

## 1. General

These General Terms and Conditions Services shall apply to To-Increase's provision of services.

## 2. Contract documents

Unless the parties agree otherwise the Agreement consists of:

- (i) a signed Master Services Agreement specifying the parties, the overall purpose of the agreement and the documents forming part thereof.
- (ii) these General Terms and Conditions Services.
- (iii) a number of Appendices, hereunder Work Orders, specifying, e.g. the type and scope of services to be performed, prices, time schedule etc.

## 3. Order of precedence

The Agreement, any particular conditions and Appendices and these General Terms and Conditions - Services are to be construed as mutually explanatory of one another. In case of inconsistency, the order of precedence shall follow as stipulated in Clause 2 above.

## 4. Definitions

"*Agreement*" means the Services Agreement together with all Appendices, hereunder these General Terms and Conditions –Services and any agreed upon Work Orders.

"*Appendix*" or "*Appendices*" means any appendix attached to and listed in the Agreement.

"*Business Day*" means Monday to Friday from 8.30 am to 5:00 pm, except for national public holidays in The Netherlands (or, if agreed, in the country where the delivery shall take place) and 25<sup>th</sup> of December and 1st January.

"*Change*" means any change, modification, reduction or addition to the Agreement or a Work Order.

"*Change Management Process*" means the process handling of any Change(s) to the Agreement or a Work Order as stipulated in Clause 11.6 below.

"*Collaborative Development*" means with respects to development, development performed by To-Increase in collaboration with Customer. Collaborative Development shall be development of which the Deliverables will include new standard features, data content or functionality to Standard Software and shall be labelled as Collaborative Development in the applicable WO. Collaborative Development shall not be deemed as a customization or modification of Standard Software but shall become an integrated part of the unmodified Standard Software.

"*Configuration*" means set up of parameters.

"*Contract Document*" or "*CD*" means a contractual appendix attached as an integral part of a Work Order.

"*Customer specific modifications*" means To-Increase's modifications to Standard Software specifically developed for the Customer as specified in a Work Order. Customer Specific Modifications are not included in future Updates of the Standard Software.

"*Date*" and any other reference to time or dates mean the time(s) and date(s) in the country of To-Increase unless otherwise indicated.

"*Day*" means any calendar day.

"*Defects Notification period*" means 30 (thirty) days from the date of Delivery. In case of partial deliveries, the 30-day Defects Notification period shall commence on the Date of Delivery of each partial delivery.

"*Deliverable*" or "*Deliverables*" means all work (services) to be performed and agreed results to be provided by To-Increase to the Customer as specified in a Work Order.

"*Delivery*" means To-Increase's provision of the agreed Deliverables to the Customer. Delivery occurs when the Deliverables have been made available to the Customer, and thereby the Deliverables are also automatically handed over to the Customer. Delivery occurs continuously, meaning that whenever parts of the Deliverables have been made available to the Customer these Deliverables shall be considered Delivered.

"*End User*" means an ordinary employee using the Deliverable or parts thereof as a basis for their everyday work.

"*Fees*" means any sum or sums payable by the Customer to To-Increase as specified in the Agreement or a Work Order.

"*Fit*" means a specific functionality handled by Standard Software.

"*Functional Design Document*" or "*FDD*" is a document describing Configuration of and/or Modifications to be provided by To-Increase.

"*Gap*" means a specific functionality not covered by Standard Software. The Parties may agree to handle a Gap via Modifications.

"*Integration*" enables two otherwise independent systems or modules to mutually exchange data.

"*Intellectual Property Rights Holder(s)*" means any manufacturer of Standard Software or proprietary owner(s) of intellectual property rights associated with any Standard Software.

"*Interfaces*" is a part of a system or module necessary for developing an Integration.

"*Key User*" means an employee with special knowledge about the use of the Deliverables or parts thereof and with the ability to instruct End User's in the correct use thereof. May also be referred to as a "super user".

