

## End User License Agreement (EULA)

This EULA governs CUSTOMER's purchase and use of proprietary WSP Products and Services, either directly from WSP or indirectly through a Partner, as identified in an Order (all as defined below).

This Agreement shall be interpreted and applied in accordance with Sections 1 and 2.

### 1 INTERPRETATION AND DEFINITIONS.

**1.1** In this Agreement, unless the context otherwise requires:

1. Reference to the parties include their respective successors and permitted assigns;
2. Words in the singular include the plural and in the plural include the singular;
3. Headings are for ease of reference only;
4. Any reference to "Agreement" also refer to any amendment or supplement to it;
5. The term "including" means including without limitation;
6. Capitalised words, phrases and acronyms shall have the meanings given to them in the Agreement or shall have their ordinary (technical or other) meaning; and
7. Parties have expressly required the Agreement to be drawn up in English.

**1.2** In the case of a conflict between any provision of this EULA and any other contract documents, the following descending order of precedence shall apply: (1) the provisions of the Module(s), (2) the provisions of the EULA and (3) the provisions of the Order.

**1.3** "Agreement" means (as the context requires): (i) this EULA (including the Exhibits attached hereto), or (ii) the agreement described under (i) and all Modules, Orders and other contract documents (taken together).

**1.4** "Confidential Information": any information CUSTOMER may obtain in connection with the Agreement or the performance thereof, including information concerning WSP or any Partners, as well as the nature of, the reason for, and the end-result of, the Agreement performed by WSP and the existence and the terms of the Agreement.

**1.5** "CUSTOMER" means the (potential) counter party of WSP that entered into an Agreement or (directly or indirectly) entered into any negotiations regarding such Agreement.

**1.6** "Documentation" means the user guides, tutorials, printed instructions, reference manuals, requirements and other explanatory materials developed by WSP that accompany or are stored on or in the Products.

**1.7** "Effective Date" means the date of signature by the parties of the Agreement.

**1.8** "End User" means, as applicable and unless stated otherwise herein, any person or entity (including, for the avoidance of doubt, any employee or agent of CUSTOMER) authorized by CUSTOMER to access or use the Products.

**1.9** "Fees" means in respect of each Agreement, the total sum of fees and charges payable by the CUSTOMER for Products and/or Services as specified in the relevant Order(s) or (if appropriate) to be calculated by WSP based on the most current version of the Pricebook.

**1.10** "Module" means an optional agreement, referencing the EULA, that may be signed by CUSTOMER containing specific provisions for specific Products and Services.

**1.11** "Object Code" means the form of WSP Software wherein computer programs are assembled or compiled in magnetic or electronic binary form on software media, which are readable and usable by machines, but not generally readable by humans without reverse-assembly, reverse-compiling, or reverse-engineering.

**1.12** "Orders" means an order referencing this Agreement as may be agreed from time to time with WSP, identifying the Products and Services, Fees and other details of each transaction that is subject to and governed by this Agreement.

**1.13** "Pricebook" means the pricelist issued by WSP to the general business community and/or public as the centralised source of pricing information and license metric (such as, without limitation, the license type) for all Products and Services and other items, all as may be amended from time to time by WSP.

