

# *General Terms and Conditions of Sale and Delivery*

Date  
Author

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Quick Response Software B.V.

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These general terms and conditions consist of ten (10) paragraphs, consisting of a general part and a number of specific parts, depending on the assignment given to Quick Response Software B.V. and services provided by Quick Response Software B.V.

The provisions of paragraph 1 apply at all times and, depending on the assignment or the service, the provisions of one or more other paragraphs also apply, as will always be indicated per paragraph.

## **Paragraph 1. General provisions**

### **Article 1. Definitions**

For the purposes of these terms and conditions, the following definitions apply:

- PROPOS: the private limited company Quick Response Software B.V., with its registered office in Paterswolde and having its principal place of business in (9765 TA) Paterswolde at Groningerweg 13b, registered in the trade register of the Chamber of Commerce under number 55676405;
- Annex: an annex to the Agreement;
- BW: Civil Code;
- Further Agreement: a further agreement or assignment that, in the event that the Agreement is a framework or framework agreement, can be entered into or provided under the Agreement.
- Client: the natural or legal person with whom PROPOS has concluded or is negotiating an Agreement, or by whom a request has been made to PROPOS or to whom PROPOS has made an offer or quotation, as well as its representative(s), authorised representative(s) and/or assignee(s);
- Agreement: the agreement between PROPOS and Client to enter into a legal relationship as referred to in article 5 of these Terms and Conditions, whereby PROPOS undertakes to deliver certain services and/or products to Client and Client undertakes to perform a payment and/or a performance in return;
- Parties: PROPOS and Client;
- SaaS: Software as a Service, which is understood to mean the 'remote' provision and keeping available of software to the Client via the internet or another data network, without providing the Client with a physical carrier with the software in question;
- Terms and Conditions: the present Terms and Conditions of PROPOS;

### **Article 2. Applicability of Terms and Conditions**

1. These Terms and Conditions apply to all offers, quotations, activities and Agreements between PROPOS and Client.
2. Deviations from and additions to these Terms and Conditions are only valid if they have been expressly agreed in writing between the Parties and signed by both Parties.
3. The applicability of purchase or other terms and conditions of Client is hereby expressly rejected by PROPOS.

4. PROPOS reserves the right to unilaterally change the Terms and Conditions. Changes will take effect thirty (30) days after notification to Client or on the website of PROPOS.

## Article 3. Nullity or Annulment of the Terms

1. The nullity or annulment of any of the provisions of these Terms and Conditions or of any provision in the Agreement shall not affect the effect of the other provisions of these Terms and Conditions or the Agreement.

2. In the event of nullity or nullification as referred to in paragraph 1 of this article, the Parties shall replace that provision(s) with a regulation that approximates the purport of the null and void or voidable provision as closely as possible.

## Article 4. Offers

1. All offers and quotations of PROPOS are completely without obligation, unless otherwise expressly indicated in writing by PROPOS.

2. Client guarantees the correctness and completeness of the information provided to PROPOS by or on behalf of the Client on which PROPOS has based its offer.

3. Offers and quotations from PROPOS are valid until thirty (30) days after the date unless a different term has been expressly agreed in writing or a different acceptance period is mentioned in the offer or quotation. After the acceptance period has expired, the Client can no longer invoke the offer or quotation.

## Article 5. Formation and content of the agreement

1. The Agreement is concluded by written or oral acceptance by Client of an offer or quotation made by PROPOS to Client. By verbal or written acceptance by Client, Client also accepts these Terms and Conditions.

2. An itemised invoice sent by PROPOS is equivalent to an order confirmation signed by it.

3. Insofar as applicable, the following arrangement of precedence between the Agreement, these Terms and Conditions and any Annexes shall apply, unless expressly agreed otherwise in writing between the parties with reference to this arrangement of precedence:

(i) Agreement;

(ii) Further Agreement;

(iii) Data Processing Agreement, if applicable.

(iv) Terms;

(v) test farm document as referred to in Article 27;

(vi) scoping document as a basis for the development and/or implementation of software;

- (vii) service level agreement;
- (viii) Dossier agreements and procedures
- (ix) consolidated offer from PROPOS;
- (x) other appendices.

4. Without prejudice to the provisions of paragraph 1 of this article, PROPOS has the right to terminate an Agreement in writing by notice or to dissolve it within ten (10) calendar days after the day on which an Agreement has been concluded, without giving reasons, and without being obliged to pay any costs or damage whatsoever to Client. The date of such notification is determined by the date of the letter in which that notification is made.

## Article 6. Price and payment

1. All prices stated in offers, quotations and/or Agreements are exclusive of turnover tax (VAT) and other levies imposed by the government, unless expressly agreed otherwise in writing.
2. Costs related to transport, installation, assembly or otherwise, if they are not explicitly included in writing in the offer, quotation and/or Agreement, will be charged separately to the Client.
3. All prices announced by PROPOS are always in euros and Client must pay all payments in euros, unless explicitly agreed otherwise in writing.
4. No rights or expectations can be derived by the Client from a pre-calculation or estimate issued by PROPOS, unless the Parties have expressly agreed otherwise in writing. An available budget made known by Client to PROPOS only counts as a (fixed) price agreed between the Parties for the services to be performed by PROPOS if this has been expressly agreed in writing.
5. If, according to the Agreement concluded between the Parties, the Client consists of several natural persons and/or legal entities, each of those (legal) persons is jointly and severally liable to PROPOS for the fulfilment of the Agreement.
6. With regard to the services performed by PROPOS and the amounts owed by Client for this, the data from the administration of PROPOS provide complete evidence, without prejudice to the right of Client to provide evidence to the contrary.
7. If the Parties have agreed that compensation will be made on the basis of subsequent calculation, the Client will owe:
  - a. an amount determined on the basis of the number of hours spent at the agreed, or in the absence thereof, the applicable hourly rate of PROPOS, which includes the costs of the use of tools and (consumable) materials available at PROPOS;

- b. the costs for computer use for the performance of research, system studies, system analyses and for the design and testing of programs on the basis of the rates applicable to the computer configurations used, insofar as these costs are not included in the hourly rates referred to under subsection a of this art;
- c. the costs of the necessary assistance from third parties;
- d. the call-out charges charged by PROPOS;
- e. the other costs incurred in connection with the performance of the Agreement.

Except insofar as this is in conflict with any mandatory statutory provision, PROPOS is entitled to pass on wage and/or price increases in the rates referred to in subparagraphs a and b of this art.

8. If there is a periodic payment obligation of Client, PROPOS is entitled to periodically adjust the applicable prices and rates without having to inform Client in advance or give Client permission for such an adjustment in advance.

9. The parties will lay down in the Agreement the date or dates on which PROPOS will charge the fee for the agreed performances to Client, failing which a payment term of fourteen (14) days will always apply, unless these Terms and Conditions provide otherwise. Amounts due will be paid by the Client in accordance with the agreed payment conditions or stated on the invoice.

10. The Client is not entitled to suspend any payment or to set off any amounts due.

11. If, in the opinion of PROPOS, the creditworthiness of the Client gives cause to do so, it may require further security or an advance payment, failing which it is entitled to suspend the execution of the Agreement.

12. If the Client does not pay the amounts due or does not pay them on time, the Client will owe statutory interest on the outstanding amount for commercial agreements without the need for a reminder or notice of default. If Client continues to fail to pay the claim after a reminder or notice of default, PROPOS can hand over the claim, in which case Client is also obliged to pay all judicial and extrajudicial costs, including all costs calculated by external parties, in addition to the total amount then due. This does not affect the other legal and contractual rights of PROPOS.

## Article 7. Duration of the agreement

1. If and insofar as the Agreement is a continuing performance agreement, the Agreement has been entered into for the term agreed between the Parties, failing which the term of one (1) year applies.

2. The term of the Agreement shall be tacitly extended for a period of one (1) year, unless one of the Parties terminates the Agreement in writing with due observance of a notice period of three (3) months before the end of the period in question.

## Article 8. Confidentiality and takeover of staff

1. The Client and PROPOS shall ensure that all information received from the other Party of which it is known or should reasonably know that it is of a confidential nature, remains confidential. This prohibition does not apply to PROPOS if and insofar as the provision of the relevant data to a third party is necessary pursuant to a court or arbitration decision or a legal provision to that effect or for the proper execution of the agreement by PROPOS.

2. The Party that receives confidential information shall only use it for the purpose for which it was provided. Data shall in any case be considered confidential if it has been designated as such by one of the Parties.

