

## **CLOUD END USER AGREEMENT**

### **WHEREAS:**

1. The Partner specialises, through the intermediary of the Distributor, in the installation, configuration and management of traditional IT environments, server-based computing and virtual desktop environments, with the objective of maximum centralisation and computerisation.
2. Copaco Cloud B.V. has developed and is the beneficiary with regard to a multitier platform for provisioning, billing and support of cloud services as defined below. This offers companies the opportunity to use a professional ICT infrastructure without having to incur the costs themselves of a full investment in said infrastructure.
3. The platform is licensed by the Distributor and the cloud services are marketed, distributed and sold by the Distributor through the platform in a multi tier sales system: Distributor – Partners – Customers.
4. The Partner wishes to (sub)license the platform and to market and distribute the cloud services provided by the Distributor via the platform to business to business customers.
5. The customer is a business to business customer of the Partner, and wishes to (sub)license the platform and to purchase and use the cloud services provided by the Distributor through the Partner via the platform.
6. The Parties wish to lay down the further terms and conditions of their cooperation in this agreement.

### **HAVE AGREED AS FOLLOWS:**

#### **Article 1: Definitions**

1. Agreement  
This Agreement.
2. Cloud Services  
Services provided by the Partner through the Control Panel.
3. Cloud Services Related Documents  
All documents related to the Cloud Services supplied by the Partner to the Customer via the Platform enforced and used by the service provider of the Cloud Services, included, but not limited to separate and specific Cloud Services Terms & Conditions,

Cloud Services Service Level Agreements (SLA's), End User License Agreements, etc., which documents are available via the Control Panel.

4. **Control Panel**  
The part of the Platform, made available by the Distributor to the Partner and the Customers through which (i) the Cloud Services may be ordered, managed, supported and cancelled, subject to the User login name and password being entered, (ii) the Partner or the Customer can view the status of orders, (iii) the most recent version of essential information, including, but not limited to the Service Level Agreements, the Cloud Service Related Documents, etc. can be considered, and (iv) all invoicing of fee's for the Cloud Services will be provided.
5. **Customer**  
A business to business customer of the Partner using the Cloud Services.
6. **Distributor**  
Copaco Nederland B.V. (Chamber of Commerce number 17048595), with its registered office and office address at Hoevenweg 21, 5652AW Eindhoven, The Netherlands, or one of its group companies, an ICT company specialised in the delivery and management of cloud services and IT environments.
7. **Officer**  
An employee or subcontractor of a Party.
8. **Partner**  
The reseller of the Distributor, who licenses the Platform from the Distributor and distributes and sells the Cloud Services via the Platform to the Customers.
9. **Platform**  
The separate or joint use of the Cloud Services Delivery Platform, which is a combination of hardware, software and networking components, together forming an Information Technology System, provided by the Distributor to the Customer through the Partner.
10. **Service Level Agreement**  
The service level agreement concluded between (i) the Distributor and the Partner respectively (ii) the Partner and the Customer containing the general service levels to be provided by the Distributor via the Partner to the Customer with respect to (i) the Platform and (ii) the Cloud Services, and a separate and service specific Platform SLA as attachment to this general SLA, which are available via the Control Panel.
11. **User**  
Individual of the Customer using the Cloud Services

## **Article 2: Cloud End User Agreement**

1. This Agreement will be entered into between the Partner and the Customer (i) by means of signing a hard copy of this Agreement or (ii) by electronic means prior to the Customer being able to use the Platform and the Cloud Services.
2. The Agreement will be made made available to the Customer (i) via the Control Panel or the web-site, and can be downloaded and printed, (ii) via email or (iii) can be asked for in hard copy, which the Partner will provide on first written request of the Customer.
3. The Agreement will anyway considered to be concluded at the moment when login credentials or a notification for the Customer have/has been issued to enable use of the Cloud Services.

### **Article 3: Subject**

1. The Platform is licensed by the Distributor and the Cloud Services are marketed, distributed and sold by the Distributor through the Platform in a multi tier sales system: Distributor – Partners – Customers.
2. This Agreement contains the terms and conditions under which the Customer licenses the Platform and purchases and uses the Cloud Services through the Partner via the Platform.
3. The Customer is granted a non-transferable and non-exclusive licence for each registered User to use the Platform for the term of the Agreement, but only for the purpose and under the terms and conditions of this Agreement. The Customer undertakes to fully comply with the licence conditions and all terms and conditions for use of the Platform. The Customer guarantees that all Users will similarly comply with these terms and conditions and assumes full responsibility for these Users.
4. In order to safeguard the quality of the Platform and the Cloud Services, a number of requirements and conditions are stipulated with respect to the use of the Platform and the Cloud Services by the Customer and the Users. These requirements and conditions are set out specifically in Article 9 below, the Service Level Agreement and the Cloud Services Related Documents.
5. Article 9 of this Agreement, the Service Level Agreement and the Cloud Services Related Documents contain the service levels to be provided with regard to (i) the Platform and (ii) the Cloud Services.
6. The Customer acknowledges that it has taken note of and reviewed the Service Level Agreement prior to the Customer being able to use the Platform and executing the Agreement. The Service Level Agreement is made available via the Control Panel, can be downloaded and printed, and can be asked for in hard copy, which the Partner will

provide on first written request of the Customer. The Service Level Agreement is deemed to be an integral part of this Agreement.

