



End User Licence Agreement



➤ netfence appliances, M appliances, phion management centre and entegra clients
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1. Licence Conditions

§1 Preamble

- (1) phion AG, Eduard-Bodem-Gasse 1, 6020 Innsbruck, FN [Business Register Number] 184392 s (hereinafter referred to as "phion") has developed the software "netfence", "M", "airlock", "phion management centre" and associated software (hereinafter referred to as "Software"). phion is the owner of all proprietary rights to and rights to use the Software which result from the copyright to the Software.
- (2) The Software runs mostly on the operating system Linux which is delivered together with the software. The operating system and the software packages provided along with it are subject to separate licences and shall not be the subject matter of these Terms and Conditions of Use. It is expressly put on record that the Software does not constitute an edited version or further development of the operating system. These Terms and Conditions of Use therefore exclusively apply to the Software developed by phion.
- (3) The phion Software was developed by inclusion of some existing software packages to which rights of third parties exist. The licencing conditions regarding that software are attached hereto.

§2 Testing of the Software

- (1) The Software "netfence" and "phion management centre" is available for evaluation purposes. The Software may be used and tested free of charge. In its evaluation version it is NOT usable as a software for network security purposes. Without a licence key the system is open for non-authorised administration. The publicly known password "phion" warrants administrative access to anyone. The usage of a non-licensed system for productive purposes is strictly forbidden. PHION SHALL NOT BE LIABLE FOR ANY DAMAGE WHICH IS CAUSED BY RUNNING A SYSTEM IN EVALUATION MODE. If Customer does not purchase a licence, Customer is obliged to delete all copies of the software and phion is entitled to proof it.
- (2) It is not allowed to publish any results of evaluations without prior written permission by phion.

§3 Use

- (1) Subject to timely payment of the licence fees phion shall grant Customer an exclusive right to install and use the programme on a data storage device from issuance of the licence certificate for an indefinite period of time. The licence exclusively concerns the use of the programme by Customer for its own data processing processes. Customer shall not be entitled to grant third parties access to the programme. Customer undertakes to keep the Software safe so that access and, thus, copying or using the Software by third parties is prevented. Customer shall be granted the right to make copies of the programme exclusively for backup or archiving purposes.
- (2) Customer shall be entitled to use the programme to the extent necessary for ordinary use of the programme.
- (3) Unless provided otherwise by mandatory statutory provisions, Customer shall not be entitled to translate the programme from object code into source code (e.g. by reverse engineering, disassembling or decompiling).
- (4) Customer shall not be entitled to crack or change the licence key. Customer shall not be entitled to modify or delete any notes regarding rights, trademarks or the like which are stated in the programme or on the medium on which the programme is stored.
- (5) Customer shall not be entitled to transfer, let, lease, lend or otherwise temporarily make available the programme to third parties. Moreover, Customer shall not be entitled to process or modify the Software in any way or to integrate it into other computer programmes.
- (6) The licence may be linked to the hardware configuration via a licence key. In the case of modifications of the hardware configuration phion shall be free to issue another licence key to Customer free of charge. Customer shall then lose the right to continue to use the first licence key. phion shall be entitled to request evidence thereof within fourteen days of receipt of the new licence key.
- (7) Some licences and licence keys may restrict the number of IP addresses that are allowed to use the software. It is forbidden to use technical methods to reduce the number of counted IP-addresses. This does not affect the usage of application proxies such as http-proxies or DNS-forwarders or mail-relays, but only NAT-devices with the primary purpose is to hide IP-addresses.
- (8) If such devices are used nonetheless for technological reasons, the licensee shall be obliged to dimension the licence in such a way that the Software is correctly licenced also without such a device.
- (9) The product "netfence sectorwall" is licenced solely for usage as a security gateway between internal parts of a licensee's network. It is strictly forbidden to use a "netfence sectorwall" product at the internet perimeter.

- (10) Some licences and licence keys may restrict the number of protected applications or/and users or/and authentication facilities that are allowed to use the software.
- (11) Export to third countries shall be effected in accordance with the EU directives applicable at the time the export/import takes place. The exporting and/or importing reseller or end customer shall be solely responsible for compliance with the said directives. Products delivered by phion are designed for being used and for remaining in the EU. Re-export, be it separately or integrated into a system, shall be subject to approval to be obtained by Customer and shall be subject to the relevant foreign trade legislation and to US Export Regulations for the knowledge of and compliance with which Customer shall be responsible. Reselling to customers in the nuclear area, in particular in the area of manufacturing and operation of nuclear technology, shall require special permits. phion reserves the right to adjust the provisions on export and import at any time if national or international legislation so requires.
- (12) Licences bound to hardware configuration may also be used on virtual machines. In this case the hardware configuration may be a hardware configuration of the virtual machine. If the licence is bound to a hardware parameter of a virtual machine, customer shall not simultaneously operate multiple virtual machine instances using the same licence key at the same time. Allowing and/or enabling a third party to operate a virtual machine image by passing on virtual machine images is not permitted.
- (13) The licensee is responsible for the choice, installation and usage of the licenced Software and the intended solution. The licensee is responsible for usage and choice of the technological environment and the necessary services and the organisation to operate the systems properly.
- (14) phion has the right to get evidence that the licenced Software is used according to the licence conditions. phion has to do this without breaching any industrial and company secrets of the Customer.

§4 Purchase Price

- (1) Unless otherwise agreed in the course of distribution, the following regulation shall apply:
The purchase price for the computer programme including the licence certificate shall be transferred to the company account of phion within fourteen days of delivery of the licence certificate without another invoice for the due purchase price being necessary. If Customer is in default of payment of the purchase price, phion shall be entitled to charge default interest at a rate of 8 % p.a. above the three-months EURIBOR applicable from time to time.

§5 Liability Provisions

- (1) THE PARTIES MUTUALLY AGREE AND PUT ON RECORD THAT THE SOFTWARE SHALL BE PROVIDED TO CUSTOMER ON A DATA CARRIER OR AS A DOWNLOAD. CUSTOMER UNDERTAKES TO CHECK WORKABILITY AND FREEDOM FROM DEFECTS OF THE PROVIDED SOFTWARE DURING A TEST PHASE AND TO NOTIFY ANY DEFECTS IN ACCORDANCE WITH SECTION 377 UGB [AUSTRIAN BUSINESS CODE] OR WITHIN SWITZERLAND ART. 201 SWISS CODE OF OBLIGATIONS. UPON ORDERING THE LICENCE CERTIFICATE IN ACCORDANCE WITH THE PURCHASE ORDER FORM CUSTOMER CONFIRMS THAT THE SOFTWARE AND THE DATA CARRIER, IF ANY, HAVE BEEN CHECKED FOR FREEDOM FROM DEFECTS AND CONFIRMS THAT FREEDOM FROM DEFECTS EXISTS. WARRANTY FOR DEFECTS IN QUALITY DURING THE TEST PHASE SHALL BE EXCLUDED BY MUTUAL CONSENT IN VIEW OF THE TESTING CHARACTER. IN ANY CASE WARRANTY SHALL BE LIMITED TO SIX WEEKS.
- (2) FOR CONSUMERS THE WARRANTY PERIOD SHALL BE TWO YEARS. THE PROVISIONS OF THE AUSTRIAN CONSUMER PROTECTION ACT SHALL REMAIN IN FORCE TO THE EXTENT THAT A TRANSACTION WITH END CONSUMERS IS CONCERNED. IN THAT CASE PHION SHALL BE ENTITLED TO FULFIL ITS WARRANTY OBLIGATIONS BY REPLACING THE DELIVERED ITEM.
- (3) FURTHERMORE PHION SHALL ASSUME NO WARRANTY FOR ERRORS/BUGS, FAILURES OR DAMAGE WHICH WERE CAUSED BY IMPROPER OPERATION, USE OF UNSUITABLE ORGANISATIONAL RESOURCES, ABNORMAL OPERATING CONDITIONS (IN PARTICULAR DEVIATIONS FROM THE INSTALLATION CONDITIONS) AS WELL AS BY TRANSPORTATION DAMAGE. IN THE CASE OF PROGRAMMES WHICH ARE SUBSEQUENTLY CHANGED BY PROGRAMMERS WORKING FOR THE CUSTOMER OR THIRD PARTIES, PHION SHALL BE UNDER NO WARRANTY WHATSOEVER.
- (4) phion is not aware of any rights of third parties which would prevent the granting of the rights to use the Software granted. If Customer is held liable for infringement of intellectual property rights of third parties due to use of the Software delivered by phion or of parts or components thereof, phion shall indemnify and hold Customer harmless provided that Customer immediately notifies such fact to phion and leaves all negotiations to phion. Customer shall not be allowed to issue any

declarations of acknowledgement in this context. Customer shall authorise phion to represent Customer with regard to such disputes and undertakes to take suitable steps jointly with phion in defence of the asserted claims.

- (5) In the case that justified claims of third parties are asserted, phion shall take the necessary steps and, if necessary, acquire rights or deliver equivalent parts and components.
- (6) PHION SHALL BE LIABLE FOR DAMAGE WITHIN THE SCOPE OF THE STATUTORY PROVISIONS IF IT CAN BE PROVEN THAT SUCH DAMAGE WAS CAUSED BY PHION OR ITS STAFF WILFULLY OR WITH GROSS NEGLIGENCE. LIABILITY FOR ORDINARY NEGLIGENCE SHALL BE EXCLUDED BY MUTUAL AGREEMENT AND TO THE EXTENT PERMITTED BY LAW. COMPENSATION FOR CONSEQUENTIAL DAMAGE AND PECUNIARY LOSS, SAVINGS NOT EARNED, LOSS OF INTEREST, INDIRECT DAMAGE AND FOR DAMAGE FROM THIRD-PARTY CLAIMS OF ANY KIND AGAINST PHION SHALL BE EXCLUDED IN ANY CASE. PHION SHALL NOT BE LIABLE FOR DAMAGES IN CASE OF DESTRUCTION OF DATA, SOFTWARE OR HARDWARE IF CUSTOMER DID NOT FULFIL OR DID NOT SUFFICIENTLY FULFIL ITS OBLIGATIONS OF OPERATING THE EDP PROPERLY AND TO MAKE TIMELY DATA BACKUPS. UNLESS THE CONTRACTING PARTY IS A CUSTOMER, CLAIMS FOR DAMAGES AGAINST PHION SHALL BE ASSERTED WITHIN ONE YEAR OF OCCURRENCE OF THE DAMAGE; OTHERWISE THEY SHALL FORFEIT.

§6 Enhancements of Programmes (Updates) and Modifications of Programmes

- (1) BY PURCHASING THE LICENCE CERTIFICATE CUSTOMER SHALL NOT ACQUIRE ANY RIGHT TO FURTHER SUPPORT BY PHION OR TO DELIVERY OF UPDATES OR PROGRAMME EXTENSIONS.
- (2) Using Software Updates on systems where no valid software subscription was purchased is severe infringement of licence rights, even the software does not prove the validity of the right to update. The customer is due to purchase the needed Software Subscription as described in the Software Subscription conditions.
- (3) Some functionality may be available only if a valid Software Subscription has been purchased. This is especially the case for content security and similar components which are updated on a regular basis.

