Article 1.   Applicability general terms and conditions and formation of the Agreement

1.1.   All quotations and/or offers issued by Vendor are issued without obligation, unless otherwise stated. In case a term of acceptance is stated in the quotation and/or offer, this term only regards to the validity of the quotation and/or offer and does not imply that the quotation and/or offer is binding for Vendor during the stated term.

1.2.   Unless agreed otherwise, the Agreement between Vendor and Client is effective from the moment Client has fully accepted the quotation. Acceptance can by done, inter alia, by signing a quotation issued by Vendor.

1.3.   The applicability of general (purchase) terms and conditions of Client are explicitly declined by Vendor, and therefore not applicable. However, Vendor is willing to agree upon deviations in writing.

Article 2.   General

2.1.   Client shall provide Vendor all information and data necessary to execute the Agreement, including at least but not limited to, technical data, applications, files, documentation, test data, descriptions of work and/or other relevant information, timely and without charge. Client will vouch for, and guarantees the correctness of the supplied information. Client is responsible for, and accepts the risks of, possible issues and/or claims arising out of the contents, accuracy, completeness, consistency and such of by Client supplied data, materials and information.

2.2.   In case the information necessary to perform the Agreement is not made available timely nor in accordance with what is agreed upon, or in case Client and/or its suppliers does/do not comply with its obligations, including but not limited to not cooperating sufficiently, Vendor is entitled to suspend its obligations without being liable to pay damages. In that case Vendor is entitled to invoice the remaining agreed upon amount for the assignment, at once. Furthermore, Vendor is in that case entitled to charge Client with related incurred costs, including any idle hours.

Article 3. Consultancy

3.1. Vendor will render the agreed upon work duties to its best efforts and with due care and professionalism. All work duties of Vendor shall be rendered on the basis of best effort, unless a specific result has been guaranteed by Vendor in a written Agreement. The specific result must be defined in sufficient detail.

3.2. Work duties which are not agreed upon in the Agreement are only rendered after approval of Client.

3.3. Unless otherwise agreed to in writing, Client bears the costs and risks of following up advice given by Vendor.

Article 4. Prior to rendering the Service

4.1. Prior to rendering the agreed upon service, Vendor drafts the specifications in favor of Client. These specifications need to be approved by Client prior to rendering work duties regarding the actual rendering of the Service by Vendor.

4.2. After the aforementioned approval, Vendor starts with all work duties necessary to actually render the Service. These work duties include, but not limited to, adapting, developing and configuring the underlying software (including any modules).

4.3. After the aforementioned work duties are finished, Vendor delivers the result to Client for testing and acceptance. The purpose of this test executed by Client is to determine whether the delivered result meets the specifications as mentioned in the first paragraph of this article. Discovered Defects are solved by Vendor.

4.4. Acceptance of what is delivered is done by signing the declaration of acceptance. Acceptance in that case means that for all activities prior to acceptance discharge is granted to Vendor by Client. The date on the declaration is deemed the date of acceptance.

4.5. After the date of acceptance any Defects discovered within a period of two (2) months after date of acceptance, will be solved by Vendor without any additional costs.

4.6. In case during rendering the Service Client has a request for change after acceptance, this change will be taken in and processed in accordance with this article. After finishing the requested change, the change is added to the Functionality, and therefore the change will become part of the Service.

Article 5.   Rendering the Service

5.1.   After the date of acceptance as mentioned in previous article, Vendor will execute all work duties in order to render the Service (putting live).

5.2.   The Service is rendered as SaaS (Software as a Service). Therefore Client only pays for the use of the Functionality. Client is therefore not granted any license, but is granted a right to use the Functionality of the underlying software. Client pays a subscription fee as set out in the quotation. The quotation also mentions the prices and rates for inter alia amount of users, amount of Sites, capacity and modules.

5.3.   A modernized Site, or a Site that is technically reworked, the modernized or reworked Site is deemed to be a new Site and is therefore charged by Vendor to Client.

5.4.   Hosting is included in the Service. Therefore Client does not have to select and contract a vendor for hosting.

5.5.   Client is not allowed to use the Service in a way it can damage the Service, and/or it can damages third parties, nor in a way it can cause interruptions in the availability of the Service.

5.6.   Vendor offers its Service on the basis of "fair use", that means that it will not impose Client any limitations regarding system and network load. However, Vendor is entitled to take measures in case of excessive load caused by Client. Excessive load in this case, is load that is significantly higher than the load of an average client of Vendor. In case of excessive system and/or network load parties will consult each other regarding possible solutions and/or changes and the involved costs.

5.7.   Client will make sure that its Users will administer their login credentials regarding the Service with great due care.

