

Software Subscription Terms D20190416

To-Increase, Kazemat 2, 3905 NR Veenendaal, The Netherlands, (CC 30202447) is the owner and Licensor of the Service to be used in connection with Microsoft Dynamics software. Licensee wants to obtain a license to use the Service. By clicking the 'I accept button' in the registration process, Licensee accepts this AGREEMENT which is applicable to the license granted to Licensee by To-Increase and declares that Licensee is duly authorized to represent the company to whom the License will be granted. Terms and conditions used by Licensee are explicitly excluded.

1 Definitions

- 1.1 Application Code: all or part of the source code of the Service.
- 1.2 Concurrent User: use or a log-on by an (unnamed) individual to the Service at any one time.
- 1.3 Device: a single personal computer, workstation, terminal, handheld computer, personal digital assistant, or other electronic device.
- 1.4 Documentation: the end user system help files and specifications developed by Licensor as included in the Licensor Software and as updated on one or more occasions, for which Licensee has acquired a license right.
- 1.5 Error: in this agreement means a substantial failure or malfunction to meet the functional and/or technical specifications as included in of the Service. An Error shall only be deemed to exist if Licensee is able to demonstrate the Error to Licensor and if it can be reproduced. Licensee is obliged to notify Licensor immediately of any Errors.
- 1.6 License Key: any files or codes which, like a key, give access to the Service to be able to use the Service.
- 1.7 Message: a single document containing a data set, consisting of one or more main records, possibly with a number of related records, which is sent from MS Dynamics to an external application, system or party or which is received by MS Dynamics from an external application, system or party
- 1.8 Reseller: the company that implements the Service for Licensee and where Licensee can place orders for the Service or obtain other (support) services.
- 1.9 Subsidiary: any company controlled by Licensee by ownership of more than 50% of the shares or the voting rights in such company.
- 1.10 Service: making available the Service Solutions in the environment of Licensee.
- 1.11 Service Solution: a specific part of the software as specified in the purchase order
- 1.12 Unit of Measure: the way by which Service is measured, for example Full User, Enterprise and Functional User, legal entity, module, invoice, message or published connection. The applicable Unit of Measure for the License is specified in the purchase order
- 1.13 User: those employees, contractors, and end users, as applicable, authorized by Licensee or on behalf of Licensee to use the Service in accordance with this Agreement.

2 Scope of the service

- 2.1 Licensor hereby grants to Licensee a non-assignable, non-transferable and non-exclusive right to use the Service for Licensees own internal business purposes and without the right to sublicense. The Service shall only be used in combination with one Microsoft Dynamics license and on one live environment at any time. Licensee may allow its Users to use the Service for this purpose. It is the sole responsibility of Licensee to ensure that its Users do not violate these Subscription Terms.
- 2.2 Licensee is granted the right to use the Service only for the amount of Units of Measure as specified in the purchase order. It shall be the sole responsibility of Licensee to ensure that the amount of Units of Measure is not exceeded. Licensee indemnifies Licensor for any breach of this agreement by its Users. Where Licensee fails to fulfil this obligation, it shall be deemed a breach of this agreement, and such breach shall entitle Licensor to terminate this agreement and pursue all remedies available to it.
- 2.3 All rights are granted under the condition that Licensee has fully paid all fees related to this agreement.
- 2.4 If and in so far as Licensor provides Licensee with software of any third party, including any MS Dynamics products, the terms and conditions of business of such third party shall apply with respect thereto and supersede the provisions hereof.
- 2.5 Licensee shall have the right to make four copies of the Licensor Service Solution for the following purposes: one copy for development, one for testing, one for acceptance and one for archival or backup and purposes.

3 Enhancement

- 3.1 Included in the Service is Enhancement. Enhancement consists of the right to obtain and use updates. Enhancement does not include any rights to new Service Solutions.
- 3.2 Licensor provides the Enhancement on reasonable efforts basis in a way it considers appropriate. The Enhancement aims to keep pace with the release and lifecycle system of MS Dynamics. However, Licensor does not warrant in any way it will provide updates with the same frequency of MS Dynamics, or with any regular frequency whatsoever. Licensor is not obliged to follow the directions of Licensee.
- 3.3 Licensor will provide Enhancement on the current product version of the Service until a new version is available. Enhancement on the previous version will be limited to making available existing updates on request by Licensee for at least 1 year after general availability of the latest version. Licensor cannot provide optimal Enhancement to Licensee if Licensee does not use the latest version of MS Dynamics.
- 3.4 In connection with the Enhancement, Licensor does not warrant that Licensee will be able to make full use of any adjustments or other modifications created as components in the application code.