3. The Client acknowledges that the software originating from PROPOS is always of a confidential nature and that it contains trade secrets of PROPOS, its suppliers or the producer of the software.

4. During the term of the Agreement as well as for three (3) years after the end thereof, the Client will only employ employees of PROPOS who are or have been involved in the execution of the Agreement, or otherwise, directly or indirectly, have them work for it after prior written permission from PROPOS. This permission may be subject to conditions, including the condition that Client pays a reasonable fee to PROPOS. A reasonable compensation is in any case considered the gross annual salary of the employee at PROPOS. If the Client violates this prohibition, it will forfeit to PROPOS an immediately payable fine of fifty thousand euros (€ 50,000) per violation, plus an amount of five thousand (€ 5,000) for each day – regardless of whether or not work is customary on this – that the violation continues. This fine shall be payable to PROPOS by the mere fact of the violation and shall not affect the right of PROPOS to demand compliance with the prohibition and shall not affect the right of PROPOS to claim full compensation in addition to the penalty.

## Article 9. Privacy and data processing

1. If this is necessary for the execution of the Agreement, Client will inform PROPOS in writing on request about the way in which Client will carry out its obligations under the legislation in the field of personal data protection.

2. Client indemnifies PROPOS against claims from persons whose personal data are registered or are processed in the context of a personal registration that is kept by Client or for which Client is otherwise responsible on the basis of the law, unless Client proves that the facts on which the claim is based are attributable to PROPOS.

3. The responsibility for the data that is processed for the Client using a PROPOS service lies entirely with the Client. Client guarantees to PROPOS that the content, use and/or processing of the data is not unlawful and does not infringe on the rights of third parties.

## Article 10. Security

1. If PROPOS is obliged under the Agreement to provide a form of information security, that security will comply with the specifications regarding security agreed in writing between the parties. If an explicitly described method of security is missing in the agreement, the security will meet a level that is not unreasonable, given the state of the art, the sensitivity of the data and the costs associated with the implementation of the security.

2. The access or identification codes and certificates provided to the Client by or on behalf of PROPOS are confidential and will be treated as such by the Client and will only be made known to authorized personnel from the Client's own organization. PROPOS is entitled to change assigned access or identification codes and certificates.

3. Client will adequately secure its systems and (ICT) infrastructure and have up-to-date antivirus software in operation at all times.

## Article 11. Reservation of Ownership and Rights and Suspension

1. All goods delivered to Client remain the property of PROPOS until all amounts owed by Client to PROPOS on the basis of the Agreement have been paid in full to PROPOS.

2. Rights will be granted or transferred to the Client on the condition that the Client has paid all amounts due under the Agreement.

3. PROPOS can retain the data, documents, software and/or data files received or realized from Client within the framework of the Agreement, despite an existing obligation to hand over or transfer, until Client has paid all amounts owed to PROPOS, if and insofar as this is not in conflict with mandatory provisions.

## Article 12. Risk transfer

The risk of loss, theft, misappropriation or damage to goods, data (including usernames, codes and passwords), documents, software or data files that are produced, delivered or used in the context of the execution of the Agreement will be transferred to the Client at the moment at which they have been brought into the actual power of disposal of the Client or an auxiliary person of the Client.

## Article 13. Intellectual

1. All intellectual property rights to the software, websites, databases, equipment, training, test and examination material or other materials such as analyses, designs, documentation, reports, quotations, as well as preparatory material thereof developed or made available to

Client on the basis of the Agreement, are exclusively vested in PROPOS, its licensors and/or its suppliers. The Client acquires the rights of use expressly granted by the Agreement and the law. A right of use vested in the Client is non-exclusive, non-transferable, non-pledgeable and non-sublicensable. This provision has effect under property law.

2. The Client will not remove or change any designation(s) regarding the confidential nature or regarding copyrights, brands, trade names or any other intellectual property right from the software, websites, databases, equipment or materials.

3. Even if the Agreement does not expressly provide for this, PROPOS is always permitted to install technical measures to protect equipment, files, websites, software made available, software to which Client is (directly or indirectly) given access, and the like in connection with an agreed limitation in the content or duration of the right to use these objects. The Client will not remove or circumvent such technical provision(s) (or have them removed).

4. Intellectual property rights of PROPOS will never be transferred to the Client, unless explicitly agreed otherwise in writing between the Parties.

5. If the Parties agree in writing and explicitly that an intellectual property right with regard to software, websites, databases, equipment or other materials developed specifically for the Client will be transferred to the Client, this does not affect the right or the ability of PROPOS to use the underlying components, general principles, ideas, designs, algorithms, Documentation, works, programming languages, protocols, standards and the like, to be used and/or exploited for other purposes without any restriction, either for oneself or for third parties. Nor does such a transfer affect the right of PROPOS to make developments for the benefit of itself or a third party that are similar or derived from those that have been or will be made for the benefit of Client.

6. PROPOS indemnifies Client against any claim by a third party which is based on the claim that software, websites, databases, equipment or other materials developed by PROPOS infringe an intellectual property right of that third party, under the condition that Client immediately informs PROPOS in writing about the existence and content of the claim and the handling of the case, including making any settlements, entirely to PROPOS. To this end, Client will provide PROPOS with the necessary powers of attorney, information and cooperation to defend itself against these claims. This obligation to indemnify lapses if the alleged infringement is related (i) to materials made available to PROPOS by Client for the use, processing, processing or maintenance, or (ii) to changes that Client has made or had made to the software, website, databases, equipment or other materials without the written permission of PROPOS. If it is irrevocably established in law that the software, websites, databases, equipment or other materials developed by PROPOS itself infringe any intellectual property right belonging to a third party or if, in the opinion of PROPOS, there is a reasonable chance that such an infringement will occur, PROPOS will, if possible, ensure that Client delivers the delivered, or functionally equivalent other software, continue to use websites,

data files, equipment or materials. Any other or more far-reaching indemnification obligation of PROPOS due to infringement of an intellectual property right of a third party is excluded.

7. The Client guarantees that no rights of third parties oppose the provision to PROPOS of equipment, software, material intended for websites, data files and/or other materials and/or designs, for the purpose of use, maintenance, processing, installation or integration. Client indemnifies PROPOS against any claim by a third party that is based on the claim that such provision, use, maintenance, processing, installation or integration infringes any right of that third party.

8. PROPOS is never obliged to carry out data conversion, unless this has been expressly agreed in writing with the Client.

## Article 14. Obligations to cooperate

1. The Parties recognise that the success of information and communication technology work depends on proper and timely cooperation between them. Client will always provide all reasonable cooperation requested by PROPOS in a timely manner, failing which PROPOS is entitled to suspend its obligations under the Agreement.

2. Client bears the risk of the selection of the goods, goods and/or services to be delivered by PROPOS. The Client always takes the utmost care to ensure that the requirements that the performance of PROPOS must meet are correct and complete. Measurements and data stated in drawings, images, catalogues, websites, quotations, advertising material, standardisation sheets, etc. are not binding on PROPOS, unless expressly stated otherwise by PROPOS.

3. If the Client deploys personnel and/or auxiliary persons in the execution of the Agreement, these personnel and auxiliary persons will have the necessary knowledge and experience. In the event that PROPOS employees perform work at the Client's location, the Client will provide the necessary facilities, such as a workspace with computer and network facilities, in a timely manner and free of charge. PROPOS is not liable for damage or costs due to transmission errors, malfunctions or unavailability of these facilities, unless Client proves that these damage or costs are the result of intent or deliberate recklessness on the part of PROPOS.

4. The workspace and facilities will meet all legal requirements. Client indemnifies PROPOS against claims from third parties, including employees of PROPOS, who suffer damage in connection with the execution of the Agreement as a result of acts or omissions of Client or unsafe situations in its organization. The Client will make the house and security rules applicable within its organization known to the employees deployed by PROPOS before the start of the work.

5. If Client makes software, equipment or other resources available to PROPOS in connection with the services and products of PROPOS, Client is responsible for obtaining all necessary licenses or approvals with regard to these resources that PROPOS may require.

6. Client is responsible for the management, including control of the institutions, the use of the products and/or services provided by PROPOS and the way in which the results of the products and services are used. Without prejudice to what has been agreed with regard to education and training, the Client is also responsible for the instruction to and use by users.

7. The Client will itself install, set up, parameterise and tune the (auxiliary) software required on its own equipment and, if necessary, adjust the equipment, other (auxiliary) software and user environment used for this purpose and achieve the interoperability desired by the Client.

