

Software Subscription License Agreement

1. Definitions

- 1.1 **Affiliate:** Shall mean any legal entity that a party hereto owns, that is owned by any party hereto, or that is owned by a legal entity that is under common ownership with any party hereto. As applied in this definition, ownership shall be construed to be legal possession of greater than fifty percent (50%) of the shares, interest in, or voting rights in an entity.
- 1.2 **Application Code:** Shall mean the code to the application, i.e. the specific functions, forms, tables and reports which form a part of the e-Con Solutions Software.
- 1.3 **Server:** Shall mean an electronic entity upon which the data and software of the e-Con Solutions Software are stored.
- 1.4 **Subscription:** a license model under which the software is licensed for a limited period as further described down this document.
- 1.5 **Documentation:** Shall mean all and any electronic and written aids and specifications developed by e-Con Solutions in relation to the e-Con Solutions Software, for which the Licensee has acquired the right of use from time to time, and any descriptions developed by e-Con Solutions in relation to the e-Con Solutions Software.
- 1.6 **Users:** Shall mean persons such as employees, contractual workers or third parties working for or with the Licensee or the Licensee's Subsidiaries which have been authorized by the Licensee to use the e-Con Solutions Software in their work for the Licensee or the Subsidiary, and for which the Licensee has acquired and paid for the right of use to the e-Con Solutions Software.
- 1.7 **License Files/Codes:** Shall mean the files/codes which, like a key, open the e-Con Solutions Software giving the Licensee access to use the e-Con Solutions Software.
- 1.8 **Software Subscription License Agreement:** Shall mean this Software Subscription License Agreement issued by e-Con Solutions.
- 1.9 **Subsidiaries:** Shall mean the companies controlled by the Licensee by ownership of more than 50% of the shares or the voting rights in such companies for which the Licensee has acquired and paid for the right of use to the e-Con Solutions Software, and which have been listed in this Software Subscription License Agreement.
- 1.10 **Reseller:** Means the company that sells the e-Con Solutions Software to the Licensee.
- 1.11 **e-Con Solutions:** Shall mean e-Con Solutions BV.
- 1.12 **Enhancement Plan:** Shall mean new Major Versions, Minor Versions, Service Packs or Hot Fixes of the Software which e-Con Solutions may release. New Major Versions, Minor Versions, Service Packs or Hot Fixes of the software will be delivered with release notes, documentation, upgrade software and upgrade documentation for an upgrade from the previous released Major Version, Minor Version, Service Pack or Hot Fix.
- 1.13 **Support Plan:** Shall mean technical support to Licensee's technical support inquiries. This support will be provided by the reseller.
- 1.14 **Applicability of Defined Terms**
- 1.14.1 Where the context so admits, any reference to the singular includes the plural, any reference to the plural includes the singular, and any reference to one gender includes all genders.
- 1.14.2 In this Software Subscription License Agreement, a reference to a Clause is a reference to a Clause in this Software Subscription License Agreement.
- 1.14.3 The Headings of this Software Subscription License Agreement are for convenience only and shall not constrain or affect its construction or interpretation in any way whatsoever.
- 1.15 **Certain Additional Terms**
The provision of Product/Program Enhancements and Technical Support is conditional on the following:
- 1.15.1 The Licensee shall provide e-Con Solutions with access to its personnel and its equipment as reasonably requested. This access must include the ability to connect to the equipment on which the e-Con Solutions Software is operating and to obtain the same access to the equipment as those of the Licensee's employees having the highest privilege or clearance level. e-Con Solutions will inform Licensee about the required VPN configuration and Licensee is responsible for implementation of the configuration;
- 1.15.2 The Licensee shall provide adequate supervision, control and management of the use of the e-Con Solutions Software. In addition, the Licensee shall implement procedures for the protection of information and the implementation of backup facilities in the event of errors or malfunction of the e-Con Solutions Software;

- 1.15.3 The Licensee shall maintain a current backup copy of all programs and data;
- 1.15.4 The Licensee personnel shall be properly trained in the use and application of the e-Con Solutions Software;
- 1.15.5 The Licensee shall provide e-Con Solutions access, at its expense, to the World Wide Web and data; and,
- 1.15.6 The Licensee's personnel must be properly trained in Database administration, Database management, Microsoft Software and e-Con Solutions Software.

