

**Fellowmind Netherlands**

**General Terms**

Version 2.0

**Fellowmind**



**Content**

Article 1 Definitions ..... 3

Article 2 General ..... 4

Article 3 Conclusion of the Agreement ..... 5

Article 4 Service provision ..... 5

Article 5 Provision of Standard Software and/or Bespoke Software ..... 7

Article 6 Development of Bespoke Software ..... 8

Article 7 Implementation Guidance ..... 9

Article 8 Acceptance ..... 10

Article 9 Managed Services ..... 10

Article 10 Consultancy ..... 11

Article 11 Training ..... 11

Article 12 Fees and payment ..... 12

Article 13 Duration and termination ..... 14

Article 14 Liability ..... 15

Article 15 Force majeure ..... 16

Article 16 Intellectual property and indemnification ..... 17

Article 17 Confidentiality and security ..... 18

Article 18 Processing of personal data ..... 19


Article 19 Non-solicitation ..... 21

Article 20 Applicable law and competent court ..... 21




## **Article 1 Definitions**

- 1.1 **Agreement:** the agreement under which the Customer is provided with Services by or through Fellowmind.
- 1.2 **Bespoke Software:** Customer-specific software or modifications to Standard Software to be realized by Fellowmind in the form of Services.
- 1.3 **Customer:** Fellowmind's contracting party, as stated in the Agreement.
- 1.4 **Fellowmind:** Fellowmind Netherlands B.V. with Chamber of Commerce number 12060560.
- 1.5 **Fellowmind Project Methodology:** the methodology that the parties shall use for their work, as specified in the Agreement.
- 1.6 **General Terms:** these general terms and conditions.
- 1.7 **Hosting:** the provision of servers and disk space to the Customer for the purpose of executing computer programs and for data storage.
- 1.8 **Implementation:** Customer's preparation for commissioning the Standard Software and Bespoke Software in its company by means of parameterization, set-up, data provision, settings and (simulation) tests, aimed at company's practices, guided and supported by Fellowmind by means of the Services agreed with the Customer.
- 1.9 **Implementation Guidance:** the support and advice provided to assist in setting up and configuring the Standard Software by the Customer.
- 1.10 **License:** the right or subscription enabling the Standard Software made available to be used in accordance with the Software Terms Of Use for the agreed duration.
- 1.11 **Licensor:** the party holding the rights to the Standard Software who grants the License to use the Standard Software to the Customer.
- 1.12 **Live Date / Go Live:** the date the implemented Standard Software is put into operation to support the Customer's business processes.
- 1.13 **Services:** the work to be performed by Fellowmind as specified in the Agreement and/or the provision of Standard Software to the Customer through Fellowmind.
- 1.14 **Software Terms Of Use:** the conditions attached to the Customer's right to use the Standard Software, (also referred to by some suppliers of Standard Software as "License Terms").

- 
- 1.15 **Standard Software:** A distinct and independently identifiable quantity of computer programs, for which Fellowmind has acquired the right to provide to the Customer the usage right on behalf of the intellectual property owner.
- 1.16 **Third Party/Parties:** a party/parties other than the Customer and/or Fellowmind

## **Article 2 General**

- 2.1 Solely these General Terms apply to all offers and Agreements under which Fellowmind provides Services (of any nature and under any name) to the Customer. These General Terms shall also always apply to further or subsequent Agreements concluded by the parties, even if such Agreements do not specifically refer to these General Terms.
- 2.2 The applicability of any terms and conditions, including purchasing terms and conditions, of the Customer is hereby explicitly excluded.
- 2.3 Deviations from and additions to these General Terms or Agreements - including oral agreements - are only valid if the parties have confirmed them in writing. The other provisions of these General Terms or Agreements shall then remain in full force and effect.
- 2.4 If any provision of these General Terms is void, nullified, or unenforceable for any other reason, it shall not affect the validity of the other provisions of these General Terms. In that case, the parties shall enter into consultations with a view to agreeing on new provisions that, to the extent possible, have the same purport as the original provision.
- 2.5 If the parties make any conflicting arrangements, the following order of precedence shall apply (with more specific documents prevailing over general ones): (1) further arrangements confirmed in writing, (2) the Agreement (including the agreed Fellowmind Project Methodology included in the Agreement), (3) these General Terms, (4) quotations and offers.
- 2.6 The basis of our arrangements is the information the parties have received from each other. Both parties warrant that they have provided each other with complete and correct information.
- 2.7 The Customer may not assign its rights and obligations under the Agreement to a Third Party without Fellowmind's prior consent in writing. Fellowmind is allowed to transfer its rights and obligations to a parent, sister, or subsidiary company without further consent from the Customer.
- 2.8 The parties shall inform each other of any changes in administrative data, preferably at least 30 days before the effective date of any such change.

- 
- 2.9 The risk of loss, theft, embezzlement, or damage to goods, data (including: usernames, codes and passwords), documents, software, or data files created for, supplied to, or used by the Customer in the context of the execution of the Agreement, transfers to the Customer at the moment they come under the actual control of the Customer or a Third Party engaged by the Customer.

