ToolsGroup®

Software-as-a-Service (SaaS) Agreement
Terms and Conditions

*NOTE: If Supplier is an entity other than ToolsGroup, certain special terms apply.
See Section 10.18 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-as-a-Service (SaaS) 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 Supplier (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 Supplier.

1.5   "Category" means a group of one or more product lines or business activities for which Customer 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 Supplier (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   "Customer" means the entity identified as such in the Signature Page.

1.9   "Customer's Data" means the data uploaded by or on behalf of Customer, whether automatically or manually, and residing in the SaaS environment.

1.10 "<u>Documentation</u>" means any user documentation, on any media, provided by Supplier or ToolsGroup for use with the Software as part of the SaaS, 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.

1.11 "<u>Error</u>" means a failure of the Software (unmodified by or on behalf of Customer and as updated by the most recent Release or Update issued by ToolsGroup at the relevant time) to perform substantially as specified in the Documentation and which can be reproduced by Customer and Supplier.

1.12 "<u>Force Majeure</u>" has the meaning given in Section 10.4 below.

1.13 "<u>Initial Term</u>" has the meaning given in Section 9.1 below.

1.14 "<u>Installation</u>" 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).

1.15 "<u>Malicious Code</u>" means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

1.16 "<u>Person</u>" means a natural person, corporation or other entity.

1.17 "<u>Qualified Individual</u>" means an individual appointed by Customer to serve as the primary contact between Customer and Supplier for all technical support issues, who shall be knowledgeable in the Use and application of the Software and familiar with the Support Plan.

1.18 "<u>Read-Only User</u>" means a User whose Use of the Software is limited to read-only access to the output of such Software.

1.19 "<u>Region</u>" means a geographical area for which Customer has a planning organization for manufacturing or distribution of one or more Categories, as specified on the Signature Page.

1.20 "<u>Release</u>" 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.

1.21 "<u>SaaS</u>" means the Software in the form of software-as-a-service hereunder, including (a) system administration, system management, and system monitoring activities that Supplier performs for the Software and (b) the right to use the Software, Documentation, and materials resulting from such use.

1.22 "<u>Signature Page</u>" means the Signature Page signed by Customer and Supplier that incorporates these Terms in the Agreement.

1.23 "<u>Software</u>" means the ToolsGroup® software described on the Signature Page, to which Supplier grants Customer access as part of the SaaS, as updated from time to time by Releases and Updates in accordance with the Documentation and the Applicable Policies, including any extensions thereto (*e.g.*, customization).

1.24 "<u>Subscription Period</u>" means the Initial Term or any subsequent renewal period under Section 9.1 below.

1.25 "<u>Supplier</u>" means the entity identified as such in the Signature Page, which, if not ToolsGroup, is a ToolsGroup-authorized provider of SaaS.

1.26 "<u>Support Plan</u>" means the SaaS Support Plan referred to in the <u>Schedule</u> to the Signature Page.

1.27 "<u>Term</u>" has the meaning given in Section 9.1 below.

1.28 "<u>Test Installation</u>" means an installation of the Software for the sole purpose of testing the operation of the Software or any Release or Update prior to its implementation in an actual Installation.

1.29 "<u>ToolsGroup</u>" means ToolsGroup B.V., a Dutch corporation, and its Affiliates.

1.30 "<u>Update</u>" means a set of the Software provided by Provider for general application to its supported customers in which detected shortcomings are being remedied (including Error corrections, patches, fixes and updates).

1.31 "<u>Users</u>" means those individuals authorized by Customer or on Customer's behalf to use the SaaS, as defined in the Signature Page, all of whom shall be Customer's employees or consultants.

1.32 "<u>Year</u>" means a twelve- (12-) month period commencing on the date of this Agreement or an anniversary thereof.

