

General Terms and Conditions

Traxion Nederland B.V.

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MODULE A – GENERAL

ARTICLE A.1. DEFINITIONS

- A.1.1. **General Terms and Conditions:** the terms and conditions in this document.
- A.1.2. **Data:** the (personal) data relating to the Client, its business, its employees and/or customers, which are stored and accessible via the Service, being SaaS.
- A.1.3. **Service(s):** the service(s) that Traxion will perform for the Client, including but not limited to:
- Consultancy and Project Supervision: Service consisting of giving advice on ICT (infrastructure), implementation and/or use of software or giving trainings.
 - Security assessments and pen testing: Service consisting of giving advice on security, as well as (comprehensive) testing of (network) infrastructures and/or (software) applications for security.
 - SaaS: Service in which a specifically agreed functionality is made remotely available to Client.
 - Other services as specified in the tender or offer from Traxion.
- A.1.4. **Start Date:** the date on which the Contract enters into effect and on which the provision of the Service starts.
- A.1.5. **Intellectual Property Rights:** all intellectual property rights and related rights, including but not limited to copyrights, database rights, domain names, trade name rights, trademark rights, design rights, neighbouring rights, patent rights and rights to know-how.
- A.1.6. **Client:** the natural or legal person with which Traxion has concluded a Contract. This also means the person who enters into negotiations on this or persons who are service representatives, authorised representatives, successors in title or beneficiaries.
- A.1.7. **Contract:** all contracts between Traxion and Client resulting from a tender or offer made by Traxion and its legally valid acceptance by Client.
- A.1.8. **Personal Data:** all data relating to an identified or identifiable natural person.

- A.1.9. **Price List:** the separately available list of prices for work by Traxion and Services to be provided by Traxion as specified in the offer or tender.
- A.1.10. **SLA:** the service level agreement concluded between Traxion and Client in which the agreements on the level, quality and manner of problem solving in relation to the Service are included.
- A.1.11. **Traxion:** the legal person Traxion Nederland B.V., with its registered office in Waardenburg and registered with the Chamber of Commerce under file number 65609263.
- A.1.12. **Works:** the concepts, recommendations, reports, other products of the mind, software, connectors, add-ons, plug-ins and/or other applications developed by Traxion (on the Client's instructions).
- A.1.13. **Working Days:** Monday to Friday, except for Dutch national holidays, whereby 5 May is a national holiday once every five (5) years.
- A.1.14. **Working Hours:** hours on Working Days between 08:30 and 17:00 hours.

ARTICLE A.2. APPLICABILITY AND RANKING ORDER

- A.2.1. These General Terms and Conditions and Module A shall apply to all offers or tenders of Traxion in relation to Services and form an integral part of every Contract.
- A.2.2. The specific modules will apply if the Services requested or provided fall within the scope of application stipulated in the module. If a specific module is applicable, this module will prevail over Module A.
- A.2.3. The definitions as set out in Article A.1 apply to all modules of these General Terms and Conditions.
- A.2.4. Terms and Conditions set by Client that differ from or do not occur in these General Terms and Conditions will be binding on Traxion only if and in so far as Traxion has explicitly accepted them in writing.
- A.2.5. In case of conflict of terms and conditions in the Contract, General Terms and Conditions or annexes thereto, the following ranking order will apply:
 - i. the Contract;
 - ii. the Service Level Agreement, if any, concluded;
 - iii. annexes, if any;
 - iv. these General Terms and Conditions;
 - v. additional terms and conditions, if any.

ARTICLE A.3. OFFERS AND FORMATION OF CONTRACTS

- A.3.1 A Contract is formed by explicit, written acceptance of the offer or tender by Client. If Client fails to do so, but agrees in a different way, or at least gives the impression of doing so to a reasonably sufficient degree, the entire offer will count as accepted.
- A.3.2. Offers from Traxion are free of obligation and valid for the period indicated in the offer. If no period is indicated, the offer will be valid until four (4) weeks from the date on which the offer is made.
- A.3.3 The rates listed in the offers will apply only to the work specified in the offer. Client cannot claim these rates in relation to other work.
- A.3.4. Should the information provided by Client in the request or Contract prove to be incorrect, Traxion will be entitled to adjust the prices in this regard.

