

## ILIONX GENERAL TERMS

Version July 2019

### Chapter 1: General Provisions

The provisions in this chapter apply to all services and products – of whatever nature – that ilionx supplies and delivers.

#### 1. Definitions

- 1.1. Agreement: the agreement, including Appendices to it, between ilionx and Client to which these Terms apply.
- 1.2. Appendix: an appendix to the Agreement.
- 1.3. Client: the party that enters into an Agreement with ilionx.
- 1.4. ilionx: an enterprise that is part of the ilionx Group B.V. or Q24 Beheer B.V. in the sense of article 2:24a, b or c of the Netherlands Civil Code, as specified in the Agreement.
- 1.5. Data Processing Agreement: the Data Processing Agreement included in the Agreement as an Appendix to the Agreement.
- 1.6. Results: the output delivered as a result of a Service, such as reports, advices, screenshots, print-outs, analyses, designs, documentation, training materials and other results of Services.
- 1.7. Service: the service that ilionx delivers to Client and which service is specified in the offer or the Agreement. Service may include, among other things, cloud services and/or software services and/or secondment services and/or consultancy services.
- 1.8. Software: the software agreed on in the Agreement and the accompanying user documentation.
- 1.9. Terms: the present Terms.

#### 2. Applicability ilionx and ilionx supplier Terms

- 2.1 The Terms apply to all offers and Agreements under which ilionx supplies and delivers goods and/or services to Client.
- 2.2 All ilionx's offers and other forms or communication and publicity are subject to contract, unless ilionx should indicate otherwise in writing.
- 2.3 Any amendments of the Terms are exclusively valid if agreed upon in writing by both parties. Any provisions to the contrary are explicitly rejected.
- 2.4 In the event any provision in these Terms is void or voided, the other provisions remain in full force. Parties will then consult each other on a new or alternative provision.
- 2.5 At all times ilionx is entitled to adapt the Terms unilaterally. Adaptations will also apply for Agreements already entered into. ilionx will notify Client in writing of any adaptation made. The amended Terms take effect thirty (30) days following the notification or at any other date referred to in the notification. If Client does not consent to the adaptation, Client is entitled to terminate the Agreement by serving written notice of termination by registered post as of the date the adaptation takes effect. After the date the adaptation has taken effect, Client is considered to have accepted the adaptation.
- 2.6 Client is only entitled to sell, transfer or pledge the rights and obligations it has under an Agreement to a third party after ilionx has consented to this in writing. ilionx is entitled to sell, transfer or pledge its claims with regard to payment of fees to a third party.
- 2.7 If and in so far as ilionx supplies or delivers third party products, software or services to Client, the terms and conditions of these third parties apply, as indicated in the Agreement. The terms and conditions of these third parties prevail over the Terms ilionx applies.

- 2.8 In the event Client should directly enter into an end user licence agreement and/or a maintenance agreement with a third party or into any other agreement with a third party in relation to an Agreement or the execution of an Agreement, ilionx will not be a party to that agreement or those agreements and these agreements are always subject to the terms and conditions applied by the relevant third party. ilionx is neither responsible, in whatever way, for the proper operation of these third party products, services or software nor for the third party products, services or software being available in good time. By entering into an Agreement, Client declares to agree to the applicability of those third party terms and conditions.

### 3. Offer and Agreement

- 3.1 All ilionx's offers and other forms of communication and publicity are subject to contract, unless ilionx should indicate otherwise in writing. Client guarantees the correctness and completeness of any data, information, designs and specifications provided to ilionx by or on behalf of Client on which data the offer – and any Agreements ensuing from it – is based.
- 3.2 An Agreement between parties becomes effective on having been signed by both parties and always includes ilionx's offer, signed by Client as correct.
- 3.3 ilionx may transfer, in whole or in part, its legal relationship under an Agreement to one of the enterprises that are part of the ilionx Group or the QNH group, without Client's consent or cooperation being required.
- 3.4 Parties agree that an Agreement entered into with the purpose to make Software available for use, will never be considered as a sales and purchase contract.

### 4 Price and payment

- 4.1 All sums are listed in euros, exclusive of turnover tax (VAT) and other levies. Client must pay these sums in accordance with the payment conditions referred to on the invoice. In the event no specific payment conditions have been included, Client must pay within thirty (30) days following the invoice date. Client is neither entitled to suspend any payments nor to set off any sums due.
- 4.2 If Client is obliged to pay periodic payments, ilionx may adapt the current prices and rates in writing, with due observance of a term of at least three (3) months. If Client does not consent to the adaptation, Client is entitled to terminate the relevant Agreement by serving written notice of termination as of the date the new prices and/or rates are to take effect.
- 4.3 ilionx may index its rates on an annual basis, per 1 January, in accordance with the CBS (Statistics Netherlands) price index. Client's right to terminate an Agreement as referred to in article 4.2 of these Terms does not apply for this indexation.
- 4.4 In the event Client should fail to pay any of the sums due or fail to pay these in time, collection costs may be charged to a minimum of 8% of the principal sum, without any prejudice, however, to ilionx's rights to claim compensation of the full collection costs and any other costs incurred, including all costs calculated by external experts and of any other damages suffered.
- 4.5 Any work or other activities carried out by ilionx on Client's request or with Client's prior consent, which work or activities are outside the content or scope of the agreed upon work and/or activities, must be paid by Client on the basis of the rates agreed upon. In the event rates have not been agreed upon, the rates apply that ilionx usually charges for this type of work or activity. ilionx is never obliged to grant such a request and ilionx may require Client to enter into a separate, written Agreement to have the work or the activities carried out.
- 4.6 ilionx retains title to all goods delivered by ilionx to Client until all sums due by Client under the Agreement have been paid to ilionx in full.

## 5 Continuing performance contract

- 5.1 If an Agreement entered into by parties is a continuing performance contract, this Agreement is considered to have been entered into for the term agreed upon by parties. If parties have not agreed upon any term, the duration of this Agreement will be one (1) year.
- 5.2 Upon expiry of its term, the duration of an Agreement is tacitly renewed for the duration of the term originally agreed upon, unless either party should terminate (“opzeggen”) this Agreement by serving written notice of termination in accordance with the possibilities described in the relevant Agreement. If no reference is made to any notice period for termination, this notice period will be three (3) months before the end of the relevant term.

## 6 Data exchange and Personal data

- 6.1 If personal data are to be processed under an Agreement, ilionx and Client will enter into a Data Processing Agreement to that end.
- 6.2 ilionx does not make Client’s data, including personal data, available outside its own organization and the enterprises affiliated with ilionx, unless Client should instruct this or in so far as this should be necessary or required under these Terms, under an Agreement or by law.
- 6.3 Client guarantees the accuracy, quality, integrity, lawfulness, reliability and suitability of the data delivered by Client. Client sees to it that all relevant consent is obtained to make data available to ilionx and for ilionx to use the data in the context of the execution of an Agreement, which consent includes permission to collect, use, process, transfer and provide personal data.

## 7 Confidentiality

- 7.1 ilionx and Client see to it that confidentiality is observed with respect to all data received from the other party, which data are known or could reasonably be known to be confidential. This confidentiality requirement does not apply if and in so far as providing the relevant data to a third party is required pursuant to a judicial decision or arbitral award, a legal requirement or for the proper execution of an Agreement. The party who receives the confidential data will only use these data for the purpose for which the data were provided. Data are always considered to be confidential if indicated as such by either party.
- 7.2 Client acknowledges that the Software, products and Services provided by ilionx are always confidential by nature and that these contain trade secrets of ilionx and its affiliates, its suppliers or the producer of the goods or services.
- 7.3 If Client detects an error or a data breach in an ilionx Cloud Service, Software Service, other Service, Software or data carrier, Client will report this to ilionx and will not make this public before ilionx and/or the supplier or the relevant third party supplier have been granted a reasonable period of time to repair the error or the breach (“responsible disclosure”).

