



IGEL TECHNOLOGY GMBH

END USER LICENSE AGREEMENT (EULA)

1. **Preamble.** This agreement describes the Terms and Conditions upon which End User may use the IGEL-Software. This is a license agreement between the End User and IGEL Technology GmbH, Hanna-Kunath-Str. 31, DE-28199 Bremen, Germany (“**IGEL**”).

End User has purchased a license or licenses to IGEL-Software through an IGEL channel partner (“**Reseller**”) to use for a specified period of time or an unlimited period as agreed in the specific purchase and commercial terms with the Reseller. End User is therefore the licensee. The use of IGEL-Software is only permitted subject to, and exclusively under, the terms and conditions of this End User License Agreement (hereinafter, “**EULA**”).

BY ACCESSING, INSTALLING OR OTHERWISE USING IGEL-SOFTWARE, END USER IS AGREEING TO BE BOUND BY THE TERMS OF THIS EULA. IF END USER DOES NOT AGREE TO THE TERMS OF THIS EULA, END USER SHOULD NOT INSTALL OR USE THE IGEL-SOFTWARE.

2. **IGEL-Software.** IGEL-Software is defined as the object code form of all IGEL-Software that is preinstalled on an IGEL device as a bundled product or acquired from a Reseller and installed by End User, any fonts, icons, images or sounds included with the IGEL-Software, any IGEL-Software updates and upgrades and supplements, and any Documentation. IGEL-Software may include third party software that is licensed by IGEL and which will be licensed by additional terms to End User. “**Documentation**” means, collectively, the official IGEL-Software and/or IGEL Hardware Product (as defined below) operation instructions, release notes and user manuals provided by IGEL or Reseller for the IGEL-Software and IGEL Hardware Product, in electronic or written form, that IGEL has made publicly available.
3. **Ownership.** End User acknowledges that IGEL and its licensors (if any) is the sole owner of the right, title and interest in the Intellectual and Industrial Property Rights of IGEL-Software and Documentation. All Industrial and Intellectual Property Rights inherent or in connection with IGEL-Software, Documentation, copyrights, registered and unregistered trademarks, rights of utility models and designs, patents and certain technical and non-technical know-how, are and shall remain sole property of IGEL.
4. **License Grant.** IGEL-Software is licensed, not sold, to End User.

End User's right of use includes copying, whether in whole or part, by loading, displaying, running, transferring or storing solely for the purpose of executing IGEL-Software and processing of data contained in IGEL-Software.



Subject to the terms and conditions of this EULA, IGEL grants to End User a revocable, non-exclusive and non-transferable (except as expressly permitted herein) license, without rights to sublicense (except as expressly permitted herein), to access and use IGEL-Software in accordance with the applicable Documentation. Use of IGEL-Software shall be strictly limited to the duration, the number (whether the number of devices, Operators (as defined below), or other IGEL licensing model metric), and type of licenses purchased and paid for by End User to Reseller. **“Operator”** means an individual employed by or who otherwise provides services, whether as an independent contractor or otherwise, to End User (and in the case of Managed Service Providers, individuals employed by or who otherwise provides services, whether as an independent contractor or otherwise, to a MSP End Customer) and who is supported with or uses the IGEL-Software.

If End User has purchased a Managed Service Provider (as defined below) license for IGEL-Software from a Reseller, then End User’s right of use under this EULA includes the limited right to use the IGEL-Software to provide Managed Services to its end customers (**“MSP End Customers”**) in connection with the IGEL-Software within the framework of the Managed Services contracted by, and solely for the benefit of, such MSP End Customer, provided that the MSP End Customer is subject to all of the limitations set forth in the EULA with regards to the MSP End Customer’s and its Operator’s access to and use of the IGEL-Software. **“Managed Service Provider”** refers to an entity in the business of providing Managed Services to its MSP End Customers on a subscription basis. **“Managed Services”** refers to services pertaining to the operation, administration, maintenance and provisioning of networked systems, as part of which, one or more MSP End Customers are provided with direct or indirect access to products that display, run, access or otherwise interact with the IGEL-Software.

End User’s right of use under this EULA includes the limited right to sublicense the use of IGEL-Software to its outsourced services providers within the framework of cloud and/or data center services contracted by, and solely for the benefit of, End User, and who are subject to all of the limitations set forth in the EULA (**“Outsourcer”**).

