

## License & Maintenance Agreement

### Article 1 Subject of the Agreement

**1.1** Counter Party acquires a non-exclusive, not transferable right of use that can be recalled by Optimizers with immediate effect on the licenses further set forth in Exhibit I for the benefit of simultaneous users.

**1.2** Counter Party may use the software program(s) only for data processing within its own enterprise and, to the extent applicable, within its subsidiaries in the sense of Article 2:24a of the Dutch Civil Code.

### Article 2 Copying and changing

**2.1** Counter Party may not make the software program(s) public and may not copy and/or otherwise multiply or change it. Except for when it is necessary for the use that has been permitted explicitly according to the Agreement.

**2.2** Counter Party is authorized to make ONE back-up copy of the software program(s) for security purposes. The data carrier that contains this copy, shall carry the title of the software program(s), the message that the data carrier contains material protected by copyright as well that Optimizers has reserved intellectual rights to this material.

**2.3** It is never permitted for Counter Party to change in or remove any present identification from the software program(s) with regard to the creator of the confidential character of the software program(s), or any other reference to Optimizers.

### Article 3 Reverse engineering

**3.1** It is not permitted for Counter Party to decompile the software program(s), to multiply the code and/or to translate it or to otherwise subject it to reverse engineering, unless that such would happen in accordance with the rules by law regarding the creation of inter-operability of the software program(s) with other software program(s).

**3.2** Counter Party is obliged to report to Optimizers *in writing* in the last mentioned instance, before proceeding to the activities as set forth in the previous section, with a detailed request for making available of the data which the Counter Party wishes to obtain by means of the activities set forth in the previous section. Counter Party thereby needs to indicate which functionality the software program(s) to be developed shall contain and of which parts of the software program(s) he wishes to be able to dispose over the source code, the one and the other to enable Optimizers whether and under which conditions, Counter Party would be able to acquire the disposal of the required data. Optimizers will respond within a reasonable term in writing to this request.

### Article 4 Version and release policy

**4.1** Only after Counter Party has submitted an explicit request thereto to Optimizer, patches and a maximum of 1 update per year within the version the software supplied by Optimizers are granted, unless agreed differently.

**4.2** After the Counter Party has requested a new version of the delivered software, such shall be supplied by Optimizers within a reasonable term.

**4.3** Three (3) months after the making available of a new version, Optimizers is no longer obliged to the repair of possible defects in the old version.

### Article 5 Confidentiality and assignment

**5.1** Counter Party shall not publish the software program(s), give it for viewing or making it otherwise available to any third party, including own employees who do not necessarily have to work with the software program(s), unless agreed by parties in writing and specifically differently.

**5.2** Counter Party shall not transfer or hand over the software program(s) or any data carrier on which it has been recorded (whether or not as a part of equipment) or the right of use for the software program(s), or to issue (limited) rights thereto to any third party, unless agreed by parties in writing and specifically differently.

**5.3** It is not permitted for Counter Party to assign the rights which it acquires on the basis of this Agreement in any way to a third party, without it having received a permission in writing by Optimizers for this assignment. If and to the extent that permission is granted by Optimizers, conditions may be set for this assignment by Optimizers.

### Article 6 Intellectual property rights

**6.1** Optimizers warrants to Counter Party that the software program(s) and the use thereof granted to Counter Party does not constitute a violation of intellectual property rights and/or similar rights of third parties, and that it is fully authorized to grant the rights set forth in this Agreement. Optimizers safeguards Counter Party for all damage(s) that derive for Counter Party from an alleged violation of such rights of third parties, on the condition that Counter Party immediately reports an alleged violation to and, if and to the extent that Optimizers wishes

so, leaves the defense to such allegation fully to Optimizers and that it will thereby give all required cooperation and information.

**6.2** In case of a violation or an alleged violation as set forth in the previous section, Optimizers has the right to replace or change the software program(s) in such a way that the violation is thereby relieved and that as little as possible, the functional features of the software program(s) are affected as little as possible. If a violation as set forth in the previous section has been determined by a court decision, that has definitively come into force and/or can be executed in the country where Counter Party is located and it is determined that a replacement or change is not possible without a negative impact on the functional features of possibilities of use of the software program(s), then both Parties have the right to dissolve this Agreement.

#### **Article 7 Violations**

**7.1** In case of a violation of the stipulations set forth in the articles 2-5, Counter Party liable for the (consequential) damage(s) incurred and to be incurred by Optimizers as a consequence of the violation made by Counter Party.

