

# Partner Agreement

This Partner Agreement is between the below mentioned Parties:

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

## Background

To-Increase is in the business of developing, selling, implementing and supporting software solutions including add-ons and verticals for Microsoft Dynamics Software. To-Increase selects, manages and coordinates Partner(s) for To-Increase software within an assigned territory and grants Partner the right to provide licenses concerning To-Increase software to its customers as agreed upon in separate Software agreements between the Partner and its customers. Partner may further purchase consultancy services for either Partners own use or for Licensee. If Partner orders any consultancy services for Licensee, the services provided by To-Increase will be delivered to Partner in accordance with an agreement between Partner and To-Increase, Partner shall be responsible for having the required agreement in place with the Licensee.

The Parties therefore agree as follows:

## 1 Definitions

- 1.1 **"Agreement"**: this 'Partner Agreement' and it's appendices (if any).
- 1.2 **"Application Code"**: all or part of the source code of the To-Increase Software.
- 1.3 **"Confidential Information"** means this Agreement, software developed by To-Increase, 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.
- 1.4 **"Licensee Contract"**: means the contract entered between the Partner and Partners customer regulating the Partners sale and delivery of To-Increase Software to Partners customer.
- 1.5 **"Customization"** means a modification to To-Increase Software specially developed by Partner on behalf of a specific Licensee.
- 1.6 **"Documentation"** the end user system help-files and written specifications developed by To-Increase as included in To-Increase's Software or released by To-Increase in relation thereto (and as updated by To-Increase at its discretion on one or more occasions), for which customers has acquired a license right.
- 1.7 **"Enhancement Plan"**: means the right for the Licensee to get new major versions or service packs for the To-Increase Software which To-Increase makes available on one or more occasions for those parts of the To-Increase Software that end-customer acquired and actually paid for, including available documentation.

- 1.8 **"Licensee"** the end user entity having ordered To-Increase's Software through a Licensee Contract from Partner regulated by separate Software License Agreement
- 1.9 **"Update"** To-Increase's smaller service packs, a correction of an Error, or any other changes to To-Increase Software (including potentially a new version thereof) made available by To-Increase to Licensee by being uploaded in Licensee's asset library in Microsoft Dynamics.
- 1.10 **"Partner Membership Level"** means the different levels of partnership as defined in the Partner Program specified in Appendix A with different prices, support packages and other advantages associated to it.
- 1.11 **"Partner Program"** means the at all time applicable program that To-Increase developed for Partners which specifies and describes the rights, practices, obligations, processes and procedures related to Partners in connection with their partner status (as specified in Appendix A). The Partner Program is available at <https://www.to-increase.com/to-increase-partner-network>.
- 1.12 **"Price List"** means the latest version of To-Increase's official Licensee price list, which is available on request.
- 1.13 **"Partner Margin"** means a percentage from the Software Subscription and/or perpetual License on the Price List to be retained by Partner when ordering To-Increase Software. Partner Margins are specified in Appendix A.
- 1.14 **"Partner"** means a company who is allowed to sell To-Increase Software and renewals on Enhancement Plan. The Partner type is specified in Appendix A.
- 1.15 **"Software License Terms" or "SLT"** means license terms that Partner must use towards Licensees when licensing To-Increase Software.
- 1.16 **"Support Portal"**: shall mean here: <https://support.to-increase.com/ticsm>
- 1.17 **"Effective Date"** the date this Agreement is approved, cf. article 7 of this Agreement. At the Effective Date, this Agreement shall take effect.
- 1.18 **"Support"** To-Increase will offer support services to Partner as described in the Partner Program in Appendix B. Furthermore, the Partner and To-Increase can enter a separate support agreement which will provide Partner with more extensive support service.
- 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.
- 1.20 **"Unit of Measure"** means the units of measures for license keys (and license size) as defined in Appendix B.

