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**Article 1. Definitions**

- 1 Provider: DigiState B.V. with its registered office in Nieuwegein and registered with the Chamber of Commerce under file number 72307129
2. Client: the (legal) person who requests the delivery of Products or Services by Provider.
3. Terms: the present document, including the Appendix.
4. Services: any service and/or all services provided by the Provider to the Client under the Agreement.
5. Agreement: any agreement between Provider and Client.
6. Website: <https://www.digistate.nl>
7. Parties: Client and Provider.
8. Personal data: All information about an identified or identifiable natural person, as intended in article 4 under 1 of the General Data Protection Regulation, that Provider processes on behalf of Client.
9. Products: any product and/or all products provided by the Provider to the Client under the Agreement.
10. Appendix: the Appendix with regard to the processing of Personal Data, attached to these Terms and forming an integral part thereof.

**Article 2. Quotation, offer and acceptance**

1. Provider will prepare a quotation for Client that will include the specifications of the Services and/or Products, including (but not limited to) the number and the type of Services and/or Products, the frequency of provision of the Services and a quote. Only the description of the Services and/or Products given in the offer will be binding. The Client may also use the digital ordering process on the Website to purchase certain Services.
2. A quotation is without obligation and valid until 30 days after being sent by Provider unless otherwise indicated in the quotation.
3. Previous offers and/or quotations to Client are considered to have been withdrawn upon the submission of a new offer and/or quotation to the same Client.
4. If it appears that the Client has provided incorrect information, the Provider shall be entitled to adjust the prices accordingly.
5. These terms apply to all Agreements between Provider and Client and also to any quotations and offers of Provider.
6. Deviations from the Terms must be explicitly agreed on in writing between Provider and Client.
7. Provider is entitled to refuse a Client at its own discretion without giving reason.
8. After the acceptance of the Agreement, any changes can only be made by mutual agreement.
9. An Agreement is effected at the time that the Client accepts a written offer by Provider and Provider confirms the acceptance in writing or commences the performance of the contents of the Agreement.
10. In the event of a conflict between the provisions in the Agreement, supplementary agreements and/or terms or appendices thereto, the following order of precedence applies:
  - the Agreement;
  - the Service Level Agreement, if concluded;
  - the appendices, if any;
  - these Terms;
  - any additional terms.

**Article 3. Performance of the Agreement**

1. Unless otherwise agreed in writing, the Provider warrants that the Services will be performed to the best of its ability, with due care and professional competence.
2. If and to the extent required for the proper performance of the Services, the Provider may have certain activities performed by third parties. The Provider accepts no liability for services performed by third parties.
3. The Client is obliged to do and refrain from doing everything that is reasonably required and desired to ensure that the Agreement is performed correctly in a timely manner. In particular, the Client shall ensure that all information which the Provider indicates is required, or in respect of which the Client ought reasonably to understand is required for the performance of the Agreement, is made available to the Provider in a timely manner.
4. The Provider may unilaterally make changes to the material provided by the Client without the prior consent of the Client.
5. If it forms part of the Service, the Provider will issue an administrative user name and a password to Client. These will provide the Client with access to an administrative account and a management

tool which will enable the Client to manage the delivery of the Service as it sees fit and to manage accounts for individual users and to set the options and restrictions for these individual users of the Service, within the limits specified in the Agreement. The Client will pay all the fees and charges arising from the use of the service with an administrative user name and a password.

6. Each action performed by means of the administrative account or an individual user account is deemed to take place under the responsibility and at the risk of the Client. In the event of suspected misuse of an account, the Client must notify the Provider thereof as soon as possible so as to enable the Provider to take action accordingly.

7. The Provider may (temporarily) decommission Services and/or Products that have been provided and/or may limit their use, or provide them only to a limited extent, or not at all and/or suspend performance of the Agreement if the Client fails to fulfill an obligation towards the Provider as stipulated in the Agreement or acts contrary to these Terms.

#### **Article 4. Delivery of the Products**

1. Delivery of the Products will occur EXW (Ex Works) (ICC Incoterms 2020). Provider will deliver the Products to a location agreed on with Client.
2. Provider is entitled to perform the Agreement in separate phases.
3. Provider shall make every effort to ensure delivery of the Products within the agreed on delivery period. The delivery periods as indicated by Provider shall never be considered fatal deadlines. If a term lapses, the Client must immediately send a written notice of default to Provider and set a reasonable term for fulfillment.
4. Failure to meet the delivery date does not entitle the Client to full or partial termination of the Agreement or to compensation of any damage suffered by the Client, unless in the event of intent or gross negligence on the part of the Provider.
5. Client is obligated to take acceptance of the Products when they are put at its disposal according to the Agreement or at the time that Provider delivers the Products or has the Products delivered by a third party.
6. Any costs arising from circumstances that prevent a delivery from being made in the agreed-on manner, not due to any fault on the part of Provider, may be charged to Client by Provider.
7. The delivery of Products is restricted to the delivery of those specific Products. This means that, unless otherwise agreed in writing, costs of assembly, installation (materials), software, consumable items, consumer items, batteries, cables, accessories, ink (cartridges), etc. and any installation or configuration activities are not included in the obligation to sell. Nor are costs of transport, insurance, (temporary) facilities, etc. included in the purchase price; these will therefore be charged to Client separately.
8. Provider cannot guarantee that the Products are suitable for the actual use and/or use as intended by Client, unless Parties have made explicit written arrangements to this end in the Agreement.
9. Provider cannot guarantee that the assembly instructions, installation instructions and operating instructions that accompany the Products are free