## 8 Intellectual Property

- 8.1 All intellectual property rights with respect to the Software, customized Software, websites, applications, data files, hardware, training materials, testing materials and other materials – such as but not restricted to analyses, designs, documentation, reports – made available under an Agreement remain exclusively vested in ilionx, its licensors and/or suppliers. Client obtains the user rights that are explicitly granted under these Terms, an Agreement and the law.
- 8.2 ilionx is permitted to take technical measures to protect the hardware, data files, websites, applications, Software made available, Software which Client is granted access to (partially or in full) and the like in the context of an agreed upon restriction in the content or the duration of the right to use these objects. Client may not remove or circumvent these technical measures or have these removed or circumvented.

- 8.3 ilionx will try to resolve any claim filed by a third party against Client, which claim is based on an alleged, direct infringement by Software, websites, applications, data files, hardware or other materials (“Materials”) developed by ilionx of any intellectual property right which that third party can enforce in the European Economic Area. ilionx is obliged to do so, provided that Client uses these Materials unmodified and in accordance with the relevant Agreement and without combining these Materials with hardware or software, websites or other materials that have not been supplied or delivered by ilionx or have not been recommended in the relevant Agreement. If ilionx cannot resolve the claim by the third party under commercially reasonable conditions, ilionx may (a) modify the object delivered to Client or replace it by an operational equivalent, or, if this should prove impossible (b) terminate (“opzeggen”) the relevant Agreement by giving notice of termination and refund the amount paid by Client for the period following the termination of this Agreement.
- 8.4 The indemnity referred to in article 8.3 is provided under the following conditions: (a) Client informs ilionx immediately in writing about any such claim or a possible claim; (b) Client allows ilionx to conduct its own defence, independently, and/or to settle the claim; and (c) Client provides ilionx with correct and complete information and assistance to settle such claim and/or to defend itself against it. To that purpose Client must grant ilionx the required powers-of-attorney and provide ilionx with any assistance it may require.
- 8.5 The indemnity referred to in article 8.3 no longer applies if the alleged infringement is related to (a) material made available by Client to ilionx for use, modification, processing or maintenance or (b) modifications that Client has made, or has had made, in the Materials without ilionx’s written permission.
- 8.6 Client is not entitled to remove or alter any reference to the confidential nature or notices of the relevant copyrights, trademarks, trade names or any other intellectual property from or in the Materials or have these removed or altered.
- 8.7 Client guarantees that none of the hardware, software, material meant for websites and/or data files and/or other materials and/or designs made available to ilionx for use, maintenance, modification, installation or integration purposes or for the performance of other activities pursuant to or in the context of an Agreement is incompatible with any third party rights. Whenever Client makes software, hardware or other means available to ilionx for the execution of an Agreement, Client guarantees that it has obtained or will obtain any required licence or consent with respect to any means ilionx may need. Client indemnifies ilionx against any claim by a third party which is based on an alleged infringement of any right of that third party by any of the means that have been made available or by the use, maintenance, modification, installation or integration of such means.
- 8.8 ilionx is never obliged to carry out data conversion, unless this has been explicitly agreed upon with Client.
- 8.9 ilionx’s full liability in relation to any alleged infringement of any third party intellectual property rights is limited to the obligations laid down in the present article.

## **9 Cooperation and information**

- 9.1 Parties acknowledge and agree that the success of an IT project depends on the commitment of both parties and a good, proactive cooperation – from both sides – plus proper communication between parties. Achieving a successful Result is a shared responsibility and not the (end) responsibility of either party. Parties will always render each other any assistance required – always promptly and in all reasonableness – and always provide the other party with the data or information that party requests. If Client assigns its own staff and/or auxiliary persons to assist in the execution of an Agreement, these employees and auxiliary persons must have the required skills and experience.

- 9.2 Client guarantees the correctness and completeness of the data, information, designs and specifications provided by Client to ilionx during the execution of an Agreement.
- 9.3 Both parties perform their tasks and duties with appropriate quality, quantity, assignment of sufficient staff and sufficiently qualified staff and on time. If either party notices that the other party is not sufficiently committed, that party will notify the other party's contact person of this in writing.
- 9.4 Client itself is responsible for the correct interpretation of the Results. Client bears the risk of selecting, using, applying and managing the hardware (including the settings), Software, websites, data files and other products and materials for or in its organization and the Services to be provided by ilionx and the way in which the Results of the Services, Software and other products and Services are implemented. Client is also responsible for the instructions given to the users and for the use made of all of this by the users.
- 9.5 Client must always exercise the utmost care with respect to the proper installation, mounting and implementation and to the correct setting of the hardware, Software, websites, data files and other products and materials.
- 9.6 In the event ilionx employees carry out activities at Client's premises, Client will see to it, free of charge, that these employees are provided, in all reasonableness, with the facilities they require, such as a workplace with computer, data and telecommunication facilities. The workplace and facilities must meet the statutory and other relevant requirements for working conditions. Client indemnifies ilionx against claims by third parties, including claims by ilionx employees, who suffer damage in connection with the execution of the Agreement, which damage results from any act or omission of Client or from unsafe situations in Client's organization. Before the activities start, Client informs ilionx employees about the house rules and safety rules that Client applies in its organization.
- 9.7 In the event computer, data and telecommunication facilities, including the internet, are used for the execution of an Agreement, Client is responsible for the appropriate selection of means required for these facilities and for their timely and full availability, except for the facilities which are under ilionx's direct use and management. ilionx is never responsible for any damage or costs, including costs of delay for ilionx, as a result of transmission errors, failures or non-availability of these facilities, unless Client proves that this damage or these costs are caused by intent or wilful recklessness on the part of ilionx's management.
- 9.8 Client is responsible both for installing, setting up, parametrizing and tuning the software and auxiliary software required for its own hardware and, where required, modifying any other hardware used, other software or auxiliary software and for the operating environment and for realizing the interoperability wanted.
- 9.9 For the duration of an Agreement and one (1) year following the end of this Agreement, or if that is later in time, following the end of any other Agreement that comes under the same umbrella Agreement – such as a framework agreement or a master agreement – entered into by parties, Client is not allowed to have any ilionx employees assigned to Client to work for Client in an employment relation, neither directly nor indirectly, unless this is decided in mutual consultation and ilionx is paid an appropriate and reasonable compensation for the expenses incurred by recruitment, selection and training of the relevant employee.
- 9.10 If Client engages the ilionx employees referred to in paragraph 9 in any other relation than an employment relation, Client is not allowed to have these employees work, neither directly nor indirectly, for Client for the periods referred to in paragraph 9 without ilionx's prior permission in writing, subject to an immediately due and payable penalty, without any demand or notice of default being required, amounting to € 30,000 per breach and € 1,000 per calendar day, or part of a calendar day, that the breach continues, without prejudice to ilionx's right to full compensation of damages.

