

**successfully\_**  
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# Terms and Conditions

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**Successfully**

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# 1 Terms and Conditions

## 1. GENERAL

### 1.1 Applicability

- 1.1.1 These terms and conditions apply to all offers and Successfully agreements and/or other legal relationships between Successfully and the Client.
- 1.1.2 Successfully may change the Terms and Conditions Successfully . The amended General Terms and Conditions Successfully will apply, unless any changes are objected to in writing within 15 (fifteen) days of the date of the amendment.
- 1.1.3 Changes in, as well as additions to, the General Terms and Conditions Successfully and/or the agreements concluded between Successfully and the Client are only valid if they have been recorded in writing by Successfully .
- 1.1.4 If several (legal) persons or companies are indicated with the trade name that the Client uses, they will be jointly and severally obliged to fulfill all obligations under the agreement concluded with Successfully .
- 1.1.5 The indications above the articles of these terms and conditions are solely intended to increase legibility. The content and purport of the article included under a particular designation is not limited to that designation.

### 1.2 Definitions

- 1.2.1 In the General Terms and Conditions Successfully the following words and terms are written with a capital letter. All of the following words and terms in the singular have the same meaning as in the plural and vice versa.
- 1.2.2 General Terms and Conditions of Third Parties:  
  
Third Party General Terms and Conditions include the terms and conditions that apply to Third Party Products and Services.
- 1.2.3 Application Software:  
  
The application that provides functionality to users. This can be a (software) Successfully Product, a (software) Third Party Product or software from the Client or a third party licensed to the Client.
- 1.2.4 Axis is:  
  
The properties of the Product are not (fully) described and the Client indicates that it is sufficiently aware of and/or has tested the properties of the Product and that it will accept the Product as it is offered. The client purchases for its own benefit and loss and the parties exclude an appeal to error.
- 1.2.5 As specified :  
  
Delivery of the Product is in accordance with the Documentation.
- 1.2.6 SaaS:  
  
(Software as a Service) includes Successfully making Application Software available directly and/or indirectly (through third parties) via Cloud Services.
- 1.2.7 Successfully :



Successfully ICT Consultancy & Management Solutions NV and its legal successors or a company or partner affiliated with Successfully ICT Consultancy & Management Solutions NV that enters into a legal relationship with the Client and has declared the General Terms and Conditions Successfully applicable.

1.2.8 Successfully Products and Services:

All products and services provided by Successfully , the resulting facilities and the related activities that do not originate from third parties and of which any intellectual property rights, industrial property rights and other rights rest with Successfully .

1.2.9 Backup:

Backup copies of digital data and/or files.

1.2.10 Data center:

A data center is a facility where servers can be connected to networks, mainly the Internet. Part of the Infrastructure is located in one or more Data Centers.

1.2.11 Third Party Infrastructure:

That part of the Infrastructure that is managed and/or delivered by third parties via Successfully to the Client and which Successfully cannot in principle control. This is a Third Party Product and Service.

1.2.12 Third Party Products and Services:

All products and services provided by Successfully , the resulting facilities and the related work that originate from third parties.

1.2.13 Documentation:

The further (functional) description of Products and Services delivered or provided to the Client

1.2.14 Fair Use :

The reasonable use by the Client of the Products and Services.

1.2.15 Fixed Price:

As further described in article 6.3.

1.2.16 Errors:

The reproducible failure of Products to (fully) comply with the Documentation.

1.2.17 Warranty:

As further described in Article 5.9.

1.2.18 Feasibility study:

As further described in article 5.1.1.

1.2.19 Cloud Services:



Offering, Maintaining and providing access to web space for the storage of information, images, or Application software , on the Successfully Infrastructure or Third-Party Infrastructure which are placed in Data Centers.

1.2.20 Successfully Infrastructure:

That part of the Infrastructure that Successfully manages in its Data Center(s) and that Successfully can control.

1.2.21 Infrastructure:

The collection of information and communication technology facilities such as software and hardware, including cabling, that are used for data processing and/or telephony. This can be Successfully Infrastructure, Third Party Infrastructure, Client Infrastructure, and Public Infrastructure

1.2.22 Identification data:

Login name, passwords , address details and/or other codes.

1.2.23 Customization:

The result of Products and Services to be developed or developed on behalf of the Client.

1.2.24 Employee:

Employees employed by Successfully or employees employed by a third party or self-employed persons who have been hired by Successfully or to persons who are otherwise involved on the part of Successfully in the execution of the agreement concluded between the Client and Successfully .

1.2.25 Subsequent calculation:

As further described in article 6.4.

1.2.26 Object code:

The computer programming code mainly in binary format. The Object Code is immediately executable by a computer after processing, but without reverse engineering, compilation or assembly.

1.2.27 Maintenance:

As further described in article 2.3.

1.2.28 Client:

Anyone who requests and orders the delivery/ delivery of Products and Services.

1.2.29 Process data:

The data entered by the Client within the Cloud Services and/or the data entered by third parties.

1.2.30 Products and/or Services:

All Successfully provided Products and Services and/or Third Party Products and Services, the resulting facilities and the related activities.

1.2.31 Public Infrastructure:



That part of the Infrastructure that is managed and/or provided by third parties and that Successfully cannot control. The internet falls under this.

1.2.32 Source code:

The computer programming code that can be displayed in a format readable and understandable to an intermediate level programmer. This includes related Source Code system documentation, notes, and procedural codes. The Source Code does not include the Object Code.

1.2.33 Support:

As further described in Article 2.5.

1.2.34 System administration:

The wholly or partly outsourcing of the (operational) management of Client's information systems to Successfully . System management consists of the provision of Maintenance, Support and/or Back-up with regard to Products and/or Services of the Client to be determined.

1.2.35 Advance:

As further described in Article 6.5.

1.2.36 Working Days:

Normal Dutch working hours (8.00-17.00 CET) and days (Monday to Friday) excluding national holidays.

### 1.3 Confirmation

1.3.1 Oral promises, orders or other statements of whatever nature from employees of Successfully are only legally valid and binding if confirmed in writing by authorized representatives of Successfully .

### 1.4 Offers

1.4.1 All offers are without obligation, unless expressly stated otherwise in the offer.

1.4.2 Offers are based on the data, information and/or wishes provided by the Client in accordance with Article 1.6.

### 1.5 Agreements

1.5.1 An agreement between Successfully and the Client for which no further duration has been agreed has a duration of 3 (three) years if (off / on) delivery relates to a Service, for which an amount is charged periodically. At the end of the contract period, the agreement is always tacitly renewed for the same period.

1.5.2 Termination of the agreement, for which a periodic amount is charged (continuation agreement), takes place by means of a registered letter that is received by the other party no later than 3 (three) calendar months before the extension of the agreement takes effect.

1.5.3 Contrary to Article 1.5.2, a continuing performance agreement applicable between the parties cannot be terminated as long as a further and/or supplementary agreement is in force between the parties. In that case, termination of the agreement will not take place until the date on which the further agreement with the longest remaining term between the parties expires, with a minimum notice period of 3 (three) calendar months.



