

# DATPROF Software License Agreement

TransValue B.V.  
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9743 AD GRONINGEN

 **DATPROF**  
TEST DATA SIMPLIFIED

# DATPROF Software License Agreement

**THIS AGREEMENT** is dated and entered as of this \_\_\_\_ day of <Month>, 20XX by and between <Customer Name here> ("LICENSEE"), having its principal place of business at <Customer Address Here> and **TransValue BV trading as DATPROF** ("LICENSOR"), a Netherlands company, having its principal place of business at Friesestraatweg 213b, 9743 AD Groningen, The Netherlands

**WHEREAS**, LICENSEE and LICENSOR desire that the terms and conditions of all software products licensed to LICENSEE by LICENSOR be governed by a single agreement;

**NOW, THEREFORE**, the parties agree as follows:

## 1. DEFINITIONS

- 1.1. "Affiliate"** shall mean, with respect to any entity, any other entity directly or indirectly, through one or more intermediaries, Controlling, Controlled by or under common Control with such entity.
- 1.2. "Applicable Specifications"** means the functional and operational characteristics of the Version of the Product as described in LICENSOR's published product manual available at <https://docs.datprof.com>.
- 1.3. "Bugfix"** is a type of Release in that its intent is to correct Defects.
- 1.4. "Confidential Information"** means all information provided by each party to the other party, or their affiliates, employees, officers, directors, agents or representatives, including without limitation the terms and conditions of this Agreement, and any and all of a party's design specifications, drawings, Documentation, written manuals, software programs, business plans, financial information, technical and marketing information and evaluations, service plans and customer information, whether such Confidential Information is conveyed to or received by the Receiving Party in writing or verbally or is otherwise observed or overheard by the Receiving Party. For purposes herein, a party disclosing information shall be deemed the "Disclosing Party" and a party receiving information shall be deemed the "Receiving Party." Confidential Information, except for Consumer Information, shall not include information which can be demonstrated: (i) to have been rightfully in the possession of the Receiving Party from a source other than the Disclosing Party prior to the time of disclosure of said information to the Receiving Party ("Time of Disclosure"); (ii) to have been in the public domain or publicly known prior to the Time of Disclosure; (iii) to have become part of the public domain or publicly known after the Time of Disclosure by a publication or by any other means, except an unauthorized act or omission or breach of this Agreement on the part of the Receiving Party, or its employees; (iv) to have been supplied to the Receiving Party after the Time of Disclosure without restriction by a third party who is under no obligation to the Disclosing Party to maintain such information in

confidence; (v) to be required to be disclosed by law or court order, provided that the Receiving Party shall use best efforts to provide the Disclosing Party with prompt notice sufficient for the Disclosing Party to have a reasonable opportunity to prevent such disclosure and shall use best efforts to limit the information to be disclosed; or (vi) to have been independently developed by the Receiving Party, provided that any persons developing same have not had access to Confidential Information and have written evidence demonstrating such independent development.

- 1.5. "Control"** over an entity shall mean (i) the possession, directly or indirectly, of more than 50% of the voting power to elect directors, in the case of an entity that is a corporation, or members of a comparable governing body, in the case of a limited liability company, firm, joint-venture, association or other entity, in each case whether through the ownership of voting securities or interests, by contract or otherwise and (ii) with respect to a partnership, a general partner thereof or an entity having management rights comparable to those of a general partner shall be deemed to control such entity. The terms "Controlling" and "Controlled" shall have synonymous meanings.
- 1.6. "Defect"** is the manifestation of an omission or error in the Product causing the software to operate in a manner that is not compliant with the Applicable Specifications.
- 1.7. "Delivery Date"** means the date on which the Product is to be delivered to LICENSEE and is the date set forth in Product Schedule #1.
- 1.8. "Documentation"** means LICENSOR's documentation for the Product (<https://docs.datprof.com>). Documentation may be further identified as:
- 1.8.1. "User Documentation"** means LICENSOR's standard documentation provided to the User, the purpose of which is to explain the installation, use, and operation of the Product, in summary or complete forms.
- 1.9. Evaluation Product:** Version of a Product and/or License designated as a demo, trial, free or beta version.
- 1.10. "Executable Code"** means the machine readable version of the Product.
- 1.11. "LICENSEE"** shall mean LICENSEE, as defined in the first paragraph of this agreement, its Subsidiaries and Affiliates.
- 1.12. "License Effective Date"** means the date set forth in Product Schedule #1.
- 1.13. "License Fee"** means the fee indicated for the Product as set forth in Product Schedule #1.
- 1.14. "License Period"** the agreed period between license effective start and end date as set forth in Product Schedule #1
- 1.15. "Major Release"** Improved Version of the Product which, in addition to any Minor Release, generally contains new functionalities and which may be offered at an extra charge and for which a new license agreement may need to be concluded.
- 1.16. "Minor Release"** is a type of release intended to add incremental improvements in the functionality of the Product.

- 1.17. "Operating System"** means software that controls the execution of application programs; an Operating System may provide services such as resource allocation, scheduling, input/output control and data management.
- 1.18. "Product"** means the LICENSOR's computer software programs (or other products or services) and Applicable Specifications identified in a Product Schedule not designated as an Evaluation Product. Delivery of the Product to LICENSEE shall be in (i) Source Code form, or (ii) Executable Code form, or (iii) both, as specified in such Product Schedule. Product shall also include each and every Minor Release, Major Release, Version, Bugfix and Release available from LICENSOR during the term of each Support Period.
- 1.19. "Product Schedule"** shall mean: (i) any schedule, order, or statement of work (present or future) attached to this Agreement; (ii) any amendment to this Agreement for the acquisition of Products or services from LICENSOR; or (iii) a purchase order.
- 1.20. "Release"** means a version of a Product containing changes that correct Defects or makes improvements in the functionality of the Product, which is generally made available to LICENSOR's client base. The Release number reflects the successive changes to the Software in the following order: the Major Release number is followed by the Minor Release number, which is followed in turn by a Bugfix number, if any, for instance 3.2.16.
- 1.21. "Source Code"** means the human readable form of the Product or a computer program, and test materials, test scripts, build scripts and other computer programs in source and executable form necessary for the transformation thereof into the machine executable form of the Product and the test and verification thereof. Source Code will also mean and include programming documentation and compilation and build instructions
- 1.22. "Support"** shall mean the support and maintenance provided to LICENSEE as set forth in the attached Support Schedule.
- 1.23. "Support Fees"** means the fees indicated on the Product Schedule for the Support as provided herein.
- 1.24. "Support Period"** means applicable period of Support during the initial term and any renewal term and as set forth in Product Schedule #1.
- 1.25. "Support Schedule"** means any schedule, order, purchase order or statement of work (present or future) incorporating by reference this Agreement or attached to this Agreement or any amendment to this Agreement for the acquisition of Support from LICENSOR.
- 1.26. "Triggering Event"** means the occurrence of any of the following during the Term:
- 1.26.1.** The failure of LICENSOR to provide Support as required in Section 10; or
  - 1.26.2.** The failure of LICENSOR to continue support for a previously supported version.
- 1.27. "User"** means either (i) a natural person, or (ii) a computer application or process; either of which is authorized to access, use, and receive the benefit of