- 1.14 “Premium Plus Support” means Standard Support that is optionally upgraded by CUSTOMER, against the execution of Module and/or Order, to 24/7 accessibility only for incidents with the highest priority.
- 1.15 “Products” means the WSP Software and (if appropriate) SaaS.
- 1.16 “SaaS” means the subscription cloud-based services provided by WSP.
- 1.17 “Services” means any services provided or to be provided by or on behalf of WSP pursuant to this Agreement, as identified in an Order.
- 1.18 “Service Levels” means the service levels as included in the applicable Module and/or the Agreement.
- 1.19 “Software Assurance” means the provision of Software Updates and access to Standard Support for, or on behalf of, the CUSTOMER.
- 1.20 “Software Updates” means bug fixes, documentation improvements and feature additions, including all major (i.e., numbered) and minor (i.e., point) releases, when and if made available by WSP.
- 1.21 “Standard Support” means the provision of technical support for issues related to the performance of the WSP Software and reported by CUSTOMER or its End Users through a web based ticket system with a response provided on weekdays between 08:00h and 18:00h CET. Standard Support may require the execution by CUSTOMER of a Module and/or Order. If WSP, at its sole discretion, determines that an issue is solely caused by a malfunction of the WSP Software, WSP will resolve the issue free of charge. In all other situations, WSP’s or (if appropriate) Partner’s assistance in remediating the issues identified will be charged to CUSTOMER subject to CUSTOMER’s execution of a separate Module and/or Order.
- 1.22 “Start Date” means, unless agreed otherwise in the Order, the earlier of: (i) when the Products are delivered to CUSTOMER or (ii) when the CUSTOMER starts using the Products.
- 1.23 “Third Party Software” means, if appropriate, the software referred to as redistributable code that is licensed to WSP by third party licensors for redistribution with the WSP Software. The redistributable code is the property of WSP’s licensors, and protected under international copyright, trade secret or other proprietary rights laws, and international treaties.
- 1.24 “Term” means any initial term or any renewal term as mutually agreed to by the parties in writing from time to time in accordance with Sections 3.2 and 3.3.
- 1.25 “Value Added Reseller” (VAR) or “Partner” means a third party that is authorised by WSP on the basis of a Module, as a separate and valid agreement, to resell the Products and Services to certain End Users.
- 1.26 “WSP” means, unless agreed otherwise in the Order, WORKSTREAMPEOPLE B.V. with its registered offices at Van Nelleweg 1, Building 9C, 3044 BC Rotterdam, The Netherlands.
- 1.27 “WSP Software” means, as applicable, the Object Code form of WSP Anywhere365 Suite or such other WSP software products, as may be identified in an Order, and shall be deemed to include the Documentation for such WSP Software, the license keys, clip art, fonts and multimedia files included in such WSP Software, their related software options, software extensions, enhancement, upgrades, Software Updates, and Third Party Software integrated into such identified products.

## **2 APPLICABILITY**

- 2.1 This EULA shall govern all quotes, Modules and Orders between CUSTOMER and WSP. This EULA is also applicable to the negotiations regarding such quotes or agreements, even if said negotiations do not result in the conclusion of an Agreement. This EULA shall also apply to all future trading relationships with WSP, even if they are not communicated as new. By using the Products and/or Services, CUSTOMER agrees to be bound unconditionally by the terms and conditions of this EULA.
- 2.2 The applicability of any general terms and conditions of CUSTOMER or Partner to any quote or agreement, said negotiations or the relationship in general, is hereby excluded. Regardless of their form, deviations from or supplements to the Agreement shall only apply if parties explicitly agree to the same in writing.

## **3 GRANT OF LICENSE RIGHTS AND TERM**

- 3.1 **License.** Subject to the terms, restrictions and limitations set forth in the Agreement, WSP hereby grants to CUSTOMER a non-exclusive, non-transferable, non-sublicensable, terminable and named license to use (and to permit its End Users to use) the Object Code version of the WSP Software (including the Documentation).
- 3.2 **Term.** This Agreement is effective as of the Effective Date and will run indefinitely unless terminated earlier in accordance with the terms of this Agreement. Each Order shall identify the initial term applicable to it.
- 3.3 **Renewals.** Without prejudice to Section 9.1, this Agreement will at the end of the initial term (or any renewal term thereafter) automatically renew for additional one (1) year periods, unless either party has

provided the other party with a written termination notice of its intention not to renew the Agreement at least sixty (60) days prior to the expiration of the then current term.

