

## Why these General Terms and Conditions?

Dear relation,

It is important to us that you are satisfied with the services and/or products we supply to you. We apply two basic principles: we do what we promise and make promises we can live up to.

If you believe that we have not acted in accordance with these two basic principles, please feel free to let us know. In that case, we will consult with you to find a solution that, within reason, is as close as possible to what you want and what we can offer. In practice, we always succeed in doing so.

If that is not the case, it is important that we both understand which formal arrangements we can rely on. These formal arrangements have been laid down in these general terms and conditions. These general terms and conditions are specific to ICT services and, more particularly, to the security services we provide to you. Therefore, the general terms and conditions contain specific arrangements on intellectual property and liability and arrangements for the cancellation of training & consultancy.

In drawing up these general terms and conditions, account was taken of both your interests and ours. We feel that this is important in maintaining a long-term relationship.

Looking forward to doing business with you.

DearBytes

# General Terms and Conditions

## DearBytes B.V.

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## MODULE A – GENERAL

### Article A.1. Definitions

Capitalised terms have the following meanings.

- A.1.1. **Account:** the right to access a user interface that enables the Client to manage and configure the Service(s) or certain aspects of the Service(s), as well as the Data itself.
- A.1.2. **Additional Work:** work or other performances delivered by DearBytes that do not fall under the contents and/or scope of the work and/or performances agreed upon in the Agreement, or changes therein (including amended functional specifications).
- A.1.3. **Agreement:** any agreement between DearBytes and the Client on the basis of which DearBytes provides Services to the Client.
- A.1.4. **Candidate:** the natural person, who may or may not be an employee of DearBytes, made available by DearBytes to the Client in order to perform work for the Client.
- A.1.5. **Commencement Date:** the date on which DearBytes receives notification that the Client has accepted the offer.
- A.1.6. **Client:** the natural person or legal entity with whom DearBytes has entered into an Agreement.
- A.1.7. **Data:** the data provided by the Client, which are stored, accessible or otherwise processed through the Services.
- A.1.8. **DearBytes:** the company DearBytes B.V., established at Rijnland 4C in Beverwijk and registered at the Chamber of Commerce under file number 37096052.
- A.1.9. **Environment:** all aspects of the Client's hardware, software and/or network environment that are relevant to the provision of the Services, including – without limitation – the physical hardware and the IT infrastructure, as well as all the (network) traffic and data.
- A.1.10. **General Terms and Conditions:** the provisions set out in this document.
- A.1.11. **Intellectual Property Rights:** all intellectual property rights and related rights, including but not limited to copyright, database rights, domain names, trade name rights, trademark rights, design rights, neighbouring rights, patent rights as well as rights to know-how.

- A.1.12. **Licence:** the non-exclusive, non-transferable right of use, with regard to which no sublicenses may be granted, which DearBytes has granted to the Client for the benefit of using the Standard Software.
- A.1.13. **Licensing Conditions:** the further conditions with regard to the supply and the use of the Standard Software, provided by the Supplier of the Standard Software.
- A.1.14. **Service(s):** the service(s) DearBytes will provide for the benefit of the Client, which includes – among others – without limitation:
- a. **Standard Software:** the supply of software developed by third parties, which DearBytes offers the Client under a licence;
  - b. **Training Course(s):** the training programmes and courses provided by DearBytes or third parties;
  - c. **Consultancy:** the provision of advice, the objective of which includes – without limitation – making the employees familiar with the Services to be provided by DearBytes;
  - d. **Secondment:** services consisting of a form of lending out DearBytes employees to the Client, whether or not on a temporary basis;
  - e. **Hardware:** the provision of equipment by DearBytes to the Client;
  - f. **Cloud Services:** services made available to the Client in the form of an online service (software-as-a-service);
  - g. other services as described in DearBytes' offer or quotation.
- A.1.15. **SLA:** the arrangements between DearBytes and the Client with regard to the level, support and manner of problem resolution with regard to the Services, as laid down in a separate agreement.
- A.1.16. **Supplier:** the supplier and/or manufacturer of the Standard Software and/or Hardware.
- A.1.17. **Updates:** (structural) changes to and updates of the Standard Software for the benefit of bug fixing, improving or adding to the functionality and/or remedying errors.
- A.1.18. **Upgrades:** structural changes of the Standard Software within the framework of adding functionalities.
- A.1.19. **Working Days:** Monday through Friday, with the exception of Dutch national holidays.
- A.1.20. **Working Hours:** hours on Working Days between 09:00 a.m. and 5:00 p.m.