ARTICLE A.4. PERFORMANCE OF THE CONTRACT

- A.4.1. After the Contract is concluded, Traxion will perform the Service as soon as possible in accordance with the offer.
- A.4.2. The delivery periods mentioned are only indicative and are not in the nature of deadlines, unless explicitly agreed otherwise. The schedule for performance of the Contract will be determined in consultation between Traxion and Client.
- A.4.3. Client may cancel and/or change the work and/or schedule free of charge only until three (3) Working Days prior to the date of the scheduled work. If Client changes the agreed schedule within three (3) Working Days before a scheduled day, Traxion will be entitled to charge the agreed costs to Client.
- A.4.4. In so far as not otherwise agreed in writing, Traxion warrants that the Service will be performed to the best of its ability with due observance of sufficient care and professional skill.
- A.4.5. If and in so far as required for proper performance of the Service, Traxion will have the right to have certain work performed by third parties without informing Client to that effect.
- A.4.6. Client must do and omit everything that is reasonably necessary and desirable to enable timely and correct performance of the Service. In particular, Client must see to it that all information which Traxion states is necessary or which Client should reasonably understand to be necessary for performance of the Service are provided to Traxion in good time.
- A.4.7. If the information as referred to in Article A.4.6 is not provided to Traxion in good time or if Client does not comply with its obligations in another way, Traxion will have the right to suspend compliance with its obligations without being obliged to pay any compensation.

ARTICLE A.5. TRAXION EMPLOYEES

- A.5.1. Traxion's Staff perform the Services on Working Days. When required by the nature of the work to be performed, or when requested by the Client, Traxion will endeavor to ensure that its personnel perform this work at different hours or perform a reasonable amount of overtime.
- A.5.2. No approval from the Client will be required for the taking of holiday days and leave days customary at Traxion. Traxion will consult with the Client in order to coordinate the holidays where possible.
- A.5.3. Personnel of Traxion shall comply with the rules and regulations applicable there and notified to it when carrying out work at the Client's location.
- A.5.4. If the Client requests that an employee of Traxion be excluded from the provision of services, he must notify this in writing, stating reasons. If Traxion complies with the request, the Client will bear all costs resulting from this for Traxion and related to the removal and replacement of the employee concerned (including costs related to the handover and training of the new employee). If the Client can demonstrate that this employee has committed misconduct, incompetence or negligence, Traxion will bear these costs. If Traxion deems it necessary to replace an employee, Traxion must

notify this in writing within a reasonable period and maintain the continuity of the work.

- A.5.5. The employees of Traxion who are engaged in the execution of the agreement will at all times remain under the direction and authority of Traxion.
- A.5.6. Neither of the parties will, from the date of the agreement up to 12 (twelve) months after the termination of the agreement, employ personnel of the other party who was involved in the execution of the agreement or on which other basis, without the other party's written permission. If a party to this agreement acts contrary to this article, this party is obliged to compensate the damage that the other party will suffer as a result. This compensation is equated with the person's gross annual salary at the time employment is offered.
- A.5.7. If the Client requests that a Traxion employee be excluded from the provision of services, they must provide a written notice to that effect, stating the reasons. If Traxion complies with the request, the Client shall bear all costs arising for Traxion as a result and relating to the removal and replacement of the employee concerned (including costs linked to the handover and to bringing the new employee up to speed). If the Client can demonstrate misconduct, incompetence or negligence on the part of this employee, Traxion shall bear these costs. If Traxion deems it necessary to replace an employee, Traxion must give written notice of this within a reasonable period of time and maintain the continuity of the work.