## 10 Execution and terms

- 10.1 All ilionx Services are provided on the basis of a best-efforts obligation (“inspannings-verbintenis”).
- 10.2 ilionx will endeavour, within reason, to observe, as much as possible, the terms and/or dates, whether deadlines or not, referred to by ilionx or agreed upon by parties. Any date agreed upon between parties is considered a target date and does not bind ilionx. Merely exceeding one of the (delivery) terms or (delivery) dates referred to by ilionx or agreed upon between parties does not result in ilionx being in default (“verzuim”). ilionx will never be in default for exceeding a deadline – not even, therefore, if parties have explicitly agreed upon a (delivery) deadline in writing – before Client has served a written default notice granting ilionx a reasonable period of time to remedy the default and ilionx still imputably fails to perform its obligations after this period of time.
- 10.3 Parties are jointly responsible for ensuring the planning and possible departures from it and they will see to it that the planning and ensuring the planning is always an item on the agenda of their regular consultations.
- 10.4 If parties have agreed that the performance of the activities agreed upon under an Agreement is to take place in phases, ilionx is entitled to postpone the start of activities that are part of a certain phase until Client has approved the Results of the preceding phase in writing.
- 10.5 Without prejudice to the provisions above, ilionx is not bound by any (delivery) date or (delivery) term, whether a deadline (“fatale termijn”) or not, if parties have agreed upon a change in the content or scope of an Agreement (extra work, alteration of specifications, etc.) or a change in the way an Agreement is to be executed, or in the event Client fails to meet its obligations arising from an Agreement, or fails to meet these in time or in full. If any extra work should be required while an Agreement is being executed, this can never be a reason for Client to terminate this Agreement by giving notice of termination (“opzeggen”) or to terminate it for breach (“ontbinden”).

## 11 Service Level Agreement and back-up

- 11.1 Possible arrangements concerning a service level (Service Level Agreement) are always explicitly agreed upon in writing. Parties always inform each other about all circumstances that effect or may effect the service level and its availability.
- 11.2 If provisions are agreed upon about a service level, the calculation of the availability of Software, systems and related Services includes neither the putting out of operation of these, as announced in advance by ilionx, for reasons of preventive, corrective or adaptive maintenance or any other forms of service nor does it include circumstances that are outside ilionx’s sphere of influence. The availability measured by ilionx is considered to be conclusive evidence, except where evidence to the contrary is provided by Client.
- 11.3 Client is responsible for making back-ups, unless explicitly agreed otherwise in writing. Client itself is responsible for a proper and complete back-up of its data and for checking these data.
- 11.4 If parties have agreed that ilionx makes back-ups of Client’s data, ilionx makes a complete back-up of all Client’s data it has in its possession, as frequently as agreed upon, or, if no such term has been agreed upon, once a week. ilionx retains the back-ups for the period agreed upon and if no such period has been agreed upon for the period usually applied by ilionx. ilionx retains the back-up with due care. Upon termination of an Agreement, ilionx returns these data to Client in an appropriate format, to be determined by ilionx, unless agreed upon otherwise.
- 11.5 Client itself is responsible for meeting all current statutory administrative and retention obligations that apply for Client.

## 12 Termination of an Agreement

- 12.1 Unless performance of the remaining obligations under an Agreement is permanently impossible, an Agreement may only be terminated for breach (“ontbinden”) if either party has imputably failed to meet any of its fundamental obligations and the other party has sent that party a written notice of default, stating the details of the breach, and has granted the other party a reasonable term to remedy the failure and this party – after this term has lapsed – still imputably fails to meet its obligations. Payment obligations of Client and any obligations Client has with respect to third parties engaged by Client are always considered fundamental obligations under an Agreement.
- 12.2 Any amounts that are invoiced by ilionx before termination (“ontbinding”) remain fully due and are immediately payable at the moment of termination, unless Client proves that ilionx continues to be in default with respect to a fundamental part of the relevant Agreement.
- 12.3 Either party may terminate, with immediate effect, an Agreement for breach (“ontbinden”) in the event of the other party’s liquidation, (provisional) suspension of payment, cessation of business activities or termination of business activities other than as a result of a merger, division or a change in the actual control of the other party. In the event either party knows that such a situation will or may occur, that party must immediately notify the other party of this in writing. The party that terminates the relevant Agreement for breach as referred to in this paragraph, is never obliged to refund any sums already received or to pay damages because of the termination. In the event Client has irrevocably gone into liquidation, Client’s right to use the Software, systems, cloud environment, website, and the like, that was made available to Client ends with immediate effect as well as Client’s right to access and/or use the Services of ilionx or its suppliers, all of this without ilionx having to take any further action.
- 12.4 If an invoice is not paid without having been contested within fourteen (14) days following the invoice date, an Agreement may be fully or partially terminated for breach (“ontbinden”) by ilionx, without any notice of default being required.
- 12.5 An Agreement that has been entered into for a definite period of time or for the duration of a project cannot be terminated early by serving notice of termination (“opzeggen”) – in so far as required contrary to the provisions of article 7:408 paragraph 1 Netherlands Civil Code. An Agreement that has been entered into for a definite period of time is tacitly renewed by the same term the Agreement was initially entered into, unless either party terminates this Agreement by serving notice of termination (“opzeggen”), taking effect from the end of that term and with due observance of a notice period of three (3) months.
- 12.6 Either party may terminate, by serving notice of termination (“opzeggen”), an Agreement entered into for an indefinite period of time if this Agreement in its nature and content does not end by discharge. Termination must be in writing, taking effect at the end of a month and with due observance of a notice period of at least three (3) calendar months.
- 12.7 ilionx will never be obliged to compensate any damages caused by termination by giving notice (“opzegging”).

## 13 Liability

- 13.1 ilionx’s total, cumulative liability, on whatever legal basis (including an obligation to indemnify or a breach of a guarantee) is limited to the compensation of damages that can be directly attributed to ilionx (direct damages), to the maximum price (exclusive of VAT) stipulated for the relevant Agreement, i.e. the Agreement from which the damage arises. If the relevant Agreement is, in principle, a continuing performance contract which has a term of more than one (1) year, the price stipulated for the Agreement is set at the total sum of the fees stipulated (exclusive of VAT) for one (1) year. ilionx total, cumulative liability for directly attributable damages never exceeds the sum of two hundred and fifty thousand euros (€ 250,000 – exclusive of VAT). A number of consecutive or related events is seen as one (1) event. In so far as claims arise from various legal relationships between parties which are based on one and the same or a related body of facts, these claims are not considered to constitute a cumulation of claims. In that event the stipulated price as referred to above is the Agreement that has the lowest price.

