



## General Terms and Conditions of Service

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## **Chapter 1.** General provisions

### **Art. 1** Definitions

- 1.1. Agreement: An agreement between TVE and the Customer or an accepted quotation, the present conditions, and all related documents, including if applicable the SLA SaaS and SLA Support.
- 1.2. Adaptive maintenance: Modifying the software in line with the latest developments of TVE.
- 1.3. Application(s): Software.
- 1.4. Availability: The period a service or Software Product is available to the Customer, further determined in the Service Level Agreements.
- 1.5. Business Modelling Method: TVE's method to develop networks of enterprises and the supporting information technology.
- 1.6. Certification: The issue of certificates to persons who have shown to have sufficient knowledge and experience concerning the e3value method.
- 1.7. Corrective maintenance: Software maintenance with the aim of resolving disruptions.
- 1.8. Education: Training provided by TVE to the Customer concerning the characteristics, effective use and management of the Software Products.
- 1.9. Functionality: The usage functions and possibilities of Software Products.
- 1.10. Customer: The party that has concluded an agreement with TVE concerning a Software Product or service.
- 1.11. Maintenance Window: Time period within which TVE or third parties engaged by TVE are able to perform Maintenance or Scheduled Maintenance on the Software Products, system software or the hardware. This time period is daily from midnight to 7 am.
- 1.12. Means of Access: the tools, such as a key, token or combination of an access code and user name, which can be used to gain access to the Software.
- 1.13. Online Community: The Internet location designated by TVE where the Customer can find information and report Incidents.
- 1.14. Preventive maintenance: Software maintenance with the aim of maintaining the intended operation and preventing disruptions.
- 1.15. Remote Assistance: Remote assistance. The Service Desk creates a connection with the Customer's computer for the purpose of resolving an Incident.
- 1.16. Repository database: The central storage place for data that belong to the virtual environment set up for the Customer and/or generated by use of the Software Products in the virtual environment.
- 1.17. Repository database storage: Storage of data in the Repository database.
- 1.18. SaaS: TVE making and keeping the Application(s) available for the Customer on a Server.
- 1.19. Server: a computer or related group of computers and related hardware ("cloud") managed by or on behalf of TVE that contain the web server equipment, Software Products, supporting software and/or database software, which can be accessed via the Internet.
- 1.20. SaaS SLA: The Service Level Agreement concerning the SaaS.
- 1.21. Support SLA: The Service Level Agreement concerning Support.
- 1.22. Software Product: TVE's software, also referred to as Tool of Software Tool, applications or software.
- 1.23. Support: Support provided by TVE to the Customer when it uses Software Products.
- 1.24. TVE: The Value Engineers B.V., established in Soest, the Netherlands, hereinafter also to be referred to as Supplier.
- 1.25. User: Natural person within the Customer's organization who uses a Software Product or service of TVE.

**Art. 2** Applicability of the TVE General Terms and Conditions of Delivery

- 2.1. These TVE General Terms and Conditions of Delivery apply to all offers and Agreements pursuant to which TVE or its representative delivers goods and/or provides services of any nature whatsoever and under whatever name to the Customer.
- 2.2. Departures from and additions to these general terms and conditions shall only be valid if they are agreed between the parties in writing.
- 2.3. The applicability of the customer's purchasing or other conditions is specifically excluded.
- 2.4. If any provision of these general terms and conditions is null and void or is voided, the other provisions of these general terms and conditions shall remain fully in effect.
- 2.5. The Supplier and the Customer shall in this case consult each other for the purpose of agreeing new provisions to replace the null and void or voided provisions.

**Art. 3** Offers

- 3.1. All offers and other communications of the supplier are subject to confirmation unless the Supplier has indicated otherwise in writing. The Customer guarantees that the information that it has provided or that has been provided on its behalf to the Supplier and on which the supplier has based its offer is accurate and complete.

**Art. 4** Assignments

- 4.1. Supplier is only bound by assignments issued in writing by the customer and accepted in writing by Supplier. The same applies to changes or additions to assignments and agreements.
- 4.2. Changes or additions confirmed in writing by Supplier to the Customer are deemed to have been accepted by the customer unless the customer has objected thereto within seven (7) days after the date of the confirmation.

**Art. 5** Price and payment

- 5.1. The prices to be paid are included in the quotation or in another document agreed between the parties. The prices are indicated exclusive of taxes and levies and exclusive of any travel, transport and insurance costs. Supplier is allowed to adjust the prices each year on 1 January without such resulting in a ground for termination or dissolution.
- 5.2. The Customer is required to pay Supplier's invoices within thirty (30) days after the invoice date in the manner stated on the invoice.
- 5.3. In the event of non-payment or late payment of invoices, the Customer will be in default by operation of law without such requiring notice of default. Interest of 1% a month will be due on the outstanding amount. Partial payments will first serve to pay outstanding interest and then to pay for outstanding invoice amounts. If the Customer does not pay or does not pay on time, Supplier will have the right to refer the claim to third parties for collection. All judicial and extrajudicial costs are for the account of the Customer. Supplier may choose to charge a collection rate of 15% for the extrajudicial collection costs or to charge the actual extrajudicial costs subject to a minimum of EUR 100.
- 5.4. If there is room for reasonable doubt on the basis of general or special facts and circumstances that the Customer will be able (to continue) to comply with its payment obligations towards Supplier, Supplier will have the right before Supplier complies any further with its obligations arising from the Agreement, to demand that the Customer provides additional security, for example in the shape of a guarantee, bank guarantee or a security deposit. The amount thereof will not exceed the amount that will be owed by the Customer within reason over a period of twelve (12) calendar months, unless otherwise agreed. In the

