

# General Terms & Conditions



These are the General Terms and Conditions of The Digital Neighborhood B.V., registered with the Chamber of Commerce under number 56619359 (hereinafter referred to as: The Digital Neighborhood) and all parent companies, sister companies and subsidiaries affiliated with The Digital Neighborhood (jointly referred to hereinafter as: Supplier). You are not contracting with The Digital Neighborhood, but separately with the enterprise (or enterprises) within the group. The enterprise with which you conclude an agreement will be designated by means of the Supplier's offer.

These General Terms and Conditions consist of a general part and a number of separate modules. The provisions in the general part apply to all agreements that you conclude with the Supplier. Depending on the products and services delivered, one or more modules may also apply to the agreement.

## GENERAL PART

### Article 1 Definitions

All capitalised terms in these General Terms and Conditions have, in their singular as well as plural forms, the meanings set out in this Article.

**Account:** any personal user interface that the Client can use to make use of (certain aspects of) the Services, or to manage or configure the Services and that are protected by means of login details.

**Agreement:** any agreement concluded between the Supplier and the Client, including the Principal Agreement, the General Terms and Conditions, any Service Level Agreement and any Processing Agreement that may have been separately concluded.

**Client:** any legal entity or natural person acting in a professional or commercial capacity that or who concludes an Agreement with the Supplier.

**Client Data:** all data that are stored by the Client (or the end users of the Services) via or using the Services, or that are otherwise provided to the Supplier by the Client (or the end users of the Services).

**Confidential Information:** all information that has been designated as being confidential, or which is declared to be confidential within 14 days after it was provided, or which the receiving party must reasonably understand to be of a confidential nature.

**General Terms and Conditions:** the present document, including the attached Modules that form an integral part thereof.

**Intellectual Property Rights:** all intellectual property rights and related rights, including but not limited to copyright, database rights, rights to domain names, trade name rights, trademark rights, design rights, neighbouring rights, patent rights as well as rights to know-how.

**Modules:** the sections A up to and including F that are attached to the General Terms and Conditions and that relate to specific parts of the Services.

**Office hours:** the time from 9:00 a.m to 5:30 p.m. (Dutch time) on Working Days.

**Principal Agreement:** the document (such as a quotation, order form or framework agreement) laying down the Services that will be delivered by the Supplier and the prices payable for this by the Client.

**Processing Agreement:** any specific agreement concluded between the Parties in which agreements are laid down concerning the treatment and protection of personal data.

**Service Level Agreement:** any specific agreement concluded between the Parties in which agreements are laid down concerning the quality of the Services delivered, which are linked to concrete and measurable key performance indicators.

**Services:** the activities that the Supplier will carry out for the Client and that are defined in more detail in the Principal Agreement concluded between the Parties.

**Working Days:** the days from Monday through Friday, with the exception of officially recognised Dutch holidays and other days on which the Supplier has stated in advance in writing that it will be closed.

### Article 2 Applicability and formation

- 2.1 These General Terms and Conditions apply to all of the Supplier's quotations and offers and to all Agreements concluded between the Parties. This expressly also applies to any future quotations, offers or Agreements in connection with which these General Terms and Conditions have not been provided to the Client again.
- 2.2 All quotations and offers of the Supplier are free of obligation and are valid for 30 days after the date stated in the quotation or offer. The Supplier is not obliged to accept

an indication of acceptance after the expiry of this period, but if the Supplier does so, the quotation or offer will be deemed to be accepted.

- 2.3 If several legal entities or natural persons or enterprises are referred to as the Client, these legal entities or natural persons or enterprises are jointly and severally obliged to fulfil all obligations that arise from the Agreement concluded.
- 2.4 If the Supplier bases a quotation or offer (in part) on data or information from the Client that prove to be incorrect, the Supplier shall be entitled to adjust the quotation, the offer or the Agreement already concluded in line therewith or to terminate or dissolve the Agreement already concluded.
- 2.5 The Supplier shall not be bound by an acceptance by the Client that is at variance with the quotation or the offer, not even if the difference relates only to minor aspects as referred to in Section 6:225(2) of the Dutch Civil Code.
- 2.6 If the Client does not expressly accept the quotation or the offer but does give rise to that impression (for instance, by having certain Services carried out that are part of the quotation or the offer), the quotation or the offer shall likewise be deemed to have been accepted.

### Article 3 Order of precedence

- 3.1 The Agreement between the Parties comprises various parts, including the Principal Agreement, these General Terms and Conditions and possibly a Service Level Agreement or a separate Processing Agreement.
- 3.2 In the event of any conflict between the various parts of the Agreement, the order of precedence set out below (in which the documents or Modules listed higher in the ranking shall prevail over the documents or Modules listed lower in the ranking) shall apply:
  - a. Principal Agreement
  - b. Service Level Agreement (if applicable)
  - c. General Terms and Conditions
    - Module F: Telecommunication and internet access
    - Module E: Reselling by the Client
    - Module D: Secondment
    - Module C: Development and implementation services
    - Module B: Cloud and hosting services
    - Module A: Delivery of software General part
  - d. Processing Agreement (if applicable)

In all other respects, the applicability of the various documents is mutually complementary.

### Article 4 Performance of the Agreement

- 4.1 The date of acceptance by the Client shall also be deemed to be the starting date of the Services, unless agreed otherwise.

- 4.2 The Supplier shall endeavour to deliver the Services within the agreed time schedule (or within a reasonable period if no time schedule has been agreed). Deadlines stated by the Supplier are indicative and are not to be considered as strict deadlines.
- 4.3 The Services shall always be delivered to the Client on a "best efforts" basis by the Supplier, unless the Supplier has expressly committed to providing a specific result or a specific guarantee in the Agreement.
- 4.4 The Supplier shall be entitled to perform the Agreement in various stages and to invoice the various stages separately to the Client.
- 4.5 The Supplier is entitled to engage third parties for the performance of the Agreement. Any costs associated with this will only be for the Client's account if this has been agreed in advance. If third parties engaged process personal data on behalf of the Client on the instructions of the Supplier, the provisions of the Processing Agreement apply, if and insofar agreed between the Client and the Supplier.
- 4.6 In the performance of the Agreement, the Supplier shall take account of reasonable requests of the Client, or state the reasons why it will not do so. If the Client, despite those reasons, insists that the request must be complied with, the Supplier shall (insofar as the request can within reason be carried out) perform the work at the Client's risk.

### Article 5 Cooperation by the Client

- 5.1 The Client is obliged to do everything that is reasonably required to ensure that the Services can be delivered correctly and on time. In particular, the Client must ensure that all information and materials that the Supplier indicates are necessary or that the Client should reasonably understand are necessary are provided to the Supplier in a timely manner and free of charge.
- 5.2 If the Client fails to provide the cooperation as described in the preceding paragraph, or fails to do so in a timely manner, the Supplier shall be entitled to suspend the Services until the cooperation has in fact been provided by the Client.
- 5.3 The Client guarantees that the information and materials provided to the Supplier are correct and complete. The Supplier is entitled but not obliged to check these for correctness and completeness. If the information or materials are found to contain inaccuracies or to be incomplete, the Supplier shall be entitled to suspend the Services until the Client has remedied the shortcomings.
- 5.4 In the situation as described above in Article 5.1 and 5.3, the Supplier can charge all reasonable costs incurred due to not being able to perform the Services (for instance, for keeping staff available) to the Client. The Supplier shall however endeavour to limit those costs.
- 5.5 If the Client provides to the Supplier certain information carriers, electronic files, software or other materials, the Client shall guarantee that these are free of viruses, malware or defects.