2 SAAS.

2.1 <u>Grant of Access</u>. Subject to the provisions of this Agreement, Supplier hereby grants to Customer during the Term the non-exclusive, non-assignable, royalty-free, limited right to use the SaaS solely for Customer's internal business operations. Customer shall be responsible for Users' compliance with this Agreement. The SaaS is provided as described in, and subject to, the Signature Page, these Terms and the Documentation. Customer acknowledges that Customer will not receive any copy of the Software as part of the SaaS. Customer shall not acquire under this Agreement any license to use the SaaS after the Term or in excess of the scope specified in the Signature Page. Customer's access to, and use of, the Software and the SaaS may be suspended or terminated as provided herein.

2.2 <u>Subscription Fees</u>. In consideration of the SaaS, Customer shall pay Subscription Fees to Supplier during the Term. The Subscription Fee for the Initial Term is set forth on the Signature Page. For each subsequent Subscription Period, Subscription Fees shall increase to the lower of: (a) Supplier's published list price, if any; (b) one hundred ten percent (110%) of the Subscription Fee for the immediately preceding Subscription Period; or (c) such fee as the parties may agree in writing at least one hundred twenty (120) days prior to the beginning of such Subscription Period. Subscription Fees hereunder shall be subject to increase at any time, in the reasonable discretion of Supplier, in connection with any increase in the scope of Use by Customer not previously accepted in writing by Supplier. Supplier shall have no obligation to accept late or partial payments of the Subscription Fee.

2.3 <u>Ownership</u>. All ownership and intellectual property rights in and to (a) Customer's Data shall be retained by Customer; and (b) the SaaS and any product thereof shall be retained by Supplier or its licensors, as the case may be. Third-party technology that may be appropriate or necessary for use with the Software is specified in the Documentation or Signature Page. Customer's right to use such

third-party technology is governed by the terms of the third-party technology license agreement obtained by Customer and not under this Agreement.

3   CERTAIN OBLIGATIONS OF CUSTOMER.

        3.1   Qualified Individual. Customer shall ensure that at least one of the Users at all times is a Qualified Individual. The number of Qualified Individuals at any given time may not exceed the maximum, if any, set forth on the Signature Page. The initial Qualified Individuals are designated on the Signature Page. Customer shall notify Supplier of any new or replacement Qualified Individuals.

        3.2   Restrictions. Customer shall not: (a) permit access to, or use of, SaaS except (i) by Users, (ii) for Customer's internal business operations and (iii) within the scope specified in the Signature Page; (b) sell, resell, license, sublicense, distribute, rent or lease the SaaS (or the results produced by the SaaS), or include the SaaS in a service-bureau or outsourcing offering; (c) use SaaS to store or transmit (i) infringing, libelous, or otherwise unlawful or tortious material, (ii) material in violation of third-party privacy rights, or (iii) Malicious Code; (d) interfere with or disrupt the integrity or performance of SaaS or third-party data contained therein; (e) attempt to gain unauthorized access to any SaaS or related systems or networks; (f) modify, make derivative works of, disassemble, reverse-compile, or reverse-engineer any part of the SaaS (except to the extent that restrictions on reverse engineering are prohibited by applicable law); or (g) cause or permit to be any part of the SaaS to be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, except for the saving and printing of reports and other output produced by the use of SaaS as contemplated by the Documentation.

        3.3   Usage Monitoring. Solely for the purpose of verifying Customer's compliance with this Agreement, Supplier may monitor and review Customer's usage of the SaaS and Customer shall provide Supplier with such additional records and assistance as Supplier may reasonably require. Such information and records shall constitute Confidential Information of Customer.

4   PRODUCT MAINTENANCE AND TECHNICAL SUPPORT; SECURITY.

        4.1   Maintenance (Releases and Updates). During the Term, Supplier shall ensure that the Software and Documentation to which Customer has access hereunder are updated with such Releases and Updates as are implemented by ToolsGroup for purposes of providing SaaS to its customers generally.

        4.2   Technical Support Services. During the Term, upon receipt of a report from a Qualified Individual of a presumed Error preventing the Use of the Software as permitted hereby, Supplier shall use reasonable efforts to resolve the Error in accordance with the Support Plan. Customer hereby consents to the use of Customer's Data, including downloading from the SaaS environment onto its secure servers by Supplier (or, if different, ToolsGroup), solely for, and for such periods, as may be required for purposes of such Error resolution.