4 Payment terms

- 4.1 All fees payable related to the Service shall be paid in advance before delivery of the Service and are exclusive of VAT and other levies imposed by any government.
- 4.2 Licensee shall not be entitled to set off or to suspend any payments.
- 4.3 Prices and payment will usually be handled through a Reseller. If the invoices are handled directly via Licensor, the following conditions shall apply. Invoices shall be due and payable within 14 days from the invoice date. Any invoiced amount not received within fourteen days after the invoice date shall be subject to collection costs of 5% of the invoiced amount and an interest charge equal to the Dutch statutory interest. Licensee shall pay Licensor's costs and expenses (including reasonable attorney's fees) to enforce and preserve Licensor's rights under this clause.
- 4.4 Prices may be amended from time to time, prior written notice to Licensee. If Licensee does not accept an adjustment, Licensee shall be entitled to terminate its subscription to the Service within 30 days of receipt of the written notification of the price adjustment.
- 4.5 Licensor is entitled to adjust the subscription prices once every year with an amount equal to any increase in the inflation price index for consumers (Consumer Price Index, CPI) published by the Dutch Central Statistical Office (CBS). If price adjustments stay within the boundaries laid down in this article, Licensee shall not have the right to terminate the subscription to the Service on the grounds of adjustment of prices.

5 Confidentiality

- 5.1 By virtue of this agreement, the parties may disclose to each other information that is confidential. Confidential information shall be limited to the terms and pricing under this agreement, the Service, any personal data and all information clearly identified as confidential at the time of disclosure.
- 5.2 Confidential information shall not include information that: a) is or becomes a part of the public domain through no act or omission of the other party; b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; d) is independently developed by the other party.
- 5.3 Each party agrees not to disclose the other party's confidential information to any third-party other than as set forth in the following sentence. Each party shall disclose confidential information only to extent necessary for the fulfillment of this agreement and only to those employees, agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than required under this agreement, and each party may disclose the other party's confidential information in any legal proceeding or to a governmental entity as required by law.

6 Privacy

- 6.1 Licensor's privacy statement as published on the website <https://www.to-increase.com/privacy-and-cookie-statement-to-increase/>, shall apply for personal data obtained by or transferred to Licensor in the execution of this agreement.

7 Intellectual property rights

- 7.1 Licensor retains all ownership and intellectual property rights to the Service, derivative works thereof, and anything developed or delivered by or on behalf of Licensor under this agreement. Any disregard of the Licensor or its intellectual property rights shall be deemed to be a material breach of this agreement.

- 7.2 Licensor shall not cause or permit others to: a) modify, make derivative works of, disassemble, decompile, reverse engineer, reproduce, republish, download, or copy any part of the Service (including data structures or similar materials produced by programs); b) access or use the Service to build or support, directly or indirectly, products or services competitive to Licensor; c) license, sell, transfer, assign, distribute, outsource, commercially exploit, or make available the Service to any third party except as permitted by this agreement.
- 7.3 Licensor reserves the right to use Licensee's name or trademark, trade name or logo in external communications, presentations and marketing materials, and on its website and to describe the solution provided to Licensee in these external communications.
- 7.4 If Licensor develops modifications to the Service, that includes the same or comparable code or functionality as customizations developed by Licensee, these modifications by Licensor will not constitute a breach of any intellectual property rights of Licensee. Licensee hereby surrenders the right to file any claim with Licensor based on infringement of any intellectual property right in relation to any modification Licensor developed on the Service.
- 7.5 If a third party objects to Licensee's use of the Service based on the claim that the use of the Service infringes such third party's intellectual property rights, Licensor will defend Licensee against the claim and indemnify Licensee from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement if Licensee does the following: a) notifies Licensor in writing, not later than 30 days after Licensee receives notice of the claim; b) gives Licensor sole control of the defense and any settlement negotiations; c) gives Licensor the information, authority and assistance the Provider needs to defend against or settle the claim.
- 7.6 In the event of an infringement claim, Licensor shall be entitled to either: a) obtain the continued right for Licensee to use the Service; b) bring the infringement to an end by modifying the Service or replacing the Service with other software which, essentially, possesses the same functions as the affected Service, or c) terminate this AGREEMENT with written notice and pay to Licensee an amount equal to the license fee actually paid for the license to the Service by Licensee.
- 7.7 The limited warranty stated in this article is void if the infringement claim has resulted from accident, abuse or misapplication. Any modification of the Service by anyone other than Licensor voids the foregoing warranty on any portion of the Service modified or affected by such modification.
- 7.8 This section provides Licensee's exclusive remedy for any infringement claims or damages.

8 Audit rights

- 8.1 On Licensor's request, and at Licensor's expense, Licensor may conduct an audit of Licensee's use of the Licensor Software. Any such audit shall be conducted during regular business hours at Licensee's facilities or online and shall not unreasonably interfere with Licensee's business activities. If an audit reveals that Licensee has underpaid in relation to the actual use of the Service, in addition to other remedies, Licensee shall be invoiced for such underpaid fees.
- 8.2 Licensor has the right to embed compliance capabilities in the Service which verifies the compliance of this agreement related to usage of the license.