- case of SaaS, Supplier has the right to block access to the SaaS in whole or in part seven (7) days after a prior demand for payment or notice of default, if the Customer fails to comply with any obligation arising from this Agreement or from another agreement with Supplier.
- 5.5. All prices are exclusive of turnover tax (VAT) and other levies imposed by government. All prices stated by the Supplier are in euros (EUR) and the Customer must make all payments in euros.
  - 5.6. The Customer may not derive any rights or expectations from a cost estimate or budget issued by the Supplier unless the parties have otherwise agreed in writing. An available budget made known to the Supplier by the Customer shall only apply as a (fixed) price agreed between the parties for the performance to be delivered by the Supplier if this has been expressly agreed in writing.
  - 5.7. If, according to the contract concluded between the parties, the customer consists of several natural persons and/or legal entities, each of these natural persons and/or legal entities shall be jointly and severally liable towards the Supplier for performance of the contract.
  - 5.8. Information from the Supplier's records shall count as conclusive evidence with respect to the performance delivered by the Supplier and the amounts owed by the Customer for delivery of this performance, without prejudice to the Customer's right to produce evidence to the contrary.
  - 5.9. The parties shall record the date or dates on which the Supplier shall charge the Customer for the performance agreed in the Agreement. Amounts owed must be paid by the Customer in accordance with the agreed payment terms or the payment terms stated on the invoice. The Customer may not suspend any payment and may also not set off any amounts owed.

#### **Art. 6 Complaints**

- 6.1. The Customer is required to notify any complaints about the products or services that have been delivered or the amount of the invoice to Supplier in writing and with an accurate substantiation within seven (7) days failing which the Customer will be deemed to have accepted the products or services delivered or the amount of the invoice. A complaint does not give the Customer the right to suspend its payment obligations.
- 6.2. If a complaint is upheld, Supplier has the right, while maintaining the Agreement, to credit an amount to be determined in mutual consultation or to perform a new (partial) delivery, or to perform additional services in mutual consultation.

#### **Art. 7 Term, termination and cancellation of the Agreement**

- 7.1. Agreements with Supplier are concluded for a term of one (1) year, unless otherwise agreed in writing. Agreements with Supplier are tacitly renewed for the duration of one (1) year, unless otherwise agreed in writing. Each party has the right to terminate an agreement by means of a registered letter effective as of the end of the aforementioned term with due observance of a notice period of three (3) months before the end of the Agreement.
- 7.2. Each party has the right to dissolve the Agreement in connection with an attributable failure to comply with the Agreement if the other party attributably fails to comply with essential obligations arising from the Agreement. Dissolution is only possible following full and detailed written notice of default that provides a reasonable term for remedying the failure. Any payment obligation on the part of the Customer and all other obligations to cooperate on the part of the Customer or third parties to be engaged by the Customer always apply as essential obligations arising from this Agreement.
- 7.3. Performances in implementation of the Agreement already carried out at the moment of dissolution as referred to above cannot be undone, unless the Customer demonstrates that

Supplier is in default as regards an essential part of those performances. In that case, the value of the performances already carried out by Supplier for the Customer (subject to evidence to the contrary) or similar to the compensations already paid, will be determined. Amounts invoiced by Supplier before the dissolution in connection with what has already been performed or delivered properly by Supplier in implementation of the Agreement will remain due in full with due observance of the provisions of the previous sentence and will become immediately due and payable at the moment of dissolution or termination.

- 7.4. The Customer does not have the right to terminate the agreement early.
- 7.5. The Supplier shall make reasonable efforts to comply to the greatest extent possible with the terms and delivery periods and/or dates and delivery dates, whether or not these are firm deadlines and/or dates, which it has specified or that have been agreed between the parties. The interim dates and delivery dates specified by the Supplier or agreed between the parties shall always apply as target dates, shall not bind the Supplier and shall always be indicative.
- 7.6. If a term is likely to be exceeded, the Supplier and Customer shall consult with each other about the consequences of the term being exceeded in relation to further planning.
- 7.7. In all cases, therefore also if the parties have agreed firm deadlines and delivery periods or dates and delivery dates, the Supplier shall only be in default as a result of a period of time being exceeded after the Customer has declared the Supplier to be in default in writing and a reasonable term that the Customer granted to the Supplier to remedy the breach has passed. The notice of default must describe the breach as comprehensively and in as much detail as possible in order to give the Supplier the opportunity to respond adequately.
- 7.8. If it has been agreed that the work under the contract is to be performed in phases, the Supplier shall be entitled to postpone the start of a phase's work until the Customer has approved the results of the preceding phase in writing.
- 7.9. The Supplier shall not be bound by a date or delivery date or term or delivery period, whether or not final, if the parties have agreed an amendment to the content or scope of the contract (additional work, a change of specifications and so on) or a change in approach with respect to performance of the contract, or if the customer fails to fulfil its obligations arising from the contract or fails to do so on time or in full. The need for or occurrence of additional work during performance of the contract shall never constitute a reason for the Customer to give notice of termination or to rescind (in Dutch: 'ontbinden') the Agreement.
- 7.10. An Agreement which, due to its nature and content, does not end in completion and which has been entered into for an indefinite period of time may be terminated by either of the parties in writing following consultation between the parties. Reasons for the termination must be stated. If a notice period has not been agreed between the parties, a reasonable period must be observed when notice of termination is given. The Supplier is never obliged to pay any compensation due to termination.
- 7.11. Either of the parties may terminate the contract in writing, in whole or in part, without notice of default being required and with immediate effect, if the other party is granted a moratorium, whether or not provisional, a petition for bankruptcy is filed for the other party or the company of the other party is liquidated or dissolved other than for restructuring or a merger of companies. The Supplier may also terminate the contract, 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 the Customer's company. The Supplier is never obliged to repay any amount in money already received or pay any amount in compensation due to termination as referred to in this paragraph. If the Customer goes irrevocably bankrupt, its right to use the software, websites and the like made available to it shall end, as shall its

right to access and/or use the Supplier's services, without termination by the Supplier being required.

