

# General Terms and Conditions - NaN Tech Solutions B.V.

## Section 1 General Provisions

### Clause 1 - Definitions

- 1.1. **"Agreement"** means: every agreement agreed upon between NaN and the Customer, by virtue of which NaN supplies Services to the Customer and procures services from its Employees, Workers and other professionals.
- 1.2. **"Consultancy Services"** means: the provision of professional software, hardware and other advisory services by NaN for the benefit of the Customer on a temporary basis by means of an agreement;
- 1.3. **"Customer"** means: each natural or legal person to which NaN directs its offers, and each natural or legal person that sends an order to NaN and/or each natural or legal person with which NaN has any kind of legal relationship concerning the supply of Services.
- 1.4. **"Employee"** means: every technical professional and/or consultant that has a relationship with NaN under labour law and which, on behalf of NaN, provides his or her professional services for the benefit of the Customer on a temporary basis by means of an Agreement.
- 1.5. **"NaN Tech Solutions B.V."** is the user of these general conditions en shall hereinafter be referred to as "NaN".
- 1.6. **"Services"** means: all services provided by NaN, and/or its Employees and/or its Workers, to or at the Customer by virtue of an Agreement.
- 1.7. **"Recruitment Services"** means: the search and selection of candidates for vacancies of the Customer by means of an Agreement.
- 1.8. **"Licence Services"** means: the granting of acces to or making available to Customers of software, hardware and other advisory products developed by NaN on the basis of a user licence.
- 1.9. **"Workers"** means: every self-employed worker that has a relationship with NaN not under labour law but on the basis of a service contract which, on behalf of NaN, provides his or her professional services for the benefit of the Customer on a temporary basis by means of an Agreement.
- 1.10. The headings above the clauses in these general conditions, are solely meant as classifiers. These headings do not have legal consequences.

### Clause 2 – Applicability

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- 2.1. These general conditions are applicable to and form an integral part of all offers and quotations (including any annexes) by NaN regarding Services and of all Agreements (including annexes).
- 2.2. Deviations and/or supplements to these general conditions are only binding for NaN if explicitly agreed upon in writing by all parties.

- 2.3. NaN is entitled to unilaterally amend these general conditions at any time. Such amendments shall become effective on current Agreements after NaN has notified the Customer of such amendments and has provided the Customer with the amended general conditions and the Customer explicitly agrees with the amendments in writing, or at such later date as indicated by NaN in the aforementioned notification. Amendments to these general conditions shall further apply to all offers and quotations by NaN for the provision of Services and to all Agreements issued or entered into after the effective date of the amendments.
- 2.4. NaN explicitly rejects the applicability of general conditions used by the Customer to the Agreements.

**Clause 3 – Conclusion of Agreements**

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- 3.1. All offers and quotations made by NaN relating to Services to be provided, are without obligations.
- 3.2. NaN is only bound towards the Customer (and therefore an Agreement only exists) if an offer and/or quotation made by NaN is accepted by the Customer in writing within the applicable term, or in case any offer and/or quotation made by the Customer is explicitly accepted by NaN in writing, or if NaN has initiated the execution thereof.
- 3.3. In case the acceptance by the Customer deviates from the offer and/or quotation made by NaN, such acceptance shall deem to be a renewed offer and/or quotation made by the Customer and shall be qualified as a rejection of the offer and/or quotation made by NaN. This renewed offer and/or quotation must be explicitly accepted by NaN in writing before NaN shall be bound by it.
- 3.4. NaN’s Employees and/or Workers, including Employees and/or Workers as defined in these general conditions, which do not dispose of a written power of attorney, are not entitled to enter into or conclude any obligations and/or agreements on behalf of NaN. Oral commitments and/or Agreements can only bind NaN when explicitly confirmed to the Customer in writing by a duly representative of NaN.

**Clause 4 – Delivery**

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- 4.1. The delivery periods mentioned in the Agreements are indicative and without obligation. The indicated delivery times and/or delivery dates shall not be final dates, unless explicitly agreed upon otherwise in writing. In the event of overdue delivery, the Customer is obliged to give NaN a written notice thereof including a reasonable alternative delivery date. The delivery periods generally applicable in the industry branch of NaN’s activities are deemed to be reasonable.
- 4.2. NaN is not liable for any loss which is caused by NaN exceeding the delivery period, unless the exceeding of the delivery period is caused by wilful misconduct or gross recklessness of NaN. In case NaN exceeds the delivery time - irrespective the cause thereof - this shall never entitle

the Customer to claim compensation and/or suspend any of its obligations under the Agreement or any other agreement related thereto. The foregoing does not apply in the event that the exceeding of the delivery time by NaN was caused by wilful misconduct or gross recklessness of NaN or in the event parties agreed otherwise in writing.

- 4.3. The Agreement indicates the commencement date of the delivery period for the Services. However, the delivery period does not commence before:
  - a. NaN disposes of all data, documents, equipment, computer time and (office) space to be provided by the Customer to NaN which are necessary for the proper fulfilment of NaN's obligations arising from the Agreement; and
  - b. the Customer – upon request of NaN - has provided sufficient security for its payment obligations towards NaN; and
  - c. NaN has received any agreed advance payment.
- 4.4. Delivery periods shall be extended with the term during which fulfilment of the Agreement is delayed due to force majeure on the side of NaN, as meant in clause 7 of these general conditions, and/or with the term during which the Customer fails to comply with its obligations under the Agreement to the extent that the delay in the performance of the Agreement by NaN has been caused by such failure.
- 4.5. Extension of the delivery periods upon request of the Customer is only possible with the explicit written consent of NaN. Any costs and/or losses incurred by NaN and caused by such extension shall be for the account of the Customer.
- 4.6. NaN is entitled to provide its Services in consignments. For the purpose of these general conditions each delivery in consignments shall be deemed an independent delivery.