**3.4 Scope of License and Use during the Term**

- A. **Use.** For each individual license purchased, CUSTOMER may use the WSP Software only for its own internal business use restricted to (i) only one server (in case of server licenses) and a single SIP domain or (ii) one end-user device (in case of device licenses) or (iii) one end user (in case of user licenses), all as specified in the Pricebook and/or the Order(s) (“Licensed Device”). Notwithstanding Section 3.1, CUSTOMER may internally transfer the WSP Software to a different environment (a “Transferred Installation”), provided that the WSP Software and any copies thereof are permanently uninstalled and/or deleted from the Licensed Device from which the WSP Software is transferred. CUSTOMER agrees that where the Transferred Installations requires concurrent migration licenses, additional license fees are due and payable to WSP.
- B. **Delivery.** WSP will deliver the WSP Software to CUSTOMER by electronic means on the Start Date and provide CUSTOMER with all necessary credentials and access to the Products.
- C. **Copies.** CUSTOMER may make one (1) copy of the WSP Software and Documentation if required for archival or back-up purposes. CUSTOMER agrees that such use excludes failover, redundancy capabilities or other operational business needs, which require additional license rights.
- D. **Third Party Software.** The license granted hereunder includes the right of CUSTOMER to use the Third-Party Software in Object Code form, solely in connection with the authorized operation and use of the WSP Software by End Users in conformance with the terms and conditions of this Agreement. For the avoidance of doubt, CUSTOMER may not decouple, disassemble or otherwise separate the Third-Party Software from the WSP Software or use the Third-Party Software except in connection with the use and operation of the WSP Software as permitted hereunder.
- E. **Restrictions.** The WSP Software is licensed, not sold. For the Term of this Agreement, WSP only gives you some rights to use the WSP Software on the Licensed Device. WSP reserves all other rights. Unless and solely to the extent otherwise permitted under applicable law, or as otherwise agreed to in writing by WSP, CUSTOMER shall not, and shall not permit any End User to:
  - 1. work around any technical limitations in the WSP Software;
  - 2. publish the WSP Software for others to copy;
  - 3. make more copies of the WSP Software than authorized under this Agreement;
  - 4. sell, lease, rent, redistribute, assign, sublicense, or transfer the WSP Software;
  - 5. reproduce, decompile, reverse engineer or disassemble the WSP Software;
  - 6. offer the use of the WSP Software to third parties as an application service provider, service bureau or remote-hosted service;
  - 7. deliver, export, transfer or otherwise distribute the WSP Software acquired hereunder to, or use the WSP Software acquired hereunder in, a country other than the country in which the WSP Software was purchased (including in connection with a Transferred Installation).
  - 8. transmit any data that it has reason to believe is infringing, obscene, threatening, libellous, or otherwise unlawful or tortious, including material harmful to children or violative of third party privacy rights, and CUSTOMER shall indemnify and defend WSP against a breach hereof.
- F. **Customer feedback.** WSP may from time to time request CUSTOMER to provide certain information or content by which the End User can be identified when using the WSP Software including the control panel, and the registration functionality that are compatible with the WSP Software (“Tools”). WSP will only use and protect such information in accordance with WSP’s [Privacy Policy](#). Customer acknowledges that WSP owns the information (including business logic, code, configurations, user data or other electronic materials created by Customer using the Tools) and covenants, on behalf of itself, successors and assigns, not to assert against WSP, its affiliates or licensors any rights in such information, or any claims of any rights against any (WSP) Products or Services.

**4 FEES, PAYMENT AND TAXES.**

- 4.1 License Fee.** During the Term, CUSTOMER agrees to be bound by and pay the license fee specified in the Order (or if no order was agreed, the then current Pricebook). CUSTOMER agrees that WSP may change the Pricebook from time to time.
- 4.2 Software Assurance Fee.** During the Term, CUSTOMER agrees to pay the annual fixed fee for Software Assurance as specified in the Order (or if no order was agreed, the then current Pricebook will apply). CUSTOMER shall, if Software Assurance coverage is agreed in the Order, be entitled to access to Software

Updates if and when made available by WSP. Any WSP Software provided as part of Software Assurance shall be governed by the terms of this Agreement.

