General terms and conditions

English version 🇬🇧

TABLE OF CONTENTS

This document contains the general terms and conditions from SWYCS.

Version November 2024 - English.

1. GENERAL PROVISIONS

Article 1: Applicability

1.1 These general terms and conditions apply to all offers and agreements of DSP Innovation B.V., also trading under the name SWYCS (hereinafter: SWYCS), Chamber of Commerce number 22058501, whereby SWYCS supplies goods and/or services of any nature and under any name whatsoever to its counterparty (hereinafter: relation).

1.2 Deviations from and additions to these general terms and conditions only apply if they have been agreed in writing between the parties.

1.3 The applicability of purchasing or other conditions of the relation is expressly rejected.

1.4 If any provision of these general terms and conditions is void or annulled, the other provisions will remain in full force. SWYCS and the relation will then enter into consultation, with the aim of agreeing on new provisions of the same purport as much as possible to replace the void or annulled provisions.

1.5 In the event of any conflict between the agreements made between the parties, the provisions of these general terms and conditions shall apply, unless the parties have expressly deviated from them in writing and with reference to these terms and conditions. In the event of any conflict between provisions from chapters of these terms and conditions, the provisions of an earlier chapter shall apply, unless expressly deviated from.

Article 2: Offers

2.1 All offers and other statements by SWYCS are without obligation, unless SWYCS has indicated otherwise in writing. The relation guarantees the correctness and completeness of the data provided by or on behalf of it to SWYCS on which SWYCS has based its offer, with the exception of obvious typing errors.

Article 3: Price and payment

3.1 All prices are exclusive of sales tax (VAT) and other product or service specific levies imposed by the government. All prices made known by SWYCS are in euros, in which currency the relation must pay.

3.2 The relation cannot derive any rights or expectations from a preliminary calculation or budget issued by SWYCS, unless the parties agree otherwise in writing. A budget made known by the relation only applies as a (fixed) price agreed between the parties if this has been agreed in writing and expressly.

3.3 If the relation under the agreement consists of several natural persons and/or legal entities, each of those (legal) persons is jointly and severally liable to SWYCS for compliance with the agreement.

3.4 With regard to the services provided by SWYCS and the amounts owed by the relation, the data from the SWYCS administration provide full evidence.

3.5 In the event of a periodic payment obligation of the relation, SWYCS may adjust the applicable prices and rates in writing and in accordance with the index or other standard included in the agreement on the term stated in the agreement. If the agreement does not expressly provide for the possibility of adjusting prices or rates, SWYCS may adjust the applicable prices and rates in writing, taking into account a term of at least two months. If the relation does not agree to the adjustment in the latter case, the relation is entitled to terminate the agreement in writing within thirty days after notification of the adjustment, with effect from the date on which the new prices and/or rates come into effect.

3.6 The parties shall record in the agreement the date or dates on which SWYCS shall charge the fee for the agreed services to the relation. Amounts due shall be paid by the relation in accordance with the agreed payment conditions or those stated on the invoice. The relation shall not be entitled to suspend any payment or to offset amounts due.

SWYCS

3.7 If the relation does not pay the amounts due or does not pay them on time, the relation shall owe statutory commercial interest on the out-standing amount, without any reminder or notice of default being required. If the relation fails to pay the claim after a reminder or notice of default, SWYCS may transfer the claim and the relation shall be obliged to pay, in addition to the total amount due, all reasonable judicial and extrajudicial costs, including all costs charged by external experts. This shall not affect the other statutory and contractual rights of SWYCS.

Article 4: Duration of the agreement
4.1 If and to the extent that the agreement between the parties is a continuing performance agreement, the agreement is deemed to have been entered into for the agreed duration, failing which a duration of one year applies.

4.2 The duration of a fixed-term agreement is tacitly extended each time for the duration of the originally agreed period with a maximum of 1 year, unless the relation or SWYCS terminates the agreement in writing with due observance of a notice period of three months before the end of the relevant period.

Article 5: Confidentiality
5.1 Relation and SWYCS shall ensure that all data received from the other party that is known or reasonably should be known to be confidential, remains secret. This prohibition shall not apply if and to the extent that providing the relevant data to a third party is necessary pursuant to a court ruling, a statutory provision, on the basis of a statutory (government) order or for the proper performance of the agreement. The party that receives confidential data shall only use it for the purpose for which it was provided. Data shall in any case be considered confidential if it has been designated as such by one of the parties.

5.2 The relation acknowledges that the software made available by or through SWYCS is always confidential and contains trade secrets of SWYCS, its suppliers or the manufacturer of the software.

Article 6: Privacy and data processing
6.1 If, in the opinion of SWYCS, this is relevant for the performance of the agreement, the relation will, upon request, inform SWYCS in writing about the manner in which the relation performs its obligations under the legislation in the field of the protection of personal data.

6.2 The relation indemnifies SWYCS against claims from persons whose personal data have been or are being processed for which the relation is responsible under the law, unless the relation proves that the facts underlying the claim are attributable to SWYCS.

6.3 The responsibility for data processed by the relation using a SWYCS service lies with the relation. The relation guarantees to SWYCS that the content, use and/or processing of the data are not unlawful and do not infringe any right of a third party. The relation indemnifies SWYCS against any legal claim by a third party, on any grounds whatsoever, in connection with this data or the performance of the agreement.

6.4 If SWYCS carries out work with regard to data of the relation, its employees or users on the basis of a request or authorised order from a government agency or in connection with a legal obligation, all associated costs may be charged to the relation.

6.5 If SWYCS, as a processor as referred to in the legislation on the protection of personal data, performs services for the relation, Chapter 2 'Standard clauses for processing' also applies.

Article 7: Security

7.1 If SWYCS is required to provide information security under the agreement, this will comply with the specifications regarding security agreed upon in writing between the parties. SWYCS does not guarantee that information security is effective under all circumstances. If an explicitly described method of security is missing from the agreement, the security will meet a level that, given the state of the art, the implementation costs, the nature, scope and context of the information to be secured known to SWYCS, the purposes and normal use of its products and services and the probability and severity of foreseeable risks, is not unreasonable.

7.2 Access or identification codes, certificates or other security measures provided to the relation by or on behalf of SWYCS are confidential and will be treated as such by the relation and will only be made known to authorized personnel from the relation's own organization. SWYCS is authorized to change assigned access or identification codes and certificates. The relation is responsible for managing authorizations and providing and timely withdrawing access and identification codes.

7.3 If the security or testing thereof relates to software, equipment or infrastructure that has not been supplied to the relation by SWYCS itself, the relation guarantees that all necessary licenses or approvals have been obtained to be allowed to perform the intended service. SWYCS is not liable for damage arising in connection with the performance of this service. The relation indemnifies SWYCS against any legal action on any grounds whatsoever in connection with the performance of this service.

7.4 SWYCS is entitled to adjust security measures from time to time if this is necessary as a result of changing circumstances.

7.5 Relation will adequately secure and keep its systems and infrastructure adequately secured.

7.6 SWYCS may provide instructions to the relation regarding security which are intended to prevent or minimize incidents or the consequences of incidents that may affect security. If the relation does not follow such instructions from SWYCS or a relevant government body or does not follow them in a timely manner, SWYCS is not liable and the relation indemnifies SWYCS against any damage that may arise as a result.

7.7 SWYCS is always entitled to implement technical and organizational measures to protect equipment, data files, websites, software made available, software or other works to which the relation is granted access (directly or indirectly), also in connection with an agreed restriction in the content or the duration of the right to use these objects. The relation will not remove or circumvent such technical measure(s).

Article 8: Retention of title and rights and suspension

8.1 All items delivered to the relation shall remain the property of SWYCS until all amounts owed by the relation to SWYCS under all agreements concluded between the parties have been paid in full to SWYCS. A relation acting as a reseller shall be permitted to sell and deliver items subject to SWYCS's retention of title to the extent that this is customary in the context of the normal exercise of its business.

8.2 The property law consequences of the retention of title of an item intended for export are governed by the law of the State of destination, if that law contains provisions that are more favourable to SWYCS in this regard.

8.3 Rights will be granted or transferred to the relation, if applicable, on the condition that the relation has paid all amounts due under the agreement.

SWYCS

8.4 SWYCS may retain the data, documents, software and/or data files received or created in the context of the agreement, despite an existing obligation to deliver or transfer, until the relation has paid all amounts owed to SWYCS.

Article 9: Transfer of risk

9.1 The risk of loss, theft, embezzlement or damage to items, data (including user names, codes and passwords), documents, software or data files that are produced for, delivered to or used by the relation in the context of the performance of the agreement, shall pass to the relation at the time when they are brought into the actual possession of the relation or an assistant of the relation.

Article 10: Intellectual property

10.1 All intellectual property rights to the software, websites, data files, databases, equipment or other materials such as analyses, designs, documentation, reports, quotations, as well as preparatory material thereof, developed or made available to the relation on the basis of the agreement, shall rest exclusively with SWYCS, its licensors or its suppliers. The relation shall only obtain the rights of use that are expressly granted in these general terms and conditions, the written agreement concluded between the parties and by mandatory law in the law. A right of use accruing to the relation is non-exclusive, non-transferable, non-pledgeable and non-sublicensable. The relation is therefore expressly prohibited from pledging or encumbering any rights accruing to it or granted to it in any way whatsoever with any other (real) right.

10.2 If SWYCS is prepared to commit to transferring an intellectual property right, this commitment can only be entered into explicitly and in writing. If the parties agree in writing that an intellectual property right with respect to software, websites, data files, equipment, know-how or other works or materials developed specifically for the relation will be transferred to the relation, this does not affect the right or the possibility of SWYCS to use and/or exploit the components, designs, algorithms, documentation, works, protocols, standards and the like underlying that development, without any restriction for other purposes, either for itself or for third parties. SWYCS also has the right to use and/or exploit the general principles, ideas and programming languages used for the production or underlying the development of any work for other purposes, either for itself or for third parties, without any restriction. Nor does the transfer of an intellectual property right affect the right of SWYCS to make developments for itself or a third party that are similar to or derived from those made or to be made for the benefit of the relation.

10.3 The Relation shall not remove or modify any indication(s) concerning the confidential nature or concerning copyrights, trademarks, trade names or any other intellectual property right from the software, websites, data files, equipment or materials.

