circumstance that are referred to as Force Majeure or equivalent limitation of responsibility in this Agreement or that the Customer has been restricted access to the Service as set forth in Section 6.6 / 6.7 in Designtech General Agreement.

## 12 PRICE REDUCTION IN THE EVENT OF INSUFFICIENT AVAILABILITY-LEVELS

12.1 In the event that the Availability-level falls below the Agreed level, the Customer has the right to a price reduction in accordance with the levels below, based on the monthly fees for the particular Designtech Product:

**Percentage or par thereof less than the agreed Availability-level: 0.1 %**

**Percentage price reduction: 10 %**

- 12.2 Maximum price reduction per month when the Availability-level is less than the agreed level that the Customer can claim is thirty percent (30%) of the monthly fee for the Designtech Product.
- 12.3 The Customer shall bring forward its claims of a price reduction, in accordance with Section 12, to Designtech within seven (7) days after receiving the compilation of the Availability-levels, in accordance with Section 10.
- 12.4 Designtech is only liable for insufficient Availability-levels as set forth in this agreement only by the terms and conditions in this Appendix. The Customer does not have any additional rights to compensation or other reimbursement as a result of insufficient Availability-levels, other than what has been caused by intention or severe neglect.

## 13 RIGHTS TO THE CUSTOMER'S DATA

- 13.1 In the relationship between Designtech and the Customer, the Customer owns all rights to the Customer's Data.
- 13.2 In the event where Designtech is monitoring the usage of the Designtech Product(s), if nothing else is agreed upon, Designtech will only use this information to what is necessary for the function and for the development of the product. Designtech shall upon the Customer's request, let the Customer to take part of the information that has been registered concerning the usage of the product in accordance with this Section, if this is agreed upon.

## 14 PERSONAL DATA

- 14.1 The Customer agrees that the handling of personal data is managed in accordance with applicable Swedish laws. All personal data used in connection to, or within the scope of the service, is the Customer's responsibility. Designtech agrees to manage the personal data in accordance with this Agreement and the Customer's written instructions. Designtech is responsible to take the necessary technical and organizational measures that have been agreed. If Designtech uses a supplier that handles personal data, shall Designtech, as a representative for the Customer sign an agreement with the supplier in which the supplier undertakes to comply with Section 14.1.



## **15 LIMITED WARRANTY; DISCLAIMER**

- 15.1 Designtech warrants that the Designtech Product will function in accordance with the then current “Online Help” documentation, available at the Designtech website, during the whole time of the Agreement (the Warranty Period). The warranty covers if, during the Warranty Period, the Software does not perform substantially in accordance with the Documentation or is not recorded properly on the media or files to be downloaded. This warranty is void if failure of the Software has resulted from accident, abuse, or misapplication, or from the Customer or any End User having modified the Software, or used it for a purpose or in a context other than the purpose or context for which it was designed. Any replacement Software will be warranted for the remainder of the original Warranty Period. There is no warranty after expiration of the Warranty Period.
- 15.2 EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 15.1, THE DESIGNTECH PRODUCTS AND THE DOCUMENTATION ARE PROVIDED “AS IS”. ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED.
- 15.3 The warranty in Section 15.1 is for the benefit of the Customer only and may not be assigned or transferred to a third party.

## **16 NO CONSEQUENTIAL DAMAGES; LIMITATION OF LIABILITY**

- 16.1 IN NO EVENT SHALL DESIGNTECH BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES OR LOSSES, INCLUDING WITHOUT LIMITATION DAMAGES OR LOSSES FOR LOSS OF PROFITS, LOSS OF PRODUCTION OR EXPECTED SAVINGS, BUSINESS INTERRUPTION, LOSS OR CORRUPTION OF BUSINESS DATA OR INFORMATION, OR OTHER PECUNIARY LOSS, EVEN IF DESIGNTECH HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 16.2 Designtech is responsible for property damage that has been caused by neglect from Designtech or a Designtech employee. Designtech’s liability towards the Customer for such property damage at the Customer or the Customer’s customer cover only reimbursement for direct losses and is per incident limited to 35 times the then current statutory base amount pursuant to the Swedish National Insurance Act (1962:381).
- 16.3 Any Party’s total liability towards the other Party shall, in exception to Section 12.2 and in the event where damages has been caused by intent or severe negligence exists, be limited to direct losses to a total sum of 15% of the total contract sum of this Agreement. This limitation does not embrace price-reductions, interest rates, or fines.

