

# General Terms & Conditions for the delivery of Software and/or Services

## 1. Definitions

**General Terms & Conditions:** the present document titled "General Terms & Conditions for the delivery of Software and/or Services".

**General (License) Terms & Conditions of the Third Party Supplier:** the general (license) terms and conditions (including payment terms) with respect to software and/or hardware of Third Party Supplier, as well as the Third Party Supplier's conditions regarding the maintenance services provided by the Third Party Supplier, as amended from time to time, which the Customer hereby expressly accepts and which form an integral part of the present Contract.

**Services:** the services and/or products that the Service Provider shall provide to the Customer, as described in the Specific Terms & Conditions. These services are at all times governed by the General (and Specific) Terms & Conditions. **Services on Time & Material basis:** Services provided by the Service Provider to the Customer on a Time & Material basis, for which the Customer is invoiced per hour/day at the agreed daily/hourly rate.

**Services on Fixed Price basis:** Services provided by the Service Provider for which the Parties have agreed a fixed price.

**Service Provider:** Guide2Property nv with official seat located in Antoinette Vandepuutepad 25 - 102, 9000 Ghent, Belgium registered in the register of legal persons in Ghent under number BTW BE0659 761 534.

**Third Party Products:** hardware and/or software from the Third Party Supplier(s) mentioned in the Specific Terms & Conditions, for which Service Provider acts as a reseller and for which the Third Party (License) Terms & Conditions fully apply.

**Customer:** the customer stated in the Specific Terms & Conditions.

**Employees:** personnel members, personnel members of Affiliated Companies, independent employees, subcontractors, consultants, and any other natural or legal persons directly or indirectly involved in the provision of the Services.

**Contract:** these General Terms & Conditions, the Specific Terms & Conditions, offer and the General (License) Terms & Conditions of the Third Party Supplier.

**Force Majeure:** the situation in which one of the Parties is impeded in the performance of the Contract, either in whole or in part and temporarily or permanently, beyond the control of the Party or Parties. This includes (but is not limited to): fire, war, terrorist attack, unfavourable weather conditions, force majeure on the part of the Third Party Suppliers, failures in Third Party Products, equipment, software or materials of third parties the use of which the Customer prescribes to the Service Provider, government measures, disruption of Internet, data network or telecommunications facilities, unavailability of third-party servers, strike, unavailability of Employees and/or their equipment, general transportation problems, pandemics and electricity outages.

**Party(-ies):** Service Provider and/or the Customer.

**Third Party Supplier:** Third Parties, more specific producers, vendors and/or suppliers of the Third Party Products mentioned in the Specific Terms & Conditions, including the maintenance services provided by the Third Party Supplier with respect to

the Products.

**Project:** the totality of reciprocal Services and cooperation between the Parties as described in the Specific Terms & Conditions.

**Specific Terms & Conditions:** an agreement subject to these General Terms & Conditions and describing the specific performance modalities of this Contract.

**Consultant:** the Employee(s) whom the Service Provider draws on for the performance of this Contract.

## 2. Contracting and termination

### Contracting

2.1. The Service Provider is only bound to perform the Contract after explicit acceptance by both Parties of the order for the (Third Party) Products and/or Services in writing.

2.2. If, at the request of the Customer, the Service Provider commences the order specified in the Specific Terms & Conditions or receives the Services and/or Third Party Products prior to the signing of the Contract, then the processing of the order and/or receipt of the Services and/or Third Party Products will be considered an acceptance of the General Terms & Conditions, the Specific Terms & Conditions and the General (License) Terms & Conditions of the Third Party Supplier.

2.3. Excepting where stated otherwise in the Specific Terms & Conditions, the product licenses are always for twelve (12) months. New Customers however have the option to sign a contract for six (6) months. This Contract will automatically renew at the end of each term for a further term of twelve (12) months unless either party gives the other written notice of termination at least 30 days prior to the end of the relevant term, by a registered letter.

### Termination

2.4. Without prejudice to its entitlement to compensation of damages, the Service Provider may, at its own discretion, suspend the Contract or rescind the Contract by operation of law, with no notice of breach required, with immediate effect and without judicial intervention, by the simple delivery of a registered letter:

(a) in the event of the Customer's missing any payment deadline;

(b) in the event that the Customer has requested deferment of payment, is under a bankruptcy or suspension of payment procedure, is in an unstable credit position or is manifestly insolvent;

(c) In the event the Customer, in the case of Services on a Time & Material basis, refuses to sign, confirm or accept the time sheet or any other time accounting system without valid reason;

(d) in the event of dissolution and liquidation of the Customer's company;

(e) should any or all of the assets of the Customer be under foreclosure and/or a garnishment order at the request of a creditor or in the event of other executive or protective measures with respect to the Customer's assets;

(f) in the event of proof or serious suspicions of fraud committed by the Customer;

(g) in the event that the Customer refuses to provide the requested information or has provided incorrect and/or false information.

2.5. Further, either Party may terminate the Contract if the other Party commits a demonstrated serious error or material Contractual failure and does not rectify this within a period of thirty (30) calendar days after being notified by registered letter of default by the Party invoking the error or failure. Extension of the aforesaid period for remedy of the default will not be refused on unreasonable grounds if during the remedy period of thirty (30) calendar days the Party in default has commenced remedying the default and is making reasonable efforts to continue to do so.

2.6. The Customer explicitly waives the application of article 1794 of the Belgian Civil Code.

2.7. If without valid reason the Customer cancels its order in whole or in part or remains in default of receiving and accepting any or all of the Third Party Products and/or Services provided without valid reason, the Service Provider is entitled to rescind the Contract or demand fulfilment. The damages suffered by the Service Provider will be: (i) a minimum of 100% of the value of the order of the Services or the unfulfilled portion thereof and (ii) the full purchase price in the case of Third Party Products and/or maintenance services delivered by the Third Party Supplier, without prejudice to the Service Provider's right to demonstrate actual damages suffered, using any and all legal means to do so, if such damages are higher.