10.4 SWYCS will assist the relation in the event of a claim by a third party based on the fact that software, websites, data files, equipment or other materials developed by SWYCS itself infringe an intellectual property right of that third party, on the condition that the relation immediately informs SWYCS in writing of the existence and content of the claim and offers SWYCS the opportunity to handle the case, including reaching any settlements, at its first request. If requested, the relation will provide SWYCS with the necessary powers of attorney, information and cooperation to defend itself against these claims. This obligation to assist and also any possible liability of SWYCS shall in any case lapse if the alleged infringement is related to (i) works or materials made available to SWYCS by the relation for use, processing, handling or maintenance, or(ii) changes that the relation has made or had made to the software, websites, data files, equipment or other works or materials without the written permission of SWYCS. If it is irrevocably established in court that the software, websites, data files, equipment or other materials developed by SWYCS itself infringe any intellectual property right belonging to a third party or if in the opinion of SWYCS there is a reasonable chance that such an infringement will occur, SWYCS will make every effort to ensure that the relation can continue to use the delivered, or functionally equivalent other software, websites, data files, equipment or materials. Any other or further obligation of SWYCS due to infringement of an intellectual property right of a third party is excluded.

SWYCS

10.5 The Relation guarantees that no rights of third parties oppose the provision to SWYCS of equipment, software, material intended for websites, data files and/or other materials, designs, and/or other works for the purpose of use, maintenance, processing, installation or integration, including the possession of the correct licenses. The relation indemnifies SWYCS against any claim by a third party based on the fact that such provision, use, maintenance, processing, installation or integration infringes any right of that third party.

10.6 SWYCS is never obliged to perform data conversion unless this has been expressly agreed in writing with the relation.

10.7 SWYCS is entitled, upon request, to use the image mark, logo or name of the relation in its external communication.

Article 11: Performance of services

11.1 SWYCS will make every effort to perform services with care, where applicable in accordance with the agreements and procedures recorded in writing with the relation. All services of SWYCS are performed on the basis of an obligation of best efforts, unless and insofar as SWYCS has expressly promised a result in the written agreement and the result in question is described with sufficient certainty in the agreement.

11.2 SWYCS is not liable for any damage or costs resulting from the use or misuse of access or identification codes, certificates or other security measures, unless the misuse is the direct result of intent or deliberate recklessness on the part of SWYCS.

11.3 If the agreement has been entered into with a view to performance by one specific person, SWYCS is always entitled to replace this person with one or more persons with the same and/or similar qualifications.

11.4 SWYCS is not obliged to follow instructions from the relation when performing its services, in particular not if these instructions concern instructions that change or supplement the content or scope of the agreed services. However, if such instructions are followed, the work in question will be remunerated in accordance with SWYCS's usual rates.

Article 12: Information and other cooperation obligations

12.1 Parties acknowledge that the success of activities in the field of information and communication technology depends on proper and timely mutual cooperation. Relation will always provide all reasonable cooperation in a timely manner.

12.2 The relation guarantees the correctness and completeness of the data, information, designs and specifications provided by or on behalf of it to SWYCS. If the data, information, designs or specifications provided by the relation contain inaccuracies that are apparent to SWYCS, SWYCS will inquire about this with the relation.

12.3 In connection with continuity, the relation will appoint an (expert) contact person who will act as such for the duration of the activities of SWYCS.

12.4 The relation bears the risk of selecting the items, goods and/or services to be delivered by SWYCS. The relation shall always take the utmost care to ensure that the requirements for the performance are correct and complete. Dimensions and data stated in drawings, images, catalogues, websites, quotations, advertising material, stand-ardisation sheets etc. are not binding for SWYCS, unless expressly stated otherwise by SWYCS.

12.5 If the relation uses personnel and/or assist-ants in the performance of the agreement, they will have the necessary knowledge and experience. If employees of SWYCS perform work on the relation-ship's location, the relation will provide the necessary facilities, such as a workspace with computer and network facilities, in a timely manner and free of charge. SWYCS is not liable for damage or costs due to transmission errors, malfunctions or unavailability of these facilities, unless the relation proves that this damage or costs are the result of intent or deliberate recklessness on the part of the management of SWYCS.

12.6 The relation ensures that the workspace and facilities meet all legal requirements. The relation indemnifies SWYCS against claims from third parties, including employees of SWYCS, who suffer damage in connection with the performance of the agreement as a result of the settings, the use of the products and/or services provided by SWYCS and the manner in which the results of the products and services are used. The relation is also responsible for the instruction to, and the use by, users.

12.7 The relation will provide the necessary equipment, infrastructure and supporting software and install, set up, parameterise and tune the (auxiliary) software required on its own equipment and, if necessary, adapt and keep up-to-date the equipment, other (auxiliary) software and user environment used for this purpose and achieve the interoperability desired by the relation.

Article 13: Project group
13.1 The relation guarantees that the persons appointed by it to be part of a project or steering group are authorised to make decisions that are binding on the relation.

Article 14: Deadlines
14.1 SWYCS will make every effort to observe the (delivery) terms and/or (completion) dates stated by it or agreed between the parties as much as possible. Interim (completion) dates stated by SWYCS or agreed between the parties are always target dates, do not bind SWYCS and are indicative.

14.2 If there is a risk that any term will be exceeded, SWYCS and the relation will consult to discuss the consequences of the excess for further planning.

14.3 In all cases - therefore also if the parties have agreed on a final (delivery) term or (completion) date - SWYCS will only be in default due to exceeding the time limit after the relation has given written notice of default, whereby the relation sets SWYCS a reasonable term to rectify the shortcoming (of the agreed) and this reasonable term has expired.

The notice of default must contain a description of the shortcoming that is as complete and detailed as possible, so that SWYCS is given the opportunity to respond adequately. SWYCS will never be liable to pay any damages to the relation.

14.4 If it has been agreed that the performance of the agreed work will take place in phases, SWYCS is entitled to postpone the commencement of the work belonging to a phase until the relation has approved the results of the preceding phase in writing.

14.5 SWYCS is not bound to a final (delivery) date or (delivery) term if the parties have agreed on a change in the content or scope of the agreement (additional work, change of specifications, etc.) or a change in the approach to the execution of the agreement, or if the relation does not, does not timely or does not fully meet its obligations arising from the agreement. The fact that (the demand for) additional work occurs during the execution of the agreement is never grounds for the relation to terminate or dissolve the agreement.

Article 15: Termination and cancellation of the agreement
15.1 Both parties shall only be entitled to terminate the agreement due to an attributable failure to comply with the agreement if the other party, always in all cases after a written notice of default that is as detailed as possible and in which a reasonable period is set for remedying the failure, is attributably in breach of essential obligations under the agreement. Payment obligations of the relation and all obligations to cooperate and/or provide information by the relation or a third party to be engaged by the relation shall in all cases be considered essential obligations under the agreement.

SWYCS

15.2 If the relation has already received services in execution of the agreement at the time of the dissolution, these services and the associated payment obligations will not be subject to cancellation, unless the relation proves that SWYCS is in default with respect to the essential part of those services. Amounts that SWYCS has invoiced prior to the dissolution in connection with what it has already properly performed or delivered in execution of the agreement, remain due in full, subject to the provisions of the previous sentence, and become immediately due and payable at the time of the dissolution.

15.3 If an agreement that by its nature and content does not end by completion has been entered into for an indefinite period, it can be terminated in writing by either party after proper consultation and stating reasons. If no notice period has been agreed between the parties, a reasonable period must be observed for termination. SWYCS will never be liable for any damages due to termination.

15.4 The relation is not entitled to terminate an agreement for a fixed period of time or an agreement that ends upon completion.

15.5 Either party may terminate the agreement in writing, in whole or in part, without notice of default and with immediate effect if the other party is granted a suspension of payments - provisionally or otherwise - if bankruptcy is requested with respect to the other party, if the company of the other party is liquidated or terminated other than for the purpose of reconstruction or merger of companies. SWYCS may also terminate the agreement in whole or in part without notice of default and with immediate effect if the decisive control over the company of the relation changes directly or indirectly.

15.6 SWYCS shall never be obliged to make any refund of monies already received or to pay any compensation due to the termination as referred to in this article. If the relation has irrevocably become bankrupt, the relation's right to use the software, websites and the like made available shall end, as shall the relation's right to access and/or use the services of SWYCS, without any termination action on the part of SWYCS being required. In the event of dissolution or termination or termination by SWYCS as referred to in the previous paragraph, all claims of SWYCS shall be fully due and payable at once, without any notice of default being required.

Article 16: Liability of SWYCS
16.1 SWYCS accepts no liability with regard to the products and services supplied by it and is in no way liable for damage resulting from shortcomings in the fulfilment of its obligations, unless expressly agreed otherwise in writing.

16.2 SWYCS is in any case never obliged to compensate costs, damage and interest, in whatever way caused, such as damage in connection with fire, explosion, defects to movable or immovable property, business damage, directly or indirectly caused to the relation or third parties, errors of persons, all in the broadest sense of the word, related to work performed by, for or on behalf of SWYCS. Indirect damage, consequential damage, lost profit, missed savings, reduced goodwill, damage as a result of claims from customers of the relation, damage related to the use of items, materials or software of third parties prescribed to SWYCS by the relation and damage related to the involvement of suppliers prescribed to SWYCS by the relation is also excluded. Liability of SWYCS related to mutilation, destruction or loss of data or documents is also excluded. SWYCS is only liable for damage if this damage is the result of intent or gross negligence on the part of SWYCS.

16.3 If, to the extent and for as long as the relation does not, does not properly or does not timely comply with any obligation arising from the agreement concluded with SWYCS or from a related agreement, SWYCS is not obliged to comply with any obligations it may have assumed with regard to any of these agreements, including warranty obligations.

16.4 SWYCS cannot be held liable for compensation for any damage suffered, of whatever nature, if items have been delivered under a manufacturer's or importer's warranty. The handling of a claim under this warranty is in this case entirely at the discretion of the manufacturer or importer concerned.

16.5 The relation must indemnify SWYCS against all damage, costs and interest incurred by SWYCS as a result of claims by third parties in connection with production and services provided by SWYCS.

