

# Reseller Agreement

This reseller agreement is between the below mentioned parties:

Full legal company name	To-Increase BV	[add reseller name]
Address	Kazemat 2 3905 NR Veenendaal The Netherlands	[add reseller address]
TAX number	NL814300108B01	[add reseller tax number]
Microsoft account number	5215109	[add reseller ms account number]
Hereinafter referred to as	"To-Increase"	"Reseller"

## Background

To-Increase is in the business of developing, selling, implementing and supporting software solutions including add-ons and verticals for Microsoft Dynamics AX and NAV Software. To-Increase selects, manages and coordinates resellers for To-Increase software within an assigned territory and grants reseller the right to provide licenses concerning To-Increase software to its customers. Reseller and To-Increase have agreed to terms and conditions for the marketing, distribution and support of To-Increase software.

The parties therefore agree as follows:

## 1. Definitions

- 1.1 "Application code" means the source code of To-Increase Software.
- 1.2 "Confidential Information" means this agreement, software developed by To-Increase BV, all material on the Partner Portal, verbal or written information, documentation, data, drawing, benchmark tests, specifications, trade secrets, object code, source code, production methods, processes and technologies relating to current or future software of To-Increase, marketing strategies and policies which is indicated confidential or which the other party reasonably can assume that is confidential. If applicable: To-Increase customer digital environment in which a party has to upload its granules on behalf of To-Increase. Confidential Information shall not include any information that (a) is or becomes generally available to the public other than as a result of disclosure by one of the parties; (b) is or becomes lawfully available to the other Parties' possession before receiving it from the other party and not subject to a confidentiality obligation; (c) is required to be disclosed pursuant to a judicial or governmental order or governmental regulations; (d) is obtained by the other party from any person other than a party and not subject to a confidentiality obligation or (e) is independently developed by the other party without using the Confidential information.
- 1.3 "Customization" means a modification to To-Increase Software specially developed by Reseller on behalf of a specific Licensee.
- 1.4 "Documentation" means the end user system help files and specifications developed by To-Increase as included in the To-Increase software and updated from time to time.
- 1.5 "Enhancement & Support Reseller" means a Reseller who only is allowed to sell renewals on Enhancement Plan. The reseller type is specified in Appendix A.
- 1.6 "Enhancement Plan" means the right to obtain and use any major release and Service Packs for the To-Increase Software. The Enhancement does not include any rights to new products. If Licensee obtains a subscription license, this right is included in the subscription fee.
- 1.7 "Licensee" means the actual entity to whom Reseller provides To-Increase Software and who uses it as an end user.
- 1.8 "Major release" means any update to To-Increase Software that includes substantial new functionalities. It is up to To-Increase to decide if a new functionality is substantial or not. A Major release is not a new product.
- 1.9 "Partner Membership Level" means the different levels of partnership as defined in the Partner Program with different prices, support packages and other advantages associated to it.

- 1.10 "Partner Portal" means internet portal accessible to all Resellers where all information can be found relevant to Resellers, such as the latest versions of the To-Increase Software, Partner Program, the Pricelist, the Reseller Margins, the Software License Terms, and Support.
- 1.11 "Partner Program" means the program that To-Increase developed for Resellers which specifies and describes the rights, practices, obligations, processes and procedures related to Resellers in connection with their partner status (as specified in Appendix A).
- 1.12 "Price List" means the latest version of To-Increase's official Licensee price list, which is available on the Partner Portal.
- 1.13 "Reseller Margin" means a percentage from the license price on the Price List to be retained by Reseller when ordering To-Increase Software. Reseller Margins are specified in Appendix A.
- 1.14 "Reseller" means a company who is allowed to sell To-Increase Software and renewals on Enhancement Plan. The reseller type is specified in Appendix A.
- 1.15 "Service Pack" means any update to To-Increase Software that includes minor new functionality or bundled solutions to errors and problems in To-Increase Software.
- 1.16 "Software License Terms (SLT)" means license terms that Reseller must use towards Licensees when licensing To-Increase Software. The latest version of the SLT can be found on the Partner Portal.
- 1.17 "Start date" means: the date this agreement is signed by the last party to sign it (as indicated by the date stated under that party's signature) which will be deemed the start date of this agreement."
- 1.18 "Support" means help desk support to Reseller for its Licensees or support directly to Licensee provided by To-Increase in connection with Licensee technical support inquiries that Reseller is unable to satisfy, as described in the Partner Program.
- 1.19 "To-Increase Software" means the latest electronic unmodified standard version of the software including Application Code, any components and certified solutions which have been integrated into the software by To-Increase, any software rightfully obtained under the Enhancement Plan, and any related Documentation licenses by To-Increase to the Licensee. It explicitly excludes Microsoft software or any other third party software that may be delivered with To-Increase Software.

