NOBEARS TERMS AND CONDITIONS

Date: 8-9-2022

Article 1   Definitions

1   The following terms are capitalised in these NOBEARS Terms and Conditions, both in the singular and in the plural. These terms have the following meanings:

Agreement:	The agreement between NOBEARS and the Client regarding the provision of the Service;
Client:	A natural person who or legal entity that has concluded, or will conclude, an Agreement with NOBEARS;
NOBEARS Terms and Conditions:	These terms and conditions of NOBEARS including all applicable Schedules;
IP Rights:	All intellectual property rights and associated rights such as copyrights, trade mark rights, patent rights, design rights, trade name rights, database rights and related rights, as well as rights to know-how and performances on a par with these rights;
Parties:	NOBEARS and the Client;
Personal data:	Each piece of information relating to an identified of identifiable natural person within the meaning of Section 1(a) of the Dutch Personal Data Protection Act;
Schedule:	An appendix to the NOBEARS Terms and Conditions with specific provisions relating to the Service to be provided; and
Service:	The services to be provided to the Client by NOBEARS pursuant to the Agreement, including, if applicable, results of services.

Article 2   General

2.1   The NOBEARS Terms and Conditions apply to and form an integral part of all offers and quotations of NOBEARS, Agreements and any other legal acts related thereto between NOBEARS and the Client or its legal successor. In addition to these NOBEARS Terms and Conditions, the specific Schedule(s) to the NOBEARS Terms and Conditions that have been agreed between NOBEARS and the Client also apply.

2.2   If the NOBEARS Terms and Conditions state that an act must be carried out in writing, this is deemed to refer to email as well.

2.3   Any departures from the NOBEARS Terms and Conditions are only valid if they have been agreed explicitly in writing by NOBEARS and the Client and they only apply to the specific agreement for which they were agreed.

2.4   The NOBEARS Terms and Conditions will always prevail over any purchasing or other terms and conditions used by the Client.

2.5   Once these NOBEARS Terms and Conditions have been applied to a legal relationship between NOBEARS and the Client, the Client is deemed to have agreed in advance to the applicability of these NOBEARS Terms and Conditions to any Agreements concluded or to be concluded thereafter.

2.6   If and to the extent that any provision in these NOBEARS Terms and Conditions is declared to be null and void or is annulled, the other provisions in the NOBEARS Terms and Conditions will remain in full force. In that case the Parties will consult to determine a new provision to replace the provision that is null and void or that has been annulled, thereby taking the purport of the void or annulled provision into account as far as possible.

2.7   In the event of a conflict between provisions in an Agreement and the NOBEARS Terms and Conditions, the provisions of the Agreement will prevail. In the event of a conflict between theNOBEARS Terms and Conditions and a specific Schedule, the provisions in the specific Schedule(s) will prevail.

2.8   Electronic communication between the Parties will be deemed to have been received on the day it was sent, unless proof to the contrary is furnished.

Article 3   Quotations and formation of the Agreement

3.1   Quotations and other offers made by NOBEARS are without obligation and can be rejected by NOBEARS after acceptance within a reasonable period of time.

3.2   Offers and quotations lose their validity four weeks after their date, unless otherwise indicated in writing.

3.3   The Client warrants that the details disclosed by it to NOBEARS, on which NOBEARS has based its offer, are correct and complete. If those details should prove not to be correct or complete, NOBEARS is entitled to modify the offer.

3.4   An Agreement is formed by written confirmation from the Client of an unmodified valid quotation and/or offer made by NOBEARS.

Article 4   Performance of the Agreement and delivery

4.1   NOBEARS will perform the Agreement to best of its knowledge and ability and in accordance with the standards of the profession and on the basis of the latest scientific and technical knowledge. The Agreement to be formed between NOBEARS and the Client involves a best efforts obligation, unless and to the extent that NOBEARS has explicitly promised a particular result in the written Agreement and the result concerned is also described in the Agreement in a sufficiently precise manner. Any arrangements about a service level (Service Level Agreement) will always be agreed in writing.

4.2   In the Agreement the Parties will determine the delivery term and delivery dates as well as the place and manner in which the Services will be delivered and/or provided. The duration of an assignment depends on various factors and circumstances, such as the quality of the data and information disclosed by the Client and the cooperation of the Client and relevant third parties. The aforementioned delivery terms are therefore not strict deadlines, unless the Parties have explicitly agreed otherwise in writing. In the event that a delivery term or other term is exceeded, or is likely to be exceeded, the Parties will consult with each other as soon as possible in order to take suitable measures.

4.3   If it has been agreed that the Agreement will be performed in phases, NOBEARS is authorised to postpone the commencement of the Services that from part of a subsequent phase until the Client has approved the results of the prior phase in writing.

4.4   NOBEARS is not obliged to follow instructions that alter or add to the content or scope of the agreed Services; if such instructions are followed, the activities concerned will be paid in accordance with NOBEARS's usual rates and NOBEARS will notify the Client of this.

4.5   NOBEARS is entitled to have the Agreement carried out by third parties wholly or in part, or to engage third parties for the performance of the Agreement.

4.6   Services will be deemed by the Parties to have been accepted if the Client has not substantiated in writing and in detail within five (5) working days after delivery of the Services concerned why the Services have not been accepted. If they are not accepted, NOBEARS must replace the Services or make adjustments to them within a reasonable term. If the Client again does not accept the Services, the Parties will perform the acceptance procedure again. This procedure will be repeated if the Client again substantiates during the new acceptance test why the Services have not been accepted.

