Terms and Conditions

Emendis B.V.

InvoiceComplete is a service offered by Emendis B.V.

VERSION   1.2
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Inhoudsopgave

MODULE A – GENERAL

ARTICLE A.1.   DEFINITIONS

Terms written in capital letters in the General Terms and Conditions have the following meaning.

- A.1.1.   General Terms and Conditions: the provisions of the present document.
- A.1.2.   Service(s): the service(s) which Emendis will perform for the benefit of the Client, including but not limited to:
  - a.   Web design and software development: service consisting of the development, configuration and/or adaptation of Works, such as websites, applications, layout, data files, software, documentation, advice, reports, analyses, designs.
  - b.   Hosting services and domain name registration: Service consisting of storage and/or transmission of material provided by Customer to third parties, such as in the case of web hosting, virtual servers and e-mail services or mediation in obtaining a domain name.
  - c.   Other services as described in the offer or quotation from Emendis.
- A.1.3.   Emendis: the company Emendis B.V., established in Veenendaal and registered with the Chamber of Commerce under file number 51400251.
- A.1.4.   Commencement Date: the date on which the Agreement takes effect and on which the supply of the Service commences.
- A.1.5.   Intellectual Property Rights: all rights of intellectual property and related rights, including but not limited to copyrights, database rights, domain names, trade name rights, trademark rights, design rights, neighbouring rights, patent rights, as well as rights to know-how.
- A.1.6.   Office Hours: hours on Business Days between 09:00 and 17:00.
- A.1.7.   Client: the natural person or legal entity with whom Emendis has entered into an Agreement. Also meant is the person who is negotiating with Emendis on that matter, as well as his representative(s), agent(s), legal successor(s) and heirs.
- A.1.8.   Agreement: any agreement between Emendis and Principal pursuant to which Emendis provides Services to Principal.

A.1.9. SLA: the separately concluded Service Level Agreement between Emendis and Client in which the agreements about the level, the quality and the manner of problem solving with regard to the Service are laid down.

A.1.10. Website: the website of Emendis, accessible via the domain www.emendis.nl.

A.1.11. Working Days: Monday through Friday, with the exception of Dutch national holidays, whereby 5 May is a bank holiday once every five (5) years.

A.1.12. Works: all works, such as websites and (web) applications, software, concepts, documentation, advice, reports and other products of the mind, as well as preparatory material thereof and files or data carriers (whether encrypted or not) on which the Works are stored.

ARTICLE A.2.   APPLICABILITY AND ORDER OF PRECEDENCE

A.2.1. These General Terms and Conditions and Module A apply to every quotation or offer made by Emendis regarding Services and form an integral part of every Agreement.

A.2.2. The specific modules apply if the Services requested or offered fall within the scope described in the module. If a specific module applies, it will take precedence over Module A.

A.2.3. The definitions set out in clause A.1 will apply to all modules of these General Terms and Conditions, unless a different meaning is given elsewhere in the Agreement and/or General Terms and Conditions.

A.2.4. Terms or conditions set by the Client which deviate from, or do not appear in, these General Terms and Conditions are only binding on Emendis if and insofar as they have been expressly accepted in writing by Emendis.

A.2.5. In the event of conflict between any provisions of the Agreement, General Conditions or appendices thereof, the following order of precedence shall apply:

  a. The Agreement;
  b. The Service Level Agreement, if any;
  c. Any appendices to the Agreement
  d. These Terms and Conditions

ARTICLE A.3.   OFFERS AND CONCLUSION OF AGREEMENT

A.3.1. The Agreement is concluded by the explicit written acceptance of the quotation or offer by the Client. The offer must be signed by the Client and returned in writing.

A.3.2. If the Client does not explicitly indicate that it agrees with the quotation or offer, but nevertheless agrees, or creates the impression, that Emendis will perform work that falls within the description of the Services, the quotation will be deemed to have been accepted. This also applies when the Client requests Emendis to perform certain activities without waiting for a formal offer.

A.3.3. Offers made by Emendis are without obligation and valid for the term indicated in the offer. If no term is indicated, the offer is valid for thirty (30) days after the date on which the offer is made.

A.3.4. If it appears that the data provided by the Client when applying for the Agreement was incorrect and/or incomplete, Emendis is entitled to adjust the prices accordingly.

A.3.5. The Agreement runs from the moment notification of acceptance by the Client is received by Emendis and/or the Service is technically delivered to the Client ("the Effective Date"), unless another Effective Date has been agreed in writing.

ARTICLE A.4.   EXECUTION OF THE AGREEMENT

A.4.1. After the Agreement has been concluded, Emendis will perform it to the best of its ability, applying sufficient care and expertise, in accordance with the offer.

A.4.2. Delivery periods stated by Emendis are always indicative and in no event serve as deadlines.

