CLEVR

CLEVR TERMS AND CONDITIONS

These CLEVR Terms and Conditions ("CTC") are effective as of the Effective Date of the relevant Service Order and are entered into by and between CLEVR and Customer.

1 DEFINITIONS

1.1 In this CTC and any Service Order in which this CTC is declared applicable, save where explicitly provided otherwise, capitalized words and expressions have the following meanings:

a. **Adverse Effect** means a significant interruption of Customer's day-to-day operations, which require Customer to incur material additional costs to mitigate the effects of the interruption;

b. **Affiliate** means in relation to a Party, each other entity which directly or indirectly Controls, is directly or indirectly Controlled by or is under direct or indirect common Control with that party from time to time;

c. **Applicable Law** means laws, enactments, regulations, regulatory policies, regulatory guidelines and recommendations, industry codes, regulatory permits and regulatory licenses which are in force from time to time;

d. **Change** means a change to Software, Deliverables or Services;

e. **Change of Control** means a change in the Control of the Customer;

f. **Confidential Information** shall mean in respect of each Party:

(i) information provided by a Party, which that Party has marked as confidential, or which the other Party acting reasonably should understand to be confidential;

(ii) all materials, and electronic or other representations in which Intellectual Property Rights of a Party, or Software developed by that Party, are embodied, and all technical know-how, trade secrets, designs, specifications, and characteristics of performance and functionality relating to those Intellectual Property Rights or that Software;

but, in both cases excluding such information that has, in the same coherent configuration, lawfully become part of the public domain, or which a Party can demonstrate to have developed fully independently without any reliance on confidential information of the other Party;

g. **Control** means in relation to a person, the direct or indirect ownership of more than 50% of the voting capital or similar right of ownership of that person or the legal power to direct or cause the direction of the general management and policies of that person, whether through the ownership of voting capital, by contract, through ownership of relevant assets, or otherwise, and Controls and Controlled are interpreted accordingly;

i. **Custom Components** means Software developed specifically for Customer, excluding any of Supplier's Standard Tools and Methodologies. Configuration, parameterization, and/or modelling of Supplier's Standard Tools and Methodologies shall not be considered a Custom Component;

j. **Customer** means the Customer entity set out in the Service Order;

k. **Customer Group** means Customer and its Affiliates;

l. **Data Processing Agreement** means a data processing agreement executed between Supplier and the Customer and relating to Services delivered under a Service Order;

m. **Deliverable** means any physical or electronic work created specifically for a Customer as agreed in a Service Order, including any Software developed for Customer;

n. **Developed Software** means Software developed specifically for Customer. Developed Software consists of Custom Components and Supplier's Standard Tools and Methodologies incorporated in that Software;

o. **Fees** means the fees paid for the Services and Deliverables and, where relevant Third Party Software and Services, as agreed in the Service Order;

p. **GDPR** means Regulation 2016/679 (the General Data Protection Regulation);

q. **Good Industry Practice** means the exercise of reasonable skill and care per Section 7:400 of the Dutch Civil Code;

r. **Intellectual Property Rights means:**

i. any and all intellectual or industrial property rights anywhere in the world, including patent rights, utility model rights, rights to trade secrets and know-how, design rights, copyrights, neighboring rights, database rights or other rights in compilations of data, trademark rights, rights in trade names and internet domain names, and any and all rights of a similar nature;

ii. all applications for any of such rights;

iii. rights to apply for any such intellectual or industrial property rights (including renewals and extensions), anywhere in the world, and any rights of priority; and

iv. any protections that arise from (ii) and (iii);

In each case whether registered or unregistered, existing under statute, common law or having another legal basis, and whether currently existing, contemplated or as yet unknown;

s. **Personnel** means, in respect of a Party, that Party's employees, directors or contractors working within that Party's organization under substantially the same conditions as an employee, i.e. incorporated into and working under the direction of that Party's management;

t. **Privacy Policy** means the privacy policy made separately available on www.clevr.com, which applies to Supplier's processing of the Customer's personal data and is in accordance with the applicable laws and regulations;

u. **Services** means the implementation, consulting and other services provided by Supplier as described in the Service Order;

v. **Service Level** means a specific, quantitatively expressed and measurable target with respect to a Service, specifically agreed in a Service Order;