§7 Customer Data

- (1) Customer expressly agrees that data concerning the Customer which becomes known to phion within the scope of the business relationship with Customer shall be collected and processed by phion for the purpose of information about the development of updates and new programme versions and for offering of maintenance contracts and for other offers.

- (2) Customer acknowledges and agrees that its personal data be stored and processed by phion for the purpose of internal data collection, data processing and for information about the development in connection with the delivered product and of updates and new programme versions. In accordance with Section 107 TKG [Austrian Telecommunications Act] Customer expressly agrees to receipt of such information also by e-mail.

§8 Copyright of Software

- (1) Customer expressly acknowledges that phion is the owner of all proprietary rights and rights to use the Software which result from copyright. In case Customer violates such rights and other mandatory copyright provisions, phion shall be entitled to all legal remedies which are provided for under copyright law to defend copyrights protection.
- (2) Parts of the Software contain software developed by third parties which is under copyright protection. Those licencing conditions for software are contained in the Annex to these Terms and Conditions of Use and shall form an integral part hereof.

§9 Final Provisions

- (1) If individual provisions of this contract are or become ineffective, the remaining provisions of this contract shall not be affected. The contracting parties shall cooperate as partners in order to find a provision which comes as close as possible to the ineffective provisions.
- (2) Unless mandatory statutory provisions provide otherwise, the statutory provisions of Austrian law applicable to full merchants shall exclusively apply, even if the order is rendered abroad.
- (3) The court having jurisdiction over the subject matter and over Innsbruck shall have exclusive jurisdiction regarding any disputes; if Customer is a consumer as defined by the Austrian Consumer Protection Act, Customer's general place of jurisdiction shall be the legal venue.
- (4) Austrian law shall apply exclusively; UN Sales Law (Vienna Convention on Contracts for the International Sale of Goods) and the conflict of laws rules of the Austrian Statute on Private International Law (IPRG) shall be excluded.
- (5) If the licensee is headquartered in Switzerland, then the Swiss material law (Swiss Code of Obligations) shall be used and the place of jurisdiction shall be Zurich.
- (6) The delivered software includes software packages which are subject to different types of licences like GPL or BSD. These are not subject to this licence condition and are listed below.

2. Licence for Client Applications

§1 Preamble

- (1) phion AG, Eduard-Bodem-Gasse 1, 6020 Innsbruck, FN [Business Register Number] 184392 s (hereinafter referred to as "phion") has developed the software "phion.a" and "entegra clients" as well as other applications for Windows or other operating systems, which are part of the product families "netfence", "M", "airlock" and other by phion distributed product families (hereinafter referred to as "Software"). phion is the owner of all proprietary rights to and rights to use the Software which result from the copyright to the Software.
- (2) The Software runs on the relevant operating system. The operating system and the software packages provided along with it are subject to separate licences and shall not be the subject matter of these Terms and Conditions of Use. It is expressly put on record that the Software does not constitute a edited version or further development of the operating system. These Terms and Conditions of Use therefore exclusively apply to the Software developed by phion.
- (3) The phion Software was developed by inclusion of some existing software packages to which rights of third parties exist. The licencing conditions regarding that software are attached hereto.

§2 Testing of the Software

- (1) The Software is available for evaluation purposes. The Software may be used and tested free of charge. The Software can only be reasonably used in connection with implementation of a phion netfence system. The scope of use of the Software will be partly restricted by those systems.
- (2) PHION EXPRESSLY NEITHER REPRESENTS NOR WARRANTS THAT THE SOFTWARE WILL RUN ON AN OPERATING SYSTEM AND THIS SHALL ALSO APPLY TO FUTURE VERSIONS OF THOSE OPERATING SYSTEMS.

§3 Use

- (1) Subject to timely payment of the licence fees phion shall grant Customer an exclusive right to install and use the programme on a data storage device from issuance of the licence certificate for an indefinite period of time. The licence exclusively concerns the use of the programme by Customer for its own data processing processes. Customer shall not be entitled to grant third parties access to the programme. Customer undertakes to keep the Software safe so that access and, thus, copying or using the Software by third parties is prevented. Customer shall be granted the right to make copies of the programme exclusively for backup or archiving purposes.
- (2) Customer shall be entitled to use the programme to the extent necessary for ordinary use of the programme.
- (3) Unless provided otherwise by mandatory statutory provisions, Customer shall not be entitled to translate the programme from object code into source code (e.g. by reverse engineering, disassembling or decompiling).
- (4) Customer shall not be entitled to crack or change the licence key. Customer shall not be entitled to modify or delete any notes regarding rights, trademarks or the like which are stated in the programme or on the medium on which the programme is stored.
- (5) Customer shall not be entitled to transfer, let, lease, lend or otherwise temporarily make available the programme to third parties. Moreover, Customer shall not be entitled to process or modify the Software in any way or to integrate it into other computer programmes.
- (6) The licence may be linked to the hardware configuration via a licence key. In the case of modifications of the hardware configuration phion shall be free to issue another licence key to Customer free of charge. Customer shall then lose the right to continue to use the first licence key. phion shall be entitled to request evidence thereof within fourteen days of receipt of the new licence key.
- (7) Export to third countries shall be effected in accordance with the EU directives applicable at the time the export/import takes place. The exporting and/or importing reseller or end customer shall be solely responsible for compliance with the said directives. Products delivered by phion are designed for being used and for remaining in the EU. Re-export, be it separately or integrated into a system, shall be subject to approval to be obtained by Customer and shall be subject to the relevant foreign trade legislation and to US Export Regulations for the knowledge of and compliance with which Customer shall be responsible. Reselling to customers in the nuclear area, in particular in the area of manufacturing and operation of nuclear technology, shall require special permits. phion reserves the right to adjust the provisions on export and import at any time if national or international legislation so requires.
- (8) The Customer is responsible for the choice, installation and usage of the licenced Software and the intended solution. The Customer is responsible for usage and choice of the technological environment and the necessary services and the organisation to operate the systems properly.

- (9) phion has the right to get evidence that the licenced Software is used according to the licence conditions. phion has to do this without breaching any industrial and company secrets of the Customer.

§4 Purchase Price

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The purchase price for the computer programme including the licence certificate shall be transferred to the company account of phion within fourteen days of delivery of the licence certificate without another invoice for the due purchase price being necessary. If Customer is in default of payment of the purchase price, phion shall be entitled to charge default interest at a rate of 8 % p.a. above the three-months EURIBOR applicable from time to time.

§5 Liability Provisions

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- (2) FOR CONSUMERS THE WARRANTY PERIOD SHALL BE TWO YEARS. THE PROVISIONS OF THE AUSTRIAN CONSUMER PROTECTION ACT SHALL REMAIN IN FORCE TO THE EXTENT THAT A TRANSACTION WITH END CONSUMERS IS CONCERNED. IN THAT CASE PHION SHALL BE ENTITLED TO FULFIL ITS WARRANTY OBLIGATIONS BY REPLACING THE DELIVERED ITEM.
- (3) FURTHERMORE PHION SHALL ASSUME NO WARRANTY FOR ERRORS/BUGS, FAILURES OR DAMAGE WHICH WERE CAUSED BY IMPROPER OPERATION, USE OF UNSUITABLE ORGANISATIONAL RESOURCES, ABNORMAL OPERATING CONDITIONS (IN PARTICULAR DEVIATIONS FROM THE INSTALLATION CONDITIONS) AS WELL AS BY TRANSPORTATION DAMAGE. IN THE CASE OF PROGRAMMES WHICH ARE SUBSEQUENTLY CHANGED BY PROGRAMMERS WORKING FOR THE CUSTOMER OR THIRD PARTIES, PHION SHALL BE UNDER NO WARRANTY WHATSOEVER.
- (4) phion is not aware of any rights of third parties which would prevent the granting of the rights to use the Software granted. If Customer is held liable for infringement of intellectual property rights of third parties due to use of the Software delivered by phion or of parts or components thereof, phion shall indemnify and hold Customer harmless provided that Customer immediately notifies such fact to phion and leaves all negotiations to phion. Customer shall not be allowed to issue any declarations of acknowledgement in this context. Customer shall authorise phion to represent Customer with regard to such disputes and undertakes to take suitable steps jointly with phion in defence of the asserted claims.
- (5) In the case that justified claims of third parties are asserted, phion shall take the necessary steps and, if necessary, acquire rights or deliver equivalent parts and components.
- (6) PHION SHALL BE LIABLE FOR DAMAGE WITHIN THE SCOPE OF THE STATUTORY PROVISIONS IF IT CAN BE PROVEN THAT SUCH DAMAGE WAS CAUSED BY PHION OR ITS STAFF WILFULLY OR WITH GROSS NEGLIGENCE. LIABILITY FOR ORDINARY NEGLIGENCE SHALL BE EXCLUDED BY MUTUAL AGREEMENT AND TO THE EXTENT PERMITTED BY LAW. COMPENSATION FOR CONSEQUENTIAL DAMAGE AND PECUNIARY LOSS, SAVINGS NOT EARNED, LOSS OF INTEREST, INDIRECT DAMAGE AND FOR DAMAGE FROM THIRD-PARTY CLAIMS OF ANY KIND AGAINST PHION SHALL BE EXCLUDED IN ANY CASE. PHION SHALL NOT BE LIABLE FOR DAMAGES IN CASE OF DESTRUCTION OF DATA, SOFTWARE OR HARDWARE IF CUSTOMER DID NOT FULFIL OR DID NOT SUFFICIENTLY FULFIL ITS OBLIGATIONS OF OPERATING THE EDP PROPERLY AND TO MAKE TIMELY DATA BACKUPS. UNLESS THE CONTRACTING PARTY IS A CUSTOMER, CLAIMS FOR DAMAGES AGAINST PHION SHALL BE ASSERTED WITHIN ONE YEAR OF OCCURRENCE OF THE DAMAGE; OTHERWISE THEY SHALL FORFEIT.

§6 Enhancements of Programmes (Updates) and Modifications of Programmes

- (1) BY PURCHASING THE LICENCE CERTIFICATE CUSTOMER SHALL NOT ACQUIRE ANY RIGHT TO FURTHER SUPPORT BY PHION OR TO DELIVERY OF UPDATES OR PROGRAMME EXTENSIONS.

- (2) Using Software Updates on systems where no valid software subscription was purchased is severe infringement of licence rights, even the software does not prove the validity of the right to update. The customer is due to purchase the needed Software Subscription as described in the Software Subscription conditions.
- (3) Some functionality may be available only if a valid Software Subscription has been purchased. This is especially the case for content security and similar components which are updated on a regular basis.

§7 Customer Data

- (1) Customer expressly agrees that data concerning the Customer which becomes known to phion within the scope of the business relationship with Customer shall be collected and processed by phion for the purpose of information about the development of updates and new programme versions and for offering of maintenance contracts and for other offers.
- (2) Customer acknowledges and agrees that its personal data be stored and processed by phion for the purpose of internal data collection, data processing and for information about the development in connection with the delivered product and of updates and new programme versions. In accordance with Section 107 TKG [Austrian Telecommunications Act] Customer expressly agrees to receipt of such information also by e-mail.

§8 Copyright of Software

- (1) Customer expressly acknowledges that phion is the owner of all proprietary rights and rights to use the Software which result from copyright. In case Customer violates such rights and other mandatory copyright provisions, phion shall be entitled to all legal remedies which are provided for under copyright law to defend copyrights protection.