- 1.5.4 Each of the parties is entitled to terminate the agreement in whole or in part by means of a registered letter without judicial intervention, if the defaulting party fails to fulfill its obligations, even after a written summons stating a reasonable period of time.
- 1.5.5 Successfully also has the right, with immediate effect and without judicial intervention, to terminate or cancel the agreement and/or the offers in whole or in part by means of an extrajudicial statement, if the Client is a natural person upon the death of the Client, if The Client submits a request for statutory debt restructuring, if bankruptcy or suspension of payments is requested for the Client or if the Client is declared bankrupt or if a suspension of payments is granted or if the Client's company is liquidated or terminated, other than for the purpose of reconstruction or merging of companies. In these cases, every claim of Successfully against the Client is immediately and fully due and payable and Successfully does not make any compensation towards the other party in connection with this termination.
- 1.5.6 After the end of the agreement, for whatever reason, the Client can no longer derive any rights from the agreement , without prejudice to the continued existence of the obligations of the parties, which by their nature are intended to continue after the end. of the agreement, such as but not limited to the obligations regarding property rights, confidentiality and non-competition clause.
- 1.5.7 After the end of a continuing performance agreement, for whatever reason, Successfully can perform transfer work for the Client at the first request of the Client, such as transferring and/or destroying data and customer applications. If the Client has not made a request as referred to in this paragraph within one (1) calendar month after termination of the Service, Successfully is entitled to remove the available data, applications, and any other data from the Client.

## **1.6 Client's cooperation/obligation to provide information**

- 1.6.1 All assignments are carried out by Successfully on the basis of the data, information, wishes and/or requirements made known by the Client to Successfully .
- 1.6.2 The Client will Successfully provide full cooperation and always provide all useful and necessary data and/or other information for a proper execution of the agreement in a timely manner. The Client will guarantee the correctness of this data and/or other information.
- 1.6.3 If data, information, wishes and/or requirements necessary for the execution of the agreement are not available to Successfully , not in time and/or not in accordance with the agreements , or if the Client does not fulfill its obligations in any other way, Successfully in any case has the right to termination or dissolution of the agreement or suspension of the execution of the agreement and Successfully has the right to charge the costs incurred as a result according to its usual rates.
- 1.6.4 If interim changes or new facts should occur in previously made available data, information, wishes and/or requirements, Successfully will at all times be entitled, in consultation with the Client, to adjust the agreement to these new circumstances. or to dissolve or terminate.
- 1.6.5 If the Client makes functional improvements or other changes to the Products and Services (after having first received the required written permission from Successfully , as further explained in Article 2.1.4), the Client is obliged to inform Successfully of these adjustments . share in the cases that Successfully provides Maintenance, Support or other services with regard to the Products and Services provided to the Client.
- 1.6.6 In the event Successfully performs activities on location other than its own, the Client will provide the facilities reasonably desired by Successfully , such as a workspace and telecommunications facilities, free of charge.





## 1.7 Confidentiality/non-compete clause

- 1.7.1 Successfully and the Client mutually commit themselves to secrecy of all data and information about each other's organization, clients, files and Products and Services, which the parties become aware of when working for each other or for clients of the Client. Data and information may only be used for the implementation of the agreement concluded between the parties.
- 1.7.2 Successfully is entitled to place the name and logo of the Client or its clients to whom rights to the Products and Services have been granted on the Successfully website and/or a reference list and to make these available to third parties for information.
- 1.7.3 The Client and its Clients will not enter into direct or indirect business, employment or other similar relationships with any Employee of Successfully during and up to 24 (twenty-four) months after the termination or dissolution of the agreement , without the written permission of Successfully . The Client must ensure that its Clients will comply with the aforementioned obligation.
- 1.7.4 In the event of a violation of the provisions of Article 1.7.3, the Client will owe an immediately due and payable fine of **USD 28,000 (twenty-eight thousand US dollars)** per violation without further notice of default, without prejudice to Successfully 's right to claim compensation for the full damage suffered. requirements.

## 1.8 Liability

- 1.8.1 The total liability of Successfully will, with due observance of articles 1.8.2 and 1.8.3, be limited to compensation for direct damage and then to a maximum of the compensation (excluding BBO) that Successfully has received from the Client for the agreed price (excluding BBO) with a maximum of **USD 28,000 (twenty-eight thousand US dollars)** , whereby a series of connected events counts as one event.
- 1.8.2 If the agreement also consists of a continuing performance contract, with a term of more than 1 (one) year and Successfully 's liability arises from this continuing performance contract, the stipulated price is set at the total of the fees (excluding BBO) actually paid by the Client to Successfully based on the continuing performance agreement for 1 (one) year (being the year in which the damage occurred) with a maximum of **USD 28,000 (twenty-eight thousand US dollars)** )
- 1.8.3 The total liability of both parties due to an attributable shortcoming in the fulfillment of a warranty obligation and/or an indemnification offered is an exception to the provisions of articles 1.8.1 and 1.8.2: this is limited to twice the total of the fees (excluding BBO) that Successfully has received from Client for 2 (two) years, with a maximum of **USD 83,000 ( eighty-three thousand US dollars)** , whereby a series of related events counts as one event.
- 1.8.4 Successfully has taken out insurance for damage. Successfully is in any case not liable for further damage and will not compensate this further damage, which the Client arises under the agreement concluded with Successfully , however and for whatever reason, including possible claims against the Client from third parties, should suffer, then is covered by this insurance and actually reimbursed plus Successfully's deductible, unless there is intent or willful recklessness.
- 1.8.5 Successfully 's total liability for damages for death or personal injury shall in no event exceed **USD 555,000 (five hundred and fifty thousand US dollars)**, whereby a series of connected events counts as one event.
- 1.8.6 Direct damage is exclusively understood to mean:
- a) The reasonable costs incurred to determine the cause and extent of the damage;



- b) The reasonable costs incurred to prevent or limit damage, insofar as the Client demonstrates that these costs have led to limitation of damage.
- 1.8.7 Liability of Successfully for indirect damage, including consequential damage, lost profit, missed savings, destruction or loss of files and/or data, damage caused by delay, loss suffered, damage caused by the inadequate provision of information and/or cooperation by The Client, damage due to business interruption or claims of third parties against the Client are expressly excluded.
- 1.8.8 Apart from the case referred to in Article 1.8, Successfully has no liability whatsoever for compensation, regardless of the ground on which an action for compensation would be based.
- 1.8.9 Successfully 's liability only arises if the Client provides Successfully , immediately and properly, with written notice of default, thereby setting a reasonable term to remedy the shortcoming and Successfully also imputably continues to fall short in the fulfillment of its obligations after that term. The notice of default must contain as detailed a description as possible of the shortcoming, so that Successfully is able to respond adequately.
- 1.8.10 The condition for the existence of any right to compensation is always that Client within 60 (sixty) days after the occurrence of the damage Successfully informs of this in writing by registered letter and thereby takes those measures so that the damage is limited as much as possible. .
- 1.8.11 Client Successfully indemnifies against all third-party claims for liability as a result of a defect in a product, system or service delivered by Client to a third party and which product, system or service also consisted of what was Successfully delivered.
- 1.8.12 Successfully does not accept any liability for damage of any nature whatsoever, caused by Third Party Products and Services, which Successfully has delivered ( delivered / completed) to the Client . If possible, Successfully will transfer its rights to claim compensation from the supplier of the Third Party Product in question to the Client.
- 1.8.13 Unless a service level agreement has been agreed that provides otherwise, Successfully is not liable for damage of any kind resulting from the late provision of Support, Maintenance and/or Warranty.

