

**GENERAL TERMS AND CONDITIONS AS OF 01/05/2024**

Of:

**Yielder IT & Communication Solutions West B.V.**  
**(formerly: Venéco Automatisering, Telecommunicatie & Beveiliging B.V.)**  
**Venéco Security & Compliance B.V.**  
**Yielder Communication Solutions B.V. (formerly: PHC Telecom B.V.)**  
**Oaktree Group B.V.**  
**Venéco INTO Telecom & IT B.V.**

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**Chapter 1. General Provisions****1 Applicability of these General Terms and Conditions**

- 1.1 These General Terms and Conditions apply to all offers and agreements under which one or more of the following parties supplies goods and/or services of any kind to the Customer:
- Yielder IT & Communication Solutions West B.V. (formerly: Venéco Automatisering, Telecommunicatie & Beveiliging B.V.) (Registered in the Chamber of Commerce under number 27237606);
  - Venéco Security & Compliance B.V. (Registered in the Chamber of Commerce under number 55214479);
  - Yielder Communication Solutions South B.V. (formerly: PHC Telecom B.V.) (Registered in the Chamber of Commerce under number 17096277);
  - Oaktree Group B.V. (Registered in the Chamber of Commerce under number 30242679);
  - Venéco INTO Telecom & IT B.V. (Registered in the Chamber of Commerce under number 20108231);
- These parties are hereinafter individually referred to as: 'Vendor'.
- 1.2 These General Terms and Conditions consist of a general section and specific sections. Depending on the goods and/or services to be provided by Vendor, the provisions of the relevant specific shall also apply. In case of conflict between provisions of a specific section and provisions of the general section, the provisions of the specific section prevail.
- 1.3 Deviations from and/or additions to these General Terms and Conditions are only valid if agreed in writing between the parties.
- 1.4 If and insofar as Vendor provides third-party goods and/or services to the Customer or grants access thereto, the (licence or sales) terms and conditions of these third parties will apply to the relationship between Vendor and the Customer in respect of those goods or services, rendering the provisions of these General Terms and Conditions which deviate from them inoperative, provided that the applicability of the (licence or sales) terms and conditions of those third parties has been communicated by Vendor. Notwithstanding the aforementioned sentence, the Customer may not invoke the failure of Vendor to comply with the aforementioned obligation if the Customer is a party as referred to in Article 6:235(1) of 6:235(3) of the Dutch Civil Code.
- 1.5 If and insofar as the aforementioned third-party terms and conditions turn out not to apply to the relationship between the Customer and Vendor, or are declared inapplicable for any reason, these General Terms and Conditions will apply in full.

**2 Offers**

- 2.1 All offers and other communications made by Vendor are non-binding and are valid for a period of fourteen (14) days from the date of their release, unless otherwise stated by Vendor in writing.
- 2.2 Vendor is not bound to a quotation if the Customer should reasonably understand that the quotation, or any part of it, contains an obvious mistake or a clerical error.
- 2.3 A composite quotation does not oblige Vendor to supply part of the goods and/or services offered at a corresponding part of the price.
- 2.4 Vendor may reject a request at all times.
- 2.5 Vendor may at all times break off the negotiations with the Customer without giving reasons and without being liable for any compensation or being obliged to continue negotiating.

- 2.6 Commitments or agreements with employees or representatives of the Vendor are only binding on the Vendor after written confirmation by the Vendors management.

### **3 Conclusion of the Agreement**

- 3.1 An agreement is concluded between the parties at the moment when an offer made by Vendor is accepted by or on behalf of the Customer, or when Vendor starts performing the agreement.
- 3.2 The Customer is obliged to provide the following information specified in the Agreement and/or required for the delivery of the Service as well as the following documents to Vendor:
- a. natural persons: proof of identity within the meaning of the Dutch Compulsory Identification Act, and proof of a permanent address or place of residence in the Netherlands;
  - b. businesses and/or legal entities: an extract of their registration in the Dutch Chamber of Commerce no older than two months and proof of identity (within the meaning of the Dutch Compulsory Identification Act) of the authorised representative of the business or legal entity.
- 3.3 The Customer is responsible, without prejudice to its obligations under the Agreement, for (timely) cancelling or changing his existing agreement(s) with other providers of (telecommunications) services ("Existing Providers"), insofar as these provide comparable services (such as internet services) or insofar as the services of the Existing Providers depend on the Services (such as PIN or emergency services). Vendor is not responsible for paying termination fees, if any, due by the Customer to the Existing Providers, or for paying amendment fees to ensure the continued enjoyment of the services provided by that Existing Provider.
- 3.4 If Vendor requests specific cooperation and the Customer has not provided its cooperation within one month, Vendor may start charging the Service and the term of the Agreement will be deemed to have started at the time Vendor starts charging it.

### **4 Prices**

- 4.1 All prices are exclusive of VAT and other government levies. All prices stated by Vendor are in euros and must be paid in euros. Vendor reserves the right to charge travel time, travel and subsistence expenses, extra hours, and other special costs relating to the work separately.
- 4.2 Shipping costs will be invoiced to the Customer by the Vendor, unless otherwise agreed upon in writing.
- 4.3 The Customer cannot assert any rights or expectations from a pre-calculation or budget provided by Vendor, unless the parties have agreed otherwise in writing. A budget provided by the Customer will only be considered as a (fixed) price agreed between the parties if this has been expressly agreed in writing.
- 4.4 Vendor's quotation and the agreed price are based on price-determining factors that applied at the time of preparing the quotation or agreement. If before or during the performance of an agreement an increase in these factors occurs, Vendor reserves the right to pass any resulting price increase on to the Customer.
- 4.5 If a price specified in a quotation is based on data provided by the Customer and this data proves to be incorrect or incomplete, Vendor may adjust the prices to those reasonably corresponding to the proper data, also if the Agreement has already been concluded.
- 4.6 If according to the Agreement the Customer consists of several natural persons and/or entities, each of those persons or entities will be jointly and severally liable towards Vendor for compliance with the Agreement.
- 4.7 Each year, on the 1st of January, Vendor may adjust the prices agreed with the Customer if necessary due to changes in wage costs, transport costs, prices of parts, etc., on the basis of the price index figures (the service price index) as determined and published by Dutch Statistics CBS. The year 2015 will be taken as reference year for the service price index (2015=100). Vendor will endeavour to communicate any price changes to the Customer at least thirty (30) days before the date on which the change takes effect.
- 4.8 If the Customer purchases and pays for goods and/or services supplied by another supplier through Vendor (for example: Microsoft licenses), Vendor may immediately change the price for them, in order to pass on a change in price by that other supplier. This is separate from the provisions in Article 4.7.

### **5 Billing and payment**

- 5.1 All invoices are payable within 14 (fourteen) days after the invoice date, unless otherwise agreed in writing.
- 5.2 Vendor will invoice the Customer for the hours worked periodically, at least once a month, unless otherwise agreed in writing. Products will be invoiced after delivery, unless otherwise agreed in writing.
- 5.3 All time spent by the Vendor will be invoiced on a quarter-hour basis, unless otherwise agreed upon in writing.
- 5.4 If the Customer does not have a service agreement or Service Level Agreement with Vendor, hours worked or services provided by Vendor will be invoiced at the applicable hourly rate.
- 5.5 If it is agreed that payment will be made by direct debit, the Customer will provide Vendor with a direct debit mandate.
- 5.6 If Vendor does not receive the amounts due in time, for any reason (e.g. reversal or insufficient balance), the Customer will be in default the moment when the payment term has expired and will owe statutory commercial interest and extrajudicial collection costs as from that moment.
- 5.7 If it is agreed that payment is due in instalments, the following instalments will apply, unless otherwise specified in the Agreement:
- a. 1st instalment: 60% immediately upon confirmation of the Agreement by Vendor;
  - b. 2nd instalment: 30% before completion;
  - c. 3rd instalment: 10% + actual costs, after completion.

- 5.8 Vendor may provide invoices to the Customer electronically (by e-mail/online). If the Customer wants paper invoices, Vendor may charge extra costs.
- 5.9 The Customer is not permitted to suspend its payment obligations towards Vendor or to apply any deduction or set-off.
- 5.10 If an invoice is not paid in time, Vendor may suspend its obligations under the Agreement as well as any obligations arising from agreements concluded with the Customer other than those to which the unpaid invoice relates. Vendor is not liable for any damage resulting from such suspension.
- 5.11 In case of liquidation, bankruptcy or suspension of payment of the Customer, the Customer's obligations towards Vendor will be immediately due and payable and Vendor will be entitled to suspend or terminate its work.
- 5.12 All costs involved in collecting invoices left unpaid by the Customer, including all extrajudicial costs, are payable by the Customer. These costs will be calculated on the basis of the Extrajudicial Collection Costs Table (*Staffel Buitengerechtelijke incassokosten*), with a minimum of €250.
- 5.13 Any objections to amounts charged must be submitted to Vendor in writing within fourteen (14) days after the invoice date. After this period the Customer will be deemed to have accepted the amount and the content of the invoice.
- 5.14 If Vendor incurs higher costs in the execution of the agreement than agreed upon, the Customer is obligated to reimburse these costs as additional work if these costs exceed the initially agreed costs by a maximum of 20%, or if these costs result from a) an additional order from the Customer, or b) a change in the state of art; or c) data provided by the Customer to Vendor that does not correspond to reality.
- 5.15 The Customer must inspect the first invoice following any amendment to the Agreement. If the invoiced amounts are incorrect, this must be stated to Vendor in writing within fourteen (14) days of the invoice date. Vendor will in no event be liable to compensate more than one instalment invoice.

## **6 General duration and termination provisions of the Agreement**

- 6.1 Unless otherwise agreed in writing, the Agreement is entered into for an (initial) period of one year.
- 6.2 Unless one of the parties terminates the Agreement in writing at least one month before the end of the initial period, the Agreement will be tacitly renewed for an indefinite period of time and may subsequently be terminated by either party in writing at any time with effect from the end of a calendar month, subject to a notice period of one calendar month, unless agreed otherwise in writing. The Agreement will remain in force for as long as no notice of termination has been given for all services.
- 6.3 If the Agreement is (partially) terminated by the Customer prematurely, i.e. before the end of the initial term, the Customers will be charged a termination fee immediately after the premature cancellation/termination, without prejudice to the other rights of Vendor. This termination fee comprises, in addition to the outstanding invoices for the Service: (i) 100% of the fixed recurring monthly fee for the Service, multiplied by the number of months that the Agreement is cancelled or terminated prematurely, and - if applicable - (ii) the monthly variable fees for the Services, for the full initial term of the Agreement. The part of the termination fee relating to the monthly fee for the Services is determined by multiplying the average monthly volume generated by the Service by the number of months that the Agreement has been cancelled or terminated prematurely, and - if applicable - (iii) the fixed recurring monthly fee for the purchase of the mobile device, multiplied by the number of months that the Agreement was cancelled or terminated prematurely. If the Customer cancels the Agreement before the Service is supplied, it will also owe Vendor the initial fee for the installation and/or supply of the Service - without discounts.
- 6.4 Unless otherwise agreed in writing, cancellation by the Customer is only accepted after Vendor has received a correct and fully completed notice of cancellation from the Customer. From that moment, the notice period starts to run in accordance with Article 6.2 of these General Terms and Conditions.  
If the Vendor provides one or more (IT) services to the Customer that are purchased by the Vendor from a third-party supplier (such as Microsoft licenses, 3CX, Netcare, and Domain Registration), the Vendor must terminate the underlying agreements with third-party suppliers and/or the licenses purchased for the Customer. The terms of those third-party suppliers apply, which may result in one or more services continuing for a longer period. The Vendor will act promptly upon termination of the underlying agreements.
- 6.5 Vendor may at any event, with immediate effect and without prior notice of default and without any obligation to pay compensation, suspend its obligations under the Agreement (including by blocking or deactivating one or more connections or services (temporarily or permanently, in whole or in part)) and terminate the Agreement in whole or in part if:
- the Customer fails in any way to fulfill its obligations under the Agreement or the General Terms and Conditions, and after the expiration of the reasonable period mentioned in the notice of default, has not demonstrated an intention to still fulfill them;
  - there is: (a suspicion of) abuse or improper use of the connection, the service or related facilities, facilities and/or services (such as, but not limited to, provided (information) numbers), whether or not by the Customer;
  - after the Agreement is concluded, circumstances come to Vendor's knowledge which give it cause to suspect that the Customer will not fulfil its obligations;
  - the actual use of the goods and/or services does not conform to the Agreement, does not correspond to the normal use on which the applicable rates are based, or is materially different from the use that may reasonably be expected.
- 6.6 Each party may cancel the Agreement with immediate effect and without notice of default in case of (a) a request for debt restructuring; (b) suspension of payments; (c) bankruptcy; (d) liquidation, or (e) dissolution by or of the other party, unless the liquidator or administrator decides to continue the Agreement and immediately provides adequate security in accordance with Article 9 and the other party accepts the continuation of the Agreement.
- 6.7 The Customer must inform Vendor immediately in writing in case of a (possible) bankruptcy, suspension of payments or debt rescheduling.
- 6.8 If any of the situations mentioned in Article 6.5 or 6.6 occur Vendor may stipulate further deadlines or conditions before continuing its services. If a service is reactivated after a suspension, Vendor may charge a reactivation fee.

