

These Terms and Conditions consist of the following chapters:

- I. General Terms*
- II. Service Levels*
- III. Maintenance Agreement*

These Terms and Conditions were last updated on: November 20, 2024

CHAPTER I – GENERAL TERMS

1. Scope of these Terms and Conditions

- 1.1 These Terms and Conditions apply to all Agreements, including any revisions thereof, as well as all requests, offers, and any resulting obligations related to the delivery of Software and Services by EDS. Specific terms related to Service Levels and the Maintenance Agreement applicable to respectively fixed-term Licenses and perpetual Licenses are detailed in Chapter II and Chapter III of these Terms and Conditions.
- 1.2 Any general purchase conditions and/or other general terms and conditions of the Licensee are expressly rejected.
- 1.3 EDS reserves the right to amend these Terms and Conditions. EDS shall inform the Licensee in writing of any amendments. If the Licensee does not agree with the proposed amendments, it shall have the right to terminate the Agreement within 30 days of such notification, subject to providing written notice.

2. Definitions

For the purposes of the Agreement, the following terms, whenever used with a capital, in both the single and plural form, shall have the meaning as defined hereinafter:

“Additional Services”	services as described in article 13;
“Agreement”	any written agreement between EDS and Licensee regarding the delivery of Software and Services, including its annexes and Documentation, which form an integral part thereof;
“Data Migration”	any transfer of Licensee’s data into the Software by EDS, either from previous software systems, data sheets or any other digital or manual source;
“Documentation”	any manuals, instructions, readme files and other information concerning the Software, provided by EDS in hardcopy, via e-mail, or made available through the Website;
“Effective Date”	the effective date as mentioned in the Agreement or, if not stated in the Agreement, the date on which EDS make the Software available to the Licensee;
“Extension”	the extension as defined in article 10;

General Terms and Conditions

EXPERT DESIGN SYSTEMS B.V.



"General Terms and Conditions"	these general terms and conditions, which form an integral part of all current and future Agreement(s) between the Parties;
"Hardware Key"	the physical device provided by EDS that may be required to activate and access the Software as described in the Agreement;
"IP Rights"	all IP Rights, including but not limited to copyrights, trademark rights, rights to software, database rights and patent rights;
"License Fee"	the fee that the Licensee must pay to EDS for the use of the Software as specified in article 12 and the Agreement;
"License"	the license as described in article 5 and the Agreement;
"Licensee"	the party that has obtained or will obtain a License;
"Maintenance Agreement"	the Maintenance Agreement applicable to perpetual Licenses, detailing the terms and conditions for ongoing maintenance and support of the Software provided by EDS, as outlined in Chapter III of these General Terms and Conditions;
"Maintenance Fee"	The fee that the Licensee must pay to EDS for the maintenance and support as described in article 32, the Agreement and/or the Documentation;
"Party" or "Parties"	EDS and Licensee individually or jointly, as the context may require;
"Service Levels"	the service levels applicable to fixed-term Licenses, detailing the agreed performance standards regarding the availability, performance and support of the Software, as outlined in Chapter II of these General Terms and Conditions;
"Services"	all services provided by EDS as specified in the Agreement and/or the Documentation, including but not limited to the provision of Software, as well as the associated Service Levels or Maintenance Agreement;
"Software"	the software modules provided by EDS to Licensee as described in the Agreement and/or the Documentation;
"Statistics"	the technical and usage analytics sent from the Software to EDS for the purpose of ensuring License compliance, catching failures, diagnosing trouble, and responding the errors in aggregate. Statistics do not include the results generated by the Software or any substantive input provided by the Licensee;
"System Specifications"	the computer hardware equipment and operating system required to operate the Software as described in the Agreement and/or the Documentation;
"Term"	the term as defined in the Agreement;

“User”	the natural person who is employed by or works for the Licensee and is authorized to use the Software under the terms of the License as described in the Agreement;
“Website”	https://www.ple4win.nl/
“Working Days”	Monday to Friday, excluding Dutch national holidays.

3. Order of Precedence

- 3.1 These General Terms and Conditions form an integral part of the Agreement.
- 3.2 If there is a conflict between the Agreement, these General Terms and Conditions and the attached annexes thereto, the order of precedence of the documents is as follows:
 - (i) The Agreement
 - (ii) Chapter II and Chapter III of these General Terms and Conditions
 - (iii) Chapter I of these General Terms and Conditions
 - (iv) The Documentation

4. Establishment of the Agreement

- 4.1 All offers made by EDS are non-binding and may be withdrawn by EDS at any time.
- 4.2 An Agreement is established when the Licensee accepts a written offer from EDS and EDS confirms the acceptance in writing.
- 4.3 If the Parties have previously entered into an Agreement for the licensing of the Software, an Agreement will also be established by the Licensee sending a written request to EDS for the (temporary) provision of the Software and/or Services, and EDS subsequently providing the Software and/or Services. In such cases, an Agreement is established only when the Licensee accepts the then current version of these General Terms and Conditions.
- 4.4 If EDS sends an order confirmation, Licensee shall notify EDS in writing of any discrepancies in the order confirmation within three (3) Working Days from the date of the order confirmation. If no notification is submitted to EDS within said period, EDS' order confirmation shall be deemed accurate and complete, and shall be binding upon the Parties.
- 4.5 Oral promises or commitments made by or with EDS' personnel shall only be binding upon EDS if confirmed in writing by EDS.

5. Scope of the License

License Grant

- 5.1 Under the terms and conditions of the Agreement and subject to payment of the applicable License Fee(s), EDS grants, and Licensee accepts, a non-exclusive, non-sublicensable (except as otherwise permitted herein), non-transferable and revocable license to use the Software.
- 5.2 The Software and Documentation are made available to Licensee as described in the Agreement.

