

# TPG Software Subscription Licensing Terms & Conditions

Version: 6.0

Datum: October 2023

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# 1 Definitions

**“Affiliate”** means all entities of the SUBSCRIBER Group as well as companies owned at least 50% by SUBSCRIBER.

**“Agreement”**: Whenever the term “Agreement” is used in these Terms and Conditions, it means the TPG Software Subscription Licensing Terms and Conditions stated in this document together with all relevant commercial documents (quotations and purchase orders) and the Subscription License Certificate.

**“Connected System”** means any third-party system, such as Microsoft, Planisware, Atlassian or SAP, that TPG Software connects to in order to exchange information.

**“Good Faith”** a general assumption of the law of contracts, that people will act in good faith and deal fairly without breaking their word, using dubious means to avoid obligations or denying what the other party obviously understood.

**“Hosting Platform”** means the platform where TPG Products are hosted. This can be a Microsoft Azure based platform or any other hosted environment, no matter if provided by SUBSCRIBER or TPG. A Hosting Platform in the context of these Terms and Conditions is only applicable if the subscribed TPG Software is hosted and not installed on-premise or used via Cloud Services.

**“Integration User”** (previously “Resource”) is one of the three Subscriber Roles used for calculating the Subscription Fees for TPG Products.

“Integration Users” are all Project Managers, Planners, Administrators and Controllers in one of the Connected Systems. Additionally, all users are counted when posting data like status or time, which is relevant for the integration.

Integration Users are only counted once, if they are active in more than one of the Connected Systems.

**“On-Premise”** refers to the case where TPG Software is installed within the IT infrastructure of SUBSCRIBER, in contrast to being hosted or used via Cloud Services.

**“Product Maintenance”** means the general upkeep of TPG Products as well as fixing issues and extending the functionality via Updates and Upgrades, for example, in order to ensure compatibility with relevant Connected System.

**“Project Manager”** is one of the three Subscriber Roles used for calculating the Subscription Fees for TPG Products. "Project Managers" are all persons that have the right to manage projects in connection with TPG project and portfolio management products. In environments with a dedicated project management system, such as Microsoft Project Server, Microsoft Project Online or Oracle Primavera, Project Managers are defined as all users that have the right to open projects in write-mode. In environments with no project management system, a special group or list in Microsoft SharePoint, SharePoint Online or other applicable tool like SAP or Jira, which represents the project manager’s role in the best possible way, will be the basis for determining the number of Project Managers.

**“Resource Manager”** is one of the three Subscriber Roles used for calculating the Subscription Fees for TPG Products. "Resource Managers" are all persons that manage teams (e.g. team leaders). A special group or list in Microsoft Project Server or Project Online or Microsoft SharePoint or SharePoint Online will be the basis for determining the number of Resource Managers.

**“Subscriber”** is a customer who has subscribed to use TPG Products for a pre-determined period of time according to the Terms and Conditions herewith.

**“Subscription”** is an assured usage right for TPG Products for a pre-determined period of time according to the Licensing Terms and Conditions herewith.

**“Subscription Fee”** means the fees charged per year, depending on the applicable Subscription Period, for the subscribed TPG Products and all applicable users in all User Roles for the applicable TPG Products, calculated with TPG Price Calculator. The applicable Subscription Period and Fees are defined in the relevant commercial quotation and Subscription License Certificate.

**“Subscription License Certificate”** is a certificate issued by TPG that lists all subscribed products with the valid number of subscribed users per product. It also defines the relevant Subscription Period. The certificate will be updated with every agreed change to the subscribed products and/or users or the Subscription Period.

**“Subscription Period”** means the period when the Subscription is valid and is defined in the relevant commercial quotation and Subscription License Certificate. The minimum Subscription Period is one year or 12 calendar months. It always commences on the first day of a calendar month. Additional TPG Products and Subscription Users may be added during an ongoing Subscription Period. TPG Products and Subscription Users may not be cancelled or reduced during an ongoing Subscription Period.

