



Subscription User License and Support Terms and Conditions

This Agreement is made between Project Partners, LLC, a California limited liability company ("Project Partners") having a principal place of business at 520 Purissima Street, Half Moon Bay, CA 94019 USA and the party downloading or receiving the Software, "Customer", referred to herein severally as "party" and jointly as "parties".

1. License. The term "Software" means all Project Partners software provided or made available to Customer under this license agreement. Project Partners grants to Customer (either as an individual or an entity), and Customer accepts, a non-exclusive and non-transferable **subscription** license (except as set forth in paragraph 4) to install and use the code of the Software, for internal use only.
 - 1.1 License Key. Users will be required to obtain a License Key from Project Partners upon first using the Software after download as described in paragraph 6. This license key will be valid for up to a 30 day introductory trial period, and will allow the user to utilize the Software free of charge after which time the License Key will expire. After the trial period, Customer must purchase a subscription for the Software in order to continue using Software. Customer may apply for a new License Key by clicking the "About" Icon on the MS-Excel ribbon of the Software, and selecting the appropriate button.
 - 1.2 Source Code and Documentation. The Software does not include source code, and no license is granted with respect to source code. Customer may make only a reasonable number of backup copies of the Software and Documentation which shall be subject to the restrictions set forth in Section 117 of the Copyright Act of 1976 and which must retain all proprietary notices of Project Partners and its suppliers contained in the original. Your acceptance of the Software and Documentation, as well as transfer of title to any media containing the Software or Documentation and risk of loss, shall be deemed to occur upon your receipt of the Software or Documentation respectively.
2. Product Discontinued. Upon purchase, the Software subscription license shall be the property of the Customer. In the event that Project Partners is no longer in the business of producing, maintaining, or otherwise supporting the Software, Customer has the right to continue use of Software for the remainder of the Subscription term. Subsequently, no renewal will be issued. Project Partners retains all Intellectual Property rights to the software.
3. Limitations on Use. Customer may not copy, reproduce, rent, lease, sell, sublicense, assign, loan, time-share or otherwise transfer, distribute or publicly display or perform the Software, Documentation or copies thereof to others, except as expressly set forth in this Agreement. Customer agrees not to decompile, disassemble, or otherwise reverse engineer the Software, and will use Customer's best efforts to prevent employees and contractors from doing so, except to the extent that such restriction is expressly prohibited by applicable law. Customer may not modify, adapt, create a derivative work, merge or translate the Software or Documentation without the prior written consent of Project Partners.
4. Transfer of Software. Only Customer is licensed to use the Software. The Software may not be transferred.
5. Requisite Support Information. To enable your download of Software and to create your support account, Project Partners requires Customer to complete Appendix A, "Requisite Support Information" in full and return the document to Project Partners via email at support@projectp.com or via fax to +1.650.726.7975.
6. Availability of Software. For the purposes of this agreement, Software shall be considered to be available to Customer when Software is downloaded. It is Customer's responsibility to install and configure the Software.
7. Support.
 - 7.1 General. The term "Support" means Project Partners' providing support directly to Customer in relationship to the Software via remote systems access. Customer must report problems or issues on-line at <http://support.projectp.com>, and can do so throughout the subscription period. Project Partners will use commercially reasonable efforts to respond within one (1) business day to all reports.
 - 7.2 Software Updates. The term "Support" includes any error corrections to the Software and future Software enhancements developed and commercially released by Project Partners in its discretion (collectively, "Updates and Upgrades"). Project Partners will continue to provide Licensed Product Maintenance for at least one year following Project Partners' written notice to Customer of intention to discontinue or terminate support or enhancement of the Licensed Product. In the event Project Partners replaces the Licensed Product with a functionally similar successor product, Customer may, in its sole discretion, choose to receive such successor product from Project Partners under a separate licensing agreement.
 - 7.3 Maintenance Releases. Customer shall implement any and all maintenance release patches to resolve software anomalies and Project Partners may withhold Support if Customer has not implemented the same. In the event that Customer has not installed maintenance release patches and/or is unable to provide direct remote access to systems, Customer should be aware that there is a potential for delays in resolution of issues.
8. Warranty.

Project Partners warrants the Software will substantially perform as identified in the Documentation, and any defects in the delivered Code identified by the Customer will be addressed by Project Partners at no charge to Customer as long as the Subscription Fee is paid and current. Customer must notify Project Partners of such defects using the Project Partners on-line support system as described in [7.1](#) above.
9. Fees.
 - 9.1 License Fees. Project Partners will invoice Customer for License Fees upon Customer's execution of a paid Subscription Agreement for Software, and a License Key will be provided to Customer. Customer may apply for a new License Key by clicking the Support Icon on the MS-Excel ribbon in the Software.