## **1.9 Transfer**

- 1.9.1 The agreement concluded between Successfully and Client and the rights and obligations arising therefrom cannot be transferred to third parties without the prior written consent of Successfully .
- 1.9.2 The Client successfully grants the right in advance, without requiring the explicit permission of the Client, to transfer the entire agreement, or parts thereof, to:
- a) parent, sister and/or subsidiary companies;
  - b) a third party in the event of a merger or acquisition of Successfully .

If this happens, Successfully will inform the Client about this.

## **1.10 Non-attributable Shortcoming**

- 1.10.1 Neither of the parties is obliged to fulfill any obligation if it is prevented from doing so as a result of a circumstance that is not due to its fault, nor is it for its account under the law, legal act or generally accepted views. . The aforementioned circumstances also include circumstances that are beyond the control of Successfully and business risks of Successfully , such as but not limited to shortcomings of suppliers of Successfully , the untimely availability of necessary data, information and/or specifications, changes in such data, incomplete specifications and/or functional descriptions of Third Party Products and



Services and/or products supplied by third parties, bad weather conditions, fire, explosion, power failure, (D)Dos attacks, hacking , cracking or any downtime or unavailability by unlawful acts of third parties, by anyone whatsoever destroying, damaging or making unusable any automated work or any work for telecommunications, causing disturbance in the flow or in the operation of such work, or by anyone safety measures taken from such work I, network failures, flooding, illness, lack of personnel, strikes, jabs, slowdowns or other labor disputes, accidents, governmental acts, inability to obtain a required permit or permission, scarcity of materials , theft, traffic nuisance and /or transport obstacles.

- 1.10.2 If the non-attributable shortcoming is of a temporary nature, Successfully can suspend the agreement until the relevant situation no longer occurs, without being obliged to pay any compensation.
- 1.10.3 Successfully reserves the right, if a non-attributable shortcoming occurs, to claim payment for services already performed that Successfully had already performed before the non-attributable shortcoming became known.
- 1.10.4 If the non-attributable shortcoming of one of the parties continues for more than three months, both parties separately have the right to dissolve the agreement, without being obliged to pay any compensation with regard to the dissolution.

### **1.11 Nullity**

- 1.11.1 If one or more provisions (or part of a provision) of the Agreement is void, declared void, voidable or has otherwise lost its validity, the remaining provisions (or the remaining part of the relevant provision) of the agreement will remain in full force and effect.
- 1.11.2 With regard to provisions (or part of a provision) that are null, annulled, voidable, or have lost their legal validity in any other way, the parties will consult with each other in order to make a replacement arrangement, to the extent that the parties will strive to maintain the tenor of the agreement (or the remainder of the relevant provision) in its entirety.

### **1.12 Applicable Law and Dispute Resolution**

- 1.12.1 **Bonairean law applies to** all agreements concluded by Successfully with the Client , unless the parties have agreed otherwise in writing. The parties expressly declare that the Vienna Sales Convention does not apply.
- 1.12. The foregoing shall, without waiving any right, not constitute an obstacle for the parties to take precautionary legal measures and/or to initiate proceedings in preliminary relief proceedings, or to initiate collection proceedings at the **Court of Bonaire, seat location Kralendijk**.

## **2. SUCCESSFULLY PRODUCTS**

### **2.1 Right of use Software**

- 2.1.1 Successfully grants the Client the non-exclusive right to use the Products and Services, with associated documentation.
- 2.1.2 The right of use is limited to the exclusive use of the Products and Services on the processing unit agreed with Successfully and the number of users, servers and/or workstations agreed with Successfully . If no further agreements have been made, the right of use is limited to the processing unit on which the Products and Services are first installed and the number of users, servers and/or workstations is limited to 1 (one).
- 2.1.3 The right of use for software Products and Services is limited to the Object Code. Rights to and the Source Codes themselves are not provided, unless expressly agreed otherwise in writing.



- 2.1.4 The Client is prohibited from copying, duplicating or changing the Products and Services in any way whatsoever and/or through third parties, without having received the prior written permission of Successfully .
- 2.1.5 The Client is allowed to make one cold backup of the Products and Services made available for security purposes, if a Backup is not made available by Successfully . The backup made may not be used by the Client for operational purposes without the prior written consent of Successfully
- 2.1.6 The right to use the Products and Services cannot be transferred to third parties (third parties also include parent, sister and/or subsidiary companies of the Client).
- 2.1.7 The Client is not authorized under any title or in any way whatsoever to make the Products and Services available to third parties (third parties also include parent, sister and/or subsidiaries of the Client).
- 2.1.8 Reverse engineering or decompilation of the Products and Services by the Client is prohibited, unless explicitly permitted by mandatory law.
- 2.1.9 The right of use commences after payment has been made by the Client and the other obligations resting on the Client have been met.
- 2.1.10 The scope of the right to use Third Party Products and Services is determined by the Third Party General Terms and Conditions as set out in Article 4. Insofar as the foregoing does not deviate from the Third Party General Terms and Conditions, the foregoing shall apply mutatis mutandis.

## **2.2 Controls**

- 2.2.1 Successfully is entitled to incorporate technical limitations and control mechanisms in the Products and Services to prevent and/or check that the actual number of users, servers and/or workstations does not exceed the agreed number of users, servers and/or workstations.
- 2.2.2 Furthermore, Successfully is entitled, as long as the Client makes use of the Products and Services, itself or through a third party, to carry out unannounced checks at the locations where the Products and Services are used. Client will provide full cooperation and access to this. If the Client refuses cooperation or access to Successfully , Successfully is entitled to terminate the agreement with immediate effect. In this case, the Client is no longer entitled to use the Products and Services and is obliged to return all Products and Services and destroy any copies made within 15 (fifteen) days at Successfully 's first request .
- 2.2.3 If it appears from the aforementioned checks or otherwise that the actual number of users, servers and/or workstations exceeds the agreed number of users, servers and/or workstations, the Client must immediately provide the number of missing user, servers and/or workstation licenses. plus a fine of 25% on the additional amount to be paid. Amounts owed for Maintenance and Support for the missing user, server and/or workstation licenses will be retroactive to the moment of the last (off/on) delivery of the previously agreed number of users, servers and/or workstations, to Client will be charged. Successfully also reserves the right to make a report to the Software Alliance (BSA).

## **2.3 Maintenance**

- 2.3.1 Successfully offers the Client, depending on the Product, the option to purchase Maintenance.
- 2.3.2 Maintenance on the Products and Services takes place on the basis of a periodic Advance and under conditions to be agreed upon. Insofar as the conditions to be agreed upon do not deviate from this, the provisions of Article 2.3 apply.



- 2.3.3 Maintenance includes making available updates, including documentation, of the Products and Services licensed to the Client , which entail a qualitative (eg Error repair) or functional improvement of the Product made available. Successfully is not obliged to actively keep Client informed of any updates.
- 2.3.4 If Maintenance involves a functional improvement, Successfully is entitled to charge additional costs to compensate for this functional improvement.
- 2.3.5 Successfully is entitled to refuse the provision of Maintenance if the Products and Services, or the environment in which the aforementioned Products and Services operate, have been changed by the Client in any form or in any way whatsoever.
- 2.3.6 If the Client refuses to install new updates that have been offered to the Client by Successfully , Successfully reserves the right to terminate the agreement, or to adjust the agreement to this refusal.