4.7   The risk of loss, theft, misappropriation or damage to items of property, products, information/data, documents or programs created or used in the context of the performance of the Agreement passes to the Client when the Client or an auxiliary person, servant or agent of the Client has taken actual possession of the goods.

Article 5   Prices and terms of payment

5.1   All prices are exclusive of turnover tax (VAT) and other government levies.

5.2   Unless explicitly agreed otherwise, price indications, estimates, budgets and/or cost estimates issued by NOBEARS are merely for information purposes, and no rights or expectations may be derived from them. Only if the Parties have so agreed is NOBEARS obliged to inform the Client when a cost estimate or estimate will be exceeded.

5.3   The Parties will set down in the Agreement the date or dates on which NOBEARS will charge the fee for Services to the Client. The Client will pay invoices in accordance with the terms of payment stated on the invoice. In the absence of a specific arrangement, the Client will pay within fourteen (14) days after the invoice date.

5.4   If the Client does not pay the amounts due on time, the Client will owe statutory interest on the outstanding amount without any demand or notice of default being required. If after a demand or notice of default the Client still fails to pay the claim, NOBEARS may refer the debt for collection, in which case the Client will be obliged to pay, in addition to the total amount due, all judicial and extrajudicial costs, including costs of external experts.

5.5   NOBEARS is entitled to retain Services that are still in its possession if the Client does not comply with its payment obligation, until the Client has settled its payment obligation, regardless of whether the arrears are related to the Services retained by NOBEARS.

5.6   During the term of an Agreement, NOBEARS is authorised to increase the prices for its Services each year with effect from 1 January in conformity with the price index figure for the preceding calendar year as published by Statistics Netherlands (CBS) (consumer price index for 'all households'), plus a maximum of five percent (5%). NOBEARS is entitled to implement the cost increase at a later date if it finds this desirable from an administrative point of view.

5.7 Comments or complaints about invoices, bills and fee statements must be made known in writing within fourteen (14) days after receipt of the invoice, bill or fee statement concerned, failing which they will be deemed to have been accepted. Such complaints do not suspend the obligation to make payment.

5.8 NOBEARS is entitled to send the Client interim invoices and/or to invoice on the basis of advance payments, to offset or to require security for compliance by the Client.

5.9 The Client agrees to electronic invoicing by NOBEARS.

Article 6   Changes to the assignment and/or extra work

6.1 The Client accepts that the time schedule of the Agreement may be affected if the scope of the Agreement is expanded and/or altered while the Agreement is still being performed. If the interim alteration affects the agreed remuneration, NOBEARS will notify the Client of this as soon as possible.

6.2 If on the basis of an alteration to the Agreement as a result of extra requests or wishes on the part of the Client NOBEARS must carry out extra work (additional work), this work will be charged to the Client on the basis of actual costs at the usual rates that apply at that time, unless explicitly agreed otherwise in writing.

6.3 NOBEARS is entitled to carry out this additional work without the Client's advance written permission to the extent that the costs entailed by this additional work are not more than ten percent (10%) of the originally agreed total payment.

6.4 If the costs of extra work are more than ten percent (10%), NOBEARS will inform the Client of this. In that case the Parties will consult to discuss the measures to be taken.

Article 7   Obligations of the Client

7.1 The Client will ensure that all data and/or information that NOBEARS has indicated are necessary, or which the Client reasonably ought to understand will be necessary for the performance of the Agreement, including information about legislation or regulations to be complied with by NOBEARS that applies specifically to the Client's field of work, are disclosed to NOBEARS in good time and will cooperate with NOBEARS to the extent that the latter requires. Quotations and offers issued by NOBEARS as well as the Agreement concluded afterwards are based on the information disclosed by the Client.

7.2 If data needed for the performance of the Agreement is not disclosed to NOBEARS in good time, NOBEARS is entitled to suspend performance of the Agreement and/or to charge to the Client the extra costs arising from the delay at the usual rates that apply at that time.

7.3 To the extent that in the context of the Agreement NOBEARS discloses user names and/or passwords, the Client is responsible for these user names and/or passwords and is entirely and independently liable for any misuse made of the user names or passwords, unless such misuse is the result of intent or gross negligence on the part of NOBEARS.

7.4 To the extent that NOBEARS discloses user names and/or passwords in the context of the Agreement, the Client is prohibited from disclosing these user names and/or passwords to third parties without NOBEARS's consent.

Article 8   Termination, premature termination and the consequences of these

8.1   An Agreement takes effect on the date stated in Article 3 for the period agreed in writing between the Parties and ends by operation of law on the date agreed by the Parties or when the provision of Services has been completed.

8.2   Unless explicitly agreed otherwise, the Parties may not terminate the Agreement prematurely.

8.3   Each of the Parties is entitled to dissolve the Agreement wholly or in part if the other Party is declared bankrupt/insolvent or is granted a suspension of payments, as well as if the other Party's business is closed down or liquidated other than for purposes of reconstruction or merger of companies, or if the decisive control of the business of the other Party changes.

8.4   The Agreement may only be dissolved on the basis of attributable failure after a written notice of default has been sent that is as detailed as possible, with a reasonable term being set within which the failure can be remedied, unless these NOBEARS Terms and Conditions or the law provide otherwise.

8.5   If the Agreement is dissolved, anything that NOBEARS has delivered and/or carried out as well as the related payment obligation will not be undone unless the Client proves that NOBEARS is in default with regard to the material part of those services. Amounts invoiced by NOBEARS before dissolution in connection with anything NOBEARS has already properly performed or delivered in performing the Agreement will continue to be owed in full with due observance of the provision in the preceding sentence and will become immediately due and payable at the time of dissolution.