5.8.   Client will use the by Vendor designated software, including but not limited to internet browsers, and hardware.

5.9.   Client indemnifies Vendor of claims of third parties regarding the breach of paragraphs 5.5 en 5.8.

5.10.　Since the Service is a web based solution, Client is responsible to acquire the necessary facilities, inter alia, installing and configuring appropriate telecommunication services, software (designated internet browsers), hardware and infrastructure, in order to make use of the Service. Therefore Vendor is not responsible for the unavailability of the Service due to internal failures in the infrastructure of Client or other aforementioned facilities. Beer Consultancy is not responsible for the costs incurred by Client regarding the use of the aforementioned facilities, inter alia, the costs of use and data.

5.11.　The service has at least an availability of 99% in a calendar year. In case a SLA (Service Level Agreement) is agreed upon, the service is rendered in accordance with the service levels as agreed upon in the SLA.

5.12.　In case the Service uses data or API's of Client, Client is responsible for the availability and integrity of the data. Client makes sure that the data is delivered in the agreed upon format and on the agreed upon location. Therefore Vendor cannot be held responsible or liable in case of misrepresentation of figures due to incorrectness or unavailability of Clients data.

5.13.　The underlying software may contain software developed by third parties for which Vendor was granted a license. The intellectual property rights regarding those parts remain vested in those third parties. These third parties are not liable for any unavailability of the Service or data loss. These third parties do not warrant that its software is free of errors and/or omissions.

Article 6.   Support

6.1.   Support is not part of the Service. Support will be rendered on the basis of best effort, unless a separate SLA and/or support agreement is agreed upon. In that case support will be rendered in accordance with the agreement or SLA.

6.2.   Vendor will strive to start with activities regarding a support call issued by Client, inter alia questions of Users and solving Defects, as soon as possible. In case parties entered into a SLA regarding support, the aforementioned activities will be rendered in accordance with the service levels as agreed upon in the SLA.

6.3.   A Defect will only be processed in case the Defect can be proved by Client and in case the Defect can be reproduced by Client and Vendor.

6.4.   In case Vendor presumes that solving a Defect will take such period of time that it can affect the availability of the Functionality, Vendor shall provide a temporary sufficient solution.

6.5.   Defects caused by:
a. improper use by User;
b. using hardware and/or (browser) software other than the designated hardware and/or software;
are never covered by the Agreement. Only in case of a written confirmation of Client, Vendor is willing to remedy the Defects on the basis of time and materials.

6.6.   In case Users do not have proper knowledge regarding the Functionality and/or Service, Vendor is entitled to demand that Client will acquire training from Vendor in order to bring the level of knowledge of the Users to an adequate level so that Users will not use Support disproportionately. Vendor will support its claim of insufficient knowledge by records of the (Support) history of Client.

6.7.   Vendor will consult with Client prior to the implementation of updates and/or other changes in the Functionality in case this can result in an expected loss of the performance of the Service and/or loss of Functionality and/or partial or complete unavailability. This paragraph does not apply in case the updates are necessary due to security reasons.

Article 7.   Intellectual property rights

7.1.   Vendor guarantees that it owns all the necessary intellectual property rights and/or licenses regarding the Service, inter alia, rights and/or licenses regarding the underlying software.

7.2.   All intellectual property rights regarding by Vendor to Client provided material, inter alia, documentation regarding trainings, manuals and presentations, reports, roadmaps, remain vested in Vendor, its licensors and/or suppliers. Client is solely granted a license to use this material, which license does not encompass more than using the material for internal (training) purposes.

Article 8.   Prices and rates, invoicing and payment

8.1.   The prices and rates mentioned in the Agreement. All prices and rates are exclusive of V.A.T.

8.2.   Vendor is yearly entitled, per January 1st, to increase the agreed upon prices and rates in accordance with the Service Price Index ("Dienstenprijsindex (DPI)") as published by the "Centraal Bureau voor Statistiek" (CBS).

8.3.   The remuneration for the Service is invoiced monthly in arrears. Functionality that was added in the interim is immediately invoiced pro rata until the next invoice date.

8.4.   Other services and activities which are not covered by the Agreement, are rendered against the applicable rates for the involved employees of Vendor. In that case invoicing will be done in monthly arrears on the basis of time and materials, unless explicitly agreed otherwise. What is stipulated in this paragraph also applies for (the parts of the Agreement covering) consultancy activities, unless explicitly agreed upon otherwise.

8.5.   The by Vendor to Client issued invoices are due and payable within thirty (30) days after invoice date.

Article 9.   Duration, termination, renewal and exit

9.1.   In case of a continuing performance agreement (rendering the Service) the Agreement is entered into for the period as mentioned in the Agreement. The continuing performance agreement is renewed tacitly for a period of one (1) year after the initial or renewed duration, unless the Agreement is terminated by one of the parties taking in to account a notice period of three (3) months counted back from the end of the initial or renewed period.

