

Matrify End User License Agreement

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This Agreement applies to the downloadable Matrify Server software.

The individual installing or using this software represents that he or she has authority to enter into this Agreement with Matrify on behalf of the Licensee, that he or she has read the terms and conditions set out herein and that the Licensee accepts and agrees to be bound by this Agreement. If the Licensee does not agree with the terms and conditions, the Licensee must not use or permit the use of the Product.

1. Definitions

Matrify means Matrify e.K., Pappelallee 78/79, D-10437 Berlin.

Authorized Use means the defined number of Seats and Records that may be used by Licensee during the applicable License Term as designated in the Quote/Receipt/Invoice issued by Matrify or within the limitations of the Matrify Basic edition.

Authorized User means a person or user account who is licensed to use the Product, regardless of whether that person is an employee, contractor, subcontractor, vendor, partner or customer of the Licensee.

Commencement Date means the date on which Licensee first installs Product for the first time.

License means the right to use the Product as defined by Authorized Use.

Licensee means the individual or entity (inclusive of affiliates and subsidiaries) that has licensed the Product under the terms and conditions of this Agreement.

License Key means a data file utilized by the Software's access control mechanism that allows you to use the Software during the License Term.

License Term means the time until the limited-term license expires as specified in the Quote/Receipt/Invoice.

Matrify Basic means the Basic edition of Matrify that is distributed free of charge and offers a limited number of Seats and Records (currently 5 Seats and 500 Records).

Matrify Pro means the Pro edition of Matrify that is activated by using a paid limited-term License Key, comprising a specified number of Seats and Records, that is replacing the number of Seats and Records offered free of charge by the Matrify Basic edition during the applicable License Term.

Product means the Matrify Server software distributed by Matrify, including any documentation and updates.

Protected Code means source code contained within the Product that is protected by Matrify against access.

Records mean the number of rows/entries that you're authorized to create. The number of rows/entries is specified in the Quote/Receipt/Invoice.

Seats mean the number of User accounts for the Software that you're authorized to create. The number of Seats is specified in the Quote/Receipt/Invoice. Only one User can use a Seat at a time. Multiple Users aren't allowed to use the same Seat.

A **User** is a single person or machine account that initiates the execution of the Software and/or interacts with or directs the Software in the performance of its functions. The number of Users shouldn't exceed the number of Seats you've licensed from us.

2. License Fee

A one-time fee paid by Licensee to Matrify, as designated by Product, in consideration for the Authorized Use of the Product. License fee is payable upon acceptance of the terms and conditions set out herein. License fee is nonrefundable after 60 days from the date payment is received by Matrify.

3. Grant of License

Subject to the terms of this Agreement, including limitations defined by the License, Matrify hereby grants to Licensee, and Licensee accepts from Matrify, a perpetual, irrevocable (except pursuant to Clause 12 below), worldwide, non-exclusive, non-transferable (except pursuant to Clause 18 below), non-sublicensable (except to Licensee's related entities) License to use the Product as defined by Authorized Use.

4. No Warranty

Except as described in this Agreement and save as provided in Clauses 13, 14 and 16 below, the Product is provided on an "as is" and "as available" basis without warranty, express or implied, of any kind or nature, including, but not limited to, any warranties of performance or merchantability or fitness for a particular purpose, including without limitation that Matrify does not warranty that the Product will be error-free, complete, or correct. Matrify provides evaluation copies of the Product so that customers can assess the Product.

5. Matrify's Obligations

Upon receipt of Licensee Fee from Licensee, Matrify will supply the Licensee with the License Key file via electronic mail.

6. Support

For the Matrify Pro edition support includes on-line technical support via email/help-desk software to one Licensee-designated technical contact for the sole purpose of addressing technical issues relating to the use of the Product.

For the Matrify Basic edition no support is provided.

