

# Standard License Terms (Subscription)

These Software License Terms are between To-Increase BV, Kazemat 2, 3905 NR Veenendaal, The Netherlands (Microsoft account number 5215109), hereinafter referred to as the “Licensor” and the entity having ordered Licensor Software on subscription basis via a separate Software Agreement (such entity hereinafter referred to as the “Licensee”).

## Background

Licensor is the owner of the Licensor Software to be used in connection with Microsoft Dynamics software. Licensee wants to obtain a license to use Licensor Software as further specified in the separate Software Agreement.

## 1. Definitions

**Agreement:** these ‘Software License Terms (Subscription)’ and it’s appendices (if any).

**Application Code:** all or part of the source code of the Licensor Software.

**Documentation:** the end user system help-files and written specifications developed by Licensor as included in the Licensor Software or released by Licensor in relation thereto (and as updated by Licensor at its discretion on one or more occasions), for which Licensee has acquired a license right.

**Effective Date:** the date this Agreement is approved, cf. section 14 of this Agreement. At the Effective Date, this Agreement shall take effect.

**Error:** in this Agreement means a substantial failure or malfunction in Licensor Software to meet the Licensor’s functional and/or technical specifications for the Licensor Software as stated in Documentation. An Error shall only be deemed to exist if Licensee is able to demonstrate the Error to Licensor and it can be reproduced. Licensee is obliged to notify Licensor immediately of any Error after it occurs.

**Instance:** has the same meaning as ‘Instance’ is at any time defined by Microsoft in its own general terms for Microsoft Dynamics Software

**License Key:** any files or codes which, like a key, give Licensee access to use the Licensor Software.

**Licensor Software:** the latest electronic unmodified standard version (as it is at the time of entering into this Agreement) of a To-Increase standard software product, including Application Code, any external components and certified solutions which have been integrated into the software, and any related Documentation Licensor in its discretion provides. It explicitly excludes MS Dynamics software or any other third-party software that may be delivered with the Licensor Software.

**Reseller:** the company that implements the Licensor Software, if a such company is involved, for Licensee and where Licensee can place orders for the Licensor Software or obtain other (support) services.

**Software Agreement:** a written agreement (either terms approved online or a physically signed agreement document) under which the Licensee has ordered the use right to Licensor Software (hereunder where the license size and price depending on the relevant Unit of Measure has been described), such Software Agreement to be entered into either: a) directly between Licensor and Licensee, or b) between Reseller and Licensee. The Software Agreement governs the actual lease of the license to Licensee, while the license rights and obligations between Licensor and Licensee, hereunder but not limited to warranties for the Licensor Software, is governed by the Software License Terms (this Agreement).

**Subsidiary:** any company controlled by Licensee by ownership of more than 50% of the shares or the voting rights in such company.

**Tenant:** has the same meaning as ‘Tenant’ is at any time defined by Microsoft in its own general terms for Microsoft Dynamics Software.

**Unit of Measure:** the way by which Licensor Software 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 relevant separate Software Agreement under which Licensee has leased Licensor Software (at a price determined based on Unit of Measure thresholds).

**Update:** Licensor’s smaller service packs, a correction of an Error, or any other changes to the Licensor Software (including potentially a new version thereof) made available by Licensor to Licensee by being uploaded in Licensee’s asset library in Microsoft Dynamics.

## 2. Scope of the license

2.1. Licensor hereby grants to Licensee a non-assignable, non-transferable and non-exclusive right to use the Licensor Software for Licensee’s own internal business purposes and without the right to sublicense. The Licensor Software may only be used on one (1) Tenant, but may within this Tenant be used on multiple Instances. Users are assigned to Instances. The Licensor Software may only be used for the purpose for which it is designed as described

in the Documentation. The Documentation is licensed solely for the purposes of supporting Licensee's use of the Licensor Software as permitted in this section.

