

ToolsGroup®  
Software License and Maintenance Agreement  
Terms and Conditions

*NOTE: If Licensor is an entity other than ToolsGroup, certain special terms apply.  
See Section 10.9 below.*

1 DEFINITIONS. As used in this Agreement, the following capitalized terms have the following respective meanings:

1.1 “Affiliate” means, with respect to any Person, any other Person that Controls, is Controlled by, or is under common Control with, such first Person.

1.2 “Agreement” means this Software License and Maintenance Agreement, including the Signature Page, these Terms and any other document referenced or incorporated herein or therein.

1.3 “Applicable Policies” means the policies of Licensor (and, if different, ToolsGroup) referenced in the Schedule to the Signature Page, including without limitation these Terms.

1.4 “Business Day” means, with respect to a given location, a day that is not a Saturday, a Sunday or other day on which banks are required or authorized to be closed in such location. Except as otherwise specified, the relevant location for a Business Day is the principal office of Licensor.

1.5 “Category” means a group of one or more product lines or business activities for which Licensee has a planning organization with respect to a Region.

1.6 “Confidential Information” means any and all information disclosed by a party hereto (“Discloser”) to any of the other party and its Affiliates (“Recipient”) which is proprietary to Discloser, whether or not reduced to writing or other tangible medium, and whether or not protected or protectable by patent, trade secrecy or copyright, including the terms of this Agreement, technical information and other information relating to intellectual property, business and marketing plans, financial matters, products, services, processes, methods, specifications, designs, costs, sources of supply, pricing, sales, profits, personnel and business relationships. Confidential Information shall not include information which: (a) becomes generally known to the public through no fault of Recipient; (b) was known to Recipient prior to its (or any of its Affiliates’) relationship with Discloser, as evidenced by Recipient’s written records; (c) is furnished to Recipient by a third party who is lawfully in possession of, and who lawfully conveys, such information; or (d) is subsequently developed by Recipient without the use of Confidential Information, as established by Recipient’s written records. In the case of Licensor (and, if different, ToolsGroup) as Discloser, Confidential Information shall include the Software, whether in object-code or source-code form, and the Documentation.

1.7 “Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting stock or similar rights, the holding of office, by contract, or otherwise.

1.8 “Documentation” means any user documentation, on any media, provided by Licensor or ToolsGroup for use with the Software, including the Applicable Policies and ToolsGroup’s on-line help files, standard manuals, program listings, data models, flow charts, logic diagrams, input and output forms, functional specifications, instructions, as in effect from time to time, and complete or partial copies of the foregoing.

1.9 “Error” means a failure of the Software (unmodified and as updated by the most recent Version, Release or Update issued by ToolsGroup at the relevant time) to perform substantially as specified in the Documentation and which can be reproduced by Licensee and Licensor.

1.10 “Installation” means an installation of the Software operating in conjunction with a dedicated operational database managing a Category with respect to a Region or a part thereof (as specified on the Signature Page) and interfacing a single system of reference (legacy, ERP or SCP suite).

1.11 “Licensee” means the entity identified as such in the Signature Page.

1.12 “Licensor” means the entity identified as such in the Signature Page, which, if not ToolsGroup, is a master licensee of ToolsGroup authorized to grant a sub-license hereunder.

1.13 “Maintenance Term” has the meaning provided in Subsection 3.1 below.

1.14 “Person” means a natural person, corporation or other entity.

1.15 “Previous Sequential Release” means, at any given time, a Release that was superseded by a new Release within the immediately preceding twelve (12) months.

1.16 “Qualified Individual” means a User appointed by Licensee who is knowledgeable in the Use and application of the Software to serve as the primary contact between Licensee and Licensor for each Installation. One Qualified Individual may cover multiple Installations.

1.17 “Read-Only User” means a User whose Use of the Software is limited to read-only access to the output of such Software.

1.18 “Region” means a geographical area for which Licensee has a dedicated planning organization for manufacturing or distribution of one or more Categories, as specified on the Signature Page.

1.19 “Release” means a set of the Software which, in addition to possible corrections of detected shortcomings, includes functional enhancements and may also include architectural

and technical changes to comply with changes in Third-Party Software or information-technology architectures.

1.20 “Signature Page” means the Signature Page signed by Licensee and Licensor that incorporates these Terms in the Agreement.