## **2.4 Advice**

- 2.4.1 All Products and Services that can be regarded as advice or have an advisory nature, such as but not limited to Support (Article 2.5), consultancy, project management, or the performance of a Feasibility Study (Article 5.1) will be performed to the best of our knowledge. and can be provided.
- 2.4.2 Successfully is not responsible and/or liable if the activities arising from the advice result in a project of the Client not being completed within the established budget, the specified time and any other predetermined conditions.
- 2.4.3 Successfully will provide advice based on preconditions indicated by Successfully and information obtained from the Client as stated in article 1.6. If it appears that not all relevant information has already been obtained and/or if other types of problems and/or insights should arise, such as but not limited to incompatibility problems (products that are incompatible with each other), the advice given can be adapted to this new situation.

## **2.5 Support**

- 2.5.1 Successfully will only provide Support on the most recent updates to the Products and Services. Successfully is entitled in its sole discretion to provide Support on older versions, releases, etc. of the Products and Services.

## **2.6 Customization**

- 2.6.1 All assignments that partly or wholly consist of custom work are settled on the basis of Fixed Price or Subsequent Calculation.
- 2.6.2 Parties will specify in writing which Successfully Product will be developed and how this will be done. Successfully will carry out the Successfully Product Development with care on the basis of the data to be provided by the Client, with the correctness, completeness and consistency for which the Client guarantees.
- 2.6.3 Successfully is entitled, but not obliged, to investigate the correctness, completeness and/or consistency of the data or specifications made available to Successfully and to suspend the agreed work upon discovery of any inaccuracies, incompleteness or inconsistency until the Client has completed the concerning deficiencies.
- 2.6.4 Exceedings of the rates underlying the price of up to 10% are deemed to have been tacitly accepted and need not be stated as such to and/or approved by the Client.
- 2.6.5 Intellectual property rights, industrial property rights or other rights of customization remain at all times vested in Successfully , as described in article 7.1.



## **2.7 Additional work**

- 2.7.1 If Successfully is of the opinion that a project change indicated by the Client is an additional work assignment, Successfully will report this to the Client before proceeding to implementation. At the request of the Client, the notification will be followed by a statement of the price and other conditions. The Client will always decide as soon as possible about the proposed additional work.
- 2.7.2 The Client is deemed to have agreed to the performance of additional work and the associated costs if the Client has allowed the additional work to be performed without first stating that it does not wish additional work to be done in writing.

## **2.8 Installation and Implementation**

- 2.8.1 Only if agreed in writing will Successfully install and/or implement the Products and Services, or have them installed and/or implemented.
- 2.8.2 Before installation and/or implementation can be proceeded with, the Client will ensure at its expense that all conditions specified by or through Successfully are met, in order to achieve a successful installation and/or implementation.
- 2.8.3 The Client will ensure and is fully responsible for meeting the required General Terms and Conditions of Third Parties for the installation to take place lawfully.
- 2.8.4 If the installation and/or implementation has not been able to take place within the agreed time due to the fault of the Client, the Client will make payments as if the installation and/or implementation had taken place, without prejudice to Successfully 's obligations to renew at a time to be determined. to install and/or deploy.

## **2.9 Backups**

- 2.9.1 Insofar as possible, the Client itself is responsible for the timely making of Back-ups . Successfully will, at the request of the Client, inform the Client of the procedures that may be necessary for the security of data and for making Backups .
- 2.9.2 If it is not possible for the Client to make Backups (and it is possible for Successfully to make Backups ) or if it has been agreed that Successfully will provide in whole or in part for the making of Backups will Successfully Create backups . Successfully is in no way liable for these Backups with regard to but not limited to the total or partial loss of Backups and/or errors in the Backups or any other loss or becoming unusable of data.

## **2.10 Activities**

- 2.10.1 All work, Maintenance, Support or other services will, as a rule, be performed uninterrupted and on Working Days and under normal working conditions.
- 2.10.2 For each uninterrupted period in which Successfully carries out work for less than 3 (three) hours at a location other than Successfully , Successfully is entitled to charge a minimum of 3 (three) hours. There is an uninterrupted period if the time in which no activities are performed, between one period and the next period in which activities are performed, does not exceed 1 (one) hour.
- 2.10.3 Work performed outside Working Days is regarded as overtime. In the event of overtime before or after Working Days, the then applicable rate will be increased by a surcharge of 50%. In the event of overtime on weekends and public holidays, the then applicable rate will be increased by a surcharge of 100%.



- 2.10.4 If it has been agreed that work will take place in phases, Successfully is entitled to postpone the start of the work, which belong to a next phase, until the Client has accepted the results of the preceding phase in writing.
- 2.10.5 Only if this has been expressly agreed in writing, Successfully is obliged to follow timely and responsible instructions from the Client when carrying out work. Successfully is not obliged to follow instructions that change or supplement the content or scope of the agreed work; if, however, such instructions are followed, the relevant work will be reimbursed on the basis of Subsequent Calculation.
- 2.10.6 Successfully is entitled, without the explicit permission of the Client, to engage third parties in the performance of work.

### **3. CLOUD SERVICES**

#### **3.1 Cloud Services General**

- 3.1.1 The Cloud Services are provided exclusively at a location approved by Successfully and on equipment approved by Successfully .
- 3.1.2 Successfully can, at its own discretion, offer the Client the opportunity to make adjustments, extensions and/or changes to the Cloud Services offered. If this option is offered to the Client, the Client is responsible and liable for all adjustments, extensions and/or changes and the consequences arising therefrom.
- 3.1.3 In the context of access to and use of the Cloud Services, the Client directly or indirectly has equipment and software that meets the standards and/or requirements established by Successfully and communicated directly or indirectly to the Client. The Client must also continue to meet the conditions set out in this paragraph. If and for as long as equipment and/or software do not comply with this, Successfully 's obligation to provide access to the Cloud Services and its use by Successfully will be suspended.
- 3.1.4 Client enables Successfully to check whether the standards and/or requirements referred to in article 3.1.3 of this article are being observed.
- 3.1.5 If, after the inspection referred to in Article 3.1.4, the Client still does not comply with the standards and/or requirements referred to in Article 3.1.3, Successfully has the right to terminate or dissolve the agreement in whole or in part without prior written notice of default. and/or judicial intervention.
- 3.1.6 The Client is obliged to follow instructions from Successfully regarding the Cloud Services.
- 3.1.7 Successfully is entitled to view log files and the like for the purpose of analyzing the use of the Cloud Services. The results of such an analysis will not be made available to third parties (third parties do not include the parent and/or subsidiaries affiliated with Successfully ). This does not apply to figures and data regarding the use of the Cloud Services that are not directly traceable to the use of the Client.
- 3.1.8 If the Client finds a malfunction, this must be reported immediately to Successfully . After reporting a malfunction by the Client, Successfully will take those measures that lead or may possibly lead to recovery.
- 3.1.9 The costs for eliminating the malfunction will be borne by the Client if it appears that the cause of the malfunction is the result of its improper use or is due to its actions or omissions in violation of the agreement.
- 3.1.10 Successfully informs Client in advance of intended Maintenance with regard to the Cloud Services, if this Maintenance leads to problems with regard to gaining access to the Cloud Services or the unavailability of





the Cloud Services. In that case, Maintenance will take place from 00:00 to 06:00 (CET). Other Maintenance will take place during Business Days.