A.4.3. If and insofar as the proper execution of the Agreement so requires, Emendis is entitled to have certain activities carried out by third parties. Any unforeseen additional costs connected with this will only be at the expense of the Client if this has been agreed in writing beforehand. These General Terms and Conditions also apply to the work performed by third parties in the context of the Agreement.

A.4.4. Emendis will make itself available for a reasonable level of customer support as described in the SLA, during regular Business Days and Office Hours.

A.4.5. All changes in the Agreement, either at the request of the Client or as a result of the fact that due to whatever circumstances a different execution is necessary, will be considered as additional work if they involve extra costs. These will be invoiced to Principal accordingly. Customer will in no case claim a refund of costs as a result of less work.

ARTICLE A.5.   OBLIGATIONS OF THE CLIENT

A.5.1. The Client is obliged to do and to refrain from doing all that is reasonably necessary and desirable in order to facilitate a timely and proper execution of the Agreement. In particular, the Client shall ensure that all data indicated by Emendis as being necessary, or which the Client should reasonably understand to be necessary for the performance of the Services, is provided to Emendis in a timely manner. The period within which Emendis must perform the Agreement will not commence until all requested and necessary data have been received by Emendis.

A.5.2. If the Client knows or may suspect that Emendis will have to take certain (extra) measures in order to comply with its obligations, the Client will inform Emendis of this immediately.

A.5.3. If the Client requires any permit or other permission from government agencies or third parties for the specific use which it gives, or intends to give, to the Services, the Client must itself take care to obtain such permission. The Client guarantees towards Emendis that it holds all permits and/or permissions necessary for the use of the Services by the Client.

A.5.4. In addition to the previous paragraph, the Client must ensure correct compliance with the applicable Dutch laws and regulations. Emendis is in no way liable for correct compliance with the applicable Dutch laws and regulations.

ARTICLE A.6.   CONSULTANCY EN PROJECT MANAGEMENT

A.6.1. Emendis shall carry out consultancy and project supervision to the best of its ability, applying due care and craftsmanship.

A.6.2. Consultancy and project guidance within the framework of the Agreement is at all times a best efforts obligation, unless agreed otherwise in writing.

A.6.3. The Client is aware that following the advice of Emendis is entirely at the risk of the Client. Emendis is only liable for any damage suffered insofar as this ensues from the Agreement.

A.6.4. To the extent possible, Emendis will make the time and costs relating to the work to be performed known to the Client in advance. The time needed for the work concerned depends on various factors, including the cooperation of the Client.

ARTICLE A.7.   SECONDMENT

A.7.1. Secondment means that Emendis makes one or more employees available to the Client for several hours per week and these employees are under the management of the Client.

A.7.2. The Client will only deploy the seconded employee for the work as agreed upon by the parties. In the event of a change in the work, the parties will consult again. All results of the work performed are entirely at the risk of the Client.

A.7.3. The Client will always provide the seconded party with all the information and intelligence in a timely manner that is relevant to the proper performance of the work.

A.7.4. The Customer will ensure a proper and safe workplace for the Seconded Person in accordance with the applicable Working Conditions Regulations and/or Working Conditions Act.

A.7.5. The Client is not permitted to place the Seconded Person with third parties for the purpose of performing work without prior permission from Emendis.

A.7.6. Emendis will pay the salary taxes and all social insurance premiums of the seconded party to the appropriate authorities and will indemnify the Client against claims from third parties in this respect.

A.7.7. Emendis is entitled, without being obliged to pay any compensation and/or contribution towards the costs, to replace the seconded party with another seconded party.

A.7.8. In the event of illness, Emendis and/or the seconded party will report to the Client as early as possible. Emendis is not obliged to replace a seconded party in the event of illness. If the seconded party is absent for longer than thirty (30) days due to illness and no replacement seconded party is available, the Client and/or Emendis will be entitled to terminate the Agreement in accordance with Article A.14 (Duration and termination).

A.7.9. Emendis will invoice the Client monthly for the hours worked by the Seconded Person. Travel time and travel and accommodation expenses will be charged separately to the Client, unless otherwise agreed. At the request of the Client, Emendis will report the hours worked by the Seconded Person and send them to the Client within ten (10) Working Days.

ARTICLE A.8. INTELLECTUAL PROPERTY

A.8.1. All Intellectual Property Rights to all Works developed or made available by Emendis within the framework of the Agreement are exclusively vested in Emendis or its licensors, unless agreed otherwise in writing.

A.8.2. The Intellectual Property Rights in respect of the open source software used by Emendis are vested in the developer of that software or any other right holder. Such rights cannot in any case be transferred to the Client. The Client itself is responsible for complying with the open source software licenses and indemnifies Emendis against claims of third parties concerning compliance with these licenses.

A.8.3. The Client will only acquire the rights of use and powers explicitly granted in these General Terms and Conditions, the Agreement or otherwise in writing, and for the rest the Client will not reproduce or publish these Works. The aforementioned is an exception if such a right has unmistakably been omitted in an explicit manner. However, the provision of source code for Works is always mandatory only if explicitly agreed in writing.