**Art. 8 Confidentiality and transfer of personnel**

- 8.1. The Customer and Supplier must ensure that all information received from the other party that the receiving party knows or should reasonably know is confidential is kept secret. This duty of confidentiality shall not apply to the Supplier if and insofar as the Supplier is required to provide the information concerned to a third party in accordance with a court decision or a statutory requirement, or if and insofar as doing so is necessary for the proper performance of the contract by the supplier. The party that receives the confidential information may only use it for the purpose for which it was provided. Information shall in any case be deemed to be confidential if it has been qualified as such by one of the parties.
- 8.2. The Customer acknowledges that software originating from the Supplier is always confidential in nature and that this software contains trade secrets of the Supplier and its suppliers or the producer of the software.
- 8.3. During the term of the contract and for one year following its termination, each of the parties shall not employ or otherwise directly or indirectly engage, for the purpose of performing work, employees of the other party who are or were involved in the performance of the contract unless the other party has given prior written permission. Conditions may be attached to this permission, including the condition that the Customer must pay reasonable compensation to the Supplier.

**Art. 9 Privacy and data processing**

- 9.1. If necessary for the performance of the Agreement, the Customer shall on request inform the Supplier in writing about the way in which the customer performs its legal obligations regarding the protection of personal data.
- 9.2. The Customer indemnifies the Supplier against claims of persons whose personal data is recorded or processed in the context of a register of personal data that is maintained by the Customer or for which the Customer is otherwise responsible by law, unless the Customer proves that the facts on which a claim is based are attributable to the Supplier.
- 9.3. The Customer is fully responsible for the data that it processes in the context of using a service of the Supplier. The Customer guarantees vis-à-vis the Supplier that the content, use and/or processing of the data are not unlawful and do not infringe any right of a third party. The Customer indemnifies the Supplier against any claim of a third party instituted for whatever reason in connection with this data or the performance of the contract.

**Art. 10 Security**

- 10.1. If the Supplier is obliged to provide for a form of information security under the Agreement, this security shall meet the specifications agreed in writing between the parties regarding security. The Supplier does not guarantee that the information security provided is effective under all circumstances. If the contract does not include an explicitly defined security method, the security provided shall meet a standard that is not unreasonable in terms of the state of the art, the sensitivity of the information and the costs associated with the security measures taken.
- 10.2. The access or identification codes and certificates provided by or because of the Supplier to the Customer are confidential and must be treated as such by the Customer, and may only be made known to authorised personnel in the Customer's own organisation. The Supplier is entitled to change the access or identification codes and certificates.

10.3. The Customer must adequately secure its systems and infrastructure and have active antivirus software protection at all times.

**Art. 11** Retention of title, reservation of rights and suspension

- 11.1. All items delivered to the Customer shall remain the property of the Supplier until all amounts owed by the Customer to the Supplier under the contract concluded between the parties have been paid to the supplier in full. A Customer that acts as a reseller may sell and supply all items that are subject to the Supplier's retention of title insofar as doing so is usual in the context of the Customer's ordinary course of business.
- 11.2. The property-law consequences of the retention of title with respect to an item destined for export shall be governed by the laws of the State of destination if those laws contain provisions that are more favourable to the Supplier.
- 11.3. As and when necessary, rights shall be granted or transferred to the Customer subject to the condition that the Customer has paid all amounts owed under the contract.
- 11.4. The Supplier may retain all information, documents, software and/or data files received or created in the context of the contract in spite of an existing obligation to hand over or transfer until the Customer has paid all amounts owed to the Supplier.

**Art. 12** Risk transfer

- 12.1. The risk of loss, theft, misappropriation or damage of items, information (including user names, codes and passwords), documents, software or data files that are created, supplied or used in the context of performing the contract shall pass to the Customer at the time at which the Customer or an auxiliary person of the Customer comes into actual possession of the items and information referred to.

**Art. 13** Intellectual property

- 13.1. If the Supplier is prepared to undertake to transfer an intellectual property right, such a commitment may only be undertaken expressly and in writing. If the parties agree in writing that an intellectual property right with respect to software, websites, data files, equipment or other materials specifically developed for the Customer shall transfer to the Customer, this shall be without prejudice to the Supplier's right or option to use and/or operate, either for itself or for third parties and without any restriction, the parts, general principles, ideas, designs, algorithms, documentation, works, programming languages, protocols, standards and the like on which the developments referred to are based for other purposes. The transfer of an intellectual property right shall likewise be without prejudice to the Supplier's right to complete developments, either for itself or for a third party, that are similar to or derived from developments that were or are being completed for the Customer.
- 13.2. All intellectual property rights to the software, websites, data files, equipment and training, testing and examination materials, as well as other materials like analyses, designs, documentation, reports and offers, including preparatory materials in this regard developed or made available to the Customer under the Agreement are held exclusively by the Supplier, its licensors or its suppliers. The Customer shall have the rights of use expressly granted under these general terms and conditions, the Agreement concluded in writing between the parties and the law. A right accorded to the Customer is non-exclusive and may not be transferred, pledged or sublicensed unless explicitly agreed otherwise in writing.
- 13.3. The Customer may not remove or change any indication concerning the confidential nature of or concerning the copyrights, brands, trade names or any other intellectual



