

# End User Licence Agreement for iVIEW Data Automation Framework (iVIEW DAF)

## PREAMBLE

Informattec is the manufacturer and rights holder of the software iVIEW DAF used for the development, deployment and operation of business intelligence applications. Informattec distributes iVIEW DAF to End Users either directly or through Resellers/Partners. The End User aims to acquire a license to use iVIEW DAF within its organization and for its own internal purposes.

## 1 SCOPE, CONCLUSION AND DEFINITIONS

- 1.1 The scope of this End User Licence Agreement ("**EULA**") is to provide the End User with a licensing right to use iVIEW DAF or its individual Components against remuneration. This EULA neither governs the installation, the implementation, the maintenance nor the sale of iVIEW DAF or any other software.
- 1.2 This EULA enters into force upon signature of the Order Form by the End User.
- 1.3 Capitalized terms in this EULA shall have the defined meanings, particularly the following:

**"Contractual Software"**: The business intelligence software iVIEW Data Automation Framework (iVIEW DAF), which allows for the development, deployment and operation of business intelligence applications. iVIEW DAF consists of the three components iVIEW Dataflow, iVIEW Library and iVIEW Designer, which can be used individually or in combination ("**Component**").

**"iTEC"**: Informattec Ltd.liab.Co. and licensor under this EULA.

**"End User"**: The respective end user and licensee under this EULA.

**"Reseller/Partner"**: An independent IT services company, which distributes the Contractual Software to End Users and provides them with technical and specialist support. Resellers/Partners may develop, license and support additional business intelligence solutions. Unless expressly stated otherwise, iTEC may not give any legally binding declarations on behalf of the Reseller/Partner and vice versa. iTEC and the Reseller/Partner do not form a simple partnership pursuant to art. 530 et seq. of the Swiss Code of Obligations.

<b>"Contracting Parties":</b>	Only iTEC and the respective End User are Contracting Parties of this EULA. The Reseller/Partner is not Contracting Party of this EULA.
<b>"Order Form":</b>	The order form concluded between the End User and iTEC or between the End User and a Reseller/Partner concerning the further scope of licensing right, the license fee and any further modalities. In the event of contradictory provisions, the provisions of this EULA shall prevail.
<b>"SLA":</b>	The service level agreement concluded between the End User and iTEC or between the End User and a Reseller/Partner concerning the ongoing maintenance of the Contractual Software.

## 2 LICENSING RIGHT

### 2.1 SCOPE

- 2.1.1 Subject to the full payment of the license fee according to section 3.1, iTEC grants the End User a non-transferable, non-sublicensable and non-exclusive right, limited to the term of this EULA, to use the Contractual Software in its current version for the End User's own internal business purposes.
- 2.1.2 The further scope of the licensing right, especially with regard to the Components to be licensed, the number of installations and users and/or any other modalities, is defined by the Contracting Parties in the Order Form.
- 2.1.3 The End User's licensing right also includes the right to use any user documentation and installation instructions ("**Documentation**") with regard to the Contractual Software. Documentations are either provided free of charge by iTEC or the Reseller/Partner or purchased separately by the End User.
- 2.1.4 Any and all rights to the Contractual Software, to its individual Components as well as to any Documentation (in particular the copyright with all rights [right to reproduce, distribute, modify, extend, edit, lease, decompile] and any other intellectual property rights) are and remain exclusively with iTEC. Without the prior expressive and written consent of iTEC, the End User is strictly prohibited from passing on or making available the Contractual Software to any third party in any way or form, whether against payment or free of charge. The End User does not receive any right to the Contractual Software beyond the licensing right described in section 2.1.1-2.1.3.

### 2.2 TERMS OF USE

- 2.2.1 The delivery of the source code and the installation of the Contractual Software is not subject to this EULA and will be performed separately upon agreement between the End User and iTEC or the Reseller/Partner.