e-Con Solutions is the owner of various software products used in connection with Microsoft Dynamics software. Now therefore, in consideration of the foregoing premises and of the covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

2. Scope of the License

2.1 License Grant

- 2.1.1 e-Con Solutions hereby grants to the Licensee, non-assignable, non-transferable and non-exclusive right to use the e-Con Solutions Software on only the number of Servers specified on page 2 (see **"E-CON SOLUTIONS SOFTWARE SOLUTIONS"**) for the period of the Subscription.
- 2.1.2 The provisions of this Software Subscription License Agreement contained herein shall come into force starting at the first day of the month after Licensee's written consent.
- 2.1.3 The Licensee is granted the right to use the e-Con Solutions Software for the number of Users specified on page 2 (see **"E-CON SOLUTIONS SOFTWARE SOLUTIONS"**) Enhancement and Support Plan(s) are included into this Software Subscription License Agreement. The Licensee shall have no right to grant access to the Licensee's or any third party's data by means of the e-Con Solutions Software.
- 2.1.4 The Subscription fee has to be prepaid
- 2.1.5 e-Con Solutions shall invoice Licensee the monthly Subscription fee at the first working day of the month prior to the subscription month, for the acquired subscription of the computer software specified on page 2 (see **"E-CON SOLUTIONS SOFTWARE SOLUTIONS"**), which have been integrated and delivered by e-Con Solutions as a part of e-Con Solutions's computer software program.
- 2.1.6 Where the Licensee exceeds the payment terms of the monthly subscription fee more than two times, it shall be deemed breach of this Software License Agreement, and such breach shall entitle e-Con Solutions to invoice Licensee the monthly subscription fee 6 months upfront. Continuous exceeding of payment terms can lead to denial of access to the e-Con Solutions Software.
- 2.1.7 The Licensee is granted the right to increase or decrease the e-Con Solutions Software components specified on page 2 (see **"E-CON SOLUTIONS SOFTWARE SOLUTIONS"**) anytime during the subscription period. After the Licensee has added new functionality or Users, the subscription fee stated herein shall be changed accordingly and invoiced the first day of the month in which such change took place. After the Licensee has decreased the functionality, the subscription fee stated herein shall be changed accordingly and invoiced the month after such change took place.
- 2.1.8 e-Con Solutions has the right to apply an annual inflation rate to the Subscriptions fees. This rate will never exceed the Dutch Consumer Price Index of (CPI) established in August of the previous calendar year. <http://www.inflation.eu/inflation-rates/the-netherlands/inflation-the-netherlands.aspx>
- 2.1.9 In case of a change of Subscription fees, e-Con Solutions will inform the Licensee three months prior to the change being effectuated.
- 2.1.10 To the extent that the Licensee permits the users, to access and use the e-Con Solutions Software as stated in Clause 2.1.3, it shall be the sole responsibility of the Licensee to ensure that the stated users do not violate the terms and conditions of this Software Subscription License Agreement, and that the Subsidiaries accept in a legally binding way to be bound by the terms and conditions stated in this Software Subscription License Agreement prior to granting the Subsidiaries access to the e-Con Solutions Software. Where the Licensee fails to fulfill this obligation, it shall be deemed breach of this Software Subscription License Agreement, and such breach shall entitle e-Con Solutions to terminate this Software Subscription License Agreement for cause, cf. Clause 10.2.1, and pursue all remedies available to it.
- 2.1.11 The Licensee's right to use the e-Con Solutions Software (or any intellectual property of e-Con Solutions or any of its affiliates associated therewith) does not include any license, right, power or authority to (a) create derivative works of the e-Con Solutions Software in any manner that would cause the e-Con Solutions Software

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2.1.12 The subscription may be terminated at any moment by the both parties as per the terms stated in clause 10.

2.2 **Functions**

2.2.1 The e-Con Solutions Software is a standard product, and it shall be the responsibility of the Licensee alone to ensure that the functions in the e-Con Solutions Software fulfill the Licensee's requirements.

