

# **ENDEAVOUR**

**explore today, conquer tomorrow.**

## **General Terms and Conditions**

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## **CHAPTER 1. GENERAL PROVISIONS**

### **Article 1 Applicability of General Terms and Conditions**

- 1.1 These terms and conditions (hereinafter also referred to as 'these general terms and conditions') apply to all offers and agreements under which the supplier provides goods and/or services of any nature and by any name whatsoever to the customer.
- 1.2 Deviations from and additions to these general terms and conditions apply only if they have been agreed between the parties in writing.
- 1.3 The applicability of purchase conditions or other conditions of the customer is explicitly rejected.
- 1.4 If and to the extent that the supplier makes products or services of third parties available to the customer or grants access to them, the licence terms or terms of sale of the relevant third parties apply to those products or services in the relationship between the supplier and the customer, disregarding any provisions deviating from these general terms and conditions, provided that the supplier has communicated the applicability of the licence terms or terms of sale of those third parties to the customer and has offered reasonable opportunity to take note of those terms. Notwithstanding the previous sentence, the customer may not rely on a failure by the supplier to fulfil the above obligation if the customer is a party within the meaning of Section 6:235 (1) or (3) of the Dutch Civil Code (**DCC**).
- 1.5 If and to the extent that said terms of third parties prove not to be applicable in the relationship between the customer and the supplier or are declared inapplicable for any reason whatsoever, these general terms and conditions apply in full.
- 1.6 If any provision of these general terms and conditions is null and void or is voided, the other provisions of these general terms and conditions remain in full force. In that case, the supplier and customer will consult with each other to agree on new provisions, as much as possible with the same meaning, to replace the void or voided provisions.
- 1.7 Without prejudice to the provisions of Article 1.4, the provisions of these general terms and conditions apply if there is any conflict between the arrangements made between

the parties, unless the parties have explicitly deviated from this in writing and with reference to these terms and conditions. In the event of a conflict between the provisions of chapters of these terms and conditions, the provisions of a previous chapter apply, unless such has been deviated from explicitly.

- 1.8 The legal relationship between the customer and the supplier is an agreement for services.  
Sections 7:404 and 7:407 (2) DCC explicitly do not apply.
- 1.9 Without the other party's prior written consent, none of the parties are authorised to employ the other party's employees or to conduct negotiations with those employees to that end during the performance of the services or within one year of completion thereof. Employees who completely of their own volition respond to a publicly announced vacancy, without the party posting the vacancy having induced the employee in any manner whatsoever to respond to that vacancy, are exempted from this prohibition. The burden of proving this is on the party posting the vacancy.

## **Article 2 Offers**

- 2.1 All offers and other communications of the supplier are without obligation, unless stated otherwise in writing by the supplier. Offers do not apply to any future agreements. The customer guarantees the correctness and completeness of the information provided to the supplier by it or on its behalf, and on which the supplier has based its offer, with the exception of any obvious typing errors. Manifest errors in the offers and other communications are not binding on the supplier.

## **Article 3 Price and payment**

- 3.1 All prices are exclusive of turnover tax (VAT) and other levies imposed by the government for a specific product or service. All prices communicated by the supplier are in euros and the customer must pay in euros.
- 3.2 The customer cannot derive any rights or expectations from a cost estimate or budget stated by the supplier, unless the parties have agreed otherwise in writing. A budget communicated by the customer is only a price or fixed price agreed between the parties if this has been expressly agreed in writing.
- 3.3 Unless otherwise agreed by the parties in writing, any expenses incurred in the context of the agreement, including travel and accommodation expenses, and third-party costs are not included in the price, and are charged separately.
- 3.4 The rates to be charged are each time adjusted on 1 January, except for any substantive rate adjustments.

- 3.5 If, according to the agreement, the customer consists of several natural persons and/or legal entities, each of those natural persons or legal entities is jointly and severally liable towards the supplier to fulfil the agreement.
- 3.6 Where the deliverables provided by the supplier and the sums due by the customer for these deliverables are concerned, the information in the supplier's records provides full evidence, without prejudice to the customer's right to provide evidence to the contrary.
- 3.7 In case of a periodic payment obligation on the customer's part, the supplier may adjust the applicable prices and rates in the term stated in the agreement in writing and according to the index or other standard included in the agreement. If the agreement does not explicitly provide for an option to adjust the prices or rates, the supplier may adjust the applicable prices and rates in writing with due observance of a period of at least three months. If, in the latter case, the customer does not wish to agree to the adjustment, the customer is entitled to give notice to terminate the agreement in writing within thirty days of notification of the adjustment with effect from the date on which the new prices and/or rates would take effect.
- 3.8 The parties record in the agreement the date or dates on which the supplier charges the customer the fee for the agreed deliverables. The customer must pay the amounts due according to the agreed terms of payment or the terms of payment stated on the invoice. The customer is not entitled to suspend any payment nor to set off any amounts that are due.
- 3.9 If the supplier is of the opinion that the customer's financial position and/or payment record warrants such action, the supplier is entitled to require that the customer provide security, or additional security, without delay in a form to be determined by the supplier.
- 3.10 Payments by the customer to the supplier first serve to pay the outstanding interest/costs and subsequently to pay the invoice/invoices.
- 3.11 If the customer does not pay the amounts that are due or does not do so in good time, the customer is automatically in default, without a demand or notice of default being required, and contractual interest of 1% a month is due on the amount that it owes at that time from the date of default, unless the statutory interest or statutory commercial interest is higher, in which case the statutory interest or statutory commercial interest applies. If the supplier must take action to recover a debt after the invoice's due date, the customer owes extrajudicial costs. The amount of the extrajudicial costs is 15% of the principal sum, subject to a minimum of €250. All this does not affect the supplier's other statutory and contractual rights.
- 3.12 The supplier has the right to suspend its obligations if the customer does not or not completely fulfil the obligations under this article, without owing the customer any compensation.

## **Article 4 Term of the agreement**

- 4.1 If and to the extent that the agreement between the parties is a continuing performance contract, the agreement has been entered into for the agreed period, in the absence of which a term of one year applies.
- 4.2 The duration of a fixed-term agreement is each time extended automatically for the duration of the initially agreed period, subject to a maximum of one year, unless the customer or supplier terminates the agreement in writing with due observance of a three-month notice period before the end of the relevant period.

## **Article 5 Confidentiality**

- 5.1 The customer and the supplier ensure that secrecy is observed with respect to all information received from the other party of which information the receiving party knows or should reasonably know it is confidential. This prohibition does not apply if and to the extent that the provision of the relevant information to a third party is necessary pursuant to a decision of the court, pursuant to legal requirements, on the basis of an injunction from a government agency or for the proper performance of the agreement. The party receiving confidential information will only use this for the purpose for which it was provided. Information will in any case be considered to be confidential if it has been designated as such by either party or if this follows from the nature of the information.
- 5.2 The customer acknowledges that software made available by or through the supplier is always confidential in nature and that it contains company secrets of the supplier, its suppliers or the producer of the software.
- 5.3 This article maintains its force after the agreement between the parties has ended.

## **Article 6 Privacy and data processing**

- 6.1 If, in the supplier's opinion, this is relevant to the performance of the agreement, the customer will inform the supplier in writing if so requested about the manner in which the customer fulfils its obligations under the law in the area of personal data protection.
- 6.2 The customer indemnifies the supplier against claims from persons whose personal data have been or are processed and for which the customer is responsible under the law.
- 6.3 The customer is responsible for the data processed by the customer using a service provided by the supplier. The customer is regarded as the controller under the law in the area of personal data protection. The customer guarantees towards the supplier that the content, the use and/or processing of the data is not unlawful and does not infringe upon any third-party right. The customer indemnifies the supplier against any



legal action of a third party, of any nature whatsoever, in connection with these data or the performance of the agreement.

- 6.4 If the supplier, pursuant to a request or an authorised order of a government agency or in connection with a statutory obligation, performs activities with respect to data of the customer, its employees or users, all associated costs may be charged to the customer.
- 6.5 If the supplier provides deliverables to the customer as processor within the meaning of data protection laws, chapter 2 'Standard clauses for processing operations' also applies. If necessary, the parties conclude a separate processing agreement. In the event of a conflict between the provisions of the processing agreement and these general terms and conditions, the provisions of the processing agreement prevail.

## **Article 7 Security**

- 7.1 If the supplier is obliged to provide for a type of information security under the agreement, that security will correspond to the specifications agreed between the parties in writing concerning security. The supplier does not guarantee that the information security is effective under all circumstances. If an expressly described method of security is missing from the agreement, the security will meet a level that is not unreasonable in view of the state of the art, the implementation costs, the nature, scope and context of the information to be secured that is known to the supplier, the purposes and the normal use of its products and services, and the likelihood and seriousness of foreseeable risks.
- 7.2 The access codes or identification codes, certificates or other security tools provided to the customer by or on behalf of the supplier are confidential, and the customer will treat them as such and will only make them available to authorised members of staff of the customer's own organisation. The supplier is entitled to change any assigned access codes or identification codes and certificates. The customer is responsible for managing authorisations and for providing and withdrawing in good time any access codes and identification codes.
- 7.3 If the security or the testing thereof pertains to software, equipment or infrastructure that the supplier has not provided to the customer, the customer guarantees that all necessary licences or approvals have been obtained in order to allow performance of said services. The supplier is not liable for damage or loss caused in connection with the performance of these services. The customer indemnifies the supplier against any legal action of any nature whatsoever in connection with the performance of these services.
- 7.4 The supplier is entitled to adjust the security measures at its own discretion from time to time if this is necessary as a result of changing circumstances.
- 7.5 The customer will adequately secure its systems and infrastructure and will keep them adequately secured.

- 7.6 The supplier may give directions to the customer concerning security, the purpose of which is to avoid or minimise incidents or the consequences of incidents that may affect security. If the customer does not follow such directions of the supplier or a relevant government body, or does not do so in good time, the supplier is not liable, and the customer indemnifies the supplier against any resulting damage or loss.
- 7.7 The supplier is always allowed to take technical and organisational measures to protect equipment, data files, websites, software made available, software or other works to which the customer is granted access either directly or indirectly, also in connection with an agreed limitation of the content or term of the right to use these objects. The customer will not remove or bypass such technical measures or have them removed or bypassed by third parties.

## **Article 8 Retention of title, reservation of rights and suspension**

- 8.1 All items delivered to the customer remain the supplier's property until all amounts that the customer owes the supplier under the agreement concluded between the parties have been paid to the supplier in full. A customer who acts as reseller will be allowed to sell and resell all items subject to the supplier's retention of title to the extent that such is customary in the context of the ordinary course of its business.
- 8.2 The property-law consequences of the retention of title of an item intended for export are governed by the law of the state of destination if such law contains provisions in that respect that are more favourable to the supplier.
- 8.3 Where appropriate, rights or licensing rights are granted or transferred to the customer on the condition that the customer has paid all amounts payable under the agreement.
- 8.4 The supplier may retain any data, documents, software and/or data files received or realised in the context of the agreement, in spite of an existing obligation to surrender or transfer such, until the customer has paid all amounts due to the supplier.

## **Article 9 Risk transfer**

- 9.1 The risk of loss, theft, misappropriation of or damage to items, data (including user names, codes and passwords), documents, software or data files that are created for, delivered to or used by the customer in the context of the performance of the agreement passes to the customer at the time that they have been placed under the actual control of the customer or an auxiliary person of the customer.

## **Article 10 Intellectual property**

- 10.1 All current or future intellectual property rights, including but not limited to trademark rights, patent rights, design rights, copyrights and neighbouring rights, trade name

rights, database rights, (intellectual property) rights with respect to developed AI models and the algorithms underlying them and the results of the use of those models and algorithms, know-how, company secrets and domain names in respect of the software, websites, data files, databases, equipment, training materials, testing materials and examination materials or other materials such as analyses, designs, documentation, reports, quotations, and any preparatory material thereof, developed on the basis of the agreement or made available to the customer, are vested exclusively in the supplier, its licensors or its suppliers. The customer is not allowed to claim the intellectual property rights to which the supplier, its licensors or its suppliers are entitled. The customer only acquires the rights of use that have been granted explicitly in these general terms and conditions, the agreement concluded between the parties in writing and that have been granted under mandatory law. Any right of use to which the customer is entitled is non-exclusive, non-transferable, non-pledgeable and non-sublicensable.

