



## **eControl aviation Licensing Terms**

As of 01.05.2017

### **1 Preliminary remarks**

The Licensing Terms listed below apply to the supply, maintenance and adaptation of eControl aviation by Arconda Systems AG or authorised sales and support partners. Arconda Systems AG or authorised sales and support partners will be referred to hereafter as “Contractual Partners”.

### **2 General Delivery Conditions**

#### **2.1 Scope**

An amendment or annulment of the individual parts of these conditions shall only apply to the contract in question. Customer Licensing Terms are nonbinding, provided these have not been explicitly agreed in writing. Verbal collateral agreements and commitments need to be issued in writing by the Contractual Partner in order to be effective.

#### **2.2 Conclusion of contract**

Offers are subject to change without notice, unless a period of validity has been specified. The contract award must be done in writing.

#### **2.3 Impairment of performance, warranty**

If the client sets an appropriate grace period or supplementary performance period in cases designated as impairment of performance by the law, they will at the same time inform the Contractual Partner if they intend to rescind the contract in the event of expiry of this period without success. The contractually-agreed quality of the performance is based on the performance or product description. If functional content is neither defined in the description nor in individual contracts, it is the responsibility of the Contractual Partner to further define this. A contractually-intended use is to be agreed upon award of contract; if there is no such agreement, the Contractual Partner guarantees that the performance is suitable for normal use and is of the standard and expected condition for work of the same type. The Contractual Partner guarantees that the standard software delivered by them as well as the individually manufactured software is free from defects for a one year period from delivery or acceptance. Defects are rectified at the discretion of the Contractual Partner by repair or replacement. The Contractual Partner can provide an interim solution to circumvent the defect until it has been finally rectified, if this only involves reasonable limitation on use, e.g. reduced ease of use. This also applies if there is an imminent new release or update, in which the reported defect no longer is present, and waiting for the new version is reasonable for the client.

#### **2.4 Obligations to cooperate**

The necessary system and environmental conditions for the use of eControl aviation according to the technical specification (hardware, operating system, mail system, database etc.) are to be provided by the client. The client is to make remote access available to the respective

system for use by maintenance and support services. The client grants the Contractual Partner all the necessary authorisations, in particular for problem analysis within the context of notification processing. The client guarantees remote access without limitation with regard to the nationality of the Contractual Partner's employees dealing with the support incident or the country in which they are located.

## **2.5 Liability**

The Contractual Partner is liable for damage caused intentionally as well as for fatal injury, personal injury and damage to health, without limitations. In addition, the following exclusions or limitations apply: The Contractual Partner is not liable in the event of a slightly negligent breach of minor contractual obligations. In addition the Contractual Partner's liability for breaches of obligations due to slight negligence is limited according to the type of goods or performance for the foreseeable, direct, average damages typical for such contracts. This also applies to breaches of obligations due to slight negligence by the legal representative or the Contractual Partner's agents. Any form of negligent violation of obligation is excluded from compensation: loss of earnings, savings that could not be realised or damages due to data loss, insofar as the latter exceeds the effort required even when the data backup is carried out immediately before the event giving rise to the damage.

## **2.6 Export**

The goods, software and technical know-how supplied by the Contractual Partner are only intended for use and to remain in the country of supply. Re-exportation – whether individually or integrated into a system – may be subject to authorisation by the Contractual Partner under foreign trade regulations. The client is solely responsible for compliance with all applicable regulations and obtaining authorisations.

## **2.7 Transfer of rights**

The Contractual Partner may transfer the rights and obligations from an order to another authorised sales and support partner. The client's claims from the business relationship with the Contractual Partner cannot be assigned or pledged without the Contractual Partner's prior written consent.

## **2.8 Place of fulfilment and place of jurisdiction**

The place of performance is the head office of the respective Contractual Partner. For contracts with registered traders, legal persons under public law or public assets, the Contractual Partner's head office shall be the place of jurisdiction for all claims from the business relationship. International sales law (EKG, CISG, UN sales law) shall not apply.