If the IGEL-Software is identified as “evaluation”, “proof of concept” or similar designation then, notwithstanding any contrary provision in this EULA, End User is permitted to use the IGEL-Software only for internal demonstration, test or evaluation purposes in a non-production environment, and solely for the period specified on the IGEL-Software license key (if not specified, this period will be 30 days from delivery) following which the IGEL-Software may automatically disable itself. End User acknowledges that IGEL is not obligated to permit further use of the IGEL-Software past the expiration date. NOTWITHSTANDING ANY CONTRARY PROVISION IN THIS EULA, THE EVALUATION IGEL-SOFTWARE IS PROVIDED “AS-IS” WITHOUT SUPPORT OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED.

5. **License Restrictions.** End User and its Operators may download, access and use IGEL-Software solely for End User’s and/or its Affiliates’ (as defined below) benefit and internal use, and only in accordance with this EULA and the Documentation. End User shall be responsible for all acts and



omissions committed by any of its Operators or third persons (including, if applicable, Outsourcers and MSP End Customers) acting under the instruction or behalf of End User or its Affiliates. End User is not allowed to grant any sublicenses to any other party (except as expressly set forth in clause 4 above). IGEL shall be allowed to take technical measures to protect IGEL-Software or with a view to restrictions regarding the license and use of the IGEL-Software. End User is not allowed to remove or evade such technical measures. “**Affiliate**” means any legal entity that controls, is controlled by or is under common control with End User or IGEL (as applicable); where ‘control’ refers to the ownership of seventy-five percent (75%) or more of its voting securities.

Except as permitted by law or as expressly authorized by IGEL in writing, End User will not (and will not permit any Operator or third party to):

- (i) authorize or permit use of the IGEL-Software by persons other than Operators;
 - (ii) remove or modify any copyright or patent notices, trademarks, trade names, service marks, logos, restricted rights legends, or proprietary or confidential notices from any part of IGEL-Software or related Documentation;
 - (iii) decompile, deconstruct, copy or to duplicate, reverse engineer, disassemble or decode IGEL-Software or any copy, adaptation, component, transcription or merged portion of them;
 - (iv) attempt to ascertain the source code of IGEL-Software or any of its components by any means, nor modify, adapt, translate or create derivative works based on IGEL-Software;
- or
- (v) subject to the limited sublicense and use rights permitted under clause 4 in respect of Outsourcers and MSP End Customers, assign, sell, resell, rent, lease, distribute, transfer, assign, sub-license or otherwise transfer or convey IGEL-Software, any of its components or adaptations, or any Documentation relating to the foregoing.

6. **License Models.** Insofar as End User has purchased a licence to a “bundled” IGEL-Software, e.g., End User has purchased an IGEL Hardware product from the Reseller such as Thin Clients, Zero Clients, or All-In-One Clients, or the IGEL UD Pocket (each of the foregoing, an “**IGEL Hardware Product**”), and these IGEL Hardware Products are provided by the Reseller together with such IGEL-Software, the license to use the IGEL-Software is expressly limited to the use with, and in connection with, the purchased IGEL Hardware Product. Subject to the next paragraph, End User is not permitted to copy or download the IGEL-Software, in whole or in part, onto or use with a third-party hardware product.



If IGEL-Software is provided to End User by way of a download, the license shall also include the right to copy or download such IGEL-Software to an IGEL Hardware Product or, if permitted herein, a third party hardware product meeting IGEL's stated minimum hardware computer system requirements for the applicable version of IGEL-Software.

7. **Open Source Software.** End User acknowledges and agrees that IGEL-Software may include or be provided with certain open source software (as defined by the Open Source Initiative) ("**Open Source Software**"), as referenced in the Documentation or on the IGEL website, for use with or in combination with IGEL-Software. ALL OPEN SOURCE SOFTWARE IS PROVIDED WITHOUT ANY WARRANTY INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. Open Source Software is free and distributed to End User solely under the terms set forth in the respective Open Source Software license agreements (which are referenced in the IGEL-Software itself, the Documentation, or on IGEL's website) and End User acknowledges and agrees that this EULA in no way supplements or detracts from any term or condition therein.
8. **Third Party Infringement Claim.**
 - 8.1. **Prompt Notification.** The parties are obliged to promptly notify the other party in writing of any third party claim or the possibility of a third party claim, suit or proceeding brought against End User or IGEL based on an allegation that the IGEL-Software infringes upon any U.S., Canadian, or European patent or copyright of any third party ("**Infringement Claim**").
 - 8.2. **Infringement Claim.** IGEL shall defend, or at its option, settle any third party claim, suit or proceeding brought against End User based on an allegation that the IGEL-Software infringes upon any U.S., Canadian, or European patent or copyright of any third party.
 - 8.3. **Third Party Costs and Damages.** IGEL shall pay all resulting third party costs and damages finally awarded in judgment of the Infringement Claim or agreed to in settlement of the Infringement Claim between IGEL and the third party, provided that that End User promptly notify IGEL according to Section 8.1. and such that IGEL is not prejudiced by any delay in such notification and do nothing which may prejudice IGEL's defense of such Infringement Claim.
 - 8.4. **Dispute Control.** IGEL will have sole control over the defense or settlement of any Infringement Claim and if so requested by IGEL, End User will provide reasonable assistance. If any Infringement Claim is made or appears possible, IGEL may at its sole expense and option:
 - (i) procure for End User the right to continue to use the alleged infringing IGEL-Software;
 - (ii) replace or modify IGEL-Software to make it non-infringing;or