- 2.2. Licensee is granted the right to use the Licensor Software based on the Unit of Measure and corresponding choices and limitations specified in the separate Software Agreement (stating e.g. how many named users or other relevant Unit of Measure parameter that will be included in the license).
- 2.3. All rights are granted under the condition that Licensee pays all fees related to the use of the Licensor Software at the applicable due dates.
- 2.4. Licensee's right to use the Licensor Software specifically does not include any license, right, power or authority to (a) create derivative works of the Licensor Software, or (b) distribute the Licensor Software or derivative works thereof in any manner that would cause the Licensor Software (or any intellectual property of Licensor or any of its affiliates associated therewith) or derivative work thereof to become subject to any violations of the terms of this Agreement.
- 2.5. 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 to such third-party software. However, any disclaimers, limitations and exclusions on liability herein shall also apply. If and insofar as for any reason whatsoever the said terms and conditions of business of third parties shall be deemed not to apply to the relations between Licensor and Licensee, or declared inapplicable, the provisions of this Agreement shall apply.
- 2.6. The Licensor Software is a standard product, and it shall be the responsibility of Licensee to ensure that the functions in the Licensor Software fulfil Licensee's requirements.
- 2.7. The license to Licensor Software, including any Updates provided by Licensor, are released by Licensor solely for the Licensee's use together with the version of the relevant Microsoft Dynamics Software (example: Microsoft Dynamics AX2009, AX2012 or D365 etc) which the Customer had a acquired valid license right to at the time of entering into this Agreement, however Licensor may, in its discretion and subject to separate agreement defining further terms and price conditions, chose to offer the Licensee to later make a transition of the license based on a newer version of Microsoft Dynamics Software than as mentioned.
- 2.8. Subject to the limitations and conditions set out in this Agreement, and the limitations set out by the number of units included in the license for the Licensor Software as determined in the Software Agreement, the Licensee shall be entitled to allow the Licensor Software to be used also by its Subsidiaries. It shall be the sole responsibility of Licensee to ensure that both its own users and the users of its involved Subsidiaries do not violate the terms and conditions of this Agreement, that the total amount

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## 3. Intellectual Property Rights/Copyrights

- 3.1. Licensor or its licensors hold full copyright, title and all and any other rights to the Licensor Software and any other materials provided therewith. Any disregard by Licensee of Licensor's or its licensor's rights, including inappropriate access to the Licensor Software or copying of License Keys, shall be deemed to be a material breach of this Agreement and shall entitle Licensor to terminate this Agreement and pursue all remedies available to it.
- 3.2. Licensee is aware that the Licensor Software, Documentation and other materials provided contain confidential information and trade secrets of Licensor or its licensors. Licensee undertakes to keep the confidential information secret and not to make third parties acquainted with them or grant their use to the same, and to use them only for the purpose for which they were provided.
- 3.3. Licensee shall not break or change any Licensor Software or License Keys. Licensee may only amend the Application Code in as far as absolutely necessary to use the Licensor Software within the license rights obtained under this Agreement. Licensee shall not change or remove any marks and/or notices concerning copyright, trademarks or other rights, or references hereto stated in the Licensor Software or on the medium upon which the Licensor Software may have been delivered. Licensee is not permitted to: (i) reverse engineer, disassemble or decompile the Licensor Software or any portion thereof or otherwise attempt to derive or determine the source code or the logic therein, except to the extent and for the express purposes authorized by applicable law, and only if Licensor is not willing or able to provide the relevant information to Licensee; (ii) remove or evade any technical protection (iii) use plug-ins or extensions not distributed by Licensor which enable modification of the Licensor Software; (iv) modify or change or make new installation programs for the Licensor Software beyond the license rights obtained; (v) use the Licensor Software for on behalf of third parties or sub-license, rent, sell, lease, distribute or otherwise transfer the Licensor Software beyond the license rights obtained and (vi) use the Licensor Software in or in association with safety critical applications such as, without limitation, medical systems,

transport management systems, vehicle and power generation applications including but not limited to power applications.

- 3.4. 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 Licensor Software provided to Licensee in these external communications.
- 3.5. If Licensor at any time develops any adjustments or modifications to the Licensor Software, that includes the same or comparable code or functionality as customizations developed by Licensee (with the Application Code), these adjustments and modifications by Licensor will not constitute a breach of any intellectual property rights of Licensee. Licensee hereby surrenders the right to file any claim against Licensor based on infringement of any intellectual property right in relation to any adjustment or modification Licensor developed on the Licensor Software.

## 4. Audit rights

- 4.1. On Licensor's request, and at Licensor's expense, Licensor may conduct an audit of Licensee's and its Subsidiaries' use of the Licensor Software. Any such audit shall be conducted during regular business hours at Licensee's and/or its Subsidiaries' 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 Licensor Software, in addition to other remedies, Licensee shall be invoiced for such underpaid fees plus a 10% penalty fee as well as demand compensation for Licensor's audit costs.
- 4.2. Licensor has the right to include and/or activate compliance capabilities in the Licensor Software which verifies the compliance of this Agreement related to usage of the license.