- 13.2 ilionx's liability for damage caused by death or bodily injury or caused by substantive damage to goods never amounts, in total, to more than one million two hundred and fifty thousand euros (€ 1,250,000) per event.
- 13.3 Direct damages are exclusively understood to mean:
- a. reasonable costs incurred by Client to have ilionx's performance comply with an Agreement. These damages are not compensated, however, if Client has terminated this Agreement for breach ("ontbinden");
  - b. costs incurred by Client until the end of an Agreement in the event Client's old system or systems and the facilities connected with this or these have to be kept operational out of necessity because ilionx has failed to supply and deliver – as agreed upon contrary to the provisions of article 10.2 of these Terms – on a binding delivery date, minus possible savings that may have resulted from the delayed delivery;
  - c. reasonable costs incurred by establishing the cause and the extent of the damage, in so far as establishing this is related to the direct damage in the meaning of these Terms;
  - d. reasonable costs incurred to prevent or limit the damage, in so far as Client demonstrates that these costs have led to a limitation of direct damages in the sense of this article 13.
- 13.4 ilionx's liability for indirect damage is excluded, such as but not restricted to consequential damage, damage to reputation, lost profit, missed savings, decreased goodwill, damage as a result of work interruption, damage as a result of claim by Client's suppliers, damage related to goods, material or software of third parties that Client instructed ilionx to use and damage connected with suppliers Client has instructed ilionx to engage. ilionx's liability for corruption, destruction or loss of data or documents is also excluded.
- 13.5 The exclusions and limitations of ilionx's liability described in this article do not affect any other exclusions or limitation of ilionx's liability described in these Terms.
- 13.6 The exclusions and limitations of ilionx's liability described in this article cease to apply if the damage is caused by intent or wilful recklessness of ilionx's management.
- 13.7 Unless performance by ilionx of the remaining obligations under an Agreement is permanently impossible, ilionx is exclusively liable for any imputable failure to meet its obligations under an Agreement if Client promptly serves ilionx a written notice of default, setting a reasonable term for ilionx to remedy the default, and ilionx still imputably fails to meet its obligations when that term has lapsed. The notice of default must contain a description of the failure, in as much detail as possible, so that ilionx can respond adequately; if this description is not included, the notice is not considered to be a notice of default as referred to in article 6:82 of the Netherlands Civil Code.
- 13.8 The right to compensation of damages exclusively arises provided always that Client notifies ilionx in writing of the damage as soon as possible after the it has occurred. Any claim for compensation of damages filed against ilionx expires twenty four (24) months after its inception, unless Client has taken legal action for compensation of damages before this term has lapsed.
- 13.9 Client indemnifies ilionx against all claims by third parties concerning product liability as a result of a defect in a product or system that was delivered by Client to a third party and of which product or system ilionx hardware, Software or other materials form part, unless and in so far as Client proves that the damage was caused by that hardware, Software or other materials.
- 13.10 Both the provisions in this article and all other restrictions and exclusions of liability referred to in these Terms also apply for the persons and legal persons that ilionx engages for the performance of an Agreement.

## 14 Force majeure

- 14.1 Neither party is obliged to meet any of its obligations, including any statutory and/or agreed upon guarantee or obligation of result, if it is unable to do so because of circumstances beyond its control (“niet toerekenbare tekortkoming”). Circumstances beyond a party’s control are understood to include, in any case: (1) circumstances beyond the control of that party’s suppliers, (2) failure by a supplier that ilionx was instructed by Client to engage to meet its obligations properly, (3) defective condition of goods, hardware, software or materials of third parties that Client instructed ilionx to use; (4) measures by authorities, (5) power cuts, (6) breakdown of the internet, of data network or telecommunication facilities, (7) war and (8) general transportation problems.
- 14.2 If a force majeure situation lasts more than sixty (60) days or if it is obvious it is going to last more than sixty (60) days, either party is entitled to terminate an Agreement in writing. Any activities already performed under that Agreement at that moment will be settled pro rata; apart from that, parties do not owe each other anything.

## 15 Consequences of terminating an Agreement and exit procedure

- 15.1 Upon termination (“beëindiging”) of an Agreement the right ends to use the Software, websites, applications, data files, training testing and other materials such as, but not limited to, analyses, designs, documentation, report, and the like, that were made available and the right ends that Client has to access and/or to use the Services provided by ilionx under the Agreement, without ilionx having to terminate these rights explicitly.
- 15.2 Upon Client’s request, ilionx will support Client in a possible transition to another party/environment after an Agreement ends. Parties will draft transitional arrangements in mutual consultation. ilionx is not liable for any damage caused by such transition. Any costs incurred by the transition will be charged by ilionx to Client on the basis of ilionx’s current rates. If no provisions have been agreed upon, the data will be made available to Client in a way and on a medium to be determined by ilionx.

## 16 Applicable law and dispute resolution

- 16.1 An Agreement is governed by the laws of the Netherlands. The Terms governed by and construed in accordance with the laws of the Netherlands. If any words used in the Terms or an Agreement have a specific legal meaning under Dutch law, that meaning shall apply and will prevail over the meaning of the English word and the meaning of such word under foreign law.
- 16.2 Applicability of the Vienna Convention on Contracts for the International Sale of Goods (1980) is excluded.
- 16.3 Since disputes should be resolved rather than submitted for litigation, parties will first try to resolve a dispute that they cannot solve themselves by means of mediation. Mediation takes place at the Stichting Geschillenoplossing Automatisering (SGOA), (internationally known as: ITDR) ([www.itdr-internationaal.eu](http://www.itdr-internationaal.eu)). The SGOA ICT Mediation Regulations apply. If parties fail to find a solution themselves or via mediation, the dispute is resolved by means of arbitration in accordance with the SGOA Arbitration Regulations. This provision does not affect the right either party has to file for a decision in preliminary relief proceedings, either in court or through arbitration, all of this without prejudice to either party’s right to file for provisional attachment.

## Chapter 2: Services

The provisions in this chapter ‘Services’ apply, in addition to those in the chapter ‘General Provisions’ if ilionx supplies and delivers Services, of whatever nature, to Client.

## 17 Performance of the Services

- 17.1 If and in so far as required for the proper performance of the Services, ilionx is entitled to have certain activities performed by third parties (“hulpverleners”). The Terms also apply to the activities these third parties perform in the context of an Agreement.

- 17.2 ilionx is not liable for damages or costs that result from the use or abuse that is made of access and identification codes or certificates, unless this use or abuse is directly caused by intentional or deliberately reckless act or omission of ilionx's management.
- 17.3 If an Agreement is entered into with a view to have one particular person perform the activities, ilionx is always entitled to replace this person by one or more persons who have the same and/or similar qualifications.
- 17.4 In the event any instructions or requests by Client change or add to the Services agreed upon, parties will consult each other on the consequences of this in terms of planning and costs.

## 18 End users of the Service

- 18.1 If this is part of the Service, ilionx creates one or more accounts for the end user(s) to provide end users with access to the Service.
- 18.2 Client and the end users must exclusively use the user name and password for the account for their own purposes and may never provide these details to third parties.
- 18.3 Client must ensure that only end users have access to the Service. Client is responsible for the secrecy of the content and for the Results. Client must impose the obligation to observe secrecy on all persons who are involved with the Service and the Results in so far as these persons do not have that obligation yet under their employment contracts. This explicitly applies for persons who perform activities for Client without having an employment contract, whether on a temporary basis or not, for example, but not limited to, consultants.
- 18.4 Any action that takes place with Client's user name and password is considered to take place under Client's responsibility and risk. In the event abuse of the administrative user name and/or password is suspected, Client must notify ilionx as soon as possible, irrespective of Client's own obligation to take immediate measures to prevent abuse or any further abuse.
- 18.5 Before making use of the Service, end users must agree to the conditions for use that apply for the use of the Service. ilionx designs the Service in such a way that the end user is asked to agree to the conditions when first using the Service.
- 18.6 End users must comply with the conditions for use. ilionx is entitled to call Client to account – in addition to or instead of calling the end user to account – for any act or omission by any end user. Incorrect use or abuse of a Service by end users is at Client's risk and in this case ilionx is entitled to refuse or restrict access to the Service.