### **3.2 Use of the Cloud Services**

- 3.2.1 The Client is not permitted to resell and/or re-rent Cloud Services, unless otherwise agreed in writing.
- 3.2.2 The Client is not allowed to use equipment or software, which can cause damage to Cloud Services, Successfully or a third party, or which can cause a malfunction in the Cloud Services.
- 3.2.3 Change or relocation of Cloud Services must be requested by the Client in writing from Successfully . Successfully is entitled to charge costs when changing and moving Cloud Services

### **3.3 Domain name**

- 3.3.1 If the delivery of Cloud Services concerns, among other things, the hosting of a website of the Client and/or for the benefit of the Client, the Client must have a domain name, issued and registered by an authorized institution, in accordance with the rules used by the relevant institution. General Terms and Conditions of Third Parties.
- 3.3.2 Successfully can request domain names in the name of the Client at the request of the Client.
- 3.3.3 Successfully is only an intermediary in the application of a domain name and makes no guarantees with regard to the application. The Client is at all times responsible for the application and use of the domain name.
- 3.3.4 The Client indemnifies and holds Successfully harmless against any form of claim, complaint or lawsuit in connection with (the use of) the domain name on behalf of or by the Client.

### **3.4 SSL Certificates**

- 3.4.1 If and to the extent applicable, Successfully will mediate in applying for an SSL certificate. The General Terms and Conditions of Third Parties of the organization responsible for granting the certificate apply directly to the Client on the application and use of the SSL certificate.
- 3.4.2 If Successfully mediates in obtaining an SSL certificate, registration of the certificate will take place in the name and at the expense and risk of the Client. The client is responsible for the use of the SSL certificate.

### **3.5 Obligations Successfully Cloud Services**

- 3.5.1 Successfully ensures the provision of the Cloud Services. Successfully will, to the best of its ability and insofar as it can be influenced by Successfully , strive for an availability percentage to be specified.
- 3.5.2 The percentage referred to in Article 3.5.1 is measured over a calendar year. The time for Maintenance is not included in this.
- 3.5.3 Successfully does not guarantee, among other things, that the telephone lines, the Internet and/or other networks provide optimal use and access.
- 3.5.4 Successfully has no obligations with regard to the availability, reliability or other performance requirements with regard to telephone lines, the Internet and/or other networks and the facilities arising therefrom.
- 3.5.5 Successfully will endeavor to take all useful and necessary measures to ensure the proper functioning and continuity of the Cloud Services. Successfully uses the most recent and most common virus protection programs in the market.





3.5.6 Successfully will strive for state-of-the-art physical and logical security against unauthorized access by third parties to the computer equipment and computer programs and/or stored Process data used by Successfully in the context of the facility(s) agreed in the agreement.

### **3.6 Browser**

3.6.1 The Cloud Services are accessible to the Client through a browser or a Remote Desktop Protocol Client. The browsers for which the Cloud Services are optimized when the agreement is concluded will be made known by Successfully .

3.6.2 Successfully is not obliged to maintain optimal access to the Cloud Services through the browsers referred to in Article 3.6.1. Successfully is entitled, without being obliged to pay any form of (damage) compensation, to make changes to the Cloud Services that may affect the browsers or Remote Desktop Protocol Clients used by the Client and/or advised by Successfully .

3.6.3 If a case as described in article 3.6.2 should occur, Successfully will make reasonable efforts to enable the Client to make the transition to another browser or Remote Desktop Protocol Client. Any costs incurred by the Client in this regard are for its own account.

### **3.7 Use Of Identifiers**

3.7.1 Successfully will only make Identification Data available to Client for the use of Products and Services. The Client will handle this Identification Data with care. In the event of loss, theft and/or other forms of unlawful use, the Client will notify Successfully of this, so that the parties can take appropriate measures.

3.7.2 The Client bears all responsibility, liability and costs caused by the use of the Identification Data, used and/or distributed by the Client. In no event is Successfully liable for the misuse and/or unlawful use of the Identification Data.

3.7.3 If it can be reasonably suspected that misuse or unlawful use has been made of the Client's identification data, Successfully Client can give instructions that must be carried out.

3.7.4 If it is established that the Identification Data has been misused or that the Client has not complied with the instructions as referred to in Article 3.7.3, the Client is immediately in default.

### **3.8 Changes to the Cloud Services**

3.8.1 Successfully is entitled after written announcement with due observance of a reasonable term and without owing any compensation to the Client, to make additions and/or changes to the Cloud Services with regard to but not limited to:

a) access procedures, such as:

- procedures related to operational rules;
- security requirements .

b) changing a third party provider/supplier, location, hardware, software and other facilities important for making the Cloud Services available.

3.8.2 If the changes result in a demonstrable and such a major negative change on the working method of the Client's company and/or the functionality of the Cloud Services, the Client may, after first demonstrating the deterioration in writing, request Successfully in writing to offering an alternative. If Successfully does not offer a reasonable alternative, the Client has the right to terminate the use of the Cloud Services, without Successfully being obliged to pay any compensation or refund of monies already paid.



### **3.9 Client's data traffic**

- 3.9.1 Successfully has no control over and/or insight into the content of the data traffic from and/or to the Client. Successfully only acts as a conduit. Successfully makes no guarantees with regard to the content of data with regard to, among other things, reliability and completeness.
- 3.9.2 The Client is responsible for the content of data traffic originating from the Client. Insofar as applicable, the code of conduct, as set out in Article 3.12, applies to the Client and its users.
- 3.9.3 The Client indemnifies and successfully holds harmless against any form of claim, complaint or lawsuit by a third party in connection with (the content of) the data traffic or the information originating from the Client.
- 3.9.4 Contrary to the provisions of Article 7, Process Data remains the (intellectual) property of the Client. Client grants to Successfully , free of charge, the perpetual right to use and edit Process data. Process data can only be made available to third parties if it cannot be directly traced back to the Client.
- 3.9.5 Successfully will cooperate in the transfer of Process data and/or other data to another application if requested by the Client. Successfully never guarantees that the available Process data and/or other data can be transferred to another application during the agreement and/or after the end of the agreement.
- 3.9.6 All costs associated with transferring Process Data and/or other data to another application at the Client's request are fully for the Client's account.

### **3.10 Obligations Client Cloud Services**

- 3.10.1 If personal data and/or other data/data are transported through the Cloud Services or commercial and/or other activities are developed through the Cloud Services, Client Successfully indemnifies against all liability, costs or damage as a result of claims from third parties in in the event that these personal data and/or other data/data are exported or commercial and/or other activities are carried out in violation of the relevant (privacy) legislation and/or other relevant regulations.
- 3.10.2 Client will immediately inform Successfully in writing about changes that are relevant for the proper performance of the Cloud Services.
- 3.10.3 Client will adhere to instructions from Successfully regarding Fair Use . If the Client does not follow the instructions given by Successfully , Successfully is authorized to use technical means to reduce the load caused by the Client or to stop the provision of the Cloud Services to the Client in the event of persistent excessive load. Successfully will never be liable for damage of any kind suffered by the Client or third parties as a result of the measures taken by Successfully and/or third parties.

