

## End User License Agreement (EULA)

This EULA will apply to (the use of) the Software (as defined below). Please read this EULA carefully so that you, as the End-User (as defined below), know what your rights and obligations are when using the Software.

The acceptance of this EULA constitutes a valid and binding agreement between IPS and you, the End-User, for the use of the Software. If you tick the box "Yes, hereby I agree with the EULA" or if you make any use of the Software, you agree to be bound by this EULA. The EULA is available for download and print at <https://the-ips.nl/EULA.pdf>.

### 1. Definitions and applicability

1.1. In this EULA, the following terms, indicated with a capital, whether used in the single or plural form, will have the following meaning, unless the context requires otherwise:

- 1.1.1. Annex: an annex to this EULA, which is incorporated herein by reference, and which forms an integral part of the EULA;
- 1.1.2. Confidential Information: any and all information that is marked as confidential by IPS, and all other information of which the End User knows or reasonably should know that the information was intended as confidential. Confidential Information includes (amongst others) the Software and all technology, systems, equipment, codes, tools, techniques, routines, procedures and methodologies used with regard thereto, as well as IPS' business affairs, financial affairs, documentation, business plans, price lists, strategies, technical operations and financial position. Any information that initially does not fall under the definition of Confidential Information can, at a later date, become Confidential Information;
- 1.1.3. End User: the natural person or legal entity that has implemented the Software in its machines, the natural person or legal entity that provides the Software as part of the supply of machines and/or any natural person or legal entity who makes use of the Software in any way;
- 1.1.4. End User Data: the data imported or inputted into the Software by the End User and/or the data collected by the Software;
- 1.1.5. EULA: this end user license agreement;
- 1.1.6. GDPR: regulation (EU) 2016/679 of the European Parliament and of the

Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

- 1.1.7. Intellectual Property Rights: any and all right, title and interest in or relating to industrial and intellectual property rights, proprietary rights and similar rights, whether protected, created or arising under the laws of any jurisdiction or pursuant to any international convention, including all:
  - (i) patents and patent applications, including all continuations, divisionals, continuations-in-part, provisionals and patents issuing on any of the foregoing, and all renewals, re-examinations, substitutions, extensions and reissues of any of the foregoing and the inventions covered thereunder; (ii) trademarks, service marks, service names, brand names, trade dress, trade names, logos, corporate names, trade styles, marketing intangibles and other source or business identifiers and general intangibles of a like nature, and all registrations, applications for registration, renewals and extensions of any of the foregoing; (iii) copyrights and rights in works of authorship, compilations, data, database and design rights, whether or not registered or published, and all registrations, applications for registration, renewals, extensions and reversions of any of the foregoing; (iv) trade secrets, knowhow and other confidential or proprietary information; and (v) the right to claim priority and/or the right to priority in relation to any of the foregoing;
- 1.1.8. IPS: the private limited liability company under the laws of the Netherlands Industrial Problem Solvers B.V., located in Veenendaal, the Netherlands at Buurtlaan west 96 (3905JV) registered with the Dutch Chamber of Commerce under number 81049706;
- 1.1.9. Parties: IPS and the End User;
- 1.1.10. Party: IPS or the End User;
- 1.1.11. Personal Data: personal data within the meaning of article 4.1 of the GDPR;
- 1.1.12. Reseller: an End User that provides the Software as part of the supply of machines to another End User;

