

# General terms and conditions BeOne Development Holding B.V. its affiliated subsidiaries - January 2023

## Chapter A: General provisions

### 1 Definitions

- 1.1 In these General Terms and Conditions, the following terms, each indicated by a capital letter, in both singular and plural, shall have the following meanings:
- 1.2 **Contractor:** BeOne Development Holding B.V., its legal successors or an affiliated (subsidiary) company or partner that enters into the legal relationship with the Customer and has declared these General Terms and Conditions applicable.
- 1.3 **Content:** any form of animation, audio, video, illustrations, text or other perceptible form of (interactive) information and tests used by Contractor in its Products and Services, whether or not in the form of software.
- 1.4 **Documentation:** the further (functional) description of Products and Services supplied to the Customer or provided by Contractor.
- 1.5 **Back-up:** Spare copies of digital data and/or files.
- 1.6 1.6 Courses: All courses, education, training and related activities.
- 1.7 **Third Party Products and Services:** all Products and/or Services provided by Contractor that originate from third parties, the resulting provisions and related activities.
- 1.8 **End User:** the ultimate user of the Content.
- 1.9 **Identification Data:** log-in name, passwords, tokens, addressing data and/or other codes.
- 1.10 **Intellectual Property Rights:** all intellectual property rights, including - but not limited to - trademark rights, copyright and database rights.
- 1.11 **Customer:** any person who requests and orders the Contractor to deliver or supply Products and Services.
- 1.12 **Customisation:** the result of Products and/or Services to be developed or developed on the instructions of the Customer.
- 1.13 **Quotation:** the written offer by Contractor on a request from Customer, to provide a certain Service and/or Product at a certain price. All Quotes from Contractor are without obligation, unless the offer expressly states otherwise in writing. Quotes from Contractor are based on the data, information and/or wishes provided by Customer.
- 1.14 **Agreement:** the set of agreements between Contractor and Customer, whereby Contractor undertakes to deliver one or more Product(s) and/or Service(s), against payment by Customer of the applicable fee in accordance with the agreed conditions.
- 1.15 **Parties:** Contractor and Customer jointly.
- 1.16 **Platform:** a system offered by Contractor for the distribution of Products and/or Services such as online training materials and the tracking of use thereof (learning management functionality).
- 1.17 **Products and Services:** all products and services to be provided by Contractor, including but not limited to Content, Customisation, Web Service (SaaS), Documentation and the resulting provisions and related work.

- 1.18 **Reseller:** party that, at its own risk and expense, supplies Contractor's Products and/or Services to its own customers with the consent of Contractor.
- 1.19 **Web Service:** SaaS (Software as a Service), this web service includes the provision by Contractor directly and/or indirectly (through third parties) via hosting of application software, such as a platform or Learning Management System (LMS), Content Management System (CMS), portal (website). This also includes a mobile app.
- 1.20 **Working days:** Dutch working hours (08:30: 17:30 CET) and days (Monday to Friday), excluding national holidays.

### 2 Applicability

- 2.1 All offers, Quotations and Agreements or other legal relationships between Contractor, directly or indirectly through third parties engaged by Contractor, and Customer, are - and exclusively - subject to these General Terms and Conditions. Other purchase or other terms and conditions (deviating from these General Terms and Conditions) of the Customer shall not apply and shall be rejected by the Contractor, unless expressly agreed otherwise in writing and the Contractor has also confirmed in writing the full or partial rejection of these General Terms and Conditions.
- 2.2 These General Terms and Conditions also apply to amended or additional or subsequent Agreements.
- 2.3 The Contractor may amend these General Terms and Conditions. The amended General Terms and Conditions will apply unless any amendments are objected to in writing within 30 (thirty) days from the date of the amendment.
- 2.4 If any provision of these General Terms and Conditions is found to be void or annulled, the remaining provisions of these General Terms and Conditions shall remain in full force and effect.
- 2.5 Deviations and/or additions to these General Terms and Conditions are considered valid if they have been agreed in writing between the parties.
- 2.6 If several (legal) persons or companies are designated by the trade name used by the Customer, they will be jointly and severally liable to fulfil all obligations under the Agreement concluded with the Contractor.
- 2.7 In case of contradiction between the provisions in the chapters of these General Terms and Conditions, what is stipulated in an earlier chapter shall apply, unless explicitly deviated from. In case the English text differs from the Dutch text of these General Terms and Conditions, the Dutch text shall prevail.

### 3 Performance of the Agreement

- 3.1 All assignments are performed by Contractor on the basis of the data, information, wishes and/or requirements made known to Contractor by Customer.
- 3.2 The Customer shall ensure the timely supply of all data - documents, information and contacts etc. - which the Contractor indicates or which the Customer should reasonably understand are necessary for the proper performance of the Agreement. The Customer shall