## Article 15. Disclosure requirements

1. In order to enable a proper execution of the Agreement by PROPOS, Client shall always provide PROPOS with all data or information reasonably required by PROPOS in a timely manner.

2. Client guarantees the correctness and completeness of the data, information, designs and specifications provided by it to PROPOS. If the data, information, designs or specifications provided by Client for PROPOS contain recognizable inaccuracies, PROPOS will inquire about this with Client.

3. In connection with continuity, Client will appoint a contact person or contact persons who will function as such for the duration of PROPOS's work. The Client's contact persons will have the necessary experience, specific knowledge of the subject matter and insight into the objectives desired by the Client. PROPOS will also appoint a contact person or contacts who will act as such for the duration of the Agreement.

4. PROPOS is only obliged to periodically provide the Client with information about the execution of the work by means of the contact person designated by the Client.

## Article 16. Project and steering groups

1. If both Parties participate in a project or steering committee with one or more employees deployed by them, the provision of information will take place in the manner agreed for the project or steering committee.

2. Decisions taken in a project or steering committee in which both Parties participate, are only binding on PROPOS if the decision-making takes place in accordance with what has been agreed in writing between the Parties or, in the absence of written agreements in this regard, if PROPOS has accepted the decisions in writing. PROPOS is never obliged to accept or implement a decision if, in its opinion, this is incompatible with the content and/or proper execution of the Agreement.

3. The Client guarantees that the persons appointed by it to be part of a project or steering committee are entitled to make decisions that are binding on the Client.

## Article 17. Terms

1. Interim (delivery) dates mentioned by PROPOS or agreed between the Parties shall always be considered target dates, shall not bind PROPOS and shall always be indicative in nature, unless it has been expressly agreed in writing between the Parties that a (delivery) date is a strict deadline as referred to in Article 6:83 sub a of the Dutch Civil Code. PROPOS shall make reasonable efforts to meet the (delivery) terms and/or (delivery) dates specified by it or agreed between the Parties, whether or not at the end of the as much as possible.
2. If there is a risk of exceeding any deadline, PROPOS and Client will consult to discuss the consequences of the exceeding for further planning.
3. Exceeding a delivery period does not entitle the Client to compensation, dissolution of the Agreement or to non-compliance by the Client with any obligation arising from the Agreement.
4. (Delivery) periods or (delivery) dates will in any case be extended by the period of time that the execution of the Agreement has been suspended due to force majeure, regardless of whether the circumstances constituting force majeure occurred before or after the extensive completion should have been completed, as well as by the period of time that the Client is in default of the performance of any obligation arising for it under the Agreement, or is in default.
5. In all cases – therefore also if the Parties have agreed on a final (delivery) term or (delivery) date – PROPOS will only be in default due to exceeding the time after Client has given it written notice of default, whereby Client sets PROPOS a reasonable period to remedy the shortcoming (on the agreed terms) and this reasonable period has expired. The notice of default must contain a description of the shortcoming that is as complete and detailed as possible, so that PROPOS is given the opportunity to respond adequately.
6. If it has been agreed that the performance of the agreed work will take place in phases, PROPOS is entitled to postpone the start of the work belonging to a phase until Client has approved the results of the preceding phase in writing.
7. PROPOS is not bound by a final (delivery) date or (delivery) period if the Parties have agreed on a change in the content or scope of the Agreement (additional work, change of specifications, etc.) or a change in the approach to the execution of the Agreement, or if the Client has not fulfilled its obligations arising from the Agreement, in a timely manner or in full. The fact that (the demand for) additional work arises during the performance of the Agreement is never a ground for the Client to terminate or dissolve the Agreement.

## Article 18. Dissolution and termination of the Agreement

1. Each of the Parties shall only have the power to dissolve the Agreement on the grounds of an attributable failure to comply with the Agreement if the other Party in all cases fails

imputably in the fulfilment of essential obligations under the Agreement after a written notice of default that is as detailed as possible, setting a reasonable period for remedying the shortcoming. Payment obligations of the Client and all obligations to cooperate and/or provide information by the Client or a third party to be engaged by the Client will in all cases be regarded as material obligations under the Agreement.

2. If Client has already received performances for the execution of the Agreement at the time of the dissolution, these performances and the related payment obligations will not be subject to cancellation, unless Client proves that PROPOS is in default with regard to the essential part of those performances. Amounts that PROPOS has invoiced before the dissolution in connection with what it has already properly performed or delivered in execution of the Agreement, will remain due in full with due observance of the provisions of the previous sentence and will become immediately due and payable at the time of the dissolution

3. If an Agreement which, by its nature and content, does not end by completion, has been entered into for an indefinite period of time, it may be terminated by either Party in writing after proper consultation and stating reasons, subject to a period of three (3) months, unless a different notice period has been expressly agreed in writing between the Parties. PROPOS will never be obliged to pay any compensation due to termination.

4. The effect of Article 7:408 of the Dutch Civil Code, first and second paragraphs of the Dutch Civil Code is excluded.

5. Each of the Parties may terminate the Agreement in writing with immediate effect without notice of default, in whole or in part, if the other Party is granted a suspension of payments, whether or not provisionally, if bankruptcy is filed in respect of the other Party, if the other Party's business is liquidated or terminated other than for the purpose of reconstruction or merger of companies. PROPOS can also terminate the Agreement with immediate effect with immediate effect if the decisive control over the Client's company changes directly or indirectly. Due to the termination as referred to in this art, PROPOS is never obliged to restitute any money already received or to pay compensation. In the event that Client has irrevocably become bankrupt, the right of Client to use the available software, websites and the like as well as the right of Client to access and/or use the services of PROPOS will end, without an act of termination on the part of PROPOS being required.

## Article 19. Liability of the Parties

1. PROPOS has taken out professional liability insurance. On request, PROPOS will send a copy of the policy schedule to the Client.

2. Without prejudice to the provisions of the following paragraphs of this article, any liability of PROPOS shall in any case be limited to the amount that is actually paid out in the case in question under the liability insurance referred to in paragraph 1 of this article, plus the deductible that PROPOS bears under that insurance.

3. If and insofar as no payment is made under the insurance referred to in paragraph 1 of this article, for whatever reason, the total liability of PROPOS due to an attributable shortcoming in the performance of the Agreement or on any legal basis whatsoever, including expressly any shortcoming in the fulfilment of a warranty obligation agreed with the Client, is limited to compensation for direct damage up to a maximum of half of the amount of the price stipulated for that Agreement (excl. VAT). If the Agreement is primarily a continuing performance agreement with a term of more than one (1) year, the price stipulated for that Agreement will be set at the total of the fees (excl. VAT) stipulated for one (1) year. However, in no event shall PROPOS's total liability for direct damages, on any legal basis whatsoever, exceed five hundred thousand Euros (€500,000).

4. The total liability of the Parties for damage caused by death, bodily injury or due to material damage to property shall never exceed one million two hundred and fifty thousand Euros (€ 1,250,000).

5. The liability of PROPOS for indirect damage, including but not limited to consequential damage, loss of profit, missed savings, reduced goodwill, damage due to business interruption, damage as a result of claims from customers of Client, damage related to the use of goods, materials or software of third parties prescribed by Client to PROPOS and damage related to the engagement by Client to PROPOS prescribed suppliers is excluded. The liability of PROPOS in connection with the mutilation, destruction or loss of data or documents is also excluded.

6. The exclusions and limitations of liability of PROPOS described in the preceding paragraphs of this article do not affect the other exclusions and limitations of liability of PROPOS as described in these Terms and Conditions as well as the Agreement.

7. The exclusions and limitations of liability of PROPOS referred to in the previous paragraphs of this article will lapse if and insofar as the damage is the result of intent or deliberate recklessness on the part of PROPOS.

8. Unless compliance by PROPOS is permanently impossible, the liability of PROPOS due to attributable failure in the performance of an Agreement only arises if Client immediately gives PROPOS written notice of default, whereby a reasonable period is set for the remedying of the shortcoming, and PROPOS continues to attributable fail to comply with its obligations even after that period. The notice of default must contain a description of the shortcoming that is as complete and detailed as possible, so that PROPOS is given the opportunity to respond adequately.

9. A condition for the existence of any right to compensation on the part of Client is always that Client reports the damage in writing to PROPOS as soon as possible after it has arisen. Any claim for damages against PROPOS will lapse by the mere lapse of one (1) year after the claim has arisen, unless Client has filed a legal claim for compensation for the damage before the expiry of that period.