ARTICLE A.6. PRIVACY

- A.6.1. The Parties undertake to each other to act in accordance with the Dutch Personal Data Protection Act (Wbp) and other privacy-related laws and regulations.
- A.6.2. The Personal Data Traxion acquires from Client will be used only for the purpose of performing the Service.
- A.6.3. Traxion will endeavour to take adequate technical and organisational measures in relation to the processing of Personal Data to be carried out, against loss or any form of unlawful processing (such as unauthorised inspection, impairment, modification or provision of the Personal Data).
- A.6.4. Traxion cannot fully warrant that the security will be effective under all circumstances. If explicitly agreed security should unexpectedly be lacking, Traxion will make efforts to ensure that the security will meet a level that is not unreasonable in view of the state of the art, sensitivity of the Personal Data and incurring of the costs involved in the security.
- A.6.5. Traxion will have the right in accordance with Article A.4.5 to engage third parties for the processing of the Personal Data. It will make the same agreements to that effect in relation to the purpose of the processing and impose the security measures on those third parties.
- A.6.6. If the Client requests that a Traxion employee be excluded from the provision of services, they must provide a written notice to that effect, stating the reasons. If Traxion complies with the request, the Client shall bear all costs arising for Traxion as a result and relating to the removal and replacement of the employee concerned (including costs linked to the handover and to bringing the new employee up to

speed). If the Client can demonstrate misconduct, incompetence or negligence on the part of this employee, Traxion shall bear these costs. If Traxion deems it necessary to replace an employee, Traxion must give written notice of this within a reasonable period of time and maintain the continuity of the work.

ARTICLE A.7. INTELLECTUAL PROPERTY

- A.7.1. For Works and/or Services developed by Traxion itself, it holds that the Intellectual Property rights will be vested in Traxion and/or its licensors, unless it has been agreed with Client in writing that the rights will be transferred.
- A.7.2. The Intellectual Property Rights in the (open source) software of third parties will be vested in the developer of that software or another entitled party. Such rights cannot under any circumstances be transferred to Client. Client itself is responsible for compliance with the (open source) software licences and indemnifies Traxion for claims of third parties concerning compliance with these licences.
- A.7.3. Client will acquire the non-exclusive and non-transferrable right of use from Traxion for the duration of the Contract of the Works developed specifically for and on the instructions of Client. Under this right of use, Client will have the right to use the Works for its own purposes. In addition, Traxion can set restrictions and/or conditions on the use of those Works.
- A.7.4. Traxion will be allowed to use the developed Works and corresponding source files and source codes in their entirety or partially for other clients and purposes.
- A.7.5. Traxion will not be required to make the source files and source codes of the developed Works available to Client, unless otherwise agreed in writing.
- A.7.6. Traxion will be allowed to take technical measures to prevent modifications to the developed Works, corresponding source files and source codes. This also means protecting the Works by way of encryption.
- A.7.7. If Client modifies the Works and/or Services, Client itself will be responsible for their proper operation. The costs of repair of the Works and/or Services by Traxion will be payable by Client.

ARTICLE A.8. LIABILITY

- A.8.1. Traxion shall only be liable to Client for direct damage and/or loss as a result of attributable failure in the performance of this Contract. Direct damage and/or loss means only damage and/or loss consisting of:
 - vi. Damage caused directly to material items of property (“property damage”);
 - vii. Reasonable and demonstrable costs Client has had to incur to urge Traxion to comply properly (again) with the Contract;
 - viii. Reasonable costs to determine the cause and extent of the damage, in so far as relating to direct damage as referred to above;
 - ix. Reasonable and demonstrable costs Client has incurred to prevent or limit the direct damage as referred to in this article.

- A.8.2. Traxion shall not be liable under any circumstances for compensation of indirect damage and/or loss or consequential loss due to lost turnover or profit, loss due to delays, loss due to the loss of data, loss due to exceeding time limits as a result of changed circumstances, loss due to the provision of faulty cooperation, information or materials by Client and loss due to information or advice given by Traxion, the contents of which do not explicitly form part of the Contract.
- A.8.3. The maximum amount to be paid in case of liability under paragraph 1 of this article will be limited per event or series of related events to the payments due from Client under this Contract per year (exclusive of VAT). Under no circumstances, however, will the total amount per year for direct loss amount to more than 15,000 euros (exclusive of VAT).
- A.8.4. The limitation of liability as referred to in the preceding paragraphs of this article will lapse if and in so far as the damage and/or loss is the result of an intentional act or omission or gross negligence of the management of Traxion.
- A.8.5. Traxion's liability for attributable failure in the performance of the Contract, however, will exist only if Client puts Traxion in default immediately and properly in writing, setting a reasonable period to remedy the failure, and Traxion continues to fail attributable to perform its obligations even after that period. The notice of default must contain the most detailed possible description of the failure, in order to enable Traxion to respond adequately.
- A.8.6. The applicability of Book 6 Section 271 et seq. of the Dutch Civil Code (BW) shall be excluded.
- A.8.7. Client indemnifies Traxion for all claims of third parties (including customers of Client), for compensation of damage, costs or interest connected with this Contract and/or the Service.