- 5.6 If the Supplier carries out work at the Client's offices in connection with the Agreement, or at another location designated by the Client, the Client shall provide to the Supplier all reasonable support and facilities that are required for delivering the Services, without charging any costs for this.
- 5.7 When using the Services, the Client is obliged to comply with all reasonable advice and instructions of the Supplier.

#### Article 6 Contract Extras

- 6.1 The Client can request the Supplier at any time to carry out work that is outside the scope of the Agreement (i.e. request "contract extras"). The Supplier is however not obliged to comply with such requests.
- 6.2 In the event of contract extras, the Supplier shall inform the Client in advance of the (estimated) costs associated with this and shall only carry out the contract extras following approval from the Client. The above shall however not apply in the case of contract extras that are necessary in connection with the Services already agreed. Such contract extras can be carried out on the basis of subsequent costing, without the Client's permission being required.
- 6.3 When carrying out contract extras, the Supplier shall always base itself on the agreed rates, or if none have been agreed, on the customary rates. The Supplier can demand that a supplementary agreement be concluded to carry out contract extras.

#### Article 7 Acceptance Test

- 7.1 If this has been agreed or is entailed by the nature of the Services, the Client can subject (the results of) the Services to an acceptance test. The Client shall carry out the acceptance test in accordance with the provisions in this Article.
- 7.2 Before performing the Agreement, the Parties shall always lay down in writing the requirements (the results of) the Services must satisfy. The Supplier will then carry out the Services and deliver the results thereof to the Client.
- 7.3 Within 14 days after delivery by the Supplier, the Client will carry out an acceptance test and approve or reject in writing (the results of) the Services. If the Client does not reject (the results of) the Services within this term, or if the Client operationally uses (the results of) the Services, these shall be deemed to have been accepted. The Client must always provide sufficient substantiation of a possible rejection, so that the Supplier has the opportunity to remedy any defects.
- 7.4 The Client can only reject (the results of) the Services if these do not comply with the requirements or specifications laid down in the Agreement. The Client shall not withhold its approval owing to minor defects, but such defects shall nonetheless be remedied by the Supplier as soon as possible following acceptance.
- 7.5 In the event of rejection, the Supplier will make every effort to eliminate the reason for the rejection as soon as

possible. The Supplier can do this by stating, providing substantiation, why the reason for the rejection does not apply, or by implementing modifications in (the results of) the Services. The Client will then carry out another acceptance test in accordance with Article 7.3.

- 7.6 If (the results of) the Services are repeatedly (at least 3 times) rejected by the Client and one of the Parties no longer considers further modification to be worthwhile, both Parties shall be entitled to terminate the part of the Agreement concerned. The Client shall in that case only be obliged to pay for the work already carried out and the Services already delivered by the Supplier, but shall not be entitled to continue to use (the results of) the Services.
- 7.7 If the agreement is performed in several stages, the Supplier shall be entitled to suspend the performance of the Services in a following stage until the Client has approved the results of the preceding stage in writing.
- 7.8 Following acceptance of (the results of) the Services by the Client, the Supplier's liability for any defects in what was delivered shall lapse.

#### Article 8 Delivery of items

- 8.1 If certain items are delivered to the Client by the Supplier pursuant to the Agreement, the risk shall pass to the Client at the moment when the items have been delivered at the agreed or designated location.
- 8.2 All items delivered to the Client by the Supplier shall remain the property of the Supplier until the Client has paid the agreed amount in full. The Client is not entitled to resell or pledge, or otherwise to encumber, the items subject the retention of title.
- 8.3 The Client shall notify the Supplier as soon as possible if a third party wishes to establish rights or exercise rights or levy an attachment, or have an attachment levied, in respect of items that are subject to the retention of title. The Client hereby unconditionally and irrevocably grants the Supplier permission in such a case to enter the places where the items are located and to repossess them.
- 8.4 Only the warranty provided by the manufacturer shall apply to the items delivered by the Supplier, unless additional warranties are expressly provided in the Agreement.

#### Article 9 Training

- 9.1 If the Services comprise providing education or training courses, the Supplier can demand payment of the amounts concerned for them before their commencement.
- 9.2 If in the judgement of the Supplier the number of enrolments gives good cause to do so, the Supplier shall be entitled to cancel the education or training courses or to combine them with other sessions or to have those courses given at a later date or a different time.
- 9.3 The Client can cancel participation in education or training courses free of charge up to 10 Working Days before commencement. If the Client cancels its participation

thereafter, the Supplier will charge an amount of 50% of the agreed fee. In the event of cancellation less than 5 Working Days before the commencement of the education or training course, the full agreed amount will be charged to the Client.

- 9.4 The provisions of Article 9.2 and 9.3 shall not apply to education or training courses that have been customised for the Client and/or are provided exclusively for the Client. Such training courses cannot be combined by the Supplier with other sessions, nor can they be cancelled by the Client. However, such an education or training course can be moved to another date or time in consultation with the Client due to unforeseen circumstances.

### **Article 10 Third-party products and services**

- 10.1 If the Client purchases products or services from third parties (such as hardware or software licences) via the Supplier, the provisions set out in this Article shall apply for this.
- 10.2 The Supplier is entitled to place an order with third parties on the Client's request. The Supplier has no influence on whether or not this order is accepted by the party concerned and cannot provide any guarantees on this.
- 10.3 With regard to the products or services of third parties, a direct agreement is formed, unless agreed otherwise, between the third party concerned and the Client. The Supplier is not a party to this agreement and is not responsible for any rights or obligations arising from it.
- 10.4 Additional and/or divergent terms and conditions may apply to the use of third-party products or services. Those terms and conditions are available from the Supplier on request. The Client accepts those terms and conditions in advance and is aware that they may be modified or supplemented at any time.
- 10.5 Invoicing of the third-party products or services can be effected both via the Supplier and directly to the Client. If invoicing is effected via the Supplier, the Client shall not be entitled to suspend payment in the event of a failure in the fulfilment of the agreement by the third party concerned.
- 10.6 The Client recognises that divergent terms or grounds for termination may apply to agreements with third parties. The Supplier shall be entitled to terminate or dissolve these agreements on the Client's request, in accordance with the terms and conditions of the third party concerned that apply for this.

### **Article 11 Intellectual Property Rights**

- 11.1 Unless agreed otherwise in writing, all Intellectual Property Rights in respect of the materials provided or developed by the Supplier under the Agreement shall be vested in the Supplier or its suppliers. The Client will solely receive a non-exclusive, non-transferable and non-sublicensable right to use the materials for the duration of the Agreement and in accordance with the terms and conditions laid down therein.

11.2 The Client is not permitted to make modifications to the materials or to modify or remove from the materials any indications of Intellectual Property Rights. It is also expressly not permitted to remove from these materials any designation concerning their confidential nature.

- 11.3 The Supplier shall be entitled to use the (company) name, the logo and a general description of the Client for promotional purposes.

### **Article 12 Client Data**

- 12.1 All rights to Client Data, including any Intellectual Property Rights applying to them, shall be vested in the Client. The Supplier shall not claim any ownership thereof.
- 12.2 The Client hereby grants a limited right of use to the Supplier to use the Client Data during the term of the Agreement insofar as this is necessary for the delivery of the Services.
- 12.3 Unless agreed otherwise, the Supplier shall not be obliged to upload and/or migrate Client Data as part of the Services. The Supplier can charge separate costs to the Client for support in this connection.
- 12.4 If and insofar as the Client Data consist of personal data, the agreements as laid down in the Processing Agreement apply, if and insofar agreed between the Client and the Supplier.
- 12.5 If the Agreement ends, regardless of the reason for its termination, the Supplier shall destroy or delete the Client Data as soon as possible, with due observance however of the provisions of Article 13 (Exit regulations).