- 4.3 Monthly License and Software Assurance Fee.** Instead of purchasing a Term License for a one-time License Fee and payment of the associated Software Assurance Fee (as described in Sections 4.1 and 4.2), the Pricebook offers CUSTOMER the option to purchase select Products and Services on a monthly basis. Against payment of the monthly Fee, CUSTOMER will be entitled to a WSP Software license and have Software Assurance coverage during that month, in accordance with the requirements of this Agreement.
- 4.4 SaaS.** If a Module for SaaS is signed, CUSTOMER agrees to pay additional hosting infrastructure Products and Service Fees that will be required or be replaced with an all-in monthly subscription Fee.
- 4.5 Outbound Fees.** If CUSTOMER has authorised the use of outbound capabilities for the SaaS, CUSTOMER agrees that WSP will charge the fees for consumption by End Users.
- 4.6 Payment and Payment term.** CUSTOMER shall pay an invoice from WSP within 30 days from the date of issuance. WSP shall issue its invoice when: (a) it receives the Order from CUSTOMER, (b) the agreed (periodic) invoice date(s) has (have) elapsed. A late payment charge of the lesser of 1.5% per month or the highest interest rate allowed by applicable law will be charged upon all past due amounts hereunder.
- 4.7 Suspension.** If any amounts owing by CUSTOMER under this Agreement are thirty (30) or more days overdue, WSP may, without limiting WSP's rights and remedies, suspend the Services to CUSTOMER and/or limit access to Products until such amounts are paid in full. WSP will give at least ten (10) days prior notice that CUSTOMER's account is overdue before any suspension.
- 4.8 Taxes and Duties.** Prices to CUSTOMER do not include taxes, duties, tariffs, handling fees, or other such assessments of any nature. Whenever imposed, such assessments are payable by CUSTOMER. Income or other taxes that are required to be paid or withheld by CUSTOMER or WSP under the laws of jurisdictions other than The Netherlands, in connection with the Fees paid by CUSTOMER hereunder, are the sole obligation of CUSTOMER and shall be exclusive of the Fees paid by CUSTOMER.

## **5 CONFIDENTIAL INFORMATION, TITLE AND COPYRIGHTS.**

- 5.1 Confidential Information.** CUSTOMER shall maintain strict confidentiality with regard to any Confidential Information. It shall deploy such procedures with regard to Confidential Information that shall be no less restrictive than the strictest procedures used by it to protect its own confidential and proprietary information, but not less than reasonable care. CUSTOMER acknowledges that a breach of this obligation will constitute a material breach of the Agreement and will lead to liability on its part. CUSTOMER shall ensure that its personnel or (the personnel of) any sub-contractors are advised of the confidential and proprietary nature of the Confidential Information and are bound in writing to confidentiality obligations no less strict than as set out in this Agreement.
- 5.2 Title.** CUSTOMER acknowledges that the WSP Software (including , any enhancements, modifications, additions) contains confidential information of, are trade secrets of, and are proprietary to WSP and its licensors. CUSTOMER shall not assert any right, title or interest in the WSP Software or other materials provided to CUSTOMER under this Agreement, except for the limited license rights expressly granted to CUSTOMER in Section 3.
- 5.3 Copyright.** CUSTOMER shall not obscure or remove any copyright or other proprietary notice or legend contained on or included in the WSP Software and shall reproduce all such information on all copies made hereunder. CUSTOMER shall not, directly or indirectly, disclose or distribute any technical information of WSP provided with or in the WSP Software without the prior written consent of WSP, which consent may be withheld at WSP's sole discretion.

## **6 LIMITED WARRANTIES.**

- 6.1 Product Warranty.** Provided that CUSTOMER is not in breach of any of its obligations under this Agreement, WSP warrants for a period of thirty (30) days from the Start Date (the "Warranty Period"); the WSP Software delivered pursuant to the Order will substantially perform in accordance with the Documentation. If the WSP Software fails to perform substantially in accordance with the Documentation, CUSTOMER must notify WSP in writing within the Warranty Period.
- 6.2 Excusive Remedy.** As CUSTOMER's sole and exclusive remedy and WSP's entire liability for any breach of the warranty set forth in Section 6.1, WSP will, at its option:
  1. promptly repair, correct or replace any WSP Software that fails to meet the warranty; or
  2. provide CUSTOMER with a reasonable procedure to circumvent the nonconformity; or

3. if 1. and 2. are not commercially feasible, terminate this Agreement upon written notice to CUSTOMER and refund the License or Monthly Subscription Fees paid by CUSTOMER under the relevant Order for the non-conforming WSP Software.