## **Clause 5 – Fees and payment**

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- 5.1. In the Agreement the fees due to NaN by the Customer for the Services provided by NaN are laid down. The amounts mentioned in the Agreement are indicative and are calculated on the basis of the hourly rates mentioned in the Agreement. For overtime, work outside the Netherlands and/or work on Sundays or during public holidays, deviating hourly rates are applicable. The Customer is obliged to reimburse all reasonable expenses made by NaN and/or its Employees and/or its Workers (which in any event include travel costs) in relation to the performance of the Services, as generally applicable in the industry branch of NaN's activities. NaN will take reasonable effort to inform Customer in advance of such costs, without obligation to do so, as generally applicable in the industry branch of NaN's activities.
- 5.2. If and as soon as NaN has reasonable ground to believe that the total amount due by the Customer shall exceed the fee quote which is mentioned in the Agreement, NaN shall inform the Customer thereof in writing, stating the anticipated exceeding of the fee quote. The Customer then has the right to terminate the Agreement by sending a registered letter to NaN within 10 days after receipt of the information mentioned before in the event it does not agree with the additional fee. A notice period of one (1) month must be observed.
- 5.3. As far as agreed in writing, NaN shall provide - within 10 days after the end of each calendar month - the Customer with a specification of the hours worked and the expenses incurred by

the Employees and/or Workers in the previous calendar month. This specification is binding for the Customer, unless the Customer objects to NaN in writing and with motivation within 10 days after receipt. This objection does not suspend the payment obligations of the Customer. If NaN considers the objection to be (potentially) legitimate, NaN and the Customer will consult in good faith in order to find an amicable settlement.

- 5.4. NaN is entitled to change the hourly rates mentioned in the Agreement during the term of the Agreement, provided that NaN has reasonable grounds to do so. The Customer will be notified before being charged any increased hourly rates of the new rates and starting data of these new rates. The Customer then has the right to terminate the Agreement by sending a registered letter to NaN within 10 days after receipt of the information mentioned before in the event it does not agree with the additional fee. A notice period of one (1) month must be observed.
- 5.5. All payments shall be made within 30 days after the date of invoice. NaN is at all times entitled to request integral or partial payment in advance. Clauses 9.2 and 9.3 are applicable.
- 5.6. All payments shall be made in Euro's, unless another currency is agreed upon in writing.
- 5.7. Unless explicitly agreed upon otherwise in writing, all payments by the Customer shall take place without any set-off and/or discount and/or settlement and/or deductions whatsoever. The Customer is not entitled to suspend its payment obligations, unless this is allowed by virtue of clause 5.10 of these general conditions.
- 5.8. The 30-day payment term included in paragraph 5 of this clause is to be considered a final date. This means that in the event of non payment within the term mentioned in paragraph 5 the Customer shall immediately be in default, and all claims of NaN towards the Customer are in that event immediately due and payable by the Customer, without any prior notice of default being required. In addition, in case the Customer is in default with its payment obligations it shall owe NaN a monthly contractual interest which equals the commercial interest as mentioned in paragraph 6:119a of the Dutch Civil Code, to be increased with 1.5 percent per month until full payment has been made. In this regard a part of the month shall be considered an entire month.
- 5.9. All payments by the Customer will first be applied against all outstanding costs and interests and subsequently against the invoices which have been outstanding the longest period, irrespective of any deviating payment indications/instructions given by the Customer.
- 5.10. The Customer is not entitled to suspend and/or to withhold the fulfillment of its obligations towards NaN based on alleged shortcomings in the Services provided by NaN (notified in conformity with clause 6.2) and/or the alleged inadequate performance of the Services and/or any other reason, unless the shortcoming is explicitly acknowledged as such by NaN. Only in the latter event is the Customer entitled to suspend payment of the total amount due to NaN until the shortcoming has been remedied.
- 5.11. Any complaints relating to a specific Service do not affect (the performance of) other Services and/or parts thereof which are subject to the same Agreement. Nor do any complaints affect the payment obligations of the Customer, other than as mentioned in clause 5.10.
- 5.12. If the Customer fails to make full payment within the period referred to in paragraph 5 of this clause, NaN is (without any prior notice of default being required) entitled to charge the Customer all costs incurred by it, both legal as non-legal.

