

Previder B.V.

General terms and conditions

General Terms and Conditions Previder B.V.

Previder B.V. is registered in the trade register of the Chamber of Commerce under number 08078011. These General Terms and Conditions Previder B.V. were filed with the Chamber of Commerce on 6 July 2020.

Chapter 1: General provisions

Article 1 Applicability General Terms and Conditions Previder B.V.

- 1.1. These General Terms and Conditions Previder B.V. (hereinafter also referred to as: these general terms and conditions) are applicable to any and all offers and agreements in pursuance of which Previder delivers goods and/or services of any nature whatsoever and by any name whatsoever to the customer.
- 1.2. Deviations from and additions to these general terms and conditions are only applicable if they were stipulated in writing by and between the parties.
- 1.3. The applicability of purchase or other terms and conditions of the customer is expressly rejected.
- 1.4. If and to the extent that Previder makes products or services of third parties available to the customer or grants access to the same the (licensing or sales) terms and conditions of the relevant third parties are applicable in terms of the said products or services in the relationship between Previder and the customer whilst setting aside the provisions deviating from the same in these general terms and conditions, provided that the applicability of the (licensing or sales) terms and conditions of the said third parties was communicated to the customer by Previder and a reasonable possibility was offered to take note of the said terms and conditions. In derogation from the previous sentence, the customer can no longer rely on a failure of Previder to comply with the aforementioned obligation if the customer is a part as intended in Section 235 Subsection 1 or Subsection 3 of Book 6 of the Dutch Civil Code.
- 1.5. If a provision of these general terms and conditions is null and void or annulled then the other provisions of these general terms and conditions shall remain in full force and effect. Previder and the customer shall, as the occasion arises, enter into discussions in order to agree on new provisions of as much as possible the same scope to replace the null and void or nullified provisions.
- 1.6. Without prejudice to the provisions set forth in article 1.4, in case of a discrepancy between provisions stipulated by and between the parties, the provisions set forth in the agreement shall prevail. In case of a discrepancy between provisions from chapters of these terms and conditions, the provisions set forth in a previous chapter shall apply, unless expressly deviated from the same.

Article 2 Offers

- 2.1. Any and all offers and other expressions of Previder are subject to contract, unless expressly indicated otherwise by Previder. The customer guarantees the correctness and completeness of the data supplied to Previder by or on behalf of the customer on which Previder based its offer, with the exception of manifest typing errors.

Article 3 Price and payment

- 3.1. Any and all prices are exclusive of turnover tax (VAT) and other officially imposed product or service duties. Any and all prices communicated by Previder are in EUR and the customer must pay in EUR.
- 3.2. The customer cannot derive any rights or expectations from a cost estimate or budget issued by Previder, unless the parties stipulated otherwise in writing. A budget communicated by the customer is only valid as a (fixed) price stipulated by and between the parties, if this was expressly stipulated in writing.
- 3.3. If, according to the agreement, the customer consists of multiple natural persons and/or legal persons then each of the said (legal) persons shall jointly and severally be liable in respect of Previder for compliance with the agreement.
- 3.4. With regard to the performances delivered by Previder and the amounts payable for the same by the customer, the data from the administration of Previder shall result in complete evidence, without prejudice to the right of the customer to furnish evidence to the contrary.
- 3.5. In case of a periodic payment obligation of the customer, Previder can, in writing and in conformity with the index or other criterion included in the agreement, adjust applicable prices and rates during the period as intended in the agreement. If the agreement does not expressly foresee the possibility of adjustment of the prices or rates then Previder can adjust the applicable prices and rates in writing in consideration of a period of at least three months. If, in the latter instance, the customer does not intend to agree with the adjustment then the customer is entitled to terminate the agreement in writing within thirty days after notification of the adjustment, effective from the date that the new prices and/or rates would take effect.
- 3.6. In case of a price change in the prices of suppliers (e.g. software licences), they can be passed on directly to the customer. Previder shall inform the customer in writing of the proposed price change. After the customer has taken note of the said price change, or could have taken note of the same, the customer shall have four weeks to rescind the agreement in writing if it does not intend to agree with this kind of price change.
- 3.7. In the agreement the parties establish the date or dates when Previder shall charge the fee for the stipulated performances to the customer. Payable amounts are paid by the customer in accordance with the stipulated payment conditions or the payment conditions specified on the invoice. The customer shall not be entitled to suspend a payment nor to settle payable amounts. If the agreement and/or the invoice do not expressly foresee a date when the customer must pay the stipulated performance then a payment term of 30 (thirty) days shall apply.
- 3.8. If the customer does not pay one or more of the payable amounts, or not in a timely fashion, then the customer shall be liable to pay the statutory interest for commercial transactions on the outstanding amount, if the customer, despite a prior written demand in which a reasonable period of at least 14 days shall be granted to remedy the said shortcoming, remains in default and fails to pay the outstanding amounts. If the customer also fails to pay the claim after a demand or notice of default then Previder can outsource the claim and the customer shall, in addition to the then payable total amount, also be held to pay any and all judicial and extrajudicial expenses, including any and all costs charged by external experts. This shall not affect the other statutory and contractual rights of Previder.

Article 4 Term of the agreement

- 4.1. If and to the extent that the agreement between the parties is a continuing performance agreement, it is noted that the agreement is concluded for the stipulated term, failing which a term of one year applies.
- 4.2. The term of an agreement for a fixed term is each time renewed automatically for the term of the originally stipulated term, with a maximum of 1 year, unless the customer or Previder terminates the agreement in writing, in consideration of a notice period of three months prior to the end of the relevant term.

Article 5 Confidentiality

- 5.1. The customer and Previder ensure that any and all data received from the other party of which they know or should reasonably understand that they are of a confidential nature remain secret. The said prohibition does not apply if and to the extent that disclosure of the relevant data to a third party is required pursuant to a judicial ruling, a statutory rule, on the basis of a legally issued order of an official authority or for the proper implementation of the agreement. The party who receives confidential data shall only use them for the purpose for which they were supplied. Data are, in any case, deemed to be confidential if they are indicated as such by one of the parties.
- 5.2. The customer acknowledges that the software made available by or via Previder is always of a confidential nature and that it contains business secrets of Previder, its suppliers or the manufacturer of the software.

Article 6 Takeover of staff

- 6.1. During the term of the agreement as also during a period of one year after the end of it each party shall only after prior written consent of the other party employ employees of the other party who are or were involved in the implementation of the agreement or otherwise have them work, either directly or indirectly, for it. Conditions can be imposed on the said consent, including the condition that a reasonable fee is paid.

Article 7 Security

- 7.1. If Previder is, in pursuance of the agreement, held to provide for a form of information security then the said security shall comply with the specifications regarding security stipulated in writing by and between the parties. Previder does not guarantee that the information security is effective under all circumstances. If an expressly described manner of security is missing in the agreement then the security shall comply with a level that, having regard to the state of the art, the implementation costs, the nature, scope and context of the information to be secured known to Previder, the purposes and the normal use of its products and services and the probability and seriousness of foreseeable risks, is not unreasonable.
- 7.2. The access or identification codes, certificates or other security resources supplied to the customer by or on behalf of Previder are confidential and shall be handled as such by the customer and shall only be made available to authorised members of staff of the own organisation of the customer. Previder is entitled to change allocated access or identification codes and certificates. The customer is responsible for the management of authorisations and the supply and timely revocation of access and identification codes.
- 7.3. If the security or the relevant testing is related to software, equipment or infrastructure that was not delivered to the customer by Previder then the customer guarantees that any and all required licences or approvals were obtained to performed the said services. Previder shall not be liable for damages that arise in connection with the performance of the said services. The customer indemnifies Previder against each and every claim on any account whatsoever in connection with the performance of the said services.
- 7.4. Previder is entitled to adjust the security measures from time to time, if this is required as a result of changed circumstances.
- 7.5. The customer shall adequately secure and adequately keep its systems and infrastructure secure.
- 7.6. Previder can give instructions to the customer with regard to the security that have the objective of preventing or minimising incidents or the consequences of incidents that may affect the security. If the customer does not follow these kinds of instructions of Previder or not in a timely fashion then Previder shall not be liable and the customer shall indemnify Previder against the damages that may consequently occur.
- 7.7. Previder is always allowed to implement technical and organisational facilities to protect equipment, data files, websites, available software, software or other works to which the customer is granted (direct or indirect) access, also in connection with a stipulated restriction in the content or the duration of the right to use these objects. The customer shall not remove or circumvent (have removed or circumvented) this technical facility (these technical facilities).

Article 8 Reservation of title and rights and suspension

- 8.1. Any and all goods delivered to the customer remain the property of Previder until any and all amounts that the customer is liable to pay to Previder on account of the agreement concluded by and between the parties were paid in full to Previder. A customer who acts as a reseller shall be allowed to sell and deliver on any and all goods that are subject to the reservation of title of Previder to the extent that this pertains to the ordinary course of its business.
- 8.2. The consequences under property law of the reservation of title of a good designated for export are governed by the law of the country of destination, if the said law contains provisions that are more favourable for Previder.
- 8.3. Rights are, as the occasion arises, granted or transferred to the customer on the condition that the customer paid any and all amounts payable pursuant to the agreement.
- 8.4. Previder can keep the data, documents, software and/or data files received or realised in the context of the agreement, despite an existing obligation to release or transfer until the customer paid any and all amounts payable to Previder.

Article 9 Transfer of risk

- 9.1. The risk of loss, theft or embezzlement of or damage to goods, data (including user names, codes, and passwords) , documents, software or data files that are manufactured in the context of the implementation of the agreement for, delivered to or used by the customer transfers to the customer at the moment that the customer or an auxiliary person of the customer comes into the actual possession of the same.