10. Client indemnifies PROPOS against all claims of third parties due to product liability as a result of a defect in a product or system that has been delivered by Client to a third party and that also consisted of equipment, software or other materials supplied by PROPOS, unless and insofar as Client proves that the damage was caused by that equipment, software or other materials.

11. The provisions of this article as well as all other limitations and exclusions of liability mentioned in these Terms and Conditions as well as the Agreement also apply to all (legal) persons that PROPOS uses in the execution of the Agreement.

## Article 20. Force majeure

1. Neither Party is obliged to comply with any obligation, including any statutory and/or agreed warranty obligation, if it is prevented from doing so as a result of force majeure.

2. Force majeure on the part of PROPOS is understood to mean, among other things: (i) force majeure of suppliers of PROPOS, (ii) failure to properly comply with obligations of suppliers prescribed to PROPOS by Client, (iii) defectiveness of goods, equipment, software or materials of third parties the use of which has been prescribed to PROPOS by Client, (iv) government measures, (v) power failure, (vi) failure of internet, data network or telecommunications facilities, (vii) war and (viii) general transport problems.

3. If a force majeure situation lasts longer than sixty (60) days, each of the Parties has the right to dissolve the Agreement in writing. In that case, what has already been achieved on the basis of the Agreement will be settled proportionately, without the Parties owing each other anything.

## Article 21. Modification and additional work

1. If, at the request or with the prior consent of Client, PROPOS has performed activities or other performances that fall outside the content or scope of the activities and/or performances established in the Agreement, these activities or performances will be reimbursed by Client according to the agreed rates and, in the absence thereof, according to the usual rates of PROPOS. PROPOS is not obliged to comply with such a request and may require a separate written agreement to be concluded for that purpose.

2. Insofar as a fixed price has been agreed for the service, PROPOS will inform Client in writing on request about the financial consequences of the extra work or performance as referred to in this article.

## Article 22. Transfer of rights and obligations

1. Client will never sell, transfer or pledge the rights and obligations it has on the basis of the Agreement to a third party without the consent of PROPOS. This provision has effect under property law.

2. PROPOS is entitled to sell, transfer or pledge its claims for payment of fees to a third party or to engage a third party in the performance of its work.

### Article 23. Applicable law and disputes

1. The Agreement between Client and PROPOS, as well as all further Agreements arising from it, resulting from it or related thereto, are governed by Dutch law, with the exception of the provisions of the Vienna Sales Convention and with the exception of rules of Dutch law that declare non-Dutch law applicable

2. With regard to all disputes relating to the Agreement, or further Agreements arising from it, resulting from it or related thereto, the District Court of Noord-Nederland, location Groningen, shall have exclusive jurisdiction in the first instance, without prejudice to the right of the Parties to appeal and cassation.

## Paragraph 2. Service

The provisions included in this Paragraph 'Services' apply, in addition to the General Provisions, if PROPOS provides services of any kind (and whether or not further elaborated in one of the other Paragraphs of these Terms and Conditions) to Client.

## Article 24. Execution

1. PROPOS will make every effort to perform its services with care, if necessary in accordance with the agreements and procedures laid down in writing with Client. All services of PROPOS are performed on the basis of an obligation to perform to the best of one's ability, unless and insofar as PROPOS has explicitly promised a result in the written Agreement and the relevant result is also described with sufficient certainty in the Agreement.
2. PROPOS is not liable for damage or costs resulting from the use or misuse of access or identification codes or certificates, unless the misuse is the direct result of an intentional or deliberately reckless act or omission of PROPOS.
3. If the Agreement has been entered into with a view to execution by one specific person, PROPOS is always entitled to replace this person with one or more persons with the same and/or similar qualifications.
4. PROPOS is not obliged to follow instructions from the Client in the execution of the Agreement, in particular not if this concerns instructions that change or supplement the content or scope of the Agreement. However, if such instructions are followed, the work in question will be reimbursed in accordance with the usual rates of PROPOS.

## Article 25. Service Level Agreement

1. Any agreements regarding a service level (Service Level Agreement) can only be expressly agreed in writing. Client shall always inform PROPOS immediately of all circumstances that affect or may affect the service level and its availability.
2. If agreements have been made about a service level, the availability of software, systems and related services shall always be measured in such a way that the decommissioning announced in advance by PROPOS due to preventive, corrective or adaptive maintenance or other forms of service, as well as circumstances beyond the control of PROPOS, are not taken into account. Subject to evidence to the contrary to be provided by the Client, the availability measured by PROPOS will count as full proof.

## Article 26. Backups, careful handling of data and resources

1. Unless expressly agreed otherwise in writing between the Parties, the making of backups, proper system management and shadow running is the sole responsibility of the Client.

2. If the services to Client on the basis of the Agreement include making back-ups of Client's data, PROPOS will make a full back-up of the Client's data in its possession, with due observance of the periods agreed in writing, and in the absence thereof once a week. PROPOS will keep the back-up for the agreed period, and in the absence of any agreements in this regard, for the usual period at PROPOS. PROPOS will carefully store the backup with due care.

3. The Client itself remains responsible for compliance with all statutory administration and retention obligations applicable to it.

4. In general, the Client will ensure appropriate security of its ICT resources and handle them with due care. This also means that Client will handle the use of software supplied by PROPOS with care, for example by first shading it before using it for production purposes.

### **Paragraph 3. Software-as-a-Service (SaaS)**

The provisions included in this Section 'Software as a Service (SaaS)' apply, in addition to the General Provisions and the provisions of the Section 'Services', if PROPOS provides services under the name or in the field of SaaS.

### **Article 27. Implementation of SaaS service**

1. PROPOS only provides the SaaS service on behalf of the Client. Client is not free to allow third parties to use the services provided by PROPOS in the field of SaaS.
2. If, on the basis of a request or authorized order from a government agency or in connection with a legal obligation, PROPOS performs work with regard to data of Client, its employees or users, all associated costs will be charged to Client.
3. PROPOS may make changes to the content or scope of the SaaS service. If such changes result in a change in the procedures applicable to Client, PROPOS will inform Client as soon as possible and the costs of this change will be borne by Client. In that case, Client may terminate the Agreement in writing with effect from the date on which the amendment takes effect, unless this amendment is related to changes in relevant legislation or other regulations issued by competent authorities or PROPOS will bear the costs of this amendment.
4. PROPOS may continue to perform the SaaS service using a new or modified version of the software. PROPOS is not obliged to maintain, change or add certain features or functionalities of the service or software specifically for the Client.
5. PROPOS may temporarily decommission all or part of the SaaS Service for preventive, corrective or adaptive maintenance or other forms of service. PROPOS will not allow the decommissioning to last longer than necessary and, if possible, to take place outside office hours.
6. PROPOS is never obliged to provide Client with a physical carrier containing the software to be made available and to be kept available to Client in the context of the SaaS service.
7. The Client shall ensure that it has the facilities necessary for the use of the SaaS service immediately after entering into the Agreement.

### **Article 28. Guarantee**

1. PROPOS does not guarantee that the software to be made available in the context of the SaaS service is error-free and functions without interruptions. PROPOS will make every effort to rectify errors as referred to in article 34 paragraph 3 in the software within a reasonable period of time if and insofar as it concerns software that has been developed by PROPOS itself and the relevant defects have been reported to PROPOS in writing by Client. PROPOS may, if necessary, postpone the repair of the defects until a new version of the software is put into use. PROPOS does not guarantee that defects in software that have not been developed by

PROPOS itself will be corrected. PROPOS is entitled to introduce temporary solutions or program workarounds or problem-avoiding restrictions in the software. If the software has been developed on behalf of the Client, PROPOS can charge the costs of repair to the Client in accordance with its usual rates.

2. On the basis of the information provided by PROPOS regarding measures to prevent and limit the consequences of malfunctions, defects in the SaaS services, mutilation or loss of data or other incidents, the Client will identify the risks to its organization and, if necessary, take additional measures. PROPOS declares that it is prepared to cooperate reasonably at the request of the Client with further measures to be taken by the Client, against (financial) conditions to be set by PROPOS. PROPOS is never obliged to recover mutilated or lost data.

3. PROPOS does not guarantee that the software to be made available in the context of the SaaS service will be adapted in a timely manner to changes in relevant laws and regulations.

## Article 29. SaaS service from suppliers

1. If and insofar as PROPOS in turn purchases the SaaS service from (a) third party(ies) and subsequently makes it available to Client, the (license) conditions of the relevant third parties will apply in the relationship between PROPOS and Client with regard to that SaaS service, with the exception of the deviating provisions in these Terms and Conditions. The Client shall not be entitled to invoke a failure on the part of PROPOS to comply with any information obligation regarding the applicability of the terms and conditions of suppliers, if the Client is a Party as referred to in Article 6:235 paragraph 1 or paragraph 3 of the Dutch Civil Code.