16.6 Advice provided by SWYCS, in whatever form and to whomever, is without obligation. The application, processing and use of delivered products and advice is at the expense of the relation.

16.7 SWYCS shall not be liable for costs, damages or interests arising as a direct or indirect result of infringement of patents, licenses or other industrial or intellectual property rights or other rights of third parties as a result of the use of data provided by or on behalf of or on behalf of the relation or acts or works and omissions of suppliers of SWYCS, their subordinates or other persons employed by or on behalf of it.

16.8 The total liability of SWYCS for attributable short-comings in the performance of the agreement or on any legal basis whatsoever, expressly including any shortcoming in the performance of a guarantee or indemnity obligation agreed with the relation, shall at all times be limited to the amount of a liability insurance taken out by SWYCS minus the costs of SWYCS's own risk. In no event shall the total liability of SWYCS for damage, on any legal basis whatsoever, exceed €50,000 (fifty thousand euros).

16.9 The exclusions and limitations of liability of SWYCS described in this article do not affect the other exclusions and limitations of liability of SWYCS described in these general terms and conditions.

16.10 Any possible claim for any damages against SWYCS shall lapse by the mere passage of twenty-four months after the claim arose.

16.11 The provisions of this article as well as all other limitations and exclusions of liability mentioned in these general terms and conditions also apply in favor of all (legal) persons used by SWYCS and its suppliers in the performance of the agreement.

Article 17: Force majeure
17.1 Neither party shall be obliged to fulfil any obligation, including any statutory and/or agreed warranty obligation, if prevented from doing so as a result of force majeure. Force majeure on the part of SWYCS shall include, but not be limited to: (i) force majeure of suppliers of SWYCS, (ii) failure to properly fulfil obligations of suppliers prescribed to SWYCS by the relation, (iii) defectiveness of items, equipment, software or materials of third parties the use of which has been prescribed to SWYCS by the relation, (iv) government measures, (v) power failure, (vi) failure of the internet, data network or telecommunication facilities, (vii) (cyber)crime, (cyber)vandalism, epidemics, war or terrorism and (viii) general transport problems.

17.2 If a force majeure situation lasts longer than sixty days, either party shall have the right to terminate the agreement in writing. In that case, any performance already performed under the agreement shall be settled proportionally, without the parties owing each other anything else.

Artikel 18: Service Level Agreement
18.1 Any agreements concerning a service level (Service Level Agreement) are only expressly agreed in writing. The relation will always inform SWYCS without delay of all circumstances that affect or could affect the service level and its availability.

18.2 If agreements have been made about a service level, the availability of software, systems and related services will always be measured in such a way that the decommissioning announced in advance by SWYCS due to preventive, corrective or adaptive maintenance or other forms of service, as well as circumstances beyond the sphere of influence of SWYCS, are disregarded. Unless the relation provides evidence to the contrary, the availability measured by SWYCS will be considered full evidence.

Artikel 19: Back-up

19.1 If the provision of services to the relation under the agreement includes making backups of the relation's data, SWYCS will make a backup of the relation's data in its possession, taking into account the periods agreed in writing and, in the absence thereof, once a month. In the absence of agreements on the retention period, SWYCS will store the backup for the period customary at SWYCS. SWYCS will store the backup with due care and attention.

19.2 The Relation shall at all times remain responsible for compliance with all statutory administrative and retention obligations applicable to it.

Article 20: Changes and additional work

20.1 If SWYCS has performed work or other services at the request or with the prior consent of the relation that fall outside the content or scope of the agreed work and/or services, these activities or services will be reimbursed by the relation according to the agreed rates and, in the absence thereof, according to the usual rates of SWYCS. SWYCS is not obliged to comply with such a request and may require that a separate written agreement be concluded for this purpose.

20.2 The relation realizes that changes and additional work (may) lead to the shifting of (delivery) terms and (completion) dates. New (delivery) terms and (completion) dates indicated by SWYCS replace the previous ones.

20.3 If a fixed price has been agreed for the agreement, SWYCS will, upon request, inform the relation in writing about the financial consequences of the additional work or services as referred to in this article.

Article 21: Transfer of rights and obligations

21.1 The relation shall never sell, transfer or pledge the rights and obligations that it has under an agreement to a third party. SWYCS is entitled to do so as a supplier.

21.2 SWYCS is entitled to sell, transfer or pledge its claims for payment of fees to a third party.

Article 22: Applicable law and disputes

22.1 The agreements between SWYCS and the relation are governed by Dutch law. Applicability of the Vienna Sales Convention 1980 is excluded.

22.2 Disputes arising from the agreement concluded between the parties and/or from subsequent agreements resulting therefrom, will be settled (in the first instance) by the Zeeland-West-Brabant Court, Middelburg location.

2. STANDARD CLAUSES FOR PROCESSING

The provisions included in Chapter 2, in addition to the General provisions of these general terms and conditions, apply if SWYCS processes personal data in the context of the performance of the agreement for the controller(s) as a (sub)processor (data processor) as referred to in the legislation in the field of protection of personal data. These standard clauses for processing, together with practical agreements on processing in the agreement or a separate appendix (for example a Data Pro Statement), form a processing agreement as referred to in Article 28, paragraph 3 of the General Data Protection Regulation (GDPR).

Article 23: General

23.1 SWYCS processes the personal data on behalf of the relation in accordance with the written instructions of the relation agreed with SWYCS.

23.2 The relation, or its relation, is the controller within the meaning of the GDPR, has authority over the processing of personal data and has determined the purpose and means of processing the personal data.

23.3 SWYCS is a processor within the meaning of the GDPR and therefore has no control over the purpose and means of processing the personal data and therefore does not make decisions about, among other things, the use of the personal data.

23.4 SWYCS implements the GDPR as set out in this chapter (2) and in the agreement. It is up to the relation to assess on the basis of this information whether SWYCS offers sufficient guarantees with regard to the application of appropriate technical and organisational measures, so that the processing meets the requirements of the GDPR and the protection of the rights of data subjects is sufficiently guaranteed.

23.5 The relation guarantees to SWYCS that it will act in accordance with the GDPR, that it will adequately secure its systems and infrastructure at all times and that the content, use and/or processing of the personal data are not unlawful and do not infringe any rights of a third party.

23.6 The relation is not entitled to recover an administrative fine imposed on it by the supervisor on any legal grounds whatsoever from SWYCS. In this chapter (2), 'supervisor' means a supervisory authority as referred to in the GDPR.

Article 24: Security

24.1 SWYCS shall take technical and organizational security measures as described in the agreement. When taking these measures, SWYCS has taken into account the state of the art, the implementation costs of the security measures, the nature, scope and context of the processing, the nature of its products and services, the processing risks and the varying likelihood and severity of the risks to the rights and freedoms of data subjects that SWYCS could expect given its intended use of its products and services.

24.2 Unless explicitly stated otherwise in the agreement, the SWYCS product or service is not designed for the processing of special categories of personal data or data relating to criminal convictions or offences.

24.3 SWYCS strives to ensure that the security measures it takes are appropriate for the intended use of the product or service by SWYCS.

24.4 The security measures described provide, in the opinion of the relation, taking into account the factors mentioned in Article 24.1, a level of security appropriate to the risk of the processing of the personal data used or provided by it.

24.5 SWYCS may make changes to the security measures taken if it deems this necessary to continue to offer an appropriate level of security. SWYCS will record important changes and will inform the relation of these changes where relevant.

SWYCS

24.6 The relation may request SWYCS to take additional security measures. SWYCS is not obliged to implement changes to its security measures in response to such a request. SWYCS may charge the costs associated with the changes implemented at the request of the relation to the relation. Only after the modified security measures desired by the relation have been agreed upon in writing by the parties, SWYCS is obliged to actually implement these security measures.

Article 25: Personal data breaches
25.1 SWYCS does not guarantee that security measures are effective under all circumstances. If SWYCS discovers a breach in connection with personal data, it will inform the relation without unreasonable delay. The agreement sets out how SWYCS informs the relation about breaches in connection with personal data. If no specific agreements have been made, SWYCS will contact the contact person at the relation in the usual manner.

25.2 It is up to the controller (relation, or its client) to assess whether the personal data breach about which SWYCS has been informed must be reported to the supervisory authority or the data subject. Reporting personal data breaches remains the responsibility of the controller (relation or its client) at all times. SWYCS is not obliged to report personal data breaches to the supervisory authority and/or the data subject.

25.3 SWYCS will, if necessary, provide further information about the personal data breach and will cooperate in providing necessary information to the relation for the purpose of reporting to the supervisory authority or data subjects.

25.4 SWYCS may charge the reasonable costs it incurs in this context to the relation at its then applicable rates.

Article 26: Confidentiality
26.1 SWYCS guarantees that the persons who process personal data under its responsibility have a duty of confidentiality.

26.2 SWYCS is entitled to provide personal data to third parties, if and to the extent that provision is necessary pursuant to a court ruling, a statutory provision, on the basis of an authorised order from a government agency or for the proper performance of the agreement.

Article 27: Obligations upon termination
27.1 In the event of termination of the processing agreement, SWYCS will delete all personal data in its possession and received from the relation within the period stated in the agreement in such a way that they can no longer be used and are no longer accessible (render inaccessible), or, if agreed, return them to the relation in a machine-readable format.

27.2 SWYCS may charge any costs it incurs in the context of the previous paragraph to the relation. Further agreements on this may be laid down in the agreement.

27.3 The provisions of Article 27.1 shall not apply if a statutory provision prevents SWYCS from removing or returning the personal data in whole or in part. In such a case, SWYCS shall only continue to process the personal data to the extent necessary under its statutory obligations. The provisions of Article 27.1 shall also not apply if SWYCS is the controller within the meaning of the GDPR with respect to the personal data.

SWYCS

Article 28: Rights of data subjects, Data Protection Impact Assessment (DPIA) and audit rights

28.1 SWYCS will, where possible, cooperate with reasonable requests from the relation that relate to rights invoked by data subjects in the relation. If SWYCS is approached directly by a data subject, it will refer the data subject to the relation where possible.

28.2 If the relation is required to do so under the GDPR, SWYCS will cooperate with a data protection impact assessment (DPIA) or subsequent prior consultation upon a reasonable request.