"*Migration*" means the conversion of data from already existing data sources to the Delivery.

"*Modifications*" means any changes to the Standard Software which can be either Standard or Customer Specific Modifications.

"*Prices*" means any sum or sums payable by the Customer to To-Increase as specified in the Agreement or Work Orders.

"*Process Document*" or "*PD*" means a working document created by To-Increase during the working process for To-Increase's internal purposes e.g. as a basis for later decision making. Process Documents are not legally binding and are not considered Contract Documents.

"*Updates*" is To-Increase' smaller service packs, a correction of an error, or any other changes to the Standard Software (including potentially a new version thereof) made available by To-Increase to Customer by being uploaded in Customer's asset library in Microsoft Dynamics.

"*Small Task*" is a smaller task which can be initiated via a simplified ordering procedure (e.g. confirmation via e-mail) which only require notification instead of a formal agreement. The procedure is further described in the Agreement itself.

"Standard Modifications" means To-Increase's modifications to Standard Software to be included as an integral part of the Standard Software as specified in a Work Order. Standard Modifications are included in future Updates of the Standard Software.

"Standard Software" means the ISV solution (standard software programmes manufactured by a third party IPR holder). Standard Software can never be considered as Customizations.

"*Solution Tests*" means non-legal tests carried out by the Customer and To-Increase as specified in Work Order or a Test Plan.

"*Subcontractor*" means any third party subcontracted by To-Increase for the performance of any of its obligations under the Agreement.

"*Subsidiaries*" means with respect to any specified person (whether physical or legal), any other person in which such specified person owns, directly or indirectly, any capital stock or other equity interest, or any other type of ownership interest representing a majority of voting rights or the power to elect or appoint the majority of the board of directors (or similar governing body) of such other person.

"*Time*" and any reference to time or dates mean the time(s) and date(s) in the country of To-Increase unless otherwise indicated.

"*Time Schedule*" means the schedule for To-Increase's performance of the Deliverables under the Agreement.

"*Work Order*" means a legally binding agreement for Delivery of one or more Deliverables, made on a signed order form, or as agreed in other ways (via DocuSign or e-mails or another similar way) between To-Increase and the Customer. When the parties agree upon a new Work Order, said Work Order shall automatically become an integral part of the Agreement and be considered a new and separate Delivery which shall be subject to terms of the Agreement, including these General Terms and Conditions Services.

If the parties agree upon the provision of Deliverables without having signed a formal Work Order form for the Delivery, then such Delivery provided by To-Increase shall nevertheless be considered a Work Order and be invoiced on a time and material basis.

## **5. Joint obligations**

### **5.1. Confidentiality**

Either party may be given access to information relating to the other party's past, present, and future research, development, business activities, products, Deliverables, and technical knowledge, which by their nature should be kept confidential. All additional information, which by their nature is not to be regarded as public, shall be deemed confidential unless otherwise agreed by the parties.

Each party agrees to protect the confidentiality of such information during the term of this Agreement. The duty of confidentiality shall also apply after termination of this Agreement irrespective of the cause of termination or expiry. Access to confidential information shall be restricted to the employees of the Customer and To-Increase directly involved in the work. To-Increase can include the Customer on To-Increase's reference lists, which will be used for marketing purposes.

## **6. Customer's obligations**

### **6.1. General**

The parties acknowledge that the active participation of the Customer and its employees is an absolute necessity for the successful provision

of the Deliverables agreed upon. The Customer is responsible for its internal project management, hereunder Solution Tests of Deliveries without unfounded delay. Any description in the Agreement of the Customer's obligations (if any) contains a non-exhaustive description of the Customer's obligations.

### **6.2. Performance**

The parties agree to act in good faith and strive to ensure that their employees demonstrate a cooperative attitude towards the employees of the other party. Furthermore, the parties agree that the conduct of both parties shall be based on open cooperation and mutual trust for the purpose of achieving the most favourable project course and result.