### Consequences of termination

2.8. Excepting where the Customer terminates the Contract based on serious error or material failing on the part of the Service Provider, the Customer shall compensate the Service Provider for all ordered Third Party Products and the Services and maintenance services performed at the moment of termination. The effective work hours performed at the moment of termination shall be billed at the Service Provider's applicable hourly rates, without prejudice to the Service Provider's option to use any and all legal means to demonstrate any damages suffered in excess thereof.

2.9. If the Contract is rescinded by one of the Parties, this rescission is considered to be effective as from the date of the postmark of the registered letter giving notice that the Contract is rescinded.

## 3. Intellectual property rights and licenses

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## Intellectual property rights with respect to the Services provided

3.1. Excepting where stated otherwise in the Specific Terms & Conditions, the Service Provider extends the Customer a limited, non-exclusive and non-transferable right of use in respect of the results of the Services it performs, as from the moment of full payment of all invoices as well as all other amounts that the Customer owes as a result of the failure in payment obligation. The Customer shall only use the results of the Services in the manner prescribed by the Service Provider.

## Intellectual property rights with respect to the Third Party Products provided

3.2. As regards the Third Party Products, the Customer shall take note of the license terms and conditions, the intellectual property terms and conditions and the limitations thereof as stipulated in the General (License) Terms & Conditions of the Third Party Supplier, which are fully applicable.

In the event of any infringements to this, the Customer is liable to the Third Party Supplier. The Customer shall indemnify the Service Provider for any claim by the Third Party Supplier against the Service Provider for breaches of the General (License) Terms & Conditions of the Third Party Supplier for whatever reason and the Customer shall fully indemnify the Service Provider for all costs, damages, costs and expenses that the Service Provider incurs as a result thereof, including lawyer fees.

## **4. Confidentiality**

4.1. Confidential information is defined as all information of any form whatsoever (oral, written, graphic, electronic, etc.), whether commercial, financial, technical or otherwise, exchanged between the Parties in the context of this Contract, which is marked or otherwise designated to show expressly or by necessary implication that it is confidential or proprietary to the disclosing Party or can otherwise reasonably be expected to qualify as being confidential.

4.2. Each Party and its Employees must keep confidential all confidential information received from the other Party in the performance of this Contract. Additionally, the Parties may only use the confidential information for the purposes of this Contract. The Parties may not disclose the confidential information to third parties without the written consent of the other Party. At a minimum, any information designated as confidential by one of the Parties will be considered as such.

4.3. The following information is not considered to be confidential information if and insofar it can be evidenced by the receiving Party's written records:

(a) information obtained legally from a third

party not bound by any confidentiality obligation or secrecy;

(b) information that a Party already knew before it was provided for the purposes of this Contract;

(c) information a Party developed independently without violating this Contract;

(d) information that came into the public domain without the doings or error of the Party receiving the information;

(e) information that must be made public pursuant to a judicial or administrative decision.

4.4. The Service Provider may also include the Customer in its customer list, publish a brief description of the assignment and use the Customer's name and trademark for publicity purposes and PR activities.

4.5. The Customer is not permitted to remove or alter any indication concerning the confidential nature or pertaining to copyright trademark, trade name or any intellectual or industrial property right from the software, websites, databases, equipment or materials and/or any Third Party Products.

4.6. The Customer hereby explicitly acknowledges and accepts the confidentiality clauses in the General (License) Terms & Conditions of the Third Party Supplier.

## **5. The performance modalities**

### General

5.1. The Service Provider undertakes (i) to execute the Services on behalf of the Customer and/or (ii) to provide the Third Party Products specified in the Specific Terms & Conditions and (iii) to provide any (maintenance) services by the Third Party Supplier in accordance with the General (License) Terms & Conditions of the Third Party Supplier. The Service Provider will respect the reasonable technical instructions and guidelines it receives in advance from the Customer. The Customer will bear all costs related thereto.

5.2. The Customer declares that it has been fully informed by the Service Provider concerning the options for the Third Party Products and/or Services (type, characteristics, operation, use potential and limitations, warranties, required environment, costs) as well as in regard to the issues of modification, installation or integration and expansion that may arise and the impact of this on the existing software and/or licenses already installed at the Customer's. The Parties agree that the Service Provider cannot be held liable for this.

5.3. Unless statutory regulations of mandatory law or public order dictate otherwise, the

Service Provider does not bear any liability with regard to Third Party Products and maintenance services provided by the Third Party Supplier. The Customer will only be able to contact the Third Party Supplier within the limits of the General (License) Terms & Conditions of the Third Party Supplier. The Service Provider cannot be held liable for the Third Party Products and maintenance services delivered by the Third Party Supplier. The delivery is the exclusive responsibility of the Customer.

5.4. The Customer bears full liability for errors and/or omissions in the order of the Third Party Products and/or Services. The Service Provider is informed fully concerning the needs and expectations of the Customer exclusively in the form of the Specific Terms & Conditions. The Contractual obligations of the Service Provider can be derived solely and exclusively from the Specific Terms & Conditions and the present General Terms & Conditions. Under no circumstances can the Service Provider be held liable in the event of incorrect services and/or an incorrect choice of product or failings in product specialization in the Non-standard Conditions.

5.5. Insofar as the Specific Terms & Conditions do not refer to any other capacity of the Customer, the Customer is irrevocably deemed to be a professional user acting in the context of its professional activities. The Customer is deemed to possess the relevant know-how in relation to the Third Party Products and the Services to be performed, and to provide personnel with the relevant expertise.

5.6. If during the term of the Contract the material specifications for the performance of the Contract change, the Customer will compensate the Service Provider for the additional training of the Consultant. If the Customer itself provides a training to the Consultant, then, barring any provision to the contrary in the Specific Terms & Conditions, the costs for this training are to be borne by the Customer.