- 2.2.2 The End User is allowed to make the necessary number of copies of the Contractual Software needed for the secure operation of the Contractual Software. The End User shall store copies securely and, as far as technically possible, shall attach a copyright notice in favor of iTEC to all copies. The End User shall independently delete any copies that are no longer required.
- 2.2.3 The End User is aware that the use of the Contractual Software may require the use of additional software. Such additional software is not subject of this EULA and the End User is wholly responsible for acquiring and maintaining the necessary licenses.
- 2.2.4 Any rights to other documents, proposals, offers, test programs etc. made accessible to the End User in connection with the Contractual Software or the Documentation are and remain exclusively with iTEC. The End User must treat such material as confidential and use it only for the intended purposes. Ideas, concepts, experiences and methods, which have been developed by iTEC alone or together with the End User may be used by iTEC at will.
- 2.2.5 If the End User acquires or receives and subsequently installs an updated version of the Contractual Software or any other update, bug fix, hotfix or the like, the licensing right to the Contractual Software previously granted shall expire within three months after installation of the updated version. The End User must independently ensure that there is no further use of the previous version after the expiration of such three-month period. iTEC is entitled to request confirmation from the End User that the previous version is no longer being used. The End User receives a licensing right to the updated version to the same extent as the licensing right acquired to the previous version. iTEC may make the provision of an updated version dependent on the End User's agreement to current terms of use.
- 2.2.6 The End User may not circumvent limitations of the scope of the licensing right, in particular not by integrating its own program components into the Contractual Software (e.g. extending the number of licensed users by programming its own user interface). If the End User's scope of licensing is not defined by installations or users, but by units that are not or only to a limited extent controllable by iTEC (e.g. number of business units), the End User has the obligation to immediately report any changes in this respect to iTEC and any Reseller/Partner.
- 2.2.7 The End User shall take appropriate measures to ensure that all persons who have access to the Contractual Software comply to the same extent with all obligations imposed on the End User by this EULA. The End User is responsible for any violation of or noncompliance under this EULA by such persons.
- 2.2.8 iTEC has the right to have the End User's compliance with this EULA audited on an ongoing basis by means of self-disclosure by the End User and by the use of a suitable auditing company (once a year and in consultation with the End User). iTEC undertakes to protect the legitimate interests of the End User and its business secrets and to ensure the undisturbed operation of business as far as possible. The End User shall support any audit to the extent necessary. If the audit should reveal noncompliant or non-contractual use of the Contractual Software by the

End User, the End User must bear the costs of the audit and must acquire the additional licensing rights required since noncompliant or non-contractual use. The End User is not be obliged to bear the costs if the noncompliant or non-contractual use is due to a misconduct of the Reseller/Partner or otherwise due to circumstances which are not within the End User's area of responsibility. Any further claims of iTEC are expressly reserved.

### **3 REMUNERATION**

#### **3.1 LICENSE FEE**

The annual license fee is calculated on the basis of the scope of the licensing right and is specified by the Contracting Parties in the Order Form. All prices are exclusive of value-added tax.

#### **3.2 PAYMENT MODALITIES**

- 3.2.1 The license fee for the first contract year will be invoiced to the End User after the Contractual Software has been ordered. For the subsequent contract years, the license fee will be invoiced in advance at the beginning of the respective contract year.
- 3.2.2 Invoices will be issued either directly by iTEC or, if the Contractual Software is distributed through a Reseller/Partner, by such Reseller/Partner in its own name and for its own account.
- 3.2.3 Invoices from iTEC and/or any Reseller/Partner are due for payment within 30 days and excluding set-off.

### **4 WARRANTY**

#### **4.1 MATERIAL WARRANTY**

- 4.1.1 iTEC warrants the suitability of the Contractual Software for use in accordance with this EULA. iTEC neither warrants nor guarantees that the Contractual Software can be used uninterrupted and error-free in all scenarios desired by the End User, nor that the correction of a program error or defect will preclude the occurrence of further program errors or defects.
- 4.1.2 iTEC or the Reseller/Partner shall remedy any defects in the Contractual Software exclusively in accordance with the SLA. The End User is obligated to immediately notify any defects discovered. Notices of defects must be sufficiently documented. The documentation shall be sufficient if it provides a comprehensible description of the error symptoms and allows proof of the conditions under which the defect occurred.
- 4.1.3 The remedy of defects under the SLA shall be carried out by iTEC's or the Reseller's/Partner's choice of rectification, in particular by providing instructions on how to remedy the defect, providing a corrected source code or providing a work around or suppression solution ("**Work Around**").