the Product pursuant to this Agreement under the terms authorized in the applicable Product Schedule.

**1.28. "Version"** means Release.

## 2. LICENSE GRANT

**2.1. Grant.** LICENSOR hereby grants to LICENSEE a, non-exclusive, worldwide, royalty free right to access, use and benefit from the Product and Documentation in such quantity and for such License Period as is specified in the Product Schedule #1. LICENSEE may install the Product in any combination, subject to the quantity limitations in the applicable Product Schedule.

**2.2. Discontinued Products.** If during the term of the Agreement LICENSOR is acquired, and as a result of such acquisition Product licensed under the terms of the Agreement is discontinued in favour of comparable products offered by the acquiring company, and Support Fees for the discontinued Product is then current, LICENSEE shall receive from the acquiring company the comparable products, providing equal or greater functionality (including Support), licensed at the same level as the discontinued Product, without being subject to any additional license fees or other fees or charges. In addition, LICENSEE shall not be subject to any additional support or maintenance or similar fees or charges during the then current term of such Support.

**2.3. Evaluation Products.** Licensee may make limited use of an Evaluation Product, exclusively for evaluation of the Product. It is not permitted to use the results ensuing from the use of an Evaluation Product in any manner whatsoever for commercial purposes unless a fee is agreed for this in writing. License grant for an Evaluation Product to LICENSEE does not entitle the LICENSEE to Maintenance & Support.

## 3. USE OF PRODUCT

**3.1. Use.** The Product may only be used by LICENSEE for LICENSEE's access, use and benefit

**3.2. Right to Copy Product.** LICENSEE may copy the Product as necessary for the uses permitted under this Agreement and for back up and disaster recovery and for back up and disaster recovery testing.

**3.3. Authorized Third Parties.** LICENSEE may exercise the rights granted in this Article 3. either directly or indirectly through the services of its own employees or consultants or other contractors provided that such third parties agree are held by LICENSEE to at least as great of confidentiality obligations as are set forth in this Agreement.

## 4. TITLE

**4.1. Product.** LICENSEE acknowledges that title to each Product or any related materials or Documentation shall at all times remain with LICENSOR. LICENSEE agrees not to remove or destroy any proprietary markings or proprietary legends placed upon or contained within any Product or any related materials or Documentation by LICENSOR.

**4.2. Rights in Data.** This license and use of the Product does not imply any transfer of ownership rights of existing data. Data created, processed and derived by Product is and remains the property of the owner of the originating data, or, in absence thereof, LICENSEE. LICENSOR shall have no ownership interest in or right to any other software, program, routine or subroutine owned or developed by LICENSEE or acquired by LICENSEE from a third party by virtue of its having been merged with or used in conjunction with any Product licensed hereunder.

## 5. DELIVERY

**5.1. Electronic Download Method.** LICENSOR make electronically available to LICENSEE (i) copies of each Product specified in a Product Schedule, and (ii) the Documentation no later than the Delivery Date specified in Schedule 1 and in accordance with the delivery instructions set forth in the applicable Product Schedule. LICENSOR understands that it will not leave tangible copies of Products or Documentation at the installation location, but will arrange for electronic downloading of those items. LICENSOR also agrees to replace the Product as originally delivered as stated in Product Schedule, at no charge in the event of damage to the Product.

## 6. FEES AND PAYMENT TERMS

**6.1.** All License Fees, Support Fees and all other amounts payable by LICENSEE to LICENSOR hereunder shall be payable within thirty (30) days of LICENSEE's receipt of LICENSOR's Correct Invoice. A "Correct Invoice" means an invoice addressed to LICENSEE, care of an appropriate person or business group, at the address set forth in the purchase order, referencing the applicable purchase order number for the amount agreed to in this Agreement (or any future agreement, order, purchase order, schedule, statement of work or amendment). In the event that LICENSOR fails to timely remit a Correct Invoice, LICENSEE shall have no liability for penalties, interest or other costs arising from payment delays. In the event of a delay in payment due to LICENSOR's failure to provide a Correct Invoice, LICENSOR shall not be excused from its performance under this Agreement. Notwithstanding the foregoing, in no event shall LICENSOR invoice LICENSEE for charges incurred by LICENSEE more than 180 days after the month in which such charges were incurred.