**“Subscriber Role” or “User Role”** means one of three possible roles for defining types of users for the pricing of TPG Products. The User Roles comprise Project Managers, Resource Managers and Integration Users. See also “User Role”.

**“TPG Price Calculator”** is a TPG tool used to select the required TPG Products and enter the number of users by User Role in order to calculate the annual Subscription Fee.

**“TPG Product” or “TPG Software”** means a software product from TPG that is made available through installation on-premise, on SUBSCRIBERS’ Microsoft Azure platform, on a Microsoft Azure Platform provided by TPG, on other hosting platforms or via Cloud-Services, whichever is applicable.

**“Update”** means a software update to eliminate errors or improve the functionality of TPG products.

**“Upgrade”** means a major release with extension of functionality and is defined as the change of the version number.

**“User Role”** see **“Subscriber Role”**.

## 2 License Terms

- 2.1 TPG hereby grants to SUBSCRIBER the non-exclusive and non-alienable right to use as many TPG Products for as many users per User Role as ordered prior to or ordered additionally during the valid Subscription Period.
- 2.2 TPG hereby grants to SUBSCRIBER the rights to sub-license to its Affiliates only.
- 2.3 SUBSCRIBER may use the subscribed TPG Product(s) free of charge in one production environment and in unlimited non-productive environments e.g. test, training or development environments. Each environment may not exceed the number of Subscription Users by User Role as ordered in advance of or during the valid Subscription Period.
- 2.4 SUBSCRIBER is bound to keep TPG Software and the License Key(s) inaccessible to unauthorized persons.

## 3 Subscription Period, Validity and Cancellation

- 3.1 The Subscription Period is initially fixed for a minimum of one year as defined in the commercial quotation and the Subscription License Certificate.
- 3.2 If not cancelled by either side sixty (60) calendar days prior to the end of the Subscription Period, the Subscription will be renewed automatically for one more year.
- 3.3 The TPG Software Subscription may be cancelled by either party in the event of a material breach by the other party of any of its obligations under these Terms and Conditions which material breach has not been resolved within thirty (30) calendar days of the date of receipt of written notice of such breach given by the non-breaching party to the other party. Any such written notice will set forth with particularity the nature of any such material breach.
- 3.4 In case of cancellation due to material breach of contract by the SUBSCRIBER, the SUBSCRIBER must return the License Key(s) to TPG at their own cost. All copies of the License Key(s) must be deleted. SUBSCRIBER must affirm in written form, that they no longer have copies of the License Key(s) in their possession and not transferred the License Key(s) to any Third Party.

## 4 Subscription Fees

- 4.1 Subscription Fees are defined in the relevant commercial quotation and Subscription License Certificate.
- 4.2 SUBSCRIBER will pay the applicable Subscription Fees to TPG yearly in advance as defined in the relevant commercial quotation and Subscription License Certificate.
- 4.3 Licenses for additional products or users purchased during the current Subscription Period will be payable on the first of the month of their purchase and invoiced in a one-off payment for the remainder of the Subscription Period. The Subscription License Certificate will be updated accordingly.
- 4.4 SUBSCRIBER must pay the Subscription Fees by bank transfer to the bank account of TPG, a TPG Subsidiary or a TPG Partner, as stated in the invoice.
- 4.5 For the avoidance of doubt, the Subscription Fees for TPG Software are limited to the license to use subscribed TPG Software and for Product Maintenance as specified in these Terms and Conditions and do NOT include:
  - Costs and fees for the hosting Platform
  - Licenses for any third-party software
  - Costs for installation and configuration of the TPG Software
  - Costs for installation and configuration of third-party software
  - Costs for consulting services

- Travel expenses
- Costs for support services other than those services defined in paragraph 6 Product Maintenance
- Any other costs that are not related to the provisions of these Terms and Conditions.

4.6 TPG may elect to change any element of the Subscription Fees and/or the TPG Price Calculator by giving to SUBSCRIBER not less than ninety (90) calendar days' written notice of the change. Such changes will take effect at the earliest in the following Subscription Period.