The Customer is responsible for the performance of its obligations, including active participation, in the same way that To-Increase is for To-Increase's obligations. The Customer is also responsible for providing To-Increase with necessary information regarding the Customer's business, existing solutions, expected IT-acquisitions etc. The Customer is responsible for information from its third-party supplier and for the performance of such third parties in the same manner as for its own contribution.

If To-Increase can obtain access to data or information from the Customer which shall be treated or handled in specific ways according to applicable laws or regulations, then the Customer shall be obliged to issue a prior written instruction to To-Increase if the Customer wants To-Increase to comply with specific procedures concerning treating and handling of such data or information.

### **6.3. Use prior to taking over**

If the Customer makes use of the Deliverables or parts thereof in a production environment (go-live), e.g. uses the Deliverable(s) or parts thereof for commercial purposes the Delivery in question will be considered to be delivered and accepted no later than at the time of use.

## **7. Supplier's obligations**

### **7.1. Deliverables**

To-Increase shall provide the Deliverables specified in one or more Work Orders or in other relevant Appendices to the Agreement. The Deliverables shall be provided in a timely manner in accordance with the agreed upon project schedule in the relevant Work Order. The Customer's active and continued participation and fulfilment of obligations is a necessary prerequisite for a successful Delivery. To-Increase will strive to apply an open, respectful and loyal dialogue during the entire project in order to maintain a beneficial working climate.

### **7.2. Safety procedures**

To-Increase shall comply with all reasonable safety procedures in use by the Customer. If the Customer's requirements in this respect in any way hinder, delay or in any other way prevent or obstruct To-Increase's proper and timely execution of work under the Agreement, To-Increase shall, in addition to other remedies available under applicable law, be entitled to compensation of any and all costs incurred by To-Increase as a result hereof and a reasonable extension of time for the completion of the work.

The above does not limit any of To-Increase's other rights under the Agreement.

### **7.3. Documentation**

To-Increase shall provide the documentation specified in the appendices. If no documentation is included, To-Increase is under no obligation to provide any documentation of work performed and Deliverables provided other than those stipulated in Clause 9 below in respect of invoicing.

### **7.4. Subcontractors**

To-Increase shall be liable for the services of Subcontractors under the Agreement in exactly the same way as for its own obligations (however, To-Increase is not liable for defects in Subcontractor Standard Software or Hardware). If any defects are ascertained in the services from a Subcontractor and To-Increase is not able to procure for the remedy hereof without extraordinary sacrifice, e.g. by reason of the Subcontractor's bankruptcy, To-Increase shall be released from its obligations under the warranty by at To-Increase's exclusive choice (i) replacement, subject to further negotiation with the Customer, with other services which in all essentials lives up to the Customer's requirements and which will thereafter shall be covered by To-Increase's obligations under its warranty, or (ii) proportionate repayment to the Customer computed on the basis of the reduced usefulness of the Solution to the Customer.

To-Increase's liability is described in Clause 10 and 11 below.

#### **7.5. Steering**

If the parties agree to hold project meetings, steering meetings etc. the persons appointed by the Customer to assist To-Increase in the performance of its obligations shall have such insight into the Customer's procedures and existing systems as is required to facilitate said performance. Furthermore, said persons shall be entitled to make the necessary decisions on behalf of the Customer regarding the Customer's requirements for functionality, integration, procedures, etc. To-Increase has the duty of initiative to facilitate the cooperation between the parties. The meetings can be held as required either at the premises of the Customer or of To-Increase or remotely via online meeting. If the parties establish such meeting groups, each party may call a group meeting at short notice; however, the agenda shall be available no later than 3 (three) Business Days prior to the date of the meeting, if possible.

