

BETA LICENSE AND NON-DISCLOSURE AGREEMENT

THIS AGREEMENT made this ____ day of _____ 20__, between

Out of the Park Developments GmbH & Co. KG (Hereinafter called "OOTP Developments"), a German company located in Vorderstr. 44a, 21723 Hollern-Tw., Germany and

_____ (Hereinafter called "Licensee").

WHEREAS OOTP Developments is in ownership and possession of certain Software (Hereinafter called "the Software") and/or Confidential Information (Hereinafter called "the Confidential Information").

AND WHEREAS OOTP Developments wishes to investigate the possibility of entering into a future business relationship for the purpose of financing, marketing, selling, or otherwise commercially exploiting the Software and/or Confidential Information.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the Licensee disclosing the Software and/or Confidential Information to OOTP Developments and the mutual covenants and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Licensee hereto covenants, undertakes and agrees with OOTP Developments as follows:

1. Grant of License.

OOTP Developments grants Licensee a non-exclusive, non-transferable license to use one copy of the beta software ("Software") that will be made available for extraction and installation upon Licensee's acceptance of the terms and conditions of this Agreement. OOTP Developments also grants, subject to the confidentiality obligations set forth herein, the right to use certain other proprietary information and materials ("Confidential Information") that may be provided with the Software from time to time. The license is granted for evaluation purposes only, and only for the term of this Agreement.

The Software is protected by the copyright laws of Germany, the United States and international copyright treaties. All rights in the Software are owned by OOTP Developments or its licensors. No license under any invention, patent, copyright, trade secret or other proprietary right is granted, either directly or indirectly, by this Agreement or by any disclosure of Confidential Information hereunder except as specifically granted herein.

2. Disclaimer and Limitation of Liability.

THE SOFTWARE AND/OR OTHER CONFIDENTIAL INFORMATION ARE PROVIDED AS IS. OOTP Developments GRANTS NO CONDITIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED CONDITIONS OR WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL OOTP Developments BE LIABLE FOR ANY LOSSES OR DAMAGES CAUSED BY THE USE OF THE PRODUCT BY LICENSEE.

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IN NO EVENT SHALL OOTP Developments OR ITS LICENSORS BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY SORT, WHETHER ARISING IN TORT, CONTRACT OR OTHERWISE INCLUDING WITHOUT LIMITATION LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, OR LOSS OF DATA ARISING OUT OF USE OF THE SOFTWARE OR INABILITY TO USE THE SOFTWARE, EVEN IF OOTP Developments HAS BEEN INFORMED OF THE

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POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, THE ABOVE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO LICENSEE.

3. Confidentiality

Licensee hereby acknowledges that:

- (i) OOTP Developments' beta testing processes, and the results thereof, and;
- (ii) the Product provided under this Agreement and any information related to the Product, including without limitation its nature and existence, constitute Confidential Information of OOTP Developments. Licensee agrees to maintain Confidential Information in confidence for a period of two (2) years from the date of receipt of the Confidential Information. Licensee further agrees to use the same care and discretion to avoid disclosure, publication, or dissemination of the Confidential Information as it uses with its own similar information that it does not wish to disclose, publish, or disseminate, but in no event less than reasonable care.

Licensee shall have no obligation of confidentiality with respect to information that:

- (i) is, or becomes, publicly available through no breach of this Agreement by Licensee, but only to the extent that and only from such date as the information becomes so available;
- (ii) was rightfully in Licensee's possession without obligation of confidentiality prior to receipt from OOTP Developments or is received from a third party who has the right to disclose it, or;
- (iii) is independently developed by Licensee without use of the Confidential Information. Licensee may disclose Confidential Information due to legal obligations beyond Licensee's reasonable control, provided that Licensee gives OOTP Developments prior written notice and a reasonable opportunity to seek a protective order.

4. Term and Termination

If you are accepted as a beta tester and receive software from OOTP Developments, this Agreement shall terminate upon the earlier of:

- (i) first commercial shipment by OOTP Developments of the Software;
- (ii) written notice of termination by either party.

Upon termination, Licensee must cease use of the Software and shall promptly return or certify destruction of all copies of the Software and all other materials provided by or through OOTP Developments. The provisions of Sections 2, 3, and, 5 shall survive any termination of this Agreement.

5. General

1) This Agreement shall be governed and construed in accordance with the laws of Germany and the United States (without regard to conflicts of laws provisions). In any legal proceeding arising out of this Agreement, the prevailing party shall be entitled to an award of its costs and reasonable attorneys' fees.

2) If any provision of this Agreement is determined to be void or unenforceable, the remaining provisions shall be given full force and effect. If any provision is unenforceable because of scope or breadth, such provision shall be valid to the extent permitted by law.

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3) No agency, partnership, joint venture or other joint relation is created by this Agreement.

4) Licensee may not transfer or assign its rights under this Agreement without prior written consent of OOTP Developments. Any attempt to do so is void. The parties agree that the complete and exclusive statement of the agreement between the parties relating to this subject shall consist of this Agreement. Any reproduction of this Agreement by reliable means will be considered an original of this document.

5) This Agreement is executed in English and may not be modified or amended except in writing signed by authorized representatives of both parties. IN WITNESS WHEREOF, the Parties hereto have executed this Agreement:

Licensee:

(Signature)

(Name)

(Address)

(Date)

(Email address)

(OOTP message board user name)

OOTP Developments:

(Name)

(Address)

(Date)