5.7. To the extent possible, the Service Provider must report any scheduled interruptions of the performance of the Services (such as short-term illness, leave days of the Consultant, etc.) to the Customer in a timely manner.

### Place of performance

5.8. Unless otherwise specified in the Specific Terms & Conditions, the Services are to be performed in the premises of the Service Provider. The Customer shall grant the Service Provider free access to the work environment if required.

5.9. The workspace and facilities will be in compliance with all requirements of law. The Customer indemnifies the Service Provider against claims of third parties, including the Employees of the Service Provider, who suffered damages in connection

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with the performance of the Contract and resulting from the acts or omissions of the Customer or from unsafe situations in the Customer's organisation.

5.10. Setup and alteration of the location where the Services will be carried out are at the Customer's expense, with the Customer being liable for any damages and associated costs incurred by the Service Provider as a result of late, incorrect or faulty performance thereof.

## Cooperation obligation

5.11. The Parties acknowledge and accept that the success of activities in the field of information and communication technology depends on timely cooperation. The Customer shall at all times promptly grant all reasonable cooperation desired by the Service Provider. If the Customer, in the context of providing cooperation within the performance of the Contract, engages its own Employees, these Employees must have the necessary knowledge, expertise and experience.

5.12. The Customer is responsible for the timely provision of the useful and necessary information and must reserve sufficient time to do so.

5.13. The required cooperation on the part of the Customer may be very intensive at some points in the Project and must be taken into account by the Customer during the Project. The Customer must reserve sufficient staff and resources to do so.

5.14. The Service Provider provides the Services within the limits of this Contract and the information provided by the Customer. The Customer warrants the accuracy, timeliness and completeness of the information it provides, stated dimensions, requirements, specifications of the Services and other data crucial to allow the Service Provider to fulfil the obligations under this Contract. The Customer indemnifies the Service Provider for all damages resulting from incorrect, late or incomplete provision of information.

5.15. The Customer must designate Employees who can provide this information. The Customer must also designate a person who is capable of assessing the accuracy and completeness of this information and who, in case of debate, can decide which information will be used as a rule. The Service Provider always assumes that the information provided by Employees of the Customer is complete and correct. The Customer is always responsible for the information it provides.

5.16. If special deployment of Employees or material is required of the Customer for the Project, this will be agreed in writing in the Specific Terms & Conditions. If required, the Customer must provide all necessary security measures, such as but not limited to, VPNs and tokens.

5.17. If the unavailability of Employees or

material by the Customer result in extra costs, including but not limited to extra time spent by Employees of the Service Provider, these extra costs will be invoiced to the Customer.

5.18. The Customer will make arrangements for the required facilities for the design, testing and operational use of the information system to be developed. This refers to hardware, system software, and peripherals (including PCs and printers). The Consultant must have access to the computing, printer and data facilities of the Customer through a number of PCs.

If the Service Provider deems this necessary, the system and related services (system administration) must also be available outside normal business hours.

If the Services are a part of a broader implementation of new IT systems, the timeline depends in part on the delivery of these other systems in good order.

## Maintenance and upgrade agreement

5.19. If applicable, the Customer can enter into a maintenance and upgrade agreement with the Service Provider and/or the Third Party Supplier with regard to the delivered (Third Party) Products.

5.20. If the Customer does not wish to enter into a maintenance agreement with the Service Provider regarding the Services, each intervention, after completion and, if applicable, after the period of guarantee, will be charged on the basis of then applicable hourly rates.

## Consultant

5.21. For the performance of this Contract, the Service Provider will draw on the services of one or more Consultants. The Service Provider reserves the right to determine what Consultant shall be assigned to the performance of the Services, and to

replace this Consultant as the Service Provider sees fit throughout the duration of the Contract.

## **6. The fee and payment modalities**

### Price

6.1. The price for the (Third Party) Products and the Services are laid down in the Specific Terms & Conditions. The Service Provider is in all cases entitled to adjust these prices for Third Party Products and/or the maintenance services of the Third Party Supplier if this is the result of a price adjustment by its Third Party Suppliers or due to exchange rate differences.

6.2. The price is exclusive of VAT, charges and taxes, excise duties, transport prices (of the Third Party Supplier), import duties and any other levies imposed or to be imposed by the government. All these taxes and duties will be the sole financial responsibility of the Customer. Unless otherwise stated in the Specific Terms & Conditions, the price does not include travel times and/or costs, incidental

expenses and all other reasonable costs. All these costs are to be borne by the Customer.

6.3. The price for Services rendered by the Service Provider may be invoiced both on Time & Material basis, Fixed Price basis or Subscription Fee basis, as determined in the Specific Terms & Conditions.

In the case of Services on Subscription Fee basis, these Services shall be invoiced on the basis of a subscription fee as specified in the Specific Terms & Conditions.

In the case of Services on Fixed Price basis, these Services shall be invoiced on the basis of a fixed price as specified in the Specific Terms & Conditions.

In the case of Services on Time & Material basis, these Services are invoiced on the basis of the daily/hourly rate stated in the Specific Terms & Conditions, multiplied by the number of days/hours worked. Unless otherwise agreed in the Specific Terms & Conditions, a minimum intervention will be at least four (4) hours. Any estimates in, for example, price or time quotations from the Service Provider are purely indicative.

### Invoicing

a) Invoicing of Services or Subscription Fee or Fixed Price basis

6.4. Upon signing the Specific Terms & Conditions, the Customer undertakes to pay 100% of the price for the ordered (Third Party) Products and for Services based on a Fixed Price, unless otherwise agreed in the Specific Terms & Conditions. The Service Provider is only bound to the execution upon payment of the aforementioned payment.

