

# NLdigital Terms



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## Section 1. General provisions

### Article 1 Applicability NLdigital Terms

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

### Article 2 Offers

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

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

### Article 3 Price and payment

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



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

#### **Article 9 Transfer of risk**

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

#### **Article 10 Intellectual property**

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

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

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

#### **Article 11 Performance of services**

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

#### **Article 12 Obligation to provide information and render assistance**

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



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

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

#### Article 16 Supplier's liability

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

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

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

#### Article 17 Force Majeure

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

#### Article 18 Service Level Agreement

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



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

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

#### **Article 24 Security**

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

#### **Article 25 Personal data breaches**

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

#### **Article 26 Confidentiality**

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

#### **Article 27 Obligations following termination**

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

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

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



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

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

#### **Article 32 Commencement of the service; payment**

- 32.1 The SaaS provided by supplier – and, where relevant, support – commences within a reasonable period of time after the agreement has been entered into. Unless agreed on otherwise, the SaaS commences by supplier client granting access to the SaaS that is made available by supplier. Client ensures that it has the facilities required to use the SaaS immediately after the agreement has been entered into.
- 32.2 The fee payable by client for the SaaS is included in the agreement. If no payment scheme has been agreed on, all sums related to the SaaS delivered by supplier become due and payable, in advance, per calendar month.

#### **Article 33 Additional provisions**

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

## **Section 4. Software**

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

#### **Article 34 Right to use and restrictions on use**

- 34.1 Supplier makes the software agreed on available for use by client on the basis of a user licence and for the term of the agreement. The right to use the software is non-exclusive, non-transferable, non-pledgeable and non-sublicensable.
- 34.2 Supplier's obligation to make the software available and client's right to use the software exclusively extend to the so-called object code of the software. Client's right to use the software does not pertain to the software's source code. The source code of the software and the technical documentation drafted when the software was developed are not made available to client, not even if client is prepared to pay a financial compensation.
- 34.3 Client always strictly complies with the agreed restrictions on the use of the software, regardless of the nature or the content of these restrictions.
- 34.4 If parties have agreed that the software may only be used in combination with particular hardware and this hardware has a malfunction, client is entitled to use the software on other hardware with the same qualifications during the period of time that the original hardware remains defective.
- 34.5 Supplier may require that client should only start using the software after it has received one or more codes needed for the use from supplier, from supplier's supplier or from the producer of the software.

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

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

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

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

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

#### **Article 35 Delivery and installation**

- 35.1 At its discretion, supplier either delivers the software on the agreed type of data carrier or, if no arrangements have been made in this regard, on a type of data carrier determined by supplier, or makes the software online available to client. At supplier's discretion, any agreed user documentation is made available in hardcopy or digital form, in a language determined by supplier.
- 35.2 Supplier only installs the software at client's business premises if this has been agreed on. If no arrangements have been made in this respect, client itself is responsible for installing, designing, parameterising, tuning and, if necessary, for modifying the hardware and operating environment used.

#### **Article 36 Acceptance**

- 36.1 If parties have not agreed on an acceptance test, client accepts the software in the state that it is in when delivered ('as is, where is'), therefore, with all visible and invisible errors and defects, without prejudice to supplier's obligations under the guarantee scheme as set out in article 40. If this should be the case, the software is deemed to have been accepted by client upon delivery or, if installation by supplier has been agreed on in writing, upon completion of the installation.
- 36.2 If an acceptance test has been agreed on by parties, the provisions of articles 36.3 up to and including 36.10 apply.
- 36.3 Where these general terms refer to 'error' this is understood to mean a substantial failure of the software to meet the functional or technical specifications of the software explicitly made known by supplier in writing and, if all or part of the software is customised software, a substantial failure to meet the functional or technical specifications explicitly agreed on in writing. An error only exists if it can be demonstrated by client and if it is reproducible. Client is obliged to report errors without delay.



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

## Section 5. Development of software and websites

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

### Article 41 Specifications and development of software and/of websites

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

### Article 42 Agile development of software/websites

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

### Article 43 Delivery, installation and acceptance

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



## Article 49 Support services

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

## Article 50 Payment

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

## Section 7. Advisory and consultancy services

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

### Article 51 Performance of advisory and consultancy services

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

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

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

## Article 52 Reporting

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

## Article 53 Payment

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

## Section 8. Secondment services

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

### Article 54 Secondment services

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



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

#### Article 61 Price and payment

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

## Section 10. Hosting

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

#### Article 62 Hosting services

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

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

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

#### Article 63 Notice and Take Down

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





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

#### **Article 70 Prior inspection**

- 70.1 By way of prior inspection, supplier may draft a report, in client's presence and prior to making the hardware available or when it is made available, describing the state of the hardware, including any defects observed. Supplier may require that client should sign this report, prior to making the hardware available to client for use, to indicate client's agreement with the text of the report. The defects in the hardware listed in this report are at supplier's account. If any defects are observed, parties arrange whether, and if so, how and when, the defects listed in the report must be repaired.
- 70.2 If client does not properly cooperate in the prior inspection referred to in Article 70.1, supplier is entitled to carry out this prior inspection without client being present and to draft the report itself. This report is binding on client.
- 70.3 If no prior inspection is carried out, client is deemed to have received the hardware in a proper and undamaged state.