### **Article 3 Conclusion of the Agreement**


- 3.1 All offers by Fellowmind are non-binding and Fellowmind may revoke them, unless explicitly stated otherwise.
- 3.2 Agreements are only concluded if confirmed in writing by the parties.
- 3.3 Fellowmind reserves the right to refuse assignments for reasons of its own, in which case Fellowmind will notify the Customer as soon as possible. This does not create any right to compensation for the Customer.
- 3.4 If the Customer does not explicitly indicate its agreement with a proposal but nonetheless agrees or gives the impression that Fellowmind may carry out activities falling within the description of the Services, the proposal shall be deemed accepted. This applies even when the Customer requests Fellowmind to perform certain activities without awaiting a signed Agreement.
- 3.5 If the acceptance deviates (on minor points) from the proposal, Fellowmind is not bound by it. The Agreement is not concluded in accordance with this deviating acceptance, unless Fellowmind indicates otherwise.
- 3.6 A composite offer does not obligate Fellowmind to perform a portion thereof at a corresponding portion of the stated price.
- 3.7 Offers do not automatically apply to future assignments.
- 3.8 If, during the execution of the Agreement, it becomes apparent that it is necessary to modify the nature and/or scope of the Services for a proper execution, the Parties shall timely and mutually adjust the Agreement accordingly. If a modification or addition to the Agreement has financial and/or qualitative implications and/or implications for the timeline, Fellowmind shall inform the Customer in advance.

### **Article 4 Service provision**

- 4.1 The success of the Services depends on the parties performing their mutual duties and responsibilities correctly and on time. The parties shall grant each other any reasonable assistance needed to enable the Services to run smoothly. Both Fellowmind and the Customer commit to proper mutual cooperation and complete and timely communication.




- 4.2 Fellowmind will use its best efforts to perform its Services properly and with due care. This best efforts obligation applies to all Fellowmind Agreements and Services.
- 4.3 To the extent applicable to the specifically agreed Services, Fellowmind will perform its duties in accordance with an agile method that is characterized by working in an iterative way (scrum). The parties accept that the Services specifications are not fully defined in advance and may be modified in consultation as the work is being carried out, e.g. for the purposes of a subsequent iteration. This also means that the nature and scope of the work to be carried out by Fellowmind may change during Implementation. This depends on the extent of the Customer's need for Fellowmind's support.
- 4.4 All deadlines (including delivery deadlines) agreed by the parties are based on the data and circumstances known when the Agreement is concluded. Fellowmind and the Customer both use their best efforts to meet the agreed deadlines. The stated deadlines (including delivery deadlines) are indicative. If deadlines are not met, the lead time of the Services will increase. This will affect the costs.
- 4.5 Fellowmind determines the manner in which the Services are to be performed and the persons who work on them on its behalf. Fellowmind may engage Third Parties to carry out certain work. Fellowmind will be responsible for the work carried out by those Third Parties.
- 4.6 If Fellowmind employees work on the Customer's premises, the Customer shall provide the necessary facilities in good time and free of charge. These facilities must meet all statutory requirements. The Customer indemnifies Fellowmind against claims of Third Parties, including Fellowmind employees, who, in connection with the performance of the Agreement, suffer damage resulting from the Customer's acts or omissions or from unsafe situations in its organization. The Customer shall provide written copies of its company rules, information rules and security rules to the employees deployed by Fellowmind before the work begins.
- 4.7 The Customer grants Fellowmind access to all locations, services, and accounts under its management (such as the Microsoft tenant and web hosting accounts) that Fellowmind reasonably requires to provide the Services. Customer will designate a point of contact who will act as the liaison throughout the duration of Fellowmind's activities.
- 4.8 If Fellowmind has scheduled its employee(s) to work for the Customer and that work cannot proceed (e.g. due to unavailability of the Customer's employees), Fellowmind reserves the right to charge the scheduled work (for up to four (4) weeks). Fellowmind will only exercise this right if, after having used its best efforts, it has failed to deploy the employee(s) in question elsewhere in a timely manner. This also applies if scheduled work is suspended, paused or delayed due to causes that cannot be attributed to Fellowmind. In such case, Fellowmind reserves the right to provide other consultants/project team members to the Customer when the activities will resume.

- 
- 4.9 If Fellowmind gives advice, as part of its work or otherwise, it shall be deemed confidential and given solely for the benefit of the Customer. Advice is given based on the information the Customer provides.

## **Article 5 Provision of Standard Software**


- 5.1 The Licensor has authorized Fellowmind to act as a partner. The Customer can purchase a License to use Standard Software through Fellowmind; Fellowmind fulfils a facilitating role in this regard. The License is granted directly by the Licensor to the Customer. If the processing of personal data via the Standard Software is applicable, the Customer enters into a data processing agreement with Licensor under the conditions set out in Licensor's Software Terms of Use. If the Customer wants to contact the Licensor, Fellowmind can facilitate this upon request.
- 5.2 The Licensor is responsible for the quality, functionality, performance and/or availability of Standard Software. If a problem arises in this regard, Fellowmind will, if desired, provide Services to assist the Customer in finding a solution. It is not possible to claim that Fellowmind substitutes the Licensor. The Customer shall evaluate whether the Standard Software is appropriate for the Customer's intended purposes.
- 5.3 Fellowmind's facilitating role with respect to Licenses includes taking care of invoicing. Unless the Agreement contains other arrangements, invoices for Licenses (and any maintenance) are sent annually and in advance. The Customer may only use a License if it has paid the relevant invoice before the start of the relevant License period.
- 5.4 The Licensor of the Standard Software gives permission for the Standard Software to be used solely under the Software Terms Of Use. Fellowmind may not make any arrangement regarding the Standard Software that conflicts with these Software Terms Of Use, nor may it amend these Software Terms Of Use. If any arrangement between Fellowmind and the Customer conflicts with the Software Terms Of Use, the Software Terms Of Use shall prevail. The Customer may request the current Software Terms of Use from Fellowmind at any time, if desired.
- 5.5 If the Customer signs the (subscription) Agreement for the License(s) and/or uses the Standard Software, it accepts the relevant Software Terms Of Use. The Customer warrants that it will only use the Standard Software in accordance with the Software Terms Of Use and Fellowmind's instructions.
- 5.6 If a License is extended, the Licensor's most recent Software Terms Of Use shall apply as of the extension date. If requested, Fellowmind will make the then current Software Terms Of Use available to the Customer.
- 5.7 If, during the term of a License, the Customer orders additional quantities of the same License or closely related Licenses, the term of these additional Licenses will be synchronized with the initial License so that all identical and closely related Licenses will be subject to the same term on the extension date.