## **2.9 Cost for non-contractual services**

For non-contractual services in the fields of installation, customizing, hotline, training and consultancy Arconda Systems AG charges €180 per hour and €90 per half hour, plus applicable VAT. Additional travel costs will be invoiced in accordance with the costs incurred for on-site operations.

## **2.10 Price list**

The price sheet only calculates the eControl licence value. In addition to the licence value, additional individual installation costs may occur:

- Installation and configuration in accordance with the costs incurred
- Oracle database licences
- Windows Server licences

## **3 Special provisions for the eControl cloud product**

### **3.1 Preliminary remarks**

All conditions listed under Point 3 only refer to the eControl cloud product and also apply to the other Licensing Terms.

### **3.2 General operating conditions**

Arconda Systems AG provides the client with its own instance as well as access to the attendant web interface. A client's data is isolated from other clients' data by the system in order to ensure data protection and auditability. The system is accessed securely via HTTPS by requesting an individual, client-specific URL. Emails sent by the system are sent via SMTP. Arconda Systems AG grants its clients the use of the hosted software in terms of its intended use. Misuse beyond the use for which it is designed is prohibited. It is not possible to use services from the maintenance and support contract according to 5. in the event of misuse.

### **3.3 Traffic**

The traffic is included in the price. Please note that your internet provider can request use-dependent transmission fees if necessary.

The document archive does not have any size limitation. Individual data however must not exceed a size of 50 MB.

### **3.4 Availability**

Technical operational support for the client's authorised service staff is a component of eControl Cloud provision. Arconda Systems AG basically offers no first-level support for individual end users.

### **3.5 Fault acceptance**

At the start of the contractual relationship, the client is given contact details and service times to notify faults. Processing of the fault begins within the 2 hour reaction period. Faults caused by force majeure are excluded from this.

### **3.6 Additional instances for test and training purposes**

As an option, further instances can be optionally reserved. These instances must only be used for test and training purposes however. Additional instances are not included in the data backup.

### **3.7 System updates**

eControl Cloud receives periodic updates, which may contain bug fixes and new features. The free update shall take place within at least 14 days before the time frame announced by the Contractual Partner.

## **3.8 Backup**

Data from the productive instance is backed up daily. Data can be restored at the request of the user; this is to be commissioned via support and is calculated in accordance with the costs incurred.

## **3.9 Data provision for migration between eControl Cloud and eControl (self hosted)**

There is always the possibility of migrating stored data between eControl Cloud and eControl (self hosted). With such migrations, the licensed modules in the target system must however correspond to the licenced modules in the source system. Migration expenses will be reimbursed in accordance with the costs incurred.

## **3.10 Data provision after termination of the contractual relationship**

Within one week after termination of the contractual relationship, Arconda Systems AG will permanently delete all eControl client data and backups. If a data provision is required, this is to be ordered in good time upon termination, two weeks however at the latest before the end of the contractual relationship.

Data provision is a separate service, which is paid in accordance with the costs incurred. The provision is made on an encrypted disk in the form of data backups, in the document archive, as well as for the operation of necessary eControl web software (read-only access only possible on the database) and installation instructions. The necessary database access licences are not included. An Arconda Systems AG technician installs the system, whereby this service is paid in accordance with the costs incurred.

## **3.11 Data security**

Arconda Systems AG takes precautions to safeguard data security and access protection from an organisational and technical point of view. User-specific software-based 2-factor authentication is standard, hardware tokens can be purchased at additional cost. If a problem with data security is established, we will inform the client concerned as soon as it is detected. In the event of a compromise of the services, Arconda Systems AG reserves the right to temporarily restrict or stop the service.

# **4 Licences**

## **4.1 Licence material**

Licence material denotes data processing programs and stored data in machine-readable form (licence programs) including relevant documentation in printed or digital form. The transfer of licence material is only done on the basis of a separately concluded contract (hand-over agreement) between the client and the Contractual Partner. Claims for the supply of licence material, guarantee, liability etc. only arise from the hand-over agreement, not from these General Conditions of Use.