ARTICLE A.9. FORCE MAJEURE

- A.9.1. Traxion will not be required to comply with any obligation towards Client if it is prevented from doing so as a result of any external cause, foreseen or unforeseen, beyond Traxion's control, but through which Traxion is not able to comply with its obligations.
- A.9.2. This means a circumstance that is not to blame on fault, and for which Traxion is not accountable by virtue of the law, a legal act or generally accepted opinion. In particular, force majeure means: civil commotion, mobilisation, wars, blocking of transport, strikes, network attacks such as SYN floods or (distributed) denial-of-service attacks, business interruptions, stagnation in supply, fire, flooding, import and export restrictions and in the case that Traxion, because of its own suppliers, regardless of the reason for this, is unable to deliver, owing to which Traxion cannot reasonably be required to comply with the Contract.
- A.9.3. Traxion may suspend its obligations under the Contract during the period that the force majeure lasts, by which the Client's payment obligations will be suspended as well. If this period last longer than one calendar month, each of the parties will be entitled to terminate the Contract without being required to compensate the other party for losses.

- A.9.4. In so far as Traxion has meanwhile complied partly with an obligation under the Contract at the time of the start of force majeure or will be able to comply with it during the period of force majeure, and independent value is attributed to the part complied with or to be complied with, Traxion will be entitled to invoice the part already complied with or to be complied with separately. Client must pay this invoice.

ARTICLE A.10. SECRECY

- A.10.1. The parties undertake to maintain the secrecy of all confidential information they receive about the other party's business, including the contents of the Contract. The parties will also impose these obligations on their employees, as well as on third parties they have engaged to perform the Contract.
- A.10.2. Information will count as confidential in any case if it is indicated as such by one of the parties.

ARTICLE A.11. PRICES

- A.11.1. Payments for the delivery of the Services are listed in the annex to the Contract or in the offer presented by Traxion. All prices are listed in Euros and exclusive of VAT.
- A.11.2. If the Contract is a continuing performance contract, the amounts due will be invoiced annually to the Client, prior to the new period, unless otherwise agreed.
- A.11.3. If Traxion has not made a tender or offer, the payments for the Services to be delivered will in principle be determined on the basis of the hourly rate.
- A.11.4. Traxion will be entitled to adjust the prices charged once a year by a maximum of 5%, without Client having the right to terminate the Contract. As far as possible, Traxion will inform Client of this adjustment at least 30 (thirty) days prior to the price adjustment.
- A.11.5. If a supplier of Traxion increases its prices in the interim, Traxion will be entitled to pass on this increase immediately 1-on-1 to Client. Traxion will communicate price adjustments in writing.
- A.11.6. Traxion will be entitled to adjust the price terms in the interim and send Client additional invoices if it is evident that, because of organisational changes, Client no longer meets the terms and conditions on which she/he was assigned to a pay scale on entering into this Contract.

ARTICLE A.12. PAYMENT CONDITIONS

- A.12.1. Traxion will be entitled to send invoices electronically. Invoices will be sent in PDF or another appropriate format to the e-mail address of Client known to Traxion.
- A.12.2. After thirty (30) days have passed after the invoice date, a Client who does not pay in time will be in default by operation of law, without notice of default being required. From that time, Traxion will be entitled to limit the provision of its Service, for example by limiting access to the Service or temporarily suspending the Service, provided it notifies Client to that effect at least 48 hours in advance.
- A.12.3. In case of late payment, in addition to the amount due and the interest due on it, Client will have to reimburse the extrajudicial costs in full, as determined and

charged in accordance with the Extrajudicial Collection Costs (Fees) Decree (Besluit vergoeding voor buitengerechtelijke incassokosten).