9.2.   All other Agreements, inter alia, consultancy agreements, automatically end in case all parties in the Agreement have fulfilled the obligations under the Agreement reciprocally.

9.3.   Without prejudice to what is agreed upon, Vendor is entitled to terminate the agreement, partially or completely and with immediate effect, in writing without any prior notice: (i) in case Client commits an imputable failure regarding one or more of its obligations and/or compliance is impossible; (ii) in case it becomes clear to Vendor that Client is not in a position and/or willing to fulfill its obligations; (iii) in case Client has applied for a suspension of payments, has been granted this suspension of payments or has filed for bankruptcy, has been declared bankrupt, is about to liquidate its company, ceases its operations or appears to be insolvent.

9.4.   All rights granted to Client under the Agreement regarding the use of the Functionality expire in case of termination of the Agreement, regardless in which way the Agreement was terminated.

9.5.   Obligations, which, by their nature are intended to survive the termination, will remain in force after termination. The termination of the Agreement will not explicitly exempt parties from inter alia confidentiality, intellectual property rights, applicable law and dispute resolution. This also applies in case the termination was due to an attributable shortcoming on the part of Vendor.

9.6.   Parties will consult each other in case of termination of the Service regarding the transfer of data, service and/or other measures necessary for a continuation of the use of the data of Client and/or Service(s). All aforementioned activities are rendered against applicable prices and rates on the basis of time and materials.

Article 10. Liability

10.1.   The total liability of Vendor due to an attributable shortcoming in the fulfillment of the Agreement, or due to any other reason, inter alia, tort, is limited to a compensation for direct damages and limited to an amount that equals the remuneration (V.A.T. exclusive) Vendor received from Client in the two (2) calendar months prior to the damage causing event, where a series of consecutive events is deemed as one event.

10.2.   The liability of Vendor for indirect damages, consequential damages, lost profits, lost savings, loss of goodwill, damage due to business interruption, damages resulting from claims of customers of Client, damages related to the use of by Client to Vendor designated procedures, third party materials or third party software and damages related to the use of suppliers designated by Client to Vendor is excluded.

10.3.   Unless compliance by Vendor is permanently impossible, the liability of Vendor for an attributable shortcoming in the fulfillment of the Agreement will only be valid if Client immediately notifies Vendor of the default situation, giving Vendor a reasonable period of time to remedy the situation and Vendor remains in default after the aforementioned period of time. The notice must give a detailed and complete description of the shortcomings, so that Vendor will have the opportunity to respond adequately.

10.4.   Any claim for damages against Vendor lapses three (3) months after the date the damage causing event, or so much sooner by virtue of law.

10.5.   The stipulations as set out in this article and all other limitations and exclusions of liability specified in these general terms and conditions, also apply for the benefit of all persons and/or legal entities used by Vendor during the execution of the agreement.

10.6.   The limitations of liability as set out in this article are void in case of willful misconduct or conscious recklessness of the top level management of Vendor.

Article 11. Force majeure

11.1.   Vendor is not obliged to perform any obligation if prevented from doing so due to a circumstance for which Vendor cannot be attributed, nor under the law, legal act or due to generally prevailing opinions. In case Vendor invokes force majeure against Client, Vendor shall notify Client in writing as soon as possible, however, within a reasonable period of time.

11.2.   Under a non-attributable shortcoming (force majeure) for Vendor is understood, inter alia, as not being able to properly fulfill its obligations due to the lack of personnel, (long duration of) illness of personnel, strikes, traffic congestions, loss of data and documents, power failures, late deliveries of goods and services, regardless of the fact that these events take place at Vendor and/or its suppliers, unsuitability of materials, software and/or equipment provided and designated by Client to be used by Vendor.

11.3.   In case of force majeure situation that lasts longer than sixty (60) days and Client has sent Vendor a notice of default, Client has the right to terminate the Agreement extra-juridical and with immediate effect by means of a registered letter. Client is not entitled to any damages. Work which has already been performed under the terms of the Agreement will be paid pro rata. In order to determine what work has already been accomplished, the time sheets of Vendor will prevail.

Article 12. Non disclosure

12.1.   Information and/or documentation is considered confidential if it is designated by one party as such, or if the other party has knowledge of the fact, or should have known, that information and/or documentation is confidential.

12.2.   The parties, and the staff of the parties, shall make use of confidential information which has been received or made available only in accordance with the stipulations in the agreement. They shall not make this material available to third parties directly nor indirectly, nor approve the use of, without prior approval of the other party. Parties, and the staff of the parties, shall take all necessary precautions in order to protect the information from unauthorized use and disclosure.

