

GENERAL TERMS AND CONDITIONS FAIRBANKS BV

These general terms and conditions of Fairbanks B.V. (“General Terms and Conditions”) apply to all Agreements concluded with Clients pursuant to which we provide Services and/or Products, as further described in the Agreement. These General Terms and Conditions may also be used by affiliates of Fairbanks BV, in which case the affiliate is regarded as “Fairbanks” as defined in these General Terms and Conditions below.

1. Definitions

In these General Terms and Conditions the following capitalized terms have the following meanings:

- 1.1 Agreement: the agreement between Fairbanks and the Client, pursuant to which Fairbanks provides the Services and/or the Products, usually consisting of the Offer, including all appendices and documents attached thereto (such as third party terms and conditions), and always including these General Terms and Conditions.
- 1.2 Client: the legal entity or non-consumer natural person, with whom Fairbanks concludes an Agreement.
- 1.3 Default: occurs when a Product or a Service does not meet the agreed specifications of that Product or Service and this can be evidenced and reproduced by the Client in detail.
- 1.4 Fairbanks: Fairbanks N.V., or an affiliate of Fairbanks N.V. which uses these General Terms and Conditions.
- 1.5 Offer: Fairbanks’ written offer with a description of the Products and/or Services.
- 1.6 Products: the products as described in the Agreement.
- 1.7 Services: the services provided by Fairbanks for the Client, as described in the Offer or as otherwise agreed.

2. Conclusion of Agreements, Applicable General Terms and Conditions

- 2.1 An Agreement is concluded by the Client accepting an Offer in writing, or by Fairbanks providing the Services and/or the Products at the Client’s request. The Offer is valid during the term indicated in the Offer, and in absence thereof, during a period of fourteen (14) calendar days. If the Client deviates from the Offer in its acceptance thereof, such deviation is not binding for Fairbanks until Fairbanks has either confirmed this in writing or provides the Services or Products in accordance with the deviation.
- 2.2 In case of discrepancy between clauses in the Agreement and these General Terms and Conditions, the clauses in the Agreement shall prevail, unless the Agreement provides otherwise.
- 2.3 Once these General Terms and Conditions have been declared applicable to an Agreement, they apply to all subsequent Agreements, even where this is not explicitly referenced in each Agreement.
- 2.4 The Client’s general terms and conditions do not apply to any Agreement, unless Fairbanks has explicitly accepted them.
- 2.5 In case other general terms and conditions apply to a specific Agreement, where the provisions of such terms and conditions conflict with those of these General Terms and Conditions, the provisions of these General Terms and Conditions shall prevail, except where these General Terms and Conditions explicitly provide that other provisions prevail.

2.6 Deviations from the Agreement are only valid if these are agreed between the parties in writing or electronically.

2.7 Third parties involved with the provision of the Products and/or Services and/or for which Fairbanks could be liable, may invoke the provisions of these General Terms and Conditions against the Client.

3. Fees and payment

3.1 The Client shall pay the fees that are indicated in the Agreement or communicated otherwise by Fairbanks. The fees are only fixed fees for the Products and/or the Services if Fairbanks explicitly indicates the fees as such in writing. Where Fairbanks mentions the Client's "budget" or a pre-calculation for Products and/or Services, such budget or pre-calculation cannot be regarded as a fixed fee, unless Fairbanks explicitly indicates that it is in writing. All fees are excluding travel and lodging expenses, time spent travelling, costs for transport, VAT (Value Added Tax) and other government imposed costs. Other costs, such as for used materials, are charged separately. Fairbanks is entitled to amend the fees. The Client will be informed of such amendment, taking into account a one month advance notice period. With regard to periodic fees, the Client is deemed to have accepted amendments of such fees, if the Client does not object to the amendment ultimately before the effective date of the amendment.

3.2 One time fees are invoiced directly after the Product has been delivered respectively the Services have been provided. Periodic fees are invoiced in advance of the specific period. Other fees are invoiced in monthly arrears on the basis of the Services provided in such month. The Agreement may contain deviating invoicing conditions. Notwithstanding the above, Fairbanks is entitled to request the Client to make an upfront payment, security and/or payment of unpaid invoices before delivering Products and/or before providing, or continuing to provide the Services.

3.3 Additional Services that fall outside the Services described in the Agreement, and which are provided either at the Client's request or which can otherwise be attributed to the Client, are invoiced in arrears at Fairbank's then current fees for additional Services ("*meerwerk*"). Fairbanks cannot be obliged by the Client to perform such additional Services.