A.8.4. Emendis is entitled not to grant or to withdraw the right of use referred to in the preceding paragraph if the Client has not fulfilled its obligations under the Agreement.

A.8.5. Unless otherwise agreed in writing, the Client is not permitted to remove or change any indication concerning Intellectual Property Rights from these Works, including indications concerning the confidential nature and secrecy of the Works.

A.8.6. Emendis is permitted to take technical measures to protect its Works. If Emendis has secured these Works by means of technical protection, the Client is not permitted to remove or evade this protection, except if and insofar as the law mandatorily provides otherwise.

ARTICLE A.9. PRICING

A.9.1. Unless expressly stated otherwise for an amount, all prices quoted by Emendis are exclusive of turnover tax and other levies imposed by the government.

A.9.2. If a price is based on data supplied by the Client and these data prove to be incorrect, Emendis will be entitled to adjust the prices accordingly, even after the Agreement has already been concluded.

A.9.3. If the Agreement is a continuing performance agreement, Emendis is entitled to increase the rates once a year in accordance with the percentage applying for the past year on the basis of the CBS index for commercial services (dpi index).

ARTICLE A.10. PAYMENT TERMS

A.10.1. Emendis shall invoice the amounts due by the Client to the Client. In doing so, Emendis may issue electronic invoices to the e-mail address of the Client known to Emendis. Emendis is entitled to periodically

A.10.2. amounts due prior to the provision of the Services.

A.10.3. The payment term of an invoice is thirty (30) days after the invoice date, unless agreed otherwise in writing.

A.10.4. If the Client has not paid in full within fourteen (14) days of the payment deadline, he will automatically be in default without notice of default being required.

A.10.5. In the event of late payment, the customer will be obliged, in addition to the amount owed and the interest due thereon, to pay in full the extrajudicial and judicial costs, including full attorney's fees.

A.10.6. Unless the customer is a consumer, the customer is not permitted to invoke suspension, set-off or deduction.

A.10.7. In the event that the Client fails to comply with any obligation under the Agreement, Emendis will be entitled, without any notice of default being required, to take back any goods delivered, without prejudice to Emendis' right to compensation for damage, loss of profit and interest.

ARTICLE A.11.   FORCE MAJEURE

A.11.1. Neither party can be held to fulfil any obligation if a circumstance beyond the control of the parties, which could not or should not have been foreseen when the Agreement was concluded, nullifies any reasonable possibility of fulfilment.

A.11.2. Force majeure is understood to include (but is not limited to) failures of public infrastructure which is normally available to Emendis, and on which the provision of the Services depends, but over which Emendis cannot exercise any actual power or contractual obligation to perform, such as networks in the Internet with which Emendis has not entered into a contract; failures of infrastructure and/or Services of Emendis caused by computer criminality, for example (D)DOS attacks or successful or unsuccessful attempts to circumvent network or system security failures on the part of suppliers of Emendis which Emendis could not foresee and for which Emendis cannot hold its supplier liable, for example because the supplier in question was (also) the victim of force majeure; defectiveness of goods, equipment, software or other source material the use of which the Client has stipulated; the unavailability of personnel (due to illness or otherwise); government measures; general transport problems; strikes; wars; terrorist attacks and civil commotion.

A.11.3. If a situation of force majeure lasts longer than ninety (90) days, either party shall be entitled to dissolve the Agreement in writing. What has already been performed on the basis of the Agreement shall in that case be settled proportionately, without the parties owing each other anything else.

ARTICLE A.12.   ACCOUNTABILITY

A.12.1. The liability of Emendis for damage resulting from an attributable failure to perform the Agreement, or from tort or otherwise, is excluded.

A.12.2. To the extent that exclusion of liability is not possible by law, Emendis is only liable to the Client for direct damage resulting from

A.12.3. an attributable failure in the performance of this Agreement. Direct damage is understood to mean exclusively all damage consisting of:
   a. damage caused directly to tangible property ('property damage');
   b. reasonable and demonstrable costs which the Client has had to incur to persuade Emendis to properly perform the Agreement (again);
   c. reasonable costs to establish the cause and extent of the damage, insofar as this relates to direct damage as referred to here;
   d. Reasonable and demonstrable costs incurred by the Client to prevent or limit the direct damage referred to in this Article.

A.12.4. Emendis is in no event liable for compensation of indirect damage or consequential damage or damage due to loss of turnover or profit, damage to image, damage due to delay, damage due to loss of data, damage due to exceeding of deadlines as a result of changed circumstances, damage as a result of the Client providing inadequate cooperation, information or materials and damage due to information or advice provided by Emendis, the content of which does not explicitly form part of the Agreement.