        4.3   Other Services. All services not referred to in this Article 4 shall be charged separately at Supplier's then current standard rates and terms.

        4.4   Assessment Tools. Supplier may provide Customer with access to or use of Assessment Tools (as defined below) in connection with the SaaS, in which case Customer shall have a non-transferable, non-exclusive, limited right to use such Assessment Tools solely to facilitate Customer's administration and monitoring of Customer's SaaS environment, subject to the terms of this Agreement and such additional license terms as Supplier may specify therefor. Any such Assessment Tools will be

provided by Supplier on an "as is" basis and Supplier shall not be obligated to provide technical support or offer any warranties in connection therewith. Customer's right to use such Assessment Tools will terminate upon the earlier of Supplier's notice (which may be through posting on Supplier's or, different, ToolsGroup's website) or the end of the Term. As used herein, "Assessment Tools" means tools, scripts, software and utilities used by Supplier (and, if different, ToolsGroup) to monitor and administer the SaaS and to help resolve Customer's service requests. Assessment Tools will not be used to collect, report or store any of Customer's Data residing in the SaaS environment, except as necessary to troubleshoot service requests or other problems in the SaaS.

4.5   Statistical Information and Models. Supplier (and, if different, ToolsGroup) may compile, store and publish statistical information related to the performance of the SaaS and may create anonymized models based on actual use of the SaaS for purposes of enhancing and demonstrating the functionality of the SaaS; *provided* that no such information or model may incorporate (or enable a third party to derive) Customer's name, Customer's Data or other Confidential Information of Customer. Such statistical information and models shall be the exclusive intellectual property of Supplier (and, if different, ToolsGroup).

4.6   Security. At all times during the Term, Supplier shall comply with the ISO/IEC 27001:2013 Information Security Management Standards and maintain its certification as to such compliance. Upon written request, Supplier shall furnish evidence of such certification to Customer.

5   WARRANTY; DISCLAIMERS; LIMITATION OF LIABILITY.

5.1   Warranty. Supplier warrants that: (a) the SaaS, when available (see separate "Service Level" section in the Schedule to the Signature Page), will perform in all material respects in accordance with the Documentation; (b) Supplier will not materially decrease the functionality specified in the Documentation or overall security of the SaaS during a Subscription Period; and (c) the SaaS will not introduce Malicious Code into Customer's systems. During the Term, Supplier shall use commercially reasonable efforts to correct any failure of the SaaS to perform as so warranted; *provided* that the SaaS are being used in accordance with the Documentation and this Agreement. Such corrections shall be Customer's sole remedy hereunder.

5.2   Disclaimers. SUPPLIER DOES NOT GUARANTEE THAT THE SAAS WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT SUPPLIER WILL CORRECT ALL SAAS ERRORS. CUSTOMER ACKNOWLEDGES THAT SUPPLIER DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SAAS MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. SUPPLIER IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

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.

5.3   Limitation of Liability. (a)   IN NO EVENT SHALL SUPPLIER 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 EXCEEDING IN THE AGGREGATE OF THE SUBSCRIPTION FEES RECEIVED BY SUPPLIER HEREUNDER IN RESPECT OF THE TWELVE (12) MONTHS UP TO AND INCLUDING THE DATE THE CLAIM AROSE.

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

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

5.4   Additional Disclaimer in Case of Trial Use of SaaS. If specified in the Signature Page, Customer may order certain SaaS for trial, non-production purposes subject to the terms and conditions of this Agreement. SaaS provided for trial purposes is "as is" and Supplier does not offer any warranties for such SaaS.