## **4.2 Licencing model**

Licencing of the eControl aviation software product is per user. A user is defined as a natural person that is –according to Terms and Concitions- a software user.

#### **4.2.1 eControl User**

An eControl user is an active user, who carries out operational processes and other activities, which are supported by the software.

#### **4.2.2 Active User**

Every active eControl aviation system user must be licenced. An active user is indicated in the user administration as such and exists as a separate user group in the underlying Oracle database. Active users are direct users, who communicate as persons/individuals with eControl aviation software.

#### **4.2.3 Technical user**

Technical users who communicate anonymously as direct users with one of the technical systems upstream from the installation, which bundles, caches or collects the communication processes and transmits them to the installation, are not users according to this eControl licencing model.

#### **4.2.4 eControl mobile User**

An eControl mobile user licence (UCAL) can be purchased for every active. The eControl user and the eControl mobile user must be the same person.

#### **4.2.5 Exclusion of group accounts**

- a) A group account is a user scheme that should be used by several users to sign in to the system.
- b) Use of group accounts is generally prohibited.
- c) eControl as an audit-compliant system is not intended for the operation by group accounts. The use of group accounts can lead to unpredictable operating problems.
- d) The rectification of operating problems as the result of improper use of a group account is a manufacturer service which is subject to charge.
- e) eControl mobile users are managed in terms of group accounts by the system in the same way as eControl users.

### **4.3 Use and purchase**

The purchase of user licences authorises the purchaser to use eControl aviation program functions and software packages for the number of active users according to 4.2.2. For individual software packages, use can be limited to a number of master records. Usage beyond this scope is regarded as purchase. The client grants the Contractual Partner the authority to measure the installation according to the requirements of the purchase and maintenance conditions list for the transfer and maintenance of eControl aviation by the Contractual Partner at any time. Purchases are invoiced according to the respective valid purchase and maintenance conditions list for the transfer and maintenance of eControl aviation.

### **4.4 Transfer of user licences**

- a) User licences and eControl mobile user licences can be transferred from a natural person to another natural person.

- b) A transfer of eControl user licences also automatically leads to a transfer of eControl mobile user licences.
- c) The transfer of user licences is only possible if the user whose licence is to be transferred has had their clearance withdrawn. Clearance is withdrawn in the user master data dialogue. The revocation of clearance leads to deletion of the user scheme in the database.
- d) Transfer of eControl user licences can only take place after the expiry of a 7-day blocking period.

## **4.5 Use and purchaser**

With the separate hand-over agreement, the client acquires an unlimited and non-exclusive right, only transferable in accordance with these conditions, for proper use of the licence material. The right of use is limited to the licence program components stated in the hand-over agreement, even if the client could technically access additional components. The client acquires the right of use for eControl aviation for the Contractual Partner designated as the purchaser. This right of use also includes the purchaser's subsidiaries, in which the purchaser has a controlling stake of more than 50 percent. A transfer of the granted rights of use is only allowed by means of a complete sale of the total number of licences and requires the Contractual Partner to agree to the transfer in writing. Printed licence material must not be copied; additional copies may be obtained for the respective valid Contractual Partner's fees. Backup copies of machine readable licence material may be made, as far as and as long as this is necessary for contractual use. Hosting of an installation by a third party is allowed, if the third party's activity is solely restricted to system administration, the computer units are held directly by the third party and the third party recognises these Contractual Partner's software conditions of use in writing as binding. In addition, the client will safeguard the licence material from access by third parties, including any copies made, for an unlimited period of time.

## **4.6 Oracle database and operating system**

The scope of delivery of eControl aviation software components includes neither the necessary Oracle database licences, operating system licences, nor other system software components. The purchaser ensures that Oracle database licences are made available to the respective extent required and in the respective required version.

# **5 Maintenance and support**

The purchaser may receive maintenance and support for eControl aviation as far as these are offered.