3.4 Unless agreed otherwise with the Client in writing, the Services are provided during regular office hours, which are Mondays through Fridays between CET 09:00 and 17:00, excluding the official holidays in the Netherlands. Services which have to be performed outside these hours may be invoiced as non-regular Services at a higher fee.

3.5 The Client must pay the invoices within fourteen (14) days of the invoice date, in accordance with the invoice instructions and without setting off or deducting any amounts owed by Fairbanks to the Client. If the Client does not timely pay an invoice, the Client is immediately in payment default ("*verzuim*"), in which case Fairbanks is entitled to suspend the provision of the Services, and/or its other obligations, such without affecting Fairbank's right to rescind the Agreement due to the payment default. From the date of payment default, all other claims vis-a-vis the Client become immediately payable and Fairbanks is entitled to increase the invoice amount with the statutory rent and the recovery costs, such with a minimum of 10% of the invoice amount. The Client is furthermore obliged to pay the statutory rent over de recovery costs. In case Fairbanks has to initiate legal proceedings to recover an invoice, the Client is furthermore obliged to pay the costs in relation to such legal proceedings. These costs shall not be limited to the costs awarded by the court, the actual costs will be paid by the Client in case the Client is ordered to pay the invoice. Legal proceedings before an arbitral court are also regarded as "legal proceedings".

3.6 Fairbanks is entitled to have amounts paid by the Client first cover the costs for recovery first, then the accrued statutory rent and finally the invoice amount. Fairbanks is entitled to refuse full payment of the invoice amount if the Client does not simultaneously pay the costs and the statutory rent.

4. Term and termination

4.1 The term of the Agreement starts on the date of conclusion of the Agreement and has the term as set out therein.

4.2 If the Agreement does not determine a term, the following terms apply: (a) Agreements for the delivery of Products and/or provision of Services shall have a term equal to the time it takes to deliver the Product and/or to provide the Services, and (b) in case a software license is granted, and/or maintenance and support is provided, for a one (1) year period starting from the date on which the Agreement is concluded and with tacit renewals of one year periods (1) unless the Agreement is terminated prior to the renewal, taking into account a three (3) month notice period, such subject to the applicable terms of the third party supplier, if any. When the Agreement has a fixed term, it cannot be terminated by the Client without paying damages suffered by Fairbanks and/or costs made by Fairbanks in relation to such termination. Fairbanks is entitled to terminate (“*opzeggen*”) the Agreement at any time without being obliged to pay at any time taking into account a two (2) month notice period.

4.3 In case Fairbanks is in evidenced default of an obligation under the Agreement, and Fairbanks does not timely remedy the default after having been served a notice of default (“*ingebrekestelling*”) setting out the (presumed) default and the obligations to be fulfilled in detail and allowing Fairbanks a reasonable term of at least fifteen (15) working days, the Client is entitled to terminate the Agreement for the future (“*opzeggen*”) (and thus not allowed to rescind (“*ontbinden*”) the Agreement). In case the default is the result of force majeure circumstances, the Client is also only entitled to terminate the Agreement for the future, and not to rescind it.

4.4 Each party is entitled at its discretion to rescind or terminate the Agreement for the future without being obliged to pay damages in case (a) the other party is declared bankrupt, (b) the other party requests or is granted moratorium of payment, (c) the other party’s enterprise is liquidated other than in the context of a reorganisation, or (d) in case the other party ceases to do business.

4.5 Fairbanks is entitled at its discretion to immediately rescind or terminate the Agreement for the future without being obliged to pay damages in case the control in the Client is taken over by a third party.

4.6 In case a supplier of Fairbanks terminates, suspends its obligations or defaults under the agreement it has with Fairbanks, Fairbanks is entitled to replace the Products and/or Services supplied or provided by such supplier with equivalent Products or Services, or, if replacement is not commercially viable, to terminate (“*opzeggen*”) the Agreement immediately in whole or in part, such without being obliged to pay any damages.

4.7 When the Agreement ends, for whatever reason, any granted software licenses and maintenance and support shall terminate, unless agreed otherwise in the Agreement or indicated otherwise in the applicable terms of the third party supplier.

4.8 In case the Agreement is rescinded, any Services or other obligations already performed by or on behalf of Fairbanks, are not part of the statutory obligations to undo (“*ongedaanmakingsverbintenissen*”). Obligations already performed also includes delivered Products, such as hardware.

4.9 If there is a ground for the Client to rescind an Agreement for the provision of Services, this does not create a ground to rescind an Agreement for the delivery of Products and vice versa.