7. Licensee Obligations

The Licensee must at all times:

- (a) ensure that only an Authorized User may use the Product and only for Authorized Use in accordance with the terms and conditions of this Agreement;
- (b) promptly advise Matrify, including in writing, if the Licensee becomes aware of any unauthorized use or distribution of the Licensee's License Key by any person.

8. Unauthorized Use or Distribution

Licensee may not, whether through deliberate or negligent act or act of omission, distribute or cause the distribution of the Product to any third party other than an Authorized User.

9. Investigation of Unauthorized Use and Distribution

If Matrify reasonably suspects that the Product has been distributed to or obtained by any person or party without Matrify's prior written consent, Matrify has the right to reasonably request once per calendar year from the Licensee an unqualified certificate executed by the Licensee's auditor or authorized representative at the Licensee's cost for the purpose of verifying compliance with Authorized Use of the Product.

For the purpose of monitoring compliance with this agreement the Licensee agrees that the Matrify Product is submitting the License Key identifier, numbers of currently used Seats, Records and cells to Matrify, where the data is recorded and analyzed together with the meta-data of the network request such as computer's IP address.

10. Licensee's Restrictions

Licensee will not, without the prior written consent of Matrify, which may be withheld in Matrify's sole discretion and which may include certain conditions:

- (a) decompile, reverse engineer, disassemble, analyze, modify, adapt, convert, create derivative works from, or otherwise attempt to derive, the Protected Code;
- (b) sell, sublicense, redistribute, reproduce, transmit, circulate, disseminate, translate or reduce to or from any electronic medium or machine readable form the Product or any data/information provided to the Licensee through the Product to a person (except that nothing in Clause 10(b) is intended to prevent an Authorized User undertaking Authorized Use);
- (c) vary or amend the Authorized Use without Matrify's prior written approval;
- (d) except as otherwise permitted in this EULA, publish, promote, broadcast, circulate or refer publicly to the Matrify name, trade name, trademark, service mark or logo;
- (e) commit any act or omission the likely result of which is that Matrify's reputation will be brought into disrepute or which act or omission could reasonably be expected to have or does have a material and adverse effect on Matrify's interests.

In addition, the Product includes license protection mechanisms that are designed to manage and protect the intellectual property rights of Matrify. Licensee must not modify or alter those features to try to defeat the Product use rules that the license protection mechanisms are designed to enforce.

11. Term

The term of this Agreement begins on the Commencement Date and will continue in full force and effect unless terminated in accordance with Clause 12 below.

12. Termination

Licensee may terminate this Agreement at any time by destroying all copies of the Product in its possession. Either party hereto may terminate this Agreement if the other party commits a material breach and such party does not cure such material breach within thirty (30) days of written notice of such breach. Licensee agrees upon termination of this License to destroy all copies of the Product in its possession.

Matrify reserves the right to discontinue the Product at any time. In this event, Matrify will announce an End-Of-Life date on the Matrify website. The End-Of-Life date will be at least 12 months after the announcement date. Matrify will honor the terms of this Agreement until the End-Of-Life date. Should Licensee's License Term exceed the End-Of-Life date, Matrify will offer a refund for any unused maintenance time. At the End-Of-Life date, this Agreement will terminate.

Clauses 1, 4, 8 – 10, 13 – 23 shall survive any termination of this Agreement.

13. Infringement Indemnification

(a) Matrify will defend, indemnify, hold Licensee and its directors, officers, employees and other agents (collectively, "Licensee Indemnitees") harmless, at Matrify's sole cost and expense, any action brought against any Licensee Indemnitee based upon the claim that the Product, if used within the scope of the License granted under this Agreement, infringes, violates, or misappropriates a patent, trademark, copyright, trade secret, or other intellectual property or proprietary right ("IP Claim"); provided, however, that: (i) Licensee shall notify Matrify promptly in writing of any such IP Claim; (ii) Licensee shall not enter into any settlement or compromise on any IP Claim without Matrify's prior written consent; (iii) Matrify shall have sole control of any such action and settlement negotiations so long as there is no detriment or liability to Licensee; and (iv) Licensee shall provide Matrify with reasonable information and assistance, at Matrify's request and sole cost and expense, necessary to settle, defend, indemnify or hold harmless such IP Claim. Matrify agrees to pay all damages and costs incurred Licensee attributable to such IP Claim. The foregoing states the sole liability of Matrify and the exclusive remedy of Licensee for any infringement of intellectual property rights by the Product or any other items provided by Matrify hereunder.