- (iii) if neither (i) nor (ii) are reasonably achievable, accept return of IGEL-Software and provide End User with a refund of the license fees paid by End User for the affected IGEL-Software based on a straight line depreciated value over three (3) years.

8.5. **Exclusion of Liability.** IGEL assumes no liability for any Infringement Claim or allegations of infringement based on:

- (i) the combination, operation, or use of IGEL-Software with products, services, hardware, data or other materials not furnished by IGEL, if such Infringement Claim would have been avoided by the use of IGEL-Software alone;
- (ii) modifications to IGEL-Software by End User or at End User's direction;
- (iii) End User's use of any IGEL-Software after notice that End User should cease use of IGEL-Software due to an Infringement Claim, where IGEL had provided End User with a subsequent no-infringing release of IGEL-Software;

or

- (iv) use of IGEL-Software otherwise than in accordance with the Documentation or any applicable laws.

THE FOREGOING STATES IGEL'S SOLE LIABILITY AND END USER'S EXCLUSIVE REMEDY WITH RESPECT TO ANY THIRD PARTY INFRINGEMENT CLAIM.

8.6. **END USER'S LIABILITY.** End User agrees to hold IGEL harmless and indemnify all IGEL costs and expenses, and settle, any third party claim, suit or proceeding brought against IGEL, its Affiliates and their respective employees, officers and directors ("**IGEL Indemnitee(s)**") alleging that End User's use of IGEL-Software in violation of this EULA or the Documentation infringes upon any patent or copyright of any third party or violates applicable laws, and End User shall pay all third party costs and damages awarded in judgment of such claim or agreed to in settlement of such claim between End User and such third party; provided that IGEL Indemnitee(s):

- (i) provide End User with prompt notification of the claim, such that End User is not prejudiced by any delay in such notification;

and

- (ii) provide reasonable assistance in connection with the defense or settlement, at End User's expense.



9. **Confidentiality.** Each party shall keep confidential, and not disclose to any third party (except each party's respective employees or as maybe required by law or any legal or regulatory authority) any Confidential Information which may be provided in connection with this EULA. "**Confidential Information**" means any non-public information disclosed by one party to the other party, either directly or indirectly, whether communicated in writing, orally or by inspection of tangible objects (including, without limitation, pricing, trade secrets, product plans and roadmaps, products, services, customers, software including the IGEL-Software, designs, inventions, processes, designs, drawings, engineering, hardware configuration information, marketing or financial information), which is designated as "Confidential," "Proprietary" or some similar designation. Information communicated orally will be considered to be Confidential Information if such information is identified as Confidential Information at the time of its disclosure, or if such information by its nature should reasonably be understood by the receiving party to be confidential. Confidential Information will include this EULA, any and all non-public information relating to any IGEL-Software and any associated training, Documentation, and other related materials, regardless of whether or not such materials are marked as "Confidential," "Proprietary" or some similar designation. Confidential Information may also include information that is disclosed to a party by one or more third parties. Notwithstanding the foregoing, Confidential Information will not include any information that:

- (i) was publicly known prior to the time of disclosure by the disclosing party;
- (ii) becomes publicly known after disclosure by the disclosing party to the receiving party through no action or inaction of the receiving party;
- (iii) is already in the possession of the receiving party at the time of disclosure by the disclosing party (as shown by the receiving party's files and records) prior to the time of disclosure;
- (iv) is obtained by the receiving party from a third party without, to the receiving party's knowledge or reasonable belief, a breach of such third party's obligations of confidentiality;
- (v) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information (as shown by documents and other competent evidence in the receiving party's possession);

or

- (vi) is required by law to be disclosed by the receiving party, provided that the receiving party will, to the extent not prohibited by applicable law or lawful order, promptly give the disclosing party written notice of such requirement prior to any disclosure so that the disclosing party may have sufficient time to seek a protective order or other appropriate relief.