6   INDEMNIFICATION.

6.1   Indemnification. Each party hereto ("Indemnitor") shall indemnify, defend and hold harmless the other party, 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 of 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 products, services or material furnished hereunder by Indemnitor (*i.e.*, in the case of Supplier as Indemnitor, the SaaS; and in the case of Customer as Indemnitor, Customer's Data) (collectively, "Indemnitor Material"), except to the extent such Claim could have been avoided but for: (a) the unauthorized modification of Indemnitor Material by or with the consent of any Indemnitee; (b) Indemnitor's compliance with or use of specifications, instructions, technology or information provided by any Indemnitee; (c) use of Indemnitor Material in combination with products or services not supplied or approved by Indemnitor; or (d) any act or omission of an Indemnitee not in compliance with this Agreement. If Supplier, as Indemnitor, believes, or it is determined, that the SaaS infringe the rights of the third-party claimant, then Supplier, at its sole option and expense, may: (x) procure for Customer the right to continue use of SaaS; (y) modify the SaaS or replace the infringing part thereof with other non-infringing SaaS having substantially the same or better capabilities; or (z) if Supplier is unable to carry out the remedies described in the foregoing clauses (x) and (y) on commercially reasonable terms, terminate this Agreement upon at least thirty (30) days' advance notice to Customer, refunding to Customer any prepaid fees for the remaining portion of the Term.

6.2   Procedure. An Indemnitee seeking indemnification hereunder shall promptly notify Indemnitor of the Claim; *provided* that the failure so to notify shall not excuse Indemnitor from its obligations under this Article 6 except to the extent Indemnitor's ability to defend the Claim has been prejudiced thereby. At Indemnitor's request and expense, Indemnitees shall (i) permit Indemnitor to assume and control the defense or settlement thereof and (ii) provide reasonable cooperation to Indemnitor in the defense of the Claim. Indemnitor shall obtain the prior written consent of each

Indemnitee, not to be unreasonably withheld or delayed, for any settlement of a Claim that imposes any liability or other obligations on such Indemnitee.

      6.3   <u>Exclusive Remedy</u>. THIS ARTICLE 6 STATES THE SOLE REMEDY AND THE ENTIRE LIABILITY OF INDEMNITOR HEREUNDER FOR INTELLECTUAL PROPERTY INFRINGEMENT.

7   FEES AND TAXES. Subscription Fees are (a) non-cancelable, (b) except as specifically provided in this Agreement, non-refundable and (c) exclusive of taxes and expenses. Customer shall pay any sales, value-added or other similar taxes imposed by applicable law that Supplier must pay based on the SaaS hereunder, except for taxes based on Supplier's income. Except when different payment terms are specified hereunder, all amounts invoiced hereunder are due and payable within thirty (30) days of the date of the invoice.

8   CONFIDENTIALITY; NON-SOLICITATION.

      7.1   <u>Confidentiality</u>. Each party ("<u>Recipient</u>") shall use Confidential Information of the other party ("<u>Discloser</u>") 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. In the case of Supplier as Recipient, Customer's Data residing in the SaaS environment or in Supplier's custody shall be handled in accordance with Supplier's security practices as specified in Section 4.6 above. Notwithstanding the foregoing, Recipient may disclose Confidential Information as required by governmental authority or court of competent jurisdiction; *provided* that Recipient has (x) made reasonable efforts to obtain confidential treatment of such disclosure and (y) given reasonable advance notice of such disclosure to Discloser, to the extent legally permissible. 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 (i) Recipient shall not be required to delete electronic back-up files created and retained in accordance Recipient's back-up procedures and not accessed or restored to general accessibility and (ii) Recipient's legal counsel may retain copies of the Confidential Information which shall be used solely as archival copies for the purpose of defending any claim that Recipient breached its obligations hereunder with respect to such Confidential Information. Notwithstanding the return or deletion of the Confidential Information, Recipient will continue to be bound by such Recipient's obligations hereunder with respect to such Confidential Information.