## **Clause 6 – Liability**

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- 6.1. All liabilities of NaN in relation to or in connection with the performed Services lapse 6 months after the termination of the Services and/or the final delivery of the Services, unless the Customer has filed a claim with respect to the Services within this period and with due observance of Clause 6.2.
- 6.2. The Customer is obliged to examine the results of the Services provided by NaN. Complaints relating to the Services, or relating to any other obligation of NaN by virtue of the Agreement, have to be notified in writing to NaN within 7 days after discovery of the shortcoming and/or the grounds for the complaint. If the Customer does not timely notify its complaint, NaN can no longer be held liable and has no obligation to compensate any damages whatsoever.
- 6.3. NaN shall in no event be liable for consequential damages of the Customer (including but not limited to loss of profits and trading losses) and/or third parties.
- 6.4. NaN shall not be liable for any damages suffered by the Customer which are caused by products of third parties used and/or delivered by NaN in relation to the performance of the Services. Upon written request of the Customer NaN shall disclose the identity of the third party supplier of these products to the Customer.
- 6.5. In the event of liability of NaN, such liability shall be limited to a maximum amount that is equal to 50% of the total fee (excluding expenses) towards Customer as mentioned in the Agreement, unless the insurance policy of NaN does not cover such an amount. In that case the liability of NaN is limited to the amount that is paid out by the insurance company of NaN.
- 6.6. NaN shall not be liable and the Customer shall indemnify NaN and hold NaN harmless for damages suffered by the Customer and/or third parties, relating to or as a consequence of the Services provided, unless these damages are for the account of NaN based on mandatory rules of law, or unless all of the following conditions are fulfilled:
  - a. the damages are clearly caused by NaN and/or the Employee and/or the Worker and are the consequence of wilful misconduct or gross negligence;
  - b. the damages are arisen in the performance of the Agreement; and, if the damages are caused by the acts or omissions of an Employee and/or Worker;
  - c. the Customer and/or the third party can demonstrate that it/they could not reasonably have prevented or limited the relevant damages.
- 6.7. NaN is not liable for damages caused by shortcomings in the Services, to the extent that these shortcomings and damages are (partly) caused by an act or omission of the Customer or any of its subordinates, or by other parties engaged by the Customer, including the performance by NaN of the Services in accordance with the instructions of the Customer.
- 6.8. The Customer shall reimburse upon request all costs for legal and/or other assistance incurred by NaN in relation to claims for which NaN is not liable by virtue of these general conditions, (including the costs concerning the defence against such claims and negotiations), without prejudice to NaN's right to charge additional costs and damages incurred by and/or suffered by NaN to the Customer, provided these costs and damages are properly specified.

## **Article Clause 7 – Force majeure**

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- 7.1. NaN will not be liable towards the Customer for damages suffered by the Customer in the event that NaN is unable to (timely) perform its obligations under the Agreement due to circumstances that qualify as force majeure.
- 7.2. Force majeure in these general conditions means (i) any shortcoming for which NaN cannot be held accountable because it is not due to its fault and can not be attributed to NaN based on the law, legal act or current prevailing opinions; and (ii) the situation that suppliers of NaN who are crucial for the proper performance of the Services by NaN, do not fulfil their contractual obligations towards NaN, unless such non fulfilment is attributable to NaN and (iii) unanticipated circumstances that were not taken into account by NaN at the moment of concluding the Agreement and which circumstances reasonably prevent the normal performance of the Agreement by NaN, including but not limited to illness, war, threat of war, civil war and riots, acts of war, sabotage, power breakdown, floods, earthquake, fire, illness, disability, pandemic, sit-down strike, strike, lockout, altered governmental measures, difficulties of transport, and other disturbances in the company of NaN.
- 7.3. In case due to force majeure the performance of the Services (or the performance of any other obligation) by NaN is impossible or unreasonably onerous, NaN has the right to terminate the Agreement by written notification to the Customer with immediate effect without any judicial intervention being necessary and without any damages being due. This termination by NaN takes by means of a registered letter to the Customer.
- 7.4. In case the force majeure lasts for more than 3 consecutive months, the Customer is entitled to terminate the Agreement with immediate effect by means of a registered letter to NaN.
- 7.5. In the event that the performance and/or supply of Services after the end of a force majeure situation leads to additional costs for NaN, NaN shall notify the Customer thereof before it actually incurs these costs. These additional costs shall be for the account of the Customer, unless the Customer notifies NaN within one (1) week after receipt of the notification of NaN that it terminates the Agreement.

## Clause 8 – Confidentiality

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- 8.1. The Customer and NaN are obliged to maintain the confidentiality of all information which has been disclosed by one of them (“**Disclosing Party**”) to the other (“**Receiving Party**”). All the information disclosed in connection with the performance of an Agreement and/or all the information which, before being disclosed, has been expressly designated by the Disclosing

Party as confidential, will be considered confidential (“**Confidential Information**”). Confidential Information includes, but is not limited to, the terms of the Agreement, as well as information relating to business activities, development, research, intellectual property, finance, employees, products, technological know-how of a party, customers, suppliers or services.

- 8.2. The Disclosing Party’s Confidential Information may be used by the Receiving Party solely for the purpose of executing the Agreement. The Receiving Party shall protect the confidentiality of the Disclosing Party’s Confidential Information in the same manner as it protects the confidentiality of its own Confidential Information, but in no event shall a Receiving Party exercise less than reasonable care in protecting such Confidential Information.
- 8.3. The Receiving Party shall not disclose Confidential Information of the Disclosing Party to any third parties, except to the Receiving Party’s group companies and to its and their professional advisers, management and staff, and authorised assistants in the performance of the Agreement to the extent that such persons necessarily need access to that Confidential Information for the purposes of the performance of the Agreement and provided that such persons are subject to confidentiality obligations in respect of such Confidential Information which are as strict as the Receiving Party’s confidentiality obligations under these general conditions.
- 8.4. The confidentiality provisions of this Clause 8 shall not prohibit or restrict the disclosure by the Receiving Party of Confidential Information of the Disclosing Party to the extent necessary to defend itself in court or to comply with mandatory legal obligations or authorised orders from courts or public authorities.
- 8.5. Furthermore, the confidentiality provisions of this article 8 shall not pertain to information:
  - a. which is or becomes publicly known other than by breach of the confidentiality provisions contained in these general conditions.
  - b. which has been obtained by the Receiving Party from a third party without this information being subject to any confidentiality obligations; or
  - c. which was already demonstrably known to the Receiving Party before it was disclosed by the Disclosing Party, without this information being subject to any confidentiality obligations;
- 1.1. NaN shall have its Employees and/or Workers sign an additional non-disclosure agreement at the Customer’s first request.