- 10.2 Any transfer, provision or communication, whether or not by means of an offer or agreement, of software, products or services to the customer will never entail a transfer of intellectual property rights. If the supplier is willing to undertake to transfer an intellectual property right, such an obligation can only be assumed in writing and explicitly. If the parties agree in writing that an intellectual property right with respect to software, websites, data files, equipment, know-how or other works or materials specifically developed for the customer will pass to the customer, this does not affect the right or the option that the supplier has to use and/or operate the components, designs, algorithms, documentation, works, protocols, standards and suchlike that form the basis of that development for other purposes without any limitation, either for itself or for third parties. The supplier also has the right to use and/or operate the general principles, ideas and programming languages that were used to produce, or that form the basis of the development of, any work for other purposes without any limitation, either for itself or for third parties. Neither does the transfer of an intellectual property right affect the supplier's right to undertake any developments similar to or derived from those made or to be made for the customer, either for itself or for a third party.
- 10.3 The customer will not remove or change, or have a third party remove or change, any designation(s) regarding the confidential nature or regarding copyrights, trademarks, trade names or any other intellectual property right from the software, websites, data files, equipment or materials.
- 10.4 The customer warrants that no third-party rights preclude the provision to the supplier of equipment, software, material intended for websites, data files and/or other materials, designs and/or other works for the purpose of use, maintenance, processing, installation or integration, including having the correct licences at its disposal. The customer indemnifies the supplier against any third-party claim to the effect that such provision, use, maintenance, processing, installation or integration infringes any right of that third party.
- 10.5 The supplier is never obliged to perform data conversion, unless such has explicitly been agreed with the customer in writing.

- 10.6 The supplier is entitled to use the customer's pictorial mark, logo or name in its external communications without obtaining the customer's prior consent.
- 10.7 If the customer acts in violation of obligations under this article, the customer must pay the supplier an immediately payable penalty of €25,000 (in words: twenty-five thousand euros) for each violation or €5,000 (in words five thousand euros) for each day, such without prejudice to any right of the supplier to compensation or performance or other actions available to the supplier under the law.
- 10.8 This article maintains its force after the agreement between the parties has ended.

## **Article 11 Performance of services**

- 11.1 The supplier will make every effort to perform the services with due care, where appropriate according to the arrangements and procedures recorded with the customer in writing. All of the supplier's services are performed on the basis of a best-efforts obligation, unless and to the extent that the supplier has explicitly promised a result in the written agreement, and the relevant result has been described in the agreement in a sufficiently precise manner.
- 11.2 The supplier is not liable for damage, loss or costs resulting from the use or misuse made of access codes, identification codes, certificates or other security tools, unless the misuse is the direct consequence of intent or deliberate recklessness of the supplier's management.
- 11.3 If the agreement was entered into with a view to performance by one specific person, the supplier is always entitled to replace this person with one or several persons who have the same and/or similar qualifications.
- 11.4 The supplier is not obliged to follow the customer's instructions in the performance of its services, particularly if this concerns instructions that change or supplement the content or scope of the agreed services. However, if such instructions are followed, the relevant activities are paid for in accordance with the supplier's usual rates.
- 11.5 The supplier is authorised to engage third parties in the performance of the services without obtaining the customer's consent.

## **Article 12 Obligation to provide information and other obligations to cooperate**

- 12.1 The parties acknowledge that the success of activities in the field of information and communication technology depends on correct cooperation in good time. The

customer will always provide all reasonable cooperation in good time and inform the supplier about relevant facts and circumstances.

- 12.2 The customer warrants and/or is responsible for the accuracy and completeness of the data, information, designs and specifications provided to the supplier by it or on its behalf, also if they originate from third parties. The data, information, designs and specifications must be provided in the form and the manner requested by the supplier. If the data, information, designs or specifications provided by the customer contain inaccuracies that are apparent to the supplier, the supplier will make enquiries about this with the customer.
- 12.3 For reasons of continuity, the customer will designate a contact person or contact persons acting in that capacity for the duration of the supplier's activities. The customer's contact persons will have the necessary experience, specific knowledge of the subject matter, and insight into the objectives required by the customer.
- 12.4 The customer bears the risk of selecting the items, goods and/or services to be provided by the supplier. The customer always observes the utmost care to warrant that the requirements for the deliverable are correct and complete. Sizes and data included in drawings, images, catalogues, websites, quotations, advertising material, standardisation materials and suchlike are not binding on the supplier, except if explicitly stated otherwise by the supplier.
- 12.5 If the customer, in the performance of the agreement, deploys staff and/or auxiliary persons, this staff and these auxiliary persons must have the necessary knowledge and experience. In the event that the supplier's employees perform activities at the customer's location, the customer arranges the necessary facilities, such as a working space with computer and network facilities, in good time and free of charge. The supplier is not liable for damage, loss or costs due to transmission errors, failures or unavailability of these facilities, unless the customer proves that such damage, loss or costs are the result of intent or deliberate recklessness of the supplier's management.
- 12.6 The working space and facilities must comply with all statutory requirements. The customer indemnifies the supplier against claims of third parties, including the supplier's employees, who suffer loss in connection with the performance of the agreement, which is the result of the acts or omissions of the customer or of unsafe situations in its organisation. The customer will communicate the company rules, rules on information and security rules that apply within its organisation to the employees deployed by the supplier before the start of the activities.
- 12.7 The customer is responsible for the management, including monitoring the settings, the use of the products delivered and/or services performed by the supplier and the manner in which the results of the products and services are used. The customer is also responsible for the instructions to and the use by users.
- 12.8 The customer will arrange the necessary equipment, infrastructure and support software, and will install, set up, parameterise and tune the necessary software or help

software on its own equipment, and if necessary adjust and keep up to date the equipment used for that purpose, other software or help software and the user environment, and effect the interoperability required by the customer.

- 12.9 If the customer does not fulfil any obligations under this article, the supplier has the right to suspend the supplier's own obligations either wholly or partially. Any resulting costs are payable by the customer, without prejudice to the supplier's right to exercise any other statutory right.

## **Article 13 Project groups and steering groups**

- 13.1 If both parties participate in a project group or steering group with one or more of the employees deployed by them, the provision of information will take place in the manner agreed on for the project group or steering group.
- 13.2 Decisions taken in a project group or steering group that both parties participate in are only binding on the supplier if the decision-making takes place in accordance with what has been agreed in writing in that respect between the parties or, in the absence of written arrangements in that respect, if the supplier has accepted the decisions in writing. The supplier is never obliged to accept or carry out a decision that in its opinion cannot be reconciled with the content and/or proper performance of the agreement.
- 13.3 The customer warrants that the persons it has appointed to form part of a project group or steering group are entitled to take decisions that are binding on the customer.

## **Article 14 Terms**

- 14.1 The supplier makes a reasonable effort to meet the terms or terms of delivery and/or dates or completion dates, whether or not final, stated by it or agreed between the parties as much as possible. Interim dates or completion dates stated by the supplier or agreed between the parties are always regarded as target dates, are not binding on the supplier, cannot be regarded as strict deadlines and are always indicative in nature.
- 14.2 If the exceeding of any term is imminent, the supplier and the customer will consult to discuss the consequences of such exceeding for the further planning.
- 14.3 A mere exceeding of a final term or term of delivery or date or completion date does not lead to the supplier's default. In all cases - therefore also if the parties have agreed on a final term or term of delivery or date or completion date - the supplier is in default on account of exceeding the time limit after the customer has given it written notice of default, where the customer gives the supplier a reasonable period to remedy the failure (in respect of what has been agreed), and this reasonable period has expired. In order to give the supplier the opportunity to respond adequately, the notice of default must contain a description of the failure that is as complete and detailed as possible.

- 14.4 If it has been agreed that the agreed activities will be carried out in phases, the supplier has the right to postpone the start of the activities belonging to a phase until the customer has approved the results of the previous phase in writing.
- 14.5 The supplier is not bound by any provisional or final date or completion date or term or term of delivery if the parties have agreed on a change to the content or scope of the agreement (additional work, change of specifications, etc.) or a change in the approach of the performance of the agreement, or if the customer does not, not fully or not in good time fulfil its obligations arising from the agreement. The fact that additional work or a demand for additional work occurs during the performance of the agreement will never be a reason for the customer to give notice or to terminate the agreement.

## **Article 15 Termination and notice to terminate the agreement**

- 15.1 Each of the parties is authorised to terminate the agreement on account of an attributable breach of contract only if the other party, in all cases always after having given written notice of default that is as detailed as possible, setting a reasonable period to remedy the breach, fails attributable to fulfil essential obligations under the agreement. The customer's payment obligations and all obligations to cooperate and/or provide information on the part of the customer or a third party to be engaged by the customer are in all cases regarded as essential obligations under the agreement.
- 15.2 If the customer, at the time of termination, has already received deliverables in execution of the agreement, these deliverables and the related payment obligations cannot be undone, unless the customer proves that the supplier is in default with respect to the essential part of those deliverables. Amounts that the supplier invoiced before termination in connection with what it has already properly performed or delivered in execution of the agreement remain payable in full with due observance of the provisions of the previous sentence and become immediately due and payable at the time of termination.
- 15.3 If an agreement, which by its nature and content is not discharged by performance, has been entered into for an indefinite period, notice of termination may be given in writing by each of the parties after consultation and stating the reasons for such notice. If the parties have not agreed on a notice period, a reasonable period must be observed in case of notice of termination. The supplier will never be obliged to pay any compensation in respect of notice of termination.
- 15.4 The customer is not entitled to terminate an agreement for services, entered into for a definite period, or an agreement that is discharged by performance, early.
- 15.5 Each of the parties may give full or partial written notice to terminate the agreement without notice of default and with immediate effect if the other party is granted a suspension of payments, whether or not provisional, if the other party's liquidation is petitioned for, if the other party's business is wound up or terminated other than for the benefit of restructuring or a merger of businesses. The supplier may give full or partial

notice to terminate the agreement without notice of default and with immediate effect if the decisive control of the customer's company changes either directly or indirectly. The supplier is never obliged to refund any money received or to pay compensation on account of the termination referred to in this paragraph. If the customer should be in liquidation, the customer's right to use the software made available, websites and suchlike ends at such time, as well as the customer's right to access and/or use the supplier's services, without such requiring termination on the supplier's part.

- 15.6 After notice of termination or termination for any reason whatsoever, the supplier has the right to delete all data stored at the supplier for the customer with effect from one month after the date on which the agreement ends.