8.6   If the Agreement is dissolved, all rights granted to the Client will cease to have effect. The Client will no longer be authorised to make use of the Service.

8.7   Articles that, by their nature, are intended to continue to apply after the end of the Agreement will remain fully effective after the Agreement is terminated.

Article 9   IP Rights

9.1   Unless otherwise determined in the Agreement, all IP Rights to all the Services provided in the context of the Agreement as well as to all other materials or information made available by NOBEARS will be vested exclusively in NOBEARS and/or its licensors.

9.2   Nothing in these NOBEARS Terms and Conditions and/or the Agreement implies a transfer of IP Rights. The Client will obtain solely the non-exclusive and non-transferable right of use to the Services for the purposes stipulated in the Agreement and on the conditions stipulated in the Agreement. Unless otherwise stipulated in writing, the right of use granted applies only for the Netherlands.

9.3   The Client is not permitted to remove or alter any identifiers concerning IP Rights from the results of Services.

9.4   NOBEARS explicitly does not relinquish its personality rights referred to in section 25 of the Dutch Copyright Act (Auteurswet).

9.5   NOBEARS is permitted to use the Services and the materials used for the implementation of the Agreement, such as designs, drawings, films, software, files whether electronic or otherwise, reports, formats and interviews, for purposes of its own promotion and/or publicity, unless otherwise stipulated in the Agreement.

9.6   NOBEARS reserves the right to introduce technical protective measures into the Services. The Client is not permitted to circumvent these technical protective measures or to offer means to do so.

9.7   NOBEARS indemnifies the Client against legal action by third parties based on the allegation that the Services or parts thereof developed by NOBEARS infringe any IP Right currently in force in the Netherlands on the condition that the Client informs NOBEARS immediately in writing of the existence and the substance of the legal action and leaves the handling of the case, including effecting a settlement, entirely to NOBEARS. The Client will give NOBEARS any powers of attorney, information and cooperation necessary to defend itself against such legal action, if necessary in the name of the Client.

9.8   The above-mentioned obligation to indemnify will not apply if the claimed infringement is connected with:
   i.   materials made available to NOBEARS by the Client; and/or
   ii.   changes the Client has made, or has had third parties make, to the Service.

9.9   If according to a binding court decision the Services developed by NOBEARS itself infringe any IP Right vested in a third party, or if in the opinion of NOBEARS there is a reasonable chance that such an infringement has occurred, NOBEARS will if possible ensure that the Client can continue to use the Service (or something functionally equivalent) without interruption. If in NOBEARS's sole opinion, it cannot ensure that the Client can continue to use the Service provided without interruption, or that it will only be able to do so in a way that is unreasonably onerous (including financially) for it, NOBEARS will take back that which has been delivered and will credit the acquisition costs after deducting a reasonable usage fee. Any other or further liability or obligation to indemnify on the part of NOBEARS on account of infringement of IP Rights of third parties is entirely excluded.

Article 10   Privacy

10.1   If in the context of performing the Services NOBEARS must process Personal Data of customers of the Client, NOBEARS must be deemed to be the "processor" (verwerker) within the meaning of the Dutch Personal Data Protection Act (Algemene Verordening Gegevensbescherming) and the Client must be deemed to be the "controller" (verwerkingsverantwoordelijke).

10.2   The Client guarantees to NOBEARS that the data are not unlawful and that they do not infringe the rights of third parties. The Client indemnifies NOBEARS against all legal action or claims by third parties, including supervisory authorities and data subjects, on any basis whatsoever, in connection with the processing of this data in the context of the Agreement.

Article 11   Confidentiality

11.1   The Parties will treat all information they obtain from one another in any form whatsoever - written, verbal, electronic or physical - including but not limited to software, code, source code, programs, applications, customer details, know-how, technical specifications, documentation ("Confidential Information") as strictly confidential and will keep it secret.

11.2   The Parties will only use the Confidential Information for the purposes for which it was disclosed and in doing so, they will observe at least the same duty of care and safeguards that apply to their own internal confidential information. The Parties will only disclose the Confidential Information to employees to the extent necessary in the context of the Agreement and its implementation.

11.3   The obligations to maintain secrecy with regard to the Confidential Information will not apply to the extent that the Party that received the information can demonstrate that the information concerned:
    i.   was already known to it when it was received;
    ii. was already publicly known when it was received;
    iii. became publicly known after receipt and this is not attributable to the receiving Party;
    iv. was received in a lawful manner from a third party along with the right to communicate it to the public, free of any obligation to maintain secrecy;
    v. was made public with the approval of the Party disclosing it.

11.4   If the receiving Party is summoned to hand over trusted information by the authorities, Party is entitled to do so. Receiving Party is obliged to inform Party as soon as possible, except when the order or law forbids this specifically. If Party takes measures to the order (e.g. with a summary proceeding), receiving Party will wait with the hand over until legal ruling is finished, if this is legally possible.

11.5   For the duration of the Agreement and 1 (one) year after it terminates, except with the advance consent of the other Party neither Party will employ employees of the other Party who are or were involved in the implementation of the Agreement, nor will it employ them or have them work for it in some other manner, directly or indirectly.

Article 12 Liability

12.1   NOBEARS's liability for attributable failure to perform its obligations and/or on the basis of an unlawful act is limited to the reimbursement of direct damage sustained by the Client up to a maximum of the amount paid out in the case concerned by NOBEARS's insurance, or up to a maximum of the amount of the fee stipulated for the performance of the Agreement, with the fee stipulated for one year applying in cases of continuing performance contracts.