- 
- 5.8 When a Licensor delivers Standard Software including Hosting, the Licenses for Standard Software shall entitle the Customer to a designated amount of data storage capacity as determined by the Licensor. In the event that the Customer stores more data than allowed based on the Licenses, the Customer shall either cleanse the data or order additional storage capacity. Fellowmind may, upon request, assist the Customer in data cleansing.
- 5.9 Fellowmind and the Licensor have the right to check whether the actual use conforms to the License obtained. The Customer shall cooperate fully in this regard. Fellowmind shall treat all confidential business information obtained during an investigation of or from the Customer, to the extent that such information does not pertain to the use of the Standard Software, as confidential. If the actual use exceeds the License obtained, the Customer shall retroactively pay the additional License fees due for the preceding twelve (12) months (or less), in accordance with the relevant terms and conditions set by the Licensor and shall immediately adjust the size of the License to comply with actual usage.
- 5.10 Licenses may only be terminated prematurely if authorized by the Licensor for the relevant License. Early termination may be subject to terms and conditions and charges.
- 5.11 The data retention period after a License expires is specified in the Software Terms Of Use. The Customer is at all times responsible for the (timely) retrieval of data stored in the Standard Software and/or Bespoke Software. Upon or after termination of a License, Fellowmind is not automatically obligated to provide assistance for data conversion to other systems as desired by the Customer and shall not be held liable in the event that data becomes unavailable.
- 5.12 Agreements on the provision of Standard Software shall never be considered to be purchase agreements.

## **Article 6 Development of Bespoke Software**


- 6.1 If the Customer is of the opinion that the functioning of the Standard Software does not fully meet its requirements, he may choose to adapt its process to the functioning of the Standard Software or to ask Fellowmind to develop Bespoke Software. Developing Bespoke Software increases costs and may result in longer lead times for Services. Fellowmind reserves the right to refuse to develop Bespoke Software if, in its professional opinion, that would be irresponsible.
- 6.2 If Bespoke Software is a modification or extension to Standard Software, it is subject to the Software Terms Of Use. The Customer obtains a free, worldwide, perpetual, non-withdrawable and irrevocable right to use Bespoke Software, to the extent Fellowmind may grant a License for it. Unless otherwise agreed, the Customer may only use the Bespoke Software provided in and for its own organization. Any other use, including making the Bespoke Software available to Third Parties (other than for maintenance/management purposes), is not permitted without Fellowmind's prior written consent.



- 
- 6.3 Fellowmind does not have any maintenance obligation with respect to Bespoke Software, unless the parties have expressly agreed to this in writing. If Bespoke Software no longer functions, either wholly or in part, due to a newly implemented version of Standard Software, Fellowmind can provide assistance in modifying the Bespoke Software. The parties will then make separate arrangements for this.
- 6.4 Development of Bespoke Software shall be conducted based on a service agreement. The Customer accepts the Bespoke Software in the state it is in at the conclusion of the final development phase ("as is, where is").
- 6.5 Fellowmind does not warrant that the Bespoke Software is fault-tolerant and/or free from defects, nor does it warrant that it will not conflict with other software or operate without interruption. This is particularly relevant in conjunction with all types (or new versions of) web browsers and any other software or equipment not tested with the Bespoke Software prior to acceptance.
- 6.6 Agreements on the provision of Bespoke Software shall never be considered to be purchase agreements.

## **Article 7 Implementation Guidance**

- 7.1 If Fellowmind agrees with the Customer to perform Implementation Guidance, the parties shall determine, in the Agreement, how the Implementation Guidance will be carried out. If the Parties do not specify in the Agreement how the Implementation Guidance will be carried out, then Fellowmind will be providing consultancy (aArticle 10 Consultancy).
- 7.2 Fellowmind works on the basis of its experience and best practice methods. The Customer is responsible for ascertaining whether the proposed setup of its systems is properly applicable and functions correctly for its organization, before deciding to put the system into operation. Putting the system into operation shall imply that the Customer has accepted the functioning of the system.
- 7.3 Unless the parties specifically agree in writing otherwise, the Customer is responsible for the project. Its duties include managing the project, monitoring its progress and making final setup choices. The Customer shall ensure permanent and active input from its organization and cooperation from relevant key users and end users. The Customer shall constitute a project team for this purpose and shall ensure that the project team members are available for the activities scheduled for the Implementation. The Customer warrants that it will make swift decisions during the Implementation. If decisions are not clear and on time, the Customer shall accept the risk of delay.
- 7.4 If the Customer decides to suspend an ongoing Implementation for more than four (4) weeks before the scheduled Live Date, Fellowmind shall be entitled to compensation of fifty (50) percent of the hours scheduled for the Customer during the first three (3) months after the suspension date. Article 4.8 of these General Terms shall then no longer apply. If the Customer then decides to resume the relevant Implementation within one (1)



year, the Customer shall be entitled to a twenty-five (25) percent discount on the project's hourly rate. The total resumption discount in this regard shall never exceed half of the compensation paid by the Customer pursuant to the first sentence of this article. A suspended Implementation that has not been resumed within one (1) year from the suspension date shall be considered terminated in accordance with article 7.5.