1.21 “Software” means the ToolsGroup® software described on the Signature Page, as updated with Releases and Updates from time to time in accordance with the Documentation and the Applicable Policies.

1.22 “Support Plan” means the Maintenance and Technical Support Plan referred to in the Schedule to the Signature Page.

1.23 “Third-Party Software” means any and all third-party computer programs required for the Software to operate.

1.24 “ToolsGroup” means Innovation Technology Tools B.V., a Dutch corporation, and its Affiliates.

1.25 “Update” means a set of the Software in which detected shortcomings are being remedied.

1.26 “Use” means the loading, execution, employment, utilization, storage or display of the Software by Licensee as permitted by this Agreement and contemplated by the Documentation.

1.27 “User” means an individual who is: (a) authorized by Licensee or on Licensee’s behalf to use the Software in accordance with this Agreement; and (b) Licensee’s or Licensee’s Affiliate’s (i) employee or (ii) independent contractor who has agreed in writing to be bound by obligations with respect to the License, the Software and other Confidential Information of Licensor and ToolsGroup that are at least as stringent as Licensee’s obligations hereunder. Within the numerical limits of the configuration set forth in the Schedule to the Signature Page, Licensee may remove and replace Users.

1.28 “Year” means a calendar year. The initial period of the Maintenance Term ending December 31, if shorter than twelve months, shall nevertheless be deemed a Year for purposes of this Agreement. References herein to specific years shall refer to Years (e.g., “2015” means the Year ending December 31, 2015).

## 2. LICENSE.

2.1 License to Use the Software. Subject to the provisions of this Agreement and to full payment of the license fee specified herein, Licensor hereby grants to Licensee a fully paid, non-exclusive and non-transferable license (the “License”) to (a) Use the Software as set forth herein with respect to the business of Licensee; (b) use the Documentation in connection with Use of the Software; and (c) copy the Software solely for backup or archival purposes; *provided*

that all titles, trademark and copyright notices and other propriety markings are reproduced; and *provided further* that Licensee Uses the Software only in the configuration and within the scope provided herein or authorized in writing in advance by Licensor. Any act or omission of a User which, if committed by Licensee, would constitute a breach of this Agreement, shall be deemed a breach by Licensee.

2.2 Delivery of Software. Licensor shall provide to Licensee one (1) machine-readable copy of the Software, along with one machine-readable copy of the Documentation. Licensee may reproduce the Documentation by printing the online files for its own internal use.

2.3 Third-Party Software. Licensee acknowledges that the Software must be Used with a Third-Party Software platform. Licensee shall be solely responsible for ensuring that it has licensed and installed all necessary Third-Party Software. Licensor (and, if different, ToolsGroup) makes no representations or warranties and shall have no responsibility regarding Third-Party Software.

2.4 License Restrictions. Licensee shall not do or permit to be done, any of the following:

- (a) sublicense or other attempt to transfer or assign any portion of the Software or Documentation;
- (b) decompiling, disassembling or reverse engineering of any portion of the Software, except to the extent that applicable law specifically requires such action by Licensee to be permitted;
- (c) modification of, or creation of any derivative work from, the Software, the Documentation or any Confidential Information of Licensor (or, if different, ToolsGroup);
- (d) use of Software for any purpose other than Licensee's internal business operations (including without limitation the provision of processing services to third parties that are not divisions of Licensee, whether pursuant to any commercial timesharing, rental, sharing or "service bureau" arrangement or otherwise);
- (e) access to or use of Software by Persons other than Users without ToolsGroup's prior written consent;
- (f) use of Software beyond the scope (Installations, Users, Categories, Regions or Software Configuration) specified in the Signature Page; or
- (g) removal or modification of any program markings or any notice of Licensor's or its licensors' proprietary rights.

2.5 Certain Obligations of Licensee. (a) Qualified Individual. Licensee shall ensure that there is at least one (1) Qualified Individual at all times. The initial Qualified

Individual is designated on the Signature Page. New or additional Qualified Individuals may be designated by notice to Licensor.