- (2) Parts of the Software contain software developed by third parties which is under copyright protection. Those licencing conditions for software are contained in the Annex to these Terms and Conditions of Use and shall form an integral part hereof.

§9 Final Provisions

- (1) If individual provisions of this contract are or become ineffective, the remaining provisions of this contract shall not be affected. The contracting parties shall co-operate as partners in order to find a provision which comes as close as possible to the ineffective provisions.
- (2) Unless mandatory statutory provisions provide otherwise, the statutory provisions of Austrian law applicable to full merchants shall exclusively apply, even if the order is rendered abroad.
- (3) The court having jurisdiction over the subject matter and over Innsbruck shall have exclusive jurisdiction regarding any disputes; if Customer is a consumer as defined by the Austrian Consumer Protection Act, Customer's general place of jurisdiction shall be the legal venue.
- (4) Austrian law shall apply exclusively; UN Sales Law (Vienna Convention on Contracts for the International Sale of Goods) and the conflict of laws rules of the Austrian Statute on Private International Law (IPRG) shall be excluded.
- (5) If the licensee is headquartered in Switzerland, then the Swiss material law (Swiss Code of Obligations) shall be used and the place of jurisdiction shall be Zurich.

3. Software Subscription Conditions

Preamble

Customer has acquired from phion a licence to use certain software modules of the "netfence", "airlock", "entegra", "M", "phion management centre" software (hereinafter referred to as "Software"). Customer is interested in receiving further developments and enhancements of the Software from phion. phion is interested in a lasting customer relationship and wants that the Software will satisfy the high demands of Customer also after some time. For the said reasons phion offers Customer software subscription in accordance with the following terms and conditions.

§1 Prerequisite for software subscription

Customer shall be entitled to order from phion software subscription for a certain product if one of the following conditions (standard conditions) is fulfilled:

1. Not more than one year has passed since the purchase of a licence to use the phion product.
2. There is a valid software subscription agreement regarding the product which has not expired.
3. Not more than one year has passed since expiration of the last valid subscription agreement.

In those three cases the term of the software subscription shall commence on the first day of the calendar month following the date of purchase in the first case, in the second and third case directly following the end of the existing or expired software subscription agreement. In accordance with the date of the purchase order within the said periods it is agreed that the Customer's right to updates shall be limited to the residual term of the software subscription agreement.

Moreover, Customer shall be entitled to order software subscription for a certain product from phion if the following condition is fulfilled:

1. More than one year has passed since the expiration of the last valid subscription agreement.

In that case Customer shall be entitled to purchase software subscription for a certain period by purchasing legacy subscription. By purchasing legacy subscription Customer shall receive the same rights as if he had purchased software subscription under standard conditions, and, thus, again the right to purchase software subscription subject to the first three conditions.

§2 Scope of software updates

phion shall provide Customer with further developments and enhancements of the software created by phion in accordance with the terms and conditions of this contract. The most recent licencing conditions of phion shall apply mutatis mutandis to software which is provided to Customer on the basis of a software subscription agreement.

The Software is identified by a three-digit number according to the version.major.minor system, the first digit indicating the programme version, the second digit indicating major updates (adaptation of software to changed framework conditions) and the third digit indicating minor updates (bug fixes and minor changes to the Software without materially changing the Software's functionality).

Further development and enhancement of the Software shall be effected by creating new versions, major updates and minor updates. phion shall decide at its own discretion when and what kind of updates will be created and shall not be obliged to respond to every technological change by an update.

Updates shall be provided to Customer on a CD after market launch or shall be released for downloading on the internet. Updates shall always be installed by Customer itself.

This software update agreement shall expressly and exclusively relate to the Software developed by phion and not to open source software or other software delivered along with it, which phion does use, but which does not originate from phion.

The updates shall only apply to the entire licence and not for parts thereof which are purchased.

§3 Installation of updates

In the case that Customer installs the programme updates he shall follow all instructions of phion with regard to installation and use of the programme updates. Relevant instruction shall be provided.

§4 Compatibility of updates

IF CUSTOMER OR THIRD PARTIES MAKE ADAPTATIONS IN THE APPLICATION LOGIC OF PROGRAMMES OR PARTS THEREOF, PHION DOES NOT WARRANT THAT THE UPDATES ARE FULLY USEABLE.

CUSTOMER ACKNOWLEDGES THAT USE OF UPDATES MAY NECESSITATE USE OF CONVERSION SCRIPTS TO ADAPT EXISTING DATA MODELS TO NEW DATA MODELS. IN THE CASE THAT UPDATES DO NOT WORK PROPERLY ON THE OPEN SOURCE SOFTWARE PHION SHALL NOT ASSUME ANY WARRANTY OR LIABILITY FOR RUNNABILITY OF THE UPDATES. CONVERSION SCRIPTS SHALL NOT BE PROVIDED WITH REGARD TO ADAPTATIONS MADE BY CUSTOMER OR THIRD PARTIES.

PHION DOES NOT WARRANT THAT THE SOFTWARE IS COMPATIBLE WITH THE HARDWARE USED SO FAR AFTER AN UPDATE HAS BEEN INSTALLED OR AN UPDATED SOFTWARE HAS BEEN NEWLY INSTALLED.

§5 Remuneration

phion shall receive a flat fee for the services rendered under these terms and conditions of software subscription. Upon payment of the said amount Customer shall acquire the right to all software updates which are provided by phion for the product Customer purchased during the agreed period. If no period has been fixed, one calendar year after phion's receipt of the purchase order for software subscription shall be deemed the period fixed.

Unless otherwise agreed in the course of distribution, the following regulation shall apply:

This amount shall be due for payment annually, immediately after issuance of the purchase order and issuance of the invoice. If Customer is in default of payment, phion shall be entitled to charge default interest at a rate of at least 8 % p.a. above the three-months EURIBOR applicable from time to time. The right to terminate the contract with immediate effect as defined in Clause 6 shall remain unaffected.

§6 Warranty

phion shall fulfil its warranty obligations only for properties of updates which were expressly promised. If a defect occurs in this context, phion shall repair such defect, at its own discretion, either by improvement or by replacement of the defective update. Any further warranty claims shall be excluded.

Warranty claims shall be excluded in particular if Customer does not install and/or use the Software in the way prescribed by phion or if Customer or third parties notify the Software or with regard to integration of the Software into the Customer's system. The warranty period shall be one year; if Customer is a consumer as defined by the KSchG [Austrian Consumer Protection Act], that period shall be two years.

§7 Liability

THE PROVISIONS ON LIABILITY OF THE LICENCING CONDITIONS OF PHION AS AMENDED FROM TIME TO TIME SHALL APPLY.

§8 Term of Software Subscription and Termination

Customer's claim shall commence in accordance with the relevant prerequisite (see Clause 1) and shall last one calendar year unless otherwise agreed. The claim shall not be renewed automatically and must be renewed in accordance with the conditions of Clause 1.

Moreover, phion shall be entitled to terminate current software subscription with immediate effect for good cause, which shall include but not be limited to a violation of provisions of the relevant most recent licencing conditions of phion or these terms and conditions of software subscription by Customer or a situation where phion does not make any updates of the software version due to technological or other circumstances or where such creation is no longer economical.

§9 Scope Of Software Subscription

If Customer purchases software subscription for a phion product, the said subscription shall include all licences purchased by Customer. It shall not be possible to purchase software subscription only for parts of the purchased licences. This shall also apply to newly purchased Software. If despite a request the software subscription is not extended to the entire licence basis used, this shall constitute a good cause for phion to terminate the existing software subscription rights.

§10 Final Provisions

Modifications of these terms and conditions of software subscription shall be made in writing. This shall also apply to a waiver of the requirement of written form.

If a provision of these terms and conditions of software subscription is or becomes ineffective, such a defect shall not affect the remaining provisions of this contract. The defective provision shall be deemed replaced by an effective provision which comes as close as possible to the economic and legal effects which the contracting parties expected

from the defective provision.

All rights and obligations under this contractual relationship shall pass to the legal successors, if any, of the parties. Moreover, phion shall be entitled to impose all rights and obligations under this agreement on a third party.

The court having jurisdiction over the subject matter and over Innsbruck shall have exclusive jurisdiction regarding any disputes; if Customer is a consumer as defined by the Austrian Consumer Protection Act, Customer's general place of jurisdiction shall be the legal venue.

Austrian law shall apply exclusively; UN Sales Law (Vienna Convention on Contracts for the International Sale of Goods) and the conflict of laws rules of the Austrian Statute on Private International Law (IPRG) shall be excluded.

If the licensee is headquartered in Switzerland, then the Swiss material law (Swiss Code of Obligations) shall be used and the place of jurisdiction shall be Zurich.

4. Anhang / Addendum

Lizenzbedingungen von Software, die ganz oder in Teilen in "netfence", "phion management centre", "entegra" und dazugehöriger Software verwendet wurden.

Terms and conditions of licencing of software which is used in "netfence", "phion management centre", "entegra" and appropriate parts of the software, in whole or in part:

4.1 Licences of Integrated 3rd Party Software

Table 1-1 Conditions of Licencing of software which is used in phion netfence

Software name	Function	see...
AdoDB	PHP database abstraction layer	page 11
AntiVir	Antivirus	page 11
AMCC	RAID Controller	page 13
Apache	Apache Web Server	page 13
Berkeley DB	Database tools	page 14
bind	DNS service	page 15
Broadcom Corporation	Linux driver	page 15
DHCP Relay / DHCP Enterprise	DHCP Relay Agent	page 15
ISAKMP	IPSec engine	page 15
ISS Proventia Web Filter	URL filter	page 15
Java Script	Virtual Keyboard	page 16
Microdasys	HTTPS Proxy engine	page 17
OpenLDAP	Authenticator	page 19
OpenSSH	Secure shell	page 20
OpenSSL	Encrypting tools	page 21
PHP	The PHP HTML-embedded scripting language	page 22
PHPMailer	PHP-Mailer-Class for sending SMTP mails	page 22
PostgreSQL	PostgreSQL client programs and libraries	page 22
PuTTY	SSH GUI Client	page 22
RipeMD160	Implementation of the RIPEMD160 hashing algorithm	page 23
SHA2	Implementation of the SHA-256 and SHA-512 hashing algorithm	page 23
SNMPD	SNMP service	page 23
SPAMAssassin	SPAM-Mail detection	page 24
TUN/TAP	Low level support for tunneling	page 24
Vortex and AXL	Library for message exchange	page 24
WinPcap	Trace and display EAP-packets within the entegra client	page 25
WPA Supplicant	802.1x EAP authentication	page 26

4.1.1 AdoDB

BSD Style-License
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4.1.2 AntiVir - End-user License Agreement (EULA)

Die im phion Antivirus Service (Software Modulname virscan) enthaltene ausführbare Software **AntiVir SAVAPI** und **AntiVir Webgate**, sowie die Dateien **antivir.gpg** und **antivir.vdf** sind urheberrechtlich geschützt für die Avira GmbH
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4.1.4 Apache