- 7.5 If the Customer decides to terminate an ongoing Implementation prior to the scheduled Live Date (other than in accordance with articles 13.4 and 13.5), Fellowmind shall be entitled to compensation for lost revenue. This compensation is calculated by dividing the number of calendar months remaining from the termination date until the scheduled Live Date / Go Live by the number of calendar months from the start of the Implementation until the scheduled Live Date / Go Live. This number is multiplied by the calculated number of hours times the agreed hourly rate times 30 (thirty) percent. If the result of the calculation stipulated in this article is lower than the amount that the Customer would have owed based on article 7.4, the Customer shall owe the amount based on article 7.4 instead of the compensation calculated pursuant to this article 7.5.

## **Article 8 Acceptance**

- 8.1 If the parties have agreed an acceptance arrangement (e.g. via the chosen Fellowmind Project Methodology), the Services shall be considered to have been accepted once that acceptance arrangement has been completed successfully. Notwithstanding the foregoing, Services shall be deemed accepted as soon as their outcome is put into operation.
- 8.2 If the parties have not agreed an acceptance arrangement, the Services provided shall be deemed accepted as soon as the Services have been performed.
- 8.3 If the parties have agreed that the Services will be performed in phases, Fellowmind may suspend performance of any of parts of it due to be provided in a subsequent phase until the Customer has approved the results of the current phase in writing. If Fellowmind does not receive this requisite written approval within 30 calendar days after the end of the relevant phase, performance of that part of the Services shall be deemed accepted.

## **Article 9 Managed Services**

- 9.1 If agreed, Fellowmind will provide the Customer with managed Services. In order to be able to provide managed Services for Standard Software, the Licensor may ask the Customer to register Fellowmind as a "partner". Without this registration, managed Services cannot be provided for Standard Software. The Customer proactively provides all cooperation in effecting the requisite partner registrations.
- 9.2 In principle, these managed Services are contracted through a managed Services agreement or service level agreement (SLA). In the absence of a managed Services agreement or SLA the provisions outlined in this article shall apply if Fellowmind provides managed Services.


- 
- 9.3 As regards Standard Software, Fellowmind is only obliged to provide support for as long as and to the extent that the Licensor of the relevant Standard Software supports the version concerned. Fellowmind may require that, for the provision of a new version, the Customer enters into a separate written Agreement with Fellowmind and pays an additional fee.
- 9.4 Managed Services are provided remotely wherever possible, in accordance with the rates specified in the Agreement. Upon the Customer's request, Fellowmind may propose software to facilitate remote access to computers. It is the Customer's responsibility to assess whether this software aligns with its requirements and ensure that its network and security environment allow for its operation. If it is determined that remote support does not lead to a satisfactory solution or is unfeasible given the nature of the problem, Fellowmind will make efforts to reach a resolution.
- 9.5 The Customer shall describe software issues within the scope of support as comprehensively and detailed as possible, enabling Fellowmind to respond adequately. Well-substantiated requests for support will be processed in accordance with Fellowmind's customary procedures within a reasonable period. Fellowmind performs its activities on a "best effort" basis. Support is provided on business days during Fellowmind's regular business hours, unless the parties have made other arrangements.

## **Article 10 Consultancy**

- 10.1 The parties may agree that Fellowmind is to perform consultancy Services entirely independently, at its own discretion and without the Customer's supervision and direction.
- 10.2 Fellowmind performs its (consultancy) Services based on its experience and best practice methods. The Customer is responsible for ascertaining whether the results of the Services provided can be applied properly and function correctly for the Customer's organization before deciding to put the results into operation.
- 10.3 Fellowmind is responsible for complying with tax and social security law obligations arising from a consultancy Services Agreement, including obligations related to the UWV (Dutch Employee Insurance Agency). Fellowmind indemnifies the Customer against any claims in this regard.


## **Article 11 Training**


- 11.1 Unless otherwise agreed, Fellowmind will provide group training to the Customer's employees regarding the use of the Standard Software or other agreed-upon topics.
- 11.2 All training registrations will be confirmed in writing by Fellowmind and will not become final until this confirmation.

- 
- 11.3 If the Customer (and/or its employees) cancels its planned participation in a group training within five (5) working days before the start of the training, the full costs will be charged. The registered participant can still follow the training on the next occasion that the same group training is given by Fellowmind and insofar as Fellowmind agrees to this, for which additional costs may be charged.
- 11.4 In the event of cancellation by the Customer (and/or its employees) of a custom-developed training course for the Customer within ten (10) working days before the start of this, the full costs will be charged.
- 11.5 Fellowmind reserves the right, without stating reasons and/or any obligation to pay compensation, to change already confirmed training data. Fellowmind may also change or combine training, or in the worst case cancel a training in the event of (among other things) insufficient interest, or no availability of a teacher. The Customer will be informed of this (if possible) before the start of the training. Any training costs already paid for the specific training will be refunded by Fellowmind in the event of cancellation.
- 11.6 The training participant may keep the provided training material. All intellectual property rights therein rest with Fellowmind and/or Third Parties. Reproduction of the training material is not allowed without the permission of Fellowmind.