## **Clause 9 – Termination of the Agreement**

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- 9.1. NaN is entitled, without any notice of default (except, insofar as necessary, in the situation referred to under 9.1.d) or judicial intervention being necessary, to dissolve the Agreement partly or wholly with immediate effect by means of a registered letter to the Customer, without NaN being obliged to pay any kind of damages, and without prejudice to NaN’s other rights, in the event:

- a. the Customer discontinues its activities or a substantial part thereof or is dissolved or a resolution thereto is adopted;
  - b. of liquidation or closing down of the company of the Customer, moratorium of payments, bankruptcy, the offer for a private arrangement related to debt restructuring by the Customer, a substantial part of the assets of the Customer is seized, appointment of a liquidator or administrator (or any person comparable thereto) within the Customer or any comparable event occurs with respect to the assets of the Customer;
  - c. all or a substantial part of the activities of the Customer and/or legal seat of the Customer are transferred to jurisdictions and/or areas with laws and regulations other than the laws and regulations applicable at the date of entering into the Agreement with the Customer.
  - d. the Customer fails to comply with any of its obligations by virtue of the Agreement;
  - e. any changes occur within the bodies of the Customer who have the power to appoint the board of directors of the Company and/or the Customer's strategy;
  - f. the Customer supplied false information, failed to provide information to NaN or misled NaN by any means and NaN would, if it had known that the information was false or misleading, not have entered into the Agreement;
  - g. the Customer enters into a merger or demerger, is (partly) taken over, is reorganised or the control over the Customer is transferred to a third party, or a resolution thereto is adopted, without priorly informing NaN and receiving NaN's approval in writing;
  - h. In the events mentioned in this clause all claims NaN has against the Customer are immediately due and payable.
- 1.1. Notwithstanding the provisions of clause 5.5 of these general conditions, NaN is entitled to suspend the fulfilment of its obligations by virtue of the Agreement until the Customer upon request of NaN has provided sufficient security for the fulfilment of its obligations by virtue of the Agreement.
- 1.1. In case the Customer refuses to provide sufficient security as requested by NaN, NaN has the right to immediately dissolve the Agreement without any judicial intervention being necessary and without any damages being due to the Customer.

## **Clause 10 - Personal Data**

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- 10.1. The Customer acknowledges that NaN processes personal data in accordance with its Privacy Statement.



- 10.2. The Customer and NaN shall treat all personal data provided within the context of the provision of the Services in a confidential manner and process these in accordance with the provisions of the [General Data Protection Regulation \(GDPR\)](#) and other relevant privacy laws and regulations. The Customer is prohibited from disclosing personal data obtained from NaN to third parties, except with the prior written consent of NaN.
- 10.3. The Customer shall indemnify NaN against all claims filed by Employees and/or Workers, employees of the Customer or other third parties against NaN and related to a violation of the GDPR and other privacy laws and regulations by the Customer and shall reimburse the related costs incurred by NaN.

## **Clause 11 – Invalidity**

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- 11.1. In case any provision in these general conditions is null, voidable or not valid and/or not enforceable, this will not affect the validity of the (other) provisions of the Agreement and of these general conditions. The parties will then make every effort to replace the relevant provision as soon as possible by a legal valid and enforceable provision which, from a legal and economic perspective, most closely approximates the original provision.

## **Clause 12 – Transfer of Agreements**

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- 12.1. NaN is at all time entitled to (partly) transfer its rights and/or obligations by virtue of the Agreement to a third party. The Customer hereby irrevocably and explicitly grants its approval to a transfer by NaN of its rights and/or obligations by virtue of the Agreement. “Third party” in this context means: a party other than the contracting party to the Agreement, irrespective if such third party is part of the group to which NaN belongs.

- 12.2. Without the prior written approval of NaN the Customer is not entitled to (partly) transfer its rights and/or obligations under the Agreement to a third party.

### **Clause 13 – Applicable law and jurisdiction**

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- 13.1. These general conditions and all legal relationships between NaN and the Customer, including but not limited to the Agreements, are subject to Dutch law.
- 13.2. All disputes that may arise in relation to these general conditions or an Agreement, or any other legal relationships between NaN and the Customer, shall be submitted to the competent court in the district of Oost Brabant (the Netherlands).

## Section 2 Consultancy Services

The provisions of this section 'consultancy services' apply, next to the general provisions of these terms and conditions, in case NaN provides Consultancy Services to the Customer.