4.10 When the Agreement ends, all amounts due become immediately payable.

5. Performance of the Agreement

5.1 Fairbanks will use its best endeavours (“*zal zich inspannen*”) to provide the Products and/or the Services in accordance with the agreed specifications and in accordance with the indicated planning. When performing the Services Fairbanks does not have the obligation to deliver a result (“*resultaatverplichting*”)

unless this is explicitly agreed between the parties in writing. All (delivery) terms and each planning is estimated in good faith based on the information available to Fairbanks upon conclusion of the Agreement. If Fairbanks does not meet a (delivery) term or planning, this does not result in Fairbanks being in default (“*verzuim*”). The parties shall consult in case a (delivery) term or planning might not be met.

5.2 Any changes to the specifications requested by the Client must be laid down in writing and can result in changes of the planning, of the provided Products and/or Services and/or the agreed fees.

5.3 In all cases, Fairbanks is only in default after the Client has issued Fairbanks a notice of default setting out in detail the default and the obligations to be fulfilled and granting Fairbanks a reasonable term, of at least fifteen (15) working days, to remedy the default.

5.4 With regard to Products and/or Services of Fairbanks’ suppliers, the terms and conditions of such third parties, such as guarantees, repair and/or return policies, apply. Fairbanks will inform the Client upon request about the applicable terms and conditions.

5.5 The Client has (a) until five (5) days for delivered Products and (b) ten (10) days for Services provided to test whether the Products respectively the Services meet the agreed specifications. If the Client does not within those inspection terms indicate, through submission of evidence detailing the Default, that there is a Default, the Products and/or the Services are deemed accepted. The Products and/or the Services are also deemed accepted upon the Client’s operational use thereof. Minor Defaults that do not affect the operational use by the Client cannot result in the Client withholding acceptance. In case the Client indicates within the inspection terms, through submission of evidence detailing the Default, that it does not accept the Products and/or the Services, Fairbanks will use its best endeavours to remedy the Defaults notified by the Client. After this, the Client shall have another five (5) respectively ten (10) days to test whether the Products respectively the Services meet the agreed specifications. Minor Defaults that do not affect the operational use by the Client cannot result in the Client withholding acceptance. In case the Client does not, within the second inspection terms, indicate through submission of evidence detailing the Default, that it does not accept the Products and/or the Services, they shall be deemed accepted. If, however, the Client does, within the second inspection terms, indicate through submission of evidence detailing the Default, that it does not accept the Products and/or Services, Fairbanks shall be granted one final term of at least fourteen (14) days to remedy the Default and, if still not remedied by Fairbanks within that term, to terminate the Agreement for the future (and thus not to rescind (“*ontbinden*”) the Agreement).

5.6 Fairbanks is not obliged to remedy Defaults in case of user mistakes or incompetent use and/or use in violation of the provisions of the Agreement, the specifications, the documentation and in case the Client without Fairbanks’ consent makes or commissions a third party to make changes to the Products and/or the Services, and/or in case the Products and/or Services are not available due to disturbances or changes to hardware, software and communication network of the Client or third parties.

5.7 Fairbanks does not guarantee that the Products and/or the Services are free from Defaults or that they will operate without error.

5.8 Fairbanks cannot be obliged to provide maintenance and/or support on provided Products and/or Services, this requires a separate maintenance and support (service level) Agreement, with Fairbanks or with its supplier. In case such an Agreement is concluded, the terms and conditions of such Agreement apply to Defaults that appear after delivery and acceptance as described in article 5.5, complemented by the provisions of article 7.7 (maintenance and support) and the supplier’s terms and conditions, as applicable.

5.9 Any costs for recovery of data as a result of a Default or any other cause, shall be borne by the Client.

5.10 Fairbanks is entitled to retain information, documents and data received from the Client, until all outstanding amounts are paid.

5.11 Fairbanks does not guarantee a 100% level of security, nor 100% uptime, because this depends on several circumstances. If the parties agree on certain uptime percentages, these shall always exclude maintenance windows.

5.12 Fairbanks is entitled at its own discretion to decide which personnel it uses for the performance of the Agreement, unless explicitly agreed otherwise with the Client in writing.

5.13 In case Fairbanks processes personal data in the context of the Services, and the Client wishes to conclude a separate data processor agreement, Fairbanks is entitled to request payment of additional fees in relation to the performance of the obligations in such data processor agreement.

6. Client's responsibilities

6.1 The Client shall timely provide Fairbanks with all requested information, facilities, technical access and cooperation required for Fairbanks to deliver the Products and/or to provide the Services.

6.2 If the Client does not or not timely provide the requested information, facilities, technical access and/or cooperation, or if the (technical) infrastructure is not available and/or does not meet the required specifications and/or system requirements, or if the Client otherwise does not fulfil its obligations, Fairbanks is entitled to suspend the delivery of the Products and/or provision of the Services until the Client has provided the requested information, facilities, access and/or cooperation and/or resolved problems with the (technical) infrastructure and/or met its other obligations within a reasonable term. Fairbanks is entitled to invoice any costs made in relation to the above at its then current fees.