## Chapter 3: Cloud Services

The provisions in this chapter 'Cloud Services' apply, in addition to those in the 'General Provisions' of these Terms and the provisions in the chapter 'Services', if ilionx provides Services under the name of or in the field of Software-as-a-Service (also referred to: SaaS) and/or Infrastructure-as-a-Service (IaaS) and/or Platform-as-a-Service (PaaS). For the applicability of these Terms, SaaS is understood to mean: remotely making and keeping Software available to Client via the internet or any other data network, without Client being provided with a physical carrier with this Software. IaaS is understood to mean: virtually making and keeping hardware or network hardware available as a service via the internet. PaaS is understood to mean: offering the hardware and the operating system as a service via the internet. The SaaS, IAAS and PaaS services are jointly referred to as 'Cloud Services'.

## 19 Service

- 19.1 Upon timely payment by Client of the sums agreed on, ilionx grants Client the right to use the Cloud Service in accordance with the provisions laid down in the relevant Agreement.

- 19.2 Client always complies strictly with the restrictions, of whatever nature or content, agreed upon in an Agreement for the use of the Cloud Service. Client is not entitled to allow third parties to make use of the Cloud Service provided by ilionx, unless this should arise from the relevant Agreement.
- 19.3 The codes and certificates provided by ilionx to Client are confidential and Client must treat these as such and may exclusively make these known to authorized members of staff in its organization. ilionx is entitled to change the codes and/or certificates it assigns.

## 20 Performance

- 20.1 The Cloud Service to be provided by ilionx is started within a reasonable term after an Agreement is entered into.
- 20.2 ilionx does not guarantee that the Software made and kept available in the context of the Cloud Service is without errors and operates without interruptions.
- 20.3 If the Cloud Service has to be taken out of service for maintenance purposes, ilionx will see to it that this does not take any longer than necessary and that this will take place, as much as possible, outside office hours.
- 20.4 Client must always itself provide of appropriate software and data communication facilities to make a connection with and communicate with the Cloud Service, as laid down in the Agreement. ilionx is not a party to any agreement between Client and its suppliers in this field. All products and services offered by suppliers are at Client's own expense and risk.

## 21 Acceptance

- 21.1 In the event parties have not agreed upon an acceptance test in an Agreement, Client accepts the Cloud Service delivered in the condition in which it is at the moment it is delivered ('as is, where is'). In this case the Cloud Service delivered is considered to have been accepted by Client upon delivery, or, in the event implementation and/or installation by ilionx was agreed upon, upon completion of the implementation and/or installation respectively.

## 22 Modification Cloud Service and consequences of termination

- 22.1 ilionx may modify the content or scope of the Cloud Service. If such modification has specific consequences for any of the procedures applicable at Client's organization, ilionx will try to inform Client as soon as possible; any costs in connection with these consequences are at Client's expense. In that case Client may terminate the relevant Agreement by serving written notification of termination ("opzeggen"), taking effect on the date the modification is realized, unless the modification is related to amendments in the relevant legislation or other regulations issued by any competent authority or unless ilionx should bear the costs incurred by this modification.
- 22.2 Upon termination of an Agreement ilionx will, in any case, make the data available to Client in a generally accepted electronic format; these data concern information (never including source codes and technical documentation) that Client needs to be able to continue the services by itself or to have these continued by a third party to be designated by Client.
- 22.3 If the information referred to above is the property of any third party or any third party is entitled to it – such as Microsoft – the above only applies if and in so far as ilionx is proprietor of or entitled to share this information with Client.

## Chapter 4: Software and developing Software (bespoke)

The provisions in this chapter 'Software' apply, in addition to those in the 'General Provisions' of these Terms and the provisions in the chapter 2 'Services', if ilionx makes Software available to Client for Client to use in other way than on the basis of a Cloud Service (chapter 3).

## **23 Right to use and restrictions**

- 23.1 Upon payment in time by Client of the sums agreed on, ilionx grants Client a non-exclusive, non-transferrable, non-pledgeable and non-sublicensable licence to use the Software under the conditions laid down in the relevant Agreement.
- 23.2 Client always complies strictly with the restrictions, of whatever nature or content, agreed upon in an Agreement concerning the right use the Software and/or the combination of the Software with specific hardware.
- 23.3 Except where exceptions apply that are laid down by mandatory law, Client is not entitled to modify the Software without ilionx's prior permission in writing.
- 23.4 ilionx does not provide any guarantees with respect to third party software. The provisions of article 2.7 and 2.8 of the chapter 'General Terms' are applicable.
- 23.5 Parties agree that an Agreement entered into by them – in so far as this Agreement concerns making Software available for use – will never be considered a sales and purchase agreement.

## **24 Delivery and installation**

- 24.1 Within a reasonable period of time after the relevant Agreement has been entered into, ilionx either delivers the Software on the type of data carrier agreed on or, if no such provisions have been agreed upon, on a type of data carrier to be determined by ilionx or makes the Software online available for delivery to Client. Parties agree on implementation and installation separately.

## **25 Acceptance**

- 25.1 In the event parties have not agreed upon an acceptance test in an Agreement, Client accepts the Software delivered in the condition in which it is at the moment it is delivered ('as is, where is'). In this case the Software delivered is considered to have been accepted by Client upon delivery, or, in the event implementation and/or installation by ilionx was agreed upon, upon completion of the implementation and/or installation respectively.

## **26 Maintenance**

- 26.1 ilionx is not obliged to provide maintenance for the Software and/or support. Parties may enter into a Service Level Agreement (SLA) to that purpose.

## **27 Audit right**

- 27.1 Client must promptly provide its assistance in any audit to be carried out by or on behalf of ilionx to check Client's compliance with the agreed restrictions on use. Upon ilionx's first request, Client will grant access to its premises and systems.

## **28 Consequences of termination ("beëindiging") of an Agreement**

- 28.1 Promptly following the termination of an Agreement, Client must return all copies of the Software in its possession or, upon ilionx's request, demonstrate that these have been destroyed.

## **29 Software Development (bespoke Software)**

- 29.1 In the event ilionx – as part of a project – develops Software on Client's instruction, the provisions of the present article are applicable. Parties will specify, in consultation, which Software is to be developed and in which way it is to be developed.
- 29.2 ilionx develops the Software with due care and due observance of the specifications and the methods, techniques and/or procedures explicitly agreed on in writing with Client.

- 29.3 If parties use a development method that is characterized by the starting point that designing and/or developing Software, or parts of the Software, is carried out interactively, for example Scrum, parties accept that, when the activities are first started, they will not be performed on the basis of complete or completely worked out specifications and parties also accept that specifications can be adapted, in consultation, during the execution of an Agreement, provided that this is part of the project strategy and the development method selected. During the execution of this Agreement parties make joint decisions, in consultation, about the specifications that apply for the next phase of the project – for example a ‘time-box’ – and/or for the development of the next part. Client accepts the risk that the Software will not necessarily meet all specifications. Client will ensure a permanent, active input supported by Client’s organization and cooperation of all relevant end users, amongst other things with respect to testing and further decision making. Client guarantees that the staff assigned have the required decision making powers when appointed in key positions. Client guarantees expeditiousness with respect to decisions to be made on further progress during the execution of this Agreement. In the event Client fails to make any timely and clear decision on further progress in conformity with the project strategy for relevant development method, ilionx is entitled – but not obliged – to make the appropriate decision at its own discretion.
- 29.4 If parties use the development method referred to in article 29.3, Client accepts the Software in the condition it is in at the moment the last development phase has been completed (‘as is, where is’). After the last development phase ilionx is not obliged to repair errors, unless parties have explicitly agreed otherwise in writing.
- 29.5 Within a reasonable period of time, to be determined by ilionx, after an Agreement has been entered into, ilionx starts the design and/or development activities and informs Client about the start and the expected duration of the activities, unless parties have agreed upon specific provisions to this purpose.
- 29.6 Upon request, Client allows ilionx to perform the activities at Client’s offices or premises outside the customary working days and working hours.
- 29.7 The obligations ilionx has with respect to developing a website do not include the making available of a so-called ‘content management system’.
- 29.8 The maintenance of the Software and/or website, and/or providing support to end users and/or administrators of the Software and/or website is not included in the development and/or delivery of the Software and/or website. If ilionx is to provide maintenance and/or support, contrary to the previous provisions, ilionx may require Client to enter into a separate, written Agreement. These activities will then be invoiced separately, at ilionx’s customary rates.
- 29.9 ilionx makes the Software and any accompanying documentation developed on Client’s instructions available to Client for use.
- 29.10 ilionx is not obliged to make any auxiliary Software and program or data libraries required for use and/or maintenance of the Software available.
- 29.11 The provisions of chapter 4, articles 23 to 28, apply accordingly.