- guarantee the accuracy of this data and/or other information.
- 3.3 If interim changes or new facts occur in data, information, wishes and/or requirements previously made available, Contractor shall at all times be entitled, in consultation with Customer, to adjust the Agreement to these new circumstances or to dissolve or terminate it.
- 3.4 If the data referred to in article 3.1 are not correct or incomplete or have not been provided to Contractor in time, Contractor shall not be liable for any damage resulting therefrom. The Contractor is entitled to suspend the performance of the Agreement and/or to charge damage or additional costs resulting from the delay in accordance with the then customary rate.
- 3.5 If, for the performance of the Agreement, Contractor performs work at the Customer's location or at a location designated by the Customer, the Customer undertakes to ensure that all help, materials, information, (electronic) systems and facilities required for the performance of the Agreement are made available to the Contractor free of charge and that the performance of the Agreement can take place in a safe and healthy working environment, just as this obligation of the Customer also applies to its own employees.
- 3.6 If an implementation period has been agreed in the Agreement, this does not apply as a strict deadline, within which delivery must be made, but as a term within which the Contractor will make its best efforts to deliver what has been agreed.
- 3.7 If it has been agreed that the Agreement will be performed in stages, the Contractor may suspend the performance of those parts belonging to a subsequent stage until the Customer has approved the acceptance of the previous stage in writing (or any other manner agreed between the Parties).
- 3.8 To the extent necessary for the proper performance of the Agreement, the Contractor has the right to have (parts of) the work performed by third parties.
- 3.9 If the Agreement was entered into with a view to performance by a specific person, the Contractor will always be entitled to replace this person by one or more other persons with the same qualifications.
- 3.10 The Customer accepts that the (time) schedule of the Agreement may be affected if the Parties decide to change the approach, working method or scope of the Agreement.
- 4 Prices and rates**
- 4.1 All prices and rates charged by the Contractor are in Euros and exclusive of turnover tax and other government levies, unless expressly agreed otherwise between the Parties in writing.
- 4.2 The Contractor is entitled to increase the agreed rates – without prior written notice – as of 1 January of each year by a maximum of the average percentage of inflation for the period September to August of the previous year, as provided by Statistics Netherlands (CBS). The index figure for collective labour agreement wages per month, including special remuneration, for sector J Information and communication (SBI2008), collective labour agreement sector private companies, as published by Statistics Netherlands, serves as the starting point.
- 4.3 If the changes referred to in article 3.10 result in additional work, the Contractor will additionally charge the Customer for this, unless the change or addition to the Agreement can be attributed to the Contractor. If Contractor is of the opinion, that a project change indicated by Customer is an additional work order, Contractor shall notify Customer thereof before proceeding with performance. The notification will be followed by a specification of the price and other conditions at the request of Customer. Customer will in each case decide on the proposed additional work as soon as possible.
- 4.4 Customer is deemed to have agreed to the execution of additional work named according to 4.3 and the related costs if Customer has let the execution of additional work take place without first indicating in writing that he does not want additional work.
- 5 Payment**
- 5.1 Payment of the invoice by Customer must be made within 30 (thirty) days of the invoice date to a bank account designated by Contractor, unless otherwise agreed in writing.
- 5.2 Customer is obliged to report inaccuracies in payment details provided or stated to Contractor without delay.
- 5.3 If Customer fails to fulfil any payment obligation, Customer is in default without any further summons or notice of default being required. The Customer shall owe the Contractor all costs (including costs due to legal assistance provided by a lawyer or agent), both in and out of court, relating to the collection of all that the Customer owes the Contractor. Extrajudicial collection costs amount to 15% of the amount due, with a minimum of € 175 (one hundred and seventy-five euros). In any event, interest at a rate equal to the statutory commercial interest rate plus 3% will be charged monthly on the amount owed by Customer from the date Customer is in default.
- 5.4 Contractor is entitled to suspend its work and other obligations until full payment has been made, without prejudice to Customer's obligation to fulfil its obligations.
- 5.5 If a discount has been agreed with the Customer in connection with entering into an Agreement of a specific duration, this discount will lapse if the Agreement ends earlier than the initially agreed duration and the Contractor is entitled to charge this recoverable discount to the Customer in such a situation.
- 5.6 If the Customer purchases a number of hours of services against prepayment (bank of hours/strippenkaart), these hours must be used by the Customer within a period of one (1) year. After this period, the right to use these purchased hours expires. Under no circumstances shall the Customer be entitled to a refund of any amount.
- 5.7 The Customer shall never be entitled to set off the amount he owes to Contractor.
- 5.8 The above provisions do not affect any other rights Contractor may have on account of breach of contract by the Customer.
- 6 Force majeure**
- 6.1 Force majeure means any failure in the performance of the Agreement which cannot be attributed to the Contractor or the Customer, because it is not due to the

fault of the Contractor or the Customer respectively, nor is it for the account of the Contractor or the Customer respectively by virtue of the law, legal act or generally accepted practice.

- 6.2 Neither party shall be obliged to fulfil any obligation if it is prevented from doing so as a result of a circumstance which cannot be attributed to its fault, nor for its account under the law, legal act or generally accepted practice. The aforementioned circumstances also include circumstances beyond the control of the Contractor and business risks of the Contractor, such as - but not limited to: (i) shortcomings of Contractor's suppliers; (ii) defectiveness of goods, equipment, software or materials of third parties whose use has been prescribed by Customer; (iii) the non-timely availability or incompleteness of necessary data, information and/or specifications; (iv) government measures; (v) power failure, failure of internet, computer network or telecommunication facilities; (vi) strike; (vii) general transport problems; (viii) (cyber)crime, (cyber)vandalism, or any downtime or unavailability due to unlawful actions of third parties, (D)Dos attacks, hacking, cracking; (ix) fire, explosion, war or terrorism; (x) the unavailability of one or more staff members.
- 6.3 In case of temporary force majeure on the part of the Contractor, the Contractor shall be entitled to extend the intended delivery period by the time, during which the temporary force majeure continues.
- 6.4 If the non-attributable failure of either party continues for more than three months, both parties shall be entitled to dissolve the Agreement separately, without being liable to pay any compensation regarding the dissolution.
- 6.5 To the extent that a part already fulfilled by Contractor has independent value, e.g. if one or more participants has already used / accessed a Web service, Contractor may invoice that part separately. The administration of Contractor is leading in this respect. Customer is obliged to pay this invoice as if it were a separate Agreement. Regardless of the moment of cancellation, termination or modification, Contractor is entitled to charge the actual external costs incurred (including, but not limited to, location rental, actor and resources) to the Customer.