28.3 SWYCS will, at the request of the relation, provide all information that is reasonably necessary to demonstrate compliance with the agreements made in the agreement with regard to the processing of personal data, for example by means of a valid Data Pro Certificate or at least an equivalent certificate, an audit report (Third Party Memorandum) drawn up by an independent expert on behalf of SWYCS or by means of other information to be provided by it. If the relation nevertheless has reason to believe that the processing of personal data is not taking place in accordance with the agreement, it can have an audit carried out at the expense of the relation by an independent, certified, external expert, who demonstrably has experience with the type of processing that is carried out on the basis of the agreement, no more than once per year. SWYCS has the right to refuse an expert if, in SWYCS' opinion, this expert undermines its competitive position. The audit will be limited to checking compliance with the agreements with regard to the processing of personal data as set out in the agreement. The expert will have a duty of confidentiality with regard to what he finds and will only report to the relation that which constitutes a shortcoming in the fulfillment of obligations that SWYCS has under the agreement. The expert will provide a copy of his report to SWYCS. SWYCS may refuse an expert, audit or instruction of the expert if in his opinion it is in conflict with the GDPR or other legislation or constitutes an unacceptable infringement of the security measures it has taken.

28.4 The parties will enter into consultations as soon as possible about the results in the report. The parties will follow the proposed improvement measures set out in the report to the extent that this can reasonably be expected of them. SWYCS will implement proposed improvement measures to the extent that they are appropriate in its opinion, taking into account the processing risks associated with its product or service, the state of the art, the implementation costs, the market in which it operates and the intended use of the product or service.

28.5 SWYCS has the right to charge the costs it incurs in the context of the provisions of this article to the relation.

Article 29: Sub-processors

29.1 SWYCS has stated in the agreement whether, and if so, which third parties (subprocessors) SWYCS uses in the processing of personal data.

29.2 Relation grants SWYCS permission to engage other sub-processors to perform its obligations arising from the agreement.

29.3 SWYCS will inform the relation about a change in the third parties engaged by SWYCS. The relation has the right to object to the aforementioned change by SWYCS.

SWYCS

3. SOFTWARE AS A SERVICE (SAAS)

The provisions included in this chapter 'Software-as-a-Service (SaaS)', in addition to the General provisions of these general terms and conditions, apply if SWYCS provides services under the name or in the field of Software-as-a-Service (also referred to as: SaaS). For the application of these general terms and conditions, SaaS is understood to mean: SWYCS making and keeping available 'remotely' functionality to the relation via the internet or another data network, without a physical carrier or download with the relevant underlying software being made available to the relation.

Article 30: Execution of SaaS service

30.1 SWYCS provides the SaaS service on behalf of the relation. The relation may only use the SaaS service for its own company or organization and only to the extent necessary for the use intended by SWYCS. The relation is not permitted to allow third parties to use the SaaS service provided by SWYCS.

30.2 SWYCS may make changes to the content or scope of the SaaS service. If such changes are substantial and result in a change in the procedures applicable to the relation, SWYCS will inform the relation of this as soon as possible. The costs of this change will be borne by the relation. In that case, the relation may terminate the agreement in writing with effect from the date on which the change takes effect, unless this change is related to changes in relevant legislation or other regulations issued by competent authorities or SWYCS will bear the costs of this change.

30.3 SWYCS may continue the execution of the SaaS service using a new or modified version of the underlying software. SWYCS is not obliged to maintain, modify or add specific properties or functionalities of the service for the relation.

30.4 SWYCS may temporarily disable the SaaS service in whole or in part for preventive, corrective or adaptive maintenance or other forms of service. SWYCS will not allow the disablement to last longer than necessary and will, if possible, have it take place at times when the SaaS service is generally used least intensively.

30.5 SWYCS is never obliged to provide the relation with a physical carrier or download of the underlying software.

30.6 In the absence of further agreements in this regard, the relation will further set up, configure, parameterize, tune the SaaS service itself, convert and upload any data and, if necessary, adjust the equipment and user environment used.

Article 31: Warranty

31.1 SWYCS does not guarantee that the SaaS service is error-free and functions without interruptions. SWYCS will make every effort to repair errors as referred to in article 36.3 in the underlying software within a reasonable period if and insofar as the underlying software is developed by SWYCS itself and the errors in question have been reported to SWYCS in writing and in detail by the relation. SWYCS may, if necessary, postpone the repair of the errors until a new version of the underlying software is put into use. SWYCS does not guarantee that errors in the SaaS service that were not developed by SWYCS itself will be remedied. SWYCS is entitled to implement temporary solutions or program bypasses or problem-avoiding restrictions in the SaaS service. If (a part of) the SaaS service was developed on behalf of the relation, SWYCS may charge the relation the costs of repair according to its usual rates. SWYCS is never obliged to repair any other imperfections than those referred to in this article. In the event that SWYCS is prepared to carry out repair activities with regard to such other imperfections, SWYCS is entitled to charge a separate fee for this.

SWYCS

31.2 The relation will, based on the information provided by SWYCS regarding measures to prevent and limit the consequences of disruptions, errors and other imperfections in the SaaS service provision, mutilation or loss of data or other incidents, inventory the risks for its organization and take additional measures if necessary. SWYCS declares that it is prepared to cooperate, at the request of the relation, within reason with further measures to be taken by the relation, under (financial) conditions to be set by SWYCS. SWYCS is not obliged to restore mutilated or lost data other than replacing the - where possible - last available backup of the data in question.

31.3 SWYCS does not guarantee that the SaaS service will be adapted in a timely manner to changes in relevant laws and regulations.

Article 32: Commencement of the service; compensation

32.1 The SaaS service to be provided by SWYCS (and any associated support) commences within a reasonable period after the conclusion of the agreement. Unless otherwise agreed, the SaaS service commences when SWYCS makes available the resources to access the SaaS service. The relation shall ensure that it has the facilities required for using the SaaS service immediately after the conclusion of the agreement.

32.2 The relation is liable for the fee included in the agreement for the SaaS service.

Article 33: Additional provisions

33.1 The following articles apply accordingly to the SaaS service: 34.3, 34.5, 34.8, 36.1 (with the exception of reference to article 40), 36.11, 48.4, 49.1, 49.2, 62.2 and 62.4 and 63. In these articles, the words 'software' should be read as 'SaaS service' and 'delivery' as 'commencement of the service provision'.

4. SOFTWARE

The provisions in this chapter 'Software' apply, in addition to the General provisions of these general terms and conditions, if SWYCS makes software, apps, associated data(banks) and/or user documentation (collectively referred to in these general terms and conditions as 'software') available to a relation for use other than on the basis of a SaaS service.

Article 34: Right of use and restrictions on use

34.1 SWYCS shall make the agreed software available to the relation for use on the basis of a user license during the term of the agreement. The right to use the software is non-exclusive, non-transferable, non-pledgeable and non-sublicensable.

34.2 The obligation to make available by SWYCS and the right of use of the relation extend exclusively to the so-called object code of the software. The right of use of the relation does not extend to the source code of the software. The source code of the software and the technical documentation created during the development of the software are not made available to the relation, not even if the relation is prepared to pay a financial compensation for this.

34.3 The relation will always strictly comply with the agreed restrictions, of whatever nature or content, on the right to use the software.

34.4 If the parties have agreed that the software may only be used in combination with certain equipment, the relation is entitled, in the event of a malfunction of the equipment, to use the software on other equipment with the same qualifications for the duration of the malfunction.

34.5 SWYCS may require that the relation does not use the software until the relation has obtained one or more codes required for use from SWYCS, its suppliers or the manufacturer of the software.

34.6 The relation may use the software exclusively in and for the benefit of its own company or organization and only to the extent necessary for the intended use. The relation will not use the software for the benefit of third parties, for example in the context of 'Software-as-a-Service' (SaaS) or 'outsourcing'.

34.7 The relation is never permitted to sell, rent, alienate or grant limited rights to the software, the associated codes for use and the media on which the software is or will be recorded, or to make them available to a third party in any way, for any purpose or under any title whatsoever. Nor will the relation grant a third party - whether or not remotely (online) - access to the software or place the software with a third party for hosting, not even if the third party in question uses the software exclusively for the benefit of the relation.

34.8 34.8 Relation shall, upon request, immediately cooperate with an investigation to be carried out by or on behalf of SWYCS concerning compliance with the agreed usage restrictions. Relation shall, upon first request of SWYCS, grant access to its buildings and systems. SWYCS shall treat all confidential business information that it obtains in the context of an investigation by or from relation, insofar as that information does not concern the use of the software itself, as confidential.

34.9 The parties agree that the agreement concluded between the parties, insofar as it concerns the provision for use of software, shall never be regarded as a purchase agreement.

34.10 SWYCS is not obliged to maintain the software and/or provide support to users and/or administrators of the software. If, in deviation from the above, SWYCS is requested to provide maintenance and/or support with regard to the software, SWYCS may require that the relation enters into a separate written agreement for this purpose.

SWYCS

Article 35: Delivery and installation

35.1 SWYCS will, at its discretion, deliver the software on the agreed data carrier format or, in the absence of agreements in this regard, on a data carrier format to be determined by SWYCS or make the software available to the relation online for delivery. Any agreed user documentation will be provided at the discretion of SWYCS in paper or digital form in a language determined by SWYCS.

35.2 SWYCS will only install the software at the relation if this has been agreed. In the absence of agreements in this regard, the relation will install, set up, para-meterize, tune the software itself and, if necessary, adjust the equipment and user environment used.

Article 36: Acceptance

36.1 If the parties have not agreed on an acceptance test, the relation accepts the software in the state in which it is at the time of delivery ('as is, where is'), therefore with all visible and invisible errors and defects, without prejudice to the obligations of SWYCS as referred to in Article 40. In the aforementioned case, the software will be deemed to have been accepted by the relation upon delivery or, if installation by SWYCS has been agreed in writing, upon completion of the installation.