License Restrictions

- 5.3 The rights granted in article 5.1 are subject to the following restrictions unless expressly permitted under mandatory applicable law:
- (i) The license is restricted to the use of the Software subject to the System Specifications as described in the Agreement and/or the Documentation.
 - (ii) The use of the Software is limited to the Licensee's internal use. Internal use is defined as the use of the Software within the context of the Licensee's professional activities.
 - (iii) The Software shall not be used to solely provide computer services to third parties.
 - (iv) If services are rendered to third parties, not being solely computer services, the value added by the Licensee from its own professional activities must be substantial.
 - (v) Licensee may only use the Software within its own entity and any subsidiary in which the Licensee owns fifty percent (50%) or more of the voting stock.
 - (vi) Licensee has no right to sell, assign, modify, translate, decompile, create derivative works or otherwise change or commercially exploit the Software.
 - (vii) Licensee is not permitted to monitor the internal workings of the Software by means of debuggers, profilers, tracers, and/or similar techniques.
 - (viii) Licensee is not permitted to reconstruct the source code of the Software by means of reverse engineering.
 - (ix) If access to the Software is provided by means of a Hardware Key, the Licensee explicitly does not have the right to copy the Hardware Key or to attempt, whether successful or not, to use the Software without this Hardware Key.
 - (x) Licensee is not permitted to conduct or request that any other person, whether legal or natural, conduct any load testing or penetration testing on the Software without prior written permission of EDS.
 - (xi) The automatic operation of the Software by means of scripting, Python, AutoHotkey, batch files, and/or similar techniques is strictly prohibited, except for the functionality the software offers by itself.
 - (xii) Licensee is not permitted to integrate the Software into third-party software applications. If Licensee requires information to effect interoperability of the Software with other software, Licensee will request EDS in writing and with motivation for the necessary information. EDS will then inform the Licensee within a reasonable period whether and under which conditions Licensee can obtain the requested information.

6. Implementation

- 6.1 EDS shall implement and/or make available the Software in consultation with the Licensee at no additional cost to Licensee, within the delivery timeframe specified in the Agreement.
- 6.2 If the Software requires implementation on equipment provided or designated by the Licensee, Licensee shall provide the necessary system-specific assistance to enable EDS to perform the implementation.
- 6.3 EDS may invoice for each module upon delivery, provided the module is functional. Implementation of each module is considered complete when its associated demonstration programs and designs are successfully executed. The overall implementation shall be deemed complete when all modules, as specified in the Agreement, have been delivered and are functional.

- 6.4 If there is a delay in delivery or implementation of any module exceeding four weeks beyond the specified delivery term caused by EDS and not due to force majeure as defined in article 21, Licensee has the right to partially terminate the Agreement for the portion that has not been delivered. However, EDS shall not be held liable for any loss or damage incurred by Licensee.
- 6.5 If Licensee chooses not to terminate the Agreement according to article 6.4, the Licensee and EDS shall agree upon a new delivery term as specified in the Agreement. In such cases, article 6.4 shall apply to the revised delivery term.
- 6.6 If the delay is caused by Licensee, not due to force majeure as defined in article 21, and as a result, the delivery and implementation cannot be completed within the agreed term extended by four weeks, EDS will invoice Licensee for all payments owed under the Agreement by Licensee to EDS, assuming that the implementation was successfully completed on the last day of the extended term. After receiving payment from Licensee, EDS shall perform the implementation at a date mutually agreed upon by both parties.

7. Test Implementation

- 7.1 EDS can grant a License for the time of a test implementation.
- 7.2 In case it is agreed to make a test implementation at the site of Licensee, EDS will implement the Software in accordance with article 6.1 and 6.2. Article 6.3 will not be applicable.
- 7.3 The term of the test implementation will be settled in the Agreement.
- 7.4 For the term of the test implementation Licensee is not obliged to pay for the use of the Software and EDS is not obliged to guarantee the proper functioning of the Software neither to provide maintenance on the Software or to support Licensee in the use of the Software, unless otherwise specified in the Agreement.
- 7.5 During the test implementation period, the Licensee shall not use the Software for commercial purposes and may only use it for the purpose of testing the Software.
- 7.6 During the term of the test implementation Licensee will protect the propriety and other rights of EDS with regard to the Software as stated in the Agreement.
- 7.7 Licensee will inform EDS before expiration of the term of the test implementation whether or not the Software is accepted on the conditions contained in this Agreement. If the Software is accepted by Licensee the date of completion of the implementation according to article 6.3 is supposed to be the last day of the term of the test implementation or any earlier date as the parties may agree. If the Software is not accepted by Licensee, EDS shall have the right to remove the Software from the System Specifications and Licensee shall return immediately to EDS all documents and other components that were part of the test implementation and have been delivered to that purpose by EDS.

8. Support

- 8.1 EDS shall provide Licensee with a reasonable level of support through e-mail, telephone, chat, or similar mechanisms. This support includes consultations, assistance, and advice concerning the installation, configuration, and use of the Software until the Software is operational.
- 8.2 Upon the Software becoming fully operational, any further support shall be subject to the following agreements:
 - (i) For fixed-term Licenses, support shall be governed by the Service Levels detailed in Chapter II of these General Terms and Conditions; or
 - (ii) For perpetual Licenses, support shall be governed by the Maintenance Agreement detailed in Chapter III of these General Terms and Conditions.

9. Statistics

- 9.1 Licensee understands and agrees that the Software sends to EDS and/or service providers of EDS Statistics. Licensee further understands and agrees that EDS and/or its service providers may:
- (i) collect, store, and use Statistics; and
 - (ii) transfer Statistics for the purposes of (a) providing the Software, (b) facilitating the provision of new products, updates, enhancements and other services, (c) improving the Software, and other products, services and technologies, (d) providing new products, services or technologies to customers of EDS and their affiliates and service providers, and (e) ensuring compliance with licensing terms.