- 4.1.4 Any rights to the work results continuously created by iTEC or by the Reseller/Partner remain exclusively with iTEC. However, the licensing right of the End User according to section 2.1 also includes the use of such work results.

## **4.2 LEGAL WARRANTY**

- 4.2.1 iTEC warrants that iTEC is the sole owner of all intellectual property rights in the Contractual Software and that the End User's use of the Contractual Software in accordance with the law and this EULA does not violate any proprietary rights of any third party. iTEC warrants that no prior rights of any third party are known at the time of entering into this EULA.
- 4.2.2 If a third party claims against the End User that a proprietary right of this third party has been infringed, iTEC shall defend the End User against this claim at its own expense, provided that the End User (i) notifies iTEC immediately (within 10 business days at the latest) in writing by registered mail, (ii) grants iTEC full control of the defense and of any settlement negotiations and (iii) supports iTEC appropriately and to a reasonable extent. Any breach of this obligation by the End User will result in the loss of any claim against iTEC.
- 4.2.3 If, at the discretion of iTEC, the use of the Contractual Software by the End User infringes or is likely to infringe any third party's proprietary rights, iTEC shall have the right to choose between the following measures: (i) modify the Contractual Software so that it no longer infringes any proprietary rights; (ii) provide the End User with the right to continue to use the Contractual Software; (iii) replace the Contractual Software with a solution that no longer infringes any proprietary rights and meets the End User's requirements; or (iv) withdraw the right to use the Contractual Software and refund to the End User the paid license fee less a reasonable contribution for previous use and loss of value.
- 4.2.4 The End User shall not be entitled to any kind of legal warranty claims if the infringement of third party's proprietary rights is due to the fact that the End User has used the Contractual Software under conditions other than those contractually provided of if the infringement of proprietary rights is based on a concept originating from the End User or due to a system used at the End User's request.

## **5 SERVICE CHANGES AND UPDATES**

- 5.1 The End Users may request at any time changes to the services delivered under this EULA, in particular to the scope of the licensing right. Changes affecting the scope of the licensing right or the remuneration must be agreed to by the Contracting Parties in written form.
- 5.2 iTEC aims to further develop the Contractual Software and fix occurring errors. As part of the remuneration under this EULA and the SLA, iTEC will provide the End User with resulting updates to the Contractual Software subject to the valid conclusion of an SLA with iTEC or a Reseller/Partner. Updates may include connections to third party products and software which are not subject to this EULA

## **6 DUTY TO COOPERATE**

- 6.1 The End User shall cooperate in the delivery of services under this EULA free of charge and to the extent required. The End User shall immediately inform iTEC of any defects of the Contractual Software and shall assist iTEC and any subcontractors in analyzing and, if necessary, fixing errors and malfunctions to the extent required. This duty to cooperate furthermore includes, but is not limited to:
- The documentation of all relevant events in an appropriate form and the requesting of services from iTEC via channels specified by iTEC (e.g. support email address or online ticket system).
  - If work is performed remotely, the provision of a remote access and the granting of the necessary authorizations. If work is performed on site, the provision of free access to buildings, technical systems and devices as well as the associated diagnostic programs, documentation, user programs and data.
  - The provision and maintenance of the proper working environment (hardware and software) necessary for running the Contractual Software as well as the backup of data according to the state of the art. In the absence of any express written indication, iTEC may assume that all data with which iTEC's employees or any subcontractors come into contact is secured.
  - The designation of a responsible contact person along with all contact data, under which the availability of the contact person is ensured.
- 6.2 If the provision of services under this EULA is delayed due to the End User's failure to comply with its duty to cooperate or due to other circumstances which lay within the End User's sphere of responsibility, the End User shall bear any resulting disadvantages and additional costs.

