

Software Agreement - Mr. Winston

In this agreement we describe the rights and obligations of ourselves as the Supplier (as referred to in Appendix 1) and you as the Client (as included in the Supplier's administration), whereby we refer to the Supplier and the Client jointly as 'Parties' or each individually as 'Party'.

This agreement is effective on the Start Date, which is the earlier of when you:

1. use or access our Services for the first time, or;
2. agrees in any way to purchase our Services.

By clicking "I agree" (or a similar button or checkbox) when concluding and/or changing your Package, or by using our Services, you agree:

1. that you have read and understand this agreement, and;
2. that you are bound by (the terms and conditions of) this agreement.

In the event that you have registered in the name or with the name of another (legal) person, for example your employer or company, you hereby affirm that you:

1. agree to this agreement on behalf of the (legal) person you represent, and;
2. have the legal authority to bind this (legal) person to this agreement.

If you do not have the legal authority to bind the entity or do not agree to the terms of this agreement, please immediately stop using the Services and notify the Supplier.

WHEREAS:

- A. The Supplier, whose business activities include providing specific IT services to support the clients' processes, has taken note of the Client's requirements in its (digital) request and has made an offer to the Client;
- B. The Client has shown interest in the Service, wishes to have it carried out by the Supplier, and has accepted the Supplier's offer;
- C. The Parties have reached an agreement on the conditions for the Services, which agreement is recorded in this Agreement and the Appendices thereto.

THEREFORE HAVE AGREED AS FOLLOWS:

Article 1 Definitions

In this Agreement, capitalized terms have the following meanings:

1. **Availability Level:** the time that the SaaS service is available to the Client in a Measurement Period within the Service Window, expressed in percentages.
2. **Attachments:** the documents attached to this Agreement that form an integral part of this Agreement and which detail the agreements set out in the Agreement.
3. **Industry Conditions:** the terms and conditions of the Supplier's trade association as included in Appendix 5.
4. **Services:** the SaaS service as well as all of the management and maintenance activities of the Supplier for the implementation of this Agreement in accordance with the Package chosen by the Client.
5. **Defect:** a material error in the SaaS service that results in the SaaS service substantially not functioning in accordance with the Specifications expressly agreed in writing.
6. **Users:** The persons who are employed by or work for the Client and use the SaaS service on the basis of the Agreement.
7. **Non-Availability:** the periods during the Service Window during which the SaaS service is not available for the agreed use by the Client.
8. **Recovery times:** the target time within which the Supplier aims to resolve a report from the Client, within the agreed Service Window.
9. **Incidents:** an event that results in the SaaS service not functioning in accordance with the agreed Specifications or not being available for use.
10. **Measuring period:** a period of one calendar month.
11. **Support:** providing (digital and/or telephone) assistance by helpdesk employees in the event of Incidents, as well as advising on the use and functionality of the SaaS service, depending on the selected Package.
12. **Agreement:** this agreement including the Appendices thereto.
13. **Package:** the conditions and associated Specifications chosen by the Client, as specified in **Attachment 1**, on the basis of which the Service is provided by the Supplier.
14. **Software:** the standard computer software as specified on the Supplier's website(s).
15. **Response times:** the target time within which the Supplier aims to respond to a notification from the Client and/or other requests relating to the Services, within the agreed Service Window.
16. **SaaS service:** the Supplier making the Software available to the Client 'remotely' via the internet or another data network and keeping it available.
17. **Service Window:** the period within which the Availability Level is measured and the Response and Recovery Times apply, depending on the selected Package.
18. **Specifications:** the technical and functional properties of the SaaS service as described in the selected Package.
19. **Start date:** the date on which the Client instructed the Supplier to provide the Services.
20. **Technical Infrastructure:** all (peripheral) equipment hardware, software, intermediate telecommunications connections, infrastructure, internet connections and associated operating systems of the Client, which meet the minimum technical requirements as specified in **Appendix 2**, in connection with which the SaaS service is used.

21. **Means of access:** the means, such as username and password, with which a User can gain access to the SaaS service.
22. **Update(s):** a new version of the SaaS service, in which previously known Defects have been removed and/or an improvement or expansion of the existing functionality has taken place.

I SaaS service

Article 2 Right of use

1. The Supplier hereby grants the Client a temporary, non-exclusive, non-transferable right to use the SaaS service under the conditions included in this Agreement.
2. From the Start Date, the Supplier shall make the SaaS service available to the Client and keep it available for the agreed use.
3. The Client shall ensure, at its own expense and risk, that it has all facilities required for the use of the SaaS service, including the required Technical Infrastructure, immediately after entering into this Agreement.
4. After registration, the Supplier shall create an account for the Client on the SaaS service with which the Client can create sub-accounts for other Users.
5. The Client is entitled to use the SaaS service with the number of Users as specified in the Package.
6. The Supplier shall perform the SaaS service with care, in accordance with the agreements expressly recorded in writing with the Client and the Package chosen by the Client. All services provided by the Supplier are performed on a best efforts basis.
7. The Supplier is not obliged to carry out data conversion.
8. The obligations of the Supplier under this Agreement with regard to the performance of the Services do not affect the obligation of the Client to establish, maintain and implement adequate procedures and control mechanisms, taking into account the nature and extent of the interests of the use of the SaaS service, to prevent or limit damage resulting from any irregularities in the use of the SaaS service or the Services. The Client shall ensure that its personnel are adequately trained and informed about the operation of the SaaS service and Services.
9. The Client shall ensure adequate information and contractual agreements with authorized external users who perform actions on the SaaS service, without the intervention of an employee of the Client, covering the risks associated with the use of an automated system.

Article 3 Terms of Use

1. The Client shall always strictly comply with the agreed terms of use as included in this SaaS agreement. The Client is aware that violation of the agreed terms of use constitutes a material breach of the agreement with the Supplier.
10. When using the SaaS service, the Client unconditionally guarantees that it shall comply with the conditions below. Client shall:
 - a. use the SaaS service exclusively in and for the benefit of its own company or organization and therefore do not allow third parties to use the SaaS service;
 - b. not misuse Access Tools or breach and/or attempt to breach the security of the SaaS Service;

- c. not to penetrate the SaaS service or an (affiliated) computer system or part thereof ("hacking");
- d. not in any way infringe on the intellectual property rights of the Supplier and/or third parties;
- e. ensuring the maintenance of its Technical Infrastructure;
- f. ensure the protection of its Technical Infrastructure against viruses, computer crime and unlawful use by employees or third parties;
- g. not distribute (computer) viruses or other files that could damage the (proper functioning of the) SaaS service;
- h. not perform any actions that could cause disruptions or inconvenience, limited use or unforeseen use (for other users);
- i. not send unsolicited large quantities of messages with the same or similar content ("spam");
- j. not to perform or omit actions that it knows or should reasonably have known could lead to use of the SaaS service that is punishable or unlawful towards the Supplier and/or third parties;
- k. not publish and/or distribute racist, discriminatory, (child) pornographic and/or otherwise punishable material via the SaaS service;
- l. not, without the prior express written permission of the Supplier in Supplier's sole discretion, disclose, reproduce or otherwise use information and data that the Supplier provides in the context of the Services, other than for use in the Client's internal business operations;
- m. The Client is obliged to adhere to the restrictions as defined by the selected Package.

Article 4 Changes to SaaS service

1. The Supplier may, in Suppliers sole discretion, make changes to the content or scope of the SaaS service. If such changes result in a significant change to the procedures and/or processes applicable to the Client, the Supplier shall inform the Client of this as timely as possible. Any resulting costs incurred by the Client shall be at the Client's own expense.
2. The Supplier may continue the performance of the SaaS service using a new or modified version of the SaaS service. The Supplier is not obliged to maintain, change or add certain features or functionalities of the SaaS service specifically for the Client.

Article 5 Duration and termination

1. This Agreement commences on the Start Date and continues until terminated under this Agreement.
2. Parties are entitled to terminate the Agreement at the end of a contract year, subject to a notice period of 90 days.
3. The Client waives the right to terminate this Agreement (in whole or in part) out of court or to demand judicial dissolution if the Supplier has not achieved the Availability Level as referred to in Article 12 after the Start Date.
4. Each of the Parties is entitled to terminate the Agreement with immediate effect (in whole or in part) by means of written notice, without this giving rise to any liability towards the other Party

and without prejudice to any other right of the Party invoking the termination, if one of the following conditions occurs:

- a. the bankruptcy of the other Party is filed;
 - b. the other Party is declared bankrupt;
 - c. the other Party is granted a suspension of payments (provisional or otherwise);
 - d. the other Party's business is terminated.
5. In all cases other than those referred to in Article 5, a Party is only entitled to terminate the Agreement if the other Party materially defaults, after sending a proper and detailed written notice of material default, with a 30 day remedy period. Payment obligations of the Client and all obligations to cooperate and/or provide information by the Client apply in all cases as essential obligations under this Agreement. If the Client has already received services in implementation of this Agreement at the time of termination, these services and the associated payment obligations will not be subject to cancellation. Amounts that the Supplier has invoiced before the termination in connection with what it has already properly performed or delivered in the execution of this Agreement remain unaffected and become immediately due and payable at the time of termination.

Article 6 Reimbursements

1. The rates for the services to be provided by the Supplier depend on the Package chosen by the Client.
2. The Services are included in the compensation referred to in Article 6.1.
3. Work that falls outside the express written agreements applicable between the Supplier and the Client and the Package chosen by the Client will be charged by the Supplier to the Client on the basis of subsequent calculation, at the then applicable rates and properly specified.
4. With regard to the services provided by the Supplier and the amounts owed by the Client, the information from the Supplier's administration provides complete evidence, without prejudice to the Client's right to provide evidence to the contrary.

Article 7 Invoicing and payment

1. Invoicing and payment of all costs under this Agreement will be in dollars.
1. The Client owes an amount monthly or annually for all performances and rights that the Client is entitled to receive under this Agreement, subject to additional compensation under this article 6.3.
2. The Supplier will charge the Client for the amounts to be paid by the Client on the basis of this Agreement that fall outside the agreed fixed amount of compensation under Article 6.3, on the basis of subsequent calculation, properly specified, in accordance with the then applicable rates of the Supplier.
3. The Client shall pay the Supplier's invoices to the Supplier within 14 days of receipt of the invoice.
4. The Client shall pay the Supplier's invoices by means of a monthly direct bank debit. The Client is obliged to cooperate in all necessary (administrative) actions to realize this automatic bank debit. The right of suspension of payment and settlement of payment obligations is excluded for the Client.

5. If (the payments of) the amounts due by the Client are not automatically paid, are prevented or reversed, for whatever reason, this will not affect the indebtedness of the amounts in question and the Client will still pay the amounts due immediately and in any case. case within the period referred to in Article 7.4.
6. If the Client does not pay the amounts due within the agreed period, the Client will owe statutory commercial interest on the outstanding amount without any notice of default being required. If the Client fails to pay the claim after notice of default, the claim may be outsourced by the Supplier, in which case, in addition to the total amount then due, the Client will also be obliged to fully reimburse extrajudicial and judicial costs, including all costs calculated by external experts. in addition to the costs determined in court, related to the collection of this claim or the exercise of legal rights otherwise.

Article 8 Intellectual property

1. This Agreement does not constitute any transfer or obligation to transfer an intellectual property right to the Client and Supplier retains all intellectual property rights.
2. All intellectual property rights to the Software, websites, equipment or other materials used by the Supplier in the context of the Services, such as analyses, designs, documentation, reports, quotations, as well as preparatory material thereof, rest exclusively with the Supplier, its licensors or its suppliers. . The Client only obtains the user rights with regard to the SaaS service that are expressly granted in this Agreement. The right of use accruing to the Client is non-exclusive, non-transferable, non-pledgeable and non-sublicensable.
3. The Client shall not remove or have changed any indication(s) regarding the confidential nature or regarding copyrights, brands, trade names or any other intellectual property rights relating to the Software and SaaS service, websites, equipment or materials. .
4. Even if this Agreement does not expressly provide for this, the Supplier is always permitted to install technical facilities (including access and use control) to protect the Software, SaaS service, equipment, databases, websites, and the like in connection with an agreed restriction. in the content or duration of the right to use these objects. The Client shall not have such technical provision(s) removed or circumvented.
5. If the Client makes certain software (whether or not from third parties) or other materials available to the Supplier in the context of the Services (for example for the purpose of use, maintenance, processing, installation or integration with the Supplier's SaaS service), then The Client guarantees that no rights of third parties oppose this making available to the Supplier. The Client indemnifies the Supplier against any claim from a third party based on the allegation that such provision, use, maintenance, processing, installation or integration infringes any right of that third party.

Article 9 Regulations

1. The Client has the obligation to inform the Supplier of all legislation and regulations specific to the sector in which the Client operates (including instructions, instructions, etc. from a supervisory authority in the sector in which the Client operates) as well as any changes in those legislation and regulations. , all this to the extent that it is important for the execution of the Agreement.

2. If the laws and regulations referred to in Article 9.1 apply to the Client and implementation thereof by the Supplier is only possible after the Client has given substance or further elaboration to the obligations applicable to him, the obligation arising therefrom only applies after the Client has informed the Supplier in writing. reported how the intended effect has taken place. If, as a result of this interpretation or elaboration, the Services can only commence later than the Start Date stated in this Agreement, this will be at the expense and risk of the Client and all payment obligations of the Client will remain in full force from the Start Date.
3. The costs for adjustments to the Services as a result of changes in generic and sector-specific legislation and regulations for the Client will be borne by the Client.
4. To the extent that regulations oblige the Client to inform supervisors about obtaining permission for the outsourcing of activities and processes, as regulated in this Agreement, the implementation thereof rests solely with the Client. The Supplier shall make the necessary information available to the Client against payment of costs and shall further cooperate insofar as this can reasonably be expected of him under this Agreement.

Article 10 Exit procedure

1. In the context of the continuity of the Client's business operations, the Parties agree that in the event of termination of the Agreement, the Parties will enter into consultations.

II Management & maintenance

Article 11 Services

1. The Supplier shall provide the Client with (digital and/or telephone) support in the application of the Services, and at the time of any problems encountered by the Client's Users.
2. The Supplier provides a helpdesk that acts as an integral point of contact for all Incidents related to the use of the SaaS service. A coordinator will report Incidents to the Supplier's helpdesk on behalf of the Client.
3. Based on its nature and consequences for the use of the SaaS service, each Incident will be classified into a priority category as included in the priority table below:

| Priority | Meaning | Response time | Recovery time |
|-----------|---|---------------|---------------|
| 1 (crash) | The SaaS service can no longer be used by Users at all. Example: No User can reach the SaaS service | 4 hours | 8 hours |
| 2 (major) | An important module of the SaaS service is no longer usable by Users. Example: part of the SaaS service is no longer available to Users. | 16 hours | 32 hours |

| | | | |
|-----------|---|----------|----------|
| 3 (minor) | Due to a minor Incident, the SaaS service does not function in accordance with the agreed Specifications. Example: The SaaS service functions, but a minor part of the SaaS service does not function. | 48 hours | 96 hours |
|-----------|---|----------|----------|

4. The coordinator is the point of contact in the Client's organization for questions and reports about Incidents and for feedback from the Supplier to the Client on the actions taken in response to those messages. Incidents can be reported by the coordinator to the Supplier's helpdesk by telephone or e-mail.
5. The work to resolve Incidents will commence as soon as possible. The Supplier will make every effort to resolve the Incidents within the communicated Recovery Times.
6. The costs associated with resolving Incidents that are the result of improper use by the Client and other circumstances attributable to the Client or third parties will be borne by the Client and will be charged by the Supplier on the basis of subsequent calculation, at the then applicable rates and properly specified, charged.
7. The Supplier will regularly provide information to the Client about the progress of the solution with regard to the reported Incident. The frequency with which information is provided to the Client regarding an Incident depends on the priority of the reported Incident.

Article 12 Availability

1. The Supplier makes every effort to achieve an Availability Rate of the SaaS Service of 99.9% measured over the Measurement Period, and a maximum continuous Non-Availability of 1 hour per Measurement Period.
2. The Availability Rate is calculated by the Supplier per Measurement Period using the following formula:

$$\frac{\text{Minutes Service Window} - \text{Minutes Unavailability}}{\text{Minute service window}} \times 100\%$$

3. Non-availability of the SaaS service as a result of the following reasons and causes cannot be attributed to the Supplier and therefore does not form part of the Minutes of Unavailability as referred to in paragraph 2 of this article:
 - Agreed maintenance work during the Service Window or other announced maintenance;
 - Resolving malfunctions in the SaaS service that are the responsibility of the Client;
 - Interruptions and/or malfunctions as a result of malfunctioning of the Client's Technical Infrastructure;
 - Interruptions and/or malfunctions caused by third parties, including but not limited to failure of services provided by third parties;
 - Interruptions and/or disruptions as a result of force majeure as referred to in Article 17 of the Industry Conditions;
 - Acting contrary to the Agreement, the Industry Conditions and/or instructions from the Supplier regarding the use of the SaaS service;
 - Injudicious use of the SaaS service by the Client;
 - Interruptions and/or malfunctions that can otherwise be attributed to the Client.