## **Article 12 Fees and payment**


- 12.1 The fees the Customer owes Fellowmind for the Services to be provided are set out in the Agreement.
- 12.2 The work is invoiced on the basis of subsequent calculation (time and material) at Fellowmind's applicable hourly rates and based on the number of hours (or parts of an hour) actually worked. Invoices are sent on a weekly basis.
- 12.3 If Fellowmind offers a calculation for the Services, it will be based on the information available at that time. Such calculation is not a budget or contract price, but the most accurate assessment of the cost possible, at that time. If it appears that the scope, content and/or complexity of the Services differs significantly from that assumed when the calculation was prepared, the parties will consult with each other. At the Customer's request, Fellowmind will provide an updated calculation.
- 12.4 All amounts and rates quoted by Fellowmind are in euro, excluding VAT and other government levies or charges, and excluding travel and accommodation expenses, administration costs and shipping costs.
- 12.5 Fellowmind's work is subject to the following provisions, unless the parties expressly agree otherwise:
- a) The work is carried out on working days between 8:00 a.m. and 6:00 p.m.;

- 
- b) Travel expenses (mileage) are charged only in the event of on-site work. These are based on the return travel distance from the nearest Fellowmind establishment, specialized in the type of Services that the Agreement mainly consists of, to the worksite.
- c) Fellowmind does not charge travel time for full on-site working days (i.e. eight (8) hours). Fellowmind tries to schedule as many full working days as possible. For on-site working days of fewer than eight (8) hours, the actual travel time at the current hourly rate will be charged. If working hours and travel time together exceed eight (8) hours, the travel time in excess of eight hours will not be charged.
- d) If consultants work on-site, Fellowmind will charge a minimum of four (4) hours per day (regardless of the work).
- e) For assignments outside the Netherlands, the actual travel time as well as travel and accommodation costs will be charged.
- 12.6 When work is performed at the Customer's request outside the times specified in article 12.5 the hourly rates will be increased by the following percentages:
- a) Working days from 6 p.m. to 8 a.m. and Saturdays: 50%
- b) Sundays and public holidays: 100%
- 12.7 If Fellowmind carries out additional work at the Customer's request, this work shall qualify for reimbursement as contract extras. Fellowmind will carry out such work at the then current hourly rates and charge for it in arrears.
- 12.8 Fellowmind reserves the right to change its rates and fees on 1 January every year, in accordance with the CBS Price Index "M-N Business Services" salary under collective agreements, contractual hourly labor costs (index 2010=100). Indexing is based on the year-on-year method (jaar-op-jaar methode). In addition, Fellowmind is entitled at all times to pass on to the Customer any price increases resulting from price increases of Licensors of Standard Software.
- 12.9 If the Customer disagrees with an invoice, it shall notify Fellowmind of this in writing within 14 days of the invoice date. The parties will then consult with each other as soon as possible to discuss the dispute. If the dispute is only about part of the invoice, the Customer shall pay the non-disputed part within the agreed payment period.
- 12.10 If Fellowmind and the Customer agree a special discount on an hourly rate (e.g. based on the volume of Services within a project), these special hourly rates shall not apply to Services performed outside of this project, such as managed Services.

- 
- 12.11 Unless otherwise agreed (e.g. payment of Licenses in accordance with article 5.3), payment must be made within 28 days of the invoice date. If the Customer does not make payment, or the Customer's payment is late or incomplete, Fellowmind will issue a written notice of default, granting it a reasonable period of time to meet its payment obligations. If the Customer fails to meet its payment obligation within this reasonable period, it shall be in default without any further notice of default. The Customer shall then owe the statutory commercial interest (pursuant to article 6:119a of the Dutch Civil Code (Burgerlijk Wetboek)) from the invoice due date up to and including the date of payment in full, without prejudice to Fellowmind's other rights. The Customer shall pay any costs, both judicial and extrajudicial (including in any case collection and enforcement costs), incurred by Fellowmind to enforce the Customer's fulfilment of its payment obligations. Extrajudicial costs are set at 15% of the invoice amount, but no less than three hundred and fifty (350) euros.
- 12.12 In the event that the Customer fails to pay the due amounts, or does not pay them in a timely or complete manner, Fellowmind is entitled, following a written warning, to limit and/or suspend its Services to the Customer. After a renewed warning, Fellowmind may block the use of the Services until the amounts have been paid. Fellowmind shall not be liable for any damages incurred by the Customer due to the limitation or blocking of Services resulting from the Customer's failure to pay the due amounts.
- 12.13 For Licenses for Third Party Standard Software Fellowmind guarantees that the Customer will be discharged from its payment obligations in this regard once it pays Fellowmind.
- 12.14 If the Customer cancels the Agreement before the work starts, Fellowmind shall be entitled to a cancellation fee of 15% of the sum of the hours calculated for the Agreement in question, multiplied by the agreed hourly rate.