10. Duration and termination

- 10.1 Parties may enter into either a perpetual License or a fixed-term License, as described in the Agreement. Articles 10.2 to 10.4 are only applicable to fixed-term licenses.
- 10.2 Unless stated otherwise in the Agreement, Parties engage in the Agreement for a period of twelve (12) months (hereinafter: the "Term") which initiates from the Effective Date of the Agreement.
- 10.3 Unless stated otherwise in the Agreement, this Agreement will be automatically extended each time by twelve (12) months after the Term or Extension.
- 10.4 Unless agreed otherwise in the Agreement, if a Party wants to terminate ("opzeggen") this Agreement at the end of the Term or Extension, this Party must give a minimum of two (2) months' notice in writing before the end of the Term or Extension. Failure to provide notice in a timely manner will result in an Extension as provided in this Agreement.
- 10.5 Parties are entitled to terminate ("opzeggen") the Agreement with cause with immediate effect in whole or in part, without obtaining any obligation to compensate for any damage, if one of the following circumstances occurs:
- (i) the other party is granted a moratorium of payments (whether or not provisionally);
 - (ii) bankruptcy is requested for the other Party;
 - (iii) the other party is declared bankrupt;
 - (iv) a Party infringes the terms of the Agreement and does not or is unable to remedy such infringement within two (2) months after given written notice by the other Party.
- 10.6 EDS is entitled to terminate ("opzeggen") the Licence with cause, without any judicial intervention, with immediate effect and without prior notice to the Licensee, if:
- (i) Licensee infringes the rights of EDS, including but not limited to EDS's IP Rights;
 - (ii) Licensee uses the Software for unlawful purposes or for purposes contrary to public policy and public decency;
 - (iii) Licensee uses the Software in such a way that the Software is damaged, modified, interrupted, or is less efficient in any way; or
 - (iv) the enterprise of the Licensee is terminated or transferred in whole or in part to a third party.
- 10.7 A termination is considered to be received the day it is delivered to the e-mail inbox, or when sent physically, it has been delivered to the address of the other Party. If termination is done physically, it shall be sent by registered mail to ensure proof of delivery.
- 10.8 Regardless of the above, the Agreement ends only if both parties agree in writing to terminate ("opzeggen") the Agreement.

- 10.9 Upon termination or expiration of the Agreement and subject to the terms of the Agreement, Licensee shall:
- (i) immediately cease all use and distribution of the Software;
 - (ii) pay all amounts accrued hereunder in accordance with the payment terms of the Agreement;
 - (iii) dispose of all copies of all Software and Confidential Information supplied to Licensee hereunder; and
 - (iv) if applicable, return any Hardware Key in good condition, with shipment by Licensee to be done by registered mail.

11. Exit clause

- 11.1 If the Agreement is terminated pursuant to article 10.4, EDS will provide transition assistance for a reasonable period, as mutually agreed upon, following the expiration or termination. This assistance aims to ensure the continued provision of the services without interruption or negative impact and to facilitate an orderly transfer of these services.
- 11.2 Unless agreed otherwise, the assistance described in this article is charged as Additional Services. Licensee shall pay EDS for any resources utilized in performing such transition assistance.
- 11.3 Parties agree that any transition assistance is governed by the terms and conditions of this Agreement, except for those terms or conditions that do not reasonably apply to such transition assistance.

12. Licence Fees and payment

- 12.1 All agreed fees as described in the Agreement shall be paid in a timely manner and in compliance with the payment conditions agreed upon, regardless of whether the Software is used or not.
- 12.2 All prices are exclusive VAT and other government levies that have been or shall be imposed.
- 12.3 All invoices and payments shall be in euro's unless agreed otherwise in writing.
- 12.4 Licensee shall pay invoices within thirty (30) days after receipt of the invoice, unless agreed otherwise in the Agreement.
- 12.5 EDS reserves the right to unilaterally increase the License Fee. In case of modification of the fees, EDS shall notify the new fees to the Licensee in writing at least thirty (30) days before the modified fee becomes due. Upon receiving this notification, Licensee has thirty (30) days to submit a written objection to the increase. If an objection is made by Licensee and Parties cannot reach an agreement, Licensee shall have the right to terminate the Agreement without cause.
- 12.6 Notwithstanding the foregoing, EDS reserves the right to unilaterally, and without giving prior notice to Licensee, increase the License Fees annually taking into account the change of the yearly price indexation figure based on the price index published by the Centraal Bureau voor de Statistiek (CBS).
- 12.7 If the Licensee fails to pay the fees due on time, statutory commercial interest shall be payable by the Licensee on the outstanding amount without a demand notice of default being required. If the Licensee still fails to pay the amount due after receiving a demand or notice of default, EDS may submit the claim for collection, in which case the Licensee shall also be obliged to pay in addition to the total amount due, all judicial and extrajudicial costs, including all costs charged by an external expert.
- 12.8 In case of non-payment of any (part of the) License Fee, EDS may, at its sole discretion, terminate the Agreement accordance with article 10.4 of the Agreement or suspend its obligations under this Agreement until all outstanding invoices have been paid in full.

13. Additional Services

- 13.1 Additional Services are services that can be performed by EDS, but that are not included in the standard services of the Agreement. Additional services will in principle be charged at Licensee's expense according to the rates specified in the Agreement.
- 13.2 EDS can provide additional services such as Data Migration, creation of new features, training courses, provision of System Specifications, service, or support regarding the Software at terms to be agreed upon between Parties.
- 13.3 Before Additional Services are performed a written price indication will first be issued for approval. Depending on the complexity, a step-by-step plan will be offered.