## 2 Partner rights

- 2.1 To-Increase grants Partner a non-exclusive and non-transferable right to market and distribute To-Increase Software only direct to Licensees. The grant of rights is restricted to the territory mentioned in Appendix A.
- 2.2 Partner is granted the rights and obligations associated to the Partner level agreed upon between the Parties in accordance with the Partner Program specified in Appendix A. Terms and conditions for the Partner Program are further defined in Appendix B. The grant is subject to Partner fulfilling the obligations in this Agreement and the Partner Program.
- 2.3 Partner may order To-Increase Software as described in the Partner Program from To-Increase for the amount listed on the Price List minus the Partner Margin. Partner may order Support from To-Increase as further described in Appendix B.
- 2.4 To-Increase will grant Partner a limited license of To-Increase Software exclusively for use in connection with the promotion, sale, implementation and support of To-Increase Software within the limits of the SLT. This license expires immediately on the termination or expiration of this Agreement. The Licensee Contract shall specify the amount of Units of Measure and the server to be used. The amount of Users specified in the Licensee Contract has to be equal to the amount of Microsoft Dynamics users.
- 2.5 Partner may obtain the following services from To-Increase: Support for its Licensees, training and pre-sales support as further described in Appendix B.
- 2.6 If Partner requires further consulting services from To-Increase this shall be agreed upon in a separate agreement between the Parties.

## 3 Responsibilities of Partner

- 3.1 Partner 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 Support Portal.
- 3.2 Partner 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. Partner shall comply with all laws applicable to Partner's business and the performance of its obligations under this Agreement, including identifying and procuring permits, certificates, approvals and inspections that apply to Partner or Partner personnel. Partner shall use commercially

reasonable efforts to refrain from taking any action or failing to act so that Partner and/or To-Increase are not compliant with any laws applicable to the Partner (e.g. satisfying VAT, or Sales tax obligations relating to licenses or services). If a charge of non-compliance by Partner of any such laws occurs, Partner shall promptly notify To-Increase of such charge in writing.

- 3.3 Partner represents that it is acting on its own behalf and is not acting as an agent for or on behalf of any third Party. Partner 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. Partner 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. Partner shall not conduct business in a manner that reflects negatively on To-Increase or To-Increase Software.
- 3.4 Partner 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 In order for the Partner to qualify as a Certified Partner, the Partner must within six months of the start date of this Agreement, train the number of Full Time Employee's (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. Such training will be offered by To-Increase twice a year as a remote session, and Partner shall be entitled to submit 2 employees for the one training session per year. Partner shall maintain the number of trained FTE's for the duration of this Agreement, and Partner shall as a minimum ensure the FTE's are trained bi-yearly in order to uphold the certification. A Partner may market itself as a certified To-Increase Software installer and trainer provided Partner has satisfactorily completed and maintains the minimum level of training specified by To-Increase in the Partner Program for such designation. 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 Partner shall pay all fees related to To-Increase Software, Support, consultancy, training, pre-sales support and other services. To-Increase shall also submit an invoice to Partner each year at the renewal date of this Agreement for prolongation of participation in the Partner Program, based on the Partner Membership Level that Partner signed up for as well as supplemental purchases of membership packages, professional services and similar.
- 3.7 Partner shall use reasonable efforts to promote and market To-Increase Software and services. Partner shall perform its activities in a professional manner and in accordance with industry standards. Partner may use materials provided by To-Increase in conducting sales and pre-sales activities. Partner 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, Partner shall quarterly 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 Partner shall install, implement and support (as defined below in article 3.11) To-Increase Software in a manner that is consistent with industry standards and practices.
- 3.10 Partner shall enter a Licensee Contract directly with Licensee for the delivery of To-Increase software. Such Licensee Contract shall include:
- Specification of the number of Units of Measures purchased by the Licensee
  - Partner shall be responsible for applying the correct Units of Measures (based on Appendix B)
  - Partner shall be responsible for specifying the correct number of Units of Measures in the Licensee Contract. If there is a discrepancy between the Units of Measures ordered by partner and the actual number of Units of Measures used at Licensee, Partner shall indemnify To-Increase the difference between the ordered amount and the actual amount of Units of Measures used.
- 3.11 Partner shall not be entitled to, and To-Increase shall not be bound by, any warranties, guarantees, commitments, appraisals or requirements made by Partner towards Licensee on behalf of To-Increase or To-Increase Software without the express written acceptance from To-Increase.
- 3.12 The relationship between To-Increase and Licensee is governed by the Software License Terms. Partner 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. To the extent To-Increase offers the Licensee an electronic approval of the SLT, Partner shall be responsible for Licensee conducting such electronic approval, and Partner shall document this towards To-Increase, prior to Licensee's use of To-Increase Software. The SLT shall not be modified by Partner. Partner is responsible for ensuring the SLT is up to date and reflects all product and Standard Software Licensee has purchased from Partner. Partner shall be responsible for updating Licensees SLT if Partner and Licensee changes or amends the amount of Units of Measures, products, solutions or Standard Software to reflect Licensees usage after such change or amendment.