- A.12.4. In the above-mentioned cases Traxion will also have the right to terminate or suspend the Contract or the part of it not yet performed without notice of default or judicial intervention or to put it out of operation, without prejudice to Traxion's right to require compensation of any losses it might incur through this.
- A.12.5. A claim for payment will be immediately due and payable if a liquidation order has been made against Client, Client applies for suspension of payment or general attachment is imposed on Client's assets, Client dies and, furthermore, it enters into liquidation or is dissolved.
- A.12.6. If reasonable doubt can exist on the basis of facts and circumstances that Client will be able to comply with its payment obligations, Traxion will have the right to require financial security from Client in the form of a security deposit for twelve (12) months' provision of Service.

ARTICLE A.13. DURATION OF THE CONTRACT

- A.13.1. The Contract will enter into effect on the date on which the Contract is signed by both parties, unless they have jointly agreed a different start date in the Contract.
- A.13.2. The Contract will be entered into for the period mentioned in the offer. If no period is mentioned, the Contract will be entered into for the duration of twelve (12) months or for the duration that is necessary for provision of the Service. The Contract can be terminated early only as stipulated in the Contract, or with the consent of both parties. If the Contract is a contract for services, however, the Client cannot terminate it early.
- A.13.3. If the Contract is a continuing performance contract (for example in the event of an SaaS contract), if there is no written notice of termination in good time before the end of the aforementioned period, with due observance of the notice period, this contract will be tacitly extended each time by the same period, unless otherwise agreed in writing.
- A.13.4. Both parties must observe a notice period of three (3) months.
- A.13.5. Traxion will have the right to terminate the Contract with immediate effect and without any obligation to pay compensation, in so far as reasonable, if
 - i. Client has failed to comply with its obligations and the Client has not remedied such failure within five (5) days after written notice of default;
 - ii. Client has had a liquidation order made against it, has applied for suspension of payment or general attachment has been imposed on the assets of the other Client.

ARTICLE A.14. AMENDMENT OF THE CONTRACT

- A.14.1. Amendments to the Contract must be made in writing and will require the consent of both parties.
- A.14.2. Traxion will be entitled to amend this Contract each time on extension, provided it announces the intended amendments to Client no later than thirty (30) days in advance.

A.14.3. If Client objects in time to the amendments, Traxion will reconsider the amendments and withdraw them if it considers the objection justified. If, however, Traxion perseveres in the amendments despite Client's objection, Client will acquire the right to terminate the Contract at the time the amendments enter into effect.

ARTICLE A.15. OTHER STIPULATIONS

- A.15.1. The Contract shall be governed by Dutch law.
- A.15.2. In so far as not prescribed otherwise by the rules of mandatory law, all disputes that might arise as a result of this Contract will be brought before the Dutch court with jurisdiction in the District of Gelderland, location Arnhem.
- A.15.3. The version of any communication and records received or stored by Traxion will count as authentic and mandatory evidence, barring evidence to the contrary to be provided by Client.
- A.15.4. In this Contract, "written" also includes communication by e-mail or via the Service, provided the identity of the sender and integrity of the contents have been sufficiently established.
- A.15.5. If Client is taken over by a third party or if Client takes over a third party, it must always report this immediately to Traxion after the Client has become aware of the takeover.
- A.15.6. Traxion will be entitled to transfer its rights and obligations under the Contract to a third party that takes over the Service or relevant business activity from it.
- A.15.7. If a term of this Contract proves to be invalid, this will not impair the validity of the entire Contract. The parties to the Contract will also adopt one or more terms as replacements by which shape is given to the intention of the original Contract as far as legally possible.

MODULE B – CONSULTANCY AND PROJECT SUPERVISION

If the Service is (also) for the purpose of giving advice on ICT (infrastructure), implementation and/or use of software or giving trainings, the terms of this module will also apply.

ARTICLE B.1. CONSULTANCY AND PROJECT SUPERVISION

- B.1.1. Traxion will carry out consultancy and project supervision to the best of its ability with due observance of sufficient care and professional skill.
- B.1.2. The parties will determine in advance which elements are part of the consultancy and/or project supervision. If necessary, this will be adjusted during the supervision in joint consultation. Traxion will have the right to charge additional costs, if any, for this.
- B.1.3. Consultancy and project supervision in the context of the Contract will at all times constitute an obligation to use best endeavours, unless otherwise agreed in writing.
- B.1.4. Client is aware that following the advice of Traxion is completely at the risk of Client. Traxion is liable for losses incurred only in so far as this ensues from the Contract.
- B.1.5. Traxion will at all times inform Client in advance of the time and costs involved in the work to be performed. The time needed for the work in question will also depend on different factors, including the cooperation of Client.