(b) *Audit.* Licensee shall permit Licensor, upon reasonable notice and during Licensee's business hours, to audit Licensee's use of the Software. Licensee shall cooperate with Licensor's audit and provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with Licensee's normal business operations. If, as a result of such audit, it is determined that there has been an overpayment or underpayment of fees (license fees and, consequently, support fees), then (i) the parties shall promptly rectify such overpayment or underpayment by repaying the amount thereof, together with interest thereon at the prime rate published in *The Wall Street Journal*, from the time such payment was originally due to the time it is paid; and (ii) in the case of an underpayment of exceeding than five percent (5%) over a Year, Licensee shall reimburse Licensor for its reasonable fees and expenses in connection with such audit. During the Maintenance Term, Licensor shall use reasonable efforts to conduct its audits through remote access to Installations in lieu of in-person, on-site reviews.

### 3 PRODUCT MAINTENANCE AND TECHNICAL SUPPORT SERVICES.

3.1 Maintenance Term. The term during which Licensee shall be entitled to product maintenance and technical support services under this Section 3 (the "Maintenance Term") shall commence on the date of delivery of the Software to Licensee and continue through the end of such Year and thereafter automatically renew for consecutive periods of one (1) Year unless Licensee has notified Licensor in writing, at least ninety (90) days prior to the relevant renewal date, of its intention not to renew; *provided* that Licensee has paid the fee for the relevant Year under Subsection 3.2. The Maintenance Term shall immediately terminate in the event of the early termination of the License under Section 9.

3.2 Fee for Maintenance and Technical Support. The fee for the first Year of maintenance and technical support services hereunder is set forth on the Signature Page. For each subsequent Year, such fee shall be the lower of: (a) Licensor's published list price, if any; (b) one hundred ten percent (110%) of the fee for the immediately preceding Year; or (c) such fee as the parties may agree in writing at least one hundred twenty (120) days prior to the beginning of such Year. If the first (1<sup>st</sup>) Year is shorter than a full calendar year, the fee for such Year shall be annualized for purposes of calculating the fee for the following Year. All fees hereunder shall be subject to increase in the reasonable discretion of Licensor in connection with any increase in the scope of the License. The fee for each renewal Year must be paid in full prior to the commencement of such Year.

3.3 Lapse of Maintenance Term. Upon the termination or non-renewal of the Maintenance Term, services under this Section 3 shall terminate; *provided* that the License shall not be affected thereby unless it is independently terminated under Section 9 below. Thereafter, upon the request of Licensee, Licensor may renew the Maintenance Term, subject to payment of (a) the fees that would have been applied under Subsection 3.2 for the period of lapse plus (b) the fee applicable under Subsection 3.2 for the then current Year.

3.4 Maintenance Services (Releases and Updates). During the Maintenance Term, Licensor shall provide Licensee with each new Release and Update, together with the related Documentation, as it is issued to ToolsGroup's Licensees generally.

3.5 Technical Support Services. During the Maintenance Term, upon receipt of a report from a Qualified Individual of a presumed Error preventing the Use of the Software as permitted hereby, Licensor shall use reasonable efforts to resolve the Error in accordance with the Support Plan.

3.6 Delegation of Technical Support Services. Licensor may in its sole discretion delegate the performance of some or all technical support services under Subsection 3.5 to third parties; *provided* that Licensor shall remain responsible hereunder for such performance.

3.7 Limitations to Technical Support. Licensor (and, if different, ToolsGroup) shall have no obligation under this Section 3 to support Software if: (a) altered, damaged or modified or incorporated with or into other software; (b) not the then current Release or Previous Sequential Release; (c) the Error results from Licensee's negligence, abuse or misapplication, use not contemplated by the Documentation, or other causes beyond the reasonable control of Licensor (or, if different, ToolsGroup); or (d) installed on any computer hardware not specified in writing by ToolsGroup. Licensor (and, if different, ToolsGroup) shall have no liability for any changes to hardware required for Use of Software due to correction of Errors, Update or Release.

3.8 Other Services. All services not referred to in this Section 3 shall be charged separately at Licensor's then current standard rates and terms.

4 TAX. All amounts payable by Licensee hereunder shall be exclusive of any federal, state or local sales, value added, use, property, excise, service, withholding or other taxes, fees, duties or other amounts, however designated, now or hereafter levied ("Taxes"). Licensee shall be responsible for all Taxes except for taxes on net income of ToolsGroup.