6.5. The outstanding balance for the (Third Party) Products and/or Services on a Fixed Price basis will be invoiced by the Service Provider upfront on a monthly basis, unless a different payment schedule is agreed in the Specific Terms & Conditions.

b) Invoicing of maintenance services

6.6. Unless otherwise agreed in the Specific Terms & Conditions, the maintenance services of the (Third Party) Products are invoiced upfront and annually.

c) Invoicing of Services on a Time & Material Basis

6.7. If the Services on a Time & Material Basis only last one (1) month, the Service Provider will invoice the Customer at the end of these Services. If the Services on a Time & Material Basis cover a period longer than one (1) month, the Service Provider will invoice these Services each month on the basis of the daily/hourly rate as agreed in the Specific Terms & Conditions.

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## General payment modalities (applicable to Services on Time & Material Basis and Services on Fixed Price Basis)

6.8. The Service Provider shall take all reasonable steps to perform the Services in accordance with the Customer's work schedule. Barring any agreement to the contrary between the Parties, the work schedule will be assumed to be 38 hours per week. Where the work schedule is more than 38 hours per week, the following increases (non-cumulative) will be applied:

- performance > 38 hours/week: + 50%;
- performance > 7.6 hours/day: + 50%;
- performance between 10 PM and 7 AM: + 100%;
- performance on Saturday: + 50%;
- performance on Sunday or public holiday: + 100%.

6.9. Barring an agreement in writing between the Parties to the contrary, the Consultant will have his/her performance hours signed off by the Customer in the form of timesheets or some other timekeeping system defined by the Service Provider.

6.10. The Service Provider may adjust the prices for the Services (Fixed Price, Subscription Fee and Time & Material) annually on 1 January based on the following formula:

New price = Base price \* (0.2 + 0.8 \* (New index/ Initial index))

For which the following definitions apply:

- Base price: price at the start of the Contract;
- Initial index: the index published by Agoria "national average reference wage cost" for the month preceding the signing of the Contract;
- New index: the index published by Agoria "national average reference wage cost" for the month preceding the date of indexation.

6.11. In the event of a sudden fundamental change in circumstances with an effect on the agreed price that was both unforeseeable at the time of the determination of the price and that constitutes a disruption of the contractual equilibrium, then, upon demand by either Party, the Parties will meet to agree on a reasonable adjustment of the Contract. If the Parties are unable to reach a consensus after thirty (30) calendar days from the moment of the request to adjust the Contract, either Party has the option to cancel the Contract by virtue of notice by registered letter with a notice period of thirty (30) calendar days, without giving rise to any obligation for compensation on the part of the cancelling Party.

6.12. All invoices are payable within thirty (30) calendar days after the date of invoice, unless specified otherwise in the Specific Terms & Conditions. Adjustment of the payment term in the Specific Terms & Conditions is only possible if the General (License) Terms & Conditions of the Third Party Supplier prescribe a shorter payment term.

6.13. The absence of a protest of an invoice in writing within eight (8) business days from the date of

sending of the invoice constitutes irrevocable acceptance of the invoice and the (Third Party) Products, any corresponding maintenance agreements and/or Services set out within it.

6.14. After expiry of the payment period, the Customer is automatically in default without any prior notice being required. Upon the expiry of the payment period, the Customer incurs conventional interest charges equalling the interest rate as defined in Article 5 of the Belgian Act on payment arrears (Act 2 August 2002, *Belgian Official Journal* 7 August 2002), increased by 3%. This interest is calculated as from the deadline for payment of the invoice up until the date of full payment.

6.15. In the event of late payment of an invoice:

- (i) the Service Provider is entitled to increase the amount of invoice by 15% as compensation;
- (ii) all costs, the extrajudicial collection of the invoice, and the costs of legal proceedings and enforcement are to be borne by the Customer;
- (iii) all claims against the Customer not yet due are immediately incurred, exigible and payable; and
- (iv) the Service Provider is entitled to suspend all its Services in regard to the Customer without prior notification.

6.16. The Customer is not entitled to settlement or suspension of a payment.

6.17. The Service Provider reserves the ownership of the delivered Third Party Products until the Customer has fully paid all invoices, including interest and damage clause.

6.18. The Service Provider is entitled to suspend its obligations automatically by sending an email to the Customer, if the Customer does not fulfil its obligations under this Contract, so the Service Provider can suspend the services provided and/or cease and/or disable software.

6.19. If in the opinion of the Service Provider the Customer's creditworthiness so dictates, the Service Provider may, even after the signing of the Contract, require the Customer to furnish a security requested by the Service Provider for the payment of the Services yet to be provided, and the Service Provider may suspend performance as long as the security is not furnished.

6.22. The Customer shall guarantee and indemnify the Service Provider for any claim by the Third Party Supplier against the Service Provider for unpaid invoices from the Third Party Supplier of the Third Party Products and/or corresponding maintenance services for whatever reason and the Customer shall fully indemnify the Service Provider for all costs, damages, costs and expenses that the Service Provider incurs as a result thereof, including lawyer fees.

## **7. Delivery, risk and transfer of ownership**

7.1. Excepting where explicitly stated otherwise, delivery periods stated in the Specific Terms & Conditions (by individual component, if applicable) are purely indicative and not binding on the Service Provider. Excepting where the Parties explicitly stipulate otherwise in the Specific Terms & Conditions in writing, the Service Provider undertakes only a best effort obligation to complete and hand over every component as quickly as possible after finishing. Partial deliveries are permitted. Partial delivery of the order can under no circumstances justify the refusal to pay for the delivered Third Party Products and/or Services.

7.2. Any delay caused by a delay in the provision of necessary information and hardware and/or software infrastructure by the Customer or a third party is beyond the responsibility of the Service Provider. Consequently, the Customer cannot terminate the Contract under such circumstances.

7.3. Unless specified otherwise in the Specific Terms & Conditions, all Third Party Products are delivered directly by the relevant Third Party Supplier to the Customer. The General (License) Terms & Conditions of the Third Party Supplier in connection with the delivery and rates apply to the Customer directly. The Service Provider does not bear any liability with regard to the Third Party Products delivered by the Third Party Supplier.