### **Article 13 Exit regulations**

- 13.1 If the Agreement is terminated, the Supplier shall undertake every effort to provide reasonable support in the migration or switch-over to a different service or a different ICT supplier. Any costs entailed by this shall be payable in full by the Client.
- 13.2 If the Client wishes to make use of the exit support referred to in the preceding paragraph, the Client must submit a request in writing for this no later than on the date on which the Agreement ends.
- 13.3 The Supplier shall only be obliged to cooperate in the migration or switch-over of the Client if all amounts owed by the Client and any other obligations under the Agreement have been paid or fulfilled in full.

### **Article 14 Confidentiality**

- 14.1 Both parties shall treat Confidential Information of the other Party as strictly confidential and use it only for the purpose for which it is provided.
- 14.2 The receiving party shall ensure that the Confidential Information of the disclosing party is given the same level of protection as its own confidential information, but at least a reasonable level of protection.

- 14.3 The Parties shall also impose the obligation described above concerning Confidential Information on their employees and any third parties engaged.
- 14.4 The obligation to treat Confidential Information as confidential shall not apply if and insofar as the receiving party can prove that the Confidential Information:
- a. was already in the possession of the receiving party prior to date on which it was provided;
  - b. is available from a third party without this party acting in breach of any duty of confidentiality in respect of the disclosing party by providing it;
  - c. is available from public sources such as newspapers, patent databases, publicly accessible websites or services; or
  - d. was developed independently by the receiving party and without the use of any information of the disclosing party.
- 14.5 If a party receives an order from a competent authority to hand over Confidential Information, it shall be entitled to proceed to hand it over. The disclosing party shall however be informed as soon as possible (in advance) of the order, unless this is prohibited. If the disclosing party states that it intends to take measures against the order (for instance, via preliminary relief proceedings), the receiving party shall wait before handing over the information until a decision has been taken on this, insofar as this is permitted by law.
- 14.6 In the event of any violation of the provisions of this Article, the receiving party shall be liable to pay the disclosing party an immediately due and payable penalty of €10,000 for each violation, without prejudice to the right of the disclosing party to demand compensation if the damage or loss actually suffered exceeds the amount of the penalty payable.

#### Article 15 Terms of payment

- 15.1 As compensation for the Services, the Client shall be required to pay the prices stated in the Agreement. All prices quoted by the Supplier are in euros and are exclusive of VAT and any other levies imposed by the government.
- 15.2 The Supplier shall be entitled to invoice the Services in advance. The Client hereby agrees to electronic invoicing by the Supplier. A payment term of 14 days shall apply to all invoices sent by the Supplier.
- 15.3 If the Client disagrees with the contents of an invoice, the Client shall be entitled to suspend the disputed (but not the other) portion of the invoice. If an invoice is disputed, this must be notified in writing to the Supplier within the payment term. After being informed that an invoice is disputed, the Supplier shall assess as soon as possible whether or not this is justified. If this proves to be unjustified, the Client shall pay the amount outstanding within 14 days. If this is justified, the Supplier shall send a credit invoice to the Client as soon as possible.
- 15.4 If the Client, except in the situation described in the preceding paragraph, fails to pay an invoice, or to pay it in full, within the payment term, it shall be in default (without any prior notice of default being required). In such a case, the Supplier shall be entitled to:
- a. charge the statutory interest for commercial transactions to the Client on the amount outstanding; and
  - b. suspend the Services in full or in part until the amount outstanding has been paid in full by the Client.
- 15.5 If the Client again fails to pay an invoice following a demand for payment or a notice of default, the Supplier shall be entitled to refer the claim for collection. Any extrajudicial and judicial costs (of collection) incurred by the Supplier, including the costs for legal experts, lawyers, bailiffs and debt collection agencies, shall in such a case be payable in full by the Client.
- 15.6 If the Supplier has suspended the Services as a consequence of overdue payment by the Client, the Supplier shall be entitled to charge, for unblocking and/or reconnecting the Services, a fee of €975,- excluding the actual hours spent by the Supplier, which will be charged to the Client in accordance with the usual hourly rates of the Supplier.
- 15.7 The Supplier shall be entitled to charge €85 in administrative charges for sending a demand for payment to the Client.
- 15.8 Unless expressly agreed otherwise, any prices and (hourly) rates stated by the Supplier exclude expenses, including but not limited to the travel and accommodation expenses incurred by the Supplier.
- 15.9 Unless expressly agreed otherwise, the Supplier shall be entitled to charge a surcharge of 150% for carrying out Services outside Office hours compared with the customary prices and (hourly) rates.
- 15.10 The Client is not entitled to set off any of its payment obligations from any claims on the Supplier, for whatever reason.
- 15.11 If the Supplier has reasonable doubts regarding the fulfilment of a payment obligation by the Client, the Supplier shall be entitled to request a bank guarantee or surety, or to require a security deposit. The amount thereof shall not exceed the amount the Client will reasonably owe pursuant to the Agreement during the next six (6) months.

#### Article 16 Price changes

- 16.1 If the Agreement concerns the continual or repeated delivery of Services (i.e. if the Agreement is a continuing performance agreement), the following principles shall apply for implementing price changes:
- a. The Supplier shall be entitled to unilaterally increase the prices for the Services by a percentage of up to 5 per cent each year, provided this price increase has



been announced to the Client in writing at least 1 month in advance.

- b. The Supplier shall be entitled to increase the prices with immediate effect if the price increase is related to changes in laws and regulations, or to changed rates of suppliers that are passed on the Client on a pro rata basis (such as electricity costs, network costs and licence costs).
  - c. If price increases are implemented in accordance with the preceding paragraph, the Client is not entitled to terminate the Agreement.
- 16.2 Any other or higher price increases than those referred to above can only be implemented by the Supplier if the Client has been informed thereof in writing at least 1 month in advance. In such a case, the Client shall be entitled to terminate the part of the Agreement concerned in writing with effect from and up to no later than the date on which the price increase takes effect.

### Article 17 Liability

- 17.1 The Supplier's liability for damage or loss as a result of an attributable failure in the fulfilment of the Agreement, an unlawful act or otherwise, shall be limited to the amount payable by the Client to the Supplier pursuant to the Agreement (excluding VAT) during a period of 6 months before the damage or loss arose, up to a maximum amount of €50,000 per year, irrespective of the number of events.
- 17.2 Without prejudice to the provisions above, the Supplier shall expressly not be liable for indirect damage or loss. In the present case, indirect damage shall be understood to mean: lost profits, missed savings, reduced goodwill and damage or loss due to business interruption.
- 17.3 Without prejudice to the provisions above, the Supplier shall under no circumstances be liable for a higher amount than that paid out by the insurer, increased by the deductible of the Supplier.
- 17.4 The Supplier's liability due to an attributable failure in the fulfilment of the Agreement shall arise solely if the Client gives proper notice of default to the Supplier without delay and in writing, offering the Supplier a reasonable period to remedy the failure, and if the Supplier continues in its attributable failure even after that period. The notice of default should contain a description of the failure in as much detail as possible, to enable the Supplier to put forward an adequate response.
- 17.5 Any limitations or exclusions of the Supplier's liability stipulated in the Agreement shall lapse in the case of intent or wilful recklessness on the part of the Supplier's management, or death or bodily injury.
- 17.6 Any claim of the Client for compensation shall lapse if the Client fails to report the damage or loss to the Supplier in writing within 14 days after it was discovered.