Unless otherwise agreed, To-Increase will take the minutes at steering group meetings and any project group meetings. The minutes shall contain a description of decisions made at the meeting and the minutes shall be sent to the Customer no later than 5 (five) Business Days from the date of the meeting. If the Customer has comments or corrections to the minutes, such comments and/or corrections shall be communicated to To-Increase 5 (five) Business Days from the date of receipt. If To-Increase has not received any comments/corrections within the time limit stipulated above, the minutes shall be deemed to be approved. If any member of the project team shall have been authorised to approve changes in the rights and responsibilities of the parties under this Agreement, said authorisation shall be specifically stated in the relevant Work Order or similar appendix.

#### **8. Prices**

Unless otherwise specifically stipulated in the Appendices, all Prices are based on actual time spent and materials used (i.e. time and material), calculated on fixed standard hourly rates as stipulated in the Agreement or Appendices hereto.

Services agreed to be performed outside the hours of a Business Day are subject to surcharges. For hours on working days between 07.00-08.30 AM and between 5.00-10.00 PM, an additional 50% will be charged on top of the applicable hourly rate. For hours on working days between 10.00 PM and 07.00 AM and in weekends and on holidays, an additional payment of 100 % will be charged on top of the applicable hourly rate.

To-Increase can choose to give an estimate of the Deliverables required and the costs to be incurred in relation to an agreed performance and if so, the estimate shall be set out in the Agreements or the Appendices hereto. This estimate is given without prejudice and shall not be considered binding, but if the actual time consumption/number of hours deviates substantially from the estimate, To-Increase is upon request obliged to specify the reasons for the deviation

and to loyally revise the estimate. To-Increase shall obtain Customers accept of new estimates. Unless otherwise specifically stated in the Agreement or Appendices, any estimates of costs or similar in the Agreement or in Appendices or otherwise shall be exclusive of expenses relating to travel, accommodation, mileage and travel time for all visits to the Customer, or tasks that can be initiated and completed without prior separate agreement.

Unless otherwise expressly agreed, any travel and accommodation expenses, hereunder also mileage, subsistence allowances and travel time etc., shall be invoiced separately on a bi-weekly basis in accordance with standard hourly rates as stipulated in the Agreement or Appendices hereto in addition to an administration fee of 5 %. If applicable, Mileage allowance to the Customer's address and back is settled in accordance with the Dutch Government's at any time effective rates per driven kilometre.

Unless otherwise expressly agreed, To-Increase has the right to single-handedly and in its own discretion initiate and complete tasks for the Customer regarding gaining, maintaining and re-establishing access to the Customer's various systems, as well as to separately invoice the Customer for such tasks on a time and material basis in accordance with the fixed standard hourly rates as stipulated in the Agreement or Appendices hereto, without entering into a separate Work Order with the Customer prior to such initiation, completion and invoicing.

All sums are quoted in EUR or USD unless otherwise stated in the Agreement. Fees do not include VAT. The Customer is liable for full and timely payment to To-Increase of any and all Fees under the Agreement whether or not To-Increase has been requested to invoice the Fees to the Customer or to another company associated with the Customer (Customer's Subsidiary, Customer's parent company or another associated company which is part of the Customer's company group). To-Increase is entitled to claim immediate compensation from the Customer for any taxes or other custom duties withheld by governmental or local authorities in relation to invoiced amounts, provided it hinders To-Increase in actually receiving the full invoiced amount in due time, which shall apply whether or not To-Increase has been requested to invoice the Fees under the Agreement to the Customer or to another company associated with the Customer (Customer's Subsidiary, Customer's parent company or another associated company which is part of the Customer's company group). In the event of any changes in the applicable taxes and duties, the Fees shall be adjusted by the net financial consequence to To-Increase hereof.

To-Increase is entitled to make an annual adjustment of its standard prices once in each calendar 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)

#### **9. Terms of Payment**

##### **9.1. Time and Material**

Unless the parties have specifically agreed on a fixed price payment scheme, the Customer shall be invoiced on a time and material basis. The Customer shall be invoiced bi-weekly based on the hours provided and material used during the bi-weekly period in question. The invoice shall clearly specify the time consumption and any other relevant information. Any objections to an invoice must be sent to [finance@to-increase.com](mailto:finance@to-increase.com) within 14 (fourteen) days from the date of invoice and the objection must include a detailed explanation of the objection. When the objection deadline expires, the invoice shall be regarded as accepted.