A.12.5. The maximum amount which will be paid out in the event of liability under paragraph 2 of this Article is limited per event or a series of connected events to the amount which the insurance of Emendis will pay out. If the insurance company will not pay out, the liability will be limited to the payments owed by the Client under this Agreement during the previous twelve (12) months (excluding VAT). In no event, however, will the total compensation for direct loss exceed EUR 15,000 (exclusive of VAT).

A.12.6. The limitation of liability as referred to in the previous paragraphs of this article shall cease to apply if and insofar as the damage is the result of intent or gross negligence on the part of the management of Emendis.

A.12.7. The liability of Emendis on account of attributable failure to perform the Agreement will only arise if the Client gives Emendis immediate and proper notice of default in writing, setting a reasonable time period in which to remedy the failure, and Emendis continues to fail attributably to perform its obligations even after that period. The notice of default must contain as detailed a description as possible of the failure, so that Emendis will be able to respond adequately.

A.12.8. The application of article 6:271 et seq. of the Dutch Civil Code is excluded.

A.12.9. The Client indemnifies Emendis against all claims from third parties (including clients of the Client) in respect of compensation for damage, costs or interest relating to this Agreement and/or the Service.

ARTICLE A.13. CONFIDENTIALITY

A.13.1. Parties will treat information which they provide to each other before, during or after the implementation of the Agreement confidentially if this information is marked confidential or if the receiving party knows or should reasonably suspect that the information was intended to be confidential. The parties shall also impose this obligation on their employees and on third parties engaged by them for the performance of the Agreement.

A.13.2. Emendis will not take cognisance of data which the Client stores and/or distributes through the systems of Emendis, unless this is necessary for the proper performance of the Agreement or Emendis is obliged to do so pursuant to a statutory provision or court order. In this case Emendis will make every effort to limit the access to the data as much as possible, insofar as this is within its power.

A.13.3. The obligation to maintain confidentiality will also continue after termination of the Agreement for whatever reason, for as long as the party providing the information can reasonably claim that it is confidential.

ARTICLE A.14. DURATION AND TERMINATION

A.14.1. The Agreement is entered into for the period stated in the quotation. If no term is stated, the Agreement is entered into for the duration of twelve (12) months or for the duration necessary to provide the Service. The Agreement can only be terminated in the interim as provided for in these General Terms and Conditions, or with the consent of both parties. However, if the Agreement concerns a commission contract, it cannot be terminated prematurely by the Customer.

A.14.2. If the Agreement is a continuing performance contract, it will be tacitly renewed by the same period if no written notice of termination is given in time before the end of the aforementioned period, with due observance of the notice period, unless otherwise agreed in writing.

A.14.3. The Client will observe a notice period of two (2) months. Emendis will observe a notice period of three (3) months.

A.14.4. Emendis may immediately suspend or terminate the Agreement in writing if at least one of the following special grounds applies:
    a. Client is in default with respect to an essential obligation;
    b. Client's bankruptcy has been filed for;
    c. Client has applied for a suspension of payment;
    d. Client's activities are terminated or liquidated.

A.14.5. If Emendis suspends fulfilment of its obligations, it will retain its claims under the law and the Agreement, including the claim to payment for the Services which have been suspended.

A.14.6. If the Agreement is terminated or dissolved, the claims of Emendis against the Client will be immediately due and payable. In the event of dissolution of the Agreement, amounts already invoiced for services rendered will remain due, without any obligation to undo. In the event of dissolution by the Client, the Client may only dissolve that part of the Agreement which has not yet been performed by Emendis. If the dissolution is attributable to the Client, Emendis will be entitled to compensation of the damage caused directly and indirectly as a result.

A.14.7. The right to suspend in the above cases applies to all Agreements concluded with the Client simultaneously, even if the Client is only in default with respect to one Agreement, and without prejudice to Emendis' right to compensation for damage, lost profits and interest.

ARTICLE A.15. CHANGES TO CONDITIONS

A.15.1. Emendis reserves the right to change or supplement the Services and these General Conditions. Amendments shall also apply to Agreements already entered into subject to a period of thirty (30) days after notification of the amendment.

A.15.2. Amendments will be announced on the Website, or by e-mail to the Client, or by any other means of which Emendis can prove that the announcement has reached the Client. Non-substantive changes of minor importance can be made at any time and do not require notification.

A.15.3. If the Client does not wish to accept a modification, the Client must notify Emendis in writing, stating the reasons, within fourteen (14) days after it has been announced. Emendis may then reconsider the change. If Emendis does not withdraw the modification in response, the Client may terminate the agreement by this date until the date on which the new conditions take effect.

ARTICLE A.16. OTHER PROVISIONS

A.16.1. The Agreement is governed by Dutch law.

A.16.2. To the extent not otherwise prescribed by mandatory law, all disputes arising from the Agreement will be submitted to the competent Dutch court for the district in which Emendis has its registered office.

A.16.3. In these General Conditions, the term "written" includes communication by e-mail provided that the identity of the sender and the integrity of the content are sufficiently clear.