#### **Article 8 Duration, termination and audit**

**8.1** This Agreement comes into force on the day that this has been signed by both Parties. The right of use only becomes valid after the amounts agreed for the acquisition of the right of use have been paid in full to Optimizers.

**8.2** This Agreement is entered into for an indefinite period.

**8.3** It can only be terminated in one of the cases set forth in this Article.

**8.4** Optimizers has the right to terminate the present Agreement with immediate effect by means of a notification in writing in case of a violation by Counter Party of one or more of its obligations conform to this Agreement.

**8.5** Optimizers shall not be liable to pay any compensation for damages for such termination, notwithstanding its right to full compensation for damages because of a default in the compliance with the present Agreement.

**8.6** In all cases of termination or dissolution of present Agreement Counter Party is obliged to deliver all copies of the software program(s) and the documentation that are in its possession as well as all reproductions made thereof, within two (2) weeks after termination or dissolution to the address of Optimizers. Furthermore the software program(s) need to be removed immediately after termination or dissolution from all equipment present at the Counter Party of affiliated enterprises. Upon first request of Optimizers, Counter Party is obliged to give its cooperation to an audit by an independent party to be identified by Optimizers, for the purpose of establishing whether the removal as aforementioned has actually taken place. The costs of this audit are for the account of Optimizers, unless the audit establishes that the software program(s) have not, or have not entirely been removed. In that case the costs of the audit are for the account of Counter Party, even when the software program(s), either demonstrable or not, are not or no longer used by Counter Party.

**8.7** Obligations that in view of their nature are destined to last till after termination of this Agreement shall remain in force after termination. Thus termination of this Agreement does explicitly not relieve Parties of the stipulations regarding confidentiality, intellectual property, applicable law and competent court.

#### **Article 9 Liability**

**9.1** Although the software program(s) have been composed with the greatest possible care, Optimizers does not warrant that the software program(s) operate without errors and/or is without omissions. Furthermore Optimizers does not warrant that the software program(s) is/are suitable for the purpose for which Counter Party acquires the rights on the software program(s) as set forth in this Agreement.

**9.2** If and to the extent that the Counter Party defaults in an attributable way in the compliance with its obligation(s), the Counter Party is liable towards Optimizers for compensation for the damage(s), as well as incurred and yet to incur consequential damage.

**9.3** Liability of Optimizers because of a default in the compliance with the Agreement is fully excluded, except for intent or conscious negligence on the side of Optimizers.

**9.4** If and to the extent that the limitation as set forth before is not possible legally, then the maximum compensation for damages for which Optimizers can be held liable shall not be more than the value of the license fees (exclusive of VAT and other levies imposed by the government) that have actually been paid by Counter Party and have been received by Optimizers for the acquisition of the right of use on the software program(s) as referred to in present Agreement.

#### **Article 10 Maintenance**

**10.1** Counter Party has a right to updates and the yearly required licenses for the software by Optimizers and the users belonging thereto.

The right on maintenance is not transferable and will be extended after the expiry date silently under the same terms and conditions each time for a period of one (1) year, unless Counter Party or Optimizers has notified by registered mail no later than sixty (60) days before the end of the contract period that it wished to terminate this Agreement. The right on maintenance commences on the day of installation.

**10.2** The costs for maintenance and support are charged per year and are calculated in accordance with the license and maintenance fees set forth in Exhibit I.

Optimizers does not warrant that the software program(s) will operate without interruptions or defects. If the software program(s) does not comply with the written specifications according to the user manuals and/or the detail design of the software program(s), Optimizers is not liable for possible damage to files and neither for possible consequential damage deriving there from. However, Optimizers obliges itself to restore the possible damaged files. After receipt of a notification of possible defects or disruptions, Optimizers will restore or mend this to the best of its abilities.

**10.3** Optimizers cannot be held liable for variable rates, fees and percentages that need to be input into the program by Counter Party itself, including VAT, BUMA, Vecta Garantiefonds, wages levies and social insurance percentages. The variable percentages already input by Optimizers in the program are pro forma only, from which no rights can be derived. Counter Party remains at all times itself for the inputting and/or checking of the correct percentages.

**10.4** Optimizers cannot be held liable by Counter Party for own damage(s), in particular for enterprise or other consequential damage deriving from or related to the use or not being able to use of Optimizers.