## 5 WARRANTY.

5.1 Warranty. Licensor warrants as follows: (a) when delivered by Licensor hereunder and for a period of one (1) year thereafter (the "Warranty Period"), the Software shall perform substantially as described in the Documentation when Used as contemplated hereby; and (b) when delivered by Licensor, the Software (and each subsequent Release) shall not contain any computer code intentionally designed to (i) disrupt, disable, harm or otherwise impede in any manner the proper operation of a computer program or computer system, or (ii) damage or destroy any data files residing on a computer system (except as required for the normal operation of the Software). During the Warranty Period, Licensor shall correct, modify, replace or take other remedial steps with respect to any failure of the Software to perform as so warranted; *provided* that (x) the Software is being correctly used on properly operating equipment and software meeting specifications and (y) the Software has not been modified or altered by anyone other than Licensor (or, if different, ToolsGroup) or its agents and has not been abused or misapplied. Such corrections or repairs shall be Licensee's sole remedy hereunder. LICENSOR (AND, IF DIFFERENT, TOOLSGROUP) DOES NOT WARRANT THAT THE SOFTWARE

WILL BE FREE OF BUGS OR ERRORS OR PERFORM WITHOUT INTERRUPTION. TO THE EXTENT NOT PROHIBITED BY LAW, THE FOREGOING WARRANTY IS EXCLUSIVE AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE HEREBY DISCLAIMED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

5.2 Limitation of Liability. (a) IN NO EVENT SHALL LICENSOR BE LIABLE IN CONNECTION WITH ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE PERFORMANCE, BREACH OR DELAY IN PERFORMANCE HEREUNDER, OR THE TERMINATION HEREOF FOR:

(I) ANY LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA, COST OF COVER OR INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND; OR

(II) ANY AMOUNT (EXCEPT, IN LICENSEE'S CASE, AMOUNTS ACCRUED AND UNPAID HEREUNDER) EXCEEDING IN THE AGGREGATE OF (AA) THE FEES RECEIVED BY LICENSOR HEREUNDER IN RESPECT OF THE LICENSE(S) GRANTED HEREUNDER, REDUCED BY TWO PERCENT (2%) FOR EACH COMPLETE MONTH OF USE HEREUNDER, IF THE LOSS OR DAMAGE IS NOT RELATED TO TECHNICAL SUPPORT, OR (BB) THE MAINTENANCE FEES RECEIVED BY LICENSOR HEREUNDER FOR THE THEN CURRENT ANNUAL MAINTENANCE TERM, IF THE LOSS OR DAMAGE IS RELATED TO TECHNICAL SUPPORT.

THE FOREGOING LIMITATIONS SHALL NOT APPLY TO LIABILITY (I) CAUSED BY LICENSOR'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, (II) DEATH OR PERSONAL INJURY CAUSED BY LICENSOR'S NEGLIGENCE, OR (III) UNDER SECTION 6 HEREOF.

(b) IF LICENSOR IS NOT TOOLSGROUP, IN NO EVENT SHALL TOOLSGROUP HAVE ANY LIABILITY OF ANY NATURE WHATSOEVER ARISING OUT OF OR RELATING TO THIS AGREEMENT.

## 6 INDEMNIFICATION FOR INFRINGEMENT.

6.1 Indemnification. Licensor shall indemnify, defend and hold harmless Licensee, its Affiliates and their respective officers, directors, employees, agents and stockholders (each an "Indemnitee") from and against all damages, costs, liabilities and expenses (including without limitation reasonable attorneys' fees) arising out any claim or action by a third party not an Affiliate of an Indemnitee (a "Claim") arising out of or resulting from infringement of the third-party claimant's intellectual property rights by the Software, except to the extent such Claim could have been avoided but for: (i) modification of Software not done or authorized by Licensor; (ii) use of a superseded Release of the Software if Licensor has made available to Licensee a current Release of the Software which would have prevented or eliminated the claimed infringement; (iii) Licensor's compliance with or use of specifications, instructions,

technology or information provided by any Indemnitee; (iv) use of Software in combination with products or services not supplied or approved by Licensor; or (v) any act or omission of an Indemnitee not in compliance with this Agreement.

6.2 Remedy for Infringement or Misappropriation. In the event any aspect of the Software or its Use becomes, or in Licensor's opinion is likely to become, the subject of a Claim, Licensor may, at its sole option and expense, mitigate its other obligations under this Section 6 by doing one or more of the following: (a) procuring for Licensee the right to continue use of Software; (b) modifying the Software or replace the infringing part thereof with other non-infringing Software having substantially the same or better capabilities; or (c) if Licensor is unable to carry out the remedies described in the foregoing clauses (a) and (b) on commercially reasonable terms, terminating this Agreement upon at least thirty (30) days' advance notice to Licensee, refunding to Licensee (i) the applicable license fee paid hereunder, reduced by two percent (2%) for each complete month of Use hereunder and (ii) any prepaid fees for maintenance and technical support services for the remaining portion of the Maintenance Term.