### Clause 14 – Consultancy services

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- 14.1. NaN shall be responsible for the selection of the Employees and/or Workers who will be engaged for the Consultancy Services, after consultation between NaN and the Customer.
- 14.2. Vacation days of the consulting Employees and/or Workers are taken after consultation between NaN, the Employee or Worker and the Customer.
- 14.3. Subject to the provisions laid down in this clause, NaN is exclusively entitled to instruct the Employees and/or Workers with respect to the performance of the Consultancy Services. The Customer is entitled to give instructions to the Employees and/or Workers concerning the practical, day-to-day affairs within the organisation of the Customer, to the extent these instructions do not conflict with the instructions given by NaN. Furthermore the Customer is entitled to give instructions to the Employees and/or Workers relating to the working conditions and safety at the workplace offered by the Customer during the performance of the Consultancy Services.
- 14.4. NaN only performs its Consultancy Services on NaN's usual working days and during NaN's usual business hours, unless other working hours are agreed upon in writing between NaN and the Customer.
- 14.5. The Customer is not entitled to put the Employees and/or Workers at a third party's disposal and/or to let the Employees and/or Workers work for third parties, without the written prior approval of NaN.
- 14.6. The Customer and (legal) persons with an interest in or associated otherwise with Customer are not entitled to employ and/or hire NaN's Employees and/or Workers, without the written prior approval of NaN.
- 14.7. If the Customer violates paragraph 14.5 or 14.6 of this clause, the Customer shall forfeit to NaN an immediately and fully payable penalty of € 25.000,- per violation, to be increased with an immediately payable penalty of € 500,- for each day, including part of a day, that the violation continues, such without prejudice to all other rights that NaN might have (including but not limited to the right to claim compensation for the full loss suffered by NaN).

- 14.8. The Customer must ensure a working environment for the provision of the Consultancy Services which is safe in all respects and will take such measures and give such instructions for the provision of the Consultancy Services as reasonably necessary to prevent an Employee and/or Worker from suffering any harm during the provision of the Consultancy Services. The Customer is obliged towards NaN and the Employee and/or Worker to comply with all applicable national and international laws and regulations relating to working conditions, health and safety, as well as to ensure the compliance thereof, including but not limited to all directions provided by the Dutch Labour Inspectorate (“Arbeidsinspectie”) based on such laws and regulations.
- 14.9. The Customer indemnifies and holds NaN harmless for all loss suffered and costs incurred by NaN as a result of any claim filed by an Employee and/or Worker for compensation of any harm suffered by him or her during the performance of the Consultancy Services which is related to the Customer’s failure to comply with its obligations under paragraph 14.6 of this clause or can otherwise be traced back to a failure by the Customer to comply with its obligations under the Agreement (including but not limited to all loss to be compensated by NaN to the relevant Employee and/or Worker in this respect and loss suffered by NaN as a result of reduced availability of the relevant Employee and/or Worker).
- 14.10. The Customer shall upon request of NaN provide NaN with all reports relating to its working conditions or safety within one (1) week after such request.

## **Clause 15 – Intellectual and industrial property rights**

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- 15.1. The Customer owns all legal title to the intellectual and industrial property rights and/or database rights with respect to the results of the Consultancy Services as arising during the term of, or in relation to the execution of the Agreement. NaN hereby transfers legal title to all the aforesaid intellectual and industrial property rights and/or database rights to the Customer in advance. If necessary and upon request of the Customer, NaN shall do everything that is reasonably necessary in order to effectuate the transfer, or establishment and/or registration of the mentioned rights for the benefit of the Customer.
- 15.2. The Customer shall indemnify NaN and shall hold NaN harmless for any and all claims of third parties alleging that the intellectual and industrial property rights and/or database rights mentioned in clause 15.1 infringe upon the intellectual and industrial property rights and/or database rights of these third parties, or other claims relating to any infringements of such rights.



### Section 3 Licence Services

The provisions of this section 'Licence Services' apply, next to the general provisions of these terms and conditions, in case NaN provides Licence Services to the Customer.

#### Clause 16 - Licencing Services

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- 16.1. NaN makes the software and/or hardware agreed upon available for use by Customer on the basis of a user licence and for the term of the Agreement. The right to use the software and/or hardware is non-exclusive, non-transferable, and non-sublicensable.
- 16.2. NaN's obligation to make the software available and Customer's right to use the software exclusively extend to the so-called object code of the software. Customer's right to use the software does not pertain to the software's source code. The source code of the software and the technical documentation drafted when the software was developed are not made available to Customer, not even if Customer is prepared to pay a financial compensation.
- 16.3. Customer always strictly complies with the agreed restrictions on the use of the software and/or hardware, regardless of the nature or the content of these restrictions.
- 16.4. If parties have agreed that the software may only be used in combination with particular hardware and this hardware has a malfunction, Customer is entitled to use the software on other hardware with the same qualifications during the period of time that the original hardware remains defective.
- 16.5. NaN may require that Customer should only start using the software and/or hardware after it has received one or more codes needed for the use from NaN, from NaN's supplier or from the producer of the software.
- 16.6. Customer is only entitled to use the software and/or hardware in and for its own organisation or company and only insofar as required for the intended use. Customer does not use the software and/or hardware for the benefit of third parties, for example in the context of Software-as-a-Service (SaaS) or outsourcing.
- 16.7. Customer is never entitled to sell, lease or alienate, or grant limited rights to, or make the software and/ or hardware and the carriers on which the software is or will be recorded available to third parties, in any way whatsoever, for whatever purpose or under whatever title. Neither is Customer entitled to grant, whether or not remotely (online), a third party access to

the software or place the software with a third party for hosting, not even if the third party concerned exclusively uses the software in Customer's interest.