### **3.11 Personal data**

- 3.11.1 The Client is 'responsible' within the meaning of the Personal Data Protection Act and therefore responsible for the protection of (personal) data that is sent or edited and/or processed by the equipment and/or software of Successfully for the benefit of the Client. .
- 3.11.2 Client Successfully indemnifies against all claims for invasion of privacy.
- 3.11.3 Insofar as the Client is entitled to do so, the Client expressly agrees to the inclusion of (personal) data of users in Successfully 's personal registration for purposes of administration and management. This personal registration contains, among other things , Identification Data and Process Data and is only accessible to Successfully . This information will not be provided to third parties, except in cases when Successfully is required to do so by law or a court decision.



3.11.4 With the exception of what is stated in article, Successfully as a 'processor' within the meaning of the Personal Data Protection Act is responsible for the protection of personal data, the use of which is necessary by Successfully for the correct execution of the agreement and it will indemnify the Client of liability in the event that the Client is legally addressed by a person on the basis of an invasion of privacy as a result of an act or omission of Successfully . Successfully will as 'processor' comply with all relevant obligations of the Personal Data Protection Act.

### **3.12 Code of Conduct**

3.12.1 Responsible use must be made of the Cloud Services and/or the other facilities offered. It is prohibited to use the Cloud Services and/or the other facilities offered in such a way that:

- a) damage may occur in the systems of Successfully and/or third parties;
- b) disturbances in use may occur.

3.12.2 The Client will ensure that such damage and/or disruptions are not the result of misconfiguration on its part.

3.12.3 It is prohibited to use the Cloud Services and/or other facilities offered for illegal practices and/or in violation of the agreement. This includes the following actions and behaviours:

- a) infringe on the rights of third parties or enable the infringement of the rights of third parties, including but not limited to intellectual property rights and privacy rights ;
- b) failure to comply with applicable legislation and/or other relevant regulations;
- c) spamming (the unsolicited distribution (or currently making it possible for third parties) of advertising messages and other communications);
- d) the storage/distribution of ( child ) pornography;
- e) sexual harassment, discrimination and/or otherwise harassing persons;
- f) dissemination or otherwise make available to third parties obscene, offensive and harassing material and/or other material of such nature;
- g) threats;
- h) storage and distribution of viruses, worms and/or other destructive activities;
- i) the unauthorized intrusion (hacking) into accounts, systems and/or networks of third parties and/or Successfully and/or the performance and/or omission of any other act that makes hacking possible.

3.12.4 Successfully reserves the right, at its own discretion, if required to do so by law or a court decision and/or if a third Successfully points out and/or suspects that rights are infringed by means of the Cloud Services. of a third party, is acted contrary to what is stipulated in the General Terms and Conditions Successfully and/or the agreement and the ensuing obligations in this regard are not, not properly or not fully fulfilled, the use of the Cloud Services and/or the other offered facilities, to remove the relevant information and/or to suspend its obligations, until the obligations have been met.

3.12.5 Successfully and/or third parties will never be liable for damage of any kind suffered by the Client and/or third parties as a result of the measures taken by and/or for the benefit of Successfully based on article



3.12.4 . The obligations to pay the agreed amounts remain fully applicable during the measures taken under article 3.12.4 by and/or for the benefit of Successfully .

3.12.6 If the seriousness of the Client's actions and/or inactions justifies this and/or these are continued despite the measures taken by and/or for the benefit of Successfully , as set out in Article 3.12.4, Successfully has in accordance with Article 1.5. 3 the right to dissolve the agreement, without Successfully being obliged to pay any compensation in this regard or to refund money already paid.

3.12.7 In the event of a violation of this article, the Client is liable for the damage caused by the violation of the code of conduct. Damage also includes compensation for the time spent by Successfully on removing IP addresses of Successfully and other Clients of Successfully that have been included in the blacklists of supervisory authorities as a result of the violation, as well as the costs arising from the settlement. of the complaints about the Client's violation, including any settlements with supervisory authorities.

## **4. THIRD PARTY PRODUCTS**

### **4.1 Third Party Products and Services**

4.1.1 Successfully is entitled to provide Third Party Products and Services or to involve Third Party Products and Services in fulfilling its obligations arising from the agreement. Successfully is not responsible for Third Party Products and Services, unless otherwise agreed in writing.

4.1.2 If Successfully provides Third Party Products and Services to the Client, then the General Terms and Conditions for Third Parties also apply to the agreement in addition to these General Terms and Conditions.

4.1.3 Successfully provides rights to Third Party Products and Services under the conditions as described in the General Terms and Conditions of Third Parties.

4.1.4 No Maintenance, Support or other services will be provided by Successfully with regard to Third Party Products and Services, unless otherwise agreed in writing.

4.1.5 With regard to delivered Third Party Products and Services Successfully provides :

- a) The service on Third Party Products and Services, subject to a maximum of the same conditions as set out in the Third Party General Terms and Conditions.
- b) The guarantee for the term and under at most the same conditions as stated in the General Terms and Conditions of Third Parties.

4.1.6 Repairs of Third Party Products and Services:

- a) Under no circumstances will the Third Party Products and Services supplied be replaced, unless the Client expressly requests this and pays the associated costs as an Advance.
- b) All repairs are subject to handling charges. If repairs are made elsewhere than at Successfully , call-out costs, hourly wages and other associated costs will also be charged.

### **4.2 General Terms and Conditions of Third Parties**

4.2.1 General Terms and Conditions Third parties declared Successfully applicable in these General Terms and Conditions will, if available from Successfully , be sent on request. The Third Party Terms and Conditions will be made available in the same format and language as Successfully received them.



- 4.2.2 The Terms and Conditions Successfully rank above the Terms and Conditions of Third Parties unless otherwise stated. In the event of a conflict between the General Terms and Conditions Successfully and the General Terms and Conditions of Third Parties, Successfully may declare the relevant conflicting provisions in the General Terms and Conditions of Third Parties inapplicable or applicable.

## **5. (AF/ON) DELIVERY**

### **5.1 Feasibility study**

- 5.1.1 A Feasibility Study is a study that can be successfully carried out before proceeding with (off/on) delivery. The purpose of the Feasibility Study is to inform the Client at an early stage about the feasibility of the assignment.
- 5.1.2 Based on the findings arising from the Feasibility Study, Successfully will issue a positive or negative advice regarding the feasibility of the assignment. A positive delivery advice usually means that Successfully will proceed to delivery. A negative delivery advice means that Successfully will reject the delivery and delivery with reasons and if possible will propose an alternative.
- 5.1.3 The costs of the Feasibility Study will always be borne by the Client regardless of the outcome of the Feasibility Study.