      8.2   <u>Non-Solicitation</u>. During the Term and for twelve (12) months thereafter, each party hereto shall, and shall cause its Affiliates to, refrain from soliciting, offering work to, employing, or contracting with, directly or indirectly, any Personnel of the other party; *provided* that this section will not apply to Personnel who independently respond to indirect solicitations (such as general newspaper advertisements, employment agency referrals and internet postings) not targeting such Personnel. As used herein, "<u>Personnel</u>" of a party includes any individual that such party or its Affiliate has employed or engaged at any time during the Term as an employee or independent contractor and with whom the other party hereto or its Affiliate has come into contact in connection with this Agreement. If Supplier is not ToolsGroup, Supplier's Personnel shall also include employees and contractors of ToolsGroup and its Affiliates.

9   TERM; TERMINATION; SUSPENSION OF SAAS.

9.1   <u>Term</u>. Unless earlier terminated in accordance with these Terms: (a) the initial term of this Agreement (the "<u>Initial Term</u>") shall be the period specified on the Signature Page; and (b) thereafter this Agreement shall automatically renew for consecutive Subscription Periods of one (1) Year (such Subscription Periods, collectively with the Initial Term, the "<u>Term</u>") unless (i) either party gives the other notice of non-renewal at least ninety (90) days before the relevant renewal date or (ii) Supplier notifies Customer that such renewal is cancelled due to Customer's (A) failure to pay the applicable Subscription Fee at least thirty (30) days prior to such renewal date or (B) continuing breach of this Agreement.

9.2   <u>Termination</u>. In addition to the termination rights specified elsewhere in this Agreement, this Agreement may be terminated:

(a)   by either party:

(i)   upon at least thirty (30) days' advance notice to the other, if the non-terminating party has breached a material term of this Agreement described in such notice and failed to correct such breach before the effective date of termination specified in such notice. By way of example but not limitation, any of the following shall be deemed material breaches by Customer: (A) exceeding the limitations on scope of use of SaaS or number of Users set forth in the Signature Page; (B) providing access to SaaS to parties other than Users; (C) failure to pay any undisputed amount due hereunder; and (D) breach of Section 8.1 above (Confidentiality). By way of example but not limitation, any of the following shall be deemed material breaches by Supplier: (X) materially decreasing the functionality specified in the Documentation as it relates to the Customer's scope of use defined in the Schedule; (Y) materially decreasing the overall security of the SaaS during the Subscription Period; and (Z) breach of Section 8.1 above (Confidentiality); or

(ii)   immediately upon notice to the other, if the other (A) ceases to conduct its business in the ordinary course; (B) becomes insolvent; (C) makes an assignment for the benefit of creditors; (D) 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 (E) 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; or

(b)   by Customer as provided in the "Service Level" section of the Schedule to the Signature Page, in which case Customer shall only be responsible for the Subscription Fee up to the effective date of termination.

9.3   <u>Suspension of SaaS</u>. In the case of a notice of breach by Supplier to Customer described in Section 9.2(a) above, whether or not such notice includes a notice of intent to terminate this Agreement, Supplier may immediately suspend Customer's password, account, and access to or use of the SaaS (a) if Customer fails to cure any breach of a payment obligation hereunder within the first ten (10) days of the 30-day cure period or (b) if Customer has breached any provision of Section 3.2 (Use Restrictions) or 10.1 (Export) hereof. Such suspension of SaaS shall not excuse Customer from its payment obligations under this Agreement.

9.4   <u>Consequences of Termination or Expiration</u>. In the event of the expiration or termination of this Agreement for any reason:

(a)   Customer must pay within thirty (30) days any and all amounts accrued and unpaid prior thereto, plus any related taxes and expenses;

        (b)   if such expiration or termination was due to Customer's failure to pay Subscription Fees, upon the request of Customer, Supplier may renew this Agreement, subject to payment of all Subscription Fees that would have been paid hereunder had the lapse not occurred; and

        (c)   Supplier shall refrain from deleting Customer's Data for a period of at least sixty (60) days, *after which Customer's Data may be irretrievably deleted*. During such period, and provided that Customer has satisfied all payment obligations hereunder, Supplier may permit Customer to access the SaaS solely to the extent necessary for Customer to retrieve a file of Customer's Data then in the SaaS environment.