## **Article 16 The supplier's liability**

- 16.1 The supplier excludes any liability for damage or loss other than specifically provided for in this Article 16.
- 16.2 Notwithstanding the exclusion of liability included in these general terms and conditions, the supplier's aggregate liability on account of attributable breach of contract or on any legal ground whatsoever, explicitly including any failure to fulfil a warranty obligation or obligation to indemnify agreed on with the customer, is limited to compensation of damage or loss as specified in this article.
- 16.3 The supplier is only liable for direct damage or loss. In this article, direct damage or loss is understood to include property damage, reasonable costs to prevent property damage and reasonable extrajudicial costs. Direct damage or loss is limited to the amount of the price stipulated for that agreement (excluding VAT) at most. If the agreement is mainly a continuing performance contract with a term of more than one year, the price stipulated for that agreement is set at the total of the payments (excluding VAT) stipulated for one year. However, in no event will the supplier's aggregate liability for direct damage or loss, on any legal ground whatsoever, exceed €15,000 (fifteen thousand euros).
- 16.4 Damage or loss caused by death, bodily injury or on account of material damage to goods is limited to €1,250,000 (one million two hundred and fifty thousand euros).
- 16.5 Indirect damage or loss, consequential damage or loss, lost savings, reduced goodwill, loss caused by business interruption, loss resulting from claims of the customer's buyers, damage or loss connected with the use of items, materials or software of third parties that the customer has prescribed to the supplier, and damage or loss connected with the engagement of suppliers that the customer has prescribed to the supplier is excluded. The supplier's liability is also excluded for or in case of:
- damage or loss resulting from damage to or loss of records and/or data;



- damage or loss resulting from the provision of incorrect or incomplete data or information by the customer to the supplier or that is otherwise the result of the customer's acts or omissions;
  - the customer making changes to the supplier's software, products or services;
  - damage or loss that occurs at the customer or third parties as a result of the improper functioning of the customer's hardware, equipment, software and/or Internet connections.
- 16.6 The exclusions and limitations of the supplier's liability described in Article 16.2 to 16.4 inclusive do not at all affect the other exclusions and limitations of the supplier's liability described in these general terms and conditions.
- 16.7 The exclusions and limitations referred to in Article 16.2 to 16.5 inclusive cease to apply if and to the extent that the damage or loss is the result of intent or deliberate recklessness of the supplier's management.
- 16.8 Unless fulfilment by the supplier is permanently impossible, the supplier is only liable on account of an attributable breach of contract if the customer immediately gives the supplier written notice of default, setting a reasonable period to remedy the breach, and the supplier continues to fail attributable to fulfil its obligations even after that period. In order to give the supplier the opportunity to respond adequately, the notice of default must contain a description of the failure that is as complete and detailed as possible.
- 16.9 A condition with regard to any right to compensation being created is always that the customer reports the damage or loss to the supplier in writing as soon as possible after it has arisen. Without prejudice to Section 6:89 DCC, any claim for damages against the supplier is barred by the mere expiry of a period of twelve months after the claim has arisen, unless the customer has instituted legal action for compensation of the damage or loss before the expiry of that period.
- 16.10 The customer indemnifies the supplier against all third-party claims on account of product liability as a result of a defective product or system that the customer delivered to a third party and that consisted in part of equipment, software or other materials delivered by the supplier, unless and to the extent that the customer proves that the damage or loss was caused by such equipment, software or other materials.
- 16.11 The provisions of this article, as well as all other limitations and exclusions of liability stated in these general terms and conditions, also apply in favour of all natural persons and legal entities whose services the supplier and its suppliers use in the performance of the agreement. This article is a third-party clause.

## **Article 17 Force majeure**

- 17.1 None of the parties is obliged to fulfil any obligation, including any statutory obligation and/or agreed warranty obligation, if they are prevented from doing so due to force

majeure. Force majeure on the supplier's part is understood to include: (i) force majeure of the supplier's suppliers, (ii) failure by suppliers prescribed by the customer to the supplier to properly fulfil their obligations, (iii) defectiveness of items, equipment, software or materials of third parties, the use of which was prescribed to the supplier by the customer, (iv) government measures, (v) power failure, (vi) failure of the Internet, data network facilities or telecommunications facilities, (vii) crime or cybercrime, vandalism or cyber vandalism, war or terrorism and (viii) general transport problems.

- 17.2 If a situation of force majeure lasts longer than sixty days, each of the parties has the right to terminate the agreement in writing. What has already been performed under the agreement will in that case be settled proportionately, without the parties owing each other anything else.

## **Article 18 Service Level Agreement**

- 18.1 Any arrangements concerning a service level (Service Level Agreement) are only explicitly agreed in writing. The customer will always inform the supplier without delay about all circumstances that influence or may influence the service level and its availability.
- 18.2 If arrangements have been made about a service level, the availability of software, systems and related services is always measured to such extent that the period of inactivity announced by the supplier in advance on account of preventive, corrective or adaptive maintenance or other forms of servicing, as well as circumstances beyond the supplier's control, are disregarded. Subject to proof to the contrary to be provided by the customer, the availability measured by the supplier will be conclusive evidence.

## **Article 19 Backup**

- 19.1 In principle, the supplier does not make a backup of the customer's data, unless otherwise agreed in writing. If the provision of services to the customer under the agreement includes making backups of the customer's data, the supplier will make a full backup of the customer's data in its possession with due observance of the periods agreed on in writing, and in the absence thereof once a week. In the absence of arrangements about the retention period, the supplier keeps the backup for the period that is customary at the supplier. The supplier will keep the backup with due care.
- 19.2 The customer remains responsible for the fulfilment of all statutory requirements to keep records and retention obligations that apply to it.

## **Article 20 Changes and additional work**

- 20.1 If the supplier, at the customer's request or with the customer's prior consent, has performed activities or provided other deliverables that fall outside the content or scope

of the agreed activities and/or deliverables, the customer must pay for such activities or deliverables according to the agreed rates and, in the absence thereof, according to the supplier's usual rates. The supplier is not obliged to comply with such a request and may require that a separate written agreement be concluded to that end.

- 20.2 The customer realises that changes and additional work leads or may lead to the moving forward of terms or terms of delivery and dates or completion dates. Any new terms or terms of delivery and dates or completion dates stated by the supplier replace the previous ones.
- 20.3 To the extent that a fixed price has been agreed for the agreement, the supplier will inform the customer in writing, if so requested, about the financial consequences of the additional activities or deliverables within the meaning of this article.

## **Article 21 Use of artificial intelligence (AI)**

- 21.1 Supplier may use AI for its services and to which customer agrees, unless explicitly deviated from by agreement.
- 21.2 When Supplier uses AI, Customer accepts that those results depend on the accuracy of data provided by Customer, the processing of that data by the (AI) technologies used by Supplier and the limitations that those technologies may entail. Customer realizes that if the results of the use of AI require manual additions and/or adjustments, that such work by Supplier may incur additional costs.
- 21.3 When using AI, Supplier shall never be liable to Customer for any damage (in whatever form) resulting from infringement by AI of Customer supplied data and Customer rights.

## **Article 22 Transfer of rights and obligations**

- 22.1 The customer will never sell, transfer or pledge to a third party the rights and obligations vested in it under an agreement.
- 22.2 The supplier is entitled to sell, transfer or pledge to a third party its claims to payment of compensation.

## **Article 23 Applicable law and disputes**

- 23.1 Agreements between the supplier and the customer are governed by Dutch law. The Vienna Sales Convention 1980 does not apply.
- 23.2 Disputes that may arise between the supplier and the customer as a result of the agreement concluded between the parties and/or as a result of further agreements resulting from it are settled by the competent Court of Noord-Holland, unless mandatory statutory provisions prescribe otherwise.

## **CHAPTER 2. STANDARD CLAUSES FOR PROCESSING OPERATIONS**

The provisions included in this chapter entitled 'Standard clauses for processing operations' apply in addition to the general provisions of these general terms and conditions if the supplier processes personal data in the context of the performance of the agreement for the controller(s) as processor or subprocessor (data processor) within the meaning of personal data protection laws. Together with practical arrangements about processing operations in the agreement or a separate schedule (e.g. a Data Pro Statement), these standard clauses for processing operations form a processing agreement within the meaning of Article 28.3 of the General Data Protection Regulation (GDPR).

### **Article 24 General**

- 24.1 The supplier processes personal data on the customer's instructions in accordance with the customer's written instructions agreed on with the supplier.
- 24.2 The customer, or its client, is the controller within the meaning of the GDPR, has control of the processing of personal data and has determined and recorded the objective of and means for the processing of personal data.
- 24.3 The supplier is the processor within the meaning of the GDPR, which is why it has no control of the objective of and means for the processing of personal data, and therefore does not take decisions on the use of personal data, among other things.
- 24.4 The supplier implements the GDPR as laid down in this chapter entitled 'Standard clauses for processing operations' and in the agreement. It is up to the customer to assess on the basis of this information whether the supplier provides adequate warranties with respect to the application of suitable technical and organisational measures so that the processing meets the requirements of the GDPR and the protection of the rights of data subjects is safeguarded sufficiently.
- 24.5 The customer guarantees towards the supplier that it acts in line with the GDPR, that it adequately secures its systems and infrastructure at all times, and that the content, the use and/or the processing of the personal data is not unlawful and does not infringe upon any third-party right.
- 24.6 The customer is not entitled to recover from the supplier an administrative penalty imposed on it by the supervisory authority on any legal ground whatsoever.

## **Article 25 Security**

- 25.1 The supplier takes the technical and organisational security measures described in the agreement. When taking technical and organisational security measures, the supplier has taken into account the state of the art, the implementation costs of the security measures, the nature, scope and context of the processing operations, the nature of its products and services, the processing risks and the risks of varying likelihood and severity for the rights and freedoms of data subjects that the supplier could expect in view of its intended use of its products and services.
- 25.2 Unless explicitly stated otherwise in the agreement, the supplier's product or service is not designed for the processing of special categories of personal data or data concerning criminal convictions or criminal offences.
- 25.3 It is the supplier's aim that the security measures to be taken by it are suitable for the supplier's intended use of the product or service.
- 25.4 In the customer's opinion and taking into account the factors referred to in Article 24.1, the described security measures provide a level of security appropriate to the risk of the processing of the personal data used or provided by it.
- 25.5 The supplier may make changes to the security measures taken if in its opinion such is necessary in order to continue to offer a suitable level of security. The supplier will record important changes and will inform the customer of those changes where relevant.
- 25.6 The customer may request that the supplier take further security measures. The supplier is not obliged to implement changes in its security measures in response to such a request. The supplier may charge the customer for the costs associated with changes implemented at the customer's request. The supplier is only obliged to actually implement these security measures after the changed security measures required by the customer have been agreed by the parties in writing.

## **Article 26 Personal data breaches**

- 26.1 The supplier does not guarantee that the security measures are effective under all circumstances. The supplier will inform the customer without undue delay if it discovers a personal data breach. The manner in which the supplier informs the customer about personal data breaches has been recorded in the agreement. If no specific arrangements have been made, the supplier will contact the customer's contact person in the customary manner.
- 26.2 It is up to the controller (the customer or its client) to assess whether the personal data breach that the supplier has notified must be reported to the supervisory authority or data subject. Reporting personal data breaches remains the responsibility of the controller (the customer or its client) at all times. The supplier is not obliged and not

entitled to report personal data breaches to the supervisory authority and/or data subject.

26.3 If necessary, the supplier will provide further information about the personal data breach, and will reasonably cooperate in the necessary provision of information to the customer for a report to the supervisory authority or data subjects.

26.4 The supplier may charge the customer for the reasonable costs incurred by it in this respect at its rates applicable at the time.

## **Article 27 Secrecy**

27.1 The supplier guarantees that the persons who process personal data under its responsibility are obliged to observe secrecy.

27.2 The supplier is entitled to provide the personal data to third parties if and to the extent that the provision is necessary pursuant to a decision of the court, pursuant to legal requirements, on the basis of an authorised order from a government agency or for the proper performance of the agreement.

## **Article 28 Obligations upon termination**

28.1 If the processing agreement ends, the supplier will remove all personal data that are in its possession and that it has received from the customer within the period included in the agreement in such a manner that they cannot be used anymore and are rendered inaccessible or, if agreed, will return them to the customer.

28.2 The supplier may charge to the customer any costs incurred by it in the context of the provisions of the previous paragraph. Further arrangements in this respect may be included in the agreement.

28.3 The provisions of Article 27.1 do not apply if statutory provisions prevent the full or partial removal or return of the personal data by the supplier. In such a case, the supplier will only continue to process the personal data to the extent necessary pursuant to its statutory obligations. The provisions of Article 27.1 also do not apply if the supplier is the controller with respect to the personal data within the meaning of the GDPR.