(b) If the Product becomes, or in the opinion of Matrify may become, the subject of a claim of infringement of any third party right, Matrify may, at its option and in its discretion promptly: (i) procure for Licensee the right to use the Product free of any liability; (ii) replace or modify the Product to make it noninfringing; or (iii) refund any License Fees related to this Product paid by Licensee.

(c) Exclusions from Defense Obligation. Matrify will have no duty to defend any IP Claim to the extent such IP Claim is based on: (i) use of a superseded release of the Product, if such infringement would have been avoided by the use of a current release

of the Product and Matrify timely notified Licensee of the availability of the non-infringing Product at no additional cost; (ii) the combination, operation, or use of the Product with programs or data not furnished by Matrify or at Matrify's direction, or with hardware or operating system software other than the hardware platform and operating system with which the Product is designed to function, if such infringement would have been avoided by the use of the Product without such programs, data, hardware or operating systems; (iii) modification or attempted modification of the Product by anyone except Matrify or at Matrify's direction, or use or distributions of such modifications; or (iv) Licensee's use of the Product in a manner that results in defamation, violates the privacy rights of individuals, transmits material in violation of any applicable law, rule, regulation, or uses any proprietary third party content without legally binding consent of such third party.

(d) To the extent an IP Claim is excluded from Matrify's defense obligation, is based upon the claim that any modifications to the Product or combination of the Product with products, not provided by Matrify or at Matrify's direction, infringes or violates any third party, Licensee will defend or settle, at its expense, any action brought against Matrify provided, however, that: (i) Matrify shall notify Licensee promptly in writing of any such claim; (ii) Matrify shall not enter into any settlement or compromise any such claim without Licensee's prior written consent; (iii) Licensee shall have sole control of any such action and settlement negotiations; and (iv) Matrify shall provide Licensee with information and assistance, at Licensee's request and expense, necessary to settle or defend such claim. Licensee agrees to pay all damages and costs finally awarded against Matrify attributable to such claim. Matrify may elect to assume control of the defense and settlement of any such claim with counsel of its choosing; provided however, that if Licensee will not have breached its defense and settlement obligations hereunder, Licensee will have no obligation to pay the costs and expenses of such Matrify-controlled defense or settlement. The foregoing states the sole liability of Licensee and the exclusive remedy of Matrify for any infringement of intellectual property rights by the Licensee modifications or combinations or any other items provided by Licensee hereunder.

(e) Notwithstanding Clause 13(a) above, Matrify assumes no liability hereunder for, and shall have no obligation to defend Licensee or to pay costs, damages or attorney's fees for, any claim based upon any modifications to any of the Product not approved by Matrify or at Matrify's direction or combination of any of the Product with products not approved by Matrify or at Matrify's direction.