10. **LIMITED WARRANTY AND DISCLAIMER.**

End User may have specific rights with respect to the laws of its state, country or other jurisdiction. End User may also have rights with respect to the Reseller from which End User purchased IGEL-Software. This EULA does not change those rights if the laws of such state, country or other jurisdiction do not permit the EULA to do so. Notwithstanding the foregoing, the parties agree as follows:

IGEL-SOFTWARE IS LICENSED "AS IS" AND "WITH ALL FAULTS", AND IGEL AND ITS LICENSORS (IF ANY) MAKE NO WARRANTIES OR CONDITIONS OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF OPERABILITY, CONDITION, TITLE, NON-INFRINGEMENT, NON-INTERFERENCE, VALUE, ACCURACY OR QUALITY OF DATA, AS WELL AS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT. IGEL CANNOT GUARANTEE AND DOES NOT WARRANT THAT THE OPERATION OF THE IGEL-SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS CAN BE CORRECTED. THE IGEL-SOFTWARE IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE OR DISTRIBUTION WITH ANY EQUIPMENT THE FAILURE OF WHICH COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

IGEL-Software will perform substantially in accordance with the Documentation. However IGEL gives neither any contractual guarantee and warranty nor conditions in relation to IGEL-Software.

IGEL's entire liability and End User's exclusive remedy will be, at the sole option of IGEL and subject to applicable law, to repair or replace the IGEL-Software or to refund the license fees paid and terminate this EULA. This limited warranty will not apply unless:

- (i) IGEL-Software has been properly installed and used at all times in accordance with the Documentation,
 - (ii) no modification, deletion or addition has been made other than by IGEL,
- and
- (iii) IGEL receives written notice of the non-conformity within the warranty period.

Any third party software products that are provided by IGEL are provided pursuant to the terms of the applicable third party end user license agreement, and End User's use of any such third party product constitutes End User's agreement to comply with the terms of the applicable third party end user license agreement. IGEL assumes no responsibility for, and specifically disclaims any liability or obligation with respect to, any third party software products. All such third party software



products are provided with the third party's warranty and without any additional warranty of any kind, whether express or implied.

11. **LIMITATION OF LIABILITY.**

IN CASE OF INTENTIONAL MISCONDUCT, GROSS NEGLIGENCE, CLAIMS BASED ON THE GERMAN PRODUCT LIABILITY ACT, AS WELL AS, IN CASE OF DEATH OR PERSONAL OR PHYSICAL INJURY, IGEL IS LIABLE ACCORDING TO STATUTORY LAW. SUBJECT TO THE PRECEDING SENTENCE, IGEL IS ONLY LIABLE FOR SLIGHT NEGLIGENCE, IF IGEL IS IN BREACH OF MATERIAL OBLIGATIONS OF THIS EULA, THE FULFILLMENT OF WHICH FACILITATE THE DUE PERFORMANCE, THE BREACH OF WHICH WOULD ENDANGER THE PURPOSE OF THIS EULA AND THE COMPLIANCE WITH WHICH PARTY MAY CONSTANTLY TRUST IN (SO CALLED "CARDINAL OBLIGATIONS"). IN ALL OTHER CASES OF SLIGHT NEGLIGENCE, IGEL WILL NOT BE LIABLE FOR SLIGHT NEGLIGENCE.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES AGREE THAT NEITHER PARTY SHALL BE LIABLE FOR ANY LOSS OF INCOME, LOSS OF OPPORTUNITY OR PROFITS, LOSS OF GOODWILL, LOSS OF DATA OR FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES ARISING FROM THE USE OF THE IGEL-SOFTWARE INCLUDING UPDATES, DOCUMENTATION, THIRD PARTY SOFTWARE, OR OTHERWISE ARISING IN CONNECTION WITH THIS EULA, HOWSOEVER CAUSED AND ON ANY THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE). TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE LIABILITY OF EITHER PARTY, ITS RESPECTIVE AFFILIATES OR ITS OR THEIR LICENSORS, RESELLERS OR DISTRIBUTORS EXCEED THE AMOUNT PAID FOR THE AFFECTED IGEL-SOFTWARE. THIS LIMITATION WILL APPLY EVEN IF A PARTY, ITS AFFILIATES OR ITS OR THEIR LICENSORS, RESELLERS OR DISTRIBUTORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. THE PARTIES ACKNOWLEDGE THAT THE LICENSE FEES REFLECTS THIS ALLOCATION OF RISK. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO END USER.