w. **Service Order** means an order form that (i) incorporates this CTC and (ii) sets forth the Deliverables and Services ordered by Customer and any associated fees and (iii) has been agreed by both Parties;

x. **SLA** means the service level agreement as agreed between Parties through a Service Order, as updated and amended from time to time;

y. **Software** means:

i. computer programs of any kind including a.o. mobile applications, websites and desktop software written in whatever language, and including any low-code or no-code programs and applications;

ii. subcomponents of computer programs such as scripts, libraries or functions, or their low-code or no-code equivalent;

iii. models, algorithms, functions or workflows used for whatever purpose and implemented in code, low-code, no-code or using embedded functionality in another program (e.g. MS Dynamics, Salesforce, SAP, Excel, Azure ML, etc.);

iv. all related technical information and documentation, including designs, version control documentation, manuals and any other documentation necessary for the use of the above;

In all cases whether delivered by download, as Software as a Service or otherwise;

z. **Software as a Service** means a Service where Supplier provides access to Software to Customer via the Internet, or such other communications network agreed between the Parties;

aa. **Supplier** means CLEVR NL B.V.;

bb. **Supplier's Standard Tools and Methodologies** means any Software, tools, methodologies or other materials which Supplier uses in the provision of the Services, or integrates into any Developed Software or other Software it provides to Customer which was (1) developed by Supplier otherwise than the Service Order, or (2) licensed or supplied to Supplier by a third party supplier, including in both cases any updated or modified version of the same from time to time;

cc. **Third Party Software, Licenses and Services** means third party Software, licenses to third party software, and any third party services;

1.2 In this CTC or a Service Order "Clause", "Schedule" or "Annex" means a clause, a schedule or an annex in or to this CTC or the Service Order.

1.3 In this CTC, or the Service Order, unless specified otherwise:

i. legal terms refer to Dutch legal concepts and shall be construed in accordance with their meaning under Dutch law;

ii. the words "include", "including" and "includes" mean include without limitation;

iii. a reference to a person includes any individual, corporation, entity, limited liability partnership, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or governmental authority, whether or not having separate legal personality, and wherever incorporated or registered, includes such person's legal representatives, successors and permitted assigns, and shall be construed so as to include any legal entity or entities into which such person may be merged by means of a statutory merger (juridische fusie) or into which it may be split up or demerged, by means of a statutory split-up or demerger (splitsing);

iv. the provisions of this CTC shall not be interpreted adversely against a Party based on the fact that such Party or its advisors was or were responsible for the drafting of that provision.

2 STRUCTURE

2.1 Services are provided based on a Service Order. All offers made by Supplier are subject to contract in a written Service Order.

2.2 The Service Order is governed by the terms set out in this CTC, which are hereby incorporated into the Service Orders.

2.3 In the event of a conflict between:

i. a provision in a Service Order;

ii. a provision in any Annex of a Service Order;

iii. a provision in this CTC;

the term falling into the category first appearing in the list takes precedence, unless expressly stated otherwise. Furthermore, a more specific term will take precedence over a more general term, if these terms are in conflict. Any similar terms that are not directly in conflict shall apply cumulatively.

2.4 No other general terms and conditions of either Party will apply to the Service Order. The acceptance of general terms or conditions can only be proven with a signed document that makes explicit reference to this Clause.

3 DELIVERY AND RECEIPT OF SERVICES IN GENERAL

3.1 Supplier will deliver the Services and Deliverables as set out in the Service Order to Customer in accordance with Good Industry Practice.

3.2 Timelines for delivery agreed in the Service Order or any other document provided by Supplier are indicative, unless expressly stated otherwise. Any failure by Supplier to achieve such an indicative delivery date shall not result in a breach of the Service Order until written notice of default is given and a remedial period is provided as per the procedure set out in Clause 10.4

3.3 Unless specifically agreed, Supplier's obligations are obligations to use its best efforts to deliver the Services and Deliverables in accordance with the terms set out herein.

3.4 Supplier may make changes to the Supplier Personnel delivering the Services as its discretion, provided a diligent and adequate handover is made.

4 DELIVERY OF SOFTWARE AS A SERVICE

4.1 Supplier shall provide Customer with credentials with which Customer can access and/or administer and manage the Software as a Service. Customer is responsible for the secure storage of the credentials and ensuring that the credentials are used solely in accordance with the terms of the Service Order, in particular the license granted to Customer. Any and all use made of the credentials and any resulting damages shall be attributable to Customer.