## 5 Rights to Count Subscription Users

- 5.1 TPG has the right to count the number of users per User Role that are relevant for calculating the Subscription Fee for TPG Software. Counting procedures and data storage will be agreed with SUBSCRIBER and the information so collected will be fully transparent to SUBSCRIBER. The method for counting Subscription Users will be either:
- Product-related list, e.g. in Microsoft SharePoint, containing all applicable Users or
  - User groups in one of the relevant systems e.g. SharePoint, Project Server, Project Online, Active Directory, Jira etc.
- 5.2 Unless otherwise provided in these Terms and Conditions TPG will, for the purpose of rendering Subscription invoices:
- regularly count and store the number of Subscription Users per User Role
  - or regularly receive the number of Subscription Users per User Role from SUBSCRIBER.
- 5.3 No "Phone-Home" functionality will be installed in SUBSCRIBER's system: For the avoidance of doubt, TPG Software will not automatically send any usage-related information outside of the hosted environment or outside of SUBSCRIBER's network, whatever is applicable, without the prior consent of SUBSCRIBER.
- 5.4 TPG may, with prior notification of thirty (30) calendar days to SUBSCRIBER, and during SUBSCRIBER's normal business hours, access the relevant server environment, regardless if hosted or on premise, to verify that the provided number of Subscription Users for TPG Software is consistent with the actual number of users per User Role in the system. Such an audit may be conducted no more than once per calendar year.
- 5.5 To the extent that such an audit reveals that the actual number of users of TPG Software has exceeded the number of Subscription Users per User Role provided by SUBSCRIBER, SUBSCRIBER shall pay TPG the additional Subscription Fees at the currently applicable license prices for the related Subscription Period or part thereof.
- 5.6 TPG shall carry the cost of such an audit. If the audit shows an unlicensed use of TPG Software, SUBSCRIBER will reimburse any reasonable cost that TPG incurred in relation to the audit.

## 6 Product Maintenance

- 6.1 As part of the Subscription Fee,  
TPG will provide Software Updates and Upgrades of TPG products free of charge. The service for the installation of updates and upgrades is not included in the subscription price and will be offered separately or charged in accordance with section 6.5.
- 6.2 TPG provides an Incident e-mail address [support@theprojectgroup.com](mailto:support@theprojectgroup.com) for reporting possible software issues, which is available 09:00 - 17:00 CET on working days in Bavaria, Germany. TPG will acknowledge

receipt of a reported software problem with a support ticket number and will attempt to solve all software problems as quickly as possible. TPG will keep the customer informed about the status of the troubleshooting.

- 6.3 Analysis for errors as well as services for installation that are proven to be due to errors of TPG products are included in the TPG Software Subscription.
- 6.4 Analysis for errors as well as services for installation that are proven not to be due to TPG products are not included in the TPG Software Subscription.
- 6.5 Service-Level Support (SLA support) and / or Consulting on demand can be purchased separately to the TPG Software Subscription.

## 7 Copyright and Property Rights

- 7.1 The TPG Software as well as any associated modifications and all materials and information under these Terms and Conditions remain the exclusive and unrestricted property of TPG and consist of confidential and proprietary data whose disclosure to or use by third parties may be damaging. The license granted under these Terms and Conditions excludes any right to reverse engineer TPG Software and disassembling or decompiling are only permitted in the event of correction of errors affecting the functioning of the Software which could not be resolved in advance by TPG. In the case of the product TPG ProjectPowerPack customizing is permitted as long as the core of the software remains untouched.
- 7.2 TPG is the sole owner of all rights, title and interest of TPG Software. All intellectual property rights in the Software, such as copyrights, trademarks and patent rights, and TPG trademarks, remain with TPG. Copyright annotations, license files, serial number and any other identification criteria of TPG Software must not be changed or removed by SUBSCRIBER. SUBSCRIBER is not authorized to break or change the source code.
- 7.3 SUBSCRIBER acquires no property rights and no rights to sell, rent, lease or hand on TPG Software and the License Key(s) even for free to other persons or companies. This includes customer specific modifications of TPG Software. The SUBSCRIBER must keep TPG Software inaccessible to unauthorized persons.
- 7.4 Nothing in these Terms and Conditions shall operate to assign or transfer any Intellectual Property Rights from TPG to SUBSCRIBER, or from SUBSCRIBER to TPG.