Article 13 Defects

1. The Supplier does not guarantee that the SaaS service is error-free and functions without interruptions. The Supplier will make every effort to repair Defects in the SaaS Service within a reasonable period if and insofar as it concerns Software developed by the Supplier itself and the relevant Defects have been described in detail by the Client in writing to the Supplier. have been reported. Where appropriate, the Supplier may postpone the repair of the Defects until a new version of the Software is put into use.
2. The Supplier does not guarantee that Defects in software that has not been developed by the Supplier itself will be remedied. The Supplier is entitled to implement temporary solutions or program bypasses or problem-avoiding limitations in the Software and/or SaaS service.
3. The Supplier reserves the right to change the technical and functional properties of the SaaS service in order to correct any errors, improve functionalities or comply with applicable laws and regulations.
4. Based on the information provided by the Supplier regarding measures to prevent and limit the consequences of disruptions, Defects in the SaaS service, corruption or loss of data or other incidents, the Client will identify the risks for its organization and, if necessary, take additional measures. At the request of the Client, the Supplier declares that it is prepared to reasonably cooperate with further measures to be taken by the Client, subject to (financial) conditions to be set by the Supplier. The Supplier is never obliged to repair corrupted or lost data.
5. The Client will provide reasonable cooperation to enable the Supplier to meet its obligations under this article.
6. The Supplier does not guarantee that the SaaS service and/or Software will be adapted in a timely manner to changes in relevant legislation and regulations.

Article 14 Retention period; Backup

1. The Client itself is and remains responsible for complying with all statutory administration and retention obligations applicable to it.
2. The Supplier will ensure periodic backups of the data processed with the SaaS service. In order to implement this obligation, the Supplier will make backup copies (backups) of the entire database of the SaaS service every 6 hours (4 times per 24 hours), on a separate and specifically requested server, and keep these backups for a period of time. storage period of 12 months.

Article 15 Maintenance of the Software and SaaS Service

1. The Supplier is entitled at all times to carry out maintenance on the Software and/or SaaS service. To this end, the Supplier will deploy Updates from time to time in connection with the maintenance or optimization of the Software and/or SaaS service. The Supplier does not require permission from the Client for this. Before deploying the Updates, the Supplier will, to the extent reasonably possible, inform the Client no later than 1 week in advance, unless the Updates in question do not have any material adverse effects on the proper functioning of the SaaS service.

Article 16 Guarantees

1. The Supplier does not guarantee that the Services in the context of the SaaS service can always be provided error-free and without interruptions. The Client acknowledges that the proper functioning of the SaaS service depends on many factors that are beyond the Supplier's control.
2. The Supplier will make every effort to implement an appropriate control system in its organization, which aims to ensure that the Supplier can meet its obligations under this Agreement with regard to quality assurance, and that it also monitors its Services in such a way that it can ensure compliance with the promotes the Availability Rate set out in this Agreement.
3. To carry out the work under this Agreement, the Supplier will use helpdesk employees with an adequate level of expertise and experience.
4. In the event that, in the context of this Agreement, items owned by the Supplier or its suppliers are placed at the (business) location(s) of the Client or are given the management of the Client, the Client guarantees that it will handle and handle these items with care. and to keep it with due care.

Article 17 Security

1. Employees of the Client only have access to systems relating to the SaaS service if they have been granted authorization by the authorized officials of the Parties. The Parties' authorization procedure must indicate for each person involved who is authorized under this procedure the nature of his activities, the duration of the authorization as well as the systems and data to which he is granted access.
2. The Client is responsible for the operational management of the authorization with regard to the Means of Access used by the Client.
3. The risk of loss, theft, embezzlement or damage to data (including: user names, codes and passwords and the like) is transferred to the Client at the time at which it is brought into the actual control of the Client or an assistant of the Client.
4. The Means of Access provided to the Client by or on behalf of the Supplier are confidential and will be treated as such by the Client and will only be made known to authorized users. The Supplier is entitled to change and/or block assigned Access Means at any time. The Client is liable for the consequences of the actions of persons whom the Client has allowed to use the SaaS service by granting authorization.
5. In the event of (a suspicion of) unauthorized use of Access Means, the Client will inform the Supplier of this without unreasonable delay.
6. At the time of signing this Agreement, the Supplier has taken the security measures as stated in **Appendix 4.2** (Security measures) taken.
7. The Supplier does not guarantee that its security measures are effective under all circumstances, as the proper functioning of the Supplier's security measures is (partly) dependent on many factors that are beyond the Supplier's control or that fall under the responsibility of the Client.
8. If the Supplier identifies (attempts at) unauthorized access, it will endeavor to take measures to minimize any damage and attempt to prevent recurrence.
9. Parties are obliged to inform their employees or third parties hired by them of the applicable information security regulations at the start of the Agreement. The parties undertake to correctly and fully instruct their personnel or third parties hired by them so that the latter regulations are correctly complied with.

10. The Supplier will make every effort to ensure that the Software and/or SaaS service remains virus-free.

Article 18 Notice and Takedown

1. The Client will at all times behave carefully and not unlawfully towards third parties, in particular by respecting the intellectual property rights and other rights of third parties, respecting the privacy rights of third parties, not distributing data in violation of laws and regulations or in the within the framework of the SaaS service by the Supplier, not to gain unauthorized access to systems, not to distribute viruses or other harmful programs or data and to refrain from criminal offenses and violation of any other legal obligation.
2. In order to prevent liability towards third parties or limit the consequences thereof, the Supplier is always entitled to take measures with regard to an act or omission by or at the risk of the Client. The Client will immediately remove data from the Supplier's systems at the Supplier's first written request, failing which the Supplier is entitled to delete the data itself at its own discretion or to make access to the relevant data impossible, in which latter case the Client will do so at the request of the Supplier. Supplier will provide all necessary cooperation. The Supplier is furthermore entitled to deny the Client access to its systems immediately and without prior notice in the event of a violation or threatened violation of paragraph 1 of this article. The foregoing does not affect any other measures or the exercise of other legal and contractual rights by the Supplier towards the Client. In that case, the Supplier is also entitled to terminate this Agreement with immediate effect, without being liable to the Client.
3. The Supplier cannot be expected to form an opinion on the validity of the claims of third parties or of the Client's defense or to be involved in any way in a dispute between a third party and the Client. The Client will have to discuss this with the relevant third party and inform the Supplier in writing and with properly substantiated documents.

Article 19 Protection of personal data

1. If the SaaS service (also) involves the processing of personal data by the Supplier, the Parties agree that the Client will be regarded as the controller and the Supplier as the processor, as referred to in the General Data Protection Regulation. In that case, the parties will enter into the Processing Agreement (**Appendix 4**) in implementation of Article 28 of the General Data Protection Regulation (GDPR) and is an indivisible and integral part of this Agreement.
2. The Supplier shall process personal data on behalf of the Client in accordance with the California Consumer Privacy Act (California Civil Code Section 1798.100 et seq).
3. In all other cases where the Supplier is the controller, the Supplier's privacy policy (**Attachment 3**) applies.

Article 20 Warranty & Liability

1. Supplier does not warrant that the Services will be uninterrupted or error free; nor does it make any warranty as to the results that may be obtained from use of the Services. Except as expressly set forth in this section, the Services and accompanying services are provided "as is" and Supplier disclaims all warranties, express or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose and non-infringement.

2. Notwithstanding anything to the contrary, except for bodily injury of a person, Supplier and its suppliers (including but not limited to all equipment and technology suppliers), officers, affiliates, representatives, contractors and employees shall not be responsible or liable with respect to any subject matter of this agreement or terms and conditions related thereto under any contract, negligence, strict liability or other theory:
 - a. for error or interruption of use or for loss or inaccuracy or corruption of data or cost of procurement of substitute goods, services or technology or loss of business;
 - b. for any indirect, exemplary, incidental, special or consequential damages;
 - c. for any matter beyond Supplier's reasonable control; or
 - d. for any amounts that, together with amounts associated with all other claims, exceed the fees paid by Client to Supplier for the services under this agreement in the 12 months prior to the act that gave rise to the liability, in each case, whether or not Supplier has been advised of the possibility of such damages.

Article 21 Force majeure

1. In the event of force majeure of either Party, the obligations under this Agreement will be suspended for as long as the force majeure situation continues. Force majeure on the part of the Supplier includes: (i) force majeure of suppliers of the Supplier, (ii) failure to properly fulfill obligations of suppliers prescribed by the Client to the Supplier, (iii) defectiveness of goods, equipment, software or materials from third parties, the use of which has been prescribed to the Supplier by the Client, (iv) government measures, (v) electricity disruption, (vi) disruption of the internet, data network or telecommunications facilities and (vii) war.
2. As long as the force majeure situation continues, the obligations of the other Party will be suspended. However, this suspension will not apply to obligations to which the force majeure does not apply and which arose before the force majeure situation occurred.
3. If the force majeure situation has lasted three months, or as soon as it has been established that the force majeure situation will last longer than three months, each of the Parties is entitled to terminate the Agreement out of court with immediate effect by means of a written notice. In the event of premature termination due to force majeure, the Client must still pay the parts of the agreed price due periodically or in advance in the time before the force majeure situation occurred.

Article 22 Transfer

1. The Client is not permitted to transfer the rights under this Agreement to a third party without the prior written permission of the Supplier.

Article 23 Contact persons

1. The Client must appoint a coordinator who is the primary contact person for communication about Incidents and contract related issues.
2. At Supplier, the helpdesk is the designated point of contact.

Article 24 Other provisions

1. The Industry Terms and Conditions (of the Supplier) apply (exclusively) to this Agreement. The Client declares that it has taken note of these Industry Terms and Conditions.

2. Any general and/or industry terms and conditions of the Client or any other party do not apply to this Agreement, even if the Supplier fails to refute a reference thereto.
3. Notifications that parties will make to each other under this Agreement will be in writing. Any verbal commitments and agreements made by a Party have no effect unless they have been confirmed in writing by the other Party.
4. This Agreement is exclusively governed by Dutch law.
5. Any claims, disputes, differences or questions arising from this Agreement that the parties cannot resolve amicably will be submitted for settlement to the exclusive jurisdiction of the competent (district) court in Zeeland-West-Brabant, location Breda, The Netherlands.

Article 25 Appendices

1. The following Appendices belong to this Agreement:
 - a. Appendix 1: Package Specifications
 - b. Appendix 2: Technical Requirements
 - c. Appendix 3: Privacy Policy
 - d. Appendix 4: Data Processing Agreement
 - i. Appendix 4.1: Personal data
 - ii. Appendix 4.2: Security measures
 - e. Appendix 5: Industry Conditions
2. The Appendices form an integral part of this Agreement. In the event of any conflict between the Appendices and this main agreement, the provisions of this Agreement shall prevail.

Appendix 1. Package Specifications

Supplier

Mr. Winston B.V. (KVK: 69247714)

Functionalities

You can gain insight into the functional specifications of our software via our website:

Website: www.mrwinston.com

License

You can gain insight into the Package you have chosen via the management panel of your environment:

Package: backoffice.mrwinston.com/admin/license

Service

Included as standard:

- online Support;
- Service Window from Monday to Friday from 09:00 to 17:00 in Client's timezone.

The Package you choose may offer additional service(s):

Package: backoffice.mrwinston.com/admin/license

Appendix 2. Technical Requirements

The systems on which you run our software must at all times meet at least the requirements stated on the Supplier's website and in any case:

Software

- The latest version of Google Chrome, or at least a version that still receives active support;
- The latest version of the relevant operating system (Windows, Android, iOS, etc.), or at least a version that still receives active support;

Hardware

- A device with active support for the latest version of the operating system in question;

Network

- A stable external internet connection with at least 10Mbps;
- A separate internal network that is used exclusively for the SaaS service, and is expressly not shared or accessible to third parties.

Appendix 3. Privacy Policy

This privacy policy applies to the processing of personal data by the Supplier when it acts as Controller, whereby it, as Processor, will ensure the processing of personal data as shown in this privacy statement.

Personal data that we process

The processor processes your personal data because you use our services and/or because you provide it to us yourself. Below you will find an overview of the personal data we process:

- First and last name
- Sex
- Date of birth
- Birthplace
- Address data
- E-mail address
- phone number
- Bank account number
- Location data
- IP address
- Internet browser and device type
- Other personal data that you actively provide, for example by creating a profile through our services or through other correspondence
- Information about your activities on our services and/or websites

Special and/or sensitive personal data that we process

Our website and/or service does not intend to collect data about visitors who are younger than 18 years of age. Unless they have permission from parents or guardians. However, we cannot check whether a visitor is older than 18. We therefore recommend that parents be involved in the online activities of their children, in order to prevent data about children from being collected without parental consent. If you are convinced that we have collected personal information about a minor without this consent, please contact us and we will delete this information.

For what purpose and on what basis do we process personal data?

Processor processes your personal data for the following purposes:

- Processing your payment;
- Contact you, if necessary;
- Offer you the opportunity to create an account;
- Providing goods and/or services;
- Informing about changes to our services;
- Improving our services;
- Sending promotional communications, such as our newsletter and/or advertising brochure;
- Tailoring our services to your preferences, partly based on your activity(s);
- Collecting statistical usage data and sharing and/or selling it to third parties;
- Legally Required Collection of Data.

Automated decision making

The processor does not make decisions based on automated processing on matters that could have (significant) consequences for people. This concerns decisions that are taken by computer programs or systems, without a human being involved (for example an employee of the Processor).

How long we keep personal data

For the purpose of processing your personal data, your data will be kept for a longer period of time in order to be able to serve you at all times during the term of the agreement or in the event of a request for information. We will not store your personal data for longer than is strictly necessary to achieve the purposes for which your data is collected.

Sharing personal data with third parties

We provide your personal data to our customers (for example organizations or companies) and partners (such as suppliers) only when this is in line with the purpose for which this data was collected. To execute our agreement with you, we may engage other service providers. These service providers will only process your personal data as agreed with us.

Cookies, or similar techniques, that we use

Processor uses functional, analytical and tracking cookies. A cookie is a small text file that is stored in the browser of your computer, tablet or smartphone when you first visit our services. The processor uses cookies with a purely technical functionality. These ensure that the services work properly and that, for example, your preferred settings are remembered. These cookies are also used to ensure that the services work properly and to optimize them.

You can unsubscribe from cookies by setting your internet browser so that it no longer stores cookies. For an explanation, see the following page: <https://veiliginternetten.nl/themes/situatie/cookies-wat-zijn-het-en-wat-doe-ik-ermee/>

Subprocessors

The processor uses various sub-processors, national, European and international, whose privacy conditions apply accordingly. Some examples of this are: Google, Microsoft, Facebook, Cloudflare, MailChimp, Pipedrive and Hotjar.

These sub-processors keep track of, among other things, how our services are used, create reports to provide them to the Processor and to provide its advertisers with information about the effectiveness of their campaigns. They may provide this information to third parties if they are legally obliged to do so, or insofar as these third parties process the information on their behalf. The processor has no influence on this.

View, adjust or delete data

You have the right to view, correct or delete your personal data. In addition, you have the right to withdraw your consent to data processing or to object to the processing of your personal data by the Processor and you have the right to data portability. This means that you can submit a request to us

to send the personal data we have about you in a computer file to you or another organization mentioned by you.

You can send a request for access, correction, deletion, data transfer of your personal data or request for withdrawal of your consent or objection to the processing of your personal data. To ensure that the request for access has been made by you, we ask you to enclose a copy of your proof of identity with the request. Make your passport photo, MRZ (machine readable zone, the strip with numbers at the bottom of the passport), passport number and Citizen Service Number (BSN) black in this copy. This is to protect your privacy. We will respond to your request as quickly as possible, but within four weeks. The processor would also like to point out that you have the option to file a complaint with the national supervisory authority, the Dutch Data Protection Authority. This can be done via their website: www.autoriteitpersoonsgegevens.nl.

How we protect personal data

We take the protection of your personal data very seriously and that is why we take appropriate measures to prevent misuse, loss, unauthorized access, unwanted disclosure and unauthorized modification.

If you suspect that your data is not properly secured or that there are indications of misuse. Please report this to us so that we can act on it immediately.

Amendments

Processor reserves the right to amend this privacy statement. Any changes will be implemented directly on this page. The last changes date from November 1, 2022.

Contact details

If you have any questions about this privacy statement, or would like to invoke any of your legal rights, you can contact us via the contact details on our website.

The Processor's Data Protection Officer can be reached via the central contact details as shown on the Processor's website(s).