2.2.2 The Licensee shall have the right to adjust or otherwise modify the Application Code of the e-Con Solutions Software to the extent that such adjustment or modification is required for the use of the e-Con Solutions Software stipulated in this Software Subscription License Agreement, and to the extent that the Licensee has acquired and actually paid for the tools to perform such adjustment or modification where this is required by e-Con Solutions.

2.3 **Upgrades**

2.3.1 The licensee can acquire Upgrades during the subscription period to the extent that Upgrades are issued by e-Con Solutions.

2.3.2 In connection with the implementation of updates, e-Con Solutions shall not represent or warrant that the Licensee will be able to make full use of any adjustments or other modifications created as components in the Application Code of the e-Con Solutions Software.

2.4 **Permitted Copying**

2.4.1 The Licensee shall have the right to make copies of the e-Con Solutions Software for the following purposes only: 1) copies for archival or backup purposes, 2) one (1) copy for development and test purposes and 3) copies of the e-Con Solutions Software where, and only to the extent that the right to make such copies is stipulated by mandatory, statutory legislation, and the Licensee shall comply with such legislation in all respects.

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3.2 The Licensee shall not break or change any License Files/Codes. Nor shall the Licensee change or remove any marks and/or notices concerning copyright, trademarks or other rights, or references hereto stated in the e-Con Solutions Software or on the medium upon which the e-Con Solutions Software may have been delivered.

3.3 The Licensee shall not reverse engineer, disassemble or decompile the e-Con Solutions Software, except where and only to the extent that such operations are permitted according to mandatory, statutory legislation and the Licensee shall comply with that legislation in all respects.

4. **Infringement of Third Party Rights**

4.1 If a third party objects to the Licensee's use of the e-Con Solutions Software based on the claim that the use of the e-Con Solutions Software infringes such third party's intellectual property right (hereinafter referred to as "Infringement Claim"), e-Con Solutions will indemnify, defend and hold Licensee harmless from and against any liabilities, damages, costs and expenses (including reasonable expert witness fees and attorney's fees) incurred by Licensee in connection with any claim, action, proceeding or suit alleging that the e-Con Solutions Software or any intellectual property infringes any patent, copyright, trade secret, logo or other intellectual property or proprietary rights of Licensee or any third party; and e-Con Solutions shall, at its expense, defend or settle any such claim, action, proceeding or suit brought against Licensee, provided that Licensee promptly 1) notifies e-Con Solutions in writing of the Infringement Claim as soon as it becomes aware of such

Infringement Claim, 2) allows e-Con Solutions to fully control the defense and any related settlement negotiations, and 3) cooperates with e-Con Solutions in the defense and any related settlement negotiations by providing e-Con Solutions with appropriate information and assistance needed for such defense or settlement.

Where the terms and conditions in the preceding Clause under 1) to 3) are not fulfilled, e-Con Solutions shall in any event be entitled, but not obligated, to defend the Infringement Claim at its expense, and upon notifying the Licensee that it intends to do so, e-Con Solutions shall be irrevocably authorized by the Licensee, to the extent legally possible, to assume the defense of the legal suit or proceedings brought forward against the Licensee, and may institute proceedings or enter into settlements concerning the Infringement Claim. The Licensee shall provide e-Con Solutions with appropriate information or assistance for such defense or settlement.

4.2 In the event of an Infringement Claim, e-Con Solutions shall be entitled to either: 1) obtain the continued right for the Licensee to use the e-Con Solutions Software, 2) bring the infringement to an end by modifying the e-Con Solutions Software or replacing the e-Con Solutions Software with other software which, essentially, possesses the same functions as the affected e-Con Solutions Software, or 3) terminate this Software Subscription License Agreement with written notice and pay to the Licensee an amount equal to the subscription fee actually paid for the license to the e-Con Solutions Software by the Licensee. e-Con Solutions shall only be obliged to pay the stated amount to the Licensee if the Infringement Claim is actually raised against the Licensee within a period of five (5) years following the date of the Licensee's signature of this Software Subscription License Agreement. If an Infringement Claim is raised against the Licensee after the stated period has expired, e-Con Solutions shall be entitled to terminate this Software Subscription License Agreement without payment of any amount to the Licensee. The performance of e-Con Solutions' obligations under this Clause 4.2 shall be e-Con Solutions' total aggregate liability and e-Con Solutions' entire obligation to the Licensee as a consequence of all and any Infringement Claims, and the Licensee shall have no other claims against e-Con Solutions as a result of such Infringement Claim. Upon termination of this Software Subscription License Agreement, the Licensee shall promptly cease using the e-Con Solutions Software and fulfill the terms and conditions connected to termination as stated in Clause 10.1.1.