## 8 Indemnification

- 8.1 To TPG's knowledge, TPG Software and any related deliverables do not violate the intellectual property rights of any third party. In the event any third party alleges that such third party's intellectual property rights (including, without limitation, patent, copyright, trademark, and trade secret rights) are infringed, violated, or misappropriated in connection with TPG Software, TPG will indemnify, defend and hold SUBSCRIBER harmless from any demand, claim, or action brought against SUBSCRIBER by a third party to the extent that it is based upon such claim and will pay any reasonable out of pocket costs and expenses, any damages, and reasonable attorneys' fees attributable to such claim that are incurred by or awarded against SUBSCRIBER. These obligations are contingent upon:
  - SUBSCRIBER providing TPG with prompt written notice of such third-party allegations;
  - SUBSCRIBER providing reasonable cooperation to TPG in the defense and settlement of any claim arising from such allegations, at TPG's expense;
  - TPG having sole authority to defend or settle any such claim with respect to any monetary settlement or the use of TPG Software;

- SUBSCRIBER having installed any and all enhancements provided by TPG which are a defense against the claim, provided such enhancements do not significantly reduce or eliminate any existing feature, functionality, or performance of TPG Software.
- 8.2 In addition to its indemnification obligations above, in the defense or settlement of the claim, TPG may obtain the right to continue using the works, replace or modify them so that it becomes License Agreement for the use of TPG Products non-infringing (provided such enhancements do not significantly reduce or eliminate any existing feature, functionality, or performance of TPG Products).
- 8.3 TPG will have no liability to the extent that any third-party allegations described herein are based on:
- use of the works in combination with any third-party products or services in a manner that violates these Terms and Conditions or the written documentation given to SUBSCRIBER by TPG;
  - TPG honoring SUBSCRIBER's detailed specifications for the work that deviate from Licensor's customarily available configurations;
  - unauthorized modifications to TPG Products or work by others.

## 9 Confidentiality

- 9.1 "Confidential Information" means all confidential information received by a party or any of its Affiliates, defined below, ("Recipient") from the other party or any of its Affiliates ("Discloser"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure including but not limited to, these Terms and Conditions and any negotiations, discussions or agreements entered into pursuant to these Terms and Conditions, discoveries, inventions, ideas, research, experimental work, concepts, know-how, processes, designs, specifications, drawings, sketches, blueprints, tracings, diagrams, models, samples, data, algorithms, computer programs, software source documents, financial information, business plans, sales plans, marketing plans, products, services, procurement requirements, customer information, pricing and any other proprietary or confidential technical, financial or commercial information.
- 9.2 Confidential Information does not include information that: (i) is at the time of disclosure, or later becomes, generally known to the public through no fault of Recipient; (ii) is or becomes available to Recipient on a non-confidential basis and is verifiably from a source which, to the knowledge of Recipient, is entitled to disclose it; or (iii) is at any time verifiably developed independently by Recipient. If, regarding information under (ii), Recipient becomes aware at any time that the source was not entitled to disclose the information, then such information shall be deemed Confidential Information from that time forward. "Confidential information" shall not include information that was known to either side prior to these Terms and Conditions, or information that becomes publicly available through no fault of either side.
- 9.3 Recipient shall not, in any way, use or disclose any Confidential Information of Discloser except as necessary in connection with the Business Purpose or with Discloser's prior written consent. Recipient shall not disclose or otherwise make available any Confidential Information of Discloser to anyone except those of its employees, attorneys, agents and consultants who need to know the Confidential Information in connection with the Business Purpose and who have previously agreed to be bound by confidentiality obligations no less stringent than those in these Terms and Conditions. Each party shall safeguard all Confidential Information of the other party with at least the same degree of care (but no less than reasonable care) as it uses to safeguard its own Confidential Information of like kind. Neither party shall disclose any information to the other party in violation of any confidentiality obligations to, or proprietary rights of, any third party. Recipient's obligations under these Terms and Conditions with respect to any



Confidential Information shall remain in effect for five (5) years from the date it first received such Confidential Information hereunder.