##### **9.2. Respite**

All invoices fall due 14 (fourteen) days after the invoice date. In the event that payment is not effected in due time, default interest will be equal to the Dutch statutory interest. If the Customer has unsettled

but payable debt to To-Increase for a period of 8 (eight) days after the due date, and the Customer has been given written notice hereof, To-Increase has the right to suspend performance of any and all obligations under the Agreement without this constituting a breach of the Agreement, until the debt has been settled.

To-Increase sends invoices etc. to the Customer in a digital way (via e-mail) and the Customer hereby in advance approves this digital procedure.

## **10. Warranties**

### **10.1. General**

To-Increase warrants that work carried out has been performed in accordance with good practice for Microsoft Partners. The Customer accepts and recognises that the Deliverables cannot in every respect be faultless or without minor discrepancies.

Any notification in respect of defects in any Deliverables shall be received by To-Increase before expiry of the Defects Notification Period.

Notwithstanding the aforesaid To-Increase does not give any warranties in respect of Standard Software other than reception of the Customer's notification of defects, recommendations to the Customer on ways known to To-Increase on how to bypass such faults so as to cause the least possible disruption to service, and to report the fault to the Intellectual Property Rights Holder(s). To-Increase grants the Customer the right to be covered by the guarantees provided by the Intellectual Property Rights Holder in the relevant license terms.

To-Increase shall allow the Customer to invoke any additional warranties for other items than Standard Software offered by any Subcontractor vis-à-vis such Subcontractor.

### **10.2. Remedy of defects**

In the event of the Customer's notification of defects in Customer Specific Modifications within the Defect Notification Period stipulated in these General Terms and Conditions, To-Increase shall remedy such defects without undue delay in accordance with good business practice. Remedy of defects in Customer Specific Modifications shall include identification of faults, recommendations to the Customer on how to bypass such faults so as to cause the least possible disruption to service and to rectification of the defect without undue delay. Assistance in connection with identification, study and rectification of faults will be invoiced in accordance with Clause 9 above.

No other warranties than those specifically stated in these General Terms and Conditions shall apply.

The Customer may terminate a Work Order in accordance with Clause 15 below if (i) defects reported during the Defects Notification Period are so extensive and serious that they reduce the value and functionality of the Deliverables significantly and (ii) To-Increase either acknowledges that rectification is not possible or has endeavoured in vain to remedy defects for more than a reasonable period of time (and for more than 90 (ninety) Business Days) following To-Increase's receipt of the relevant defect report. Termination shall be conditional upon To-Increase having received said first defect report during the Defects Notification Period. Alternatively, the Customer may, under the same conditions as above, demand a proportionate reduction in the amount(s) paid under this Agreement instead of termination. The amount payable corresponds to the reduced usefulness as a result of the defect.

### **10.3. Defects in standard software**

To-Increase undertakes no liability of any kind for Standard Software under this Agreement. Any defect or discrepancies in Standard Software or third-party software shall be governed solely by the terms

given in the relevant separate contract(s) governing the Customer's purchase/lease of Standard Software.

## **11. Liability**

### **11.1. General**

The parties shall not (whether for breach of contract, negligence, tort or otherwise) be liable for loss of profit due to business interruption, operating losses, loss of data, defective data, corruption of data, the injured party's increased use of internal or external resources, loss of reputation or goodwill, or other indirect losses or damage. To-Increase's total liability cannot exceed 25% (twenty-five per cent) of the total payment received by To-Increase from the Customer in the relevant Work Order under which To-Increase is in breach. To-Increase shall not be liable for any claim arising out of this Agreement unless receiving written notice of the claim within 6 (six) months of the date when the Customer became aware, or should have become aware, of the circumstances giving rise to the claim. The limitations of liability stated in this Agreement shall have effect to the maximum extent permitted by applicable law.