**6.3 Warranty Period.** Any request for the remedies of this Section 6 must be made within the Warranty Period and proof of purchase (i.e., copy of the invoice or receipt) is required to be presented to WSP. In the event of a refund, this Agreement will immediately terminate without further notice, and CUSTOMER will have no further rights or license to use WSP Software or Documentation.

**6.4 Exclusions from Warranty.** The limited warranty is void if non-conformance of the WSP Software results from or is related to the:

1. factors outside of our reasonable control (for example, natural disaster, war, acts of terrorism, riots, government action, or a network or device failure outside our control);
2. use of hardware, or software not provided or not approved (as recommended in the Documentation) by or on behalf of WSP, including, but not limited to, issues from inadequate bandwidth, high latency or related to third-party software or services resulting
3. use of WSP Software after advice was given to modify your use of the WSP Software and provided CUSTOMER did not modify its use as advised;
4. unauthorized action or lack of action when required, or from CUSTOMER's employees, agents, contractors, or vendors, or anyone gaining access to WSP's network by means of CUSTOMER's passwords or equipment, or otherwise resulting from a failure attributable to CUSTOMER to follow appropriate security practices;
5. CUSTOMER's failure to adhere to any required configurations, use supported platforms, follow any policies for acceptable use, or CUSTOMER's use of the WSP Software in a manner inconsistent with the features and functionality of the WSP Software (for example, attempts to perform operations that are not supported) or inconsistent with WSP's published guidance;
6. CUSTOMER's faulty input, instructions, or arguments (for example, requests to access files that do not exist);
7. CUSTOMER's attempts to perform operations that are not permitted or supported by the purchased license; or
8. Products or Services for which CUSTOMER at the time of the claim has not or not fully paid.

**6.5 Try & Buy.** If the WSP Software is purchased as a trial or evaluation version, a limited license will be granted to use certain key functionality of the Software on an "AS IS" basis for your own internal evaluation purposes and during a limited period of maximum thirty (30) calendar days and otherwise subject to the express limitations of the trial. Unless CUSTOMER and WSP agree otherwise in writing prior to the expiration or termination of the trial period, CUSTOMER agrees to cease all use of the WSP Software.

**6.6 Disclaimer of Warranties.** WSP AND ITS LICENSORS MAKE NO WARRANTY, REPRESENTATION OR PROMISE EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT. TO THE FULLEST EXTENT PERMITTED BY LAW, WSP AND ITS LICENSORS DISCLAIM AND EXCLUDE ANY AND ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR RESULTS. WSP AND ITS LICENSORS DO NOT WARRANT THAT THE WSP SOFTWARE OR DOCUMENTATION WILL SATISFY CUSTOMER'S REQUIREMENTS; THAT THE WSP SOFTWARE AND DOCUMENTATION ARE WITHOUT DEFECT OR ERROR; OR THAT THE OPERATION OF THE WSP SOFTWARE WILL BE UNINTERRUPTED.

## **7 LIMITATION OF LIABILITY.**

**7.1** IN NO EVENT SHALL WSP OR ITS LICENSORS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS). REGARDLESS OF WHETHER WSP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IT IS SPECIALLY UNDERSTOOD AND AGREED THAT WSP EXCLUDES LIABILITY FOR ANY FAILURE TO MEET AGREED SERVICE LEVELS FOR THE PRODUCT AS A RESULT OF NETWORK INTRUSIONS AND/OR INCIDENTS ATTRIBUTABLE TO ITS CRITICAL IT SERVICE PROVIDER MICROSOFT CORP (AZURE). TO THE MAXIMUM EXTENT PERMITTED BY LAW, WSP'S AGGREGATE LIABILITY ARISING FROM OR RELATING TO THE LICENSE, PRODUCTS OR SERVICES IS LIMITED TO THE FEES ACTUALLY PAID OVER THE LAST TWELVE

(12) MONTHS. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMIT ACTION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY.