## **2. Reseller rights**

- 2.1 To-Increase grants Reseller the non-exclusive and non-transferable right to market and distribute To-Increase Software and/or Enhancement Plans only direct to Licensees. The grant of rights is restricted to the territory mentioned in Appendix A.
- 2.2 If Reseller applies for a Partner Membership level, Reseller also acquires the rights associated with the Partner Membership Level and described in the Partner Program. Reseller may cancel partner Membership prior 30 days written notice. The grant is subject to Reseller fulfilling the obligations in this agreement and the Partner Program.
- 2.3 Reseller may order To-Increase Software and renewals on Enhancement Plan as described in the Partner Program from To-Increase for the amount listed on the Price List minus the Reseller Margin. If Reseller does not effectively exercise the right (if any) to renew the Enhancement Plan, To-Increase has the right to approach Licensees directly or through a different reseller to renew the Enhancement Plan. If Reseller is an Enhancement & Support Reseller, Reseller is not allowed to order To-Increase Software but only renewals on Enhancement Plan.
- 2.4 To-Increase will grant Reseller a limited license of To-Increase Software exclusively for use in connection with the promotion, sale, implementation and support of To-Increase Software and within the limits of the SLT. This license expires immediately on the termination or expiration of this Agreement. The SLT to be entered by and between To-Increase and Licensee shall specify the amount of units of measure as defined in the SLT and the server to be used. The amount of Users mentioned in the SLT has to be equal to the amount of Microsoft Dynamics users. This license does not apply to other software (like specific software for partners) that To-Increase may make available to Reseller.
- 2.5 Reseller may use the Application Code to develop Customizations, in accordance with article 8.1 of this Agreement.
- 2.6 Reseller may obtain the following services from To-Increase: Support for its Licensees, consultancy services, training and pre-sales support.

## **3. Responsibilities of Reseller**

- 3.1 Reseller shall comply with the requirements in the Partner Program and related policies and procedures as amended from time to time by To-Increase and published on the Partner Portal.
- 3.2 Reseller shall comply with all domestic and international (export) laws and regulations applicable to To-Increase Software as well as Licensee or destination restrictions issued by governments. Reseller shall comply with all laws applicable to Reseller's business and the performance of its obligations under this Agreement, including identifying and procuring permits, certificates, approvals and inspections that apply to Reseller or Reseller personnel. Reseller shall use commercially reasonable efforts to refrain from taking any action or failing to act so that Reseller and/or To-Increase are not compliant with any laws applicable to the Reseller (e.g. satisfying VAT, or Sales tax obligations relating to licenses or services). If a

charge of non-compliance by Reseller of any such laws occurs, Reseller shall promptly notify To-Increase of such charge in writing.

