MW

mailware collaboration suite

SOFTWARE LICENSE AGREEMENT

B·A·B·E·L

Agreement of software license of use

between

Babel S.r.l., a company incorporated under Italian law with registered office in Pomezia (Rome), P.zza S.Benedetto da Norcia 33, VAT No. **06062681009**, in the person of its legal representative *pro tempore* Mr. _____, hereinafter named "Babel"

- on the one side -

and

_____, a company incorporated under _____ law with registered office in _____, _____, VAT No. _____, in the person of its legal representative *pro tempore* _____, hereinafter named "Client"

- on the other -

Whereas

a) Babel is the exclusive proprietor and holder, with the sole exception provided by article 2.1 that follows, of the software known as "_____" and is willing to license the software to the Client, only and exclusively on the condition that all the terms specified in this agreement are accepted and respected.

b) The Client is interested in obtaining from Babel formal license of use of the software, undertaking to respect all the obligations, duties, conditions and responsibilities specified in this agreement.

c) The Parties (thus, hereinafter, shall be intended jointly Babel and Client) intend to discipline the respective relations in the manner, terms and conditions specified in this agreement.

This being stated, it is agreed and stipulated as follows:

Article 1) License of use

Babel, upon acceptance of all the terms and conditions of this agreement, grants to the Client, that accepts, license of use of the software and the documentation specified in the subsequent points 1.2 and 1.3.

Intended by Software is the program _____ (hereinafter "Product), exclusively owned by Babel, excluding the exception provided in article 2.1 that follows.

Intended by Documentation is all the documentation correlated to the Product such as manuals of use, explantoty notes, explanations, material useful for its installation and its functioning provided by Babel to the Client, in any form, paper or electronic (hereinafter "Documentation").

The license is intended as non exclusive and is not assignable and/or transferable in any manner; the client retains the right to be able to use the Product to provide its end users a service based on the functionality offered by the Product.

Assistance, maintenance and updating services of the Product shall not fall within this agreement, except for what is provided by the subsequent article 4, if not made spontaneously available by Babel. In the event of improvements made available spontaneously by Babel, they shall automatically form part of this agreement and shall be automatically included in the discipline regulated thereby, unless Babel requests the Client to adhere to a new license agreement ("Form License Agreement") that must be accepted, in the manner provided herein.

Article 2) Use consented and restrictions

- The Product and the Documentation, with the exception of any Open Source parts present therein, are the exclusive property of Babel and are protected, as also all the rights connected therewith and related thereto, by Copyright and by all the applicable regulations on the subject of Intellectual Property.

- By means of the grant of this license, the Client shall have the right to use the executable code version of the product. The license and the consideration shall depend on the number of

end users of the Product, the number of servers on which the Product shall be installed, the version of the Product or a combination of these factors, as agreed during the negotiation phase of the supply.

If the Client defaults or does not pay the consideration due within the agreed terms, Babel may suspend the grant of the license.

- The Product and all the Documentation sent by Babel to the Client should be taken as private and confidential. At the end of this agreement, except for legal obligations, all the material and the Documentation can no longer be held or used in any manner and must be destroyed.

- The Client undertakes to use the Product respecting all the laws in force in the jurisdiction in which it shall use the same Product, complying with the regulations in force including, merely by way of illustration and not limited thereto, those applicable related to copyright and other Intellectual Property rights.

- Except for what is provided in the agreement and by law, the Client may not make copies of the Product.

The Client may make a copy of the Software, completely or in part, for the sole purpose of placing on file and obtaining back-up copies to be used in the event of failures.

- Except for what is provided in this agreement, the Client may not assign, license, lease and/or rent the Product to third parties, completely or in part.

- The Client may not implement reverse engineering, decode, decompile, disassemble or modify the Product, create derivations based on the Software or attempt to discover its source code.

Without the prior consent of Babel, the Client may not make known any *program benchmark test*.

- With this agreement, Babel shall license solely and exclusively the right of use of the Product. No other right or title, including those related to marks, trade names, logos and anything other recognisable as distinctive sign, present in the Product or

Documentation, is licensed by Babel to the Client.

- The Client, on receipt of an updated version or a substitute copy of the Product, may not use the previous version or copy of the Product but must destroy it.
- The Client may not use subsequent versions of the Product, other than those purchased and licensed, unless also the right to make the updated version has been purchased.
- The Client may not use the Product in any manner not authorised or provided by this license.
- The carrier containing the Product i.e. the same Software supplied by Babel, can contain, completely or in part, other Open Source software not owned by Babel but the use of which is freely permitted and disciplined by the license contracts specified below:

- Affero GNU Public License

- Apache License

- BSD License

- GNU General Public License

- GNU General Public License v3

- GNU Library (or "Lesser") Public License

- GNU Library (or "Lesser") Public License v3

- IBM Public License

It shall be the responsibility of the Client to verify the use it intends to make of the Software is not in contrast with the terms of the license indicated above.

Babel shall provide the source code of the Open Source parts and the parts of the Product that use Open Source libraries and shall give evidence inside the code of the terms and conditions of the relative license. Nothing of this Agreement can limit the rights of the Client to use the Open Source parts separately from the Product.