7.4. The risks associated with the Services and/or Third Party Products provided transfer to the Customer at the moment of delivery. The delivery terms of the Third Party Supplier are directly applicable to the Customer.

## **8. Specific provisions which only apply to Services provided on Subscription Fee and/or Fixed Price Basis**

### Acceptance

8.1. In the event that the Specific Terms & Conditions explicitly provides for an acceptance test for the Services on Fixed price Basis, the Customer itself is responsible for organising and performing this test, and doing so in consultation with the Service Provider and in accordance with the clauses and timeline of the Specific Terms & Conditions.

8.2. If this acceptance test, which in all cases must be performed in the presence of the Consultant of the Service Provider, is passed in whole or in part, the passing component of the deliverable is deemed to have been accepted by the Customer. In the event that the acceptance test is not performed in a timely manner, the deliverable is deemed to have been accepted by the Customer. During the testing period, the Customer is not allowed to use the Services and/or Third Party Products for productive or operational purposes.

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8.3. The Customer shall appoint a contact person which is responsible for the acceptance of each portion of the Services on Subscription fee and/or Fixed Price Basis.

8.4. If no acceptance test is agreed/performed, the Customer accepts the Services and/or the Third Party Products in the state in which they are at the time of delivery, thus with all visible and invisible errors and defects. The using of and/or production commissioning of (i) the Third Party Products and/or (ii) the result of the Services on Subscription Fee and/or Fixed Price Basis by the Customer, implies its full acceptance.

8.5. The acceptance procedure is an evaluation of whether the expressly agreed deliverables are in compliance with the Specific Terms & Conditions. Additional acceptance criteria may be added insofar as approved in writing in advance by both Parties.

8.6. Acceptance may be in three forms:

- (a) unconditional acceptance;
- (b) conditional acceptance;
- (c) unconditional non-acceptance.

Conditional acceptance must be accompanied by a list with the Customer's considerations regarding the acceptance of the Services submitted. After modification and resolution of these issues or after the Service Provider's refutation of the considerations, the deliverables will be presented again for re-evaluation and will be deemed to have been accepted failing written notice to the contrary within five (5) business days.

Unconditional non-acceptance must be accompanied by a clear description of the justified reasons for non-acceptance. After modification by the Service Provider in observance of these reasons, the Service Provider is once again entitled to obtain acceptance from the Customer.

8.7. The Parties acknowledge that it is essential for knowledge of failures in the Services to be exchanged in a timely manner so as to allow the appropriate adjustments to be made at the earliest possible stage. Late evaluation and acceptance will automatically result in extra costs, which may be treated as a change request, this without prejudice to the Service Provider's right to hold the Customer liable for all direct and indirect damages resulting therefrom.

## Change procedure

8.8. All changes and/or extensions to the original specifications and changes to the underlying conditions of the Services fall under these provisions. An intended change is, among other things, a clear change in the project team's working conditions, resulting in a proven loss of production.

8.9. If the Customer desires a change or

addition to the specifications as agreed in the Specific Terms & Conditions, this change must be formalised by means of this change procedure. The same procedure must be followed whenever the criteria that the Services must meet are changed by the Customer, as provided for in the Specific Terms & Conditions.

8.10. The change procedure entails that first, the change in the specifications or the order are described, followed by an assessment of the impact of the change on the efforts and timeline of the Project.

After approval of the documents describing the changed specification, the Customer must also approve the new budget in the form of an Addendum to the Specific Terms & Conditions.

8.11. The time required for these activities and Services will be invoiced to the Customer on the basis of hours spent, in accordance with the Service Provider's applicable rates. The Service Provider's project manager will determine in advance how many hours this will require and submit this determination to the Customer for approval. Allowing the Service Provider to commence these additional activities is qualified as sufficient evidence of the Customer's ordering this work and as the Customer's consent to invoice these activities and Services.

8.12. A change is carried out after the Customer issues an instruction for the change.

8.13. A change proposal typically includes the following elements:

- 1) a description of the change;
- 2) the submitter and date of the change request;
- 3) the reason for the change;
- 4) if possible, an estimate of the time required to determine the impact and consequences of the change;
- 5) if available, the approval of the estimate under point 4;
- 6) a complete description of the change, including specifications and use options;
- 7) if applicable, the cost impact (additional cost/reduced cost) of the change;
- 8) a timeline for the implementation and any applicable test procedure for the change;
- 9) a payment schedule (if applicable);
- 10) any consequences on other components of the project;
- 11) space for the Customer's and Service Provider's signatures.

8.14. Situations and underlying conditions that fall under the responsibility of the Customer, including the provision of training courses to Consultants, and which necessitate extra efforts will be invoiced to the Customer.

## Warranty

8.15. In case of delivery of Third Party Products, the Customer also explicitly takes note of the warranty provisions in the General (License) Terms & Conditions of the Third Party Supplier, which exclusively apply. The Customer acknowledges that the Service Provider cannot be held to any warranty obligations with regard to the delivered Third Party Products.

If and insofar as the Parties explicitly agreed in the Specific Terms & Conditions that a warranty shall be offered, the following clauses apply:

8.16. The Service Provider warrants that the Services on Subscription Fee and/or Fixed Price Basis shall be rendered in accordance with the applicable standards in the industry as applicable at that time, and shall substantially meet the requirements described in the Specific Terms & Conditions, and this during a period of half of the expected development time, with a maximum of three (3) months commencing from the delivery, this conditional on any failings being notified within this time period in accordance with article.

8.17. In the event that the Services rendered are not in conformity with the abovementioned warranty, the Service Provider's only obligation consists of making every reasonable effort to rectify the failing or replacing the component in question, this at the discretion of the Service Provider.