- 3.13 Partner shall not be entitled to make any modifications or Customization to To-Increase Software without the express prior written approval from To-Increase. Any such Customization done without the written approval from To-Increase shall be deemed a material breach of this Agreement.
- 3.14 Partner shall provide to Licensee a software subscription or Support and related services to individual Licensees if the Licensee is current on all payment obligations relating to any software subscription; maintain a support center 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 Partners. Training is also available upon request or via a pre-determined schedule.
- 4.2 To-Increase offers Partner promotional aids and pre-sales assistance. Partner may use the To-Increase logo, trademarks and marketing materials for the purpose of marketing To-Increase Software but may not in any way misrepresent, misuse or mis-credit To-Increase's trademarks, brand, name or other intellectual property rights. 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 offer Partner a service team that, at Partners request, can support the implementation of Licensees, may provide consultancy services or additional training in connection with the implementation of To-Increase Software. Upon request of Partner, To-Increase and Partner define a timetable for implementation and eventual Customization of To-Increase Software. To-Increase may participate in Partner's first implementation of To-Increase Software to confirm the quality of the implementation services of Partner.
- 4.4 To-Increase will offer Support to Partner in connection with Licensee inquiries that Partner is unable to solve. Support is offered to Partners for Licensees in accordance with the Partner Program or a separate Support Agreement if such agreement have been entered into between the Parties.
- 4.5 The following conditions apply to services not covered by the Partner Membership Level. The provided services to Licensee through Partner by To-Increase will be based on time and material as rated on the Price List as well. Regarding the consultancy services the Parties agree that the minimum number of hours for consultancy services (implementation and/or modification of the Software) per Licensee/deal implementation is 4 hours. Any services provided by To-Increase to Partner 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 Partner based on actual documented cost.
- 4.6 To-Increase shall inform Partner, through the Support Portal if and when new products, versions, translations and localizations of To-Increase Software are available.
- 4.7 To-Increase shall be entitled to, but not obligated to, at its sole discretion to enter into agreements directly with the Licensee, notwithstanding anything in this Agreement.
- 4.8 To-Increase shall inform Partner of Major Releases and Service Packs through the Support Portal. 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 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 with 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 with 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 Partner and To-Increase are allowed to refer to the other as its 'Partner' 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 make it clear that such references are made in connection with the resale, distribution or supply of To-Increase Software in the Territory.

- 5.7 Partner 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 “Partner” 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 Partners, dealers, licensees or agents either within or outside of the Territory.