A.16.4. If any provision of the Agreement proves to be invalid, this will not affect the validity of the Agreement as a whole. The parties will in that case lay down (a) new provision(s) by way of replacement, which will give shape to the intention of the original Agreement and General Terms and Conditions as much as is legally possible.

A.16.5. Information and communications, including price indications, on the Website are subject to programming and typing errors. In the event of any inconsistency between the Website and the Agreement, the Agreement will prevail.

A.16.6. The log files and other records, electronic or otherwise, of Emendis constitute full evidence of the statements made by Emendis and the version of any (electronic) communication received or stored by Emendis is deemed authentic, unless evidence to the contrary is produced by the Client.

A.16.7. The parties shall always inform each other forthwith in writing of any changes in name, postal address, e-mail address, telephone number and, if requested, bank or giro account number.

A.16.8. Each party is only entitled to transfer its rights and obligations under the Agreement to a third party with the prior written consent of the other party. This consent is not required, however, in the case of a business takeover or acquisition of the majority of shares of the party concerned.

MODULE B – DEVELOPING WORKS

If the Service (also) includes the development, configuration and/or adaptation of Works such as websites, applications, layout, data files, software, documentation, advice, reports, analyses, designs, the provisions of this module also apply.

ARTICLE B.1. DEVELOPING WORKS

B.1.1. Prior to development, parties shall jointly discuss the specifications on which the Works to be developed are based. Emendis uses the following development methods:

  a. Development by the hour: the specifications of the Works to be developed are determined in advance by Client. The work of Emendis will be performed under the supervision of the Client. Emendis will charge the Client for the hours worked;

b. Agile/SCRUM: the specifications of the Works to be developed are continuously adjusted during the development process. The work will be carried out in time blocks (sprints). Emendis shall charge the Client for the time blocks (sprints) in advance. Emendis does not guarantee that the Works will be delivered according to certain specifications and within a certain period of time and/or within certain time blocks (sprints);

c. Fixed fee: the specifications of the Works to be developed are determined jointly and in advance by the parties. The Work will be executed by Emendis on the basis of a fixed fee. Emendis guarantees that the Works will be delivered in accordance with the specifications, provided that this is not unreasonable.

B.1.2. If applicable, the development method used by Emendis will be included in the quotation of Emendis.

B.1.3. If a Service extends to the development, configuration and/or adaptation of Works, Emendis is entitled, unless otherwise agreed, to make use of images, software and components of third parties in the development, configuration or adaptation of Works.

B.1.4. Emendis is allowed to make use of open source software of which the rights are held by third parties. This means, inter alia, that Emendis may supply open source software to the Client and may incorporate open source software in Works which Emendis creates or adapts as part of a Service. If the licence of certain open source software entails that the Client can only distribute (parts of) the Works as open source, Emendis will adequately inform the Client of all applicable licence conditions.

B.1.5. After delivery, the responsibility for correct compliance with the relevant third party licenses when using the developed Works lies with the Client.

B.1.6. Emendis is permitted to include a name statement in the Works. If the Client objects, Emendis will remove this name statement free of charge.

B.1.7. Emendis is not obliged to supply a standard manual with the delivered Works. If Client requests a manual, Emendis is entitled to charge additional costs. To the extent possible, Emendis will inform Client of these costs in advance.

ARTICLE B.2. TESTS EN TEST ENVIRONMENT

B.2.1. Prior to delivery, Client will be given the opportunity to test the Works in an acceptance environment. Emendis will provide Client with access to this test environment by sending a location (URL) and, if necessary, the log-in data.

B.2.2. The access to this test environment is strictly bound to Client. The Customer is not permitted to grant third parties access to this test environment by sending them the location (URL) and/or the log-in data.

B.2.3. Customer is aware that the test version is not suitable for production purposes, in any form whatsoever. It is therefore not permitted to use the test environment for these purposes.

B.2.4. Emendis is not obliged to move the Data stored in the test environment to a production environment, unless agreed otherwise in writing.

B.2.5. Emendis will in no event be liable for any loss and/or disclosure of the Data stored in the test environment.

B.2.6. Client is aware that the Work may send communications (e.g. e-mail) to specified addresses. Emendis is not liable for these sent communications.

B.2.7. Emendis gives no guarantees regarding the availability, completeness and correct operation of the test environment. Also, no guarantees can be derived from an SLA already concluded with regard to the test environment.

ARTICLE B.3. DELIVERY AND ACCEPTANCE

B.3.1. Emendis will deliver the Works to be developed or adapted or parts thereof when, in its professional opinion, they meet the specifications or are suitable for use. Emendis is entitled to postpone the delivery of the Works until the Client has fulfilled all its obligations under the Agreement.

B.3.2. Delivery takes place by making available in a test environment as referred to in Article 8 (Tests and test environment).