## **Article 29 Rights of data subjects, Data Protection Impact Assessment (DPIA) and audit rights**

29.1 The supplier will reasonably cooperate in reasonable requests from the customer relating to the rights of data subjects relied on by data subjects in respect of the

customer. If the supplier is approached directly by a data subject, it will refer them to the customer where possible.

- 29.2 The supplier will, after a reasonable request to that effect, cooperate in a data protection impact assessment (DPIA) or any subsequent prior consultation if the customer is obliged to perform such according to the GDPR.
- 29.3 At the customer's request, the supplier will make all information available that is reasonably necessary to demonstrate fulfilment of the arrangements made in the agreement in relation to the processing of personal data, for example by means of a valid Data Pro Certificate or a certificate that is at least equivalent to this, an audit report (Third Party Memorandum) drawn up by an independent expert on the supplier's instructions, or by means of other information to be provided by it. If the customer nevertheless has reason to assume that the processing of personal data does not take place according to the agreement, it may have an audit carried out in this respect by an independent and certified external expert, with demonstrable experience with the type of processing operations that is carried out on the basis of the agreement, at the customer's expense once a year at most. The supplier has the right to refuse an expert if according to the supplier this expert affects its competitive position. The audit will be limited to monitoring compliance with the arrangements relating to the processing of personal data as recorded in the agreement. The expert will be obliged to observe secrecy with respect to anything they find, and will only report to the customer anything that constitutes a failure in the performance of the obligations that the supplier has under the agreement. The expert will provide a copy of its report to the supplier. The supplier may refuse an expert, audit or instruction of the expert if in its opinion this is contrary to the GDPR or other laws or constitutes an unacceptable infringement of the security measures taken by it.
- 29.4 The parties will discuss the findings of the report as soon as possible. The parties will follow the proposed improvement measures included in the report to the extent that they may reasonably be expected to do so. The supplier will implement the proposed improvement measures to the extent that they are suitable in its opinion, taking into account the processing risks associated with its product or service, the state of the art, the implementation costs, the market in which it operates and the intended use of the product or service.
- 29.5 The supplier has the right to charge to the customer the costs that it incurs in the context of the provisions of this article.

## **Article 30 Sub-processors**

- 30.1 The supplier has stated in the agreement whether the supplier engages third parties (sub-processors) in the processing of personal data, and if so who.
- 30.2 The customer gives the supplier permission to engage other sub-processors in the performance of its obligations arising from the agreement.



30.3 The supplier will inform the customer about a change in the third parties engaged by the supplier. The customer has the right to object to the above change by the supplier.

## **CHAPTER 3. SOFTWARE AS A SERVICE (SAAS)**

The provisions included in this chapter entitled 'Software as a Service (SaaS)' apply in addition to the general provisions of these general terms and conditions if the supplier performs services under the name of or in the area of Software as a Service (also referred to as SaaS). For the purposes of these general terms and conditions, SaaS is understood to mean: the supplier's remotely making available of functionality to the customer and keeping this available via the Internet or another data network, without a physical carrier or download with the relevant underlying software being made available to the customer.

### **Article 31 Performance of SaaS**

- 31.1 The supplier performs SaaS on the customer's instructions. The customer may only use SaaS for its own company or organisation and only to the extent that such is necessary for the use intended by the supplier. The customer is not at liberty to have third parties use the SaaS provided by the supplier.
- 31.2 The supplier may make changes to the content or scope of the SaaS. If such changes are substantial and result in a change in the procedures in place at the customer, the supplier will inform the customer about this as soon as possible. The costs of this change are payable by the customer. In that case, the customer may give written notice to terminate the agreement with effect from the date on which the change takes effect, unless this change is connected with changes in relevant laws or other regulations laid down by competent authorities, or if the supplier pays for the costs of this change.
- 31.3 The supplier may continue the performance of SaaS by using a new or changed version of the underlying software. The supplier is not obliged to maintain, change or add certain features or functionalities of the service specifically for the customer.
- 31.4 The supplier may temporarily decommission the SaaS wholly or partially for preventive, corrective or adaptive maintenance or other forms of servicing. The supplier will ensure that the decommissioning does not last any longer than necessary, and will, where possible, have it take place at times when the SaaS is generally used least intensively.
- 31.5 The supplier is never obliged to provide the customer with a physical carrier or download of the underlying software.
- 31.6 In the absence of further arrangements in this regard, the customer will further set up, configure, parameterise and tune the SaaS, convert and upload any data, and, if necessary, adjust the used equipment and user environment.

### **Article 32 Warranty**

- 32.1 The supplier does not guarantee that the SaaS is error-free and functions without interruptions. The supplier will do its utmost to remedy errors in the underlying software as referred to in Article 36.3 within a reasonable period if and to the extent that it concerns underlying software that the supplier has developed, and the customer has reported the errors in question to the supplier in writing with a detailed description. Where appropriate, the supplier may postpone the remedy of errors until a new version of the underlying software is put into use. The supplier does not guarantee that errors in the SaaS that the supplier has not developed will be remedied. The supplier is entitled to implement temporary solutions, workarounds or problem-avoiding restrictions in the SaaS. If all or part of the SaaS has been developed on the customer's instructions, the supplier may charge the customer for the costs of repair according to its usual rates. The supplier is never obliged to remedy imperfections other than those referred to in this article. If the supplier is willing to remedy such other imperfections, the supplier is entitled to charge a separate fee for this.
- 32.2 Based on the information provided by the supplier about measures to prevent and limit the consequences of failures, errors and other imperfections of the SaaS, corruption or loss of data or other incidents, the customer will identify and list the risks for its organisation and take additional measures if necessary. The supplier declares to be willing at the customer's request to reasonably cooperate in further measures to be taken by the customer on financial or other conditions to be set by the supplier. The supplier is never obliged to remedy corrupted or lost data other than placing back, where possible, the most recent backup of the relevant data.
- 32.3 The supplier does not guarantee that the SaaS is adjusted in good time to changes in relevant laws and regulations.

### **Article 33 Commencement of the services; fee**

- 33.1 The SaaS to be provided by the supplier (and any corresponding support) starts within a reasonable period after the agreement is entered into. Unless otherwise agreed, the SaaS starts upon the supplier making the means available to gain access to the SaaS provided by the supplier. The customer ensures that immediately after entering into the agreement it has the facilities required for using the SaaS.
- 33.2 The customer owes the fee included in the agreement for the SaaS. In the absence of an agreed payment schedule, all amounts relating to the SaaS provided by the supplier are payable in advance each time per calendar month.

## **Article 34 Additional provisions**

34.1 The following articles apply by analogy to the SaaS: 34.3, 34.5, 34.8, 36.1 (except for the reference to Article 40), 36.11, 48.4, 49.1, 49.2, 62.2 and 62.4 and 63. In these articles, 'software' must be read as 'SaaS' and 'delivery' must be read as 'commencement of the services'.

## **CHAPTER 4. SOFTWARE**

The provisions of this chapter entitled 'Software' apply in addition to the general provisions of these general terms and conditions if the supplier makes software, apps, corresponding data or databases and/or user documentation (in these general terms and conditions to be referred to jointly as 'software') available to the customer for use other than on the basis of SaaS.

### **Article 35 Right of use and restrictions on use**

- 35.1 The supplier makes the agreed software available to the customer based on a licence for use during the term of the agreement for use. The right to use the software is non-exclusive, non-transferable, non-pledgeable and non-sublicensable.
- 35.2 The supplier's obligation to make available and the customer's right of use pertain exclusively to the so-called object code of the software. The customer's right of use does not extend to the software's source code. The software's source code and the technical documentation drawn up upon the development of the software are not made available to the customer, not even if the customer is willing to pay financial compensation for this.
- 35.3 The customer will always strictly comply with the agreed limitations, of any nature or content whatsoever, of the right to use the software.
- 35.4 If the parties have agreed that the software may only be used in combination with specific equipment, in the event of any failure of the equipment the customer is entitled to use the software on other equipment with the same qualifications for the duration of the failure.
- 35.5 The supplier may require that the customer does not use the software until after the customer has obtained one or more codes, necessary for using the software, from the supplier, its supplier or the producer of the software.
- 35.6 The customer may only use the software in and for its own company or organisation and only to the extent that such is necessary for the intended use. The customer will not use the software for third parties, for example in the context of Software as a Service (SaaS) or outsourcing.
- 35.7 The customer is never allowed to sell, lease, dispose of or grant limited rights in respect of the software, the corresponding codes for use and the carriers on which the software has been or will be recorded or to make such available to a third party in any manner, for any purpose or under any title whatsoever. Neither will the customer give a third party - whether or not remotely (online) - access to the software or place the software with a third party for hosting purposes, not even if the relevant third party only uses the software for the customer's benefit.

- 35.8 If so requested, the customer will immediately cooperate in an investigation to be carried out by or for the benefit of the supplier concerning compliance with the agreed restrictions on use. On demand, the customer will grant the supplier access to its buildings and systems. The supplier will treat confidentially all confidential business information that it acquires from or at the customer in the context of an investigation, to the extent that such information does not concern the use of the software itself.
- 35.9 The parties consider that the agreement concluded between the parties, to the extent that its object is making software available for use, is never regarded as a purchase agreement.
- 35.10 The supplier is not obliged to provide maintenance and/or support of the software to users and/or administrators of the software. If, contrary to the above, the supplier is asked to provide maintenance and/or support with respect to the software, the supplier may require that the customer enter into a separate written agreement to that end.

## **Article 36 Delivery and installation**

- 36.1 At its choice, the supplier will deliver the software on the agreed data carrier format or, in the absence of arrangements in that respect, on a data carrier format to be determined by the supplier, or will make the software available to the customer online for delivery. At the supplier's discretion, any agreed user documentation is provided on paper or in digital format in a language determined by the supplier.
- 36.2 The supplier will install the software at the customer only if such has been agreed on. In the absence of arrangements in that respect, the customer will install, set up, parameterise and tune the software, and, if necessary, adjust the used equipment and user environment.

## **Article 37 Acceptance**

- 37.1 If the parties have not agreed on an acceptance test, the customer accepts the software in the state that it is in at the time of delivery ('as is, where is'), therefore with all visible and invisible errors and defects, without prejudice to the supplier's obligations referred to in Article 40. In the above case, the software will be considered to have been accepted by the customer upon delivery or, if an installation to be performed by the supplier has been agreed on in writing, upon completion of the installation.
- 37.2 The provisions of Articles 36.3 to 36.10 inclusive apply if an acceptance test has been agreed between the parties.
- 37.3 Where these general terms and conditions refer to 'errors' this is understood to include the substantial failure of the software to meet the functional or technical specifications of the software explicitly stated by the supplier in writing and, if the software is fully or partially customised software, the functional or technical specifications expressly

agreed on in writing. There is only an error if the customer can demonstrate it and if it is reproducible. The customer is obliged to immediately report any errors. The supplier does not have any obligation in respect of other imperfections in or to the software other than relating to errors within the meaning of these general terms and conditions.

- 37.4 If an acceptance test has been agreed on, the testing period amounts to fourteen days after delivery or, if installation to be performed by the supplier has been agreed on in writing, fourteen days after completion of the installation. During the testing period, the customer is not entitled to use the software for productive or operational purposes. The customer will carry out the agreed acceptance test with qualified personnel and with sufficient scope and depth.
- 37.5 If an acceptance test has been agreed on, the customer is obliged to test whether the delivered software meets the functional or technical specifications explicitly stated by the supplier in writing and, if the software is fully or partially customised software, the functional or technical specifications expressly agreed on in writing.
- 37.6 If data are used during testing on the customer's instructions, the customer will ensure that the use of these data for this purpose is allowed.
- 37.7 The software will be considered to have been accepted between the parties:
- a. if the parties have agreed on an acceptance test: on the first day after the testing period, or
  - b. if the supplier has received a test report as referred to in Article 36.8 before the end of the testing period: upon correction of the errors identified in such test report, without prejudice to the presence of errors that, according to Article 36.9, do not preclude acceptance, or
  - c. if the customer uses the software for productive or operational purposes: upon the relevant putting into use.
- 37.8 If upon performance of the agreed acceptance test it becomes evident that the software contains errors, the customer will report the test results to the supplier in writing in an orderly, detailed and comprehensible manner no later than the last day of the testing period. The supplier will make every effort to remedy the stated errors within a reasonable period, in which respect the supplier is entitled to implement temporary solutions, workarounds or problem-avoiding restrictions.
- 37.9 The customer may not withhold acceptance of the software for any reasons not relating to the specifications explicitly agreed between the parties in writing and, furthermore, not on account of the existence of any minor errors, which are errors that do not reasonably preclude operational or productive putting into use of the software, without prejudice to the supplier's obligation to correct these minor errors in the context of the warranty scheme of Article 40. Furthermore, acceptance may not be withheld on account of aspects of the software that can only be assessed subjectively, such as aesthetic aspects of user interfaces.