- 1.1.13. Software: the software of IPS, as provided by IPS, whether or not as a service or on premise, to, amongst others, connect production processes, to monitor data from production processes and/or to get insights in the status of the production processes and all programs, (source) codes, user interfaces, know-how, documentation, confidential technical information, materials and, tools, as part thereof, and all modifications, enhancements and replacements thereof and additions thereto;
  - 1.1.14. Privacy Policy: the privacy policy of IPS, available at <https://the-ips.nl/privacystatement/> ;
  - 1.1.15. Website: the website of IPS, available at <https://the-ips.nl>, including all underlying pages.
- 1.1. The EULA has been prepared in English and contains Dutch legal terms (which are quoted in inverted commas: "..."). The EULA may have been translated into other languages. In case of a dispute, the English version shall have precedence and must be interpreted in accordance with the laws of the Netherlands and with ANNEX 1 - References and interpretation.
  - 1.2. Any terms and conditions of the End User do not apply and are expressly rejected.
- 2. Scope of the EULA**
  - 2.1. The EULA applies to all access and use that the End User has to the Software respectively makes of the Software.
- 3. Use of the Software**
  - 3.1. IPS grants the End User a non-exclusive, non-transferable, limited right to use the Software solely for internal business purposes for the term and under the conditions of this EULA.
  - 3.2. The End User shall explicitly, without limitation, not:
    - 3.2.1. permit any third party access or use – remotely or otherwise – to (parts of) the Software, except and to the extent as expressly permitted in the EULA;
    - 3.2.2. modify or adapt (parts of) the Software or merge it into another (computer) program, or create derivative works therefrom;
    - 3.2.3. distribute (parts of) the Software to any third party;
    - 3.2.4. reverse engineer, disassemble, decompile or make any attempt to discover

the source code of (parts of) the Software, except and to the extent allowed by a mandatory or peremptory rule of applicable (local) law; and/or

- 3.2.5. sublicense, sell, rent or lease any portion of (parts of) the Software or any of his rights under the EULA, or to grant restrictive rights thereto.
- 3.3. The End User shall not use the Software for any other purpose than expressly allowed under the EULA or a mandatory or peremptory rule of applicable (local) law, and only insofar such use is absolutely necessary for such purpose.
- 3.4. The End User is not allowed to make a backup copy of the Software. On the request of End User, IPS can decide, at its sole discretion, to make a backup copy for the End User at the expense of the End User. The End User is not allowed to use this copy independently or to sell or distribute the copy.
- 3.5. The End User is responsible for meeting the technical and functional requirements and using the electronic communication facilities that are necessary to be able to use the Software. The risk of loss, theft or damage to any of his data, including End User Data, will at all times be borne by the End User.
- 3.6. The End User shall not use the Software in relation to unlawful actions or in relation to actions which are otherwise prohibited under applicable (local) law.
- 3.7. In the event that IPS is of the opinion that damages or other danger can occur in relation to IPS and/or a third party, IPS is entitled to take all reasonable measures which it may deem necessary in order to prevent or avert these damages or dangers, at its sole discretion and without becoming liable for damages and/or compensation.

#### **4. Reseller's obligations**

- 4.1. The Reseller is obliged to bind its customer (which also is an End User) to the EULA. Also, the Reseller is obliged to stipulate to its customer (which also is an End User) that IPS may invoke and enforce the EULA, as third-party beneficiary, against the customer (which also is an End User) of the Reseller.
- 4.2. The Reseller represents and warrants that its customer (which also is an End User) shall comply with the EULA.
- 4.3. The Reseller shall be liable for and shall indemnify IPS from any and all liability, loss, damage, penalties, costs or claims of third parties (including, but not limited to, legal fees on an indemnity basis), regardless of cause, in connection with or arising out of the use of

the Software by its customer (which also is an End User), and/or any unlawful activities, including but not limited to the infringement of Intellectual Property Rights.

## **5. Intellectual Property Rights**

- 5.1. All Intellectual Property Rights regarding the Software exclusively belong to IPS and/or its licensors. IPS and/or its licensors retain all ownership and Intellectual Property Rights to the Software. The EULA does not constitute a transfer to the End User of any title or Intellectual Property Right(s) in or related to the Software.
- 5.2. The End User shall only acquire those rights that are explicitly granted in the EULA.
- 5.3. The End User shall not be permitted to remove or amend any details in relation to Intellectual Property Rights related to the Software.
- 5.4. The End User shall under no circumstances be permitted to remove or circumvent technical provisions and/or to arrange for this to be carried out.
- 5.5. The End User shall not perform acts which may infringe the Intellectual Property Rights of IPS and/or its licensors, including but not limited to unauthorized disclosure and/or reproduction of any (part of the) Software and/or registering domain names, trademarks or Google AdWords or Bing Ads search terms (keywords) that identical or similar to any sign on which IPS and/or its licensors may enforce Intellectual Property Rights.
- 5.6. The End User grants IPS a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license, if protected by any Intellectual Property Rights at all, to any materials, including End User Data imported or inputted into the Software by the End User.
- 5.7. IPS shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license, if protected by any Intellectual Property Rights at all, to use and incorporate into the Software any suggestions, enhancement requests, recommendations, ideas or other feedback provided by the End User, relating to (the operation of) the Software.