B.3.3. The Customer must evaluate and approve or reject the work delivered within fourteen (14) days of delivery. There is question of acceptance of the delivered work if:

    a. Client has accepted the delivery by means of a written agreement;

    b. Client uses the completed work for production purposes, including but not limited to transferring the Works to a production environment;

    c. Client does not reject the delivered work within a period of ten (10) Working Days, has not requested a revision round or has not objected to the delivery.

B.3.4. If a Work is delivered in phases, the Client must approve or reject the part of the Work belonging to that phase after completion of each phase, in the manner determined in the previous paragraph. The Client may not base an approval or rejection in a later phase on aspects that were approved in an earlier phase.

B.3.5. If the Client disapproves of all or part of the delivered product, Emendis will make every effort to remove the reason for disapproval as soon as possible. Emendis can do this by revising the result or by rejecting the reason for rejection. The Client then has a period of ten (10) Working Days to approve or reject the revision or motivation.

B.3.6. If after the first revision or motivation the Client has rejected the delivered work in whole or in part, a reasonable number of revision rounds will follow at the discretion of Emendis.

B.3.7. If the parties agree that further revisions are not (or no longer) useful, both parties will consult on the further settlement. In any case, the Client will be obliged to reimburse the actual hours spent by Emendis, up to a maximum of the quoted amount. However, this does not entitle the Client to use the Works in any way whatsoever, unless agreed otherwise in writing.

B.3.8. After acceptance of the completed Work, any liability for defects in the completed Work will lapse, unless Emendis was aware or should have been aware of the defect at the time of acceptance. In any case, any liability for defects in a Work will lapse twelve (12) months after acceptance of the delivered Work.

B.3.9. Desired changes to Works must be submitted by the Client point by point and in writing. Emendis will then assess whether this work falls within the Agreement, or will be separately quoted as additional work.

ARTICLE B.4. ADDITIONAL WORK

B.4.1. Changes as a result of new or changed insights which have arisen during the development process are considered as additional work. This is entirely at the discretion of Emendis.

B.4.2. Emendis will indicate clearly and in advance which activities are to be considered as additional work. In addition, Emendis will state the costs involved in the additional work.

ARTICLE B.5. SUPPLY OF MAINTAINCE

B.5.1. Maintenance is understood to mean the functioning of existing Works in accordance with the quotation or further agreement, and more generally the repair of technical errors. Maintenance is expressly not understood to mean the repair of errors as a result of incorrect use of the Works, hacks and/or other external influences (for example, browser and other software updates).

B.5.2. Emendis will endeavour to carry out the maintenance to the best of its ability, but in doing so is often dependent on its supplier(s) and third parties for updates, error repair software ('patches') or spare parts. Emendis is entitled not to install certain updates or patches if in its opinion this will not benefit the proper functioning of the Works or is not in the interest of the Client.

B.5.3. As part of the maintenance, Emendis will endeavour to repair errors in the Works and associated software. However, Emendis is dependent on supplier(s) and third parties in this respect. In the case of new functionality or changes which could substantially alter the functioning of the Works, Emendis will consult with Client in advance.

B.5.4. Emendis will make every effort to add improvements as referred to in this article requested by the Client to the Works. Emendis is always entitled to refuse a request if, in its opinion, this is not feasible or could impede the proper operation or availability of the Works.

B.5.5. If, in the opinion of Emendis, a requested change could adversely affect the functioning or safety of the Works, Emendis will notify the Client thereof in writing. If the Client nevertheless insists on the

change and Emendis makes it, this will be done at the Client's own risk and without any liability for Emendis.

B.5.6. If the Client wishes to make any independent changes to the results delivered by Emendis, this will be done entirely at the risk and responsibility of the Client, unless the Client has reported the desired change to Emendis in advance and Emendis has approved this in writing. Emendis may attach conditions to this approval.

B.5.7. Remote support is provided by telephone, e-mail and other channels to be agreed together.

B.5.8. At the request of the Client, Emendis shall propose software with which computers to be supported can be remotely accessed. It is the responsibility of the Client to ensure that its network and security environment allows this software to work.

B.5.9. If it appears that remote support does not lead to a satisfactory solution or is not feasible given the nature of the problem, Emendis will consult with the Client to find an on-site solution.

MODULE C – HOSTING AND DOMAIN NAME REGISTRATION

If the Service (also) includes storage and/or forwarding of material supplied by the Customer to third parties, as in the case of web hosting, virtual servers and e-mail services or mediation in obtaining a domain name, the provisions of this module also apply.

ARTICLE C.1.   IMPLEMENTATION OF THE SERVICE

C.1.1. Emendis will set up a space for the Service as soon as possible after commencement of the Agreement. If such has been agreed, the log-in data for access to this space will be sent by Emendis to the Client.

C.1.2. Emendis will make every effort to achieve good quality and uninterrupted availability of the Service and the accompanying systems and networks, and to realise access to data stored by the Client with this. Emendis does not, however, offer any guarantees regarding quality or availability, unless otherwise agreed in the offer by means of a Service Level Agreement (SLA) designated as such.