Customer represents to Supplier that, in entering into this Agreement, Customer has not relied on the availability of any services, programs or updates after the Term.

10   GENERAL.

     10.1   <u>Export</u>. Export-control laws and regulations of The Netherlands, the United States and any other relevant local export laws and regulations apply to the SaaS and Customer's use thereof (including technical data). Customer shall comply with all such laws and regulations (including "deemed export" and "deemed re-export" regulations).

     10.2   <u>Subcontractors</u>. Supplier may in its sole discretion engage subcontractors to perform some or all of its services hereunder, including without limitation technical support services under Section 4.2 or the hosting of Installations; *provided* that Supplier shall remain responsible hereunder for such performance and for all obligations to such subcontractors. The appointment of any subcontractor by Supplier shall not create any liability on the part of Customer to such subcontractor and such subcontractor shall not obtain any rights as a third-party beneficiary under this Agreement.

     10.3   <u>Relationship</u>. Supplier and Customer are independent contractors and this Agreement does not create any partnership, joint-venture, or agency relationship between them. Customer acknowledges that Supplier's business partners, including any third-party firms retained by Customer to provide computer consulting services, are independent of Supplier and are not Supplier's agents. Supplier is not liable for nor bound by any acts of any such business partner, unless the business partner is providing services as Supplier's subcontractor under this Agreement.

     10.4   <u>Force Majeure</u>. A party shall not be responsible for failure or delay of performance hereunder if caused by a circumstance or event outside its reasonable control ("<u>Force Majeure</u>"), including without limitation an act of war, epidemic, terrorism or sabotage, act of God, electrical, internet, or telecommunication outage that is not caused by such party, or government restrictions (including the denial or cancellation of any export or other license). A party affected by Force Majeure will use reasonable efforts to mitigate the effect thereof. If the Force Majeure continues for more than thirty (30) days, either party may cancel unperformed SaaS upon notice to the other. This section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Customer's obligation to pay for SaaS rendered prior to termination.

     10.5   <u>Customer's Data</u>.   (a)   *Location of Servers*. Customer acknowledges that Supplier may provide the SaaS from locations, and through use of subcontractors, worldwide. Customer shall be solely responsible for providing any notices and obtaining any consents required for Customer's processing of Customer's Data using the SaaS. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and ownership of Customer's Data.

        (b)   *Personal Data*. (i)   <u>*Certain Definitions*</u>. As used herein:

(A)   "GDPR" means Regulation (EU) 2016/679 (General Data Protection Regulation) or any successor regulation; and

(B)   "Personal Data" means any data that constitutes "personal data" as defined in the GDPR or that is protected under similar laws in other jurisdictions where Customer will use the SaaS.

(ii)   *General*. Customer hereby warrants to Supplier that Customer's Data shall not include any Personal Data, except to the extent that the following may be deemed to constitute Personal Data under applicable law: (A) User Data stored or generated in connection with the use of Usage Metrics (as defined in clause (iii) below); (B) names of companies or other entities that include personal names; and (C) names of Users. In the case of inclusion of Personal Data in Customer's Data, Customer would be considered the "data controller", and Supplier would be considered a "data processor", under the GDPR and similar laws in other jurisdictions. Customer shall be solely responsible for ensuring that there is a lawful basis for the processing of Personal Data hereunder (see, *e.g.*, GDPR Art. 6).

(iii)   *Usage Metrics Feature*. The Software includes a feature that, when activated by Customer, enables Customer to monitor each User's usage of the Software ("Usage Metrics"). Usage Metrics uses User-specific numerical identifiers, which, along with the information linked to them (collectively, "User Data"), may constitute Personal Data. In order to avoid liability under applicable privacy laws, including without limitation the GDPR where applicable, Customer shall meet all requirements of such laws in its treatment of User Data as if such User Data were Personal Data.