- 3.3 Reseller represents that it is acting on its own behalf and is not acting as an agent for or on behalf of any third party. Reseller shall not incur any liabilities on behalf of To-Increase nor pledge the credit of To-Increase nor make any representations nor give any warranty on behalf of To-Increase. Reseller has no authority to and shall not take part in any dispute or institute or defend any proceedings or settle or attempt to settle or make any admission concerning any dispute proceedings or any other claim relating to To-Increase Software. Reseller shall not conduct business in a manner that reflects negatively on To-Increase or To-Increase Software.
- 3.4 Reseller shall obtain all relevant Microsoft Dynamics certification and shall maintain this certification for at least those people who are also certified for To-Increase Software.
- 3.5 Within six months of the start date of this agreement, Reseller shall train and maintain trained the number of FTE's specified in appendix A so that they have adequate knowledge and sufficient technical background to install, implement, customize service and support To-Increase Software "Stand Alone" (where applicable) and on official integrations to other platforms. A Reseller may hold itself out as a certified To-Increase Software installer and trainer provided Reseller has satisfactorily completed and maintains the minimum level of training specified by To-Increase in the Partner Program for such designation. Specific guidelines to certification requirements are available in the Partner Program. Failure to satisfy minimum training or certification levels as mentioned in appendix A and the Partner Program constitutes a material breach of and grounds for termination of this Agreement.
- 3.6 Reseller shall pay all fees related to To-Increase Software, Enhancement Plan, Support, consultancy, training, pre-sales support, other services. If Reseller applies for a Partner Membership level, To-Increase shall also submit an invoice to Reseller each year around the renewal date of this Agreement for prolongation of participation in the Partner Program, based on the Partner Membership Level that Reseller signed up for.
- 3.7 Reseller shall use reasonable efforts to promote and market To-Increase Software. Reseller shall perform its activities in a professional manner and in accordance with industry standards. Reseller may use materials from the Partner Portal in conducting sales and pre-sales activities. Reseller shall only use sales and pre-sales materials which accurately present To-Increase Software and comply with this Agreement and the Partner Program.
- 3.8 Upon request of To-Increase, Reseller shall submit pipeline information to To-Increase specifying the deals it has closed with Licensees and the deals that it expects to close. Such information shall be treated by To-Increase as confidential information.
- 3.9 Reseller shall install and implement To-Increase Software in a manner that is consistent with industry standards and practices.
- 3.10 The relationship between To-Increase and Licensee is governed by the Software License Terms. Reseller is solely responsible for the acceptance of the SLT by Licensee and shall provide To-Increase with a signed copy of the latest version of the SLT for each Licensee including any appendixes thereto in the version valid at the order date. The SLT shall not be modified by Reseller.
- 3.11 Reseller shall provide to Licensee an Enhancement Plan, Support and related services to individual Licensees if the Licensee actually signed up for Enhancement Plan and if Licensee is current on all payment obligations relating to any Enhancement Plan; maintain a support centre that is capable of receiving reports of To-Increase Software irregularities; maintain a telephone line for the helpdesk that allows Licensees to report To-Increase Software problems and to seek assistance in the use of To-Increase Software; accept responsibility from Licensees to use all reasonable diligence to render the assistance summarized above.

#### **4. Activities of To-Increase**

- 4.1 To-Increase provides regular trainings at its premises and other mutually agreed locations as preparation for the certification of Resellers. Training is also available upon request or via a pre-determined schedule.
- 4.2 To-Increase offers Reseller promotional aids and pre-sales assistance. Reseller may use the To-Increase logo, trademarks and marketing materials for the purpose of marketing To-Increase Software. The parties may as mutually agreed develop joint marketing campaigns. Any deliverable for a marketing campaign that a party creates will be communicated and shared between the parties.
- 4.3 To-Increase may provide consultancy services or additional training in connection with the implementation of To-Increase Software. Upon request of Reseller, To-Increase and Reseller define a timetable for implementation and eventual customization of To-Increase Software. To-Increase may participate in Reseller's first implementation of To-Increase Software to confirm the quality of the implementation services of Reseller.
- 4.4 To-Increase will offer Support to Reseller in connection with Licensee inquiries that Reseller is unable to satisfy. Support is offered to Resellers for Licensees which are current on their Enhancement Plan.
- 4.5 If Reseller applies for a Partner Membership level, all services mentioned in this agreement will be provided according to the Partner Program.

4.6 The following conditions apply to services not covered by the Partner Membership Level or provided to Resellers without a Partner Membership Level. The provided services to Licensee through Reseller by To-Increase will be based on billable hours as rated on the Price List as well. Regarding the consultancy services Parties agree that the minimum number of hours for consultancy services (implementation of the software) per Licensee/deal implementation is 4 hours. Any services provided by To-Increase to Reseller will be restricted to To-Increase Software. Travel time will be calculated at 50% of the consultancy rate. Travel costs and other costs will be invoiced to Reseller based on actual cost.

4.7 To-Increase shall inform Reseller, through the Partner Portal if and when new products, versions, translations and localizations of To-Increase Software are available. The same applies to Major Releases and Service Packs as part of the Enhancement Plan. To-Increase does not represent in any way that any existing functionality will be included in new Major Releases, versions or products. To-Increase shall be under no obligation to continue any To-Increase Software or Enhancement plan or Support related to the To-Increase products and may, in its sole discretion, decide to cease licensing any To-Increase Software at any time.

## 5. Marketing and communication

5.1 Neither party shall make any representation, public announcement, statement, advertisement and the like about or on behalf of the other, except prior written approval of the other party.