7. The Customer hereby accepts the terms and conditions of the Service Level Agreement and will at all times adhere and remain compliant to the terms and conditions thereof.
8. The Cloud Services Related Documents applicable to the Cloud Services to be provided to the Customer through the Partner via the Platform are made available via the Control Panel, can be downloaded and printed, and can be asked for in hard copy, which the Partner will provide on first written request of the Customer. The Cloud Services Related Documents are deemed to be an integral part of this Agreement.
9. The Customer acknowledges that it has taken note of and reviewed the Cloud Services Related Documents prior to executing this Agreement respectively before ordering Cloud Services which are on boarded to the Platform after execution of this Agreement. The Customer hereby accepts the terms and conditions of the Cloud Services Related Documents and will at all times adhere and remain compliant to the terms and conditions thereof, also in the relation between the Partner and the Customer.
10. The Customer agrees and accepts that the Partner with regard to the Cloud Services only operates as a serving hatch and that between the Partner and the Customer with regard to the Cloud Services the same rights, obligations and liabilities apply as between the third party service provider of the Cloud Services and the Distributor respectively the Distributor and the Partner, amongst others in accordance with the Cloud Services Related Documents.
11. The Customer (i) will procure and guarantees that all Users will comply with the terms and conditions of this Agreement, the Service Level Agreement and the Cloud Services Related Documents, (ii) assumes full responsibility and liability for the Users in this respect, and (iii) will indemnify and hold the Partner harmless against any claims on whatsoever ground in this respect.

#### **Article 4: Rights and obligations of the Partner**

1. The Partner shall procure that its Officers dispose of the required know-how, experience, knowledge, skills and training to make available and maintain the Platform, in accordance with this Agreement and the standard applying in the ICT sector.
2. The Partner undertakes to use all reasonable efforts to make available and maintain the Platform and the Cloud Services in accordance with the provisions included in this Agreement and the Service Level Agreement. The Customer acknowledges that all of the obligations of the Partner (and the Distributor) are obligations of means.

3. The Partner will ensure that its Officers are apprised of and comply with the requirements of the Agreement.
4. In case of any breach of the Agreement by the Customer, the Partner will have the right to temporarily or permanently block access to the Platform and/or the Cloud Services for the Customer or a User without this giving rise to any right to compensation.

#### **Article 5: Rights and obligations of the Customer**

1. The Customer undertakes to license and use the Platform and to purchase and use the Cloud Services in accordance with this Agreement.
2. The Customer agrees not to take any action that could diminish or harm the reputation or the goodwill of the Partner, the Distributor, the Platform, the Cloud Services, the intellectual property rights or the third party provider of the Cloud Services.
3. The Customer shall not have the right to sublicense the Platform.
4. The Partner is entitled to give the Customer reasonable instructions and directions with regard to the license and use of the Platform.
5. The Customer will at all times adhere and remain compliant to the following principles:
  - a) The Customer declares that it is not connected to the Platform with the aim of deliberately causing damage to the Platform or the Partner or the Distributor. The Customer undertakes to take all due care when using the Platform and any hardware leased from the Partner. For example, the Customer will notify the Partner immediately of any faulty configuration which results in its ability to access any third party data on the Platform. Use of the Platform for bulk emails or spam is prohibited.
  - b) The Customer indemnifies the Partner against all claims of third parties for damages suffered as a result of unlawful use of the Platform by the Customer or by one or more Users. The Customer has sole liability for any damage that it or one or more Users may cause to third parties or the Partner or the Distributor by inappropriate use of the Platform, as in the case of unlawful activities such as piracy or downloading and/or offering illegal text and/or images, etc.
  - c) In no circumstances will the Customer pass on its account information to third parties or allow use of the Platform by or on behalf of third parties.
  - d) If the Partner or the Distributor discovers that the Customer or one or more Users is/are endangering the operational availability and/or the reputation or the goodwill of the Platform and/or the Cloud Services, the Partner will have the right

to temporarily or permanently block access for the Customer and/or the said Users without this giving rise to any right to compensation.

- e) The Customer undertakes to obtain the requisite licences for all software it intends to use, or to insource use of this software through the intermediary of the Partner. The Customer will indemnify Partner at all times against any possible third party claims against the Partner in relation to this software.
  - f) Where software is used for graphic applications, the Partner may refuse to provide the services on account of the higher than average load graphics place on the Platform.
  - g) Should the Customer, even with the permission of the Partner, outsource ICT services to third parties, it will be solely responsible and liable for the choice and work of the said third party. The Partner accepts no responsibility and liability for the results of the work of the said third parties or for integration of that work into the Platform.
  - h) The Customer will instruct its Users in the use of the Platform and the service levels available at any time. Users will be deemed to use the Platform efficiently. The Users may not make any modifications to the facilities. Users must use the Platform responsibly and must follow the instruction manuals which accompany the Platform.
  - i) If so requested by the Partner, the Customer will allow the Distributor access to the premises where Users make use of the Platform, if this helps to optimize the Platform or if it is considered useful or desirable in order to identify abuse of the Platform by one or more Users.
  - j) If the Customer starts to use the Platform, the Customer must ensure that its internal ICT staff or external ICT suppliers cooperate fully, at the expense of the Customer, with the transfer of systems and data. The Partner accepts no liability for lack of cooperation on the part of the Customer or its ICT supplier or for technical problems that arise as a consequence thereof.
6. The Customer will have no other rights, titles, licenses and/or claims towards the Distributor as included in this Agreement and related agreements and documents.