Article 10 Intellectual property

- 10.1. Any and all intellectual property rights in respect of software, website, data files, databases, equipment, training, test and examination material or other materials, e.g. analyses, designs, documentation, reports, offers, as well as relevant preparatory material, developed in pursuance of the agreement or made available to the customer are exclusively vested in Previder, its licensors or its suppliers. The customer exclusively acquires the user rights that are expressly allocated pursuant to these general terms and conditions, the agreement concluded in writing by and between the parties and mandatory statutory provisions. A user right vested in the customer is non-exclusive, non-transferable, non-pledgeable and non-sub-licensable.
- 10.2. If Previder is willing to commit to a transfer of an intellectual property right then this kind of commitment can only be entered into expressly and in writing. If the parties stipulate in writing that an intellectual property right in respect of software, websites, data files, equipment, know-how or other works or materials specifically developed for the customer then this shall not affect the right or the possibility of Previder to use and/or exploit components, designs, algorithms, documentation, works, protocols, standards and the like on which the said development is based, without any limitation, for other purposes, either for itself or for third parties. Previder is also entitled to use and/or exploit the general principles, ideas and programming languages that were used for the manufacturing or on which the development of any work, without any limitation, was based for other purposes for itself or for third parties. Nor shall the transfer of an intellectual property right affect the right of Previder to, for the benefit of itself or a third party, make developments that are similar to or borrowed from those that were or are made for the benefit of the customer.
- 10.3. The customer shall not remove (have removed) or change (have changed) an indication (indications) regarding the confidential nature or regarding copyrights, trademarks, trade names or any other intellectual property right from software, websites, data files, equipment or materials.
- 10.4. Previder indemnifies the customer against each and every claim of a third party that is based on the fact that software, websites, data files, equipment or other materials developed by Previder infringes an intellectual property right of the said third party, on the condition that the customer forthwith informs Previder of the existence and the content of the claim and leaves the handling of the case, including the conclusion of potential settlements, entirely to Previder. To this end the customer shall grant and lend the necessary authorisations, information and cooperation to Previder so that the latter can defend itself against the said claims. The said obligation to indemnify expires if the alleged infringement is related to (i) works or materials made available to Previder by the customer for treatment, processing or maintenance, or (ii) changes that the customer made or had made in the software, websites, data files, equipment or other works or materials without written consent of Previder. If it becomes an irrevocable fact in court that the software, websites, data files, equipment or other materials developed by Previder infringe an intellectual property right that belongs to a third party or if there is, at the discretion of Previder, a reasonable chance that this kind of infringement occurs then Previder shall, where possible, ensure that the customer can continue using the delivered goods or functionally equivalent other software, websites, data files, equipment or materials. Any other or further indemnification obligation of Previder on account of an infringement of an intellectual property right of a third party is excluded.
- 10.5. The customer guarantees that rights of third parties do not oppose availability of equipment, software, material designated for websites, data files and/or other materials, designs and/or other works to Previder for the purpose of use, maintenance, processing, installation or integration, including the availability of the correct licences. The customer indemnifies Previder against each and every claim of a third party that is based on the fact that the said availability, use, maintenance, processing, installation or integration infringes a right of the said third party.
- 10.6. Previder shall never be held to perform a data conversion, unless this was expressly stipulated in writing with the customer.
- 10.7. Previder shall be entitled to use the figurative mark, logo or name of the customer in its external communication.

Article 11 Performance of services

- 11.1. Previder shall to the best of its ability make an effort to perform the services with due care, as the occasion arises in accordance with the arrangements and procedures established with the customer in writing. Any and all services of Previder are performed on the basis of a best efforts obligation, unless and to the extent that in the written agreement Previder expressly committed to a result and the relevant result was described in the agreement in a sufficiently precise manner.
- 11.2. Previder shall not be liable for damages or costs that are the result of use or abuse of access or identification codes, certificates or other security resources, unless the abuse is the direct result of intent or intentional recklessness of the business management of Previder.
- 11.3. If the agreement was concluded in view of performance by one specific person, Previder shall always be entitled to replace this person by one or more persons with the same and/or equivalent qualifications.
- 11.4. Previder shall not be held to follow instructions of the customer during the performance of its services, in particular not if it regards instructions that change or supplement the content or scope of the stipulated services. If these kinds of instructions are, however, followed, then the relevant activities are reimbursed in accordance with the common rates of Previder.

Article 12 Information and other cooperation obligations

- 12.1. The parties acknowledge that the success of activities in the area of information and communication technology depends on correct and timely mutual cooperation. The customer shall always lend any and all reasonable cooperation in a timely fashion.
- 12.2. The customer guarantees the correctness and completeness of the data, information, designs and specifications supplied to Previder by or on behalf of the customer. If the data, information, designs or specifications supplied by the customer contain inaccuracies evident to Previder then Previder shall inquire about this with the customer.
- 12.3. In connection with the continuity, the customer shall designate a contact person or contact persons who shall act as such for the duration of the activities of Previder. Contact persons of the customer shall dispose of the necessary experience, specific material knowledge and insight into the objectives required by the customer.
- 12.4. The customer bears the risk of the selection of the goods, objects and/or services to be delivered by Previder. The customer always observes the utmost care in order to safeguard that the requirements of the performance are correct and complete. Dimensions and data mentioned in drawings, images, catalogues, websites, offers, advertising material, standardisation sheets, and the like do not have binding effect on Previder, barring if expressly indicated otherwise by Previder.
- 12.5. If the customer deploys staff and/or auxiliary persons during the implementation of the agreement then the said staff and auxiliary persons shall dispose of the necessary knowledge and experience. If employees of Previder perform activities on location of the customer then the customer shall provide for the necessary facilities, e.g. a work area with computer and network facilities, free of charge and in a timely fashion. Previder shall not be liable for damages or costs on account of transmission errors, failures or unavailability of the said facilities, unless the customer evidences that the said damages or costs are the result of intent or intentional recklessness of the business management of Previder.

- 12.6. The work area and facilities shall comply with any and all statutory requirements. The customer indemnifies Previder against claims of third parties, including employees of Previder, who incur damages in connection with the implementation of the agreement that are the result of acts or omissions of the customer or of unsafe situations within its organisation. The customer shall communicate the company, information and security rules applicable within its organisation to the employees deployed by Previder prior to the start of the activities.
- 12.7. The customer is responsible for the management, including control of the settings, the use of the products delivered and/or the services performed by Previder and the manner that the results of the products and services are deployed. The customer is also responsible for the instruction to and the use by the users.
- 12.8. The customer shall provide for the required equipment, infrastructure and supporting software and install, configure, parametrise and tune (auxiliary) software on its own equipment and, where required, the equipment used in connection therewith, adjust other (auxiliary) software and user environment and keep them up to date and accomplish the interoperability required by the customer.

Article 13 Project and steering groups

- 13.1. If both parties participate in one or more project or steering groups with employees deployed by them then the supply of information shall take place on the manner stipulated for the project or steering group.
- 13.2. Decisions reached in a project or steering group in which both parties participate shall only have binding effect on Previder if the decision-making takes place in conformity with the relevant written arrangements stipulated by and between the parties or, failing relevant written arrangements, if Previder accepted the decisions in writing. Previder shall never be held to accept or implement a decision if this is, at its sole discretion, incompatible with the content and/or the proper implementation of the agreement.
- 13.3. The customer guarantees that the persons who were designated by the same to participate in a project or steering group are authorised to reach binding decisions for the customer.

Article 14 Periods

- 14.1. Previder shall make a reasonable effort to observe the, whether or not final, (delivery) periods and/or (completion) dates mentioned by Previder or stipulated by and between the parties as much as possible. Interim (completion) dates mentioned by Previder or stipulated by and between the parties are always qualified as target dates, shall not have binding effect on Previder, and are exclusively of an indicative nature.
- 14.2. If an overstepping of a period is imminent then Previder and the customer shall enter into discussions in order to discuss the consequences of the overstepping for the further planning.
- 14.3. In all instances - hence also if the parties agreed on a final (delivery) period or (completion) date - Previder shall only be in default due to an overstepping of the period after the customer has given Previder written notice of default, in the course of which the customer grants Previder a reasonable period to remedy the shortcoming (in respect of the stipulated arrangements) and the said reasonable period has expired. The notice of default must contain a description of the shortcoming that is as complete and detailed as possible in order that Previder is given the opportunity to react adequately.
- 14.4. If it was stipulated that the compliance with the stipulated activities shall take place in phases then Previder shall be entitled to postpone the start of the activities that pertain to a phase until the customer approved the results of the preceding phase in writing.
- 14.5. Previder shall not be bound by a, whether or not final, (completion) date or (delivery) period if the parties agreed on a change of the content or scope of the agreement (contract extras, change or specifications, etc.) or a change in the approach of the implementation of the agreement, or if the customer does not comply with its obligations that derive from the agreement or not in a timely or not in a complete fashion. The fact that (the request for) contract extras occur(s) during the implementation of the agreement shall never entitle the customer to terminate or rescind the agreement.

Article 15 Rescission and termination of the agreement

- 15.1. Each party shall only be authorised to rescind the agreement on account of an imputable failure to comply with the agreement if the other party, always in all instances after a written notice of default that is as detailed as possible in the course of which a reasonable period is imposed to remedy the failure, imputably fails to comply with essential obligations pursuant to the agreement. Payment obligations of the customer and any and all obligations to cooperate and/or supply information on the part of the customer or a third party to be hired by the customer are in all instances qualified as essential obligations pursuant to the agreement.
- 15.2. If the customer has already received performances for the implementation of the agreement at the time of the rescission then the said performances and the associated payment obligations shall not be subject of undoing, unless the customer evidences that Previder is in default in respect of the essential part of the said performances. Amounts invoiced by Previder prior to the rescission in connection with what Previder has already properly performed or delivered for the implementation of the agreement remain, in consideration of the provisions set forth in the previous sentence, payable in full and immediately fall due at the time of rescission.
- 15.3. If an agreement that due to its nature and content does not come to an end following completion, was concluded for an open term, then each party can terminate it in writing after mutual consultation and whilst stating reasons. If a notice period was not stipulated by and between the parties then a reasonable period must be observed in case of termination. Previder shall, on account of termination, never be held to pay any compensation.
- 15.4. The customer shall not be entitled to terminate an agreement for the provision of services concluded for a fixed term, or an agreement that comes to an end following completion, early.
- 15.5. Each party can terminate the agreement in writing, either in whole or in part, without a notice of default and with immediate effect, if the other party is granted - whether or not provisional - suspension of payment, if a winding-up petition is filed in respect of the other party, if the business of the other party is liquidated or terminated other than for the benefit of restructuring or merger of businesses. Previder can also terminate the agreement, either in whole or in part, without a notice of default and with immediate effect, if the decisive control over the business of the customer changes, either directly or indirectly. Previder shall, on account of the termination as intended in this paragraph, never be held to refund any already received amounts or to pay compensation. If the customer has irrevocably been declared to be insolvent then the right of the customer to use the available software, websites and the like as well as the right of the customer to access and/or use the services of Previder shall come to an end, without any act of termination on the part of Previder being required.