Appendix 4. Data Processing

The parties mentioned in this Processing Agreement are the same as the parties mentioned in the Software Agreement, whereby the Supplier qualifies as the Processor and the Client as the Controller.

WHEREAS

The Parties have entered into an Agreement WHEREBY Processor makes a SaaS service available and provides Services to/for the Controller under the terms and conditions as included in the Agreement

- A. In the course of making the SaaS service available and/or providing the Service by the Processor to the Controller, Personal Data is provided by the Controller to the Processor, or at least the Processor can come into contact with Personal Data of the Controller.
- B. The Parties attach great importance to protecting this Personal Data;
- C. The parties wish to record their agreements regarding the processing of the Personal Data in this Processing Agreement in accordance with Article 28 paragraph 3 of the GDPR.

Have agreed:

Article 1 Definitions

The terms used below and above have the following meaning:

1. Appendix: an appendix to this Processing Agreement that forms an integral part thereof.
2. Personal data: any information relating to an identified or identifiable natural person ('the Data Subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, psychological, economic, cultural or social identity of that natural person (Per Article 4(1) GDPR).
3. Data subject(s): identified or identifiable natural person to whom the processed Personal Data relates (Per Article 4(1) GDPR).
4. Processing: an operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not carried out by automated means, such as collection, recording, organization, structuring, storage, updating or modification, retrieval, consultation, use, provision by means of transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction of data (Per Article 4(2) GDPR).
5. Controller: Client (Per Article 4(7) GDPR).
6. Processor: Supplier (Per Article 4(8) GDPR).
7. Processing Agreement: this Agreement including the appendices (Per Article 28 paragraph 3 GDPR).
8. Agreement: the agreement, as mentioned in the preamble, from which this Processing Agreement arises, including any appendices added to it.
9. Data breach: a breach that has occurred in connection with personal data, including, but not limited to, any breach of organizational and/or technical security measures taken that leads

to the destruction, loss, modification or unauthorized provision of or unauthorized access to and /or access to forwarded, stored or otherwise processed Personal Data.

10. Supervisor: an independent government agency responsible for monitoring compliance with the Laws and Regulations in connection with the processing of Personal Data. In the Netherlands this is the Dutch Data Protection Authority.
11. Parties: the Controller and the Processor.
12. Legislation and Regulations: this in any case, but not exclusively, includes the General Data Protection Regulation (GDPR).
13. Third party(ies): a natural or legal person, a public authority, agency or other body, other than the Data Subject, the Controller, the Processor, nor the persons authorized under the direct authority of the Controller or the Processor to Process personal data.
14. Sub-Processor: another processor engaged by the Processor to carry out specific processing activities on behalf of the Controller.

Article 2 Establishment, duration and end of the Processing Agreement

1. This Processing Agreement comes into effect on the first moment that the Supplier acts as Processor for the Controller.
2. This Processing Agreement is and will remain in force for as long as the Processor has or will obtain access, in any way whatsoever, to Personal Data (originating) from the Controller. The Processing Agreement may be terminated by each of the Parties with immediate effect only after the Parties have become aware that the Processor no longer has or will no longer have access, in any way whatsoever, to Personal Data (originating) from the Controller. This Processing Agreement is therefore in force in any case during the term of the Agreement.
3. This Processing Agreement is an integral part of the Agreement. It is not possible to terminate the Processing Agreement separately (prematurely).
4. Deviations from this Processing Agreement are only binding to the extent that the Parties have expressly agreed this in writing.

Article 3 Processing Personal Data

1. The Processor processes the Personal Data that are necessary for the execution of the Agreement only on the written instructions of the Controller. The actual Processing(s) depend on the services purchased by the Controller. Appendix 4.1 (Personal Data) contains a non-exhaustive overview of the purpose of the processing and the Personal Data, categories of Data Subjects and (actual) Processing(s) that take place/that the Processor may process in the execution of the Agreement.
2. In addition to what is stated in Article 3.1, the Processor will:
 - a. also process some of the Personal Data included in Appendix 4.1 (Personal Data) for its own business operations, including but not limited to more specifically:
 - i. improving and promoting its SaaS service;
 - ii. presenting personalized offers;
 - b. make available or sell statistical usage data about the SaaS service and (at macro level) data about the actions and/or transactions carried out via the SaaS service to third parties.

Processor has independently determined the purposes and means of this Processing and therefore qualifies as controller for this specific processing.

3. If a Data Subject wishes to exercise her rights in accordance with the applicable Laws and Regulations, the Processor will inform the Controller of this.
4. The Processor will inform the Controller if, in its opinion, an instruction from the Controller is contrary to the Laws and Regulations.
5. To the extent possible, the Processor supports the Controller on the basis of the Agreement, within the legally set periods, to comply with the obligations under the applicable Laws and Regulations, including the rights of the Data Subject(s), such as, but not limited to , a request for access, correction, supplementation, deletion or blocking of Personal Data and the execution of an honored registered objection, as well as the obligations incumbent on the Controller as referred to in Articles 32 to 36 of the GDPR. The Processor reserves the right to charge the costs associated with these efforts to the Controller. The time spent by the Processor will be charged at the hourly rate then applicable to the Processor
6. In the context of the Agreement, the Controller grants the Processor permission to engage a Sub-Processor to process the Personal Data. The Processor will inform the Controller about (changes in) the Sub-Processors used. If the Controller cannot agree on reasonable grounds with the intended change or addition of a specific Sub-Processor, the Controller is permitted to object. If the Processor does not offer a reasonable alternative (in the opinion of the Controller) within a period of 4 weeks, the Controller is permitted to terminate the agreement with immediate effect, without being liable to the Processor.
7. When the Processor engages a Sub-Processor, the Processor ensures that the provisions of Article 28(4) GDPR are complied with, whereby the Sub-Processor undertakes in any case to take appropriate technical and organizational measures with regard to the Processing Personal Data and undertakes to maintain confidentiality.
8. In principle, the Processor is not permitted to process Personal Data outside the EEA, unless prior written notification, instruction or approval has been given by the Controller.
9. Outside the performance of the Agreement, the Processor is not permitted to provide Personal Data to anyone other than the Controller, unless at the written request of the Controller, or with his express written permission or when this is necessary to comply with a legal obligation.

Article 4 Security of Personal Data

1. The parties are obliged to ensure that the Personal Data are sufficiently secured and are obliged to take appropriate technical and organizational measures to prevent loss and unlawful Processing.
2. In any case, the processor has taken the security measures as included in Appendix 4.2 (Security Measures) at the time of signing. The processor may evaluate and adjust these measures from time to time.
3. The Controller, in mutual consultation with the Processor, is permitted to conduct an audit once a year to determine whether the processing of Personal Data complies with the applicable Legislation and Regulations and the agreements made in this Processing Agreement. This applies:
 - a. A request for this must be substantiated by the Controller.

- b. The Processor will (in such a case) make available all necessary information required to demonstrate compliance with the obligations laid down in this Processing Agreement.
 - c. The costs involved in the efforts of the Processor will be borne by the Controller, whereby the time spent by the Processor will be charged to the Controller at the hourly rate then applicable to the Processor.
4. The audit referred to in Article 4.3 may only be carried out by an auditor who meets the following requirements:
 - a. a diploma from a recognized IT audit training course;
 - b. impeccable behavior, as evidenced by a recent Declaration of Good Conduct (VOG);
 - c. at least three (3) years of demonstrable experience in IT audit work; and
 - d. registered with the register of the professional organization of IT auditors (NOREA).
5. If and insofar as an audit under Article 4.3 shows that the Processor's compliance is deficient in one or more areas, the Processor will make concrete proposals to improve this.
6. The parties will consult with each other if a change in the (organizational and/or technical) security measures to be taken is necessary. They try to achieve a change in the security measures through proper consultation.

Article 5 Confidentiality

1. The Processor keeps the Personal Data processed in the context of the execution of the Agreement confidential and will take all necessary measures to ensure the confidentiality of the Personal Data. The Processor will also impose the obligation of confidentiality on its staff and all persons and Sub-Processors engaged by it.
2. The obligation of confidentiality referred to in this article does not apply if the Controller has given express written permission to provide the Personal Data to a Third Party, or if there is a legal obligation to provide the Personal Data to a Third Party, or if it concerns data that is not secret or confidential in nature, are already generally known, or confidentiality is not possible due to a legal obligation.

Article 6 Data leaks

1. In the event of a discovery of a (possible) Data Leak, the Processor will inform the Controller without unreasonable delay, but in any case within 72 hours, as soon as it has become aware of the breach in connection with the personal data. This notification includes a description of the nature of the infringement, including, if possible:
 - a. the date and time the incident occurred and was discovered;
 - b. (the number) of people affected by the incident and
 - c. which categories of Personal Data are involved in the incident;
 - d. The contact details of the point of contact within the Processor regarding the Data Breach;
 - e. The (alleged) cause of the Data Leak;
 - f. The already known and expected consequences of the Data Breach;
2. The Processor will keep the Controller informed of new developments surrounding the (possible) Data Leak, and the Processor will also submit to the Controller the measures taken to limit and end the Data Leak and to prevent a similar incident in the future.

3. The Processor will not report a Data Leak to the Supervisor on its own initiative and will also not inform the Data Subject(s) about a Data Leak on its own initiative. This responsibility lies with the Controller.

Article 7 Return of Personal Data and retention period

1. At the first request of the Controller and, unless otherwise agreed in writing between the Parties, in any case after expiry of the Agreement and the Processing Agreement, all Personal Data in the Processor's possession must be returned or provided to the Controller, at the discretion of the Controller. or a third party to be designated by the Controller, or must be destroyed and/or erased and all existing copies must be deleted, unless storage of the personal data is required by Union or Member State law. The costs involved in the efforts of the Processor will be borne by the Controller, whereby the time spent by the Processor will be charged to the Controller at the hourly rate then applicable to the Processor.
2. Until this Processing Agreement ends, the Processor will provide all its cooperation with regard to the transfer of the Processor's activities as laid down in this Processing Agreement to the Controller or a successor Processor. The costs involved in these efforts by the Processor will be borne by the Controller, whereby the time spent by the Processor will be charged to the Controller at the hourly rate then applicable to the Processor.

Article 8 Final Provisions

1. In the event of changes to the Agreement and/or the Legislation and Regulations that affect the (method of) processing of Personal Data and which require amendment of this Processing Agreement, the Parties will enter into consultation and the Parties will try to reach an agreement as soon as possible. about the provision(s) to be amended, which, where possible, will have the same scope and content as the provision(s) it replaces.

Appendix 4.1. Personal data

Which personal data the Processor processes in the context of the assignment referred to in Article 3 of the Processing Agreement partly depends on the services purchased from the Processor by the Controller.

By way of illustration, a non-exhaustive list of the purpose of the processing, the Personal Data, the categories of data subjects and an overview of the actual processing operations that are involved in the context of the assignment referred to in Article 3 of the Processing Agreement is included below.

.

Purpose of the processing

Offer you, your users, your customers and/or your relations the opportunity to use our services, improve the Processor's business operations and/or provide insight to third parties.

Personal data

- The personal data as described in the Privacy Policy (appendix 3).

Categories of data subjects

- Customers or users of the Service;
- Relationships or customers of customers of the Services.

Processing

- Save;
- To share;
- Inspect;
- To copy;
- To delete;

Appendix 4.2. Security measures

The technical and organizational security procedures and measures will comply with applicable and generally accepted security standards.

The measures taken by the Processor are the following:

Information security policy

- Supplier has a formal and up-to-date information security policy.
- The information security policy is available to relevant parties at all times.
- There is clear support from top management to implement, monitor, maintain and adjust information security at the Supplier.

Organization and information security

- Supplier has assigned responsibilities for specific tasks related to information security, including appointing a Security & Privacy Officer.
- Supplier has developed a separate policy on the use of mobile devices and teleworking. Employees who use mobile devices are trained so that they (1) are aware of the additional risks associated with teleworking and the use of mobile devices and (2) know what control measures should be taken.
- Supplier has put in place the necessary controls to secure teleworking and the use of laptops (and other mobile devices). These measures include:
 - o cryptography techniques;
 - o protection against malware;
 - o access security for external access to personal data;
 - o physical security of laptops (and other mobile devices) and the teleworkplace against theft.

Human resources security

- The Supplier has ensured that employees are aware of and have insight into their responsibilities when using personal data.
- Employees of the Supplier sign an employment contract that contains provisions regarding their responsibilities in the field of IT security and protection of personal data.
- The Supplier has taken all appropriate measures to prevent personal data from leaving the organization uncontrolled and falling into the hands of unauthorized persons. In particular by:
 - o protection against unauthorized access, disclosure, alteration, destruction or disruption;
 - o carry out security processes or activities;
 - o always clearly assign responsibilities to a person;
 - o to report (potential) security incidents or other security risks.

Asset management

- The Supplier has classified the information components according to risk and has assigned appropriate security measures to the different types of risk.
- The Supplier ensures that sensitive data is not unauthorized disclosed, changed, deleted or destroyed.
- The Supplier has mapped out its information components and distinguishes the following types of data:
 - anonymous data: this is data that cannot be linked to an identified or identifiable person and is therefore not personal data;
 - personal data: all information about an identified or identifiable natural person as defined in Article 1.2 of this Processing Agreement;
 - special personal data: this concerns personal data revealing race, ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, health, sexual life, suspicions, prosecutions and criminal or administrative convictions. It is in principle prohibited to process such data;
 - coded personal data: these are personal data that can only be linked to an identified or identifiable person by means of a code.

Access control

- The Supplier has an approved and updated access security policy with regard to granting, changing and deleting access rights for applications and systems that use/process personal data.
- The Supplier has designated a person who manages all requests regarding access to personal data.
- Users are informed of their responsibilities regarding access security. For example, they must use efficient passwords and secure the user equipment on which personal data is used and processed.
- Supplier has established appropriate security measures to limit access to personal data.

Cryptography

- Based on a risk assessment, the Supplier has developed a policy for the correct and effective use of cryptography to protect the confidentiality, authenticity and/or integrity of personal data.

Security of activities

- Supplier has implemented controls to address malware and ensure that Supplier has the necessary defenses in place to limit the risk of infection and to raise awareness among system users and end users.
- Supplier has installed and regularly updates anti-malware and recovery software. Computers and media are scanned as a precaution and systematically. To the extent relevant, the scan consists of:
 - all files received via networks or any storage medium are checked for malware before they are used;
 - attachments and downloads are checked for malware at various critical points in your network configuration before use;

- web pages are checked.

Communications security

- The Supplier has included network security in the general information security plan and focuses on information flows through which personal data can leave the Supplier's systems.
- The Supplier has a formal and up-to-date policy regarding means of communication (such as e-mail, internet, video and telephone). This policy is regularly communicated to all relevant parties and pays special attention to the use of personal data.
- The Supplier draws up confidentiality and non-disclosure agreements and documents the requirements for the protection of personal data.

Relationships with suppliers

- When collaborating with suppliers, the Supplier ensures that the supplier offers sufficient guarantees with regard to the information security of personal data and that the obligations regarding the use and processing of personal data are contractually recorded.
- The Supplier requires those suppliers to maintain an appropriate level of information security and service provision.

Information security incident management

- Responsibilities and procedures are established for detecting and addressing information security incidents and vulnerabilities of personal data.
- The Supplier ensures that the information security/data controller is always immediately informed of events and incidents that may jeopardize or have jeopardized the information security of personal data.

Appendix 5. Industry Conditions

NLdigital Terms



The NLdigital Terms have been deposited by NLdigital at the District Court Midden-Nederland, location Utrecht. In the event of disputes concerning the interpretation of the English version of the NLdigital Terms, the Dutch text takes precedence. © 2020 NLdigital

Section 1. General provisions

Article 1 Applicability NLdigital Terms

- 1.1 These NLdigital Terms (hereinafter also to be referred to as: these general terms) apply to all offers and agreements for which supplier delivers goods and/or services, of whatever nature and under whatever name, to client.
- 1.2 These general terms can only be departed from or be supplemented if agreed by parties in writing.
- 1.3 The applicability of any of the client's purchase or other terms is explicitly excluded.
- 1.4 If and insofar as supplier makes products or services of third parties available to client or grants access to these products or services, the terms of the third parties in question apply to these products or services in the relationship between supplier and client and replace the provisions in these general terms that depart from those third party terms, provided that client has been informed by supplier about the applicability of the (licensing or sales) terms of those third parties and client has been given a reasonable opportunity to take note of those terms. Contrary to the previous sentence, client cannot invoke a failure on the part of supplier to meet the aforementioned obligation if client is a party as referred to in article 6:235 paragraph 1 or paragraph 3 of the Netherlands Civil Code.
- 1.5 If and insofar as the terms of third parties in the relationship between client and supplier referred to above prove to be inapplicable or are declared inapplicable for any reason whatsoever, these general terms apply in full.
- 1.6 If any provision of these general terms should be null and void or is annulled, the other provisions of these general terms remain fully applicable and effective. In that case, supplier and client consult as to arrange for new provisions which have the same purport, as much as possible, and that will replace the provisions that are null and void or that have been annulled.
- 1.7 Without prejudice to the provisions of article 1.4, the provisions of these general terms prevail if a conflict should arise about any of the arrangements made by parties, unless parties have explicitly departed from these terms in writing, with reference to these terms. In the event of a conflict between the provisions of different sections of these general terms, the provisions of a prior section apply, unless parties have explicitly agreed otherwise.