ARTICLE B.2. TRAINING COURSES AND PROGRAMMES

- B.2.1. Traxion determines the contents of the training course or programme to be given. Client may inform Traxion of its preferences in relation to the contents, but Traxion cannot guarantee at all times that these preferences will be included in the training course or programme.
- B.2.2. In the event that Traxion gives a training course or programme at a location of Client, Client will be responsible for provision of the facilities needed by Traxion (including in any case sufficient room for the course, computers, beamers, internet connection, food and beverages) for the training course or programme, as well as for handling the registrations.
- B.2.3. Cancellation and/or relocation of a training course or programme free of charge by Client is possible only until five (5) Working Days prior to the date of the scheduled training course or programme. In case of cancellation and/or relocation within five (5) days before that date, 50% of the agreed costs must be paid. In the case of compulsory training courses, Traxion will not be required under any circumstances to refund paid fees.
- B.2.4. Traxion will be entitled to cancel and/or relocate a training course or programme free of charge until five (5) Working Days prior to the date of the scheduled training course or programme. The amounts already paid for the training course or programme not taken will be refunded within ten (10) Working Days. In the event of compulsory training courses, Traxion will not be required under any circumstances to refund paid fees. In such a case the parties will set another date in consultation.

MODULE C – SECURITY ASSESSMENTS AND PEN TESTING

If the Service is (also) for the purpose of having Traxion give advice on security or the (comprehensive) testing of (network) infrastructures and/or (software) applications for safety, the stipulations in this module will apply as well.

ARTICLE C.1. SCOPE OF THE ASSESSMENT OR PEN TEST

- C.1.1. Prior to the performance of the Contract, the parties will specify the purposes of the assessment and/or the pen test in detail. Traxion will work out the relevant specification in an annex to the Contract. This annex drafted by Traxion will be guiding at all times.
- C.1.2. In addition to the preceding paragraph, the parties will jointly determine the consequences of the outcomes. This may mean that Traxion will make recommendations immediately, or immediately make modifications to the infrastructure and/or application.
- C.1.3. Although Traxion will make efforts to the best of its ability, making use of all its professionalism, to test the infrastructure and/or applications, Traxion cannot guarantee that the security flaws and weaknesses will actually be found and identified.

ARTICLE C.2. COOPERATION BY CLIENT

- C.2.1. Client must cooperate with Traxion in every reasonable way necessary for the purposes of the test.
- C.2.2. In particular, Client must deliver all information which Traxion has indicated as necessary for the test. As far as reasonably necessary, Client will grant Traxion access to all locations where the test can be conducted. It will instruct its employees and/or other representatives to cooperate in the test and follow the instructions given by Traxion during the test.

ARTICLE C.3. REPORTING

- C.3.1. Traxion will report periodically and in the interim at Client's request on the course of the test. To prevent such reporting from having an adverse effect on the test, Traxion may withhold certain details until after the test has been concluded. After conclusion of the test, Client will receive a comprehensive report of findings.
- C.3.2. Traxion will be allowed to engage third parties for the performance of the Contract. These third parties will work under the management and supervision of Traxion.
- C.3.3. After the report is completed, Traxion will make specific suggestions for repair or improvement and cooperate in their implementation.

ARTICLE C.4. AUTHORISATIONS AND WARRANTIES

- C.4.1. Client hereby gives Traxion unlimited permission to enter, use and operate the infrastructure and/or applications clearly specified in advance, including all systems and infrastructures at hand and corresponding systems and infrastructures, irrespective of whether they belong to third parties. Client hereby declares that it has

obtained permission from third parties who could possibly experience consequences of the test and has informed them properly about the test.

C.4.2. Client also gives Traxion permission to represent itself as anything whatsoever during the test and to call staff and auxiliary persons of Client to account under false pretences.