## **5.1 Maintenance fee**

The maintenance fee is due from the first month after delivery and is to be paid annually in advance. The maintenance fee is charged separately for each contract concluded and always in accordance with the respective current price and conditions list for the transfer and maintenance of eControl aviation. eControl aviation's support services must always include all software users, software packages and other constituents (e.g. customer-specific adaptations). If the purchaser suspends eControl aviation support or let it expire for a certain period and requests this again at a later date, or this is to be resumed again, the eControl licences must be purchased again to the respective required extent, according to the licence prices valid at this time.

## 5.2 Scope of support

### 5.2.1 Scope of application

Maintenance and support services are only provided by the Contractual Partner for the supplied, unchanged software products in their respective latest version. After the release of a new release or software product updates, the previous version is still maintained up to a maximum of the end of six months after the release date.

### 5.2.2 Continuous improvements

The maintenance and support scope includes the provision of new software updates, as well as the necessary tools and procedures to carry out software updates. The maintenance and scope of support also includes the provision of support packages. Support packages contain corrections to adapt existing functions and may also contain adaptations for changed legal requirements. Support packages and software updates include technology updates to support operating systems and databases of the supported third parties and versions. The software updates do not include the provision of program modifications, which require the reorganisation of programs (software upgrades). The continuous improvements do not include textual adaptations to changes in legal or other framework.

### 5.2.3 Exclusions

The Contractual Partner only provides support for the software and does not provide support services for support cases which arise because the client has changed the software without having been duly authorised by the support provider, or has violated the terms of use. Support for problems arising from the use of third-party products, is expressly excluded. The Contractual Partner does not provide any support services for support cases which are the client's responsibility and which arise due to improper installation, inadequate training, an incomplete or erroneous operating plan, incorrect operation, improper use or faulty hardware for example. Support services are restricted to the resolving of support cases and problems in relation to eControl aviation software. This does not include particular questions about use and operation or any other typical hotline services. The Contractual Partner is under no obligation to deliver the customer data adaptations (data migration) necessary for the use of continuous improvements.

### 5.2.4 Response times

The classification of the priority of support cases takes place through the support desk.

Support case priority	Response time
High	4 hours
Medium	8 hours
Low	16 hours

### 5.2.5 Duration and termination

Support is concluded for an indefinite period. Support is agreed on an annual basis and automatically extended on an annual basis. The support and maintenance agreement can only be terminated after one year with a 3-month period to the maturity date.

## **6 Data protection**

Arconda Systems AG ensures that the requirements of the German Federal Data Protection Act (BDSG) are met in full for all domestic and foreign customers. For details, particularly with regard to customer-specific national requirements, a data protection officer is available at all times for the client.

## **7 Confidentiality**

### **7.1 Framework conditions**

The use of the Contractual Partner's products and services requires an open dialogue between the Contractual Partner and the client, as well as the agents concerned, which requires the exchange of confidential information. The Contractual Partner and the client may obtain knowledge of confidential information.

### **7.2 Confidential information**

The Contractual Partner and the client will keep all confidential information secret, in particular know-how and business and trade secrets that have been made available or otherwise made known to them by the respective party within the context of contractual cooperation and that only apply for the purpose of the respective agreements. The confidential information also includes, in particular, any tender and negotiation content. Disclosure to third parties only occurs if the respective party providing information has given their consent in writing in advance. The secrecy does not apply if statutory provisions, official or court orders require the publication or disclosure of confidential information.

### **7.3 Exceptions to confidential information**

Confidential information does not include information publicly known at the time the receiving party acquired the knowledge or that later became known without tort or without a breach of duty by the receiving party, or which the receiving party has lawfully purchased from a third party, which the information giving party is not obliged to keep secret or which is released by written consent.

### **7.4 Disclosure to third parties**

The Contractual Partner and the client will only make confidential information available to employees or expert third parties, insofar as this is necessary and with the proviso that this information is confidential in accordance with the current eControl aviation Licensing Terms or confidentiality agreed on an individual contract basis. A corresponding obligation to maintain confidentiality is imposed on employees or expert third part.