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4.1.21 SHA2

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4.1.26 WinPcap

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bind-utils	BSD-like
binutils	GPL
bison	GPL
bootparamd	BSD
busybox	GPL
busybox-anaconda	GPL
byacc	public domain
bzip2	BSD
bzip2-devel	BSD
bzip2-libs	BSD
cdecl	distributable
chkconfig	GPL
chkfontpath	GPL
cipe	GPL
compat-db	BSDish
compat-egcs	GPL
compat-glibc	LGPL

Table 1-2 Software package listing and licences

Module	Licence
kudzu-devel	GPL
l2tpd	GPL
lcd4linux	GPL
less	GPL
libaio	LGPL
libao	GPL
libcap	BSD-like and LGPL
libcap-devel	BSD-like and LGPL
libcurl4	MIT/X derivate
libelf	distributable
libghttp	LGPL
libglade	LGPL
libglib-2.0_0	LGPL
libgmodule-2.0_0	LGPL
libgobject-2.0_0	LGPL
libgsasl	LGPL
libgthread-2.0_0	LGPL
libjpeg	GNU
libol	GPL
libol-devel	GPL
libole2	GPL
libpcap	BSD
libpng-1.2.8	GPL
libsvg	LGPL
libsigc++	LGPL
libstdc++	GPL
libstdc++-devel	GPL
libtermcap	LGPL
libtool	GPL
libtool-libs13	GPL
libtool-libs	GPL
libunicode	LGPL
libusb	LGPL
libuser	LGPL
libvortex	LGPL
libvortex-axl	LGPL
libxml10	LGPL
libxml2_2	MIT
libxml2	MIT
libxml2-devel	MIT
libxml2-python	MIT
libxslt-python	MIT
lilo	MIT
lm_sensors	GPL
locale_config	GPL
lockdev	LGPL
logrotate	GPL
losetup	distributable
lrzsz	GPL
lsk	Free
lsof	Free
ltrace	GPL
lvm	GPL
lynx	GPL
m2crypto	BSD
m4	GPL
make	GPL
MAKEDEV	GPL
man	GPL

Table 1-2 Software package listing and licences

Module	Licence
man-pages	distributable
mc	GPL
memtest86+	GPL
mgetty	GPL
mingetty	GPL
minicom	GPL
mkbootdisk	GPL
mkinitrd	GPL
mktemp	BSD
mm	Apache Software License
mod_ssl	Apache License, Version 2.0
modutils	GPL
mount	distributable
mouseconfig	distributable
ncftp	distributable
ncompress	distributable
ncurses4	distributable
ncurses	distributable
ncurses-devel	distributable
netdump	GPL
net-tools	GPL
newt	LGPL
nfreporter	Mixed (see LICENSE)
nss_db	GPL
nss_db-compat	GPL
ntp	distributable
open	GPL
openh323	MPL
openh323-devel	MPL
openldap12	OpenLDAP
openldap	OpenLDAP
openldap-clients	OpenLDAP
openldap-servers	OpenLDAP
openssh	BSD
openssh38	Other License(s), see package
openssh-clients	BSD
openssh-server	BSD
openssl096b	BSDish
openssl	BSDish
p3pmail	Strict
p3scan	GPL
pam	GPL or BSD
pam-devel	GPL or BSD
parted	GPL
passwd	BSD
patch	GPL
patchutils	GPL
pciutils	GPL
pciutils-devel	GPL
pcre	GPL
pcre-devel	GPL
perl	Artistic or GPL
perl-Archive-Tar	Artistic
perl-Authen-NTLM	Artistic or GPL
perl-Digest-HMAC	distributable
perl-Digest-SHA1	GPL or Artistic
perl-HTML-Parser	GPL or Artistic
perl-HTML-Tagset	distributable
perl-IO-Zlib	Artistic

Table 1-2 Software package listing and licences

Module	Licence
perl-libwww-perl	Artistic
perl-Net-DNS	distributable
perl-Razor-Agent	Artistic
perl-Time-HiRes	distributable
perl-URI	distributable
php	The PHP license (see "LICENSE" file included in distribution)
phpPgAdmin	GPL
pidentd	Public domain
pinfo	GPL
pkgconfig	GPL
pmake	BSD
popt	GPL
portmap	BSD
postgresql	BSD
postgresql-libs	BSD
ppp	distributable
pptp	GPL
pptpd	GPL
procmail	GPL or artistic
procps	GPL
properJavaRDP	GPL
psacct	GPL
psmisc	BSD/GPL
psutils	distributable
pump	MIT
pwdb	GPL or BSD
pwlib	MPL
pwlib-devel	MPL
pxe	BSD
python	distributable
python24	PSF
python-clap	GPL
python-devel	distributable
python-docs	distributable
python-popt	GPL
python-tools	distributable
python-xmlrpc	BSDish
pyzor	GPL
quagga	GPL
quagga-contrib	GPL
quagga-devel	GPL
raidtools	GPL
rcs	GPL
readline2.2.1	GPL
readline	GPL
readline-devel	GPL
redhat-lsb	GPL
reiserfs-utils	GPL
rmt	BSD
rootfiles	public domain
rpm	GPL
rpm-build	GPL
rpm-devel	GPL
rpm-python	GPL
rp-pppoe	GPL
rsync	GPL
sac	Freely Distributable
samba	GNU GPL version 2

Table 1-2 Software package listing and licences

Module	Licence
samba-client	GNU GPL version 2
samba-common	GNU GPL version 2
samba-doc	GNU GPL version 2
sash	GPL
sed	GPL
setup	public domain
sgml-common	GPL
shadow-utils	BSD
sh-utils	GPL
slang	GPL
slocate	GPL
smartsuite	GPL
smstools	GPL v2
spamassassin	Artistic
specspo	GPL
sqlite	Strict
squid	GPL
sslprxsquid	GPL
stat	GPL
strace	BSD
stunnel	GPL
symlinks	distributable
syslinux	BSD
syslog-ng	GPL
sysreport	GPL
tar	GPL
tcl	BSD
tcpdump	BSD
tcp_wrappers	Distributable
tcsh	distributable
telnet	BSD
termcap	Public Domain
texinfo	GPL
textutils	GPL
tightvnc	GPL
time	GPL
tmpwatch	GPL
traceroute	BSD
ttcp	Public Domain
unzip	BSD
usbutils	GPL
usermode	GPL
utempter	MIT
util-linux	distributable
vconfig	distributable
vera_ttf	GPL
vim-common	freeware
vim-minimal	freeware
vixie-cron	distributable
watchdog	GPL
wget	GPL
which	GPL
wireless-tools	GPL
words	freeware
xauth	XFree86
xml-common	GPL
zend-optimizer	GPL
zlib	BSD
zlib-devel	BSD

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[Dolly the sheep] "Clone me," says Dolly sheepishly

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The following individuals contributed in part to the Network Time Protocol Distribution Version 4 and are acknowledged as authors of this work.

1. [1]Mark Andrews <marka@syd.dms.csiro.au> Leitch atomic clock controller
2. [2]Viraj Bais <vbais@mailman1.intel.com> and [3]Clayton Kirkwood <kirkwood@striderfm.intel.com> port to WindowsNT 3.5
3. [4]Michael Barone <michael.barone@lmco.com> GPSVME fixes
4. [5]Karl Berry <karl@owl.HQ.ileaf.com> syslog to file option
5. [6]Greg Brackley <greg.brackley@bigfoot.com> Major rework of WINNT port. Clean up recvbuf and iosignal code into separate modules.
6. [7]Marc Brett <Marc.Brett@westgeo.com> Magnavox GPS clock driver
7. [8]Piete Brooks <Piete.Brooks@cl.cam.ac.uk> MSF clock driver, Trimble PARSE support
8. [9]Steve Clift <clift@ml.csiro.au> OMEGA clock driver
9. [10]Casey Crellin <casey@csc.co.za> vxWorks (Tornado) port and help with target configuration
10. [11]Sven Dietrich <sven_dietrich@trimble.com> Palisade reference clock driver, NT adj. residuals, integrated Greg's Winnt port.
11. [12]John A. Dundas III <dundas@salt.jpl.nasa.gov> Apple A/UX port
12. [13]Torsten Duwe <duwe@immd4.informatik.uni-erlangen.de> Linux port
13. [14]Dennis Ferguson <dennis@mrbill.canet.ca> foundation code for NTP Version 2 as specified in RFC-1119
14. [15]Glenn Hollinger <glenn@herald.usask.ca> GOES clock driver
15. [16]Mike Iglesias <iglesias@uci.edu> DEC Alpha port
16. [17]Jim Jagielski <jim@jagubox.gsfc.nasa.gov> A/UX port
17. [18]Jeff Johnson <jbj@chatham.usdesign.com> massive prototyping overhaul
18. [19]William L. Jones <jones@hermes.chpc.utexas.edu> RS/6000 AIX modifications, HP/UX modifications
19. [20]Hans Lambermont <Hans.Lambermont@nl.origin-it.com> or [21]H.Lambermont@chello.nl> ntpswEEP
20. [22]Frank Kardel [23]Frank.Kardel@informatik.uni-erlangen.de> PARSE <GENERIC> driver (14 reference clocks), STREAMS modules for PARSE, support scripts, syslog cleanup
21. [24]Dave Katz <dkatz@cisco.com> RS/6000 AIX port
22. [25]Craig Leres <leres@ee.lbl.gov> 4.4BSD port, ppsclock, Magnavox GPS clock driver
23. [26]George Lindholm <lindholm@ucs.ubc.ca> SunOS 5.1 port
24. [27]Louis A. Mamakos <louie@ni.umd.edu> MD5-based authentication
25. [28]Lars H. Mathiesen <thorinn@diku.dk> adaptation of foundation code for Version 3 as specified in RFC-1305
26. [29]David L. Mills <mills@udel.edu> Version 4 foundation: clock discipline, authentication, precision kernel; clock drivers: Spectracom, Austron, Arbiter, Heath, ATOM, ACTS, KSI/Odetics; audio clock drivers: CHU, WWV/H, IRIG

27. [30]Wolfgang Moeller <moeller@gwdgv1.dnet.gwdg.de> VMS port
28. [31]Jeffrey Mogul <mogul@pa.dec.com> ntpttrace utility
29. [32]Tom Moore <tmoore@fiavel.daytonoh.ncr.com> i386 svr4 port
30. [33]Kamal A Mostafa <kamal@whence.com> SCO OpenServer port
31. [34]Derek Mulcahy <derek@toybox.demon.co.uk> and [35]Damon Hart-Davis <d@hd.org> ARCRON MSF clock driver
32. [36]Rainer Pruy <Rainer.Pruy@informatik.uni-erlangen.de> monitoring/trap scripts, statistics file handling
33. [37]Dirce Richards <dirce@zk3.dec.com> Digital UNIX V4.0 port
34. [38]Wilfredo Sánchez <wsanchez@apple.com> added support for NetInfo
35. [39]Nick Sayer <mrapple@quack.kfu.com> SunOS streams modules
36. [40]Jack Sasportas <jack@innovativeinternet.com> Saved a Lot of space on the stuff in the html/pic/ subdirectory
37. [41]Ray Schnitzler <schnitz@unipress.com> Unixware1 port
38. [42]Michael Shields <shields@tembel.org> USNO clock driver
39. [43]Jeff Steinman <jss@pebbles.jpl.nasa.gov> Datum PTS clock driver
40. [44]Harlan Stenn <harlan@pfcs.com> GNU automake/autoconfigure makeover, various other bits (see the ChangeLog)
41. [45]Kenneth Stone <ken@sdd.hp.com> HP-UX port
42. [46]Ajit Thyagarajan <ajit@ee.udel.edu> IP multicast/anycast support
43. [47]Tomoaki TSURUOKA <tsuruoka@nc.fukuoka-u.ac.jp> TRAK clock driver
44. [48]Paul A Vixie <vixie@vix.com> TrueTime GPS driver, generic TrueTime clock driver
45. [49]Ulrich Windl <Ulrich.Windl@rz.uni-regensburg.de> corrected and validated HTML documents according to the HTML DTD