#### **Article 71 Use of the hardware**

- 71.1 Client exclusively uses the hardware in and for its own organisation or company, in compliance with the hardware's intended use under the agreement and at the premises specified in the agreement. Use of the hardware by or for the benefit of third parties is not permitted. The right to use the hardware is non-transferable. Client is not permitted to lease the hardware to a third party or otherwise enable a third party to use the hardware or to make use of it together with client.
- 71.2 Client itself is responsible for installing and assembling the hardware and making it ready for use.
- 71.3 Client is not permitted to use the hardware or any part of it as a security or collateral, in any way whatsoever, or to dispose of the hardware or any part of it in another way.
- 71.4 Client uses and maintains the hardware with due care. Client takes adequate measures to prevent any damage to the hardware. Should there be any damage, client promptly informs supplier about this. For the term of the lease, client is always liable to supplier for damage to the hardware and theft, loss or misappropriation of the hardware.
- 71.5 Client is neither permitted to modify the hardware, either entirely or partly, nor permitted to add anything to it. If any modifications or additions have nevertheless been made, client is obliged to undo or remove these modifications or additions no later than at the end of the lease agreement.
- 71.6 Parties agree that defects in the modifications or additions made to the hardware by or under client's instructions and all defects in the hardware caused by those modifications or defects are not considered defects within the sense of article 7:204 of the Netherlands Civil Code. Client can never file a claim against supplier with respect to such defects. Supplier is not obliged to carry out repairs or perform maintenance services with respect to such defects.
- 71.7 Client is not entitled to any compensation for modifications or additions made by client to the leased hardware if these modifications or additions are not undone or removed, for any reason whatsoever, when or after the lease agreement ends.
- 71.8 Client promptly informs supplier in writing when the hardware is provisionally attached, stating the identity of the attaching party and the reason for the attachment. Client promptly allows the bailiff levying the attachment to inspect the lease agreement.

#### **Article 72 Maintenance of the leased hardware**

- 72.1 Client is not allowed to maintain the leased hardware itself or have the hardware maintained by a third party.
- 72.2 Client promptly informs supplier in writing about any defects that it observes in the leased hardware. Supplier makes every effort, within a reasonable period of time and by means of corrective maintenance, to repair defects in the hardware that are at supplier's account. Supplier is also entitled, though not obliged, to perform preventive maintenance services on the hardware. If so requested, client provides supplier with the opportunity to perform corrective and/or preventive maintenance services. Parties determine together, by consultation and in advance, the dates on which and the times at which maintenance services must be performed. Client is not entitled to replacement hardware during periods of time maintenance services are performed.
- 72.3 Supplier's obligation to repair defects excludes:
- repairing defects that client accepted when entering into the lease agreement;
  - repairing defects that are caused by external circumstances;
  - repairing defects that can be attributed to client, its staff members and/or third parties contracted by client;
  - repairing defects that are caused by careless, incorrect or incompetent use or use that is contrary to the use described in the documentation;
  - repairing defects that are related to the use of parts or consumer articles that have not been recommended or authorised by supplier;
  - repairing defects that are caused by the hardware being used in a manner that is contrary to its designated use;
  - repairing defects that are caused by unauthorised modifications of or additions to the hardware.
- 72.4 If supplier repairs the defects referred to in the preceding paragraph or has such defects repaired, client is charged, at supplier's applicable rates, for the costs incurred by the repairs carried out.
- 72.5 Supplier is always entitled to decide against repairing the defects and to replace the hardware with other, similar, though not necessarily identical, hardware.
- 72.6 Supplier is never obliged to recover or reconstruct data that have been lost.

#### **Article 73 Final inspection and return of hardware**

- 73.1 At the end of the lease agreement, client returns the hardware to supplier in its original state. Any costs of transportation incurred by the return of the hardware are at client's expense.
- 73.2 Prior to or no later than on the last working day of the lease's term, client renders its assistance in a joint, final inspection of the hardware's condition. The findings of this final inspection are laid down in a report to be jointly drafted by parties. This report must be signed by both parties. If client does not render assistance in the final inspection, supplier is entitled to carry out this inspection without client being present and to draft the report itself. This report is binding on client.
- 73.3 Supplier is entitled to have the defects that are listed in the final inspection report and that are – within reason – at client's risk and expense, repaired at client's expense. Client is liable for any loss supplier suffers because the hardware is temporarily out of operation or because supplier cannot lease the hardware to a third party.
- 73.4 If, at the end of the term of the lease, client has not undone a modification or removed an addition that client implemented in