- 37.10 If the software is delivered and tested in phases and/or components, non-acceptance of any given phase and/or any given component does not affect acceptance of a previous phase and/or another component.
- 37.11 Acceptance of the software in one of the manners referred to in this article results in the discharge of the supplier for the fulfilment of its obligations concerning the making available and delivery of the software and, if installation of the software by the supplier has also been agreed on, of its obligations concerning installation.
- 37.12 Acceptance of the software does not affect the customer's rights under Article 36.9 concerning minor errors and Article 40 concerning warranty.

## **Article 38 Availability**

- 38.1 The supplier will make the software available to the customer within a reasonable period after the agreement has been entered into.
- 38.2 The customer will return to the supplier all copies of the software in its possession immediately after the agreement has ended. If it has been agreed that the customer will destroy the relevant copies upon the end of the agreement, the customer will immediately notify the supplier in writing of such destruction. The supplier is not obliged to provide assistance with a view to data conversion desired by the customer upon or after the end of the agreement.

## **Article 39 Right-of-use fee**

- 39.1 The fee to be paid by the customer for the right of use is payable at the agreed times or, in the absence of an agreed time:
- a. if the parties have not agreed that the supplier arranges installation of the software: upon delivery of the software; or, in case of right-of-use fees payable periodically: upon delivery of the software and subsequently upon the start of each new right-of-use period;
  - b. if the parties have agreed that the supplier arranges installation of the software: upon completion of that installation; or, in case of right-of-use fees payable periodically: upon completion of that installation and subsequently upon the start of each new right-of-use period.

## **Article 40 Changes in the software**

- 40.1 Except for mandatory exceptions provided for by law, the customer is not entitled to change the software wholly or partially without obtaining the supplier's prior written consent. The supplier is entitled to refuse its consent or to attach conditions to it. The customer bears the full risk of all changes made by the customer or by third parties on the customer's instructions, whether or not with the supplier's consent.



## **Article 41 Warranty**

- 41.1 The supplier will do its utmost to remedy errors within the meaning of Article 36.3 within a reasonable period if they have been reported to the supplier in writing with a detailed description within a period of three months after delivery, or, if an acceptance test has been agreed on, within three months of acceptance. The supplier does not guarantee that the software is suitable for the actual and/or intended use. Neither does the supplier guarantee that the software will function without interruption and/or that all errors are always remedied. Errors are remedied free of charge, unless the software was developed on the customer's instructions other than at a fixed price, in which case the supplier will charge the costs of remedying the errors according to its usual rates.
- 41.2 The supplier may charge the costs of remedying errors according to its usual rates in case of wrong use or improper use by the customer or other causes for which the supplier cannot be blamed. The obligation to remedy errors lapses if the customer makes changes, or has third parties make changes, to the software supplied without the supplier's written consent.
- 41.3 Errors are remedied at a location and in a manner to be determined by the supplier. The supplier is entitled to implement temporary solutions, workarounds or problem-avoiding restrictions in the software.
- 41.4 The supplier is never obliged to remedy corrupted or lost data.
- 41.5 The supplier does not have any obligation of any nature or content whatsoever with respect to errors reported after the end of the warranty period referred to in Article 40.1.

## **CHAPTER 5. DEVELOPMENT OF SOFTWARE AND WEBSITES**

The provisions of this chapter entitled 'Development of software and websites' apply in addition to the general provisions of these general terms and conditions if the supplier designs and/or develops software as described in Chapter 4 and/or websites for the customer and installs the software and/or websites.

### **Article 42 Specifications and development of software and/or websites**

- 42.1 Development always takes place based on an agreement for services. If specifications or a design of the software and/or website to be developed have not been provided to the supplier before or upon entering into the agreement, the parties will specify in consultation in writing which software and/or website will be developed and how the development is to take place.
- 42.2 The supplier will develop the software and/or website with care, all this with due observance of the explicitly agreed specifications or the design and - where appropriate - with due observance of the project organisation, methods, techniques and/or procedures agreed on with the customer in writing. Before starting with the development work, the supplier may require that the customer declare in writing that it agrees to the specifications or the design.
- 42.3 In the absence of specific arrangements in that respect, the supplier will start with the design and/or development work within a reasonable period after entering into the agreement to be determined by it.
- 42.4 If so requested, the customer will give the supplier the opportunity to perform the activities outside customary working days and working hours at the customer's office or location.
- 42.5 The supplier's obligations to perform in respect of the development of a website do not include making available a content management system.
- 42.6 If the parties agree that the supplier, in addition to development, also provides training, maintenance and/or support, and/or if the supplier also applies for a domain name, the supplier may require that the customer enter into a separate written agreement to that end. These activities are charged separately at the supplier's usual rates.
- 42.7 If the supplier performs services for the customer with respect to a domain name, such as application, extension, disposal of or transfer to a third party, the customer must observe the rules and working method of the relevant authority/authorities. If so requested, the supplier will provide the customer with a written copy of those rules. The supplier explicitly does not accept responsibility for the correctness or timeliness of the services or the achieving of the results intended by the customer. The customer owes

all costs associated with the application and/or registration according to the agreed rates or, in the absence of agreed rates, the supplier's usual rates. The supplier does not guarantee that a domain name required by the customer is assigned to the customer.

## **Article 43 Agile development of software/websites**

- 43.1 If the parties use an iterative development method (such as scrum), the parties accept: (i) that at the start of the process the activities are not performed based on complete or completely worked out specifications; and (ii) that specifications, which have or have not been agreed on upon the start of the activities, may be adjusted in consultation during the performance of the agreement with due observance of the project approach belonging to the relevant development method.
- 43.2 Before the start of the performance of the agreement, the parties will put together one or more teams consisting of both customer and supplier representatives. The team ensures that the lines of communication remain short and direct and that consultation takes place on a regular basis. The parties provide for the deployment of the capacity agreed by each of them (FTEs) to team members in the roles and with the knowledge and experience and the decision-making power required for the performance of the agreement. The parties accept that the agreed capacity is the minimum capacity required for the project to succeed. The parties do their utmost to keep key persons, once they have been deployed, available until the end of the project as much as reasonably possible, unless circumstances occur that are beyond the relevant party's control. During the performance of the agreement, the parties will take decisions jointly in consultation with respect to the specifications that apply to the next phase of the project (e.g. a time box) and/or for the next partial development. The customer accepts the risk that the software and/or website do not necessarily meet all specifications. The customer ensures a permanent and active contribution and collaboration of relevant end users, which is supported by the customer's organisation, including with respect to testing and (further) decision-making. The customer warrants the expeditiousness of the progress decisions taken by it during the performance of the agreement. In the absence of clear progress decisions in good time on the customer's part in accordance with the project approach belonging to the relevant development method, the supplier is entitled - but not obliged - to take the decisions that are appropriate in its opinion.
- 43.3 If the parties agree on one or several testing moments, testing will take place exclusively on the basis of objective, measurable and previously agreed criteria (such as conforming to development standards). Errors or other imperfections are remedied only if the responsible team makes a decision to that effect, and such takes place within a next iteration. If an additional iteration proves to be necessary for this purpose, the costs thereof are payable by the customer. After the last development phase, the supplier is not obliged to remedy errors or other imperfections, unless explicitly agreed otherwise in writing.

## **Article 44 Delivery, installation and acceptance**

- 44.1 The provisions of Article 35 on delivery and installation apply by analogy.
- 44.2 Unless the supplier will host the software and/or website for the customer on its own computer system under the agreement, the supplier will deliver the software and/or website to the customer on an information carrier and in a form to be determined by it, or the supplier will make it available for delivery to the customer online.
- 44.3 The provisions on acceptance of Article 36 of these general terms and conditions apply by analogy.
- 44.4 If the parties use a development method as referred to in Article 42, the provisions of Articles 36.1, 36.2, 36.4 to 36.9 inclusive, 36.12 and 40.1 and 40.5 do not apply. The customer accepts the software and/or website in the state that it is in at the time of the end of the last development phase ('as is, where is').

## **Article 45 Right of use**

- 45.1 The supplier makes the software and/or website developed on the customer's instructions and any developed user documentation available to the customer for use.
- 45.2 Only if such has been agreed in writing will the source code of the software and the technical documentation prepared upon the development of the software be made available to the customer, in which case the customer will be entitled to make changes in the software.
- 45.3 The supplier is not obliged to make available the help software and program libraries or data libraries necessary for using and/or maintaining the software and/or website.
- 45.4 The provisions of Article 34 on the right of use and restrictions on use apply by analogy.
- 45.5 Contrary to the provisions of Article 44.1, there are no limitations to the customer's right to use the software and/or website made available and paid by the customer only if the content of the written agreement explicitly shows that all costs of design and development of software that the supplier has developed specifically for the customer are borne fully and exclusively by the customer.

## **Article 46 Fee**

- 46.1 In the absence of an agreed payment schedule, all amounts relating to the design and development of software and/or websites are payable in arrears each time per calendar month.
- 46.2 The price for the development work also includes the fee for the right to use the software and/or website during the term of the agreement.
- 46.3 The fee for the development of the software and/or website does not include a fee for the help software and program libraries and data libraries required by the customer, any installation services and any adjustment and/or maintenance of the software and/or website. Neither does the fee include providing support to its users.

## **Article 47 Warranty**

- 47.1 The warranty provisions of Article 40 apply by analogy.
- 47.2 The supplier does not guarantee that the software and/or website developed by it work properly in conjunction with all types or new versions of web browsers and any other software and/or websites. Neither does the supplier guarantee that the software and/or website work properly in conjunction with all types of equipment.

## **CHAPTER 6. SOFTWARE MAINTENANCE AND SUPPORT**

The provisions included in this chapter entitled 'Software maintenance and support' apply in addition to the general provisions of these general terms and conditions if the supplier performs services in the area of software maintenance and support when that software is used.

### **Article 48 Maintenance services**

- 48.1 If so agreed, the supplier carries out maintenance with respect to the software determined in the agreement. The maintenance obligation includes remedying software errors within the meaning of Article 36.3 and - exclusively if such has been agreed in writing - making available new versions of the software in accordance with Article 48.
- 48.2 The customer will report any software errors in detail. After receiving the report, the supplier will do its utmost according to its usual procedures to remedy errors and/or make improvements to later new versions of the software. The results will be made available to the customer, depending on the urgency and the supplier's version policy and release policy, in the manner and within the period to be determined by the supplier. The supplier is entitled to implement temporary solutions, workarounds or problem-avoiding restrictions in the software. The customer will install, set up, parameterise and tune the corrected software or the new version of the software that is made available, and, if necessary, adjust the used equipment and user environment. The supplier is never obliged to remedy imperfections other than those referred to in this article. If the supplier is willing to remedy such other imperfections, the supplier is entitled to charge a separate fee for this.
- 48.3 The provisions of Articles 40.3 and 40.4 apply by analogy.
- 48.4 If the supplier carries out online maintenance, the customer will arrange proper and adequately secured infrastructure and network facilities in good time.
- 48.5 The customer will provide all assistance in the maintenance required by the supplier, including the temporary discontinuation of the use of the software and making a backup of all data.
- 48.6 If maintenance relates to software that the supplier has not delivered to the customer, the customer will, if the supplier deems such to be necessary or desirable for the maintenance services, make the source code and the technical documentation or technical development documentation of the software (including data models, designs, change logs, etc.) available. The customer guarantees that it has a right to make this available. The customer grants the supplier the right to use the software, including the source code and technical documentation or technical development documentation, and to change it in the context of the performance of the agreed maintenance services.