6.9 In connection with the provisions of Article 7.12 of these General Terms and Conditions, the Vendor is entitled to terminate the agreement (partially), subject to a notice period of at least one month. In that case, the Vendor will, if possible, offer an alternative service. If the Customer does not wish to accept the alternative service, or if no alternative service is available, the Agreement will be terminated as of the (announced) date on which the Vendor ceases the provision of services.

## **7 Performance of the Agreement, service level and use of the service**

- 7.1 Vendor will use its best endeavours to perform the Agreement to the best of its ability, by applying adequate care and skill. Furthermore, the Vendor endeavors to provide the service as smoothly as possible.
- 7.2 All lead times and delivery periods are approximate. Vendor will not be in default if a deadline is exceeded.
- 7.3 The Vendor does not guarantee the suitability or usability of the services for the purpose intended by the Customer, even if this purpose has been communicated to the Vendor in advance.
- 7.4 The (deadline for) delivery of the services may depend on a functional connection point. The Customer is responsible for a functional connection point at the location where the services are to be provided. If a connection point is not present or not functional at the respective location, the costs for installation and/or repair are fully borne by the Customer.
- 7.5 If the Customer fails to comply with the provisions of this article, Vendor may charge additional costs and the lead time and/or delivery period may possibly not be met.
- 7.6 Vendor may engage third parties in the performance of the Agreement and accept the General Terms and Conditions and limitations of liability of that third party on behalf of the Customer.
- 7.7 The Customer must provide an adequate level of security to prevent unauthorised third parties from gaining access to the network and/or the Customer's systems, and/or viruses, worms and/or other harmful software or systems from entering or being installed on the network, unless it is agreed in writing that Vendor will take charge of this.
- 7.8 The Customer is liable for all use or abuse of the service and the numbers, domain names, IP addresses, user names, passwords and e-mail addresses allocated to it. The Customer is itself responsible for the security of the data entered by the Customer in its systems and for providing security against improper use by third parties.
- 7.9 The Customer may not remove or otherwise render illegible any type numbers, serial numbers, logos and/or other identification marks affixed to equipment.
- 7.10 The Customer is itself responsible for installing (security) updates, unless a separate administration agreement is concluded. Vendor is not responsible if a product or its service does not function or malfunctions because updates have not been installed.
- 7.11 The Vendor is liable to compensate (as referred to in Article 7.1a of the Dutch *'Telecommunicatiewet'* if the provision of the service is fully interrupted for a continuous period of more than 12 hours due to a network outage.
- 7.12 The Vendor reserves the right to change, expand, suspend, or terminate network standards, network specifications, networks in general, technologies, and techniques if the Vendor deems it necessary for business, technical, and/or commercial reasons, solely at the discretion of the Vendor, or if the Vendor can no longer have access to specific goods and/or services provided by third parties.
- 7.13 Services and/or goods are subject to intellectual property rights owned exclusively by the Vendor, its affiliated companies, licensors, or other third parties. The Vendor grants the Customer a non-exclusive and non-transferable right to use these goods and services during the term of the Agreement in accordance with the intended use. The Customer agrees to the license terms accompanying any software and documentation. The Customer is not permitted to allow third parties to use this software and/or documentation. The Customer indemnifies the Vendor and holds the Vendor harmless from the consequences of infringements of intellectual property rights of the Vendor or third parties arising from the unauthorized use of services and goods in violation of the agreement.
- 7.14 Vendor will in no event be obliged to carry out data conversion, unless this is expressly agreed in writing with the Customer.
- 7.15 Vendor may use the visual brand, logo or name of the Customer in its external communications.

## **8 Security**

- 8.1 If Vendor is required under the Agreement to provide some form of information security, this security will comply with the security specifications agreed between the parties in writing. Vendor does not warrant that the information security is effective in all circumstances. The Customer declares to have formed an opinion about (the level of) the information security of the Services before entering into the Agreement, and to consider the technical and organisational security measures taken by the Vendor to be appropriate, given the risks associated with the processing of data and the use of (ICT) systems. If the Agreement does not expressly stipulate a specific form of security, the security will meet a level that is not unreasonable, given the state of the art, the implementation costs, the nature, scope and context of the information to be secured known to the Services, the purposes and normal use of its products and Services, and the likelihood and seriousness of foreseeable risks.
- 8.2 The access or identification codes, certificates, or other means of security provided to the Customer by or on behalf of the Vendor are confidential and must be treated as such by the Customer and may only be disclosed to authorised personnel in the Customer's own organisation. Vendor reserves the right to change the assigned access or identification codes and certificates. The Customer is responsible for managing authorisations and for providing and timely revoking access and identification codes. The Customer must ensure that default access and identification codes are replaced with another access or identification code upon first use. Default access and identification codes supplied with the software must be changed by the Customer upon first use. The Customer must ensure that access or identification codes are changed immediately if it is suspected that the relevant code has become known to a third party in an unauthorised manner. The Customer is required to have an adequate password management system in place. Vendor will in no event be liable for any damage or costs resulting from abuse of access or certification codes.

- 8.3 If systems, software, equipment, infrastructure or other works supplied by the Vendor to the Customer or made available by the Vendor to the Customer are mixed up with systems, software, equipment, infrastructure or other works not supplied by the Vendor to the Customer or made available by Vendor to the Customer, the parties will assume that in the event of any liability for damage and/or costs resulting from a breach of the (information) security, this damage and/or these costs are attributable to the use made by the Customer of the systems, software, equipment, infrastructure or other works not supplied to the Customer by the Vendor or made available to the Customer by the Vendor. In that case, the Vendor will not be liable and the Customer agrees to indemnify the Vendor for any damage and costs that may arise from the breach of the (information) security. The provisions of this Article 8.3 apply subject to the Customer's right to provide evidence to the contrary.
- 8.4 If the security or the testing thereof relates to software, equipment or infrastructure not supplied by the Vendor to the Customer themselves, the Customer warrants that all necessary licences or approvals have been obtained to perform the said services. Vendor is not liable for any damage arising in connection with the performance of this service. The Customer agrees to indemnify the Vendor against any claim, on any ground, in connection with the performance of this service.
- 8.5 Vendor may adjust the security measures from time to time if this is necessary due to changing circumstances.
- 8.6 The Customer must keep its systems and infrastructure adequately secured, including without limitation against the risks of computer intrusion, theft, loss or mutilation of data, malware, virus infections, phishing mails, injections with malicious software, ransomware. If and to the extent required by law or if the nature or seriousness of the security risks so require, the Customer must secure its systems and infrastructure by means of multi-factor authentication. The Customer must ensure that its data files and incoming and outgoing emails are checked for malware. The Customer must ensure that security updates (security patches) are implemented on its systems and infrastructure as soon as possible after they become available.
- 8.7 Vendor may give security instructions to the Customer, aimed at preventing or minimising incidents or the consequences of incidents that may affect security. If the Customer does not follow such instructions from the Vendor or from a competent authority, or does not do so in time, the Vendor will not be liable and the Customer agrees to indemnify the Vendor against any damage and costs that may arise as a result.
- 8.8 The Vendor will at all times be allowed to make or change technical and organisational provisions to protect equipment, data files, websites, provided software, programs or other works to which access is (directly or indirectly) provided to the Customer, also in view of an agreed restriction in the content or duration of the right to use these items. The Customer may not remove or circumvent these technical provision(s) or cause them to be removed or circumvented.

## **9 Security, retention of title, transfer of risk**

- 9.1 Vendor may at all times, for reasons of its own, demand that the Customer provides (additional) security by means of prepayment (up to a maximum of the total amount the Customer would reasonably owe Vendor over six months) or of payment of an advance.
- 9.2 All goods delivered to the Customer will remain the property of Vendor until all amounts due by the Customer to Vendor under the Agreement concluded between the parties have been fully paid to Vendor.
- 9.3 Vendor may retain the data, documents, software and/or data files received or created under the Agreement, notwithstanding an existing obligation to surrender or transfer them, until the Customer has paid all amounts due to Vendor.
- 9.4 The risk of loss, theft, embezzlement or damage to goods, data (including user names, codes and passwords), documents, software or data files produced for, delivered to, or used by the Customer in the context of the performance of the Agreement pass to the Customer the moment when they are placed in the actual control of the Customer or an auxiliary person of the Customer.

## **10 Information obligation and other obligations to cooperate**

- 10.1 The Customer shall provide the Vendor with all information necessary for the maintenance of the services. This includes, among other things, timely notification of changes in address details, billing information, and/or other relevant data.
- 10.2 The Customer will bear the risk of the selection, use and application of the items, goods and/or services to be provided by Vendor, and will also be responsible for control and security procedures and for an adequate system management. The Customer must at all times take the utmost care to ensure that the performance requirements are correct and complete. All dimensions and data included in drawings, images, catalogues, websites, quotations, advertising material, standardisation sheets, etc. are not binding on Vendor, unless explicitly stated otherwise by Vendor.
- 10.3 The Customer is responsible for the management, including control of the settings, the use of the products and/or the services provided by Vendor and the manner in which the results of the products and services are used. The Customer is also responsible for giving instructions to, and the use by, users.

## **11 Inspection, acceptance, repair/replacement of goods and/or services**

- 11.1 All goods and/or services must be inspected by the Customer and the Customer must notify Vendor if the Customer considers the goods and/or services to be defective and cannot accept them within seven working days of receipt. If Vendor has not received any complaint or comments within the aforementioned period, the Customer is deemed to have unconditionally accepted the goods and/or services.
- 11.2 Goods and/or services are considered accepted if:
- a. Vendor has delivered the goods and/or services or notified the Customer by e-mail that the goods and/or services are ready for use or completed;
  - b. The Customer has not stated in writing and in detail that he does not accept the goods and/or services within seven working days of receipt of the completion document (or, if no completion document is provided, the delivery of the goods and/or services); or
  - c. the Customer has made or used the goods and/or services operationally.

The Customer may not refuse acceptance of the goods and/or services if they show minor defects (including defects that do not significantly adversely affect the principal functionalities).

- 11.3 If the Customer has refused to accept the goods and/or services in time and in accordance with the aforementioned conditions, Vendor will, if it has culpably failed to fulfil its obligations:
- a. with regard to the Services, fix the defect (or have it fixed), insofar as the Service does not function in accordance with the documented specifications of that Service;
  - b. with regard to goods, at the Customer's discretion, either repair the defect or replace the defective goods with comparable goods, provided that:
    - the relevant goods were provided to the Customer by Vendor;
    - the goods do not function in accordance with the documented specifications of these goods;
    - the goods are returned complete, in their original packaging, with all accompanying documentation and proof of purchase; and
    - the defect to the goods did not occur after they were delivered or due to a cause attributable to the Customer.
- 11.4 If the Customer finds that goods are defective, Vendor will assess whether the producer of those goods will repair the defect or replace the defective goods with comparable goods under the warranties granted to by that producer to Vendor. If this is the case, Vendor will, at its own discretion and at no additional cost for the Customer, either repair the defect (or have it repaired) or replace the defective goods (or have them replaced) with comparable goods, provided that:
- a. the relevant goods were provided to the Customer by Vendor;
  - b. the goods do not function in accordance with the documented specifications of these goods;
  - c. the defect has been reported to Vendor as soon as possible after it was discovered, but in any event within 12 (twelve) months after delivery; and
  - d. the goods are returned complete, in their original packaging, with all documentation provided and proof of purchase;
  - e. if applicable, the serial number and/or IMEI number of the equipment matches the serial number and/or IMEI number on the packaging; and
  - f. the defect to the goods did not arise from a cause attributable to the Customer.
- 11.5 Vendor reserves the right to charge the investigation costs and is not obliged to repair the defect to the goods and/or services (or have it repaired), or to replace the defective goods and/or services (or have them replaced) if Vendor has procured these goods and/or services from a third party and it appears that this third party is not obliged to repair or replace the goods and/or services or, even though it is obliged to do so, fails to do so.
- 11.6 Apart from what is stipulated in this Article 11, no obligations rest on Vendor in connection with the functioning of goods and/or services or any defects thereto.
- 11.7 If goods and/or services are found to be defective, this will not entitle the Customer to suspend any obligation it has.