5.2 Neither party shall modify or resell the other party's promotional literature, documentation, advertising artwork, names or package design of software provided by, owned by or copyrighted by the other party, except prior written approval by the other party.

5.3 Each party acknowledges that the logo, trademarks, intellectual property rights in or attached to them and all associated goodwill of the other party, are and remain the exclusive property of that party.

5.4 Neither party shall register or apply for the registration of the other party's name, trademarks, logos or anything confusingly similar to them or use any trademark in such a way that confusion might arise as to the relationship of the parties.

5.5 Each party shall apply the appropriate designation when using the logo and/or trademarks of the other party's software, either © (copyright) or ® (registered) or "TM" (trade mark) as designated by the other party.

5.6 Reseller and To-Increase are allowed to refer to the other as its 'Reseller' or as 'To-Increase', 'Business partner' or as 'Supplier', as the case may be. Such references can be made at the website, the boilerplate text in press releases or similar communications, provided they always made clear that such references are made in connection with the resale, distribution or supply of To-Increase Software in the Territory.

5.7 Reseller and To-Increase grant each other a non-exclusive, non-transferable license to use its logo and trademarks on marketing materials, advertisements and in sales presentations when referring to the other party as its "Reseller" or "Supplier" as the case may be. Upon request, each party shall have the right to inspect the manner in which its name and logo have been used and shall have the right to refuse use of its name and logo in a manner that is not reasonably acceptable.

5.8 Nothing in this Agreement shall be construed as limiting in any manner To-Increase's marketing or distribution activities or its appointment of other resellers, dealers, licensees or agents either within or outside of the Territory.

## 6. Fees and invoices

6.1 All prices are exclusive of VAT and other levies imposed by any government and shall be in the currency as listed on the Price List. Such taxes, duties and/or fees are to be paid for by Customer.

6.2 Reseller shall invoice Reseller's Customers for To-Increase Software, Enhancement Plan and other services. Reseller agrees to be solely responsible for the collection of all outstanding amounts due by Customers. Reseller shall bear the entire risk of collection and non-payment of such invoices.

6.3 To-Increase shall submit an invoice to Reseller for each order request for To-Increase Software, Enhancement Plan or other services ordered and approved by To-Increase based on the latest Price List taking the relevant Reseller Margin into account. Any invoices for To-Increase Software shall be paid in advance, unless otherwise agreed. All other invoices shall be due and payable (100%) within fourteen (14) days from invoice date. Any invoiced amount not received within fourteen (14) days after the invoice date shall be subject to an interest charge equal to the Dutch statutory interest. Reseller shall pay To-Increase's costs and expenses (including reasonable attorney's fees) to enforce and preserve To-Increase's rights under this article.

6.4 Fees and expenses due by Reseller under this Agreement may not be withheld or offset by Reseller against amounts owed by To-Increase for any reason.

6.5 To-Increase may change its Price List, the Reseller Margin payable to Reseller, the SLT or the Partner Program at any time. To-Increase shall communicate any change via the Partner Program or directly to the Reseller. Reseller may apply the old prices up to forty-five days after the release of the new Price List. If Reseller does not accept an adjustment of any fees and/or Reseller Margin, Reseller shall be entitled to terminate this Agreement within thirty days of receipt of the notification of adjustment.

- 6.6 In addition to article 7.5, To-Increase is entitled to adjust the prices of the fees payable by Reseller once every year with an amount equal to any increase in the inflation price index for consumers (Consumer Price Index, CPI) published by the Dutch Central Statistical Office (CBS). If price adjustments stay within the boundaries laid down in this clause 7.6 Reseller will not have the right to terminate this agreement or additional services on the grounds of adjustment of prices.
- 6.7 All licenses and other rights will be granted subject to the condition that Reseller has paid any fees associated therewith in full.
- 6.8 Upon notice from To-Increase, Reseller shall forthwith provide To-Increase with copies of Licensee details, signed Licensee Software License Terms, billing records and supporting documentation relating to To-Increase Software licenses, Enhancement Plan, Support, and/or services as may reasonably be requested.
- 6.9 To-Increase may audit the amounts reported and paid to determine if such amounts are accurate and in accordance with this Agreement. If, as a result of such audit, it is determined that Reseller has underpaid, To-Increase shall notify Reseller that it is alleged to have underpaid a specified amount, and if it determined that there was an underpayment, then Reseller shall promptly pay the amount of the underpayment, plus interest equal to one percent (1%) per month. In addition to the rights above, in the event such audit reveals an underpayment of five percent (5%) or more of the total amounts audited has occurred, Reseller shall reimburse To-Increase for the full costs of such audit (including travel expenses). Any such audit shall be conducted during regular business hours at Reseller's facilities and shall not unreasonably interfere with Reseller's business activities.
- 6.10 Reseller shall retain all records specified below for a period of at least five years provided this Agreement is still in effect, and for two years after the expiration or termination of this Agreement, consisting of: records and supporting documentation sufficient to document Licensee details, signed Software License Terms, the amounts ordered and paid or payable under this Agreement, source documents, including vendor invoices, computer tapes (or other similar media), general ledgers, journal entries and supporting documents or schedules, account reconciliations, cancelled checks, applicable tax returns or forms and supporting documents.