of errors and that the Products have all the characteristics described in these instructions.

11. If Client requests that Provider installs and/or configures and/or connects the Products, or has a third party do this, the Client owes the customary rates for these services to Provider. Provider is not obligated to convert data and/or the install software unless this was explicitly agreed in writing. Provider is not responsible for obtaining any required permits and/or licenses.

#### **Article 5. Removal old material**

1. Provider is not obligated to remove any old material (network, cabinets, (data on) hardware, cable trays, packaging, etc.). Therefore, Provider is not liable for the (safe) removal of this old material.
2. Parties can specifically agree that Provider will remove any old material (network, cabinets, (data on) hardware, cable trays, packaging, etc.) or Provider may be obligated to do so under mandatory law. In this event, Provider will charge its usual rates unless mandatory law prevents this.

#### **Article 6. Test setup**

If Client requests a test setup, Parties will make further arrangements about this. Provider is entitled to charge a financial compensation for a test setup. If a test setup is done, the Products will be delivered to Client's on approval only. In principle, no accessories will be placed. Client is liable for the use, damage, theft or loss of all Products and other items that are part of the test setup.

#### **Article 7. Environment requirements Products**

Client will comply with the environment requirements for the Products as provided by Provider. These requirements include for instance, temperature, humidity, and technical environment.

#### **Article 8. Prices**

1. Unless otherwise indicated, all prices are exclusive of value-added tax (VAT).
2. All the prices appearing on the Website, in quotations, brochures and other documents of the Provider are subject to manifest programming and typing errors. No liability will be accepted for the consequences of any such errors.
3. If the Agreement is a continuing performance agreement, the Provider may increase its rates on the expiry of the first year of the continuing performance agreement, once per calendar year. To that end, the Provider will inform the Client of the rate changes at least 2 (two) months in advance via the Website, in writing or by email. In the event of a rate increase, the Client may terminate the Agreement within three months after the implication of the increased rates, subject to 1 (one) months' notice.
4. All costs accruing to the Provider from the Agreement shall be borne by the Client, provided they are attributable to the Client.

#### **Article 9. Hosting and related services**

1. If the Services provide, in full or in part, for services regarding the storage and/or transfer to third parties of material supplied by the Client, such as in the case of webhosting or email services, the provisions of this article shall also apply.

# General Terms and Conditions

## DigiState B.V. (v 3.0 June 2020)



2. The Client will not publish or offer information in breach of Dutch law via the Provider. This includes in particular, but is not limited to, information that is offered without the permission of the copyright holder(s), information that is of a libelous, intimidating, insulting, racist, inflammatory or discriminatory nature, information containing child pornography or pornography that is otherwise liable to prosecution and information that violates the privacy of third parties or that constitutes a form of stalking, as well as hyperlinks, torrents and other links to such information on third-party sites anywhere in the world (even if the information would be legal in the jurisdiction concerned).

3. The Provider has a complaints procedure under which third parties ('complainants') can file a complaint if they believe there is evidence of such a violation. If the Provider considers a complaint to be justified, the Provider may remove the material or block access to it. In that case, the Provider may also supply the personal data of the Client to a reporting party or to the competent authorities. The Provider will inform the Client of the progress of this procedure.

4. In case of information that may constitute a criminal offense, the Provider may report this information to the police. In that case, the Provider can submit all relevant information on the Client to the competent authorities and perform all other acts that those authorities request the Provider to perform as part of the investigation.

5. In case of repeated complaints about the information provided by the Client, the Provider may dissolve and/or terminate the Agreement by giving notice.

6. A Client acting in the exercise of a business or profession indemnifies the Provider against any and all loss or damage as a consequence of the above. The Provider is not liable for any loss or damage sustained by a Client acting in the exercise of a business or profession due to action taken by the Provider in relation to the complaints procedure.

7. The Client will refrain from obstructing other Clients or internet users or inflicting damage on the servers of the Client or any third parties engaged by Client. The Client is prohibited from starting up processes or programs, via the server or otherwise, which the Client knows or can reasonably assume will obstruct or inflict damage on the Provider, other clients or internet users. The Provider will advise the Client of any measures taken.