- 16.8. If so requested, Customer promptly renders assistance in any investigation into compliance with the agreed restrictions on use to be carried out by or on behalf of NaN. At NaN's first request, Customer grants supplier access to its buildings and systems. Insofar as such information does not concern the use of the software and/or hardware itself, NaN observes secrecy with respect to all confidential business information that it obtains from Customer or at Customer's business location in the context of an investigation.
- 16.9. Parties agree that the agreement entered into by parties is never seen as a purchase agreement where it is related to making software and/or hardware available for use.
- 16.10. NaN is not obliged to maintain the software and/or hardware and/or provide support to users and/or administrators of the software and/or hardware. If, contrary to the foregoing, NaN is asked to perform maintenance activities and/or provide support for the software and/or hardware, NaN may require that Customer should enter into a separate, written agreement for this purpose.
- 16.11. At its discretion, NaN either delivers the hardware and/or software on the agreed type of data carrier or, if no arrangements have been made in this regard, on a type of data carrier determined by NaN, or makes the software online available to Customer. At NaN's discretion, any agreed user documentation is made available in hardcopy or digital form, in a language determined by NaN.
- 16.12. NaN only installs the software and/or hardware at Customer's business premises if this has been agreed on. If no arrangements have been made in this respect, Customer itself is responsible for installing, designing, configuring, tuning and, if necessary, for modifying the hardware and operating environment used.
- 16.13. If parties have not agreed on an acceptance test, Customer accepts the software and/or hardware in the state that it is in when delivered ('as is, where is'), therefore, with all visible and invisible errors and defects, without prejudice to NaN's obligations under the guarantee scheme as set out in article 16.28 to 16.32. If this should be the case, the software and/or hardware is deemed to have been accepted by Customer upon delivery or, if installation by NaN has been agreed on in writing, upon completion of the installation. If an acceptance test has been agreed on by parties, the provisions of articles 16.14 up to and including 16.21 apply.
- 16.14. Where these general terms refer to 'error' this is understood to mean a substantial failure of the software and/or hardware to meet the functional or technical specifications of the software and/or hardware explicitly made known by NaN in writing and, if all or part of the software and/or hardware is customised software and/or hardware, a substantial failure to meet the functional or technical specifications explicitly agreed on in writing. An error only exists if it can be demonstrated by Customer and if it is reproducible. Customer is obliged to report errors without delay. NaN does not have any other obligation whatsoever with regard to other imperfections in or on the software and/or hardware than those in relation to errors in the sense of these general terms.
- 16.15. If an acceptance test has been agreed on, the test period is fourteen days following delivery or, if installation by NaN has been agreed on in writing, fourteen (14) days following the completion of installation. During the test period, Customer may not use the software and/or hardware for production or operational purposes. Customer performs the agreed acceptance test with qualified personnel, to an adequate extent and in sufficient detail
- 16.16. If an acceptance test has been agreed on, Customer is obliged to check whether the software and/or hardware delivered meets the functional or technical specifications explicitly made known by NaN in writing and, if and to the extent that all or part of the software and/or

hardware is customised software and/or hardware, that it meets the functional or technical specifications explicitly agreed on in writing.

16.17. If testing on Customer's instruction involves personal data being made use of, Customer ensures that using these data for this purpose is permitted.

16.18. The software and/or hardware is understood to have been accepted:

- a. if parties have agreed on an acceptance test: on the first day following the test period, or
- b. if NaN receives a test report as referred to in article 16.19 prior to the end of the test period: at the time the errors listed in this test report have been repaired, notwithstanding the presence of errors that, according to article 16.20, do not prevent acceptance, or
- c. if Customer uses the software and/or hardware in any way for production or operational purposes: at the time it is put into use for production or operational purposes.

1.1. If it should become clear when the agreed acceptance test is carried out that the software and/or hardware contains errors, Customer reports the test results to NaN in writing in a well-ordered, detailed and understandable manner no later than on the last day of the test period. NaN makes every effort to repair the errors referred to within a reasonable period of time. In this context, NaN is entitled to install temporary solutions, program bypasses or problem-avoiding restrictions.

1.2. Customer is neither entitled to refuse the acceptance of the software and/or hardware for reasons that are not related to the specifications explicitly agreed on in writing by parties nor entitled to refuse the acceptance of the software and/or hardware because it has minor errors, i.e. errors that do not prevent - within reason - the productive or operational use of the software and/or hardware, all of this without prejudice to NaN's obligation to repair these minor errors as referred to in the article 16.28. Acceptance may not be refused either because of aspects of the software and/or hardware that can only be assessed subjectively, such as aesthetic aspects of the user interfaces.

1.3. If the software and/or hardware is delivered and tested in phases and/or parts, non-acceptance of a certain phase and/or part is without prejudice to the acceptance of a previous phase and/or a different part.

1.4. Acceptance of the software and/or hardware in one of the ways referred to in this article results in NaN being discharged of its obligations in the context of making the software and/or hardware available and delivering it and, if installation of the software and/or hardware by NaN has also been agreed on, of its obligations in the context of installing it.

1.5. Acceptance of the software and/or hardware is without prejudice to Customer's rights under the article 16.20 regarding minor errors and the article 16.28 providing for guarantees.

1.6. NaN makes the software and/or hardware available to Customer within a reasonable period of time after parties have entered into the Agreement.

1.7. Immediately after the Agreement ends Customer returns all hardware and copies of the software in its possession to NaN. If it has been agreed that Customer is obliged to destroy the relevant copies when the Agreement ends, Customer informs NaN, promptly and in writing, that the copies have been destroyed. When the agreement ends, or after it has ended, NaN is not obliged to render assistance in any data conversion that Customer may possibly want to carry out.