### **11.2. Customer's risks**

To-Increase shall not be liable for any delays or defects, due to circumstances for which the Customer carries the risk. In the event of delay in the Customer's performance, To-Increase shall be entitled to claim reimbursement of cost incurred by To-Increase as a result thereof, e.g. due to the rescheduling of activities and resources. The Customer shall also pay any and all reasonable expenses incurred by To-Increase for work redone or additional work. All costs incurred shall be compensated in accordance with To-Increase's applicable rates for Services as stipulated in the Agreement or Appendices hereto.

### **11.3. Instruction**

If To-Increase provides Deliverables as specified in a Work Order or the Agreement as staff augmentation, body shopping, in-sourced resources, etc., or other situations where the Customer has the right to issue instructions directly to the individual consultant, the following shall apply:

To-Increase warrants that the resources provided have the relevant general qualifications for the performance of the Deliverables as described in the Work Order or the Agreement. Save for the aforesaid, To-Increase shall not be liable for any acts or omissions by any of the resources provided hereunder. Consequently To-Increase is not under any obligation or liability in respect of defects in the Deliverables.

#### **11.3.1. Project Management**

Purchase of project management services is relevant and necessary for the control and organization of project activities and the provision of Deliverables for the duration of the entire applicable Work Order(s). The parties acknowledge and accept the principle that the longer a project lasts, and the more complex a project is, the larger the necessary amount of project management services will automatically be. Any project management services performed by To-Increase shall be invoiced on a time and material basis.

If project management services are not purchased for the entire duration of the applicable Work Order(s) the following shall apply:

To-Increase warrants that the resources provided have the relevant general qualifications for the performance of the Deliverables as described in the Work Order or the Agreement. Save for the aforesaid, To-Increase shall not be liable for any acts or omissions by any of the resources provided hereunder. Consequently To-Increase is not under any obligation or liability in respect of defects in the Deliverables.

### **11.4. Force Majeure**

Neither party is liable for failure to comply with its contractual obligations, including delays and/or defects caused by circumstances beyond the control of the said party, including but not limited to industrial conflicts (strikes and lockouts), fire, war, riots, internal disorder, natural disasters, currency restrictions, any effects of computer viruses, worms, seizure by public authorities, import and export bans, interruption or failure of ordinary communications and transport, including interruption or failure of power supply, and the failure of Sub-contractors to comply with their contracts.

#### **11.5. Passing of risk**

The risk for accidental loss or damage shall pass from To-Increase to the Customer on the Date of Delivery.

#### **11.6. Change Management Process**

Unless otherwise agreed any new or additional services or changes to the Deliverables of a Work Order (or another form) shall be considered a Change to the Work Order which may affect budget, time tables etc., and which entitles To-Increase to additional compensation for the Change on a time and material basis for the work actually performed. To-Increase may choose to use a Work Order form for describing the new, additional or changed services and Deliverables, although this is not a prerequisite. Work related to revisions of time schedules, evaluation and description of Deliverables in Work Order forms etc. necessitated by Changes shall be invoiced according to the conditions specified in Clause 9 above.

### **12. Intellectual property rights**

#### **12.1. Customer's License**

The parties acknowledge that the intellectual property rights of the Deliverable(s) shall at all times remain the property of To-Increase and/or the Intellectual Property Rights Holder(s). When Customizations are handed over to the Customer, the Customer shall acquire a perpetual right to use said software for its internal business. When Standard Modifications are handed over to the Customer, the Customer shall acquire the right to use Standard Modifications in accordance with the license terms of the Intellectual Property Rights Holder(s).

#### **12.2. Supplier's right of use**

To-Increase is free to use the general knowledge obtained from the performance of the Agreement. General knowledge does not include any knowledge of the Customer's business and trade secrets.