**10.5** Optimizers cannot be held (liable) to disable computer viruses.

**10.6** Optimizers can charge the costs of repair in case of user errors by Counter Party or of other causes not attributable to Optimizers. Restoration of possible lost data is not included under the maintenance.

**10.7** The maintenance does not include activities relating to and/or caused by inexpert use, negligence, lack of alertness, intent, changes of a user nature, changes in the equipment or changes in the program that have not been applied by Optimizers or upon commission of Optimizers. Said activities will be charged to Counter Party separately against the then current rates.

**10.8** The way in which the maintenance is executed, is determined by Optimizers.

**10.9** Counter Party provides Optimizers during the normal office hours, all cooperation for the execution of the maintenance, such as the use of the system insight in the in and output, which relate to the maintenance.

**10.10** Optimizers is always authorized to demonstrate that the software program(s) made available by it are working properly by making a test run on or with the aid of equipment belonging to Optimizers or on equipment indicated by it, respectively software program(s) comparable with the situation at the Counter Party.

**10.11** The media on which the data required for maintenance are provided remain property of Optimizers.

**10.12** During the tenor of this Agreement and immediately following a period of twelve (12) months thereafter, it shall not be permitted for Counter Party to take into employment personnel of Optimizers.

## **Article 11 Consultancy**

**11.1** Consultancy activities are executed against the agreed hourly rate and on the desired location, whereby the minimal duration is 1 hour, while on-site activities on location at the Counter Party shall be executed with a minimal duration of 4 hours.

**11.2** Counter Party is obliged to provide, upon first request, all information and cooperation that Optimizers deems necessary and useful to be able to execute its activities properly.

**11.3** Optimizers warrant the expertise of its (employed) consultants, it being understood that for consultancy activities it shall be obvious that Optimizers has an obligation to *make best efforts* towards Counter Party. **11.4** Optimizers has no obligation to achieve a certain result and is never liable, if it does not achieve the result expected by Counter Party.

**11.5.** Liability of Optimizers is fully excluded regarding (consequential) damages incurred or yet to be incurred by Counter Party as a direct or indirect consequence of consultancy activities, except for intent or conscious recklessness on the side of Optimizers.

**11.6.** Consultancy appointments can be canceled free of charge up to five working days before the scheduled date. After that, 50% will be charged up to one working day before the scheduled date. In case of cancellation on the last working day before the consultation or on the day of the consultation, 100% will be charged.

## **Article 12 Service and support**

**12.1** Support is requested by means of sending an e-mail to [app4sales@optimizers.nl](mailto:app4sales@optimizers.nl), [EDIsupport@optimizers.nl](mailto:EDIsupport@optimizers.nl), [warpsupport@optimizers.nl](mailto:warpsupport@optimizers.nl) or [support@app2track.com](mailto:support@app2track.com).

**12.2** After granting a request for support, it is determined by Optimizers at the beginning whether the request relates to debugging. In that case Counter Party is entitled to support to be provided by Optimizers that leads to repair of that bug, without any costs being charged to Counter Party.

**12.3** If and to the extent that the requested support relates to other activities than those that are aimed at repairing bug(s), Optimizers is authorized to charge Counter Party for these activities on the basis of ex post calculation.

## **Article 13 Prices**

**13.1** If a fixed price has been agreed with Counter Party, then this fixed price shall only relate to the activities set forth in the Agreement and to services of Optimizers. Possible activities and services provided by Optimizers in addition or by way of change thereto upon commission by Counter Party, hereinafter "extra work ", shall if and

to the extent that more than 5% of the agreed fixed price is involved in this, be charged on the basis of ex post calculation to Counter Party. When extra work in the framework of the commission is deemed necessary by Optimizers, then this shall be notified in writing in advance.

**13.2** The following circumstances may give rise to extra work and therewith to settlement, as set forth in section one of this clause:

- a. Extension or change of the analysis, package or demands and wishes of design, after it has been approved by Counter Party.
- b. Demands, wishes, or expectations of Counter Party that have not been made known to Optimizers at the time of the conclusion of the Agreement to their full extent or not completely clear.
- c. Defects and shortcomings in products or services of third parties, that reasonably could not be foreseen by Optimizers, or on which Optimizers can exercise no or little influence.
- d. Shortcoming cooperation by Counter Party in the execution of the Agreement.