## **8 INFRINGEMENT CLAIMS AND CUSTOMER OBLIGATIONS**

**8.1 Infringement Indemnity:** Subject to Section 8.2 and the restrictions and limitations set forth herein, WSP shall indemnify and hold harmless CUSTOMER, its officers, directors and employees from and against any costs or demands awarded against CUSTOMER by a court of competent jurisdiction pursuant to a final judgment as a result of a claim or action by a third party against CUSTOMER that the WSP Software or Documentation infringes a registered copyright, trademark, valid patent or other intellectual property right of a third party in North America, European Economic Area or Japan. The foregoing indemnity is conditioned on CUSTOMER:

- A. promptly notifying WSP of such claim;
- B. permitting WSP to control the response thereto and the defence thereof, including any agreement relating to the settlement thereof, and
- C. assisting and cooperating with WSP in the defence or settlement thereof. CUSTOMER may participate, at its own expense, in such defence directly or through counsel of its choice on a monitoring, non-controlling basis. WSP shall obtain CUSTOMER's prior written consent to any compromise or settlement of any claim which would require an admission of liability on the part of CUSTOMER or which would subject CUSTOMER to any injunction or other equitable relief.

**8.2 Exclusions.** WSP shall have no obligation under Section 8.1, and otherwise will have no liability for, any claim of infringement caused or alleged to be caused by:

- A. the use or combination of the WSP Software with non-WSP software, hardware, data, or content, including but not limited to software, hardware, data, or content of CUSTOMER;
- B. infringement that would have been avoided without the use or combination of the WSP Software with other non-WSP software, hardware, content, or data;
- C. the presence of any alteration or modification of the WSP Software by CUSTOMER or any third party acting on CUSTOMER's behalf; or
- D. the CUSTOMER's continuing the allegedly infringing activity after being notified thereof or after being informed and provided with modifications that would have avoided the alleged infringement.

**8.3 Exclusive Remedy:** The foregoing Sections 8.1 and 8.2 set forth the exclusive remedy and entire liability and obligation of WSP with respect to third party claims against CUSTOMER alleging intellectual property infringement or misappropriation.

**8.4 Injunctions.** In the event that a claim of infringement of a valid North American, European Economic Area or Japanese software patent or copyright is made against WSP or CUSTOMER or if WSP reasonably believes that such a claim will be made, WSP, at its option and in lieu of indemnification, may:

- A. procure for CUSTOMER the right to use the WSP Software without patent or copyright infringement;
- B. modify the WSP Software to make it non-infringing;
- C. replace the WSP Software with substantially equivalent software that is non-infringing; or
- D. direct CUSTOMER to cease use of the WSP Software, and refund to CUSTOMER a percentage of the aggregate fees received for such WSP Software that are the subject of such a claim, based on a five (5) year straight line depreciation.

**8.5 CUSTOMER Obligations.** Without prejudice to the indemnity given by WSP in Section 8.1, CUSTOMER shall indemnify, defend and hold WSP, its directors, officers, agents and employees harmless from any claims, demands, or causes of action whatsoever by a third party against WSP arising as a result of CUSTOMER's use (directly or indirectly) or operation of the WSP Software including CUSTOMER's use, performance, distribution or operation in conjunction with certain third party software (licensed to or under the control of CUSTOMER). CUSTOMER is not allowed to give any third parties/agents access to Products and/or Services provided to the CUSTOMER which are hosted by WSP. CUSTOMER shall, during the Term, allocate

sufficient third party software licenses as required to run (as appropriate) the WSP Software or the Software as a Service in accordance with the Documentation.