8. The Client will abide by the generally accepted code of conduct on the internet as laid down in RFC1855 (<ftp://ftp.ripe.net/rfc/rfc1855.txt>) and any future amendments thereto.

9. The Client is prohibited from making the user name or user names and password or passwords supplied by the Provider available to any third party without the Provider's consent.

10. Unless otherwise agreed, the Client is prohibited from reselling and/or re-leasing (parts of the) Services.

11. The Provider may impose a maximum limit on the amount of storage space the Client may use each month under the terms of the Services. In the event this maximum limit is exceeded, the Provider may charge an additional amount in accordance with the amounts charged for additional storage space listed on the Website. Provider shall never be liable for the consequences of not being able to

send, receive, store or modify data if the agreed storage space limit is reached.

12. The Client hereby grants the Provider an unrestricted license to distribute, store, forward or copy all materials disseminated by the Client via the Provider's systems, in any manner deemed appropriate by the Provider, however solely to the extent this is reasonably required for the purpose of fulfillment of the Agreement by the Provider.

13. In addition to the relevant legal obligations, any loss or damage arising as a result of incompetence or a failure to act in compliance with the points set out above shall be for the Client's account.

### Article 10. Domain names and IP addresses

1. If the Services provide, in full or in part, for the Provider to mediate on behalf of the Client for the acquisition of a domain name and/or IP address, the provisions in this article will also apply.

2. Application for, allocation of and possible use of a domain name and/or IP address depend on and are subject to the applicable rules and procedures of the relevant registration authorities, including the Foundation for Internet Domain Registration in the Netherlands (Stichting Internet Domeinregistratie Nederland) and RIPE. The authority concerned will decide on the allocation of any domain name and/or IP address. The Provider only plays a mediating role in the application process and cannot guarantee that an application will be accepted.

3. Unless otherwise indicated, the Client is informed of the registration solely through the confirmation letter from the Provider, stating that the requested domain name has been registered. An invoice for the costs of registration does not constitute a confirmation of registration.

4. The Client acting in the exercise of a business or profession indemnifies the Provider and holds it harmless against any and all loss or damage related to (the use of) a domain name on behalf of or by the Client.

5. The Provider is not liable for the Client losing its right(s) to a domain name and/or IP address or for the fact that the domain name and/or IP address has been requested by and/or assigned to a third party in the interim, unless in the event of willful misconduct or gross negligence committed by the Provider.

6. If the Provider registers a domain name in its own name on behalf of the Client, the Provider will honor requests from the Client with respect to moving, transferring or terminating this domain name.

7. The Client shall observe the rules that the registration authorities set for the application for, allocation of and use of a domain name and/or IP address.

8. The Provider may render the domain name inaccessible or unusable if the Client demonstrably fails to fulfill the Agreement, which action will, however, last solely for the period that the Client is in default and solely on the expiry of a reasonable term to remedy the default as set out in a written notice of default.

9. In the event the Agreement is terminated prematurely due to a breach of contract on the part of the Client, the Provider may revoke the domain name and/or IP address subject to one month's notice.

### Article 11. Resellers

1. If the Services provide, in full or in part, for reselling or re-leasing or the provision against payment ('Reselling') of the Services and/or Products by the Client to its customers, the provisions in this article will also apply.
2. When Reselling, the Client will act in its own name, for its own account and at its own risk and may not enter into agreements for or on behalf of the Provider or give the impression that it acts as the agent or representative of the Provider.
3. The Client shall impose on its customers at least the same obligations as the Provider imposes on the Client with regard to the Services and/or Products that are made available. The Provider may demand that the Client furnishes proof of this.
4. Any failure by customers of the Client to make payment or make payment in good time shall not release the Client from its payment obligations towards the Provider.
5. The Provider will only approach the Client's customers via the Client, unless the Provider has a compelling reason to approach these customers directly or the Client gives its consent for direct contact to be sought. (Imminent) damage or loss and inconvenience for third parties due to customers' activities shall always constitute a compelling reason.
6. The Client may not use any trade name, brand name, logos or symbols of the Provider in promotional or commercial communication, including a domain name, with the aim of leveraging the goodwill enjoyed by or the good name of the Provider for the acquisition of customers by the Client. The Client may, however, communicate in a business-like manner that it uses the Provider's Services and/or Products.
7. The Client is fully liable at all times for every act or omission committed by its customers using the Provider's systems or networks or those of its suppliers.
8. In the event the Agreement is terminated prematurely due to a breach of contract on the part of the Client, the Provider shall be entitled to approach, notify and take over, as applicable, the Client's customers.