12.2   Direct damage is exclusively taken to mean:
    i.   reasonable costs the Client would have to incur so for NOBEARS's performance to conform with the Agreement; however, this alternative damage will not be reimbursed if the Agreement is dissolved by or on the demand of the Client;
    ii.   reasonable costs incurred by the Client because it was necessary to keep its old system or systems and the associated facilities operational longer because NOBEARS did not deliver on a delivery date which was a binding deadline for it, less any savings that result from the deferred delivery;
    iii. reasonable costs incurred to determine the cause and the scope of the damage, to the extent that this relates to direct damage in the sense meant in this Agreement;
    iv. reasonable costs incurred to prevent or limit damage, to the extent that the Client demonstrates that these costs resulted in a limitation of direct damage in the sense meant in this Agreement.

12.3 Any liability of NOBEARS for anything other than direct damage ("indirect damage"), including but not limited to consequential damage, loss and/or damage to data, loss of profits and loss of sales, is excluded.

12.4 The limitations referred to in the preceding paragraphs of this article will not apply if and to the extent that the damage is the result of intent or wilful recklessness on the part of NOBEARS or its management ("own acts").

12.5 In all cases, NOBEARS is only liable on account of an attributable failure to perform the Agreement if the Client immediately and in the form of a proper written notice informs NOBEARS that it is in default, stating a reasonable term in which the attributable failure can be remedied, and after this term NOBEARS continues to fail attributably to perform its obligations, except in the event of permanent attributable failure. The notice of default must comprise a description of the failure that is as complete and detailed as possible, so that NOBEARS is able to respond adequately.

12.6 The creation of any right to compensation is always conditional on the Client reporting the damage to NOBEARS in writing as soon as possible after it has come about. Any claim for compensation against NOBEARS will cease to exist simply by the passage of twelve (12) months after the claim arose.

12.7 The Client bears the full risk and responsibility for its use of the Services. NOBEARS does not accept any liability for the use made by the Client of the Services. The Client indemnifies NOBEARS against any claims of third parties arising from the Client's use of the Services.

Article 13 Force majeure

13.1 In the event of force majeure there is no attributable failure in the performance of the Agreement by the Parties.

13.2 Force majeure includes, among other things, disruptions in the supply of electricity, strikes, riots, government measures, fire, natural disasters, floods, failure on the part of the Parties' suppliers, failure on the part of third parties enlisted by the Parties, disruptions in the internet connection, hardware malfunctions, malfunctions in networks, including telecommunication networks, and other unforeseen circumstances.

13.3 If the force majeure lasts at least thirty (30) days, the Parties are entitled to dissolve the Agreement without being obliged to reimburse any damage, to undo any work or to pay any compensation for such dissolution.

13.4 If NOBEARS can still perform in part at the time of the force majeure, or if it has performed, it is authorised to perform this service and to invoice it separately, as if it concerned a separate Agreement.

Article 14 Transfer of rights and obligations

14.1 The Parties may only license, sublicense or transfer the rights and obligations arising from the Agreement to third parties if the other Party agrees to this in writing.

14.2 Notwithstanding the foregoing, NOBEARS has the right to transfer the rights and obligations under the Agreement to a parent, subsidiary or sister organization, or to a third party that takes over the relevant business activities of NOBEARS, without permission or cooperation of the Client being required.

Article 15 Settlement and mediation

15.1   If a dispute between the Parties cannot be resolved to their satisfaction, before submitting the dispute to a court it will be submitted to the Parties' authorised representatives to investigate the possibilities of a settlement, or to an independent mediator for mediation.

Article 16 Applicable law and competent court

16.1   These General Terms and Conditions are governed exclusively by Dutch law.

16.2   The applicability of the Vienna Sales Convention (CISG) is expressly excluded.

16.3   Any disputes that arise between NOBEARS and the Client in the context of or in connection with this Agreement will exclusively be submitted to the competent court in the district of Amsterdam.

Schedule agile software development

Article 1   Applicability

1.1   In addition to the general provisions of the NOBEARS Terms and Conditions, the provisions set out in this Schedule apply if, on the instructions of the Client, NOBEARS develops computer software, hereinafter to be referred to as "Software", on the basis of a software development method characterised by a step-by-step approach to writing Software involving repetition and the absence of a pre-determined plan with specifications, with the emphasis lying on experiment and teamwork, hereinafter to be referred to as: the "Agile Software Development Method".

Article 2   Framework, specifications and order of priority

2.1   The Parties will agree a written framework in advance stating, if required, the number of iterations, the way in which they will be managed, which efforts are expected from which employees, and the expected timeline for completing the various iterations (hereinafter: the "Framework"). This Framework will also outline, as a point of reference, the minimum functionalities of the Software to be developed.

2.2   The Parties will agree the order of priority of the specifications; at any time while the Agreement is being performed, the Parties may agree to modify this order of priority (hereinafter: the "Order of Priority").

2.3   If required, the Parties will determine in advance who is authorised to make changes to or to approve amendments to the Framework.

2.4   If required, the Parties will determine in advance who is authorised to accept individual iterations in accordance with Article 4.

Article 3   Parties and roles

3.1   The Parties will determine who forms part of the group which is designated and/or approved by the Client and which is responsible for developing the Software to be developed (hereinafter: the "Team").

3.2   If required, the Parties will determine which person designated by the Client will be responsible for the Client's communications with the Team.

3.3   If required, the Parties will determine who is to be appointed to supervise the cooperation between the person designated by the Client and the Team.

3.4   The designated persons of this article will, in principle, be designated for the full duration of the development process.

Article 4   Acceptance

4.1   Unless a different acceptance procedure is agreed, every iteration to be completed or interim result will be tested while the Agreement is still being performed, with the test period taking fourteen (14) days after completion of the iteration in question or as long as is agreed in the Agreement.