6.3 Procedure. An Indemnitee seeking indemnification hereunder shall promptly notify Licensor of the Claim; *provided* that the failure so to notify shall not excuse Licensor from its obligations under this Section 6 except to the extent Licensor's ability to defend the Claim has been prejudiced thereby. Licensor (or, if different, ToolsGroup) shall have the right to control the defense of, and to settle or compromise, all Claims; *provided* that Licensor (and, if different, ToolsGroup) may not settle or compromise a Claim without the written consent of Licensee, not to be unreasonably withheld, if such settlement or compromise would (a) require Licensee to part with any right, make any admission of liability, or make any payment not indemnified under this Section 6 or (b) subject Licensee to any injunction. Subject to the foregoing, Licensee shall have the right, at its option and expense, but not the obligation, to retain counsel to represent its interests in defending any such claim or lawsuit.

6.4 Exclusive Remedy. THIS SECTION 6 STATES THE SOLE REMEDY AND THE ENTIRE LIABILITY OF LICENSOR HEREUNDER FOR INTELLECTUAL PROPERTY INFRINGEMENT.

7 INTELLECTUAL PROPERTY RIGHTS. Licensee acknowledges that ownership of and title in and to all intellectual property rights, including patent, trademark, service mark, copyright and trade secret rights, in the Software and Documentation are and shall remain in Licensor and its licensors. Except for the License, Licensee shall not hereby acquire any right in the Software or Documentation, including without limitation any and all future Releases and Updates, as the case may be. Licensee shall not remove any proprietary, copyright, trademark or service mark legend from the Software or the Documentation.

8 CONFIDENTIALITY. Each party ("Recipient") shall use Confidential Information of the other party ("Discloser") to which it becomes privy, and give access to such Confidential Information to its employees, agents and Affiliates, only to perform its obligations and exercise its rights hereunder. Recipient shall, and shall cause such employees, agents and Affiliates to, maintain such Confidential Information in the strictest confidence. All Confidential Information is, and shall remain, the property of Discloser. Notwithstanding the foregoing, Recipient may

disclose Confidential Information pursuant the requirement of a governmental authority or by order of a court of competent jurisdiction, provided that (x) such disclosure is subject to all applicable governmental or judicial protection available for like material and (y) reasonable advance notice is given to Discloser. Upon the expiration or termination of this Agreement, Recipient shall promptly return to Discloser or, at Discloser's request, destroy any and all copies of Confidential Information in its possession or control and delete any Confidential Information stored in its electronic media; *provided* that Recipient may retain one copy thereof in its legal files solely for evidentiary and regulatory purposes.

## 9 TERM AND TERMINATION.

9.1 Term. This Agreement shall become effective on the date hereof and will remain in force unless terminated pursuant to this Section 9, in which case the License and, if then continuing, the Maintenance Term shall immediately terminate.

9.2 Termination. Licensor may, by notice to Licensee, terminate this Agreement and, in the event that Licensee:

(a) fails to pay in full any license fee hereunder when due and to remedy such non-payment within ten (10) Business Days after notice thereof from Licensor;

(b) commits any other material breach under this Agreement and fails to cure such breach within thirty (30) days after notice thereof or, if such breach cannot reasonably be cured within such period, fails to commence promptly and thereafter diligently pursue such cure. By way of example but not limitation, a breach of any of the following shall be deemed material: (i) the limitations set forth on the Signature Page on Categories, Regions, Scope of Use, number and location of Installations or number of Users; (ii) any payment obligation not covered by subsection 9.2(a); and (iii) Section 8 (Confidentiality); or

(c) (i) ceases to conduct its business in the ordinary course; (ii) becomes insolvent; (iii) makes an assignment for the benefit of creditors; (iv) petitions, applies for, or suffers (with or without its consent) the appointment of a custodian, receiver, trustee in bankruptcy or similar officer for all or any substantial part of its business or assets; or (v) avails itself of or becomes subject to any proceeding relating to bankruptcy, insolvency, reorganization, receivership, arrangement, adjustment of debts, dissolution or liquidation, which proceeding, if involuntary, is not dismissed within sixty (60) days of commencement thereof.