## 12 Liability

- 12.1 Vendor's total liability for an attributable failure to perform the Agreement, or on any (other) legal ground, expressly including any failure to fulfil a warranty obligation or an obligation to indemnify agreed with the Customer, is limited to compensation of the damage as set out in this article.
- 12.2 Direct damage is limited to a maximum of the amount of the price paid for that Agreement (excluding VAT). If the Agreement is primarily a continuing performance agreement with a term of more than one year, the price paid for that Agreement will be set at the total of the fees (excluding VAT) due for one year. Vendor's total liability for direct damage, on any legal ground, will in no event exceed an amount of €50,000 (fifty thousand euros).
- 12.3 Indirect damage, consequential damage, loss of profit, missed savings, reduced goodwill, damage due to business stagnation, damage as a result of claims of customers of the Customer, damage related to the use of third-party goods, materials or software prescribed by the Customer to Vendor, and damage due to the use of suppliers prescribed by the Customer to Vendor is excluded. Also excluded is Vendor's liability for mutilation, destruction or loss of data or documents.
- 12.4 Furthermore, Vendor is not liable for the following circumstances and any damage resulting therefrom:
- a. acts or omissions of third parties engaged by Vendor (including providers of telecommunications networks or services and information, content, or texting services).
  - b. the manner in which the Customer uses the services, connections or other facilities provided. The Customer agrees to indemnify Vendor and the supplier against all third-party claims relating to the content of telecommunications traffic (including voice, images, data, and regardless of the medium) and/or data sent by the Customer using the services;
  - c. non-functioning of (telecommunications) services due to natural phenomena, necessary maintenance, or force majeure;
  - d. the use, whether authorised or not, of access codes and SIM Cards;
  - e. suspension of obligations, blocking and removal of access to connections and services.
  - f. damage or costs resulting from use or abuse made of access or identification codes, certificates or other security devices;
  - g. failing to terminate or terminate in a timely manner existing agreements of the Customer with a third-party supplier.
- 12.5 Vendor's liability for damage due to death or bodily injury will in no case exceed the amount of €100,000 for each damage-causing event, whereby a series of related events will be considered as one event.
- 12.6 Any claims for compensation made by the Customer expire at any event 12 months after the Customer became or should reasonably have become aware of the damage arising from an event or circumstance for which Vendor is or may be liable.
- 12.7 All limitations and exclusions of liability will not apply if the damage is caused by the intent or deliberate recklessness of Vendor or its management.

**13 Force Majeure**

- 13.1 The Customer cannot hold Vendor liable for non-compliance with its obligations if an event for which Vendor cannot be blamed occurs ("Force Majeure"). If a Force Majeure event occurs, those obligations will be suspended until the moment Vendor is able to fulfil them in the agreed manner as yet, without any liability.
- 13.2 Force Majeure on the part of Vendor includes: force majeure occurring at Vendors' suppliers; failure to properly fulfil obligations by suppliers prescribed to Vendor by the Customer; (defective) third-party items, equipment, software or materials the use of which is prescribed to Vendor by the Customer; government measures; power outages, disruption of the internet, data network or telecommunication facilities; ransomware at the Customer and/or customers of the Customer; (cyber) crime; (cyber) vandalism; war or terrorism; revoking numbers by the authorities; safety and environmental requirements (e.g. polluted soil, subsidence of soil and/or buildings, asbestos); refused and/or restricted access to sites and/or buildings; conditions imposed by landowners (e.g. installation of ornamental paving or certain works); delays in obtaining necessary permits; cable break(s) caused by third parties; failures or shortcomings in services of third parties, and general transport problems.
- 13.3 If a Force Majeure event lasts more than ninety days, either party has the right to terminate the Agreement in writing. Anything that has already been performed under the Agreement will in that case be charged proportionally, without the parties owing each other anything else.

**14 Privacy and data processing**

- 14.1 Vendor may process personal data of the Customer in the context of the Agreement, for example relating to its personnel or customers. In that case, Vendor does so as processor. The Customer will be the controller for the processing of this personal data.
- 14.2 The Customer agrees to indemnify Vendor against any claims from persons whose personal data is or has been processed for which the Customer is responsible by law, unless the Customer proves that the facts underlying the claim are attributable to Vendor.
- 14.3 Vendor will use its best endeavours to keep personal data safe for the Customer and will therefore in any case ensure appropriate, technical and organisational measures. These measures are set out in the Agreement. If nothing is agreed on this in the Agreement, Vendor will apply its standard measures. If the Customer wants to know what measures Vendor has taken and how Vendor protects personal data, Vendor will inform the Customer about this upon request.
- 14.4 If Vendor performs services for the Customer as a processor within the meaning of the data protection legislation, Chapter 8 'Standard Clauses for Processing' will apply as well.
- 14.5 If the Vendor, based on a request or authorized order from a government agency or in connection with a legal obligation, performs tasks related to data of the Customer, its employees, users, or stakeholders, all associated costs may be charged to the Customer.

**15 Phone numbers**

- 15.1 Vendor may provide one or more telephone numbers to the Customer for the purposes of the Service. The Customer cannot assert any rights with regard to the use or the preservation thereof, subject to applicable statutory regulations. Vendor may change or revoke numbers as referred to in this article if necessary due to the continuation of the Service or Vendor's network infrastructure or because of amended laws or regulations or if a competent authority so orders.
- 15.2 If the Customer wishes to port a number to another provider, the Customer must submit the request to that provider. If the Customer has ported the number to another provider before the end of the initial term, this is considered a premature termination, to which the provisions on premature termination of Article 6.3 of the General Terms and Conditions apply.
- 15.3 The number will be cancelled one month after the Agreement is terminated, unless the Customer has requested number retention in time.

**16 Confidentiality**

- 16.1 The Customer and Vendor will ensure that all information received from the other party that is known or should reasonably be known to be of a confidential nature is kept confidential. This prohibition does not apply if and insofar as disclosure of the relevant data to a third party is necessary pursuant to a court order, a statutory regulation, on the basis of a statutory order issued by a public authority, or for the proper performance of the Agreement. The party receiving confidential data will use it only for the purpose for which it was provided. Nor does the prohibition apply if Vendor engages a (sub-)processor or another service provider (e.g. a hosting party or cloud provider) in connection with the performance of the Agreement, in which case Vendor will impose confidentiality on that (sub-)processor or service provider in respect of data received from the Customer. Data is in any case considered confidential if it is designated as such by either party.
- 16.2 The Customer acknowledges that the software provided by or through Vendor is always of a confidential nature and contains trade secrets of Vendor, its suppliers or the producer of the software.

**17 Takeover of personnel**

- 17.1 The Customer is not permitted, both during the term of the Agreement and for one (1) year thereafter, to employ employees of Vendor, or to enter into business relations with them, either directly or indirectly, or to have them perform activities for it, other than within the context of the Agreement, without the prior written consent of Vendor. In case of violation of this article, the Customer owes Vendor an immediately payable penalty of €10,000 for each violation, plus €500 for each day that the violation continues, all this without prejudice to the obligation to compensate the actual damage suffered to the extent that this exceeds the amount of the penalty.

**18 Assignment**

- 18.1 The Customer may not assign, transfer or otherwise provide to third parties its rights and obligations under the Agreement, including the use of services, other than as stated in the Agreement, without the prior written consent of Vendor.
- 18.2 Vendor may assign its obligations under the Agreement in whole or in part to its affiliates.

**19 Service Level Agreement**

- 19.1 Any agreements made concerning a service level (Service Level Agreement) will be expressly agreed in writing. The Customer must at all times promptly inform the Vendor of any circumstances that affect or may affect the service level and its availability.
- 19.2 If agreements are made on a service level, the availability of software, systems and related services will always be measured in such a manner that suspension for preventive, corrective or adaptive maintenance or other forms of service announced in advance by the Vendor, as well as circumstances beyond the control of the Vendor, are excluded. Barring evidence to the contrary to be provided by the Customer, the availability measured by the Vendor will constitute full proof.

**20 Backups**

- 20.1 If and insofar as the services provided under the Agreement do not include providing data backups, the Customer will provide these itself. These backups include not only data, but also software, configurations and virtual settings. The Customer must store all backups in a location in such a manner that any security incident at the original location will not cause damage to the backup. The Customer will ensure that the backups are adequately secured. The Customer will ensure that only authorised employees can access backups.
- 20.2 The Customer is itself responsible for compliance with all legal administration and retention obligations applicable to it.

**21 Assignment of rights and obligations**

- 21.1 The Customer may in no event sell, assign or pledge its rights and obligations under an Agreement to a third party.
- 21.2 Vendor may sell, assign or pledge its claims for payment of compensation to a third party.

**22 Applicable Law and Jurisdiction**

- 22.1 The legal relationship between Vendor and Customer is exclusively governed by Dutch law. The applicability of the U.N. Convention on Contracts for the International Sale of Goods 1980 is excluded.
- 22.2 Any disputes will be settled in the first instance by the competent judge of the District Court for Noord-Holland, unless Vendor elects to bring the case before the court of the Customer's place of business.

**23 Final Provisions**

- 23.1 Vendor reserves the right to amend these Terms and Conditions, which amendment will take effect at the announced time. Vendor will timely provide the Customer with a copy of the amended terms and conditions. If the date on which the amendments take effect has not been announced, any amendments will take effect towards the Customer as soon as it has been informed of this amendment.
- 23.2 If any provision of these General Terms and Conditions becomes invalid or void, the remaining provisions of these General Terms and Conditions will remain in full force and effect. In that case, Vendor and the Customer will enter into negotiations with the aim to agree new provisions to replace the invalid or void provision.
- 23.3 In case of inconsistencies or ambiguities between the English version and the Dutch version of these General Terms and Conditions, the Dutch version prevails.

**Chapter 2. Mobile**

***This section of the General Terms and Conditions applies additionally to services offered by Vendor to the Customer by providing SIM cards, where necessary in combination with equipment.***

**24 Commencement of the term of the Agreement for mobile services**

- 24.1 The (initial) term of the Agreement is calculated from the date on which the first SIM card is activated, unless otherwise agreed in the Agreement in writing. This does not apply to SIM cards of numbers transferred (ported) to Vendor. For this purpose, the term of the Agreement for each SIM card is calculated separately from the date of transfer of the number to Vendor, unless otherwise agreed in writing in the Agreement. A Service is billed as from the activation date of the SIM card.

**25 Delivery and equipment for mobile services**

- 25.1 Unless otherwise agreed in writing in the Agreement, the Service consists of the provision by Vendor of a SIM card, which, either in combination with the equipment or not, enables the transmission and reception of voice and/or data over the network.
- 25.2 The Customer must, if necessary, purchase suitable (replacement) hardware to use the services. The Customer may only use the SIM card in combination with CE-certified hardware.
- 25.3 If the Vendor sells and delivers equipment as part of the Agreement, ownership of that equipment is transferred to the Customer upon full payment of the purchase price. The terms determined by the manufacturer of the respective equipment apply regarding warranty, maintenance, and operation of the equipment.

**26 Service level and use of the service**

- 26.1 The Customer must adhere to the requirements of reasonable use of the Services.

- 26.2 The Service is intended for individual use by the Customer. It is not permitted to resell the Service or otherwise use the Service for commercial purposes, such as enabling third parties (against payment) to use the connection or making the connection available to multiple users unless otherwise agreed in the Agreement.
- 26.3 The telecommunication traffic generated by the Customer must originate on Vendor's network, unless in case of roaming or if otherwise agreed. The Customer is therefore not allowed to use the Service if the offered telecommunication traffic originates from outside Vendor's network, e.g. the Customer's corporate network. The Customer is not allowed, without the prior consent of Vendor, to convert (or cause to convert) the mobile phone traffic enabled by the Services as land-line traffic before it is routed by Vendor to its final destination. For example, the Customer is not allowed to use SIM or mobile phone boxes or similar equipment.
- 26.4 For roaming and international calls, the usage options, quality features, and regulations of the respective country and/or network providers apply.
- 26.5 The Customer is not allowed to set up a dedicated voice connection with data-only SIM cards.
- 26.6 The Customer is obliged to use a 06 number only on devices that enable a speech connection.
- 26.7 For certain services, Vendor may provide access codes (such as the administration portal). The Customer is responsible for maintaining these access codes and securing them against use by third parties and must immediately inform Vendor of any unauthorised use. In case of (suspected) unauthorised use, Vendor may block the access codes immediately.
- 26.8 The Services work with the help of radio signals. These signals may be interfered with by external circumstances beyond Vendor's control. Also in view of this, Vendor cannot guarantee the quality of the connection. Reception may temporarily be interrupted or reduced due to maintenance or failures. Vendor is not liable for any resulting damage caused by this.
- 26.9 Vendor may change the countries and/or networks from which mobile calls can be made and received abroad.
- 26.10 The Customer is not allowed to use the Services for machine-to-machine (M2M) applications unless agreed in writing in the Agreement.
- 26.11 If the mobile device can still make calls, the end user of the service can always call the emergency number 112, which automatically forwards information about the user's location to the emergency services. However, it is possible that the operating software on the end user's device no longer supports the transmission of detailed real-time location information.
- 26.12 The Customer may not use the Services in such a manner that (a) practices are used, including SIM boxes or automatic call systems, whereby the Customer or a third party obtains a financial advantage, and/or (b) damage is caused to Vendor and/or third parties, and/or (c) the integrity of the Network is jeopardised and/or (d) the Network is disproportionately overloaded.
- 26.13 If Vendor has well-founded reasons to believe that the Customer does not comply with the provisions of this article and/or in case of abuse and/or unreasonable use, Vendor is entitled, depending on the seriousness of the shortcoming, to suspend or terminate all or part of the Agreement and/or Services and/or connections with immediate effect, without prejudice to the right of Vendor to claim the full costs of usage as referred to in Article 31.1 of these General Terms and Conditions. Vendor will not be liable for any damage Customer suffers as a result.