4.2   The Client will perform the agreed acceptance test with sufficiently qualified personnel and to a sufficient depth and extent, and the Client will report the test results clearly and comprehensibly to NOBEARS in writing.

4.3   An iteration will be deemed to be accepted on the first day after the test period or, if NOBEARS receives a test report as referred to in Article 5.5 before the end of the test period, when the errors referred to in that test report have been remedied, notwithstanding the presence of errors which on the basis of article 5.6 do not preclude acceptance.

4.4   If, when performing the agreed acceptance test, it turns out that the iteration contains errors that obstruct the progress of the acceptance test, the Client will provide detailed written information about this to NOBEARS, in which case the test period will be interrupted until the iteration has been modified in such a way that the obstruction has been removed.

4.5   If, when performing the agreed acceptance test, it turns out that the iteration contains errors, the Client will inform NOBEARS about the errors by means of a detailed written test report no later than on the last day of the test period. NOBEARS will use its best endeavours to remedy the errors within a reasonable period, with NOBEARS being entitled to introduce temporary solutions or software bypasses or problem-evading restrictions.

4.6   The Client may not withhold acceptance of an iteration due to the existence of minor errors, i.e. errors which would not reasonably preclude the operational or productive use of the iteration.

4.7   NOBEARS is not obliged to remedy errors that arise as a result of:
   i.   a modification to an iteration which is made outside the context of the Team;
   ii.   use of the Software in a manner or in conjunction with other software or equipment which is not described in the Framework;
   iii. incorrect use of an iteration by the Client or another party;
   iv.   errors in software, hardware, communications equipment, peripheral equipment or other equipment belonging to third parties, or failure by the Client to have that equipment and/or software maintained regularly; or
   v.   input errors or errors connected with the data used by the Client.

4.8   Non-acceptance of a particular iteration will not have any effect on the acceptance of a previous iteration.

4.9   The Software will be deemed to be accepted on the first day after the test period of the last outstanding iteration described in the Order of Priority or, if NOBEARS receives a test report before the end of the test period as referred to in Article 5.5, when the errors referred to in that test report have been remedied, notwithstanding the presence of errors which do not preclude acceptance on the basis of Article 5.6.

Article 5   Interim dispute resolution

5.1   If a dispute between the Parties regarding an iteration or interim result (or its acceptance or non-acceptance) cannot be resolved satisfactorily within a reasonable period, it will be submitted to authorised representatives of the Parties to investigate the possibilities of a settlement before being submitted for mediation by an independent mediator.

5.2   If a dispute has been resolved by mediation, the Parties will adjust the timeline for the completion of iterations within the Framework in consultation with each other.

Article 6   Payment

6.1   The Parties will agree on the payment model to be used between them.

6.2   If the Parties have not agreed that, following every interim acceptance as referred to in Article 4 the amounts relating to the development of the interim result in question are due, all amounts relating to the development will be due in arrears at the end of every calendar month.

Article 7   The Client's right of use

7.1   To the extent that in developing the Software use is made of parts that have not been specifically developed for the Client within the Team, NOBEARS grants the Client the non-exclusive, non-transferrable and non-sublicensable right to use the parts of the Software concerned in accordance with the provisions of the Agreement. Notwithstanding the other provisions of the Agreement, the Client's right of use is limited to the right to load and run the parts of the Software concerned.

7.2   If use of the Software on one processing unit has been agreed, then, if there is a disruption to this processing unit, the Software may be used on another processing unit for the duration of the disruption.

7.3   The Client may only use the Software in and for its own business or organisation. The Client may not use the Software for processing data for third parties (time-sharing) or in any other way for third parties.

7.4   The Client will comply with instructions and directions given by NOBEARS with regard to the Software, including those given in relation to installing any patches and updates for the Software.

7.5   The Client will not make the Software available to third parties unless otherwise agreed in the Agreement.

7.6   The Client may not reproduce the Software or disclose it to third parties in any way. The Client is not permitted to do any of the following, although this list is not exhaustive:

    i.   alter, translate, attempt to determine the source code of, decompile or disassemble the Software or create derived works from it; information that is needed to achieve the interoperability of an independently developed computer program with the Software (as referred to in Article 6 of Council Directive 91/250/EEC on the legal protection of computer programs) may, if required, be obtained from NOBEARS against payment of the administrative rates charged by NOBEARS at that time;

    ii.   transfer (except where explicitly allowed), lend, rent out, lease, distribute or use the Software to provide services to third parties or for the benefit of third parties, or grant rights to the Software or documentation in any form to third parties, unless NOBEARS has granted its explicit written permission for this in advance, any applicable payment(s) has/have been made and all of NOBEARS's other requirements have been met; or

    iii.   remove, alter or render illegible the identifiers, labels or markings on the Software or documentation regarding copyright and other IP Rights.

7.7   Unless otherwise agreed in writing, the source code of the Software and the technical documentation produced upon developing the Software will not be made available to the Client.

7.8   If the Client so requests NOBEARS will, at the Client's expense, place the Software in escrow with an escrow service provider selected by NOBEARS in order to safeguard the continuity of the Client's Services.

7.9   If the right to use the Software ends, the Client will immediately cease using it and will return all copies of the Software in its possession to NOBEARS.

7.10   If NOBEARS has secured the Services by means of technical protection (e.g. firewalls or security keys), the Client will not be permitted to remove or evade this protection. If the protection measures result in the Client not being able to make a reserve copy of the Software, NOBEARS will make a reserve copy available at the Client's request.