8.18. Only in case of Services on Subscription Fee and/or Fixed Price basis, the repair is carried out free of charge. In case of Services on Time & Material basis, the Service Provider will charge the costs of repair according to its usual rates. The Service Provider may, in accordance with his usual rates, charge the costs of

repair if there are errors of use or improper use by the Customer or other causes not attributable to the Service Provider, or if the errors could have been discovered in the execution of the agreed acceptance test. The repair obligation lapses if the Customer makes changes or has made changes without the written consent of the Service Provider, whose permission will not be withheld on unreasonable grounds.

8.19. This warranty covers only the software developed by or on commission of the Service Provider as described in the Project Order. Software and/or software licenses and/or hardware not developed by the Service Provider are only covered by the warranty of the manufacturer, importer or primary distributor.

8.20. All changes made during this warranty period are included in this warranty.

8.21. If a warranty period has been agreed in the Specific Terms & Conditions for the Services on Subscription Fee and/or Fixed Price Basis, the Customer will report any alleged deficiencies in writing and in detail upon identification of these deficiencies

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within the warranty period as soon as possible and within no more than seven (7) days with regard to the concerned Services rendered by the Service Provider.

8.22. If there are warranty agreements made in the Specific Terms & Conditions, the Service Provider, its employees or subcontractors have the right to test or inspect the Services delivered. The Customer shall provide all required cooperation to allow the Service Provider, its employees and/or subcontractors to fulfil their obligations.

8.23. In view of the technical nature of computer programs, the Service Provider cannot guarantee its uninterrupted operation. Moreover, given the nature of every computer program, it is admitted and acknowledged by the Customer that it is not possible according to the current state of technology and knowledge to guarantee that a certain software will be free of all faults or bugs or that it will function in all circumstances in accordance with what was agreed or provided for.

8.24. Under no circumstances does the Service Provider warrant the suitability or marketability of the Services for the performance of specific tasks envisioned by the Customer unless said tasks are explicitly covered in the Specific Terms & Conditions and/or the description of the functional specifications.

8.25. The following is not covered under any circumstance, interventions due to any cause other than the Services rendered, including but not limited to:

incorrect or abnormal use or operation; negligence of the Customer or its agents; fire; power outages; accidents; inappropriate environment; the Customer's failure to meet specifications of the environment in which the deliverable is to be used;

- any repair or maintenance, adjustment or alteration performed by personnel and/or subcontractors not working for the Service Provider and without the permission of the Service Provider, in which case the Customer bears all risks of any damages resulting therefrom;
- Force Majeure;
- data file recovery;
- non-modified infrastructure (hardware, software, etc.) of the Customer and/or irregular functioning thereof, and more generally, damages caused by hardware and/or software not supplied by the Service Provider.

No guarantee is provided for Services on Subscription Fee and/or Time & Material basis, or when the Parties have not expressly included a guarantee in the Specific Terms & Conditions. These Services are delivered 'as is', with all visible and invisible errors and defects.

8.26. In general, the provisions of Article 8 do not apply to Services rendered on Time & Material basis.

9.1. The Service Provider will enjoy complete freedom and independence in the performance of the Contract. There is no hierarchical relationship between either the Service Provider and the Customer or the Customer and Consultant(s) deployed by the Service Provider. Under no circumstances does the Service Provider transfer any employer's authority to the Customer excepting insofar as permitted by the applicable legislation as set out below.

9.2. The Parties acknowledge and accept that they are familiar with the Act of 24 July 1987 governing temporary labour, the secondment and posting of employees for users, the changes implemented by the Programming Act of 27 December 2012 and the changes that may be made from time to time and published in the Belgian Official Journal (Belgisch Staatsblad). The Parties undertake the obligation to comply with the provisions of these acts of legislation.

9.3. The Customer may not give any instructions to the employees of the Service Provider (and/or employees of the subcontractors the services of which are called upon by the Service Provider) other than the instructions given in this Contract in relation to the standards of conduct and safety, time management, the applicable policy standards and procedures of the Customer identified in this Contract, and/or the work to be performed by these employees.

9.4. The Customer is not authorised to make decisions in regard to:

- the recruitment process;
- the remuneration package (definition of salaries and benefits, expense reimbursement, etc.);
- disciplinary matters;
- training and the policy in regard to training (with the exception of those aspects necessary for the performance of the Services);
- dismissal and related policy;
- management of attendance and absence from work (vacation, sick leave and other forms of absence);
- employment relationships and organisational aspects relating to employees of the Service Provider (and/or employees of the subcontractors the services of which are called upon by the Service Provider).

9.5. Any instructions given by the Customer to employees of the Service Provider (and/or employees of the subcontractors the services of which are called upon by the Service Provider) in regard to the work to be performed must remain strictly limited to the operational and technical aspects of the provision of the Services, and may not under any circumstances effectively entail the authority of an employer; these instructions must pertain purely and exclusively to the following:

- scheduling of the Services to be provided;
- timeframe within the Services must be completed, if applicable;
- processes and procedures of the Customer as agreed by the Parties and which must be observed in the performance of the Services (for example in relation to those of safety or access);
- access to locations and facilities of the Customer for the purposes of the performance of the Services;
- use of the material, infrastructure, tools or facilities of the Customer for the purposes of the performance of the Services;

In cases of doubt, the Parties must consult on the applicability of an instruction of the Customer.

9.6. The Specific Conditions may include more specific details about the instructions that the Customer may give. This list may be altered at any time during the term of the Contract.

9.7. The Customer shall indemnify the Service Provider against all claims, damages and liabilities resulting from noncompliance with article 9 of these General Terms & Conditions.

## **10. Liability**

10.1. The liability that the Service Provider may incur is derived from a best effort obligation that in cases of claim must be appropriately demonstrated by the Customer.