### **5.2 ( Delivery ) term**

- 5.2.1 All ( delivery ) periods possibly mentioned by Successfully and applicable to Successfully have been determined to the best of its knowledge on the basis of the data made known to Successfully and will be observed as much as possible.
- 5.2.2 ( Delivery ) periods are therefore not regarded as strict deadlines within which delivery must be made, but as periods within which Successfully will strive to deliver what has been agreed to its best efforts. If there is a possibility that any term will be exceeded, Successfully and the Client will discuss a new term as soon as possible.
- 5.2.3 The exceeding of any applicable ( delivery ) term by Successfully never entails an attributable shortcoming of Successfully . Successfully accepts no liability under any circumstances if a ( delivery ) term should be exceeded.

### **5.3 Reservation**

- 5.3.1 Successfully only undertakes to implement the agreement concluded between Successfully and Client, after a signed copy of the agreement drawn up by Successfully has been received by Successfully and/or if all due fees have been paid in full and on time. If Successfully commences the execution of the agreement before receipt of a signed copy of the agreement and/or all fees owed have been paid in time and in full, Successfully reserves the right to suspend the execution of the agreement until a signed copy of the agreement has been received and/or all due fees have been paid on time and in full.
- 5.3.2 Rights, such as but not limited to the transfer of Products and Services, are granted to the Client under the suspensive condition that the Client pays the agreed fees on time and in full. If default of payment occurs, the Client must return the Products and Services to Successfully at its own expense within one week, after an order thereto from Successfully . All other remedies will continue to apply.
- 5.3.3 If the Client forms a new product from Products and Services delivered by Successfully , the Client will form the new product for Successfully and the Client will keep the new product for Successfully until the Client has received all amounts owed under the agreement on time and in full. paid. Successfully retains all rights as owner of the new product until the moment of timely and full payment by the Client.



## **5.4 Risk**

- 5.4.1 The Product is at the risk of the Client from the delivery / completion, even if the ownership or the right of use has not yet been transferred. The Client therefore remains liable to pay the (purchase) price, regardless of the destruction or deterioration of the Product due to a cause that cannot be attributed to Successfully .
- 5.4.2 The same applies from the moment that the Client is in default with the performance of an act with which the Client must cooperate with the delivery/ delivery .

## **5.5 ( delivery/completion) , Installation and Acceptance procedure**

- 5.5.1 Successfully will deliver the Products and Services to Client in accordance with the specifications laid down in writing by Successfully and install them if desired by Client.
- 5.5.2 Delivery of Products and Services takes place by making the Products and Services available to the Client at the location of Successfully 's warehouse . The costs of transport and any insurance are for the account of the Client. The choice of the mode of transport is determined by Successfully and insurance of the Products and Services to be transported is not provided by Successfully , unless otherwise agreed in writing.
- 5.5.3 Delivery, by or through Successfully , of services takes place at the place(s) and at the times at which the services are performed.
- 5.5.4 Only in the case where installation by Successfully takes place will an acceptance period apply immediately after completion of the installation. The acceptance period for the Client is 14 (fourteen) days after completion of the installation. During the acceptance period, the Client is not permitted to use the Products and Services for productive and/or operational purposes.
- 5.5.5 The Products and Services shall be deemed to have been accepted between the parties:
- a) upon delivery/ delivery if no acceptance period applies, or
  - b) if an acceptance period applies: on the first day after the acceptance period, or
  - c) if Successfully receives a Test Report (Article 5.6) before the end of the acceptance period: At the moment that the Errors mentioned in that Test Report (Article 5.7) have been repaired, without prejudice to the presence of minor Errors that are not accepted in accordance with Article 5.7.4 stand in the way.
- 5.5.6 If the Products and Services are delivered and tested in phases and/or parts, the non-acceptance of a certain phase and/or part does not affect any acceptance of an earlier phase and/or another part.
- 5.5.7 Notwithstanding the foregoing, the Products and Services, if the Client makes any use of them for productive or operational purposes before the moment of acceptance, will already be considered as fully accepted from the start of that use.

## **5.6 Test report**

- 5.6.1 If during the acceptance period it appears that the Products and Services contain Errors, as described in article 5.7, that impede the progress of the acceptance test, Client will provide Successfully on the last day of the acceptance period at the latest by means of a written and detailed Test Report about inform the Errors, in which case the remaining acceptance period will be interrupted until the Product has been modified in such a way that the Errors have been corrected.



## **5.7 Errors**

- 5.7.1 Error(s) is understood to mean failure to meet the functional specifications established by Successfully in writing and, in the event of the development of tailor -made Successfully Products and Services, to the functional specifications explicitly agreed in writing. An Error only exists if it can be proven and reproduced. The Client is obliged to report possible Errors to Successfully without delay .
- 5.7.2 Any right to rectification of Errors lapses if the Products and Services provided have been changed by the Client in any form or in any way whatsoever.
- 5.7.3 Correction of Errors will take place at a location designated by Successfully . Successfully is entitled to implement temporary solutions, emergency solutions, detours and/or other problem-limiting measures.
- 5.7.4 Acceptance of the Products and Services may not be withheld on grounds other than those related to the specifications expressly agreed between the parties and furthermore not due to the existence of minor Errors that cannot reasonably prevent operational or productive commissioning of the Products and Services. stand in the way of.

## **5.8 Change Performance**

- 5.8.1 Successfully may, instead of the Products and Services ordered by the Client, deliver other Products and Services, provided that the operation and capacity do not differ materially from the originally ordered.
- 5.8.2 If the agreement has been entered into with a view to execution by a specific person, Successfully will always be entitled to replace this person by one or more other persons with the same qualifications.

## **5.9 Warranty**

- 5.9.1 Successfully is entitled to charge the usual prices and costs for repair, changes or replacement of the Products and Services if Errors can be regarded as errors in a general sense of the Client, are the result of careless or incompetent use or other causes not attributable to Successfully or if the Client could reasonably have discovered the Error during the acceptance period.
- 5.9.2 The warranty does not cover the reconstruction and/or recovery of damaged or lost files and/or data. Successfully does not guarantee that the Products and Services will function without interruptions or Errors, are suitable for any intended use by the Client and/or will lead to the result desired by the Client during the Warranty Period and thereafter. Any right to Warranty lapses if the Client changes or changes the Products and Services without the written permission of Successfully , as required in article 2.1.4
- 5.9.3 The Warranty given on Third Party Products and Services is in any case limited to the General Terms and Conditions of Third Parties applied by the suppliers of Third Party Products and Services, as stated in Article 6.

## **6. PRICES/PAYMENTS**

### **6.1 Prices and Payments**

- 6.1.1 All prices are exclusive of BBO and exclusive of any other levies imposed by the government. The amounts due will be charged including BBO and including any government levies.
- 6.1.2 Successfully will invoice the amounts owed by the Client monthly and/or within another term specified in the agreement to the Client. The Client will pay amounts due within 15 (fifteen) days of the invoice date without being entitled to set-off.
- 6.1.3 Unless otherwise agreed, the Client undertakes to issue a written and signed authorization for direct debit at Successfully 's first request, whereby the Client guarantees the correctness and completeness of the





completed collection form. The Client is not entitled to withdraw the authorization referred to in the previous sentence as long as an agreement between the parties is in force. Costs incurred by Successfully that are related to the wrongful reversal of collections by the Client can be charged to the Client.