2. If and insofar as the said terms and conditions of third parties in the relationship between Client and PROPOS are deemed not to be applicable or are declared inapplicable for whatever reason, the provisions of these Terms and Conditions apply in full.

## Paragraph 4. Software

The provisions included in this Paragraph 'Software' apply, in addition to the General Provisions and the provisions of the paragraph 'Services', if PROPOS makes software available to the Client for use other than on the basis of a SaaS service.

## Article 30. Testing company

1. In the event that the Agreement provides for the establishment, furnishing and execution of a so-called 'testing ground' phase (test company) in which Client can determine for itself whether the solution offered by PROPOS is suitable for it before further implementation of the Agreement is given, Client will formulate test criteria against which the solution offered by PROPOS can be tested by Client. The Client shall record these criteria in a test company document and submit this document to PROPOS for approval.

2. PROPOS will assist Client at the latter's request as well as possible in setting up, setting up and carrying out a testing ground in accordance with the test company document approved by PROPOS as referred to in the previous paragraph, insofar as this is reasonably possible, and at the agreed rates, or in the absence thereof, at the applicable rates of PROPOS.

3. The Client shall have investigated within a reasonable period of time, but no later than eight (8) weeks after the start of the set-up of the test company in accordance with the PROPOS approved test company document as referred to in the first paragraph, whether the PROPOS solution meets the requirements set out in the test company document, and shall record the results of its findings in a test company report. A copy of this test farm report will be provided to PROPOS.

4. If, on the basis of the results of the test company recorded in the test company report, the Client concludes that the solution offered by PROPOS does not reasonably meet the criteria set out in the test company document, the Client is entitled, in addition to the provisions of Article 18, to terminate the Agreement by termination, without the Client being able to claim reimbursement of costs of any nature or extent, and without having any right to compensation. The costs incurred by PROPOS up to that point will be reimbursed by the Client. The Client is also obliged to return all documents, software, documentation and other goods provided to it by PROPOS to it immediately after that date.

5. If, on the basis of the results of the test company established in the test company report, the Client concludes that the solution offered by PROPOS meets the criteria laid down in the test company document, or if, after the expiry of the period set out in paragraph 3 of this article, the Customer has not shared any conclusions as referred to in paragraph 4 of this article in a test company report with PROPOS, the solution of PROPOS is deemed to be suitable for Client, and further execution will be given to the delivery of goods and/or services as stipulated in the Agreement.

## Article 31. Conversion

1. If and insofar as the Agreement provides for this, PROPOS will convert data and/or information at the request of Client and/or assist Client with conversion so that it is suitable for use with the software to be made available by PROPOS, at the agreed rates, or in the absence thereof, at the rates applicable at PROPOS.

2. After conversion has been carried out by PROPOS, Client must validate the results in writing to PROPOS. Client is at all times responsible for the results of the conversion as referred to in the previous paragraph, PROPOS never guarantees the correctness and completeness of the results of the conversion.

## Article 32. Right of use and restrictions of use

1. PROPOS shall make available to the Client on the basis of a user licence the agreed computer programs and, if agreed, user documentation for use during the term of the

Agreement, hereinafter referred to as 'the software'. The right to use the software is not exclusive, non-transferable, non-pledgeable and non-sublicensable. This provision has effect under property law.

2. The obligation to make available by PROPOS and the right of use of the Client extend exclusively to the so-called object code of the software. The Client'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 made available to the Client, even if the Client is prepared to pay a financial compensation for this.

3. The Client will always strictly comply with the agreed restrictions, of whatever nature or content, on the right to use the software.

4. If the Parties have agreed that the software may only be used in combination with certain equipment, the Client is entitled to use the software on other equipment with the same qualifications for the duration of the malfunction in the event of a malfunction.

5. PROPOS may require that Client does not use the software until Client has obtained one or more codes required for use from PROPOS, its suppliers or the producer of the software. PROPOS is always entitled to take technical measures to protect the software against unlawful use and/or against use in a manner or for purposes other than those agreed between the Parties. The Client will never remove or circumvent technical provisions intended to protect the software.

6. The Client may only use the software in and for the benefit of its own company or organisation and only to the extent necessary for the intended use. The Client will not use the software for the benefit of third parties, for example in the context of 'Software-as-a-Service' (SaaS) or 'outsourcing'.

7. The Client is never permitted to sell, rent, dispose of or grant limited rights to the software and the carriers on which the software is or will be recorded or to make them available to a third party in any way, for any purpose or under any title whatsoever. Nor will the Client give a third party – whether or not remotely (online) – access to the software or host the software with a third party, even if the third party in question uses the software exclusively for the benefit of the Client.

8. Upon request, the Client will immediately cooperate with an investigation to be carried out by or on behalf of PROPOS regarding compliance with the agreed restrictions on use. The Client will grant access to its buildings and systems at the first request of PROPOS. PROPOS will treat all confidential business information that it obtains in the context of an investigation by or from Client, insofar as that information does not concern the use of the software itself, confidentially.

9. The Parties consider that the Agreement concluded between the Parties, insofar as it has the provision of software as its object, is never considered to be an agreement of sale.

10. PROPOS is not obliged to maintain the software and/or to provide support to users and/or administrators of the software. If, contrary to the above, PROPOS is requested to provide maintenance and/or support with regard to the software, PROPOS may require Client to enter into a separate written Agreement for this purpose.

## Article 33. Delivery and installation

1. PROPOS will, at its option, deliver the software on the agreed format of data carrier or, in the absence of agreements in this regard, on a format of data carrier to be determined by PROPOS or make the software available online to the Client for delivery. Any agreed user documentation will be provided in paper or digital form in a language determined by PROPOS at the discretion of PROPOS.

2. Only if this has been agreed, PROPOS will install the software at Client's premises. In the absence of agreements in this regard, the Client will install, set up, parameterize, tune the software itself and, if necessary, adjust the equipment and operating environment used.

## Article 34. Acceptance

1. If the Parties have not agreed on an acceptance test, the Client will accept the software in the state in which it is at the time of delivery ('as is, where is'), therefore with all visible and invisible errors and defects, without prejudice to the obligations of PROPOS on the basis of the guarantee scheme of article 38. In the aforementioned case, the software will be deemed to have been accepted by the Client upon delivery or, if an installation to be carried out by PROPOS has been agreed upon in writing, upon completion of the installation.

2. If an acceptance test has been agreed between the Parties, the provisions of paragraphs 3 to 10 of this article shall apply.

3. Where 'errors' are referred to in these Terms and Conditions, this is understood to mean the substantial non-compliance of the software with the functional or technical specifications of the software expressly stated by PROPOS in writing, and, in the event that the software is wholly or partly custom-made software, with the functional or technical specifications expressly agreed in writing. There is only an error if the Client can demonstrate it and it is reproducible. The Client is obliged to report errors immediately. PROPOS has no obligation whatsoever with regard to defects in or to the software other than with regard to errors within the meaning of these Terms and Conditions.

4. If an acceptance test has been agreed, the test period shall be ten (10) days after delivery or, if an installation to be carried out by PROPOS has been agreed in writing, ten (10) days after completion of the installation. During the test period, the Client is not entitled to use the software for productive or operational purposes. The Client will carry out the agreed acceptance test with qualified personnel and with sufficient scope and depth. At the request of the Client, PROPOS will provide support in an acceptance test at the rates customary at PROPOS.

5. If an acceptance test has been agreed, Client is obliged to check whether the delivered software complies with the functional or technical specifications explicitly stated by PROPOS in writing, and, if and insofar as the software is wholly or partly custom-made software, with the functional or technical specifications expressly agreed upon in writing.

6. The software will be deemed to be accepted between the Parties:

i. if the Parties have agreed on an acceptance test: on the first day after the test period, or

ii. if PROPOS receives a test report as referred to in paragraph 7 of this article before the end of the test period: at the time that the errors referred to in that test report have been corrected, without prejudice to the presence of errors that do not prevent acceptance according to paragraph 8 of this article, or

iii. if the Client makes any use of the software for productive or operational purposes: at the time of the relevant commissioning.

7. If it turns out that the software contains errors during the execution of the agreed acceptance test, the Client will report the test results to PROPOS in writing, clear, detailed and understandable no later than the last day of the test period. PROPOS will use its best efforts to correct the said errors within a reasonable period of time, whereby PROPOS is entitled to apply temporary solutions, program workarounds or problem-avoiding restrictions.