Article 16 Liability of Previder

- 16.1. The total liability of Previder on account of an imputable failure to comply with the agreement or any other legal ground whatsoever, expressly including each and every failure to comply with a warranty or indemnification obligation stipulated with the customer, shall be limited to compensation for damages as elaborated in this article.
- 16.2. Direct damages are limited to at most the amount of the price stipulated for the relevant agreement (exclusive of VAT). If the agreement mostly regards a continuing performance agreement with a term or more than one year then the price stipulated for the said agreement is set at the total of the fees (exclusive of VAT) stipulated for one year. However, in no instance whatsoever shall the total liability of Previder for direct damages, on the basis of any legal ground whatsoever, exceed €500,000 (five hundred thousand euros).
- 16.3. Direct damages are exclusively understood as any and all damages consisting of:
- the damages to remedy the breach of contract;
 - reasonable and demonstrable costs to incite the relevant party to (again) comply properly with the agreement;
 - reasonable costs for the establishment of the cause and the scope of the damages to the extent that they are related to the direct damages as intended here; and
 - reasonable and demonstrable costs incurred by the customer to prevent or limit the direct damages as intended in this article.
- 16.4. Damages due to death, bodily harm or on account of property damage shall be limited to €1,250,000 (one million and two hundred and fifty thousand euros).
- 16.5. Indirect damages, consequential damages, lost profit, lost savings, reduced goodwill, reputational damages, losses due to business interruptions, damages as a result of claims of buyers of the customer, damages related to the use of goods, materials or software of third parties prescribed to Previder by the customer, and damages related to the hiring of suppliers prescribed to Previder by the customer are excluded. Equally excluded is the liability of Previder related to the mutilation, destruction or loss of data or documents.
- 16.6. The exclusions and limitations of liability of Previder as intended in article 16.2 up to and including article 16.4 shall not affect the other exclusions and limitations of liability of Previder that are described in these general terms and conditions.
- 16.7. The exclusions and limitations as intended in article 16.2 up to and including article 16.5 expire if and to the extent that the damages are the result of intent or intentional recklessness of Previder.
- 16.8. Unless compliance by Previder has become permanently impossible, the liability of Previder on account of an imputable failure to comply with an agreement shall only arise if the customer forthwith gave Previder notice of default, in the course of which a reasonable period for the remedy of the shortcoming is granted, and Previder also fails to comply with its obligations after the said period. The notice of default must contain a description of the shortcoming that is as complete and detailed as possible in order that Previder is given the opportunity to react adequately.
- 16.9. Condition for the occurrence of any entitlement to compensation is always that the customer forthwith reports the damages to Previder in writing as soon as possible after the occurrence of the same. Each and every claim for compensation in respect of Previder expires following the mere lapse of a period of twenty-four months after the occurrence of the claim, unless the customer filed a claim for compensation prior to the expiry of the said period.
- 16.10. The customer indemnifies Previder against any and all liabilities of third parties on account of product liability as a result of a defect in a product or system that were delivered to a third party by the customer and that also consisted of equipment, software or other materials delivered by Previder, unless and to the extent that the customer evidences that the damages were caused by the said equipment, software or other materials.
- 16.11. The provisions set forth in this article as well as any and all other restrictions and limitations of liability mentioned in these general terms and conditions are also applicable in favour of any and all (legal) persons on whom Previder and its suppliers rely for the implementation of the agreement.

Article 17 Force majeure

- 17.1. Neither party shall be held to comply with an obligation, including a statutory and/or stipulated warranty obligation, if the said party is prevented from doing so as a result of force majeure. Force majeure on the part of Previder includes, inter alia: (i) force majeure of suppliers of Previder, (ii) the improper compliance with obligations of suppliers who were prescribed to Previder by the customer, (iii) the defectiveness of goods, equipment, software or materials of third parties of which the use was prescribed to Previder by the customer, (iv) official measures, (v) war or terrorism, (vi) general transport difficulties, (vii) sickness of staff, and (viii) pandemic.
- 17.2. If a situation of force majeure has continued for more than sixty days then each party shall be entitled to rescind the agreement in writing. The performances that have already been delivered in pursuance of the agreement shall in that case be settled proportionately, without the parties otherwise being liable to pay each other anything else.

Article 18 Service Level Agreement

- 18.1. Potential arrangements regarding a service level (Service Level Agreement) are expressly stipulated in writing. The customer shall forthwith inform Previder of any and all circumstances that are or may affect the service level and the relevant availability.
- 18.2. If arrangements were stipulated about a service level then the availability of software, systems and related services shall always be measured in such manner that the decommissioning announced by Previder in advance on account of preventive, corrective or adaptive maintenance or other forms of service, as well as circumstances that are beyond the control of Previder, shall not be taken into account. Barring evidence to the contrary to be furnished by the customer, the availability measured by Previder shall serve as complete evidence.

Article 19 Back-up

- 19.1. If the services to the customer comprises, in pursuance of the agreement, the creation of back-ups of data of the customer then Previder shall, in consideration of the periods stipulated in writing, and failing the same once a week, create a complete back-up of the data of the customer in its possession. Failing arrangements about the retention period, Previder retains the back-up during the period common at Previder. Previder shall retain the back-up diligently as befits a good pater familias.
- 19.2. The customer personally remains responsible for compliance with any and all administrative and retention obligations applicable to the customer.

Article 20 Change and contract extras

- 20.1. If Previder, at the request or with prior consent of the customer, performed activities or delivered other performances that fall outside the content or scope of the stipulated activities and/or performances then the said activities or performances shall be paid by the customer according to the stipulated rates and, failing the same, according to the common rates of Previder. Previder shall not be held to comply with this kind of request and it may require that a separate written agreement is concluded for it.
- 20.2. The customer realises that changes and contract extras (may) result in the postponement of (delivery) periods and (completion) dates. New (delivery) periods and (completion) dates indicated by Previder shall replace the previous periods and dates.
- 20.3. To the extent that a fixed price was stipulated for the agreement, Previder shall, if so required, inform the customer in writing of the financial consequences of the additional activities or performances as intended in this article.

Article 21 Transfer of rights and obligations

- 21.1. The customer shall never sell, transfer or pledge the rights and obligations vested in the same pursuant to an agreement to a third party.
- 21.2. Previder shall be entitled to sell, transfer or pledge its claims for payment of fees to a third party.

Article 22 Applicable law and disputes

- 22.1. The agreements between Previder and the customer are governed by Dutch law. The applicability of the Vienna Sales Convention 1980 is excluded.
- 22.2. Disputes that arise as a result of agreements concluded by and between the parties and/or as a result of further agreements that are the result of the same shall be settled through arbitration in accordance with the Arbitration Regulations of the Foundation for the Settlement of Automation Disputes (www.sgoa.eu), all without prejudice to the right of each party to request a (arbitration) preliminary injunction and without prejudice to the right of each party to request the imposition of precautionary measures. The location of arbitration is Amsterdam, or another location as mentioned in the Arbitration Regulations.
- 22.3. If a dispute following the agreement concluded by and between the parties or following further agreements that are the result of the same falls within the competence of the Dutch sub-district court then each party shall, in derogation from the provisions set forth in article 22.2, be entitled to bring the case as a sub-district court case before the statutorily competent court in the Netherlands. The aforementioned authority is only vested in the parties if arbitration proceedings in conformity with the provisions set forth in article 22.2 have not been instituted yet in respect of the relevant dispute. If the case was, in consideration of the provisions set forth in article 22.3, brought to the cognisance of the statutorily competent court by one or more parties for handling and ruling then the sub-district court of the said court shall be authorised to handle and rule in the case.
- 22.4. Each party shall in connection with a dispute following the agreement concluded by and between the parties or following further agreements that are the result of the same always be authorised to institute ICT mediation proceedings in conformity with the ICT Mediation Regulations of the Foundation for the Settlement of Automation Disputes. The other part is held to actively participate in instituted ICT mediation proceedings, which shall in any case include the legally enforceable obligation to attend at least one joint meeting of mediators and parties, in order to give the said extrajudicial form of dispute settlement a chance. Each party shall always be free to, after a joint first meeting of mediators and parties, terminate the ICT mediation proceedings. The provisions set forth in this paragraph do not oppose that a party who deems this to be required to request a (arbitration) preliminary injunction or precautionary measures.

Chapter 2: Software-as-a-service (SaaS)

The provisions set forth in this chapter 'Software-as-a-service (SaaS)' are, in addition to the General Provisions of these general terms and conditions, applicable if Previder performs services under the name or in the area of Software-as-a-service (also referred to as: SaaS). For the purpose of these general terms and conditions, SaaS is understood as 'remotely' making and keeping software and/or functionality available to the customer by Previder via the internet or another data network, without a physical carrier or download with the relevant underlying software being made available to the customer.

Article 23 Performance of SaaS

- 23.1. Previder performs the SaaS under the authority of the customer. The customer can exclusively use the SaaS for the benefit of its own business or organisation and the latter only to the extent that this is required for the use intended by Previder. The customer shall not be free to have third parties use the SaaS supplied by Previder.
- 23.2. Previder can make changes in the content or scope of the SaaS. If these kinds of changes are substantial and results in a change of the procedures applicable at the customer then Previder shall inform the customer accordingly in a timely fashion. The costs of the said change shall be at the expense of the customer. As the occasion arises, the customer can terminate the agreement in writing effective from the date that the change takes effect, unless the said change is related to changes in relevant legislation or other rules issued by competent authorities or Previder bears the costs of the said change.
- 23.3. Previder can continue the performance of the SaaS whilst making use of a new or changed version of the underlying software. Previder shall not be held to maintain, change or add certain features or functionalities of the service specifically developed for the customer.
- 23.4. Previder can temporarily decommission the SaaS, either in whole or in part, for preventive, corrective or adaptive maintenance or other forms of service. Previder shall not have the decommissioning continue longer than required and have it, where possible, take place at times that the SaaS is usually used least intensively.
- 23.5. Previder shall never be held to provide a physical carrier or download of the underlying software to the customer.
- 23.6. Failing further relevant arrangements, the customer shall set up, configure, parametrise and tune the SaaS, convert and upload potential data and, where required, adjust the used equipment and user environment.