6.3 The Client is responsible for the operation and security of its own (technical) infrastructure, including software and hardware and for this to meet the required specifications and/or system requirements.

6.4 Unless otherwise agreed between Fairbanks and the Client in writing, the Client will itself install the software and hardware and arrange, test, parameterize, configure and tune it and as required adapt the hardware, software and user environment and create the (inter)operability required by the Client.

6.5 The Client guarantees:

6.5.1 that, in relation to the performance of the Agreement (i) it will make available a sufficient number of personnel (whether employees or hired third parties); (ii) the personnel will timely provide the requested assistance and input and make the required decisions; (iii) it will use personnel authorized to take decisions on behalf of the Client; (iv) in case Fairbanks' personnel provides Services the Client's premises, the Client will provide the requested co-operation and facilities;

6.5.2 that all information, documentation, data and input provided by the Client that are relevant for the performance of the Agreement, are (i) correct, complete and up-to-date, (ii) do not infringe third party (intellectual) property rights, and (iii) comply with applicable laws and regulations;

6.5.3 that, in case Fairbanks processes personal data on behalf of the Client for the performance of the Agreement, the applicable laws and regulations have been complied with;

6.5.4 that the person signing or otherwise confirming the Offer and/or the Agreement, is authorized to bind the Client. The Client waives any rights it may have in relation to that person not being authorized to bind the Client.

6.6 In case of large or complex projects the Client will at Fairbanks' request co-operate with creating a project board structure so that the Client's and Fairbanks' personnel can regularly consult for the purpose of controlling the planning, addressing problems that may arise during the project and taking decisions with regard to such problems. Unless otherwise agreed between Fairbanks and the Client in writing, Fairbanks is entitled to take the final decisions, if this is appropriate for the project's proper progress.

7. Specific provisions for certain Services

7.1 In addition to the other provisions of these General Terms and Conditions and the Agreement, the provisions of this article apply for certain Services.

7.2 Cloud solutions

7.2.1 Fairbanks will use its best endeavours (“*zal zich inspannen*”) to deliver the cloud solution pursuant to the agreed specifications and other agreed conditions. The Client acknowledges that cloud solutions depend on several circumstances and developments and that Fairbanks, without affecting the other provisions of these General Terms and Conditions, cannot give any guarantees with regard to the operation of the delivered cloud solution; it is delivered “as is”, “where is”, and for any Defaults occurring after delivery, the provisions of article 5.8 apply (a separate service level Agreement must be concluded for this purpose).

7.2.2. Unless agreed otherwise between Fairbanks and the Client, the cloud solution will be installed on the Client’s hardware and the Client is responsible for the operation and maintenance of that hardware, including all connected facilities such as electricity and communication networks. Where Fairbanks advises with regard to certain hardware, such advice is at the Client’s own risk.

7.2.3 The below provisions regarding software (article 7.3), hardware (article 7.4), software-as-a-service in case the software is maintained remotely (article 7.5) and maintenance and support (article 7.7) are applicable to the delivery of software, hardware and support and maintenance for a cloud solution.

7.3 Delivery of software

Where Fairbanks delivers software, the following provisions apply:

7.3.1 The Client is obliged to comply with third party license conditions. Where such third party license conditions are in conflict with the provisions of these General Terms and Conditions, the third party license conditions prevail, where they relate to the software. Pursuant to the terms and conditions of the Agreement, the Client is granted a non-exclusive, limited, unalienable, non-sublicenseable, non-transferable (unless transfer is allowed based on applicable mandatory legal provisions) right to use the software for its own operations and within its own organisation. The Client guarantees it will only use the software in accordance with any (other) limitations indicated by Fairbanks. Unless agreed otherwise in writing between Fairbanks and the Client, the Client may not use the software to offer it as a software-as-a-service.

7.3.2 The Client is entirely responsible for securing the hardware on which the software is installed, which also includes access to the software and/or the software environment and/or with which the software interfaces or is connected, and for preventing the software’s use in violation of the license terms. Unless agreed otherwise in writing between Fairbanks and the Client, the software may only be installed and used on the Client’s own hardware.

7.3.3 Fairbanks is entitled to make the use of the software subject to activation of a license key. Fairbanks is at times, even without prior notice, to take technical measures to protect the software against unauthorized use. The Client will never (have) remove(d) and/or (have) circumvent(ed) such technical measures.