#### **Article 6: Placing orders**

- 1. Orders for the Cloud Services must be placed directly by the Customer or through the Partner via the Control Panel.
- 2. The Customer must have accepted this Agreement, the Service Level Agreement and the Cloud Services Related Documents before placing an order.
- 3. All orders are subject to acceptance by the Partner. If and when the Partner accepts the order, the agreement with regard to the relevant Cloud Services is established, and the Partner and the Customer are bound by the respective agreements and documents.

4. If the Partner accepts the order:
  - a) login credentials for the Customer will be issued to enable use of the Cloud Services, or
  - b) a notification of acceptance will be send in writing to the Customer, or
  - c) the status of the order will be indicated as provisioned on the Contol Panel.
5. An order is considered to be accepted in case the order is executed by the Partner.
6. An order for the Cloud Services can be refused via the Control Panel at any time. There is no obligation to explain any refusal of an order or to pay any compensation to the Customer.

#### **Article 7: Changes to and/or discontinuation of the Platform**

1. The Partner and/or the Distributor explicitly reserve the right to make changes to and/or to discontinue all or part of the Platform at any time upon a timely notification in writing and/or upon a timely notification on the Control Panel, without any obligation to pay any damages to the Customer and without any right of the Customer to cancel or to rescind the Agreement.
2. Any change or discontinuation is applicable to new orders with effect from the time of the notification of this change or discontinuation to the Customer via the notification in writing and/or the Control Panel. Up to date information in this respect is available via the Control Panel. Current information on the Platform shall be made available via the Control Panel.

#### **Article 8: Use of the Control Panel**

1. Through the Control Panel:
  - a) the Cloud Services may be ordered, managed, supported and cancelled, subject to the User login name and password being entered;
  - b) the Distributor, the Partner and the Customer can view the status of orders;
  - c) the most recent version of essential information, including, but not limited to the Service Level Agreement, the Cloud Services Related Documents, etc. can be considered; and
  - d) all invoicing of fee's for the Platform and for the Cloud Services (from the Partner to the Customer) will be provided.

To that end, the Customer shall receive a non-transferable and non-exclusive licence for use of the Control Panel. In addition, the Customer may receive a login name and a password to be distributed to the Customer for one User.

2. As provided for in Article 6, all orders for the Cloud Services must be placed by the Customer or via the Partner on the Control Panel, subject to the User's login name and password being entered.
3. The Customer undertakes to observe any licence terms and all terms of use attached to the Control Panel and shall ensure that its Users will do the same.
4. The Partner undertakes to make all reasonable efforts to have the Control Panel accessible to Customer to the largest extent possible.

### **Article 9: Consideration / Fee's for the Cloud Services**

1. The fee's payable by the Customer to the Partner for the Cloud Services may include:
  - a) a time-based fee (such as hourly or daily rates);
  - b) a pay per use fee;
  - c) a fixed fee and/or costs and expenses actually incurred for the performance of the Cloud Services as provided for in this Agreement.
2. The fee for each Cloud Service shall be as set forth in the Partner specific pricelist in force at the time of receipt of the order as published on the Control Panel. The Partner shall be free to determine the fee payable by the Customer to the Partner for the Cloud Services.
3. The fee's under this Article 9 shall remain valid until new fee's are set by the Partner. The Partner reserves the right to change the fee's under this Article 9 at any time upon a timely notification in writing and/or upon a timely notification on the Control Panel.
4. All fee's prices under this Article 9 are in euros and exclusive of VAT.

### **Article 10: Invoicing and Payment**

1. All invoicing of fee's for the Cloud Services will be provided through the Control Panel or otherwise, including, but not limited to electronic invoicing. Unless agreed otherwise in writing, invoices will be sent in such intervals as determined by the Customer in accordance with the intervals announced on the Control Panel.
2. In case it subsequently appeared that any fee for any Cloud Service is invoiced based on incorrect information, the Partner shall have the right to still invoice the right amount due under this Agreement.
3. Unless expressly agreed otherwise, payment term and time of payment with regard to the Cloud Services will be determined by the Customer in accordance with the terms of payment and time of payment announced on the Control Panel. All invoices must be paid by the Customer without any discount, deduction, setoff or suspension of payments on or before the due date specified on the invoice.