### Article 12. Services

1. Hardware and software support and support in respect of other Services will be billed at the applicable hourly rate. The applicable hourly rate will be communicated in advance by the Provider. Support will be charged on an hourly basis, with a minimum of 1 (one) hour, unless otherwise agreed. The Provider is unable to provide any guarantees in terms of response times in case of requests for support where no SLA has been arranged.

### Article 13. Connectivity

1. The Client's current and actual usage will be reviewed each month. If the usage differs from the expected package, the package can be adjusted with retroactive effect. Any increase will be implemented with immediate effect. Any decrease can only be implemented at the end of this Agreement's term.
2. Unless otherwise agreed, data traffic cannot be carried forward and is not transferable to a following month and/or equipment.
3. Data traffic is understood to mean all the network traffic generated by the Client, both

incoming and outgoing. Incoming and outgoing traffic is added together for the purpose of calculating the data traffic.

4. The Provider may impose a maximum limit on the amount of data traffic the Client may use each month under the terms of the Services. In the event this maximum limit is exceeded, the Provider may charge an additional amount in accordance with the amounts charged for additional data traffic as stated on the Website. No liability is accepted for the consequences of not being able to send, receive, store or modify data if the agreed data traffic limit is reached.

### Article 14. Availability of the Services

1. The Provider will make every effort to ensure uninterrupted access to its systems and networks and to the data it has stored but is unable to offer any guarantees in this regard unless otherwise agreed in the quotation or the online ordering procedure by means of a Service Level Agreement (SLA) that is identified as such. To the extent not otherwise provided in such an SLA, the provisions in this article shall apply to availability.
2. The Provider will make every effort to keep the software used by it up to date. The Provider is nonetheless dependent on its supplier(s)/provider(s) in this regard. The Provider is entitled not to install certain updates or patches if it believes installing such updates or patches will not be beneficial to the Service and its correct delivery.
3. The Provider will endeavor to ensure that the Client can make use of the networks that are either directly or indirectly connected to the Provider's network. However, the Provider cannot guarantee that these (third-party) networks will be available at any particular time.
4. If, in the opinion of the Provider, the operation of the computer systems or the Provider's network or third-party networks and/or service provision via a network is at risk, in particular as a result of excessive volumes of email or other data traffic, poorly or inadequately secured systems or virus activities, Trojan horses and similar software, the Provider may take all measures it deems reasonably necessary to avert or prevent such risk.

### Article 15. Liability

1. For each event or series of related events, the Provider's liability for direct loss or damage sustained by the Client as a result of a culpable shortcoming in the Provider fulfilling its obligations under this Agreement, also expressly including any shortcoming in fulfilling a guarantee commitment agreed with the Client, or an unlawful act on the part of the Provider, its employees or third parties engaged by the Provider, is limited to a sum equal to the payments the Client is obliged to make under this Agreement each year (excluding VAT). Under no circumstance, however, will the total compensation payable for any direct loss or damage exceed a sum of EUR 1,000 (excluding VAT).
2. The Provider's liability for indirect loss or damage, including consequential loss or damage, loss of profit, lost savings, loss of data (business or otherwise), and loss due to business interruption, is excluded.
3. With the exception of the cases mentioned in article 15(1), the Provider cannot be held liable in

any way whatsoever for compensation, irrespective of the ground on which a claim for compensation might be based. The maximum amount mentioned in article 15(1) will however not apply if and insofar as the loss or damage is the result of willful misconduct or gross negligence committed by the Provider's management.

4. The Provider's liability for an attributable failure to fulfil the Agreement will only arise if the Client gives the Provider proper notice of default in writing without delay, and specifies a reasonable period within which to remedy its failure, and the Provider continues to attributable fail to perform its obligations even after that period. The notice of default should contain a description of the failure in as much detail as possible so that the Provider is able to put forward an adequate response.

5. The Provider will never be liable for loss or damage due to force majeure.

6. Any right to compensation is conditional at all times upon the Client reporting to the Provider in writing and by registered letter the occurrence of every instance of loss or damage within 30 days after the event giving rise to such loss or damage.

7. The Client indemnifies the Provider against any and all third-party claims on account of liability resulting from a failure in the Services provided by the Client to a third party and which consisted in part of Products or results provided by the Provider.

8. In this article, Client is understood to mean only a Client acting in the exercise of its business or profession.

#### **Article 16. Failures and Force Majeure**

1. The Provider may temporarily close down its systems, including the Website, either fully or partially, for the purpose of maintenance, adjustments or improvements. The Provider will endeavor to ensure that such a period of inactivity only takes place outside office hours where possible, and will make every effort to inform the Client in good time of the scheduling of periods of inactivity. However, the Provider is never liable for compensation for loss or damage in connection with such period of inactivity..