## 7. Term and Termination

- 7.1 If this Agreement is closed before 1 July of a particular year, it shall continue in force until the end of the year it is signed by both parties, unless terminated pursuant to Article 7.2 and Article 7.3. If this Agreement is closed after 1 July of a particular year, it shall continue until the end of the year following the year this Agreement is signed by both parties, unless terminated pursuant to Article 7.2 and Article 7.3. Unless terminated in writing by a party, this Agreement shall automatically renew each year for a period of one year. The notice period is 30 days prior to the end of a term.
- 7.2 To-Increase has the right to terminate this Agreement with immediate effect in case:
- Reseller has not paid outstanding and undisputed invoices after it has received a notification to do so and after it has neglected to cure the breach within ten (10) days after receipt of such notification;
  - the Reseller breaches a term of this Agreement and fails to cure the breach within thirty days after it has received a notice of breach from To-Increase which notice specifies the details of such breach;
  - Reseller acts in a way that, in the reasonable judgment of To-Increase, has or may damage its reputation;
  - For whatever reason, To-Increase has to cease the (sub) licensing of To-Increase Software.
- 7.3 Either party may terminate this Agreement if the other party becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceedings under any bankruptcy or insolvency law, whether domestic or foreign, or has wound up or liquidated its business voluntarily or otherwise, and the same has not been discharged or terminated within forty-five (45) days.
- 7.4 In the event of termination, To-Increase shall not, as a result of such termination, be liable to Reseller, for compensation, reimbursement or damages on account of the loss of future profits or anticipated sales or on account of expenditure, inventory, investments, or commitments in connection with Reseller's business or goodwill unless this termination is a result of a breach by To-Increase of a term of this Agreement and To-Increase had failed to cure this breach. Termination will not, however, relieve either party of obligations incurred prior to the termination.
- 7.5 Upon termination of this Agreement by Reseller, To-Increase will continue to fulfil all purchase orders that it has accepted, subject to the terms of this Agreement, up to the date of termination. All orders accepted by To-Increase prior to the date of termination shall be governed by this Agreement.
- 7.6 When this Agreement is terminated:
- all rights and licenses granted to Reseller expire automatically;
  - Reseller shall collect all the copies of To-Increase Software from its staff, the relevant documentation, personal licenses and all other materials, and destroy them or return them to To-Increase;
  - Reseller will cease each and every activity that is relevant to marketing and distributing of To-Increase Software;
  - Both parties shall cease using the trademarks and trade name of each other.

## **8. Non-Compete**

- 8.1 Subject to article 2.5 of this Agreement, Reseller shall not for the duration of this Agreement and for a period of one (1) year thereafter, directly or indirectly develop, market and distribute software that is based on or in competition with To-Increase Software or any other software provided by To-Increase to Reseller, without the prior written consent of To-Increase, which will not be unreasonably withheld.
- 8.2 During the term of this Agreement and for a period of one (1) year thereafter, Reseller shall not employ employees of To-Increase or allow them to work for Reseller in any other way, whether directly or indirectly, without prior written consent from To-Increase.