4. The agreed-upon term of payment is final. As from that date the Customer shall be obliged to pay the statutory commercial interest applicable in the Netherlands at that time (article 6:119a Dutch Civil Code) plus 2% until full payment is received without any further notice of default being required. After the end of each month the amount on which interest is due shall be increased by the interest due for that month.
5. All extra-judicial and judicial costs, internal as well as external, incurred by the Partner, where the Partner has become involved in any way in a judicial procedure against the Customer, both as plaintiff and defendant, will be borne by the Customer. The extra-judicial collection costs will be determined in accordance with the graduated calculation of extra-judicial collection costs ('Staffel buitengerechtelijke incassokosten (BIK)'). The judicial costs will be set at the actual amount paid by the Partner relating to the proceedings, even where these costs exceed the liquidated legal costs.
6. Payments made by the Customer will, notwithstanding the description, be credited with costs, subsequently with interest and thereafter with invoices in the order of their age, also if not yet mature.
7. Where an invoice remains unpaid 30 days after its due date, the Partner will be entitled to block access to the Control Panel and the Cloud Services until such time as the full outstanding balance, including interest and costs, is cleared, without any compensation being due.
8. If the outstanding balance is cleared by the Customer after access to the Platform has been blocked, the Partner will reactivate upon receipt of an upfront payment of a reactivation fee as provided in the applicable price list on the Control Panel.
9. The fee for the Cloud Services remains payable, notwithstanding any block, for as long as the Agreement remains in force.
10. Any discounts allowed will cease to apply in the event of failure to comply with the payment terms.
11. Any complaint in relation to an invoice must be sent to the Partner in writing, with substantiation, within 10 days of the invoice date, failing which the invoice will be regarded as having been definitively accepted. Any complaint made pursuant to Article 10.10 does not entitle the Customer to suspend payment of the Platform fee and/or the fee's for the Cloud Services.

### **Article 11: Audit**

1. The Partner, the Distributor, or an agent designated by the Partner or the Distributor, shall have the right to conduct quality and/or compliance audits and to inspect the Customer's business and its books and records related to the execution of this Agreement in order to confirm compliance with the terms and conditions of this Agreement and the applicable laws and regulations.
2. The Partner shall provide the Customer with at least 5 days prior notice of the intended audit and inspection and the Customer shall fully cooperate and provide access to its facilities, books and records.
3. Any audit under this Article 11 will be for the account of the Partner respectively the Distributor and under the confidentiality obligation as described in Article 15.

**Article 12 Warranty, Service levels, Data protection, Compliance with law, End of Life and End of Support Policy**

1. The Partner guarantees that:
  - a) it has full right and power to grant the rights, licenses, and privileges herein given with regard to the Platform;
  - b) the Platform is free of third party claims/rights;
  - c) the Platform complies with all applicable laws and regulations.
2. The Cloud Services Related Documents contain the terms and conditions of warranty to be provided with regard to the Cloud Services. The Partner will provide the same warranty to the Customer as the service provider of the Cloud Services provides to the Distributor respectively the Distributor provides to the Partner. Reference is made to these Cloud Services Related Documents. The Cloud Services Related Documents are deemed to be an integral part of this Agreement.
3. The only warranty the Partner provides with regard to the Platform and the Cloud Services, will be the warranty referred to in Article 12.1 and Article 12.2. The Partner expressly disclaims any other express or implied warranty of any kind of nature to the Customer, including, without limitation, any warranty of merchantability or fitness for a particular purpose or use. The Customer explicitly waives all (other) rights and/or remedies and/or claims it may have towards the Partner under the applicable law.
4. Each Party hereby covenants, warrants and represents that:
  - a) performance of its obligations under this Agreement does not and shall not violate any existing agreement to which it is subject or a party;
  - b) the execution and performance of this Agreement is within its individual or duly authorized corporate powers, as the case may be; and
  - c) to the best of his or its knowledge, there are no pending or threatened lawsuits, proceedings, claims, governmental actions or investigations which could, in any

way, adversely affect its performance of its obligations hereunder or reduce the value of the rights granted hereunder.

5. This Agreement, the Service Level Agreement and the Cloud Services Related Documents contain the service levels to be provided with regard to (i) the Platform and (ii) the Cloud Services. Reference is made to these agreements.
6. All service with regard to the Platform and the Cloud Services will be settled between the Partner and the Customer (on the basis of this Agreement, the Service Level Agreement and the Cloud Related Documents) respectively the Distributor and the Partner (on the basis of the Cloud Partner Agreement, the Service Level Agreement and the Cloud Related Documents). The Customer may not make any direct claims against the Distributor. The Customer may not make direct claims against the Distributor.
7. The Customer licenses the Platform during the term agreed upon between the Partner and the Customer. Given the evolution of technical standards and changing market expectations, the provisions relating to the service levels will be updated from time to time by the Distributor and/or the Partner. The Distributor and the Partner reserve the right to change the service levels at any time without impairing the quality standards, without any obligation to pay any damages to the Customer. In such circumstances, the Customer will be informed as follows. The Control Panel contains the prevailing version of the service levels at all times. When changes have been made to the service levels, a warning will be sent to the User(s) in an email sent to their respective email addresses.
8. The Customer hereby accepts the terms and conditions of the most recently published provisions on service levels on the Control Panel and will at all times adhere and remain compliant to the terms and conditions thereof.
9. If under the Service Level Agreement any fee is charged by the Distributor, the Partner will invoice this fee to the Customer. The Customer will pay this invoice in accordance with Article 10.
10. The Partner shall comply with all applicable data protection directives and regulations that impose obligations on processors of personal data. For the avoidance of doubt, the Partner however does not qualify as the controller of the processing of personal data entered or used by the Customer (end user) on the Platform. As processor, the Partner shall take appropriate organizational and technical (security) measures to prevent unauthorized access to such data. Such measures are described in the Service Level Agreement and the Cloud Services Related Documents.
11. The obligations imposed on the Partner as processor, leave unaffected the obligations that are incumbent on the controllers of the processing, such as the