### **Article 13 Duration and termination**

- 13.1 The initial term of the Agreement is specified in the Agreement. If the Agreement does not specify a term, the term of the Agreement shall be one (1) year. Unless otherwise agreed, the term of the Agreement shall be automatically extended by one (1) year after the initial term expires and following every extension after that.
- 13.2 Either party may terminate the Agreement with effect from the end of the term (or extended term) of the Agreement, with due observance of at least two (2) months' notice. Early termination of the Agreement by the Customer is not possible.
- 13.3 Notwithstanding articles 13.1 and 13.2, Agreements on Implementation Guidance shall terminate once the hyper care period ends. Either party may terminate the Agreement on Implementation Guidance in writing by registered letter, with due observance of a notice period of at least two (2) months. If a party terminates the Agreement in this manner, it shall not be obliged to pay compensation for any resulting damage, except as provided by article 7.5.

- 
- 13.4 Either party is only entitled to terminate the Agreement due to an attributable failure to perform it if the other party attributably fails to fulfil material obligations under the Agreement, provided it has been given notice of default in a registered letter providing as much detail as possible and stating a reasonable period to remedy the failure.
- 13.5 Without prejudice to their statutory rights, the parties may suspend the performance of their obligations or terminate the Agreement, wholly or in part, and without intervention of the courts or a notice of default, without being liable for any reimbursement or compensation, if: (a) a suspension of payments, provisional or otherwise, is applied for or granted in respect of the other party; (b) the other party petitions for insolvency or is declared insolvent; (c) the other party's business is liquidated or terminated other than for the purpose of restructuring or merging businesses. In the event of liquidation, bankruptcy, seizure, moratorium, or debt restructuring of the Customer, all amounts owed by the Customer to Fellowmind become immediately due and payable.
- 13.6 If the Agreement is terminated and Fellowmind has already provided Services under the Agreement, such performance and the related payment obligations shall not be subject to cancellation. Subject to the provisions of the preceding sentence, any amounts that Fellowmind has invoiced for what it has already performed or delivered in performance of a Service before such cancellation shall continue to be owed in full and shall be due and payable immediately upon such cancellation.
- 13.7 After an Agreement ends, any arrangements between the parties which by their nature were intended to continue after it ends (e.g. confidentiality, acquisition of personnel, liability, applicable law, etc.) shall remain in full force and effect.
- 13.8 Upon ascertaining that an Agreement has terminated, Fellowmind will upon request of the Customer provide all the cooperation needed to enable the Customer to ensure a smooth transition to a new system and/or new supplier. The Customer shall reimburse the reasonable costs incurred for activities referred to in this article at Fellowmind's actual prevailing hourly rates.
- 13.9 If the Agreement on the provision of Standard Software ends, for any reason and on any grounds whatsoever, the Customer shall immediately cease to use any and all Standard Software provided and, if applicable, immediately remove any and all copies of it from its systems, unless explicitly agreed otherwise.

#### **Article 14 Liability**

- 14.1 Fellowmind's total liability for damage suffered by the Customer due to any failure by Fellowmind or a person through whom it is liable by law to perform the Agreement or for any other reason (including warranty and indemnification obligations) is limited to compensation for direct damage, capped at the invoice amount paid (excluding VAT) under the Agreement under which the event causing the damage occurred. If the term of an Agreement exceeds twelve (12) months, this compensation shall be capped at the amount invoiced and



received by Fellowmind over the last twelve (12) months preceding the occurrence of the damage. Fellowmind's total liability for direct damage shall never exceed two hundred and fifty thousand (250,000) euros. A series of related events or a sequence of events arising from a common cause or reason is considered to be one event. "Direct damage" means solely:

- a) reasonable costs that the Customer would have to incur to have Fellowmind's performance comply with the Agreement; this alternative damage is not compensated however, if the Agreement is rescinded by or on application of the Customer;
- b) reasonable costs that the Customer has had to incur to keep its old system(s) and related facilities operational for an extended period of time, less any savings;
- c) reasonable costs incurred to determine the cause and extent of the damage, insofar as such determination relates to direct damage within the meaning of these General Terms;
- d) reasonable costs incurred to prevent or mitigate damage, insofar as the Customer demonstrates that these costs have mitigated direct damage within the meaning of these General Terms.

14.2 Fellowmind is not liable for indirect damage. "Indirect damage" means: consequential damage, loss of profit, lost savings, reduced goodwill, damage due to business interruption, loss or disruption of production, damage as a result of claims from the Customer's customers, mutilation or loss of data and any forms of damage other than those mentioned in paragraph 1, for whatever reason.

14.3 The limitations of liability in this article do not apply if the Customer's damage is caused by intent or gross negligence on Fellowmind's part.


14.4 A condition for the creation of any right to compensation is always that the Customer reports the damage to Fellowmind as soon as possible, but no later than three (3) months after the damage occurred.

14.5 Fellowmind is insured adequately and will maintain insurance while the Agreement continues to be in effect.

## **Article 15 Force majeure**


15.1 A situation of force majeure arises when the parties cannot properly meet their obligations and it is neither Fellowmind's nor the Customer's fault, nor do either of them bear the risk of that by law or according to commonly accepted standards. In this context, "force majeure" includes, but is not limited to: power outages, failure of Internet and/or other telecommunications connections, power supply failures and/or communications networks, computer viruses, (cyber) crime or hacks (in the widest possible sense), as well as any other circumstances beyond Fellowmind's or the Customer's control.



- 
- 15.2 If the period of force majeure continues for more than two (2) months or it can be said with certainty that it will continue for at least as long as that, either party may terminate the Agreement, subject to a notice period of one (1) month, without any obligation to compensate the other party for damage. The parties shall settle what has been performed under the Agreement(s) up to that time on a prorated basis. If there is a situation of force majeure, the party invoking it will notify the other party in writing as soon as possible, submitting the necessary written evidence.