4.2 Unless explicitly agreed otherwise in writing, Customer shall use the Software as a Service only through the graphical user interface, or other interfaces, specifically provided by Supplier to Customer. Customer shall only allow its Personnel to use the Software as a Service directly, and shall not use any intermediate software or automation to interface with the Software as a Service.

5 CHANGES TO SOFTWARE AS A SERVICE

5.1 Except with respect to any Developed Software, Supplier has the right to change the appearance, functionality and other characteristics of the Services delivered under the Agreement at its discretion, and without liability to Customer. In the event of material changes, including in particular (i) significantly reduced or changed functionality or performance, (ii) changes that require Customer to incur significant costs to continue its use of the Services, or (iii) changes that require Customer to agree to terms and conditions imposed by a supplier of Supplier and impose a significant burden on Customer, Customer shall have the right to terminate the Agreement subject to 30 days written notice.

5.2 To the extent Customer believes its use of the Services will breach any provision under Applicable Law, it shall inform Supplier. Supplier may at its full discretion, and at Customer's cost, elect to Change the Software as a Service in order to ensure compliance, subject to Customer entering into the Service Order in respect of that Change.

6 SERVICE LEVELS

6.1 Agreed Service Levels will apply from the date agreed in the Service Order.

7 CUSTOMER RESPONSIBILITIES

7.1 Customer shall:

a. comply with all reasonable instructions provided by Supplier in respect of Customer's use of the Services and Deliverables, including any such instructions as are included in manuals and documentation related hereto;

b. appoint a single contact person for managing the Services vis-a-vis Supplier day-to-day, who is sufficiently skilled and knowledgeable with respect to the Customer's relevant operations and has the authority to approve and arrange all necessary support from Customer Personnel for Supplier, including for testing and deployment of fixes, changes and updates;

c. ensure Supplier has access to all of Customer's or Customer's supplier's systems necessary to perform the Services;

d. where required by the third party licensor, enter into a separate license agreement with the relevant third party licensor and review, understand and comply with all terms set out therein;

e. where Supplier acts as a sub licensor, review, understand and comply with all terms of third party licensors of Supplier which are provided to Customer;

f. comply with Applicable Law in its use of the Services and Deliverables;

g. provide all reasonable assistance required by Supplier to perform the Services at Customer's own cost and expense;

h. appoint sufficient and sufficiently knowledgeable and skilled Personnel with adequate time available to roles interfacing with Supplier;

i. provide complete and correct information to Supplier for performing the Services, both on Supplier's request, and proactively where Customer acting reasonably should understand that information to be relevant to Supplier in the provision of the Services.

8 SUSPENSION OF ACCESS AND AVAILABILITY

8.1 Supplier may temporarily suspend access to the Services and Deliverables for the purpose of preventative or corrective maintenance or updates. Supplier shall when reasonably possible conduct these activities at times when they cause the least hindrance for its customers as a whole.

8.2 Supplier may temporarily suspend access to the Services and Deliverables if it believes this to be reasonably required to safeguard the integrity of the Services, Deliverables or the data therein.

8.3 Without prejudice to any other of its rights and remedies Supplier shall have the right to suspend Customer's access to the Services in the event Customer materially breaches the terms of the Agreement, Applicable Law or any terms of third party licensors of Supplier through its use of the Services, until such time as Customer has remedied that breach.

8.4 Without prejudice to any other of its rights and remedies, to the extent Supplier hosts Customer's data, Supplier shall have the right to remove any of Customer's data, hosting of which Supplier knows or could plausibly expect to result in Supplier acting contrary to any Applicable Law.

9 FEES AND PAYMENT

9.1 All Fees specified in the Service Order exclude VAT, unless explicitly specified otherwise.

9.2 All Fees specified in the Service Order exclude expenses, unless explicitly specified otherwise.

9.3 Customer will pay all undisputed invoices within 30 days after the date of the invoice. Customer has no right to set-off any of its payment obligations hereunder.

9.4 Supplier has the right to index Fees for recurring Services at the anniversary of the initial term or any renewal term, in accordance with the increase in the Dutch CPI over the previous year (2015=100, January vs January).

9.5 For Services billed based on time and materials spent, Customer acknowledges that any Fee specified in the Service Order is an estimate unless explicitly specified otherwise, and that such an estimate is subject to change if additional manhours or resources are employed.