2. The Provider may modify its systems, including the Website, in its entirety or in part, from time to time in order to improve its functionality and/or to remedy faults. If a modification causes a significant change in functionality, the Provider will endeavor to inform the Client of this. In the event of modifications that are relevant to multiple clients, it is not possible to waive a specific modification only for the Client's benefit. The Provider is not liable for any compensation of loss or damage resulting from such modification.

3. In the event of unavailability of Services due to disruptions or failures, maintenance or other causes, the Provider will make every effort to inform the Client of the nature and expected duration of the interruption.

4. Provider cannot be held to the observance of any obligation towards the Client if it is prevented by force majeure.

5. In these Terms, force majeure is defined, in addition to the definition in the relevant laws and jurisdiction, as all external causes, whether or not anticipated, that are beyond Provider's control yet render Provider unable to fulfill its obligations under the Agreement. This always includes

disruptions to or breakdowns of the internet, the telecommunications infrastructure, SYN flood, network attacks, DoS or DDoS attacks, power failures, domestic disturbances, mobilization, war, traffic jams, strikes, exclusions, business interruptions, stagnation in supply, fire, floods, import and export barriers and in the event that the Provider is prevented, regardless of the reason, from delivering owing to its own providers/suppliers, as a result of which fulfillment of the Agreement by the Provider cannot reasonably be demanded.

6. The fulfillment of the Agreement can be suspended by Provider for the duration of the force majeure. If the force majeure situation exceeds a 90 (ninety) day period, both Parties shall be entitled to terminate the Agreement prematurely by giving notice, all this without any obligation for either Party to pay compensation.

7 In the event that the Provider has fulfilled part of the Agreement or will be able to fulfill part of the Agreement during the force majeure situation, it may invoice the fulfilled part separately. The Client is then obligated to pay the invoice as if it were a separate Agreement.

#### **Article 17. Term and termination**

1. In the event of a continuing performance Agreement, the Agreement is entered into for a period of one year. Unless the Client gives notice to terminate the Agreement (or an individual domain name) not less than one month prior to the end of this period, the Agreement will be tacitly extended for a period of one year after it expires.

2. After the extension, a Client who does not act in a professional or business capacity may give notice to terminate on any day, taking into account a one (1) month notice period, commencing on the day of Provider's receipt of the notice of termination. 'One month's' notice is understood to mean no later than the corresponding date in the following month.

3. If the Client acts in the conduct of a business or profession, a notice period of two months will apply with effect from the end of the term of the Agreement.

4. The Client can give notice of termination via the same channel used for entering into the Agreement. The Client may additionally give notice of termination by email, via the customer account (control panel) and in writing (by letter).

5. If it is discovered after termination that the Client has paid more than is due for the period between the final invoice and the moment of termination, the Provider will refund the difference within 30 (thirty) days.

6. In the event of a cancellation (termination by giving notice), termination or dissolution for whatever reason, the Provider may immediately delete all stored data or render access to it impossible, and it may cancel all accounts of the Client. The Provider is not obliged in that case to provide the Client with a copy of such data.

7. The delivery dates given by the Provider will always be an indication only unless it is expressly stated in writing that the date is a final delivery date. The Provider will not be in default, also with respect to an agreed final delivery date, until the Client has given it written notice of default.

8. In the event an agreed delivery date or time is exceeded, for whatever cause or reason, this shall

not automatically grant a right to compensation, unless otherwise agreed in writing.

9. If the Client is a natural person not acting in the exercise of his/her business or profession, the Client may cancel the Agreement within 14 (fourteen) days after the conclusion of the Agreement, without giving reasons. Registration of domain names is excluded from this statutory reflection period in the event the Client has consented to direct delivery and to waiving his/her statutory reflection period.

10. If the Client fails to perform any of its obligations under the Agreement, the Provider may terminate all Agreements concluded with the Client concerned without notice of default or judicial intervention being required and without prejudice to the Provider's right to demand compensation for loss or damage, lost profit and interest.

### Article 18. Payment Terms

1. The Provider will issue the Client with an invoice for the amount payable by the Client. The payment term of this invoice is one month after the invoice date, unless otherwise stated on the invoice or otherwise agreed in the Agreement.

2. By way of derogation from the previous paragraph, the Provider is under no obligation to send an invoice if the Agreement is a continuing performance contract. The amount owed for a specific term will be paid in advance by the Client to the Provider each month or per another agreed term.

3. If the Client has failed to pay within 14 (fourteen) days of the due date, the Client will be held in default by operation of law without notice of default being required. If an amount owed is not paid within the payment term, the outstanding invoice amount will be subject to statutory interest without any notice of default by the Provider being required.

4. In the event the Client fails to pay by the due date, the Client shall be obliged to pay any and all judicial and extra-judicial collection costs, including the costs of lawyers, bailiffs and debt-collection agencies, in addition to the amount payable and the relevant interest due.