## **Article 16 Intellectual property and indemnification**

- 16.1 All intellectual property rights relating to Standard Software, Bespoke Software and Fellowmind's Services, equipment, training materials, or other materials (such as analyses, designs, documentation, reports, proposals, as well as preparatory materials thereof) and websites (including its/their content) are vested exclusively in Fellowmind and/or the Third Parties.
- 16.2 Fellowmind indemnifies the Customer against any legal claim by a Third Party based on the allegation that Fellowmind's Bespoke Software or Services infringe any intellectual property right applicable in the Netherlands, provided that the Customer: (a) promptly notifies Fellowmind in writing of the existence and substance of the legal claim; and (b) leaves the handling of the matter, including making any settlements, entirely to Fellowmind. To this end, the Customer shall provide Fellowmind with any powers of attorney, information and cooperation that it needs it to put forward a defense, if necessary on behalf of the Customer, against such legal claims. This obligation to indemnify shall lapse if the alleged infringement relates to changes that the Customer has made to Fellowmind's Bespoke Software or Services, or has allowed a Third Party to do so. If it is irrevocably established at law that Fellowmind's Bespoke Software or Services infringe any intellectual property right belonging to a Third Party, or if Fellowmind is of the opinion that there is a reasonable chance that such an infringement will occur, Fellowmind will ensure, as far as possible, that the Customer can continue to use the product or functionally equivalent Bespoke Software or Services delivered by Fellowmind without disruption, e.g. by altering the infringing parts or by acquiring a right of use for the Customer. If Fellowmind is of the opinion that it cannot ensure that the Customer can continue to use the delivered product without disruption, or cannot ensure this other than in a manner that is unreasonably onerous (financially or otherwise), it will take back the delivered product in exchange for crediting the acquisition costs less a reasonable user fee. Fellowmind will only decide on this after consulting with the Customer. Fellowmind does not accept any other or further liability or indemnification obligation due to any infringement of Third Party intellectual property rights.
- 16.3 The Customer realizes that Third Parties make their own Standard Software available to it through Fellowmind, and that Fellowmind has no control over or influence on the creation and/or any modifications to that software. Accordingly, indemnification by Fellowmind, as provided in article 16.2, does not apply to Standard Software from Third Parties. This is governed by the terms of indemnification, if any, included in the Software Terms of Use.

- 
- 16.4 The Customer shall not provide any equipment, software, materials intended for websites, databases, and/or other materials, designs, and/or works to Fellowmind for which the Customer does not possess the (usage) rights and/or which the Customer is not authorized to provide to Fellowmind. The Customer indemnifies Fellowmind against any claim from a Third Party asserting that Fellowmind is infringing upon any right of that Third Party.
- 16.5 The Customer shall not remove or alter any indicator(s) regarding the confidential nature or intellectual property rights from the software, websites, databases, equipment, or materials, nor have them removed.
- 16.6 Fellowmind may use the Customer's figurative mark, logo or name in external communications.

### **Article 17 Confidentiality and security**

- 17.1 The parties are obliged to maintain confidentiality with regard to all confidential information (including software lists, documentation, benchmark tests, specifications, object codes, source codes and machine-readable copies of software, means of authentication, commercial information, e.g. quotations, price information and Agreements) belonging to the other party and/or Third Parties or from other sources that they obtain for the purposes of the Agreement. Information is considered confidential if this has been stated by a party or if this is inherent in the nature of the information.
- 17.2 The parties shall agree with their employees and/or Third Parties working for them, who could in fact gain access to the confidential data referred to in the preceding paragraph, a similar confidentiality obligation and guarantee to the other party that their employees and/or Third Parties engaged by them will comply with this confidentiality obligation.
- 17.3 Any obligation of confidentiality shall expire once the information becomes available through public sources. Furthermore, a party is entitled to provide confidential information to government authorities if required or necessary under a statutory provision, authorized order, or for a legal proceeding. In such case, the party shall promptly inform the other party thereof.
- 17.4 The parties are obliged to take appropriate technical and organizational security measures to protect confidential data of the other party and Third Parties that they obtain for the purposes of performing the Agreement against loss or any form of unlawful processing.
- 17.5 Access or identification codes, certificates or other security devices provided to the Customer are confidential and the Customer shall treat them as such. The parties shall only provide these access or identification codes, certificates, or other security measures to authorized personnel from their own organization. Fellowmind is authorized to modify assigned access or identification codes and certificates. The Customer is responsible for managing authorizations and for the provision and timely revocation of access and identification codes.




Fellowmind shall not be liable for any damages or costs resulting from the use, misuse or access of identification codes, certificates, or other security measures, unless such misuse is a direct result of intent or conscious recklessness on the part of Fellowmind.