10.2. Insofar as maximally permitted by applicable law, the total liability of the Service Provider based on attributable failure in the fulfilment of the Contract is limited to the reimbursement of direct damages up to a maximum of the compensation owed by the Customer for the specific Services that gave rise to the damages (excluding VAT). If the Contract extends over a year or multiple years, for the compensation of direct damages, the Service Provider may be held to a maximum of the value of the amounts invoiced for the performance of this Contract for the Services (excluding VAT) over a period of six (6) months prior to the date that the damages-causing event occurred. Under no circumstances shall the total liability for all direct damages during the entire duration of the Contract exceed the fee paid by the Customer for the specific Services (excluding VAT). For damages incidents partly attributable to the Customer and/or a third party, the Service Provider may be held liable towards the Customer up to a maximum amount, within the limits defined above, of the share caused by the Service Provider's demonstrated error, to the exclusion of any joint and several liability with the other debtors. This provision applies regardless of whether the claim is brought on a contractual or extra-contractual basis.

10.3. The Customer must inform the Service Provider in writing of any event that may call upon the latter's liability or of any disadvantage the Customer

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suffers within the shortest possible time and at the latest within seven (7) calendar days from the occurrence of this event or disadvantage, or at least to be counted from the moment the Customer becomes aware of or reasonably could have been aware of this event or disadvantage. This is in order to enable the Service Provider to determine the origin and cause(s) of the damage within a reasonable period. In the event of failure to comply with the written notification, the Service Provider reserves the right to refuse any compensation and cannot be held liable.

10.4. Under no circumstances shall the Service Provider be liable for (i) indirect, incidental or consequential loss, including but not limited to financial or commercial losses, loss of profit, increase of general expenses, missed savings opportunities, diminished goodwill, damages resulting from business stoppage, damages resulting from claims of customers of the Customer, disruptions in scheduling, loss of expected profit, loss of capital, loss of customers, missed opportunities, loss of information, loss of advantages, or compromising and loss of files resulting from the performance of the present Contract, (ii) damages resulting from error or negligence of the Customer, (iii) compensation of any direct and indirect damages caused by the use of the Product and/or the result of the Services, (iv) compensation of any direct and indirect damages caused in whole or in part by Third Party Products and/or software or hardware supplied or created by third parties, or any other element introduced into the Customer's business after the signing of the Contract, and (v) all claims of third parties brought against the Customer.

10.5. The limitation of liability as set out in these General Terms & Conditions shall not apply with respect to damages caused by an intentional and/or fraudulent error by the Service Provider.

10.6. In the event that the delivered developments are used for further development or commercialisation, the Customer will hold the Service Provider blameless against any third-party damages claims, even if it were established that such originated from the services and developments supplied by the Service Provider.

10.7. The Service Provider is not liable for any claims of intellectual property rights infringement based upon:

- (a) use of a modified or old version of any or all of the developments, if the infringement could have been prevented by using the unmodified or last version which the Service Provider has made available; or
- (b) information, design, specifications, instructions, software, data or other materials that were not developed by the Service Provider.

10.8. These limitations of liability remain applicable in the event that the Service Provider is informed by the Customer of the existence of a realistic risk of damages. The Parties acknowledge that this constitutes a reasonable spread of the risk.

10.9. The provisions of this article, alongside all other limitations and exclusions of liability specified in these General Terms & Conditions, are stipulated in part for the benefit of the Employees of the Service Provider.

10.10. Only the Customer is responsible for setting up procedures that allow them to reconstruct lost or modified files, data or programs at any time, regardless of the cause of the loss or modification. On a daily basis, the Customer must be able to dispose of the necessary back-up copies of its computer programs, files and data.

10.11. In reference to viruses, the Service Provider's responsibility is limited to installing anti-virus programmes where explicitly ordered in the project order. The Service Provider can never be held liable for viruses in the Customer's system and the consequences thereof.

10.12. The Customer at all times bears the responsibility for its existing infrastructure (including, but not limited to: hardware, software, websites, databases, monitoring and security procedures, adequate system management, etc.) and the proper functionality and safety of all its working materials.

## **11. Protection of personal privacy**

11.1 Each Party must at all times adhere to its respective obligations under applicable law in regards to the processing of personal data in connection with personal data that is to be processed pursuant to this Contract. The Customer undertakes to refrain from granting the Service Provider and the Consultant access to personal data within the framework of this Contract, except when the performance of the Contract would be impossible without such access. The Customer undertakes in such a case only to grant access to the personal data that are strictly necessary for the execution of the Contract. The Customer remains solely responsible for the determination of the objectives for which the Contractor processes personal data pursuant to the Contract. For the sake of clarity, the Parties acknowledge that the Customer acts as the party responsible for the data processing, and the Contractor acts as the processor of the personal data that must be stored, used or otherwise processed for the offices of this Contract, as these terms are defined in the legislation governing the processing of personal data. All costs related to and/or resulting from the application and/or implementation of the legislation with respect to the processing of personal data will be exclusively borne by the Customer.

11.2. The Customer declares that it has obtained all approvals necessary for the use and processing of the personal data transferred to the Contractor for the purposes of the Contract, and the Customer further warrants that the content, use and/or processing of the Personal Data is not wrongful and does not violate the rights of third parties.

11.3. As regards the Third Party Products, the Customer shall take note of the applicable General (License) Terms and Conditions of the Third Party Supplier, including the terms and conditions with respect to the protection of personal data, which are fully and directly applicable to the Customer. The Service Provider does not bear any liability with regard to the protection of personal data relating to Third Party Products delivered by the Third Party Supplier

## **12. Force Majeure**

12.1. Neither party is obliged to fulfil any obligation if prevented from doing so by Force Majeure.

12.2. If a situation of Force Majeure lasts longer than sixty (60) calendar days, either Party is entitled to rescind the Contract in writing. In that event, all performances already rendered under the Contract will be settled in proportion to the state of completion, without the Parties owing anything to each other beyond this proportionate compensation.

## **13. Non-solicitation**

13.1. The Customer agrees that it will not actively approach the Employees of the Service Provider directly or indirectly involved in the provision of the Services with the intention of engaging these Employees, and that this obligation commences as from the start of performance of the Services and continues until twelve (12) months after the end date of the Services and/or termination of the Contract, whichever is later, excepting where agreed otherwise by the parties in writing.