- 6.1.4 If the Client fails to fulfill any payment obligation, the Client is in default without any further summons or notice of default being required. The Client owes Successfully the costs, both in and out of court with regard to the collection of all that which the Client owes Successfully . Extrajudicial collection costs amount to 15% of the amount due with a minimum of **USD 300 (three hundred American dollars)** . In any event, monthly interest will be charged on the amount owed by the Client from the date on which the Client is in default, at a percentage equal to the statutory interest plus 3%.
- 6.1.5 Successfully has the right to suspend its activities and other obligations until full payment has been made, without prejudice to the Client's obligation to meet its obligations.
- 6.1.6 If Successfully is unable to deliver as a result of a default on the part of the Client, Successfully is entitled to charge a 1.5% interest monthly on the amount owed.
- 6.1.7 The fee for Maintenance, Support and any other annual or periodic fees are payable as an Advance at the time of the conclusion of the agreement between the parties and will furthermore be duly specified prior to each new year or any other period that the agreement between the parties continues. be charged to the Client.
- 6.1.8 The amount due in Article 6.1.1 may be increased by any order costs, shipping costs and costs of third parties. Increase can also take place if activities for the benefit of the Client are performed outside the office of Successfully . Hourly wages, travel and waiting time allowances, travel costs and/or mileage allowances, hotel costs and any other costs associated with such work will be charged for work outside Successfully 's office. The travel and waiting time allowance is 50% of the then applicable hourly wage. The mode of transport is determined by Successfully . The foregoing also applies to work that will take place outside the Netherlands.
- 6.1.9 The above provisions do not affect other Successfully accruing rights on the basis of shortcoming in the fulfillment by the Client.

## 6.2 Price changes

- 6.2.1 The prices agreed between Successfully and the Client are based, among other things, on the costs of electricity, salaries, social security contributions, materials, and travel and accommodation costs, etc., as well as the exchange rate between the currency used, as applicable at the time of purchase. the conclusion of the agreement. Successfully is entitled in the event of a change in one or more cost items (including Third Party Products and Services) and/or a change in the exchange rate, change in the Consumer Price Indices (CPI), or the CBS index for business services (CBS Price Index 6202 Computer Advice), the prices to adapt to this change(s). Successfully will at least annually, on January 1, increase its prices, based on the figures published by CBS on January 1 (possibly based on third quarter figures) 'CBS Price Index 6202 Computer Advice'. Changes are rounded up to a multiple of AWG 2.50.
- 6.2.2 Successfully will offer Client the opportunity to take note of any price changes. If the Client does not agree to a price change, the Client is only entitled to terminate the agreement with effect from the date on which the price change will take effect, if and as long as the total price increase during 1 (one) year reflects the inflation rate of the current year published by Statistics Netherlands. (or the previous year before price increases announced for the following year) by more than 5 points (expressed in %).

## 6.3 Fixed Price

- 6.3.1 In the case of a Fixed Price agreement, the work is performed for a pre-agreed amount.





6.3.2 Unless Successfully can invoke article 1.6.4, additional hours will not be charged.

## **6.4 Subsequent calculation**

6.4.1 If settlement will take place on the basis of Subsequent Calculation, this means that, before Successfully starts with the agreed work, a global estimate can be made of the expected costs. After completion of the work to be performed, all costs actually incurred in connection with the work will be charged. The client is therefore aware that there is a possibility that the previously established estimate may be lower than the costs actually incurred. If no method of settlement has been agreed in advance, work will be performed on the basis of Subsequent Calculation.

## **6.5 Advance**

6.5.1 Successfully is entitled to charge an advance. If full payment of the advance is not made, Successfully is entitled, without prejudice to its other rights, to immediately suspend the further execution of the agreement and everything that the Client owes Successfully for whatever reason is immediately due and payable.

# **7. INTELLECTUAL PROPERTY RIGHTS**

## **7.1 Rights of Successfully and Client**

7.1.1 Successfully has the exclusive right to further develop the Successfully Products and Services and to make their use available to third parties by means of licenses.

7.1.2 Unless there are Third-Party Products and Services, for each assignment Successfully will continue to be performed wherever and whenever, regardless of whether there is the (off/on) delivery of an existing Product or a Product yet to be developed. , all ensuing intellectual property rights, industrial property rights and other rights rest with Successfully .

7.1.3 The Client acknowledges that all current and future intellectual property rights, industrial property rights, other rights and the registration and/or application of the aforementioned rights and/or similar rights for the entire term and any extensions or renewals thereto now or in the future for will always accrue or be transferred to Successfully worldwide .

7.1.4 The Client is not permitted to remove or change any designation regarding intellectual property rights, industrial property rights, other rights, brands and trade names from the Products and Services, or to have such acts performed by a third party.

7.1.5 The intellectual property rights, industrial property rights and other rights of a Product, or a part thereof, can only be transferred to the Client by means of a written deed if Successfully has these rights.

7.1.6 If Successfully , Client or third parties make functional improvements or other changes to the Products and Services, the intellectual property rights, industrial property rights and other rights resting on the improved or changed Products and Services will remain unchanged in this case with Successfully . the third rightful claimant . If the aforementioned rights are not vested in Successfully or a third party entitled, the Client will ensure the transfer of the aforementioned rights to Successfully or the third party entitled free of charge .

7.1.7 Successfully reserves all intellectual property rights, industrial property rights and other rights in relation to that and/or documentation provided. The Client is expressly prohibited from multiplying this in any way, handing it over to third parties or giving it on loan. The Client must ensure that its employees and/or third parties will comply with the aforementioned obligations.



## 7.2 Disclaimer

7.2.1 Successfully will indemnify the Client from any action insofar as this is based on the statement that the Successfully Products and Services infringe a copyright applicable in the Netherlands. Successfully will pay the costs irrevocably determined by final judgment and awarded compensation amounts, provided that the Client:

- a) Successfully immediately, but at the latest within 10 (ten) days after the alleged infringement of copyright has been brought to the attention of the Client or that the Client has reasonably been able to take cognizance thereof, informs in writing about the claim; and
- b) leave the entire handling of the case, including settlement negotiations, to Successfully .

If such an action is initiated or the possibility exists to do so, Successfully reserves the right to acquire the license or sub-license right to the Successfully Product or to change the Successfully Product in such a way that it no longer infringes any Netherlands applicable copyright. If, in the opinion of Successfully , the foregoing options do not reasonably qualify, Successfully can take back the Successfully Product delivered against payment of only the compensation already paid for this Successfully Product, less a reasonable compensation for the use of the Successfully Product.

7.2.2 Successfully will not indemnify the Client from an action insofar as:

- a) this is based on the statement that the Third Party Products and Services delivered to the Client infringe an intellectual property right, industrial property right or other right that applies in the Netherlands or elsewhere;
- b) what is delivered or delivered by the Client is part of or in conjunction with a Product and this combination infringes an intellectual property right, industrial property right or other right applicable in the Netherlands or elsewhere;
- c) Client has made a change in or to the Product.

7.2.3 If it has been agreed between Successfully and the Client that the intellectual property rights, industrial property rights or other rights of a Product or a part thereof will be transferred to the Client, the Client will indemnify Successfully from any action insofar as this is based on the statement that the Product or part thereof infringes an intellectual property right, industrial property right or other right belonging to a third party.