obligations to inform the data subjects of the processing, to notify the relevant data protection Authority and data subjects about data breaches, to assess the security measures in the light of the sensitivity of the personal data in question, to file the processing with Data protection authorities etc. The Partner shall not indemnify the Customer (end user) for any liability of fines imposed resulting from non-compliance with applicable privacy laws.

12. The Customer acknowledges that information processed in the course of performing the Cloud Services may contain personally identifiable information of individuals and associated metadata and that the processing of such information may therefore involve the processing of personal data. The Customer shall take all necessary measures to ensure that it, and all its employees and User(s), are aware of any responsibilities they have in respect of applicable privacy laws and/or regulations. The Customer understands and agrees that the Partner has no control or influence over the content of the data and that the Cloud Services are performed on behalf of the Customer. Reference is made to the applicable Cloud Services Related Documents.
13. The Customer shall in the execution of this Agreement and further agreements, which may result therefrom, take into account all applicable statutory and government provisions as well as regulations, including, but not limited to product regulations.
14. The Partner reserves the right:
  - a) to cease, cancel or discontinue (End of Life) or freely modify any of the Cloud Services;
  - b) to cease, cancel or discontinue the support (End of Support) of any of the Cloud Services;at any time and without any obligation to replace the Cloud Services and/or to pay any damages to the Customer, provided that the Partner informs the Customer in writing in advance, within a reasonable term. The Partner will exert best efforts to comply within one month notification before the End of Life respectively the End of Support.
15. Cloud Services with an End of Life date must be migrated by the Customer before the End of Life date to a new respectively replacing service, which will be the sole responsibility of the Customer.
16. In case the Customer wishes to continue the support after the End of Support date, the Customer may file a request for additional support. However, the Partner shall assess the request in its sole discretion and shall not be obliged to accept the request.

### **Article 13: Liability and Indemnification**

1. Any liability on the part of the Partner for an imputable failure to comply with the Agreement or on any other grounds (including but not limited to the warranty obligation agreed with the Customer) is limited to the amount that the Partner

receives from its insurer under its commercial liability insurance in relation to the damage for which the Customer has held the Partner liable.

2. If no insurance payments are made in relation to the matter at hand, the liability of the Partner hereunder regardless the cause in law shall in any case (i) with regard to the Platform be excluded and (ii) with regard to the Cloud Services be limited to 50% of the last monthly fee (pro rata in case of a different period of invoicing) for the Cloud Service in relation to the damage for which the Customer has held the Partner liable as determined in Article 9 paid by the Customer to the Partner.
3. In no circumstances will the Partner be liable to the Customer for any special, consequential, indirect, criminal or incidental loss, including but not limited to losses caused by delays, lost profits, lost savings, increased operational costs, damages caused by the customers of the Customer, loss of customers, loss of goodwill, etc., howsoever caused, regardless of the basis of liability, and regardless of whether or not it was advised in advance of the possibility of such damages arising in any way from this Agreement or otherwise.
4. The liability of the Partner to the Customer due to mutilation, destruction or loss of information, documents or data, howsoever caused, is excluded.
5. The Customer will be solely responsible and liable, and the Partner cannot be held liable for installation, management, operation, functionality, compatibility and compliance to the license terms of the software vendors (including, but not limited to any reporting and information obligation) of all software licenses installed by the Customer in combination with the Cloud Services. Failing to comply with the license terms of the software vendors may result in severe penalties and/or damages. The Customer will be liable for all penalties forfeited and all direct and indirect damages sustained, caused by any non-compliance, and the Customer will indemnify and hold the Partner harmless in this respect.
6. The Partner cannot be held liable for operational problems or performance problems with the local internet connection, as a result of which the Platform and/or the Cloud Services is/are not available.
7. The Customer is responsible for the installation of appropriate mechanisms for the security, storage and recovery of Customer data in the event of any irregularity in the implementation of the Platform and/or the Cloud Services.
8. Where the Customer leases or buys hardware from the Partner, the warranty on this hardware does not extend beyond the warranty provided by the supplier to the Partner. The Customer explicitly waives all (other) rights and/or remedies and/or claims it may have towards the Partner under the applicable law. Moreover, the Partner cannot be held liable for hardware operational problems if the Customer has made modifications to the hardware.