8. The Client may not withhold acceptance of the software for reasons that are not related to the specifications expressly agreed in writing between the Parties and furthermore not because of the existence of minor errors, being errors that do not reasonably impede the operational or productive commissioning of the software, without prejudice to the obligation of PROPOS to rectify these minor errors within the framework of the guarantee scheme of article 38. Furthermore, acceptance should not be withheld because of aspects of the software that can only be assessed subjectively, such as aesthetic aspects of user interfaces.

9. If the software is delivered and tested in phases and/or components, the non-acceptance of a particular phase and/or component shall not affect the acceptance of an earlier phase and/or another component.

10. Acceptance of the software in one of the ways referred to in this article shall mean that PROPOS is discharged for the fulfilment of its obligations with regard to the provision and delivery of the software and, if the installation of the software has also been agreed by PROPOS, of its obligations with regard to the installation. Acceptance of the software does not affect the Client's rights pursuant to paragraph 8 of this article regarding minor defects and article 38 regarding the warranty.

## Article 35. Mobilisation

1. PROPOS will make the software available to the Client within a reasonable period of time after entering into the Agreement.

2. Immediately after the Agreement has ended, Client will return all copies of the software in its possession to PROPOS. If it has been agreed that Client will destroy the relevant copies at the end of the Agreement, Client will immediately notify PROPOS in writing of such destruction. PROPOS is not obliged to provide assistance at or after the end of the agreement with a view to a data conversion desired by Client.

## Article 36. Fee of use

The fee to be paid by the Client for the right to use is due at the agreed times, or in the absence of an agreed time prior to the delivery of the software.

## Article 37. Changes in the software

Subject to exceptions provided for by law, Client is not entitled to modify the software in whole or in part without the prior written consent of PROPOS. PROPOS is entitled to refuse its permission or to attach conditions to it. Client bears the full risk of all changes made by or on behalf of Client by third parties – whether or not with the permission of PROPOS.

## Article 38. Guarantee

1. PROPOS will make every effort to rectify errors within a reasonable period of time if they have been reported to PROPOS in writing within a period of two (2) months after delivery, or, if an acceptance test has been agreed, within two (2) months after acceptance. PROPOS does not guarantee that the software is suitable for its actual and/or intended use. Nor does PROPOS guarantee that the software will work without interruption and/or that all errors will always be corrected. The repair will be carried out free of charge, unless the software has been developed on behalf of the Client other than for a fixed price, in which case PROPOS will charge the costs of repair according to its usual rates.
2. PROPOS can charge the costs of repair according to its usual rates in the event of errors of use or injudicious use by Client or other causes not attributable to PROPOS. The repair obligation lapses if the Client makes changes to the software or has it made without the written permission of PROPOS.
3. Correction of errors shall take place at a location and manner to be determined by PROPOS. PROPOS is entitled to introduce temporary solutions or program workarounds or problem-avoiding restrictions in the software.
4. PROPOS is never obliged to recover mutilated or lost data.
5. PROPOS shall have no obligation of any kind or content whatsoever in respect of errors reported after the end of the warranty period referred to in paragraph 2 of this article.

## Article 39. Supplier software

1. If and insofar as PROPOS makes third-party software available to Client, the (license) conditions of relevant third parties in the relationship between PROPOS and Client will apply with regard to that software, with the exception of the deviating provisions in these Terms and Conditions. The Client shall not be entitled to invoke a failure on the part of PROPOS to comply with any information obligation regarding the applicability of the terms and conditions of suppliers, if the Client is a Party as referred to in Article 6:235 paragraph 1 or paragraph 3 of the Dutch Civil Code.

2. If and insofar as the said terms and conditions of third parties in the relationship between Client and PROPOS are deemed not to be applicable or are declared inapplicable for whatever reason, the provisions of these Terms and Conditions apply in full.

## **Paragraph 5. Development of custom software**

The provisions included in this Paragraph 'Development of Custom Software' apply, in addition to the General Provisions and the provisions of the paragraph 'Services', if PROPOS develops custom software and makes it available to the Client for use.

### **Article 40. Specifications**

1. If specifications or a design of the software to be developed have not already been provided to PROPOS before or at the time of entering into the Agreement, the Parties will specify in writing which software will be developed and how the development will take place.
2. PROPOS will develop the software with care, all this with due observance of the explicitly agreed specifications or the design and – where applicable – with due observance of the project organization, methods, techniques and/or procedures agreed in writing with Client. Before starting the development work, PROPOS may require the Client to agree in writing with the specifications or the design.
3. If the Parties use a development method that is characterized by the principle that the design and/or development of (parts of) the software takes place in an iterative manner (e.g. Scrum), the Parties accept that the work will not be carried out at the start on the basis of complete or fully developed specifications and also that specifications, which may or may not have been agreed upon at the start of the work, can be adjusted in good consultation during the implementation of the Agreement, taking into account the project approach associated with the relevant development method. During the execution of the Agreement, the Parties will jointly make decisions in good consultation with regard to the specifications that apply to the next phase of the project (e.g. a 'time-box') and/or to the next sub-development. The Client accepts that the software will not necessarily meet all specifications. The Client will ensure permanent, active input and cooperation from relevant end users supported by the Client's organisation, including with regard to testing and with regard to (further) decision-making. The Client guarantees that the employees deployed by it who are appointed to key positions have the decision-making powers required for this position. The Client guarantees the expeditiousness of the progress decisions to be taken by it during the execution of the Agreement. In the absence of timely and clear progress decisions on the part of the Client in accordance with the project approach that belongs to the development method in question, PROPOS is entitled – but not obliged – to take the decisions it deems appropriate.
4. If the Parties use a development method as referred to in paragraph 3 of this article, the provisions of paragraphs 1 and 4 to 8 of article 34 and article 38 paragraph 1 shall not apply. The Client accepts the software in the state in which it is at the time of the end of the last iteration ('as is, where is'). PROPOS is not obliged to correct errors after the final development phase, unless explicitly agreed otherwise in writing.

5. In the absence of specific agreements in this regard, PROPOS will commence the design and/or development work within a reasonable period to be determined by it after entering into the Agreement.

6. Upon request, Client will give PROPOS the opportunity to perform the work outside the usual working days and working hours at the office or location of Client.

7. The performance obligations of PROPOS with regard to the development of custom software do not include the maintenance of the software and/or the provision of support to users and/or administrators thereof. If, contrary to the above, PROPOS must also provide maintenance and/or support, PROPOS may require Client to enter into a separate written agreement for this. This work will be charged separately at the usual rates of PROPOS.

## Article 41. Delivery, installation and acceptance

1. The provisions of Article 33 concerning delivery and installation shall apply mutatis mutandis.

2. The provisions of Article 34 on acceptance shall apply mutatis mutandis.

## Article 42. License

1. PROPOS shall make the software and/or website developed on behalf of the Client and any associated user documentation available to the Client for use.

2. Only if this has been agreed in writing, the source code of the software and/or the technical documentation created during the development of the software will be made available to the Client, in which case the Client will be entitled to make changes to the software.

3. PROPOS is not obliged to make available the utilities and program or data libraries necessary for the use and/or maintenance of the software.

4. The provisions of Article 32 on rights of use and restrictions on use shall apply mutatis mutandis.

5. Only if it is clear from the content of the Agreement that all design and development costs are borne entirely and exclusively by the Client, no restrictions on the right to use the software apply to the Client – contrary to the provisions of the previous paragraph.

## Article 43. Compensation

1. In the absence of an agreed payment schedule, all amounts relating to the design and development of software and/or websites shall be due in arrears per calendar month.

2. The price for the development work does not also include the fee for the right to use the software during the term of the Agreement, unless expressly agreed otherwise in writing.

3. The fee for the development of the software does not include a fee for the tools and program and data libraries required by the Client, any installation services and any modification and/or maintenance of the software. Nor does the fee include the provision of support to users.

#### Article 44. Guarantee

1. The provisions of Article 38 relating to guarantees shall apply mutatis mutandis.
2. PROPOS does not guarantee that the custom software it has developed will work properly in conjunction with other parts of software, equipment and/or the Client's ICT infrastructure.

## **Paragraph 6. Maintenance and support**

The provisions included in this Section 'Maintenance and support' apply, in addition to the General Provisions and the provisions in the section 'Services', if PROPOS provides services in the field of maintenance of software and support for the use of software.