- 6.2.** All payments to be made under this Agreement shall be made in cleared funds, without any deduction or set-off and free and clear of and without deduction for or on account of any taxes, levies, imports, duties, charges, fees and withholdings of any nature now or hereafter imposed by any governmental, fiscal or other authority. If a Party to this Agreement is compelled to make any such deduction, it will pay to the receiving Party such additional amounts as are necessary to ensure receipt by the receiving Party of the full amount which that party would have received but for the deduction.
- 6.3.** License Fees for the Product are set forth in Product Schedule #1.
- 6.4.** License Fees for additional or subsequent purchases of the Product set forth in the Product Schedule #1 shall not increase more often than once in each twelve (12) month period.
- 6.5.** For a period of 12 months from the initial date of this Agreement, LICENSEE shall be entitled to make additional purchases of Product(s) at prices not to exceed the prices set forth in this agreement.
- 6.6.** If any invoice remains unpaid for 30 days after the invoice date, LICENSEE is in default ipso jure, without a notice of default being required. LICENSOR has the right to suspend access to the Software and the provision of services and Maintenance & Support until the outstanding amount as well as all additional charges have been paid by LICENSEE.
- 6.7.** In case of non-timely payment LICENSEE is held, in addition to the amount owed and the interest on it, to full payment of both judicial and extrajudicial collection costs, including all costs for legal assistance, bailiffs and debt-collection agencies. In the event of non-timely payment LICENSEE owes an interest of 2% per month on the outstanding amount.
- 6.8.** The outstanding amount is immediately payable if LICENSEE is declared bankrupt, files for a moratorium on payments or if the LICENSEE's assets are attached, if LICENSEE dies and also if LICENSEE proceeds to liquidation or is dissolved.
- 6.9.** Once a period has started LICENSEE owes the full amount for that period. LICENSEE is never entitled to reimbursement of any amount paid other than the remedies mentioned in article 7.8.
- 6.10.** The provisions in this Article 6 can never result in any liability of LICENSOR whatsoever.

## **7. WARRANTY**

### **LICENSOR hereby warrants that:**

- 7.1.** (a) It has all necessary power and authority to enter into this Agreement; (b) this Agreement and performance hereunder does not and will not violate the terms of any other contract, covenant or agreement between LICENSOR and any third party now existing or hereinafter entered into; (c) it has the full right to license

the Product and any related materials or Documentation; (d) it shall perform all responsibilities and render all services pursuant to this Agreement in a professional, competent and workmanlike manner with qualified personnel; (e) that there are no known infringements or claims of infringement with respect to any patent, copyright, licenses, trade secrets, trademarks, service marks or other intellectual and proprietary rights of third parties; and, (f) the Product and Documentation delivered to LICENSEE are the most current commercially available versions thereof.

- 7.2.** For a period of time equal to the greater of (i) the warranty period set forth in Product Schedule #1 beginning on the date of delivery of the Product to LICENSEE or (ii) the period of time during which LICENSEE pays Support Fees for the Product, that the Product shall be free from significant programming Defects and perform in all material respects in the manner specified in the Applicable Specifications. LICENSOR's sole obligation and liability under the preceding sentence is to use its best efforts to correct promptly any such programming Defects or failure to perform and such efforts shall be at least as great as LICENSOR's obligations under the Support requirements for set forth in Support Schedule #2, which is attached hereto and incorporated herein by reference. This warranty shall not be affected by LICENSEE's modifications of the Product (including Source Code) so long as such modifications are not the sole cause of any such failure to perform and if LICENSOR has authorized such modifications.
- 7.3.** It has made all commercially reasonable efforts to ensure that all Product provided to LICENSEE hereunder shall be virus free. If LICENSOR fails to perform any obligation set forth in this section and if as a result, the Product deliverable or interfacing equipment introduces a virus into LICENSEE's system(s), LICENSOR will be responsible for any costs in removing the virus from the affected system(s).
- 7.4.** It has taken reasonable steps to test the Product acquired hereunder for "Disabling Code" and that the Product is free of Disabling Code as of the date of delivery by LICENSOR, and that LICENSOR will continue to take such steps with respect to future enhancements or modifications to the Product. Disabling Code is defined as computer instructions, devices or functions (e.g. key, node, lock, time-out, "back door", "trapdoor", "booby trap", "drop dead device", "data scrambling device", "Trojan Horse") that restrict, disable, limit or impair the performance or access to the Product, alter, destroy or inhibit the Product and/or LICENSEE's processing environment, including but not limited to other programs, data storage and computer libraries. Disabling Code includes but is not limited to: (i) programs that self-replicate without manual intervention; (ii) instructions programmed to activate at a predetermined time or upon a specified event; (iii) programs that allow an unauthorized party to access LICENSEE's processing environment; (iv) and/or, programs purporting to do a meaningful function but designed for a different function. If LICENSOR fails to



perform any obligation set forth in this section LICENSOR will be responsible for any damages resulting from such failure.

- 7.5.** Notwithstanding the above in article 7.4 LICENSOR has the right to take technical or other measures to stop or restrict the Product if the agreed license term has expired or if LICENSEE has failed to fulfil its obligations or if LICENSEE does not possess the required keys. LICENSOR has the right to restrict functions in the Product not acquired by LICENSEE. LICENSOR is never liable for any damages caused as a result.
- 7.6.** The Product contains no monitoring functionality wherein the Product monitors or records the usage of the Products or any other products, applications, software, computers, systems or other property or information of customer that LICENSOR would be able to access remotely, without the prior written approval by an authorized representative of LICENSEE and that the Product contains no functionality that permits it communicate with LICENSOR, without the prior written approval by an authorized representative of LICENSEE.
- 7.7.** That a list of all third party, open source, freeware or shareware contained in the Product is maintained, a copy of which is available on request.
- 7.8. Remedies.** If a Product or any related materials or Documentation does not conform to the warranties made by LICENSOR in this Agreement, or is otherwise defective, LICENSOR shall correct the defects or non-conformities within twenty (20) days of notice from LICENSEE. If LICENSOR does not remedy any and all defects in the Product or any related materials or Documentation within such period, LICENSEE may elect to terminate this Agreement as to such Product and any other Products dependent thereon, and LICENSEE shall be entitled the return of the unexpired months of License and Support Fees for all such Products. Upon return of such (prepaid) fees , LICENSEE shall remove and refrain from further use of the Product and this Agreement shall terminate as to such Product. For the purpose of this subsection a perpetual License term is considered as a five year period.