## **7 Intellectual property rights**

- 7.1 Except in the case of Third Party Products and Customisation delivered for the Customer, all intellectual property rights and other rights arising therefrom shall remain vested in the Contractor for each assignment carried out by the Contractor at any time and place, irrespective of whether it concerns the delivery or completion of an existing Product or Service or a Product or Service yet to be developed. Contractor always has the exclusive right to further develop the Products and Services and to make their use available to third parties by means of licences.
- 7.2 Customer only acquires the rights of use granted by Contractor under these General Terms and Conditions and in the Agreement. The Customer's right of use is non-exclusive, non-transferable, non-pledgeable and non-sublicensable.
- 7.3 An undertaking to transfer a right of intellectual property by the Contractor to the Customer can only be entered into expressly in writing. If the parties agree in writing

that a right of intellectual property in respect of Content developed specifically for the Customer will be transferred to the Customer, this does not mean that the Contractor also transfers the components, designs, works, standards, algorithms and the like underlying that development. The Contractor always retains the intellectual property rights vested in the Contractor in the general principles, programming languages, ideas, knowledge and know-how used to create or develop the Content. The Customer acknowledges that all present and future intellectual property rights, industrial property rights, other rights and the registration and/or application of the aforementioned rights and/or similar rights for the entire term and any extensions or renewals thereto now or in the future worldwide shall forever belong or be transferred to the Contractor.

- 7.4 The Customer is not permitted to remove or alter any indication concerning intellectual property and other rights, trademarks and trade names from the Products and Services or to have such actions performed by a third party.
- 7.5 If Contractor, Customer or third parties make functional improvements or other changes to the Products or Services, the intellectual property rights and other rights vested in the improved or changed Products or Services will unchanged remain vested in Contractor or the third party entitled thereto. If the aforementioned rights are not vested in Contractor or a third party entitled thereto, Customer shall ensure the transfer of the aforementioned rights to Contractor or the third party entitled thereto free of charge.
- 7.6 Contractor reserves all intellectual property and other rights to training materials and/or documentation provided. The Customer is explicitly not allowed to reproduce this in any way, to hand it over to third parties or to give it on loan. Customer shall ensure that its employees and/or third parties will comply with the aforementioned obligations.

## **8 Liability**

- 8.1 Contractor's total liability on account of an attributable failure in the performance of the Agreement or for any other reason, expressly including a guarantee obligation agreed upon with Customer, is limited to compensation of direct damage and then to a maximum of the amount of the price stipulated for that Agreement (excluding VAT) with a maximum of € 15.000,- (fifteen thousand euros), whereby a series of related events counts as one event.
- 8.2 If the Agreement consists of one or more continuing performance agreement(s), the amount of the Agreement will be set at the total of the fees received in one year (excluding VAT), being the year in which the damage occurred. In no event shall the total liability of the Contractor for direct damage, on any account whatsoever, exceed €15.000,- (fifteen thousand euros).
- 8.3 Contractor has taken out insurance in respect of damage. Contractor is in any case not liable for and will not compensate any further damage which Customer may suffer under the Agreement concluded with Contractor, however and for whatever reason, such including possible claims against Customer from third parties, than is covered by this insurance and is actually compensated

- plus the amount of Contractor's own risk, unless in case of intent or conscious recklessness.
- 8.4 Contractor's liability for damage due to death, bodily injury or because of material damage to property shall never exceed € 1.000.000,- (one million euros) in total, whereby a series of related events counts as one event.
- 8.5 Direct damage means exclusively:
- The reasonable costs incurred to determine the cause and extent of the damage.
  - The reasonable costs incurred to prevent or limit the damage, insofar as Customer demonstrates that these costs have led to a limitation of the damage.
  - The reasonable costs incurred to repair the damage, to the extent Customer proves that these costs have led to the repair of damage and Contractor, after a written request thereto, cannot offer a timely solution to repair the damage itself.
- 8.6 Contractor's liability for indirect damage, consequential damage, loss of profit, loss of savings, loss of goodwill, damage due to business interruption, damage resulting from claims of customers of Customer, damage relating to the use of goods, materials or software of third parties prescribed by Customer to Contractor and damage relating to the engagement of suppliers prescribed by Customer to Contractor is excluded. Also excluded is Contractor's liability for mutilation, destruction or loss of data or documents.
- 8.7 Contractor is not liable for any defect in quality or infringement of an intellectual property right of a third party caused by e-learning materials or other materials created or supplied by Customer in use through Contractor's Products and Services. Customer shall indemnify Contractor against all costs, damages or other liabilities that Customer may suffer as a result of any claim based on Products or Services not created by Contractor such as eLearning materials in use through Contractor's Products and Services.
- 8.8 Contractor is not responsible for the operation of the infrastructure, i.e. the collection of information and communication technology facilities such as software and hardware including cabling and internet, used for data processing and/or telephony.
- 8.9 Customer indemnifies Contractor for all claims, in the broadest sense of the word, that might arise from the application of Contractor's phishing simulation tool.
- 8.10 The limitations of Contractor's liability referred to in this article 8 lapse in case of intent or deliberate recklessness on the part of Contractor.
- 8.11 Outside the case mentioned in article 8, Contractor is not liable for any damages whatsoever, regardless of the ground on which an action for damages would be based.
- 8.12 A condition for the occurrence of any right to compensation is always that Customer reports the damage in writing to Contractor within 60 (sixty) days after its occurrence and takes those measures that limit the damage as much as possible. Any claim for damages against Contractor shall lapse by the mere expiry of twenty-four months after the claim arose.
- 8.13 Customer indemnifies Contractor against all third party claims for liability as a result of a defect in a product, system or service delivered (or supplied) by Customer and which product, system or service partly consisted of that delivered by Contractor.