14. IP Rights of EDS

- 14.1 EDS reserves all rights not expressly granted to Licensee in the Agreement. Without limiting the generality of the foregoing, Licensee acknowledges and agrees that:
 - (i) the Software and Documentation are licensed, not sold, to Licensee by EDS and Licensee does not and will not have or acquire under or in connection with the Agreement any ownership interest in the Software or Documentation, or in any related IP Rights;
 - (ii) except as specifically set forth in the Agreement, EDS retains all IP Rights and other rights, title and interest in and to the Software and Documentation, and Licensee acknowledges and agrees that it does not acquire any IP Rights or other rights, express or implied, therein;
 - (iii) any configuration or deployment of the Software shall not affect or diminish EDS's rights, title, and interest in and to the Software; and
 - (iv) if Licensee suggests any new features, functionality, or performance for the Software that EDS subsequently incorporates into the Software, such new features, functionality, or performance shall be the sole and exclusive IP Rights or other proprietary right of EDS and shall be free from any confidentiality restrictions that might otherwise be imposed upon EDS pursuant to article 20.
- 14.2 Licensee shall, during the Term:
 - (i) take all reasonable measures to safeguard the Software and Documentation (including all copies thereof) from infringement, misappropriation, theft, misuse, or unauthorized access; and
 - (ii) promptly notify EDS in writing if Licensee becomes aware of: (a) any actual or suspected infringement, misappropriation, or other violation of IP Rights in or relating to the Software or Documentation; or (b) any claim that the Software or Documentation, including any production, use, marketing, sale, or other disposition of the Software or Documentation, in whole or in part, infringes, misappropriates, or otherwise violates the IP Rights or other rights of EDS.

- 14.3 If the Software, or any part of the Software, is, or in EDS's opinion is likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party IP Right, or if Licensee's use of the Software is enjoined or threatened to be enjoined, EDS may, at its option and sole cost and expense:
- (i) obtain the right for Licensee to continue to use the Software as contemplated by the Agreement;
 - (ii) modify or replace the Software, in whole or in part, to seek to make the Software non-infringing, while providing equivalent features and functionality, and such modified or replacement software will constitute Software under the Agreement;
 - or
 - (iii) if, after EDS's exercise of commercially reasonable efforts, none of the remedies set forth under (i) or (ii) is reasonably available to EDS, terminate the Agreement, in its entirety or with respect to the affected part or feature of the Software, effective immediately on written notice to Licensee, in which event: (i) Licensee shall cease all use of the Software immediately on receipt of EDS's notice; and (ii) provided that Licensee and EDS fully comply with the post-termination obligations, EDS shall promptly refund to Licensee, on a pro rata basis, the share of any licence fees prepaid by Licensee for the future portion of the Term that would have remained but for such termination.

15. Right to audit

- 15.1 EDS is entitled to investigate whether Licensee uses the Software in a manner that complies with the conditions of the Agreement. Licensee undertakes to cooperate with such an audit. EDS shall bear the costs of such audit, as long as no infringements of the Agreement are found. If the Licensee is found to infringe the Agreement, Licensee will bear the costs of the audit.
- 15.2 EDS may employ various methods, such as license managers and activation tools, to monitor software usage to ensure adherence to Agreements and to protect its IP Rights.

16. Promotion

- 16.1 Licensee is encouraged to publicly report its use of the Software, e.g. in press releases, annual reports or environmental reports concerning its organization.
- 16.2 To this end, EDS hereby grants Licensee a non-exclusive, non-transferable, non-sublicensable and revocable license under its trademark(s) and copyrights concerning the name "Ple4Win" and the associated logos as made available on the EDS website as indicated in the Agreement or specifically provided by EDS. However, Licensee must use the name and logos in unmodified form and Licensee must adhere to any specific rules given by EDS, which rules are generally available on the EDS website.
- 16.3 Licensee may not create any false or misleading impressions regarding its affiliation with EDS.
- 16.4 Licensee may not register or apply for any trademarks or Internet domain names that contain the name "Ple4Win" or any confusingly similar designation. EDS is entitled to demand transfer of any such trademarks or domain names by Licensee to EDS.
- 16.5 In light of the promotion of the Software, EDS is entitled to use Licensee's name and logo in promotional material regarding the Software, unless Licensee can demonstrate a serious and material business reason against such use.
- 16.6 The license of this article terminates automatically upon termination or expiry of the Agreement, regardless of reason.

17. Assignment

- 17.1 The Agreement shall not be assigned or otherwise transferred by Licensee without the prior written consent of EDS, which shall not be unreasonably withheld. Any such assignment without consent will be null and void.
- 17.2 The Licensee accepts that EDS may transfer and assign the Agreement (entirely or partially) and the performance of all or some of EDS's rights and obligations of the Agreement to a third party at any time without the prior written consent of the Licensee.

18. Limited Warranty

- 18.1 The Software is provided "as is" and EDS only guarantees that the Software has been developed and made available in accordance with the applicable standards in the IT-sector.
- 18.2 In case EDS performs any Data Migration, this is done at the expense and risk of Licensee. Since the format of Data offered for migration is in general very variable, no representation or guarantee is made regarding the quality and accuracy of such Data Migration.
- 18.3 The Licensee acknowledges having been fully informed of the characteristics of the current status of the Software and declares that EDS has completely fulfilled its duty of informing the Licensee with respect to the Software and its functionalities.
- 18.4 The Licensee acknowledges and agrees that the Software is provided by EDS with no other guarantees or obligations than those provided in the Agreement. EDS does not warrant that the functions contained in the Software will operate in other combinations than the combinations mentioned in the Documentation belonging to the Software or that the operation of the Software always will be uninterrupted or error free.
- 18.5 The foregoing warranties are in lieu of all other warranties, expressed or implied, including but not limited to, implied warranties of fitness for a particular purpose and warranties of merchantability. Excepting the warranty expressly acknowledged hereunder and to the fullest extent permitted by law, EDS hereby disclaims and licensee hereby waives all other warranties, express or implied, including but not limited to all implied warranties of fitness for a particular purpose and all implied warranties of merchantability.