### Article 18 Force majeure

- 18.1 The Supplier shall not be obliged to fulfil the Agreement if fulfilment is prevented as a result of force majeure.
- 18.2 Force majeure will in any case be understood to be, without being limited to: fire, floods, strikes, power outages, failures in the telecommunications infrastructure, force majeure affecting suppliers of the Supplier, network attacks and (D)DOS attacks (unless and only insofar as protection against these is purchased as part of the Services), import and export barriers, war and terror. Any liquidity problems on the part of the Client are expressly not to be qualified as force majeure.
- 18.3 To the extent that the Supplier had already partially fulfilled its obligations under the Agreement by the time the force majeure commenced or will be able to partially fulfil them, which partial fulfilment can be ascribed an independent value, the Supplier is entitled to separately invoice such partial fulfilment.
- 18.4 In the event of force majeure, the Supplier can suspend the performance of the Agreement for as long as the force majeure situation continues. If the force majeure situation last longer than 3 months, both parties shall be entitled to terminate the Agreement in writing, without any obligation to pay compensation to the other party.

### Article 19 Takeover of staff

- 19.1 The Client is forbidden to hire employees of the Supplier for the duration of the relationship between the Client and the Supplier and for one (1) year after termination thereof, or to have them work for the Client in any other manner, directly or indirectly, without the Supplier's prior written permission.
- 19.2 In this Article, employees of the Supplier are understood to be: all persons who are employed by the Supplier or by one of its affiliates, or those who were employed by the Supplier or by one of its affiliates no longer than six months ago, regardless of the reason for the termination.
- 19.3 In the event of a violation of the prohibition described in this Article, the Client shall be liable to pay to the Supplier an immediately due and payable penalty of €25,000 for each violation, plus a penalty of €2,500 for each day during which the violation continues up to a maximum of €100,000, without prejudice to the right of the Supplier to demand full compensation.

### Article 20 Duration and termination

- 20.1 If the Agreement concerns the delivery of certain Services that end upon the completion of specific work or tasks (i.e. if the agreement is a "once-only agreement"), the term of the Agreement shall be equal to the period that is required to provide the Services concerned.
- 20.2 If the Agreement concerns the periodic or continual delivery of certain Services (i.e. if it is a "continuing performance agreement"), the term shall be laid down in writing. If the Parties have not made any agreements on

the term, the Agreement shall be deemed to have been concluded for a period of at least 12 months.

- 20.3 If the Agreement is a continuing performance agreement that has been concluded for a fixed period, it can be terminated by both Parties in writing with effect from the end of the term, with due observance of a period of notice of 3 months. If no such termination is effected, the Agreement shall be tacitly extended by the same term in each instance.
- 20.4 If the Agreement is a continuing performance agreement that has been concluded for an indefinite period, this can be terminated in writing at any time by both parties after an initial period of 12 months, with due observance of a period of notice of 6 months.
- 20.5 If the Agreement relates to Services that can be qualified as electronic communication services within the meaning of section 1.1 of the Telecommunications Act, the Agreement concerned shall be concluded, in derogation from the provisions above, for an initial period of 12 months. After this initial period, the Agreement shall be tacitly extended for an indefinite period and can be terminated by both parties in writing at any time, with due observance of a period of notice of 1 month.
- 20.6 The Parties are not permitted to terminate the Agreement early, save for those cases for which an exception is expressly made in these General Terms and Conditions or in other parts of the Agreement.
- 20.7 If the Client can itself deactivate, switch off or remove certain (parts of) Services, the Client itself shall be responsible for doing so before the date on which the Agreement ends. If the Client fails to do this, the Supplier can charge costs for keeping the Services available and the Agreement shall be deemed to have been extended for the period during which the Services are used. The Supplier shall only deactivate, switch off or remove the Services concerned on the express request of the Client.
- 20.8 The Supplier shall be entitled to suspend the Agreement with immediate effect (in full or in part) or to terminate or dissolve the Agreement with immediate effect (in full or in part) if:
- The Client fails to fulfil, or fails to fulfil in a timely manner, the obligations pursuant to the Agreement and does not remedy the failures within a reasonable period after being given notice of default. Prior notice of default is however not required in those cases where default arises by operation of law;
  - the Client files for bankruptcy or is declared to be bankrupt, applies for or is granted a moratorium, the Client's business is liquidated or its business activities are discontinued;
  - due to delay on the Client's side, the Supplier can no longer be required to fulfil the Agreement under the terms and conditions originally agreed; or

d. circumstances arise due to which performance of the Agreement is rendered impossible, or due to which the Supplier cannot be reasonably required to maintain the Agreement unchanged.

- 20.9 In the case of termination of the Agreement, the Services that the Supplier has already delivered, and the corresponding payment obligations, will not be undone. The applicability of Section 6:271 et seq. of the Dutch Civil Code is hereby expressly excluded by the Parties.
- 20.10 Following termination or dissolution of the Agreement, any remaining claims of the Supplier in respect of the Client shall be immediately due and payable, regardless of the reason for termination.

## Article 21 Changes

- 21.1 The Supplier reserves the right to modify these General Terms and Conditions and will announce any changes to the Client in writing at least 1 month in advance. Any changes also apply to Agreements already concluded.
- 21.2 If the Client does not wish to accept a change, the Client can lodge an objection in writing within 14 days after the announcement. If the Supplier decides to proceed with the change despite the Client's objection, the Client can terminate the Agreement in writing with effect from and up to no later than the date on which the change takes effect.
- 21.3 The procedure described above does not apply to changes of minor significance or changes that benefit the Client. Such changes can be implemented unilaterally and with immediate effect by the Supplier.
- 21.4 Changes in other parts of the Agreement (such as the Principal Agreement) can only be implemented with the written approval of both parties.

## Article 22 Transfer of duties, rights and obligations

- 22.1 The Parties can only transfer the rights and obligations arising from the Agreement to a third party with the written permission of the other party.
- 22.2 In derogation from the above, the Supplier shall be entitled to transfer the Agreement, without the prior permission of the Client, to a parent company, sister company or subsidiary or to a third party in the event of a merger or acquisition. The Supplier shall inform the Client in writing as soon as possible if such a transfer has taken place.

## Article 23 Choice of law and forum

- 23.1 The Agreement is subject to Dutch law.
- 23.2 To the extent that the rules of mandatory law do not prescribe otherwise, any dispute between the parties in connection with the Agreement will be submitted to the competent court in the Netherlands for the district where the Supplier has its registered office.

## Article 24 Other provisions

- 24.1 If any provision in the Agreement proves to be void, voidable or otherwise invalid, this will not affect the validity

of the entire Agreement. In such a case, the Parties will replace that provision with a new provision that will reflect the purpose of the original clause as much as is possible under the law.

- 24.2 The terms "written"/"in writing" in these General Terms and Conditions also include communication by email, provided that the sender's identity and integrity of the contents have been sufficiently established, with the exception of termination or dissolution of the Agreement.
- 24.3 The version of the communication received or stored by the Supplier, as well as any log files kept by the Supplier or measurements carried out by the Supplier with regard to the Services shall be regarded as authentic evidence, barring evidence to the contrary provided by the Client.
- 24.4 The Client shall at all times inform the Supplier immediately in writing of any changes in name, postal address, email address, telephone number or bank account number.
- 24.5 The General Terms and Conditions are available in both Dutch and in English. In the event of any differences in the contents or purport of these different versions, the Dutch version shall be binding at all times.