## **9 TERMINATION.**

- 9.1 Termination for Breach.** Each party will have the right to terminate this Agreement (in whole or in part) at any time by giving written notice to the other party if (i) the other party breaches any material term of this Agreement and fails to cure such breach within thirty (30) days after written notice thereof; (ii) the other party repeatedly breaches any terms of this Agreement in such manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement, (iii) if any of the following events occur: (a) the presentation of a petition for winding up (b) is the subject of an order or an effective resolution is passed for winding up; (c) the application for an order or application for the appointment of a receiver (including an administrative receiver), administrator, trustee or similar officer in respect thereof; (d) if a receiver, administrative receiver, administrator or similar office is appointed over all or any part of the assets or undertaking; (e) making a composition with its creditors generally or an assignment for the benefit of its creditors or other similar arrangement; (f) goes into liquidation; or (g) ceasing, or threatening to cease, to carry on business.
- 9.2 No dissolution.** To the extent permitted by law, the parties hereby waive their right under Articles 2:265 tot and 2:272 BW to terminate this Agreement or to invalidate this Agreement in accordance with said Articles.
- 9.3 Effect of Termination.** Upon expiration or termination of this Agreement CUSTOMER shall immediately cease use of the WSP Software, remove WSP Software from all computer hardware and return all software including license keys, together with the Documentation to the entity that the WSP Software was originally acquired from and certify to WSP's reasonable satisfaction the destruction or permanent deletion of all copies of the WSP Software and Documentation from its computer systems.
- 9.4 Termination of Orders.** All Orders issued under this Agreement shall terminate immediately on termination of this Agreement in accordance with this section 9, unless agreed otherwise.

## **10 PERSONAL DATA AND PRIVACY**

- 10.1 Scope.** This Section 10 applies to all personal data (as defined under applicable laws) processed by the Products or otherwise provided by CUSTOMER to WSP in connection with this Agreement ("Personal Data"). For purposes of this Agreement, WSP is a "data processor" that processes certain Personal Data on behalf of CUSTOMER, which is the "data controller." Under European Union (EU) privacy legislation, the term "data controller" is defined as the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes and means of the processing of personal data, and the term "data processor" is defined as a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the data controller.
- 10.2 Data protection and privacy laws.** WSP and CUSTOMER shall comply with all data protection and privacy laws applicable to its processing of Personal Data, including the General Data Protection Regulation (Regulation (EU) 2016/679) (the "GDPR") and including (if appropriate) obligations when transferring Personal Data outside the EEA.
- 10.3 Customer Responsibilities.** CUSTOMER's instructions to WSP for the processing of Personal Data will comply with applicable data protection laws. CUSTOMER will have sole responsibility for the accuracy, quality, and legality of Personal Data and the means by which CUSTOMER acquired Personal Data. CUSTOMER shall ensure that CUSTOMER is entitled to transfer the relevant Personal Data to WSP so that WSP may lawfully use, process and transfer the Personal Data in accordance with this Agreement on CUSTOMER's behalf.

## **11 GENERAL.**

- 11.1 License administration and Audit.** CUSTOMER shall keep complete and accurate books and records of its use of the WSP Software to demonstrate its compliance with this Agreement. Further, WSP may audit CUSTOMER's use of the WSP Software in order to verify compliance with this Agreement. CUSTOMER agrees to cooperate with WSP's reasonable request for access to CUSTOMER's computer systems to ensure CUSTOMER's adherence with the license terms hereunder.
- 11.2 Notices.** Any notice required or permitted to be given by CUSTOMER hereunder shall be in writing and delivered by courier or overnight delivery services, by email (with a read-receipt) or by certified mail,

and in each instance will be deemed given upon receipt. Any such notice shall be delivered or sent to WSP, Van Nelleweg 1, 3044 BC Rotterdam, The Netherlands.