36.2 If an acceptance test has been agreed between the parties, the provisions of Articles 36.3 to 36.10 shall apply.

36.3 Where these general terms and conditions refer to 'errors', this is understood to mean the substantial failure of the software to comply with the functional or technical specifications of the software expressly made known in writing by SWYCS, and, if the software is wholly or partly custom software, with the functional or technical specifications expressly agreed in writing. An error only exists if the relation can demonstrate it and if it is also reproducible. The relation is obliged to report errors without delay. SWYCS has no obligation whatsoever with regard to other imperfections in or to the software other than with regard to errors within the meaning of these general terms and conditions.

36.4 If an acceptance test has been agreed, the test period will be fourteen days after delivery or, if an installation to be carried out by SWYCS has been agreed in writing, fourteen days after completion of the installation. During the test period, the relation is not entitled to use the software for productive or operational purposes. The relation will carry out the agreed acceptance test with qualified personnel and with sufficient scope and depth.

36.5 If an acceptance test has been agreed, the relation is obliged to test whether the delivered software complies with the functional or technical specifications expressly made known in writing by SWYCS and, if and to the extent that the software concerns wholly or partly custom software, with the functional or technical specifications expressly agreed in writing.

36.6 If data is used for testing on behalf of the relation, the relation will ensure that the use of this data for this purpose is permitted.

36.7 The software will be considered accepted between the parties:

A if the parties have agreed on an acceptance test: on the first day after the test period, or

B if SWYCS receives a test report as referred to in article 36.8 before the end of the test period: at the time that the errors mentioned in that test report have been corrected, without prejudice to the presence of errors that do not prevent acceptance according to article 36.9, or

C if the relation makes any use of the software for productive or operational purposes: at the time of the relevant commissioning.

36.8 If, during the execution of the agreed acceptance test, it appears that the software contains errors, the relation will report the test results to SWYCS in writing, clearly, in detail and intelligibly no later than the last day of the test period. SWYCS will make every effort to correct the errors in question within a reasonable period, whereby SWYCS is entitled to apply temporary solutions, program bypasses or problem-avoiding restrictions.

36.9 The relation may not withhold acceptance of the software for reasons that are not related to the specifications expressly agreed in writing between the parties, nor because of the existence of minor errors, being errors that do not reasonably impede the operational or productive use of the software, without prejudice to SWYCS's obligation to repair these minor errors within the framework of the warranty scheme of article 40. Furthermore, acceptance may not be withheld because of aspects of the software that can only be assessed subjectively, such as aesthetic aspects of user interfaces.

36.10 If the software is delivered and tested in phases and/or parts, the non-acceptance of a particular phase and/or part does not affect the acceptance of an earlier phase and/or another part.

36.11 Acceptance of the software in one of the ways referred to in this article results in SWYCS being discharged from its obligations regarding the provision and delivery of the software and, if installation of the software by SWYCS has also been agreed, from its obligations regarding the installation.

36.12 Acceptance of the software does not affect the rights of the relation under Article 36.9 regarding minor errors and Article 40 regarding the warranty.

Article 37: Provision
37.1 SWYCS will make the software available to the relation within a reasonable period after entering into the agreement.

37.2 Immediately after the agreement has ended, the relation will return all copies of the software in its possession to SWYCS. If it has been agreed that the relation will destroy the relevant copies at the end of the agreement, the relation will immediately notify SWYCS in writing of such destruction. SWYCS is not obliged to provide assistance with a data conversion desired by the relation at or after the end of the agreement.

Article 38: Usage fee
8.1 The fee to be paid by the relation for the right of use is due at the agreed times, or in the absence of an agreed time:

A   if the parties have not agreed that SWYCS will ensure installation of the software:
- upon delivery of the software;
- or in the case of periodically payable user rights fees upon delivery of the software and subsequently at the start of each new user rights term;

B   if the parties have agreed that SWYCS will take care of the installation of the software:
- upon completion of that installation;
- or in the case of periodically payable right of use fees, upon completion of that installation and subsequently at the start of each new right of use term.

Article 39: Changes to the software

39.1 Except for mandatory exceptions determined by law, the relation is not entitled to change software in whole or in part without prior written permission from SWYCS. SWYCS is entitled to refuse its permission or to attach conditions to it. The relation bears the full risk of all changes made by or on behalf of the relation by third parties - with or without permission from SWYCS.

Article 40: Warranty

40.1 SWYCS will make every effort to rectify errors within the meaning of article 36.3 within a reasonable period if these are reported to SWYCS in writing in detail within a period of three months after delivery, or, if an acceptance test has been agreed, within three months after acceptance. SWYCS does not guarantee that the software is suitable for the actual and/or intended use. SWYCS also does not guarantee that the software will operate without interruption and/or that all errors will always be corrected. The rectification will be carried out free of charge, unless the software was developed on behalf of the relation other than for a fixed price, in which case SWYCS will charge the costs of rectification according to its usual rates.

40.2 SWYCS may charge the costs of repair according to its usual rates if there are operating errors or improper use by the relation or other causes not attributable to SWYCS. The repair obligation lapses if the relation makes or has changes made to the software without the written permission of SWYCS.

40.3 Errors will be corrected at a location and in a manner determined by SWYCS. SWYCS is entitled to implement temporary solutions, program bypasses or problem-avoiding restrictions in the software.

40.4 SWYCS is never obliged to restore damaged or lost data.

40.5 SWYCS has no obligation of any nature or content whatsoever with regard to errors reported after the warranty period referred to in Article 40.1 has expired.

5. DEVELOPMENT OF SOFTWARE AND WEBSITES

The provisions in this chapter 'Development of software and websites' apply, in addition to the General provisions of these general terms and conditions, if SWYCS designs and/or develops software as described in chapter 4 and/or websites for the benefit of the relation and possibly installs the software and/or websites.

Article 41: Specifications and development of software and/or websites

41.1 Development always takes place on the basis of a contract of assignment. If specifications or a design of the software and/or website to be developed have not already been provided to SWYCS before or upon entering into the contract, the parties will specify in writing in good consultation which software and/or website will be developed and in what manner the development will take place.

41.2 SWYCS will develop the software and/or website with care, taking into account the expressly agreed specifications or design and - where applicable - taking into account the project organization, methods, techniques and/or procedures agreed in writing with the relation. Before commencing the development work, SWYCS may require the relation to agree in writing to the specifications or design.

41.3 In the absence of specific agreements in this regard, SWYCS will commence the design and/or development work within a reasonable period to be determined by it after entering into the agreement.

41.4 If requested, the relation will give SWYCS the opportunity to perform the work outside the usual working days and hours at the relation's office or location.

41.5 SWYCS's performance obligations for the development of a website do not include the provision of a so-called 'content management system'.

41.6 If the parties agree that SWYCS will provide training, maintenance and/or support in addition to development and/or a domain name is also requested by SWYCS, SWYCS may require the relation to enter into a separate written agreement for this. These activities will be charged separately at SWYCS's usual rates.

41.7 If SWYCS provides services to the relation with regard to a domain name, such as the application, renewal, alienation or transfer to a third party, the relation must take into account the rules and procedures of the relevant authority(ies). Upon request, SWYCS will provide the relation with a written copy of those rules. SWYCS expressly accepts no responsibility for the correctness or timeliness of the services or the achievement of the results intended by the relation. The relation is liable for all costs associated with the application and/or registration according to the agreed rates or, in the absence of agreed rates, the rates customary at SWYCS. SWYCS does not guarantee that a domain name desired by the relation will be granted to the relation.

Article 42: Agile development of software/websites

42.1 If the parties use an iterative development method (e.g. scrum), the parties accept: (i) that the work will not be performed on the basis of complete or fully developed specifications at the start; and (ii) that specifications, whether or not agreed upon at the start of the work, may be adjusted in consultation during the performance of the agreement, taking into account the project approach that belongs to the relevant development method.

42.2 Before the start of the execution of the agreement, the parties will set up one or more teams, consisting of representatives of both the relation and SWYCS. The team will ensure that the lines of communication remain short and direct and that consultations take place regularly. In the absence of timely and clear progress decisions on the part of the relation in accordance with the project approach that belongs to the relevant development method, SWYCS is entitled - but not obliged - to take the decisions it deems appropriate.

SWYCS

42.3 If the parties agree on one or more test moments, testing will be carried out exclusively on the basis of objective, measurable and previously agreed criteria (such as conforming to development standards). Errors or other imperfections will only be corrected if the responsible team decides to do so and will be carried out within a subsequent iteration. If an additional iteration is required for this, the costs for this will be borne by the relation. SWYCS is not obliged to carry out corrective activities with regard to errors or other imperfections after the last development phase, unless expressly agreed otherwise in writing.

Article 43: Delivery, installation and acceptance
43.1 The provisions of Article 35 regarding delivery and installation apply accordingly.

43.2 Unless SWYCS will 'host' the software and/or website on its own computer system for the benefit of the relation on the basis of the agreement, SWYCS will deliver the software and/or website to the relation on an information carrier and in a form to be determined by it or make it available to the relation online for delivery.

43.3 The provisions of article 36 of these general terms and conditions regarding acceptance apply accordingly.

43.4 If the parties use a development method as referred to in article 42, the provisions of article 36.1, 36.2 article 36.4 to and including 36.9, 36.12 and article 40.1 and 40.5 shall not apply. The relation accepts the software and/or website in the state in which it is at the time of the end of the last development phase ('as is, where is').

Article 44: Right of use
44.1 SWYCS shall make the software and/or website developed on behalf of the relation and any user documentation developed for this purpose available to the relation for use.

44.2 Only if this has been agreed in writing will the source code of the software and the technical documentation created during the development of the software be made available to the relation, in which case the relation will be entitled to make changes to the software.

44.3 SWYCS is not obliged to provide the support software and program or data libraries required for the use and/or maintenance of the software and/or website.

44.4 The provisions of Article 34 regarding right of use and restrictions on use apply accordingly.

44.5 Only if the content of the written agreement expressly shows that all design and development costs of software specifically developed by SWYCS for the relation are fully and exclusively borne by the relation, will - in deviation from the provisions of article 44.4 - no restrictions apply to the relation's right to use the software and/or website made available and paid for by the relation.

Article 45: Compensation
45.1 In the absence of an agreed payment schedule, all amounts relating to the design and development of software and/or websites are due in arrears each calendar month.

45.2 The price for the development work also includes the fee for the right to use the software and/or website during the term of the agreement.