**13.3** Counter Party is deemed to have agreed with the execution of extra work and the related costs when Counter Party has let the execution of the extra work take place after the written notification as set forth in section 1 of this article, without indicating that such was not desired.

**13.4** Activities for which no fixed price has been agreed will be charged on the basis of ex post calculation and against the agreed rates to Counter Party. The current rates and travel expenses are as follows or are calculated as follows:

- Daily rate for consultancy: € 1200.00 exclusive of VAT, whereby it shall apply that a day consists of 8 hours of two parts of a day, each of 4 hours; in case of on-site consultation a minimum of one part of a day will be charged.
- The daily rate for project management and interim management amounts to € 1290.00 exclusive of VAT.
- If travel takes place within the borders of the Benelux, 70 cents per kilometer will be charged, whereby the location of Optimizers is regarded as place of departure.
- If travel takes place outside the borders of the Benelux Optimizers is also authorized to charge the costs of airline tickets and € 250.00 per day to Counter Party as compensation for the incurred hotel costs and expenditures.

**13.5** If no rates have been agreed in advance, then the rates will be determined on the basis of the methods customary within Optimizers.

**13.6** Optimizers is authorized to charge in addition to the agreed price for waiting time, if Optimizers cannot execute the activities on the agreed time as a consequence of causes attributable to Counter Party.

**13.7** If in an "indicative price" has been recorded the offer, then the stated amount does not indicate more than a non-binding estimate of the costs.

**13.8** All prices are exclusive of VAT and other levies charged by the government.

**13.9** Optimizers has the right to change the rates. These changes will be brought to the attention of Counter Party before its coming into operation. Counter Party is then authorized within 7 working days after the notification, to terminate the Agreement per the date of coming into force of the change.

## **Article 14 Payment**

**14.1** All prices are exclusive of turnover tax (VAT) and other levies by the government.

**14.2** All invoices shall be paid by Counter Party within 14 days after the date of the invoice and in accordance with the payment conditions stated in the offer.

**14.3** If Counter Party does not pay the due amounts within the agreed term, then Counter Party will be liable to pay, without a notification of default being required, to pay an interest of 1.5 % per month over the outstanding amount. If Counter Party remains in default to pay the amount due after a notification of default in writing, then the claim shall be handed over for collection, in which case Counter Party next to the due total amount is also liable to compensation for out-of-court costs that will amount to 15% of the outstanding amount of the invoice. As such shall also be regarded the costs of lawyers, bailiffs and collection agencies, which costs shall be determined according to the current or usual rates.

**14.4** Optimizers reserves, at all times, the right to, while observing the then current legislation on prices, to change the price valid between the parties, provided that a notification in writing thereto is given ninety (90) days in advance to Counter Party.

**14.5** Irrespective of any other clause of this Agreement Counter Party has the right, when the prices are increased, to terminate this Agreement per the date of the coming into force of the price increase, provided that Counter Party, no later than sixty (60) days before the priced increase coming into force, notifies by registered mail, not to agree with the price increase. This does not apply for the normal price increases according to the index rate C.P.I. (Consumer Price Index) according to the Centraal Bureau voor de Statistiek.

**14.6** The Counter Party will pay in legal Dutch tender, without deduction or set-off on the basis of Article 6:127 Dutch Civil Code, without suspension on the basis of alleged shortcoming by Optimizers and without the possibility that the Counter Party may block its payment obligation by a seizure of the claim under itself as set forth under Dutch law or otherwise.

#### **Article 15 Returns and exchange of modules and/or users**

**15.1** The returning of modules and/or users is not permitted. The exchange of modules is only possible after consultation with Optimizers.

#### **Article 16 Termination of current contracts**

**16.1** For the current contracts the following terms for notification of termination shall apply for Counter Party. Contracts with a duration of 1 year or longer: 60 days cancellation period before the end of the maintenance or subscription period.

**16.2** Contracts should always be cancelled by registered mail or by bailiffs exploit. In case of non timely cancellation, a contract is extended automatically under the same terms and conditions for a period of one (1) year.

#### **Article 17 Force Majeure**

**17.1** If by Force Majeure or any other cause outside the control of Optimizers, such as in particular, strike, lock out, fire, riots, public disorder and so forth, Optimizers cannot commence, complete or continue one or more of its obligations deriving from the commission or a maintenance contract, then the execution of the concerned part of the commission or the maintenance contract shall be suspended. Optimizers shall notify Counter Party as soon as possible of such fact or such a circumstance.