## **6. Interruptions and indemnities**

- 6.1. IPS does not warrant that the Software will be error free, complete or up-to-date at all times.
- 6.2. The End User agrees that the Software only provides the functionality and other features as found in the Software at the time of use ("as is"). IPS does not guarantee that the Software or any part thereof will be accessible at all times and without any interruptions or failures. Failures in the Software can occur as a result of failures in the internet or

phone connection, failures of third-party software, failures of third-party (software) suppliers or as a result of viruses and/or faults and/or defects. IPS is not liable towards the End User for any damage, loss or costs resulting or arising from the Software being (temporarily) unavailable, including but not limited to the loss of data, including End User Data, or inability to use the Software.

- 6.3. If the End User reports a fault and/or defect in the Software, IPS can render reasonable efforts to repair the fault and/or defect or to provide a workaround. IPS is not obliged to do so and may decide otherwise.
- 6.4. IPS is entitled to change and/or update the Software and replace functionalities and/or the design and layout of (any of the functionalities of) the Software at any time, without any prior notification and without being obliged to pay any compensation whatsoever to the End User.
- 6.5. IPS does not warrant in any way whatsoever that any terms and conditions applicable to third-party software or services allow the use of and/or interaction with the Software.
- 6.6. IPS is not responsible nor liable for hosting the Software and/or the End User Data. The End User is responsible for this.

## **7. Liability and indemnification**

- 7.1. The End User is fully responsible and liable for all use he makes of the Software, including but not limited to the use of the results thereof and/or of End User Data.
- 7.2. IPS' liability for damages resulting from an attributable failure (in Dutch: "toerekenbare tekortkoming") in the performance of the Agreement, unlawful act (in Dutch: "onrechtmatige daad") or otherwise, is excluded, to the extent allowed by a mandatory or peremptory rule of law.
- 7.3. In the event that IPS is liable for damages under a mandatory or peremptory rule of law, IPS' liability is, per event (a series of successive events is seen as one event) limited to the amount that in the relevant case under the professional liability insurance of IPS is paid out.
- 7.4. If, for whatever reason, no payment is made under the insurance referred to in the preceding paragraph or if no insurance has been taken out for the event giving rise to the damage, IPS' liability is limited to compensation of the direct damage (in Dutch: "directe schade") up to twice the amount (excluding VAT) that the End User paid to IPS for the Software in the three (3) months preceding the event giving rise to the damage. In all

cases, IPS' liability shall be limited to an amount of €10,000. Direct damage shall be understood to mean exclusively:

- 7.4.1. material damage to property;
- 7.4.2. reasonable costs incurred to prevent or limit direct damage, which could be expected as a result of the event on which the liability is based; and
- 7.4.3. reasonable costs incurred to determine the cause of the damage.