5. The payment demanded is due and payable immediately in the event the Client is put in involuntary liquidation or applies for suspension of payments, or in the event that a total seizure is made on all of the Client's assets, the Client passes away and furthermore, if the Client's business is liquidated or dissolved.

6. In the cases referred to above, the Provider furthermore has the right to terminate or suspend the Agreement or any part thereof that has not yet been performed without notice of default or judicial intervention being required, and without the Client having any right to compensation for loss or damage that might result from the above.

7. If the Client does not act in the exercise of a business or profession, the Provider will send the Client a reminder upon the expiry of the due date referred to in article 18.3 giving the Client a further period of 14 (fourteen) days within which to remedy its non-payment of the invoice. On the expiry of this term the Client not acting in the exercise of a business or profession shall be in default, with due regard for the provisions in article 18.4.

### 19. Retention of title and risk

1. All Products sold and/or delivered by Provider will remain Provider's property until the Client has fulfilled all its obligations arising from the Agreement. Until such a time, Client is considered to be holding the Products for Provider.

2. Client may not transfer the title of the Products, supply them to a third party, pledge them or in any way use them as collateral.

3. Should third parties institute garnishee proceedings on the Products delivered subject to a retention of title or seek to encumber these Products or to seize these Products, Client is obligated to inform Provider of this immediately.

4. If Client remains in default of its obligations after a written demand was sent, or if there is a reasonable fear that Client will not fulfill these obligations, Provider will be entitled to retrieve, or have a third party retrieve, the Products from Client or from any third parties holding the Products for Client. Client is obligated to provide its full cooperation immediately on request.

### Article 20. Inspection and complaints

1. Upon delivery, Client must inspect the Products for accordance with the Agreement and suitability to use the Products for their intended purposes.

2. In the event that Client discovers defects, it must inform Provider in writing and/or by email without delay but always within 5 (five) days after delivery.

3. Complaints regarding the performance of the Agreement, the functioning of the system or the operation of other facilities must be filed in writing.

4. Client may expect to receive a reply to the complaint within 5 (five) working days.

### Article 21. Guarantees

1. Provider will do its utmost to repair any faulty material or manufacturing faults in the Products sold and in parts supplied by Provider under guarantee, free of charge and within a reasonable period of time. In order to qualify for the guarantee, the defects must be reported to Provider immediately after discovery. Any claim under a guarantee lapses three months after the Products were delivered. Any claim under a guarantee should be made to Provider in writing and must include a detailed description.

2. In the event that - in the reasonable opinion of Provider - repair is impossible, will take too long or involve disproportionate costs, Provider will be entitled to replace the Products by similar (but not necessarily identical) Products free of charge. Data conversion that is necessary as a result of repair or replacement will not be covered by the guarantee. Any parts that have been replaced will become the property of Provider.

4. The guarantee obligation ceases to apply if defects in the Products or parts thereof fully or partially result from improper, negligent or incompetent use. The guarantee obligation also ceases to apply if the defects are the result of external causes (for instance, fire and/or water damage) or if Client has made changes to the Products or parts thereof or arranged for third parties to make these changes.

5. The guarantee obligation is limited to the provisions of paragraph 1. Any other or further

reliance on non-conformity of the delivered Products is excluded.

6. Replacement of (parts of) Products will not constitute a ground to extend the guarantee period.

7. Any costs incurred by Provider that are not covered by its guarantee obligation will be charged in accordance with its usual rates.

#### **Article 22. Intellectual property rights**

1. All personal data will remain the property of Client, customers of Client or end users of the Services. The Provider will not make any ownership claims in respect thereof and will only use the personal Data to the extent necessary for the performance of the Agreement.

2. All intellectual property rights on all Services and/or Products developed or provided for the purpose of the Agreement and/or the Services and/or the Products such as materials, software, analyses, designs, documentation, recommendations, reports, quotations developed or made available in connection with the Service, as well as preparatory materials in relation to them, are vested exclusively in the Provider or its licensors.

3. The Client will solely acquire the rights of use and authorities and/or permissions arising under the Agreement and its effect or those rights and authorities and/or permissions assigned in writing, and in all other respects the Client will not reproduce or publish the software or other materials.

4. The Client is not permitted to remove or modify any markings related to copyrights, trademarks, trade names or other intellectual property rights from the Products and/or Services, including markings related to their confidential nature.

5. The Provider may put technical measures in place to protect the Products and/or Services. If the Provider has used technical measures to protect the materials, the Client is not permitted to remove or circumvent the relevant protection.

6. Any use, reproduction or publication of the materials outside the scope of the Agreement or the rights of use that have been granted shall be deemed to be copyright infringement. The Client will be liable for payment to the Provider of an immediately due and payable penalty that is not subject to judicial mitigation amounting to EUR 1,000 for infringement, without prejudice to the Provider's right to claim damages as a result of the infringement or to take other legal action.