Article 3) Marks and Logos

- The Client accepts and acknowledges that Babel is the sole and exclusive owner of the mark and logos attributable to Babel present in the Product.
- The Client has no right in relation to the use of these distinctive signs, cannot remove them, amend them or use them autonomously.

Article 4) Content updating and maintenance of the Software

- This license does not include the updating service of the content of the Product or that of maintenance. The content of the Product may be subject matter of subsequent and periodic updating by Babel (hereinafter "Updating"); the Client may purchase, separately from the Product, the service of subscription to the Updating and maintenance of the Product provided by Babel.
- Should the Client contribute to the development of the Product directly, by means of the development and evolution of the parts of the source code of which it has legitimately come into possession, it shall render the code available in source form of what shall be realised according to what is provided by the license related to the Open Source parts involved; should the Client propose or commission evolutions or improvements of the Product from Babel, Babel may dispose freely of such evolutions or improvements, it shall acquire, without charges, all the rights (including those of ownership and integrate them in the Product), including the Intellectual Property of the same evolutions and improvements.

Article 5) Guarantees

1. For a period of 12 months from installation, Babel guarantees the Product, if used in accordance with the present License and according to what is provided in the Documentation (including the use of hardware and supported operating systems), shall operate as described in the same Documentation.

2. The guarantee specified in the preceding point may not be applied should a defect result as a consequence of the conduct of the Client not in accordance with what is contained in the Documentation, or repairs, interventions, amendments made to the Product by the Client or third parties not authorised by Babel, or malfunctions originating from an inappropriate use of the Product or of its carrier by the Client.

Malfunctions originating from an incorrect use of the Product cannot be considered errors or defects, such as, merely by way of illustration and not limited thereto, in the following cases:

- if the configurations of the Product or the host systems had been modified by unauthorised third parties, or in an inappropriate manner i.e. using procedures other than those provided;

- in the case of installation of release hardware or different base software other than those agreed during the offer stage or existing at the time of testing of the Product;

- should the Product or the systems not be used or maintained by the client correctly or not in accordance with that established and agreed by the parties or in the Documentation;

- if the Product does not correspond to the technical regulation requirements introduced subsequently to the offer and conclusion of the agreement;

- if the anomaly originates from any cause not attributable to the Product or its solution was feasible without any change to the Software.

3. During the period of guarantee, any defects that the Client shall find in the Product shall be corrected by Babel at its expense and in the shortest possible time; the corrections shall be available to the Client together with the instructions for the correct installation. Any corrections of errors cannot be taken as a further extension of the period of guarantee.

Without specific agreements between the parties, the guarantee shall not include the supply of the services necessary for the activity of installation of the corrections and testing of the Product.

The possibility of the Client to obtain compensation of any kind or nature because of the presence of the defenct or as a consequence of the same defect is in any event excluded.

4. The Product and the Documentation, in any event, are licensed and supplied by Babel and accepted by the Client, that has evaluated the suitability to its needs, in the state of fact in which they are found. Babel does not declare or guarantee that the functions contained in the Product satisfy the requirements, expectations or needs of the Client and of any third parties; the Client assumes therefore all risks and responsibilities with regard to the choice, installation, use of the Product, the Documentation and the consequent results.

5. Babel shall indemnify the Client from any legal claims brought by any person, both natural person and corporation, following claim of an alleged violation of copyright on the parts of the Product declared by Babel as its own and exclusive property. Should for the violation of copyrights legal action is instituted, Babel shall make every effort to ensure that the Client obtains the right to continue to use the Product possibly providing at its expense for the revision of the Product so that it is no longer in condition to violate the rights in question.

6. In addition to the obligations, the responsibilities and the guarantees expressly and specifically assumed by means of this agreement, no other obligation, responsibility and guarnantee can be attributed to Babel.

Article 6) Limitations and exclusion of responsibility.

1. In any event, Babel is not responsible and is expressly released from any and all responsibility, of any kind and nature for damages of any type – including, merely by way of illustration and not limited thereto, those direct, indirect, incidental, consequential damage, of any kind or type, including therein

the loss of image, reputation, work, profit or data – suffered by the Client, originating from and/or connected to the present agreement, to the Product, to the Documentation, to their uses, to any breakdowns or malfunctions of the electronic equipment, also if Bable was advised of the possibility of such damage.

2. The Client acknowledges and accepts that Babel is not in any way responsible, at any title, for any use of the Product and/or the Documentation by the Client and/or as a result of such use, including, by way of example and not limited thereto, the hypotheses in which the use involves the obtaining of material that violates third party rights, of imprecise, illicit, illegal and any other material.

3. The Client acknowledges and accepts that Babel is not responsible for any malfunctions caused by the Software or depending from any incompatibility between the Software and/or Documentation and hardware.

4. Where the applicable right shall not consider applicable the exclusion and limits of responsibility specified in this article 6 – and principally article 6.1 -, as well as the previous article (article 5), in no case the limit of responsibility and compensation charged to Babel vis-à-vis the Client, of any title, for any damage, loss and/or for any other reason, including therein any loss of profit or data and for all the hypotheses provided in this agreement, originating or consequent to the use of the Product or the Documentation, can exceed, on the whole, what was paid by the client to Babel for the license of the Product.