19. Limitation of liability

- 19.1 The Agreement sets forth Licensee's sole remedy and EDS's entire obligation and liability for any breach of any EDS condition, warranty, or representation of the Software or Documentation set forth in the Agreement.
- 19.2 The parties shall be liable to the extent determined in this agreement for any damages resulting from an attributable failure (schade door toerekenbare tekortkoming). EDS shall not be liable for any indirect, incidental, consequential, or regulatory damages resulting from or related to the use or unavailability of the Software or Hardware Key. Additionally, EDS shall not be liable for any loss, or regulatory fines resulting from or related to the Software, including loss of data, income, profit, or other economic advantages.
- 19.3 In so far as EDS is liable, EDS shall not be held liable for more than the total amount paid by Licensee for the Software during the previous 12 months or € 10,000 (ten thousand), whichever is lower, in the event of any claims against EDS.
- 19.4 No liability shall exist for damages or fines that have not been reported to EDS in writing within thirty (30) days of their occurrence, or for damages where Licensee failed to take appropriate measures to limit such damages.
- 19.5 Under no circumstances is EDS liable for damages arising because of intent or gross negligence from the Licensee.

20. Confidentiality

- 20.1 Each Party may have access to information that is confidential to the other Party ("Confidential Information"). EDS's Confidential Information shall include, but is not limited to, the Software, Documentation, formulas, methods, know how, processes, designs, new products, developmental work, marketing requirements, marketing plans, customer names, prospective customer names, the terms and pricing under the Agreement, all information clearly identified in writing at the time of disclosure as confidential and all information which Licensee ought reasonably to regard as confidential.
- 20.2 A Party's Confidential Information shall not include information that:
- (i) is or becomes a part of the public domain through no act or omission of the other Party;
 - (ii) was in the other Party's lawful possession prior to the disclosure and had not been obtained by the other Party either directly or indirectly from the disclosing Party;
 - (iii) is lawfully disclosed to the other Party by a third party without restriction on disclosure; or
 - (iv) is independently developed by the other Party without use of or reference to the other Party's Confidential Information.
- 20.3 The Parties agree, unless required by law, not to make each other's Confidential Information available in any form to any third party or to use each other's Confidential Information for any purpose other than in the performance of the Agreement. Each Party agrees to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in breach of the Agreement.
- 20.4 The Parties agree to hold each other's Confidential Information in confidence during the term of the Agreement and for an unlimited period thereafter. Each Party acknowledges and agrees that, due to the unique nature of Confidential Information, there can be no adequate remedy at law for breach of this article 20 and that such breach would cause irreparable harm to the non-breaching Party; therefore, the non-breaching Party shall be entitled to seek immediate injunctive relief, in addition to whatever remedies it might have at law or under the Agreement.
- 20.5 This article 20 will not be construed to prohibit disclosure of Confidential Information to the extent that such disclosure is required by law or valid order of a court or other governmental authority; provided, however, that the responding Party shall first have given notice to the other Party and shall have made a reasonable effort to obtain a protective order requiring that the Confidential Information so disclosed be used only for the purposes for which the order was issued.

21. Force majeure

- 21.1 If Licensee or EDS is unable to satisfy its obligations under the Agreement as a result of force majeure, the party concerned shall not be liable for any delays or shortcomings in the performance of the obligations, nor for any damage arising from this for the other party, provided that he (i) informs the other party as quickly as possible after the occurrence by registered letter of the nature and causes of this unforeseeable situation beyond his control, and (ii) does his best to undo such causes of non-performance as quickly as possible, and (iii) carefully continues performance as soon as the causes of the force majeure have been eliminated.

21.2 All causes that are beyond the reasonable control of EDS or the Licensee, including but not limited to fire, explosions, power failures, earthquakes, floods, very severe storms, strikes, embargos, labour disputes, pandemics, epidemics, shortages of materials, supply chain disruptions, changes in laws or regulations, acts by the civil or military authorities, (cyber) terrorism, cyberattacks, natural disasters, acts or neglect of internet traffic services, acts or neglect of regulatory or government bodies shall be considered as force majeure.

22. Communications

22.1 All communications between Parties related to this Agreement, including but not limited to notices, requests, consents, and approvals, shall be in writing via registered mail or via e-mail and shall be delivered or sent to the other Party addresses according to the communication specifications described in the Agreement.

22.2 The parties agree to promptly notify each other in writing of any changes to their respective designated addresses.

23. Miscellaneous

23.1 Amendments to the Agreement can be agreed upon between Parties in writing.

23.2 Articles 14 (IP Rights), 15 (Right to audit) 19 (Liability), 20 (Confidentiality), and 24 (Applicable Law) and all other parts of the Agreement that by their nature are ought to survive the termination of the agreement remain applicable after termination of the Agreement.

23.3 The fact that a party does not exercise any right or does not use any legal remedy does not constitute a waiver of that right or remedy.

23.4 The Agreement constitutes the entire agreement between the parties and supersedes any and all previous representations, understandings, discussions, or agreements between Licensee and EDS as to the subject matter hereof.

23.5 The section headings in the Agreement are for convenience only and shall not be used in construing or interpreting any of its terms.

23.6 In the event that any of the provisions of the Agreement shall be found to be illegal, invalid, or unenforceable, the remaining provisions of the Agreement shall remain valid, enforceable and in full effect. Moreover, in the event of the nullity, invalidity or unenforceability of one or more provisions of the Agreement, the Licensee and EDS undertake to negotiate in good faith in order to replace the provision concerned with a valid and enforceable provision that bears the closest resemblance to the intentions of the Agreement.

24. Applicable law and jurisdiction

24.1 The Agreement and all related Documentation including all annexes and schedules attached hereto, and all matters arising out of or relating to the Agreement are construed in accordance with and are governed by the laws of the Netherlands, without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than those of the Netherlands.