[50]Home
[51]David L. Mills <mills@udel.edu>

References

1. mailto:marka@syd.dms.csiro.au
2. mailto:vbais@mailman1.intel.co
3. mailto:kirkwood@striderfm.intel.com
4. mailto:michael.barone@lmco.com
5. mailto:karl@owl.HQ.ileaf.com
6. mailto:greg.brackley@bigfoot.com
7. mailto:Marc.Brett@westgeo.com
8. mailto:Piete.Brooks@cl.cam.ac.uk
9. mailto:clift@ml.csiro.au
10. mailto:casey@csc.co.za
11. mailto:Sven_Dietrich@trimble.COM
12. mailto:dundas@salt.jpl.nasa.gov
13. mailto:duwe@immd4.informatik.uni-erlangen.de
14. mailto:dennis@mrbill.canet.ca
15. mailto:glenn@herald.usask.ca
16. mailto:iglesias@uci.edu
17. mailto:jagubox.gsfc.nasa.gov
18. mailto:jbj@chatham.usdesign.com
19. mailto:jones@hermes.chpc.utexas.edu
20. mailto:Hans.Lambermont@nl.origin-it.com
21. mailto:H.Lambermont@chello.nl
22. www4.informatik.uni-erlangen.de/~kardel
23. mailto:Frank.Kardel@informatik.uni-erlangen.de
24. mailto:dkatz@cisco.com
25. mailto:leres@ee.lbl.gov
26. mailto:lindholm@ucs.ubc.ca
27. mailto:louie@ni.umd.edu
28. mailto:thorinn@diku.dk
29. mailto:mills@udel.edu
30. mailto:moeller@gwdgv1.dnet.gwdg.de
31. mailto:mogul@pa.dec.com
32. mailto:tmoore@fiavel.daytonoh.ncr.com
33. mailto:kamal@whence.com
34. mailto:derek@toybox.demon.co.uk
35. mailto:d@hd.org
36. mailto:Rainer.Pruy@informatik.uni-erlangen.de
37. mailto:dirce@zk3.dec.com
38. mailto:wsanchez@apple.com
39. mailto:mrapple@quack.kfu.com
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41. mailto:schnitz@unipress.com
42. mailto:shields@tembel.org
43. mailto:pebbles.jpl.nasa.gov
44. mailto:harlan@pfcs.com
45. mailto:ken@sdd.hp.com
46. mailto:ajit@ee.udel.edu
47. mailto:tsuruoka@nc.fukuoka-u.ac.jp
48. mailto:vixie@vix.com
49. mailto:Ulrich.Windl@rz.uni-regensburg.de
50. file://localhost/backroom/ntp4+/html/index.htm
51. mailto:mills@udel.edu

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- (9) Das Produkt "netfence sectorwall" ist ausschliesslich für den Einsatz als Security Gateway innerhalb von Anwendernetzwerken lizenziert und nicht für den Einsatz als Security Gateway zum Internet erlaubt. Es ist daher nicht erlaubt, eine "netfence sectorwall" am Perimeter zum Internet einzusetzen.
- (10) Teilweise begrenzen die Lizenzen und Licence-Keys die Anzahl der Applikationen und Authentisierungsmethoden. Ergreift der Lizenznehmer Maßnahmen, diese Begrenzungen zu umgehen, begeht er damit eine schwere Verletzung dieser Lizenzbedingungen.
- (11) Der Export in Drittländer hat nach den zum Zeitpunkt des Exports/Imports jeweils gültigen EU-Richtlinien stattzufinden. Die alleinige Verantwortung zur Einhaltung dieser Richtlinien liegt beim exportierenden bzw. importierenden Reseller oder Endkunden. Von phion gelieferte Produkte sind zur Benutzung und zum Verbleib innerhalb der EU bestimmt. Die Wiederausfuhr - einzeln oder in systemintegrierter Form - ist für den Kunden genehmigungspflichtig und unterliegt dem jeweiligen Außenwirtschaftsrecht sowie den US Export Regulations, deren Kenntnis und Beachtung dem Kunden obliegt. Der Wiederverkauf an Kunden im nuklearen Bereich, insbesondere im Bereich der Herstellung und des Betriebs von Nukleartechnik, erfordert spezielle Genehmigungen. phion behält sich das Recht vor, die gegenständlichen Bestimmungen zum Export und Import jederzeit anzupassen, sofern es die nationale oder internationale Gesetzgebung erfordert.
- (12) Lizenzen, die auf Hardwareparameter gebunden sind, können auch auf virtuellen Maschinen eingesetzt werden. In diesem Fall kann der Hardwareparameter ein Parameter der virtuellen Maschine sein. In diesem Fall ist das gleichzeitige Betreiben von mehreren virtuellen Instanzen mithilfe desselben Lizenzzertifikats untersagt. Die Einräumung der Möglichkeit zur Nutzung der Lizenz durch Dritte durch Weitergabe von kompletten Systemimages der virtuellen Maschine an Dritte ist nicht zulässig.
- (13) Die Verantwortung für die Auswahl, die Installation und den Gebrauch des Lizenzmaterials und die durch den Einsatz angestrebte Problemlösung liegt beim Lizenznehmer. Der Lizenznehmer ist zudem für Auswahl, Gebrauch und Unterhalt der im Zusammenhang mit der Software eingesetzten Informatiksysteme, weiterer Programme und Datensysteme sowie die dafür erforderlichen Dienstleistungen zuständig und stellt die für den Einsatz der Software geeignete Organisation bereit.
- (14) Der Lizenzgeber hat das Recht, sich unter Wahrung der Geschäfts- und Betriebsgeheimnisse des Lizenznehmers von der Einhaltung des bestimmungsgemäßen Gebrauchs der Software zu überzeugen.

§4 Kaufpreis

- (1) Wenn im Vertriebsweg nichts anderes vereinbart wird, gilt folgende Regelung:
Der Kaufpreis für das Computerprogramm samt Lizenz-Zertifikat ist innerhalb von 14 Tagen nach der Auslieferung des Lizenz-Zertifikats, ohne dass es einer weiteren Rechnungslegung für die Fälligkeit des Kaufpreises bedarf, auf das Geschäftskonto von phion zu überweisen.

Gerät der Kunde mit der Bezahlung des Kaufpreises in Verzug, ist phion berechtigt, Verzugszinsen in Höhe von 8 Prozent über dem jeweils gültigen Dreimonats-EURIBOR per annum zu berechnen.

§5 Haftungsbestimmungen

- (1) Einvernehmlich festgehalten wird, dass dem Kunden die Software auf einem Datenträger oder als Download zur Verfügung gestellt wurde. Der Kunde verpflichtet sich, die Funktionsfähigkeit und Mängelfreiheit der zur Verfügung gestellten Software während einer Testphase zu überprüfen und allfällige Mängel analog zu § 377 UGB (in der Schweiz: Art. 201 des Schweizer Obligationsrechts) zu rügen. Mit der Bestellung des Lizenz-Zertifikats gemäß dem Bestellformular, bestätigt der Kunde die Überprüfung der Software und eventuell des Datenträgers auf ihre Mängelfreiheit und bestätigt diese. Einvernehmlich wird für die Testphase in Hinblick auf deren Testcharakter die Gewährleistung für Sachmängel ausgeschlossen. In jedem Falle ist die Gewährleistung auf sechs Wochen beschränkt.
- (2) Für Konsumenten beträgt die Gewährleistungsfrist zwei Jahre. Die Bestimmungen des Konsumentenschutzgesetzes bleiben in Geltung, soweit es sich um ein Geschäft mit Endverbrauchern handelt. In diesem Fall ist phion berechtigt, ihre Gewährleistungsverpflichtungen durch Austausch der gelieferten Sache zu erfüllen.
- (3) Ferner übernimmt phion keine Gewähr für Fehler, Störungen oder Schäden, die auf unsachgemäße Bedienung, Verwendung ungeeigneter Organisationsmittel, anomale Betriebsbedingungen (insbesondere Abweichungen von den Installationsbedingungen) sowie auf Transportschäden zurückzuführen sind. Für Programme, die durch eigene Programmierer des Kunden bzw. Dritte nachträglich verändert werden, entfällt jegliche Gewährleistung durch phion.
- (4) phion sind keine Rechte Dritter bekannt, die der Einräumung der gewährten Nutzungsrechte an der Software entgegenstehen. Wird der Kunde wegen Verletzung von Immaterialgüterrechten Dritter aufgrund der Nutzung der von phion gelieferten Software oder von Teilen oder Komponenten davon in Anspruch genommen, wird phion den Kunden schad- und klaglos halten, wenn der Kunde phion den Sachverhalt unverzüglich anzeigt und phion alle Verhandlungen überlässt. Der Kunde ist nicht befugt, diesbezüglich irgendwelche Anerkennungserklärungen abzugeben. Der Kunde bevollmächtigt phion zu seiner Vertretung im Bezug auf diesbezügliche Streitigkeiten und verpflichtet sich gemeinsam mit phion geeignete Schritte für die Abwehr der geltend gemachten Ansprüche zu ergreifen.
- (5) Für den Fall, dass berechnete Ansprüche Dritter geltend gemacht werden, wird phion die notwendigen Vorkehrungen treffen und allenfalls die Rechte erwerben, oder gleichwertige Teile und Komponenten liefern.
- (6) phion haftet für Schäden, sofern ihr oder ihren Mitarbeitern Vorsatz oder grobe Fahrlässigkeit nachgewiesen werden, im Rahmen der gesetzlichen Vorschriften. Die Haftung für leichte Fahrlässigkeit wird einvernehmlich und im gesetzlich zulässigen Ausmaß ausgeschlossen. Der Ersatz von Folgeschäden und Vermögensschäden, nicht erzielten Ersparnissen, Zinsverlust, indirekten Schäden und von Schäden aus Ansprüchen Dritter jeglicher Art gegen phion ist in jedem Fall ausgeschlossen. phion haftet nicht für Schadenersatz bei Daten-, Software- oder Hardwarezerstörung, wenn der Kunde seinen Pflichten zum ordnungsgemäßen EDV-Betrieb und der regelmäßigen Datensicherung nicht bzw. nicht ausreichend nachgekommen ist. Schadenersatzansprüche gegen phion sind, sofern es sich beim Vertragspartner nicht um einen Konsumenten handelt, bei sonstigem Verfall binnen eines Jahres ab Schadenseintritt gerichtlich geltend zu machen.