(iv)   *Controller-Processor Agreement under GDPR*. Customer shall inform Supplier whenever the processing of Personal Data hereunder is subject to the GDPR, in which case the following provisions shall constitute the agreement between controller and processor required by Article 28(3) of the GDPR (the "Controller-Processor Agreement"):

(A)   Documented Instructions. Supplier shall process Personal Data only (I) on behalf of Customer and in accordance with explicit written instructions issued by Customer and accepted by Supplier or (II) as required by EU or EU member-state law, in which case Supplier shall inform Customer in advance unless prohibited by such law for important reasons of public interest.

(B)   Security. Supplier shall have taken measures for the security of processing required by Article 32 of the GDPR, for which purpose Customer hereby confirms that the standard set forth in Section 4.6 above is satisfactory.

(C)   Confidentiality. Supplier shall ensure that its employees and other persons authorized by Supplier to process Personal Data have committed themselves to keep the Personal Data confidential or are subject to a statutory obligation of confidentiality.

(D)   Sub-Processors. Customer hereby consents to the processing of Personal Data by subcontractors of Supplier ("Sub-Processors"). Supplier shall inform Customer of any addition or replacement of Sub-Processors, in which case Customer shall have the opportunity to raise objections against such change. Supplier shall ensure that Sub-Processors agree in writing to be bound by the obligations of a processor under the Controller-Processor Agreement with respect to the Personal Data. Where a Sub-Processor fails to fulfil its data protection obligations, Supplier shall be fully liable to Customer for the performance of that Sub-Processor's obligations.

(E)   <u>Data Subjects' Rights</u>. Supplier shall, at Customer's written request and expense, and to the extent possible, assist Customer in responding to requests of data subjects (*i.e.*, Users) in the exercise of their rights with respect to Personal Data under Chapter III of the GDPR (*e.g.*, access, portability, correction and erasure).

(F)   <u>Information; Audit</u>. Supplier will make available to Customer information reasonably required by Customer to demonstrate Supplier's compliance with the Controller-Processor Agreement. Customer or its independent auditor may audit Supplier's compliance with the Controller-Processor Agreement; *provided* that such audits are performed at Customer's sole expense, upon reasonable advance notice to Supplier, at intervals of at least twelve (12) months, during Supplier's ordinary business hours and with the least possible disruption to Supplier's business.

(G)   <u>Further Assistance</u>. Supplier shall assist Customer at Customer's written request and expense in ensuring Customer's compliance with Articles 32 to 36 of the GDPR, taking into account the nature of processing and the information available to Supplier.

(H)   <u>Return of Personal Data</u>. At Customer's request, Supplier shall delete or return all Personal Data to Customer and delete existing copies thereof, unless EU or EU member-state law requires Supplier to store such Personal Data.

(v)   *Indemnification*. Customer shall indemnify, defend and hold harmless Supplier, its Affiliates and their respective officers, directors, employees, agents and stockholders from and against all Claims (as defined in Article 6) arising out of or relating to any breach or inaccuracy of Customer's obligations or representations in this Section 10.5. Any claim for indemnification under this clause (v) shall be subject to the provisions of Section 6.2 above.

10.6   <u>Marketing</u>. In consideration for the rights granted to Customer hereunder and the associated pricing: (a) upon ToolsGroup's reasonable request, (i) Licensee shall work with ToolsGroup's marketing department to prepare and issue a mutually acceptable (A) press release announcing Customer's entry into this Agreement and (B) within a reasonable period after "go live", Customer/ToolsGroup success story (video or written); (b) Customer shall act as a reference for prospective ToolsGroup customers and industry analysts; and (c) ToolsGroup may use Customer's logo, subject to Customer's guidelines for design and usage, to display on its website, in presentations and proposals to prospective customers, and for other similar media and uses.

10.7   <u>Notices</u>. Any notice required or permitted under this Agreement from one party to the other shall be in writing and addressed 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 successful transmission by email with confirmation of receipt. Without limitation of the foregoing, Customer shall promptly notify Supplier if it disputes any charges hereunder or becomes subject to insolvency or other similar legal proceedings. Notwithstanding the foregoing, Supplier may give notices that are applicable to Supplier's software-as-a-service customer base generally by means of general notices on Supplier's portal for the SaaS.