9.3 Effects of Termination. Upon termination or expiration of this Agreement for any reason, Licensee shall immediately: (a) cease all Use of Software and Documentation; (b) discontinue any use of the name, logo, trademarks, service marks or slogans of Licensor (and, if different, ToolsGroup); (c) fully comply with the requirements of Section 8 above, including without limitation the return to Licensor or destruction, and irretrievably deletion from any storage media, of all Software and Documentation; and (d) within thirty (30) days, furnish Licensor with a certificate signed by an executive officer of Licensee verifying that Licensee has complied with this Section. In the event of any termination hereunder (other than an unlawful termination by ToolsGroup), Licensee shall not be entitled to any refund of any portion of any

monies that have been paid to Licensor. The expiration or termination hereof shall not affect any indebtedness or liability then accrued hereunder or in connection herewith.

## 10 GENERAL.

10.1 Legal Compliance. Licensee shall at all times comply with applicable law. Without limitation of the foregoing, Licensee shall not use, or allow the transfer, transmission, export, or re-export of any Software or Documentation, or any portion thereof, in violation of any export control laws or regulations of The Netherlands, the United States or any other jurisdiction. Licensee shall comply with all such laws and regulations (including “deemed export” and “deemed re-export” regulations).

10.2 Force Majeure. Except with respect to payment obligations, a party shall not be in breach of this Agreement to the extent that its performance hereunder is prevented or delayed by circumstances beyond its reasonable control, including but not limited to strikes, lockouts, labor disputes, fire, flood, war, hurricane or other extreme weather, or governmental action; *provided* that such party gives prompt notice to the other party of such cause and takes such steps as are reasonably necessary to relieve the effect of such cause as rapidly as possible.

10.3 Relationship of the Parties. The parties are independent contractors to each other and neither shall have the authority to bind the other. Nothing in this Agreement shall be deemed to create a fiduciary, partnership, agency or joint-venture relationship between the parties.

10.4 Injunctive Relief. Licensee acknowledges that a breach of this Agreement adversely affecting Licensor’s (or, if different, ToolsGroup’s) intellectual property rights in the Software or Documentation would cause irreparable injury to Licensor (and, if different, ToolsGroup) for which monetary damages would not be an adequate remedy and Licensor (or, if different, ToolsGroup) shall be entitled to equitable relief in addition to any remedies it may have hereunder or at law.

10.5 Notices. Any notice required or permitted under this Agreement from one party to the other shall be in writing and sent by e-mail or certified mail with return receipt, to the receiving party’s address, to the attention of the contact person, set forth on the Signature Page, or to such updated address and contact person as such party may designate by notice hereunder. Notices shall be deemed given (a) ten (10) Business Days after being sent by certified or registered mail with return receipt, (b) three (3) Business Days after being sent by reputable express courier service with tracking capability, or (c) upon transmission by telecopy providing confirmation of receipt. Without limitation of the foregoing, Licensee shall promptly notify Licensor if it has a dispute with Licensor or becomes subject to insolvency or other similar legal proceedings.

10.6 Public Announcements. Neither party shall issue any press release or make any public announcement relating to the subject matter of this Agreement, without the prior written consent of the other party in its sole discretion; *provided* that Licensee shall not unreasonably

withhold its consent to Licensor's (and, if different, ToolsGroup's) use of Licensee's name and logo as a user of the Software.

10.7 Anti-Corruption. Licensee hereby acknowledges that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Licensor's employees or agents in connection with this Agreement. If Licensee learns of any violation of the foregoing restriction, Licensee will promptly notify Licensor thereof.

10.8 Assignment. (a) *General*. Except as otherwise provided in this Subsection 10.8, Licensee may not assign this Agreement, in whole or in part, without Licensor's (and, if different, ToolsGroup's) prior written consent. A change of Control of Licensee shall be deemed an assignment for purposes hereof.