## **9 Back-ups**

- 9.1 Customer is itself responsible for the timely creation of Back-ups. At the request of the Customer, the Contractor shall make known the procedures that may be required for the security of data and for making Back-ups.
- 9.2 The Contractor will only make Back-ups if and insofar as it has been explicitly agreed in writing that the Contractor will make full or partial Back-ups. Under no circumstances shall Contractor be liable for these Back-ups regarding but not limited to the complete or partial loss of Back-ups and/or errors in the Back-ups or any other loss or unusability of data. Customer is at all times fully responsible for regularly checking and testing the integrity, readability and usability of the Back-ups. This also applies if Contractor restores a Back-up for the benefit of Customer, regardless of the reason for this restore.
- 9.3 Customer remains fully responsible for making Back-ups in advance if Customer performs or has a third party perform actions that may lead to data loss with regard to the Products and Services and/or the environments and/or equipment on which the Products and Services operate. The Contractor is not liable for damages if Customer has failed to comply with this article.

## **10 Duration and termination**

- 10.1 The Agreement is valid for the duration agreed between Contractor and Customer. Interim termination by the Customer is excluded, unless otherwise provided for in the Agreement or in these General Terms and Conditions. An Agreement between Contractor and Customer for which no further duration has been agreed has a duration of 1 (one) year if the delivery relates to a Service, for which an amount is charged periodically. If this Agreement is not terminated or not terminated in time, namely with due observance of a notice period of 3 (three) months, continuation of this Agreement will take place each time for the duration of 1 (one) year.
- 10.2 Parties have the right to dissolve or terminate the Agreement with immediate effect by means of a written notification after a proper notice of default in writing, if:
- the other Party imputably fails to comply with any obligation incumbent on it the other Party acts in breach of any applicable rights of use or restrictions on use and/or has violated any intellectual property right pursuant to the Agreement;
  - (to) the other Party is granted (provisional) suspension of payment or bankruptcy, submits a request for debt restructuring or is placed under guardianship or administration;
- 10.3 After the end of the Agreement, for whatever reason, the Customer can no longer derive any rights from the Agreement, without prejudice to the continuation of the obligations of the Parties which by their nature are intended to continue after the end of the Agreement, such as, but not limited to, the obligations concerning property rights and confidentiality.
- 10.4 By the end of the Agreement, the right of use ends and all Products and where possible the Services, must be returned to the Contractor and/or demonstrably destroyed at the first request of the Contractor.

## **11 Personal data**

- 11.1 If Customer is to be regarded as a processor within the meaning of the General Data Protection Regulation (GDPR) and Contractor is to be regarded as a processor within the meaning of the GDPR on behalf of Customer, the provisions of this article and the processor agreement shall apply.
- 11.2 Customer acknowledges that the data processing as entrusted to Contractor is lawful. The Customer also acknowledges to have ascertained that Contractor has taken appropriate technical and organisational measures, as referred to in article 28-1 GDPR, including security measures as referred to in article 32 GDPR. The Customer indemnifies the Contractor against claims due to privacy breaches, within the meaning of the GDPR, for which the Customer is responsible under the law, unless the Customer proves that the facts underlying the claim can be attributed to the Contractor.

## **12 Confidentiality and non-acquisition**

- 12.1 The Contractor and Customer shall ensure that all information, data or documents received from the other party which are known or should reasonably have been known to be of a confidential nature shall remain secret. The receiving party will only use the data for the purpose for which it was provided. Data shall in any case be considered confidential if it is designated as such by the providing party.
- 12.2 Without Contractor's prior written consent, Customer shall not be entitled to make any communication to third parties about Contractor's working methods, methods and techniques and/or the content of Contractor's advice or reports. Customer shall not provide or otherwise disclose the advice or reports to any third party. The Customer is not allowed to disclose, exploit or reproduce data or parts of the Content, documentation and/or course, training, test or examination materials and/or excerpts from the course, training, test or examination materials provided, except for use within its own organisation, insofar as appropriate within the purpose of the assignment and provided the parties have not agreed otherwise in writing.
- 12.3 The Customer acknowledges that the Products and Services made available by or through Contractor may always contain software of a confidential nature and that these are trade secrets of Contractor, its suppliers or the producer of the software.
- 12.4 Customer and its Customers shall not enter into any direct or indirect business, employment or other similar relationships with any employee of Contractor during and for 12 (twelve) months after the termination or dissolution of the Agreement, except with the written consent of Contractor. The foregoing applies mutatis mutandis to Customers of the Customer. Customer shall ensure that its Customers will comply with the aforementioned obligation.
- 12.5 In case of breach of the provisions of this article, Customer shall be liable without further notice of default to pay an immediately payable penalty of €50.000,- (fifty thousand euros) per breach, without prejudice to Contractor's right to claim compensation for the full loss suffered.