1.8. The sum due for the right to use is payable by Customer at the agreed times or, if a time has not been agreed on:

- a. if parties have not agreed that NaN is responsible for the installation of the software:



- upon delivery of the software and/or hardware; or
  - in the event periodic payments are due for the right to use, upon delivery of the software and/or hardware and subsequently when each new term of the right to use commences;
- b. if parties have agreed that NaN is responsible for the installation of the software and/or hardware:
- upon completion of that installation;
  - in the event periodic payments are due for the right to use the software and/or hardware, upon completion of that installation and subsequently when each new term of the right to use commences.
- 1.1. Except where mandatory statutory provisions should provide otherwise, Customer is not entitled to modify all or part of the software and/or hardware without NaN's prior written permission. NaN is entitled to refuse permission or to attach conditions to its permission. Customer bears the entire risk of all modifications that it implements, whether or not with NaN's permission, or that Customer has implemented by third parties on its instructions.
- 1.9. NaN makes reasonable efforts to repair errors in the sense of article 16.14 within a reasonable period of time if these errors are reported, in detail and in writing, to NaN within a period of three (3) months after delivery or, if an acceptance test was agreed, within three (3) months after acceptance. NaN does not guarantee that the software and/or hardware is suitable for the actual and/or the intended use. NaN does not guarantee either that the software and/or hardware functions without interruptions and/or that all errors are always repaired. Repairs are carried out free of charge unless the software and/or hardware was developed on Customer's instructions other than for a fixed price, in which case NaN charges the costs of the repairs to Customer at its applicable rates.
- 1.10. NaN may charge the costs of the repairs to Customer at its applicable rates if such repairs are required as a result of usage errors or Customer not using the software and/or hardware for intended use, or as a result of causes that cannot be attributed to NaN. The obligation to repair errors ends if Customer modifies the software and/or hardware or has such modifications implemented without NaN's written permission.
- 1.11. Errors are repaired at a location and in a manner to be determined by NaN. NaN is entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the software and/or hardware.
- 1.12. NaN is never obliged to recover corrupted or lost data.
- 1.13. NaN does not have any obligation whatsoever, of whatever nature or content, with respect to errors reported after the end of the guarantee period referred to in article 16.28.

## **Clause 17 – Intellectual and industrial property rights**

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- 17.1. All intellectual property rights to the software, data files, databases, hardware, training, testing and examination materials, as well as other materials such as analyses, designs, documentation, reports, offers, including preparatory materials for these materials, developed or made available to Customer under the Agreement with regard to providing Licence Services remain exclusively vested in NaN, its licensors or its suppliers. Customer is solely granted the rights of use laid down in these general terms, in the agreement entered into by parties in writing and in the applicable mandatory legal provisions. A right of use granted to the Customer is non-exclusive, non-transferable, and non-sublicensable.
- 17.2. If NaN is prepared to undertake to transfer an intellectual property right, such undertaking may only be explicitly effected in writing. If parties agree in writing that an intellectual property right with respect to software, websites, data files, hardware, know-how, or other works or materials specifically developed for Customer is transferred to Customer, this does not affect NaN's rights or options to use and/or exploit, either for itself or for third parties and without any restriction, the parts, designs, algorithms, documentation, works, protocols, standards and the like on which the developments referred to are based for other purposes. NaN is also entitled to use and/or exploit, either for itself or for third parties and without any restrictions, the general principles, ideas and programming languages that have been used as a basis to create or develop any work for other purposes. The transfer of an intellectual property right does not affect NaN's right to continue developing, either for itself or for third parties, software or elements of software-that are similar to or derived from software, or elements of software, that have been or are being developed for Customer.
- 17.3. Customer is not permitted to remove or change any indication with respect to the confidential nature of the software, data files, hardware or materials or with respect to copyrights, brands, trade names or any other intellectual property right pertaining to the software, websites, data files, hardware or materials, or have any such indication removed or changed.
- 17.4. NaN indemnifies Customer against any claim of a third party based on the allegation that software, websites, data files, hardware or other materials developed by NaN itself infringe an intellectual property right of that third party, provided always that Customer promptly informs NaN in writing about the existence and content of the claim and leaves the settlement of the claim, including any arrangements to be made in this context, entirely up to NaN. To this end, Customer provides NaN with the powers of attorney and information required and renders the assistance supplier requires to defend itself against such claims. This obligation to indemnity does not apply if the alleged infringement concerns:
  - a. works or materials made available by Customer to NaN for use, modification, processing, or maintenance or
  - b. modifications Customer has implemented or modifications client has had implemented in the software, websites, data files, hardware or other works and materials without supplier's written permission. If it is irrevocably established in court that software, websites, data files, hardware or other works and materials developed by NaN itself should infringe any intellectual property right belonging to a third party, or if, in NaN's opinion, there is a good chance that such an infringement

will occur, NaN ensures, if possible, that Customer can continue to use, or use functional equivalents of, the software, websites, data files, hardware or other works and materials delivered. Any other or further obligation that NaN might have to indemnify Customer against any infringement of a third party's intellectual property right is excluded.