## MODULE A: DELIVERY OF SOFTWARE

### Article 25 Delivery of the software

- 25.1 The software that the Supplier will deliver to the Client is described in more detail in the Principal Agreement concluded between the parties.
- 25.2 The software can be made available by the Supplier on an electronic or other data carrier that is customary for this, or by making the software available via the internet in the form of a downloadable file. If the software is made available by the Supplier via the internet ("as a service"), the provisions in Module B (Cloud and hosting services) shall apply in addition to and take precedence over this Module.
- 25.3 The software shall be delivered by the Supplier "AS IS" and, insofar as permitted, excluding all implicit and explicit entitlements to conformity and correctness. The Supplier is unable to provide any guarantee that the software will meet the Client's expectations, or that it is or will at any time be free of errors.

### Article 26 Installation and configuration of the software

- 26.1 Unless agreed otherwise in writing, the Client itself bears full responsibility for the installation and configuration of the software. The Supplier can charge costs to the Client for any support in this connection.
- 26.2 Unless agreed otherwise, the Client itself shall be responsible for verifying whether the software is suitable for the systems used by it. On the Client's request, the Supplier can provide information on the applicable system requirements. These requirements may change over time when updates or upgrades for the software are released.

## Article 27 Maintenance and support

- 27.1 The Supplier and its suppliers can release updates and upgrades to resolve errors in the software or improve its performance. This may result in changes in functionality. Unless providing updates and upgrades is part of the agreed Services, additional costs may be entailed by making updates or upgrades available.
- 27.2 Unless this is part of the agreed Services, the Client itself is responsible for switching to a new version of the software in the event of updates or upgrades. The Supplier cannot accept any liability for damage or loss resulting from errors or issues that have been resolved in a new version of the software.
- 27.3 If the Client requests technical and/or practical support in the use of the software, the Supplier can charge additional costs for this, unless the support is expressly part of the agreed Services.

## Article 28 Intellectual Property Rights

- 28.1 With regard to the software, the Client will solely obtain the non-exclusive, non-transferable and non-sublicensable rights of use for the duration of the Agreement that have been agreed in writing between the parties.
- 28.2 The right of use granted to the Client solely relates to the object code of the software. The Client is expressly not entitled to (a copy of) the source code, except in those cases where this is permitted pursuant to mandatory law.
- 28.3 Supplementary terms and conditions of the supplier concerned may apply to the use of the software. Those conditions can be viewed via the website of the supplier and/or are available from the Supplier on request.
- 28.4 The Client is expressly not permitted to reverse engineer the software (for instance by means of decompilation), except in those cases where this is permitted pursuant to mandatory law.
- 28.5 The Supplier can take technical and other measures to protect the Software. Where such security measures have been implemented, the Client may not remove or circumvent that security.
- 28.6 The Supplier and its suppliers are entitled to carry out an inspection to verify compliance with the terms and conditions and use restrictions applying to the software. The Client shall provide every cooperation for this and shall grant access to all locations, data and information insofar as this is reasonably necessary in the performance of the inspection. The costs incurred by the Client in this connection shall be payable by the Client.

## MODULE B: CLOUD AND HOSTING SERVICES

### Article 29 Delivery of the Services

- 29.1 The Services that the Supplier will deliver to the Client are described in more detail in the Principal Agreement concluded between the parties.



29.2 The Services shall be delivered by the Supplier "AS IS" and, insofar as permitted, excluding all implicit and explicit entitlements to conformity and correctness. The Supplier is unable to provide any guarantee that the Services will meet the Client's expectations, or that they are or will at any time be free of errors.

### **Article 30 Installation and configuration of the Services**

30.1 Unless agreed otherwise in writing, the Client itself bears full responsibility for the installation and configuration of the Services. The Supplier can charge costs to the Client for any support in this connection.

30.2 The Client is not entitled to carry out modifications independently or to install software within Services administrated by the Supplier (such as but not limited to online workshops and virtual private servers) without the written permission of the Supplier.

30.3 The Client has no right to (access to) any configurations made by the Supplier. The Supplier is therefore also not obliged to provide information to the Client with regard to these configurations or with regard to the associated configuration files in the event of termination of the Agreement.

### **Article 31 Accounts**

31.1 The Client may need an Account in order to make use of the Services, or to administrate or configure the Services. These Accounts will be provided by the Supplier or can be created by the Client itself.

31.2 The Client itself is responsible for ensuring that login details for Accounts are treated as strictly confidential. Any Accounts provided by the Supplier or created by the Client are personal and must not be used by more than one person.

31.3 It is expressly not permitted to share the login details for Accounts with third parties without the permission of the Supplier. The Client shall instruct all end users (such as employees, temporary workers and interns) to treat the login details as confidential.

31.4 All actions that are carried out via an Account shall be for the account and risk of the Client. The Supplier is entitled to assume that those actions have been carried out by the Client itself or with the Client's permission.

31.5 If the Client suspects or ascertains that an Account is being misused, it must immediately take all measures that are necessary to prevent (further) misuse, for instance by changing the password. If it is not possible for the Client to take measures itself, the Client must immediately inform the Supplier, to enable the Supplier to take the necessary measures.

### **Article 32 Rules of use**

32.1 The Client is not permitted to use the Services in contravention of Dutch or other applicable laws and regulations, or in a way that is otherwise unlawful.

32.2 Without prejudice to the provisions above, the Client is expressly not permitted, regardless of whether or not this is lawful, to use the Services to store or distribute certain materials that:

- a. incorporate, or contain a link to, malicious content (such as viruses, malware or other harmful software);
- b. infringe on the rights of third parties (e.g. Intellectual Property Rights), or are manifestly defamatory, libellous, offensive, discriminatory or inflammatory;
- c. contain information on (or that may aid in) infringing the rights of third parties, such as hack tools or information on computer crime intended to enable readers to commit a crime or make readers commit a crime, and not to enable readers to defend themselves against such crimes;
- d. violate the privacy of third parties, in any case including but not limited to the processing of personal data of third parties without permission or another basis; or
- e. contain hyperlinks, torrents or links to (the location of) materials that infringe Intellectual Property Rights;

32.3 The Client is solely permitted to use the Services to distribute (unsolicited) commercial, charity-related or ideals-related communications with due observance of the applicable laws and regulations.

32.4 The Client shall refrain from hindering other clients of the Supplier or inflicting damage on the systems or networks of the Supplier or third parties by using the Services. It is prohibited to launch processes or programs of which the Client knows or should know that these will hinder the Supplier or third parties, or that these may cause damage.

32.5 All activities of end users that make use of the Services are for the account and risk of the Client. The Client itself is responsible for informing them of the applicable rules of use and any other applicable terms and conditions.

### **Article 33 Notice and take-down**

33.1 If a third party informs the Supplier or if the Supplier itself ascertains that the Services are being used to store or distribute certain materials that infringe upon third-party rights or are otherwise unlawful or contravene laws and regulations or the Agreement, the Supplier shall inform the Client of the complaint or the violation as soon as possible.

33.2 The Supplier shall give the Client an opportunity to respond to the complaint within a reasonable period and take measures if necessary. If the Client fails to do so, the Supplier itself can take all reasonable measures to put an end to the violation. This may result in certain data being removed or made inaccessible, or access to the Services being blocked in full or in part. In urgent cases, the Supplier can intervene immediately, without warning the Client.

33.3 The Supplier shall not be liable for any damage or loss of the Client, the latter's customers or the end users resulting

from a shut-down of the Services or the removal of materials in connection with the procedure described in this Article.