## **13 Transfer**

- 13.1 The agreement concluded between the Contractor and the Customer and the rights and obligations arising therefrom cannot be transferred to third parties without the prior written consent of the Contractor.
- 13.2 The Customer grants the Contractor the right in advance, without needing the express permission of the Customer, to transfer the entire agreement or parts thereof to:
- 13.2.1 (i) parent, sister and/or subsidiary companies and
- 13.2.2 (ii) a third party in the event of a merger or acquisition of the Contractor.
- 13.3 If this occurs, Contractor shall inform Customer accordingly.

## **14 Nullity**

- 14.1 If one or more provisions (or part of a provision) of the General Terms and Conditions or the Agreement are null and void, are declared void, are voidable or have lost their validity in any other way, the remaining provisions (or the remaining part of the relevant provision) of the General Terms and Conditions or the Agreement will remain in full force and effect.
- 14.2 With regard to provisions (or the part of a provision) that are null and void, have been declared void, are voidable or have lost their validity in another way, the parties shall consult with each other in order to reach a substitute arrangement, in such a way that the parties shall strive to ensure that the purport of the agreement (or the remaining part of the relevant provision) remains intact in its entirety.

## **15 Applicable law and disputes**

- 15.1 The agreements between Contractor and Customer shall be governed by Dutch law. Applicability of the Vienna Sales Convention 1980 is excluded.
- 15.2 If Customer has a complaint about Contractor, Customer shall submit it to the management of Contractor as soon as possible. The management of Contractor will respond as soon as possible, but at the latest within 4 weeks. Contractor aims to settle every complaint within 3 months, and will only deviate from this in a substantiated manner.
- 15.3 Irrespective of the provisions in article 15.2 of these General Terms and Conditions, any disputes arising between Contractor and Customer in connection with an Agreement will be submitted to the competent court of the District Court of Midden-Nederland, location Utrecht.
- 15.4 If Contractor and/or Customer have not yet commenced proceedings before the District Court of Midden-Nederland, location Utrecht, for the settlement of disputes arising from the Agreement concluded between the parties, the parties will be authorised to commence arbitration proceedings in accordance with the Arbitration Regulations of the Stichting Geschillenoplossing Automatisering (SGOA), without prejudice to the right of either party to request a provision in (arbitral) summary proceedings and without prejudice to the right of either party to take precautionary legal measures (see [www.sgoa.eu](http://www.sgoa.eu)).

## **16 Final provisions**

16.1 Oral undertakings, orders or other statements of any nature whatsoever by employees of the Contractor shall only be legally valid and binding if confirmed in writing by authorised representatives of the Contractor.

## **17 Right of use**

17.1 If agreed between the parties, the Contractor may make Content available to the Customer.

17.2 Content may be made available to the Customer via the Platform, the Customer's platform or third-party platform.

17.3 In accordance with [Article 7](#) and during the term of the Agreement, the Contractor grants the Customer, against payment to user, the non-exclusive right to use the Content, with - if available - the accompanying documentation, unless otherwise agreed in writing between the parties.

17.4 The right of use is limited to the exclusive use of the Content and other restrictions as mentioned in the Agreement. The Customer is prohibited from publishing, copying, duplicating or modifying the Content or parts thereof in any way whatsoever itself and/or by means of third parties, without the prior written permission of Contractor.

17.5 Resellers obtain from the Contractor the right to resell this right to use the Content to its customers in accordance with the conditions in the Agreement. Resellers must impose on their customers the limited right of use as included in article 17.4, as well as the code of conduct from article 24.

17.6 The right of use commences at the time of making it available to Customer via the Platform, Customer's platform or third-party platform.

17.7 The Contractor has the right to withdraw the right of use in the event of arrears in the payment of invoices sent by the Contractor to the Customer or if the Customer acts in breach of any provision of the General Terms and Conditions or Agreement.

## **18 Audits**

18.1 The Contractor is entitled to incorporate technical limitations and control mechanisms in Products and Services to prevent and/or control that the actual number of users of the Content does not exceed the agreed number of users of the Content.

18.2 Furthermore, as long as the Customer uses the Products and Services, the Contractor is entitled to carry out unannounced inspections itself or through a third party at the locations where the Products and Services are used. Customer will provide all cooperation and access to this end. If Customer refuses cooperation or access to Contractor, Contractor shall be entitled to terminate the Agreement with immediate effect. In this case, Customer is no longer entitled to use the Products and Services and is obliged to return all Products and destroy any copies made within 30 (thirty) days upon the first request of Contractor.

18.3 If the aforementioned checks or otherwise show that the actual number of users exceeds the number of users agreed, Customer shall immediately and retroactively pay compensation for the number of missing users, which

16.2 These General Terms and Conditions have been filed with the Chamber of Commerce

## **Chapter B: Content**

compensation consists of the agreed pricing per additional user, increased by a percentage of 25%.

## **19 Technical operation**

19.1 The Contractor cannot guarantee that Content will function without problems on thin-client technology, such as, for example, Citrix. The Contractor will provide support on a best-effort basis when appropriate.