Article 2 Offers

- 2.1 All off supplier's offers and other forms of communication are without obligation, unless supplier should indicate otherwise in writing. Client guarantees the correctness and completeness of the information provided, with the exception of obvious typing

errors, by or on behalf of client to supplier and on which information supplier has based its offer.

Article 3 Price and payment

- 3.1 All prices are exclusive of turnover tax (VAT) and other product or service-specific levies imposed by the authorities. All prices quoted by supplier are in euros and client must pay in euros.
- 3.2 Client cannot derive any rights or expectations from any cost estimate or budget issued by supplier, unless parties have agreed otherwise in writing. A budget communicated by client is only considered a (fixed) price agreed on by parties if this has been explicitly agreed in writing.
- 3.3 If it should be apparent from the agreement that client consists of several natural persons and/or legal persons, each of these persons is jointly and severally liable to supplier for the performance of the agreement.
- 3.4 Where the activities performed by supplier and the sums due by client for these activities are concerned, the information in supplier's administration provides full evidence, without prejudice to client's right to provide evidence to the contrary.
- 3.5 In the event client should be under a periodic payment obligation, supplier may adjust the applicable prices and rates, in writing and in accordance with the index or any other criterion included in the agreement, within the period specified in the agreement. If the agreement does not explicitly provide for the possibility to adjust the prices or rates, 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, client does not want to accept the price adjustment, client is entitled to terminate the agreement by serving notice of termination (*opzeggen*) in writing, within thirty days following the notification of the adjustment and effective from the date on which the new prices and/or rates would take effect.
- 3.6 In their agreement parties lay down the date or dates on which supplier invoices the fee for the activities agreed on with client. Any sums due are paid by client in accordance with the payment terms agreed on or as stated in the invoice. Client is neither entitled to suspend any payments nor to set off any of the sums due.
- 3.7 If client should fail to pay the sums due or does not pay these on time, the statutory interest for commercial agreements is payable by client on any outstanding sum, without a reminder or notice of default being required. If client should fail to pay the sum due even after a reminder or notice of default, supplier can pass on the claim for collection and client is obliged to pay, within reason and in addition to the total sum due at that time,



all judicial and extrajudicial costs, including all costs charged by external experts – all of which is without prejudice to any of supplier's statutory and contractual rights.

Article 4 Duration of the agreement

- 4.1 If and insofar as the agreement between parties is a continuing performance contract, the agreement is entered into for the term agreed on by parties. A term of one year applies if a specific term has not been agreed on.
- 4.2 The duration of the agreement for a definite period of time is tacitly extended, each time by the period of time originally agreed on with a maximum of one year, unless client or supplier should terminate the agreement by serving written notice of termination (*opzeggen*), with due observance of a notice period of three months prior to the end of the relevant term.

Article 5 Confidentiality

- 5.1 Client and 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 insofar as the information concerned must be provided to a third party in compliance with a judicial decision, a statutory requirement, a statutory order by a public authority or for the proper performance of the agreement. The party that receives the confidential information may only use it for the purpose for which it has been provided. Information is in any case deemed confidential if it has been designated as such by either party.
- 5.2 Client acknowledges that software made available by supplier is always confidential in nature and that this software contains trade secrets of supplier and its suppliers or of the producer of the software.

Article 6 Privacy and data processing

- 6.1 If this should be relevant, in supplier's opinion, for the performance of the agreement, client informs suppliers in writing, at supplier's request, about the way in which client performs its obligations under the applicable rules and regulations pertaining to the protection of personal data.
- 6.2 Client indemnifies supplier against any claims by persons whose personal data are or have been processed and for which processing client is responsible pursuant to the law, unless client proves that the facts on which a claim is based are attributable to supplier.
- 6.3 Client is fully responsible for the data that it processes when making use of a service provided by supplier. Client guarantees vis-à-vis supplier that the content, use and/or processing of the data are not unlawful and do not infringe any third party's right. Client indemnifies supplier against any claims by a third party instituted, for whatever reason, in connection with these data or the performance of the agreement.
- 6.4 If, further to a request or a lawfully issued order by a public authority or in the context of a statutory obligation, client should perform activities with relation to data of client, client's employees or users, any costs involved in this may be charged to client.
- 6.5 If supplier performs activities for client as a processor as meant in the rules and regulations pertaining to the protection of personal data, Section 2 '*Standard Clauses for Processing*' also applies.

Article 7 Security

- 7.1 If supplier is obliged to provide some form of information security under the agreement, this protection meets the specifications on security that parties have agreed on in writing. Supplier does not guarantee that the information security provided is effective under all circumstances. If the agreement does not include an explicitly defined security method, the security features provided meet a level that is not unreasonable in view of the state of the art, the implementation costs, the nature, scope and context as known to supplier of the information to be secured, the purposes and the standard use of supplier's products and services and the probability and seriousness of foreseeable risks.
- 7.2 The access or identification codes and certificates provided by or on behalf of supplier to client are confidential and must be treated as such by client, and they may only be made known to authorised staff in client's own organisation or company. Supplier is entitled to change the access or identification codes and certificates. Client is responsible for managing these authorisations and for providing and duly revoking access and identification codes.
- 7.3 In the event security features or the testing of security features pertain to software, hardware or infrastructure that has not been delivered by supplier to client, client guarantees that all licences or approvals have been obtained so that the performance of such activities is actually allowed. Supplier is not liable for any damage caused by or in relation to the performance of these activities. Client indemnifies supplier against any claims, for whatever reason, arising from these activities being performed.
- 7.4 Supplier is entitled to adapt the security measures from time to time if this should be required as a result of a change in circumstances.
- 7.5 Client adequately secures its systems and infrastructure and keeps these adequately secured.
- 7.6 Supplier may give client instructions about security features intended to prevent or to minimize incidents, or the consequences of incidents, that may affect security. If client should fail or follow the instructions issued by supplier or by a relevant public authority, or should fail to follow these in time, supplier is not liable and client indemnifies supplier against any damage that may arise as a result.
- 7.7 Supplier is at any time permitted to install technical and organizational facilities to protect hardware, data files websites, software made available, software or other works to which client has been granted access, whether directly or indirectly, also in connection with a restriction agreed on in the content or the duration of the right to use these objects. Client may not remove or circumvent any of such technical facilities or have these removed or circumvented.

Article 8 Retention of title, reservation of rights and suspension

- 8.1 All goods delivered to client remain the property of supplier until all sums due by client to supplier under the agreement entered into by parties have been paid to supplier in full. A client that acts as a reseller may sell and supply all goods that are subject to the supplier's retention of title insofar as this is customary in the context of client's normal course of business.
- 8.2 The property-law consequences of the retention of title with respect to any goods destined for export is governed by the laws of the state of destination if the relevant laws contain provisions that are more favourable to supplier.



- 8.3 Where applicable, rights are granted or transferred to client subject to the condition that client has paid all sums due under the agreement.
- 8.4 Supplier may retain all information, documents, software and/or data files received or created in the context of the agreement, despite an existing obligation to hand these over or transfer them, until client has paid all sums due to supplier.

Article 9 Transfer of risk

- 9.1 The risk of loss, theft, misappropriation or damage of goods, information (including user names, codes and passwords), documents, software or data files that are created for, delivered to or used by client in the context of the performance of the agreement pass to client at the moment these are placed under the actual control of client or an auxiliary person of client.

Article 10 Intellectual property

- 10.1 All intellectual property rights to the software, websites, data files, databases, hardware, training, testing and examination materials, as well as other materials such as analyses, designs, documentation, reports, offers, including preparatory materials for these materials, developed or made available to client under the agreement remain exclusively vested in supplier, its licensors or its suppliers. Client is solely granted the rights of use laid down in these general terms, in the agreement entered into by parties in writing and in the applicable mandatory legal provisions. A right of use granted to client is non-exclusive, non-transferable, non-pledgeable (*niet-verpandbaar*) and non-sublicensable.
- 10.2 If supplier is prepared to undertake to transfer an intellectual property right, such undertaking may only be explicitly effected in writing. If parties agree in writing that an intellectual property right with respect to software, websites, data files, hardware, know-how, or other works or materials specifically developed for client is transferred to client, this does not affect supplier's rights or options to use and/or exploit, either for itself or for third parties and without any restriction, the parts, designs, algorithms, documentation, works, protocols, standards and the like on which the developments referred to are based for other purposes. Supplier is also entitled to use and/or exploit, either for itself or for third parties and without any restrictions, the general principles, ideas and programming languages that have been used as a basis to create or develop any work for other purposes. The transfer of an intellectual property right does not affect supplier's right to continue developing, either for itself or for third parties, software - or elements of software - that are similar to or derived from software - or elements of software - that have been or are being developed for client.
- 10.3 Client is not permitted to remove or change any indication with respect to the confidential nature of the software, websites, data files, hardware or materials or with respect to copyrights, brands, trade names or any other intellectual property right pertaining to the software, websites, data files, hardware or materials, or have any such indication removed or changed.
- 10.4 Supplier indemnifies client against any claim of a third party based on the allegation that software, websites, data files, hardware or other materials developed by supplier itself infringe an intellectual property right of that third party, provided always that client promptly informs supplier in writing about the existence and content of the claim and leaves the settlement of the claim, including any arrangements to be made in this context, entirely up to supplier. To this end, client provides supplier with the powers of attorney and information required and renders the assistance supplier requires to defend itself

against such claims. This obligation to indemnify does not apply if the alleged infringement concerns (i) works or materials made available by client to supplier for use, modification, processing or maintenance or (ii) modifications client has implemented or modifications client has had implemented in the software, websites, data files, hardware or other works and materials without supplier's written permission. If it is irrevocably established in court that software, websites, data files, hardware or other works and materials developed by supplier itself should infringe any intellectual property right belonging to a third party, or if, in supplier's opinion, there is a good chance that such an infringement will occur, supplier ensures, if possible, that client can continue to use, or use functional equivalents of, the software, websites, data files, hardware or other works and materials delivered. Any other or further obligation that supplier might have to indemnify client against any infringement of a third party's intellectual property right is excluded.

- 10.5 Client guarantees that no rights of third parties preclude making hardware, software, material intended for websites, data files and/or other materials, designs and/or other works available to supplier for the purpose of use, maintenance, processing, installation or integration; this guarantee also pertains to client's having the relevant licences. Client indemnifies supplier against any claim of a third party based on the allegation that making any of this available and/or the use, maintenance, processing, installation or integration infringes a right of that third party.
- 10.6 Supplier is never obliged to perform data conversion unless this has been explicitly agreed on with client in writing.
- 10.7 Supplier is entitled to use client's figurative mark, logo or name in its external communication.

Article 11 Performance of services

- 11.1 Supplier performs its services with care to the best of its ability, where applicable in accordance with the arrangements and procedures agreed on with client in writing. All services provided by supplier are performed on the basis of a best-efforts obligation unless and insofar as supplier has explicitly promised a result in the written agreement and the result concerned has been described in the agreement in a sufficiently precise manner.
- 11.2 Supplier is not liable for any damage suffered or costs incurred as a result of the use or misuse that is made of access or identification codes or certificates or any other security means unless the misuse is the direct result of any intent or deliberate recklessness on the part of supplier's management.
- 11.3 If the agreement has been entered into with a view to it being performed by one specific person, supplier is always entitled to replace this person by one or more persons who have the same and/or similar qualifications.
- 11.4 Supplier is not obliged to follow client's instructions when performing the services, more particularly not if these instructions change or add to the content or scope of the services agreed on. If such instructions are followed, however, the activities performed are charged at supplier's applicable rates.

Article 12 Obligation to provide information and render assistance

- 12.1 Parties acknowledge that the success of activities to be performed in the field of information and communications technology depends on proper and timely cooperation of parties. Client undertakes always to fully cooperate, within reason, and in time.



- 12.2 Client vouches for the correctness and completeness of the data, information, designs and specifications provided by on or behalf of client to supplier. If the data, information, designs or specifications provided by client should contain inaccuracies apparent to supplier, supplier requests client to provide further information.
- 12.3 For reasons of continuity, client designates a contact person or contact persons who act in that capacity for the time supplier performs its services. Client's contact persons have the relevant experience required, specific knowledge of the subject matter and a proper understanding of the objectives that client wishes to achieve.
- 12.4 Client bears the risk of selecting the goods and/or services to be provided by supplier. Client always exercises the utmost care to guarantee that the requirements set for supplier's performance are correct and complete. Measurements and data provided in drawings, images, catalogues, websites, offers, advertising material, standardisation sheets and the like are not binding on supplier unless explicitly stated otherwise by supplier.
- 12.5 If client deploys employees and/or auxiliary persons in the performance of the agreement, these employees and auxiliary persons must have the knowledge and experience required. If supplier's employees perform activities at client's premises, client ensures the facilities required are available, such as a workspace with computer and network facilities, on time and free of charge. Supplier is not liable for damage suffered or costs incurred by transmission errors, malfunctions or the non-availability of these facilities unless client proves that this damage or these costs are caused by intent or deliberate recklessness on the part of supplier's management.
- 12.6 The workspace and facilities must meet all statutory requirements. Client indemnifies supplier against claims of third parties, including supplier's employees, who, when performing the agreement, suffer damage caused by client's acts or omissions or by unsafe situations in client's organisation or company. Before the activities to be performed start, client informs the employees deployed by supplier about the company rules, information rules and security rules that apply in client's organisation or company.
- 12.7 Client is responsible for the management, including checks of the settings, and use of the products delivered and/or services provided by supplier, and the way in which the results of the products and services are implemented. Client is also responsible for appropriately instructing users and for the use of the products and services that is made by users.
- 12.8 Client itself is responsible for the hardware, infrastructure and auxiliary software and ensures that the (auxiliary) software for its own hardware is installed, organised, parameterised and tuned and, where required, that the hardware, other (auxiliary) software and the operating environment used are modified and kept updated, and that the interoperability wanted by client is effected.

Article 13 Project and steering groups

- 13.1 If both parties are participating in a project or steering group in which one or more of their employees have been appointed, the provision of information takes place in the manner agreed on for that project or steering group.
- 13.2 Decisions made in a project or steering group in which both parties are participating are only binding on supplier if the decisions are made in accordance with that which parties have agreed on in writing in this regard or, if no written arrangements have been made in this context, if supplier has accepted the relevant decision in writing. Supplier is never obliged to accept

or implement a decision if, in its opinion, the decision cannot be reconciled with the content and/or proper performance of the agreement.

- 13.3 Client ensures that the persons that it has assigned to participate in a project or steering group are authorised to make decisions that are binding on client.

Article 14 Terms and deadlines

- 14.1 Supplier makes reasonable efforts, within reason, to comply to the greatest extent possible with the terms and delivery periods and/or dates and delivery dates, whether or not these are deadlines and/or strict dates, that it has specified or that have been agreed on by parties. The interim dates and delivery dates specified by supplier or agreed on by parties always apply as target dates, do not bind supplier and are always indicative.
- 14.2 If a term or period of time is likely to be exceeded, supplier and client consult as to discuss the consequences of the term being exceeded in relation to further planning.
- 14.3 In all cases – therefore, also if parties have agreed on deadlines and strict delivery periods or dates and delivery dates – supplier is only in default because of a term or period of time being exceeded after client has served supplier with a written notice of default and has set a reasonable period of time for supplier to remedy the failure to meet its obligations and this reasonable term has passed. The notice of default must describe supplier's breach to meet its obligations as comprehensively and in as much detail as possible so that supplier has the opportunity to respond adequately.
- 14.4 If it has been agreed that the activities to be performed under the agreement must be performed in phases, supplier is entitled to postpone the start of the activities for a next phase until client has approved the results of the preceding phase in writing.
- 14.5 Supplier is not bound by a date or delivery date or term or delivery period, whether or not these are deadlines and/or strict dates, if parties have agreed on an adjustment in the content or scope of the agreement (additional work, a change of specifications, etc.) or a change in approach with respect to the performance of the agreement, or if client fails to fulfil its obligations under the agreement or fails to do so on time or in full. If additional work should be required during the performance of the agreement, this never constitutes a reason for client to give notice of termination of the agreement (*opzeggen*) or to terminate the agreement for breach (*ontbinden*).