## **17 TERM AND TERMINATION**

- 17.1 Unless sooner termination of this Agreement in accordance with section 17.2 and 17.3 below, the initial term of this Agreement shall commence on the date specified in the Sales Agreement and shall continue thereafter for a period of one (1) year. Following the expiration of the initial term, this Agreement shall be automatically renewed for consecutive one-year periods, unless either Party notifies the other Party in writing at least three (3) months prior to the expiration of the initial term or then-current renewal term, as applicable, of its intention not to renew this Agreement.
- 17.2 Either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if:

a) the other Party fails to perform any material obligation, duty or responsibility, or is in default with respect to any material term, warranty or condition, undertaken by such Party under this Agreement and such Party fails to cure such failure or default for a period of thirty (30) days following written notice thereof;



b) the other Party: (i) admits in writing its inability to pay its debts generally as they become due; (ii) makes a general assignment for the benefit of creditors; (iii) institutes proceedings to be adjudicated a voluntary bankrupt, or consents to the filing of a petition of bankruptcy against it; (iv) is adjudicated by a court of competent jurisdiction as being bankrupt or insolvent; (v) seeks reorganization under any bankruptcy act, or consents to the filing of a petition seeking such reorganization; or (vi) has a decree entered against it by a court of competent jurisdiction appointing a receiver, liquidator, trustee, or assignee in bankruptcy or in insolvency covering all or substantially all of its property or providing for the liquidation of its property or business affairs; or

c) the other Party has repeatedly and materially failed to fulfill its obligations under this Agreement, regardless if such Party has cured such failures in accordance with Section 17.2 (a) above.

17.3 Designtech may terminate this Agreement with immediate effect in the event that the Customer severely neglect its obligations during its usage of any Designtech Product as set forth in this Agreement and the Software End User License Agreement (EULA). This should be commenced in writing by Designtech to the Customer without any delay after the circumstances constituting the breach have become known to Designtech.

17.4 Upon termination or expiration of this Agreement: (a) all sums due to Designtech but not yet paid shall become immediately due and payable; (b) all rights and licenses of the Customer will terminate; and (c) the Customer shall return to Designtech all copies or delete all installations of the Designtech Products currently in its possession as well as all Confidential Information of Designtech. Upon request by Designtech, a duly authorized representative of the Customer shall certify in writing to Designtech that all such materials have been returned to Designtech or deleted.

17.5 Any termination or expiration of this Agreement (howsoever occasioned) shall not affect any accrued rights, remedies or liabilities of either Party.

17.6 Notwithstanding the termination or expiration of this Agreement, it is acknowledged and agreed that those rights and obligations which by their nature are intended to survive such termination or expiration will survive, including without limitation Sections 5, 6, 13, 14, 17, 18, and 21.

## **18 CONFIDENTIALITY**

18.1 Any information, in whatever form, disclosed by Designtech to the Recipient that relates to the Designtech Products and that is not publicly known will fall under the definition of “Confidential Information.”

18.2 The Recipient shall keep confidential all Confidential Information of the Disclosing Party, and shall only utilize such Confidential Information in connection with the performance of this Agreement.

18.3 The obligation of confidentiality in Section 18.2 shall not apply to information: (i) which is in the public domain or comes into the public domain through no fault of the Recipient; (ii) which is already known to the Recipient prior to the time of disclosure by the Disclosing Party, or is developed by the Recipient without reference to the Confidential Information of the Disclosing Party; (iii) which is properly received by the Recipient from a third party who has the right to disclose such information without restriction and who owes no obligation of confidentiality to the Disclosing Party; or (iv) which is required by law or by regulation of any governmental or regulatory authority, or is required by law in response to a valid order of a court or other governmental body; provided that if the Recipient believes, or is notified that, it is required by law, regulation or in response to a valid order to disclose any Confidential Information, it will promptly inform the Disclosing Party and, if requested by the Disclosing Party, at the Disclosing Party’s expense, take all reasonable steps to prevent and/or limit such disclosure.

18.4 All Confidential Information supplied by the Disclosing Party to the Recipient pursuant to the provisions of this Agreement, together with all copies thereof, will remain the property of the Disclosing Party.

18.5 The confidentiality obligations set forth in this Section 18 shall survive any termination of this Agreement.

## 19 ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, negotiations, and discussions relating to the subject matter of this Agreement, whether written or verbal. Each Party acknowledges that in entering into and performing this Agreement it does not do so on the basis of, and does not rely on any statement or representation or warranty or understanding other than expressly contained in this Agreement at the date of this Agreement.