4.3 The limited warranty stated in Clause 4.1 and 4.2 is void if the Infringement Claim has resulted from accident, abuse or misapplication. Any modification of the e-Con Solutions Software by anyone other than e-Con Solutions voids the foregoing warranty on any portion of the e-Con Solutions Software modified or affected by such modification.

5. Limited Warranty

5.1 Where the Licensee within a period of six (6) months following the Licensee's signature of this Software Subscription License Agreement provides written documentation demonstrating that the e-Con Solutions Software does not perform substantially in accordance with its electronic user documentation, and that there is a significant error in the e-Con Solutions Software, (i.e. an error characterized by the fact that one or more of the Licensee's vital business functions cannot be carried into effect owing to the fact that the error renders the e-Con Solutions Software inoperable), e-Con Solutions shall either 1) deliver, free of charge, a new version of the e-Con Solutions Software without the error, 2) correct the error free of charge or 3) return the subscription fee actually paid for the license to the e-Con Solutions Software by the Licensee. The performance of e-Con Solutions's obligations under this Clause 5.1 shall be e-Con Solutions's total maximum liability and e-Con Solutions's entire obligation to the Licensee as a consequence of all and any errors in the e-Con Solutions Software, and the Licensee shall have no other claims against e-Con Solutions 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 Licensee's use of the e-Con Solutions Software. This limited warranty is void if failure of the e-Con Solutions Software has resulted from accident, abuse or misapplication. Any modification of the e-Con Solutions Software by anyone other than e-Con Solutions voids the foregoing warranty on any portion of the e-Con Solutions Software modified or affected by such modification.

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7. EXCLUSION OF LIABILITY

- 7.1 WHERE ANY LIABILITY HAS BEEN LIMITED IN THIS SOFTWARE LICENSE AGREEMENT, SUCH LIMITATION SHALL HAVE EFFECT TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. IN SOME JURISDICTIONS, MANDATORY, STATUTORY LEGISLATION DOES NOT ALLOW SUCH EXCLUSION OR LIMITATION OF LIABILITY WHICH MAY ENTAIL THAT THE LIMITATIONS STATED HEREIN DO NOT APPLY TO THE LICENSEE, EITHER IN WHOLE OR IN PART.
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- 8.1 Neither party shall be held liable for any damage sustained by the other party as a direct or indirect consequence of the non-performing party being delayed, prevented or hindered in the performance of its obligations under this Software Subscription License Agreement as a result of a force majeure situation. Force majeure situations include war and mobilization, catastrophes of nature, strikes, lock-out, fire, damage to production plant, import and export regulations and other unforeseeable circumstances beyond the control of the party concerned.

9. Transfer

9.1 By the Licensee

- 9.1.1 The Licensee shall have no right to sell/rent out/lend or in any other way transfer or assign the right to use the e-Con Solutions Software or any right or obligation under this Software Subscription License Agreement to any third party.

9.2 By e-Con Solutions

- 9.2.1 e-Con Solutions reserves the right to transfer its rights and obligations under this Software Subscription License Agreement in whole or in part to a third party.

10. Termination

10.1 By the Licensee

- 10.1.1 The Licensee shall have the right to terminate this Software Subscription License Agreement with prior written notice of one (1) month to e-Con Solutions. Therefore, e-Con Solutions shall invoice Licensee the last monthly subscription fee for the complete calendar month after receipt of the foregoing consent. The Licensee shall not

be entitled to a refund of the paid subscription fee upon such termination. Upon such termination, the Licensee shall promptly cease using the e-Con Solutions Software and promptly delete and erase and destroy the e-Con Solutions Software, including all and any copies thereof, unless otherwise stipulated by mandatory, statutory legislation, and the Licensee shall comply with such legislation in all respects.