§6 Programmverbesserungen (Updates) und Programmänderungen

- (1) Der Kunde erwirbt mit dem Lizenz-Zertifikat keinerlei Recht auf weitergehende Betreuung durch phion sowie auf die Lieferung von Updates oder Programmerweiterungen.
- (2) Selbst wenn die Software keine Lizenzverletzung anzeigt, ist das Update von Systemen, deren Software Subscription nicht mehr aktuell ist, eine schwere Lizenzverletzung und der Kunde ist verpflichtet, Software Subscription, wie in den Software Subscription Bedingungen beschrieben, nachzukaufen.
- (3) Manche Funktionalitäten, vor allem Updates von Content Security Patterns oder ähnlichen Komponenten, die regelmäßig auf den neuesten Stand gebracht werden, stehen nur bei aufrechten Subscriptionrechten zur Verfügung.

§7 Kundendaten

- (1) Der Kunde erklärt sich ausdrücklich damit einverstanden, dass ihn betreffende Daten, die phion im Rahmen der Geschäftsverbindung mit dem Kunden bekannt werden, von phion zum Zweck der Benachrichtigung über die Entwicklung von Updates und neuen Programmversionen und zum Angebot von Wartungsverträgen und weitere Angeboten gesammelt und bearbeitet werden.
- (2) Der Kunde nimmt zustimmend zur Kenntnis, dass seine persönlichen Daten von phion zum Zwecke der internen Datenerfassung, Datenverarbeitung und zur Benachrichtigung über die Entwicklung im Zusammenhang mit dem gelieferten Produkt und von Updates und neuen Programmversionen gespeichert und verarbeitet werden. Der

Kunde erklärt sich gemäß § 107 TKG ausdrücklich damit einverstanden, derartige Benachrichtigungen auch per email zu empfangen.

§8 Urheberrechtlicher Schutz der Software

- (1) Der Kunde nimmt ausdrücklich zur Kenntnis, dass phion Inhaber sämtlicher sich aus dem Urheberrecht ergebender Leistungsschutz- und Nutzungsrechte ist. Im Falle des Verstoßes des Kunden gegen diese Rechte und sonstige zwingende urheberrechtliche Bestimmungen, stehen phion sämtliche im Urheberrechtsgesetz vorgesehenen Rechtsbehelfe zur Verteidigung des urheberrechtlichen Schutzes zu.
- (2) Teile der Software enthalten von Dritten entwickelte Software, die urheberrechtlichen Schutz genießt. Diese Softwarelizenzbestimmungen sind im Anhang dieser Nutzungsbestimmungen angeführt und stellen einen integrierenden Bestandteil dieser Bestimmungen dar.

§9 Schlussbestimmungen

- (1) Sollten einzelne Bestimmungen dieses Vertrages unwirksam sein oder unwirksam werden, so wird hierdurch der übrige Teile des Vertrages nicht berührt. Die Vertragspartner werden partnerschaftlich zusammenwirken um eine Regelung zu finden, die den unwirksamen Bestimmungen möglichst nahe kommt.
- (2) Soweit nicht zwingende gesetzliche Bestimmungen entgegenstehen, gelten die zwischen Vollkaufleuten zur Anwendung kommenden gesetzlichen Bestimmungen nach österreichischem Recht, auch dann, wenn der Auftrag im Ausland ausgeführt wird.
- (3) Für eventuelle Streitigkeiten gilt ausschließlich die örtliche Zuständigkeit des sachlich zuständigen Gerichtes in Innsbruck als vereinbart; ist der Kunde Verbraucher im Sinne des KSchG, dessen allgemeiner Gerichtsstand..
- (4) Es wird die Anwendbarkeit ausschließlich österreichischen Rechtes, mit Ausnahme sowohl des UN-Kaufrechts (Vienna Convention on the Sale of Goods) als auch der Verweisungsnormen des Internationalen Privatrechts (IPRG) vereinbart.
- (5) Hat der Lizenznehmer seinen Hauptsitz in der Schweiz, so wäre materielles Schweizer Recht (Obligationen Recht) und Gerichtsstand Zürich anzuwenden.
- (6) Andere Softwarepakete, die auf der CD enthalten sind, stehen noch unter anderen Lizenzen wie der GPL (GNU General Public Licence) oder BSD Lizenzen. Diese fallen nicht unter die phion Nutzungsbedingungen. Sie werden unten angeführt.

5.2 Lizenzbedingungen für Klienten-Applikationen

§1 Präambel

- (1) phion AG, Eduard-Bodem-Gasse 1, 6020 Innsbruck, FN: 184392 s (im folgenden kurz "phion" genannt), hat die Software phion.a, phion entgra clients sowie andere Applikationen für Windows oder andere Betriebssysteme entwickelt, die Teil der Produktfamilien "netfence", "M", "airlock" oder weiterer von phion vertriebenen Produktfamilien sind, (künftig kurz als "Software" bezeichnet) entwickelt. phion ist Inhaber aller sich aus dem Urheberrecht an der Software ergebenden Leistungsschutz- und Nutzungsrechte an dieser Software.
- (2) Die Software läuft auf dem jeweiligen Betriebssystem. Das Betriebssystem und die mitgelieferten Softwarepakete unterliegen eigenen Lizenzen und sind nicht Gegenstand dieser Nutzungsbedingungen. Es wird ausdrücklich festgehalten, dass die Software keine Bearbeitung oder Weiterentwicklung des Betriebssystems ist. Die gegenständlichen Nutzungsbedingungen betreffen somit ausschließlich die von phion entwickelte Software.
- (3) Die phion Software wurde unter Einbeziehung einiger bestehender Softwarepakete entwickelt, an denen Rechte Dritter bestehen. Die Lizenzbedingungen dieser Software finden sich als Anhang.

§2 Test der Software

- (1) Die Software ist zu Evaluierungszwecken erhältlich. Die Software kann an sich kostenlos genutzt und getestet werden. Die Software ist nur im Zusammenhang mit einer Implementierung eines phion netfence Systems sinnvoll einsetzbar. Der Umfang des Gebrauchs der Software wird von diesen Systemen teilweise eingeschränkt.
- (2) phion gibt ausdrücklich keine Gewähr und sichert nicht zu, dass die Software auf einem Betriebssystem lauffähig ist und dies gilt auch für zukünftige Versionen dieser Betriebssysteme.

§3 Benutzung

- (1) phion gewährt dem Kunden ab der Ausstellung des Lizenz-Zertifikats unter der Bedingung der rechtzeitigen Bezahlung der Lizenzgebühren, auf unbeschränkte Zeit ein nicht ausschließliches Recht zur Installation und Nutzung des Programmes auf einem Datenspeicher. Die Lizenz bezieht sich ausschließlich auf die Nutzung des Programmes durch den Kunden für seine eigenen Datenverarbeitungsprozesse. Der Kunde ist

nicht berechtigt, Dritten Zugang zum Programm zu gewähren. Der Kunde verpflichtet sich, die Software gesichert aufzubewahren, sodass ein Zugang und somit ein Kopieren oder Benutzen der Software durch Dritte verhindert wird. Der Kunde erhält das Recht, ausschließlich für sicherungs- oder archivarische Zwecke Kopien des Programmes anzufertigen.

- (2) Der Kunde ist berechtigt das Programm in dem Umfang zu nutzen wie es für die gewöhnliche Nutzung des Programmes erforderlich ist.
- (3) Soweit durch zwingende gesetzliche Vorschriften nicht anderwärtig vorgesehen, ist der Kunde nicht berechtigt, das Programm vom Objektcode zum Quellcode (z.B. durch "Reverse Engineering", Disassemblierung oder Dekompilierung) zu übersetzen.
- (4) Der Kunde ist nicht berechtigt, den Licence-Key aufzubrechen oder zu ändern. Er ist nicht berechtigt, irgendwelche Hinweise im Bezug auf Rechte, Marken oder Ähnlichem, die in dem Programm oder auf dem Medium, auf dem das Programm enthalten ist, angegeben werden, zu verändern, oder zu löschen.
- (5) Der Kunde ist nicht berechtigt, das Programm an Dritte zu übertragen, zu vermieten, zu verlesen, zu verleihen oder auf andere Weise Dritten vorübergehend zur Verfügung zu stellen. Er ist darüber hinaus nicht berechtigt, die Software auf irgendeine Weise zu bearbeiten, zu verändern, oder in andere Computerprogramme zu integrieren.
- (6) Die Lizenz kann über einen Licence-Key an die Hardwarekonfiguration gebunden sein. Bei Änderungen der Hardwarekonfiguration, steht es phion frei, dem Kunden kostenlos einen weiteren Licence-Key auszustellen. Der Kunde verliert damit das Recht, den ersten Licence-Key weiter zu benutzen. phion ist berechtigt, darüber den Nachweis binnen 14 Tagen nach Erhalt des neuen Licence-Keys zu verlangen.
- (7) Der Export in Drittländer hat nach den zum Zeitpunkt des Exports/Imports jeweils gültigen EU-Richtlinien stattzufinden. Die alleinige Verantwortung zur Einhaltung dieser Richtlinien liegt beim exportierenden bzw. importierenden Reseller oder Endkunden. Von phion gelieferte Produkte sind zur Benutzung und zum Verbleib innerhalb der EU bestimmt. Die Wiederausfuhr - einzeln oder in systemintegrierter Form - ist für den Kunden genehmigungspflichtig und unterliegt dem jeweiligen Außenwirtschaftsrecht sowie den US Export Regulations, deren Kenntnis und Beachtung dem Kunden obliegt. Der Wiederverkauf an Kunden im nuklearen Bereich, insbesondere im Bereich der Herstellung und des Betriebs von Nukleartechnik, erfordert spezielle Genehmigungen. phion behält sich das Recht vor, die gegenständlichen Bestimmungen zum Export und Import jederzeit anzupassen, sofern es die nationale oder internationale Gesetzgebung erfordert.
- (8) Die Verantwortung für die Auswahl, die Installation und den Gebrauch des Lizenzmaterials und die durch den Einsatz angestrebte Problemlösung liegt beim Lizenznehmer. Der Lizenznehmer ist zudem für Auswahl, Gebrauch und Unterhalt der im Zusammenhang mit der Software eingesetzten Informatiksysteme, weiterer Programme und Datensysteme sowie die dafür erforderlichen Dienstleistungen zuständig und stellt die für den Einsatz der Software geeignete Organisation bereit.
- (9) Der Lizenzgeber hat das Recht, sich unter Wahrung der Geschäfts- und Betriebsgeheimnisse des Lizenznehmers von der Einhaltung des bestimmungsgemäßen Gebrauchs der Software zu überzeugen.

§4 Kaufpreis

- (1) Wenn im Vertriebsweg nichts anderes vereinbart wird, gilt folgende Regelung:
Der Kaufpreis für das Computerprogramm samt Lizenz-Zertifikat ist innerhalb von 14 Tagen nach der Auslieferung des Lizenz-Zertifikats, ohne dass es einer weiteren Rechnungslegung für die Fälligkeit des Kaufpreises bedarf, auf das Geschäftskonto von phion zu überweisen. Gerät der Kunde mit der Bezahlung des Kaufpreises in Verzug, ist phion berechtigt, Verzugszinsen in Höhe von 8 Prozent über dem jeweils gültigen Dreimonats-EURIBOR per annum zu berechnen.