9.6 For Services billed based on time and materials spent, Supplier has no obligation to perform work in excess of that agreed. Supplier may agree to perform extra work, in which case Supplier may choose to adapt its rate card for the further work proposed.

10 TERM AND TERMINATION

10.1 The Effective Date is specified in the Service Order.

10.2 Unless explicitly agreed otherwise in the Service Order any Service that by its nature is a recurring Service shall have an initial term of three years and these Services shall continue to renew automatically for one year, unless terminated by either Party through written notice ultimately two (2) months before the date of anniversary of the then current term.

10.3 Supplier shall have the right to terminate the Service Order for Software as a Service, that is not Developed Software, without liability to Customer subject two (2) months written notice, and for Services offered free of charge, immediately without a period of notice.

10.4 Either Party may terminate or rescind the Service Order in whole or in part with immediate effect and without liability to the other Party, in the event the other Party commits a material breach of the Service Order that is not capable of remedy. Where the breach is capable of remedy, a Party shall have the right to rescind or terminate the Service Order in whole or in part with immediate effect and without liability to the other Party, if the Party in breach does not remedy that breach after receiving written notice describing the breach and demanding its remedy:

i. where payment obligations are concerned, within 30 days from receipt of the notice; or

ii. where any other obligation is concerned, within a reasonable time period after receipt of the notice, as specified in the notice.

10.5 Either Party may terminate or rescind the Service Order in whole or in part with immediate effect and without liability if the other Party becomes bankrupt, is granted a suspension of payments, or is wound-up or dissolved.

10.6 Supplier may terminate or rescind the Service Order in whole or in part without liability in the event of a Change of Control in Customer, unless Customer has obtained Supplier's written consent for such Change of Control**.**

10.7 Parties hereby waive, to the extent permitted by law, their rights to terminate or rescind the Service Order other than as set out in this CTC.

10.8 Any termination, rescission or expiration of the Service Order shall not affect any accrued rights and liabilities of the Parties. All Clauses and any Schedules that are intended by their nature to survive termination, rescission or expiration, shall do so, including in any case Clauses 1, 2, and 10 through 21 of this CTC.

11 INTELLECTUAL PROPERTY RIGHTS IN GENERAL

11.1 Supplier acknowledges that, save for any licenses explicitly granted or rights explicitly assigned and transferred to Supplier herein, all right, title and interest in any pre-existing Intellectual Property Rights owned by Customer, or any of Customer's Confidential Information shall continue to vest in Customer.

11.2 Subject to the Service Order and payment of the Fees thereunder, Supplier hereby grants to Customer for the term of the Service Order, and in accordance with the agreed usage limitations, a non-exclusive, non-sublicensable, non-transferable license to use and have its Personnel use the Software, Services or Deliverables delivered hereunder for use in the ordinary course of Customer's business.

11.3 To the extent Customer exceeds the agreed usage limitations without Supplier's prior writtten consent Supplier shall have the right to invoice the Fees for the excess usage to Customer.

11.4 To the extent Supplier delivers any Third Party Software, Licenses and Services hereunder, Customer shall adhere to the terms of the relevant licenses, and to the extent those terms are more restrictive than those set out herein, those terms shall apply.

11.5 Customer shall not use the Services, Software or Deliverables provided hereunder for the purpose of building a product or service that competes with the products or services of Supplier.

11.6 Customer acknowledges that, save for any licenses explicitly granted or rights explicitly assigned and transferred to Customer herein, all right, title and interest in any Intellectual Property Rights relating to or resulting from Software or Services provided hereunder vest in Supplier, or in Supplier's licensors and this Agreement nor the Service Order constitute an assignment or transfer of those rights to Customer.

11.7 Customer shall not use the Services, Software or Deliverables of Supplier for creating derivative works based on or including, in whole or in part, the Services, Software or Deliverables. Customer shall not reverse engineer any of the Services, Software or Deliverables provided hereunder, unless it owns the Intellectual Property Rights in respect thereof or such reverse engineering may not be prohibited under mandatory law. The foregoing notwithstanding, Customer may incorporate Deliverables that are not Software, such as documents or presentations, into other works for internal use in the ordinary course of Customer's business, without prejudice to Customer's obligations under Clauses 11.5 and 11.8 .