Article 15 Termination of the agreement for breach or by serving notice of termination

- 15.1 Either party is exclusively entitled to terminate the agreement for breach (*ontbinden*) following an imputable failure of the other party to meet its obligations under the agreement if the other party, in all cases after a written notice of default has been served that is as detailed as possible and in which the other party is granted a reasonable period of time to remedy the breach, should still imputably fail to meet any of its essential obligations under the agreement. Client's payment obligations and all obligations of client or a third party contracted by client to cooperate and/or to provide information apply in all cases as essential obligations under the agreement.
- 15.2 If, at the time of the termination for breach, client has already received goods or services in the performance of the agreement, this performance and the relevant payment obligations cannot be undone unless client proves that supplier



is in default with respect to the essential part of the performance due. With due regard to the provisions of the preceding sentence, sums invoiced by the supplier prior to the termination for breach in connection with what has already been properly performed or delivered in the performance of the agreement remain due in full and become immediately payable at the time of the termination for breach.

- 15.3 An agreement which, due to its nature and content, is not discharged by performance and which has been entered into for an indefinite period of time may be terminated, following consultation between parties, by either party by serving written notice of termination to the other party (*opzeggen*). Reasons for the termination must be stated. If a notice period has not been agreed on between parties, a reasonable period must be observed when notice of termination is served. Supplier is never obliged to pay any compensation because of this termination.
- 15.4 Client is not entitled to terminate (*opzeggen*) an agreement for services that has been entered into for a definite period of time before the end of the term; client is not entitled either to terminate (*opzeggen*) an agreement that ends by completion before it has been completed.
- 15.5 Either party may terminate (*opzeggen*) the agreement in writing, in whole or in part, without notice of default being required and with immediate effect, if the other party is granted a suspension of payments, whether or not provisional, a petition for bankruptcy is filed against the other party or the company of the other party is liquidated or dissolved other than for restructuring purposes or for a merger of companies. Supplier may also terminate (*opzeggen*) the agreement, in whole or in part, without notice of default being required and with immediate effect, if a direct or indirect change occurs in the decisive control of client's company. Supplier is never obliged to repay any sum of money already received or pay any sum of money in compensation because of termination as referred to in this paragraph. If client is irrevocably bankrupted, its right to use the software, websites and the like made available to client ends, as does its right to access and/or use supplier's services, without supplier being required to cancel these rights.

Article 16 Supplier's liability

- 16.1 Supplier's total liability for an imputable failure in the performance of the agreement or arising from any other legal basis whatsoever, explicitly including each and every failure to meet a guarantee or indemnification obligation agreed on with client, is limited to the compensation of damages as described in more detail in this article.
- 16.2 Direct damage is limited to a maximum of the price stipulated for the agreement in question (excluding VAT). If the agreement is mainly a continuing performance contract with a duration of more than one year, the price stipulated for the agreement is set at the total sum of the payments (excluding VAT) stipulated for one year. In no event does supplier's total liability for any direct damage, on any legal basis whatsoever, exceed EUR 500,000 (five hundred thousand euros).
- 16.3 Supplier's total liability for any damage arising from death or bodily injury or arising from material damage to goods is limited to the amount of EUR 1,250,000 (one million two hundred fifty thousand euros).
- 16.4 Liability for indirect damage, consequential loss, loss of profits, lost savings, reduced goodwill, loss due to business interruption, loss as a result of claims of client's clients, loss arising from the use of goods, materials or software of third parties prescribed by client to supplier and any damage and loss arising from contracting suppliers client has recommended

to supplier is excluded. Liability for corruption, destruction or loss of data or documents is also excluded.

- 16.5 The exclusions and limitations of supplier's liability described articles 16.2 up to and including 16.4 are without any prejudice whatsoever to the other exclusions and limitations of supplier's liability described in these general terms.
- 16.6 The exclusions and limitations referred to in articles 16.2 up to and including 16.5 cease to apply if and insofar as the damage is caused by intent or deliberate recklessness on the part of supplier's management.
- 16.7 Unless performance by supplier is permanently impossible, supplier is exclusively liable for an imputable failure in the performance of an agreement if client promptly serves supplier with a written notice of default, granting supplier a reasonable period of time to remedy the breach, and supplier should still imputably fail to meet its obligations after that reasonable term has passed. The notice of default must describe supplier's failure as comprehensively and in as much detail as possible so that supplier has the opportunity to respond adequately.
- 16.8 The right to compensation of damages exclusively arises if client reports the damage to supplier in writing as soon as possible after the damage has occurred. Any claim for compensation of damages filed against supplier lapses by the mere expiry of a period of twenty four months following the inception of the claim unless client has instituted a legal action for damages prior to the expiry of this term.
- 16.9 Client indemnifies supplier against any and all claims of third parties arising from product liability because of a defect in a product or system that client delivered to a third party and that consisted in part of hardware, software or other materials delivered by supplier, unless and insofar as client is able to prove that the loss was caused by the hardware, software or other materials referred to.
- 16.10 The provisions of this article and all other exclusions and limitations of liability referred to in these general terms also apply in favour of all natural persons and legal persons that supplier and supplier's suppliers contracts for the performance of the agreement.

Article 17 Force Majeure

- 17.1 Neither party is obliged to meet any obligation, including any statutory and/or agreed guarantee obligation, if it is prevented from doing so by circumstances beyond its control (*overmacht*). Circumstances beyond supplier's control include, among other things: (i) circumstances beyond the control of supplier's suppliers, (ii) the failure by supplier to properly meet obligations that were contracted by supplier on client's instructions, (iii) defects in goods, hardware, software or materials of third parties that supplier uses on client's instructions, (iv) measures by public authorities, (v) power failures, (vi) failures of the Internet, data network or telecommunication facilities, (vii) (cyber) crime, (cyber) vandalism, war or terrorism and (viii) general transport problems.
- 17.2 If a force majeure situation lasts for more than sixty days, either party has the right to terminate the agreement, in writing, for breach (*ontbinden*). In such event, all that has already been performed under the agreement must be paid for on a proportional basis, without anything else being due by either party to the other party.

Article 18 Service Level Agreement

- 18.1 Possible arrangements about a service level (Service Level Agreement) are exclusively agreed on in writing. Client



promptly informs supplier about any circumstances that may affect the service level or its availability.

- 18.2 If any arrangements have been made about a service level, the availability of software, systems and related services is always measured in such a way that unavailability due to preventive, corrective or adaptive maintenance service or other forms of service that supplier has notified client of in advance and circumstances beyond supplier's control are not taken into account. Subject to proof to the contrary offered by client, the availability measured by supplier is considered conclusive.

Article 19 Backups

- 19.1 If the services provided to client under the agreement include making backups of client's data, supplier makes a complete backup of client's data in its possession, with due observance of the periods of time agreed on in writing, or once a week if such terms have not been agreed on. Supplier keeps the backup for the duration of the agreed term or for the duration of supplier's usual term if no further arrangements have been made in this regard. Supplier keeps the backup with due care and diligence.
- 19.2 Client itself remains responsible for complying with all the applicable statutory obligations with respect to keeping records and data retention.

Article 20 Adjustments and extra work

- 20.1 If, at client's request or after client's prior consent, supplier has performed activities or has delivered goods or services that are outside the scope of the agreed activities and/or delivery of goods or services, client is charged for these activities or for these goods or services on the basis of the agreed rates or, if no rates have been agreed on by parties, on the basis of supplier's applicable rates. Supplier is not obliged to honour such request and may require that, to that purpose, a separate agreement should be entered into in writing.
- 20.2 Client realises that adjustments and extra work (may) result in terms and delivery periods and/or dates and delivery dates being postponed. Any new terms and delivery periods and/or dates and delivery dates indicated by supplier replace the previous terms and delivery periods and/or dates and delivery dates.
- 20.3 Insofar as a fixed price has been agreed on for the agreement, supplier informs client, at client's request and in writing, about the financial consequences of the extra work or additional delivery of goods or services referred to in this article.

Article 21 Transfer of rights and obligations

- 21.1 Client is not entitled to sell, transfer or pledge (*verpanden*) its rights and obligations under an agreement to a third party.
- 21.2 Supplier is entitled to sell, transfer or pledge (*verpanden*) any claims it has to payment of any sums due to a third party.

Article 22 Applicable law and disputes

- 22.1 The agreements between supplier and client are governed by the laws of the Netherlands. Applicability of the Vienna Convention 1980 (The United Nations Convention on Contracts for the International Sale of Goods (CISG)) is excluded.
- 22.2 Any disputes that may arise from an agreement between parties and/or from any further agreements deriving from this agreement are resolved by arbitration in accordance with the Arbitration Regulations of the Foundation for the Settlement of Automation Disputes (*Stichting Geschillenoplossing*

Automatisering – SGOA – (www.sgoa.eu), this without prejudice to either party's right to request preliminary relief in preliminary relief proceedings or arbitral preliminary relief proceedings and without prejudice to either party's right to attach property before judgment. Arbitration proceedings take place in Amsterdam, or in any other place designated in the Arbitration Regulations.

- 22.3 If a dispute that arises from an agreement entered into by parties or from any further agreements deriving from this agreement is within the jurisdiction of the cantonal section of the Netherlands District Court (*kantongerecht*), either party is entitled, notwithstanding the provisions of article 22.2, to bring the case as a cantonal court case before the competent district court in the Netherlands. Parties are only entitled to initiate these proceedings if arbitration proceedings concerning the dispute have not yet been instituted under the provisions of article 22.2. If, with due observance of the provisions of this article 22.3, either party has brought the case before the competent district court to be heard and decided, the cantonal judge of that district court is competent to hear the case and to decide on it.
- 22.4 Regarding a dispute that arises from an agreement entered into by parties or from any further agreements deriving from this agreement, either party is always entitled to institute ICT mediation proceedings in accordance with the ICT Mediation Regulations of the Foundation for the Settlement of Automation Disputes (*Stichting Geschillenoplossing Automatisering* – SGOA – (www.sgoa.eu)). The other party is then obliged to actively participate in the ICT mediation proceedings that have been instituted. This legally enforceable obligation in any case includes having to attend at least one joint meeting of mediators and parties, in order to give this extrajudicial form of dispute resolution a chance of success. Either party is free to terminate the ICT mediation proceedings at any time after this first joint meeting of mediators and parties. The provisions of this paragraph do not prevent either party, if this party deems doing so necessary, from requesting preliminary relief in preliminary relief proceedings or in arbitral preliminary relief proceedings nor do they prevent either party from attaching property before judgment.

Section 2. Standard clauses on data processing

The provisions in this section 'Standard clauses on data processing' apply, apart from the General provisions of these general terms, if supplier processes personal data, in the context of the performance of an agreement, for the controller(s) as (sub)processor as meant in the laws and regulations on personal data protection. These 'Standard clauses on data processing' together with the practical arrangements made on personal data processing in the agreement or in a separate appendix (for example a Data Pro Statement) form a processing agreement as meant in article 28, paragraph 3 of the General Data Protection Regulation (GDPR).

Article 23 General

- 23.1 Supplier processes the personal data on client's behalf and in accordance with the written instructions agreed on by supplier and client.
- 23.2 Client, or client's client, is the controller in the sense of the GDPR, has control over the processing of personal data and



has established the purpose of and the means for the personal data processing.

- 23.3 Supplier is processor in the sense of the GDPR and, for that reason, has no control over the purpose of and the means for the personal data processing and, therefore, does not take any decisions on, amongst other things, the use of the personal data.
- 23.4 Supplier implements the GDPR as laid down in this section '*Standard clauses on data processing*' and in the agreement. Client is responsible for assessing, on the basis of this information, whether supplier offers adequate guarantees with respect to applying appropriate technical and organisational measures for the processing to meet the requirements posed by the GDPR and to adequately safeguard the protection of the data subjects' rights.
- 23.5 Client guarantees vis-à-vis supplier that it acts in compliance with the GDPR, that its systems and infrastructure are at any time appropriately secured and that the content, the use and/or the processing of the personal data are not unlawful and do not breach any third party rights.
- 23.6 Client is not entitled to seek recovery from supplier of an administrative fine imposed on client by the supervisory authority, on whatever legal ground. In the present section (Section 2) 'supervisory authority' is understood to mean the supervisory authority referred to in the GDPR.

Article 24 Security

- 24.1 Supplier takes all the technical and organisational security measures described in the agreement. When implementing these technical and organisational measures, supplier has taken into account the state of the art, the costs involved in implementing the security measures, the nature, scope and context of the processing, the nature of its products and services, the processing risks and the varying risks, in terms of likelihood and severity, posed to the rights and freedoms of the data subjects that supplier could expect in view of the use intended to be made of its products and services.
- 24.2 Unless explicitly stated otherwise in the agreement, supplier's product or service is not intended for processing special categories of personal data or data relating to convictions under criminal law or criminal offences.
- 24.3 Supplier endeavours to ensure that the security measures to be taken by supplier are appropriate for the use of the product or service intended by supplier.
- 24.4 The security measures described offer a security level, in client's opinion and taking the factors referred to in article 24.1 into account, appropriate to the risk involved in processing personal data used or provided by client.
- 24.5 Supplier may adjust the security measures implemented if this should be required, in supplier's opinion, to continue to offer an appropriate security level. Supplier keeps a record of important adjustments and informs client of these adjustments where relevant.
- 24.6 Client may request supplier to implement further security measures. Supplier is not obliged to implement any adjustments in its security measures following such request. Supplier may charge client for the costs involved in implementing the adjustments requested by client. Supplier is not obliged to actually implement these adjusted security measures before the security measures requested by client have been agreed on in writing.

Article 25 Personal data breaches

- 25.1 Supplier does not guarantee that the security measures are effective in all circumstances. If supplier discovers a personal data breach, supplier informs client of this without undue delay. The agreement stipulates in which way supplier informs client of personal data breaches. If no specific arrangements have been agreed on, supplier contacts the client's contact person in the usual way.
- 25.2 It is up to the controller – i.e. client or client's client – to assess whether the personal data breach reported by supplier must be reported to the supervisory authority or the data subject. Reporting personal data breaches is, at any time, controller's – i.e. client's or client's client's – responsibility. Supplier is not obliged to report personal data breaches to the supervisory authority and/or the data subject.
- 25.3 Where required, supplier provides further information on the personal data breach and renders assistance in providing the information to client that client needs to report a breach to the supervisory authority or the data subject.
- 25.4 Supplier may charge client for the costs involved in this context, within reason and at supplier's current rates.

Article 26 Confidentiality

- 26.1 Supplier ensures that the obligation to observe confidentiality is imposed on any person processing personal data under supplier's responsibility.
- 26.2 Supplier is entitled to provide personal data to third parties if and insofar as this should be required pursuant to a judicial decision or a statutory requirement, on the basis of an authorised order by a public authority or in the context of the proper performance of the agreement.

Article 27 Obligations following termination

- 27.1 In the event the processing agreement ends, supplier deletes, within the period of time agreed on in the agreement, all personal data received from client that it has in its possession in such a way that they can no longer be used and are rendered inaccessible, or, if agreed on, returns these data to client in a machine readable format.
- 27.2 Supplier may charge client for any costs possibly incurred in the context of the stipulation in the previous paragraph. Further arrangements on this may be laid down in the agreement.
- 27.3 The provisions of article 27.1 do not apply if statutory provisions should prohibit supplier to delete the personal data or return these, in part or in full. In such event supplier only continues to process the personal data insofar as required under its statutory obligations. The provisions of article 27.1 do not apply either if supplier is a controller in the sense of the GDPR with respect to the personal data.

Article 28 Data subjects' rights, Data Protection Impact Assessment (DPIA) and audit rights

- 28.1 Where possible, supplier renders assistance in reasonable requests by client that are related to data subjects exercising their rights against client. If supplier is directly contacted by a data subject, supplier refers this data subject, whenever possible, to client.
- 28.2 If client should be obliged under the GDPR to carry out a Data Protection Impact Assessment (DPIA) or a prior consultation following this, supplier renders assistance, at client's reasonable request, in this DPIA or prior consultation.