7.3.4 In absence of a written test- and/or acceptance procedure, the provisions of article 5.5. apply.

7.3.5 Except in case of open source software with license conditions allowing disclosure of the source code or unless explicitly agreed otherwise in writing between the Client and Fairbanks, the Client is not entitled to receive a copy of the source code of the software.

7.3.6 Except as permitted by the applicable mandatory legal provision, or as permitted in the applicable license conditions, (i) the Client may not reproduce, copy, translate, amend, decompile, recreate, reconstruct or reverse-engineer the software without Fairbanks’ prior written consent; (ii) the Client may not

remove or circumvent any security measures or technical (use) limitations, (iii) where the Client intends to create an interface (interoperability) with other software, the Client is required to ask Fairbanks for the information required to create such an interface and only where Fairbanks does not timely provide such information, the Client may use its legal right, if any, (iv) the Client is not entitled to register or claim any intellectual property rights with regard to the software in its own name, (v) the Client is not entitled to remove any Fairbanks or third party property notices. If the Client infringes the intellectual property rights of Fairbanks or Fairbanks' licensor, this constitutes a default under the Agreement.

7.3.7 The Client is not allowed to rent out, sell or place liens or make available to any third party in whatever manner and for whatever purpose the software, the software's data carriers or, as applicable, authenticity certificates.

7.4 Hardware (Products)

Where Fairbanks delivers hardware (Products) the following provisions apply:

7.4.1. For Products delivered respectively provided by suppliers of Fairbanks, the guarantee, repair and/or return policies of the specific suppliers apply. Where such conditions are in conflict with the provisions of these General Terms and Conditions, the third party conditions prevail, where they relate to the Products. For the rest, these General Terms and Conditions are complementary, unless Fairbanks indicates otherwise.

7.4.2. Fairbanks retains title and interest ("*eigendomsvoorbehoud*") in any of the Products until the Client has fulfilled its obligations in relation to the delivery of the Products, the costs for any ancillary Services and any claims Fairbanks may have on the Client on the basis of the Client's default under the Agreement. Until that moment, the Client is only entitled to use the Products in the context of its regular commercial activities, and is therefore not entitled to sell the Products, give them in security or otherwise retract them from Fairbanks' property. The retention of title does not expire due to the mere fact that Fairbanks at any time does not have a claim on the Client. As appropriate, the Client shall inform third party of Fairbank's property rights and inform Fairbanks immediately upon a third party taking conservatory or enforcement measures in relation to the Products. In case Fairbanks can exercise its property rights in relation to the Products, the Client grants Fairbanks access to its premises and administration in order for Fairbanks to retrieve the Products.

7.4.3 The risk of damage or loss to the Products passes to the Client the moment these are delivered to the Client. The Products are delivered at Fairbanks' or its supplier's premises, unless explicitly agreed otherwise between the Client and Fairbanks in writing.

7.5 Software-as-a-service

Where Fairbanks provides software-as-a-service (application), the following provisions apply:

7.5.1 Pursuant to the terms and conditions of the Agreement and these Terms and Conditions, the Client is granted a non-transferable, non-exclusive, non-sublicenseable, limited right to use the application through an internet connection.

7.5.2 Fairbanks will use its best endeavours ("*zal zich inspannen*") to keep the application available, however, Fairbanks cannot guarantee the uptime of the application. A separate service level Agreement, including an uptime percentage, is required. Fairbanks reserves the right to request payment of an extra fee in relation to such service levels.

7.5.3 Fairbanks reserves the right to (temporarily) take the application offline for maintenance purposes (by Fairbanks or a third party). Fairbanks will try to have such interruptions take place outside office hours and will try to inform the Client thereof in advance.

7.5.4 Fairbanks reserves the right to amend the application offline in order to enhance functionalities and resolve any issues. Fairbanks will use its best endeavours ("*zal zich inspannen*") to resolve any issues with the application but cannot guarantee that such issues can be resolved. In case an amendment of the

application causes a change in functionality, Fairbanks will inform the Client thereof. The Client cannot enforce any right to enhance and/or improvement any of the application's functionalities.

7.5.5 In order to get access to the application, Fairbanks may provide the Client with login details. These login details are for the Client only and may not be made available to any third party. The Client is responsible for securing the log in details and ensuring that they are not access by unauthorized persons. In case the Client suspects or knows that the log in details are or may be available to an unauthorized person, the Client must inform Fairbanks thereof as soon as possible. In that case, Fairbanks reserves the right to block access to the application with those log in details. As a rule, Fairbanks will provide the Client with new log in details but if the log in details have been compromised more the twice, Fairbanks reserves the right to block access to the application permanently.