### **Article 45. Maintenance services**

1. If agreed, PROPOS shall carry out maintenance with regard to the software stipulated in the Agreement. The maintenance obligation includes the correction of errors in the software and – only if this has been agreed in writing – the provision of new versions of the software in accordance with Article 46.

2. 'Errors' within the meaning of this article is understood to mean the substantial non-compliance of the software with the functional or technical specifications of the software expressly stated in writing by PROPOS, and, in the event that the software is wholly or partly custom-made software, with the functional or technical specifications expressly agreed in writing. There is only an error if the Client can demonstrate it and it is reproducible.

'Errors' is expressly not understood to mean non-compliance with the software as a result of user errors on the part of the Client and/or as a result of changes to the software other than by or on behalf of PROPOS, the improper use of the software, the non-compliance of the software due to external causes, such as defects in the internet, data network connections, power supplies, etc. or links with equipment, software or materials. If PROPOS performs work for the benefit of the Client in connection with the circumstances referred to in the previous sentence, the Client will owe the usual rates of PROPOS for this.

3. Client is obliged to inform PROPOS of errors without delay.

4. The Client shall report any errors found in the software in detail. Upon receipt of the notification, PROPOS will make every effort to correct errors and/or make improvements to later new versions of the software, in accordance with its usual procedures. Depending on the urgency and the version and release policy of PROPOS, the results will be made available to the Client in the manner and term to be determined by PROPOS. PROPOS is entitled to introduce temporary solutions or program workarounds or problem-avoiding restrictions in the software. The Client will itself install, set up, parameterize, tune the corrected software or the new version of the software made available and, if necessary, adjust the equipment and operating environment used.

5. The provisions of Article 38 (3) and (4) shall apply mutatis mutandis.

6. If PROPOS carries out the maintenance online, the Client will ensure a sound infrastructure and network facilities in a timely manner.

7. Client will provide all cooperation requested by PROPOS with the maintenance, including the temporary cessation of the use of the software and the making of a back-up of all data.

8. If the maintenance relates to software that has not been delivered by PROPOS itself to Client, Client shall, if PROPOS deems this necessary or desirable for the maintenance, make the source code and the technical (development) documentation of the software (including data models, designs, change-logs, etc.) available. Client guarantees that he is entitled to such a provision, and indemnifies PROPOS against all claims with regard to infringement of intellectual property rights in this respect. Client grants PROPOS the right to use and modify the software, including the source code and technical (development) documentation, in the context of performing the agreed maintenance.

9. The maintenance by PROPOS does not affect the Client's own responsibility for the management of the software, including control of the settings and the way in which the results of the use of the software are used. The Client will install, set up, parameterise, tune and, if necessary, adjust the equipment, other software and user environment used for this purpose and achieve the interoperability desired by the Client.

## Article 46. New versions of software

1. Maintenance shall include the provision of new versions of the software only if and to the extent agreed in writing. If the maintenance includes the provision of new versions of the software, this provision will take place at the discretion of PROPOS. If and to the extent applicable, Client and PROPOS will follow the version policy of PROPOS's suppliers.

2. Three (3) months after the provision of an improved version, PROPOS is no longer obliged to correct errors in the previous version and to provide support and/or maintenance in relation to a previous version.

3. PROPOS may require that Client enters into a further written Agreement with PROPOS for the provision of a version with new functionality and that a further fee is paid for the provision. PROPOS can copy functionality from a previous version of the software unchanged, but does not guarantee that every new version contains the same functionality as the previous version. PROPOS is not obliged to maintain, change or add certain features or functionalities of the software specifically for the Client.

4. PROPOS may require the Client to adjust its system (equipment, software, etc.) if this is necessary for the proper functioning of a new version of the software.

## Article 47. Support services

1. If the services of PROPOS on the basis of the Agreement also include support to users and/or administrators of the software, PROPOS will advise by telephone, online or e-mail about the use and functioning of the software mentioned in the Agreement. PROPOS may impose conditions on the qualifications and the number of persons eligible for support. PROPOS will process well-founded requests for support within a reasonable period of time in accordance with its usual procedures. PROPOS does not guarantee the accuracy,

completeness or timeliness of responses or support offered. Support is provided on working days during the usual opening hours of PROPOS.

2. If the services provided by PROPOS on the basis of the Agreement also include the provision of so-called 'standby services', PROPOS will keep one or more staff members available during the days and at the times specified in the Agreement. In that case, the Client is entitled to call in the support of the staff members who have been kept available in the event of an emergency in the event of a serious malfunction in the functioning of the software. PROPOS does not guarantee that all malfunctions will be resolved in time.

3. The maintenance and other agreed services as referred to in this paragraph will be carried out as of the day on which the Agreement was entered into, unless the Parties have agreed otherwise in writing.

## Article 48. Maintenance and support reimbursement

1. In the absence of an expressly agreed payment schedule, all amounts relating to the maintenance of software and the other services laid down in the Agreement as referred to in this paragraph shall be due in advance per calendar year.

2. Amounts relating to the maintenance of the software and the other services laid down in the Agreement as referred to in this paragraph shall be payable from the commencement of the Agreement. The fee for maintenance and other services is due regardless of whether the Client has (or has used) the software or makes use of the possibility of maintenance or support.

## Paragraph 7. Advice and consultancy

The provisions included in this Section 'Advice and consultancy' apply, in addition to the General Provisions and the provisions in the paragraph 'Services', if PROPOS provides services in the field of advice and consultancy.

## Article 49. Execution of advice and consultancy services

1. The duration of an assignment in the field of consultancy or advice depends on various factors and circumstances, such as the quality of the data and information provided by the Client and the cooperation of the Client and relevant third parties. Unless otherwise agreed in writing, PROPOS will therefore not commit itself in advance to a duration of the assignment.

2. The services of PROPOS are only provided on the usual working days and times of PROPOS.

3. The use that the Client makes of an advice and/or consultancy report issued by PROPOS is always at the risk of the Client. The burden of proof that (the manner of) advice and consultancy services does not comply with what has been agreed in writing or with what may

be expected of a reasonably acting and competent Contractor rests entirely with the Client, without prejudice to the right of PROPOS to provide evidence to the contrary by all means.

4. Without the prior written consent of PROPOS, the Client is not entitled to make a communication to a third party about the working method, the methods and techniques of PROPOS and/or the content of the advice or reports of PROPOS. Client shall not provide the advice or reports of PROPOS to a third party or otherwise make them public.

## Article 50. Reporting

PROPOS will periodically inform Client about the execution of the work in the manner agreed in writing. Client shall notify PROPOS in writing in advance of circumstances that are or may be important to PROPOS, such as the manner of reporting, the issues for which Client wishes attention, Client's priorities, availability of resources and personnel of Client and special facts or circumstances that may not be known to PROPOS. Client will ensure the further dissemination and knowledge of the information provided by PROPOS within the Client's organisation and will assess this information partly on the basis of this information and inform PROPOS thereof.

## Article 51. Compensation

In the absence of an expressly agreed payment schedule, all fees relating to services provided by PROPOS as referred to in this paragraph are due in arrears per calendar week.

## **Paragraph 8. Education and training**

The provisions included in this Section 'Education and training' apply, in addition to the General Provisions and the provisions in the paragraph 'Services', if PROPOS provides services, under whatever name and in whatever manner (e.g. in electronic form) in the field of education, training, workshops, training, seminars and the like (hereinafter referred to as the training).

### **Article 52. Registration and cancellation**

1. A registration for a training course must be made in writing and is binding after confirmation by PROPOS.
2. The Client bears responsibility for the choice and suitability of the training for the participants. The lack of the required prior knowledge on the part of a participant does not affect the Client's obligations under the Agreement. The Client is permitted to replace a participant for a course with another participant after prior written permission from PROPOS.
3. If the number of registrations gives cause to do so in the opinion of PROPOS, PROPOS is entitled to cancel the training, to combine it with one or more training courses, or to have it take place at a later date or a later time. PROPOS reserves the right to change the location of the training. PROPOS is entitled to make organisational and substantive changes to a programme.
4. The consequences of a cancellation of participation in a training course by the Client or participants are governed by the rules customary at PROPOS. A cancellation must always be made in writing and prior to the training or the relevant part thereof. Cancellation or non-appearance shall not affect the payment obligations that the Client has under the Agreement.