- 7.5. In deviation from the foregoing, IPS' liability for damage due to death, physical injury or due to material damage to goods is limited to € 1,250,000.
- 7.6. IPS' liability for indirect damages (in Dutch: "indirecte schade") is, in any event, excluded. Indirect damage means any damage that is no direct damage, and is thus including but not limited to consequential damages (in Dutch: "gevolgschade"), loss of profit, loss of business, loss of anticipated savings, loss of information, loss of End User Data, or any other financial loss or loss of goodwill or reputation, or other incidental, indirect, punitive or exemplary damages of any kind.
- 7.7. The exclusions and limitations of this article will not apply if and insofar as the damages are caused by willful misconduct (in Dutch: "opzet") or wilful recklessness (in Dutch: "bewuste roekeloosheid") of IPS or its management.
- 7.8. Without prejudice to the above, IPS excludes any liability for third party failures, including but not limited to third parties involved by IPS and failures of third party software. If the End User observes such third party failure, the End User's only and exclusive remedy is to report this to IPS. IPS may, at its sole discretion, replace the third party (software) or create a workaround.
- 7.9. Unless performance of the Agreement by IPS is permanently impossible (in Dutch: "blijvend onmogelijk"), IPS' liability for attributable failures in the performance of the agreement will be incurred only if the End User sends IPS a notice of default (in Dutch: "ingebrekestelling"), setting a reasonable term (in Dutch: "redelijke termijn") for the recovery of the failure, and IPS also after that term is attributable failing to fulfill its obligations.
- 7.10. Any claim for damages by End User that is not specified and explicitly reported by the End User shall expire within a period of twelve (12) months after the claim has arisen. This does not affect the End User's complaint obligation (in Dutch: "klachtplicht") and the obligation to investigate the Software at first use.
- 7.11. To the maximum extent permitted by applicable law, and unless mandatory applicable

law provides otherwise, the End User shall be liable for and indemnify IPS and its affiliates, and their directors and officers, from all liability, loss, damage, fines, costs or claims from third parties (including, but not limited to, legal costs on an indemnity basis), regardless of cause, in connection with or arising out of the End User's use of the Software, a violation by the End User of the EULA, any misrepresentation on the part of the End User and/or any unlawful activity, including but not limited to a violation of Intellectual Property Rights.

## **8. Force majeure**

- 8.1. IPS shall not be bound to fulfill any contractual and/or statutory obligation if it is prevented from doing so as a result of force majeure (in Dutch: "overmacht").
- 8.2. Force majeure on the part of IPS shall include, in addition to what is understood by it according to law and case law, illness of employees and/or absence of employees who are crucial to the provision of the Software, interruptions in the supply of electricity, strikes, riots, fire, natural disasters, floods, failures of suppliers to IPS, failures of third parties engaged by IPS, internet failures, hardware failures, failures in (telecommunications) networks, epidemics, pandemics, government measures and all other external causes beyond IPS' control.
- 8.3. In case of force majeure IPS is entitled to suspend (in Dutch: "opschorten") its obligations under the Agreement or to terminate (in Dutch: "opzeggen") the Agreement in its entirety, without any obligation to compensate the End User for any damages the End User may suffer as a result.

## **9. Term and termination**

- 9.1. The EULA is entered into for the term as agreed between the Parties, failing which the term of twelve (12) months shall apply. Parties cannot terminate (in Dutch: "opzeggen") before the end of such term, unless otherwise specified in this EULA.
- 9.2. Unless the EULA is terminated (in Dutch: "opgezegd") in time, taking into account a notice period of three (3) months prior to the expiration of the period cited in the previous paragraph, the EULA will be renewed automatically (in Dutch: "stilzwijgend verlengd"), each time for twelve (12) months, unless expressly agreed otherwise.
- 9.3. In addition to the other remedies available to IPS, IPS is at all times, at its sole discretion, without prior written notice or explanation and without becoming liable to the End User,



entitled to:

- 9.3.1. suspend (in Dutch: "opschorten") or terminate (in Dutch: "opzeggen") (temporarily or permanently) the Agreement and/or the right of the End User to access and use the Software, in the event that IPS, at its sole discretion, deems such suspension and/or termination necessary. This includes, without limitation, the situation where the End User does not in time, in full or properly meet its payment obligation(s), or where the the End User fails to comply with its obligations under the EULA;
  - 9.3.2. (temporarily) restrict the End User's activities in connection with the Software or to ban the End User from the Software.
- 9.4. Either Party has the right to rescind (in Dutch: "ontbinden") the EULA without a notice of default (in Dutch: "ingebrekestelling") being necessary if the other Party is declared bankrupt or applies for a moratorium on payments, a general attachment is levied against the other Party's assets, it goes into liquidation or is dissolved.
- 9.5. Each Party is authorized to rescind the EULA due to an attributable failure (in Dutch: "toerekenbare tekortkoming") in the performance of the EULA if the other Party, in all cases after a written notice of default (in Dutch: "ingebrekestelling") that is as detailed as possible and that grants a reasonable term (in Dutch: "redelijke termijn") to remedy the attributable failure has been issued, is attributable failing to fulfill its obligations under the EULA.
- 9.6. If, at the time of rescission (in Dutch: "ontbinding"), the End User has already received (parts of) the Software under the EULA, this/these (parts) of the Software and the associated payment obligations shall not be subject to an obligation to undo (in Dutch "ongedaanmakingsverplichting", "ongedaanmakingsverbintenis").
- 9.7. Amounts invoiced by IPS prior to rescission (in Dutch: "ontbinding") or termination (in Dutch: "opzegging") in connection with the Software and/or services already properly performed under the EULA shall remain payable in full and shall become immediately due and payable at the time of rescission or termination.
- 9.8. Upon any termination, rescission or expiration of the EULA, the End User's right to access and use the Software shall cease to exist immediately, without any right to compensation whatsoever.
- 9.9. Upon any termination, rescission or expiration of the EULA, it is the End User's responsibility to secure any data End User wants to retain to a computer or any other

storage device, in a timely manner before the termination, rescission or expiration. IPS is not responsible to the End User or any third party for any loss of data, including but not limited to End User Data, that may result or arise out of such termination, rescission or expiration of the EULA.

- 9.10. IPS is, at its sole discretion, entitled to discontinue (versions of) the Software, without becoming liable to End User. In the event (versions of) the Software reaches its end of life, IPS will notify End User thereof through the Software and/or on the Website.
- 9.11. All provisions which are meant to survive the termination, rescission or expiration of the EULA shall survive such termination, rescission or expiration. These provisions include, but are not limited to all of the End User's representations, warranties, indemnification obligations, the penalties, IPS' limitation of liability, the applicable law and dispute provisions and this provision.

## **10. Privacy**

- 10.1. During the use of the Software, the End User may provide Personal Data to IPS. These Personal Data will be processed in accordance with the GDPR.

## **11. Non-disclosure and confidentiality**

- 11.1. The End User shall treat any Confidential Information strictly confidential. The End User shall also impose this obligation on their employees, staff members and/or third parties working for him who are in any way involved in the Confidential Information.
- 11.2. The obligation to treat Confidential Information strictly confidential applies for the term of the EULA plus a period of five (5) years thereafter.
- 11.3. IPS reserves the right at all times to use the knowledge acquired through performance of the EULA for its own benefit and/or the benefit of its (other) clients.
- 11.4. In the event of a breach of this article by the End User, the End User shall promptly notify IPS by means of a written notice stating the nature of that breach, when the breach occurred, and any other information that may be relevant. The End User shall take all measures to prevent further breaches and/or damages. The End User shall provide IPS with all necessary assistance to defend the rights of IPS, including but not limited to giving IPS the opportunity to take any (other) (legal) measures to prevent further breaches and/or damages.
- 11.5. In the event the End User acts in violation of the provisions of the first paragraph of this

article, the End User forfeits to IPS – without attributability (in Dutch: “toerekenbaarheid”) and/or a notice of default (in Dutch: “ingebrekestelling”) being required – an immediately payable penalty (in Dutch: “onmiddellijk opeisbare boete”) of € 10,000.00 per violation, and € 1,000.00) per day that the violation continues, without prejudice to all other rights of IPS including but not limited to the right to (additional) compensation and/or performance of the contractual obligations of the End User.