- property right pertaining to the software, websites, data files, equipment or materials, or have any such indication removed or changed.
- 13.4. Even if not expressly provided for in the Agreement, the Supplier may always take technical measures to protect equipment, data files, websites, software made available, software to which the Customer is granted direct or indirect access, and the like in connection with an agreed limitation in terms of the content or duration of the right of use of these items. The Customer may not remove or bypass such technical measures or have such technical measures removed or bypassed.
- 13.5. The Supplier indemnifies the Customer against any claim of a third party based on the allegation that software, websites, data files, equipment or other materials developed by the Supplier itself infringe an intellectual property right of that third party, subject to the condition that the Customer immediately informs the Supplier in writing about the existence and content of the claim and leaves the settlement of the claim, including any arrangements made in this regard, entirely to the Supplier. The Customer shall provide the powers of attorney and information required to the Supplier and assist the Supplier to defend itself against such claims. This obligation to indemnify shall not apply if the alleged infringement concerns (i) materials made available to the Supplier by the Customer for use, modification, processing or maintenance or (ii) changes made or commissioned by the Customer in the software, website, data files, equipment or other materials without the Supplier's written permission. If it is irrevocably established in court that software, websites, data files, equipment or other materials developed by the Supplier itself is or are infringing any intellectual property right held by a third party, or if, in the opinion of the Supplier, there is a good chance that such an infringement is occurring, the Supplier shall if possible ensure that the Customer can continue to use, or use functional equivalents of, the software, websites, data files, equipment or materials supplied. Any other or further obligation to indemnify on the part of the Supplier due to infringement of a third party's intellectual property right is excluded.
- 13.6. The Customer guarantees that making equipment, software, material intended for websites, data files and/or other materials and/or designs available to the Supplier for the purpose of use, maintenance, processing, installation or integration does not infringe any rights of third parties. The Customer indemnifies the Supplier against any claim of a third party based on the allegation that such making available, use, maintenance, processing, installation or integration infringes a right of that third party.
- 13.7. The Supplier is never obliged to perform data conversion unless doing so has been expressly agreed in writing with the Customer.

**Art. 14** Obligations to cooperate

- 14.1. The parties acknowledge that the success of work in the field of information and communications technology depends on proper and timely cooperation between the parties. The Customer shall always extend, in a timely manner, the cooperation reasonably required by the Supplier.
- 14.2. The Customer bears the risk of selecting the items, goods and/or services to be provided by the Supplier. The Customer must always exercise the utmost care to guarantee that the requirements that the Supplier's performance must meet are accurate and complete. Measurements and particulars given in drawings, images, catalogues, websites, offers, advertising material, standardisation sheets and the like are not binding for the Supplier unless expressly stated otherwise by the Supplier.

- 14.3. If the Customer deploys employees and/or auxiliary persons in the performance of the contract, these employees and auxiliary persons must have the knowledge and experience required. If the Supplier's employees perform work at the Customer's location, the Customer must provide, on time and free of charge, the facilities required, such as a workspace with computer and network facilities. The Supplier shall not be liable for damage or costs due to transmission errors, malfunctions or the non-availability of these facilities unless the customer proves that this damage or these costs are the result of deliberate intent or recklessness on the part of the Supplier's management.
- 14.4. The workspace and facilities must meet all legal requirements. The Customer indemnifies the Supplier against claims of third parties, including the Supplier's employees, who suffer injury in the context of performing the contract as a result of acts or omissions of the Customer or unsafe situations in the Customer's organisation. The Customer shall make the company and security rules current in its organisation known to employees deployed by the Supplier prior to the start of the work.
- 14.5. If, in connection with the Supplier's services and products, the Customer makes software, equipment or other resources available to the Supplier, the Customer guarantees that all licences or approvals that the Supplier may require in relation to these resources shall be obtained.
- 14.6. The Customer is responsible for the management, including checking the settings, and use of the products supplied and/or services provided by the Supplier, and the way in which the results of the products and services are used. The Customer is also responsible for appropriately instructing users and for the use made by users.
- 14.7. The Customer shall itself install, organize, parameterize and tune the software and support software required on its own equipment and, if necessary, modify the equipment, other software and support software and operating environment used in this regard, and effect the interoperability that it desires.

**Art. 15** Obligations to provide information

- 15.1. To enable proper performance of the contract by the Supplier, the Customer shall always provide all information reasonably required by the Supplier to the Supplier in a timely manner.
- 15.2. The Customer guarantees that the information, designs and specifications that it has provided to the Supplier is or are accurate and complete. If the information, designs or specifications provided by the Customer contain inaccuracies apparent to the Supplier, the Supplier shall contact the Customer to make enquiries about the matter.
- 15.3. In connection with continuity, the Customer shall designate a contact person or contact persons who shall act in that capacity for the duration of the Supplier's work. The Customer's contact persons shall have the experience required, specific knowledge of the subject matter and a proper understanding of the objectives that the Customer wishes to achieve.
- 15.4. The Supplier is only obliged to periodically provide information concerning the performance of the work to the Customer through the contact person designated by the Customer.

**Art. 16** Project and steering groups

- 16.1. If both parties are participating in a project or steering group through one or more employees that they have deployed, the provision of information shall take place in the manner agreed for the project or steering group.
- 16.2. Decisions made in a project or steering group in which both parties are participating shall only be binding for the Supplier if the decisions are made in accordance with that which has been agreed between the parties in writing in this regard or, in the absence of written agreements

in this context, if the Supplier has accepted the decisions in writing. The Supplier is never obliged to accept or implement a decision if, in its opinion, the decision cannot be reconciled with the content and/or proper performance of the contract.

