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 minimalize 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 nonsublicensable.

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 indemnity 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 bestefforts 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 it 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 nonavailability 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 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 it is 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 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 iintended 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, nontransferable, 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:

a if parties have agreed on an acceptance test: on the first day following the test period, or

b 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

c 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:

a 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;

b 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 on 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 nonperformance 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. Suppler 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 nonconformity 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.