## **27 SIM Cards**

- 27.1 SIM cards provided by Vendor to the Customer are and remains the property of Vendor. At the end of the Agreement the Customer must return the SIM card to Vendor upon Vendor's first request. The Customer may itself have to purchase suitable (replacement) equipment to be able to use the Services.
- 27.2 Vendor has the right to replace the SIM cards. Vendor may charge the costs replacing a stolen or defective SIM card. These costs are stated in the rates relating to the purchased mobile price plan.
- 27.3 To each SIM card a PIN code (personal identification number) and PUK code (personal unblocking key) are attached. The Customer must take all possible precautions to protect the PIN and PUK codes against loss, theft and/or damage and is responsible for any unauthorised use.
- 27.4 If the SIM card is lost or stolen, the Customer must immediately block the relevant connection or have it blocked. The Customer will remain liable for the usage costs until the moment when the Connection is blocked.
- 27.5 The Customer may only use the SIM card in combination with CE-certified equipment. If investigation by Vendor reveals that the Customer's complaints regarding the operation of the Services cannot be attributed to the network, it may demand the Customer to submit the equipment to Vendor for inspection. If Vendor determines that the Customer's equipment interferes with the proper functioning of the network, Vendor is entitled to immediately deactivate the relevant SIM card of that equipment.

## **28 Phone numbers and number porting**

- 28.1 Number porting and number retention is not possible with data-only SIM cards. In that case, the mobile number will be cancelled upon termination of the Agreement.
- 28.2 Number retention is a service to be agreed separately, to which conditions apply. The Customer accepts that Vendor accepts no responsibility or liability if the requested number portability fails.

## **29 Content and Content Services**

- 29.1 Content, Content Services, and other services and/or products provided by Vendor under the Agreement are subject to intellectual property rights belonging exclusively to Vendor, its affiliates, licensors or other third parties. Vendor grants the Customer a non-exclusive and non-transferable right to use these products and/or Content (Services) during the term of the Agreement, in accordance with the intended use, as mentioned, inter alia, in Article 26 of the General Terms and Conditions. The Customer is not allowed to edit or copy Content, to send it to third parties, or to reproduce it or disclose it.
- 29.2 Access to, and the use and/or purchase of Content Services by the Customer does not result in the transfer of any intellectual property right to Content to the Customer.

- 29.3 The Customer agrees to indemnify and hold harmless Vendor for the consequences of infringements of intellectual property rights of Vendor or third parties caused by the use of Content contrary to these General Terms and Conditions and the Agreement.
- 29.4 The Customer must have properly functioning equipment and software applications required for the Content and/or Content Services. Vendor is not responsible or liable if the Content Services do not function or not properly due to defects in equipment and/or software used by Customer.
- 29.5 Vendor is not responsible or liable for the content and operation of content services purchased by the Customer from third parties.
- 29.6 The Customer must comply with the conditions that apply to Content Services.
- 29.7 Vendor reserves the right to modify, temporarily suspend or discontinue the Content Services (such as the administration portal) without prior notice. Vendor will endeavour to provide an equivalent service in its place.

### **30 Maintenance and failures**

- 30.1 Vendor may suspend all or part of the network for network maintenance or in case of an incident. Vendor will timely give advance notice of such suspension, unless the suspension is only for a brief period of time or of a limited nature.
- 30.2 Vendor will investigate any failures as soon as possible. Vendor will endeavour to resolve the failure as soon as possible. The statutory compensation applies to failures.
- 30.3 The technical characteristics of Services and/or the network are subject to change by Vendor. Vendor will not temporarily restrict or discontinue a service without a legitimate reason or without cause.

### **31 Costs of use**

- 31.1 Unless otherwise agreed in writing in the Agreement, the Customer owes the following amounts for the use of the delivery of the Services:
- a. A charge for each call and/or data received or sent and/or a usage and/or a destination-based charge (including roaming charges);
  - b. A fee for other service-specific use based on a usage fee;
  - c. A fixed monthly fee agreed with the Customer;
  - d. An initial fee for the installation and/or delivery of the Service;
  - e. Optional: a fixed monthly fee agreed with the Customer for the purchase of a mobile device, until the purchase price is fully paid.
- 31.2 The Customer agrees that the amounts specified in the Agreement are considered an alternative roaming charge as referred to in the EU Roaming Regulation.
- 31.3 If a bundle has been agreed, the bundle is personal and linked to the Service. Unused balance cannot be transferred to the next month. The Customer is not entitled to a refund of its bundle or to transfer or otherwise pass it on to a third party. The bundle remains the property of Vendor until the Customer has paid all fees due. The bundle will automatically end if the Agreement is terminated, without the Customer being entitled to any form of refund or compensation.
- 31.4 In cases other than after termination of the Agreement, Vendor reserves the right to charge the cost of disconnection and/or reconnection of (parts of) the Service(s) to the Customer.
- 31.5 Vendor is entitled to adjust the applicable rates under the agreement every year in January due to inflation. This adjustment will be based on the increase in the Consumer Price Index of Statistics Netherlands (CBS) for the month of June of the preceding year, unless it is less than the price index as determined in Article 4.7 of these general terms and conditions. In that case, the price index as determined in Article 4.7 will apply. Vendor aims to communicate price changes to the Customer at least thirty (30) days before the effective date of the change.

### **32 Reasonable use**

- 32.1 The subscriptions are specifically intended for individual use on smartphones and tablets.
- 32.2 The subscriptions are intended for individual use and not for commercial purposes, such as providing the connection to third parties for a fee or providing the connection to multiple users. Additionally, the subscriptions must be used in accordance with applicable laws; for example, a SIM card with a 06 number must be used in a device capable of making calls.
- 32.3 The plans are intended for consumers/users who live/reside in the Netherlands, or who have a stable link with the Netherlands, as appears from a frequent and substantial presence.
- 32.4 Vendor reserves the right to take measures to avoid overloading of its network.
- 32.5 'Improper use' or 'abuse' is understood to mean by Vendor, but not exhaustively:
- a. Use that stems from the fact that the Customer has no address or place of residence in the Netherlands and/or has no stable link with the Netherlands. This may for instance be apparent from the fact that during a period of at least 4 months, the presence and/or the use of (data) services abroad are greater than in the Netherlands, the SIM card is inactive for extended periods of time, and/or is only used to roam or for telephone calls in or from the EU or Turkey, Switzerland, and the US, Iceland, Norway, the United Kingdom, and Liechtenstein;
  - b. Use that results from (organised) resale of the Plans to people without an address or place of residence in the Netherlands and/or without a stable link with the Netherlands;

If Vendor determines that improper use is made or abuse has taken place, it reserves the right to charge the maximum regulated wholesale rate for roaming traffic and/or to charge consumption at the regular rates as listed in the tariff schedule, to recover the damage and/or to terminate the service (wholesale temporarily or permanently).

- 32.6 If the plan includes unlimited calls in the EU (or EU / United Kingdom / Iceland / Norway / Liechtenstein / Turkey / Switzerland / US) or the bundle 'Unlimited calls to the EU', reasonable use means that up to 300 different international fixed and mobile numbers may be called each month under each plan (excluding service numbers).
- 32.7 Vendor reserves the right, in case of unreasonable use of unlimited calls in the EU (or EU / United Kingdom / Iceland / Norway / Liechtenstein / Turkey / Switzerland / US) or with the bundle 'Unlimited Calls to the EU', to charge the use at the regular rates as listed in the tariff overview, or to deactivate the use in the EU (or EU / United Kingdom / Iceland / Norway / Liechtenstein / Turkey / Switzerland / US). Vendor additionally reserves the right to contact Customer if unreasonable use is made in this respect.
- 32.8 In case of (suspected) circumvention of the provisions in Article 32 in a manner for which the plans are not intended (improper use), Vendor has the right to temporarily suspend the connection or to temporarily reduce the speed or quality of the connection. Vendor will inform the Customer of this in advance. Vendor has the right to change the plan to the highest possible data plan with a national limit or to terminate the Agreement. Vendor is not liable for any resulting damage and the Customer will remain liable for any costs incurred.

### **Chapter 3. Fixed services (Voice and Connectivity)**

*This section of the General Terms and Conditions applies additionally to fixed services provided by the Vendor to the Customer through fixed infrastructure, such as telephony services over a computer network and related services, such as (X)DSL, mobile and VOIP, as well as to connectivity services (such as the internet and other fixed services) provided over a carrier. Examples of carriers include optic fibre, copper, or radio connections (including terrestrial transmissions, 4G, 5G, and satellite).*

#### **33 Commencement of the term of the Agreement for fixed services**

- 33.1 The term of the Agreement for fixed services commences on the 'Ready for Service date' (the date on which the fixed service ordered by the Customer is delivered and can be put into use by the Customer). Invoicing for a service also starts from this Ready for Service date. The Vendor will inform the Customer about the Ready for Service date. If no notification of the Ready for Service date has been provided to the Customer, the duration of the Agreement is deemed to have commenced when the service is put into use by the Customer.
- 33.2 If the Agreement concerns multiple connections at multiple locations of the Customer, the following applies: a connection is entered into and taken by the Customer for a term as referred to in Article 6.1 per location of the Customer (hereinafter: 'Location'). The term commences on the Ready for Service date of the connection delivered under the Agreement at the respective Location. Invoicing for a service also starts from this Ready for Service date. The start and end dates of a connection may vary per Location depending on the aforementioned Ready for Service date.

#### **34 Delivery and equipment**

- 34.1 It is possible that the Vendor installs certain equipment for the provision of the service(s), which may or may not be included in the price of the agreed service(s). Unless otherwise agreed, the Vendor provides the equipment.
- 34.2 The terms determined by the manufacturer of the respective equipment apply regarding warranty, maintenance, and operation of the equipment.
- 34.3 Ownership of the equipment will not be transferred to the Customer unless otherwise agreed upon in writing.
- 34.4 The Customer is not allowed to make changes to the equipment, move it, open it, or otherwise modify and/or influence it without the explicit prior written consent of the Vendor.
- 34.5 The customer shall inform third parties claiming rights to the equipment or intending to take measures such as seizure, about the ownership of the Vendor. In such cases, the Customer shall also immediately inform the Vendor.
- 34.6 Upon termination of the Agreement, the Customer is obliged to cooperate with the Vendor at its first request to surrender or (have it) take back the equipment. If the Customer fails to comply with its obligation under this article, the Customer shall compensate the Vendor for the replacement value of the relevant equipment and all costs incurred by the Vendor related to this breach by the Customer.

#### **35 Service level and use of the service**

- 35.1 The Customer adheres to the requirements of reasonable use of the services.
- 35.2 The service is solely intended for use within the Customer's organization. It is not permitted for the Customer to use a service for other purposes.
- 35.3 The Customer is not allowed to use data-only SIM cards for voice communication services as described in Article 1.1 of the Dutch 'Telecommunicatiewet'. These data-only SIM cards may only be used for electronic communication services for automated applications as described in Article 1c of the Number Plan for telephone and ISDN services (in Dutch: 'Nummerplan telefoon- en ISDN-diensten').
- 35.4 The Vendor does not provide guarantees regarding the precise amount of availability unless otherwise agreed upon in writing.
- 35.5 Unless proven otherwise, the availability and service level measured by the Vendor shall be deemed as full evidence.
- 35.6 The Vendor will endeavor to ensure that the Customer can use the networks directly or indirectly connected to the Customer's network. The use of third-party networks may be subject to legal and contractual terms. The Vendor will make efforts to inform the Customer about this in a timely manner.
- 35.7 The availability and quality of the service also depend on several external factors, including the Customer's internet connection if, for example, a VOIP service is used.

- 35.8 If the Vendor has reasonable indications that the Customer is not complying with the provisions in this article and/or in case of abuse and/or unreasonable use, the Vendor, depending on the severity of the breach, is entitled to suspend or terminate the Agreement and/or services and/or connections immediately, wholly or partially, without prejudice to the Vendor's right to demand the full usage costs in accordance with Article 38.1 of these General Terms and Conditions. The Vendor shall not be liable for any damages suffered by the Customer as a result thereof.
- 35.9 The Vendor is obliged to cooperate with requests from competent (government) authorities to provide personal data or to provide (real-time) access to the Customer's telephone and/or data traffic. The Vendor has no obligation to inform the Customer about this.