C.1.3. The Client hereby grants Emendis an unrestricted licence to distribute, store, pass on or copy all materials distributed by the Client through the systems of Emendis in any way deemed suitable by Emendis, but only insofar as this is reasonably necessary for the performance of the Agreement by Emendis.

C.1.4. All changes with respect to the Service, either at the request of the Client or as a result of the fact that through whatever circumstances a different execution is necessary, will be considered, if they involve extra costs, as extra work and, if they involve less costs, as less work. These will be invoiced to Principal accordingly.

C.1.5. The Customer is not permitted to supply the Service to third parties (to "resell"), unless agreed otherwise in writing.

C.1.6. Emendis will not take cognisance of data which the Client stores and/or distributes through the systems of Emendis, unless this is necessary for a proper execution of the Agreement or unless Emendis is obliged to do so pursuant to a statutory provision or court order. In this case Emendis will make every effort to limit the access to the data as much as possible, insofar as this is within its power.

ARTICLE C.2.   GEDRAGSREGELS

C.2.1. The Client is prohibited from using the Service in violation of Dutch or other laws or regulations applicable to the Client or Emendis, or in violation of the rights of others.

C.2.2. It is prohibited (whether legal or not) by Emendis to offer or distribute, through the use of the Service, any Materials that:

    a. are clearly primarily intended to help others violate the rights of third parties, such as websites with (exclusively or primarily) hacking tools or explanations of computer

crime that are clearly intended to enable the reader to commit the criminal behaviour described and not to be able to defend themselves against it;

b. are unmistakably libellous, defamatory, offensive, racist, discriminatory or hate-mongering;

c. contain child pornography or bestiality pornography or are manifestly aimed at helping others to find such materials;

d. constitute an infringement of the privacy of third parties, including in any case but not exclusively the distribution of personal data of third parties without permission or necessity or the repeated harassment of third parties with communications they do not want;

e. contain hyperlinks, torrents or references to (sources of) material that clearly infringe copyrights, neighbouring rights or portrait rights;

f. contain unsolicited commercial, charitable or idealistic communications; or

g. contain malicious content such as viruses or spyware.

C.2.3. The Client shall refrain from hindering other clients or Internet users or causing damage to systems or networks of Emendis or other clients. The Client is forbidden to start up processes or programs, whether or not through the systems of Emendis, of which the Client knows or can reasonably suspect that this will hinder or damage Emendis, its clients or Internet users.

C.2.4. If, in the opinion of Emendis, hindrance, damage or any other danger occurs to the functioning of the computer systems or the network of Emendis or third parties and/or the provision of services via the Internet, in particular due to the excessive sending of e-mail or other data, (distributed) denial-of-service attacks, poorly secured systems or activities of viruses, Trojans and similar software, Emendis is entitled to take all measures it reasonably considers necessary in order to avert or prevent this danger. Emendis may recover the costs reasonably incurred in taking these measures from the Client.

C.2.5. If the measures referred to in Article C.2.4 consist of the (temporary) suspension of the Service, as a result of which it is not accessible, Emendis has the right to charge an amount of EUR 60,00 exclusive of VAT for reinstatement of the Service.

ARTICLE C.3. NOTICE & TAKEDOWN (COMPLAINTS PROCEDURE)

C.3.1. If Emendis receives a complaint about an infringement of the preceding article by the Client, or itself observes that this seems to be the case, Emendis will notify the Client as soon as possible of the complaint or infringement. The Client will respond as soon as possible, after which Emendis will decide how to proceed.

C.3.2. If Emendis considers a violation to have taken place, it will block access to the material in question, but without permanently removing this material (unless this proves to be technically impossible, in which case Emendis will make a backup). Emendis will make every effort not to hit any other materials in the process. Emendis will inform the Client as soon as possible of any measures taken.

C.3.3. Emendis is at all times entitled to report any criminal offence identified. Furthermore, Emendis is entitled to hand over the name, address and other identifying data of the Client to a third party who complains that the Client is infringing its rights or these General Conditions, provided the correctness of this complaint is sufficiently plausible and the third party has a clear interest in handing over the data.

C.3.4. Although Emendis strives to act as reasonably, carefully and adequately as possible after complaints about the Client, Emendis is never obliged to pay compensation for damage as a result of measures referred to in this article.

C.3.5. In the event of repeated complaints about the Client or the information stored by the Client, Emendis will be entitled to terminate the Agreement.

ARTICLE C.4. STORAGE AND DATA LIMITS

C.4.1. Emendis may set a maximum amount of storage space which the Client may use per month in connection with the Service.

C.4.2. Unused storage space, bandwidth and/or data traffic are not transferable to a following month, unless agreed otherwise in writing.

C.4.3. If the Client exceeds the applicable limits, Emendis may, after sending at least one warning message to the Client regarding the excess, charge an additional amount per data unit (e.g. MB or GB) equal to the amount exceeded, in accordance with the amounts applicable in the Price List.