## **Article 49 New software versions**

- 49.1 Maintenance includes making available new versions of the software only if and to the extent that such has been agreed in writing. If maintenance includes making available new versions of the software, they will be made available at the supplier's discretion.
- 49.2 Three months after an improved or new version has been made available, the supplier is no longer obliged to remedy any errors in the previous version or to provide support and/or maintenance for a previous version.
- 49.3 The supplier may require that the customer enter into a further written agreement with the supplier for the making available of a version with new functionality, and that a further fee is paid for making it available. The supplier may copy functionality unchanged from a previous version of the software, but does not guarantee that each new version includes the same functionality as the previous version. The supplier is not obliged to maintain, change or add certain features or functionalities of the software specifically for the customer.
- 49.4 The supplier may require that the customer adjust its system (equipment, web browser, software, etc.) if such is necessary for the proper functioning of a new version of the software.

## **Article 50 Support services**

- 50.1 If the supplier's provision of services under the agreement also includes support to software users and/or administrators, the supplier will give advice online, by telephone or via e-mail on the use and functioning of the software stated in the agreement. The customer will describe reports in the context of support as completely and detailed as possible to give the supplier the opportunity to respond adequately. The supplier may set conditions for the method of reporting, qualifications and the number of persons who qualify for support. The supplier will deal with properly substantiated requests for support within a reasonable period according to its usual procedures. The supplier does not guarantee the correctness, completeness or timeliness of responses or the offered support. Support is provided on working days during the supplier's usual opening hours.
- 50.2 If the supplier's provision of services under the agreement also includes providing standby services, the supplier will keep one or more staff members available during the days and times specified in the agreement. In case of urgency, the customer is entitled to rely on the support of staff members kept available if there are serious failures, errors and other serious imperfections in the software's functioning. The supplier does not guarantee that they will be remedied in good time.
- 50.3 Maintenance and other agreed services within the meaning of this chapter are performed with effect from the day on which the agreement was entered into, unless the parties have agreed otherwise in writing.

## **Article 51 Fee**

- 51.1 In the absence of an explicitly agreed payment schedule, all amounts relating to software maintenance and the other services recorded in the agreement within the meaning of this chapter are always payable per calendar month in advance.
- 51.2 Amounts with respect to software maintenance and the other services recorded in the agreement within the meaning of this chapter are payable from the start of the agreement. The fee for maintenance and other services is payable regardless of whether the customer is using or has put the software into use or is using the possibility of maintenance or support.



## **CHAPTER 7.   ADVICE AND CONSULTANCY SERVICES**

The provisions included in this chapter entitled 'Advice and consultancy services' apply in addition to the general provisions of these general terms and conditions if the supplier performs services in the area of advice and consultancy that are not carried out under the customer's management and supervision.

### **Article 52 Performance of advisory and consultancy services**

- 52.1 The supplier will perform advisory and consultancy services completely independently, at its discretion and not under the customer's management and supervision.
- 52.2 The supplier is not bound by a turnaround time of the assignment, because the turnaround time of an assignment in the area of consultancy or advice depends on various factors and circumstances, such as the quality of the data and information provided by the customer and the cooperation of the customer and relevant third parties.
- 52.3 The supplier's services are provided exclusively during the supplier's usual working days and times.
- 52.4 The customer's use of advice given and/or a consultancy report issued by the supplier is always at the customer's risk. The burden of proving that the advisory and consultancy services, or the manner in which they are provided, do not comply with what has been agreed in writing or with what may be expected of a competent supplier acting reasonably is vested entirely in the customer, without prejudice to the supplier's right to provide evidence to the contrary using any means.
- 52.5 The customer is not entitled to make any statements to a third party about the working procedure, methods and technologies of the supplier and/or the substance of the supplier's advice or reports without the supplier's prior written consent. The customer will not provide the supplier's advice or reports to a third party or otherwise disclose them.

### **Article 53 Reporting**

- 53.1 The supplier will periodically inform the customer in the manner agreed on in writing about the performance of the activities. The customer will report any circumstances to the supplier in advance in writing that are or may be relevant to the supplier, such as the method of reporting, the issues that the customer would like to be addressed, the customer's prioritisation, the customer's availability of resources and staff, and any special facts or circumstances or facts or circumstances with which the supplier might not be familiar. The customer will ensure the further distribution and taking note of the information provided by the supplier within the customer's organisation, and will assess this information partly on the basis thereof and will inform the supplier of this.

## **Article 54 Fee**

- 54.1 In the absence of an explicitly agreed payment schedule, all fees relating to services provided by the supplier within the meaning of this chapter are payable in arrears each time per calendar month.

## **CHAPTER 8. SECONDMENT SERVICES**

The provisions included in this chapter entitled 'Secondment services' apply in addition to the general provisions of these general terms and conditions if the supplier makes one or more employees available to the customer for performing activities under the customer's management and supervision.

### **Article 55 Secondment services**

- 55.1 The supplier will assign the employee referred to in the agreement to the customer to perform activities under the customer's management and supervision. The results of the activities are at the customer's risk. Unless otherwise agreed in writing, the employee will be assigned to the customer forty hours a week during the supplier's usual working days.
- 55.2 The customer may only deploy the assigned employee for activities other than the agreed activities if the supplier has consented to this in advance in writing.
- 55.3 The customer is only allowed to make the assigned employee available to a third party to perform activities under that third party's management and supervision if this has been explicitly agreed in writing.
- 55.4 The supplier will do its utmost to ensure that the assigned employee remains available for work on the agreed days during the term of the agreement, with the exception of illness or if the employee leaves the supplier's employment. Even if the agreement was entered into with a view to performance by a specific person, the supplier is always entitled to replace this person with one or several persons who have the same qualifications after consulting with the customer.
- 55.5 The customer is entitled to request replacement of the assigned employee (i) if the assigned employee demonstrably does not meet the explicitly agreed quality requirements, and the customer notifies the supplier within three working days of the start of the activities, stating reasons, or (ii) in case of long-term illness of the assigned employee, or if the assigned employee leaves the supplier's employment. The supplier will immediately deal with the request with priority. The supplier does not guarantee that replacement is always possible. If replacement is not or not immediately possible, the customer's claims to further performance of the agreement lapse, as do all of the customer's claims on account of a failure to perform the agreement. The customer's payment obligations relating to the activities performed remain in full force.

## **Article 56 Term of the secondment agreement**

- 56.1** Contrary to the provisions of Article 4 of these general terms and conditions, if the parties have not made any arrangements about the term of the secondment this means that the agreement is an open-ended agreement, in which case a notice period of one calendar month after any initial term applies to each of the parties. Notice of termination must be given in writing.

## **Article 57 Length of the working week, working hours and working conditions**

- 57.1** The working hours, holiday hours and rest periods, length of the working week and other relevant terms of employment of the assigned employee are equal to those that are customary at the customer. The customer guarantees that the working hours, holiday hours and rest periods, length of the working week and other relevant working conditions comply with relevant laws and regulations in that respect.
- 57.2** The customer will inform the supplier about an intended temporary or permanent closure of its company or organisation.

## **Article 58 Overtime pay and travel time**

- 58.1** If, on the customer's instructions or at the customer's request, the assigned employee works more hours a day than the agreed or usual number of working hours or works on days other than the working days that are customary at the supplier, the customer must pay the agreed overtime rate for these hours or, in the absence of any agreed overtime rate, the supplier's usual overtime rate. If so requested, the supplier will inform the customer about the applicable overtime rates.
- 58.2** Costs and travel time will be charged to the customer in accordance with the supplier's usual rules and standards. If so requested, the supplier will inform the customer about the usual rules and standards.

## **Article 59 Recipients' liability and other liability**

- 59.1** The supplier will ensure payment in good time and in full of any payroll tax, national insurance contributions, employee insurance contributions, income-related healthcare insurance contribution and turnover tax payable with respect to the assigned employee in connection with the agreement. The supplier indemnifies the customer against all claims of the Dutch Tax and Customs Administration or of authorities implementing social security legislation that are payable on account of the agreement with the customer, subject to the condition that the customer immediately informs the supplier in writing about the existence and the content of the claim and leaves the handling of the matter, including the effecting of any settlements, entirely to the supplier. To that

end, the customer will grant the supplier the necessary powers of attorney and will provide it with the necessary information and cooperation to defend itself against any such claims, in the customer's name if necessary.

- 59.2 The supplier does not accept any liability for the quality of the results of activities performed under the customer's management and supervision.

## **CHAPTER 9. TRAINING**

The provisions included in this chapter entitled 'Training' apply in addition to the general provisions of these general terms and conditions if the supplier provides services, under any name and in any manner whatsoever (e.g. in electronic form) in the area of education, training, courses, workshops, training sessions, seminars and suchlike (hereinafter to be referred to as: training).

### **Article 60 Registration and cancellation**

- 60.1 Registration for training must be done in writing and is binding after the supplier has confirmed the registration.
- 60.2 The customer is responsible for the choice and suitability of the training for the participants. If a participant lacks the required prior knowledge, this does not affect the customer's obligations under the agreement. The customer is allowed to replace a participant in a training with another participant after the supplier has given its prior written consent.
- 60.3 If the number of registrations gives rise to this in the supplier's opinion, the supplier is entitled to cancel the training, to combine it with one or more training sessions, or to have it take place at a later date or a later time. The supplier reserves the right to change the training location. The supplier is entitled to make organisational and substantive changes to a training.
- 60.4 The consequences of cancellation of participation in a training by the customer or participants are governed by the supplier's usual rules. Cancellation must always take place in writing and prior to the training or the relevant part of it. Cancellation or non-attendance does not affect the customer's payment obligations under the agreement.

### **Article 61 Execution of training**

- 61.1 The customer accepts that the supplier determines the substance and depth of the training.
- 61.2 The customer will inform the participants and monitor fulfilment by the participants of the obligations under the agreement and compliance with the rules and rules of conduct prescribed by the supplier for participation in the training.
- 61.3 If the supplier uses its own equipment or software to execute the training, the supplier does not guarantee that this equipment or software is error-free or functions without interruptions. If the supplier executes the training at the customer's location, the customer will arrange the availability of a proper classroom and functioning equipment and software. If the customer's facilities prove to be inadequate, and the quality of the

training cannot be guaranteed as a result, the supplier is entitled not to start the training, to cut down or discontinue the training.

- 61.4 Administering an examination or a test does not form part of the agreement.
- 61.5 The customer must pay a separate fee for any documentation, training materials or means made available or produced for the training. The above also applies to any training certificates or duplicates thereof.
- 61.6 If the training is offered based on e-learning, the provisions of Chapter 3 'Software as a Service (SaaS)' apply by analogy as much as possible.

## **Article 62 Price and payment**

- 62.1 The supplier may require that the customer pay the relevant fees before the start of the training. The supplier may exclude participants from participation if the customer has not made payment in good time, such without prejudice to all of the supplier's other rights.
- 62.2 If the supplier has made preliminary inquiries for a training plan or training advice, any associated costs may be charged separately.
- 62.3 Unless the supplier has stated explicitly that the training is exempt from VAT within the meaning of Section 11 of the Dutch Turnover Tax Act 1968, the customer must also pay VAT on the fee. After entering into the agreement, the supplier is entitled to adjust its prices in case of any change of the VAT regime for training established by or under the law.

## CHAPTER 10. HOSTING

The provisions included in this chapter entitled 'Hosting' apply in addition to the general provisions of these general terms and conditions if the supplier provides services, under any name whatsoever, in the area of hosting and related services.