11.8 Customer shall abstain from any action that could plausibly be harmful for the scope of protection of any Intellectual Property Rights of Supplier. In particular, Customer shall not remove or alter any indication concerning copyrights, trademarks, trade names or other rights of intellectual or industrial property from any Services, Software or Deliverables provided hereunder without the consent and cooperation of Supplier. This is without prejudice to the Customer's right to alter the appearance of Services or Software using built-in functionality made available to Customer for that purpose.

11.9 Customer shall not register any trademark, tradename, domain name or right of a similar nature that is similar to any of those relating to the Services or Software provided hereunder.

11.10 Customer hereby grants to Supplier at no cost a non-exclusive, non-sublicensable, non-transferable license to use all materials and any electronic or physical representations protected by such Intellectual Property Rights or constituting such Confidential Information, only to the extent such use is necessary for the purpose of delivering the Services.

11.11 Customer understands and acknowledges that by connecting its Mendix account through Mendix SSO and the Mendix Account Profile API, Supplier shall have access to Customer's Mendix Account information so as to deliver the Services. Customer acknowledges and agrees that Supplier may access and analyze its Mendix applications to evaluate, study, develop and improve the Services.

12 RIGHTS TO DEVELOPED SOFTWARE

12.1 This Clause applies only to Developed Software.

12.2 Supplier grants to Customer a perpetual, non-exclusive and transferrable license to use and have its Personnel use the Custom Components in the ordinary course of Customer's business, subject to the condition precedent of Customer's full payment of the Fees under the Agreement. Customer may offer the benefits of its licenses to Personnel of its Affiliates without further charges other than full payment of the relevant Fees. The transfer of this license is subject to sub Clause 12.4.

12.3 Supplier grants to Customer a perpetual, non-exclusive license to use and have its Personnel use Supplier's Standard Tools and Methodologies solely as required to utilize the Custom Components in the ordinary course of Customer's business, and subject to the condition precedent of Customer's full payment of the Fees under the Agreement. Customer may offer the benefits of its licenses to Personnel of its Affiliates and Customer may transfer this license to third parties, but only together with the license to use the Custom Components, without extra charges. The transfer of this license is subject to sub Clause 12.4.

12.4 Customer shall not, unless explicitly agreed otherwise in writing, provide access of whatever kind to any Third Party Software, Licenses and Services, other than any Personnel of Customer.

13 DATA PROTECTION

13.1 To the extent Supplier processes personal data as a data processor on behalf of Customer as part of the Services, Customer agrees that the Privacy Policy as published on www.clevr.com applies to any processing by Supplier of the Customer's personal data. The Customer hereby expressly consents to the Privacy Policy. Supplier may amend the Privacy Policy occasionally and will give notice of the amendments. It is the Customer's responsibility to review the Privacy Policy and become familiar with any amendments. The Customer's continued use of the Service(s) following such amendments will be regarded as the Customer's acceptance of the revised Privacy Policy. The Privacy Policy shall be deemed an integral part of, the Service Order and shall be subject to the terms of this CTC.

13.2 Customer acknowledges that Supplier may use personal data related to Customer's Personnel for its legitimate business operations provided this is compliant with Applicable Law and Supplier's Privacy Policy.

13.3 Customer acknowledges and agrees that Supplier shall have no specific additional obligations with respect to personal data for which Customer is a data controller. Customer bears the full responsibility for determining whether its use of any Services hereunder is compatible with Applicable Law related to privacy or data protection. To the extent Customer requires Supplier to take any action in this respect to ensure or maintain compliance, Clause 5.2 will apply mutatis mutandis.

14 LIABILITY

14.1 Subject to sub Clause 14.3, Supplier's liability towards Customer under the Service Order, including any indemnity, shall be limited to the total Fees paid under the Agreement plus the Fees not yet paid but payable under the Agreement in the period of 2 months before and 2 months after the fact occurred that caused the damage. In the event the Service Order relates to recurring Services, Supplier's liability shall be capped at the total amount paid and still payable by Customer in the 12 months preceding the event giving rise to the claim. In case the event giving rise to the claim occurs in the first 11 months after the Service Order commenced, Supplier's liability shall be capped at the total amount paid and still payable by Customer in the period of 12 months after the commencement date of the Service Order.