## 20 FORCE MAJEURE

20.1 Neither Party shall have any liability under this Agreement to the extent that it is delayed, prevented or hindered in performing any of its obligations under this Agreement (other than the obligation to pay money) as a result of a Force Majeure Event.

20.2 Either Party may terminate this Agreement effective immediately upon written notice to the other if the period that the other Party is delayed, prevented or hindered from performing its obligations arising from a Force Majeure Event lasting more than three (3) months.

## 21 GOVERNING LAW AND DISPUTES

21.1 This Agreement shall be governed by and construed in accordance with the laws of Sweden.

21.2 Any unresolved dispute, controversy or claim arising out of or in connection with this Agreement, or the breach, termination, or invalidity thereof, between the Parties, shall be settled by arbitration at the Arbitration Institution of the Stockholm Chamber of Commerce (the "SCC Institute"). Where the amount in dispute clearly does not exceed the (10) times the statutory base amount pursuant to the Swedish National Insurance Act (1962:381) in force of the date of demand for arbitration, shall the dispute be settled by a sole arbitrator, whom will be appointed on a Party's request by the SCC Institute. The place for arbitration shall be Stockholm, Sweden. The language to be used in the arbitral proceedings shall, unless otherwise agreed, be English.

## DESIGNTECH'S CONTACT INFORMATION

Questions regarding this document can be referred to Designtech's Sales department:

**Office:** +46 (0)920-37731  
**Fax:** +46 (0)920-75010  
**E-mail:** sales@designtech.se

# Software End User License Agreement

Version 1.2, Last modified 2011-09-01

## TERMS OF SERVICE

**THIS IS A LEGAL AGREEMENT BETWEEN DESIGNTech SOLUTIONS AB ("DESIGNTech") AND THE CUSTOMER STATING THE TERMS THAT GOVERNS THE END USER'S USE OF THE DESIGNTech PRODUCTS ("LICENSED SOFTWARE"). THIS AGREEMENT, TOGETHER WITH ALL UPDATES, ADDITIONAL TERMS, SOFTWARE LICENSES, AND ALL OF DESIGNTech'S RULES AND POLICIES, COLLECTIVELY CONSTITUTE THE "AGREEMENT" BETWEEN THE CUSTOMER AND DESIGNTech. BY INSTALLING THE LICENSED SOFTWARE(S) THE CUSTOMER AGREES TO THESE TERMS. IF THE CUSTOMER DOES NOT AGREE TO THESE TERMS, DO NOT INSTALL OR USE ANY OF THE DESIGNTech PRODUCTS. THE CUSTOMER MUST ACCEPT AND ABIDE BY THESE TERMS AS PRESENTED IN THIS SOFTWARE END USER LICENSE AGREEMENT. CHANGES, ADDITIONS, OR DELETIONS ARE NOT ACCEPTABLE, AND DESIGNTech MAY REFUSE ACCESS TO THE LICENSED SOFTWARE FOR NONCOMPLIANCE WITH ANY PART OF THIS AGREEMENT.**

### Grant of License for Authorized Users

Subject to the terms and conditions of this Software End User License Agreement (the "EULA") and the payment of all applicable license fees as expressly set forth in the Sales Agreement, Designtech Solutions AB ("Designtech") grants to the Customer a limited, non-exclusive and non-transferable license to install and/or use, depending on in which form the Designtech Product is delivered to the Customer, for internal purposes only, the software programs with which this license is distributed (the "Licensed Software"), including any printed documentation or documentation files accompanying the Software (the "Documentation"), on a single server (if the Software is server based) which may be accessed only by the number of users licensed by Designtech, or a single personal computer (if the Software is PC based) (the "License").

One (1) License for the Software may not be shared for use on different computers, by other End Users or Third Party. If a serial number, password, license key or other security device is provided to the Customer and/or End User for use with the Software, the Customer and/or End User may not share or transfer such security device with or to any other user of the Software or any other third party. Any other use of the Software by any third party, except as provided in this EULA, is strictly forbidden and is a breach of this EULA.

Any maintenance of the Software (i.e. support and upgrades), will be provided in accordance with a separate Maintenance Agreement entered into between the Customer and either Designtech or any of Designtech's Authorized Partners.