### **36 Numbers, access codes etc.**

- 36.1 For the purpose of a service, the Vendor may provide the Customer with one or more numbers and/or email addresses and/or domain names and/or IP addresses, and possibly associated usernames, passwords, and/or other access codes. The Customer cannot claim any rights regarding the use or retention of such numbers, email addresses, domain names, and/or IP addresses, and possibly associated usernames, passwords, and/or other access codes, except for legal regulations regarding number portability.
- 36.2 The Customer can choose a new telephone number for the Service, for instance bound to a geographical area, or transfer a telephone number from an agreement with a third party.
- 36.3 The Customer must as much as possible follow Vendor's instructions for number retention. Vendor is entitled to charge the Customer a one-off fee for number retention. Vendor is not liable for the termination of existing agreements with a third party relating to the telephone number concerned.
- 36.4 The Customer declares, where applicable, that it will only use the geographical telephone number in the geographical area for which the number is intended. The Customer agrees to indemnify Vendor against all possible consequences in case of non-compliance.
- 36.5 Upon termination of the Agreement, the telephone number of the Customer will expire, unless the Customer exercises the option of number retention and transfers the telephone number to a third party.

### **37 Maintenance**

- 37.1 Vendor may temporarily suspend the services, in whole or in part, for maintenance, modification or improvement purposes. Vendor will endeavour to confine the suspensions as much as possible to outside office hours and will use its best endeavours to timely inform the Customer of the scheduled suspension, unless the parties have expressly agreed otherwise in writing.
- 37.2 Vendor is only obliged to provide a fall-back centre or other fall-back facilities if expressly agreed in writing.
- 37.3 Vendor may modify the operation and technical specifications of the Service at any time to ensure the continuation of the Service. Vendor will timely inform the Customer of these modifications unless this is not reasonably possible. Vendor is not be liable for any damage resulting from the modifications.

### **38 Usage costs**

- 38.1 Unless otherwise agreed upon in writing, the Customer owes the Vendor, depending on the type of service:
- a fee per successful call as well as a usage- and/or destination-dependent rate;
  - a fee for other service-specific consumption based on a consumption rate;
  - a monthly fixed rate;
  - a one-time fee for the installation and/or delivery of the service.
- 38.2 If the Vendor needs to perform work for the Customer, for any reason, that is not documented in a written agreement, or if costs arise because the Customer has defaulted in any way, making execution of the Agreement impossible or difficult, or if the Vendor incurs additional costs due to local procedures or conditions for obtaining permission from building or landowners, then these activities and/or costs are considered as additional work and are charged to the Customer at the Vendor's prevailing rates.
- 38.3 If a service delivered under the Agreement includes the provision of one or more fixed connections, the Vendor will conduct a more extensive site survey and, if necessary, submit a permit application to local government agencies. One-time costs for additional work may result from the site survey. The Vendor will then inform the Customer of the costs of this additional work. If the Customer agrees to the additional work and wishes to proceed with the execution of the Agreement, the Vendor will invoice the one-time costs for additional work. If the Customer cannot agree to the costs of the additional work, then the Customer and/or Vendor are entitled to terminate the service related to the fixed connection free of charge without any obligation to pay damages. The Agreement remains unchanged for the other services provided under the Agreement.
- 38.4 The Vendor is entitled to (partially) terminate the Agreement regarding the fixed connections if it is found before the delivery of the service that it cannot be provided for business, technical, and/or commercial reasons, solely at the discretion of the Vendor.
- 38.5 To the extent that the agreed-upon fees are related to a certain period and are not payable for the entire period, the Vendor may charge a pro-rata amount per calendar day.
- 38.6 The Vendor may adjust the prices applicable to the Agreement every year in January and/or July due to inflation. This adjustment is based on the most recent price index 'CAO-lonen categorie M-N zakelijke dienstverlening' determined and published by Dutch Statistics CBS, unless it is less than the price index determined in Article 4.7 of these General Terms and Conditions. In that case, the price index determined in Article 4.7 applies. The Vendor will endeavour to communicate any price changes to the Customer at least thirty (30) days before the date on which the change takes effect.

**39 Delivery**

- 39.1 The delivery deadlines provided and communicated by the Vendor are indicative. The delivery deadlines depend on the technical facilities and/or circumstances at the Customer's premises and any changes or adjustments that need to be made for the provision of the agreed services. Delivery deadlines may also be influenced by factors such as the absence of a functional connection point as referred to in Article 7.4 of the General Terms and Conditions, the lack of necessary consent from competent authorities, from the building owner in case access to a building is required, or from the landowner in case of excavation works. The customer is responsible for obtaining the necessary consent from the building owner. Exceeding one or more delivery deadlines does not put the Vendor in default.
- 39.2 The services are provided at the address (and where applicable, on the relevant floor or level) as filled in on the Agreement. If the Customer wishes to move the service to a different address, this constitutes an early termination, and the early termination provisions of Article 6.3 of the general terms and conditions apply. The Customer must enter into a new agreement for the provision of the service at the new address. Under mutually agreed upon written conditions, the Customer and Vendor may deviate from this article.

**40 Use and costs**

- 40.1 The Customer must use the Service in a proper manner. Vendor may charge excessive usage of the Service to the Customer if so agreed.
- 40.2 Vendor may impose a cap on the number of minutes the Customer may call each month under the Service. If this limit is exceeded, Vendor may charge additional (usage) costs, based on the rates applicable to additional call minutes as stated in its offer.
- 40.3 Any additional minutes call time or additional costs relating to the Service will be specified and charged separately to the Customer on a monthly basis.
- 40.4 If no limit has been set by Vendor on the number of minutes call time the Customer may use per month under the service, a 'Fair Use Policy' applies. In that case, a fair amount of minutes call time will be determined based on the average use of all customers. If the Customer repeatedly exceeds that amount, Vendor will contact the Customer to reach a reasonable solution, e.g. by charging a higher rate.

**Chapter 4. Applications****4.1. Software-as-a-Service**

***This section of the General Terms and Conditions applies additionally if Vendor provides services under the name of or relating to Software-as-a-Service (also referred to as: SaaS). For the purposes of these General Terms and Conditions, SaaS means: the remote provision and maintenance by Vendor of functionality to the Customer and maintaining this functionality, via the Internet or another data network, without providing a physical carrier or a download containing the relevant underlying software to the Customer.***

**41 Implementation of the SaaS service**

- 41.1 Vendor provides the SaaS service further to the instructions of the Customer. The Customer may only use the SaaS service for the benefit of its own undertaking or organisation and only to the extent necessary for the use envisaged by Vendor. The Customer may not allow third parties to use the SaaS service provided by Vendor.
- 41.2 Vendor may change the content or scope of the SaaS service. If these changes are substantial and result in a change in the procedures in force at the Customer, Vendor will notify the Customer of this as soon as possible. The costs of the change will be charged to the Customer. In that case, the Customer may terminate the Agreement in writing with effect from the date on which the change takes effect, unless the change is necessitated due to changes in relevant legislation or other regulations issued by competent authorities or unless Vendor bears the costs of such change.
- 41.3 Vendor may continue performing the SaaS service using a new or modified version of the underlying software. Vendor is not obliged to maintain, modify or add certain features or functionalities of the service specifically provided to Customer.
- 41.4 Vendor may temporarily suspend the SaaS service, fully or partially, in connection with preventive, corrective or adaptive maintenance or other forms of service. Vendor will ensure that the suspension will not last longer than necessary and will, if possible, do so at times when the SaaS service is normally little used.
- 41.5 Vendor will in no event be obliged to provide a physical carrier or download of the underlying software to the Customer.
- 41.6 In the absence of further agreements in this regard, the Customer will set up, configure, parameter, or tune the SaaS service, convert and upload any data, and, if necessary, modify the equipment and user environment used.

**42 Warranty**

- 42.1 Vendor does not warrant that the SaaS service is free of errors and will operate without interruptions. Vendor will use its best endeavours to fix errors as referred to in Article 47.3 in the underlying software within a reasonable period of time, if and insofar as the software is underlying software developed by Vendor itself and the errors concerned have been reported in detail to Vendor by the Customer in writing. Where appropriate, Vendor may postpone fixing the errors until a new version of the underlying software is put into use. Vendor does not warrant that errors in the SaaS service not developed by Vendor itself will be fixed. Vendor may implement temporary solutions or programme workarounds or problem-avoiding restrictions in the SaaS service. If (part of) the SaaS service was developed on the instructions of the Customer, Vendor may charge the costs of fixing the errors to the Customer on the basis of its usual rates. Vendor will in no event be obliged to fix shortcomings other

than those referred to in this article. If Vendor is prepared to provide fixes in respect of such other shortcomings, Vendor may charge these separately.

- 42.2 The Customer will identify the risks to its organisation and will, if necessary, take additional measures further to the information provided by Vendor concerning measures to prevent and limit the consequences of failures, errors and other shortcomings in the SaaS services, mutilation or loss of data, or other incidents. Upon the Customer's request Vendor will reasonably cooperate with further measures to be taken by the Customer, subject to (financial) conditions to be stipulated by Vendor. Vendor will in no event be obliged to restore mutilated or lost data, other than to restore - where possible - the last available backup of the data concerned.
- 42.3 Vendor does not warrant that the SaaS Service will be timely adapted to reflect changes in applicable laws and regulations.

#### **43 Commencement of the service; fee**

- 43.1 The SaaS service to be provided by Vendor (and any related support) commences within a reasonable period of time after the Agreement is concluded. Unless otherwise agreed, the SaaS service commences by Vendor making the means to access the SaaS service available by Vendor. The Customer must ensure that it has the facilities required for the use of the SaaS service at its disposal immediately after entering into the Agreement.
- 43.2 The Customer owes a fee for the SaaS service as set out in the Agreement. In the absence of an agreed payment schedule, all amounts relating to the SaaS service provided by Vendor are payable each calendar month in advance.

#### **44 Supplementary provisions**

- 44.1 The following articles apply *mutatis mutandis* to the SaaS service: 45.3, 45.5, 45.8, 47.1 (excluding reference to Article 51), 47.11, 53.1, 53.3 en 54. In these articles, the term "Software" should be read as "SaaS service" and "delivery" as "commencement of service".

#### 4.2. Software

***This section of the General Terms and Conditions applies additionally if Vendor provides software apps, associated data (banks) and/or user documentation (collectively referred to in these General Terms and Conditions as 'Software') to the Customer for use other than on the basis of a SaaS service.***

#### **45 Right of use and limitation of use**

- 45.1 Vendor provides the agreed Software to the Customer for use during the term of the Agreement on the basis of a licence for use. The right to use the Software is non-exclusive, non-transferable, pledge able and non-sublicensable.
- 45.2 Vendor's obligation to provide and the Customer's right of use only extends to the object code of the Software. The Customer's right of use does not extend to the source code of the Software. The source code of the Software and the technical documentation created during the development of the Software will not be provided to the Customer, even if the Customer is willing to pay for this.
- 45.3 The Customer must strictly observe the agreed restrictions on the right to use the Software at all times, regardless of the nature or content.
- 45.4 If the parties have agreed that the Software may only be used in combination with certain hardware, the Customer may, in case of malfunction of the hardware, to use the Software on other equipment with the same qualifications for the duration of the malfunction.
- 45.5 Vendor may require that the Customer does not start using the Software until after the Customer has obtained one or more codes required for use from Vendor, its suppliers, or the producer of the Software.
- 45.6 The Customer may only use the Software within and for the benefit of its own undertaking or organisation and only to the extent necessary for the intended use. The Customer may not use the Software for the benefit of third parties, for example in the context of 'Software-as-a-Service' (SaaS) or 'outsourcing'.
- 45.7 The Customer may in no event sell, rent, dispose of or grant limited rights to the Software, the associated codes for use and the carriers on which the Software is or will be stored, or to provide the Software to a third party in any way, for any purpose, or under any title whatsoever. Nor may the Customer give a third party - remotely (online) or otherwise - access to the Software or place the Software with a third party for hosting purposes, not even if the third party concerned uses the Software exclusively for the Customer's benefit.
- 45.8 The Customer will immediately cooperate upon request with any investigation to be conducted by or on behalf of Vendor regarding compliance with the agreed restrictions on use. The Customer will grant access to its premises and systems upon Vendor's first request. Vendor will keep all confidential proprietary information it obtains from or at the Customer in the course of an investigation confidential, insofar as such information does not concern the use of the Software itself.
- 45.9 The parties accept that the Agreement concluded between the parties, insofar as it concerns the provision of Software for use, will never be regarded as a purchase agreement.
- 45.10 Vendor is not obliged to maintain the Software and/or provide support to users and/or administrators of the Software. If, in deviation from the foregoing, Vendor is asked to provide maintenance and/or support with regard to the Software, Vendor may require the Customer to conclude a separate written agreement for that purpose.