14.2 Supplier's aggregate liability for any claims arising out of the Service Order, whether based on breach of contract, tort, or any other legal basis, shall never exceed:

i. EUR 1,250,000 for any damages arising from death, bodily injury, or damage to goods:

ii. EUR 500,000 for all other damages.

14.3 Nothing in the Service Order will limit a Party's liability for damages resulting from the willful intent or deliberate recklessness of that Party.

14.4 Supplier shall be liable to Customer for direct damages only. Direct damages include only the following categories of damages:

i. reasonable costs and expenses incurred to establish the amount of direct damages suffered by Customer and to limit the direct damages suffered by Customer;

ii. a refund of amounts paid to Supplier for the Services, if the Services were not delivered, or not delivered in accordance with the terms of this Agreement;

iii. in respect of any claim relating to data loss due to whatever cause and on whatever grounds, a claim for specific performance against Supplier, to restore data lost by Customer from any back-up of that data actually held by Supplier.

14.5 Any damages paid out under indemnities and any fines, penalties or service credits shall count towards the liability caps set out herein. Fines, or penalties paid in respect of any event shall be set off against any damage claimed by Customer in respect of that same event. If Service Credits have been agreed, payment of the agreed Service Credits shall be Supplier's only liability in respect of the breach of the relevant Service Level.

15 WARRANTY DISCLAIMER

15.1 Other than as expressly set out in this CTC or the Service Order, Supplier has not made, nor makes, and hereby disclaims, any express or implied representation or warranty whether arising by law or otherwise in respect of the Software, Services, Deliverables or Third Party Software, Licenses and Services delivered hereunder, including any representations or warranties: (i) of a certain level of availability or performance, or a level of availability or performance appropriate for Customer's particular use case; (ii) of continuous confidentiality, availability and integrity of Customer's data (iii) of error-free output and uninterrupted operation; (iv) of adequate protection against cybersecurity threats (v) of fitness for Customer's purpose (vi) that the use of Software, Services or Deliverables delivered hereunder will enable Customer to comply with Applicable Law. Customer acknowledges that it has not relied on any representation or warranty made by Supplier, or any other person on Supplier's behalf, in entering into the Service Order.

16 INDEMNITY

16.1 Customer shall indemnify in full and hold harmless Supplier against all damages, fines, penalties losses, costs and expenses, including all legal fees, incurred by Supplier as a result of claims instituted or threatened by any third party against Supplier as a result of any of Customer's use of the Services, Software or Deliverables, except to the extent relating to an event as would be covered by Supplier's indemnity included in Clause 16.2.

16.2 Supplier shall indemnify in full and hold harmless Customer against all damages, fines, penalties, losses, costs and expenses, including all legal fees, incurred by Customer as a result of claims instituted or threatened by a third party against Customer, based on the infringement of that third party's Intellectual Property Rights by the Services, Software or Deliverables, provided however that the claim is not indirectly or directly caused by Customer's breach of the terms of the Service Order relating to its use of the Services, Software or Deliverables.

16.3 The Party requesting the indemnity shall notify its counterparty of any claim or threatened or potential claim as soon as reasonably possible after having become aware thereof. Subsequently:

i. the indemnitor shall, at the indemnitee's first demand, take full control of the claim; and

ii. the indemnitee shall, at the indemnitor's reasonable expense, take all actions reasonably required to support the indemnitor in its defense against the claim.

16.4 In the event of a claim under 16.2, Supplier shall, as soon as reasonably possible and at its choice:

i. procure a license for the Customer so as to enable the Customer to continue its use of the Services, Software or Deliverable;

ii. replace, alter or amend the Services, Software or Deliverable that is the subject of the claim so as to no longer infringe on third party Intellectual Property Rights, without materially compromising its functionality; or

iii. terminate the Service Order, and refund to Customer any Fees paid in advance for Services not yet delivered.

17 FORCE MAJEURE

17.1 Neither Party is obliged to meet any obligation if it is prevented from doing so based on force majeure.

18 ASSIGNMENT

18.1 Neither Party may assign any of its rights or transfer any of its obligations under the Service Order, or any interest therein without the prior written consent of the other Party.

19 CONFIDENTIALITY

19.1 Each Party will keep, and will ensure that its Personnel and any other persons acting by or on behalf of that Party will keep, confidential all Confidential Information provided to it by or on behalf of the other Party or otherwise obtained by it under or in connection with the Service Order.