24.2 Any legal suit, action, litigation, or proceeding of any kind whatsoever in any way arising out of, from or relating to the Agreement shall be settled in accordance with the Rules of Arbitration of the Netherlands Arbitration Institute (NAI) by one or more arbitrators appointed in accordance with the said Rules, without prejudice to each Party's right to seek injunctive relief in any court having jurisdiction thereof. The place of arbitration shall be Amsterdam, the Netherlands. The arbitration shall be conducted in the English language, unless both sides agree otherwise. The arbitral award shall be final and binding upon the Parties hereto, and judgment upon such award may be entered in any court having jurisdiction thereover.

CHAPTER II – SERVICE LEVELS

This Chapter outlines the Service Levels and both Licensee's and EDS' commitments applicable to the Software and Services of fixed-term Licenses, and forms an integral part of the Agreement between the Licensee and EDS.

25. Definitions

For the purposes of this Chapter II, the following terms, whenever used with a capital, in both the single and plural form, shall have the meaning as defined hereinafter:

"Defect"	a defect in the Software that leads to impaired Functionality of the Software;
"Functionality"	the degree of certainty that the Software is available to use, and the Software works in accordance with the description thereof in the specifications in the Agreement and/or the Documentation;
"Incident"	an alleged malfunctioning of the Software, which can either be defined as a Defect or as a request for a Non-Standard Change.

26. New releases of the Software

26.1 EDS may from time to time issue new releases of the Software. New releases are to be understood as updates or enhancements to the Software without changing to a larger extend the Functionality of the Software. Within a new release the existing Functionality of the Software may become extended. In general, new releases will not affect the useability of existing design databases resulted from the foregoing release. Licensee will receive new releases of the Software free of charge and these Service Levels will be applicable to the new releases of the Software as well.

27. New versions of the Software

27.1 EDS may from time to time issue new versions of the Software. New versions are to be understood as adaptations of the main structure of the Software to major enlargements of the Functionality of the Software. Such major enlargements of the Functionality of the Software may be contained in additional Software modules. In general, new versions of the Software will affect the useability of existing design databases resulted from a previous version of the Software. Licensee will receive such new versions of the Software free of charge, however, new Software modules, if requested by Licensee, are subject to amendment of the existing license agreement including license and maintenance fees according to the Agreement to incorporate additional Software module purchases.

27.2 New versions of the Software may also be the result of implementation of the Software on other System Specifications. Licensee will be informed by EDS on the availability of such new implementations. However, such new implementations are subject to an amended Agreement. Trade-in of the existing Software will be possible during the term of the Agreement, taking into account a linear amortization of twenty percent per year. Parts of a year of six months or longer are to be rounded off upwards to a full year. Parts of a year less than six months are to be rounded off downwards.

28. New Software modules

28.1 In case new Software modules become available, EDS will inform Licensee on the availability of such new Software modules. Upon request by Licensee EDS will provide Licensee with such new Software modules subject to an amendment of the existing Agreement including License Fees of new Software modules purchased. During the term of the Agreement Licensee will receive a reduction on the License Fee related to such new modules of fifteen percent on the list price. Existing modules contained in the Agreement are excluded from this reduction. In case of a second system or more, the reduction is related to the reduced list price.

29. Incident Management

Note: articles 29.11 up to and including 29.13 below are only applicable if and when EDS offers cloud-based applications or functionality.

29.1 Incidents are reported by Licensee to EDS in writing ("the Report"), this will be done by sending an email to: info@eds-ple.nl. The person who reports an Incident will submit a clear description of the Incident. This description will in any case include a substantiation of why the Incident qualifies as a Defect rather than a request for Additional Services. Furthermore, the Report will include a classification, including substantiation, of the Incident based on the tables below. In the event of a dispute regarding the classification of an Incident, the classification given by EDS to the Incident will prevail.

29.2 The standard process of resolving Defects is as follows:

- (i) Report of Incident: Licensee sends the report to EDS.
- (ii) Response report: EDS confirms the receipt of the report and may already report the timeline for work conducted by EDS.
- (iii) Analysis of Incident: EDS analyses report and starts its own analysis of the Incident.
- (iv) Planning of Changes: EDS sends its conclusion on whether the Incident is a Defect and, if the Incident is a Defect, what Priority the Defect is granted. Furthermore, a (proposed) timeline is communicated for the Changes required or requested.
- (v) Start Changes: EDS executes the Changes.
- (vi) Recovery reported: EDS sends Licensee a confirmation that the Defect is resolved, or that a solution is ready for acceptance by Licensee.
- (vii) Accepting Changes: if so required, Licensee approves Changes.

29.3 The following indications of priority are given to Defects:

Priority Description

- | | |
|----|---|
| 1. | Loss or significant disruption of Functionality of business-critical data output – this involves disruptions leading to significant impairment or standstill of critical business output of Licensee. |
| 2. | Loss or significant disruption of Functionality of non-business-critical data output that is used on a daily basis. |
| 3. | Any other problems which limit the Functionality. |

29.4 Defects are resolved free of charge, unless agreed otherwise. Additional Services are carried out on a project basis and charged separately at the agreed prices and rates.

29.5 Based on the priority given to a Defect, the below Response time, Planning of Changes and Recovery times (as described in article 29.2) apply. Response times and Planning of Changes apply to all Incidents, Recovery times apply only to Incidents that are also a Defect. The given timeframes only start: i) after the Licensee has provided EDS with sufficient information to comprehend what the Incident entails; and ii) when the given Service Window has started.