## Chapter 5: Managed Services

The provisions in this chapter ‘Managed Services’ apply, in addition to those in the chapter ‘General Provisions’ and the chapter ‘Services’, if ilionx provides Services in the field of operating and maintaining an IT environment.

### 30 Support services

- 30.1 The relevant Agreement specifies which Services in the field of support (Support Services) ilionx provides.

- 30.2 If ilionx also provides Support Services to users and/or system managers of, for example, Microsoft Cloud software or private cloud or hybrid cloud environment, ilionx advises, by telephone or by email, on the use and operation of the Software, systems and infrastructure referred to in the Agreement. ilionx may set conditions for the qualifications and the number of persons who may make use of the Support Services. ilionx attends to properly substantiated requests for Support Services within a reasonable period of time and in accordance with its customary procedures. ilionx does not guarantee the correctness, completeness or the promptness of its responses or the Support Services offered. Support Services are provided on working days, during ilionx's customary opening hours.
- 30.3 If it is agreed upon in an Agreement that ilionx provides so-called 'standby-services', ilionx keeps one or more employees available during the days and the hours referred to in this Agreement. In that case Client is entitled to call these employees for Support Services in an urgent situation, i.e. if there is a serious failure in the operation of the Software. ilionx cannot guarantee that all failures will be repaired in time.
- 30.4 Maintenance and other Services agreed on, as mentioned in this chapter, are carried out starting on the day an Agreement is entered into, unless parties have agreed otherwise in writing.
- 30.5 Software Assurance is an agreement between Client and Microsoft under which extra user rights and other rights, such as maintenance, support or a right to upgrades, are provided to Client for Microsoft products. This service can actually be made available for Client by ilionx as well. These extra rights cease to have effect when the Software Assurance for the Microsoft Licence or the Microsoft Online Service ends, unless determined otherwise in the description of the Software Assurance. Per product, Software Assurance may provide other extra user rights.
- 30.6 ilionx is not responsible or liable for performance issues that can be traced back to or that are caused by the online support by Microsoft or by any other third parties or by suppliers.
- 30.7 ilionx is not obliged to repair corrupt or lost data.

## 31 Fees

- 31.1 Managed Services must be paid when the Agreement comes into effect. The stipulated fee is due irrespective of whether Client makes use of the possibility to have Managed Services provided or not.
- 31.2 ilionx is entitled to charge costs for the time it has spent on repairing failures that cannot be attributed to ilionx in any of the Services. ilionx's customary rates apply in that event. This would be the case if, for example, the failure is caused by user mistakes or improper use by Client or third parties or by modifications to the Software or hardware that were made by Client or third parties without ilionx's consent; or if a failure can be traced back to the use of Software or hardware not delivered or recommended by ilionx.

## 32 Consequences of termination

- 32.1 Upon termination of the relevant Agreement ilionx will, in any case, make the following data available to Client in a generally accepted electronic format:
- Information (never including source codes and technical documentation) that Client needs to be able to continue the services by itself or to have these continued by a third party to be designated by Client;
  - Up-to-date information on incidents, failures and modifications during the period of time the Managed Services were provided;
  - Up-to-date built up knowledge bases and documentation on the Managed Services.
- 32.2 In the event the information referred to above and the knowledge bases is the property of third parties or third parties are entitled to these – such as Microsoft – the above only applies if and in so far as ilionx is proprietor of or entitled to share these information and knowledge bases with Client.

## Chapter 6: Consultancy

The provisions in this chapter 'Consultancy' apply, in addition to those in the chapter 'General Provisions' and the chapter 'Services', if ilionx provides Services in the field of consultancy.

### 33 Execution

- 33.1 Unless agreed otherwise in the relevant Agreement, ilionx does not commit itself to the completion time of a consultancy assignment. Consultancy is provided during ilionx's customary working days and working hours.
- 33.2 When ilionx gives advice concerning configuration, ilionx can neither guarantee the correct and timely supply and delivery of the hardware, Software or software, infrastructure and/or other materials that the advice is meant for, nor their correct operation.

### 34 Client's obligations

- 34.1 Client must notify ilionx – in advance and in writing – of all circumstances that are or may be important for ilionx to know, such as the way reports are made, the issues Client wants to be addressed, Client's prioritization and special facts or circumstances or facts and circumstances that may not be known to ilionx.

## Chapter 7: Training

The provisions in this chapter 'Training' apply, in addition to those in the chapter 'General Provisions' and the chapter 'Services', if ilionx provides Services in the field of training, courses, etc. ('training').

### 35 Registration

- 35.1 A registration by Client for a training is binding after ilionx has confirmed it in writing.

### 36 Terms

- 36.1 ilionx informs Client in the relevant Agreement about the obligations that arise under a registration for a training, the prescribed general rules and rules of conduct for attending the training and the required materials. Client must meet these obligations and comply with these rules.
- 36.2 Unless otherwise agreed upon in writing, no additional fee is due for the materials or means and resources made available or produced for trainings. This also applies for possible certificates of participation or copies of these.
- 36.3 Unless otherwise agreed upon in writing, the following cancellation provisions apply for Client:
  - (a) registration for a training can be cancelled without charge until at the latest four (4) weeks before its start;
  - (b) if registration for a training is cancelled within the period from four (4) weeks before its start until two (2) weeks before its start, ilionx is entitled to charge 50% of the fee due for participation in the relevant training;
  - (c) if registration for a training is cancelled within the period from two (2) weeks before its start and in the event the participant does not turn up, ilionx is entitled to charge the full fee due for participation in the relevant training;
  - (d) cancellation of the registration must always take place in writing and prior to the training;
  - (e) if Client is prevented from attending the training, Client is allowed to have another person who fits the profile attend the training; in that case the cancellation provisions as laid down in this article do not apply.

### 37 Execution

- 37.1 Client accepts that ilionx determines the content and the scope of the training and that ilionx is entitled to adapt these.

## **38 Changes in the trainings**

- 38.1 If the number of registrations should give rise to this, to be determined at ilionx's discretion, ilionx is entitled to cancel a training without charge, to combine this training with one or more other trainings, or to have it take place at a later date or later time. ilionx reserves the right to change the location of a training.

## **39 E-learning**

- 39.1 If a training is offered to Client on the basis of e-learning, the provisions in chapter 3 of these Terms apply equally.