19.2 Each Party will only use, and will ensure that its Personnel will only use, Confidential Information solely as strictly necessary to perform its obligations as set out in the Service Order.

19.3 Clause 19.1 notwithstanding, a Party may disclose Confidential Information:

a. that is strictly necessary to be disclosed by Applicable Law, or under compulsion of law by a court, regulator or other government authority; or

b. that is strictly necessary to be disclosed in the proper performance of, or in the proper exercise of any rights under the Service Order, including for the purpose of court proceedings related to the Service Order; or

c. to an advisor, to the extent strictly necessary for the purpose of supporting fundraising for that Party, be it through a loan, acquisition, sale of shares or assets or otherwise;

in each case provided that the Party (i) discloses the minimum amount of Confidential Information required, (ii) takes all reasonable steps to maintain the Confidential Information in confidence, which in cases (b) and (c) will at least require imposing obligations of confidentiality no less stringent than the obligations set out herein, and (iii) gives a reasonable amount of notice to the other Party, in case (a) to the extent reasonably possible.

19.4 Upon any termination, expiration or other end to the Service Order, each Party shall, and shall ensure that all Personnel and any other persons acting by or on behalf of that Party shall, cease all use of the other Party's Confidential Information obtained under the Service Order immediately and shall at the other Party's first request and option return or destroy that Confidential Information.

19.5 Clause 19.4 notwithstanding, Customer may continue to use a Deliverable that contains or requires the use of Supplier's Confidential Information, that Supplier and Customer expressly intended to be used after termination of the Agreement, provided such use is fully in accordance with the terms of the Service Orde, in particular any license restrictions.

20 MISCELLANEOUS TERMS

20.1 During the term of the Service Order, and during the 12 months immediately succeeding the term of the Service Order, neither Party may, and both must ensure that none of its Affiliates shall, without the prior written consent of the other Party, directly or indirectly, whether on their own behalf or on behalf of another party, solicit, employ or engage any Personnel of the other Party or any of its Affiliates who is or was less than 18 months ago directly involved in the performance by that Party of its obligations under the Service Order. This provision shall not apply if Personnel is employed as a result of a response by that employee of his or her own volition to a public advertisement or normal recruitment procedures.

20.2 No Clause in this CTC or the Service Order is intended to require any Party to act contrary to its mandatory obligations under Applicable Law, or to contravene any order of a court, regulator or other government authority that is legally binding on it, and acting in accordance with such an obligation or order shall not constitute a breach of the Service Order provided notice of such an obligation or order is made to the other Party a soon as reasonably possible. Parties shall apply Clause 20.3 in such a case.

20.3 If at any time any provision of this CTC or in a Service Order is or becomes illegal, invalid or unenforceable under the laws of any jurisdiction, this will not affect or impair:

i. the legality, validity or enforceability in that jurisdiction of any other provision of this CTC or the Service Order; or

ii. the legality, validity or enforceability in any other jurisdiction of that or any other provision of this CTC or the Service Order; and

iii. any such illegal, invalid or unenforceable provision will be replaced by a legal, valid and enforceable provision which, given the contents and purpose of this CTC or Service Order is, to the greatest extent possible, similar to that of the original provision.

20.4 The rights of each Party under the Service Order:

i. may be exercised as often as necessary;

ii. are, unless the relevant agreement provides otherwise, cumulative and not exclusive of rights and remedies provided by law; and

iii. may be waived only in writing and specifically; any delay in exercising or non-exercise of any such right will not constitute a waiver of that right, except that any claim for damages must be notified to Supplier within at most 12 months after Customer actually became aware of having incurred those damages, failing which Customer's claim shall lapse and Supplier shall no longer be liable for those damages.

20.5 Any amendment to the Service Order must be made in writing and must be signed by the Parties.

21 GOVERNING LAW AND JURISDICTION

21.1 The Service Order, any non-contractual rights, obligations or causes of action arising out of or in connection therewith will be exclusively governed by and will be construed in accordance with the laws of the Netherlands without regard to any conflict of law rules under Dutch private international law. The Convention on Contracts for the International Sale of Goods shall not apply.

21.2 The court of Amsterdam and relevant courts of appeal have exclusive jurisdiction to settle any dispute relating to the Service Order and any non-contractual rights, obligations or causes of action arising out of or in connection therewith.