§5 Haftungsbestimmungen

- (1) Einvernehmlich festgehalten wird, dass dem Kunden die Software auf einem Datenträger oder als Download zur Verfügung gestellt wurde. Der Kunde verpflichtet sich, die Funktionsfähigkeit und Mängelfreiheit der zur Verfügung gestellten Software während einer Testphase zu überprüfen und allfällige Mängel analog zu § 377 UGB (in der Schweiz: Art. 201 des Schweizer Obligationenrechts) zu rügen. Mit der Bestellung des Lizenz-Zertifikats gemäß dem Bestellformular, bestätigt der Kunde die Überprüfung der Software und eventuell des Datenträgers auf ihre Mängelfreiheit und bestätigt diese. Einvernehmlich wird für die Testphase in Hinblick auf deren Testcharakter die Gewährleistung für Sachmängel ausgeschlossen. In jedem Falle ist die Gewährleistung auf sechs Wochen beschränkt.
- (2) Für Konsumenten beträgt die Gewährleistungsfrist zwei Jahre. Die Bestimmungen des Konsumentenschutzgesetzes bleiben in Geltung, soweit es sich um ein Geschäft mit Endverbrauchern handelt. In diesem Fall ist phion berechtigt, ihre Gewährleistungsverpflichtungen durch Austausch der gelieferten Sache zu erfüllen.
- (3) Ferner übernimmt phion keine Gewähr für Fehler, Störungen oder Schäden, die auf unsachgemäße Bedienung, Verwendung ungeeigneter

Organisationsmittel, anomale Betriebsbedingungen (insbesondere Abweichungen von den Installationsbedingungen) sowie auf Transportschäden zurückzuführen sind. Für Programme, die durch eigene Programmierer des Kunden bzw. Dritte nachträglich verändert werden, entfällt jegliche Gewährleistung durch phion.

- (4) phion sind keine Rechte Dritter bekannt, die der Einräumung der gewährten Nutzungsrechte an der Software entgegenstehen. Wird der Kunde wegen Verletzung von Immaterialgüterrechten Dritter aufgrund der Nutzung der von phion gelieferten Software oder von Teilen oder Komponenten davon in Anspruch genommen, wird phion den Kunden schad- und klaglos halten, wenn der Kunde phion den Sachverhalt unverzüglich anzeigt und phion alle Verhandlungen überlässt. Der Kunde ist nicht befugt, diesbezüglich irgendwelche Anerkennungs- oder Erklärungen abzugeben. Der Kunde bevollmächtigt phion zu seiner Vertretung im Bezug auf diesbezügliche Streitigkeiten und verpflichtet sich gemeinsam mit phion geeignete Schritte für die Abwehr der geltend gemachten Ansprüche zu ergreifen.
- (5) Für den Fall, dass berechtigte Ansprüche Dritter geltend gemacht werden, wird phion die notwendigen Vorkehrungen treffen und allenfalls die Rechte erwerben, oder gleichwertige Teile und Komponenten liefern.
- (6) phion haftet für Schäden, sofern ihr oder ihren Mitarbeitern Vorsatz oder grobe Fahrlässigkeit nachgewiesen werden, im Rahmen der gesetzlichen Vorschriften. Die Haftung für leichte Fahrlässigkeit wird einvernehmlich und im gesetzlich zulässigen Ausmaß ausgeschlossen. Der Ersatz von Folgeschäden und Vermögensschäden, nicht erzielten Ersparnissen, Zinsverlust, indirekten Schäden und von Schäden aus Ansprüchen Dritter jeglicher Art gegen phion ist in jedem Fall ausgeschlossen. phion haftet nicht für Schadenersatz bei Daten-, Software- oder Hardwarezerstörung, wenn der Kunde seinen Pflichten zum ordnungsgemäßen EDV-Betrieb und der regelmäßigen Datensicherung nicht bzw. nicht ausreichend nachgekommen ist. Schadenersatzansprüche gegen phion sind, sofern es sich beim Vertragspartner nicht um einen Konsumenten handelt, bei sonstigem Verfall binnen eines Jahres ab Schadenseintritt gerichtlich geltend zu machen.

§6 Programmverbesserungen (Updates) und Programmänderungen

- (1) Der Kunde erwirbt mit dem Lizenz-Zertifikat keinerlei Recht auf weitergehende Betreuung durch phion sowie auf die Lieferung von Updates oder Programmweiterungen.
- (2) Selbst wenn die Software keine Lizenzverletzung anzeigt, ist das Updaten von Systemen, deren Software Subscription nicht mehr aktuell ist, eine schwere Lizenzverletzung und der Kunde ist verpflichtet, Software Subscription, wie in den Software Subscription Bedingungen beschrieben, nachzukaufen.
- (3) Manche Funktionalitäten, vor allem Updates von Content Security Patterns oder ähnlichen Komponenten, die regelmäßig auf den neuesten Stand gebracht werden, stehen nur bei aufrechten Subscriptionrechten zur Verfügung.

§7 Kundendaten

- (1) Der Kunde erklärt sich ausdrücklich damit einverstanden, dass ihn betreffende Daten, die phion im Rahmen der Geschäftsverbindung mit dem Kunden bekannt werden, von phion zum Zweck der Benachrichtigung über die Entwicklung von Updates und neuen Programmversionen und zum Angebot von Wartungsverträgen und weitere Angeboten gesammelt und bearbeitet werden.
- (2) Der Kunde nimmt zustimmend zur Kenntnis, dass seine persönlichen Daten von phion zum Zwecke der internen Datenerfassung, Datenverarbeitung und zur Benachrichtigung über die Entwicklung im Zusammenhang mit dem gelieferten Produkt und von Updates und neuen Programmversionen gespeichert und verarbeitet werden. Der Kunde erklärt sich gemäß § 107 TKG ausdrücklich damit einverstanden, derartige Benachrichtigungen auch per email zu empfangen.

§8 Urheberrechtlicher Schutz der Software

- (1) Der Kunde nimmt ausdrücklich zur Kenntnis, dass phion Inhaber sämtlicher sich aus dem Urheberrecht ergebender Leistungsschutz- und Nutzungsrechte ist. Im Falle des Verstoßes des Kunden gegen diese Rechte und sonstige zwingende urheberrechtliche Bestimmungen, stehen phion sämtliche im Urheberrechtsgesetz vorgesehenen Rechtsbehelfe zur Verteidigung des urheberrechtlichen Schutzes zu.
- (2) Teile der Software enthalten von Dritten entwickelte Software, die urheberrechtlichen Schutz genießt. Diese Softwarelizenzbestimmungen sind im Anhang dieser Nutzungsbestimmungen angeführt und stellen einen integrierenden Bestandteil dieser Bestimmungen dar.

§9 Schlussbestimmungen

- (1) Sollten einzelne Bestimmungen dieses Vertrages unwirksam sein oder unwirksam werden, so wird hierdurch der übrige Teile des Vertrages nicht berührt. Die Vertragspartner werden partnerschaftlich zusammenwirken um eine Regelung zu finden, die den unwirksamen Bestimmungen möglichst nahe kommt.
- (2) Soweit nicht zwingende gesetzliche Bestimmungen entgegenstehen, gelten die zwischen Vollkaufleuten zur Anwendung kommenden

gesetzlichen Bestimmungen nach österreichischem Recht, auch dann, wenn der Auftrag im Ausland ausgeführt wird.

- (3) Für eventuelle Streitigkeiten gilt ausschließlich die örtliche Zuständigkeit des sachlich zuständigen Gerichtes in Innsbruck als vereinbart; ist der Kunde Verbraucher im Sinne des KSchG, dessen allgemeiner Gerichtsstand.
- (4) Es wird die Anwendbarkeit ausschließlich österreichischen Rechtes, mit Ausnahme sowohl des UN-Kaufrechts (Vienna Convention on the Sale of Goods) als auch der Verweisungsnormen des Internationalen Privatrechts (IPRG) vereinbart.
- (5) Hat der Lizenznehmer seinen Hauptsitz in der Schweiz, so wäre materielles Schweizer Recht (Obligationen Recht) und Gerichtsstand Zürich anzuwenden.

5.3 Software Subscription

Präambel

Der Kunde hat von phion die Nutzungsberechtigung für bestimmte Softwaremodule der Software "netfence", "airlock", "entegra", "M", "phion management centre" oder anderen von phion hergestellten und vertriebenen Softwareprodukten (im folgenden kurz "Software") erworben. Er ist daran interessiert, dass er Weiterentwicklungen der Software erhält und Verbesserungen der Software von phion zur Verfügung gestellt werden. phion ist an einer dauerhaften Kundenbeziehung und daran interessiert, dass die Software auch nach einiger Zeit ihren hohen Ansprüchen genügt. Aus diesen Gründen bietet phion dem Kunden Software Subscription zu folgenden Bedingungen an.

§1 Voraussetzung für Software Subscription

Der Kunde ist berechtigt, Software Subscription für ein bestimmtes Produkt bei phion zu bestellen, wenn eine der folgenden Bedingungen erfüllt ist (Standard-Bedingungen):

1. Seit dem Erwerb einer Lizenz für den Einsatz des phion Produkts ist nicht mehr als ein Jahr vergangen.
2. Es besteht für das Produkt eine gültige, nicht abgelaufene Software Subscription Vereinbarung.
3. Seit dem Ablauf der letzten gültigen Subscription Vereinbarung ist nicht mehr als ein Jahr vergangen.

In diesen 3 Fällen beginnt die Laufzeit der Software Subscription im ersten Fall mit dem 1. des auf das Erwerbsdatum folgenden Kalendermonat, im zweiten und dritten Fall direkt anschließend an die Beendigung der bestehenden beziehungsweise abgelaufenen Software Subscription Vereinbarung. Entsprechend dem Bestellzeitpunkt innerhalb dieser Fristen folgt, dass das Recht des Kunden auf Updates auf die Restlaufzeit der Software Subscription Vereinbarung beschränkt ist.

Der Kunde ist weiters berechtigt, Software Subscription für ein bestimmtes Produkt bei phion zu bestellen, wenn die folgende Bedingung erfüllt ist:

1. Seit dem Lizenzwerb oder seit dem Ablauf der letzten gültigen Subscription Vereinbarung ist mehr als ein Jahr vergangen.

In diesem Fall hat der Kunde das Recht, wieder Software Subscription für einen bestimmten Zeitraum zu erwerben, indem er Legacy Subscription erwirbt. Mit dem Erwerb der Legacy Subscription erhält der Kunde dieselben Rechte, als ob er unter Standard Bedingungen Software Subscription erworben hätte. Und damit auch wieder das Recht zu den ersten drei Bedingungen weiterhin Software Subscription zu erwerben.

§2 Umfang der Software Updates

phion wird dem Kunden die von ihr geschaffenen Weiterentwicklungen und Verbesserungen der Software gemäß den Bestimmungen dieses Vertrages zur Verfügung stellen. Die jeweils aktuellen Lizenzbedingungen der phion gelten sinngemäß auch für Software, die dem Kunden aufgrund einer Software Subscription Vereinbarung zur Verfügung gestellt wird.

Die Software ist durch eine aus drei Zahlen bestehende Bezeichnung nach dem System Version.Major.Minor bestimmt, wobei die erste Zahl die Programmversion, die zweite Major Updates (Anpassungen der Software an geänderte Rahmenbedingungen) und die dritte Minor Updates (Bugfixes und kleinere Änderungen der Software, ohne dass deren Funktionalität wesentlich verändert wird) kennzeichnet.