- 17.5. Customer guarantees that no rights of third parties preclude making hardware, software, material intended for websites, data files and/or other materials, designs and/or other works available to Customer for the purpose of use, maintenance, processing, installation or integration. This guarantee also pertains to Customer's having the relevant licences. Customer indemnifies NaN against any claim of a third party based on the allegation that making any of this available and/or the use, maintenance, processing, installation or integration infringes a right of that third party.
- 17.6. NaN is never obliged to perform data conversion unless this has been explicitly agreed on with customer in writing.
- 17.7. NaN is entitled to use Customer's figurative mark, logo or name in its external communication.

## **Section 4 Recruitment Services**

**The provisions of this section ‘Recruitment Services’ apply, next to the general provisions of these terms and conditions, in case NaN provides Recruitment Services to the Customer.**

### **Clause 18 – Recruitment Services**

- 18.1 NaN will determine, in consultation and cooperation with the Customer, the content of the Agreement, which will be based on the organisational, job and candidate profiles (hereinafter jointly referred to as the Profile). All Recruitment Services will be carried out on the basis of an Agreement between NaN and a Customer to introduce one or more candidates for employment or other contractual relationship at the Customer’s company. The Agreement will include:
- i) the organisational, job and candidate profiles (hereinafter jointly referred to as the Profile),
  - ii) the working method to be used,
  - iii) the estimated duration,
  - iv) the fee and
  - v) the invoicing method.
- 18.2 NaN will carry out the Agreement to the best of its knowledge and ability, and will make every effort to introduce one or more candidates to the Customer based on the information it has regarding the qualifications of candidates and the Profile. NaN will accept the information and data provided by both the Customer and the candidate as is. NaN is not liable for non-accuracy of the information and data provided.
- 18.3 The Customer is responsible for the choice of a candidate and determines the nature of the employment relationship, or other contractual relationship, as well as the contents of the agreement entered into with a candidate in this respect.
- 18.4 The Customer enters into a recruitment agreement with NaN on the basis of exclusivity, to the exclusion of any other (external) recruitment agency and/or company for the Profile belonging to NaN’s field of expertise.
- 18.5 If during the performance of an Agreement candidates are introduced to the Customer by a third party, they will be regarded as an integral part of the Agreement concerned. The appointment of such a candidate will be considered as a fulfilment of the Agreement by NaN.
- 18.6 The candidates proposed by NaN and placed by the Customer will not be approached by NaN after placement for a position elsewhere unless the Customer has granted permission for the duration of the Agreement.
- 18.7 The Customer will do everything necessary to enable NaN to perform the work (or have it performed).
- 18.8 The Customer has the right to terminate the Agreement in writing at any time. In the event of the premature termination of the Agreement, the Customer will be obliged to pay NaN that part of the fee corresponding to the phase in which execution of the Agreement is situated at that time, as specified in the Agreement. The costs associated with the placement of advertisements by media hired on behalf of NaN that can no longer be cancelled on the date of written termination of the assignment will be borne by and will be invoiced to the Customer.
- 18.9 Fundamental changes to the original job description will be regarded as termination of the Agreement. In that case, the Customer will owe NaN the agreed fee.
- 18.10 NaN is entitled to terminate the Agreement with immediate effect if the Customer fails to cooperate sufficiently in the execution of the Agreement. In that case, NaN shall be entitled to charge the agreed honorarium to the Customer, in accordance with article 18.8. In addition, NaN has the right to terminate the Agreement with immediate effect, if fulfilment can no longer be reasonably demanded from NaN. In all cases, NaN will not be liable for the

consequences of its premature termination of the Agreement, nor will the Customer be entitled to a refund of any amounts already invoiced by NaN.

- 18.11 Once the Agreement between the Customer and NaN has been established, the Customer will owe the fee as specified in the Agreement, and will be obliged to pay this fee in the manner specified therein.
- 18.12 All costs incurred by NaN other than those specified in the Agreement, such as costs related to advertisements or publicity, will be borne by the Customer.
- 18.13 If a Candidate introduced to the Customer by NaN enters into an employment relationship of any kind or other contractual or labour relationship with the Customer within twelve (12) months of completion of the Agreement, the Customer will owe the full Agreement fee, as stated in the Agreement, without further notice equal to 100% of the full fee mentioned in the Agreement.
- 18.14 If more than one of the Candidates proposed by NaN enters into an employment relationship or other contractual or labour relationship with the Customer within a period of twelve (12) months after the completion of the Agreement, the Customer will owe an individual fee for the second and every subsequent Candidate hired, equal to 100% of the full fee mentioned in the Agreement.
- 18.15 If a Candidate introduced by NaN is appointed to a different position within the organisation of the Customer, or otherwise affiliated organisations and/or institutions, than that for which the Agreement was carried out, within a period of twelve (12) months after completion of the assignment, the client will owe NaN a fee equal to 100% of the full fee mentioned in the Agreement.
- 18.16 Without the written permission of NaN, the Customer is not entitled to pass on information about Candidates of NaN to third parties in any way whatsoever or to introduce them to third parties. If the Customer introduces a Candidate presented by NaN to a third party, another organisational unit or institution within twelve (12) months after the introduction of that Candidate, resulting in an employment contract or other contractual or labour relationship with that Candidate, the Customer will be obliged to pay the full fee in accordance with the provisions in the Agreement between NaN and the Customer.
- 18.17 NaN accepts no liability whatsoever for any damage, of whatever nature, that the Customer, employees of the Customer or third parties may suffer as a result of any wrongful act, breach of contract or performance of the Candidates nominated by NaN and/or accepted by the Customer. The Customer shall indemnify NaN against any claims by third parties in connection with the Agreement between NaN and the Customer.