45.3 The fee for the development of the software and/or website does not include a fee for the auxiliary software and program and data libraries required by the relation, any installation services and any adjustment and/or maintenance of the software and/or website. Nor does the fee include the provision of support to users thereof.

SWYCS

Article 46: Warranty

46.1 The provisions of article 40 regarding warranty apply accordingly.

46.2 SWYCS does not guarantee that the software and/or website developed by it will work well in conjunction with all types or new versions of web browsers and any other software and/or websites. SWYCS also does not guarantee that the software and/or website will work well in conjunction with all types of equipment.

6. MAINTENANCE OF SOFTWARE AND SUPPORT

The provisions included in this chapter 'Software maintenance and support' apply, in addition to the General provisions of these general terms and conditions, if SWYCS provides services in the field of software maintenance and support for the use of that software.

Article 47: Maintenance services
47.1 If agreed, SWYCS shall perform maintenance with respect to the software specified in the agreement. The maintenance obligation includes the correction of errors in the software within the meaning of article 36.3 and - only if this has been agreed in writing - the provision of new versions of the software in accordance with article 48.

47.2 The relation will report any errors found in the software in detail. After receipt of the report, SWYCS will make every effort to correct errors and/or make improvements in later new versions of the software in accordance with its usual procedures. The results will be made available to the relation in a manner and within a period to be determined by SWYCS, depending on the urgency and the version and release policy of SWYCS. SWYCS is entitled to apply temporary solutions or program bypasses or problem-avoiding restrictions to the software. The relation will install, set up, parameterize, tune the corrected software or the new version of the software made available and, if necessary, adjust the equipment and user environment used. SWYCS is never obliged to correct any other imperfections than those referred to in this article. In the event that SWYCS is prepared to perform repair activities with regard to such other imperfections, SWYCS is entitled to charge a separate fee for this.

47.3 The provisions of Articles 40.3 and 40.4 shall apply accordingly.

47.4 If SWYCS performs maintenance online, the relation will ensure that proper and adequately secured infrastructure and network facilities are provided in a timely manner.

47.5 The relation will provide all cooperation requested by SWYCS for the maintenance, including the temporary cessation of use of the software and the making of a backup of all data.

47.6 If the maintenance relates to software that has not been supplied to the relation by SWYCS itself, the relation will, if SWYCS deems this necessary or desirable for the maintenance, make the source code and the technical (development) documentation of the software (including data models, designs, change logs, etc.) available. The relation guarantees that it is entitled to make such provision. The relation grants SWYCS the right to use and modify the software, including the source code and technical (development) documentation, in the context of performing the agreed maintenance.

Article 48: New versions of software
48.1 Maintenance includes the provision of new versions of the software only if and to the extent that this has been agreed in writing. If maintenance includes the provision of new versions of the software, this provision will take place at the discretion of SWYCS.

48.2 Three months after an improved version has been made available, SWYCS is no longer obliged to correct errors in the previous version or to provide support and/or maintenance with regard to a previous version.

48.3 SWYCS may require that the relation enters into a further written agreement with SWYCS for the provision of a version with new functionality and that a further fee is paid for the provision. SWYCS may adopt functionality unchanged from a previous version of the software, but does not guarantee that each new version contains the same functionality as the previous version. SWYCS is not obliged to maintain, change or add specific properties or functionalities of the software specifically for the relation.

SWYCS

48.4 SWYCS may require the relation to adjust its system (equipment, web browser, software, etc.) if this is necessary for the proper functioning of a new version of the software.

Article 49: Support services
49.1 If the service provided by SWYCS under the agreement also includes support to users and/or administrators of the software, SWYCS will provide advice online, by telephone or by e-mail on the use and functioning of the software mentioned in the agreement. The relation will describe reports in the context of support as completely and in detail as possible, so that SWYCS is given the opportunity to respond adequately. SWYCS may impose conditions on the method of reporting, qualifications and the number of persons eligible for support. SWYCS will process properly substantiated requests for support within a reasonable period of time in accordance with its usual procedures. SWYCS does not guarantee the correctness, completeness or timeliness of responses or support provided. Support is provided on working days during SWYCS's usual opening hours.

49.2 If the service provided by SWYCS under the agreement also includes the provision of so-called 'standby services', SWYCS will keep one or more staff members available during the days and at the times stated in the agreement. In that case, the relation is entitled to call upon the support of the staff members kept available in the event of an emergency if there are serious malfunctions, errors and other serious imperfections in the functioning of the software. SWYCS does not guarantee that these will be remedied in a timely manner.

49.3 The maintenance and other agreed services as referred to in this chapter will be carried out with effect from the date on which the agreement is entered into, unless the parties have agreed otherwise in writing.

Article 50: Compensation
50.1 In the absence of an expressly agreed payment schedule, all amounts relating to software maintenance and the other services specified in the agreement as referred to in this chapter are due in advance each calendar month.

50.2 Amounts for the maintenance of the software and the other services laid down in the agreement as referred to in this chapter are due from the start of the agreement. The fee for maintenance and other services is due regardless of whether the relation has (taken) the software into use or makes use of the possibility of maintenance or support.

SWYCS

7. ADVICE AND CONSULTANCY

The provisions included in this chapter 'Advice and consultancy' apply, in addition to the General provisions of these general terms and conditions, if SWYCS provides services in the field of advice and consultancy that are not carried out under the direction and supervision of the relation.

Article 51: Execution of advice and consultancy services

51.1 SWYCS will perform the advisory and consultancy services entirely independently, at its own discretion and not under the supervision and management of the relation.

51.2 SWYCS is not bound to a lead time for the assignment because the lead time of an assignment in the field of consultancy or advice depends on various factors and circumstances, such as the quality of the data and information provided by the relation and the cooperation of the relation and relevant third parties.

51.3 SWYCS's services are provided exclusively on SWYCS's usual working days and times.

51.4 The use that the relation makes of an advice and/or consultancy report issued by SWYCS is always at the risk of the relation. The burden of proof that (the manner of) advice and consultancy services do not comply with what has been agreed in writing or with what may be expected of a reasonably acting and competent SWYCS, rests entirely with the relation, without prejudice to the right of SWYCS to provide counter-evidence by all means.

51.5 Without prior written permission from SWYCS, the relation is not entitled to make a statement to a third party about the working method, methods and techniques of SWYCS and/or the content of the advice or reports of SWYCS. The relation will not provide the advice or reports of SWYCS to a third party or otherwise make them public.

Article 52: Reporting

52.1 SWYCS will periodically inform the relation in the manner agreed in writing about the performance of the work. The relation will inform SWYCS in advance in writing of circumstances that are or may be important to SWYCS, such as the manner of reporting, the issues to which the relation wishes attention, the prioritization of the relation, the availability of the resources and personnel of the relation and special facts or circumstances or facts or circumstances that may not be known to SWYCS. The relation will ensure that the information provided by SWYCS is further disseminated and taken note of within the organization of the relation and will assess this information partly on the basis thereof and inform SWYCS thereof.

Article 53: Compensation

53.1 In the absence of an expressly agreed payment schedule, all fees relating to services provided by SWYCS as referred to in this chapter are due each calendar month in arrears.

SWYCS

8. SECONDMENT SERVICES

The provisions included in this chapter 'Secondment services' apply, in addition to the General provisions of these general terms and conditions, if SWYCS makes one or more employees available to the relation in order to work under the supervision and direction of the relation.

Article 54: Secondment services

54.1 SWYCS will make the employee named in the agreement available to the relation to perform work under the direction and supervision of the relation. The results of the work are at the risk of the relation. Unless otherwise agreed in writing, the employee will be made available to the relation for forty hours per week during the working days customary for SWYCS.

54.2 The relation may only deploy the employee made available for work other than that agreed upon if SWYCS has agreed to this in writing in advance.

54.3 The relation is only permitted to lend the employee made available to a third party to work under the direction and supervision of that third party if this has been expressly agreed in writing.

54.4 SWYCS will make every effort to ensure that the employee made available remains available for work during the agreed days for the duration of the agreement, except in the event of illness or termination of employment of the employee. Even if the agreement has been entered into with a view to performance by a specific person, SWYCS is always entitled, after consultation with the relation, to replace this person with one or more persons with the same qualifications.

54.5 The relation is entitled to request replacement of the employee made available (i) if the employee made available demonstrably does not meet the expressly agreed quality requirements and the relation notifies SWYCS of this within three working days after commencement of the work, or (ii) in the event of long-term illness or termination of employment of the employee made available. SWYCS will immediately give priority attention to the request. SWYCS does not guarantee that replacement is always possible. If replacement is not possible or not possible immediately, the relation's claims for further performance of the agreement shall lapse, as shall all claims of the relation due to non-performance of the agreement. The relation's payment obligations regarding the work performed shall remain in full force.

Article 55: Duration of the secondment agreement

55.1 Notwithstanding the provisions of Article 4 of these general terms and conditions, if the parties have not agreed on the duration of the secondment, the agreement will have an indefinite term, in which case a notice period of one calendar month will apply to each of the parties after the initial term, if any. Notice must be given in writing.

Article 56: Working hours, working times and working conditions

56.1 The working, vacation and rest times, working hours and other relevant employment conditions of the employee made available are the same as those customary in the relation. Relation guarantees that the working, vacation and rest times, working hours and other relevant employment conditions comply with the relevant laws and regulations.

56.2 The relation will inform SWYCS of any intended (temporary) closure of its company or organization.

Article 57: Overtime pay and travel time

57.1 If the employee made available works longer per day on the instructions or at the request of the relation than the agreed or usual number of working hours or works outside the working days customary at SWYCS, the relation owes the agreed overtime rate for these hours or, in the absence of an agreed overtime rate, the overtime rate customary at SWYCS. If requested, SWYCS will inform the relation about the applicable overtime rates.

57.2 Costs and travel time will be charged to the relation in accordance with the rules and standards customary at SWYCS. If requested, SWYCS will inform the relation about the rules and standards customary for this.

Article 58: Hirer's liability and other liability

58.1 SWYCS will ensure the timely and complete payment of the payroll tax, national insurance contributions, employee insurance premiums, income-independent contribution under the health insurance act and sales tax payable for the employee made available in connection with the agreement. SWYCS indemnifies the relation against all claims from the Tax Authorities or from the authorities for the implementation of social security legislation that are due under the agreement with the relation, on the condition that the relation immediately informs SWYCS in writing of the existence and content of the claim and leaves the handling of the case, including any settlements, entirely to SWYCS. To this end, the relation will grant SWYCS the necessary powers of attorney, information and cooperation to defend itself against these claims, if necessary on behalf of the relation.