## **Chapter 8: Secondment Services**

The provisions in this chapter 'Secondment Services' apply, in addition to those in the chapter 'General Provisions' and the chapter 'Services', if ilionx assigns one or more employees to Client to perform activities under Client's supervision and direction.

## **40 Execution**

- 40.1 In the relevant Agreement ilionx lists the employee who ilionx will assign to Client and who will perform the activities agreed upon in writing under Client's supervision and direction. The Results of the activities performed are at Client's risk.
- 40.2 ilionx will make an effort to keep the assigned employee available, for the duration of an Agreement, to perform the activities agreed upon during the days agreed on, provided that the employee is not incapacitated for work or leaves ilionx's employment. If an Agreement is entered into with a view to have one particular person perform the activities, ilionx is always entitled to replace this person, after consultation with Client, by one or more persons who have the same and/or similar qualifications.
- 40.3 Client is entitled to request replacement of the assigned employee (i) if this employee demonstrably fails to meet the quality requirements explicitly agreed upon and Client informs ilionx about this, stating reasons, within three (3) working days after the activities have started, or (ii) in the event of long-term incapacity for work of this employee or his leaving ilionx's employment. ilionx promptly looks into the request with priority. ilionx cannot guarantee that replacement will always be feasible. If replacement is not possible or not directly possible, Client's claims to further performance of the relevant Agreement and all Client's claims for non-performance will lapse. Any payment obligations Client may have with respect to activities that have already been performed will remain intact.
- 40.4 Before the start of the activities, ilionx must enquire after the working hours and the circumstances at Client's premises where the activities will be performed. Before an Agreement is actually executed, ilionx and its employee(s) must enquire after the rules and regulations that Client applies, such as rules and regulations on safety, health and environment and ilionx and its employee(s) will always behave in compliance with these rules and regulations.
- 40.5 The assigned employee can make use of Client's facilities during the execution of an Agreement.
- 40.6 All correspondence, documents and other matters of Client and the enterprises affiliated with Client which ilionx and its employee(s) acquire or have at their disposal are and will remain Client's property and will promptly be made available to Client when an Agreement is terminated or ends ("geëindigd").

## **41 Term of the secondment**

- 41.1 Contrary to the General Provisions of these Terms, if parties have not agreed upon the term of the secondment, an Agreement has a duration of an indefinite period of time; either party has a notice period of one (1) calendar month following the possible initial duration. Notice of termination must be served in writing.

- 41.2 In the event Client serves notice of termination (“opzeggen”), Client is obliged – upon ilionx’s first request – to inform ilionx on the reason for termination and to provide ilionx with written evidence substantiating the reasons for termination, so that ilionx can start a dismissal procedure in the event the employment contract of the assigned employee must be terminated because Client has terminated the relevant Agreement.

## **42 Rights of the assigned employees**

- 42.1 The working hours, rest periods and working time of the assigned employee correspond with Client’s customary working hours and time. Client guarantees that the working hours and rest periods and the working time are in compliance with the relevant laws and regulations.
- 42.2 Client informs ilionx about any intended (temporary) closing of its business or organization.
- 42.3 With respect to any assigned employees, Client must comply with the relevant laws and regulations in the field of workplace safety and working conditions.

## **43 Fees and payment**

- 43.1 Unless agreed upon otherwise in the relevant Agreement, ilionx invoices, in arrears, the hours actually spent per month on the basis of the time sheet approved by Client. If the hours are not approved by Client, ilionx may still invoice these hours at any time.
- 43.2 In the event the assigned employee works more hours per day, following Client’s instruction or request, than the hours agreed upon or more hours than the customary number of hours, or if the assigned employee works on days which are not customary working days at ilionx, Client must pay the overtime fee agreed upon or, if no such fee has been agreed upon, ilionx’s customary rate for overtime. Upon Client’s request, ilionx will inform Client about the current overtime rates.
- 43.3 Client is charged for expenses and travelling time in accordance with the rules and standards that are always applied by ilionx.
- 43.4 In the event the assigned employee is incapacitated for work, ilionx will not charge Client.
- 43.5 Client indemnifies ilionx against any claim filed by an assigned employee against ilionx for incapacity for work resulting from activities being performed by this employee under an Agreement, such as a claim arising from an accident at work when performing these activities.

## **44 Liability**

- 44.1 ilionx ensures that any wage tax, premiums for social securities and turnover tax due for the employee assigned under an Agreement with Client is paid in time and in full. ilionx indemnifies Client against any claims which may be due under an Agreement with Client by the tax authorities or by any authority responsible for the implementation of social security laws. This indemnity exclusively applies on the condition that Client promptly informs ilionx, in writing, about the existence and content of the claim and on the condition that Client leaves handling the claim and possibly settling it entirely to ilionx. To that purpose, Client will give ilionx the required powers-of-attorney, information and assistance to defend itself against these claims, where necessary in the name of Client.
- 44.2 ilionx does not accept liability for the quality of the Results that have been realized under Client’s supervision and direction.
- 44.3 Client indemnifies ilionx against any claim, by whatever party, arising from an Agreement, which claim is filed against ilionx and for which claim Client would have been liable if Client had been the employer of the assigned employee. Furthermore, Client renounces all claims for damage, which claims Client would not have been able to recover from the assigned employee, had Client been this employee’s employer.

## **45 Efforts to be made by ilionx**

- 45.1 To the best of its abilities ilionx makes every effort to see to it that:

- a. the assigned employee meets the requirements laid down and that this employee is properly qualified – in terms of training, skills and experience – to be able to perform the activities agreed upon and that this employee complies with the applicable safety instructions;
- b. the activities are performed in a professional way, without interruptions and in time;
- c. ilionx has a registered enterprise as meant in the Wet allocatie arbeidskrachten door intermediairs (WAADI) and has complied with the requirement to register this in the Commercial Register;
- d. the assigned employee – where required by law – has a work permit (TWW, a work permit for persons from outside the European Economic Area);
- e. the assigned employee complies with the working arrangements arising from an Agreement;
- f. the required insurance has been taken out for the assigned employee, including in any case a proper business and professional liability insurance and an occupational accident insurance (“arbeidsongevallenverzekering”).

## Chapter 9: Purchase hardware

The provisions in this chapter ‘Purchase hardware’ apply, in addition to those in the chapter ‘General Provisions’, if ilionx sells hardware, of whatever nature, or any other goods, corporeal objects, to Client.

### 46 Purchase and sale

- 46.1 ilionx sells the hardware and/or other goods, in nature and in numbers, as agreed upon in writing, just as Client purchases these from ilionx.
- 46.2 ilionx does not guarantee that, upon delivery, the hardware and/or goods are fit for actual use and/or the use intended by Client, unless its purpose has been clearly specified, without any reservations, in an Agreement.
- 46.3 ilionx’s sale obligations do not include supplying mounting and installation material, software, consumption and consumer items, batteries, stamps, ink and ink cartridges, toner items, cables and accessories.
- 46.4 ilionx does not guarantee that the mounting, installation and operating instructions accompanying the hardware and/or goods are free of defects and that the hardware and/or goods include the features referred to in these instructions.