#### **46 Delivery and installation**

- 46.1 Vendor will, at its own discretion, deliver the software on the agreed data carrier format or, in the absence of an agreement to this effect, on a data carrier format to be determined by Vendor, or provide the Software to Customer online. Any agreed user

documentation will be provided either in hardcopy or digital form and in a language to be decided by Vendor at its own discretion.

46.2 Vendor will only install the Software at the Customer's if this has been specifically agreed. In the absence of an agreement to this effect, the Customer is itself responsible for installing, setting up, parameterising, and tuning the Software, and, if necessary, modifying the hardware and operating environment used.

#### **47 Acceptance**

47.1 If the parties have not agreed an acceptance test, the Customer will accept the Software in the condition it is in at the time of delivery ("as is, where is"), hence with all visible and invisible errors and defects, without prejudice to Vendor's obligations as referred to in Article 51. In the aforementioned event, the Software will be considered to have been accepted by the Customer upon delivery or, if installation by Vendor has been agreed in writing, upon completion of the installation.

47.2 If the parties have agreed an acceptance test, the provisions of Articles 47.3 to 47.10 apply.

47.3 Where in these General Terms and Conditions reference is made to "errors", this means the material non-compliance of the Software with the functional or technical specifications of the Software expressly specified in writing by Vendor and, where all or part of the Software is custom-made, with the functional or technical specifications expressly agreed in writing. An error exists if the Customer can prove this and it is furthermore reproducible. The Customer is obliged to promptly report any errors. Vendor has no obligations with respect to other shortcomings in or to the Software, other than errors within the meaning of these General Terms and Conditions.

47.4 If an acceptance test has been agreed, the test period will be fourteen days after delivery or, if installation by Vendor is agreed in writing, fourteen days after completion of the installation. During the test period the Customer is not entitled to use the software for productive or operational purposes. The Customer will carry out the agreed acceptance test using qualified personnel and with sufficient scope and depth.

47.5 If an acceptance test has been agreed, the Customer is obliged to test whether the Software supplied meets the functional or technical specifications expressly stated in writing by Vendor and, if and insofar as all or part of the Software is custom-made, the functional or technical specifications expressly agreed in writing.

47.6 If data is used in testing on the instructions of the Customer, the Customer will ensure that the use of this data for this purpose is permitted.

47.7 The Software will be deemed to be accepted between the parties:

- a. if the parties have agreed on an acceptance test: on the first day after the test period, or
- b. if Vendor receives a test report as referred to in Article 47.8 before the end of the test period: at the time when the errors mentioned in that test report have been fixed, without prejudice to the existence of errors which do not preclude acceptance under Article 47.9, or
- c. if the Customer makes any use of the Software b. if the parties have agreed that Vendor will use the software for productive or operational purposes: at the time when it is first used.

47.8 If, when the agreed acceptance test is carried out, it turns out that the Software contains errors, the Customer will report the test results to Vendor clearly, in detail and comprehensibly in writing no later than on the last day of the test period. Vendor will use its best endeavours to fix the said errors within a reasonable period of time, on the understanding that Vendor is entitled to apply temporary solutions, programme workarounds or problem-avoiding restrictions.

47.9 The Customer may not refuse acceptance of the Software for reasons that are not related to the specifications expressly agreed between the parties in writing and, furthermore, not due to the existence of minor errors, i.e. errors that do not reasonably prevent the operational or productive use of the Software, notwithstanding Vendor's obligation to fix these minor errors under the guarantee provisions of Article 51. Acceptance may furthermore not be refused because of aspects of the Software that can only be judged subjectively, such as aesthetic aspects of user interfaces.

47.10 If the Software is delivered and tested in phases and/or parts, non-acceptance of a particular phase and/or part does not affect the acceptance of an earlier phase and/or another part.

47.11 Acceptance of the Software in one of the ways referred to in this Article will discharge Vendor from its obligations concerning the provision and delivery of the Software and, if installation of the software by Vendor has also been agreed, from its obligations concerning installation.

47.12 Acceptance of the Software does not affect the Customer's rights under Article 47.9 on minor errors and Article 51 on warranty.

#### **48 Provision**

48.1 Vendor will provide the Software to Customer within a reasonable time after the Agreement is concluded.

48.2 The Customer must return all copies of the Software in his possession to Vendor immediately upon termination of the Agreement. If it is agreed that the Customer will destroy the relevant copies at the end of the Agreement, the Customer will notify Vendor of such destruction in writing without delay. Vendor is not obliged to provide assistance with a view of data conversion requested by the Customer at the end of the Agreement or thereafter.

#### **49 Right-of-use fee**

49.1 The fee payable by the Customer for its right of use is payable at the agreed times, or if no time is agreed:

- a. if the parties have not agreed that Vendor will install the Software:
  - upon delivery of the Software;
  - or in case of a right-of-use fee that is due periodically, upon delivery of the Software and thereafter each time at the beginning of a new right-of-use period;
- b. if the parties have agreed that Vendor will install the Software:
  - upon completion of the installation;

- or in case of a right-of-use fee that is due periodically, upon completion of the installation of the Software and thereafter each time at the beginning of a new right-of-use period.

## **50 Changes in the Software**

- 50.1 Subject to mandatory statutory exceptions, the Customer is not entitled to modify the Software in whole or in part without the prior written consent of Vendor. Vendor may refuse its consent or grant it subject to conditions. The Customer bears the full risk of all changes made by the Customer or by third parties on the instructions of the Customers - with or without the consent of Vendor.

## **51 Warranty**

- 51.1 Vendor will use its best endeavours to fix errors within the meaning of Article 36.3 to the best of its ability within a reasonable period of time, provided these are reported in detail to Vendor in writing within three months of delivery or, if an acceptance test has been agreed, within three months after acceptance. Vendor does not warrant that the Software is suitable for the actual and/or intended use. Vendor also does not warrant that the Software will operate without interruption and/or that all errors will always be fixed. Fixes will be made free of charge, unless the Software has been developed on the instructions of the Customer other than for a fixed price, in which case Vendor will charge the costs of the fix on the basis of its usual rates.
- 51.2 Vendor may charge the costs of fixes on the basis of its usual rates in case of user errors or improper use by the Customer or other causes not attributable to Vendor. The obligation to provide fixes ends if the Customer makes changes or causes changes to be made to the Software without Vendor's written consent
- 51.3 Errors are fixed at a location and in a manner to be decided by Vendor. Vendor may provide temporary solutions or software bypasses or problem-evading limitations in the Software.
- 51.4 Vendor will in no event be obliged to restore mutilated or lost data.
- 51.5 Vendor has no obligation of any kind or form whatsoever in respect of errors reported after the end of the warranty period referred to in Article 50.1.

## **52 Maintenance services**

- 52.1 If agreed Vendor will provide maintenance of the Software as specified in the Agreement.
- 52.2 The maintenance obligation includes fixing errors in the Software as referred to in Article 47.3 and - if agreed in writing - providing new versions of the Software in accordance with Article 52.3.
- 52.3 Maintenance only includes the provision of new versions of the Software if and to the extent this is agreed in writing. If the maintenance includes providing new versions of the Software, these will be provided at Vendor's discretion.
- 52.4 Vendor is no longer obliged to fix errors in previous versions and to provide support and/or maintenance with regard to previous version three months after an improved version has been made available.
- 52.5 Vendor may require the Customer to conclude an additional written agreement with Vendor for the provision of a version with new functionality and may charge an additional fee for this. Vendor may adopt functionality from a previous version of the Software unchanged, but does not warrant that each new version contains the same functionality as the previous version. Vendor is not obliged to maintain, change or add certain features or functionalities of the software specifically for the Customer.

### 4.3. Hosting

***This section of the General Terms and Conditions applies additionally if Vendor provides hosting and related services.***

## **53 Hosting services**

- 53.1 If the subject-matter of the Agreement is the provision of disk space in equipment, the Customer may not exceed the agreed disk space, unless the Agreement expressly regulates the consequences thereof. The Agreement includes the provision of disk space on a server reserved exclusively and specifically for the Customer only if this has been expressly agreed in writing. All use of disk space, data traffic and other load on systems and infrastructure is limited to the maximum volumes agreed between the parties. Data traffic not used by Customer in any given period cannot be transferred to a subsequent period. Vendor will charge an additional fee, based on its normal rates, if the agreed maximum volumes are exceeded.
- 53.2 The Customer is responsible for the management, including controlling the settings, the use of the hosting service and how the results of the service are used. In the absence of an explicit agreement to this effect, the Customer is itself responsible for installing, setting up, parameterising and tuning the (auxiliary) Software and, if necessary, modifying the hardware, other software and user environment used in the process and achieving the interoperability desired by the Customer. Vendor is not obliged to perform data conversion.
- 53.3 The Agreement only includes providing or making available security, backup, fallback and recovery services if this is expressly agreed in writing.
- 53.4 Vendor may temporarily suspend the hosting service, fully or partially, in connection with preventive, corrective or adaptive maintenance. Vendor will ensure that the suspension will not last longer than necessary and will, if possible, do so outside office hours and commence these, depending on the circumstances, after consultation with the Customer.
- 53.5 If Vendor performs services for the Customer under the Agreement relating to a domain name, e.g. the application, renewal, disposing of or transfer to a third party, the Customer must adhere to the rules and practices of the relevant authority or authorities. Vendor will provide a written copy of those rules to the Customer upon request. Vendor expressly accepts no responsibility for the accuracy or timeliness of the service or for achieving the results envisaged by the Customer. All costs relating to the application and/or registration are payable by the Customer, on the basis of the agreed rates, or in the absence

of agreed rates, on the basis of Vendor's usual rates. Vendor does not guarantee that the domain name the Customer wants will in fact be assigned to the Customer.

#### **54 Notice and takedown**

- 54.1 The Customer must at all times behave diligently and not unlawfully towards third parties, in particular by respecting the intellectual property and other rights of third parties; respecting the privacy of third parties; not disseminating data in violation of the law; not gaining unauthorised access to systems; not disseminating viruses or other harmful programmes or data, and refraining from criminal offences and violation of any other legal obligation.
- 54.2 In order to prevent liability towards third parties or to limit the consequences thereof, Vendor is entitled to take action in response to an act or omission of, or which is for the risk of, the Customer at all times. The Customer must promptly remove all data and/or information from Vendor's systems upon Vendor's first written request, failing which Vendor will be entitled, at its option, to remove the data and/or information itself or make access thereto impossible. Vendor is furthermore entitled to immediately and without prior notice deny the Customer access to its systems in the event of violation or imminent violation of the provision of Article 54.1. The foregoing is without prejudice to any other measures Vendor may take or the exercise of other legal and contractual rights by Vendor against the Customer. In that case, Vendor is also entitled to terminate the Agreement with immediate effect, without any liability towards the Customer on that ground.
- 54.3 Vendor cannot be required to form an opinion on the merits of third-party claims or the Customer's defence or to become involved in any way in a dispute between a third party and the Customer. The Customer must settle with the relevant third party directly and inform Vendor accordingly in writing, properly substantiated with documents.

### **Chapter 5. Security**

***This section of the General Terms and Conditions, together with Chapter 7.1 ('Advice and consultancy') applies additionally if Vendor provides information security services. Services provided by Vendor in respect of information security include performing vulnerability analyses, backup services and consultancy and audit services.***

#### **55 General**

- 55.1 Vendor only performs services in respect of information security that have been expressly agreed between the parties in writing. Vendor will in no event be obliged to provide information security services other than those expressly agreed, also if the Customer has outsourced the management of processing systems, hardware, software or networks to Vendor. The Customer bears the risk of the specific selection of information security services agreed with Vendor.
- 55.2 All services in respect of information security are performed by Vendor in all events on the basis of a best-efforts obligation.
- 55.3 The Customer fully accepts the risk that the security of the processing systems it uses, the data, data files and software processed or stored on them and the work processes supported by them may not be effective under all circumstances, even if Vendor provides or has provided the Customer with information security services of whatever nature or scope. The Customer accepts the risk that the provision of the information security services agreed with Vendor will never guarantee a security level appropriate to all security risks and will not guarantee the confidentiality, integrity, availability and resilience of data, processing systems and services.
- 55.4 Vendor does not guarantee that the performance of the agreed information security services ensures that unauthorised third parties, such as cyber criminals, cannot gain access to the Customer's processing systems and the data, data files and software processed or stored on them. Nor does Vendor guarantee that data, data files or software are not and cannot, accidentally or unlawfully, be destroyed or altered, provided or may be disclosed to third parties or that unauthorised third parties have or may gain access to them.
- 55.5 Vendor does not guarantee that the performance of the agreed information security services will not result in unauthorised third parties being able to obstruct access to or use of a processing system of Customer, e.g. in the form of a Ddos attack.
- 55.6 Unless expressly agreed otherwise in writing, by providing the agreed information security services Vendor does not warrant that the Customer will comply with the applicable laws and regulations in respect of information security and data protection or with (national or international) security standards.
- 55.7 Unless expressly agreed otherwise in writing, the Customer is itself responsible for selecting, procuring, implementing and using the technical and organisational security measures appropriate to the security risk in its organisation or the organisation of third parties used by the Customer, even if Vendor provides assistance in this respect.
- 55.8 Because of, *inter alia*, constantly evolving cyber threats, future forms of malware, future vulnerabilities in (new versions of) existing ICT systems, future developments in technology, vulnerabilities in software that are not yet known to the software producer, as well as the circumstance that software producers often do not solve known vulnerabilities immediately, the Customer accepts that he is itself responsible for regularly testing, assessing and evaluating (or having tested, assessed and evaluated) the technical and organisational security measures used by it, including their effectiveness, even if Vendor provides or has provided information security services to the Customer, irrespective of the nature and scope. Vendor will in no event be responsible for this, unless expressly agreed otherwise in writing.
- 55.9 The Customer is itself responsible for timely and properly installing and using security patches.