## **8. LIMITATION OF LIABILITY**

**EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, THE WARRANTIES STATED ABOVE IN SECTION 7 ARE LIMITED WARRANTIES AND ARE THE ONLY WARRANTIES MADE BY LICENSOR. LICENSOR DOES NOT MAKE AND HEREBY DISCLAIMS, AND LICENSEE HEREBY EXPRESSLY WAIVES, ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED. THERE ARE EXPRESSLY EXCLUDED ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. UNDER NO CIRCUMSTANCES SHALL EITHER PARTY HAVE ANY LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR LOSS OF PROFITS, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL OR PUNITIVE DAMAGES, EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, EXCEPT FOR LICENSOR'S OBLIGATIONS SET**

**FORTH IN SECTION 7.4 (DISABLING CODE), SECTION 9 (INDEMNITY), AND SECTION 12 (CONFIDENTIALITY) OF THIS AGREEMENT, FOR LICENSOR'S NEGLIGENCE, FRAUD, OR WILFUL MISCONDUCT AND FOR BODILY OR PERSONAL INJURY AND PROPERTY DAMAGE, THE LIABILITY OF EITHER PARTY TO THE OTHER PARTY FOR ANY REASON AND UPON ANY CAUSE OF ACTION WHATSOEVER SHALL BE LIMITED TO THE AMOUNT SET FORTH IN PRODUCT SCHEDULE #1. LICENSOR REJECTS ALL LIABILITY FOR DAMAGES RELATED TO THE USE OF AN EVALUATION PRODUCT.**

## **9. INDEMNITY**

**9.1. Infringement Indemnity.** LICENSOR will indemnify and hold LICENSEE, its parent, Affiliates and subsidiaries and their respective officers, directors, employees, consultants and agents harmless from and against, and LICENSOR will at its own expense defend any claim, suit or action (collectively "Action") brought against any of them to the extent such Action is based upon, any claim that any aspect of the Product or Applicable Specifications used within the scope of this Agreement infringes any patent, copyright, licenses, trade secrets, trademarks, service marks or other intellectual property rights.

**9.2. Condition of Indemnification.** The indemnification provided under this Section 9 is conditioned upon LICENSOR being promptly notified in writing of any such claim. LICENSOR will have the sole right to conduct the defense of any such claim or action and all negotiations for its compromise or settlement and no such compromise or settlement is hereby authorized unless the party to be indemnified obtains a complete release of liability under such compromise or settlement. If LICENSOR, after receiving notice of any such proceeding, fails to timely begin the defense of such claim or action, LICENSEE may (without further notice to LICENSOR) retain counsel and undertake the defense, compromise, or settlement of such claim or action at the expense of LICENSOR. LICENSEE shall give LICENSOR (i) all reasonable information and assistance in defending or settling such Action and (ii) the exclusive right to control such defense and/or settlement provided that LICENSEE is entitled to participate in the defense and any negotiations at its own expense.

**9.3. Remedies.** In addition, in the event of any such Action or threat thereof, LICENSOR shall, at LICENSOR's option, either:

**9.3.1.** Procure for LICENSEE a right to continue to use the Product as contemplated hereunder; or

**9.3.2.** Replace or modify the Product to make its use hereunder non-infringing while being capable of performing the same functions, with the same performance, and operational characteristics.

**9.4.** Notwithstanding the foregoing, LICENSOR assumes no liability for any Action that results solely from: (i) the combination of the Product with non-LICENSOR software unless such combination was made, designated or authorized by

LICENSOR; or (ii) any Product that is modified in any way by LICENSEE, unless such modification was made or authorized by LICENSOR.

- 9.5.** The foregoing states the entire liability and obligations of LICENSOR and the exclusive remedy of LICENSEE with respect to infringement of any copyrights, patents, licenses, trade secrets, trademarks, service marks or other intellectual property rights by the Product or any parts thereof or any related materials or Documentation.

## 10. INTELLECTUAL PROPERTY RIGHTS

- 10.1.** LICENSOR retains ownership of all rights of intellectual property in respect of the Product including copies, improvements, enhancements, derivative works and modifications thereof as well as the designs, software, Documentation and all other materials developed and/or used in preparation or execution of the agreement between LICENSOR and LICENSEE or resulting from it. No other rights with respect to the Product or any related intellectual property rights are implied or granted.
- 10.2.** LICENSEE will not engage in any activities regarding the Product that directly or indirectly affect or harm these intellectual property rights.
- 10.3.** LICENSEE is never entitled to (perusal of) the source code of the Product, unless agreed otherwise in writing

## 11. SUPPORT

- 11.1. Support Period; Support Fee Increase.** LICENSOR shall provide Support to LICENSEE for the Product at set forth in Product Schedule #1 beginning on the date of delivery of the Product to LICENSEE. Thereafter, LICENSOR shall provide Support to LICENSEE for the annual Support Fee set forth on Support Schedule #2. LICENSOR may from time to time increase the Support Fee so long as (i) LICENSOR provides LICENSEE 90 days written notice of such increase, (ii) such increases are not more often than once in each twelve (12) month period and (iii) any such increased fee may not exceed the lesser of (a) twenty percent (20%) of the then current perpetual license fee for the Product or (b) an amount not more than the published Dutch Retail Price Index in the month of the renewal of the Support Fee paid by LICENSEE for the most recent Support Fee.
- 11.2. Support Renewal.** Support shall automatically renew upon the expiry of each paid term for successive one (1) year terms (or for such other length of term(s) as set forth in Product Schedule #1) (each, a "Renewal Term") unless LICENSEE gives LICENSOR written advance notice of its intention to terminate (or not renew) the Support as provided in the next sentence. LICENSOR will invoice LICENSEE for Support for each Renewal Term at least 30 days prior to the beginning of the Renewal Term, and if LICENSEE desires to terminate Support, then LICENSEE must give the notice of termination prior to the beginning of the

Renewal Term to which the invoice applies. While LICENSEE may cancel an existing term of Support, no refund will be issued for any unused portion of the Support unless LICENSOR is in material breach of this Agreement. LICENSEE shall have the option to receive Support for successive additional one year terms (or for such other length of term(s) as set forth in Product Schedule #1) for as long as LICENSOR offers Support. LICENSOR shall make such Support available for at least one year from the delivery date. Said Support will, at a minimum, result in the Product performing in accordance with the Applicable Specifications and the warranty stated herein.

**11.3. Co-terminus Support.** Notwithstanding the foregoing, if LICENSEE has previously licensed Product from LICENSOR, then the initial term of Support for newly purchased Product licenses will be made coterminous with the term of Support for previously licensed Product and the applicable pro-rated portion of the annual Support fee shall be payable by LICENSEE.