Die Weiterentwicklung und Verbesserung der Software erfolgt durch die Erstellung von neuen Versionen sowie Major Updates und Minor Updates. phion entscheidet dabei nach eigenem Ermessen, wann und

welche Art von Updates erstellt werden und ist nicht verpflichtet, auf jede technische Veränderung mit einem Update zu reagieren.

Die Updates werden dem Kunden nach Markteinführung auf einer CD übergeben oder im Internet zum Download freigegeben. Die Installation der Updates nimmt der Kunde selbst vor.

Der gegenständliche Software-Update Vertrag bezieht sich ausdrücklich, ausschließlich auf die von phion entwickelte Software und nicht auf gegebenenfalls mitgelieferte Open-Source-Software oder sonstige Software, die zwar von phion verwendet wird, nicht jedoch von phion stammt.

Die Updates gelten nur für die gesamte Lizenz und nicht für Teile, die hiervon erworben werden.

§3 Ausführung des Updates

Für den Fall, dass der Kunde die Programm-Updates installiert, hat er sämtliche Anweisungen von phion hinsichtlich der Installation und Nutzung der Programm-Updates zu beachten. Eine entsprechende Anleitung wird zur Verfügung gestellt.

§4 Kompatibilität von Updates

Soweit von Kunden oder Dritten, Anpassungen in der Anwendungslogik von Programmen oder Teilen hiervon vorgenommen werden, gewährleistet phion nicht, dass die Updates vollständig nutzbar sind.

Der Kunde erkennt an, dass der Einsatz von Updates möglicherweise den Einsatz von Konversionsscripts zur Anpassung der bestehenden Datenmodelle an neue Datenmodelle erforderlich macht. Für den Fall, dass die Updates auf der Open-Source-Software nicht störungsfrei funktionieren, übernimmt phion keinerlei Gewährleistung und Haftung für die Funktionsfähigkeit der Updates. Für vom Kunden oder Dritten hergestellte Anpassungen werden keine Konversionsscripts zur Verfügung gestellt.

phion übernimmt keine Gewährleistung, dass die Software nach Durchführung eines Updates oder auch nach einer Neuinstallation der aktuelleren Software mit der bisher für die Software eingesetzten Hardware kompatibel ist.

§5 Vergütung

Für die Leistungen gemäß dieser Software-Subscription-Bedingungen erhält phion einen Pauschalbetrag. Mit der Bezahlung dieses Betrags erwirbt der Kunde das Recht auf alle Software Updates, die von phion für das von ihm erworbene Produkt innerhalb des festgelegten Zeitraums zur Verfügung gestellt werden. Sollte kein Zeitraum festgelegt werden, so gilt als fixierter Zeitraum ein Kalenderjahr nach Einlangen der Bestellung der Software Subscription bei phion.

Wenn im Vertriebsweg nichts anderes vereinbart wird, gilt folgende Regelung:

Dieser Betrag ist jährlich unmittelbar nach Bestellung und Rechnungslegung zur Zahlung fällig. Im Falle eines Zahlungsverzuges des Kunden ist phion berechtigt, Verzugszinsen in Höhe von 8 % über dem jeweils gültigen Dreimonats-EURIBOR zu verrechnen. Das Recht zur sofortigen Kündigung gemäß § 6 bleibt davon unberührt.

§6 Gewährleistung

phion leistet lediglich für ausdrücklich zugesagte Eigenschaften der Updates Gewähr. Sollte dabei ein Mangel auftreten, kann phion diesen nach eigener Wahl durch Verbesserung oder Austausch des mangelhaften Updates beheben. Darüber hinausgehende Gewährleistungsansprüche sind ausgeschlossen.

Gewährleistungsansprüche sind insbesondere ausgeschlossen, wenn der Kunde die Software nicht in der von phion vorgegebenen Weise installiert und/oder benützt oder wenn der Kunde oder Dritte Veränderungen an der Software oder betreffend die Integration der Software in das System des Kunden vornehmen. Die Gewährleistungsfrist beträgt 1 Jahr, handelt es sich beim Kunden um einen Konsumenten im Sinne des KSchG, so beträgt die Frist 2 Jahre.

§7 Haftung

Es gelten die Haftungsbestimmungen der phion Lizenzbedingungen in der jeweils aktuellen Form.

§8 Laufzeit der Software Subscription und Kündigung

Der Anspruch des Kunden beginnt je nach Voraussetzung (siehe §1) und dauert 1 Kalenderjahr, sofern nicht anderes vereinbart wird. Der Anspruch verlängert sich nicht automatisch und muss unter den Bedingungen von §1 erneuert werden.

Darüber hinaus ist phion berechtigt, laufende Software Subscription mit sofortiger Wirkung aus wichtigem Grund zu kündigen, der insbesondere dann vorliegt, wenn der Kunde gegen Bestimmungen der jeweils aktuellen Lizenzbedingungen der phion oder dieser Software-Subscription-Bedingungen verstößt oder wenn phion aufgrund von technischen oder sonstigen Umständen keine Updates der Softwareversion herstellt, oder dies unwirtschaftlich geworden ist.

§9 Umfang der Software Subscription

Wird vom Kunden Software Subscription für ein phion Produkt erworben, so muss diese alle von ihm erworbenen Lizenzen umfassen. Es ist nicht möglich, nur teilweise für die erworbenen Lizenzen Software Subscription zu erwerben. Dies gilt auch für neu erworbene Software.

Wird trotz Aufforderung die Software Subscription nicht auf die gesamte eingesetzte Lizenzbasis ausgedehnt, gilt dies als wichtiger Grund, bestehende Software Subscription Rechte seitens phion zu kündigen.

§10 Schlussbestimmungen

Änderungen dieser Software Subscription Bedingungen bedürfen der Schriftform. Das gleiche gilt auch für das Abgehen vom Schriftformerfordernis.

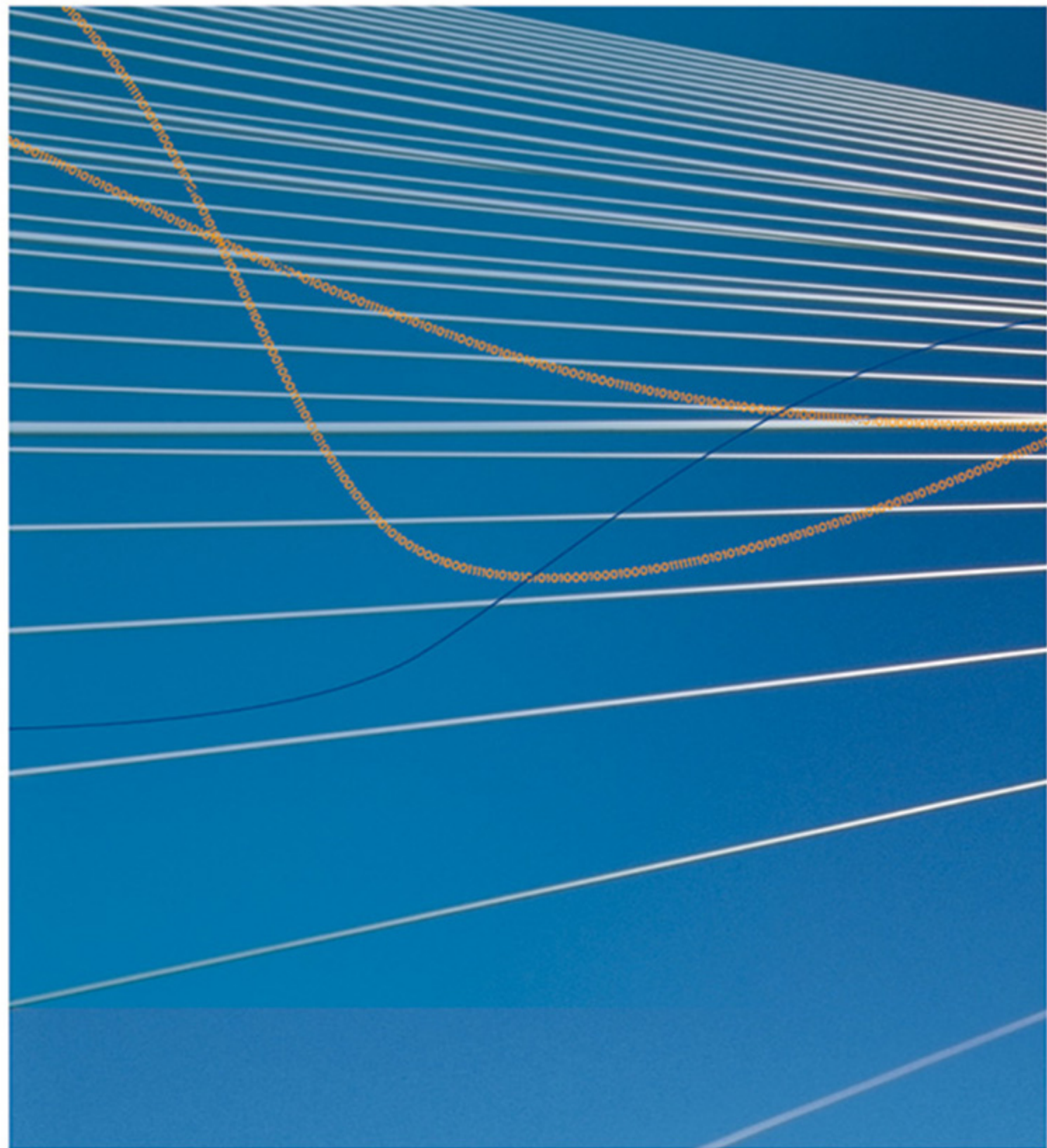
Sollte eine Bestimmung dieses Software Subscription Bedingungen unwirksam sein oder werden, beeinträchtigt ein solcher Mangel die übrigen Bestimmungen dieses Vertrages nicht. Die mangelhafte Bestimmung gilt als durch eine wirksame Bestimmung ersetzt, die den wirtschaftlichen und rechtlichen Auswirkungen, die die Vertragsparteien von der mangelhaften Bestimmung erwartet haben, am nächsten kommt.

Alle Rechte und Pflichten aus diesem Vertragsverhältnis auf die etwaigen Rechtsnachfolger der Vertragspartner über. phion hat darüber hinaus das Recht, alle Rechte und Pflichten aus diesem Vertrag an einen Dritten zu überbinden.

Für eventuelle Streitigkeiten gilt ausschließlich die örtliche Zuständigkeit des sachlich zuständigen Gerichtes in Innsbruck als vereinbart; ist der Kunde Verbraucher im Sinne des KSchG, dessen allgemeiner Gerichtsstand.

Es wird die Anwendbarkeit ausschließlich österreichischen Rechtes, mit Ausnahme sowohl des UN-Kaufrechts (Vienna Convention on the Sale of Goods) als auch der Verweisungsnormen des Internationalen Privatrechts (IPRG) vereinbart.

Hat der Lizenznehmer seinen Hauptsitz in der Schweiz, so wäre materielles Schweizer Recht (Obligationen Recht) und Gerichtsstand Zürich anzuwenden.



www.phion.com

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© phion AG
Eduard-Bodem-Gasse 1
6020 Innsbruck
Austria
Phone +43 (0)508 100
Fax +43 (0)508 100 20
office@phion.com
www.phion.com