Designtech may, at any time upon reasonable advance notice, conduct an audit at the Customer's premises to ascertain whether the Customer and its End User's use of the Software is in compliance with the provisions of this EULA. The Customer shall assist Designtech in the conduct of such audit and shall grant Designtech access to the Customer's premises and computer equipment. In the event that such audit reveals any use of the Software by the Customer and/or individual End User's other than in full compliance with this EULA and/or any other agreement between Designtech and the Customer, the Customer shall reimburse Designtech for all reasonable costs and expenses related to such audit in addition to any other liabilities the Customer may incur as a result of such non-compliance.

## SCOPE OF LICENSE

The Customer and/or End Users may not rent, lease, lend, sell, redistribute or sublicense the Licensed Software. The Customer and/or End Users may not copy (except as expressly permitted by this license and the Usage Rules), decompile, reverse engineer, disassemble, attempt to derive the source code of, modify, or create derivative works of the Licensed Software, any updates, or any part thereof (except as and only to the extent any

foregoing restriction is prohibited by applicable law or to the extent as may be permitted by the licensing terms governing use of any open sourced components included with the Licensed Software). Any attempt to do so is a violation of the rights of Designtech and its licensors. If the Customer and/or End User breach this restriction, The Customer may be subject to prosecution and damages. The terms of the license will govern any upgrades provided by Designtech that replace and/or supplement the original Product, unless such upgrade is accompanied by a separate license in which case the terms of that license will govern.

## **INTELLECTUAL PROPERTY RIGHTS**

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The Customer agrees that Designtech may collect and use technical data and related information, including but not limited to technical information about the Customer's and/or End User's device, system and application software, and peripherals, that is gathered periodically to facilitate the provision of software updates, product support and other services to the Customer and/or End User (if any) related to the Licensed Application. Designtech may use this information, as long as it is in a form that does not personally identify the Customer and/or End User, to improve its products or to provide services or technologies to the same.

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### **Privacy Policy.**

Designtech value the Customer's and End User's privacy and is dedicated to protect information about the Customer and End User. Designtech will log the usage by the Customer and End User's of the Designtech Product(s) in accordance with the Section "Consent to Use of Data" above, in addition, the Customer's and End User's privacy will be respected.

Designtech reserves the right to email the Customer and End Users, when the Designtech Product is delivered as a Software as a Service (SaaS), with technically related, product related, and marketing related information. Each individual End User has the possibility to opt-in/opt-out, this is done by sending an email to [info@designtech.se](mailto:info@designtech.se) with the subject line "Opt-out" in the email. Once one has opted out from receiving



marketing and promotional materials, Designtech will not send any additional materials other than those required by Designtech's service agreement with the Customer.

**Personally Identifiable Information.**

When the Customer register an End User to the Licensed Software, the Customer must complete a registration form that requires the Customer to provide Personal Information (including, without limitation, the End User's name and email address).

**Announcement Email Information.**

From time to time Designtech provide information about its products to the Customer and/or End Users in the form of email. Announcement Emails will be emailed directly to the address that the Customer and/or End User provides when registering, or in the event where the registration has been done by an administrator. The individual End User can opt-out by sending a email to [info@designtech.se](mailto:info@designtech.se) with subject line as "Opt-out" in the email.

Designtech may place email links and/or forms on Designtech's Website to allow the Customer and/or End User to contact Designtech directly. The Personal Information provided in these links and forms is used to respond directly to the questions or comments. Designtech may also file the comments to improve the quality of the website, products, or process, or review and discard the Personal Information. All information, other than the Personal Information that is sent to Designtech using these email links or forms, will not be considered or treated as confidential information. Do not send Designtech any information, ideas, suggestions, proposals, or comments that you consider confidential or that you want to be treated as confidential.

**Use of Your Personally Identifiable Information.**

Designtech use Personal Information to respond to the Customer's and/or End User's inquiries, improve Designtech's marketing and promotional efforts, to analyze Licensed Software and service offers, and to customize services and Licensed Software(s). Designtech may use Personal Information to deliver information to the Customer and/or End User and to contact the same regarding administrative notices. Designtech may also use Personal Information to resolve disputes and troubleshoot problems.

Designtech may use additional information not considered Personally Identifiable to analyze and improve troubleshooting techniques and responses, and to improve the value of Licensed Software(s) and services provided by Designtech or third parties.

If the email address provided to Designtech is an email address that the Customer and/or End User access via a wireless device, the Customer and/or End User understand that the wireless carrier's standard rates apply to these messages, and that the Customer and/or End User may elect to not receive such messages. The Customer and/or End User has the right to opt-out from such messages using our opt-out policy, see separate Section below. The Customer and/or End User also represent that the wireless device is used by its owner or authorized user, on which the messages may be received, and that the Customer and/or End User understand and are authorized to approve the applicable charges.