Priority	Response time	Planning of Changes	Recovery Reported
Priority 1	1 Working Days	2 Working Days	10 Working Days
Priority 2	2 Working Days	5 Working Days	New release or version
Priority 3	2 Working Days	5 Working Days	New release or version
Request for Additional Services	2 Working Days	10 Working Days	-

29.6 The following Service Windows apply for the Agreement:

Description	Service Window
Availability Service Desk	Working Days between 9:00 – 17:00 Amsterdam Time
Implementation of Changes	Working Days between 9:00 – 17:00 Amsterdam Time
Plannable Changes with disruption of Functionality	Working Days between 9:00 – 17:00 Amsterdam Time

- 29.7 All time estimates provided for Response times, Planning of Changes, and Recovery times are merely estimates and are expressly not binding deadlines. EDS will endeavour to resolve any Defect as quickly as possible, aiming to address the issue in the next Software release or version. EDS shall not be liable if a Defect cannot be resolved, and the Licensee shall not be entitled to any compensation or remedy beyond what is expressly provided in these Terms and Conditions.
- 29.8 A Defect is also regarded resolved if EDS realizes a temporary Change that (partly) restores the Functionality of the Software. This temporary Change does not release EDS from the obligation to sustainably repair a Defect. If a priority 1 Defect receives the character of a priority 2 Defect after a (temporary) Change, the Recovery time associated with priority 2 shall apply. The same applies for priority 2 Defect being turned into priority 3 Defect.
- 29.9 In case a Defect can be resolved with a workaround that needs to implement by the Licensee, Licensee is obliged to give full cooperation to this implementation. If Licensee fails to cooperate, the time between offering the workaround and this full cooperation will not account as the Software not being Available.
- 29.10 All Changes are requested through the Service Desk. Priority 1 Defects may also be reported to EDS via telephone insofar as EDS is available via this way at the given moment.
- 29.11 EDS guaranties an uptime of 99%. The uptime is measured per month, and if multiple modules or licenses are procured per module and/or license. Down-time is only counted when it is related to a Defect and the waiting time is exceeded. This means in any case that down-time due to one of the following circumstances shall not be included as Exceeded Waiting Time (and shall thus not negatively influence the Uptime) in the calculation of article 29.12 of these General Terms and Conditions:
- (i) Pre-announced activities.
 - (ii) Additional Services.
 - (iii) Exceeding of Waiting Time for Changes related to Defects due to Licensee not accepting the timelines proposed by EDS in accordance with article 29.2.
 - (iv) Exceeding of Waiting Time for Changes related to Defects due to Licensee not delivering requested input needed to make the required Changes.
 - (v) Non-availability of the Software due to issues external to the Software itself, such as the non-availability of an App Store, which must be resolved by the infrastructure partner of Licensee.
 - (vi) Non-availability related to changed input data and/or resources of Licensee. This includes situations where datasets delivered to the Software and/or resources connected to the Software, are amended (intentionally or non-intentionally) by Licensee or others and this is not communicated to EDS in advance giving reasonable notice.
 - (vii) Any authorisation issues not related to EDS and/or the Software.

29.12 The uptime is calculated as follows:

$$\frac{\text{Total time} - \text{Exceeded Waiting Time}}{\text{Total time}} \times 100\% = \text{Uptime}$$

29.13 If EDS does not meet the Uptime as described in article 29.11, Licensee will receive a service credit. The service credit is based on the paid License Fee for the specific module and/or License for which the Uptime is not met. This service credit is 5% of the month's License Fee for every 1% less uptime in that month, with a maximum of 25%. The amount of the service credit is accumulated as described in this article, and the following terms apply:

- (i) Service credits (translated into service hours under the agreed hourly rates) must be used by Licensee within twelve (12) months from the month they were awarded.
- (ii) The Licensee must provide sufficient evidence and reasonable details to support the request for service credits by the end of the month following the month in which the Functionality and/or Uptime was lower than the agreed level.

29.14 Except for the assertion of any claim based on fraud or wilful misconduct, the remedies provided in this Chapter II shall be the sole and exclusive legal remedies of the Parties with respect to Uptime and Functionality. EDS shall only be in default after the expiry of the reasonable term stated in a written notice of default in accordance with the Agreement.

CHAPTER III – MAINTENANCE AND SUPPORT LEVELS

This Chapter outlines the Maintenance Agreement and both Licensee's and EDS' commitments applicable to the Software and Services of perpetual Licenses, and forms an integral part of the Agreement between the Licensee and EDS.

30. Definitions

For the purposes of this Chapter III, the following terms, whenever used with a capital, in both the single and plural form, shall have the meaning as defined hereinafter:

"Procured Software"	the version of the Software, specific Hardware Key (if applicable) which operates together with the Software and Documentation hereto as defined in the Agreement;
"Release"	an update or enhancement to the Software that does not change to a larger extend the functionality of the Software. Releases are not considered new Versions.;
"Successor Software"	any later Version of the Procured Software;
"Support Ending Date"	the date established by EDS after which all support services on the Software as described in this Maintenance Agreement are no longer available. In general a Support Ending Date will coincide with the end of a calendar year. A Support Ending Date will be announced by EDS in writing to Licensee not less than sixty (60) days prior to the Support Ending Date;
"Version"	adaptations of the main structure of the Procured Software to major enlargements of the functionality of the Procured Software.

31. Purpose and Scope

- 31.1 EDS guarantees to Licensee the availability of maintenance services on the Procured Software during a minimum term of three years beginning at the date of completed implementation. If the Procured Software reaches end-of-life before the end of the three-year term, EDS will grant the Licensee a license to the Successor Software for the remainder of the three years, under the terms and conditions of this Chapter III.
- 31.2 This Maintenance Agreement shall commence on the date of completion of the Procured Software implementation and shall remain in force for the duration of the Agreement.
- 31.3 This Maintenance Agreement is terminated automatically at the Support Ending Date or at the end of the agreed term of maintenance following the Support Ending Date.
- 31.4 Maintenance services will be provided by EDS between 09.00 am and 16.00 pm European Time on Working Days, or in case EDS has appointed a distributor, maintenance services will be provided by the distributor during general office hours, excluding public holidays in the country of the distributor.

32. Maintenance Fee

- 32.1 The provisions of article 12 concerning Licensee Fees shall apply mutatis mutandis to Maintenance Fees.