19.2 The Contractor shall ensure correct operation of the Content on the most recent version of Chrome, Edge, Safari and Firefox on the most recent version of Windows and MacOS, at the latest within 6 months of the release of the relevant version. In the case of Customisation, this applies to the relevant current versions at the time of delivery.

19.3 In the event that Content is explicitly suitable for mobile devices, the Contractor shall ensure that the Content works correctly on the most recent version of iOS, iPadOS and Android, at the latest within 6 months of the release of the relevant version.

19.4 The Contractor guarantees that Content in SCORM format functions smoothly on the SCORM Cloud web service. The Contractor cannot guarantee that Content in SCORM format will function smoothly on other LMS platforms, and can support Customer where required on an hourly basis at the applicable rates.

19.5 Contractor guarantees that Content offered via a LTI link will function smoothly with Contractor's open source Moodle LMS and Web Service. The Contractor cannot guarantee that Content via LTI will function smoothly on other LMS platforms, and can provide support to the Customer where required on an hourly basis at the applicable rates.

19.6 For the Content to function properly, the End User must have access to a minimum internet bandwidth of 1 Mbps and a minimum screen resolution of 1024 x 660.

## **20 Customisation**

20.1 The Parties will agree in writing which Customisation will be developed in the context of Content and in what manner this will take place. The Contractor will carry out the development of Customisation with care, on the basis of the data provided by the Customer. The Customer guarantees the accuracy, completeness and consistency of these data.

20.2 The development of Customisation may take place according to phases to be determined by the Contractor. If the Customer does not wish to follow the aforementioned phases, this shall take place entirely at the risk (and expense) of the Customer.

20.3 The Contractor reserves the right to terminate a Customisation prematurely if the lead time is significantly delayed beyond the control of the Contractor by actions or inactions of the Customer. In that case, settlement will take place based on the project result achieved up to that point, the project capacity reserved by Contractor for this project, as well as loss of income by Contractor.

- 20.4 Every Customisation assignment ends with a review by the Customer. After processing the review points within the scope of the assignment and delivery of the final product by the Contractor to the Customer, the Customisation is deemed to be accepted by the Customer.
- 20.5 To support the full life cycle of the Customisation, the Contractor shall provide the following maintenance and support activities under warranty for a period of 3 months after delivery & acceptance:
- Corrective maintenance: fixing problems that were not previously known and/or occurred. In scope: Correction of technical - or functional shortcomings (fixing bugs) and of language errors. Corrective maintenance is performed only within the scope of the original target platforms (LMS, browsers, devices). Adding support for new target platforms is outside the scope of the agreement. Modifications to media files (animations, audio and video) are outside the scope.
  - Minor changes: a minor change is a change that needs to be implemented and takes a maximum of 15 minutes of work. In scope: implementing minor textual changes (e.g. implementing another term, or adjusting a URL); implementing minor graphical changes (e.g. replacing a media file such as an image or a video file); replacing or adding a linked external document (e.g. a PDF); Minor textual adjustments to a translated module (text/translation to be supplied by the customer).
  - The following activities do not fall under maintenance and support for Customisation: Adjustments to media files (animations, audio and/or video), 1st line support (end-user support), Localisation/translation work, larger changes, such as: functional changes, extensive textual changes, changes in design.
- 20.6 Intellectual property rights, or other rights relating to Customisation in the context of Content will be transferred by the Contractor to the Customer, unless expressly agreed otherwise in writing.

## Chapter C: web service

### 21 Web Service General

- 21.1 If agreed between the parties, the Contractor may grant the Customer the non-exclusive right to access and use a Web Service.
- 21.2 The Customer will hereby access software provided by the Contractor via a web browser (Software-as-a-Service). The Contractor is never obliged to make the source code of the software made available and/or documentation developed and/or auxiliary software required for development or maintenance available to the Customer. Contractor is never obliged to provide Customer with a physical carrier or download of the software underlying the Webservice.
- 21.3 The Contractor does not guarantee, inter alia, that telephone lines, the Internet and/or other networks will provide optimum use and access.
- 21.4 Contractor has the right to withdraw or suspend the right of use in the event of arrears in the payment of invoices sent by Contractor to Customer, if Customer fails to timely provide relevant information required for invoicing, or if Customer acts in breach of any provision of the General Terms and Conditions or Agreement.
- 21.5 Contractor is entitled to inspect log files and the like for the purpose of analysing the use of the Webservice. The results of such analysis will not be made available to third parties (third parties do not include parent and/or subsidiary companies affiliated with the Contractor). This does not apply to figures and data regarding the use of the Webservice that are not directly traceable to the use of the Customer.
- 21.6 Customisation within the framework of the Web service cannot be provided by the Contractor, as it concerns a product that is offered to all customers of the Contractor in general. It is, however, possible to add functionalities to the Webservice after written approval by Parties, after payment thereof by Customer. Intellectual property rights or other rights relating to these extra functionalities remain with Contractor at all times.

### 22 Controls

- 22.1 The Contractor is entitled to incorporate technical limitations and control mechanisms in the Web Service to prevent and/or control that the actual number of users does not exceed the contractually agreed number of users.