9. Where the Customer leases or buys hardware from third party ICT suppliers, the Partner is not liable for damages caused to and/or by such hardware, the functioning of such hardware or the compatibility thereof with the Platform. This applies mutatis mutandis to ICT services ordered by the Customer from third party ICT suppliers.
10. The limitations and exclusions of liability referred to in paragraphs 1 to 9 above do not apply insofar as the damage in question is caused by gross negligence or willful misconduct of the management of the Partner.
11. Save where compliance by the Partner is permanently impossible, the Partner's liability on the grounds of imputable failure to comply with the Agreement arises only if the Partner receives notice of default in writing from the Customer immediately, in which a reasonable period is allowed to remedy the failure, and the Partner remains in default of its obligations after the aforesaid period. The notice of default must describe the shortcoming in as much detail as possible and as completely as possible, in order to give the Partner the opportunity to respond adequately.
12. Any claim for damages against the Partner is extinguished automatically 12 months after the inception of the claim.
13. The Customer hereby agrees to protect, indemnify, defend and hold harmless the Partner and each of its officers, directors, agents and employees ('Indemnified Parties') from (i) all claims and threatened claims by third parties against the Partner and/or any of its Indemnified Parties, (ii) costs (including reasonable legal fees) incurred in defending against such claims, and (iii) all liabilities of the Partner and/or any of its Indemnified Parties to third parties, where such claims, costs and liabilities arise from or in connection with the use of the Platform and/or the Cloud Services by the Customer or any of its User(s), or any failure by the Customer to properly perform, direct or indirect, the terms of the Agreement, provided, however, that these indemnification obligations shall not apply in the event that such claims, costs and/or liabilities were caused in any manner by the Partner.

#### **Article 14: IP rights**

1. The Customer expressly acknowledges that the Platform shall be owned by the Distributor or a third party with whom the Distributor has concluded a (license) agreement on this subject. Any and all IP Rights as defined below with regard to the Cloud Services remain with the owner thereof. This includes 'Background IP' (any and all IP Rights relating to the Platform and/or the Cloud Services existing or originating on the effective date of the Agreement) and 'Foreground IP' (any and all IP Rights relating to the Platform and/or the Cloud Services generated or originated by any of the Parties after the effective date of the Agreement). IP Rights mean all rights, title

and interest (including copyrights, trade secret rights, knowhow, mask work rights, trademark rights, database rights, discoveries, inventions (whether or not patentable) and all other intellectual and industrial property rights of any sort in connection with the Platform and/or the Cloud Services.

2. This Agreement does not constitute any transfer of any IP Right.
3. The Customer undertakes not to infringe or to attack these IP Rights in any way, directly or indirectly, by use or otherwise and neither directly nor indirectly to do any act which would or might invalidate such registration or title, nor apply to vary or cancel any registered user ship of these rights.
4. The Partner will grant to the Customer for the term of the Agreement a non-exclusive not for resale (sub)licence to use the Platform and the Cloud Services (hereinafter 'NFR licence'), but only for the purpose of executing the Agreement and under the terms and conditions thereof. However, the Customer is prohibited to grant a NFR licence to third parties (different from the User(s)), to use this NFR licence on behalf of third parties, or allow third parties installation thereof.
5. After termination of the Agreement, for whatever reason, the Customer shall cease above-mentioned use without delay.

#### **Article 15: Confidentiality**

1. During the term of the Agreement, and for a period of five years after termination of the Agreement, the Receiving Party will maintain all of the Disclosing Party's Confidential Information as defined below in trust and confidence and will not disclose or disseminate any of the Disclosing Party's Confidential Information to any third person or use any of the Disclosing Party's Confidential Information for any unauthorized purpose. The Receiving Party may use the Disclosing Party's Confidential Information only to the extent required to accomplish the purposes of the Agreement. Confidential Information shall not be used for any purpose or in any manner that would constitute a violation of applicable laws. Confidential Information shall not be reproduced in any form except as required to accomplish the intent of the Agreement. The Receiving Party will use at least the same standard of care to protect and maintain in confidence the Disclosing Party's Confidential Information as it uses to protect its own proprietary or confidential information.
2. 'Confidential Information' shall mean any information received by one party (the 'Receiving Party') from the other party (the 'Disclosing Party') pursuant to the agreement, including, without limitation, all know how, data, designs, specifications, inventions, drawings, processes, trade secrets, patent and trademark applications, techniques, or formula relating to any product and any research project, work in process, future development, scientific, engineering, manufacturing, marketing, business plan, financial or personnel matter relating to either party, its present or

future products, sales, suppliers, customers, employees, investors or business, whether in oral, written, graphic, electronic or other tangible form and shall include the agreement.

3. Each Party shall ensure that these obligations will be observed under the same terms and conditions by its Officers.
4. The Receiving Party will promptly notify the Disclosing Party upon discovery of any unauthorized use or disclosure of the Disclosing Party's Confidential Information.
5. Confidential Information shall not include any information that:
  - a) is now, or hereafter becomes, through no act or failure to act on the part of the Receiving Party, generally known or available;
  - b) is known by the Receiving Party at the time of receiving such information, as evidenced by its written records;
  - c) is hereafter furnished to the Receiving Party by a third party, as a matter of right and without restriction on disclosure;
  - d) is independently developed by the Receiving Party without any breach of the agreement; or
  - e) is the subject of a written permission to disclose provided by the Disclosing Party.
6. Notwithstanding any other provisions of the agreement, each Party may disclose Confidential Information if such disclosure:
  - a) is in response to a valid order of a court or governmental authority; provided, that the Receiving Party shall first have given notice to the Disclosing Party in order to allow the Disclosing Party the opportunity to prevent or limit any such disclosure and the receiving Party shall have made a reasonable effort to obtain a protective or other appropriate form of order requiring that the Confidential Information so disclosed be used only for the purposes for which the order was issued;
  - b) is otherwise required by the applicable law; or
  - c) is otherwise necessary to file or prosecute patent applications, prosecute or defend litigation or comply with the applicable law or otherwise establish rights or enforce obligations under the agreement, but only to the extent that any such disclosure is necessary.
7. In the event that one Party shares confidential information acquired from the other Party with third parties, the other Party shall have the right to immediately terminate the Agreement. If the Customer breaches the confidentiality Agreement, the Partner can block all access to the Platform without the Customer having any right to compensation.