- 16.3. The Customer guarantees that the persons that it has designated to participate in a project or steering group are authorised to make decisions that are binding for the Customer.

**Art. 17** Liability of the Supplier

- 17.1. The total liability of Supplier in connection with an attributable failure to comply with the Agreement or in connection with any other legal basis, expressly including any failure to comply with a guarantee obligation agreed with the Customer, is limited to the compensation of the direct damage up to at most the price stipulated for that agreement (exclusive VAT). If the agreement is largely a continuing performance contract with a term of more than one (1) year, the price stipulated for that agreement is set at the total of the compensations (exclusive of VAT) that has been stipulated for one (1) year. Supplier's total liability for direct damage will never exceed EUR 100,000 in the case of material damage and EUR 450,000 in the case of personal injury or death. Related or consecutive events that cause damage apply as one and the same event when calculating the damage. There will be no accumulation of compensation for damage.
- 17.2. Supplier is not liable for indirect damage including loss of profit, lost savings, loss of goodwill, damage due to business interruption, or damage due to claims from the Customer's suppliers. Supplier's liability in connection with mutilation, destruction or loss of files, data, or documents or other data carriers of the Customer is similarly excluded.
- 17.3. The aforementioned exclusions and limitations of Supplier's liability do not apply if the damage is caused by intent or gross negligence on the part of Supplier's management.
- 17.4. Unless Supplier's compliance is permanently impossible, the liability of Supplier due to an attributable failure to comply with an agreement shall only arise if the Customer has given Supplier written notice of default forthwith, stating a reasonable term within which to remedy the failure and if even on the expiry of this term Supplier continues to fail attributable to comply with its obligations. The notice of default must contain a complete and detailed description of the alleged failure so that Supplier are able to respond adequately to the notice of default.
- 17.5. The rise of any right to compensation is always subject to the condition that the Customer notifies the damage to Supplier in writing as soon as possible after it arises and within at most 48 hours after observing the damage. Any claim for compensation against Supplier lapses as a result of the mere lapse of 24 months after the claim has arisen.
- 17.6. The Customer indemnifies the Supplier against any and all claims of third parties due to product liability as a result of a defect in a product or system that the Customer supplied to a third party and that consisted in part of equipment, software or other materials supplied by the Supplier, unless and insofar the Customer is able to prove that the loss was caused by the equipment, software or other materials referred to.
- 17.7. The provisions of this article and all other limitations and exclusions of liability referred to in these general terms and conditions shall also apply for the benefit of all-natural persons and legal entities that the supplier engages in the performance of the Agreement.

**Art. 18** Force majeure

- 18.1. Neither of the Parties is obliged to comply with any obligation, including any guarantee obligation agreed between the Parties, if a Party is prevented from doing so as a result of force majeure. Force majeure on the part of the Supplier means, among other things: (i) force

majeure on the part of the suppliers of the Supplier, (ii) the failure to properly fulfil obligations on the part of suppliers that were prescribed to the Supplier by the Customer, (iii) defects in items, equipment, software or materials of third parties the use of which was prescribed to the Supplier by the Customer, (iv) government measures, (v) power failures, (vi) Internet, data network or telecommunication facilities failures, (vii) war and (viii) general transport problems.

18.2. If a situation of force majeure lasts for more than sixty (60) days, each of the Parties has the right to terminate the Agreement in writing by means of a registered letter. The matters already performed on the basis of the Agreement will be settled on a pro rata basis, without the Parties owing each other anything otherwise.

**Art. 19** Changes and additional work

19.1. If, at the request or prior consent of the Customer, the Supplier has performed work or supplied goods or services that is or are outside the scope of the agreed work and/or provision of goods or services, the Customer shall pay for this work or provision of goods or services in accordance with the agreed rates or, if no rates have been agreed between the parties, in accordance with the Supplier's usual rates. The Supplier is not obliged to honor such a request and may require that a separate contract be concluded in writing for the purpose.

19.2. Insofar as a fixed price has been agreed for the provision of services, the Supplier shall on request inform the Customer in writing about the financial consequences of the additional work or additional provision of goods or services as referred to in this article.

**Art. 20** Transfer of rights and obligations

20.1. The Customer does not have the right to sell, transfer or pledge the rights and obligations arising from this Agreement to a third party without Supplier's written approval. Supplier will not withhold this approval on unreasonable grounds, but Supplier does have the right, however, to attach reasonable conditions to this approval.

20.2. The Supplier is entitled to sell, transfer or pledge its claims to payment of amounts owed to a third party.

**Art. 21** Applicable law and disputes

21.1. Dutch law applies to the Agreement. The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply.

21.2. Any disputes between the Parties will be submitted to the Dutch District Court of Midden-Nederland, Amersfoort location. The Parties may decide in mutual consultation to settle a dispute by means of arbitration or mediation.

**Art. 22** Other provisions

22.1. If Supplier is required to perform activities with respect to data concerning the Customer, its employees or Users, on the basis of a request or an order issued by a competent government agency or in connection with a statutory obligation, all related costs will be charged to the Customer unless the reason for this investigation is attributable to Supplier. Supplier will notify the Customer thereof in advance as much as possible.

22.2. The version of any communication received or stored by Supplier applies as authentic (including log files) subject to evidence to the contrary to be provided by the Customer.