14. Limitation of Liability

Excluding Matrify's indemnification obligations described in Clause 13 hereof, neither party hereto will be liable to any third-party for any loss, damage, cost, expense or other claim (including consequential, directly, indirect, special, punitive or other damages and loss of data or profits) in relation to this Agreement or the Product including, without limitation: (a) any use or reliance on a Product by the third-party (including the form and content of errors in and/or omissions from any information contained in a Product); (b) any delay, interruption or other failure in the provision of the Product; or (c) any change in the form or content of the Product. Excluding Matrify

indemnification obligations described in Clause 13 hereof, in no event will either party's liability under any claims arising out of this Agreement exceed the fees paid by Licensee under this Agreement. Except for each party's indemnification obligations or breach of Clause 2 ("Licensee Fee"), 8 ("Unauthorized Use or Distribution"), or 10 ("Licensee's Restrictions"), neither party will be liable for lost profits or for special, indirect, incidental or consequential damages, regardless of the form of action, even if such party is advised of or aware of the possibility of such damages. The foregoing liability limitations shall apply to the maximum extent allowed by applicable law. To the extent the foregoing liability limitations or the warranty disclaimers of Clause 4 are not allowed by applicable law, then the liability of Matrify, and the remedy of Licensee, shall be limited to the prompt: (d) re-supply of any defective Product; or (e) refund of any license fees paid by Licensee for such defective Product.

15. Ownership / Intellectual Property

This Agreement only confers the right to use the Product and does not convey any rights of ownership in or to the Product. The Licensee acknowledges that the Product and all intellectual property rights in relation to the Product are the property of Matrify and Matrify is entitled to take whatever action it may decide in order to protect its intellectual property rights in the Product. Matrify does not claim intellectual property rights over databases created with the Product.

16. Open Source Code

With respect to open source software, Matrify hereby represents and warrants: (a) that the Licensee's use thereof does not create, or purport to create, obligations on the Licensee to grant licenses or usage rights to the general public to any source or object code, whether such code is embedded in the Product or any other software provided under this Agreement or used in conjunction therewith; (b) that in no event shall the Licensee be liable for any damages whatsoever, whether direct or indirect, and whether experienced by Matrify or a third party, which are related to a loss of Matrify or any third party resulting from such use of Open Source Software hereunder; and (c) to, and hereby does, waive any claims it may have against the Licensee in relation to The Licensee's use of such open source software. Open source software included in the Matrify Product is listed on: www.matrify.com/en/third-party-code.

17. Publicity Rights

We may identify the Licensee as an Matrify customer in Matrify's promotional materials. The Licensee may request that Matrify stop doing so by submitting an email to sales@matrify.com at any time. Please note that it may take us up to 30 days to process your request.

18. No Assignment or Amendment

Licensee may not amend this Agreement without prior written consent of Matrify. Licensee may assign this Agreement to succeeding parties in the case of a merger, acquisition or change of control so long as in doing so, Matrify is notified in writing via email to sales@matrify.com within ninety (90) days of the closure of such transaction.

Matrify may assign its rights and obligation under this Agreement without consent of Licensee.

19. Tax

All fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you shall be responsible for payment of all such taxes, levies, or duties, excluding only the European Union for VAT.

20. Applicable Law and Jurisdiction

Except where otherwise required by the mandatory law of the United States or any member state of the European Union

(i) this Agreement is subject to the laws of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG) and excluding the principles of conflict of laws (international private law); and

(ii) you hereby agree, and Matrify agrees, to submit to the exclusive jurisdiction of the courts in Berlin, Germany for resolution of any dispute, action or proceeding arising in connection with this Agreement.

The foregoing provisions of this Applicable Law and Jurisdiction section do not apply to any claim in which Matrify seeks equitable relief of any kind. You acknowledge that, in the event of a breach of this Agreement by Matrify or any third party, the damage or harm, if any, caused to you will not entitle you to seek injunctive or other equitable relief against Matrify, including with respect to Your Content, and your only remedy shall be for monetary damages, subject to the limitations of liability set forth in these Terms of Use.

21. Attorneys Fees

The prevailing party in any legal action or arbitration relating to this Agreement will be entitled to recover its attorneys' fees and litigation costs and expenses incurred in connection with such action or arbitration as part of the same proceeding.

22. No Waiver

The failure of either party hereto to prosecute its rights with respect to a breach hereunder will not constitute a waiver of the right to enforce its rights with respect to the same or any other breach.