10.8   <u>Anti-Corruption</u>. Customer 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 Supplier's employees or agents in connection with this Agreement. If Customer learns of any violation of the foregoing restriction, Customer will promptly notify Supplier thereof.

10.9   Assignment.   (a)   *General*. Except as otherwise provided in this Section 10.9, Customer may not assign this Agreement, in whole or in part, without Supplier's (and, if different, ToolsGroup's) prior written consent.

(b)   *Customer's Service Providers*. Supplier (and, if different, ToolsGroup) shall not unreasonably withhold its consent to the assignment hereof by Customer, in whole or in part, to a third-party professional service provider ("Service Provider") in connection with the outsourcing of Customer's internal business support function to which the SaaS relates, solely for the limited purpose of Use of the SaaS authorized hereunder and for the sole benefit of Customer, subject to all of the terms and conditions set forth in this Agreement; *provided* that Customer shall remain jointly and severally liable with Service Provider for all of Customer's obligations hereunder. By way of example and not limitation, Supplier (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*. Customer may assign this Agreement to its Affiliate; *provided* that Customer shall remain jointly and severally liable with such Affiliate for all of its obligations hereunder.

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

10.11   Governing Law; Disputes. This Agreement is governed by the laws of the jurisdiction indicated, and any dispute arising out of or relating to this Agreement shall be subject to the exclusive jurisdiction of the courts, indicated in the table below:

If Supplier is:	The laws of:	Courts:
ToolsGroup B.V.	The Netherlands	Amsterdam
ToolsGroup, Inc.	Massachusetts, USA	State or federal courts sitting in Boston, Massachusetts, USA
Other	the jurisdiction of Supplier's incorporation	the city of Supplier's principal address specified on the Signature Page

Except for actions for non-payment or breach of Supplier's proprietary rights, no action, regardless of form, arising out of or relating to this Agreement may be brought by either party more than two (2) years after the cause of action has accrued.

10.12   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 Customer may use in connection with the subscription to the SaaS hereunder, regardless of any failure by Supplier 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: (1) the Signature Page; (2) these Terms; (3) the Applicable Policies; and (4) other Documentation.

10.13   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.

10.14   Amendments. This Agreement may not be amended except by a written instrument signed by Supplier and Customer. Notwithstanding the foregoing, Supplier (or, if different, ToolsGroup) may in its discretion make amendments to the Applicable Policies; *provided* that any such change that would materially reduce the level of protection or service provided to Customer shall not be binding upon Customer during the then current Subscription Period.

10.15   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.

10.16   Counterparts. The Signature Page 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.

10.17   Survival. The provisions of Sections 1, 5.3, 6-8, 9.4, 10.3, 10.5, 10.7, 10.8, 10.10-10.13, 10.15 and 10.18 shall survive the expiration or termination of this Agreement.

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

(a)   *Authority of Supplier to Grant License.* Supplier represents and warrants to Customer that Supplier is authorized, pursuant to a license or value-added reseller agreement with ToolsGroup, to provide the SaaS hereunder. Customer may request confirmation of the foregoing from ToolsGroup at any time.

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

(c)   *Amendment.* Supplier's agreement with ToolsGroup requires that this Agreement be in a form satisfactory to ToolsGroup. Supplier hereby represents to Customer 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 Supplier pursuant to which Supplier is authorized to grant the License hereunder, Supplier may, in accordance with such agreement, assign this Agreement in whole to ToolsGroup or to a third-party reseller designated in writing by ToolsGroup to Customer, which shall thereafter be Supplier hereunder; *provided* that (i) Customer shall not be charged for any amount paid to Supplier when due hereunder prior to such assignment and (ii) neither ToolsGroup nor any such third-party designee shall assume any obligation of Supplier accrued hereunder prior to such assignment.