- 22.3. The Parties always notify each other in writing with-in a reasonable term of any changes in the name, postal address, e-mail address, telephone number and, if so requested, the bank account or giro number.
- 22.4. In the event of several documents, the order will be as follows, whereby the documents mentioned first will have priority over the ones mentioned later: Agreement, Offer, SaaS SLA, Support SLA, the present terms and conditions.

## **Chapter 2.** Provision of services

The provisions of this 'Provision of services' chapter shall apply in addition to the general provisions of these general terms and conditions if the Supplier provides services of whatever nature, whether or not set out in more detail in one of the other chapters of these general terms and conditions, to the Customer.

### **Art. 23** Performance

- 23.1. The Supplier shall perform its services with care to the best of its ability, if applicable in accordance with the agreements and procedures agreed in writing with the customer. All services by the Supplier shall be performed on the basis of an obligation to use best endeavors unless and insofar as the Supplier has expressly promised a result in the written contract and the result concerned has also been defined with sufficient determinability in the Agreement.
- 23.2. The Supplier shall not be liable for loss or costs that are the result of the use or misuse of access or identification codes or certificates unless the misuse is the direct result of deliberate intent or recklessness on the part of the Supplier's management.
- 23.3. If the Agreement has been entered into with a view to performance by one specific person, the Supplier shall always be entitled to replace this person with one or more persons who have the same and/or similar qualifications.
- 23.4. The Supplier is not obliged to follow the Customer's instructions in the performance of its services, particularly not if these instructions change or add to the content and scope of the agreed services. If such instructions are followed, however, payment shall be made for the work concerned in accordance with the Supplier's usual rates.

### **Art. 24** Service Level Agreement

- 24.1. Any agreements concerning a service level (Service Level Agreements) shall only be expressly agreed in writing.
- 24.2. The Customer shall always inform the Supplier without delay about any circumstances that affect or that could affect the service level and its availability.
- 24.3. If agreements about a service level have been made, the availability of software, systems and related services shall always be measured such that unavailability due to preventive, corrective or adaptive maintenance or other forms of service announced by the Supplier in advance and circumstances beyond the supplier's control are not taken into account. The availability measured by the supplier shall count as conclusive evidence, subject to evidence to the contrary produced by the Customer.

### **Art. 25** Backups

- 25.1. If the services provided to the Customer under the Agreement include making backups of the Customer's data, the Supplier shall make a complete backup of the Customer's data in its possession in accordance with the periods agreed in writing or once a week if such periods have not been agreed. The Supplier shall retain the backup for the duration of the agreed

term or for the duration of the Supplier's usual term if agreements have not been made in this regard. The Supplier shall retain the backup with due care.

25.2. The Customer remains responsible for the fulfilment of all administrative and retention obligations that apply to it by law.

### **Chapter 3. Software as a Service (SaaS)**

The provisions of this 'Software as a Service' chapter shall apply in addition to the general provisions of these general terms and conditions and the provisions of the 'Provision of services' chapter if the Supplier performs services under the name or in the field of Software as a Service (SaaS).

#### **Art. 26 SaaS**

26.1. The SaaS consists of:

- (a) making the functionality of the agreed Software Products available to the Customer via the Internet;
- (b) services as provided for in the SaaS SLA;
- (c) services as provided for in the Support SLA.
- (d) Supplier is not obliged to create back-up copies of the data the Customer stores when using the SaaS, unless otherwise agreed in writing.

#### **Art. 27 Availability of the SaaS**

27.1. Supplier makes the agreed Software Products available on the basis of the service level as provided for in the SaaS SLA. Supplier can only provide this service level if the Customer complies strictly with the requirements set out in the SaaS SLA.

#### **Art. 28 Access to the SaaS**

- 28.1. Supplier provides the Customer with Means of Access. The Means of Access cannot be transferred, they are strictly personal and exclusively intended for use within the Customer's organization.
- 28.2. The Customer informs Supplier immediately if the Means of Access are used in an unauthorized manner or the Customer reasonably suspects that this is the case.
- 28.3. The Customer has the right to request Supplier to block the Means of Access. Supplier also has the right at all times to block the Means of Access at its own initiative if Supplier is aware or has a reasonable suspicion of unauthorized use of the Means of Access. In such cases, Supplier is not liable for damage sustained by the Customer and/or third parties resulting from the blocking of the Means of Access.

#### **Art. 29 Use of the SaaS**

- 29.1. When using the SaaS, the Customer guarantees in any event that it and the User(s), to the extent relevant, comply with the following rules:
- 29.2. the Customer will arrange for the protection of its (peripheral) equipment, software, infrastructure and Internet connection against viruses, computer crime and (other) unauthorized use by User(s) or third parties;
- 29.3. when using the SaaS, the Customer and/or User will not spread (computer) viruses or other files that could damage the (proper operation of the) SaaS;
- 29.4. the Customer and/or User will not perform acts or cause acts to be performed that could cause disruptions to the SaaS, (computer) networks or infrastructures (of other users) or which cause nuisance, limited use or unforeseen use (for other users);