## 5. Updates

- 5.1. Included in the license is an access and use right to Updates. It does not include any rights to new Service Solutions.
- 5.2. Licensor provides the Updates on reasonable efforts basis in a way it considers appropriate in its discretion, where the Licensor aims to release Updates to keep pace with the release and lifecycle system of MS Dynamics, although 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. The Licensor Software may not be utilized as expected while Licensor has not yet released its relevant new Updates and Licensee has not deployed such Updates yet.

- 5.3. Licensor will provide Updates on the current product version of the Licensor Software until a new version is available, although Licensor reserves the right to discontinue provision of Updates to the Licensor Software or earlier versions thereof if and to the extent it deems it necessary. Licensor cannot provide optimal Update to Licensee if Licensee does not use the latest version of MS Dynamics.
- 5.4. In connection with the Updates, 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.
- 5.5. Licensor's Updates are uploaded in the Licensee's asset library in Microsoft Dynamics where Licensee must deploy the Updates in order to use them. In the interim period between Updates have been uploaded by Licensor and the Licensee has deployed the Updates Licensee may not rely on the warranties set out in this Agreement, but after deployment any remaining part of the warranty period (if any) may still be relied upon again without prolonging the warranty period.

## 6. Price and payment

- 6.1. Prices and payment will be specified and governed by the Software Agreement. All prices are exclusive of VAT and other levies imposed by any government.
- 6.2. Licensee shall not be entitled to set off or to suspend any payments.
- 6.3. Fees for licenses or any additional services may be adjusted on one or more occasions by Licensor or Reseller. If Licensee does not accept such adjustment, Licensee shall be entitled to terminate its subscription thereto for convenience within thirty (30) days of receipt of the written notification of the price adjustment. No refunds of licensee fees prepaid or due is provided in the event of Licensee's termination.
- 6.4. In addition to article 6.3, Licensor is entitled to adjust the 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 6.4 Licensee will not have the right to terminate the license for convenience on the grounds of adjustment of prices.

## 7. Infringement of Third-Party Rights

- 7.1. If a third party objects to Licensee's use of the Licensor Software based on the claim that the use of the Licensor Software infringes such third party's intellectual property right (hereinafter referred to as "Infringement Claim"), Licensor will indemnify and defend Licensee from and

against any liabilities, damages, costs and expenses (including reasonable expert witness fees and attorney's fees) incurred by Licensee in connection with any claim, action, proceeding or suit alleging that the Licensor Software or any intellectual property infringes any patent, copyright, trade secret, logo or other intellectual property or proprietary rights of Licensee or any third party; and Licensor shall, at its expense, defend or settle any such claim, action, proceeding or suit brought against Licensee, provided that Licensee promptly 1) notifies Licensor in writing of the Infringement Claim as soon as it becomes aware of such Infringement Claim, 2) allows Licensor to fully control the defense and any related settlement negotiations, and 3) cooperates with Licensor in the defense and any related settlement negotiations by providing Licensor with appropriate information, powers of attorney and assistance needed for such defense or settlement, if necessary in Licensee's name.

- 7.2. Where the terms and conditions under 1) to 3) are not fulfilled, Licensor shall in any event be entitled, but not obligated, to defend the Infringement Claim at its expense, and upon notifying Licensee that it intends to do so, Licensor shall be irrevocably authorized by Licensee, to the extent legally possible, to assume the defense of the legal suit or proceedings brought forward against Licensee, and may institute proceedings or enter into settlements concerning the Infringement Claim. Licensee shall provide Licensor with appropriate information or assistance for such defense or settlement, if necessary in Licensee's name.
- 7.3. In the event of an Infringement Claim, Licensor shall be entitled to either: 1) obtain the continued right for Licensee to use the Licensor Software, 2) bring the infringement to an end by modifying the Licensor Software or replacing the Licensor Software with other software which, essentially, possesses the same functions as the affected Licensor Software, or 3) terminate this Agreement with written notice and pay to Licensee an amount equal to the license fee actually paid for the license to the Licensor Software by Licensee. Licensor shall only be obliged to pay the stated amount to Licensee if Licensee notifies Licensor within one year after the claim is actually raised against Licensee. If an Infringement Claim is notified to Licensee after the stated period has expired, Licensor shall be entitled to terminate this Agreement without payment of any amount to Licensee.
- 7.4. The performance of Licensor's obligations under article 7.1 -7.2 shall be Licensor's total aggregate liability and Licensor's entire obligation to Licensee or its Subsidiaries as a consequence of all and any Infringement Claims, and Licensee and its Subsidiaries shall have no other claims against Licensor as a result of such Infringement Claim.
- 7.5. The limited warranty stated in article 7.1 and 7.2 is void if the Infringement Claim has resulted from accident, abuse or misapplication. Any modification of the Licensor Software by anyone other than Licensor voids the foregoing