- 9.4 If Recipient is compelled by law to disclose Confidential Information of the Discloser, it shall provide the Discloser with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Discloser's cost, if the Discloser wishes to contest the disclosure. Recipient shall use commercially reasonable efforts to limit any such disclosure to the extent required and to obtain confidentiality protections to the extent reasonably practicable.

## 10 Limitation of Liability

- 10.1 Except for indemnification under section 7.1, neither party will be liable for any indirect, consequential, incidental, punitive or special damages sustained by the other party in connection with or arising out of these Terms and Conditions, whether based on breach of agreement, tort (including negligence), product liability, or otherwise, except in the case of intent and gross negligence.
- 10.2 Except for indemnification under section 7.1 and instances of gross negligence, misconduct, or intentional acts, each party's entire liability and the other party's sole and exclusive remedy for direct damages from any cause relating to or arising out of these Terms and Conditions, regardless of the form of action, whether breach of agreement, tort (including negligence), product liability, or otherwise, will not exceed in the aggregate the charges actually paid by SUBSCRIBER pursuant to these Terms and Conditions which are the subject matter of or directly related to the causes of action asserted.
- 10.3 TPG points out assertively that SUBSCRIBER must create frequent and regular backups in order to ensure that data can be restored in case of TPG software failures.

## 11 Circumstances beyond Control of the Parties

- 11.1 In the event of any circumstance, occurrence, act or omission arising at any time which is beyond the control of a party and which delays or prevents the performance by such party of any of its obligations pursuant to these Terms and Conditions (except any obligation to pay money), the parties agree that the performance of the affected obligation(s) will be suspended until such time as the circumstance, occurrence, act or omission (which is preventing the performance of such obligation) no longer affects the performance of the particular obligation(s) and the agreed upon period for performance of such obligation(s) will be extended by a period equal to the period during which such suspension of performance was in effect.

## 12 General

- 12.1 These TPG Software Subscription Licensing Terms and Conditions together with all relevant commercial documents (quotations and purchase orders) as well as the Subscription License Certificate constitutes the entire agreement between the parties with regard to the subject matter hereof and supersedes all prior oral and written agreements, understandings, representations, proposals or communications, of whatsoever kind, between the parties with respect to the subject matter of TPG Software Subscription.
- 12.2 No modifications or amendments to these Terms and Conditions and no waiver of any provision of these Terms and Conditions will be valid unless made in writing and signed by duly authorized representatives of the parties hereto.
- 12.3 A party may assign these Terms and Conditions without the other party's consent in connection with any merger, acquisition or reorganization involving the assigning party, or sale or other transfer of all or a substantial part of the assigning party's assets.

- 12.4 These Terms and Conditions will be governed by and construed in accordance with the laws of Munich, Germany, without reference to its conflicts of laws principles.
- 12.5 The parties hereto acknowledge and agree that Sections 7 - 11 will survive the expiration or termination of these Terms and Conditions.
- 12.6 In performing the Maintenance Services, TPG is acting as an independent contractor and not as an employee, agent or representative of the SUBSCRIBER. TPG has no authority to transact any business in the name of or for the account of the SUBSCRIBER or to otherwise obligate the SUBSCRIBER in any manner.
- 12.7 The unenforceability of any provision hereof will not affect the remaining provisions of these Terms and Conditions, but rather such provision will be severed, and the remainder of the Terms and Conditions will remain in full force and effect.
- 12.8 All paragraph headings and captions used herein are for the convenience of the parties only and will not be part of the text or affect the meaning of these Terms and Conditions.