33. Included Maintenance and Support Levels

33.1 Under this Chapter III the following Maintenance and Support Levels by EDS are included:

(i) Error elimination

EDS will use reasonable endeavour to promptly rectify any errors in the Procured Software reported and documented in writing by Licensee. The error(s) must be in the latest unaltered Release. The revised Procured Software will be forwarded to Licensee electronically or on an appropriate data carrier with documentation if applicable and free of charge, if electronic delivery is not possible. The same will apply if EDS or another Licensee discovers an error in the Procured Software. Licensee understands however that EDS is not obligated to correct every (minor) error immediately as long as the functionality of the Procured Software is not affected and that all enhancements, updates and corrective code of the Procured Software are established using standard software products which contain currently available corrective code and are at current update level.

(ii) Malfunctioning Hardware Key

During the term of the Maintenance and Support Levels EDS will replace the Hardware Key being part of the Procured Software in case of malfunctioning. Such replacement is free of charge to Licensee as long as the dongle is under the warranty provided by the manufacturer of the dongle (currently 3 years) **but** will be done only if the suspect Hardware Key is received by EDS in good order and accompanied by a proper description of the malfunctioning of the Hardware Key. Shipment of a Hardware Key by Licensee shall be done by registered mail. EDS will send back to Licensee a revised Hardware Key by registered mail as well.

(iii) E-mail/website support

EDS will maintain e-mail or website service, specified in the Agreement to support Licensee during the term of this Maintenance Agreement to aid Licensee to install updates and new Releases of the Procured Software and to determine errors in the Procured Software. EDS will use reasonable endeavour to assist Licensee in the application of the Procured Software, however, problem solving assistance cannot be provided free of charge and will be invoiced to Licensee according to the individual support prices listed in the Agreement and/or Documentation. Individual support is defined as any assistance, not being incidental help of a minor nature, on the use of the Procured Software by EDS on the request of Licensee and not contained in this Maintenance Agreement or general training courses.

(iv) New Releases of the Software

EDS may from time to time issue new Releases of the Procured Software. Within a new Release the existing functionality of the Procured Software may become extended. In general new Releases will not affect the useability of existing design databases resulted from the foregoing Release. Licensee will receive new Releases of the Procured Software free of charge and this Maintenance Agreement will be applicable to the new Releases of the Procured Software as well.

(v) Automatic Support Ending Date

New Releases of the Procured Software, not being new implementations on other System Specifications, will supersede previous Releases of the Procured Software. Maintenance services shall automatically be transferred to the new Release of the Procured Software, and the Support Ending Date for the prior Release of the Procured Software will automatically be set to the end of the calendar year in which the new Release becomes available.

34. Excluded Maintenance and Support Levels

34.1 Under this Maintenance Agreement the following maintenance services by EDS are not included:

(vi) New Versions of the Procured Software

EDS may, from time to time, issue new Versions of the Procured Software. These new Versions may include additional Software modules. Generally, new Versions of the Procured Software will impact the usability of existing design databases created with the Procured Software. Licensee will not receive new Versions of the Software free of charge. However, if requested by the Licensee, new Versions can be provided subject to an amendment of the Agreement, which will include updated License Fees and maintenance fees.

New Versions of the Procured Software may also result from implementation on other System Specifications. EDS will inform the Licensee of the availability of such new implementations. These new implementations will require an amended license agreement. During the term of this Maintenance Agreement, trade-in of the existing Procured Software is possible, with a linear amortization of twenty percent per year. Parts of a year lasting six months or longer will be rounded up to a full year, while parts of a year less than six months will be rounded down.

(vii) New Software modules

In case new Software modules become available, EDS will inform Licensee on the availability of such new Software modules. Upon request by Licensee, EDS will provide Licensee with such new Software modules subject to an amendment of the Agreement including License Fees and maintenance fees of new Software modules purchased. During the term of this Maintenance Agreement Licensee will receive a reduction on the License Fee related to such new modules of fifteen percent on the list price. Existing modules contained in the Agreement are excluded from this reduction. In case of a second system or more, the reduction is related to the reduced list price.

(viii) Individual support services

This Maintenance Agreement does not include the undertaking of extensions of the Procured Software on request of Licensee. Such individual extensions may become subject to individual support service and have to be arranged separately. Excluded furthermore are any modifications to the Procured Software as a result of modifications to the System Specifications other than advised by EDS and installed after the first implementation of the Procured Software. Such additional modifications may become subject to individual support service and have to be arranged separately.

35. Responsibilities Licensee

35.1 Under this maintenance agreement Licensee bears the following responsibilities:

(i) Installation of latest Release

Licensee shall install and use the latest Release of the Software made available to Licensee by EDS.

(ii) Unauthorized alterations to the Procured Software

If Licensee alters or supplements the Procured Software, not being separate software outside the Procured Software and functioning apart from the control of the Procured Software, EDS has the right to refuse any service subject to this Maintenance Agreement.

(iii) Non-standard operating system

Licensee is only entitled to maintenance service under this Maintenance Agreement if the Software is running under a properly maintained standard version of the operating system specified in the Agreement and/or the Documentation.

(iv) Error reporting

When notifying EDS of an error or suspected error in the Procured Software, Licensee will send to EDS sufficient documentation to reproduce the error. This documentation shall include but not be limited to: examples of output from the suspect Procured Software and a copy of the design database on a proper medium according to the hardware specifications provided in the Agreement and/or the Documentation.

(v) Replacement of Hardware Key

Replacement of a Hardware Key as described before is done only by EDS if the Hardware Key is received without damage due to tampering by Licensee. Licensee has to take care of proper packaging to avoid damage during transport. A damaged Hardware Key will be replaced only by EDS if the damaged parts contain all components of the Hardware Key and Licensee proves sufficiently to the opinion of EDS, who will judge in reasonableness, that the damage is the result of an accident other than the result of an attempt to open or in any other way to investigate the contents of the hardware key. If the Hardware Key is lost by Licensee or in any other way not available anymore to Licensee, EDS will replace the Hardware Key only on basis of an amended license agreement and license fee.