7.5.6 Fairbanks will use its best endeavours (*"zal zich inspennen"*) to timely inform the Client of changes in the specifications of internet browsers and other system requirements that are required to use the application. In case of open source software, the Client is deemed to be aware of such changes.

7.5.7 When using the application, the Client will comply with the applicable laws and regulations. In that respect, the Client is not allowed to use the application to do anything illegal. Fairbanks reserves the right, whether or not at a third party's request, to remove and/or amend certain contents in case this is deemed to be in violation of applicable laws and regulations; Fairbanks cannot be held liable for this, such without affecting the other liability provisions in the General Terms and Conditions.

7.5.8 Unless explicitly agreed otherwise between the Client and Fairbanks in writing, Fairbanks is not obliged to make back-ups of data.

7.5.9 The Client is not entitled to a "runtime" or "machine readable" version of the application, nor its source code, unless Fairbanks explicitly agrees in writing to deliver this.

7.6 Hosting services

Where Fairbanks provides hosting Services, the following provisions apply:

7.6.1 The terms and conditions of Fairbanks' hosting provider apply to the hosting Services. Where such conditions are in conflict with the provisions of these General Terms and Conditions, the third party conditions prevail, where they relate to the hosting. For the rest, these General Terms and Conditions are complementary, unless Fairbanks indicates otherwise.

7.6.2 Fairbanks does not give any guarantees on uptimes. A separate service level Agreement, including an uptime percentage, is required. Fairbanks reserves the right to request payment of an extra fee in relation to such service levels.

7.6.3 Unless explicitly agreed otherwise between the Client and Fairbanks in writing, Fairbanks is not obliged to make back-ups of data.

7.6.4 The provisions of article 7.5.7 apply to applications and/or websites hosted for the Client.

7.7 Maintenance and support

The below provisions apply to maintenance and support, such in addition to a separate maintenance and support Agreement.

7.7.1 Fairbanks will use its best endeavours (*"zal zich inspennen"*) to remedy Defaults in the software and resolve incidents as agreed in the maintenance and support Agreement but cannot guarantee that such Defaults can be remedied or all incidents can be resolved.

7.7.2 In order to make use of the support, the Client is obliged to follow Fairbanks' or its supplier's release policy and always use the most recent release, or are otherwise indicated by Fairbanks. Fairbanks is entitled to suspend the support Services in case the Client does not fulfil this obligation. New releases are delivered "as is", "where is" unless agreed otherwise in writing and they are delivered in accordance with article 5.5. Fairbanks or Fairbanks' supplier unilaterally determines when new releases are issued. Only when Fairbanks and the Client agree in writing, Fairbanks will deliver new version with new functionality (upgrades).

7.7.3 Fairbanks reserves the right to not provide maintenance and/or support in case of Defaults and/or incidents that are the result of, or relate to: (i) user mistakes or incompetent use, which also includes errors in submitted data or in submitting the data; (ii) changes to the software other than by or on behalf of Fairbanks or unless it follows from the nature of the software that it can be amended (.e.g. in case of open source software) and in that case only within reasonable boundaries; (iii) use of the software in violation of the applicable terms and conditions or the instructions in the documentation; (iv) non-timely notification of incidents; (v) non-detailed or unreproducible Defaults and/or incidents; (vi) if it concerns an old software release which is no longer maintained by Fairbanks; (vii) recovery of lost or compromised data; (viii) other causes that are not attributable to Fairbanks. If one of the above circumstances arises and Fairbanks provides maintenance or other Services, Fairbanks is entitled to invoice the extra costs for such Services on the basis of article 3.3, without affecting the Client's obligation to pay the regular fees for maintenance and support.

7.8 Secondment

Where Fairbanks provides secondment Services, the following provisions apply:

7.8.1 Fairbanks shall make available personnel during the terms and for the services as described in the Agreement. Unless otherwise agreed between the Client and Fairbanks in writing, Fairbanks is entitled to replace the seconded person with another person who has the same qualifications, or, when the person is required for other activities, to terminate the Agreement taking into account a one (1) month notice period.

7.8.2 At the Client's request, if, in the Client's opinion the seconded person is not sufficiently qualified, or when the person is absent during a certain period or has terminated his or her services for Fairbanks, Fairbanks will use its best endeavours ("*zal zich er voor inspannen*") to replace the seconded person.

7.8.3 The seconded person will perform the Services during regular office hours (see article 3.4) and will perform the Services as they are described in the Agreement. When the seconded person at the Client's request performs Services outside regular office hours or outside the Services as agreed in the Agreement, Fairbanks is entitled to invoice the extra costs for such Services on the basis of article 3.3, for the then current fees (for Services outside regular hours).