- 28.3 At client's request, supplier provides all information that would be reasonably required to demonstrate compliance with the arrangements laid down in the agreement with respect to personal data processing, for example by means of a valid Data Pro Certificate or another certificate at least equal to it, an audit report (Third Party Memorandum) drafted by an independent expert commissioned by supplier or by means of other information to be provided by supplier. If client should nevertheless have reasons to assume that the personal data are not processed in accordance with the agreement, client may commission an audit, no more than once per year and at client's expense, by an independent, certified external expert who has demonstrable experience in the type of data processing that is carried out under the agreement. Supplier is entitled to refuse an expert if this expert affects, in supplier's opinion, supplier's competitive position. The audit is limited to verifying compliance with the arrangements on personal data processing as laid down in the agreement. The expert is obliged to observe confidentiality with respect to his findings and only reports issues to client which result in a failure by supplier to meet its obligations under the agreement. The expert provides supplier with a copy of his report. Supplier may refuse an expert, an audit or an instruction by the expert if this should be, in supplier's opinion, in violation of the GDPR or other laws and regulations or if this should be an unacceptable breach of the security measures implemented by supplier.
- 28.4 Parties hold consultations on the findings of the report as soon as possible. Parties comply with the improvement measures proposed and laid down in the report insofar as this can be reasonably expected from them. Supplier implements the proposed measures insofar as these are appropriate in supplier's opinion, taking into account the processing risks associated with supplier's product or service, the state of the art, the implementation costs, the market in which supplier operates and the intended use of the product or service.
- 28.5 Supplier is entitled to charge client for the costs it has incurred in the context of the provisions laid down in this article.

Article 29 Subprocessors

- 29.1 Supplier has stated in the agreement if and, if so, which third parties (subprocessors) supplier contracts for the processing of personal data.
- 29.2 Client grants supplier permission to contract other subprocessors in the performance of supplier's obligations under the agreement.
- 29.3 Supplier informs client about possible changes with respect to the third parties it contracts. Client is entitled to object to said change by supplier.

Section 3. Software-as-a-Service (SaaS)

The provisions in this section 'Software-as-a-service (SaaS)' apply, apart from the General provisions of these general terms, if supplier performs services under the name or in the field of Software-as-a-Service (also referred to as: SaaS). For the application of these general terms, SaaS is understood to mean a service by which supplier makes functionality available to and keeps functionality available for client remotely, through the Internet or another data network, without providing client with a physical carrier with or download of the relevant underlying software.

Article 30 SaaS Implementation

- 30.1 Supplier provides the SaaS on client's instructions. Client may solely use the SaaS for its own organisation or company and only insofar as required for the use intended by supplier. Client may not allow third parties to make use of the SaaS.
- 30.2 Supplier may adjust the content or scope of the SaaS. If such adjustments are substantive and result in a change in client's current procedures, supplier informs client about this as soon as possible and the costs of this adjustment are at client's expense. In this case client may serve notice of termination of the agreement (*opzeggen*), which termination takes effect on the date on which the adjustment takes effect, unless the adjustment is related to amendments in relevant legislation or other instructions issued by public authorities, or the adjustment is at supplier's expense.
- 30.3 Supplier may continue to provide the SaaS using a new or modified version of the underlying software. Supplier is not obliged to maintain, modify or add particular features or functionalities of the SaaS specifically for client.
- 30.4 Supplier may temporarily put all or part of the SaaS out of service for preventive, corrective or adaptive maintenance services or other forms of service. Supplier ensures that the period of time during which the SaaS is out of operation does not take longer than necessary and ensures, where possible, that the service takes place at times when the SaaS is usually used least intensively.
- 30.5 Supplier is never obliged to provide client with a physical carrier or download of the underlying software.
- 30.6 If no further arrangements have been made in this regard, client itself is responsible for designing, configuring, parameterising and tuning the SaaS, converting and uploading possible data and, where required, for modifying the hardware and user environment used.

Article 31 Guarantees

- 31.1 Supplier does not guarantee that the SaaS is free of errors and functions without any interruptions. Supplier makes every effort to repair the errors in the underlying software referred to in article 36.3 within a reasonable period of time if and insofar as underlying software is concerned that has been developed by supplier itself and client has provided supplier with a detailed, written description of the relevant errors. In a particular case, supplier may postpone repairing errors until a new version of the underlying software is put into service. Supplier does not guarantee that errors in the SaaS that has not been developed by supplier itself are repaired. Supplier is entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the SaaS. If the SaaS, or part of it, has been developed on client's instructions, supplier may charge client for the costs incurred by repairing the error(s) at supplier's applicable rates. Supplier is never obliged to repair other imperfections than those referred to in this article. In the event supplier is prepared to remedy other imperfections than those referred to in this article, supplier is entitled to charge client a separate fee for this.
- 31.2 On the basis of the information provided by supplier on measures to prevent and restrict the effects of malfunctions, errors and other imperfections in the SaaS, corruption or loss of data or other incidents, client identifies and lists the risks to its organisation or company and, where necessary, takes additional measures. Supplier declares itself prepared to render assistance, at client's request, to the extent reasonable and according to the financial and other conditions set by supplier, with respect to further measures to be taken by client. Supplier



is never obliged to recover data that have been corrupted or lost other than placing back – where possible – the most recent back-up of the data in question.

- 31.3 Supplier does not guarantee that the SaaS is timely adapted to any amendments in the relevant laws and regulations.

Article 32 Commencement of the service; payment

32.1 The SaaS provided by supplier – and, where relevant, support – commences within a reasonable period of time after the agreement has been entered into. Unless agreed on otherwise, the SaaS commences by supplier client granting access to the SaaS that is made available by supplier. Client ensures that it has the facilities required to use the SaaS immediately after the agreement has been entered into.

32.2 The fee payable by client for the SaaS is included in the agreement. If no payment scheme has been agreed on, all sums related to the SaaS delivered by supplier become due and payable, in advance, per calendar month.

Article 33 Additional provisions

33.1 The following articles apply equally to the SaaS: 34.3, 34.5, 34.8, 36.1 (excluding the reference to art. 40), 36.11, 48.4, 49.1, 49.2, 62.2 and 62.4 and 63. In these articles the word 'software' should be read as 'SaaS' and the word 'delivery' as 'commencement of the service'.

Section 4. Software

The provisions in this section 'Software' apply, apart from the General provisions of these general terms, if supplier makes software and apps available to client for use, together with the relevant data or databases and/or user documentation for this software– in these general terms together to be referred to as 'software' – other than on the basis of a SaaS.

Article 34 Right to use and restrictions on use

34.1 Supplier makes the software agreed on available for use by client on the basis of a user licence and for the term of the agreement. The right to use the software is non-exclusive, non-transferable, non-pledgeable and non-sublicensable.

34.2 Supplier's obligation to make the software available and client's right to use the software exclusively extend to the so-called object code of the software. Client's right to use the software does not pertain to the software's source code. The source code of the software and the technical documentation drafted when the software was developed are not made available to client, not even if client is prepared to pay a financial compensation.

34.3 Client always strictly complies with the agreed restrictions on the use of the software, regardless of the nature or the content of these restrictions.

34.4 If parties have agreed that the software may only be used in combination with particular hardware and this hardware has a malfunction, client is entitled to use the software on other hardware with the same qualifications during the period of time that the original hardware remains defective.

34.5 Supplier may require that client should only start using the software after it has received one or more codes needed for the use from supplier, from supplier's supplier or from the producer of the software.

34.6 Client is only entitled to use the software in and for its own organisation or company and only insofar as required for the intended use. Client does not use the software for the benefit of third parties, for example in the context of Software-as-a-Service (SaaS) or outsourcing.

34.7 Client is never entitled to sell, lease or alienate, or grant limited rights to, or make the software and the carriers on which the software is or will be recorded available to third parties, in any way whatsoever, for whatever purpose or under whatever title. Neither is client entitled to grant, whether or not remotely (online), a third party access to the software or place the software with a third party for hosting, not even if the third party concerned exclusively uses the software in client's interest.

34.8 If so requested, client promptly renders assistance in any investigation into compliance with the agreed restrictions on use to be carried out by or on behalf of supplier. At supplier's first request, client grants supplier access to its buildings and systems. Insofar as such information does not concern the use of the software itself, supplier observes secrecy with respect to all confidential business information that it obtains from client or at client's business location in the context of an investigation.

34.9 Parties agree that the agreement entered into by parties is never seen as a purchase agreement where it is related to making software available for use.

34.10 Supplier is not obliged to maintain the software and/or provide support to users and/or administrators of the software. If, contrary to the foregoing, supplier is asked to perform maintenance activities and/or provide support for the software, supplier may require that client should enter into a separate, written agreement for this purpose.

Article 35 Delivery and installation

35.1 At its discretion, supplier either delivers the software on the agreed type of data carrier or, if no arrangements have been made in this regard, on a type of data carrier determined by supplier, or makes the software online available to client. At supplier's discretion, any agreed user documentation is made available in hardcopy or digital form, in a language determined by supplier.

35.2 Supplier only installs the software at client's business premises if this has been agreed on. If no arrangements have been made in this respect, client itself is responsible for installing, designing, parameterising, tuning and, if necessary, for modifying the hardware and operating environment used.

Article 36 Acceptance

36.1 If parties have not agreed on an acceptance test, client accepts the software in the state that it is in when delivered ('as is, where is'), therefore, with all visible and invisible errors and defects, without prejudice to supplier's obligations under the guarantee scheme as set out in article 40. If this should be the case, the software is deemed to have been accepted by client upon delivery or, if installation by supplier has been agreed on in writing, upon completion of the installation.

36.2 If an acceptance test has been agreed on by parties, the provisions of articles 36.3 up to and including 36.10 apply.

36.3 Where these general terms refer to 'error' this is understood to mean a substantial failure of the software to meet the functional or technical specifications of the software explicitly made known by supplier in writing and, if all or part of the software is customised software, a substantial failure to meet the functional or technical specifications explicitly agreed on in writing. An error only exists if it can be demonstrated by client and if it is reproducible. Client is obliged to report errors without delay.



Supplier does not have any other obligation whatsoever with respect to other imperfections in or on the software than those in relation to errors in the sense of these general terms.

- 36.4 If an acceptance test has been agreed on, the test period is fourteen days following delivery or, if installation by supplier has been agreed on in writing, fourteen days following the completion of installation. During the test period, client may not use the software for production or operational purposes. Client performs the agreed acceptance test with qualified personnel, to an adequate extent and in sufficient detail.
- 36.5 If an acceptance test has been agreed on, client is obliged to check whether the software delivered meets the functional or technical specifications explicitly made known by supplier in writing and, if and to the extent that all or part of the software is customised software, that it meets the functional or technical specifications explicitly agreed on in writing.
- 36.6 If testing on client's instruction involves personal data being made use of, client ensures that using these data for this purpose is permitted.
- 36.7 The software is understood to have been accepted:
- if parties have agreed on an acceptance test: on the first day following the test period, or
 - if supplier receives a test report as referred to in article 36.8 prior to the end of the test period: at the time the errors listed in this test report have been repaired, notwithstanding the presence of errors that, according to article 36.9, do not prevent acceptance, or
 - if client uses the software in any way for production or operational purposes: at the time it is put into use for production or operational purposes.
- 36.8 If it should become clear when the agreed acceptance test is carried out that the software contains errors, client reports the test results to supplier in writing in a well-ordered, detailed and understandable manner no later than on the last day of the test period. Supplier makes every effort to repair the errors referred to within a reasonable period of time. In this context, supplier is entitled to install temporary solutions, program bypasses or problem-avoiding restrictions.
- 36.9 Client is neither entitled to refuse to accept the software for reasons that are not related to the specifications explicitly agreed on in writing by parties nor entitled to refuse to accept the software because it has minor errors, i.e. errors that do not prevent – within reason – the productive or operational use of the software, all of this without prejudice to supplier's obligation to repair these minor errors as referred to in article 40. Acceptance may not be refused either because of aspects of the software that can only be assessed subjectively, such as aesthetic aspects of the user interfaces.
- 36.10 If the software is delivered and tested in phases and/or parts, non-acceptance of a certain phase and/or part is without prejudice to the acceptance of a previous phase and/or a different part.
- 36.11 Acceptance of the software in one of the ways referred to in this article results in supplier being discharged of its obligations in the context of making the software available and delivering it and, if installation of the software by supplier has also been agreed on, of its obligations in the context of installing it.
- 36.12 Acceptance of the software is without prejudice to client's rights under article 36.9 regarding minor errors and article 40 providing for guarantees.

Article 37 Making the software available

- 37.1 Supplier makes the software available to client within a reasonable period of time after parties have entered into the agreement.

- 37.2 Immediately after the agreement ends, client returns all copies of the software in its possession to supplier. If it has been agreed that client is obliged to destroy the relevant copies when the agreement ends, client informs supplier, promptly and in writing, that the copies have been destroyed. When the agreement ends or after it has ended, supplier is not obliged to render assistance in any data conversion that client may possibly want to carry out.

Article 38 Payment for the right to use the software

- 38.1 The sum due for the right to use is payable by client at the agreed times or, if a time has not been agreed on:
- if parties have not agreed that supplier is responsible for the installation of the software:
 - upon delivery of the software; or
 - in the event periodic payments are due for the right to use, upon delivery of the software and subsequently when each new term of the right to use commences;
 - if parties have agreed that supplier is responsible for the installation of the software:
 - upon completion of that installation;
 - in the event periodic payments are due for the right to use the software, upon completion of that installation and subsequently when each new term of the right to use commences.

Article 39 Modifications in the software

- 39.1 Except where mandatory statutory provisions should provide otherwise, client is not entitled to modify all or part of the software without supplier's prior written permission. Supplier is entitled to refuse permission or to attach conditions to its permission. Client bears the entire risk of all modifications that it implements – whether or not with supplier's permission – or that client has implemented by third parties on its instructions.

Article 40 Guarantees

- 40.1 Supplier makes reasonable efforts to repair errors in the sense of article 36.3 within a reasonable period of time if these errors are reported, in detail and in writing, to supplier within a period of three months after delivery or, if an acceptance test was agreed, within three months after acceptance. Supplier does not guarantee that the software is suitable for the actual and/or the intended use. Supplier does not guarantee either that the software functions without interruptions and/or that all errors are always repaired. Repairs are carried out free of charge unless the software was developed on client's instructions other than for a fixed price, in which case supplier charges the costs of the repairs to client at its applicable rates.
- 40.2 Supplier may charge the costs of the repairs to client at its applicable rates if such repairs are required as a result of usage errors or client not using the software properly, or as a result of causes that cannot be attributed to supplier. The obligation to repair errors ends if client modifies the software or has such modifications implemented without supplier's written permission.
- 40.3 Errors are repaired at a location and in a manner to be determined by supplier. Supplier is entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the software.
- 40.4 Supplier is never obliged to recover corrupted or lost data.



- 40.5 Supplier does not have any obligation whatsoever, of whatever nature or content, with respect to errors reported after the end of the guarantee period referred to in article 40.1.

Section 5. Development of software and websites

The provisions in this section 'Development of software and websites' apply, apart from the General provisions of these general terms, if supplier develops and/or designs software as described in Section 4 and/or websites for client and possibly installs the software and/or websites.

Article 41 Specifications and development of software and/of websites

- 41.1 Development always takes place under an agreement for services. If no specifications or design of the software and/or website to be developed have been provided before the agreement is entered into or no specifications or design are provided when the agreement is entered into, parties specify, by consultation and in writing, the software and/or website to be developed and the manner in which the software and/or website will be developed.
- 41.2 Supplier develops the software and/or website with due care and in accordance with the explicitly agreed specifications or design and, where applicable, with due regard for the project organisation, methods, techniques and/or procedures agreed on in writing with client. Before starting the development activities, supplier may require that client should agree to the specifications or design in writing.
- 41.3 If no specific arrangements have been made in the matter, supplier starts the design and/or development activities within a reasonable period or time, to be determined by supplier, after the agreement has been entered into.
- 41.4 At supplier's request, client provides supplier with the opportunity to perform activities at client's premises outside the usual working days and working hours.
- 41.5 Supplier's obligations to perform with respect to the development of a website do not include making a content management system available.
- 41.6 If parties agree that, apart from development activities, supplier also provides training courses, maintenance and/or support and/or that supplier also applies for a domain name, supplier may request that client should enter into a separate, written agreement. Supplier charges client separately for these services, at supplier's applicable rates.
- 41.7 If supplier provides services to client in the context of a domain name, such as the application for, renewal, alienation or transfer to a third party of that name, client is obliged to observe the rules and methods of the relevant authority or authorities. At client's request, supplier provides client with a written copy of these rules. Supplier is explicitly neither responsible for the correctness or the promptness of the services nor responsible for achieving the results client intends to achieve. Client is charged for all costs involved in the application and/or registration at the agreed rates and, if no rates have been agreed on, at supplier's applicable rates. Supplier does not guarantee that a domain name client should want to use will actually be assigned to client.