#### **Article 23. Confidentiality**

1. The Parties will treat the information they provide to each other before, during or after the performance of this Agreement as confidential if such information has been marked as confidential or if the receiving party is aware or may reasonably assume that the information was intended to be confidential. The Parties will also impose this obligation on their employees as well as on any third parties engaged by them for the purpose of performing the Agreement.

2. The Provider will not access data stored by the Client and/or distributed by the Client via the Provider's systems, unless this is necessary for the proper performance of the Agreement or if the Provider is obliged to do so pursuant to a legal provision or an injunction. In that case, the

Provider will do everything in its power to limit access to the information as far as possible.

#### **Article 24. Amendments to the Terms**

1. The Provider reserves the right to amend or supplement these Terms.

2. Amendments also apply to Agreements already concluded with due observance of a term of 30 (thirty) days following publication of the amendment on the Provider's Website or by electronic communication. Minor changes can be implemented at any time.

3. If the Client does not wish to accept an amendment to these Terms, it may terminate the Agreement until the date on which the new terms and conditions enter into force effective from that date.

#### **Article 25. Final provisions**

1. The Agreement shall be governed by Dutch law.

2. To the extent not otherwise prescribed by rules of mandatory law, any dispute that may arise in connection with the Agreement will be referred to the competent court in the Netherlands in the district in which the Provider has its registered office.

3. If any provision of the Agreement (including the Service Level Agreement and/or these Terms and/or appendices) proves invalid or is declared null and void, this will not affect the validity of the Agreement as a whole. In that case, for the purpose of replacing any such provision the Parties will, in so far as legally possible, stipulate a new provision or new provisions reflecting the intent of the original Agreement and the General Terms and Conditions.

4. In these Terms, 'in writing' also includes email and fax communication, provided that the identity and integrity of the email or fax have been sufficiently established.

5. The version of any communication received or saved by the Provider, measurements performed (including, but not limited to, data traffic) and monitoring by the Provider shall be considered authentic, unless the Client provides proof to the contrary.

6. The Parties will at all times inform each other immediately in writing of any changes to a name, postal address, email address, telephone number and, if requested, bank account number.

7. The Client may only transfer its rights and obligations under the Agreement to a third party with the prior written consent of the Provider. The Provider may do this without the Client's consent.

### **APPENDIX 1: PROCESSING OF PERSONAL DATA**

In the event that the Provider processes Personal data for the Client during the performance of the Agreement, the conditions below will apply in addition to the Terms and Conditions.

#### **Article 1. General**

1. The definitions in this Appendix are defined in the General Data Protection Regulation (hereinafter: GDPR) and have the meaning assigned to them in the GDPR.

2. When processing Personal data, Client will be considered the Data Controller, or, if Client

processes the Personal data on behalf of a third party, as Processor. Provider will be the Processor or sub-processor (depending on the capacity in which the Client processes the Personal data).

### Article 2. Purpose of processing

1. Provider undertakes to process the Personal data on the instruction of Client under the terms of the Agreement. Processing will only occur for the purpose of the performance of the Agreement, plus any intended purposes reasonably related thereto or any purposes determined by further Agreement.
2. Provider will not process the Personal data for any other purpose than the purpose determined between Provider and Client. Client shall inform Provider of the purposes of the processing, the categories of Data subjects and the categories of Personal data involved.
3. Provider does not have any control over the purpose and the means used for the processing of Personal data. Provider will not take any decisions regarding the use of the Personal data, the disclosure to third parties and the duration of the storage of Personal data.

### Article 3. Obligations of Provider

1. With regard to the processing as referred to in article 2, Provider will ensure the observance of the conditions that are attached to the processing of Personal data under the provisions of the GDPR.
2. Provider will process Personal data and other data that is brought to it by or on behalf of Client.
3. On Client's request and within a reasonable period of time, Provider will inform Client of the measures it has taken with regard to its obligations under this Appendix.
4. The obligations that arise for Provider based on this Appendix, also apply to those who process the Personal data under the authority of Provider.
5. Provider shall provide Client with the necessary cooperation should the processing require a data protection impact assessment, or prior consultation of the supervisory authority.

### Article 4. Transfer of Personal data

1. In principle, the Personal data will be processed by Provider within the European Union. The Personal data may be processed in countries outside of the European Union with due observance of the appropriate laws and regulations
2. On request, Provider will inform Client of the specific country or countries involved.