Project Partners.
Software Ordering Document

- 9.2 User Subscriptions. This License applies to an unlimited number of users in your organization; however, each user will require a license key.
- 9.3 Support Fees. Support for Software is included with the Subscription Fee.
10. Payment Terms. Project Partners shall issue invoices for the paid Subscription License Fee, and invoices will be due immediately. If not paid within thirty 30 days, the License will be revoked. Additionally, invoices not paid within thirty (30) days of their due date shall accrue interest at the rate of one and one half percent (1.5%) per month or the maximum rate allowed by law, whichever is less. Customer agrees Project Partners is entitled to recover any sums expended in connection with the collection of undisputed sums not paid when due, including reasonable attorneys' fees.
11. Non-Disclosure. Customer agrees not to disclose the terms of this agreement, including but not limited to pricing, to third parties.
12. Intellectual Property Rights. Customer acknowledges that Project Partners retains exclusive ownership of all copyrights, trademarks, patents and/or other intellectual property rights embodied in or related to the Software and Documentation. Customer is not granted any rights in the Software or Documentation other than the license rights expressly set forth above.
13. Indemnification and Hold Harmless. Customer agrees to indemnify and hold Project Partners harmless from any damages and liabilities that arise from or are related to use of the Software in combination with other software, machines or other devices not provided for by Project Partners.
14. Term and Termination. The term of this Agreement is for the duration of any intellectual property rights in the Software or Documentation, unless terminated sooner as provided below. This Agreement automatically terminates if Customer fails to comply with any of the terms and conditions of this Agreement. Upon any termination, Customer shall destroy the Software, Documentation and all copies thereof. Customer may terminate this Agreement at any time by destroying the Software, Documentation and any permitted copies. Paragraph 3 and 11 through 24 shall survive termination or expiration of this Agreement.
15. Term of Purchased User Subscriptions. User subscriptions purchased by Customer commence when Project Partners makes the software available to Customer, as defined under Availability of Software above, and continues for a subscription term of one year. User subscriptions shall automatically renew for additional periods equal to the expiring subscription term on payment of the renewal amount.
16. Limited Warranty and Limited Remedy. Project Partners warrants to the original Customer only (i.e., not Customer's permitted transferee and assign) that the Software as delivered pursuant to paragraph 6 will substantially conform to the Documentation, and that any original Software media and Documentation are free from defects in material and workmanship under normal use, provided the Software is used with compatible computer hardware and operating systems. This limited warranty is void if failure of the Software has resulted from accident, abuse, or misapplication. Project Partners' entire liability, and Customer's sole and exclusive remedy shall be, at Project Partners' option, either to (a) correct or help Customer work around or avoid a reproducible Error; (b) replace defective Software media or Documentation; or (c) authorize a refund, so long as Customer destroys the Software and certifies in writing such destruction within ninety (30) days from the original Customer's acceptance of the Software, as defined in paragraph 8, together with a brief written statement describing the alleged Error. An "Error" is a defect in the Software, reproducible by Project Partners, that causes it not to perform substantially in accordance with the limited warranty set forth above. Any replacement Software will be warranted for the remainder of the original warranty period only.
17. Disclaimer of Warranties. EXCEPT AS SPECIFICALLY PROVIDED ABOVE, THE SOFTWARE AND DOCUMENTATION ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND. ALL OTHER WARRANTIES ARE DISCLAIMED, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS OR THAT THE SOFTWARE'S FUNCTIONS WILL MEET YOUR REQUIREMENTS OR THAT ITS OPERATION WILL BE UNINTERRUPTED OR ERROR FREE. EXCEPT AS SET FORTH IN THIS AGREEMENT, THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SOFTWARE IS WITH CUSTOMER. If a disclaimer of implied warranties is not permitted by law, the duration of any such implied warranty is limited to thirty (30) days from the date of purchase by the original end user purchaser. Some jurisdictions do not allow the exclusion of implied warranties or limitations on how long an implied warranty may last, so such limitations or exclusions may not apply to Customer. This limited warranty gives Customer specific legal rights, and Customer may also have other rights which vary from jurisdiction to jurisdiction.
18. Liability Exclusions and Limitations. IN NO EVENT SHALL PROJECT PARTNERS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS, LOSS OF USE OR INTERRUPTION OF BUSINESS), OR FOR LEGAL FEES, ARISING OUT OF THE USE OF THE SOFTWARE OR DOCUMENTATION, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IF PROJECT PARTNERS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL PROJECT PARTNERS' AGGREGATE LIABILITY HEREUNDER EXCEED THE LICENSE FEE PAID BY CUSTOMER. This limitation shall apply notwithstanding any failure or inability to provide the limited remedies set forth above. Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation(s) or exclusion(s) may not apply to Customer.
19. Proprietary Rights-Contracts with Certain U.S. Government Agencies. If the Software or Documentation is acquired under the terms of a Department of Defense or civilian agency contract, the Software and Documentation are each a "commercial item" as that term is defined at 48 C.F.R. 2.101 (Oct. 1995), consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 of the Federal Acquisition Regulations and its successors and 48 C.F.R. 227.7202 of the DoD FAR Supplement and its successors. All U.S. Government end users acquire the Software and Documentation with only those rights set forth in this Agreement.