warranty on any portion of the Licensor Software modified or affected by such modification.

## 8. Limited Warranty

- 8.1. Where Licensee within a period of six (6) months after the Effective Date of this Agreement provides written documentation demonstrating that there is an Error in the Licensor Software which can be proved and reproduced, Licensor shall either 1) deliver, free of charge, a new version of the Licensor Software without the Error, 2) correct the Error free of charge or 3) return the license fee actually paid for the license to the Licensor Software by Licensee. The performance of Licensor's obligations under article 8.1 shall be Licensor's total maximum liability and Licensor's entire obligation to Licensee as a consequence of all and any Errors in the Licensor Software, and Licensee shall have no other claims against Licensor as a result of such Errors. Error correction may also take the form of a statement of procedures or manners of application ("work arounds") whereby the Error will have no significant effect on Licensee's use of the Licensor Software. This limited warranty is void if failure of the Licensor Software has resulted from accident, abuse or misapplication by Licensee. Any modification, including modifications to Application Code, of the Licensor Software by anyone other than Licensor voids the foregoing warranty on any portion of the Licensor Software modified or affected by such modification. Any analysis work carried out by Licensor due to Licensee's notification of Errors shall not be invoiceable if and to the extent the Error is documented and warranted, but in other situations such analysis work is invoiced on a time and material basis at Licensor's standard hourly rates.
- 8.2. Other than as provided in article 8.1, the Licensor Software (including Updates) is considered "as-is" with no other warranties, representations, obligations of remedy or rights other than those described above, 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. Accordingly, Licensee shall have no right to raise claims against Licensor if the Licensor Software contains errors and inconveniences not covered by article 8.1.
- 8.3. Licensee shall be responsible for the use, deployment and application of the Licensor Software and related software and equipment in its organization, as well as for sufficient back-ups, security measures and adequate system management. The Licensor Software is not localized for particular country-specific requirements (except if and to the extent the Licensor in its discretion has created one or more of such localised specific versions of the Licensor Software and has notified the Licensee thereof), and should localization be requested by Licensee then it can be agreed upon via a separate contract governing the consultancy task that such localization would involve.

- 8.4. The warranty, cf. article 8.1, is furthermore limited to the latest commercial release of the Licensor Software which is supported by Licensor.

## 9. Limitation of Liability

- 9.1. In no event and no matter the circumstances shall Licensor be liable for any loss of anticipated profit, loss of data, damage to records or data or any indirect, special, incidental or consequential damages or loss (collectively "losses") (which for purposes of this Agreement shall be deemed to include, but not be limited to the loss of goodwill, or loss as a consequence of any kind of business interruption) arising out of or in connection with this Agreement or the use or performance of the Licensor Software or services connected thereto even if Licensor was advised of the possibility of such losses and regardless of whether the cause of action is in contract or tort. Accordingly, licensee cannot claim, demand or seek recovery from Licensor for any of the foregoing losses and Licensor will not indemnify Licensee or its Subsidiaries for such claims.
- 9.2. To the maximum extent permitted by applicable law, Licensor disclaims any product liability as a consequence of loss or damage to property which, in view of its nature, is normally intended for commercial use.
- 9.3. In all and any event, no matter the circumstances, Licensor's total aggregate liability for loss or damage arising out of or in connection with this Agreement explicitly including any failure to comply with a guarantee or warranty obligation, or the use or performance of the Licensor Software or services connected thereto shall not exceed the amount (excl. Vat) of the license fee actually paid by Licensee for the license to the Licensor Software. The total compensation shall not, however, in any case exceed Euro 50,000 (fifty thousand Euros).
- 9.4. Licensor shall have no responsibility or liability for any adjustments or other adjustments in or to the Licensor Software or any service and support of the Licensor Software performed by Licensee itself or provided by its Subsidiaries or third parties, Reseller or other 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 Licensor software and licensee's own hardware and software environments.
- 9.5. 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.