**11.4. Reinstatement.** In the event Support or maintenance has lapsed, a reinstatement fee may be assessed if LICENSEE elects to reinstate Support. The reinstatement fee is equal to the Support Fee for the period in which the Products was not under support plus the current support fee but in no event shall the current Support Fee be greater than LICENSEE would have incurred had Support not lapsed.

## **12. CONFIDENTIALITY; SECURITY; ACCESS TO LICENSEE FACILITIES AND SYSTEMS**

**12.1. Confidentiality.** LICENSOR agrees that any information concerning LICENSEE's or LICENSEE's customers' business operations, systems, practices, computer systems (without limitation the programs and products used therein or related in any way thereto), data, customers, products and programs (including without limitation all information whatsoever concerning or pertaining to (i) shareholders or security holders of securities issued by or serviced by clients of LICENSEE or (ii) clients of LICENSEE or such clients' customers (also styled "Consumer Information") and any documents, letters, memoranda, charts, graphs, programs and other writings or documents of any nature given to LICENSOR by LICENSEE or LICENSEE's agents, or obtained by LICENSOR in the course of performing an Engagement Order or Purchase Order, shall constitute confidential and proprietary information (except as otherwise provided herein, or as otherwise agreed by LICENSEE) and will be considered LICENSEE's "Confidential Information", and that LICENSOR shall use such Confidential Information solely for the purpose of providing the services contemplated herein. LICENSOR agrees that such Confidential Information will be kept confidential; provided, however, that (i) any such Confidential Information may be disclosed to LICENSOR's officers, employees, personnel and representative who need to know such Confidential Information for the purpose of providing the services contemplated herein (it being understood that such officers,

employees, personnel and representatives shall be informed of the confidential and proprietary nature of such Confidential Information and shall be directed to use such Confidential Information as provided above and not to use or disclose such Confidential Information to any person or entity except as provided herein), and (ii) any disclosure of such Confidential Information may be made as agreed to by LICENSEE in advance, and in writing. Furthermore, LICENSOR shall not copy, reproduce, sell or otherwise transfer or convey any Confidential Information to any person or entity. All documents, memoranda, graphs, charts, programs, notes and other writings and documents whatsoever prepared by LICENSOR and based on such Confidential Information shall remain subject to the confidentiality provisions hereinabove. Upon completion of an Engagement Order or Purchase Order, LICENSOR shall return to LICENSEE all Confidential Information in tangible form. LICENSOR acknowledges that disclosure of the Confidential Information may give rise to an irreparable injury to LICENSEE inadequately compensable in damages. Accordingly, LICENSEE may seek (without the posting of any bond or other security) injunctive relief against the breach of the foregoing undertaking of confidentiality and nondisclosure, in addition to any other legal remedies which may be available. LICENSOR consents to the obtaining of such injunctive relief and in any proceeding upon a motion for such injunctive relief, LICENSOR's ability to answer in damages shall not be interposed as a defense to the granting of such injunctive relief.

**12.2. Security.** LICENSOR will ensure that all physical embodiments of Confidential Information it receives from LICENSEE, including without limitation, computer tapes, disks and written materials are stored in secure locations at all times. LICENSOR will not transmit Confidential Information electronically unless that Confidential Information is encrypted. LICENSOR will maintain access controls on electronic systems containing Confidential Information including controls to authenticate and permit access only to authorized individuals and controls to prevent employees from providing information to unauthorized individuals, and will maintain access restrictions at physical locations containing Confidential Information to permit access only to authorized individuals. LICENSOR has conducted or will conduct employee background checks on employees who have access to Confidential Information. LICENSOR will have measures in place to protect against destruction, loss, or damage of Confidential Information due to environmental hazards, such as fire and water damage. LICENSOR will have monitoring systems in place to detect actual or attempted attacks on or intrusions into electronic systems containing Confidential Information, and any actual or attempted improper access to and/or improper disclosure of Confidential Information in any form. Furthermore, LICENSOR will notify LICENSEE if any Confidential Information, whether maintained electronically or in hard copy form, is known to have been accessed, or reasonably believed to have been accessed, by an unauthorized party, or improperly disclosed by LICENSOR contrary to this Agreement as soon as reasonably possible following

the discovery of the improper access/disclosure. LICENSOR shall promptly provide LICENSEE with detailed information regarding the nature of the improper access/disclosure, the impact on LICENSEE and the corrective action taken by LICENSOR to address the improper/access disclosure.

### **12.3. LICENSOR Access to LICENSEE Facilities; Conduct of LICENSOR Personnel.**

If required for performance of services, LICENSOR, its employees and agents, will be granted access to LICENSEE facilities subject to compliance with LICENSEE's standard administrative and security requirements and policies, for the purpose of performing the Services, as notified to LICENSOR in writing from time to time. Access to LICENSEE facilities shall be restricted to normal LICENSEE business hours. Access to LICENSEE facilities outside normal business hours must be approved in advance by a LICENSEE officer, which approval will not be unreasonably withheld. LICENSOR shall have no tenancy, license or any other property or other rights or interest in LICENSEE facilities. While present at LICENSEE facilities, LICENSOR's personnel shall be accompanied by LICENSEE personnel, unless otherwise specified prior to such event by LICENSEE's program manager or his or her designee. All LICENSOR personnel shall carry and produce when requested a valid LICENSOR identification card. LICENSOR shall not in any way physically alter or improve any LICENSEE facility without the prior written approval of LICENSEE in its sole and absolute discretion. While at any LICENSEE facility, LICENSOR's personnel, contractors, and subcontractors shall (1) comply with LICENSEE's requests, rules, policies, and regulations regarding personal and professional conduct (including without limitation, the wearing of a particular uniform, identification badge, or personal protective equipment and adhering to regulations and general safety practices or procedures (including fingerprinting and background checks)) and (2) otherwise conduct themselves in a professional and business-like manner. LICENSOR shall not remove from LICENSEE's facilities or retain a copy of any data or information obtained from, or as a result of access to, LICENSEE's systems unless that removal or retention is reasonably necessary to perform the Services and is approved in writing by LICENSEE. If LICENSOR is not granted the required access to LICENSEE's facilities, LICENSOR shall not be held responsible and liable for the non-performance of service(s), unless LICENSOR and LICENSEE agree to perform the service in an alternative way.