20. Export Restrictions. Customer acknowledges that the laws and regulations of the United States restrict the export and re-export of certain commodities and technical data of United States origin, including the Software and Documentation, in any medium. Customer agrees not to export or re-export the Software or Documentation in any medium without the appropriate United States and foreign government licenses, and will comply with any other applicable export control regulations and laws.
21. Severability. Customer acknowledges and agrees that each provision of this Agreement that provides for a disclaimer of warranties or an exclusion or limitation of damages represents an express allocation of risk, and is part of the consideration of this Agreement. Invalidity of any provision of this Agreement shall not affect the validity of the remaining provisions of this Agreement.
22. Tax Liability. Customer is responsible for paying (or reimbursing Project Partners if applicable) any sales, use, value-added or other tax (excluding taxes on Project Partners net income), and all customs, duties, and tariffs, imposed at any time whatsoever on this transaction, the Software, the Documentation or Agreement.
23. Dispute Resolution.
 - 23.1 Escalation of Disputes. The parties agree to escalate any conflicts, disputes, or controversies (collectively "Disputes") arising out of or relating to this Agreement to their respective business managers before filing any legal action. The business managers will meet and work in good faith to resolve the Dispute within 30 days of receiving written notice of the dispute. If the business managers are unable to resolve the Dispute then either party may propose structured negotiations under the assistance of a neutral adviser or mediator ("Neutral Adviser"). All negotiations connected with the Dispute, including negotiations with a Neutral Adviser, shall be conducted in confidence and without prejudice to the rights of the parties in any future legal proceedings.
 - 23.2 Arbitration. If the parties are unable to resolve the Dispute after the 30-day escalation period, the Dispute shall be settled by binding arbitration conducted in San Mateo County, California, under the Commercial Arbitration Rules and Mediation Procedures (Including Procedures for Large, Complex Commercial Disputes) (the "Rules") of the American Arbitration Association ("AAA") then in effect and in accordance with the Rules. The parties shall mutually agree to one arbitrator within 30 days of the filing of the written submission to arbitrate in accordance with Rule R-11. The arbitrator shall be knowledgeable and experienced in the subject matter of this Agreement. If the parties cannot agree upon an arbitrator within the time provided, the parties agree to permit the AAA to appoint an arbitrator under the Rules meeting the foregoing qualifications from the National Roster. The arbitrator shall set a limited time period and establish procedures designed to reduce the cost and time for discovery while allowing the parties an adequate opportunity to discover relevant information regarding the subject matter of the dispute. The arbitrator shall rule upon motions to compel or limit discovery and shall have the authority to impose sanctions, including attorney's fees and costs, if the arbitrator determines that discovery was sought without substantial justification or that discovery was refused or objected to without substantial justification. The arbitrator shall render a decision in writing within 120 days of the commencement of the arbitration proceeding, and in no event shall such a decision be in the form of a reasoned award. The arbitrator's decision shall be final and binding on the parties. Judgment upon any award rendered by the arbitrator may be entered in any court having jurisdiction. The fees of the arbitrator, the administrative fee of the AAA, and the expenses (including reasonable attorneys' fees) of the prevailing party incurred in connection with the arbitration shall each be paid by the non-prevailing party, as determined by the arbitrator.
 - 23.3 Court Injunction. The foregoing shall not prohibit either party from seeking an injunction in a court of competent jurisdiction to prevent or enjoin the other party's alleged breaches of confidentiality or of the license grants.
 - 23.4 Damages. Notwithstanding anything to the contrary, the arbitrator shall not award damages inconsistent with the Limitation of Liability and Consequential Damages Waiver provisions set forth in the Agreement and the parties irrevocably waive the award of any such damages.
24. General. This Agreement is the entire agreement between Customer and Project Partners relative to the Software and Documentation, and supersedes all prior or contemporaneous written or oral statements, proposals or agreements relative to its subject matter. It may be modified only in writing executed by authorized representatives of Project Partners and Customer. The failure of Project Partners to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver, nor shall it deprive Project Partners of the right to insist later on adherence thereto. Any waiver must be in writing signed by an authorized representative of Project Partners. No Project Partners dealer or sales representative is authorized to make any modifications, extensions or additions to this Agreement. This Agreement is governed by the laws of the State of California without application of the principles of conflicts of laws. The parties agree the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.