### 23 Obligations of Customer

- 23.1 Customer is obliged to follow instructions from the Contractor regarding the use of the Web service.
- 23.2 The Customer is responsible for the purchase and/or proper functioning of the software and/or infrastructure required to make use of the Contractor's Web service, the monitoring of the settings of the Web service, the use of the Web service, the way in which the results of the Web service will be handled, the instructions regarding the use of the services, the software and/or infrastructure required to use the Web service. Contractor is not obliged to perform any data conversion.
- 23.3 The Customer is only permitted to give persons who are not employees of the Customer access to the Web service if this has been explicitly agreed in writing with the Contractor, without prejudice to the other provisions of these General Terms and Conditions. If Customer and Contractor have explicitly agreed in writing that Customer may also grant third parties access to the Web Service, Customer will have to comply with the conditions attached to this by Contractor.
- 23.4 If the Customer is able to create, create, modify or add users himself, whether or not via self-registration by users, who can subsequently gain access to the web service of Contractor, Contractor shall at all times be entitled to send an additional bill for these created, modified and/or added users in accordance with the rates applicable at Contractor.
- 23.5 If the Customer discovers a fault in the Webservice, this must be reported to the Contractor immediately. After reporting a malfunction by Customer, Contractor will take

those measures that lead to or could possibly lead to recovery.

- 23.6 The costs of remedying the malfunction shall be borne by Customer if it appears that the cause of the malfunction is the result of his injudicious use or is due to his acts or omissions in violation of the Agreement.

## **24 Code of Conduct**

- 24.1 Customer must use the Web service and/or the other facilities offered in a responsible manner. It is prohibited to use the Web service and/or the other facilities offered in such a way that:
- may cause damage to the systems of the Contractor and/or third parties;
  - disruptions in use.
- 24.2 Customer will ensure that such damages and/or disruptions are not the result of misconfiguration on its side.
- 24.3 It is prohibited to use the Web Service and/or other facilities offered for illegal practices and/or in violation of the Agreement. This includes, inter alia, the following acts and conduct:
- infringing or enabling the infringement of the rights of third parties, such as but not limited to intellectual property rights and privacy rights;
  - failure to comply with applicable legislation and/or other relevant regulations;
  - spamming (unsolicited distribution (or now enabling third parties to do so) of advertising messages and other communications);
  - storing/distributing pornography;
  - causing danger to the functioning of computer systems or networks of the Contractor or third parties and/or to the services via the network, in particular caused by sending excessive e-mails or other data, poorly secured systems or activities of viruses, Trojan horses or similar software;
  - sexual harassment, discrimination and/or otherwise harassing persons;
  - dissemination or otherwise making available to third parties obscene, insulting and harassing material and/or other material of that nature;
  - threats;
  - storage and distribution of viruses, worms and/or other destructive activities;
  - penetrating (hacking) the accounts, systems and/or networks of third parties and/or Contractor without permission and/or performing and/or omitting to perform any other act that enables hacking.
- 24.4 The Contractor reserves the right, at its own discretion, if compelled to do so by law or court order and/or if a third party draws the Contractor's attention to and/or suspects that the rights of a third party are being infringed by means of the Web Service, is in breach of the Contractor's General Terms and Conditions and/or the agreement and the obligations arising therefrom are not, not properly or not fully complied with, to take the use of the Web service and/or the other facilities offered out of commission, to remove the information concerned and/or to suspend its obligations, this until the obligations have been met.
- 24.5 Contractor and/or third parties shall never be liable for damage of any kind suffered by Customer and/or third

parties as a result of measures taken by and/or for the benefit of Contractor on the basis of this article. The obligations to pay the agreed amounts shall continue to apply in full during the measures taken under this article by and/or for the benefit of Contractor.

- 24.6 If the seriousness of the Customer's actions and/or inactions justifies this and/or these are continued despite the measures taken by and/or for the benefit of the Contractor, as set out in this article, the Contractor has the right to terminate the agreement, without the Contractor being liable to pay any compensation in respect thereof or to refund any monies already paid.

## **25 Changes to the Webservice**

- 25.1 Contractor is entitled after written notice with due observance of a reasonable period of time and without owing any compensation to Customer, to make additions and/or changes to the Web service regarding but not limited to:
- Access procedures, such as: (i) procedures relating to operational rules; (ii) security requirements.
  - Changes to a third party Contractor/supplier, location, hardware, software and other facilities relevant to making the Web service available.
- 25.2 If the changes result in a demonstrable and significant negative change to the working method of the Customer and/or the functionality of the Web Service for the Customer, the Customer may, after first demonstrating the deterioration in writing, request the Contractor in writing to offer an alternative. If Contractor does not offer a reasonable alternative at that time, Customer has the right to terminate the use of the Web Service, without Contractor being obliged to any compensation in this respect or refund of already paid monies.

## **26 Service level**

- 26.1 A standard service level applies to the Web Service. On request of the Customer, Contractor shall make these available to the Customer. Additional service levels are only applicable if the Parties have agreed this jointly.
- 26.2 The Web Service does not include providing support to End Users, unless the Parties have agreed otherwise in writing.
- 26.3 The Contractor may continue the performance of Web Service using a new version of the software. The Contractor is not obliged to retain, modify or add certain features or functionalities of the Web Service or software, unless the Parties have agreed otherwise in writing.
- 26.4 The Contractor may take the Web Service out of operation in whole or in part for (preventive, corrective or adaptive) maintenance. The Contractor will not allow the taking out of service to last longer than necessary and will, if possible, ensure that the maintenance in question will take place outside office hours and, where possible, notify the Customer in advance.

## **27 Identification Data**

- 27.1 The Identification Data provided by the Contractor to the Customer is strictly personal per user. The aforementioned data are provided for the benefit of a specific person within the Customer's organisation, or, if explicitly agreed, to a third party. It is not permitted to share and/or jointly use the aforementioned information



within the organisation of the Customer/or with a third party, unless explicitly agreed otherwise.