Article 42 Agile development of software/websites

- 42.1 If parties use an iterative development method – scrum, for example – parties accept: (i) that, at the start, the activities are not performed on the basis of complete or fully detailed specifications; and (ii) that specifications which may or may not have been agreed on at the start of the activities, may be adapted during the term of the agreement, in mutual consultation and with due observance of the project approach that forms part of the development method concerned.
- 42.2 Before starting the activities to be performed in the context of the agreement, parties put together one or more teams that consist of representatives of both supplier and client. The team ensures that the communication lines remain short and direct and that consultations take place regularly. Parties provide for the deployment, by both of them, of the capacity agreed on (FTEs) in terms of team members in the roles and with the knowledge and experience and the decision-making powers required to perform the agreement. Parties accept that in order to make the project successful, the capacity agreed on is a minimum requirement. Parties endeavour to keep key staff available that have been deployed in first instance, as much as reasonably possible, until the end of the project, unless circumstances should arise that are beyond parties' control. During the performance of the agreement, parties jointly decide, by consultation, on the specifications that apply for the following phase of the project – for example a time box – and/or for the development of a following part. Client accepts the risk that the software and/or the website may not necessarily meet all specifications. Client ensures permanent and active input by and contributions from relevant end users who are supported by client's organisation or company in the context of, among other things, testing and (further) decision making. Client guarantees expeditiousness in progress-related decisions that have to be made during the performance of the agreement. If client fails to make clear and prompt progress-related decisions in conformity with the project approach that forms part of the relevant development method, supplier is entitled, though not obliged, to make the decisions that supplier considers to be appropriate.
- 42.3 If parties have arranged for one or more test moments, a test exclusively takes place on the basis of objective, measurable criteria agreed on previously, such as confirming to development standards. Errors and other imperfections are only repaired if the responsible team decides so and this will be carried out in a subsequent iteration. If an extra iteration should be required, the costs are at client's expense. After the last development phase, supplier is not obliged to repair any errors or other imperfections, unless explicitly agreed on otherwise in writing.

Article 43 Delivery, installation and acceptance

- 43.1 The provisions of article 35 with respect to delivery and installation apply *mutatis mutandis*.
- 43.2 Unless supplier is obliged, under the agreement, to host the software and/or website for client on its own computer system, supplier either delivers the software and/or website to client on a data carrier and in a form determined by supplier, or makes the software and/or website online available to client.
- 43.3 The provisions of article 36 of these general terms with respect to acceptance apply *mutatis mutandis*.
- 43.4 If parties make use of a development method as referred to in article 42, the provisions of article 36.1, 36.2, article 36.4 up to



and including 36.9, article 36.12 and article 40.1 and 40.5 do not apply. Client accepts the software and/or website in the state it is in at the moment the last development phase ends ('as is, where is').

Article 44 Right to use

- 44.1 Supplier makes the software and/or website developed on client's instructions, together with the relevant user documentation, available to client for use.
- 44.2 The source code of the software and the technical documentation prepared when the software is developed is only made available to client if this has been agreed in writing, in which case client is entitled to modify the software.
- 44.3 Supplier is not obliged to make the auxiliary software and program or data libraries required for the use and/or maintenance of the software and/or website available to client.
- 44.4 The provisions of article 34 with respect to the right to use and restrictions on the use apply *mutatis mutandis*.
- 44.5 Only if the content of the written agreement explicitly indicates that all design and development costs are fully and exclusively at client's expense, restrictions on the use of the software and/or website do not apply for client, contrary to the provisions of article 44.4.

Article 45 Payment

- 45.1 If no payment scheme has been agreed on, all sums related to the development of software and/or website become due and payable, in arrears, per calendar month.
- 45.2 The price for the development activities includes payment for the right to use the software and/or website for the term of the agreement.
- 45.3 The payment for the development of the software and/or website does not include payment for auxiliary software and program and data libraries, and any installation services and any modifications and/or maintenance of the software and/or website required by client. The payment does not include support services for the users of the software and/or website either.

Article 46 Guarantees

- 46.1 The provisions of article 40 with respect to guarantees apply *mutatis mutandis*.
- 46.2 Supplier does not guarantee that the software and/or website it has developed function properly on all sorts of new versions of web browser types and possibly other software and/or websites. Supplier does not guarantee either that the software and/or website function properly on all types of hardware.

Section 6. Maintenance and support of software

The provisions in this section 'Maintenance and support of software' apply, apart from the General provisions of these general terms, if supplier provides services in the field of software maintenance and software support for the use of the software.

Article 47 Maintenance services

- 47.1 If agreed, supplier performs maintenance services for the software specified in the agreement. The obligation to provide

maintenance includes repairing errors in the software in the sense of article 36.3 and, only if this has been agreed in writing, making new versions of the software available in accordance with article 48.

- 47.2 Client is to report, in detail, any errors discovered in the software. Following receipt of the report, supplier makes every effort to repair errors and/or implement corrections in later, new versions of the software in compliance with its applicable procedures. Depending on the urgency and supplier's version and release policy, the results are made available to client in a manner and within the period of time determined by supplier. Supplier is entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the software. Client itself is responsible for installing, organising, parameterising and tuning the corrected software or the new version of the software made available, and, if necessary, for modifying the hardware and operating environment used. Supplier is never obliged to repair other imperfections than those referred to in this article. In the event supplier is prepared to correct other imperfections than those referred to in this article, supplier is entitled to charge a separate fee for this.
- 47.3 The provisions of article 40.3 and 40.4 apply *mutatis mutandis*.
- 47.4 If supplier performs maintenance services online, client ensures, in due time, that a properly and appropriately secured infrastructure and network facilities are in place.
- 47.5 Client renders every assistance required by supplier for the maintenance services, which includes that client should temporarily stop using the software and should make a backup of all data.
- 47.6 If maintenance concerns software that was not delivered to client by supplier and if supplier believes this is necessary or appropriate in the context of maintenance, client makes the source code and the technical (development) documentation of the software, including data models, designs, change logs and the like, available to supplier. Client guarantees that it is entitled to make the source code and documentation available. Client grants supplier the right to use and modify the software, including the source code and technical (development) documentation, so that supplier can perform the maintenance services agreed on.

Article 48 New versions of the software

- 48.1 Maintenance includes making new versions of the software available only if and insofar as this has been agreed in writing. If maintenance includes making new versions of the software available, these new versions are made available at supplier's discretion.
- 48.2 Three months after an enhanced version has been made available, supplier is no longer obliged to repair errors in the previous version and to provide support and/or perform maintenance services for a previous version.
- 48.3 Supplier may require that client should enter into an additional written agreement with supplier for a version with new functionality and that a further payment should be made for this version. Supplier may incorporate functionality from a previous version of the software in the new version without any modifications, but supplier does not guarantee that each new version includes the same functionality as the previous version. Supplier is not obliged to maintain, modify or add particular features or functionalities in the software especially for client.
- 48.4 Supplier may require that client should modify its system (hardware, web browser, software and the like) if this should be necessary for the proper functioning of a new version of the software.



Article 49 Support services

- 49.1 If the services provided by supplier under the agreement include support services to users and/or administrators of the software, supplier advises – online, by telephone or by email – on the use and functioning of the software specified in the agreement. Client is obliged to specify the requests for support as comprehensively and in as much detail as possible so that supplier can respond appropriately. Supplier may set conditions with respect to the way in which support is requested and the qualifications and the number of persons eligible for support. Supplier handles properly substantiated requests for support within a reasonable period of time and in compliance with its applicable procedures. Supplier does not guarantee the correctness, completeness or timeliness of responses or of the support offered. Support services are performed on working days during supplier's usual business hours.
- 49.2 If the services provided by supplier under the agreement include standby services, supplier ensures that one or more staff members are available on the days and at the times specified in the agreement. If standby services have been agreed on, client is entitled, in urgent cases, to call in the support of staff members on standby if there are serious errors, serious malfunctions and other serious imperfections in the functioning of the software. Supplier does not guarantee that these are promptly repaired.
- 49.3 The maintenance and other agreed services referred to in this chapter are performed starting from the date on which the agreement is entered into, unless parties have agreed otherwise in writing.

Article 50 Payment

- 50.1 If no payment scheme has been explicitly agreed on, all sums related to the maintenance of the software and other services as meant in this section and set out in the agreement become due and payable, in advance, per calendar month.
- 50.2 Sums relating to the maintenance of the software and the other services as meant in this section and set out in the agreement are payable when the agreement is entered into. Payment for maintenance and other services is always due, regardless whether client has taken the software into use and regardless whether client actually makes use of the maintenance or support services.

Section 7. Advisory and consultancy services

The provisions in this section 'Advisory and consultancy services' apply, apart from the General provisions of these general terms, if supplier provides services in the field of advice and consultancy, which services are not provided under client's direction and supervision.

Article 51 Performance of advisory and consultancy services

- 51.1 Supplier performs the advisory and consultancy services in a fully independent manner, at its own discretion and without client's supervision and directions.
- 51.2 Supplier does not commit to a completion time of the assignment because the completion time of an assignment in the field of advisory or consultancy services depends on various factors and circumstances, such as the quality of the

data and the information provided by client and the assistance rendered by client and relevant third parties.

- 51.3 Supplier only performs its services on supplier's usual working days and during supplier's usual business hours.
- 51.4 The use that client makes of any advisory and/or a consultancy report drafted by supplier is always at client's risk. The burden of proof is on client to prove that the advisory and/or consultancy services or the way in which these are performed is not in compliance with that which has been agreed on in writing or that which may be expected from a competent supplier acting reasonably, without prejudice to supplier's right to provide evidence to the contrary, using any legal means.
- 51.5 Without supplier's prior written permission, client may not inform any third party about supplier's way of working, methods and techniques and/or the content of supplier's recommendations or reports. Client may not provide supplier's recommendations or reports to a third party or otherwise make supplier's recommendations or reports public.

Article 52 Reporting

- 52.1 Supplier periodically informs client, in the manner agreed on in writing, about the performance of the services. Client informs supplier, in advance and in writing, about circumstances of importance or circumstances that could be of importance to supplier, such as the manner of reporting, the issues to be addressed, client's prioritisation, the availability of client's resources and staff, and special facts or circumstances or facts or circumstances of which supplier is possibly unaware. Client ensures that the information provided by supplier is spread and actually taken notice of within client's organisation or company and client assesses this information, also on this basis, and informs supplier of this.

Article 53 Payment

- 53.1 If no payment scheme has been explicitly agreed on, all sums related to the services provided by supplier as meant in this section become due and payable, in arrears, per calendar month.

Section 8. Secondment services

The provisions in this section 'Secondment services' apply, apart from the General provisions of these general terms, if supplier makes one or more of its employees available to client to perform activities under client's supervision and instructions.

Article 54 Secondment services

- 54.1 Supplier makes the employee specified in the agreement available to perform activities under client's direction and supervision. The results of these activities are at client's risk. Unless otherwise agreed in writing, the employee is made available to client for forty hours a week, during supplier's usual working days.
- 54.2 Client may only deploy the employee made available to perform activities other than the activities agreed on if supplier has agreed to this in advance and in writing.
- 54.3 Client may only second the employee made available to a third party for the purpose of performing activities under that third party's direction and supervision if this has been explicitly agreed in writing.



54.4 Supplier makes reasonable efforts to ensure that the employee made available remains available, during the agreed days, to perform activities for the term of the agreement, except in the event of the employee's incapacity for work or if the employee leaves supplier's employment. Even if the agreement has been entered into with a view to the activities being performed by one particular person, supplier is always entitled, after consultations with client, to replace this person by one or more persons who have the same qualifications.

54.5 Client is entitled to request that the employee made available should be replaced (i) if the employee made available demonstrably fails to meet the quality requirements explicitly agreed on and client informs supplier about this, stating reasons, within three working days after the activities have started, or (ii) in the event of the relevant employee's prolonged incapacity for work or if the employee leaves supplier's employment. Supplier complies with such a request without delay and as a matter of priority. Supplier does not guarantee that the employee made available can always be replaced. If the employee cannot be replaced or cannot be replaced promptly, both client's rights with respect to further performance of the agreement and all client's claims arising from non-performance of the agreement lapse. Client's payment obligations with respect to the activities already performed continue to apply in full.

Article 55 **Duration secondment agreement**

55.1 Notwithstanding the provisions of article 4 of these general terms, if nothing has been agreed by parties considering the duration of the secondment, the secondment agreement is seen as an agreement for an indefinite period of time, in which case either party must observe a notice period of one calendar month following any initial term of the agreement. Termination by serving notice of termination (*opzegging*) must be served in writing.

Article 56 **Working hours and working conditions**

56.1 The working hours, holiday periods, rest periods and other relevant working conditions of the employee made available are the same as those usually applied by client. Client guarantees that the working hours, holiday periods, rest periods and other relevant working conditions are in compliance with relevant laws and regulations.

56.2 Client informs supplier about any intended temporary or permanent closure of its organisation or company.

Article 57 **Overtime pay and travel time**

57.1 If, on client's instructions or at client's request, the employee made available works more hours per day than the agreed or usual number of working hours or works on days other than supplier's usual working days, client is charged for these hours at the overtime rate agreed on, or, if no such rate has been agreed on, at supplier's applicable overtime rate. If so requested, supplier informs client about its applicable overtime rates.

57.2 Client is charged for travelling expenses and travel time in accordance with supplier's applicable rules and standards. If so requested, supplier informs client about supplier's applicable rules and standards.

Article 58 **Hirer's liability and other liability**

58.1 Supplier ensures that amounts payable in terms of payroll tax, national insurance contributions, employee insurance contributions, income-related healthcare contributions and turnover tax for the employee made available under the agreement with client are paid on time and in full. Supplier indemnifies client against any and all claims of the Tax Administration or authorities responsible for implementing social insurance legislation that are due and payable under the agreement with client, provided that client promptly informs supplier, in writing, about such claims when they arise and about the content of a claim and leaves the settlement of that claim, including any arrangements to be made in this regard, entirely up to supplier. Client provides supplier with the powers of attorney and the information required and assists supplier in defending itself, if necessary in client's name, against such claims.

58.2 Supplier does not accept any liability for the quality of the results of the activities performed under client's supervision and instructions.

Section 9. Training courses

The provisions in this section 'Training courses' apply, apart from the General provisions of these general terms, if supplier provides services, under whatever name and in whatever way – for example in electronic form – in the field of education, courses, workshops, trainings, seminars and the like (hereinafter to be referred to as: training courses).

Article 59 **Registration and cancellation**

59.1 Registration for a training course must take place in writing and is binding following its confirmation by supplier.

59.2 Client is responsible for the choice and suitability of the training course for the participants. A participant's lack of the required prior knowledge does not affect client's obligations under the agreement. Client may replace a training course participant by another participant following supplier's written permission.

59.3 If, in supplier's opinion, the number of registrations should give rise to this, supplier is entitled to cancel the training course, to combine it with one or more training courses or schedule it on a later date or at a later time. Supplier reserves the right to change the location of the training course. Supplier is entitled to change the training course in organisational terms and in terms of content.

59.4 If client or a participant cancels participation in a training course, the consequences of the cancellation are governed by supplier's applicable rules. In any case, cancellation must take place in writing and prior to the training course or the part of the training course concerned. Cancellation or non-attendance does not affect client's payment obligations under the agreement.

Article 60 **Training courses**

60.1 Client accepts that supplier determines the content and the scope of the training course.

60.2 Client informs the participants about the obligations under the agreement and the rules of conduct and other rules prescribed by supplier for participation in the training course, and client ensures compliance by participants with these obligations and rules.



- 60.3 If supplier uses its own hardware or software in the training course, supplier does not guarantee that this hardware or software is free of errors and operates without interruption. If the training course is at client's premises, client ensures that an appropriate classroom and properly operating hardware and software are available. In the event the facilities at client's premises appear not meet the requirements and the quality of the training course, therefore, cannot be guaranteed, supplier is entitled not to start or to shorten the training course or to stop it altogether.
- 60.4 The agreement does not include administering an exam or a test.
- 60.5 Client is separately charged for the documentation, training materials or training resources made available or produced for the training course. This also applies for possible training course certificates or duplicates of training course certificates.
- 60.6 If the training course takes place as an e-learning training course, the provisions of the section 'Software-as-a-Service (SaaS)' apply *mutatis mutandis* as much as possible.

Article 61 Price and payment

- 61.1 Supplier may require that client should pay the sums due prior to the start of the training course. Supplier may exclude participants from participating in the training course if client fails to ensure the payment is made in time, without prejudice to any other rights supplier may have.
- 61.2 If supplier has carried out a preliminary study to make a training course plan or has given training course recommendations, client may be separately charged for any costs involved.
- 61.3 Unless supplier has explicitly indicated that the training course is VAT exempt within the meaning of article 11 of the Turnover Tax Act 1968, VAT is payable on client's payment. Supplier is entitled to adjust its prices after the agreement has been entered into in the event of any changes in the VAT regime for training courses as this applies under or pursuant to the law.

Section 10. Hosting

The provisions in this section 'Hosting' apply, apart from the General provisions of these general terms, if supplier provides services, under whatever name, in the field of hosting and hosting-related services.