#### **56 Information security service risks**

- 56.1 Although Vendor will make every reasonable effort to minimise disruption to Customer's business processes when performing information security services, Vendor does not guarantee that this is safeguarded at all times.

- 56.2 The Customer acknowledges and accepts that there are risks involved in the performance of information security services by Vendor. Those risks include, but are not limited to:
- (i) the risk that processing systems crash or are (temporarily) unavailable;
  - (ii) the risk that data or data files are lost or altered;
  - (iii) the risk that the speed of operation ('performance') of a processing system is affected;
  - (iv) the risk that unforeseeably large amounts of disk space are used;
  - (v) the risk of activating e-mails, alarm functions or other functionalities.

## **57 Vulnerability analysis**

- 57.1 If the service agreed between the parties in respect of information security involves carrying out a vulnerability analysis, howsoever named, the following provisions of this Article 57 apply, without prejudice to the other provisions of these General Terms and Conditions.
- 57.2 Given the multitude of existing and potential vulnerabilities, the Customer accepts that a vulnerability analysis is always limited in scope and never covers all information security vulnerabilities, the associated risks for the Customer and third parties and the potential security measures. The Agreement between the parties may include agreements regarding the scope of the vulnerability analysis and the manner of conducting the analysis, in the absence of which Vendor will be free to make choices regarding the scope and manner of conducting the analysis at its own professional discretion. The Customer accepts the choices made in this respect by Vendor.
- 57.3 The vulnerability analysis will be limited to technical security risks, unless it is expressly agreed in writing that the analysis also covers organisational, personnel or other types of security risks.
- 57.4 The vulnerability analysis is at all times limited to the technical security aspects of the Customer's processing systems expressly mentioned in the Agreement, including any links to other processing systems, hardware, software, networks, data structures and protocols. If available, the Customer will provide Vendor upon request with a copy of an inventory of all processing systems, software, hardware etc. relevant to the vulnerability analysis (e.g. in the form of a CMDB), whereby the Customer guarantees their accuracy and completeness where applicable. Unless otherwise agreed in writing, the vulnerability analysis does not cover the processing systems and the data, data files and software stored on them, or that are used within the Customer's organisation or by employees of the Customer but fall outside the forms of management approved by the Customer (e.g. 'Shadow IT', 'Bring Your Own Device' etc.).
- 57.5 Before Vendor performs information security services, the Customer will notify Vendor upon request in detail of the existence, design and operation of its critical business processes.
- 57.6 If the vulnerability analysis also includes an analysis of third-party products, services, software and data, the Customer will timely ensure, to Vendor's satisfaction, that those third parties (including, for example, software services, Cloud providers or Internet service providers) have given their consent for this. Vendor may require Customer to produce written evidence of such consent. Vendor may suspend its services if and for as long as said consent has not been obtained or if the Customer fails to provide the requested proof. The Customer agrees to indemnify Vendor against all third-party claims relating to the lack of consent.
- 57.7 Before Vendor performs a vulnerability analysis, the Customer must itself ensure, of its own accord, that a complete and usable backup copy (backup) has been made of the data, data files and software stored on the processing systems to be investigated.
- 57.8 If the performance of a vulnerability analysis so requires, the Customer must ensure that there is sufficient bandwidth on the communication lines.
- 57.9 If a vulnerability analysis shows that it is useful, necessary or desirable for the Customer to implement certain security measures, Vendor is only obliged to implement those measures if this has been expressly agreed in writing. In the absence of such agreement, the parties will enter in good faith negotiations on this upon the request of either party.
- 57.10 The Customer may only use the results of the vulnerability analysis internally, within its own organisation, and may not disclose the results to third parties for any purpose whatsoever.

## **58 Backup services**

- 58.1 Vendor only provides backup services for the benefit of the Customer if this is agreed in writing. If and insofar as no written agreements regarding backups have been made between the parties, the Customer is itself fully responsible for making them.
- 58.2 Vendor may at all times change the functionality of the backup services it provides when performing the agreed backup services.
- 58.3 The Customer is itself responsible for setting up an automatic backup schedule.
- 58.4 The Agreement between the parties may stipulate which categories of data, data files (including e-mail files) and software are covered by the backup services provided by Vendor, in the absence of which the Customer itself is solely responsible for the choice thereof.
- 58.5 The Agreement between the parties may stipulate whether backup files are incremental or not, in the absence of which Vendor will be entitled to produce backups incrementally. The Customer accepts all related risks.
- 58.6 The Customer accepts that backup files never fully reflect all (historical) data, data files and software of the Customer.
- 58.7 If the Customer uses specific software or a portal, whether or not provided by Vendor, for the purpose of making backups (or having them made), it must at all times use such software and portals, as well as the related identification codes, properly and with every care.
- 58.8 The Agreement between the parties may specify the retention period for the backup files, failing which this will be determined by Vendor and the Customer will accept the relevant choices made by Vendor. Unless otherwise agreed in writing, Vendor

will at any event be entitled, without prior notice, to delete and destroy the data, data files and software retained as part of a backup three months after the backup was created.

## **Chapter 6. Hardware / equipment**

### **6.1 Purchase of equipment**

***This section of the General Terms and Conditions applies additionally if Vendor sells hardware / equipment of any kind and/or other items to the Customer.***

#### **59 Delivery**

- 59.1 The equipment and/or items sold by Vendor to the Customer will be delivered to Customer ex-warehouse. If so agreed in writing Vendor will deliver the goods sold to the Customer (or have them delivered) at a place to be designated by the Customer. In that case, Vendor will inform the Customer, if possible well before the delivery, at what time it or the carrier it engages intends to deliver the Equipment and/or items.
- 59.2 The costs of shipping, transport, insurance, hoisting and lifting, hiring of temporary provisions, etc. are not included in the purchase price and will be charged to the Customer where applicable.
- 59.3 If the Customer asks Vendor to remove or destroy old materials (such as networks, cabinets, cable trays, packaging materials, equipment or data on equipment) or if Vendor is required by law to do so, Vendor may grant this request by means of a written order and at its usual rates.
- 59.4 If the parties have so agreed in writing, Vendor will install, configure and/or connect the Equipment and/or items (or instruct the installation). Any obligation to install and/or configure Equipment by Vendor does not include performing data conversion and installing software. Vendor is not responsible for obtaining the necessary permits.

#### **60 Test setup**

- 60.1 Vendor will only be obliged to make a test setup of the Equipment in which the Customer is interested if this has been agreed in writing. Vendor may attach (financial) conditions to a test setup. A test set-up involves the temporary installation of Equipment on sight in a standard version, excluding accessories, in a room to be provided by the Customer, before the Customer definitively decides whether or not to purchase the Equipment concerned. The Customer is liable for the use of, damage to, or theft or loss of Equipment forming part of a test setup.

#### **61 Environmental requirements**

- 61.1 The Customer will provide an environment that meets the requirements specified by Vendor for the Equipment and/or items, including in terms of temperature, humidity and technical environment requirements.
- 61.2 The Customer is responsible for ensuring that the activities to be performed by third parties, such as construction work, is carried out adequately and on time.

#### **62 Warranty**

- 62.1 The warranty, maintenance, and operation of the equipment are subject to the terms determined by the manufacturer of the respective equipment.
- 62.2 Costs of work and repair outside the scope of this warranty will be charged by Vendor on the basis of its usual rates.

### **6.2. Equipment rental**

***This section of the General Terms and Conditions applies additionally if Vendor rents equipment of any kind to the Customer.***

#### **63 Rental and hire**

- 63.1 The rental period commences on the day the Equipment is provided to the Customer.

#### **64 Prior inspection**

- 64.1 Before or upon delivering the Equipment Vendor may prepare a description of the condition of the Equipment, in the presence of the Customer, by way of prior inspection, specifying any defects found. Vendor may require the Customer to sign the prepared report containing this description for approval before Vendor provides the Equipment to the Customer. Any defects to the Equipment mentioned in that report will be at Vendor's expense. Upon discovery of defects, the parties will agree whether and, if so, how and when the defects mentioned in the report will be repaired.
- 64.2 If the Customer fails to cooperate satisfactorily with the prior inspection referred to in Article 64.1, Vendor will be entitled to carry out this inspection outside the presence of the Customer and prepare the report independently. This report will be binding on the Customer.
- 64.3 If no prior inspection is carried out, the Customer is deemed to have received the Equipment in proper and undamaged condition.

#### **65 Use of the Equipment**

- 65.1 The Customer may only use the Equipment in accordance for the intended purpose specified in the Agreement, and at the locations specified in that Agreement, and only within and for the benefit of its own organisation or business. Use of the

Equipment by or for the benefit of third parties is not permitted. The right to use the Equipment is not transferable. The Customer is not allowed to sublet the Equipment to a third party or otherwise allow a third party to use it (as well).

- 65.2 The Customer is itself responsible for installing, configuring and connecting the Equipment and preparing it for use.
- 65.3 The Customer is not allowed to offer the Equipment or any part thereof in any way as collateral or security, or otherwise dispose of it.
- 65.4 The Customer must use the Equipment with care and keep it in its safekeeping with due care. The Customer must take adequate measures to prevent damage. The Customer must promptly notify Vendor of any damage to the Equipment. In all cases the Customer will be liable to Vendor for any damage to or theft, loss or misappropriation of the Equipment during the rental period.
- 65.5 The Customer is not allowed to modify any part of the Equipment or add anything to it. The Customer is obliged to undo or remove any modifications or additions made before the end of the rental period.
- 65.6 The parties agree that any defects to modifications and additions made to the Equipment by or on the instructions of the Customer and all defects to the Equipment resulting from those modifications or additions are not considered defects within the meaning of Article 7:204 of the Dutch Civil Code. The Customer has no claim against Vendor in respect of these defects. Vendor is not obliged to repair or maintain these defects.
- 65.7 The Customer is not entitled to any compensation in connection with modifications or additions made by the Customer to the rented Equipment which have not been undone or removed at or after the end of the rental period, for any reason.
- 65.8 The Customer must immediately notify Vendor in writing if the Equipment is seized, stating the identity of the person carrying out the seizure and the reason for it. The Customer must immediately notify the seizing bailiff of the existence of the rental agreement.

## **66 Maintenance of the rented Equipment**

- 66.1 The Customer may not maintain the rented Equipment itself or have it maintained by a third party.
- 66.2 The Customer must immediately report in writing any defects found to the rented Equipment. Vendor will use its best endeavours to repair any defects to the Equipment for which it is responsible within a reasonable period of time by way of corrective maintenance. Vendor is also entitled, but not obliged, to perform preventive maintenance to the Equipment. The Customer will allow Vendor to perform corrective and/or preventive maintenance upon request. The parties will discuss the days and times when maintenance will take place beforehand in good consultation. The Customer is not entitled to replacement equipment during the period of maintenance.
- 66.3 Excluded from the obligation to repair defects are:
- defects that the Customer accepted upon concluding the rental agreement;
  - the repair of defects due to external causes;
  - defects attributable to the Customer, its employees and/or third parties engaged by the Customer;
  - defects resulting from careless, incorrect or inexperienced use or use contrary to the documentation;
  - defects related to the use of non-recommended or non-authorized parts or consumables;
  - defects resulting from use of the Equipment contrary to its intended use;
  - defects resulting from unauthorized alterations or additions made to the Equipment.
- 66.4 If Vendor repairs the defects referred to in the previous paragraph, or has these repaired, the Customer will be charged the related costs on the basis of Vendor's usual rates.
- 66.5 Vendor may at all times decide not to repair defects and to replace the Equipment with other, similar, but not necessarily identical equipment.
- 66.6 Vendor will in no event be obliged to repair or reconstruct lost data.