7.11   The Client itself is at all times responsible for the use of the Software. The Client may not use the Software for actions and/or conduct contrary to the law, public order or morals and the provisions of the Agreement. The Client indemnifies NOBEARS against all third-party claims with regard to breaches of the foregoing.

7.12   If the IP Rights to the Software (or part of it) belong to licensors of NOBEARS, the Client may be bound by the licence provisions and the terms and conditions of these licensors, including terms and conditions with regard to price adjustments.

Article 8   Guarantees

8.1   NOBEARS will use its best endeavours to remedy errors in the Software within a reasonable period if these have been reported, with a detailed description of them, to NOBEARS within three (3) months of the Software having been fully accepted as referred to in article 5.9

8.2   If NOBEARS delivers Software or provides Services to the Client which NOBEARS has obtained from its suppliers, NOBEARS is not bound by a guarantee to the Client that is more far-reaching than that which NOBEARS may claim from its supplier, on condition that NOBEARS informs the Client of this.

8.3   The guarantee obligation will cease to have effect if:
    i.   the Client makes alterations to the Software or has them made without NOBEARS's written permission;
    ii. the Client has used the Software wrongly or inexpertly;
    iii. there are other causes that are not attributable to NOBEARS; or
    iv. the errors could have been established when the agreed acceptance test was performed.

8.4   NOBEARS will endeavour, to the extent that this is reasonably possible, to recover impaired or lost information.

Article 9   Software from suppliers

9.1   If and to the extent that NOBEARS makes Software (or parts of it) from third parties available to the Client, the conditions of these third parties that apply to the Software (or parts of it) will apply instead of the NOBEARS Terms and Conditions provided that NOBEARS has communicated this to the Client in writing. The Client accepts the conditions of these third parties. These conditions will be available for the Client's inspection at NOBEARS, and NOBEARS will send them to the Client at its request.

9.2   If and to the extent that the aforementioned conditions of third parties are, for any reason whatsoever, deemed not to apply to the relationship between the Client and NOBEARS or they are declared inapplicable, the NOBEARS Terms and Conditions will apply.

Schedule website development

Article 1   Applicability

1.1   In addition to the general provisions of the NOBEARS Terms and Conditions, the provisions set out in this Schedule apply if NOBEARS develops a website (hereinafter: the "Website") on the Client's instructions. The other capitalised terms used in this Schedule are defined in the NOBEARS Terms and Conditions.

Article 2   Website development

2.1   NOBEARS will develop the Website in accordance with the specifications set out in the Agreement.

2.2   NOBEARS is entitled to require written approval of a design and/or plan of the Website before starting to develop it and to suspend the development of it until it has obtained such approval.

Article 3   Right of use

3.1   Unless the Agreement provides otherwise, NOBEARS grants the Client the non-exclusive, non-transferrable and non-sublicensable right to use the Website in accordance with the provisions of the Agreement.

3.2   Unless agreed otherwise, the Website's source code and the technical documentation used or produced upon developing the Website will not be made available to the Client.

3.3   If the Client so requests NOBEARS will, at the Client's expense, place the Website's source code in escrow with an escrow service provider selected by NOBEARS in order to safeguard the Client's use of the Website.

3.4   If the right to use the Website ends, the Client will immediately cease using it and will return all copies of the Website in its possession to NOBEARS or destroy it, at NOBEARS's discretion.

3.5   The Client itself is at all times responsible for the use of the Website. The Client may not use the Website for actions and/or conduct contrary to the Agreement, any applicable laws or regulations, public order or morals, or use it in any other unlawful manner. The Client indemnifies NOBEARS against all third-party claims with regard to breaches of the foregoing.

3.6   If the IP Rights to the Website (or part of it) belong to licensors of NOBEARS, the Client may be bound by the licence provisions and the terms and conditions of these third parties including, but not limited to, content management software.

Article 4   Delivery, installation and acceptance

4.1   NOBEARS will deliver the Website in the manner described in the Agreement.

4.2   If an acceptance test has been agreed, the Website will be deemed to be accepted on the first day after the test period or, if NOBEARS receives a test report as referred to in Article 4.5 before the end of the test period, when the errors referred to in that test report have been remedied, notwithstanding the presence of errors which do not preclude acceptance on the basis of Article 4.8.

4.3   Contrary to the foregoing, the Website will be deemed to be fully accepted from the time that use of it commences if the Client puts it online or uses it in another way for productive or operational purposes before it has been accepted.

4.4   If when performing the agreed acceptance test it turns out that the Website contains errors that obstruct the progress of the acceptance test, the Client will provide detailed written information of this to NOBEARS, in which case the test period will be interrupted until the Website has been modified in such a way that the obstruction has been removed.

4.5   If when performing the agreed acceptance test it turns out that the Website contains errors, the Client will inform NOBEARS of the errors by means of a detailed written test report no later than on the last day of the test period. NOBEARS will use its best endeavours to remedy the errors within a reasonable period, with NOBEARS being entitled to introduce temporary solutions or software bypasses or problem-evading restrictions into the Website.

4.6   The Client may not withhold acceptance of the Website for reasons other than those that are connected with the specifications expressly agreed between the Parties or due to the existence of minor errors, i.e. errors which would not reasonably preclude putting the Website into operation, notwithstanding NOBEARS's obligation to remedy these minor errors on the basis of the guarantee arrangement set out in Article 5 of this Schedule, if applicable.

4.7   NOBEARS is not obliged to remedy any errors as referred to in Article 4.5 and Article 4.6 if they arise as a result of:
    i.   a modification to the Website, of any nature whatsoever, which has not been made by NOBEARS;
    ii.   use of the Website in a manner which is not allowed on the basis of the Agreement;
    iii. incorrect use of the Website by the Client or another party;
    iv.   input errors or errors connected with the data used by the Client.