**12.4. Communication Systems and Access to Information.** If required for performance of services, LICENSOR will receive access to LICENSEE's computers and electronic communications systems ("Systems"), including but not limited to voicemail, email, customer databases, and internet and intranet systems. Such Systems are intended for legitimate business use related to LICENSEE's business. LICENSOR acknowledges that LICENSOR does not have any expectation of privacy as between LICENSOR and LICENSEE in the use of or access to LICENSEE's Systems and that all communications made with such Systems or equipment by or on behalf of LICENSOR are subject to LICENSEE's scrutiny, use

and disclosure, in LICENSEE's discretion. LICENSEE reserves the right, for business purposes, to monitor, review, audit, intercept, access, archive and/or disclose materials sent over, received by or from, or stored in any of its electronic Systems. This includes, without limitation, email communications sent by users across the internet and intranet from and to any domain name owned or operated by LICENSEE. This also includes, without limitation, any electronic communication System that has been used to access any of LICENSEE's Systems. LICENSOR further agrees that LICENSOR will use reasonable security, such as, for example, encryption and passwords, to protect LICENSEE's Confidential Information from unauthorized disclosure (internally or externally) and that the use of such security does not give rise to any privacy rights in the communication as between LICENSOR and LICENSEE. LICENSEE reserves the right to override any security passwords to obtain access to voicemail, email, computer (and software or other applications) and/or computer disks on LICENSEE's Systems. LICENSOR also acknowledges that LICENSEE reserves the right, for any business purposes, to search all work areas (for example, offices, cubicles, desks, drawers, cabinets, computers, computer disks and files) and all personal items brought onto LICENSEE property used to access LICENSEE Information or Systems. If LICENSOR is not granted the required access to LICENSEE's Communication Systems and Access to Information, LICENSOR shall not be held responsible and liable for the non-performance of service(s), unless LICENSOR and LICENSEE agree to perform the service in an alternative way.

**12.5. Unauthorized Access.** In the course of furnishing the Services, LICENSOR shall not access, and shall not permit its personnel or entities within its control to access, LICENSEE's systems without LICENSEE's express written authorization. Further, any access shall be consistent with, and in no case exceed the scope of, the Services and any such authorization given by LICENSEE. All LICENSEE authorized connectivity or attempted connectivity to LICENSEE's systems shall be only through LICENSEE's security gateways and/or firewalls, and in conformity with applicable LICENSEE security policies.

### **13. ASSIGNMENT**

Neither this Agreement nor the Product or any related materials or Documentation nor any part of the Product shall be assigned or transferred or sublicensed by either party without the written consent of the other party, and such consent will not be unreasonably withheld and is not necessary for any assignment by a party to its Affiliate. In the event of a Divestiture as provided in Section 18, LICENSOR shall permit an assignment of this Agreement or any Product, in whole or in part, to a Divested Entity (as defined in Section 18), at no cost, provided that such use does not exceed the limitations as stated in Product Schedule#1 and that the Support for the assigned Product is current and the Divested Entity is not a direct competitor of LICENSOR. The Divested Entity shall be entitled to use, benefit and enjoy the

transferred Product or any related materials or Documentation and any prepaid support at no additional cost during the balance of the then current term.

## **14. TERMINATION**

**14.1.** Either LICENSOR or LICENSEE may terminate this Agreement upon ten (10) days prior written notice in the event of a Triggering Event or in the event the other violates any material provision of this Agreement and fails to cure such material breach within thirty (30) days of receipt of written notice of such breach, provided that any breach or default in the nature of unlicensed use for which pricing is set forth in this Agreement or generally made available at the time of unlicensed use may be cured by payment of the applicable License and Support Fees.

**14.2.** LICENSEE may terminate this Agreement or any Schedule or License hereunder upon the occurrence of any Triggering Event.

**14.3.** LICENSEE may terminate this Agreement or any Schedule or License hereunder upon 90 days written notice to LICENSOR.

## **15. SURVIVAL**

The following provisions shall survive termination of this Agreement: 4 (Title); 8 (Limitation of Liability); 10 (Intellectual Property Rights) and 11 (Confidentiality).

## **16. INSTALLATION**

LICENSOR agrees to provide services necessary to install each Product by the installation date set forth in the applicable Product Schedule, if any. The parties agree that a separate schedule or agreement may be necessary for installation, implementation, consulting or training.

## **17. INTERNAL DISPUTE RESOLUTION**

Notwithstanding the foregoing, in the event of a dispute between the parties over the Agreement, the terms and conditions thereof, Support or any Product ("Dispute"), the parties agree to make a good faith effort to timely (in any event, not to exceed 30 days) resolve such Dispute utilizing the following procedure: representative of the parties of a manager level or higher shall meet either in person or by telephone in attempt to resolve the dispute ("1st Level Resolution"). In the event that the 1st Level Resolution does not timely resolve such dispute, then the dispute shall be escalated to the next level of representatives of each party ("2nd Level Resolution") to make a good faith effort to resolve the Dispute. In the event that the parties are unable to timely resolve the Dispute at the 2nd Level Resolution, the Dispute shall be timely escalated up and through each party's organization, to the level of appropriate vice president.



## 18. DIVESTITURE

Notwithstanding anything to the contrary herein, if LICENSEE reduces its interest in a subsidiary or Affiliate below the level of twenty percent (20%) (“Divested Entity”), LICENSEE may, at LICENSEE’s discretion, with no additional charge to LICENSEE or Divested Entity, allow the Divested Entity to continue to use, access, benefit and enjoy any Product or any related materials or Documentation on Divested Entity’s equipment, or utilize the Product on LICENSEE’s equipment to provide benefit to the Divested Entity for the purpose of facilitating an orderly transition of said Divested Entity to either become part of another organization or to achieve an independent status; provided that the cumulative use does not exceed the use allowed under this Agreement were such Divested Entity to remain a part of LICENSEE. The Divested Entity shall be entitled to receive Support for up to one (1) year following the transition period by paying support and maintenance fees to LICENSOR for the one year period, which such support and maintenance shall be at least as favorable as under this Agreement. Notwithstanding the foregoing, in the event that LICENSEE has prepaid support for the Product to be transferred, the Divested Entity shall be entitled to such prepaid support for the balance of the then current term. After such period, said Divested Entity shall acquire its own License, Maintenance and supports agreements with LICENSOR. LICENSEE shall not be held responsible for payment of any fees, charges, costs, expenses or penalties owed to LICENSOR by the Divested Entity.