58.2 SWYCS accepts no liability for the quality of the results of work carried out under the supervision and guidance of the relation.

SWYCS

9. EDUCATION AND TRAINING

The provisions included in this chapter 'Education and training', in addition to the General provisions of these general terms and conditions, apply if SWYCS provides services, under whatever name and in whatever manner (e.g. in electronic form), in the field of education, training, courses, workshops, training, seminars and the like (hereinafter referred to as: training).

Article 59: Registration and cancellation

59.1 An application for a training course must be made in writing and is binding after confirmation by SWYCS.

59.2 The relation is responsible for the choice and suitability of the training for the participants. The lack of the required prior knowledge by a participant does not affect the obligations of the relation under the agreement. The relation is permitted to replace a participant for a training with another participant after prior written permission from SWYCS.

59.3 If the number of registrations gives reason to do so in the opinion of SWYCS, SWYCS is entitled to cancel the training, to combine it with one or more training courses, or to have it take place at a later date or time. SWYCS reserves the right to change the location of the training. SWYCS is entitled to make organizational and substantive changes to a training course.

59.4 The consequences of a cancellation of participation in a training by a relation or participants are governed by the rules customary at SWYCS. A cancellation must always be made in writing and prior to the training or the relevant part thereof. Cancellation or non-appearance does not affect the payment obligations that the relation has under the agreement.

Article 60: Implementation of training

60.1 The relation accepts that SWYCS determines the content and depth of the training.

60.2 The relation will inform the participants about and monitor the participants' compliance with the obligations under the agreement and (behavioural) rules prescribed by SWYCS for participation in the training.

60.3 If SWYCS uses its own equipment or software to carry out the training, SWYCS does not guarantee that this equipment or software is error-free or functions without interruptions. If SWYCS carries out the training at the relation's location, the relation will ensure that proper classroom space and working equipment and software are available. If the facilities at the relation do not appear to be adequate and the relation of the training cannot be guaranteed as a result, SWYCS is entitled not to start the training, to shorten it or to discontinue it.

60.4 Taking an examination or test is not part of the agreement.

60.5 For the documentation, training materials or resources made available or produced for the purpose of the training, the relation owes a separate fee. The foregoing also applies to any training certificates or duplicates thereof.

60.6 If the training is offered on the basis of e-learning, the provisions of Chapter 3 'Software-as-a-Service (SaaS)' apply accordingly as much as possible.

Article 61: Price and payment

61.1 SWYCS may require that the relations pays the fees due before the start of the training. SWYCS may exclude participants from participation if the relation has failed to ensure timely payment, without prejudice to all other rights of SWYCS.

61.2 If SWYCS has carried out a preliminary investigation for the purpose of a training plan or training advice, the associated costs may be charged separately.

61.3 Unless SWYCS has expressly stated that the training is exempt from VAT within the meaning of Article 11 of the Turnover Tax Act 1968, the relation is also liable for VAT on the fee. After entering into the agreement, SWYCS is entitled to adjust its prices in the event of any change in the VAT regime for training courses established by or pursuant to law.

10. HOSTING

The provisions included in this chapter 'Hosting' apply, in addition to the General provisions of these general terms and conditions, if SWYCS provides services, under whatever name, in the field of 'hosting' and related services.

Article 62: Hosting services

62.1 SWYCS will perform the hosting services agreed with the relation.

62.2 If the agreement concerns the provision of disk space of equipment, the relation will not exceed the agreed disk space, unless the agreement expressly regulates the consequences thereof. The agreement only includes the provision of disk space on a server reserved exclusively and specifically for the relation if this has been agreed in writing and expressly. All use of disk space, data traffic and other burden on systems and infrastructure is limited to the maximum amounts agreed between the parties. The data traffic that has not been used by the relation in a certain period cannot be transferred to a subsequent period. For exceeding the agreed maximum amounts, SWYCS will charge an additional fee in accordance with the usual rates for this.

62.3 The relation is responsible for the management, including checking the settings, the use of the hosting service and the way in which the results of the service are used. In the absence of explicit agreements in this regard, the relation will itself install, set up, parameterize, tune the (auxiliary) software and, if necessary, adjust the equipment used, other software and user environment and achieve the interoperability desired by the relation. SWYCS is not obliged to perform data conversion.

62.4 Only if this has been expressly agreed in writing, the agreement also includes the provision or provision of security, backup, contingency and recovery services.

62.5 SWYCS may temporarily disable the hosting service in whole or in part for preventive, corrective or adaptive maintenance. SWYCS will not allow the discontinuation to last longer than necessary, will allow it to take place outside office hours if possible and, depending on the circumstances, will commence this after consultation with the relation.

62.6 If SWYCS provides services to the relation under the agreement with regard to a domain name, such as the application, renewal, alienation or transfer to a third party, the relation must take into account the rules and procedures of the relevant body(ies). Upon request, SWYCS will provide the relation with a written copy of those rules. SWYCS expressly accepts no responsibility for the correctness or timeliness of the services or the achievement of the results intended by the relation. The relation is liable for all costs associated with the application and/or registration according to the agreed rates or, in the absence of agreed rates, the rates customary at SWYCS. SWYCS does not guarantee that a domain name desired by the relation will be granted to the relation.

Article 63: Notice and takedown

63.1 The relation shall at all times behave carefully and not unlawfully towards third parties, in particular by respecting the intellectual property rights and other rights of third parties, respecting the privacy of third parties, not distributing data in violation of the law, not gaining unauthorized access to systems, not distributing viruses or other harmful programs or data and refraining from criminal offenses and violation of any other legal obligation.

SWYCS

63.2 In order to prevent liability towards third parties or to limit the consequences thereof, SWYCS is always entitled to take measures regarding an act or omission by or at the risk of the relation. The relation will, at the first written request of SWYCS, immediately remove data and/or information from the systems of SWYCS, failing which SWYCS is entitled to choose to remove the data and/or information itself or to make access to it impossible. SWYCS is furthermore entitled to deny the relation access to its systems immediately and without prior notice in the event of a breach or threatened breach of the provision of article 63.1. The foregoing does not affect any other measures or the exercise of other legal and contractual rights by SWYCS towards the relation. In that case, SWYCS is also entitled to terminate the agreement with immediate effect, without being liable towards the relation.

63.3 SWYCS cannot be expected to form an opinion on the validity of the claims of third parties or of the defence of the relation or to be involved in any way in a dispute between a third party and the relation. The relation will have to consult with the third party in question and inform SWYCS in writing and properly substantiated with documents.

11. PURCHASE OF EQUIPMENT

The provisions included in this chapter 'Purchase of equipment' apply, in addition to the General provisions of these general terms and conditions, if SWYCS sells equipment of any kind and/or other items (tangible objects) to a relation.

Article 64: Purchase and sale

64.1 SWYCS sells the equipment and/or other items according to nature and quantity as agreed in writing.

64.2 SWYCS does not guarantee that the equipment and/or items are suitable for the actual and/or intended use upon delivery, unless the intended uses are clearly and unconditionally specified in the written agreement.

64.3 Unless otherwise agreed in writing, the sales obligation of SWYCS does not include assembly and installation materials, software, consumables, batteries, stamps, ink (cartridges), toner items, cables and accessories.

64.4 SWYCS does not guarantee that the assembly, installation and operating instructions accompanying the equipment and/or items are error-free and that the equipment and/or items possess the properties stated in these instructions.

Article 65: Delivery

65.1 The equipment and/or items sold by SWYCS to the relation will be delivered to the relation ex-warehouse. SWYCS will deliver the items sold to the relation (or have them delivered) to a location to be designated by the relation if this has been agreed in writing. In that case, SWYCS will inform the relation, if possible in good time before delivery, of the time at which it or the carrier engaged intends to deliver the equipment and/or items.

65.2 The costs of transport, insurance, hoisting and lifting work, hiring of temporary facilities, etc. are not included in the purchase price unless otherwise agreed in writing and will be charged to the relation where applicable.

65.3 If the relation requests SWYCS to remove or destroy old materials (such as networks, cabinets, cable ducts, packaging materials, equipment or data on equipment) or if SWYCS is legally obliged to do so, SWYCS can accept this request by means of a written order at its usual rates. If and to the extent that SWYCS is not legally permitted to request payment of compensation (e.g. in the context of the so-called 'old-for-new scheme'), it will not request this compensation from the relation in such a case.

65.4 If the parties have agreed to this in writing, SWYCS will install, configure and/or connect the equipment and/or items. Any obligation to install and/or configure equipment by SWYCS does not include performing data conversion and installing software. SWYCS is not responsible for obtaining any necessary permits.

65.5 SWYCS is always entitled to execute the agreement in partial deliveries.

Article 66: Test setup

66.1 Only if this has been agreed in writing, SWYCS will be obliged to place a test setup with regard to the equipment for which the relation is interested. SWYCS may attach (financial) conditions to a test setup. A test setup involves temporarily placing equipment on inspection in a standard version, excluding accessories, in a space to be made available by the relation, before the relation makes a final decision whether or not to purchase the equipment in question. The relation is liable for use, damage, theft or loss of equipment that is part of a test setup.

SWYCS

Article 67: Environmental requirements

67.1 The relation shall ensure an environment that meets the requirements specified by SWYCS for the equipment and/or items, including with regard to temperature, humidity and technical environmental requirements.

67.2 The relation shall ensure that work to be carried out by third parties, such as construction work, is carried out adequately and on time.

Article 68: Warranty

68.1 SWYCS will make every effort to repair material and manufacturing defects in the equipment and/or other items sold, as well as in parts supplied by SWYCS under the warranty, within a reasonable period of time and free of charge, if these defects have been reported to SWYCS in detail within a period of three months after delivery. If repair is not possible in the reasonable opinion of SWYCS, repair will take too long or if repair entails disproportionately high costs, SWYCS is entitled to replace the equipment and/or items free of charge with other similar, but not necessarily identical equipment and/or items. Data conversion that is necessary as a result of repair or replacement is not covered by the warranty. All replaced parts become the property of SWYCS. The warranty obligation shall lapse if errors in the equipment, items or components are wholly or partly the result of incorrect, careless or unskilled use, external causes such as fire or water damage, or if the relation makes or has made changes to the equipment or components supplied by SWYCS under the warranty without SWYCS's permission. SWYCS shall not withhold such permission on unreasonable grounds.