### Article 63 Hosting services

63.1 If the supplier agrees on hosting services with the customer, these activities are performed by third parties, i.e. True (Managed Hosting), DigitalOcean (Unmanaged Hosting) Flywheel hosting and Savvii (hereinafter to be referred to as the 'hosting partner'). The supplier is not responsible for damage or loss that occurs if the hosting services are not performed properly.

The following hosting services can be performed by True (Managed Hosting): (1) Kubernetes: where True takes care of the hardware, uptime, Kubernetes cluster components and the network (2) Web servers: where True takes care of the hardware, uptime and all server components that are used for a web server, such as the operating system, web server and SSL certificate (3) Database: where True takes care of the hardware, data storage, uptime and all server components that are used for a web server.

The following hosting services can be performed by DigitalOcean (Unmanaged Hosting): (1) Kubernetes; these clusters are intended solely for testing, acceptance and internal environments. There are no production workloads available on these Kubernetes clusters.

The following hosting services can be performed by FlyWheel hosting:

Managed WordPress Hosting, where FlyWheel hosting takes care of the hardware, backups, uptime, all server components that are used for a web server, such as the operating system, web server and SSL certificate.

The following hosting services can be performed by Savvii:

Web servers: where Savvii takes care of the hardware, backups, uptime, all server components that are used for a web server, such as the operating system, web server and SSL certificate.

63.2 If and to the extent that the supplier makes hosting services of one of the above hosting partners available to the customer or grants access to them, the terms and SLA of the relevant hosting partner apply to those products or services in addition to these general terms and conditions.

True - <https://www.true.nl>

FlyWheel - <https://getflywheel.com>

Savvii - <https://www.savvii.com/>

DigitalOcean - <https://www.digitalocean.com>

63.3 If the object of the agreement is making available disk space of equipment, the customer will not exceed the agreed disk space, unless the agreement explicitly arranges the consequences thereof. The agreement covers making disk space available on a server reserved exclusively and specifically for the customer only if that has been



explicitly agreed in writing. All use of disk space, data traffic and other burden on systems and infrastructure is limited to the maximums agreed between the parties. Data traffic that has not been used by the customer during a specific period cannot be carried over to the next period. If the agreed maximums have been exceeded, the supplier will charge an additional fee according to the usual rates.

- 63.4 The customer is responsible for the management, including monitoring the settings, the use of the hosting service and the manner in which the results of the service are used. In the absence of explicit arrangements in that respect, the customer will install, set up, parameterise and tune the software or help software, and, if necessary, adjust the used equipment, other software and user environment and effect the interoperability required by the customer. The supplier is not obliged to perform data conversion.
- 63.5 Only if this has explicitly been agreed in writing does the object of the agreement also include arranging or making available security services, backup services, fall-back services and recovery services. Only if this has explicitly been agreed in writing does the object of the agreement include service level agreements.
- 63.6 The supplier and/or hosting partner may temporarily decommission the hosting service wholly or partially for preventive, corrective or adaptive maintenance. The supplier and/or hosting partner will ensure that the decommissioning does not last any longer than necessary, will, where possible, have it take place outside office hours and will, depending on the circumstances, have it start after consultations with the customer.
- 63.7 If the supplier performs services for the customer under the agreement with respect to a domain name, such as application, extension, disposal of or transfer to a third party, the customer must observe the rules and working method of the relevant authority/authorities. If so requested, the supplier will provide the customer with a written copy of those rules. The supplier explicitly does not accept responsibility for the correctness or timeliness of the services or the achieving of the results intended by the customer. The customer owes all costs associated with the application and/or registration according to the agreed rates or, in the absence of agreed rates, the supplier's and/or hosting partner's usual rates. The supplier does not guarantee that a domain name required by the customer is assigned to the customer.

## **Article 64 Availability of the service**

- 64.1 The supplier will do its utmost to realise uninterrupted availability of systems and networks, and to realise access to the stored data, but does not provide any guarantees in this respect. If agreed otherwise in the quotation or the electronic order procedure by means of a Service Level Agreement (SLA) designated as such, this is a guarantee that is offered by the hosting partner and not by the supplier.
- 64.2 The supplier does not make any backups available to the customer. It is therefore the customer's responsibility to make backups of the data stored at the hosting partner.

- 64.3 The supplier will do its utmost to keep the software that it uses up to date. However, the supplier is dependent on its supplier/suppliers in that regard. The supplier has the right not to install certain updates or patches if in its opinion this does not benefit a correct provision of the service.
- 64.4 The supplier will do its utmost to ensure that the customer can use the networks that are connected directly or indirectly with the network of the supplier and/or third parties, including the hosting partner. However, the supplier cannot guarantee that these networks are available at any time.
- 64.5 If, in the opinion of the supplier and/or hosting partner, there is a danger to the functioning of the computer systems on the network of the supplier and/or hosting partner, particularly caused by the excessive sending of e-mail or other data, poorly secured systems or activities of viruses, Trojans and similar software, the supplier and/or hosting partner has the right to take all measures deemed reasonably necessary to avert or avoid this danger.

## **Article 65 Notice and takedown (NTD)**

- 65.1 The customer will behave with due care at all times and will not act unlawfully towards third parties, particularly by honouring the intellectual property rights and other rights of third parties, by respecting the privacy of third parties, by respecting the honour and good name of third parties, by respecting the sexuality of third parties, by not distributing data in breach of the law, by not gaining unauthorised access to systems, by not distributing viruses or other harmful programs or data, and by refraining from criminal offences and violation of any other statutory obligation.
- 65.2 In order to prevent third-party liability or to limit the consequences thereof, the supplier and/or hosting partner is always entitled to take measures with respect to the acts or omissions of the customer or at the customer's risk. Costs reasonably involved in the measures referred to above are payable by the customer. On the supplier's written demand, the customer will immediately remove data and/or information from the supplier's systems, in the absence of which the supplier is entitled, at its discretion, to remove the data and/or information itself or to make it impossible to access the data and/or information. Furthermore, the supplier is entitled in case of a violation or imminent violation of the provisions of paragraph 1 of this article to immediately deny the customer access to its systems without any prior notice. The above does not affect any other measures or the exercise of other statutory rights and contractual rights by the supplier in respect of the customer. In that case, the supplier is also entitled to terminate the agreement with immediate effect, without being liable towards the customer in this respect.
- 65.3 The supplier cannot be required to form an opinion on the validity of third-party claims or on the customer's defence or to be involved in any manner whatsoever in a dispute between a third party and the customer. The customer must consult with the relevant

third party in that respect, and must inform the supplier in writing and well-substantiated with documentation.

## **CHAPTER 11. PURCHASE OF EQUIPMENT**

The provisions included in this chapter entitled 'Purchase of equipment' apply in addition to the general provisions of these general terms and conditions if the supplier sells equipment of any nature whatsoever and/or other items (corporeal objects) to the customer.

### **Article 66 Purchase and sale**

- 66.1 The supplier sells the equipment and/or other items according to type and number as agreed in writing.
- 66.2 The supplier does not guarantee that upon delivery the equipment and/or items are suitable for actual use and/or the use intended by the customer, unless the intended uses have been clearly specified in the written agreement without reservations.
- 66.3 The supplier's obligation to sell does not include assembly and installation materials, software, consumable and consumer items, batteries, stamps, ink or ink cartridges, toner items, cables and accessories.
- 66.4 The supplier does not guarantee that the instructions for assembly, installation and use belonging to the equipment and/or items are error-free and that the equipment and/or items have the qualities stated in these instructions.

### **Article 67 Delivery**

- 67.1 The equipment and/or items that the supplier has sold to the customer will be delivered to the customer ex warehouse. The supplier will deliver the items sold to the customer or have them delivered at a location to be designated by the customer if this has been agreed in writing. In that case, the supplier will notify the customer, if possible in good time before the delivery, of the time that it or the engaged carrier intends to deliver the equipment and/or items.
- 67.2 The costs of transport, insurance, rigging and hoisting, leasing temporary facilities, etc. are not included in the purchase price and are charged to the customer where relevant.
- 67.3 If the customer requests that the supplier remove or destroy old materials (such as networks, cases, cable ducts, packaging materials, equipment or data on equipment) or if the supplier is obliged to do so by law, the supplier can accept this request by means of a written assignment at its usual rates. If and to the extent that the supplier is not allowed by law to require payment of a fee (e.g. in the context of the 'old-for-new scheme'), it will not ask the customer for such fee where relevant.
- 67.4 If the parties have agreed on this in writing, the supplier will install, configure and/or connect the equipment and/or items or have this done by third parties. Any obligation

of the supplier to install and/or configure equipment does not include the performance of data conversion and the installation of software. The supplier is not responsible for obtaining any necessary permits.

67.5 The supplier is always entitled to perform the agreement in partial deliveries.

## **Article 68 Test setup**

68.1 Only if this has been agreed in writing will the supplier be obliged to install a test setup with respect to the equipment that the customer is interested in. The supplier may attach financial or other conditions to a test setup. A test setup involves the temporary installation on approval of equipment in a standard version, excluding accessories, in a space to be made available by the customer, before the customer decides definitively whether or not it wants to buy the relevant equipment. The customer is liable for the use of, damage to, theft or loss of equipment that forms part of the test setup.

## **Article 69 Environmental requirements**

- 69.1 The customer arranges an environment that meets the requirements specified by the supplier for the equipment and/or items, including relating to temperature, humidity and technical environmental requirements.
- 69.2 The customer ensures that activities to be performed by third parties, such as construction activities, are performed adequately and in good time.

## **Article 70 Warranty**

70.1 The supplier will do its utmost to repair defective material and manufacturing defects in the sold equipment and/or other sold items, as well as in components that the supplier has delivered in the context of a warranty, free of charge within a reasonable period if these defects have been reported to the supplier with a detailed description within a period of three months after delivery. If, in the supplier's reasonable opinion, such repair is impossible, will take too long or involves unreasonably high costs, the supplier is entitled to replace the equipment and/or items at no cost with other similar, but not necessarily identical, equipment and/or items. Data conversion that is necessary as a result of repair or replacement is not covered by the warranty. All replaced components become the supplier's property. The warranty obligation lapses if errors in the equipment, items or components are fully or partially the result of incorrect, negligent or incompetent use, external causes such as fire damage or water damage, or if the customer makes changes or has third parties make changes, without the supplier's consent, to the equipment or components delivered by the supplier in the context of the warranty. The supplier will not unreasonably withhold such consent.

- 70.2 Any reliance by the customer on non-conformity of the delivered equipment and/or items other or further than what is provided in Article 68.1 is excluded.
- 70.3 The costs of activities and repair outside the scope of this warranty will be charged by the supplier in accordance with its usual rates.
- 70.4 The supplier does not have any obligation under the purchase agreement with respect to errors and/or other defects that have been reported after the end of the warranty period referred to in Article 69.1.

## **CHAPTER 12. LEASING EQUIPMENT**

The provisions included in this chapter entitled 'Leasing equipment' apply in addition to the general provisions of these general terms and conditions if the supplier leases equipment of any nature whatsoever to the customer.

### **Article 71 Lease**

- 71.1 The supplier leases to the customer the equipment and corresponding user documentation stated in the lease.
- 71.2 The lease does not include making software available on separate data carriers and consumable and consumer items that are necessary to use the equipment, such as batteries, ink or ink cartridges, toner items, cables and accessories.
- 71.3 The lease starts on the day on which the equipment is made available to the customer.

### **Article 72 Prior inspection**

- 72.1 Before or on the occasion of the equipment being made available, the supplier may, in the presence of the customer and by way of a prior inspection, prepare a description of the condition of the equipment, stating any defects found. The supplier may require that the customer sign the prepared report with this description for approval before the supplier makes the equipment available to the customer. Defects in the equipment stated in that report are at the supplier's expense. If any defects are established, the parties agree whether, and if so how and within which period the defects listed in the report are remedied.
- 72.2 If the customer does not cooperate in the prior inspection within the meaning of Article 71.1, the supplier has the right to perform this inspection without the customer's presence and to prepare the report itself. This report is binding on the customer.
- 72.3 If a prior inspection is not performed, the customer is deemed to have received the equipment in good and undamaged condition.