#### **Article 16: Commencing date, Term of the Agreement and Termination**



1. The Agreement will commence at the moment when the Customer accepts the offer of the Partner in accordance with article 2.1 of this Agreement, and anyway when the Customer places an order for Cloud Services under this Agreement.
2. Unless expressly agreed otherwise in writing, the duration of the Agreement will be determined by the Customer in accordance with the terms announced on the Control Panel. This Agreement shall continue until the termination or cancellation of the last Cloud Service subscription, unless extended in accordance with the terms announced on the Control Panel.
3. The Parties shall be entitled to terminate the Agreement with immediate effect by giving written notice, without prejudice to any rights which it may have, whether under the provisions of this Agreement, in law, or in equity, or otherwise, if the other Party:
  - a) commits a fundamental breach of any of the terms or conditions of this Agreement or any other agreement made pursuant to the provisions hereof and such breach is not cured within 10 days after written notice specifying the default; to avoid any misunderstanding, in case the breach is not curable because of its nature, the Agreement will terminate immediately upon receipt of the written notice;
  - b) becomes bankrupt, requests suspension of payment, is declared commercially incompetent by order of the court, enters into liquidation, compounds with its creditors or is unable to pay its debts as they mature (i.e. where at least two of the Distributor's invoices were not paid by the Partner on the due date) or is involved in any insolvency or reorganisation proceedings supervised by a court;
  - c) commits a crime, within or outside the framework of this Agreement.
4. Furthermore the Partner shall have the right to terminate the Agreement with immediate effect by giving written notice, without prejudice to any rights which it may have, whether under the provisions of this Agreement, in law, or in equity, or otherwise in case of:
  - a) regular payment problems in respect of the Customer (i.e. where at least two of the Partner's invoices were not paid by the Customer on the due date);
  - b) unlawful or harmful use of the Platform and/or the Cloud Services by the Customer or by one or more of its Users.
5. No claims for indemnity or compensation can be lodged by reason of the termination of this Agreement, save where these claims are based on breach of contract or tort.
6. The Platform is licensed by the Distributor to the Partner respectively by the Partner to the Customer and the Cloud Services are marketed, distributed and sold by the Distributor through the Platform in a multi tier sales system: Distributor – Partners – Customers. In the event of termination of the Cloud Partner Agreement between the Distributor and the Partner, the Distributor shall have the right:
  - a) to appoint another Partner to replace the Partner; or

- b) to appoint a third party to distribute the Cloud Services respectively activate new Cloud Services, continue running Cloud Services and/or change running Cloud Services, or
  - c) to take this up itself;  
to its sole discretion.
7. In case of termination of the Cloud Partner Agreement between the Distributor and the Partner as referred to above, this Agreement between the Partner and the Customer will be transferred from the Partner to the newly appointed Partner, the newly appointed third party or the Distributor (to the sole discretion of the Distributor) as per the date of the termination of the Cloud Partner Agreement. The Customer hereby approves such a transfer of contract in advance without being entitled to any damage compensation whatsoever, just like the Partner has done in the Cloud Partner Agreement, and expressly acknowledges and accepts this right of intervention by the Distributor.
8. All Cloud Services will be provisioned with a subscription expiration date published on the Control Panel. The Customer may cancel and terminate Cloud Services via the Customer Control Panel before the auto-renewal date, otherwise Cloud Service subscriptions will be continued automatically.
9. There are two methods for cancelling/terminating Cloud Service subscriptions:
- a) Placing a cancellation order in the Control Panel (a cancellation order is considered to be valid only after the cancellation task has run successfully on the Platform). If a cancellation order task has run successfully, the Cloud Service subscription is stopped immediately, the subscription application must be uninstalled (if applicable).
  - b) Disable the auto-renewal, with the exception of 'Device as a Service'. Using this method, the auto-renewal mode for the subscription is disabled. The auto-renewal mode can be disabled in the Control Panel. The Cloud Service subscription will be automatically stopped at the Cloud service subscription expiration date (a cancellation order is considered to be valid only after the cancellation task has run successfully on the Platform). As regards 'Device as a Service', it is not allowed to disable the auto-renewal during the term of the Cloud Service subscriptions.  
After a retention period of at least 30 days the subscription will be destroyed permanently.