- 27.2 Contractor shall only make Identification Data available to Customer for use of the Webservice. Customer shall treat these Identification Data with care. In case of loss, theft and/or other forms of unlawful use, Customer shall immediately notify Contractor, so that the parties can take appropriate measures.
- 27.3 Under no circumstances shall the Contractor be liable for the misuse and/or unlawful use of the Identification Data.
- 27.4 If it can be reasonably suspected that misuse or wrongful use has been made of the Customer's Identification Data, the Contractor may give the Customer instructions to prevent the misuse or wrongful use. Customer will be obliged to follow these instructions.
- 27.5 If it is established that misuse of the Identification Data has been made or that Customer has not complied with the instructions as referred to in article 27.4, Customer will immediately be in default.

## **28 Guarantee**

- 28.1 The Contractor does not guarantee that the software to be made and kept available to the Customer as part of the Web Service is error-free and functions without interruptions.
- 28.2 Based on the information provided by Contractor regarding measures to prevent and limit the consequences of failures, service defects, mutilation or loss of data or other incidents, the Customer shall make an inventory of the risks for its organisation and, if necessary, take additional measures. The Contractor shall never be responsible for the recovery of mutilated and/or lost data.
- 28.3 The Contractor does not guarantee that the software to be made and kept available to the Customer as part of the Web Service will be adapted in time to changes in relevant laws and regulations.

## **29 Third-party access**

- 29.1 Contractor may grant Customer the right to grant third parties independent access to the Web Service under certain conditions specified in the Agreement.
- 29.2 Customer acknowledges that no contractual relationship arises between Contractor and the third party and that Customer is the contractual counterparty of the third party or parties. Customer also acknowledges that Contractor can never be held liable by the third party for an attributable shortcoming or wrongful act resulting from the use of the Webservice. Customer therefore indemnifies Octrooibureau Novopatient if it is obliged to pay any compensation or damages to a third party as a result of a judgment.

## **30 Third Party Products and Services**

- 30.1 Contractor is entitled to provide Third Party Products and Services or to involve Third Party Products and Services in the fulfilment of its obligations under the Agreement. Contractor is not responsible for Third Party Products and Services, unless agreed otherwise in writing.
- 30.2 If Contractor provides Third Party Products and Services to the Customer, the Third Party General Terms and Conditions shall apply to the Agreement in addition to these General Terms and Conditions of Contractor.
- 30.3 Contractor delivers rights to Third Party Products and Services under the conditions as described in the Third Party General Conditions.
- 30.4 Contractor does not perform any Maintenance, Support or other services with regard to Third Party Products and Services, unless agreed otherwise in writing.
- 30.5 With regard to Third Party Products and Services, Contractor shall provide:
- The service on Third Party Products and Services, under maximum the same conditions as shown in the Third Party General Terms and Conditions.
  - The warranty for the term and under maximum the same conditions as shown in the Third Party General Conditions.
- 30.6 Repairs of Third Party Products and Services:
- Under no circumstances will replacement of delivered Third Party Products and Services take place unless Customer expressly requests it and pays the associated costs as an advanced payment.
  - All repairs are subject to handling charges. If repairs take place elsewhere than at the Contractor's premises, call-out charges, hourly wages and other related costs will also be charged.

## **31 Third Party General Conditions**

- 31.1 Third Party General Conditions declared applicable in these Contractor General Conditions shall, if available from the Contractor, be sent on request. The Third Party General Terms and Conditions will be made available in the same format and language as received by the Contractor.
- 31.2 The Contractor's General Terms and Conditions take precedence over the Third Party General Terms and Conditions unless specified otherwise. In case of conflict between the Contractor General Terms and Conditions and the Third Party General Terms and Conditions, the Contractor may declare the relevant conflicting provisions in the Third Party General Terms and Conditions inapplicable or inapplicable.

## Chapter D: Advisory Service

### **32 Advisory Service**

- 32.1 All Products and Services that can be considered consultancy or of an advisory nature, such as but not limited to offering workshops, conducting feasibility studies and cultural scans will be provided to the best of Contractor's knowledge and ability only.
- 32.2 The Contractor shall not be responsible and/or liable if the work resulting from the advice results in a failure to complete a Customer project within the specified budget, time and any other predetermined conditions.
- 32.3 Contractor shall provide advice based on preconditions specified by Customer and information obtained from Customer. If it appears that not all relevant information had already been obtained and/or other problems and/or insights may arise, such as but not limited to incompatibility problems (products that are incompatible with each other), the advice given may be adjusted to this new situation.
- 32.4 The parties will agree in writing which consultancy work will be performed and in what manner this will be done.
- 32.5 The Contractor is entitled to have the consultancy work carried out by a third party.
- 32.6 The Contractor reserves the right to terminate consultancy work prematurely if the lead time is significantly delayed beyond the Contractor's control by actions or inactions of the Customer. In that case, a settlement will take place based on the project result achieved up to that point, the project capacity reserved by Contractor for this project, as well as loss of income by Contractor.
- 32.7 Contractor reserves the right to claim compensation in the event of cancellation of an agreed project, prior to the start of the project.
- 32.8 Intellectual property rights or other rights relating to consultancy activities shall at all times remain vested in Contractor, unless explicitly agreed otherwise in writing.