7.8.4 The Client will ensure the seconded person's working conditions are equal to those for the Client's own employees and the applicable laws and regulations. The Client is responsible for ensuring a safe working environment.

7.8.5 The seconded person will provide the Services only for the Client. The seconded person will follow the Client's reasonable instructions but cannot be obliged to perform Services that are incompatible with the person's assignment. The Client uses the result of the Services at its own risk.

7.9 Trainings

Where Fairbanks organizes trainings the following provisions apply:

7.9.1 Fairbanks reserves the right to, after notification to the Client, cancel, reschedule or combine a training with another training on account of the number of registered trainees.

7.9.2 If a registered trainee cancels a training or does not attend it, Fairbanks reserves the right to invoice the total costs if such training.

8. Limitation of Liability

8.1 Fairbanks' liability for Defaults is at all times limited as set out in article 5.5., and for Products also limited as set out in article 7.4.

8.2 Fairbanks' liability for damage caused by an attributable default under the Agreement or otherwise, is limited to damage caused by the persons charged with Fairbanks' daily operations (and thus not for example for damage caused by Fairbank's suppliers or hired third parties). The persons charged with Fairbanks' daily operations cannot themselves be held personally liable for such damage.

8.3 Fairbanks' liability is furthermore limited to liable for direct damages only. "Direct damages" includes only damages to movable property ("zaken"), including the Client's hardware. In no event can Fairbanks be held liable for other types of damage, whether this is caused by Fairbanks itself, suppliers or hired third parties. Other damage than direct damage includes without limitation loss of revenue, loss of profits, loss of or damage to data, loss of customers, claims from customers, damage to software, damage as a result of delay, loss resulting from interruption or discontinuation of business operations, loss of or damage to information systems.

8.4 Furthermore, Fairbanks's liability is limited to the fees, excluding VAT, paid by the Client to Fairbanks pursuant to the Agreement or, in case of a long term Agreement or relationship, paid to Fairbanks during the six (6) month period prior to the event that caused the damage. Fairbank's total, aggregate liability for all damage suffered by the Client is limited to a maximum amount of EUR 50,000 (fifty thousand euro's).

8.5 The above liability limitations do not apply in case the damage is the result of the intent or wilful recklessness ("*bewuste roekeloosheid*") of the persons charged with Fairbanks' daily operations.

8.6 As soon as possible but ultimately within one (1) month after becoming aware of the cause of the damage, the Client has to notify Fairbanks thereof, in absence of which the claim expires. Any claim for reimbursement of damages has to be initiated against Fairbanks within 6 months after the Client became aware, or should have reasonably become aware of the damage, in absence of which the claim expires.

8.7 Third parties hired by Fairbanks in relation to the performance of the Agreement are entitled to invoke the liability limitation in this article against the Client. Fairbanks is entitled to invoke the liability limitation of this article against third parties involved with the performance of the Agreement.

8.8 The Client indemnifies and holds harmless Fairbanks from all third party claims, including without limitation legal fees, fines and settlement amounts, relating to the Client's acts and/or omissions or which are otherwise attributable to the Client.

9. Force majeure

9.1 In case of *force majeure* the parties are entitled to suspend their obligations under the Agreement.

9.2 If the *force majeure* condition continues during a period of 90 consecutive days, the other party is entitled terminate the Agreement for the future ("*opzeggen*") in whole or in part, without the party affected by the *force majeure* circumstances being obliged to pay any damages.

9.3 The following circumstances are in any case deemed *force majeure* circumstances on the part of Fairbanks: failure of electricity supplies, failure or errors in communication networks including the internet, lack of personnel, strikes, illness of personnel, *force majeure* or default of suppliers or hired third parties, war, terrorist attackers, fire, explosion, flood.

10. Intellectual Property Rights

10.1 All intellectual property rights in relation to the Products and the Services and the results thereof shall vest in Fairbanks or its licensors and shall not be transferred to the Client. Where Fairbanks explicitly agrees in writing to transfer intellectual property rights to the Client in whole or in part, such transfer is always subject to payment of the invoices for the Product, the Services and/or other fees, such as for the transfer of the intellectual property rights.

10.2 Irrespective of whether the intellectual property rights have been transferred to the Client, Fairbanks is entitled at all times to use the know-how acquired through the provision of the Services, taking into account however that confidential information may not be disclosed to third parties.

10.3 Fairbanks indemnifies the Client from claims from third parties that its intellectual property rights are infringed by the use of the Product and/or the Service, provided that (i) the Client immediately informs Fairbanks of such claim and (ii) allows Fairbanks to take over the defence against the claim.