12.3.   The provisions in this article shall not apply if one party has to disclose confidential information pursuant to a court order or government decree.

12.4.   Client is obliged to take measures to prevent unauthorized persons from gaining (possible) access to the delivered services and data. Client is liable for damages suffered by Vendor in case third-parties make illegal or unauthorized use of delivered goods, software and/or services.

12.5.   Client acknowledges that the Functionality of the underlying software, the screen lay outs, the interfaces, graphical elements and icons are subject to intellectual property rights as mentioned in Article 7. The stipulations regarding non disclosure, as set out in this article also apply to inter alia the screen prints / captures, algorithms and business rules of the Service.

Article 13. Processing personal data

13.1.   The following paragraphs of this article are deemed as a basic processing agreement in accordance with the Dutch Personal Data Protection Act and are applicable if personal data, as described in the aforementioned law, are being processed. Upon first request of Client, Vendor is willing to cooperate in order to make further arrangements regarding processing (and securing) personal data.

13.2.   Under the aforementioned law, Vendor should be deemed as processor and Client as the controller.

13.3.   Vendor shall process personal data in favor of Client within the agreed upon scope. Vendor is not allowed to use the personal data obtained from Client for its own benefit, other than agreed upon, process or disclose this personal data to third parties.

13.4.   Vendor will never be able to guarantee that the safeguarding of information is effective under all circumstances. In case an explicitly described level of protection is not agreed upon the security shall meet a level which, given the standard of the current technology and sensitivity of the data and involved costs, is not unreasonable.

13.5.   Upon the first request by Client, Vendor will cooperate with an independent audit in order for Client to be able to get an accurate perception of the measures taken by Vendor as described in the preceding paragraph. Any involved costs with this will be borne by Client.

13.6.   Adequate protection of the workstations and devices of Client and Users , as well as taking appropriate technical and organizational measures is always the responsibility of Client, therefor Vendor is never responsible or liable.

Article 14. Transfer of rights and obligations

14.1.   Client is not entitled to transfer rights and obligations to a third party, without prior written permission of Vendor. The aforementioned permission cannot be withheld unreasonably by Vendor.

14.2.   Vendor is entitled to transfer all rights and obligations ensuing from the agreement, without any limitations, to third parties. Client shall be notified thereof as soon as possible.

14.3.   Vendor is entitled to make use of third parties to execute the Agreement, whether by of subcontracting or the hiring of personnel.

Article 15. General stipulations

15.1.   The Agreement is governed by the Laws of the Netherlands. Disputes arising out of the Agreement will be solely submitted to the court in Amsterdam.

15.2.   In these terms and conditions the expression "in writing" also includes electronic messages such as e-mail and fax. When "registered letter" is stated, it means a registered letter sent by mail.

15.3.   To the extent that any provision of the general conditions is declared void and/or annulled, all other conditions between parties remain in force. In such a case, parties will agree to a new set of provisions, which will correspond as much as possible to the void or annulled conditions.

15.4.   Delivery terms given by Vendor at any given moment are approximate deadlines and can not to be considered as binding terms. The lapse of the delivery term will not result in an attributable shortcoming. In that case Client is not entitled to any compensation or damages.

15.5.   Since the parts of the Service are acquired through third parties, additional stipulations can be applicable. In that case the additional stipulations are set out in the Agreement.

Article 16. Definitions

16.1.   *General Terms and Conditions:* these general terms and conditions.

16.2.   *Service*: the functionality of software which is delivered through the internet to Client (Software as a Service, SaaS for short)

16.3.   *Functionality*: the functions and possibilities of the software at the basis of the Service.

16.4.   *Defect:* the Functionality is partially of completely not meeting the agreed upon specifications.

16.5.   *User*: a user that can be attributed to Client, inter alia, an employee who uses the Functionality.

16.6.   *Client:* party in the Agreement.

16.7.   *Agreement:* the agreement regarding the delivery of the Service, the delivery of consultancy, or a combination thereof.

16.8.   *Vendor:* the limited liability company "Beers Consultancy B.V.", or every affiliated company which uses these General Terms and Conditions, also the other party in the agreement.

16.9.   *Support*: providing Client with information and advice regarding the use of the Functionality by Vendor through e-mail and/or a website and/or a helpdesk during Working Hours, as well as supporting Client with finding the causes of Defects during Working Hours, as well as solving the Defects during Working Hours.

16.10.   *Site:* a site is a single location where one or more antennas are located, with the accompanying equipment, which antennas are operated by a mobile network operator in order to let their customers make use of mobile services, such as speech and (internet) data.

16.11.   *Working Hours*: from 9.00 en 17.00 (Dutch time) on Working Days.

16.12.   *Working Days*: Monday to Friday, with the exception of national Dutch holidays.

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