## **6 Fees and invoices**

- 6.1 All prices are exclusive of VAT and any other levies imposed by any government and shall be in the currency as listed on the Price List. Any taxes, duties and/or fees levied are to be paid for by Partner.
- 6.2 Partner shall invoice Partner’s Customers for the use of To-Increase Software, consultancy services and other services. Partner agrees to be solely responsible for the collection of all outstanding amounts due by Customers. Partner shall bear the entire risk of collection and non-payment of such invoices.
- 6.3 To-Increase shall submit an invoice to Partner for each order request, based on the order form attached in Appendix D for To-Increase Software, or other services ordered and approved by To-Increase based on the latest Price List taking the relevant Partner Margin into account. The order request shall be provided to To-Increase through electronic communication, and once confirmed and accepted by To-Increase shall form a valid agreement for the delivery of the ordered To-Increase Software, or other services provided by To-Increase. 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. Partner 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 Partner under this Agreement may not be withheld or offset by Partner against amounts owed by To-Increase for any reason.
- 6.5 To-Increase may change its Price List, the Partner Margin payable to Partner, the SLT or the Partner Program at any time. To-Increase shall communicate any change directly to the Partner. Partner may apply the old prices up to forty-five days after the release of the new Price List. If Partner does not accept an adjustment of any fees and/or Partner Margin, Partner shall be entitled to terminate this Agreement within thirty days of receipt of the notification of adjustment.
- 6.6 In addition to article 6.5, To-Increase is entitled to adjust the prices of the fees payable by Partner 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 article 6.6 Partner 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 Partner has paid any fees associated therewith in full.
- 6.8 If Partner is in default on payments regarding To-Increase Software and/or service that Partner has delivered, sold or leased or in other ways made available to Licensee(s), and such default has not been remedied within 14 (fourteen) days after Partner have received notice thereof, To-Increase shall in its own discretion be entitled to, but not obliged, to: 1) immediately suspend all access to the To-Increase Software, 2) contact and negotiate directly with Licensee and settle payments for Licensee’s purchased or leased To-Increase Software and/or services delivered from To-Increase to Licensee via Partner. Any such agreement/settlement between Licensee and To-Increase shall not relieve Partner from performing its obligations under this Agreement, including but not limited to payments and requirements in accordance with the Partner Program. Partner shall not be entitled to any Partner Margins to To-Increase Software and/or services settled directly between Licensee and To-Increase as described under this article.
- 6.9 If an agreement or settlement is made between Licensee and To-Increase in accordance with article 6.8 above, Partner shall be bound by the terms and conditions of such agreement or settlement. Partner shall waive any payment claims towards Licensee for the To-Increase Software and/or services as agreed between Licensee and To-Increase under such agreement or settlement. If To-Increase and Licensee enter into such agreement or settlement, then this shall not limit To-Increase’ rights under this Agreement including its right to termination in accordance with article 7.2 below.
- 6.10 Upon notice from To-Increase, Partner 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, Support, and/or services as may reasonably be requested.
- 6.11 To-Increase may audit the amounts reported and paid by Partner to determine if such amounts are accurate and in accordance with this Agreement. If, as a result of such audit, it is determined that Partner has underpaid, To-Increase shall notify Partner that it is alleged to have underpaid a specified amount, and if it determined that there was an underpayment, then Partner 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, Partner 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 Partner's facilities and shall not unreasonably interfere with Partner's business activities.

- 6.12 Partner 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:
- a) Partner 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;
  - b) the Partner 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;
  - c) Partner acts in a way that, in the reasonable judgment of To-Increase, has or may damage its reputation;
  - d) For whatever reason, To-Increase must 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 Partner, 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 Partner'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 Partner, unless terminated due to Partners lack of payment for To-Increase Software and/or services, 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:
- a) all rights and licenses granted to Partner expire automatically;
  - b) Partner 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;
  - c) Partner will cease each and every activity that is relevant to marketing and distributing of To-Increase Software;
  - d) Both Parties shall cease using the trademarks and trade name of each other.

## **8 Non-Compete**

- 8.1 For the duration of this Agreement and for a period of one (1) year thereafter, Partner shall not, neither directly or indirectly, develop, market, sell, lease or in other ways distribute any software that is based on or in competition either with To-Increase Software or with any other software provided by To-Increase to Partner, unless with prior written consent of To-Increase, which will not be unreasonably withheld.
- 8.2 To-Increase shall act impartial of interests between the various partners of To-Increase in mutual competition. All business opportunities shared with To-Increase by a partner shall remain confidential within the To-Increase organization, only to be distributed between individuals at a need to know basis, and not to be disclosed to third Parties outside To-Increase. For avoidance of doubt a To-Increase affiliate company is considered a third Party under this Agreement.



## 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 Partner 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. 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 Partner as a consequence of all and any errors in To-Increase Software, and Partner 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 Partner 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 article 9.3 the license which are distributed by Partner, 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, Partner shall have no right to raise claims against To-Increase if To-Increase Software contains errors and inconveniences not covered by article 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 damage up to an amount equal to the amount (exclusive of VAT) paid by Partner 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 shall not (whether for breach of contract, negligence, tort or otherwise) be liable for loss of profit due to business interruption, operating losses, loss of data, defective data, corruption of data, the injured Party's increased use of internal or external resources, loss of reputation or goodwill, or other indirect losses or damage

### 10.3 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).

### 10.4 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.

### 10.5 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.

### 10.6 To the extent of any third Party claims brought against To-Increase, Partner shall indemnify To-Increase resulting from:

- a) Any statements made by Partner 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 Partner of any of its obligation's covenants or warranties hereunder;
  - c) Any service, delivery, promise or assurance made by Partner towards third Parties, hereunder but not limited to its customers;
  - d) Partner shall (at its expense) have the exclusive right to defend or settle any claim, action or allegation brought against it pursuant to Article 10.7, and To-Increase agrees to provide Partner with: (1) immediate written notice of any such claim, action or allegation; and (2) any reasonable assistance and information as Partner may reasonably require.
- 10.7 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 Partner 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,
- 10.8 Neither Party is liable for failure to comply with its contractual obligations, including delays and/or defects caused by circumstances beyond the control of the said Party, including but not limited to industrial conflicts (strikes and lockouts), fire, war, riots, internal disorder, natural disasters, currency restrictions, any effects of computer viruses, worms, seizure by public authorities, import and export bans, interruption or failure of ordinary communications and transport, including interruption or failure of power supply, and the failure of Subcontractors to comply with their contracts.
- 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 Partner, are and remain with To-Increase. Unless otherwise agreed in writing Partner shall have no rights, besides what has already been granted under this Agreement to any enhancements, developments, translations, localizations and Customizations developed by Partner and shall as such remain with To-Increase.
- 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 Partner, these developments by To Increase will not constitute a breach of any intellectual property rights of Partner. Partner 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 Partner 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 Partner (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 Partner 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 Partner 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 Partner 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 Partner'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 Partner recognizes and agrees that there is no adequate remedy at law for a breach of Articles 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. Partner 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. Partner is responsible for ensuring that it complies with the at any time existing data protection laws and regulations, hereunder but not limited to the laws and regulations applying when Partner providing services or any other activities or products where or not processing of personal data occurs as a result thereof.

### 14 **Miscellaneous**

- 14.1 Except with the prior written consent of To-Increase, Partner 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 both Parties. In the event of conflict, the appendix shall prevail. 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 Partner acknowledges that because it is not relying on any statements made by To-Increase to Partner, other than in this Agreement, regarding the subject matter of this Agreement, Partner 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 Partner 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 Partner, 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	Partner
Name	Luciano Cunha	[add name signatory here]
Title	CEO	[add title here]
Signature		
Signature date		
Legal Check:		

The following Appendices are an integral part of this agreement

Partner Conditions	: Appendix A
Partner Program	: Appendix B
Units of Measures	: Appendix C
Order form template	: Appendix D

# Appendix A: Partner Conditions

This Appendix A is part of and incorporated into To-Increase Partner Agreement, between To-Increase and Partner. All defined terms in the Agreement have the same meaning in this Appendix A. In the event that any provision of this Appendix A conflict with any provision of the Agreement, this Appendix shall control except as otherwise indicated below.

The Partner Guide (available at <https://www.to-increase.com/to-increase-partner-network>) is an integrated part of this Agreement. To-Increase reserves the right to at any time change or amend the Partner Guide on the same terms as in article 6.5 of this Partner Agreement.

## Partner specifications as defined at the date of signature

Base membership Partner	Included
Standard Package	[add #]
Premium Package	[add #]
Territory	[add]
Number of people to certify on To-Increase Software	2 (Excluding Sales)
Contact Person name	[add]
Contact person e-mail	[add]

### Base membership includes:

- The right for the Partner to resell To-Increase Software in accordance with this Agreement and as further specified in Appendix B.

### Standard package includes:

- 40 value points, for the Partner to spend in accordance with the Partner Program as further specified in Appendix B.

### Premium Package includes:

- 80 value points, for the Partner to spend in accordance with the Partner Program as further specified in Appendix B.

## Invoice information

Contact name for invoicing	[add contact name]
E-mail address for invoicing	[add e-mail]
Invoice contact phone #	[add phone number]

## Partner margins

If Partner is certified in accordance with article 3.5 To-Increase Software	20 %
If Partner is not certified in accordance with article 3.5 To-Increase Software	10 %

Partner Membership Level and Territory will be re-established each contract year depending on circumstances.

## Appendix B: Partner Program

The at any time applicable Partner Program will be available here: <https://www.to-increase.com/to-increase-partner-network> and may be subject to changes from time to time at the sole discretion of To-Increase.

## Appendix C: Units of Measures

For Units of Measures please refer to latest Units of Measures as described at <https://support.to-increase.com/ticism>, the Units of Measure might be subject to change from time to time, and it is the responsibility of Partner to update and use the correct Units of Measure in the Licensee Agreement.

## Appendix D: Order form Template

For the latest version of the Order form template please refer to <https://www.to-increase.com/become-a-partner>