10.2 **By e-Con Solutions**

10.2.1 In the event of the Licensee's material breach of this Software Subscription License Agreement or the Licensee's breach of Clause 2.1.9, e-Con Solutions shall have the right to terminate this Software Subscription License Agreement immediately with written notice and shall have all remedies available at law or in equity available to it. In such case, the Licensee shall immediately cease using the e-Con Solutions Software and promptly delete, erase and destroy the e-Con Solutions Software, including all and any copies hereof as stated in Clause 10.1.1. In the event of termination under this Clause, e-Con Solutions shall have no obligation to refund any paid subscription fees whatsoever.

11. **Validity and Severability**

11.1 If any provision of this Software Subscription License Agreement is held to be illegal, invalid or unenforceable, such provision shall nonetheless be enforced to the fullest extent permitted by applicable law, so as to reflect the original intent of the parties, and such provision shall not affect the legality and validity of the other provisions.

12. **Survival Clause**

12.1 Any terms of this Software Subscription License Agreement which, by their nature, extend beyond the day this Software Subscription License Agreement comes to an end shall remain in effect and thus bind the parties.

13. **Waiver**

13.1 If either party does not exercise, or delays exercising, a right or remedy provided by this Software Subscription License Agreement or by law, that failure or delay will not amount to a waiver of that right or remedy by that party. The fact that a party does exercise a right or remedy provided by this Software Subscription License Agreement or by law does not prevent that party from exercising that right or remedy again, or exercising another right or remedy.

14. **Applicable Law and Jurisdiction**

14.1 For Licensees whose principal place of business is not in North America, this Agreement will be interpreted and construed in accordance with the laws of the Netherlands and except as stated in Clause 14.2 any dispute, controversy or claim arising out of or in connection with this Agreement or the breach, termination or invalidity thereof, shall be submitted to the "Stichting Geschillen oplossing Automatisering (Automation Disputes Board) te Wassenaar, the Netherlands, in accordance with their then current procedures.

Each party waives all defenses of lack of personal jurisdiction and forum non-convenience. Process may be served on either party in the manner authorized by applicable law or court rule. In any action to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs and other expenses.

14.2 Clause 14.1 does not prevent e-Con Solutions from seeking or obtaining injunctive relief or other extraordinary relief in any courts with jurisdiction. To the extent permitted by applicable law, e-Con Solutions may take concurrent proceedings for injunctive relief in any number of jurisdictions.

15. **Acceptance**

15.1 By signing this Software Subscription License Agreement, the Licensee hereby expressly accepts that any Licensee-specific information received by e-Con Solutions on the basis of the contractual relationship regulated by this Software Subscription License Agreement, i.e. concerning the e-Con Solutions Software, including Serial No., Nace Code, Name of Licensee, Address, Tel. No., Fax No., E-mail Address, URL, Contact Name and the name of the Licensee's supplier, may be used internally within the e-Con Solutions only for the purpose of internal administration of the license to the e-Con Solutions Software.

16. **Other General Terms**

16.1 **Priority**

This Software Subscription License Agreement, which the Licensee has received in hardcopy and signed in connection with the Licensee's purchase of the e-Con Solutions Software, shall be the legally binding version. In the event of any conflict between the contents of this Software Subscription License Agreement and the contents of the said Software Subscription License Agreement implemented electronically in the e-Con Solutions Software, the Software Subscription License Agreement signed in hardcopy shall prevail.

16.2 **Entire Agreement**

This Software Subscription License Agreement (together with all Appendices) set forth the entire understanding between the parties and supersedes any and all oral or written agreements or understandings between the parties as to the subject matter of this Software Subscription License Agreement.

16.3 **Amendments**

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16.4 **Independent Contractors**

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16.5 **Execution in Counterparts**

This Software Subscription License Agreement may be executed in counterparts, each of which will be deemed an original, but all of which taken together will constitute but one and the same instrument.

16.6 **Notices**

All notices, requests or other communications required or permitted to be given hereunder shall be sent by registered mail, postage prepaid, facsimile, or electronic mail to the other party at its address set forth below or to such other address as may from time to time be notified by either party to the other. Notices shall be deemed received upon actual receipt.