5. The limitations and the exclusions of responsibility, of damage and of guarantee, shall be applied independently from the acceptance and use of the Product and shall survive after discontinuance of the contractual relationship.

Article 7) Resolution of the agreement

1. At the time of resolution of the agreement or expiry of the same, the Client undertakes to interrupt all use of the Product and the Documentation and to destroy Product and

Documentation with the exclusion of what is provided by the legal obligations.

2. Babel reserves the right to resolve this agreement in the event of violation, by the Client, of the commitments and obligations assumed by the same by means of this agreement; in particular, the violation by the Client also of only one of the commitments and obligations provided by the agreement should be contested in writing to the party in default with registered letter with advice of receipt, specifying the reasons of the default and ordering that remedy be made within thirty days from receipt of the communication. Should the default continue to exist beyond such term, this could involve the immediate resolution of the agreement *ex* article 1456 civil code, with prior simple written declaration by Babel of its wish to avail itself of this clause and without altering the right of Babel to take action in the competent venues for the purpose of obtaining compensation for any damage suffered.

3. The possible resolution of the agreement by Babel shall not involve in any event the obligation of the restitution of the consideration already paid and shall not produce effects with regard to the services already performed, it shall not eliminate the right of Babel to receive the other, possible payments still due.

4. The violation, by the Client, also of only one of the commitments and obligations assumed by the same by means of this agreement, shall involve the immediate lapsing of the guarantees provided by Babel and of the rights of the Client.

Article 8) Confidentiality

1. The Client undertakes, for the entire term of the agreement and until five years after its expiry, not to disclose, not to render available to third parties and to maintain the strictest reserve on the Product and the Documentation, on the information and notes of a private and confidential nature contained therein, as well as on all the technical information related to the Product, to which it became aware in the application of this agreement.

With regard to the preceding confidentiality obligation, the Client is guarantor for the personnel it employs, for consultants or any other party that operates on its behalf, in its premises or in any way has access to its systems.

2. In any event, at the end of this agreement, the Client shall arrange to return to Babel or to destry all the material referred to in the preceding point

3. The Client must use the same level of diligence with which it protects its own reserved information in order to avoid the use or the diffusion of the reserved information related to the Product and Documentation and, in any event, at least a reasonable level of diligence.

Article 9) Applicable law and Competent Court

1. The validity, execution and interpretation of this agreement shall be governed by the laws of the Italian Republic.
2. For any dispute between the Parties related to and/or originating from this agreement the competent court shall be exclusively the Court of Rome.

Article 10) Miscellaneous

1. The possible nullity of one or more clauses, entirely or in part, of this agreement does not invalidate the validity of this agreement in its entirety. In any event, the contracting parties undertake, in good faith, to make every effort to remedy the nullity of the individual clause and to substitute the null parts with valid attributions of an equivalent or similar content.
2. This agreement substitutes the previous negotiations, obligations, declarations, communications and agreements so that all the acts performed and the obligations assumed by the Parties shall be governed solely by this agreement.
3. Any amendments and/or supplements to the content of this agreement must be agreed in writing and signed by the legal representatives of the Parties.
4. Babel reserves the right to have access to and/or make known

information regarding the Client, including therein the content of communications, for the purpose of: complying with the provisions of the law or responding in legal proceedings; ensuring fulfilment of this agreement by the Client; protecting its rights regarding the Product, Documentation and whatsoever originates from and/or is connected with this agreement.

5. Babel may cite publicly the Client amongst its own references with or without exclusive reference to the subject matter of supply.

6. The non exercise by one of the Parties of a right, term or faculty provided by this agreement, shall not determine lapsing of such right, term or faculty and the possibility shall remain valid of the party to whom they are referred to exercise them subsequently.

7. All communications, reports, and/or any other notices made on the basis of what is provided by this agreement must be sent, with regard to Babel, to: Babel S.r.l. - P.zza S. Benedetto da Norcia, 33 - 00040 Pomezia (ROMA) - tel. +39.06.91801075; fax: +39.06.91612446 – info@babel.it; with regard to the Client to:

Read, approved and signed in all of its clauses

Babel   Client

                    Place_____   Place_____
                    Date_____   Date_____
                    Name_____   Name_____
Company office_____   Company office_____
        Signature_____   Signature_____

        Pursuant to articles 1341 and 1342 and following civil code the parties declare to have taken note, to have carefully read and to specifically approve the following clauses: articles.: 1.4, 2.2, 2.3, 2.5, 2.6, 2.7, 2.10, 2.11, 2.12, 4.2, 5.1, 5.2, 5.3, 5.4, 5.6, 6.1, 6.2, 6.3, 6.4, 6.5, 7.1, 7.2, 7.3, 7.4, 9.1 e 9.2.

Babel   Client

Place_____   Place_____

Date_____   Date_____

Name_____   Name_____

Company office_____   Company office_____

Signature_____   Signature_____