- 17.6 If Fellowmind is obligated to provide a form of information security under the Ancillary Agreement, such security shall comply with the mutually agreed upon written specifications regarding security between the parties. Fellowmind does not warrant that the information security will be effective under all circumstances. The security shall be at a reasonable level considering the state of the art, implementation costs, the nature, scope, and context of the information to be secured as known to Fellowmind, the purposes and normal use of the products and Services, and the likelihood and severity of the foreseeable risks. If necessary due to changing circumstances Fellowmind is entitled to adjust security measures from time to time.
- 17.7 The Customer shall adequately secure and maintain the security of its systems and infrastructure. Fellowmind is entitled, after consulting with the Customer, to reasonably temporarily adjust the provision of Services when changes are necessary to mitigate or prevent the adverse effects of a security incident. Fellowmind will keep the consequences of the adjustment to a minimum and will fully inform the Customer about the incident and the changes made based on it.
- 17.8 Fellowmind may provide the Customer with instructions regarding security aimed at preventing security incidents or minimizing their potential consequences. The Customer shall promptly comply with such instructions.
- 17.9 If the security or testing thereof pertains to software, equipment, or infrastructure not supplied to the Customer by Fellowmind, the Customer shall ensure that all necessary licenses or approvals have been obtained to perform the intended Services. The Customer indemnifies Fellowmind against any legal claims, of any nature whatsoever, related to the absence of all necessary licenses or approvals as referred to in this article.
- 17.10 Fellowmind is permitted to implement technical and organizational measures to protect equipment, databases, provided software, or other works to which the Customer is (directly or indirectly) granted access, including in connection with an agreed limitation on the content or duration of the right to use these works. The Customer shall not (directly or indirectly) remove or circumvent such technical or organizational measures.

## **Article 18 Processing of personal data**

- 18.1 Although Fellowmind's Services are not primarily aimed at processing personal data, performing the Agreement may involve the processing of personal data of Third Parties (e.g. the Customer's customers). The parties agree that the Customer will then be considered the controller and Fellowmind the processor in this respect.

- 
- 18.2 If applicable the Customer hereby instructs Fellowmind to process such personal data on its behalf for the purposes of performing the Agreement. Fellowmind will process personal data only within the scope of the assignment arising from the Agreement and will otherwise process all personal data in accordance with the applicable laws and regulations. In this regard, Fellowmind will, among other things, take appropriate technical and organizational measures to secure the processing of personal data. Such security measures will reasonably provide an appropriate level of security, taking into account the state of the art, the cost of Implementation, the risks involved in the processing and the nature of the personal data, that is customary in the industry in which Fellowmind operates. Fellowmind does not guarantee that the security measures are effective under all circumstances.
- 18.3 If the Customer is of the opinion that the standard security measures to be taken by Fellowmind need to be modified or added to, the parties will discuss this. Any modified security measures must be agreed in writing and Fellowmind will charge the costs incurred for that to the Customer.
- 18.4 Personal data may be stored on systems belonging to the Customer, at least to others than Fellowmind. Fellowmind is not responsible for the security aspects of the processing and storage of personal data on such systems, but the owner or licensor of the systems concerned. In that case, Fellowmind, as a processor, is only responsible insofar as it concerns acts or omissions in the processing of personal data that are exclusively attributable to Fellowmind, independent of the system.
- 18.5 The parties undertake to act in accordance with the applicable privacy laws and regulations. The Customer guarantees to Fellowmind that the content, use and/or processing of the data is not unlawful and does not infringe any right of a Third Party/Parties. The Customer indemnifies Fellowmind against any legal claim by a Third Party/Third Parties, on any basis whatsoever, in connection with such personal data processing.
- 18.6 In the unlikely event of a breach of Fellowmind's security measures, Fellowmind will notify the Customer as soon as possible, observing its own obligations to take effective measures in such event in order to reverse to the extent possible the negative consequences resulting from the incident and to limit further negative consequences as much as possible. Fellowmind will keep a log of the incidents referred to in this paragraph, as well as the measures taken in response to such incidents, and will make them available for inspection at the Customer's request. To the extent that the Customer deems it necessary to inform the responsible authorities or data subjects about one or more incidents referred to in the preceding articles, Fellowmind will provide all reasonable assistance.
- 18.7 For all other arrangements on personal data processing, please refer to the Agreement.



### **Article 19 Non-solicitation**

- 19.1 Until one year after the Agreement ends, neither party will employ any staff from the other party that is or was involved in the performance of the Agreement or related agreements (or from having such staff work for them directly or indirectly in any other way), nor will enter into negotiations with such staff, unless the other party gives its express prior written consent. The parties may attach reasonable conditions to such consent.
- 19.2 Until one year after the Agreement ends, the Customer shall also refrain from employing any Third Party/Parties engaged by Fellowmind for the performance of the Agreement or from entering into negotiations with such Third Party/Parties or from independently hiring such Third Party/Parties for its business, unless Fellowmind gives its express prior written consent. Fellowmind may attach reasonable conditions to such consent.
- 19.3 In the event of a breach of Articles 19.1 and 19.2, the Customer shall incur an immediately due and payable penalty of twenty thousand (20,000.00) euros, to be increased by two thousand (2,000.00) euros for each day the violation persists, without prejudice to the right to demand performance and compensation for damages.

### **Article 20 Applicable law and competent court**

- 20.1 All Agreements and obligations arising from or related to them are exclusively governed by Dutch law. The applicability of the Vienna Sales Convention 1980 (CISG) is expressly excluded.
- 20.2 If a dispute arises between the Customer and Fellowmind, they shall try to resolve it in a reasonable and amicable manner. If the parties fail to resolve the dispute amicably within 10 working days, they may submit it for arbitration by the Dutch Foundation for the Settlement of Automation Disputes (SGOA) in The Hague. The parties may also jointly decide to engage an SGOA mediator. Both arbitration and mediation will take place according to SGOA's regulations. This paragraph does not preclude a party, if it considers this necessary, from seeking relief in interim relief proceedings (before a court or arbitral tribunal) or from levying prejudgment attachment.



**Fellowwind**