68.2 Any other or further appeal by the relation to non-conformity of the delivered equipment and/or goods than that provided in Article 68.1 is excluded.

68.3 Costs of work and repairs outside the scope of this warranty will be charged by SWYCS in accordance with its usual rates.

68.4 SWYCS has no obligation under the purchase agreement with regard to errors and/or other defects reported after the warranty period referred to in Article 68.1 has expired.

12. RENTAL OF EQUIPMENT

The provisions included in this chapter 'Rental of equipment' apply, in addition to the General provisions of these general terms and conditions, if SWYCS rents equipment of any kind to a relation.

Article 69: Rental and letting

69.1 SWYCS rents to the relation the equipment specified in the rental agreement and the associated user documentation.

69.2 The rental does not include the provision of software on separate data carriers and the consumables and consumables required for the use of the equipment, such as batteries, ink (cartridges), toner items, cables and accessories.

69.3 The rental commences on the day the equipment is made available to the relation.

Article 70: Preliminary inspection

70.1 SWYCS may, before or on the occasion of the provision, draw up a description of the condition of the equipment by way of a preliminary inspection in the presence of the relation, stating any defects found. SWYCS may require the relation to sign the drawn up report with this description for approval before SWYCS provides the equipment to the relation for use. The defects in the equipment stated in that report shall be borne by SWYCS. If defects are found, the parties shall agree whether and, if so, in what manner and within what period the defects stated in the report shall be remedied.

70.2 If the relation does not cooperate properly with the pre-inspection as referred to in article 70.1, SWYCS has the right to carry out this inspection without the presence of the relation and to draw up the report itself. This report is binding for the relation.

70.3 If no pre-inspection is carried out, the relation is deemed to have received the Equipment in good and undamaged condition.

Article 71: Use of the equipment

71.1 The relation will use the equipment exclusively in accordance with the intended purpose under the agreement and at the locations stated in that agreement in and for the benefit of its own organization or company. Use of the equipment by or for the benefit of third parties is not permitted. The right to use the equipment is not transferable. The relation is not permitted to sublease the equipment to a third party or otherwise grant a third party (joint) use thereof.

71.2 The relation itself will install, configure, connect and make the equipment ready for use.

71.3 The relation is not permitted to use the equipment or any part thereof in any way whatsoever as collateral or security object, or to dispose of it in any other way.

71.4 The relation will use the equipment carefully and keep it in its possession as a good father. The relation will take sufficient measures to prevent damage. In the event of damage to the equipment, the relation will immediately notify SWYCS thereof. In all cases, the relation is liable to SWYCS in the event of damage to or theft, loss or embezzlement of the equipment during the term of the rental.

71.5 Relation will not change the equipment in whole or in part or add anything to it. If, in any case, changes or additions have been made, relation will undo or remove these at the end of the rental agreement at the latest.

SWYCS

71.6 The parties agree that defects in the changes and additions made to the equipment by or on behalf of the relation and all defects of the equipment resulting from those changes or additions are not defects within the meaning of article 7:204 BW. The relation has no claim against SWYCS in respect of these defects. SWYCS is not obliged to repair or maintain these defects.

71.7 The relation shall not be entitled to any compensation in connection with changes or additions made by the relation to the rented equipment that have not been undone or removed for any reason whatsoever at or after the end of the rental agreement.

71.8 Relation shall immediately notify SWYCS in writing of any seizure of the equipment, stating the identity of the seizing party and the reason for the seizure. Relation shall immediately provide the seizing bailiff with access to the rental agreement.

Article 72: Maintenance of rented equipment
72.1 The relation will not maintain the rented equipment itself or have it maintained by a third party.

72.2 The relation shall immediately report any defects it finds in the rented equipment in writing. SWYCS shall make every effort to repair the defects in the equipment for which it is responsible within a reasonable period of time by way of corrective maintenance. SWYCS shall also be entitled, but not obliged, to perform preventive maintenance on the equipment. The relation shall, if requested, give SWYCS the opportunity to perform corrective and/or preventive maintenance. The parties shall discuss the days and times at which maintenance will take place in good consultation with each other in advance. During the maintenance period, the relation shall not be entitled to replacement equipment.

72.3 Excluded from the obligation to repair defects are:

• defects that the relation accepted when entering into the rental agreement;
• the repair of defects resulting from external causes;
• defects that can be attributed to the relations, its employees and/or third parties engaged by the relation;
• defects resulting from careless, incorrect or injudicious use or use contrary to the documentation;
• defects related to the use of unadvised or unauthorised parts or consumables;
• defects resulting from use of the equipment contrary to its intended use;
• defects resulting from unauthorized modifications or additions to the equipment.

72.4 If SWYCS repairs or has repaired the defects referred to in the previous paragraph, the relation shall owe the associated costs in accordance with SWYCS's usual rates.

72.5 SWYCS is always entitled to choose not to repair defects and to replace the equipment with other, similar, but not necessarily identical equipment.

72.6 SWYCS is never obliged to restore or reconstruct lost data.

Article 73: Final inspection and return

73.1 Relation shall return the equipment to SWYCS in its original condition at the end of the rental agreement. Relation shall also delete any data from the equipment. Costs of transport in connection with the return shall be borne by relation.

73.2 The relation will cooperate in a joint final inspection of the condition of the equipment before or at the latest on the last working day of the rental period. The parties will jointly draw up a report of the findings, which must be signed by both parties. If the relation does not cooperate in this final inspection, SWYCS is entitled to carry out this inspection without the relation being present and to draw up the report itself. This report is binding for the relation.

73.3 SWYCS is entitled to have the defects stated in the final inspection report and which are reasonably at the expense and risk of the relation repaired at the expense of the relation. The relation is liable for damage to SWYCS due to temporary unusability or further unrentability of the equipment.

73.4 If, at the end of the rental period, the relation has not undone a change made to the equipment or has not removed an addition to it, the parties shall be deemed to have waived any right to those changes and/or additions.

13. MAINTENANCE OF EQUIPMENT

The provisions included in this chapter 'Maintenance of equipment' apply, in addition to the General provisions of these general terms and conditions, if SWYCS maintains equipment of any kind for the benefit of the relation.

Article 74: Maintenance services

74.1 SWYCS will perform maintenance on the equipment specified in the agreement, provided that the equipment is installed in the Netherlands.

74.2 During the time that SWYCS has the equipment to be maintained in its possession, the relation is not entitled to temporary replacement equipment.

74.3 The content and scope of the maintenance services to be performed and any associated service levels will be laid down in a written agreement. In the absence thereof, SWYCS is obliged to make every effort to remedy malfunctions that have been properly reported to SWYCS in writing by the relation within a reasonable period of time. In this chapter of the general terms and conditions, 'malfunction' means the failure or failure without interruption of the equipment to meet the specifications of that equipment expressly made known by SWYCS in writing. A malfunction only exists if the relation can demonstrate this malfunction and the malfunction in question can also be reproduced. SWYCS is also entitled, but not obliged, to perform preventive maintenance.

74.4 The relation will immediately notify SWYCS of any equipment malfunction by means of a detailed written description.

74.5 The relation shall provide all cooperation requested by SWYCS for the maintenance, such as the temporary suspension of the use of the equipment. The relation shall be obliged to grant access to the location of the equipment to the personnel of SWYCS or third parties designated by SWYCS, to provide all other necessary cooperation and to make the equipment available to SWYCS for the purpose of maintenance.

74.6 Before the relation offers the equipment to SWYCS for maintenance, the relation must ensure that a complete and properly functioning backup has been made of all software and data stored in or on the equipment.

74.7 At the request of SWYCS, a competent employee of the relation will be present for consultation during maintenance work.

74.8 The relation is authorized to connect equipment and systems not supplied by SWYCS to the equipment and to install software on it.

74.9 If, in the opinion of SWYCS, it is necessary for the maintenance of the equipment to test the connections of the equipment with other equipment or with software, the relation will make the relevant other equipment and software, as well as the test procedures and data carriers, available to SWYCS.

74.10 The test material required for maintenance that is not part of the normal SWYCS equipment must be made available by the relation.

74.11 The relation bears the risk of loss, theft or damage to the equipment during the period that SWYCS has it in its possession for maintenance work. It is up to the relation to insure this risk.

Article 75: Maintenance allowance

75.1 The maintenance price does not include: costs of (replacing) consumables such as batteries, stamps, ink (cartridges), toner items, cables and accessories;

- costs of (replacing) parts as well as maintenance services for the repair of malfunctions that are wholly or partly caused by attempts to repair by parties other than SWYCS;
- work for the purpose of overhauling the equipment;
- modifications to the equipment;
- relocation, relocation, reinstallation or costs of transport for the repair of equipment or work resulting from this.

75.2 The maintenance fee is due regardless of whether the relation has taken the equipment into use or makes use of the maintenance option.

Article 76: Exclusions

76.1 Activities for the investigation or repair of malfunctions that are the result of or related to operating errors, improper use of the equipment or external causes, such as defects in the internet, data network connections, power supplies or connections with equipment, software or materials that are not covered by the maintenance agreement, are not part of SWYCS's obligations under the maintenance agreement.

76.2 SWYCS's maintenance obligations do not include: the investigation or repair of malfunctions resulting from or related to modifications to the equipment other than by or on behalf of SWYCS;

- the use of the equipment in violation of the applicable conditions and the failure of the relation to have the equipment maintained in a timely manner.

SWYCS's maintenance obligations also do not include the investigation or repair of malfunctions related to software installed on the equipment.

76.3 SWYCS may charge (additionally) for the costs of maintenance and/or research carried out in connection with the provisions of Article(s) 76.1 and/or 76.2 at its usual rates.

76.4 SWYCS is never obliged to restore data that has been damaged or lost as a result of malfunctions and/or maintenance.

SWYCS

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