## **9. Representations and Warranties**

- 9.1 Each party represents that:
- a) it is a corporation registered, duly organized, validly existing, and in good standing, and it is qualified to transact business in all jurisdictions where the ownership of its properties or the nature of its operations requires such qualification;
  - b) it has all requisite power and authority to execute, deliver and perform its obligations under this Agreement; and
  - c) The execution, delivery, and performance of this Agreement have been duly authorized, and this Agreement has been duly executed and is enforceable in accordance with its terms; no approval, authorization, or consent of any governmental authority is required to be obtained or made for it to enter into and perform its obligations under this Agreement.
- 9.2 To-Increase represents that it has the full legal right to provide licenses of To-Increase Software hereunder, and there is, to the best of To-Increase's knowledge, no claim, litigation or proceeding pending or threatened with respect to To-Increase Software, that is to be provided by To-Increase hereunder alleging infringement of any patent or copyright or violation of any trade secret or any other proprietary right of any person.
- 9.3 Where Reseller within a period of six (6) months following the installation of To-Increase Software provides written documentation demonstrating that To-Increase Software does not perform substantially in accordance with the Documentation, and that there is a significant error in To-Increase Software, where an error shall be understood to mean failure to meet the functional specifications stated in the Documentation by To-Increase, and the error can be proved and reproduced, To-Increase shall either at its own choice 1) deliver, free of charge, a new version of To-Increase Software without the error, 2) correct the error free of charge or 3) return the license fee actually paid for the license to To-Increase Software by Reseller. The performance of To-Increase's obligations under this article 9.3 shall be To-Increase's total maximum liability and To-Increase's entire obligation to Reseller as a consequence of all and any errors in To-Increase Software, and Reseller shall have no other claims against To-Increase as a result of such errors. Error correction may also take the form of a statement of procedures or manners of application ("work arounds") whereby the error will have no significant effect on the use of To-Increase Software. This limited warranty is void if failure of To-Increase Software has resulted from, modifications or Customizations made to To-Increase Software by Reseller without To-Increase's prior consent (other than as specifically stipulated in this Agreement) and/or has resulted from accident, abuse or misapplication. Any modification, including modifications to Application Code, of To-Increase Software by anyone other than To-Increase voids the foregoing warranty on any portion of To-Increase Software modified or affected by such modification.
- 9.4 Other than as provided in Clause 9.3 the license which are distributed by Reseller, are granted to To-Increase Software "as-is" with no other warranties, representations, obligations of remedy or rights other than those described above, whether implied or express, statutory, oral or written, including but not limited to any implied warranties of merchantability, against infringement, quiet enjoyment, accuracy of data, system integration, or fitness for a particular purpose. Accordingly, Reseller shall have no right to raise claims against To-Increase if To-Increase Software contains errors and inconveniences not covered by Clause 9.3.

## **10. Limitation of Liability; Indemnification**

- 10.1 To-Increase's total liability for claims under or related to this Agreement shall be limited to compensation for direct and indirect damage up to an amount equal to the amount (exclusive of VAT) paid by Reseller to To-Increase during the preceding twelve months. The total compensation for direct damage shall not, however, in any case exceed Euro 50,000 (fifty thousand Euros).
- 10.2 To-Increase's liability for material damage to objects shall never exceed Euro 50,000 (fifty thousand Euros). To-Increase's total liability for any loss by death or bodily injury shall not exceed Euro 1.000.000,-- (one million Euro).
- 10.3 The limitations mentioned in the preceding paragraphs of this Article shall not apply if and insofar as the damage or injury is the result of intentional acts, intentional omissions or gross negligence by the breaching party.