13.2. If the Customer Contracts an Employee of the Service Provider or recruits or use the services of any such Employees, whether under an employment relationship, on an independent basis and/or through a company, the Customer shall pay the Service Provider an amount equivalent to twelf monthly remunerations of that Employee. This sum shall be payable on the date on which the Employee is first engaged or on which the Employee's services are first used.

13.3. The Customer undertakes the obligation to impose the obligations under articles 13.1. and 13.2. of these General Terms & Conditions on the third parties with which it partners and/or contracts. The Customer commits to ensuring that these third parties will not approach any of the Employees of the Service Provider with the purpose of engaging or recruiting these persons.

## **14. General stipulations**

14.1. The present Contract is governed by Belgian law. Application of the Vienna Sales Convention of 11 April 1980 (CISG) is excluded.

14.2. The Customer warrants that it will comply with all applicable import and export regulations.

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Further, the Customer indemnifies the Service Provider against all liability on the basis of violation of applicable import or export regulations. The Customer, with the explicit exclusion of the Service Provider, is deemed to be the exporter and/or importer in case of the import or export of the Third Party Products.

14.3. In the event of disputes concerning the implementation and/or interpretation of the present Contract which cannot be resolved amicably, only the Courts of Ghent (division Ghent) will be considered competent. Any claim of the Customer relating to the Services provided expires six (6) months after the date on which the Customer becomes aware or reasonably could have become aware of the damages-causing events giving rise to the claim.

14.4. Neither this Contract nor the rights or obligations arising from it may be transferred in whole or in part without the express written consent of both Parties. Without prejudice to the foregoing, the Service Provider is at all times authorised to transfer this Contract or the rights or obligations derived from it, in whole or in part, to an Affiliated Company without requiring the explicit and written consent of the Customer.

14.5. For the performance of the Contract, the Service Provider may call upon the services of subcontractors without requiring the written consent of the Customer in advance.

14.6. The nullity of any provision or part of a provision under this Contract will in no way affect the validity of the remaining portion of the provision or the rest of the provisions and clauses. By mutual agreement, the Parties will make every effort to replace the invalid clause with a valid one with the same, or largely the same, economic impact as the invalid clause had.

14.7. A Party cannot be considered to have waived a right or claim under this Contract or relating to a default of the other Party excepting where this waiver is made explicitly and in writing.

If under application of the preceding paragraph a Party waives rights or claims under this Contract that are derived from continuing breach of Contract or other default of the other Party, this waiver can never be interpreted as waiver of any other right under this Contract or concerning a continuing breach or other default of the other Party, even if the two situations exhibit significant similarities.

14.8. Barring any stipulation to the contrary, all legal remedies provided in the Contract are cumulative and above and beyond (and not in replacement of) any other legal remedies available to the Parties.

14.9. These General Terms & Conditions, together with the Specific Terms & Conditions and the General (License) Terms & Conditions of the Third Party Supplier are a full and complete

reflection of the rights and obligations of the Parties and take the place of all previous agreements and proposals, whether oral or in writing. The Customer declares to have taken note of the General (License) Terms & Conditions of the Third Party Supplier and accepts them. The Customer cannot derive more rights from the General (License) Terms & Conditions of the Third Party Supplier than those contained in it. The Customer shall fully indemnify the Service Provider against any compensations, losses, liabilities, damages, costs or expenditures that the Service Provider may suffer or incur as a result of an infringement of the General (License) Terms & Conditions of the Third Party Supplier and the claims arising therefrom.

Departures from and additions to the General Terms & Conditions and Specific Terms & Conditions are only valid if agreed between the Parties in writing. Departures from and additions to the General (License) Terms and Conditions of the Third Party Supplier are not possible.

In the event of any contradiction between the General Terms & Conditions, the Specific Terms & Conditions and the General (License) Terms & Conditions of the Third Party Supplier, the Specific Terms & Conditions will take precedence over the General Terms & Conditions and the General (License) Terms & Conditions of the Third Party Supplier over the General and Specific Terms & Conditions.

If and insofar as the aforementioned General (License) Terms & Conditions of the Third Party Supplier in the relationship between the Customer and the Third Party Supplier for whatever reason are deemed inapplicable or are declared inapplicable, the provisions in the General and Specific Terms & Conditions shall apply in full.

14.10. The applicability of the Customer's purchase conditions or any other general conditions are explicitly rejected, even if these conditions state otherwise.

14.11. All notifications, requests and other communication under this Contract (excluding everyday operational communications) shall be in writing by email with proof of receipt or in another conventional method of communication agreed between the Parties.

14.12. All provisions of the Contract explicitly identified as extending beyond the termination (including rescission) or expiry of the Contract, as well as all provisions of the Contract the performance of or compliance with which is intended after the termination or expiry of the Contract, shall continue and remain fully in force beyond the termination or expiry of the Contract. Specifically, but not exhaustively, all provisions relating to liability, confidentiality and non-solicitation continue after the termination of the Contract under any and all circumstances.

14.13. Regardless of the nature and value of the juristic act to be demonstrated, the Service Provider may at all times demonstrate this based on the following additional evidence: copies or reproductions in any form whatsoever (carbon copy, photocopy, microfilm, scan, etc.), via information carrier, fax, telex and email. This evidentiary material has the same basic force as a private instrument drafted in accordance with the provisions of the Belgian Civil Code. In the event a signed copy of the Contract is disclosed by email in a .pdf or .jpeg file or another form of exact copy, the signature included within it shall create a valid and binding obligation on the part of the signer (or the person in the name of whom and on whose account the document is signed) with the same value, force and effect as an original signature.

14.14. The titles and headings in this Contract are solely indicative and do not in any way affect the content or scope of the provisions or the rights and obligations derived therefrom.