## 7 LIABILITY

- 7.1 iTEC is liable to the End User for direct damages caused intentionally or by gross negligence, and for property damage and personal injury, arising in connection with the licensing right to the Contractual Software. The liability of iTEC for negligently caused damage and for damage caused by auxiliary persons or subcontractors is excluded, as far as legally permissible.
- 7.2 The End User is responsible for the legally and contractually compliant use of the Contractual Software. iTEC is not liable for damages resulting from use in violation of the law or this EULA, and the End User is liable for all damages incurred by iTEC as a result. The End User shall indemnify iTEC for damages resulting from a breach of this EULA or rights, including third party claims and any court and attorney's fees.
- 7.3 iTEC is not liable for delays in service delivery or disruptions that arise due to events that are not the responsibility of iTEC or that make the delivery significantly more difficult or impossible and that cannot be avoided, such as natural disasters of any kind, pandemics, riots, blockade, fire, war, embargo, earthquakes, hostage taking, revolution, sabotage, strike, terrorism or production disruptions of any kind.

## 8 CONFIDENTIALITY

- 8.1 Both Contracting Parties undertake to treat as confidential information all information not generally known which they have learned from the other Contracting Party about it or its customers and business relations ("**Confidential Information**"). Furthermore, they undertake to not make such information available to third parties, either in whole or in part, nor publish such information. The End User especially agrees to treat the Contractual Software and the Documentation as Confidential Information. This confidentiality obligation shall survive the termination of this EULA.
- 8.2 The following does not constitute Confidential Information: (i) information which has been publicly disclosed and made generally available, except through the wrongful act or omission of the receiving party, (ii) information which the receiving party can prove was already lawfully in its possession prior to receiving it from the disclosing party, (iii) information which the receiving party has lawfully and unrestrictedly received from third parties, and (iv) information which the receiving party has independently developed without using Confidential Information.

## 9 DATA PROTECTION

- 9.1 The Contracting Parties shall observe applicable data protection laws and aim to undertake all reasonable technical and organizational measures for the protection of personal data. The Contracting Parties are aware that the conclusion of this EULA and delivery of services hereunder may result in the processing of personal data of employees and other related persons of the Contracting Parties and of any Reseller/Partner. The Contracting Parties agree that such data may be used and stored for the purpose of processing and maintaining their business relationship and may also be transmitted to a possible Reseller/Partner for this purpose.

- 9.2 To the extent required by law and requested by the End User, iTEC shall conclude a data processing agreement with the End User.

## **10 TERM AND TERMINATION**

- 10.1 The term of this EULA is open ended. The Contracting Parties may terminate this EULA subject to a notice period of 60 days after the end of a contract year, for the first time after the end of the first contract year. Each Contracting Party is also entitled to terminate this EULA for cause at any time and without notice.
- 10.2 Termination of this EULA by the Contracting Parties must be made in writing in any case.
- 10.3 Upon termination of this EULA, any right of the End User to use the Contractual Software and the Documentation as well as any modifications, extensions, updates or the like shall expire. The End User is obligated to return the Contractual Software and the Documentation as well as all copies thereof to iTEC without undue delay and without being requested to do so, or, if a return is not possible, to destroy them.

## **11 FINAL PROVISIONS**

- 11.1 This EULA replaces all previous agreements, correspondence, declarations, negotiations or arrangements between the Contracting Parties concerning the scope of this EULA. The only exception to this is if deviations from this EULA have been explicitly agreed in writing.
- 11.2 Unless expressly stated otherwise, any changes and/or amendments to this EULA must be made in writing.
- 11.3 iTEC has the right to transfer rights and obligations under this EULA in whole or in part to third parties. The transfer of rights and obligations under this EULA by the End User to third parties requires the written consent of iTEC.
- 11.4 Should one or more provisions of this EULA be or become invalid, ineffective or void, the respective provision shall be replaced by a valid and effective provision that comes closest to the meaning of the original provision and corresponds to the economic balance of the Contracting Parties.
- 11.5 This EULA and all disputes arising from it are subject exclusively to substantive Swiss law, excluding its conflict of law provisions and the UN Convention on Contracts for the International Sale of Goods. Exclusive place of jurisdiction is at the seat of iTEC.



## **ORDER FORM**

⇒ For the moment done via mail.