Article 62 Hosting services

- 62.1 Supplier performs the hosting services agreed on with client.
- 62.2 If the agreement's object is to make hard disk space available, client may not exceed the agreed disk space unless the agreement explicitly arranges for the consequences of doing so. The agreement pertains to making disk space available on a server specifically reserved for client only insofar as this has been explicitly agreed in writing. All use of disk space, data traffic and other use made of systems and infrastructure is restricted to the maximums agreed on by parties. Data traffic that is not used by client in a given period may not be transferred to a subsequent period. If the agreed maximums are exceeded, supplier charges client for an additional compensation at its applicable rates.
- 62.3 Client is responsible for the management, including checks of the settings, and use of the hosting service, and the way in which the results of the service are implemented. If no specific arrangements have been made in this regard, client itself is responsible for installing, organising, parameterising and tuning

the software and auxiliary software, and, where required, modifying the hardware and user environment used and for effecting the interoperability wanted. Supplier is not obliged to perform data conversion.

- 62.4 Only if this has been explicitly agreed in writing, the agreement's object also is to ensure security, back-up, contingency and recovery services or to make these available.
- 62.5 Supplier may temporarily put all or part of the hosting service out of operation for preventive, corrective or adaptive maintenance. Supplier ensures that the period of time during which the service is out of operation does not take longer than necessary and also ensures, where possible, that this takes place outside office hours, and, according to circumstances, have this commence after client has been consulted.
- 62.6 If, under the agreement, supplier provides services to client in the context of a domain name, such as the application for, renewal, alienation or transfer to a third party of that name, client is obliged to observe the rules and methods of the relevant organisation or organisations. At client's request, supplier provides client with a written copy of these rules. Supplier is explicitly neither responsible for the correctness or the promptness of the services nor responsible for achieving the results client intends to achieve. Client is charged for all costs involved in the application and/or registration at the agreed rates and, if no rates have been agreed on, at supplier's applicable rates. Supplier does not guarantee that a domain name client should want to use will actually be assigned to client.

Article 63 Notice and Take Down

- 63.1 At all times, client acts with due care and does not act unlawfully vis-à-vis third parties, more in particular by respecting the intellectual property rights and other rights of third parties and the privacy of third parties, by refraining from spreading information in a manner that is in violation of the law, from granting unauthorised access to systems and from spreading viruses or other harmful programs or data, and by refraining from committing criminal offences and violating any other legal obligations.
- 63.2 To prevent liability to third parties or limit the consequences, supplier is always entitled to take measures with respect to an act or omission of or at client's risk. At supplier's first request in writing, client promptly removes data and/or information from supplier's systems. If client fails to do so, supplier is entitled, at its own option, to delete the data and/or information itself or to make access to the data and/or information impossible. In addition, in the event of a breach or an imminent breach of the provisions of article 63.1, supplier is entitled to deny client access to supplier's systems with immediate effect and without prior notice. All of this is without prejudice to supplier taking any other measures or exercising any other statutory and contractual rights with respect to client. Supplier is also entitled in this case to terminate the agreement by serving notice of termination (*opzeggen*) with immediate effect without being liable to client for doing so.
- 63.3 Supplier cannot be expected to form an opinion on the validity of the claims of third parties or of client's defence, or to become involved, in any way whatsoever, in any dispute between a third party and client. Client is to deal with the relevant third party in this matter and is to inform supplier in writing, properly substantiated and supported by documents.



Section 11. Hardware purchases

The provisions in this section 'Hardware purchases' apply, apart from the General provisions of these general terms, if supplier sells hardware, of whatever nature, and/or other goods (corporeal objects) to client.

Article 64 Purchase and sale

- 64.1 Supplier sells the hardware and/or other goods according to the nature and number agreed on in writing.
- 64.2 Supplier does not guarantee that the hardware and/or goods are suitable, on delivery, for client's actual and/or intended use unless the intended purposes have been clearly specified, without caveats, in the written agreement.
- 64.3 Supplier's obligation to sell does not include assembly and installation of materials, software, consumer items and articles, batteries, stamps, ink and ink cartridges, toner articles, cables and accessories.
- 64.4 Supplier does not guarantee that the assembly, installation and operating instructions that come with the hardware and/or goods are free of errors and that the hardware and/or goods have the features stated in these instructions.

Article 65 Delivery

- 65.1 The hardware and/or goods sold by supplier to client are delivered to client ex warehouse. If this has been agreed on in writing, supplier delivers the goods sold to client at a location to be designated by client, or has these goods delivered at this location. In this case, supplier informs client, if possible in good time before the delivery, about the time when supplier or the transporter contracted by supplier intends to deliver the hardware and/or goods.
- 65.2 The purchase price of the hardware and/or goods does not include the costs of transportation, insurance, hauling and hoisting, the hiring of temporary facilities and the like. If applicable, client is charged for these costs.
- 65.3 If client requests supplier to remove or destroy old materials – such as networks, cabinets, cable ducts, packaging materials, hardware or data on hardware – or if supplier is legally obliged to do so, supplier may accept this request on the basis of a written order and at its applicable rates. If and insofar as supplier is prohibited by law from requiring payment, for example in the context of the old-for-new scheme, supplier does not charge, where applicable, any costs.
- 65.4 Provided parties have entered into a written agreement to arrange for this, supplier is responsible for installing, configuring and connecting the hardware and/or goods or for having the hardware and/or goods installed, configured and connected. Any obligation of supplier to install and/or configure hardware neither includes data conversion nor software installation. Supplier is not responsible for obtaining any of the licences possibly required.
- 65.5 Supplier is always entitled to perform the agreement in partial deliveries.

Article 66 Test setup

- 66.1 Supplier is only obliged to set up a test environment for the hardware client is interested in if this has been agreed in writing. Supplier may attach financial and other conditions to a test setup. A test setup involves making the standard version of the hardware temporarily available on approval, excluding accessories, in a space made available by client, prior to

client's final decision on whether or not to purchase the hardware in question. Client is liable for the use of, damage to and theft or loss of the hardware that forms part of a test setup.

Article 67 Requirements hardware environment

- 67.1 Client ensures an environment that meets the requirements specified by supplier for the hardware and/or goods, among other things in terms of temperature, humidity and technical requirements.
- 67.2 Client ensures that activities to be performed by third parties, such as constructional work, are performed adequately and on time.

Article 68 Guarantees

- 68.1 Supplier makes every effort to repair defects in the material and manufacturing defects in the hardware and/or goods sold, as well as defects in parts delivered by supplier within the scope of the guarantee, within a reasonable period of time and free of charge if these defects are reported, in detail, to supplier within a period of three months following delivery. If, in supplier's reasonable opinion, the defects cannot be repaired or repair would take too long, or if repair would entail disproportionately high costs, supplier is entitled to replace the hardware and/or goods free of charge with other, similar, though not necessarily identical, hardware and/or goods. The guarantee does not include any data conversion that should be required because of any repair or replacement. All replaced parts are supplier's property. The guarantee obligation no longer applies if defects in the hardware, goods or parts are entirely or partly caused by incorrect, careless or incompetent use or by external circumstances such as fire or water damage, or if client modifies the hardware or parts delivered by supplier under the guarantee, or has these modified, without supplier's permission. Supplier does not withhold such permission on unreasonable grounds.
- 68.2 Client cannot file any claims or further claims concerning non-conformity of hardware and/or goods delivered other than those laid down in article 68.1.
- 68.3 Client is charged for any costs incurred by activities and repairs performed outside the scope of this guarantee at supplier's applicable rates.
- 68.4 Supplier does not have any obligation whatsoever under the purchase agreement with respect to defects and/or other faults reported after the guarantee period referred to in article 68.1 ends.

Section 12. Leasing hardware

The provisions in this section 'Leasing hardware' apply, apart from the General provisions of these general terms, if supplier leases hardware of whatever nature to client.

Article 69 Leasing

- 69.2 Supplier leases to client the hardware and relevant user documentation specified in the lease agreement.
- 69.3 The lease neither includes making software available on separate data carriers nor does it include making the consumer items and articles available that are required to use the hardware, such as batteries, ink and ink cartridges, toner articles, cables and accessories.



69.4 The lease commences on the date the hardware is made available to client.

Article 70 Prior inspection

70.1 By way of prior inspection, supplier may draft a report, in client's presence and prior to making the hardware available or when it is made available, describing the state of the hardware, including any defects observed. Supplier may require that client should sign this report, prior to making the hardware available to client for use, to indicate client's agreement with the text of the report. The defects in the hardware listed in this report are at supplier's account. If any defects are observed, parties arrange whether, and if so, how and when, the defects listed in the report must be repaired.

70.2 If client does not properly cooperate in the prior inspection referred to in Article 70.1, supplier is entitled to carry out this prior inspection without client being present and to draft the report itself. This report is binding on client.

70.3 If no prior inspection is carried out, client is deemed to have received the hardware in a proper and undamaged state.

Article 71 Use of the hardware

71.1 Client exclusively uses the hardware in and for its own organisation or company, in compliance with the hardware's intended use under the agreement and at the premises specified in the agreement. Use of the hardware by or for the benefit of third parties is not permitted. The right to use the hardware is non-transferable. Client is not permitted to lease the hardware to a third party or otherwise enable a third party to use the hardware or to make use of it together with client.

71.2 Client itself is responsible for installing and assembling the hardware and making it ready for use.

71.3 Client is not permitted to use the hardware or any part of it as a security or collateral, in any way whatsoever, or to dispose of the hardware or any part of it in another way.

71.4 Client uses and maintains the hardware with due care. Client takes adequate measures to prevent any damage to the hardware. Should there be any damage, client promptly informs supplier about this. For the term of the lease, client is always liable to supplier for damage to the hardware and theft, loss or misappropriation of the hardware.

71.5 Client is neither permitted to modify the hardware, either entirely or partly, nor permitted to add anything to it. If any modifications or additions have nevertheless been made, client is obliged to undo or remove these modifications or additions no later than at the end of the lease agreement.

71.6 Parties agree that defects in the modifications or additions made to the hardware by or under client's instructions and all defects in the hardware caused by those modifications or defects are not considered defects within the sense of article 7:204 of the Netherlands Civil Code. Client can never file a claim against supplier with respect to such defects. Supplier is not obliged to carry out repairs or perform maintenance services with respect to such defects.

71.7 Client is not entitled to any compensation for modifications or additions made by client to the leased hardware if these modifications or additions are not undone or removed, for any reason whatsoever, when or after the lease agreement ends.

71.8 Client promptly informs supplier in writing when the hardware is provisionally attached, stating the identity of the attaching party and the reason for the attachment. Client promptly allows the bailiff levying the attachment to inspect the lease agreement.

Article 72 Maintenance of the leased hardware

72.1 Client is not allowed to maintain the leased hardware itself or have the hardware maintained by a third party.

72.2 Client promptly informs supplier in writing about any defects that it observes in the leased hardware. Supplier makes every effort, within a reasonable period of time and by means of corrective maintenance, to repair defects in the hardware that are at supplier's account. Supplier is also entitled, though not obliged, to perform preventive maintenance services on the hardware. If so requested, client provides supplier with the opportunity to perform corrective and/or preventive maintenance services. Parties determine together, by consultation and in advance, the dates on which and the times at which maintenance services must be performed. Client is not entitled to replacement hardware during periods of time maintenance services are performed.

72.3 Supplier's obligation to repair defects excludes:

- repairing defects that client accepted when entering into the lease agreement;
- repairing defects that are caused by external circumstances;
- repairing defects that can be attributed to client, its staff members and/or third parties contracted by client;
- repairing defects that are caused by careless, incorrect or incompetent use or use that is contrary to the use described in the documentation;
- repairing defects that are related to the use of parts or consumer articles that have not been recommended or authorised by supplier;
- repairing defects that are caused by the hardware being used in a manner that is contrary to its designated use;
- repairing defects that are caused by unauthorised modifications of or additions to the hardware.

72.4 If supplier repairs the defects referred to in the preceding paragraph or has such defects repaired, client is charged, at supplier's applicable rates, for the costs incurred by the repairs carried out.

72.5 Supplier is always entitled to decide against repairing the defects and to replace the hardware with other, similar, though not necessarily identical, hardware.

72.6 Supplier is never obliged to recover or reconstruct data that have been lost.

Article 73 Final inspection and return of hardware

73.1 At the end of the lease agreement, client returns the hardware to supplier in its original state. Any costs of transportation incurred by the return of the hardware are at client's expense.

73.2 Prior to or no later than on the last working day of the lease's term, client renders its assistance in a joint, final inspection of the hardware's condition. The findings of this final inspection are laid down in a report to be jointly drafted by parties. This report must be signed by both parties. If client does not render assistance in the final inspection, supplier is entitled to carry out this inspection without client being present and to draft the report itself. This report is binding on client.

73.3 Supplier is entitled to have the defects that are listed in the final inspection report and that are – within reason – at client's risk and expense, repaired at client's expense. Client is liable for any loss supplier suffers because the hardware is temporarily out of operation or because supplier cannot lease the hardware to a third party.

73.4 If, at the end of the term of the lease, client has not undone a modification or removed an addition that client implemented in



the hardware, parties agree that client is deemed to have waived any and all rights to those modifications and/or additions.

Section 13. Maintenance of hardware

The provisions in this section 'Maintenance of hardware' apply, apart from the General provisions of these general terms, if supplier maintains hardware, of whatever nature, for client.

Article 74 Maintenance services

- 74.1 Supplier performs maintenance services for the hardware specified in the maintenance agreement provided that the hardware is set up in the Netherlands.
- 74.2 Client is not entitled to temporary replacement hardware during the time that supplier has the hardware that has to be maintained in its possession.
- 74.3 The content and scope of the maintenance services to be performed and the service levels that possibly apply are laid down in a written maintenance agreement. If maintenance has not been agreed on in writing, supplier is obliged to make every effort to repair malfunctions, within a reasonable period of time, that have been reported by client in an appropriate way. In these general terms, 'malfunction' means non-compliance of the hardware with the hardware specifications explicitly made known by supplier in writing or a failure of the hardware to comply with these specifications without interruption. A malfunction only exists if client cannot only demonstrate but also reproduce this malfunction. Supplier is also entitled, though not obliged, to perform preventive maintenance.
- 74.4 Client promptly informs supplier of a malfunction in the hardware, by providing a detailed description of it, when this malfunction occurs.
- 74.5 Client renders all assistance required by supplier in the context of maintenance services, for example to temporarily stop using the hardware. Client grants supplier's staff or third parties designated by supplier access to the location of the hardware, renders the assistance required and makes the hardware available to supplier so that the maintenance services can be performed.
- 74.6 Client ensures that a complete and properly functioning backup is made of all software and data recorded in or on the hardware before the hardware is made available to supplier for maintenance.
- 74.7 At supplier's request, one of client's staff who is an expert in the matter at hand is present for consultation when the maintenance services are performed.
- 74.8 Client is authorised to connect hardware and systems not delivered by supplier to the hardware and install software on that hardware.
- 74.9 If, in supplier's opinion, maintenance of the hardware should require testing the hardware's connections with other hardware or software, client makes both the other hardware and software in question and the test procedures and data carriers available to supplier.
- 74.10 Testing material required for maintenance that is not included in supplier's normal range of hardware is to be made available by client.
- 74.11 Client bears the risk of loss or theft of, or damage to, the hardware during the time that supplier has the hardware that has to be maintained in its possession. It is up to client to take

out insurance against this risk.

Article 75 Maintenance fees

- 75.1 The maintenance fee does not include:
- costs of consumer articles, or of replacing these articles, such as batteries, stamps, ink and ink cartridges, toner articles, cables and accessories;
 - costs of parts, or of replacing these parts, and of maintenance to repair malfunctions that were entirely or partly caused by attempts at repair by parties other than supplier;
 - activities performed for overhaul of the hardware;
 - modifications of the hardware;
 - moving, relocating or reinstalling hardware, or costs for transportation where hardware is to be repaired or any other activities arising from these activities.
- 75.2 The maintenance fee is due regardless whether client has put the hardware to use and makes use of it and regardless whether client makes use of the maintenance option.

Article 76 Exclusions

- 76.1 Activities performed to investigate or repair malfunctions that are caused by or connected with user errors, improper use of the hardware or external circumstances such as failures of internet services, data network connections, power supplies or connections to hardware, software or materials that do not come under the maintenance agreement, do not fall within the scope supplier's obligations under the maintenance agreement.
- 76.2 Supplier's obligations with respect to maintenance do not cover:
- investigating or repairing malfunctions that are caused by or connected with a modification of the hardware carried out by a party other than supplier or a party acting on behalf of supplier;
 - use of the hardware in breach of the applicable conditions and client's failure to have the hardware maintained in time.
- Supplier's maintenance obligations do not include investigating or repairing malfunctions in the software installed on the hardware.
- 76.3 Any costs incurred by maintenance services and/or investigations carried out under articles 76.1 and/or 76.2 can be charged by supplier, or charged as extra costs by supplier, at supplier's applicable rates.
- 76.4 Supplier is never obliged to recover corrupted or lost data.