Article 24 Guarantee

- 24.1. Previder does not guarantee that the SaaS is free from errors and operates without interruptions. Previder shall to the best of its ability make an effort to resolve errors as intended in article 29.3 in the underlying software within a reasonable period, if and to the extent that it regards underlying software that was developed by Previder and the customer reported the relevant errors to Previder in writing in a detailed fashion. As the occasion arises, Previder can postpone the remedy of the errors until a new version of the underlying software is commissioned. Previder does not guarantee that errors in the SaaS that was not developed by Previder shall be resolved. Previder is entitled to implement temporary solutions or program bypasses or problem avoiding restrictions in the SaaS. If (a part of) the SaaS was developed under the authority of the customer then Previder can charge the costs of the resolution to the customer according to its common rates. Previder shall never be held to resolve inaccuracies other than those as intended in this article. If Previder is willing to perform resolution activities in respect of these kinds of other inaccuracies then Previder shall be entitled to charge a separate fee for it.
- 24.2. The customer shall list and define, on the basis of the information supplied by Previder about measures to prevent or limit the consequences of failures, errors and other inaccuracies in the SaaS, mutilation or loss of data or other incidents, the risks for its organisation and, where required, take additional measures. Previder declares to be willing to, at the request of the customer, lend reasonable cooperation in further measures to be taken by the customer on the basis of (financial) conditions to be imposed by Previder. Previder shall never be held to resolve mutilated or lost data other than through the recovery of the - where possible - lastly available back-up of the relevant data.
- 24.3. Previder does not guarantee that the SaaS is adjusted in a timely fashion to changes in relevant legislation and regulations.

Article 25 Start of the services; fee

- 25.1. The SaaS to be supplied by Previder (and potentially related support) starts within a reasonable period after the conclusion of the agreement. If not stipulated otherwise then the SaaS starts through availability by Previder of the resources to obtain access to the SaaS by Previder. The customer ensures that immediately after the conclusion of the agreement the customer disposes of the facilities required for the use of the SaaS.
- 25.2. The customer is liable to pay the fee for the SaaS as included in the agreement. Failing a stipulated payment schedule any and all amounts that are related to the SaaS supplied by Previder shall always be payable in advance per calendar month.

Article 26 Additional provisions

- 26.1. The following articles are equally applicable to the SaaS: 27.3, 27.5, 27.8, 29.1 (with the exception of reference to article 33), 29.11, 41.4, 42.1, 42.2, 55.2, 55.4 and 57. In these articles the words 'software' must be read as 'SaaS' and 'delivery' as 'start of the services'.

Chapter 3: Software

The provisions in this chapter 'Software' are, in addition to the General Provisions of these general terms and conditions, applicable if Previder makes software, apps, related data (databases) and/or user documentation (for the purpose of these general terms and conditions collectively referred to as: 'software') available to the customer other than on the basis of SaaS.

Article 27 User right and user restrictions

- 27.1. Previder makes the stipulated software available for use to the customer on the basis of a user licence during the term of the agreement. The right to use the software is non-exclusive, non-transferable, non-pledgeable and non-sub-licensable.
- 27.2. The availability obligation of Previder and the user right of the customer exclusively extend to the so-called object code of the software. The user right of the customer does not extend to the source code of the software. The source code of the software and the technical documentation created during the development of the software are not made available to the customer, neither if the customer is willing to pay a financial fee for it.
- 27.3. The customer shall always comply strictly with the stipulated restrictions, of any nature and content whatsoever, in respect of the right to use the software.
- 27.4. If the parties stipulated that the software can exclusively be used in combination with certain equipment then in case of a potential failures the customer is entitled to use the software on other equipment with the same qualifications for the duration of the failure.
- 27.5. Previder may require that the customer does not start using the software other than after the customer has obtained one or more codes required for the use from Previder, its supplier or the producer of the software.
- 27.6. The customer can exclusively use the software within and for the benefit of its own business or organisation and the latter only to the extent that this is required for the use intended. The customer shall not use the software for the benefit of third parties, e.g. in the context of -Software-as-a-Service' (SaaS) or 'outsourcing'.
- 27.7. The customer is never allowed to sell, rent, alienate or grant a limited right to the software, the associated codes for use and the carriers on which the software was or is recorded or to, in any way whatsoever make the same available to a third party for any purpose or by any title whatsoever. Nor shall the customer grant a third party - whether or not remote (online) - access to the software or to place the software with a third party for hosting, neither if the relevant third party exclusively uses the software for the benefit of the customer.
- 27.8. The customer shall, if so requested, forthwith lend cooperation in an audit to be conducted by or for the benefit of Previder regarding compliance with the stipulated user restrictions. The customer shall, on demand of Previder, grant access to its buildings and systems. Previder shall handle any and all confidential business information that it receives in the context of an audit or at the customer, to the extent that the said information does not regard the use of the software, confidentially.
- 27.9. The parties note that the agreement concluded by and between the parties, to the extent that it regards the availability for use of software, can never be qualified as a sale and purchase agreement.
- 27.10. Previder shall not be held to maintain the software and/or provide support to users and/or administrators of the software. If, in derogation from the above, Previder is requested to provide maintenance and/or support in respect of the software then Previder may require that the customer concludes a separate written agreement for it.

Article 28 Delivery and installation

- 28.1. Previder shall, at its sole discretion, deliver the software on the stipulated format of data carrier or, failing relevant arrangements, on a format of data carrier to be determined by Previder or make the software available to customer for delivery online. Potentially stipulated user documentation is, at the discretion of Previder, provided in hard copy or digital form in a language to be determined by Previder.
- 28.2. Exclusively if this was stipulated shall Previder install the software at the customer. Failing relevant arrangements, the customer shall install, set up, parametrise and tune the software and, where required, adjust the equipment and user environment used.

Article 29 Acceptance

- 29.1. If the parties did not agree on an acceptance test then the customer accepts the software in its condition at the time of delivery ('as is, where is'), hence with all visible and invisible errors and defects, without prejudice to the obligations of Previder as intended in article 23. In the aforementioned instance the software shall upon delivery or, if installation to be carried out by Previder was stipulated in writing, upon the completion of the installation, be deemed to be accepted by the customer.
- 29.2. If an acceptance test was stipulated by and between the parties then the provisions set forth in articles 29.3 up to and including 29.10 are applicable.
- 29.3. Where these general terms and conditions refer to 'errors' this includes the substantial non-compliance of the software with the functional or technical specifications of the software expressly communicated to Previder in writing, and, in the event that the software fully or partly regards customised software, with the functional or technical specifications expressly stipulated in writing. There can only be question of an error if the customer can demonstrate this and it can moreover be reproduced. The customer is held to forthwith report errors. Previder is not subject to any obligation with regard to other inaccuracies in or on the software other than with regard to errors within the meaning of these general terms and conditions.
- 29.4. If an acceptance test was stipulated then the test period amounts to fourteen days after delivery or, if an installation to be carried out by Previder was stipulated, fourteen days after completion of the installation. During the test period the customer shall not be entitled to use the software for productive or operational purposes. The customer shall carry out the stipulated acceptance test with qualified staff and with sufficient scope and depth.
- 29.5. If an acceptance test was stipulated then the customer commits to test whether the delivered software complies with the functional or technical specifications expressly communicated by Previder in writing and, if and to the extent that the software fully or partly regards customised software, with the functional or technical specifications expressly established in writing.
- 29.6. If during the testing under the authority of the customer use is made of data then the customer shall ensure that the use of the said data is permitted for the relevant purpose.
- 29.7. The software shall be deemed to be accepted between the parties:
- a. if the parties agreed on an acceptance test: on the first day after the test period; or
 - b. if Previder receives, prior to the end of the test period, a test report as intended in article 29.8: at the moment that the errors mentioned in the said test report were remedied, without prejudice to the presence of errors that do not oppose acceptance according to article 29.9; or
 - c. if the customer uses software for productive or operational purposes: at the moment of the relevant commissioning.
- 29.8. If it becomes apparent during the performance of the stipulated acceptance test that the software contains errors then the customer shall report the test results to Previder in writing at the latest on the last day of the test period in a transparent, detailed and comprehensible manner. Previder shall make every effort to remedy the aforementioned errors within a reasonable period, in the course of which Previder shall be entitled to implement temporary solutions, program bypasses or problem avoiding restrictions,
- 29.9. The customer cannot withhold the acceptance of the software on grounds that are not related to the specifications expressly stipulated by and between the parties and moreover not on account of the existence of minor errors, i.e. errors that do not reasonably oppose the operational or productive commissioning of the software, without prejudice to the obligation of Previder to resolve these small errors in the context of the warranty scheme as intended in article 33. Acceptance can, moreover, not be withheld on account of aspects of the software that can only be assessed subjectively, e.g. aesthetic aspects of user interfaces.
- 29.10. If the software is delivered and tested in phases and/or components then the non-acceptance of a certain phase and/or component shall not affect the acceptance of a previous phase and/or another component.
- 29.11. Acceptance of the software in one of the manners as intended in this article implies that Previder shall be discharged from the compliance with its obligations regarding the availability and delivery of the software and, if the installation of the software by Previder was also stipulated, from its obligations regarding the installation.
- 29.12. Acceptance of the software shall not affect the rights of the customer in pursuance of article 29.9 regarding minor errors and article 33 regarding the warranty.

Article 30 Availability

- 30.1. Previder shall make the software available to the customer within a reasonable period after the conclusion of the agreement.
- 30.2. Forthwith after the agreement has come to an end, the customer shall return any and all copies of the software in its possession to Previder. If it was stipulated that at the end of the agreement the customer shall destroy the relevant copies then the customer shall forthwith report the said destruction to Previder in writing. Upon or after the end of the agreement Previder shall not be held to provide assistance in view of a data conversion required by the customer.