- 29.5. the User and/or the Customer will not abuse Means of Access or breach the security of the SaaS and/or attempt to breach it;
- 29.6. the Customer and/or the User will not perform or omit acts in respect of which he knows or should reasonably have foreseen that they could lead to use of the SaaS that is punishable or unlawful towards Supplier and/or third parties;
- 29.7. the User and/or the Customer will not access a computer system or part thereof against the will of the owner or manager deliberately and without approval (“hacking”);
- 29.8. the User and/or the Customer will not infringe the intellectual property rights of Supplier and/or third parties in any way; and
- 29.9. without the express, prior, written approval from Supplier, the User and/or the Customer will not publish, reproduce or otherwise use information and data provided by Supplier within the context of the SaaS, other than for use within the Customer’s internal business operations.
- 29.10. If the Customer and/or User(s) acts contrary to one or more of the aforementioned rules, the Customer will be required to comply with the reasonable instructions issued by Supplier in that connection and to have them complied with by the User(s).
- 29.11. If the data that are stored, processed, incorporated or that have been entered in another manner with the aid of the SaaS are unlawful towards third parties, Supplier has the right to remove these data from the Server and destroy them immediately and without prior notification. The Customer hereby grants its approval in advance to Supplier to remove and destroy all infringing data from the Server. Supplier will never be liable for any damage that arises from such conduct.
- 29.12. Supplier can prevent Access to the SaaS by taking the Means of Access out of service or by suspending the services if it has serious suspicions that it is being used contrary to the provisions of this Agreement. The payment obligation continues to exist while the Means of Access have been taken out of service or the services are suspended.
- 29.13. The Supplier shall only provide SaaS on the instructions of the Customer. The Customer may not allow third parties to make use of the services provided by the Supplier in the field of SaaS.
- 29.14. If the Supplier performs work relating to the data of the Customer, its employees or users pursuant to a request or a competently issued order of a government agency or in connection with a legal obligation, all costs associated with this work shall be charged to the Customer.
- 29.15. The Supplier may change the content or scope of the SaaS delivery model. If such changes result in a change in the Customer’s current procedures, the Supplier shall inform the Customer about the matter as soon as possible and the costs of this change shall be borne by the Customer. The Customer may in this case give notice of termination of the Agreement, which termination shall then take effect on the date on which the change takes effect, unless the change is related to changes in relevant legislation or other instructions issued by competent bodies, or the Supplier bears the costs of this change.
- 29.16. The Supplier may continue to provide SaaS using a new or modified version of the software. The Supplier is not obliged to maintain, modify or add certain features or functionalities of the service or software specifically for the Customer.
- 29.17. The Supplier may temporarily put all or part of the SaaS out of operation for preventive, corrective or adaptive maintenance or other forms of service. The Supplier shall not allow the period during which the service is out of operation to last longer than necessary and shall ensure if possible that this period occurs outside office hours.
- 29.18. The Supplier is never obliged to provide a physical carrier to the Customer that contains the software provided to and held by the Customer in the context of the SaaS.

**Art. 30** Consequences of termination of the SaaS

- 30.1. When the Agreement is terminated, Supplier will provide a backup with the data from the Repository Database to the Customer. Supplier can perform additional activities at the request of the Customer. This will take place against Supplier's rates that apply at that time.
- 30.2. Supplier is not subject to any (statutory) period of retention concerning the data entered by the Customer after the Agreement has been terminated, other than as referred to expressly in this article. If the Customer has not indicated immediately after the end of the Agreement that it wishes to receive the aforementioned data backup, Supplier has the right to remove the data that are stored, processed, incorporated or entered in a different manner with the aid of the SaaS from the Server and destroy them immediately and without prior notification.

**Art. 31** Guarantee

- 31.1. The Supplier does not guarantee that the software made available and held in the context of the SaaS is free of errors and functions without interruption. The Supplier shall make efforts to fix the errors in the software within a reasonable term if and insofar as the matter concerns software developed by the Supplier itself and the Customer has provided a detailed, written description of the defects concerned to the Supplier. Where there are grounds for doing so, the Supplier may postpone the fixing of defects until a new version of the software is put into operation. The Supplier does not guarantee that defects in software that it has not developed itself shall be fixed. The Supplier is entitled to install temporary solutions, program bypasses or problem-avoiding limitations in the software. If the software was developed on the instructions of the Customer, the Supplier may charge for the costs of fixing to the customer in accordance with the Supplier's usual rates.
- 31.2. Based on the information provided by the Supplier concerning measures to prevent and limit the effects of malfunctions, defects in the SaaS, corruption or loss of data or other incidents, the Customer shall identify and list the risks to its organization and take additional measures if necessary. The Supplier declares that it is prepared to provide assistance, at the Customer's request, to the extent reasonable and according to the financial and other conditions set by the Supplier, with respect to further measures to be taken by the Customer. The Supplier is never obliged to recover data that has been corrupted or lost.
- 31.3. The Supplier does not guarantee that the software made available and held in the context of the SaaS shall be adapted to changes in relevant legislation and regulations on time.

**Art. 32** Protection of personal data

- 32.1. Under legislation pertaining to the processing of personal data, such as the Personal Data Protection Act, the Customer has obligations towards third parties, such as the obligation to provide information and allow the person concerned to inspect his or her personal data, and correct and delete the personal data of the person concerned. The Customer is fully and solely responsible for the fulfilment of these obligations. The parties maintain that the Supplier is the 'processor' within the meaning of the Personal Data Protection Act with respect to the processing of personal data.
- 32.2. To the extent that doing so is technically possible, the Supplier shall provide support in the context of the obligations that the Customer must fulfil as referred to in Article 32.1. The costs associated with this support are not included in the agreed prices and payments and shall be borne by the Customer.

**Art. 33** Commencement of the service; payment



- 33.1. The SaaS provided by the Supplier shall commence within a reasonable term following the conclusion of the Agreement. The Customer shall promptly ensure that it has the facilities required to use the SaaS following the conclusion of the Agreement.
- 33.2. The Customer shall owe the payment specified in the Agreement for the SaaS. In the absence of an agreed payment schedule, all amounts that relate to the SaaS provided by the Supplier shall be payable each calendar month in advance.