- 33.4 The Supplier is entitled to provide the name, address and other data identifying the Client or end user concerned to a third party that has complained that the Client has violated its rights, provided that the requirements applicable for this under the law or case law have been complied with.
- 33.5 The Client shall indemnify the Supplier against any third-party claims that are based on the assertion that the materials that stored or distributed by using the Services infringe its rights or are otherwise unlawful.

#### **Article 34 Usage limits and credits**

- 34.1 The Supplier may impose a maximum for the capacity (for instance, volume of data traffic, processing capacity, memory, storage or electricity) that the Client may or can actually use within the framework of the Services. If this maximum is exceeded, the Supplier shall be entitled to charge additional costs or (following a written warning) to restrict the use of the Services or to reduce it to the permitted capacity.
- 34.2 If a specific limit or capacity applies for the Services, this can be raised or reduced in consultation with the Supplier. An increase or upgrade of the Services can be implemented with immediate effect, a reduction or downgrade can however only be implemented with effect from the date of extension of the Agreement.
- 34.3 Any credit awarded to the Client (for instance, an amount of credits, data traffic or accounts) is not transferable to a subsequent month, another agreement or another client.
- 34.4 The Supplier shall not be liable for the consequences of being unable to send, receive, store or change data or any incorrect operation of the Services if the Client exceeds an agreed limit (for instance, the volume of data traffic, processing capacity, memory, storage or electricity).

#### **Article 35 Fair use**

- 35.1 If no limit has been set for the capacity (for instance, the volume of data traffic, processing capacity, memory, storage or electricity) for the Services, a fair use policy shall apply to the Services concerned.
- 35.2 The Supplier can further specify the fair use policy, which shall in that case be made available to the Client in writing. The Supplier reserves the right to amend or supplement the policy at any time and shall inform the Client in writing in advance in such a case.
- 35.3 If there is no expressly defined fair use policy, it shall be understood to mean that the Client may use at most twice as much capacity as that used by other clients of the Supplier that purchase the same or comparable Services in comparable circumstances.
- 35.4 If the use of the Services exceeds the fair use policy, the Supplier shall be entitled to limit or block the Services, or to offer an alternative Service to the Client. If the limits are

exceeded, the Supplier shall not be responsible if the Services do not operate or do not operate correctly.

#### **Article 36 Updates and upgrades**

- 36.1 The Supplier and its suppliers can release updates and upgrades to resolve errors in the Services or improve their performance. This may result in changes in functionality of the Services.
- 36.2 The Supplier shall endeavour to keep the Services up-to-date, but depends in part on its suppliers for this. The Supplier is not obliged to install updates or upgrades of suppliers if in its professional opinion this will not benefit the operation of the Services.
- 36.3 If the updates or upgrades result in a material change in the functionality of the Services, the Supplier will make every effort to inform the Client of this in advance, at least 30 days in advance, in writing.

#### **Article 37 Availability and maintenance**

- 37.1 The availability and the maintenance of the Services shall always be on the basis of best efforts and with due observance of the provisions of this Article, except if and insofar as the Parties expressly agree otherwise in a Service Level Agreement.
- 37.2 The Supplier shall endeavour to keep the Services available as much as possible, but cannot guarantee uninterrupted availability. The Supplier shall be entitled to take the Services temporarily out of operation for the purpose of maintenance activities.
- 37.3 The Supplier shall endeavour to announce planned maintenance to the Client in writing in advance. In the event of urgent maintenance, notification in advance will not be possible, but the Supplier shall endeavour to keep the Client informed of the nature and expected duration of the maintenance activities.
- 37.4 The Supplier shall carry out planned maintenance at a time chosen by it, but shall endeavour to let the work take place at a time when the use of the Services is relatively limited.
- 37.5 If any obstruction, damage or other threat arises or may arise for the operation of the computer systems or the network of the Supplier or third parties, for instance due to excessive sending, uploading or downloading of data, (D)DOS attacks or other network attacks, poorly protected systems, or activities of viruses or other harmful software, the Supplier shall be entitled to take all measures that it deems reasonably necessary to avert or prevent this threat. The Supplier shall notify the Client of this as soon as possible.
- 37.6 The Client shall provide every cooperation to the Supplier that is required to execute a migration to other hardware or Services if these are End of Life (EOL) or End of Service (EOS). If the Client refuses to cooperate in the migration, any guarantees and obligations to produce a certain result shall lapse as from the date of EOL or EOS. In that case, the Client shall have 3 months to execute a migration to

other hardware or Services itself. After the expiry of this period, the Supplier shall be entitled to switch off or remove the hardware and to shut down the Services concerned in full or in part.

### Article 38 Support

- 38.1 The Supplier shall offer the Client a reasonable level of support via the Supplier's help desk with regard to practical or technical questions concerning the Services. The opening hours and contact details of the help desk shall be laid down in the Agreement or be communicated via the Supplier's website.
- 38.2 Help desk requests of the Client that cannot be easily handled via the telephone or by email shall be designated as "contract extras". The procedure laid down in Article 6 (Contract Extras) shall therefore apply to those requests.
- 38.3 The Supplier shall endeavour to handle help desk requests as soon as possible, but cannot provide any guarantees for this unless agreed otherwise in a Service Level Agreement.

### Article 39 Back-ups

- 39.1 The Supplier is not obliged to make reserve copies (back-ups) of the Services; the responsibility for this rests with the Client. This is only otherwise if making back-ups is expressly part of the Services agreed between the Parties.
- 39.2 Unless expressly provided otherwise in the Agreement, the Client itself shall be responsible for periodic inspection of the operation and integrity of any back-ups made by the Supplier.
- 39.3 If a back-up is restored by the Supplier on the Client's request, the costs entailed by this shall be payable by the Client.

### Article 40 Domain names and IP addresses

- 40.1 If the Agreement provides, in full or in part, for the Supplier mediating in acquiring a domain name and/or IP address, the provisions in this Article shall apply for this.
- 40.2 The application for and assignation of a domain name and/or IP address are subject to procedures of the registration authorities or issuing authorities. Those authorities decide on the assignation. The Supplier only plays a mediating role and cannot guarantee that any application will be accepted by the authority concerned.
- 40.3 The Client is required to comply with laws and regulations and all conditions set by the registration authorities or issuing authorities when using the domain name and/or the IP address. The use takes place entirely under the responsibility of the Client. The Client shall indemnify the Supplier against any damage or loss connected with the use of the domain name and/or the IP address.
- 40.4 The Client accepts that any disputes can be handled via the Dispute Resolution Policies (DRP) of the registration authority or issuing authority, such as the SIDN's

"Geschillenregeling voor .nl-domeinnamen" (Dispute regulations for .nl-domain names).

- 40.5 The Client is informed exclusively of the registration by the written confirmation from the Supplier, which states that the requested Domain Name has been registered. An invoice for the costs of registration is not a confirmation of registration.
- 40.6 As the rights of third parties may be at stake, the Supplier cannot guarantee the right of registered domain names to exist or their continuity. The Supplier is unable to prevent that the domain name may at any time be applied for and/or obtained by a third party. The Client shall in such a case not be entitled to a refund or an alternative domain name.
- 40.7 The IP addresses made available to the Client shall continue to be administrated by the Supplier. The IP addresses can therefore not be retained or migrated in the event of termination of the Agreement.
- 40.8 The Supplier shall be entitled at any time to change the IP addresses made available to the Client or to assign another IP address to the Client.
- 40.9 The Supplier shall be entitled to render inaccessible or block the domain name and/or the IP address, or to place it, or have it placed, in its own name or to cancel it if the Client fails to fulfil the Agreement and does not remedy this failure within 14 days after being given notice of default by the Supplier.
- 40.10 If the Agreement is terminated or dissolved due to breach of contract by the Client, the Supplier shall be entitled to cancel the Client's domain names, without being liable for any damage or loss arising from this.