Article 31 User right fee

- 31.1. The fee payable by the customer for the user right is payable at the stipulated times or, failing a stipulated time:
- a. if the parties did not agree that Previder shall provide for installation of the software:
 - upon delivery of the software;
 - or in case of periodically payable user right fees upon delivery of the software and subsequently at the start of every new user right period;
 - b. if the parties did agree that Previder shall provide for installation of the software:
 - upon completion of the said installation;
 - or in case of periodically payable user right fees upon completion of the said installation and subsequently at the start of every new user right period.

Article 32 Changes in the software

- 32.1. Barring mandatory statutory exceptions, the customer is not entitled to change the software, either in whole or in part, without prior written consent of Previder. Previder is entitled to refuse its consent or to impose conditions on the same. The customer bears the full risk of any and all changes implemented by or under the authority of the customer - whether or not with consent of Previder.

Article 33 Warranty

- 33.1. Previder shall make every effort to resolve errors within the meaning of article 29.3 within a reasonable period if they were reported to Previder in writing in a detailed manner within a period of three months after delivery or, if an acceptance test was stipulated, within three months after acceptance. Previder does not warrant that the software is suitable for the actual and/or proposed use. Previder neither warrants that the software shall operate without interruption and/or that all errors shall always be improved. The resolution is carried out free of charge, unless the software was developed under the authority of the customer, other than for a fixed price, in which instance Previder shall charge its usual resolution rates.
- 33.2. According to its usual rates Previder can charge the costs of resolution if there is question of user errors or injudicious use of the customer or due to other causes than cannot be blamed on Previder. The resolution obligation expires if the customer implements or has implemented changes in the software without written consent of Previder.
- 33.3. Resolution of errors takes place at a location and in a manner to be determined by Previder. Previder is entitled to implement temporary solutions or program bypasses or problem avoiding restrictions in the software.
- 33.4. Previder shall never be held to recovery of mutilated or lost data.
- 33.5. Previder is not subject to any obligation of any nature or content whatsoever regarding errors that are reported after expire of the warranty period as intended in article 33.1.

Chapter 4: Development of software and websites

The provisions in this chapter 'Development of software and websites' are, in addition to the General Provisions of these general terms and conditions, applicable if Previder designs and/or develops software as intended in chapter 3 and/or websites for the benefit of the customer and potentially installs the software and/or websites.

Article 34 Specifications and development of software and/or websites

- 34.1. Development always takes place on the basis of an agreement for the provision of services. If specifications or a design of the software and/or the website to developed had not already been provided to Previder prior to or upon the conclusion of the agreement then the parties shall specify in proper consultation and in writing what software and/or website shall be developed and how the development shall take place.
- 34.2. Previder shall develop the software and/or website with due care, all in consideration of the expressly stipulated specifications or the design and - as the occasion arises - in consideration of the project organisation, methods, techniques and/or procedures stipulated with the customer in writing. Before starting with the development activities, Previder may require that the customer declares in writing to agree with the specifications or the design.
- 34.3. Failing specific relevant arrangements, Previder shall start the design and/or development activities within a reasonable period after the conclusion of the agreement to be determined by Previder.
- 34.4. If so requested, the customer shall give Previder the opportunity to perform the activities outside the usual working days and working hours at the office or location of the customer.
- 34.5. The performance obligations of Previder for the development of a website do not include the availability of a so-called 'content management system'.
- 34.6. If the parties agree that Previder, in addition to the development, also provides training, maintenance and/or support and/or a domain name is also applied for by Previder then Previder may require that the customer concludes a separate written agreement for it. These activities are charged separated at the usual rates of Previder.
- 34.7. If Previder provides services to the customer with regard to a domain name, e.g. the application, renewal, alienation or transfer to a third party, then the customer must take the rules and method of the relevant authority (authorities) into account. If so requested, Previder shall provide the customer with a hard copy of the said rules. Previder does expressly not accept responsibility for the correctness or timeliness of the services or the realisation of the results envisaged by the customer. The customer is liable to pay any and all costs associated with the application and/or registration according to the stipulated rates or, failing stipulated rates, the usual rate of Previder. Previder does not guarantee that a domain name requested by the customer is allocated to the customer.

Article 35 Agile development of software / websites

- 35.1. If the parties use an iterative development method (e.g. scrum) then the parties accept: (i) that at the start the activities are not performed on the basis of complete or fully elaborated specifications; and (ii) that specifications, which had not been stipulated at the start of the activities, can be adjusted in proper consultation during the implementation of the agreement, in consideration of the project approach that pertains to the relevant development method.
- 35.2. Prior to the start of the implementation of the agreement the parties shall set up one or more teams that consist of delegates of both the customer and Previder. The team ensures that the lines of communication remains short and direct and that consultations take place regularly. The parties provide for the deployment of capacity stipulated by each of them (FTE) in terms of team members in the roles and with the knowledge and experience and decision-making authority that is required for the implementation of the agreement. The parties accept that the stipulated capacity is at least required for the success of the project. The parties make an effort to reasonable keep already deployed persons available up to the end of the project, unless circumstances occur that are beyond the control of the relevant parties. During the implementation of the agreement the Parties shall in proper consultation jointly reach decisions with regard to the specifications that are applicable to the next phase of the project (e.g. a 'time box') and/or the next partial development. The customer accepts the risk that the software and/or website may not necessarily comply with all specifications. The customer provides for a permanent, active contribution supported by the organisation of the customer and cooperation of relevant end users, inter alia in respect of the testing and in respect of (further) decision-making. The customer guarantees expeditiousness of the progress decisions to be reached during the implementation of the agreement. Failing timely and clear progress decisions on the part of the customer in conformity with the project approach that pertains to the relevant development method, Previder shall be entitled - however not be held - to reach the, at its discretion, appropriate decisions.

- 35.3. If the parties agree on one or more test moments then testing shall exclusively take place on the basis of objective, measurable and previously stipulated criteria (e.g. conforming to development standards). Errors or other inaccuracies are only remedied if the responsible team decides to do so and are carried out within a subsequent iteration. If an additional iteration appears to be required then the relevant costs are at the expense of the customer. After the final development phase Previder shall not be held to perform resolution activities in respect of errors or other inaccuracies, unless expressly stipulated otherwise in writing.

Article 36 Delivery, installation and acceptance

- 36.1. The provisions set forth in article 28 regarding delivery and installation are equally applicable.
- 36.2. Unless Previder shall, in pursuance of the agreement, host the software and/or website on its own computer system for the benefit of the customer then Previder shall deliver the software and/or website to the customer on a data carrier and in a form to be determined by the same or online.
- 36.3. The provisions set forth in article 29 of these general terms and conditions regarding acceptance are equally applicable.
- 36.4. If the parties use a development method as intended in article 35 then the provisions set forth in article 29,1, article 29.2, articles 29.4 up to and including 29.9, article 29.12, article 33.1 and article 33.5 are not applicable. The customer accepts the software and/or website in the condition in which it is at the moment of the end of the final development phase ('as is, where is').

Article 37 User right

- 37.1. Previder makes the software and/or website developed under the authority of the customer and the user documentation potentially developed in connection with it available to the customer for use.
- 37.2. Only if this was stipulated in writing shall the source code of the software and the technical documentation created during the development of the software be made available to the customer, in which instance the customer shall be entitled to make changes in the software.
- 37.3. Previder shall not be held to make auxiliary software and program or data libraries required for the use and/or maintenance of the software and/or website available.
- 37.4. The provisions set forth in article 27 regarding user right and user restrictions are equally applicable.
- 37.5. Only if the content of the written agreement expressly indicates otherwise that all design and development costs of software specifically developed for the customer by Previder shall fully and exclusively be borne by the customer then - and such in derogation from the provisions set forth in article 37.4 - there shall not be any restrictions for the customer in terms of the right to use the software and/or website made available to and paid by the customer.

Article 38 Fee

- 38.1. Failing a stipulated payment schedule any and all amounts that are related to the design and development of software and/or websites shall always be payable in advance per calendar month.
- 38.2. The price for the development activities also includes the fee for the right to use the software and/or website during the term of the agreement.
- 38.3. The fee for the development of the software and/or website does not include a fee for the auxiliary software and program and data libraries, potential installation services and potential adjustment and/or maintenance of the software and/or website required by the customer. Nor does the fee include the provision of support to users of the same.

Article 39 Warranty

- 39.1. The provisions set forth in article 33 regarding warranty are equally applicable.
- 39.2. Previder does not warrant that the software and/or website developed by the same work well in conjunction with any and all types or new versions of web browsers and potential other software and/or websites. Previder neither warrants that the software and/or website work well in conjunction with all types of equipment.

Chapter 5: Maintenance of software and support

The provisions included in this chapter 'Maintenance of software and support' are, in addition to the General Provisions of these general terms and conditions, applicable if Previder performs services in the area of maintenance of software and support during the use of the said software.

Article 40 Maintenance services

- 40.1. If stipulated then Previder performs maintenance with regard to the software specified in the agreement. The maintenance obligation comprises the resolution of errors in the software as intended in article 29.3 and - such exclusively if this was stipulated in writing - the availability of new versions of the software according to article 41.
- 40.2. The customer shall report the observed errors in the software in a detailed fashion. After receipt of the notification Previder shall, in accordance with its usual procedures, make every effort to resolve errors and/or implement improvements in later new versions of the software. The results shall depend on the urgency and the version and release policy of Previder and shall be made available to the customer in the manner and within the period to be determined by Previder. Previder is entitled to implement temporary solutions or program bypasses or problem avoiding restrictions in the software. The customer shall personally install, set up, parametrise and tune the corrected software or the available new version of the software and, where required, adjust the equipment and user environment used. Previder shall never be held to resolve inaccuracies other than those as intended in this article. If Previder is willing to perform resolution activities in respect of these kinds of other inaccuracies then Previder shall be entitled to charge a separate fee for it.
- 40.3. The provisions set forth in articles 33.3 and 33.4 are equally applicable.
- 40.4. If Previder performs the maintenance online then the customer shall in a timely fashion provide for a proper and adequately secured infrastructure and network facilities.
- 40.5. The customer shall lend any and all cooperation required by Previder in the maintenance, including the temporary discontinuation of the use of the software and the creation of a back-up of all data.
- 40.6. If the maintenance is related to software that was not delivered to the customer by Previder then the customer shall, of Previder deems this to be required or desirable for the maintenance, make the source code and the technical (development) documentation of the software (including data models, designs, change-logs, and the like) available. The customer guarantees that the customer is entitled to proceed with the said availability. The customer grants Previder the right to use the software, including the source code and technical

(development) documentation, and to change it in the context of the performance of the stipulated maintenance.