#### **Chapter 4.** Advice and consultancy

The provisions of this 'Advice and consultancy' chapter shall apply in addition to the general provisions of these general terms and conditions and the provisions of the 'Provision of services' chapter if the Supplier provides services in the field of advice and consultancy.

##### **Art. 34** Performance of advisory and consultancy services

- 34.1. Supplier offers Certification and Consultancy in line with the Business Modelling Method.
- 34.2. Providing Certification is exclusively reserved for Supplier. The Customer is not allowed to provide or receive from third parties Certification concerning Supplier's Business Modelling Method.
- 34.3. The completion time of an assignment in the field of advice and consultancy depends on various factors and circumstances, such as the quality of the data and information provided by the Customer and the cooperation of the Customer and relevant third parties. Unless otherwise agreed in writing, therefore, the Supplier shall not commit to an assignment completion time in advance.
- 34.4. The Supplier's services shall only be performed on the Supplier's usual working days and during the Supplier's usual business hours.
- 34.5. The use that the Customer makes of advice and/or a consultancy report issued by the Supplier shall always be at the Customer's risk. The onus to prove that the advisory and consultancy services or the way in which they are performed are not in conformance with that which has been agreed in writing or may be expected from a competent supplier acting reasonably is entirely on the Customer, without prejudice to the Supplier's right to furnish evidence to the contrary through all means.
- 34.6. Without the Supplier's prior written permission, the Customer may not disclose the Supplier's way of working, methods and techniques and/or the content of the Supplier's advice or reports to third parties. The Customer may not provide the Supplier's advice or reports to a third party or otherwise make the Supplier's advice or reports public.

##### **Art. 35** Reporting

- 35.1. The Supplier shall periodically inform the Customer, in the manner agreed in writing, about the performance of the work. The Customer shall inform the Supplier in advance and in writing about circumstances of importance or circumstances that could be of importance to the Supplier, such as the manner of reporting, the issues to be addressed, the Customer's prioritisation, the availability of resources and personnel of the Customer, and special facts or circumstances or facts or circumstances of which the Supplier is possibly unaware.
- 35.2. The Customer shall ensure that the information provided by the Supplier is further disseminated and noted within the Customer's organisation and that it is assessed partly on the basis of this inspection, and shall inform the supplier about this inspection and assessment.

##### **Art. 36** Payment

- 36.1. In the absence of an expressly agreed payment schedule, all amounts that relate to the services provided by the Supplier as referred to in this chapter shall be payable each calendar month in arrears.

## **Chapter 5.** Education and training

The provisions of this 'Education and training' chapter shall apply in addition to the general provisions of these general terms and conditions and the provisions of the 'Provision of services' chapter if the Supplier provides services, under whatever name and in any manner whatsoever (for example in electronic form), in the field of education, training, workshops, seminars and the like (hereinafter referred to as 'training course' ).

### **Art. 37** Performance of training services

- 37.1. Supplier offers Training in line with the Business Modelling Method.
- 37.2. Providing Training is exclusively reserved for Supplier. The Customer is not allowed to provide or receive from third parties Training concerning Supplier's Business Modelling Method. Supplier has the right to have its own employees trained by its employees.

### **Art. 38** Registration and cancellation

- 38.1. A course must be registered for in writing. Registration is binding following its confirmation by the Supplier.
- 38.2. The Customer is responsible for the choice and suitability of the training course for the participants. A lack of prior knowledge on the part of a participant does not affect the Customer's obligations under the Agreement. The Customer may replace a training course participant with another participant with the Supplier's prior written permission.
- 38.3. If, in the opinion of the Supplier, the number of registrations is a reason for doing so, the Supplier shall be entitled to cancel the training course, to combine it with one or more training courses or provide it at a later date. The Supplier reserves the right to change the location of the training course. The Supplier is entitled to change the training course in organisational terms and in terms of content.
- 38.4. The consequences of cancellation of participation in a training course by the Customer or participants are governed by the Supplier's usual rules. A cancellation must always be effected in writing prior to the training course or the part of the training course concerned. Cancellation or non-attendance does not affect the Customer's obligations under the Agreement.

### **Art. 39** Provision of the training course

- 39.1. The Customer accepts that the supplier determines the content and depth of the training course.
- 39.2. The Customer shall inform the participants about the obligations under the Agreement and the rules of conduct and other rules prescribed by the Supplier for participation in the training course, and shall ensure compliance with these obligations and rules.
- 39.3. If the Supplier uses its own equipment or software to provide the training course, it does not guarantee that this equipment or software is free of errors and will function without interruption. If the Supplier provides the training course at the Customer's location, the Customer shall ensure the availability of properly operating equipment and software.
- 39.4. Administering an examination or test does not form part of the Agreement.

- 39.5. The Customer shall owe a separate payment for the documentation, training materials or training resources made available or produced for the training course. The preceding stipulation also applies to any certificates of training or copies of such certificates.
- 39.6. If the training course is provided on the basis of e-learning, the provisions of the 'Software as a Service (SaaS)' chapter shall apply *mutatis mutandis* to the greatest extent possible.

**Art. 40** Price and payment

- 40.1. The Supplier may require that the Customer pay the amounts owed prior to the start of the training course.
- 40.2. The Supplier may exclude participants from the training course if the Customer fails to ensure payment on time, without prejudice to the other rights of the Supplier.
- 40.3. Unless the Supplier has expressly indicated that the training course is exempt from VAT within the meaning of Section 11 of the Turnover Tax Act 1968, the Customer shall also owe VAT on the payment. The Supplier shall be entitled to adjust its prices following the conclusion of the Agreement in the event of a change in the VAT regime for training courses established under or pursuant to the law.