### **Article 17: Consequences of termination of the Agreement**

- 1. In case of termination of this Agreement, the Distributor or the Partner will in reasonableness and fairness assist and participate in the possible migration of the Customer to the infrastructure of the Customer or a third party. In case such migration involves additional work for the Distributor or the Partner, it will be entitled to charge a reasonable compensation for the work.
- 2. Upon the termination of this Agreement, the Partner will cooperate fully with the transfer of systems and data. This will be charged at the applicable hourly rate for

management work. As a rule the transfer will take place during the final weeks before the end of the period of the license of the Platform, in consultation with the Customer.

3. Otherwise, the Customer shall be obliged after termination of the Agreement, for whatever reason, to stop any use of the Platform, the Control Panel, the NFR license and/or the Cloud Services and to return any property belonging to the Partner or to the Distributor immediately.
4. Immediate upon termination of this Agreement, the owning Party shall return to the other Party all originals and copies of all documents and information in any form, such as brochures, advertising materials, data, etc., which have been made available within the scope of this Agreement as well as any goods belonging to the owning Party.
5. Termination of this Agreement in accordance with the terms of this Agreement shall not prejudice or affect any right of action or remedy which shall have accrued at the time of such expiration or termination and any obligations which expressly or by implication are intended to come into or continue in force on or after such or termination.
6. Any damage to and/or loss of leased hardware must be reimbursed by the Customer, who has sole liability in this regard. To this end, the Partner will invoice the Customer within a reasonable time after preparing a report on the return of the hardware.

#### **Article 18: Applicable law and disputes**

1. The validity, interpretation and implementation of the Agreement is governed by Dutch law.
2. Any dispute relating to the conclusion, validity, implementation and/or termination of this Agreement will be settled by the competent court in Oost-Brabant, 's-Hertogenbosch.
3. Before instituting a procedure before the Court, Parties will, however, attempt to negotiate in good faith in order to reach an out-of-court settlement.

#### **Article 19: Final provisions**

1. All notices concerning this Agreement shall be sent by registered mail or email, in each case addressed to the address as the respective Parties may designate by like notice from time to time. A notice served by the sending Party shall only have effect towards the receiving Party if the sending Party can produce the following

documents: (i) a notice of receipt if sent by registered mail or (ii) a digital receipt of successful delivery if sent by email.

2. This Agreement constitutes the entire agreement between the Parties concerning the subject stated above and supersedes and cancels any prior agreement or any contemporaneous oral agreement between the Parties on the subject.
3. All documents and information available via the Control Panel as referred to in in this Agreement form an integral part of the Agreement and are subject to the provisions of the Agreement.
4. Any adjustment or amendment of this Agreement will only be binding upon the Parties if agreed upon in writing.
5. In the event that particular provisions or requirements of this Agreement are in violation of Dutch law, the validity of other provisions or requirements shall not be affected thereby and shall be enforced and remain in full force and effect. In the place of the null or invalid provisions a suitable regulation shall apply which approximates as closely as possible with the intention of the Parties and the economic result aimed for by them in a legally effective way.
6. This Agreement shall be binding upon and inure to the benefit of the Parties, their legal representatives, successors and assigns. Each Party is strictly prohibited from transferring the rights and obligations arising from this Agreement, in part or in whole, to a third party, without the other Party's express prior written approval, with the exception of the transfer described in Article 16.7.
7. Each Party shall bear its own costs of the conclusion and the implementation of this Agreement.
8. The failure of either Party to enforce at any time one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions.
9. This Agreement is in the English language only, which language shall be controlling in all respects, and all versions in any other language shall be for accommodation only and shall not be binding upon the Parties.
10. Each Party has cooperated in the drafting of this Agreement. Hence, this Agreement shall not be construed against any Party on the basis that that Party was the drafter.
11. This Agreement has been negotiated between unrelated Parties, who are sophisticated and knowledgeable in the matters contained in the same and who have acted in their own self-interest. The provisions of this Agreement shall be

interpreted in a reasonable manner to affect the purpose of the Parties, and this Agreement shall not be interpreted or construed against any Party to it, because that Party or representative for that Party drafted this Agreement or participated in its drafting.

12. A failure in the performance of their obligations under this Agreement cannot be attributed to a Party if the failure is caused by circumstances beyond the reasonable control of said Party such as fire, flood, strikes, labour unrest or other disruptions of the economy, unavoidable accidents, embargos, blockades, legal restrictions, riots, government measures, non-availability of means of communication, terrorist attacks, war, etc.
13. In case of temporary force majeure the mutual obligations of the Parties shall be suspended until the hindrance is eliminated. Where force majeure persistently prevents fulfilment, by which the Parties also understand a force majeure situation which lasts for more than 90 days, the Agreement shall end by right. The Parties shall then have no right to fulfilment, compensation for this reason and/or postponement.
14. The Customer agrees that the Distributor, although not a party to this Agreement, may derive rights from the Agreement, particularly where commitments are stipulated in respect of the Partner which are included (in part) in the interest of the Distributor.

Drafted in twofold at [LOCATION] on [date] whereby all Parties declares to have received one original.

[PARTNER]  
Represented by

.....

[CUSTOMER]  
Represented by

.....

[NAME]  
[POSITION]

[NAME]  
[POSITION]