## **12. Applicable law and disputes**

- 12.1. The EULA, (the use of) the Software and all legal acts and disputes arising therefrom shall exclusively be governed by the laws of the Netherlands, to the extent allowed by a mandatory or peremptory rule of law. The United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention of 1980) shall not apply.
- 12.2. All disputes between Parties shall be resolved initially by mutual agreement between Parties.
- 12.3. If Parties are unable to resolve the dispute through mutual consultation after thirty (30) days, either Party is entitled to commence an ICT-Mediation procedure in accordance with the ICT-Mediation Rules of the Stichting Geschillenoplossing Automatisering. The other Party is obliged to participate actively and constructively in ICT-Mediation proceedings initiated.
- 12.4. If within sixty (60) days from the commencement of the mediation the Parties cannot resolve the disputes by mediation, they shall be settled exclusively by arbitration in accordance with the (at that moment applicable version of the) Arbitration Rules of the Stichting Geschillenoplossing Automatisering (SGOA), having its registered office in The Hague.
- 12.5. The preceding paragraphs are without prejudice to the right of each Party to obtain interim relief or to take precautionary measures (in Dutch: “voorlopige voorzieningen of bewarende maatregelen”) through the exclusively competent court of the District Court of Midden-Nederland, Utrecht.

## **13. Miscellaneous**

- 13.1. In the event that any term or provision in the EULA shall be held to be illegal, invalid, or unenforceable, in whole or in part, under any applicable law or be so held by an applicable court or arbitrary decision, such term or provision or part thereof, will be

interpreted to best reflect the Parties' intent, and the remainder of the EULA will not be affected and will continue to be valid and enforceable to the fullest extent permitted by law.

- 13.2. All notices or reports permitted or required under the EULA shall be in (electronic) writing.
- 13.3. No term or provision of the EULA shall be varied or modified by any prior or subsequent statement, conduct or act of the End User, except that hereafter the Parties may amend the EULA only by a subsequently dated written amendment signed by the duly authorized representatives of both Parties.
- 13.4. IPS may amend this EULA at any time. The End User will be notified of any amendments by email, on the Website and/or through the Software. The new version of the EULA will be available for viewing and downloading at the Website. If the End User does not agree with the amended or supplemented EULA, the End User's exclusive remedy is to no longer use the Software and to terminate the EULA in accordance with the terms and conditions of the EULA.
- 13.5. The version of any communication and/or reports received or stored by IPS serves as authentic and binding proof (in Dutch: "authentiek en bindend bewijs"), subject to evidence to the contrary (in Dutch: "tegenbewijs") provided by the End User.
- 13.6. IPS may transfer its rights and obligations under the EULA to a third party. The End User hereby authorizes IPS thereto in advance.
- 13.7. The End User may only transfer his rights and obligations under the EULA to a third party with IPS' prior written permission.

#### **14. Contact**

- 14.1. IPS can be contacted by means of the following contact details:

Industrial Problem Solvers B.V.  
Buurtlaan west 96  
3905 JV Veenendaal  
The Netherlands  
+31 (0)6 52 38 20 65  
info@the-ips.nl

## **ANNEX 1 - References and interpretation**

In this EULA:

- reference to any statute includes a reference to that statute as amended, extended or re-enacted and to any regulation, order, instrument or subordinate legislation under the relevant statute;
- reference to the singular includes a reference to the plural and vice versa;
- reference to "or" is not exclusive and "include" and "including" shall not be construed or read to be limiting;
- reference to a law or regulation includes any amendment or modification to such law or regulation and any further rules issued thereunder or any law or regulation in replacement thereof;
- references to a natural person or legal entity includes its successors or assigns, to the extent permitted under the EULA;
- any rights of either Party may be exercised at any time and from time to time unless specified otherwise in the EULA;
- reference to "written/in writing" in this EULA also refers to email communication, provided the identity of the sender and the integrity of the contents is adequately established;
- reference to an article in this EULA shall be a reference to such section of the body of the EULA, and not to any attachment or other document, unless where explicitly provided otherwise;
- specific references in (the body of) this EULA to other parts of the EULA shall be without prejudice to the full general applicability of any unreferenced provision or part thereof;
- the headings of articles, sections, portions or paragraphs of the EULA are for ease of reference only and shall not affect the interpretation of the respective rights and obligations of the Parties and shall not form any part of this EULA for the purposes of construction;
- the wording of the EULA shall be decisive in interpreting the mutual rights and obligations of the Parties under the EULA; and
- no provision of this EULA shall be interpreted against a Party solely as a result of the fact that such Party was responsible for drafting such a provision.