4.8   If the Website is delivered and tested in phases and/or parts, non-acceptance of a particular phase and/or part will not affect any acceptance made of a previous phase and/or different part.

Article 5   Guarantees

5.1   NOBEARS will use its best endeavours to remedy errors in the Website within a reasonable period if these have been reported, with a detailed description of them, to NOBEARS within four (4) weeks of the Website having been delivered, or, if the Parties have agreed an acceptance test, within four (4) weeks of its acceptance.

5.2   Unless otherwise agreed in writing, NOBEARS does not guarantee that the Website will function (properly) in combination with all software (including web browsers and/or equipment) or that the Website will function and be accessible without malfunctions, disruptions or other errors.

5.3   If NOBEARS delivers a Website or provides Services to the Client which NOBEARS has obtained from its suppliers, NOBEARS is not bound by a guarantee to the Client that is more far-reaching than that which NOBEARS may claim from its supplier, on condition that NOBEARS informs the Client of this.

5.4   The guarantee obligation will cease to have effect if:

     i.   the Client makes alterations to the Website or has them made without NOBEARS's written permission;

    ii.   the Client has used the Website wrongly or inexpertly;

   iii.   there are other causes that are not attributable to NOBEARS; or

   iv.   the errors could have been established when the agreed acceptance test was performed.

5.5   NOBEARS will endeavour, to the extent that this is reasonably possible, to recover impaired or lost information.

Schedule hosting

Article 1   Applicability

1.1   In addition to the general provisions of the NOBEARS Terms and Conditions, the provisions set out in this Schedule apply if, on the Client's instructions, NOBEARS saves and passes on information in a communications network and/or provides access to a communications network, hereinafter referred to as: "Hosting".

Article 2   Availability of Hosting services

2.1   The Client is responsible for the availability of the hardware and software, connections and other preconditions of the Client for making access to the system possible.

2.2   NOBEARS will endeavour to enable the Hosting services to be used with as little disruption as possible, but cannot guarantee this unless explicitly stated in a separate service level agreement.

2.3   NOBEARS is not liable for the non-availability or reduced availability of the Services as a result of power cuts or power disruptions, disruptions in telecommunications or the internet, defects in the Client's hardware and software and all other causes that are beyond NOBEARS's direct control.

2.4   NOBEARS has the right to temporarily close down the Hosting services or to limit the use of them for maintenance work or for adjustments to the system and it will inform the Client of this in advance. In that case the Client will not be entitled to compensation.

2.5   If after the Agreement ends the Client does not wish to extend its cooperation with NOBEARS, NOBEARS will cooperate with the transfer to a third party at NOBEARS's applicable rates.

2.6   If the amount of the allowed data traffic and disc space is exceeded, NOBEARS is entitled to charge reasonable additional costs without further notice.

2.7   Arrangements regarding service levels will be set out in a Service Level Agreement (SLA).

Article 3   Obligations of the Client

3.1   The Client is expressly prohibited from distributing information or offering facilities or functionalities through or via websites hosted by NOBEARS if and to the extent that this information is contrary to:

    i.   applicable laws and regulations including regulations of self-regulating bodies;
    ii.   the Agreement; or
    iii.   reasonable directions and instructions issued by NOBEARS.

3.2   The Client will at all times adopt the attitude and conduct itself in the manner that may be expected of a careful user with regard to the information it communicates to the public and the use of the internet. In this regard it will, inter alia, comply with all statutory regulations and observe "netiquette" and will, inter alia, refrain from: spamming, infringing IP Rights of third parties, communicating to the public or distributing child pornography, sexually intimidating or harassing third parties in any other way, violating the privacy of third parties or compromising the honour or reputation of third parties, hacking, carrying out DDoS or other kinds of attacks and

spreading viruses, worms or other programs which could damage individual systems or disrupt the operation of the internet.

3.3 If the Client fails to comply with the provisions of Articles 3.1 and 3.2 and/or if NOBEARS is notified by third parties that it has failed to do so, NOBEARS is entitled to suspend or cease providing the Services without further notice, block connections or remove content. In instances in which this is justified in view of the seriousness of the violation, NOBEARS is entitled to terminate the Agreement with immediate effect. In the event of such suspension, cessation, blockage, removal and/or termination, the Client will not be entitled to receive any compensation from NOBEARS.

3.4 The Client indemnifies NOBEARS against all third-party claims including, but not limited to, claims based on the information and/or data which it communicates to the public through or via its websites and claims from supplier(s) of NOBEARS arising from the Client's failure to perform any of its obligations under the Agreement and in particular under this article.

Schedule consultancy

Article 1   Applicability

1.1   In addition to the general provisions of the NOBEARS Terms and Conditions, the provisions set out in this Schedule apply if NOBEARS's Client purchases consultancy and/or training Services or hires professionals with a best efforts obligation on a hourly basis, hereinafter to be referred to as "Consultancy".

Article 2   Consultancy

2.1   All Consultancy services provided by NOBEARS will be performed in accordance with and on the conditions set out in the Agreement.

2.2   In performing the Services, NOBEARS will exercise the greatest possible care with regard to the Client's interests. In particular, NOBEARS will ensure the secrecy of all the data and information made available by the Client to NOBEARS in the context of the Agreement.

2.3   If the Agreement has been concluded for Consultancy services provided by a particular person, NOBEARS will always be entitled to replace that person with one or more other equally qualified persons.