10.4 In case it is irrevocably determined by a court that third party intellectual property rights are infringed by the use of a Product and/or a Service, Fairbanks is entitled, in addition to the above indemnity, to (i) procure the right to continue the use of the Product and/or the Service, (ii) to replace the specific Product and/or Service with one that does not infringe such third party intellectual property rights or, if the above alternatives are not commercially viable, (iii) terminate (“*opzeggen*”) the Agreement.

10.5 In case Fairbanks has to make use of software licensed by the Client in the context of providing the Services, the Client guarantees that it is authorized to make such software available to Fairbanks. The Client indemnifies and holds harmless Fairbanks from claims from third parties in relation to such software.

11. Confidentiality

11.1 Each party will keep confidential information that is disclosed by the party and which is marked as confidential or is of an apparent confidential nature, and will not disclose such confidential information to any third party without the other party’s prior consent. Furthermore, each party will only make such confidential information available to its personnel on a need to know basis, in relation to the performance of the Agreement. The parties will impose this duty of confidentiality on the personnel working with the confidential information.

11.2 The above confidentiality obligations do not apply where:

- (i) the confidential information was already rightfully known to the receiving party, either on its own or through a third party;
- (i) the confidential information was independently created by the receiving party without any knowledge of the other party’s confidential information;
- (ii) the confidential information was purposefully brought into the public domain by the disclosing party.

12. Applicable law and dispute resolution

12.1 These General terms and Conditions, the Agreement and any conflicts arising in connection therewith are solely governed by the laws of the Netherlands, excluding its conflict laws. The United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG) does not apply.

12.1 Each party is entitled to submit a dispute between the parties to the “*Stichting Geschillenoplossing Automatisering*” (“SGOA”) for mediation. The other party will in that case participate actively in at least one session to try and resolve the dispute.

12.3 When the mediation does not lead to a resolution of the dispute, each party is entitled to choose to submit the dispute either to the SGOA (seat The Hague) for arbitration or the civil court. This does not affect each party’s right to conservatory measures and/or to initiate (arbitral) interlocutory proceedings (“*kort geding*”). If a party has submitted the dispute to the SGOA or the civil court, the other party is obliged to submit a counterclaim at the SGOA respectively the civil court where the first party had submitted the dispute. A dispute before the civil court always has to be submitted to the court in Utrecht.

12.4 The foregoing does not affect the parties’ obligations to use their best endeavors to try and solve a conflict amicably.

13. Miscellaneous

13.1 The Agreement constitutes the entire agreement between the parties concerning the Products and/or Services and replace all prior oral or written agreements between the parties.

13.2 These General Terms and Conditions can be amended by Fairbanks. The Client will be informed at least one month in advance in writing of such intended amendments. During this one month term, the Client is entitled to terminate the Agreement for the future (“*opzeggen*”), in absence of which the amendment becomes effective per the effective date.

13.3 In case a provision from these General Terms and Conditions and/or the Agreement is not valid, this does not affect the validity of the other provisions. The affected provision will be deemed replaced by a valid provision which is closest to the intention of the original provision.

13.4 Fairbanks is entitled to subcontract (parts of) the Agreement to subcontractors and in so far as necessary, the hereby gives its consent thereto. Fairbanks is entitled to transfer its rights and obligations pursuant to the Agreement to a third party and the Client provides its co-operate and consent to such transfer in advance. Articles 7:404, 7:407 sub 2 and 7:409 of Dutch Civil Code (“*Burgerlijk Wetboek*”) explicitly do not apply. The Agreement is performed for the Client only. Third parties may not rely on the Services nor obtain any rights in relation thereto.

13.5 Notices between the parties are to be sent in writing using the contact details and contact person so indicated by each party. Where these General Terms and Conditions use the term “in writing” this also applies to emails or another electronic method with receipt confirmation.

13.6 During the term of the Agreement and during a period of 12 months after the Agreement has ended, the Client shall not directly or indirectly (through affiliated persons or legal entities) hire any of Fairbank’s personnel involved in the performance of the Agreement. When the Client violates this prohibition, the Client is obliged to pay a lump sum fee of € 100.000 (one hundred thousand euro’s).

13.7 Information from Fairbank’s administration will be regarded as full evidence of the Fairbanks’ activities.

13.8 These General Terms and Conditions are a translation. The Dutch text of the General Terms and Conditions prevails, unless Fairbanks invokes a certain provision from the translated version.

13.9 When the Client is not established in The Netherlands, the Client agrees that articles 6:232, 234 and 244 of the Dutch Civil Code (“*Burgerlijk Wetboek*”) apply.

13.10 If a party at any time does not invoke a provision of the Agreement or these General Terms and Conditions, this does not constitute a waiver of such provision.