### Article 41 Colocation

- 41.1 The provisions of this Article shall apply if the Services that the Supplier delivers to the Client pursuant to the Agreement consist in part in colocation, whereby the Client installs its own hardware in a space made available by the Supplier in a data centre.
- 41.2 The Client shall be entitled to access to the data centre (or the space designated by the Supplier in the data centre) in order to install and maintain the hardware, insofar as this is not done by the Supplier pursuant to the Agreement. The Client shall strictly comply with the instructions and internal and other rules of the Supplier in this connection.
- 41.3 If the Client wishes to access the data centre, it must request this in advance by telephone or via its Account. Barring unforeseen circumstances, the Supplier shall confirm the request within half an hour.
- 41.4 Only the persons registered by the Client shall be given access to the data centre and only if they present valid, official proof of identity. Access by third parties (such as customers and suppliers of the Client) is possible only with the written permission of the Supplier.

- 41.5 In the case of “shared colocation” (i.e. the placement of hardware in shared racks) the Client is not permitted to place or remove hardware of its own accord. The Client is required to make an appointment for this with a member of staff of the Supplier. This member of staff will assist the Client in carrying out the work. Any costs entailed by this shall be payable by the Client.
- 41.6 The Client is expressly not permitted to record any images in the data centre, except of its own hardware and racks (that are not shared) of the Client, unless the Supplier has given written permission for this.
- 41.7 On the Supplier's request, the Client shall be obliged to accept an alternative space in the same or another data centre, provided that space satisfies, within reason, the requirements that also applied to the original space. The costs for moving hardware will not be reimbursed by the Supplier.
- 41.8 The Client shall not make any modifications in the space in the data centre made available by the Supplier or the facilities in it (such as racks, connection points and cabling), except with the written permission of the Supplier.
- 41.9 Activities in the data centre shall be carried out efficiently and competently by the Client, without causing any nuisance for the Supplier or third parties. In addition, the Client guarantees that:
- a. the hardware placed by it will not damage the data centre or facilities and other hardware that has been placed in the data centre, nor disrupt or affect the operation thereof;
  - b. the hardware complies with all applicable national and international laws and regulations and other standards;
  - c. it has all registrations, licenses or permissions that are required for the placement and the use of the hardware in the data centre; and
- d it has adequately insured the hardware and will keep it adequately insured during the full term of the Agreement and will, on request, provide copies of the insurance policies concluded to the Supplier.
- 41.10 The Supplier shall be entitled to move, switch off or remove the hardware if the Client fails to comply with the applicable instructions or internal or other rules or if unforeseen circumstances necessitate this, without becoming liable for compensation in respect of the Client.
- 41.11 If the Client attributable fails in the fulfilment of the Agreement, the Supplier shall be entitled to retain possession of the hardware placed in the data centre and to refuse access for the Client to the data centre until the Client has fulfilled its obligations in full. Even if the Agreement is terminated while amounts remain payable by the Client, the Supplier shall retain the right to retain possession of the hardware of the Client until all amounts outstanding have been paid.

- 41.12 The Supplier shall be entitled at all times to inspect the space made available in the data centre, without advance notification to the Client.
- 41.13 Before the date on which the Agreement expires, the Client shall vacate the space in the data centre and deliver it in the condition in which it was made available to the Client at the start of the Agreement, hand in all keys and/or key cards and provide its cooperation in a final inspection.
- 41.14 If the Client fails to vacate the space in the data centre, the Supplier shall be entitled, after expiry of a reasonable period, to remove the Client's hardware from the data centre and to store it, in connection with which the work carried out and any storage costs will be charged to the Client. The Supplier shall inform the Client of this without delay and set a final deadline for the collection of the hardware. When this expires, the Supplier will obtain full ownership of the hardware and shall be entitled to sell the hardware.

## MODULE C: DEVELOPMENT AND IMPLEMENTATION SERVICES

### Article 42 Delivery of the Services

- 42.1 The Parties shall determine in advance in what manner (and in accordance with what method) the development and implementation activities will be carried out as well what technical and functional requirements the materials developed or implemented are required to meet.
- 42.2 The Supplier shall endeavour to periodically inform the Client during the performance of the work on the progress of the development and implementation activities.
- 42.3 The Supplier shall deliver the developed materials if these, in its professional opinion, satisfy the technical and functional requirements laid down in advance or are suitable for operational use. The Client shall then assess the delivered materials in accordance with the procedure described in Article 7 (Acceptance Test).

### Article 43 Quality and interoperability

- 43.1 The Supplier shall make every effort to develop or to implement the materials as effectively and as free of errors as possible, but cannot guarantee that the materials are free of errors.
- 43.2 The Supplier is not responsible for the software developed or implemented being unusable if this is due to the fact that the Client has not migrated its systems to the current standards in good time (whether or not on the Supplier's instructions), or if the Client is using standards that are no longer supported in the industry.
- 43.3 Software developed or implemented by the Supplier can be linked to software or systems of third parties. Such links can affect the technical and functional operation. The Supplier cannot accept any liability for the links, software and services of third parties. Any obligations applying to the Supplier shall not be applicable to links created nor to the software or services of third parties.

## Article 44 Third-party materials

- 44.1 The Supplier shall be entitled to use third- party software or other materials in the development and implementation activities. The Supplier shall inform the Client in advance of the third-party software or materials used and the licence or other terms and conditions applicable to them. Any costs for the use of the software or materials shall be payable by the Client.
- 44.2 The Supplier shall be entitled to use open source components in the performance of the Agreement, provided this does not entail the consequence that the materials developed must themselves also be distributed under an open source licence. The Supplier shall inform the Client in advance about the open source components used and the licence or other terms and conditions applicable to them.
- 44.3 Following delivery of the development and implementation activities, the Client shall be responsible in full for compliance with any licence or other terms and conditions applicable to the third-party software or materials, including licence or other terms and conditions applicable to open source components.

## Article 45 Intellectual Property Rights

- 45.1 Unless agreed otherwise in writing, the Intellectual Property Rights in respect of the materials developed or implemented by the Supplier shall be vested in the Supplier or its suppliers. The Supplier grants the Client solely the non-exclusive right to reproduce and distribute the materials developed or implemented for the purposes intended by the parties when they entered into the Agreement.
- 45.2 The Client shall only be entitled to access to the source code of software developed (other than open source software) and the technical documentation created in the development of the software if this has been agreed in writing.
- 45.3 The Client is expressly not permitted to reverse engineer (for instance, by means of decompilation) the software developed or implemented by the Supplier, except in the cases where this is permitted by mandatory law.
- 45.4 The Supplier can take technical and other measures to protect the software developed or implemented. Where such security measures have been implemented, the Client may not remove or circumvent that security.

## MODULE D: SECONDMENT

### Article 46 Designation of seconded employees

- 46.1 In consultation with the Client, the Supplier shall designate one or more employees who will carry out work under the supervision and control of the Client.
- 46.2 The Supplier shall endeavour to ensure that seconded employees are available for the agreed number of hours to carry out work for the Client. In this connection, employees may sporadically and in consultation with the Client be

unavailable, for instance owing to internal meetings, training courses and business activities of the Supplier.