- 10.4 Each party's liability because of a failure to perform this Agreement shall in all cases only arise if the other Party without undue delay and properly provides a written notice of default to the breaching party, with a reasonable time period for remedying the failure being given and the breaching party still fails to perform and can be blamed for continuing to fail to perform its obligations after that period as well. The notice of default must contain a description of the breach which is as complete and specific as possible, so that the breaching party can respond adequately.
- 10.5 To the extent of any third party claims brought against To-Increase, Reseller shall indemnify To-Increase resulting from:
- a) Any statements made by Reseller or its employees or agents with respect to To-Increase Software, except for statements that are a direct and correct reference to information in the Documentation and marketing materials provided by To-Increase for use in connection with To-Increase Software;
  - b) Any breach or alleged breach by Reseller of any of its obligations covenants or warranties hereunder;
  - c) Reseller shall (at its expense) have the exclusive right to defend or settle any claim, action or allegation brought against it pursuant to Article 10.6, and To-Increase agrees to provide Reseller with: (1) immediate written notice of any such claim, action or allegation; and (2) any reasonable assistance and information as Reseller may reasonably require.
- 10.6 To Increase shall have no responsibility or liability for any Customizations, adjustments or other modifications in the To-Increase Software or any service and support of To-Increase Software performed by Reseller itself or provided by third parties or partners of To-Increase, further To-Increase shall have no responsibility or liability for any defects which are a consequence of external factors,
- 10.7 If any event or circumstance that was not caused by that party (hereinafter Force Majeure Event) prevents a party from complying with any obligation under this agreement, that inability to comply will not constitute breach or result in any liability if (1) that party uses reasonable efforts to perform those obligations, (2) that party's inability to perform those obligations is not due to its failure to (A) take reasonable measures to protect itself against events or circumstances of the same type as that Force Majeure Event or (B) develop and maintain a reasonable contingency plan to respond to events or circumstances of the same type as that Force Majeure Event, and (3) that party complies with its obligations under this agreement. If a Force Majeure Event occurs, the noncomplying party shall promptly notify the other party of occurrence of that Force Majeure Event, its effect on performance, and how long the noncomplying party expects it to last. Thereafter the noncomplying party shall update that information as reasonably necessary. During a Force Majeure Event, the noncomplying party shall use reasonable efforts to limit damages to the other party and to resume its performance under this agreement.

## **11. Confidential information**

- 11.1 Each party shall use the Confidential Information only in compliance with this agreement and shall not disclose or distribute any Confidential Information to any person other than a party, without the other parties' prior written consent. Each party exercise due care and use all reasonable efforts to protect the Confidential Information from unauthorized access, reproduction, use and disclosure and shall promptly notify the other party in writing of any unauthorized use or disclosure of the Confidential Information.
- 11.2 Each Party shall restrict access to the Confidential Information received from the other party to only such employees and other representatives that have a direct need to access the Confidential Information, and only after having assured that such employee or representative is bound by a nondisclosure undertaking which in all material aspects is identical to this agreement.
- 11.3 In the event that one of the Parties requires the assistance of any person other than a party, other than its employees as provided for above, to whom disclosure of any Confidential Information is necessary, the party shall first seek approval from the other party for the disclosure and, when such approval is granted, thereafter enter into a nondisclosure agreement with such a person.
- 11.4 The obligations of each party under this Agreement with respect to each item of Confidential Information disclosed to the other party shall terminate five years after the date of disclosure of such item of Confidential Information, except in the case of software developed by To-Increase, for which such obligations shall not terminate.

## **12. Intellectual property rights**

- 12.1 All intellectual property rights belonging to or embedded in or associated with To-Increase Software, enhancements, developments, translations, localizations and Customizations developed by To-Increase or as developed by Reseller when and only when Reseller is acting upon request, instruction and responsibility of To-Increase, are and remain with To-Increase. The rights to any enhancements, developments, translations, localizations and Customizations developed by Reseller without request, instruction and responsibility of To-Increase are and remain with Reseller.