9 Warranty

- 9.1 The license to the Service is granted "AS-IS" with no other warranties, representations, obligations of remedy or rights other than those described in this article, whether implied or express, statutory, oral or written, including but not limited to any implied warranties of merchantability, against infringement, quiet enjoyment, accuracy of data, system integration, or fitness for a particular purpose.
- 9.2 The Service is a standard product, and it shall be the responsibility of Licensee to ensure that the functions in the Service fulfil Licensee's requirements.
- 9.3 Where Licensee within a period of one month after the effective date of this agreement provides written documentation demonstrating that there is an Error in the Service which can be reproduced, Licensor shall either 1) deliver free of charge, a new version of the Service without the Error, 2) correct the Error free of charge or 3) return the fees actually paid for the license to the Service by Licensee or 4) provide a statement of procedures or manners of application whereby the Error will have no significant effect on Licensee's use of the Service.
- 9.4 This warranty is void if failure of the Service has resulted from accident, abuse or misapplication by Licensee. Any modification of the Service by anyone other than Licensor voids the foregoing warranty on any portion of the Service modified or affected by such modification.
- 9.5 Licensee shall be responsible for the use and application of the Service and related software and equipment in his organization, as well as for sufficient back-ups, security measures and adequate system management.
- 9.6 This section provides Licensee's exclusive remedy for any damages because of Errors in the Service.

10 Liability

- 10.1 In no event shall the aggregate liability of Licensor arising out of or related to this agreement, whether in contract, tort or otherwise exceed the total amount actually paid for the Service during the twelve months immediately preceding the event giving rise to such liability.

- 10.2 Licensor shall have no responsibility or liability for any adjustments or other modifications in the Service or any service and support of the Service performed by licensee itself or provided by third parties or partners of Licensor. Further, Licensor shall have no responsibility or liability for any defects which are a consequence of external factors, including other programs, or a consequence of the integration of or interaction between the Service and Licensees own hard-ware and software environments.
- 10.3 Neither party shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; pandemic; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancelation of any export, import or other license); or other events outside the reasonable control of the obligated party. This article does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Licensees obligation to pay for the Services.

11 Term and termination

- 11.1 This agreement becomes effective on the date which Licensee orders the subscription to the Service or on the date this agreement is signed by Licensor and Licensee, whichever is sooner. The Service will be deemed to have been delivered to Licensee on the date the Service successfully is uploaded in the Licensee asset library of the LCS Services.
- 11.2 The initial term for this agreement will be the term as determined by the parties. Thereafter this agreement shall automatically renew for the same term as the initial term, unless terminated by either party giving written notice. The notice period is 90 days.
- 11.3 In the event of Licensee's material breach of this agreement, Licensor has the right to terminate this agreement immediately after a written notice of default and not remedied within 30 days after this notice and shall have all remedies available at law. In the event of termination under this article, Licensor shall have no obligation to refund any paid fees nor shall Licensee be liable for termination.
- 11.4 Either party may terminate this Agreement if the other party becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceedings under any bankruptcy or insolvency law, whether domestic or foreign, or has wound up or liquidated its business voluntarily or otherwise, and the same has not been discharged or terminated within forty-five (45) days.
- 11.5 In case of termination, Licensee shall immediately cease using the Service and promptly delete, erase and destroy the Service. Licensor may conduct an audit to check Licensees abidance of this article.
- 11.6 When Licensee orders more than one Licensee Service Solution and obtains a business value discount, termination is only possible for the combination of solutions, and not for an individual solution.

12 Miscellaneous

- 12.1 In the event any translation of this agreement is prepared for convenience or any other purpose, the provisions of the English version shall prevail.
- 12.2 No amendment to this agreement will be effective unless it is in writing and signed by both parties.
- 12.3 Except prior written consent of Licensor, Licensee shall not transfer or assign its rights or obligations arising under this agreement to any third party. However, if reasonable Licensor may impose financial consequences to such a transfers or assignment.
- 12.4 All notices or communications under this agreement shall be sent by registered mail to the other party at its address on the header of this agreement, or by electronic mail to legal@to-increase.com. Notices shall be deemed received upon actual receipt.
- 12.5 This agreement set forth the entire understanding between the parties and supersedes all oral or written agreements or understandings between the parties as to the subject matter of this agreement
- 12.6 If any provision of this agreement is held to be unenforceable, then that provision is to be construed by modifying it to the minimum extent necessary to make it enforceable. If an unenforceable provision is modified in accordance with this article, the rest of the agreement is to remain in effect as written
- 12.7 Licensee must comply with all import regulations to the Service and with any License destination restrictions issued by governments. Licensee must at its own expense obtain and arrange for the maintenance of any government approval and comply with all applicable laws and regulations necessary for Licensee's performance of the agreement. Licensee will defend and indemnify Licensor from and against all damages incurred by Licensor as a result of any violation of import regulations by Licensee or any of its agents.

13 Applicable law and jurisdiction

- 13.1 This agreement is governed by the laws Netherlands, without giving effect to its conflicts-of-law principles. Any disputes arising out of this agreement shall be submitted to the applicable courts of Amsterdam, the Netherlands.

13.2 This agreement is not governed by the 1980 UN Convention on Contracts for the International Sales of Goods.