C.4.3. Client grants Traxion the right to switch off or circumvent every security measure found to be present in or near the infrastructure and/or applications and the right to modify, open, copy and delete data present on an infrastructure and/or application, but only if this is necessary to conduct the test correctly. Traxion will not be subject to an obligation under any circumstances to restore or put back the deleted data on the infrastructure and/or applications during or after the test.

C.4.4. Client declares and warrants that it is authorised to grant Traxion the rights and permission referred to in this article. It declares in addition that it is also authorised to grant this right for and have the permission of third parties who could possibly experience consequences from the test.

ARTICLE C.5. LIABILITY

C.5.1. In addition to Article A.7, the terms in this article will apply.

C.5.2. Despite the fact that Traxion will endeavour not to cause any damage to the systems, infrastructures and other objects of Client and any third parties, Traxion cannot guarantee that no damage will occur. Traxion shall be liable for damage incurred by Client only in case of an intentional act or omission or gross negligence during the test.

MODULE D – PROVISION OF SAAS

If the Service is (also) for the purpose of having Traxion make a specifically agreed functionality remotely available to Client, the terms of this module will apply as well.

ARTICLE D.1. PROVISION OF SOFTWARE (AS A SERVICE)

- D.1.1. Traxion hereby grants Client for the duration and under the terms and conditions of this Contract a non-exclusive, non-transferable and limited right to use the Service.
- D.1.2. The right of use as referred to in the preceding paragraph also means all future updates. Traxion will have the right to charge additional costs for the installation of upgrades.
- D.1.3. Client will be entitled to use the Service under the right of use for Client's business or institution. The limitations, which also means the number of employees and/or administrators and available functions, are specified in the Contract.
- D.1.4. Unless specifically agreed otherwise in writing, Client will not be allowed to sublet the Service or make it available to third parties in another way. This does not mean the employees of Client's business or institution.
- D.1.5. On purchasing the Service, Client must see to it that all applicable legal obligations are complied with strictly.
- D.1.6. On or about the Start Date, Traxion will send or hand over the login details for the Service to Client. Client is aware that loss of the login details can result in unauthorised access to the Service. Client must therefore protect the login details from unauthorised persons.
- D.1.7. Client itself is responsible for loading all data in the Service by using the loading possibility or one of the synchronisation possibilities made available by Traxion in the Service. Traxion shall not be liable for any inaccuracies after loading or on the synchronisation of the data, unless an intentional act or omission or gross negligence is involved.
- D.1.8. Client must at least impose the same terms and conditions as included in Article D.5 on the end users with respect to the use of the Service.
- D.1.9. Traxion will be entitled to use the Data anonymised for the purposes of statistical analyses and/or benchmarking. In addition, Traxion will be entitled to monitor the use of the Service, on the basis of which it can make recommendations to Client.

ARTICLE D.2. AVAILABILITY AND MAINTENANCE

- D.2.1. If the parties have not concluded an SLA, the terms and conditions following below will apply.
- D.2.2. Traxion will endeavour to allow the Service to be available, but does not guarantee uninterrupted availability.
- D.2.3. Traxion maintains the Service actively. Maintenance can take place at any time, even if this results in a limitation of availability. Traxion nevertheless endeavours to

conduct maintenance during the times that the Service is used minimally. Maintenance will be announced in advance if possible.

ARTICLE D.3. GUARANTEES AND MODIFICATIONS

- D.3.1. Client accepts that the Service only contains the functionality and other properties as Client finds them in the Service at the time of provision (“as is”), therefore with all visible and invisible flaws and defects.
- D.3.2. Traxion will endeavour to remedy problems/defects in the Service. Traxion, however, does not give any guarantees in this regard.
- D.3.3. Client itself must check the calculations or processings of Data done by the Service. Traxion does not guarantee that all calculations and/or processings will be faultless at all times.
- D.3.4. Traxion may modify the functionality of the Service from time to time. Client’s feedback and suggestions on this are welcome, but Traxion has the right not to implement the modifications if it has reasonable grounds for this. Traxion strives to, but is not obliged to state at least two (2) Working Days in advance which modifications it plans to implement. Client cannot under any circumstances continue to use the old version of the Service.