## **67 Final inspection and return**

- 67.1 The Customer must return the Equipment to Vendor at the end of the rental period in its original condition. The Customer must also remove any data from the Equipment. The costs of transport for returning the Equipment are payable by the Customer.
- 67.2 The Customer will cooperate with a joint final inspection of the condition of the Equipment on or before the last working day of the rental period. The parties will prepare a joint report of the findings of the inspection, which will be signed by both parties. If the Customer does not cooperate with this final inspection, Vendor may carry out this inspection outside the presence of the Customer and prepare the said report independently. This report will be binding on the Customer.
- 67.3 Vendor may have the defects listed in the final inspection report that are reasonably for the Customer's expense and risk repaired and charge the costs to the Customer. The Customer is liable for any damage Vendor suffers because the Equipment can temporarily not be used or rented out.
- 67.4 If, at the end of the rental period, the Customer has not undone a modification it has made to the Equipment or has not removed an addition made to it, the parties agree that the Customer is deemed to have waived any right to those modifications and/or additions.

## **Chapter 7. Yielder Expertise**

### **7.1. Advice and Consultancy**

***This section of the General Terms and Conditions applies additionally if Vendor provides advisory and consultancy services, which are not provided under the Customer's direction and supervision.***

#### **68 Providing advisory and consultancy services**

- 68.1 Vendor will provide the advisory and consultancy services entirely independently, at its own discretion and not under the supervision and direction of the Customer.
- 68.2 Vendor is not bound by a turnaround time of the assignment because the turnaround of an assignment in the field of consultancy or advice depends on various factors and circumstances, such as the quality of data and information provided by the Customer and the cooperation of the Customer and relevant third parties.
- 68.3 Vendor's services are performed exclusively during Vendor's usual working days and times.
- 68.4 The use made by the Customer of an advice and/or consultancy report issued by Vendor is always entirely at the Customer's own risk. The burden of proof that (the manner of) advisory and consultancy services do not comply with what was agreed in writing or with what may be expected from a reasonably acting and competent vendor rests entirely with the Customer, without prejudice to Vendor's right to provide evidence to the contrary by every means.
- 68.5 The Customer may not disclose Vendor's working methods, methods and techniques and/or the content of Vendor's advice or reports to a third party without the prior written consent of Vendor. The Customer may not provide or otherwise disclose Vendor's advice or reports to any third party.

#### **69 Reporting**

- 69.1 Vendor will periodically report to the Customer on its activities in the manner agreed in writing. The Customer will notify Vendor in writing in advance of any circumstances that are or may be of interest to Vendor, such as the method of reporting, the issues for which the Customer requires attention, the Customer's prioritisation, the availability of the Customer's resources and staff, and special facts or circumstances or that are possibly unknown to Vendor. The Customer will be responsible for the further dissemination and publication of the information provided by Vendor within the Customer's organisation and will assess this information partly on that basis and inform Vendor accordingly.

### **7.2. Education and training**

***This section of the General Terms and Conditions applies additionally if Vendor provides services, under any name and in any manner (e.g. in electronic form), relating to education, training, courses, workshops, seminars and the like (hereinafter collectively referred to as: "Training").***

#### **70 Registration and cancellation**

- 70.1 An application for a Training must be made in writing and is binding upon confirmation by Vendor.
- 70.2 The Customer is responsible for the choice and suitability of the Training for the participants. Any lack of the required prior knowledge on the part of a participant does not affect the Customer's obligations under the Agreement. The Customer may replace a participant for a training course with another participant with the prior written consent from Vendor.
- 70.3 If the number of registrations gives cause to do so in the opinion of Vendor, Vendor may cancel the Training, combine it with one or more other training courses, or schedule it at a later date or time. Vendor reserves the right to change the location of the Training. Vendor reserves the right to change the organisation and content of a Training.
- 70.4 The consequences of cancelling participation to a Training by the Customer or participants are governed by Vendor's customary rules. Cancellation must always take place in writing and prior to the Training or the relevant part thereof. Cancellation or non-appearance does not affect the Customer's payment obligations under the Agreement.

#### **71 Providing the Training**

- 71.1 The Customer accepts that Vendor determines the content and depth of the training.
- 71.2 The Customer will inform the participants about and monitor their compliance with the obligations under the Agreement and the rules (of conduct) prescribed by Vendor for participation in the Training.
- 71.3 If Vendor uses its own equipment or software for the Training, Vendor does not warrant that this equipment or software is error-free or functions without interruption. If Vendor conducts the Training at the Customer's premises, the Customer is responsible for ensuring the availability of proper classrooms and functioning equipment and software. If the facilities at the Customer's premises prove unsatisfactory and the quality of the Training cannot be guaranteed as a result, Vendor may refuse to give the Training or reduce or discontinue it.
- 71.4 The Agreement does not include conducting examinations or tests.
- 71.5 A separate fee will be charged for documentation, training materials or resources provided or produced for the Training. The foregoing also applies to any training certificates or duplicates thereof.
- 71.6 If the Training is offered on the basis of e-learning, the provisions of Chapter 4 'Applications' apply *mutatis mutandis* as much as possible.

**72 Price and payment**

- 72.1 Vendor may demand that the Customer pays the fees due for the Training in advance. Vendor may exclude participants from participation if the Customer has not paid in time, without prejudice to all other rights of Vendor.
- 72.2 If Vendor has conducted a preliminary study for the purpose of a training plan or training advice, the related costs may be charged separately.
- 72.3 Unless Vendor has expressly stated that the Training is exempt from VAT within the meaning of Article 11 of the Turnover Tax Act 1968, the Customer will also owe VAT on the fee. Vendor will be entitled to adjust its prices after the Agreement is concluded in case of a change in the VAT regime for Training adopted by or pursuant to the law.

**Chapter 8. Standard Clauses for Processing**

***This section of the General Terms and Conditions applies additionally if and insofar as the Services process personal data as part of the performance of the Agreement on behalf of the controller(s) as a (sub)processor within the meaning of the personal data protection legislation. These Standard Clauses for Processing, together with practical arrangements on processing included in the (Data Processing) Agreement or in a separate annex, constitute a data processing agreement within the meaning of Article 28(3) of the General Data Protection Regulation (GDPR).***

**73 General**

- 73.1 Vendor will process personal data on behalf of the Customer in accordance with the Customer's written instructions agreed with Vendor.
- 73.2 The Customer, or its customer, is the controller within the meaning of the GDPR, and controls the processing of personal data and has determined the purposes and means of processing personal data.
- 73.3 Vendor is a processor within the meaning of the GDPR and therefore has no control over the purpose and means of processing personal data, and therefore does not make decisions on, among other things, the use of the personal data.
- 73.4 Vendor implements the GDPR as laid down in this chapter and in the (Data Processing) Agreement. The Customer is responsible for assessing, on the basis of this information, whether Vendor provides adequate guarantees with regard to the application of appropriate technical and organisational measures to ensure that the processing meets the requirements of the GDPR and that the rights of data subjects are sufficiently protected.
- 73.5 The Customer warrants Vendor that it acts in accordance with the GDPR, that it adequately secures its systems and infrastructure at all times, and that the content, use and/or processing of the personal data is not unlawful and does not infringe any right of a third party.
- 73.6 The Customer is not entitled to recover from Vendor any administrative fine imposed on it, on any legal ground, by the supervisory authority. 'Supervisory authority' in this chapter means a supervisory authority as referred to in the GDPR.

**74 Security**

- 74.1 Vendor will take the technical and organisational security measures described in the (Data Processing) Agreement. When implementing the technical and organisational security measures, Vendor has taken into account the state of the art, the implementation costs of the security measures, the nature, scope and context of the processing operations, the nature of its products and supplier, the processing risks, and the risks to the rights and freedoms of data subjects that differ in terms of likelihood and seriousness, which Vendor could expect in view of its intended use of its products and services.
- 74.2 Unless explicitly stated otherwise in the (Data Processing) Agreement, Vendor's product or service is not set up to process special categories of personal data or data relating to criminal convictions or criminal offences.
- 74.3 Vendor will endeavour to ensure that the security measures to be taken by it are appropriate for Vendor's intended use of the product or service.
- 74.4 The described security measures will, in the opinion of the Customer, taking into account the factors mentioned in Article 24.1, provide a level of security appropriate to the risk of processing the personal data used or provided by it.
- 74.5 Vendor may change the security measures taken if, in its opinion, this is necessary to continue ensuring an appropriate level of security. Vendor will record any significant changes and notify the Customer of such changes where relevant.
- 74.6 The Customer may request Vendor to take additional security measures. Vendor is not obliged to change its security measures further to such request. Vendor may charge Customer the costs relating to changes made at the Customer's request. Vendor will only be obliged to actually implement the modified security measures requested by the Customer if these are agreed in writing by the parties.

**75 Personal data breaches**

- 75.1 Vendor does not warrant that the security measures are effective in all circumstances. If Vendor discovers a personal data breach, it will inform the Customer without unreasonable delay. The (Data Processing) Agreement stipulates the manner in which Vendor must notify the Customer of personal data breaches. If no specific arrangements are made, Vendor will contact the contact person at the Customer in the usual way.
- 75.2 The controller (Customer, or its client) is responsible for assessing whether the personal data breach notified by Vendor should be reported to the regulatory authority or the data subject. The reporting of personal data breaches will at all times be the responsibility of the controller (Customer or its client). Vendor is not obliged to report personal data breaches to the supervisory authority and/or the data subject.
- 75.3 Vendor will, if necessary, provide additional information about the personal data breach and cooperate by providing necessary information to the Customer for the purpose of notifying the supervisory authority or data subjects.
- 75.4 Vendor may charge Customer the reasonable costs incurred in this context at its then applicable rates.

**76 Confidentiality**

- 76.1 Vendor warrants that the persons processing personal data under its responsibility have a duty of confidentiality.
- 76.2 Vendor may disclose the personal data to third parties if and to the extent that this is required pursuant to a court order, a statutory regulation, on the basis of an order given by a competent public authority, or for the proper performance of the Agreement.

**77 Obligations upon termination**

- 77.1 At the end of the (Data Processing) Agreement Vendor will delete all personal data in its possession and that it has received from the Customer within the period stipulated in the (Data Processing) Agreement, in such a manner that it can no longer be used and is no longer accessible (rendered inaccessible), or, if agreed, return it to the Customer in a machine-readable format.
- 77.2 Vendor may charge Customer the costs it incurs in connection with the provisions of the previous paragraph. The (Data Processing) Agreement may include further agreements on this.
- 77.3 The provisions of Article 77.1 do not apply if a statutory regulation prevents the removal or return of all or part of the personal data by Vendor. In that case Vendor will continue to process the personal data only to the extent necessary under its statutory obligations. The provisions of Article 77.1 also do not apply if Vendor is a controller within the meaning of the GDPR in respect of the personal data.

**78 Data subjects' rights, Data Protection Impact Assessment (DPIA), and audit rights**

- 78.1 Vendor will, where possible, cooperate with reasonable requests from the Customer relating to rights exercised by data subjects towards the Customer. If Vendor is contacted directly by a data subject, it will refer him to the Customer where possible.
- 78.2 If the Customer is obliged under the GDPR to carry out a data protection impact assessment (DPIA), Vendor will, upon reasonable request, assist with this assessment or with a subsequent prior consultation.
- 78.3 At the Customer's request, Vendor will provide all information reasonably necessary to demonstrate compliance with the arrangements made in the (Data Processing) Agreement regarding the processing of personal data, for example by means of an audit report (Third Party Memorandum) prepared by an independent expert on behalf of Vendor, or by means of other information to be provided by Vendor. If the Customer nevertheless has reason to believe that the processing of personal data does not take place in accordance with the (Data Processing) Agreement, it may instruct not more often than once a year an independent, certified, external expert with demonstrable experience in the type of processing carried out under the Agreement, to conduct an audit, at the Customer's expense. Vendor may refuse an expert if, in Vendor's opinion, this affects its competitive position. The audit will be limited to verifying compliance with the arrangements relating to processing personal data made in the (Data Processing) Agreement. The expert will have a duty to keep his findings confidential and will only report to the Customer matters which constitute a failure by Vendor to fulfil its obligations under the (Data Processing) Agreement. The expert will provide a copy of his report to Vendor. Vendor may refuse an expert, audit, or expert instruction if, in its opinion, this is contrary to the GDPR or other legislation, or constitutes an inadmissible breach of the security measures it has taken.
- 78.4 The parties will consult on the findings in the report as soon as possible. The parties will follow up on the proposed improvement measures proposed in the report to the extent they can reasonably be expected to do so. Vendor will implement the proposed improvement measures to the extent that, in its opinion, these are appropriate, taking into account the processing risks associated with its product or service, the state of the art, the implementation costs, the market in which it operates, and the intended use of the product or service.
- 78.5 Vendor may charge the Customer the costs it incurs under the provisions of this article.

**79 Sub-processors**

- 79.1 Vendor has specified in the (Data Processing) Agreement whether Vendor engages third party (sub-)processors for the processing of personal data, and if so which.
- 79.2 The Customer authorises Vendor to engage other (sub-)processors to perform its obligations under the (Data Processing) Agreement.
- 79.3 Vendor will notify the Customer of any changes in the third parties engaged by Vendor. The Customer may object to the aforementioned changes made by Vendor.