C.4.4. The log files and the administration of Emendis are conclusive evidence of the actual consumption by the Client and are therefore decisive, unless the Client provides evidence to the contrary.

C.4.5. No liability exists for the consequences of not being able to send, receive, store or change data if an agreed limit for storage space or data traffic has been exceeded.

C.4.6. If an excessive amount of data traffic is caused by an external cause (such as a (distributed) denial-of-service attack), Emendis is entitled to reasonably charge the costs to the Client.

ARTICLE C.5.   SOFTWARE

C.5.1. Emendis will endeavour to keep the software it uses up-to-date. However, Emendis is dependent on its suppliers in this regard, and Emendis is entitled not to install certain updates or patches if in its opinion this does not benefit proper delivery of the Service.

C.5.2. Emendis guarantees that changes in the configuration or software on its hosting infrastructure (for example updates) will not adversely affect the operation of the web applications hosted on it. This insofar as these web applications have been developed by Emendis and have remained housed on the Emendis infrastructure uninterruptedly since their delivery.

C.5.3. In offering this guarantee Emendis will use the status of the software as indicated by the relevant supplier. If software has been given the status "end of life", is being phased out at an accelerated pace, is no longer being maintained and/or no longer receives updates for security problems, Emendis will, in view of the security of its infrastructure, also phase out this software. The guarantee mentioned in the previous paragraph will then lapse.

C.5.4. Emendis is in this case not obliged to assist the Client, free of charge, in making any required changes to the web application, or in transferring the web application to the hosting infrastructure of a third party.

ARTICLE C.6.   DOMAIN REGISTRATION

C.6.1. Application, assignment and possible use of a domain name are subject to and governed by the applicable rules and procedures of the relevant registering authorities, such as the Stichting Internet Domeinregistratie Nederland (SIDN) in the case of .nl domain names. The relevant authority decides on the allocation of a domain name. Emendis only plays an intermediary role in the application and gives no guarantee that an application will be granted.

C.6.2. The Client can only ascertain the fact of registration from the confirmation issued by Emendis, which states that the requested domain name has been registered. An invoice for registration costs is not confirmation of registration.

C.6.3. The Client indemnifies and holds Emendis harmless for any damage in connection with (the use of) a domain name on behalf of or by the Client.

C.6.4. Emendis is not liable for the loss by the Client of its right(s) to a domain name or for the fact that the domain name is applied for and/or obtained in the meantime by a third party, except in the case of intent or conscious recklessness on the part of the Client.

C.6.5. The Client must comply with the rules set by the registering authorities for application, assignment or use of a domain name. Emendis will refer to these rules during the registration procedure.

C.6.6. The rules referred to in the previous paragraph will be made available to the Client by Emendis in good time and prior to registration.

C.6.7. In the event that Emendis registers a domain name in its name for the benefit of the Client, Emendis shall lend its co-operation to requests made by the Client for the transfer, cancellation or relocation of this domain name. Any resulting costs, including but not limited to trade costs, are for the account of the Client.

C.6.8. Emendis has the right to make the domain name inaccessible or unusable, or to place it (or have it placed) in its own name, if the Client demonstrably fails to comply with the Agreement, but only for

as long as the Client is in default and only after the expiry of a reasonable term for compliance set in a written notice of default.

C.6.9. In the event of dissolution of the Agreement for breach of contract by the Client, Emendis is entitled to terminate a domain name of the Client with two (2) months notice.

ARTICLE C.7.   MALFUNCTIONS

C.7.1. Emendis has the right to put its systems, including the Service, or parts thereof temporarily out of commission for maintenance, modification or improvement purposes. Emendis will endeavour to arrange for such taking out of service to take place as far as possible outside Working Hours and will make every effort to notify the Client of the planned taking out of service in good time. However, Emendis will never be liable to pay compensation for damage in connection with such taking out of service.

C.7.2. Emendis has the right to adjust its systems, including the Service, or parts thereof from time to time in order to improve functionality and to repair errors. If a modification leads to a substantial change in functionality, Emendis will make every effort to notify the Client thereof. In the case of adjustments that are relevant for several Clients, it is not possible to waive a particular adjustment for the Client only. Emendis is not liable for any compensation of damage caused by such a modification.

C.7.3. Emendis will make every effort to inform the Client of the nature and expected duration of the interruption if the Service is unavailable, due to failures, maintenance or other causes.

ARTICLE C.8.   PROCEDURE AFTER TERMINATION

C.8.1. After termination of the Agreement, as a result of cancellation or dissolution, all data stored for Customer shall be kept available for one week after termination, so that Customer can download the data himself. After this period, all data of Customer will be deleted, regardless of whether Customer has downloaded them or not.

C.8.2. The deletion of data stored for the Customer is carried out by default without any special precautions being taken to make the deletion irreversible, but can, on request and for an additional charge, be carried out using a software-based data shredder.