(b) *Service Providers*. Licensor (and, if different, ToolsGroup) shall not unreasonably withhold its consent to the assignment hereof by Licensee, in whole or in part, to a third-party professional service provider ("Service Provider") in connection with the outsourcing of Licensee's internal business support function to which the Software relates, solely for the limited purpose of Use of the Software authorized hereunder and for the sole benefit of Licensee, subject to all of the terms and conditions set forth in this Agreement; *provided* that Licensee shall remain jointly and severally liable with Service Provider for all of Licensee's obligations hereunder. By way of example and not limitation, Licensor (and, if different, ToolsGroup) may withhold its consent to such assignment based upon its determination, in its reasonable discretion, that Service Provider: (i) engages, directly or indirectly through any of its Affiliates or clients, in competition with ToolsGroup or its software products; (ii) lacks adequate creditworthiness; or (iii) has a history of litigiousness.

(c) *Affiliates*. Licensee may assign this Agreement to its Affiliate; *provided* that Licensee shall remain jointly and severally liable with such Affiliate for all of its obligations hereunder.

10.9 Third-Party Beneficiaries. Licensor's content licensors (including ToolsGroup, if different from Licensor) shall have the benefit of Licensor's rights and protections hereunder. There are no other third-party beneficiaries under this Agreement.

10.10 Governing Law; Disputes. This Agreement is governed by the laws of The Netherlands (or, if different, the country of Licensor's incorporation). Any dispute arising out of or relating to this Agreement shall be subject to the exclusive jurisdiction of the courts of Amsterdam (or, if different, the city of Licensor's principle address specified on the Signature Page).

10.11 Entire Agreement. This Agreement sets forth the entire agreement, and supersedes all prior or contemporaneous understandings or representations, written or oral, between the parties regarding the subject matter hereof. This Agreement shall not be modified, conditioned or supplemented by any standard terms, provisions or conditions or any purchase order, acknowledgment or other business document which Licensee may use in connection herewith, regardless of any failure by Licensor to object to such terms, provisions or conditions.

In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (a) the Signature Page; (b) these Terms; (3) the Applicable Policies; and (4) the Documentation.

10.12 Severability. If any provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and such invalid or unenforceable provision shall be reformed so that it is valid and enforceable to the fullest extent permitted by law.

10.13 Amendments. This Agreement may not be amended except by a written instrument signed by both parties hereto; *provided* that Licensor (or, if different, ToolsGroup) may in its discretion make amendments to the Applicable Policies that do not result in a material reduction in the level of protection or service provided to Licensee thereunder during any period for which fees for maintenance have been paid.

10.14 Waiver. A waiver by a party hereto of the performance or breach of any provision of this Agreement must be in writing and shall not constitute a waiver of any subsequent performance or breach of the same or any other provision hereof.

10.15 Execution. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

10.16 Survival. The provisions of Sections 1, 4-8, 9.3, 10.4, 10.5, 10.7, 10.9-10.12, 10.14 and 10.17 shall survive the expiration or termination of this Agreement.

10.17 Certain Terms Applicable If Licensor Is Not ToolsGroup. If Licensor is not ToolsGroup, then, notwithstanding any other provision in this Agreement, the following terms shall apply:

(a) *Authority of Licensor to Grant License*. Licensor represents and warrants to Licensee that Licensor is authorized, pursuant to a license or value-added reseller agreement with ToolsGroup, to grant the License and provide the services contemplated hereby. Licensee may request confirmation of the foregoing from ToolsGroup at any time.

(b) *Relationship with ToolsGroup*. Licensor is not an agent of ToolsGroup and cannot bind or act on behalf of ToolsGroup. Licensee acknowledges that this Agreement shall not create any contractual relationship between Licensee and ToolsGroup and Licensee shall look solely to Licensor for any request, service, claim or remedy hereunder.

(c) *Amendment*. Licensor's agreement with ToolsGroup requires that this Agreement be in a form satisfactory to ToolsGroup. Licensor hereby represents to Licensee that it has obtained ToolsGroup's approval for the form of this Agreement. Any amendment of this Agreement shall be subject to ToolsGroup's prior written approval.

(d) *Assignment to ToolsGroup.* In the event of the expiration or termination for any reason of the agreement between ToolsGroup and Licensor pursuant to which Licensor is authorized to grant the License hereunder, Licensor shall be deemed to have assigned this Agreement in whole to ToolsGroup or to a third-party reseller designated in writing by ToolsGroup to Licensee, which shall thereafter be Licensor hereunder; *provided* that (i) Licensee shall not be charged for any amount paid to Licensor when due hereunder prior to such assignment and (ii) ToolsGroup shall not assume any obligation of Licensor accrued hereunder prior to such assignment.