- 46.3 The Supplier reserves the right to replace employees by other persons at any time, provided the designated replacement possesses comparable expertise and qualifications.
- 46.4 If the performance of an employee made available by the Supplier is demonstrably insufficient or is substandard, or in the case of long-term or permanent unavailability of an employee, the Client can request the Supplier to designate a replacement. The Supplier shall in such a case endeavour to find, within a reasonable period, a suitable replacement who possesses the required expertise and qualifications.
- 46.5 The Supplier shall be responsible for remitting wage tax and other social insurance contributions.

### Article 47 Execution of the work

- 47.1 The results of the work carried out by the employees shall be for the account and risk of the Client. The Supplier cannot accept any liability in connection therewith.
- 47.2 The Client may only deploy the employees made available by the Supplier for the work as described in the Agreement. Letting these employees carry out other work or making these employees available to a third party is only possible with the Supplier's written permission.
- 47.3 The employees made available by the Supplier shall at all times comply with the reasonable internal and other regulations of the Client, provided these have been made available to the Supplier and the employees concerned in a timely manner by the Client.
- 47.4 The Client shall be responsible for providing a safe workplace to seconded employees that complies with the applicable Working Conditions Regulations and legislation.
- 47.5 The work shall be carried out at the offices of the Client or at another location to the designated by the Client. The Client shall not be entitled to have the seconded employee carry out work outside the Netherlands, unless the Supplier has given its permission in writing for this.
- 47.6 The Client shall always provide all the data and information that are important for the proper performance of the work to the seconded employee on a timely basis.

### Article 48 Working hours

- 48.1 Unless agreed otherwise, the work shall be carried out during Office hours. Unless agreed otherwise in the Agreement, this will be based on a working day of 8 hours in each instance.
- 48.2 The Client shall be responsible for compliance with statutory obligations concerning resting times and working hours. The leave of the seconded employee will be taken in close consultation. The Client shall not refuse a request for leave of the seconded employee on unreasonable grounds.



## Article 49 Terms of payment

- 49.1 The work will be invoiced by the Supplier in accordance with the invoicing schedule set out in the Agreement on the basis of subsequent costing. If there is no such invoicing schedule, the Supplier shall be entitled to send an invoice to the Client once every 14 days. The Supplier shall add a breakdown of the hours worked and expenses incurred to each invoice.
- 49.2 If seconded employees work more hours than the agreed number of working hours, or if work is performed outside Office hours, the Supplier is entitled to charge a surcharge of 200% to the Client for this "overtime" compared with the agreed hourly rate.
- 49.3 The hourly rates stated in the Agreement exclude any travel and accommodation costs, unless expressly stated otherwise. The Supplier shall therefore be entitled to invoice these expenses separately to the Client.
- 49.4 If the parties have agreed a fixed or minimum number of hours of secondment, the Client shall continue to be obliged to pay a fee for this, even if the Client (temporarily) has less work for the seconded employee.
- 49.5 Unless the Supplier deploys a replacement employee, the Client will not owe the Supplier any fee in respect of a period in which the seconded employee is unable to perform the agreed work due to illness, holidays or any other reason.

## MODULE E: RESELLING BY THE CLIENT

### Article 50 Reselling

- 50.1 Reselling the Services is only permitted if this expressly follows from the Agreement.
- 50.2 In the event of reselling, the Client will be acting in its own name and for its own account and risk. The Client is expressly not permitted to conclude agreements for or on behalf of the Supplier or to create the impression that it is acting as agent or representative of the Supplier.
- 50.3 The Client is required to impose on its customers at least the same obligations as those applied by the Supplier with regard to the Services. The Supplier may require the Client to provide evidence thereof.
- 50.4 A failure on the part of the Client's customers to pay or pay on time does not release the Client from its payment obligations towards the Supplier.
- 50.5 The Client may only communicate for business purposes that it uses the Services and may not otherwise use trade names, brand names, logos or other distinguishing marks of the Supplier. The Client shall always strictly comply with any instructions of the Supplier concerning the use of such distinguishing marks.
- 50.6 The Supplier shall contact customers of the Client primarily via the Client. In urgent cases, however, such as in the case of (imminent) damage or loss, or of nuisance for third parties due to activities of the customer concerned, the

Supplier shall be entitled to contact customers of the Client directly.

- 50.7 The Client shall at all times be liable in full in respect of the Supplier for what its customer do or omit to do via the Services provided by the Supplier. The Client shall indemnify the Supplier against any third-party claims in this connection.
- 50.8 In the event of termination or dissolution of the Agreement owing to breach of contract by the Client, the Supplier shall be entitled to approach the Client's customers and to make an offer in order to continue the Services itself or to have the Services continued by another reseller. Immediately on the Supplier's request, the Client shall provide all contact details and other data required for this.

## MODULE F: TELECOMMUNICATION AND INTER- NET ACCESS

### Article 51 Availability and maintenance

- 51.1 Insofar as not provided otherwise in a Service Level Agreement, the provisions of this Article shall apply with regard to availability and maintenance of the Services.
- 51.2 The Supplier shall endeavour to keep the Services available as much as possible, but cannot guarantee uninterrupted availability.
- 51.3 The Supplier shall be entitled to take the Services or parts thereof temporarily out of operation for the purpose of maintenance, adjustment or improvement. The Supplier will make every effort to ensure that the period of inactivity takes place outside Office hours as much as possible and to inform the Client in good time of the planned inoperative periods.
- 51.4 In the event that the Services are not available due to failures, maintenance or other causes, the Supplier will make every effort to inform the Client of the nature and the expected duration of the interruption of the Services.
- 51.5 The availability and quality of the Services depend partly on certain external factors, such as the Client's internet connection, if, for example, Voice over IP is purchased as Service. The Supplier shall not be liable for any disruptions or quality issues owing to such external factors.
- 51.6 The Supplier is entitled to change the operation and the technical specifications of the Services. The Supplier shall inform the Client of the proposed changes in good time, unless this is not reasonably possible. The Supplier shall not be liable for any damage or loss arising from these changes.

### Article 52 Usage and costs

- 52.1 The Client will use the Services in a proper manner. The Supplier shall be entitled to charge excessive use to the Client on a pro rata basis.
- 52.2 The Supplier may set a maximum for the number of call minutes or data traffic that the Client may use per month in connection with the Services. If that maximum is

exceeded, the Supplier shall be entitled to charge extra costs, in accordance with the rates of the Supplier that are customary for this. These extra (usage) costs will be invoiced separately on a monthly basis.

### **Article 53 Number management**

- 53.1 The provisions in this Article shall apply if the Services partly relate to delivering telephony via a computer network ("Voice over IP", or VoIP).
- 53.2 The Client has the option to choose a new telephone number for the Services, which may or may not be tied to a geographical area, or to migrate a telephone number from an agreement with a third party.
- 53.3 The Client will follow the Supplier's instructions in order to keep its number. The Supplier is entitled to charge the Client a one-off fee to keep its number. The Supplier is not liable for the termination of current agreements with a third party relating to the telephone number in question.
- 53.4 Where applicable, the Client will declare that it will only use the telephone number in the geographical area for which this number is intended. The Client shall indemnify the Supplier against all possible claims in the event of any failure to comply with this.
- 53.5 If the Supplier deems this necessary for the proper functioning of the Service or to comply with applicable laws and regulations, the Supplier is entitled to change the Client's telephone number. The Supplier will take the Client's interest into consideration as much as possible in doing this. The Supplier is not obliged to pay compensation as a consequence of the change.
- 53.6 Upon termination of the Agreement, the Client loses the telephone number, unless it decides to keep the number and transfer it to a third party.