#### **12.3. Third party rights**

Subject to the limitations stipulated in Clause 11 above To-Increase warrants that the Deliverables provided do not infringe third party rights, including patents and copyright. Should legal action be taken against the Customer for infringement, the Customer shall without undue delay notify To-Increase thereof in writing and To-Increase shall be entitled, but not obliged, to assume responsibility for the case and all costs associated therewith. To-Increase undertakes to indemnify the defendant against any costs associated with the case, including the costs of legal counsel, etc., and any legal costs awarded to the plaintiff. To-Increase does not provide any warranty of any kind in relation to Standard Software, as violation of third-party intellectual property rights in relation to Standard Software shall be governed exclusively by the IPR Holder's license terms.

### **13. Assignment**

To-Increase is entitled to assign its rights and obligations under the Agreement to a third party in connection with a merger, acquisition of new businesses or change of control. To-Increase is furthermore entitled to assign its rights and obligations under the Agreement to associated companies. Save for the aforesaid, To-Increase may only assign its rights and obligations hereunder with the Customer's written approval. Such approval shall not be unreasonably withheld.

Any assignment of the Customer's rights and obligations shall be subject to To-Increase's prior written consent and shall be conditional upon the terms and conditions of the license terms in involved Standard Software license agreements as the license terms may further restrict the Customer's right of assignment.

### **14. Validity**

If any provision of an Agreement is held to be illegal, invalid or unenforceable, such provision (including necessary modifications to other provisions) shall nonetheless be enforced to the fullest extent permitted by applicable law, so as to reflect the original intent of the parties.

### **15. Termination for cause**

Notwithstanding any provisions herein contained this Agreement may be terminated forthwith by either party by notice in writing if (i) the other party shall commit any act of bankruptcy, shall have a receiving order made against it, shall make or negotiate for any composition or arrangement with or assignment for the benefit of its creditors or if the other party, being a body corporate, shall present a petition or have a petition presented by a creditor for its winding up or shall enter into any liquidation (other than for the purposes of reconstruction or amalgamation), shall call any meeting of its creditors, shall have a receiver of all or any of its undertakings or assets appointed, shall be deemed by virtue of the relevant statutory provisions under the applicable law to be unable to pay its debts, or shall cease to carry on business, or (ii) if the other party shall at any time be in material breach under this Agreement and shall fail to remedy such breach within 30 (thirty) days from receipt of notice in writing from the first party specifying such breach. Delay in To-Increase's performance of its obligations under the Agreement shall only constitute breach of contract if To-Increase has agreed to achieve a specific result and shall only constitute material breach if the delay continues for more than 90 (ninety) Business Days.

### **16. Waiver**

Any consent to or waiver of any provision or breach shall not constitute consent to or a waiver of such provision or breach in the future. No failure or delay by To-Increase in exercising any right, power or remedy shall operate as a waiver of the same.

### **17. Interpretation**

Reference to an Agreement or a provision in an Agreement shall be construed so as to include the Appendices to the Agreement referred to. Any provision contained in supplementary agreements to an Agreement shall be construed as having the same ranking as the provision so supplemented or replaced. To-Increase's offer and provisions in tender documentation shall not bind the parties if these are not repeated or included in the Agreement.

### **18. Retention of title**

Until the total sum for the Deliverables has been paid, To-Increase shall retain the title (right of ownership) to all Deliverables. Unless otherwise agreed the Customer shall not be entitled to use all or parts of the Deliverables until the total sum incl. interests and costs has been paid in full to To-Increase, at which point the Customer shall receive the user right described in Clause 12.1.

### **19. Law and Venue**

Any and all disputes arising out of or in connection with the Agreement shall be governed by and construed in accordance with the laws of the Kingdom of The Netherlands.

The parties shall seek to settle all disputes arising out of this agreement by direct negotiation. If the parties cannot settle a dispute by direct negotiation, the dispute shall be submitted to the applicable courts of Amsterdam, the Netherlands.