### **Article 53. Implementation of training**

1. The Client accepts that PROPOS determines the content and depth of the training.
2. Client will inform the participants about and supervise the compliance of participants with the obligations under the Agreement and the (conduct) rules prescribed by PROPOS for participation in the training.
3. If PROPOS uses its own hardware or software in the execution of the training, PROPOS does not guarantee that this hardware or software is error-free or functions without interruptions. If PROPOS carries out the training at the location of the Client, the Client will ensure the availability of properly functioning equipment and software.
4. The administration of an exam or test is not part of the Agreement.

5. The Client owes a separate fee for the documentation, training materials or resources made available or produced for the purpose of the training. The foregoing also applies to any training certificates or duplicates thereof.

## Article 54. Price and payment

1. PROPOS may require Client to pay the fees due in this respect before the start of the course. PROPOS may exclude participants from participation if Client has failed to ensure timely payment, without prejudice to all other rights of PROPOS.

2. Unless PROPOS has explicitly indicated that the course is exempt from VAT within the meaning of Article 11 of the Turnover Tax Act 1968, the Client also owes VAT on the fee. After entering into the Agreement, PROPOS is entitled to adjust its prices in the event of a change in the VAT regime for training courses established by or pursuant to the law.

## **Paragraph 9. Hosting**

The provisions included in this Paragraph 'Hosting' apply, in addition to the General Provisions and the provisions in the paragraph 'Services', if PROPOS provides services, under whatever name, in the field of 'hosting' and related services.

### **Article 55. Hosting services**

1. PROPOS will provide the hosting services agreed with Client.
2. If the object of the Agreement is the provision of disk space for equipment, the Client will not exceed the agreed disk space, unless the Agreement explicitly regulates the consequences thereof. The Agreement only includes the provision of disk space on a server reserved exclusively and specifically for the Client 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 maximums agreed between the Parties. The data traffic that has not been used by the Client in a certain period cannot be transferred to a subsequent period. For exceeding the agreed maximums, PROPOS will charge an additional fee in accordance with the usual rates.
3. The Client is responsible for the management, including control of the settings, the use of the hosting service and the way in which the results of the service are used. In the absence of explicit agreements in this regard, the Client will install, set up, parameterize, tune the (auxiliary) software itself and, if necessary, adjust the equipment, other software and user environment used for this purpose and achieve the interoperability desired by the Client. PROPOS is not obliged to perform data conversion.
4. Only if expressly agreed in writing, the Agreement also has the provision or provision of back-up, fallback and recovery services as its object.
5. PROPOS may temporarily decommission all or part of the hosting service for preventive, corrective or adaptive maintenance. PROPOS will not allow the decommissioning to last longer than necessary, if possible have it take place outside office hours and, depending on the circumstances, will start it after consultation with the Client.

### **Article 56. Notice and take down**

1. Client will at all times behave carefully and not unlawfully towards third parties, in particular by respecting the intellectual property rights and other rights of third parties, respecting the privacy of third parties, not distributing data in violation of the law, not gaining unauthorized access to systems, not distributing viruses or other harmful programs or data and refraining from criminal offenses and violation of any other legal obligation.
2. In order to prevent liability towards third parties or to limit the consequences thereof, PROPOS is always entitled to take measures with regard to an act or omission of or at the risk of Client. Client will immediately remove data and/or information from the systems of PROPOS

at the first written request of PROPOS, failing which PROPOS is entitled to remove the data and/or information itself or to make access to it impossible. PROPOS is also entitled to deny Client access to its systems in the event of a violation or imminent violation of the provision of paragraph 1 of this article, immediately and without prior notice. The foregoing does not affect any other measures or the exercise of other legal and contractual rights by PROPOS vis-à-vis Client. In that case, PROPOS is also entitled to terminate the Agreement with immediate effect, without being liable to the Client on this account.

3. PROPOS cannot be required to form an opinion about the merits of the claims of third parties or of the defence of Client, or to be involved in any way in a dispute between a third party and Client. The Client will have to come to an understanding with the relevant third party and inform PROPOS in writing and properly substantiated with documents.

## Article 57. Hosting via suppliers

If and insofar as PROPOS provides hosting services which hosting PROPOS in turn purchases from (a) third party(ies) and subsequently delivers to Client, the terms and conditions of the relevant third party(ies) will apply in the relationship between PROPOS and Client with regard to that Hosting service, with the exception of the deviating provisions in these Terms and Conditions. The Client shall not be entitled to invoke a failure on the part of PROPOS to comply with any information obligation regarding the applicability of the terms and conditions of suppliers, if the Client is a Party as referred to in Article 6:235 paragraph 1 or paragraph 3 of the Dutch Civil Code.

2. If and insofar as the said terms and conditions of third parties in the relationship between Client and PROPOS are deemed not to be applicable or are declared inapplicable for whatever reason, the provisions of these Terms and Conditions apply in full.

## **Paragraph 10. Secondment**

The provisions included in this Paragraph 'Secondment' apply, in addition to the General Provisions and the provisions of the Paragraph 'Services', if PROPOS makes one or more employees available to Client in order to work under the supervision and direction of Client.

### **Article 58. Secondment**

1. PROPOS will make the employee referred to in the Agreement available to Client to perform work under the direction and supervision of Client. The results of the work are at the risk of the Client. Unless otherwise agreed in writing, the employee will be made available to the Client for forty (40) hours per week during the working days customary for PROPOS.
2. Client can only deploy the seconded employee for work other than the agreed upon if PROPOS has agreed to this in writing in advance.
3. The Client is only permitted to lend the employee made available to a third party to work under the direction and supervision of that third party if this has been expressly agreed in writing.
4. PROPOS will make every effort to ensure that the seconded employee remains available for work during the agreed days during the term of the Agreement, except in the event of illness or termination of employment of the employee. Even if the Agreement has been entered into with a view to execution by a certain person, PROPOS is always entitled to replace this person with one or more persons with the same qualifications after consultation with Client.
5. Client is entitled to request replacement of the seconded employee (i) if the seconded employee demonstrably does not meet explicitly agreed quality requirements and Client makes this known to PROPOS within three (3) working days after the start of the work, or (ii) in the event of long-term illness or termination of employment of the seconded employee. PROPOS will give priority to the request without delay. PROPOS does not guarantee that replacement is always possible. If replacement is not possible or is not possible immediately, the Client's claims for further compliance with the Agreement will lapse, as will all claims of the Client due to non-compliance with the Agreement. Payment obligations of the Client with regard to the work performed remain in full force.

### **Article 59. Duration of the secondment agreement**

Contrary to the provisions of Article 7 of these Terms and Conditions, if the Parties have not agreed on the duration of the secondment, the Agreement will have a term for an indefinite period, in which case a notice period of one (1) calendar month will apply to each of the Parties after the initial term, if any. Termination must be made in writing.

## Article 60. Working hours, working hours and working conditions

1. The working hours, rest periods and working hours of the employee made available are the same as the usual times and duration at the Client, unless expressly agreed otherwise in writing between the Parties. The Client guarantees that the working hours, rest periods and working hours comply with the relevant laws and regulations.
2. Client will inform PROPOS of an intended (temporary) closure of its company or organisation.
3. The Client is obliged towards PROPOS and the posted employee to comply with the relevant laws and regulations in the field of workplace safety and working conditions.
4. Client indemnifies PROPOS against all damage suffered by PROPOS and the employee as a result of a breach of the duty of care by Client

## Article 61. Overtime pay and travel time

1. If the seconded employee works longer than the agreed or usual number of working hours per day on behalf of or at the request of the Client or works outside the usual working days at PROPOS, the Client owes the agreed overtime rate or, in the absence of an agreed overtime rate, the overtime rate customary at PROPOS for these hours. If requested, PROPOS will inform the Client about the applicable overtime rates.
2. Costs and travel time will be charged to Client in accordance with the rules and standards customary at PROPOS. If requested, PROPOS will inform the Client about the usual rules and standards.

## Article 62. Recipient's liability and other liability

1. PROPOS will ensure the timely and full payment of the wage tax, social security contributions and turnover tax to be paid for the seconded employee in connection with the Agreement with the Client. PROPOS indemnifies Client against all claims of the tax authorities or of the authorities for the implementation of social insurance legislation that are due on account of the Agreement with Client, on the condition that Client immediately informs PROPOS in writing about the existence and content of the claim and the handling of the case, including the conclusion of any settlements, entirely to PROPOS. To this end, Client will provide the necessary powers of attorney, information and cooperation to PROPOS to defend itself, if necessary in the name of Client, against these claims.
2. PROPOS is not liable to the Client for errors made by the seconded employee in the context of the execution of the secondment agreement and/or the work performed by the employee.

3. PROPOS is not liable for damage caused by the employee to the Client or to third parties in the performance of the work.