- 12.2 If To-Increase at any time independently develops any additions to To-Increase Software, or any enhancements, developments, translations, localizations, Customizations that include the same or comparable code or functionality as those developed by Reseller, these developments by To-Increase will not constitute a breach of any intellectual property rights of Reseller. Reseller hereby surrenders the right to file any claim with To-Increase based on infringement of any intellectual property right in relation to any enhancements, developments, translations, localizations or Customizations Reseller developed on To-Increase Software.
- 12.3 Trademarks, copyrights, patents, logo's, descriptions and other intellectual property rights belonging to, embedded in or associated with the business of a party are and remain exclusively owned by that party.
- 12.4 Each of To-Increase and Reseller (each, an "Indemnifying party") shall indemnify the other against any claim, action or allegation brought against the other that the intellectual property rights of an Indemnifying party would infringe any patent, copyright, trade secret, logo or other proprietary rights of any third party and shall at its (the Indemnifying party's) expense, defend or settle any such claim, action or allegation brought against it, provided that the party that is recipient of such claim gives the Indemnifying party immediate written notice of any such claim, action or allegation. The Indemnifying party shall have the exclusive right to defend any such claim, action or allegation and make settlements thereof at its own discretion. The recipient party shall give such assistance and information as the Indemnifying party may reasonably require at the Indemnifying party's expense.
- 12.5 To-Increase shall have no liability for any claim of intellectual or industrial property right infringement based on the (i) use of other than the latest version or release of To-Increase Software, or (ii) use of a modified version by Reseller of To-Increase Software, or (iii) use of To-Increase Software in conjunction with other products, hardware or data, or (iv) use of any To-Increase Software in a manner inconsistent with the specifications and documentation, or (v) use of To-Increase Software that is in breach with this Agreement, if the infringement is (partly) a result of any of these uses.
- 12.6 If any To-Increase Software is finally adjudged to so infringe, or in To-Increase's opinion is likely to become the subject of such a claim, To-Increase shall, at its own choice, either:
- a) Procure for Reseller the right to continue distributing To-Increase Software;
  - b) Modify or replace To-Increase Software to make it non-infringing; or
  - c) Upon return of To-Increase Software, refund the price paid by Reseller for To-Increase Software in question, minus a reasonable usage fee to be determined by To-Increase, in its sole discretion.
- 12.7 This article 12 states the entire liability of To-Increase and Reseller's sole remedy with respect to infringement of intellectual and industrial property rights, and To-Increase shall have no additional liability with respect to any alleged or proven infringement.
- 12.8 Reseller recognizes and agrees that there is no adequate remedy at law for a breach of Sections 11 & 12, that such a breach would irreparably harm To-Increase, and that To-Increase is entitled to equitable relief including, without limitations, injunctions, and without the posting of a bond with respect to any such breach (and may seek equitable relief with respect to any such potential breach) in addition to any other remedies. Reseller will notify To-Increase in writing immediately upon the occurrence of any such breach.
- 13. Personal Data**
- 13.1 Licensors' privacy statement as published on the website <https://www.to-increase.com/privacy-and-cookie-statement-to-increase/>, shall apply for personal data obtained by or transferred to Licensor in the execution of this agreement.
- 14. Miscellaneous**
- 14.1 Except prior written consent of To-Increase, Client shall not transfer or assign its rights or obligations arising under this agreement to any third party. Subject to the foregoing, this agreement will be binding upon and will inure to the benefit of the parties and their respective successors.
- 14.2 All notices or communications under this agreement shall be sent by registered mail to the other party at its address on the header of this agreement, or by electronic mail to [legal@to-increase.com](mailto:legal@to-increase.com). Notices shall be deemed received upon actual receipt.
- 14.3 Any modification made to this agreement shall be set forth in an appendix which shall only be valid when signed by the parties. In the event of conflict, the appendix shall control. A newer appendix shall prevail over older ones.
- 14.4 No waiver of satisfaction of a condition or non-performance of an obligation under this agreement will be effective unless it is in writing and signed by the party granting the waiver.
- 14.5 If any provision of this agreement is held to be unenforceable, then that provision is to be construed by modifying it to the minimum extent necessary to make it enforceable. If an unenforceable provision is modified in accordance with this article, the rest of the agreement is to remain in effect as written.

- 14.6 Reseller acknowledges that because it is not relying on any statements made by To-Increase to Reseller, other than in this agreement, regarding the subject matter of this agreement, Reseller will have no basis for bringing any claim for fraud in connection with any such statements.
- 14.7 The parties shall at all times be independent parties and shall present themselves to all other parties as such. Each party agrees that it is not an agent, employee, franchisee, joint venture or legal representative of the other party. In no event may Reseller subcontract or appoint agents to perform any of its obligations under this Agreement without the prior written consent of To-Increase.
- 14.8 Nothing contained in any general terms and conditions of Reseller, an order request, purchase order or invoice submitted pursuant to this Agreement shall in any way modify the terms or conditions of this Agreement.

**15. Governing Law and Jurisdiction**

- 15.1 This agreement will be interpreted and construed in accordance with the laws of the Netherlands, without giving effect to its principles of conflicts of law. Any disputes arising out of this agreement shall be submitted to the applicable courts of Amsterdam, the Netherlands.
- 15.2 This agreement is not governed by the 1980 UN Convention on Contracts for the International Sale of Goods (CISG).

**For approval**

	To-Increase	Reseller
<b>Name</b>	Luciano Cunha	[add name signatory here]
<b>Title</b>	CEO	[add title here]
<b>Signature</b>		
<b>Signature date</b>		
<b>Legal Check:</b>		

The following Appendices are an integral part of this agreement

Reseller Conditions : Appendix A  
 Amendment to Reseller Agreement : Appendix B