12. **Support and Maintenance Services.** End User will have access to certain support and maintenance services for the IGEL-Software ("**Support**"), which may include updates, upgrades, enhancements or other modifications to the IGEL-Software (collectively "**Updates**"), upon End User's registering the licensed IGEL-Software for Support at <https://support.igel.com/overview.html>. Support is subject to any terms and conditions, including the relevant end of life policies as displayed on the IGEL Support website located at <https://support.igel.com/overview.html> from time to time. Any generally-available Updates provided to End User pursuant to the Support shall be considered IGEL-Software under the terms of this EULA.



- 13. End User Responsibilities.** End User is responsible for performing data backups at regular intervals and for backing up this data on a separate data carrier. This is particularly recommended before installing an Update. In addition, End User is responsible for protecting itself from the loss of data by using appropriate measures.

End User agrees to abide by and act in accordance with all laws, regulations and rules applicable to End User's use of IGEL-Software and to End User's conduct in connection with this EULA, in particular relating to applicable privacy and data protection laws and anti-corruption laws in force at any time during the term of this EULA.

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- 14. General.**
- 14.1. U.S. Government End Users.** Each of the components that constitute the IGEL-Software is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and/or "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire IGEL-Software with only those rights set forth herein. If IGEL-Software is acquired for or on behalf of the U.S. Government, then it is recognized and agreed that IGEL-Software: (i) was developed at private expense; (ii) was not required to be originated or developed under a U.S. Government contract; (iii) was not generated as a necessary part of performing a U.S. Government contract.
- 14.2. Assignment.** Except for a transfer of all or substantially all of a party's business and assets, whether by merger, sale of assets, sale of stock, or otherwise, neither party shall assign, transfer, charge, sub-contract or deal in any other manner (each, and "**Assignment**") with all or any of its rights or obligations under the EULA without the prior written consent of the other party; provided, however that any such Assignment by End User must be in compliance with IGEL's then-current applicable relicensing/transfer policies.
- 14.3. Export Restrictions.** End User will not, directly or indirectly export or re-export or knowingly permit the export or re-export of any IGEL-Software in breach of any applicable export and import control laws and regulations including but not limited to regulations of the Federal Office For Export (Germany), the European Community, the United States Bureau of Industry and Security, the United Kingdom Department for Business, Innovation & Skills and other applicable agencies. End User is obliged to inform itself autonomously about the corresponding regulations and namely for the German terms by the Federal Office For Export, 65760 Eschborn/Taunus, for the European Terms and Regulation and for the U.S. terms by the US-Department of Commerce, OEA, Washington DC 20230.

The same applies if the End User activates and uses the IGEL-Software in another country than the country of destination.



- 14.4. Severance.** If any provision of this EULA is held to be unenforceable, void or invalid under applicable law, such provision shall be deemed omitted and the remaining provisions will remain in full force.
- 14.5. Entire EULA.** This EULA represents the complete and exclusive statement of the EULA between IGEL and End User with respect to the IGEL-Software and supersedes all prior or contemporaneous oral or written communications and arrangements concerning the subject matter contained herein. Any printed or other terms and conditions on a purchase order or similar order document conflicting with, or purporting to add to, the terms and conditions of this EULA or its exhibits and addenda will be of no force or effect. In the event of any inconsistency between this EULA in English language and any translation of it into another language, the English language EULA shall control.
- 14.6. No Waiver.** No failure or delay to exercise any right or remedy provided under this EULA or by law shall constitute a waiver of that or any other rights or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right shall preclude or restrict the further exercise of that or any other right or remedy.
- 14.7. Force Majeure.** Neither party will incur any liability to the other party for any loss or damage resulting from any delay or failure to perform any part of the EULA if the such failure or delay is caused by circumstances beyond the parties' reasonable control including, without limitation, flood, fire, acts of war, terrorism, earthquake and acts of God; however, inability to meet financial obligations is expressly excluded. IGEL shall not be liable for any failure of delay in performing its obligations on account of End User's failure to perform its obligations under this EULA.
- 14.8. Third Party Rights.** A person who is not a party to the EULA shall not have any rights under or in connection with it.
- 14.9. Variation.** Any variation to the EULA shall only be binding when agreed in writing and signed by both parties.
- 14.10. Survival.** Those provisions that by their nature are reasonably intended to survive termination or expiration of this EULA, including but not limited to Clauses 3, 8, 9, 10, 11, 13, and 14, shall survive the termination or expiration of this EULA.
- 14.11. Governing Law.** This EULA and all claims and actions of End User relating to IGEL-Software are governed by German Law under the exclusion of the UN-Convention on the International Sale of Goods (CISG) . For all disputes about this EULA and the IGEL-Software the parties submit to the non-exclusive jurisdiction of the German courts.