Article 41 New versions of software

- 41.1. The maintenance exclusively comprises the availability of new versions of the software if and to the extent that this was stipulated in writing. If the maintenance comprises the availability of new versions of the software then the said availability takes place at the discretion of Provider.
- 41.2. Three months after the availability of an improved version Provider shall no longer be held to resolve errors in the previous version and to provide support and/or maintenance with regard to a previous version.
- 41.3. Provider may require that the customer concludes a further agreement with Provider for the availability of a version with new functionality and that a further fee is paid for the availability. Provider can copy functionality from a previous version of the software, but does not guarantee that every new version contains the same functionality as the previous version. Provider shall not be held to maintain, change or add certain features or functionalities of the software specifically developed for the customer.
- 41.4. Provider may require of the customer that the customer adjusts its system (equipment, web browser, software, and the like) if that would be required for the proper operation of a new version of the software.

Article 42 Support services

- 42.1. If the services of Provider in pursuance of the agreement also include support to users and/or administrators of the software then Provider shall advise online, by telephone or by email about the use and the operation of the software specified in the agreement. The customer shall describe notifications in the context of support as complete and detailed as possible, in order that Provider is given the opportunity to react adequately. Provider can impose conditions on the manner of notification, qualifications and the number of persons that qualifies for support. Provider shall handle properly substantiated requests for support within a reasonable period according to its common procedures. Provider does not guarantee the correctness, completeness or timeliness of reactions or provided support. Support is provided on working days during the common opening hours of Provider.
- 42.2. If the services of Provider in pursuance of the agreement also comprise the provision of so-called standby services then Provider shall keep one or more members of staff available on the days and during the hours specified in the agreement. As the occasion arises, the customer shall be entitled to rely on the support of the available members of staff in case of urgency if there is question of serious failures, errors and other serious inaccuracies in the operation of the software. Provider does not guarantee that they shall be resolved in a timely fashion.
- 42.3. The maintenance and the other stipulated services as intended in this chapter are carried out effective from the day that the agreement was concluded, unless the parties stipulated otherwise in writing.

Article 43 Fee

- 43.1. Failing an expressly stipulated payment schedule, any and all amounts that are related to maintenance of software and the other services established in the agreement as intended in this chapter are each time payable in advance per calendar month.
- 43.2. Amounts in respect of maintenance of the software and the other services established in the agreement as intended in this chapter are payable from the start of the agreement. The fee for maintenance and other services is payable irrespective of the fact whether the customer is using (used) the software or relies on the possibility of maintenance or support.

Chapter 6: Advisory and consultancy

The provisions included in this chapter “Advisory and consultancy” are, in addition to the General Provisions of these general terms and conditions, applicable if Provider performs services in the area of advisory and consultancy, which are not performed under the authority or supervision of the customer.

Article 44 Performance of advisory and consultancy services

- 44.1. Provider shall perform the advisory and consultancy services entirely autonomously, at its sole discretion, and not under the authority and supervision of the customer.
- 44.2. Provider shall not be bound by a turnaround time of the contract because the turnaround of a contract in the area of consultancy or advisory depends on various factors and circumstances, e.g. the quality of the data and information that the customer supplies and the cooperation of the customer and relevant third parties.
- 44.3. The services of Provider are exclusively performed on the common working days and during the common working hours of Provider, unless stipulated otherwise in writing.
- 44.4. The use that the customer makes of an advisory and/or consultancy report issued by Provider shall always be at the risk of the customer. The evidentiary burden that (the manner of) advisory and consultancy services do (does) not comply with the arrangements stipulated in writing or with the expectations in respect of a reasonably acting and diligent Provider shall entirely be vested in the customer, without prejudice to the right of Provider to furnish any and all evidence to the contrary.
- 44.5. Without prior written consent of Provider, the customer shall not be entitled to make a statement to a third party about the manner, the methods and techniques of Provider and/or the content of the recommendations or reports of Provider. The customer shall not provide or otherwise disclose the recommendations or reports of Provider to a third party.
- 44.6. In case of cancellation within 3 working days before the start of the scheduled advisory / consultancy services Provider reserves the right to invoice the full expenses of the scheduled sessions to the customer.

Article 45 Reporting

- 45.1. Provider shall inform the customer periodically in the manner stipulated in writing of the performance of the activities. The customer shall inform Provider in advance in writing of circumstances that are or could be relevant to Provider, e.g. the manner of reporting, the questions the customer wishes to have addressed, prioritisation of the customer, availability of resources and staff of the customer, and special facts or circumstances that may potentially not be known to Provider. The customer shall provide for the further dissemination and perusal of the information supplied by Provider within the organisation of the customer and also assess the information on the basis thereof and inform Provider accordingly.

Article 46 Fee

- 46.1. Failing an expressly stipulated payment schedule any and all fees that are related to the services supplied by Previder as intended in this chapter shall always be payable in advance per calendar month.

Chapter 7: Secondment services

The provisions included in this chapter 'Secondment services' are, in addition to the General Provisions of these general terms and conditions, applicable if Previder makes one or more employees available to the customer in order to perform activities under the authority and supervision of the customer.

Article 47 Secondment services

- 47.1. Previder shall make the employee mentioned in the agreement available to the customer in order to perform activities under the authority and supervision of the customer. The results of the activities are at the risk of the customer. Unless stipulated otherwise in writing, the employee shall be made available to the customer for forty hours a week during the common working days of Previder.
- 47.2. The customer can only deploy the available employee for activities other than the stipulated activities if Previder gave prior written consent to this.
- 47.3. The customer is only allowed to hire the available employee to a third party in order to perform activities under the authority and supervision of the said third party if this was expressly stipulated in writing.
- 47.4. Previder shall make an effort to keep the available employee available for work during the stipulated days for the term of the agreement, barring in case of sickness or termination of the employment of the employee. If the agreement was concluded in view of performance by a specific person, Previder shall, after consultation with the customer, always be entitled to replace this person by one or more persons with the same qualifications.
- 47.5. The customer is entitled to request replacement of the available employee (i) if the available employee does demonstrably not comply with the expressly stipulated quality requirements and the customer communicated this to Previder in a motivated manner within three working days after the start of the activities, or (ii) in case of prolonged sickness or termination of employment of the available employee. Previder shall forthwith address the request with priority. Previder does not guarantee that replacement is always possible. If replacement is not possible, or not forthwith, then the claims of the customer in respect of further compliance with the agreement as well as any and all claims of the customer on account of non-compliance with the agreement shall expire. Payment obligations of the customer regarding the performed activities remain in full force and effect in an unchanged manner.
- 47.6. The costs are invoiced monthly in arrears.
- 47.7. In case of cancellation within 3 working days before the start of the scheduled secondment services Previder reserves the right to invoice the full expenses of the scheduled sessions to the customer.

Article 48 Term of the secondment agreement

- 48.1. In derogation from the provisions set forth in article 4 of these general terms and conditions, it is noted that if the parties did not agree on anything in respect of the duration of the secondment, the agreement shall have a term for an open period, in which instance after the potential initial term a notice period of one calendar month applies to each party. Notice of termination must take place in writing.

Article 49 Working time, working hours and working conditions

- 49.1. The working hours, holidays and rest periods, working time and other relevant terms and conditions of employment of the available employee equal those that are common at the customer. The customer guarantees that the working hours, holidays and rest periods, working time and other relevant working conditions comply with the relevantly applicable legislation and regulations.
- 49.2. The customer shall inform Previder of a proposed (temporary) closing of its business or organisation.

Article 50 Overtime allowance and travelling time

- 50.1. If, under the authority or at the request of the customer, the available employee works longer than the stipulated or the common number of working hours or works outside the working days common at Previder then the customer shall be liable to pay the stipulated overtime rate or, failing a stipulated overtime rate, the overtime rate common at Previder for the said hours. If so requested, Previder shall inform the customer of the applicable overtime rates.
- 50.2. Expenses and travelling time shall be charged to the customer in accordance with the rules and criteria common at Previder. If so requested, Previder shall inform the customer of the relevantly applicable rules and criteria.

Article 51 Recipients; liability and other liability

- 51.1. Previder shall provide for the timely and complete payment of the payroll tax, national insurance contributions, employee insurance scheme contributions, income independent contribution pursuant to the Dutch Healthcare Insurance Act and turnover tax payable for the available employee in connection with the agreement. Previder indemnifies the customer against any and all claims of the Dutch Tax Administration or the implementing agencies for national insurance legislation that are payable on account of the agreement with the customer, on the condition that the customer forthwith informs Previder in writing of the existence and the content of the claim and leaves the handling of the case, including the conclusion of potential settlements, entirely to Previder. To this end the customer shall grant and lend the necessary authorisations, information and cooperation to Previder so that the latter can, where required in the name of the customer, defend itself against the said claims.
- 51.2. Previder does not accept any liability for the quality of the results of activities that were realised under the authority and supervision of the customer.

Chapter 8: Instruction and training

The provisions set forth in this chapter 'Instruction and training' are, in addition to the General Provisions of these general terms and conditions, applicable if Previder performs services, by any name and in any way whatsoever (e.g. electronically), in the area of instruction, training, courses, workshops, sessions, seminars and the like (hereinafter referred to as: training).

Article 52 Registration and cancellation

- 52.1. Registration for a training must take place in writing and shall have binding effect after confirmation by Previder.
- 52.2. The customer bears responsibility for the choice and suitability of the training for the participants. The absence of the required prior knowledge with a participant shall not affect the obligations of the customer in pursuance of the agreement. The customer is allowed to replace a participant in a training by another participant, after prior written consent of Previder.
- 52.3. If the number of registrations gives, at the discretion of Previder, cause for this then Previder shall be entitled to cancel the training, combine it with one or more trainings or postpone it to a later date or a later time. Previder reserves the right to change the location of the training. Previder is entitled to make organisational and substantive changes in a training.
- 52.4. The consequences of a cancellation of participation in a training by the customer or participants are governed by the rules common at Previder. A cancellation must always take place in writing and prior to the training or the relevant component of it. Cancellation or non-appearance does not affect the payment obligations vested in the customer pursuant to the agreement.