**11.3 Governing Law and Disputes.**

- A. United States. If you acquired the WSP Software or Services in the United States, all matters arising from or connected with this Agreement, are governed by New York state law, excluding the United Nations Convention on the International Sale of Goods (“CISG”), conflict of law rules and choice of law principles that provide otherwise.
- B. Outside the United States. If you acquired the WSP Software or Services in any other country outside the United States, all matters arising from or connected with this Agreement, are governed by the laws of the Netherlands, excluding CISG, conflict of law rules and choice of law principles that provide otherwise.
- C. Disputes. Any dispute between CUSTOMER and WSP with regard to this Agreement shall exclusively be submitted to the courts of New York if you acquired the WSP Software or Services in the United States. In all other cases, such dispute shall be exclusively settled by arbitration in The Hague, The Netherlands, in the English language in accordance with then existing Rules of Conciliation and Arbitration of the International Chamber of Commerce (“ICC”) by 1 (one) arbitrator to be selected in accordance with the said rules. The parties request the ICC Court of Arbitration to attempt to appoint an arbitrator who is knowledgeable in the area of information technology; if no such arbitrator can be appointed, the normal appointment process shall apply. The award rendered therein shall be final and binding upon the parties to such arbitration proceedings.
- D. Urgent relief. CUSTOMER acknowledges and agrees that any copying or use of the WSP Software other than as expressly permitted by this Agreement would result in irreparable injury to WSP for which money damages would be inadequate and in such event submission to arbitration shall not preclude WSP’s ability, in addition to other remedies available at law and in equity, to immediate injunctive relief to prevent any such unauthorized use.

**11.4 Legal Effect.** This Agreement describes certain legal rights. You may have other rights under the laws of your state or country. You may also have rights with respect to the party from whom you acquired the WSP Software. This Agreement does not change your rights under the laws of your state or country if the laws of your state or country do not permit it to do so.

**11.5 Assignment.** Neither party may assign any rights, duties, obligations or privileges under this Agreement without the prior written consent of the other party. Furthermore, CUSTOMER may not assign (or pledge) a claim against WSP in a way that is valid under applicable property law without the prior written consent of WSP. A change of control or ownership shall not be deemed to be an assignment under this Section so long as the new owner has expressly assumed in writing all of the duties and obligations of the assignor and further provided, that CUSTOMER shall remain liable and responsible to WSP (and its licensors) for the performance and observance of all such duties and obligations.

**11.6 Severability.** Should any part or provision of this Agreement be held unenforceable or in conflict with the law of any jurisdiction, the validity of the remaining parts or provisions shall not be affected by such holding.

**11.7 Limitation on Effect of Waiver.** Failure on the part of WSP to exercise, or WSP’s delay in exercising, any of WSP’s rights hereunder shall not be construed as a waiver or waiver of other breaches of this Agreement. Any single or partial exercise by a party of any right shall not preclude any other or future exercise thereof or the exercise of any other right in the Agreement.

**11.8 Entire Agreement and Amendments.** The Agreement contains the entire understanding of the parties with respect to the transactions contemplated and supersedes any prior agreements or understandings among the parties with respect to the subject matter hereof. Except for the EULA, which may be amended by WSP as published on its website from time to time, this Agreement may be amended only in writing signed by authorised representatives of both parties.

**11.9 Export Law Assurances.** CUSTOMER acknowledges that it is familiar and shall comply with all domestic and international export laws and regulations that apply to the WSP Software. These laws include restrictions on destinations and use. CUSTOMER hereby expressly agrees to defend, hold harmless and

indemnify WSP, its directors, officers, and employees, from any claim, suit or dispute alleging that CUSTOMER has exported the WSP Software in violation of such laws.

- 11.10 Construction.** The headings in this Agreement are for convenience of the parties only. They do not constitute a portion of this Agreement and shall not be used in interpreting the construction of this Agreement.
- 11.11 Third Party Beneficiary.** CUSTOMER hereby agrees that the licensors of Third Party Software shall be considered third party beneficiaries of this Agreement and shall be entitled to bring a direct action against CUSTOMER in the event of breach of any applicable provisions of this Agreement, pursuant to the terms and conditions of this Agreement.
- 11.12 Force Majeure.** Neither party shall be in default if failure to perform any obligation hereunder is caused solely by unforeseen supervening conditions beyond that party's reasonable control, which could not have been prevented by the non-performing party's reasonable precautions, commercially accepted processes or substitute services, including acts of God, civil disturbances, strikes and labour disputes.
- 11.13 Survival.** The rights and obligations of the parties which by their nature extend beyond the expiration or termination of the Agreement shall survive termination or expiry of this Agreement for any reason.
- 11.14 Negation of Agency and Similar Relationships.** Nothing contained in this Agreement shall be deemed to create an agency, joint venture or partnership relationship.

**VERSION EULA: [2021.01]**