ARTICLE D.4. SUPPORT BY TRAXION

- D.4.1. Traxion offers support on providing the Service in the form of work that in Traxion’s opinion is supportive and can be performed quickly, properly and simply.
- D.4.2. Traxion will have the right to charge costs for the Upgrades. Traxion will inform Client of the costs in advance at all times.

ARTICLE D.5. CODE OF CONDUCT

- D.5.1. Client shall be prohibited from using the Service to violate Dutch or other laws or regulations applicable to Client or Traxion, or to infringe on the rights of others.
- D.5.2. Traxion prohibits (whether this is legal or not) using the Service to offer, store or distribute materials that:
 - iii. are unmistakably primarily meant to aid and abet others in violating the rights of third parties, such as websites with (exclusively or mainly) hacking tools or an explanation of computer crime that is manifestly meant to enable the reader to commit (or cause to be committed) the criminal acts described, and not to enable someone to defend him/herself against them;
 - iv. are unmistakably defamatory, libellous, insulting, racist, discriminating or hatemongering;
 - v. contain child pornography or bestial pornography or are manifestly aimed at helping others to find such materials;
 - vi. constitute a violation of third-party privacy, including in any case, but not limited to distributing personal data of third parties without permission or need or repeatedly harassing third parties with communication they do not want;

- vii. contain hyperlinks, torrent files or references with (sources of) material that unmistakably infringes on copyrights, neighbouring rights or portrait rights;
 - viii. contain unasked commercial, charitable or idealistic communication; or
 - ix. contain malicious content such as viruses or spyware.
- D.5.3. Client must refrain from impeding other clients or internet users or damaging systems or networks of Traxion or other clients. Client shall be prohibited from starting up processes or programs, whether or not via the systems of Traxion, regarding which Client knows or can reasonably suspect that this will impede or harm Traxion, its clients or internet users.
- D.5.4. If Traxion is of the opinion that impediment, damage or another danger arises to the functioning of the computer systems or network of Traxion or third parties and/or to the Provision of Services via internet, in particular through excessive sending of e-mail or other data, (distributed) denial-of-service attacks, poorly protected systems or activities of viruses, trojans and similar software, Traxion will be entitled to take all measures it reasonably considers necessary to avert or prevent this danger. Traxion may recover the costs reasonably involved in these measures from Client.

ARTICLE D.6. AVAILABILITY OF THE SERVICE

- D.6.1. Notwithstanding the terms in the SLA concluded, if any, the following will apply concerning the availability of the Service and any interruptions.
- D.6.2. Traxion will take technical and organisational measures to ensure that the Service will be available. Traxion cannot, however, guarantee that the measures taken will be effective at all times.
- D.6.3. Client is aware that the Service depends on a stable internet connection at the location where Client uses the Service. Traxion cannot exert any influence on the internet connection, network, equipment or all other Services/equipment not delivered by Traxion.
- D.6.4. Traxion will be entitled to decommission its Service, corresponding websites or parts thereof for the purpose of maintenance, modification or improvement thereof, and/or maintenance, modification or improvement of the corresponding software or other facilities. Traxion will endeavour to have such decommissioning take place outside office hours and, if possible, inform Client in good time of the scheduled decommissioning. Traxion, however, will never be obliged to compensate any loss in connection with such decommissioning.
- D.6.5. Traxion may modify the functionality of the Service from time to time. Feedback and suggestions from Client on this are welcome, but Traxion itself will ultimately decide which modifications it implements or not. Traxion will state at least thirty (30) days in advance which modifications it plans to implement.

ARTICLE D.7. AUDIT

- D.7.1. Client shall not have the right to conduct audits.

ARTICLE D.8. EXIT SCHEME

- D.8.1. In case of termination of the Contract and in the context of continuity of Client's provision of information, the parties will consult about the transfer of the stored Data.
- D.8.2. If necessary, agreements will be made on the retention of the Data by Traxion, based on statutory retention obligations. Traxion will be entitled to charge costs for retaining the Data.
- D.8.3. All work performed by Traxion in the context of the continuity of Client's provision of information after termination of the Contract will be charged on the basis of subsequent calculation at the rates applicable at that time.