Article 53 Performance of training

- 53.1. The customer accepts that Previder determines the content and depth of the training.
- 53.2. The customer shall inform the participants of and monitor compliance by the participants with the obligations pursuant to the agreement and the rules (of conduct) prescribed by Previder for participation in the training.
- 53.3. If Previder uses its own equipment or software during the performance of the training then Previder does not guarantee that the said equipment or software is error-free or operates without interruptions. If Previder performs the training on location of the customer then the customer shall provide for the availability of proper teaching space and operational equipment and software. If the facilities at the customer do not appear to comply and the quality of the training can consequently not be guaranteed then Previder shall be entitled not to start, to shorten or to discontinue the training.
- 53.4. Sitting for an examination or a test is not part of the agreement.
- 53.5. The customer is liable to pay a separate fee for the documentation, teaching materials or resources made available or developed for the benefit of the training. The foregoing also applies to potential training certificates or duplicates of the same.
- 53.6. If the training is offered on the basis of e-learning then the provisions of chapter 2 'Software-as-a-service (SaaS)' are, where possible, equally applicable.

Article 54 Price and payment

- 54.1. Previder may require that the customer pays the relevant payable fees prior to the start of the training. Previder can exclude participants from participation if the customer failed to provide for timely payment, the latter without prejudice to all other rights of Previder.
- 54.2. If Previder conducted a preliminary investigation for the benefit of a training plan or training recommendation then the associated costs can be charged separately.
- 54.3. Unless Previder expressly indicated that the training is exempt from VAT within the meaning of Section 11 of the Dutch Turnover Tax Act 1968, the customer shall also be liable to pay VAT on the fee. Upon the conclusion of the agreement Previder shall be entitled to adjust its prices in case of a potential change in the VAT regime applicable to training established by or pursuant to the law.

Chapter 9: Hosting

The provisions set forth in this chapter 'Hosting' are, in addition to the General Provisions of these general terms and conditions, applicable if Previder performs services, by any name whatsoever, in the area of hosting and related services.

Article 55 Hosting services

- 55.1. Previder shall perform the hosting services stipulated with the customer.
- 55.2. If the agreement regards the availability of disk space of equipment then the customer shall not exceed the stipulated disk space, unless the agreement expressly regulates the consequences of it. The agreement comprises the availability of disk space on a server exclusively and specifically reserved for the customer, only if this was expressly stipulated in writing. Any and all use of disk space, data traffic and other load of systems and infrastructure is limited to the maximums stipulated by and between the parties. The data traffic that was not used by the customer in a certain period cannot be carried forward to a subsequent period. In case of an overstepping of the stipulated maximums, Previder shall charge an additional fee in accordance with the relevant common rates.
- 55.3. The customer is responsible for the management, including control of the settings, the use of the hosting services and the manner that the results of the service are deployed. Failing relevant express arrangements, the customer shall install, set up, parametrise and tune the (auxiliary) software and, where required, adjust the equipment, other software and user environment used and accomplish the interoperability required by the customer. Previder is not held to carry out a data conversion.
- 55.4. Only if this was expressly stipulated in writing shall the agreement also comprise the provision or availability of security, back-up, contingency use and recovery services.
- 55.5. Previder can temporarily decommission the hosting service, either in whole or in part, for preventive, corrective or adaptive maintenance. Previder shall not have the decommissioning last longer than required, have it take place outside office hours as much as possible, and start it, depending on the circumstance, after consultation with the customer.
- 55.6. If Previder provides, in pursuance of the agreement, services to the customer with regard to a domain name, e.g. the application, renewal, alienation or transfer to a third party, then the customer must take the rules and method of the relevant authority (authorities) into account. If so requested, Previder shall provide the customer with a hard copy of the said rules. Previder does expressly not accept responsibility for the correctness or timeliness of the services or the realisation of the results envisaged by the customer. The customer is liable to pay any and all costs associated with the application and/or registration according to the stipulated rates or, failing stipulated rates, the usual rate of Previder. Previder does not guarantee that a domain name requested by the customer is allocated to the customer.

Article 56 Software licences

- 56.1. The customer is aware of the fact that third parties can conduct audits at Previder (inter alia) with regard to the numbers and type of software licences that are active on the 'Cloud Platform'. In this respect the customer acknowledges the interest of Previder in a timely and correct specification by the customer of the number, type and sort of licences that it purchases via third parties and uses on the 'Cloud Platform'.
- 56.2. On demand of Previder the customer shall forthwith, and in any case within five working days, supply the information requested by Previder in connection with licences of third parties that the customer uses on the 'Cloud Platform' in writing. The said information includes, for instance, information like the number, type and sort of licences of third parties and the name of the licensor.
- 56.3. The customer indemnifies Previder against damages and costs (also including a penalty imposed on Previder) that arise on account of the fact that the customer acts in violation of the provisions set forth in this article.

Article 57 Notice and take-down

- 57.1. The customer shall always act diligently and not unlawfully in respect of third parties, in particular by respecting the intellectual property rights and other rights of third parties, respecting the privacy of third parties, not disclosing data in violation of the law, not gaining unauthorised access to systems, not disseminating viruses or other malicious programs and refraining from punishable acts and violations of any other statutory obligation.
- 57.2. In order to prevent liability in respect of third parties or to limit the consequences of the same, Previder shall always be entitled to take measures regarding an act or omission of or at the risk of the customer. On written demand of Previder, the customer shall forthwith erase data and/or information from the systems of Previder, failing which Previder shall be entitled to, at its sole discretion, personally erase the data and/or information or the render access to the same impossible. Previder shall moreover be entitled to, in case of a violation or imminent violation of the provisions set forth in article 57.1, immediately and without prior notice deny the customer access to its systems. The above does not affect potential other measures or the exercising of other statutory and contractual rights by Previder in respect of the customer. Previder shall, as the occasion arises, also be entitled to terminate the agreement with immediate effect, without being liable in respect of the customer in connection therewith.
- 57.3. It cannot be required of Previder that it forms an opinion on the merits of the claims of third parties or the defence of the customer or to, in any way whatsoever, be involved in an dispute between a third party and the customer. The customer shall deal with the relevant third party and inform Previder with documents in writing and in a properly substantiated manner.

Chapter 10: Purchase of equipment

The provisions set forth in this chapter 'Purchase of equipment' are, in addition to the General Provisions of these general terms and conditions, applicable if Previder sells equipment of any nature whatsoever and/or other goods (tangible objects) to the customer.

Article 58 Sale and purchase

- 58.1. Previder sells the equipment and/or other goods based on nature and number as stipulated in writing.
- 58.2. Previder does not guarantee that upon delivery the equipment and/or goods are suitable for the actual and/or proposed use of the customer, unless the intended purposes were clearly specified in the written agreement without proviso.
- 58.3. The sales obligation of Previder does not include assembly and installation materials, software, consumables, batteries, stamps, ink (cartridges), toner products, cables, and accessories.
- 58.4. Previder does not guarantee that the assembly, installation and user instructions pertaining to the equipment and/or goods are error-free and that the equipment and/or goods possess the features that are mentioned in the said instructions.

Article 59 Delivery

- 59.1. Previder shall deliver (have delivered) the goods sold to the customer at a location designated by the customer, if this was stipulated in writing. As the occasion arises, Previder shall inform the customer, where possible in a timely fashion prior to the delivery, of the time that Previder or the carrier hired by the same intends to deliver the equipment and/or goods.
- 59.2. The costs of transport, insurance, hosting and lifting, rental of temporary facilities, and the like are not included in the purchase price and are, as the occasion arises, charged to the customer.
- 59.3. If the customer requests Previder to dispose of or destroy old materials (e.g. networks, cabinets, cable conduits, packaging materials, equipment or data on equipment) or if Previder is by law held to do so then Previder can accept the said request through a written order at its common rates. If and to the extent that Previder is by law not allowed to require payment of a fee (e.g. in the context of the so-called 'old-for-new scheme') then Previder shall, as the occasion arises, not require the said fee from the customer.
- 59.4. If the parties stipulated this in writing then Previder shall install (have installed), configure (have configured) and/or connect (have connected) the equipment and/or goods. The potential obligation of Previder to install and/or configure equipment does not include the performance of a data conversion and the installation of software. Previder shall not be responsible for obtaining potentially required authorisations.
- 59.5. Previder shall always be entitled to implement the agreement in partial deliveries.

Article 60 Test set-up

- 60.1. Only if this was stipulated in writing shall Previder be held to place a test set-up with regard to the equipment in which the customer is interested. Previder can impose (financial) conditions on a test set-up. A test set-up comprises the temporary placement of equipment in a standard set-up, excluding accessories, in an area made available by the customer, before the customer definitively decides to purchase the relevant equipment or not. The customer shall be liable for the use, theft or loss or or damage to equipment that is part of a test set-up.

Article 61 Environmental requirements

- 61.1. The customer provides for an environment that complies with requirements specified by Previder for the equipment and/or goods, inter alia regarding the temperature, humidity, and technical environmental requirements.
- 61.2. The customer ensures that activities to be performed by third parties, e.g. structural activities, are performed in an adequate and timely fashion.

Article 62 Warranty

- 62.1. Previder shall to the best of its ability to repair material and manufacturing errors in the sold equipment and/or other sold goods, as also in parts that were delivered by Previder in the context of the warranty, within a reasonable period free of charge if the said errors were reported to Previder within a period of three months after delivery in a detailed manner. If repair is, at the reasonable discretion of Previder, not possible, if repair would take too long or if unreasonably high expenses are associated with the repair then Previder shall be entitled to replace the equipment and/or the goods free of charge by other similar, but not necessarily identical, equipment and/or goods. A data conversion that necessarily results from repair or replacement falls outside the warranty. Any and all replaced parts become the property of Previder. The warranty obligation expires if errors in the equipment, goods or in the parts are, either fully or partly, the result of incorrect, inaccurate or injudicious use, external causes, e.g. fire or water damage, or if the customer made or had made changes in the equipment or in the parts that were delivered by Previder in the context of the warranty without consent of Previder. Previder shall not withhold the said consent on unreasonable grounds.
- 62.2. Any other or further reliance by the customer on non-conformity of the delivered equipment and/or goods other than the provisions set forth in article 62.1 is excluded.
- 62.3. Costs of activities an repair outside the context of this warranty shall be charged by Previder in conformity with its common rates.
- 62.4. On account of the sale and purchase agreement Previder shall not be subject to any obligation regarding errors and/or other defects that were reported after expiry of the warranty period as intended in article 62.1.