## 19. LARGE ACCOUNT RESELLER (LAR)

In the event that LICENSEE elects to purchase Products from a large account reseller of LICENSOR’s products (“LAR”) or other reseller of LICENSOR’s products, LICENSOR agrees that the purchase of the Products through the LAR shall be subject to and be at least as favourable as the pricing and terms and conditions set forth in this Agreement. If LICENSEE purchases a Product through a LAR, then such purchase shall be credited against any Product volume or other commitments under this Agreement. All Support purchased from a LAR shall be co-termed with LICENSEE’s Support with LICENSOR.

## 20. BANKRUPTCY

LICENSOR and LICENSEE hereby acknowledge that this Agreement involves rights in and to “intellectual property”, as that term is defined by the appropriate National Bankruptcy Codes and Practices and any amendments thereto.

## 21. GENERAL

**21.1. Headings; Merger.** Titles and paragraph headings are for convenient references and are not a part of this Agreement. This Agreement contains the

entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, negotiations, representations, and proposals, written or oral, relating to the Product. This Agreement may be amended only by a writing executed by LICENSOR and LICENSEE.

**21.2. Waiver.** No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of such provision or any other provisions hereof and no waiver shall be effective unless made in writing. In the event that any provision of this Agreement shall be determined to be illegal or otherwise unenforceable, such provision shall be severed and the balance of the Agreement shall continue in full force and effect.

**21.3. Notices.** All notices which either party hereto is required to give the other party shall be mailed, postage prepaid, by certified mail, or by traceable express services. Notices shall be sent to:

LICENSOR: TransValue BV trading as DATPROF  
Friesestraatweg 213b  
9743 AD Groningen  
The Netherlands

LICENSEE: <Company Name>  
Addr. 1  
Addr. 2  
Town / State or Province  
Country

**21.4. Governing Law.** This Agreement shall be governed by the laws of The Netherlands.

**21.5. Compliance with Law.** In performing its obligations under this Agreement, LICENSOR shall comply with all applicable national, state or province, local and other laws, rules and regulations.

**21.6. Publicity.** Except with respect to internal business communications, communications with governmental agencies, or as required by law, LICENSOR shall not utilize this Agreement nor its relationship with LICENSEE for purposes of or in any manner which intentionally gives rise to advertising or publicity, unless LICENSEE shall consent in advance in writing.

**21.7. Security Policies.** LICENSOR and LICENSEE agree that their employees, while working at or visiting the premises of the other party, shall comply with all the internal rules and regulations of the other party, including security procedures, and all applicable federal, state, and local laws and regulations applicable to the location where said employees are working or visiting.

**21.8. No Click-Wrap; Shrink-wrap.** This Agreement supersedes and replaces any (i) click-wrap, or click-through or shrink-wrap agreements (or other similar or standard form agreements) that LICENSEE has or may be required to accept as a part of downloading, accessing or using the Product or any updates, upgrades or enhancements to the Product or (ii) or any other agreements or terms

conditions imposed upon LICENSEE outside of the Agreement, or when installing the Product. This Section shall apply to Product downloaded, accessed or used by LICENSEE in any environment, including but not limited to production, test, disaster recovery, disaster recovery testing, evaluation, trial or beta testing.

Executed by the parties by their duly authorized representatives as of the date first above written.

**TransValue BV trading as DATPROF****LICENSEE**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_

## PRODUCT SCHEDULE #1

ITEM	DESCRIPTION
Product description(s) (See § 1.18)	Product name or list here
License Effective Date (See § 1.12)	DD MM YYYY
License Period (start and end date) (See § 1.14)	Start date: DD MM YYYY End date: DD MM YYYY
License Fees (See § 1.12) Quotation reference	Executable Code License Fee: € n,nnn.nn 20XXXXXX-REF-NN
Product deliverable form	Executable Code: Included Source Code: Not Included
Delivery Date (See § 1.7, § 5)	Within two business days of the date of this Agreement
Operating Environment (See § 1.17)	See <a href="https://docs.datprof.com">https://docs.datprof.com</a>
Licensed Database system(s)	Oracle, DB2, MSSQL Server
Installation Services (See § 16)	Installation Fees: None required, and no onsite installation services have been requested, nor contracted.
Annual Support Fees (See § 1.23; § 11.1)	Annual Support Fee: € n,nnn.nn
Support Period (See § 1.24)	From License date for a period of 12 calendar months
Limitation of Liability (See § 8)	No more than the amount invoiced by LICENSOR to LICENSEE in the preceding twelve (12) month period.

## SUPPORT SCHEDULE #2

### 1. MAINTENANCE AND SUPPORT SERVICES

Provided that an active Support Agreement is in place, the Support for each Product includes the following:

- 1.1. Support Portal.** Support of LICENSEE's use of the Product shall be requested via the support portal (<https://support.datprof.com>) by using the Customer Support Portal ID stated in Product Schedule #1 and is provided 24 hours per day. In the event that the support portal is not available, LICENSEE can request support via [support@datprof.com](mailto:support@datprof.com).
- 1.2. Support Representatives.** Support shall be provided to LICENSEE support organization by named individuals. LICENSEE's support individuals ("Support Representatives") shall be reasonably competent in the use and operation of the Product and LICENSEE's operating environment. The Support Representatives will act as primary interface to LICENSOR for Support purposes. LICENSOR will use its best efforts to address the problem identified by the Support Representative.
- 1.3. Corrections.** LICENSOR shall use its best efforts to provide solutions, changes and corrections to the Product as are required to (i) keep the Product conforming in all material respects to the Applicable Specifications, and (ii) correct reported problems that are replicated and diagnosed by LICENSOR as Defects in the Product. LICENSOR's shall reply within the time specified in the Response Schedule set out below. Response time shall be measured from the time LICENSEE requests support as set forth in 1.1.
- 1.4. Reporting and Escalation.** LICENSEE's Support Representatives shall report Defects to LICENSOR to one of the contacts designated by LICENSOR. For Severity Level 1 defects, LICENSEE's Support Representatives shall, in addition to any notification by any other means, notify LICENSOR by telephoning the support telephone number stated in Product Schedule #1. In the event LICENSEE cannot make contact with LICENSOR using the prescribed methods, LICENSEE shall continue its efforts to personally notify LICENSOR by contacting the LICENSOR representatives set forth in the order listed in Table 1, below, until a LICENSOR Representative is contacted in person:

Representative	Contact information
Support Manager	Gerard Knol – <a href="mailto:Gerard@datprof.com">Gerard@datprof.com</a>
Product Manager	Bert Nienhuis – <a href="mailto:Bert@datprof.com">Bert@datprof.com</a>

- 1.5. Defect Classification.** LICENSEE will make an initial nonbinding classification of each defect in the Product or associated Documentation and will report such defect to LICENSOR based on the criteria set forth below. In the event there is a dispute between LICENSEE and LICENSOR regarding the classification of a defect, such a dispute shall be referred to each party's manager level for resolution. In

the event such Managers cannot resolve the dispute, the dispute will ultimately be resolved by LICENSORS's Manager with responsibility over the operations.

### 1.6. Classification Criteria

Defect classification	Determination Criteria
Severity Level 1	Fatal: Defects that meet at least one of the following criteria: <ul style="list-style-type: none"> <li>- loss of production data;</li> <li>- permits unauthorized access to Consumer Information or any loss thereof.</li> </ul>
Severity Level 2	Severe Impact: Defects that meet at least one of the following criteria: <ul style="list-style-type: none"> <li>- loss of non-production data;</li> <li>- unavailability of essential functions for which no work around exists;</li> <li>- prevents all useful work from being done.</li> </ul>
Severity Level 3	Non-critical: Defects that meet at least one of the following criteria: <ul style="list-style-type: none"> <li>- unavailability of essential functions for which a work around exists;</li> <li>- unavailability of nonessential functions.</li> </ul>
Severity Level 4	Minimal Impact: Non-critical reports generally categorized as an enhancement to be prioritized for inclusion in a future version or Release of the Product.

### 1.7. Product Maintenance Response Schedule.

LICENSOR shall use commercially reasonable efforts to respond to reports in accordance with the following Product Maintenance Response Schedule:

Defect classification	1 <sup>st</sup> Level Response	2 <sup>nd</sup> Level Response	3 <sup>rd</sup> Level Response
Severity Level 1	2 business hours	8 business hours	Next Release
Severity Level 2	4 business hours	4 business days	As Appropriate
Severity Level 3	2 business days	As Appropriate	To Be Scheduled
Severity Level 4	2 business days	To Be Scheduled	To Be Scheduled

### 1.8. Response Level Identification.

- 1.8.1.** 1<sup>st</sup> Level Response - Acknowledge receipt of defect report.
- 1.8.2.** 2nd Level Response - Provision of patch, work around, temporary fix, or other temporary resolution of the defect and documentation of corrections.
- 1.8.3.** 3rd Level Response - Official object code fix incorporated in a Release of the Product and/or an update in the Applicable Specifications.
- 1.8.4.** "To Be Scheduled" means that LICENSOR shall address the defects in a timeline decided by LICENSOR.

**1.8.5.** “As Appropriate” means the response agreed to in a review meeting between the parties.

**1.9. LICENSEE Responsibilities.** LICENSEE must supply LICENSOR with reproducible defects in order for the Response Schedule to apply. The manner in which LICENSEE reasonably presents to LICENSOR the method or means to reproduce such a reported defect shall be determined by LICENSEE. For defects not reproducible by LICENSOR, LICENSOR will use reasonable efforts to investigate the defect, but shall not be bound by the above Response Schedule. LICENSEE agrees to furnish LICENSOR with all information and materials requested by LICENSOR that are available and reasonably required for use in replicating, diagnosing and correcting a Product problem reported by LICENSEE.

**1.10. New Versions.** LICENSOR shall provide Bugfixes, Minor Releases and Major Releases to the Product which are made available to LICENSOR’s client base.

**1.11. Compatibility Updates.** LICENSOR will update the Product, if and as required, to cause it to operate under Major Release or Releases of the Operating System specified on the Product Schedule #1, and will provide all other Support services for any future Releases of the Operating System within six (6) months of general availability.

**1.12. Limited Maintenance.** LICENSOR shall have no obligation to provide Support for Products that have been customized for LICENSEE by any party other than LICENSOR unless LICENSEE has obtained prior authorization from LICENSOR of such modification. Notwithstanding the foregoing, defect corrections shall be provided for modified Products in the event that the reported defect is reproducible in the unmodified version. In such event, LICENSOR shall correct the defect in the unmodified version and LICENSEE shall be responsible for the integration of the defect correction into the modified version.

**1.13. Limited maintenance for Minor Releases.** Support for Minor Releases older than 2 years following the Release of the latest Release of the Product is excluded. Insofar as LICENSEE is still using the older Minor Releases, LICENSOR’s Support obligation expires with that term.

**1.14. Limited maintenance for Major Releases:** Support for Major Releases older than 3 months up to 1 year following the Release of the latest Release of the Product is limited to bug fixing. Insofar as LICENSEE is still using the older Major Release after said term, LICENSOR's Support obligation expires with the term.

**1.15. Suspension of Maintenance Charges.** All Support Fees shall be suspended if a nonconformance with Applicable Specifications in the Product causes a delay of more than sixty (60) days in LICENSEE’s ability to use the Product in accordance with the Applicable Specifications or User Documentation. If the Support Fees are paid in advance, then any period of suspension shall be result in an extension of the then applicable Support Period, thereby extending the term thereof.