### **Article 73 Use of the equipment**

- 73.1 The customer will use the equipment only in accordance with the designated use intended under the agreement and at the locations stated in that agreement in and for the benefit of its own organisation or company. The equipment may not be used by or for the benefit of third parties. The right to use the equipment is not transferable. The customer is not allowed to sublease the equipment to a third party or to otherwise allow a third party to use or also use the equipment.

- 73.2 The customer will install, configure, connect and make the equipment ready for operation.
- 73.3 The customer is not allowed to use the equipment or any part of it in any manner whatsoever as security or collateral, or have it at its disposal in any other manner.
- 73.4 The customer will use the equipment carefully and retain it with due care. The customer will take adequate measures to prevent damage. The customer will immediately inform the supplier in case of damage to the equipment. In all cases, the customer is liable towards the supplier in case of damage to or theft, loss or misappropriation of the equipment during the term of the lease.
- 73.5 The customer will not change the equipment wholly or partially or make any additions to it. If, where relevant, changes or additions have nevertheless been made, the customer will reverse or remove them upon the end of the lease.
- 73.6 The parties agree that defects in the changes and additions made to the equipment by or on the instructions of the customer and all defects in the equipment resulting from those changes or additions are not defects within the meaning of Section 7:204 DCC. The customer cannot enforce any claim against the supplier with respect to these defects. The supplier is not obliged to remedy or carry out maintenance of these defects.
- 73.7 The customer cannot claim any compensation in connection with changes or additions made by the customer in the leased equipment that have not been reversed or removed upon or after the end of the lease for any reason whatsoever.
- 73.8 The customer will also immediately inform the supplier in writing of any attachment of the equipment, stating the identity of the attaching party and the reason for the attachment. The customer will allow the bailiff levying the attachment to inspect the lease without delay.

## **Article 74 Maintenance of leased equipment**

- 74.1 The customer will not service the leased equipment itself and will not have a third party service the leased equipment.
- 74.2 The customer will immediately state in writing any defects that it has discovered in the leased equipment. The supplier will do its utmost to remedy the defects in the equipment that it must pay for within a reasonable period by way of corrective maintenance. The supplier is also entitled, but not obliged, to carry out preventive maintenance to the equipment. If so requested, the customer will give the supplier the opportunity to carry out corrective and/or preventive maintenance. The parties will discuss the days and times when maintenance is to take place in advance in consultation. The customer is not entitled to replacement equipment during the maintenance period.



- 74.3 The following is excluded from the obligation to remedy defects: defects that the customer accepted when entering into the lease; the remedy of defects resulting from external causes; defects that can be attributed to the customer, its staff members and/or third parties engaged by the customer; defects resulting from negligent, incorrect or improper use or use contrary to the documentation; defects relating to the use of components or consumable items that have not been recommended or authorised; defects resulting from the use of equipment contrary to the intended use; defects resulting from changes or additions made to the equipment without authorisation.
- 74.4 If the customer remedies the defects referred to in the previous paragraph or has a third party remedy them, the customer must pay the associated costs according to the supplier's usual rates.
- 74.5 The supplier is always entitled to choose not to remedy defects and to replace the equipment with other similar but not necessarily identical equipment.
- 74.6 The supplier is never obliged to remedy or reconstruct lost data.

## **Article 75 Final inspection and return**

- 75.1 The customer will return the equipment to the supplier in the original state upon the end of the lease. To that end, the customer will also remove any data from the equipment. The costs of transport in connection with the return are payable by the customer.
- 75.2 On or before the last working day of the lease period at the latest, the customer will cooperate in a joint final inspection of the state of the equipment. The parties will jointly prepare a report of the findings, which must be signed by both parties. If the customer does not cooperate in this final inspection, the supplier has the right to perform this inspection without the customer's presence and to prepare said report itself. This report is binding on the customer.
- 75.3 The supplier is entitled to have any defects that are listed in the report of the final inspection and that are reasonably at the customer's risk and expense remedied at the customer's expense. The customer is liable for the supplier's loss on account of the temporary unusability or further impossibility to lease the equipment.
- 75.4 If the customer has not reversed any change made by it to the equipment or has not removed any addition to the equipment upon the end of the lease, the parties agree that the customer is deemed to have waived any right to those changes and/or additions.



## **CHAPTER 13. EQUIPMENT MAINTENANCE**

The provisions included in this chapter entitled 'Equipment maintenance' apply in addition to the general provisions of these general terms and conditions if the supplier services equipment of any nature whatsoever for the customer.

### **Article 76 Maintenance services**

- 76.1 The supplier performs maintenance with respect to the equipment specified in the agreement, provided that the equipment is located in the Netherlands.
- 76.2 The customer is not entitled to temporary replacement equipment during the time that the supplier retains the equipment that is to be serviced.
- 76.3 The content and scope of the maintenance services to be performed and any corresponding service levels will be recorded in a written agreement. In the absence thereof, the supplier is obliged to do its utmost to remedy within a reasonable term any failures that the customer has properly reported to the supplier in writing. In this chapter of the general terms and conditions, a 'failure' is understood to mean that the equipment does not or not without interruption meet the specifications of that equipment explicitly stated by the supplier in writing. There is only a failure if the customer can demonstrate this failure and moreover if the relevant failure can be reproduced. The supplier is also entitled, but not obliged, to carry out preventive maintenance.
- 76.4 Immediately after a failure in the equipment occurs, the customer will notify the supplier by means of a detailed written description.
- 76.5 The customer will provide all assistance in the maintenance required by the supplier, including the temporary discontinuation of the use of the equipment. The customer is obliged to grant the supplier's staff or third parties designated by the supplier access to the location of the equipment, to provide all other necessary assistance, and to make the equipment available to the supplier for maintenance.
- 76.6 Before the customer presents the equipment to the supplier for maintenance, the customer ensures that a complete and properly functioning backup has been made of all the software and data recorded in or on the equipment.
- 76.7 At the supplier's request, an expert employee of the customer will be present during the maintenance work for consultation purposes.
- 76.8 The customer is authorised to connect equipment and systems to the equipment that have not been supplied by the supplier and to install software on them.
- 76.9 If, in the supplier's opinion, the equipment maintenance requires the testing of the connections of the equipment with other equipment or with software, the customer

will make the relevant other equipment and software, as well as testing procedures and information carriers, available to the supplier.

- 76.10 The customer must make available any testing material required for maintenance that does not form part of the supplier's standard facilities.
- 76.11 The customer bears the risk of loss or theft of or damage to the equipment during the period that the supplier retains the equipment for maintenance work. It is up to the customer to take out insurance against this risk.

## **Article 77 Maintenance fee**

- 77.1 The maintenance price does not include: the costs of consumable items or their replacement such as batteries, stamps, ink or ink cartridges, toner items, cables and accessories; the costs of components or their replacement as well as maintenance services to remedy failures caused wholly or partially by attempted repairs by parties other than the supplier; equipment overhaul work; equipment modifications; moving, relocation, reinstallation or the costs of transport to repair equipment or activities resulting from this.
- 77.2 The fee for maintenance is payable regardless of whether the customer is using or has put the equipment into use or is using the possibility of maintenance.

## **Article 78 Exclusions**

- 78.1 Activities on account of the investigation or remedy of failures that are the result of or that are connected with wrong use, improper use of the equipment or external causes, such as defects in the Internet, data network connections, power supply or links to equipment, software or materials not covered by the maintenance agreement are not included in the supplier's obligations under the maintenance agreement.
- 78.2 The supplier's maintenance obligations do not include: the investigation or remedy of failures that are the result of or that are connected with a change of the equipment other than by or on behalf of the supplier; the use of the equipment contrary to the applicable conditions and the customer's failure to have the equipment serviced in good time.
- 78.3 Neither do the supplier's maintenance obligations include the investigation or remedy of failures connected with software installed on the equipment.
- 78.4 The supplier may charge or additionally charge the costs of maintenance and/or investigations performed in connection with the provisions of Articles 77.1 and/or 77.2 according to its usual rates.

78.5 The supplier is never obliged to remedy data that are corrupted or lost as a result of failures and/or maintenance.

## **CHAPTER 14. MARKETING AND INFLUENCER MARKETING**

The provisions included in this chapter entitled 'Marketing and influencer marketing' apply in addition to the general provisions of these general terms and conditions if the supplier performs services for the customer in the area of marketing and influencer marketing.

### **Article 79 Marketing services and influencer marketing services**

- 79.1 The supplier performs marketing services and influencer marketing services. The supplier cannot guarantee that the result intended by the customer is actually achieved. The customer understands that the result achieved by the supplier also depends on the customer's data and conduct.
- 79.2 The projections or forecasts issued by the supplier are indicative in nature and are not binding on the supplier.
- 79.3 The supplier depends on platforms or social media platforms, systems and/or third-party applications and cannot influence the manner in which those third parties operate their platforms, social media platforms, systems and/or applications.
- 79.4 The customer is responsible and liable for all activities on or caused by platforms, social media platforms, systems and/or applications of third parties or their use.
- 79.5 The customer is responsible for the content of the advertisement, website and/or profile or social media profile.

### **Article 80 Media budget**

- 80.1 The customer provides information on the available media budget on the supplier's demand.
- 80.2 The available media budget is never a fixed price, unless this has been agreed in writing between the parties.
- 80.3 The supplier reserves the right to charge costs in the amount of the available media budget to the customer in advance and in one lump sum.

### **Article 81 Liability**

- 81.1 In addition to Article 16 of these general terms and conditions, the supplier is not liable for or in the event of:
- loss that has arisen as a result of the conduct, publications or content of third parties;

- loss that has arisen as a result of clicks or the loss of clicks on or views of content or advertisements placed by the supplier and/or any circumstance that has not resulted in a visit to the customer's website;
- loss that has arisen as a result of the use and/or incorrect functioning of platforms or social media platforms, systems and/or applications of third parties.

## **Article 82 Indemnity**

82.1 The customer indemnifies the supplier against all third-party claims that are related directly or indirectly to or arise from activities of and/or the content of the advertisement, website and/or profile or social media profile of the customer.

## **CHAPTER 15. E-MAIL MARKETING**

The provisions included in this chapter entitled 'E-mail marketing' apply in addition to the general provisions of these general terms and conditions if the supplier performs services for the customer in the area of e-mail marketing.

### **Article 83 E-mail marketing services**

83.1 The supplier makes an online application available to the customer for e-mail marketing. The supplier performs additional services, including advice and support, to the extent that the parties have agreed on this in writing.

83.2 The application is made available to the customer on an 'as is' basis.

83.3 Once-only trial subscriptions apply for the stated duration and end automatically.

83.4 The term of the agreement depends on the type of subscription selected by the customer.

### **Article 84 Price and payment**

84.1 The price of the application depends on the type of subscription selected by the customer and consists of fixed and variable costs.

84.2 The supplier invoices on an annual or monthly basis, depending on the type of subscription selected by the customer.

84.3 Variable costs are paid through a credit system. The customer purchases a specific number of credits in advance, at its option, and spends them on variable costs at its discretion. Unused credits are not repaid.

### **Article 85 Conditions for use of the application**

85.1 The customer may only use the subscription for the application for one brand or trademark.

85.2 The customer may only use the application in the context of its own normal business operations. Any other use of the application is not allowed. The customer is not allowed to give third parties access to the application, except with the supplier's written consent.

85.3 The customer guarantees that messages that the customer sends via the application comply with the applicable laws and regulations in the Netherlands. The customer is



responsible and liable for the use of the application and the content of the messages sent via the application.

## **Article 86**

86.1 Chapter 3 of these general terms and conditions applies by analogy.