Chapter 11: Rental of equipment

The provisions set forth in this chapter 'Rental of equipment' are, in addition to the General Provisions of these general terms and conditions, applicable if Previder rents equipment of any nature whatsoever to the customer.

Article 63 Rental

- 63.1. Previder rents the equipment and the thereto-pertaining user documentation mentioned in the rental agreement to the customer.
- 63.2. The rental does not include the availability of software on separate data carriers and the consumables that are required for the use of the equipment, e.g. batteries, ink (cartridges), toner products, cables, and accessories.
- 63.3. The rental starts on the day of availability of the equipment to the customer.

Article 64 Preliminary inspection

- 64.1. Prior to or on the occasion of the availability Previder can, by way of preliminary inspection, in the presence of the customer prepare a description of the condition of the equipment, with reference to observed defects. Previder may require that the customer signs the prepared report with the said description for approval before Previder makes the equipment available to the customer for use. The defects of the equipment mentioned in the said report are at the expense of Previder. Upon observation of defects the parties agreed if, and if so how and when, the defects mentioned in the report are repaired.
- 64.2. If the customer does not properly lend cooperation in the preliminary inspection as intended in article 64.1 then Previder shall be entitled to carry out the said inspection in the absence of the customer and personally prepare the report. This report shall have binding effect on the customer.
- 64.3. If a preliminary inspection is not carried out then the customer is deemed to have received the equipment in a good and undamaged condition.

Article 65 Use of the equipment

- 65.1. The customer shall only use the equipment in accordance with the intended designated use pursuant to the agreement and at the location mentioned in the said agreement in and for the benefit of its own organisation or business. Use of the equipment by or for the benefit of third parties is not allowed. The right to use the equipment is non-transferable. The customer is not allowed to sub-rent the equipment to a third party or to otherwise surrender the (shared) use of it to a third party.
- 65.2. The customer shall personally install, configure, connect and prepare the equipment for use.
- 65.3. The customer is not allowed to use the equipment or any part of it in any way whatsoever as collateral or object of security or to otherwise dispose of the same.
- 65.4. The customer shall use the equipment diligently and shall keep it as befits a good pater familias. The customer shall take sufficient measures to prevent damages. In case of damage to the equipment, the customer shall forthwith inform Previder accordingly. In all instances the customer shall be liable in respect of Previder in case of damage to or theft, loss or embezzlement of the equipment during the duration of the rental.
- 65.5. The customer shall not fully or partly change the equipment or add something to it. If, as the occasion arises, changes or additions were yet made then the customer shall undo or remove them at the latest at the end of the rental agreement.
- 65.6. It applies between the parties that defects of the changes and additions of or to the equipment made by or under the authority of the customer and any and all defects that derive from the said changes or additions of the equipment are not defects within the meaning of Section 204 of Book 7 of the Dutch Civil Code. The customer is not entitled to any claim in respect of Previder in connection with the said defects. Previder shall not be held to repair or maintain the said defects.
- 65.7. The customer is not entitled to any compensation in connection with changes of, or additions to, the rented equipment made by the customer that were not undone or removed upon or after the end of the rental agreement, for any reason whatsoever.
- 65.8. The customer shall forthwith inform Previder in writing of a potential attachment on the equipment, with reference to the identity of the attaching party and the reason for the attachment. The customer shall forthwith provide the attaching bailiff insight into the rental agreement.

Article 66 Maintenance of rented equipment

- 66.1. The customer shall not personally maintain the rented equipment or have it maintained by a third party.
- 66.2. The customer shall forthwith communicate defects of the rented equipment observed by the same in writing. Previder shall make every effort to, by way of corrective maintenance, repair the defects of the equipment that are at its expense within a reasonable period. Previder shall also be entitled, but not held, to perform preventive maintenance on the equipment. The customer shall, if so requested, give Previder the opportunity to perform corrective and/or preventive maintenance. The parties shall in advance, in proper consultation, determine the days and times when maintenance takes place. During the period of maintenance the customer is not entitled to alternative equipment.
- 66.3. The following defects are excluded from the repair obligation:
- defects that the customer accepted upon conclusion of the rental agreement;
 - the repair of defects as a result of external causes;
 - defects that can be blamed on the customer, its members of staff and/or third parties hired by the customer;
 - defects that are the result of inaccurate, incorrect or injudicious use or use in violation of the documentation;
 - defects related to the use of the not recommended or not authorised parts or consumables;
 - defects that are the result of the use of the equipment in violation of the designated use;
 - Defects that are the result of authorised changes or or additions to the equipment.
- 66.4. If Previder repairs the defects as intended in the previous paragraph or has them repaired then the customer shall be liable to pay Previder the relevant costs according to the common rates of Previder.
- 66.5. Previder shall always be entitled to opt for omission of repair of defects and to replace the equipment by other similar, but not necessarily identical, equipment.
- 66.6. Previder shall never be held to repair or reconstruct lost data.

Article 67 Final inspection and return

- 67.1. At the end of the rental agreement the customer shall return the equipment to Previder in the original condition. To this end the customer shall also erase potential data from the equipment. Costs of transport in connection with the return are at the expense of the customer.
- 67.2. Prior to or at the latest on the last working day of the rental period the customer shall lend its cooperation in a joint final inspection of the condition of the equipment. The parties shall jointly prepare a report of the findings, which must be signed by both parties. If the customer does not lend cooperation in the said final inspection then Previder shall be entitled to carry out the said inspection in the absence of the customer and personally prepare the report. This report shall have binding effect on the customer.
- 67.3. Previder shall be entitled to have the defects that are mentioned in the report of the final inspection and that are reasonably at the risk and expense of the customer repaired at the expense of the customer. The customer shall be liable for damages of Previder on account of temporary unusability or further unrentability of the equipment.
- 67.4. If at the end of the rental the customer failed to undo a change made to the equipment or failed to remove an addition made to it then it is noted between the parties that the customer is deemed to have waived each and every right to the said changes and/or additions.

Chapter 12: Maintenance of equipment

The provisions set forth in this chapter 'Maintenance of equipment' are, in addition to the General Provisions of these general terms and conditions, applicable if Previder maintains equipment of any nature whatsoever for the benefit of the customer.

Article 68 Maintenance services

- 68.1. Previder performs the maintenance with regard to the equipment specified in the agreement, provided that the equipment is located in the Netherlands.
- 68.2. During the period that Previder is in possession of the equipment to be maintained the customer shall not be entitled to temporary alternative equipment.
- 68.3. The content and scope of the maintenance services to be performed and the potential associated service levels shall be recorded in a written agreement. Failing the same Previder shall be held to make an effort to resolve failures that were properly reported to Previder by the customer in writing to the best of its ability within a reasonable period. For the purpose of this chapter of the general terms and conditions 'failure' is understood as the equipment not complying or not complying without interruptions with the specifications of the said equipment expressly communicated by Previder in writing. There can only be question of a failure if the customer can demonstrate this failure and the relevant failure can moreover be reproduced. Previder shall also be entitled, but not held, to perform preventive maintenance.
- 68.4. The customer shall, immediately after a failure on the equipment has occurred, inform Previder accordingly by means of a detailed written description.
- 68.5. The customer shall lend the cooperation required by Previder for the maintenance, e.g. the temporary discontinuation of the use of the equipment. The customer is held to provide the staff of Previder or third parties designated by Previder access to the location of the equipment, to lend any and all other required cooperation and to make the equipment available to Previder for the benefit of the maintenance.
- 68.6. Before the customer presents the equipment to Previder for maintenance, the customer ensures that a complete and properly operational back-up is created of any and all software and data present in or on the equipment.
- 68.7. At the request of Previder a relevantly expert employee of the customer shall be present during maintenance activities for consultation.
- 68.8. The customer is authorised to connect equipment and systems not delivered by Previder to the equipment and to install software on it.
- 68.9. If, at the discretion of Previder, it is required for the maintenance of the equipment that the connections of the equipment with other equipment or with software are tested then the customer shall make the relevant other equipment and software as well as the test procedures and data carriers available to Previder.
- 68.10. The test material required for the maintenance that does not pertain to the normal facilities of Previder must be made available by the customer.
- 68.11. The customer bears the risk of loss or theft of or damage to the equipment during the period that Previder has it in its possession for maintenance activities. It is left up to the customer to take out insurance for the said risk.

Article 69 Maintenance fee

- 69.1. The maintenance fee does not include:
- costs of (the replacement of) consumables, e.g. batteries, stamps, ink (cartridges), toner products, cables, and accessories;
 - costs of (the replacement of) parts as well as maintenance services for the repair of failures that were fully or partly caused by repair attempts by parties other than Previder;
 - activities for the benefit of revision of the equipment;
 - modifications on the equipment;
 - move, relocation, re-installation or costs of transport for repair of equipment or activities resulting from the same.
- 69.2. The fee for maintenance is payable irrespective of the fact whether the customer is relying (relied) on the possibility of using maintenance.

Article 70 Exclusions

- 70.1. Activities on account of the investigation or repair of failures that are the result of or are related to user errors, injudicious use of the equipment or external causes, e.g. internet failures, failures of data network connections, power facilities or connections with equipment, software or materials that do not fall under the scope of the maintenance agreement, do not pertain to the obligations of Previder in pursuance of the maintenance agreement.
- 70.2. The maintenance obligations of Previder do not include:
- the investigation or repair of failures that are the result or or are related to changes of the equipment other than by or on behalf of Previder;
 - the use of the equipment in violation of the relevantly applicable conditions and failure of the customer to have the equipment maintained in a timely fashion.
- The maintenance obligations of Previder neither include investigation or repair of failures that are related to software installed on the equipment.
- 70.3. Costs for maintenance and/or investigations carried out in connection with the provisions set forth in article 70.1 and/or article 70.2 can be charged (additionally) by Previder according to its common rates.
- 70.4. Previder shall never be held to recover data mutilated or lost as a result of failures and/or maintenance.