### **Required Disclosures.**

Designtech may disclose Personal Information if required to do so by law or in the good-faith belief that such action is necessary to prevent injury or property damage. Designtech will usually attempt to notify the Customer and/or End User when Designtech is making such a disclosure, but Designtech may not do so in an emergency or when Designtech is prohibited by law or court order from giving such notice.

### **Information Sharing and Third Party Service Partners.**

Designtech does not rent, sell, or share personal information about the Customer and/or End User with other people or non-affiliated companies without the Customer's and/or End User's prior consent or unless Designtech has a good faith belief that access, use, preservation, or disclosure is reasonably necessary to (a) satisfy any law, regulation, legal process or enforceable governmental request, (b) enforce any applicable Terms of Service (including investigation of potential violations thereof), or (c) detect, prevent or otherwise address fraud, security, or technical issues.

Designtech may provide services for the Licensed Application through contractual arrangements with affiliates, service providers, partners and other third parties ("Service Partners"). Designtech and its Service Partners use Personal Information to operate and deliver their products and services. Unless otherwise agreed by the Customer and/or End User in a separate agreement, Designtech's Service Partners may not use any Personal Information to inform the Customer and/or End User of other products or services available from those Service Providers.

If Designtech becomes involved in a merger, acquisition, or any form of sale of some or all of its assets, Designtech will ensure the confidentiality of any Personal Information involved in such transactions and provide reasonable notice before Personal Information is transferred and becomes subject to a different privacy policy. Such notice may be given by a clear and concise statement on Designtech's website or in a subsequent update to the Licensed Software that there has been an update to this Privacy Policy.

### **Opt-Out Policy.**

Designtech allows the Customer and/or End User to opt out of Designtech's use of the Customer's and/or End User's Personal Information for purposes other than the purpose for which it was provided. This includes, by way of example, marketing and promotional mailings relating to Designtech products and services. In order to opt-out, send an email to [info@designtech.se](mailto:info@designtech.se) with subject line as "Opt-out" in the email. Once Designtech has received the opt-out email from receiving marketing and promotional materials, Designtech will not send any additional materials other than those required by Designtech's service agreement with the Customer.

### **Access and Integrity of Stored Personal Information.**

The Personal Information the Customer and/or End User provide to Designtech during registration of the Licensed Software is shown directly in the Licensed Software's settings. The Customer and/or End User can help Designtech maintain the accuracy of such information by updating the Licensed Software settings any time the Customer's and/or End User's Personal Information changes. In the event where the Customer and/or End User wish to actively delete the Personal Information that has been provided to Designtech, subject to the Customer's and/or End User's understanding that certain deletions may affect Designtech's ability to provide the Designtech services the Customer and/or End User has requested, please contact Designtech.

### **Links.**

The Licensed Software may include links to other applications or sites. This Privacy Policy applies to the Licensed Software only. Any information submitted to linked sites or other applications will be subject to the privacy policies of those sites or applications, if any. The Customer and/or End User should review those policies carefully before providing any information to these linked sites or applications.

**Security.**

Designtech undertakes practical and reasonable steps to protect Personal Information from unauthorized or accidental access, disclosure, misuse or processing, or from alteration, destruction, or loss. Personal Information that Designtech collect resides on servers operated by Designtech or its affiliates and is accessible only to personnel who, by virtue of their duties, are required to have access and have been trained in, and tasked with, the observance of the principles embodied in this Privacy Policy.

**Enforcement.**

If the Customer and/or End User has any questions or complaints regarding how Designtech is handling Personal Information under this Policy or generally about the implementation of the principles of this policy, Designtech encourage the Customer and/or End User to contact Designtech directly.

**Changes to Privacy Policy.**

Should Designtech decide to change this Privacy Policy, Designtech will update it with the release or update of the Licensed Software so that the Customer and/or End User will always know what Personal Information Designtech gather, how Designtech might use it, and whether Designtech will disclose it to anyone. Unless the Customer and/or End User opt out of receiving Announcement Emails from Designtech, as possible in the manner described herein, Designtech may also notify the Customer by email of changes to this Privacy Policy.

**Contact information**

Questions regarding this document can be referred to the Designtech Sales Department:

**Office:** +46 920-37730

**Fax:** +46 920-75010

**E-mail:** [sales@designtech.se](mailto:sales@designtech.se)