2.4   The Client will provide an adequate and safe work area to the extent that the Consultancy services are performed at the Client. The Client will ensure that employees of NOBEARS are informed about any local health and safety regulations.

2.5   The Client will ensure that its employees and other independent contracting parties fully cooperate with NOBEARS (and its employees) in the provision of Consultancy services and it will adequately provide them with all the information that is reasonably required in order to perform the Consultancy services properly.

Article 3   Rates and working hours

3.1   The daily rate charged by NOBEARS for Consultancy services is based on [eight-hour] days. The Client will reimburse NOBEARS for travel and other expenses incurred in providing such services.

3.2   The Client may also request training from NOBEARS (scheduled lessons on NOBEARS's premises or on site) at the rates and on the days determined by mutual agreement in the Agreement.

Schedule advertisement sales

Article 1   Applicability

1.1   In addition to the general provisions of the NOBEARS terms and Conditions, the provisions set out in this Schedule apply if NOBEARS's Client purchases Services concerning online advertisement sales and campaign management, hereinafter to be referred to as "Advertisement Sales".

Article 2   Prognoses

2.1   Any advance prognoses regarding possible results of advertising campaigns given by NOBEARS in a media plan or otherwise are merely estimates and are not binding upon NOBEARS .

Article 3   Obligations of the Client

3.1   The Client will provide all cooperation reasonably required by NOBEARS and will promptly supply NOBEARS with all information that is reasonably required in order to perform the Agreement, including information about laws and regulations specific to the Client's sector which NOBEARS must comply with, including information about advertising bans and information obligations.

3.2   If the Client supplies advertising material to NOBEARS via a third party or otherwise, the Client guarantees that such advertising material has always been prepared in accordance with the applicable laws and regulations, including but not limited to the Dutch Advertising Code [Nederlandse Reclame Code]; the Client also guarantees that that advertising material does not infringe any rights (including intellectual property rights) of third parties.

3.3   If the Client supplies advertising material to NOBEARS via a third party or otherwise, the Client guarantees that such advertising material meets the technical specifications communicated by NOBEARS to the Client in advance, that it is free of technical defects and that it is sufficiently suitable for placing measuring systems.

3.4   The Client must perform all obligations with regard to third parties to the extent that this has any effect on NOBEARS's performance of the Agreement.

Article 4   NOBEARS's obligations

4.1   At the Client's request NOBEARS will, within a reasonable period after the budget made available by the Client for Advertisement Sales has been spent, specify which part of the budget was spent on the purchase of media and which part was spent on campaign management costs.

4.2   If NOBEARS independently prepares advertising material on the Client's instructions, NOBEARS guarantees that the advertising material complies with the applicable laws and regulations and that the advertising material does not infringe any rights (including intellectual property rights) of third parties; any liability of NOBEARS in this regard will cease to apply if the Client has not provided information or has provided incorrect or incomplete information contrary to the provisions of Article 3.1.

Article 5   Access to third-party accountants

5.1   To the extent necessary for performing the Agreement, the Client will provide NOBEARS with all information required to access accounts with third-party service providers.

5.2   NOBEARS will comply with reasonable instructions and guidelines provided by the Client with regard to the use of the Client's accounts with third-party service providers. However, NOBEARS has obligations solely to the Client and is not liable to these third parties in any way.

5.3   To the extent that the Client uses accounts of NOBEARS with third-party service providers, the Client will always strictly comply with the instructions issued by NOBEARS in that regard, including but not limited to payment periods. The Client is liable for and indemnifies NOBEARS against all damage resulting from any failure by the Client to comply with such instructions in a timely manner.

Article 6   Cookies

6.1   To the extent that the activities of the Client, or the party with which agreements are concluded for the Client, in the context of Advertisement Sales include the placement and reading of information on the peripheral equipment of end users (hereinafter: "Cookies"), the Client acknowledges that the Client is fully responsible for complying with all applicable legislation regarding the placement and reading of Cookies and that NOBEARS does not bear any responsibility in this regard whatsoever.

6.2   The Client guarantees that the Client always acts in complete accordance with all laws and regulations with regard to Cookies, including but not limited to the Dutch Telecommunications Act [Telecommunicatiewet]. In particular the Client guarantees that, in accordance with the applicable laws and regulations, the Client (i) does not place or read any Cookies (or have them placed or read) before the Client has received satisfactory permission from the end user in this regard, and (ii) provides end users with satisfactory information in the form of a cookie policy before the Client places and reads Cookies. At NOBEARS's request, the Client must always be able to demonstrate this satisfactorily in writing.

6.3   The Client is liable for all damage sustained or which will be sustained by NOBEARS as a result of any failure to comply with this Article 6 and/or which is the result of any violation by the Client of the applicable laws and regulations, and it fully indemnifies NOBEARS against all claims by third parties, including but not limited to fines imposed by supervisory authorities which are the result of and/or are connected with any breach by the Client of this article 6.

Article 7   Measurements

7.1   NOBEARS's administrative and measuring systems will be used as the basis for calculating the agreed fees unless a calculation made using the Client's measuring systems results in higher value, in which case the Client's measuring systems will be used as the basis for such calculations.

7.2   Unless agreed otherwise, the gross order value will be used as the basis for calculating the agreed fees, with incomplete orders placed by end users also being considered as orders on the basis of which the agreed fee will be calculated, unless the difference between the gross and net order value can be demonstrably attributed to NOBEARS.

7.3   In the event of an interruption, presumable tampering with the measuring systems or a discrepancy of more than 10% between the measuring systems of NOBEARS and the Client, NOBEARS will be entitled to calculate the fee owed on the basis of a reasonable estimate of measurement results, gauged according to previous measurement results or otherwise.