### Article 5. Distribution of responsibility

1. Parties will ensure compliance with the applicable privacy laws and regulations.
2. The authorized processing shall be performed by Provider within a (semi) automated environment.
3. Provider is solely responsible for the processing of Personal data under this Appendix, in accordance with the instructions of Client and under the explicit (final) responsibility of Client. Provider shall not be liable for any other processing of Personal data, including but not limited to collection of the Personal data by Client, processing for purposes other than those provided by Client to Provider, processing by third parties and/or for other intended purposes. The responsibility for these processing operations lies solely with Client.
4. Client guarantees Supplier that the contents, the use and the instruction to process Personal data, as

intended in this Appendix, shall not be wrongful and shall not infringe on any third party rights.

### Article 6. Involvement of third parties or subcontractors

1. Client hereby grants Provider permission to engage third parties (sub-processors) in the processing operations.
2. Upon Client's request, Provider will promptly provide information to Client about the sub-processors it has engaged. Client is entitled to object to the involvement of a sub-processor. A substantiated objection should be made in writing, within two weeks.
3. Provider shall unconditionally ensure that these third parties accept, in writing, the same obligations as those agreed on between Client and Provider. Provider guarantees full observance of these obligations by these third parties.

### Article 7. Security

1. Provider shall make every effort in taking suitable technical and organizational measures with respect to the processing of Personal data against loss or any form of unjustified processing (including unauthorized access, deterioration, change or disclosure of the Personal data).
2. Provider cannot guarantee that the security measures taken will be effective in all circumstances. Provider shall make every effort to ensure protection on a reasonable level taking into account the available technology, the risks involved in processing, the sensitivity of the Personal data and the costs attached to taking security measures.
3. Client will only provide Personal data for processing to Provider after making sure that the required security measures have been taken. Client is responsible for the observance of the measures agreed by Parties.

### Article 8. Duty to report

1. In the event of a security leak and/or a data breach (this means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal data transmitted, stored or otherwise processed), the Provider will do its utmost to promptly inform the Client after which the Client will assess whether or not to inform the supervisory authority and/or data subjects involved. Provider will make every effort to provide complete, correct and accurate information.
2. If required by law and/or regulations, Provider will assist in informing the relevant authorities and any data subjects involved. Client is responsible for informing the relevant authorities.
3. The duty to report always involves reporting that a breach occurred, as well as:
  - The nature of the breach;
  - The Personal data (possibly) affected;
  - The (alleged) cause of the breach;
  - The impact of the breach (known so far and/or to be expected);
  - The (proposed) solution in repairing the breach;
  - The measures that have already been taken;
  - Contact information for the follow-up of the report;



- The parties that have been informed (including the data subject itself, Client, supervisory authority).

**Article 9. Handling of requests made by data subjects**

In the event that a data subject directs a request relating to its Personal data to Provider, Provider will pass on the request to Client and inform the data subject that it has done so. Client will then handle the request independently. If it appears that the Client requires the assistance of Provider in the execution of a data subject's request, Provider will cooperate with the request and may charge Client for its activities.

**Article 10. Nondisclosure and confidentiality**

1. All Personal data that Provider receives from Client and/or that it collects itself for the purposes of this Appendix is subject to a duty of confidentiality towards third parties. Provider will not use this information for any other purpose than the purpose for which it was received unless it has been transformed in such a way that it cannot be traced back to any data subjects.
2. The duty of confidentiality does not apply:
  - To the extent that Client has given explicit permission to disclose the information to third parties; or
  - If the provision of the information to third parties is evidently necessary for the execution of the Agreement or this Appendix; and
  - If there is a statutory obligation to provide the information to a third party.

**Article 11. Audit**

1. Client is entitled to have audits performed by an independent IT expert who will be bound by confidentiality so as to ensure the observance of all articles in this Appendix.
2. This audit will only take place after Client has requested and assessed similar audit reports from Provider and provides reasonable, solid and substantiated arguments that justify an audit initiated by Client. Such an audit will be justified when the similar audit reports provided by Provider do not or not fully prove Provider's compliance with this Appendix. An audit initiated by Client must take place within two weeks after Client notifies Provider, with a maximum of one audit per year.
3. Provider will cooperate with the audit and will provide all information relevant to the audit, including supporting data such as system logs, and provide access to employees without delay and within a reasonable period of time, taking into account a reasonable maximum of two weeks, unless an urgent interest dictates otherwise.
4. The findings of the audit will be assessed by Parties jointly and, if the outcome of the assessment so dictates, be implemented by one of the Parties or both Parties jointly.
5. The reasonable costs of the audit will be borne by the Client, with the proviso that the costs of the auditor and any third parties engaged will always be borne by Client.

**Article 12. Duration and termination**

1. The Appendix has been entered into for the duration as determined in the Agreement between

Parties and, in the absence thereof, always for the duration of the collaboration.

2. This Appendix cannot be terminated prematurely.
3. Parties may only alter the Appendix by mutual consent.
4. After the termination of the Appendix, Provider will immediately destroy any Personal data it received from Client, unless Parties agree otherwise.