**17.2** As Force Majeure shall be regarded too unforeseen circumstances regarding persons and/or materials of which Optimizers makes use or is in the habit of making use during the execution of the commission, which are of such nature that the execution of the commission becomes impossible, or so cumbersome and/or disproportionately costly, that prompt compliance cannot reasonably be demanded. As such circumstances will be regarded in particular government measures, traffic and transport disruptions, disruptions in the delivery of products and aides, industrial conflicts and complications unforeseen by both Parties and so forth.

#### **Article 18 Dissolution**

**18.1** If Counter Party remains in default concerning with payment or any other obligation under the commission or the maintenance contract, Optimizers is authorized to, notwithstanding a possible obligation of the Counter Party to pay damages, to proceed without intervention of the courts, to partial or entire dissolution of the Agreement, as well as to repossession of the delivered goods.

**18.2** The right to dissolution and repossession set forth in the previous section, will also be available to Optimizers, if the Counter Party deceases, is placed under supervision, should enter into liquidation. Is declared bankrupt, gets a provisional stay of payment or if a seizure under the Counter Party takes place.

#### **Article 19 Cancellation**

**19.1** If the Counter Party wishes to cancel the concluded Agreement, the 30% will be charged as cancellation costs, notwithstanding the right of Optimizers to full compensation for damages, including missed profits.

**19.2** Cancellation is no longer possible, after Optimizers has made an actual start with the execution of the Agreement concluded between the Parties.

#### **Article 20 Complaints**

**20.1** A possible complaint is only treated by Optimizers, if it is submitted in writing to Optimizers within 14 days after the date of sending the data or documents to which the complaint relates, or within 14 days after discovery of the defect has reached Optimizers in writing.

**20.2** Complaints about invoices should also be submitted in writing, no later than within 21 days after the date of the invoice.

**20.3** After the expiration of these terms, the Counter Party is deemed to have approved the activities, respectively the invoice. After that, Optimizers will no longer treat complaints.

**20.4** If the complaint is regarded as founded by Optimizers, then Optimizers is solely obliged to execute the agreed activities still.

**20.5** Only if and to the extent that the complaint is regarded to be properly founded, this will suspend the payment obligation of the Counter Party, till the moment that the complaint has been resolved.

#### **Article 21 Right of suspension**

Optimizers is authorized to suspend the further compliance with its obligations, till the moment on which the Counter Party has fully complied with its (due) obligation.

#### **Article 22 Right of retention**

Optimizers always has the right to retain anything it keeps under it from the Counter Party under any title, till the moment that the Counter Party has paid all it is due to Optimizers, or has provided sufficient surety. If Optimizers feels necessitated to exercise its right of retention, then it has also the right to charge the Counter Party for all related costs, including storage costs.

**Article 23 Retention of ownership**

**23.1** Delivered goods remain property of Optimizers, till the moment on which the Counter Party has paid for all the deliveries or deliveries still to be made and activities under the Agreement, including interest and costs. In case of a stay of payment, bankruptcy, suspension of payment, liquidation of the Counter Party, of death when the Counter Party is a natural person, Optimizers is authorized to cancel the order without notification of default or intervention of the courts in its entirety or in part and to claim back the unpaid part of the delivered goods. Despite cancellation and repossession Optimizers retains the right to full compensation for loss or damage(s). In these instances each claim by Optimizers on the Counter Party shall be payable direct and in full.

**23.2** The Counter Party is obliged to keep all goods delivered under the right of retention of ownership and to treat it with the necessary care and recognizable as Optimizers' property and to insure it against all customary risks.

**23.3** Optimizers always has the right to remove or have the goods delivered removed under the retention of ownership, if the Counter Party does not comply with its obligations towards correctly. The Counter Party shall provide, at Optimizers' first request in this matter, all necessary cooperation and to grant unrestricted access to Optimizers or to the persons/aides employed by it.

**23.4** The goods may not be given as lien/surety and cannot serve as collateral for a claim of a third party.

**Article 24 Applicable law and disputes**

**24.1** The present Agreement and further agreements related to the present Agreement are governed by the Laws of the Netherlands. Disputes deriving from this Agreement shall be presented to the competent court in the court district where Optimizers is located.

**24.2** In case of a dispute, the most eligible of Parties shall notify the other Party in writing that a dispute has arisen and summarily states what the dispute consists of in the view of that Party.