### 47 Delivery

- 47.1 The hardware and/or goods sold by ilionx to Client are delivered to Client ex warehouse. Only if this has been agreed upon in writing, ilionx delivers the items purchased by Client – or has these delivered – at a location to be indicated by Client. In that event ilionx will notify Client – if possible in due time, before the delivery – at what time ilionx, or the carrier engaged by ilionx, intends to deliver the hardware and/or goods.
- 47.2 The purchase price of the hardware and/or goods does not include costs for transportation, insurance, tackling and hoisting, renting temporary facilities, etc. Where applicable, these costs will be charged to Client.
- 47.3 If Client requests ilionx to remove old materials, such as networks, cabinets, cable trays, packaging materials and hardware, or if ilionx is obliged by law to do so, ilionx may accept this request on the basis of a written order and at its customary rates.
- 47.4 If parties have agreed upon this in writing, ilionx installs, configures and/or connects the hardware and/or goods or has these installed, configured and/or connected. The actual obligation ilionx then has to install and/or configure the hardware does not include data conversion and software installation. ilionx is not responsible for obtaining the permits possibly required.
- 47.5 ilionx is always entitled to execute the relevant sales agreement in partial deliveries.

## **48 Requirements with respect to environment**

- 48.1 Client ensures that the requirements specified by ilionx for the environment for the hardware and/or goods are met, amongst other things, requirements for temperature and humidity and technical environmental requirements.
- 48.2 Client ensures that any activities to be performed by third parties, such as constructional activities, are carried out adequately and in time.

## **49 Guarantees**

- 49.1 To the best of its abilities ilionx will make every effort to see to it that any defects in the material and manufacturing in the hardware and/or other goods sold, and in parts that have been supplied and delivered by ilionx in the context of the guarantee provisions, are repaired within a reasonable period of time and free of charge, provided ilionx has been notified of these defects within a period of three (3) months following delivery; the notification must include a detailed description of the defect. If the defect cannot be repaired, in ilionx's reasonable opinion, or repair would take too long or if repair were to entail disproportionately high costs, ilionx is entitled to replace the hardware and/or the goods, free of charge, by other, similar but not necessarily identical hardware and/or goods. Any data conversion that should be required after the replacement is not covered by the guarantee. All replaced parts become ilionx's property. The guarantee obligation ends if defects in the hardware or goods or in the parts that have been delivered by ilionx in the context of its guarantee obligations are caused, in part or in full, by incorrect, careless or incompetent use, by other external causes such as damage as a result of fire or water, or if Client has modified the hardware or goods or parts that have been delivered by ilionx in the context of its guarantee obligations or has had any of these modified without ilionx's permission, which permission ilionx will not withhold on unreasonable grounds.
- 49.2 In the context of nonconformance of the hardware and/or goods delivered, Client can exclusively rely on the provisions of article 49.1; any other or any farther-reaching provision is excluded.
- 49.3 Any costs for activities and repairs outside the context of this guarantee are charged by ilionx at its customary rates.
- 49.4 ilionx has no other obligations under a sales agreement with respect to defects and/or any other faults that it is notified of after the guarantee period referred to in article 49.1 lapses.

## **50 Terms and conditions of suppliers and manufacturers**

- 50.1 ilionx does not manufacture any hardware itself, but purchases this from a manufacturer or a supplier, i.e. a third party. If ilionx sells hardware and/or goods to Client under an Agreement, this is subject to the sales terms and conditions of the relevant third party, replacing any provisions to the contrary in these Terms, provided that ilionx has informed Client in writing about the applicability of that third party's sales terms and conditions and that ilionx has provided Client with these terms and conditions before or when an Agreement is entered into. Contrary to the previous sentence, Client cannot rely on any omission by ilionx to meet its obligation to notify Client as referred to in that sentence if Client is a party as referred to in article 6:235 paragraph 1 or paragraph 3 of the Netherlands Civil Code.
- 50.2 If and in so far as the third party terms and conditions referred to are not considered to be applicable or are declared inapplicable, for whatever reason, to the relation between ilionx and Client, the provisions in these Terms apply in full.

## **Chapter 10: Hosting**

The provisions in this chapter 'Hosting' apply, in addition to those in the chapter 'General Provisions' of these Terms and in the chapter 'Services', if ilionx provides Services, under whatever name, in the field of hosting and any services related to hosting.

## 51 Hosting services

- 51.1 If an Agreement concerns making hardware disk space available, Client may not exceed the disk space agreed upon, unless this Agreement explicitly arranges for the consequences of this. An Agreement exclusively involves making disk space available on a server specifically reserved for Client if this has been explicitly agreed upon in writing. Any use of disk space, data traffic and any other load on systems and infrastructure is restricted to the maximums agreed upon by parties. The data traffic that has not been used by Client in a specific period cannot be transferred to a next period. If the maximums agreed upon are exceeded, ilionx will charge additional costs to Client, at its customary rates.
- 51.2 Client is responsible for the system management, including checking the settings, the use of the hosting service and the way in which the Results of the Service are applied. If no explicit arrangements have been made, Client itself is responsible for installing, setting up, parametrizing and tuning the Software and the auxiliary Software and where required – for modifying the hardware used for it, other software and the operating environment and for effecting the interoperability wanted by Client. ilionx is not obliged to carry out data conversion.
- 51.3 Only if this has been explicitly agreed upon in writing, the relevant Agreement also includes providing back-up, contingency and recovery services or making these available.
- 51.4 ilionx may take the Hosting Service out of service, in full or in part, for preventive, corrective or adaptive maintenance. ilionx sees to it that this does not take any longer than required and that this takes place, as much as possible, outside office hours and starts the maintenance, depending on the circumstances, in consultation with Client.
- 51.5 In the event ilionx provides Services for Client under an Agreement regarding a domain name, such as application for a name, renewal of it or alienation or transfer to a third party, Client must observe the rules and regulations and the procedures of the relevant authority or authorities. Upon request, ilionx will provide Client with a written copy of these rules. ilionx does explicitly not accept any responsibility for the correctness or promptness of the Service or for achieving the results intended by Client. Client must pay all costs attaching to the application and/or registration on the basis of the rates agreed on or, if no rates have been agreed on, at ilionx's customary rates. ilionx does not guarantee that the domain name that Client wants will be made available to Client.

## 52 Notice en take-down

- 52.1 Client must always behave carefully and not unlawfully vis-à-vis third parties, more in particular by observing the intellectual property rights and other rights of third parties, by respecting the privacy of third parties, by not distributing data in violation of the law, by not gaining unauthorized access to systems, by not distributing viruses or other harmful programs or data, and by refraining from criminal offences and violations of any other statutory duties.
- 52.2 In order to prevent liability vis-à-vis third parties or to restrict the consequences of such liability, ilionx is always entitled to take measures against any act or omission by Client or at Client's risk. Upon ilionx's first and written request, Client must promptly remove data and/or information from ilionx's systems and if Client should fail to do so, ilionx is entitled, at its discretion, to remove the data and/or information itself or to make access to these data and/or information impossible. In the event of a breach – or a threatened breach – of article 52.1, ilionx is also entitled to deny Client access, with immediate effect and without prior notification, to its systems. The above does not prejudice any other possible measures that ilionx may take or any other statutory and contractual rights that ilionx may exercise vis-à-vis Client. In that case ilionx is also entitled to terminate the relevant Agreement with immediate effect by giving notice of termination (“opzeggen”), without being liable to Client in any way.
- 52.3 In the event of a dispute between Client and a third party, ilionx cannot be expected to form an opinion on the validity of a claim by any third party or on the validity of Client's defence; neither can ilionx be expected to become involved in any other way in this dispute. Client must resolve this dispute with the relevant third party and must keep ilionx informed in writing, properly substantiating its position by providing the relevant documents.

Utrecht, July 2019