## 10. Term and termination

- 10.1. This Agreement becomes effective (the Effective Date) on the date on which Licensee places the order for the Licensor Software or on the date this Agreement is approved, whichever is sooner. The Licensor Software will be deemed to have been delivered to Licensee on the date the Licensor successfully uploaded the Licensor Software in the Licensee's asset library in Microsoft Dynamics and the Licensee has received the License Key.
- 10.2. The time limitations of the Licensee's use right to the Licensor Software may be defined in the separate Software Agreement, but the use right shall continue until terminated in accordance with the agreed terms, hereunder the terms of this Agreement, but may be terminated for convenience by a party with a ninety (90) days written notice.
- 10.3. 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 thirty (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.
- 10.4. 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.
- 10.5. In case of termination, Licensee shall immediately cease using the Licensor Software and promptly and permanently delete the Licensor Software, including any copies thereof, and any access thereto. Licensor may conduct an audit to check Licensee's abidance of this article.
- 10.6. Licensee's Subsidiaries do not have any termination rights themselves but are automatically considered part of Licensee's termination (if any).

## 11. Privacy policy and confidentiality

- 11.1. Licensor's privacy statement as published on the Licensor's website shall apply for personal data obtained by or transferred to Licensor in capacity as data controller in the execution of this Agreement.
- 11.2. Licensor shall keep any sensitive information it gets access to or receives from the Licensee, hereunder personal data, confidential. Such information shall be used

by Licensor exclusively for the performance of the obligations or purposes set forth in this Agreement, shall not be distributed or disclosed in any way or form by the Licensor to anyone except its own employees.

## 12. Miscellaneous

- 12.1. Licensee may not assign or transfer its rights or obligations arising under this Agreement to any third party, including any group of companies, parent companies and affiliated companies of Licensee without the written consent by Licensor, which consent will not be unreasonably withheld. However, Licensor may impose financial consequences to such assignment or transfer of Licensee's rights and obligations. Any attempt by Licensee to assign or transfer this Agreement in violation of the aforementioned shall be void and without effect.
- 12.2. Licensee must comply with all domestic and international (export) laws and regulations to the Licensor Software and with any Licensee, end-use and 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 this Agreement if required. Licensee is responsible for obtaining any licenses to export, re-export or import the Licensor Software as may be required. Licensee will defend and indemnify Licensor from and against all fines, penalties, liabilities, damages, costs and expenses incurred by Licensor as a result of any violation of export (control) laws or regulations by Licensee or any of its agents or employees.
- 12.3. 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 this Agreement is to remain in effect as written.
- 12.4. Any terms of this Agreement which, by their nature, extend beyond the day this Agreement comes to an end shall remain in effect and thus bind the parties.
- 12.5. Licensor reserves the right in its discretion, acting reasonably, to modify this Agreement at any time and make the modified version available for the Licensee where after it shall be considered legally binding.
- 12.6. No waiver of satisfaction of a condition or non-performance of an obligation under this Agreement will be effective unless it is in writing and approved by the party granting the waiver.
- 12.7. This Agreement (together with all Appendices) set forth the entire understanding between the parties and supersedes any and all oral or written agreements or understandings between the parties as to the subject matter of this Agreement.

- 12.8. This Agreement may not be amended, modified or superseded, unless expressly agreed to in writing by both parties.
- 12.9. 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.
- 12.10. In the event any translation of this Agreement is prepared for convenience or any other purpose, the provisions of the English version shall prevail.

## 13. Applicable law and jurisdiction

- 13.1. This Agreement will be interpreted and construed in accordance with the laws of the Netherlands, without giving effect to its principles of conflicts of law. 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.
- 13.3. Each party waives all defences of lack of personal jurisdiction and forum non-convenience. Process may be served on either party in the manner authorized by applicable law or court rule. In any action to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs and other expenses.
- 13.4. This article does not prevent Licensor from seeking or obtaining injunctive relief or other extraordinary relief in any courts with jurisdiction. To the extent permitted by applicable law, Licensor may take concurrent proceedings for injunctive relief in any number of jurisdictions.

## 14. Approval

Licensee and Licensor acknowledge and accept that this Agreement shall be considered mutually accepted and binding once approved digitally by Licensee (without the need for a physical signature).