## Article A.2. Applicability and priority

- A.2.1. The specific modules apply if the requested or offered Services fall under the scope of application described in the module. Where a specific module applies, it prevails over Module A.
- A.2.2. The definitions as described in Article A.1. apply to all modules of these General Terms and Conditions, unless a meaning is ascribed to them elsewhere in the Agreement and/or the General Terms and Conditions.
- A.2.3. In the event of a conflict between the provisions of the Agreement, the General Terms and Conditions or appendices thereto, the following order of priority will apply:
- i. the offer or Agreement;
  - ii. the data processing agreement, if one has been entered into;
  - iii. the SLA, if one has been entered into;
  - iv. any appendices to the Agreement;
  - v. these General Terms and Conditions.

## Article A.3. Quotations and formation of the Agreement

- A.3.1. The Agreement is entered into after the Client's written acceptance of the quotation or offer. Sending a (purchase) order, procurement order or any other (order) confirmation in response to an offer sent by DearBytes will be considered written acceptance of DearBytes' offer.
- A.3.2. If the Client does not explicitly indicate that it agrees to the offer, but nevertheless agrees to DearBytes carrying out work that falls within the scope of the description of the Services, or makes that impression, the offer will

be deemed to be accepted. The same applies when the Client requests DearBytes to carry out certain work, without waiting for a formal quotation.

- A.3.3. Provisions or terms and conditions stipulated by the Client that differ from, or do not appear in, these General Terms and Conditions are only binding upon DearBytes B.V. if and to the extent that these have been expressly accepted by DearBytes B.V. in writing.
- A.3.4. DearBytes' quotations are free of obligation and valid for the time period stated therein. If no time period is stated, the quotation is valid for thirty (30) days after the date on which it was sent.
- A.3.5. If the information provided by the Client at the time of the application or the Agreement proves to be incorrect and/or incomplete, DearBytes has the right to adjust the prices accordingly.
- A.3.6. The Agreement will be in effect as of the Commencement Date, unless a different commencement date has been agreed upon in writing.

## Article A.4. Performance of the Agreement

- A.4.1. After its formation, DearBytes will perform the Agreement to the best of its ability and with due care and professional competence, in accordance with the offer.
- A.4.2. Delivery terms indicated by DearBytes are always only indicative in nature and will under no circumstances be considered a strict deadline.
- A.4.3. If and where required for the proper performance of the Agreement, DearBytes is authorised to have certain work performed by third parties. Any unforeseen additional costs relating to the above will only be borne by the Client if this has been agreed upon in writing in advance. These General Terms and Conditions also apply to the work performed by third parties within the framework of the Agreement.

## Article A.5. Obligations of the Client

- A.5.1. The Client is obliged to do everything that is reasonably required and desired to facilitate the correct and timely performance of the Agreement. In particular, the Client will ensure that all information that DearBytes indicates is required or that the Client may reasonably be expected to understand to be required for the provision of the Services is made available to DearBytes in time. The period within which DearBytes is required to perform the Agreement will not commence until all the information that DearBytes has requested and requires has been received. At DearBytes' request, the Client will also make its own employees available.
- A.5.2. If the Client knows or may assume that DearBytes will have to take additional or other measures in order to comply with its obligations, the Client will inform DearBytes thereof as soon as possible.
- A.5.3. The Client will grant DearBytes access to all locations, services and accounts under its management that DearBytes reasonably requires in order to provide the Services. In special cases, it can be agreed that the Client itself will enter the necessary data or that the Client itself will modify these services or accounts. In particular, where required for the support, the Client will – at the request of DearBytes staff and auxiliary persons – grant any access to the environment that may be required to enable installation, configuration, maintenance and modification of the Standard Software and/or Hardware. Physical access to hardware will only be granted if so required and subject to prior consultation with the Client.

## Article A.6. Additional Work

- A.6.1. All changes to the Services, whether at the Client's request or as a result of the fact that, due to unforeseen external circumstances, an alternative performance is absolutely essential, will be deemed to be Additional Work if additional costs are involved. These will be invoiced to the Client accordingly.
- A.6.2. The right from the preceding paragraph is subject to the condition that DearBytes has informed the Client of the circumstances and – where possible – the additional costs referred to in that paragraph in good time. If the

Client does not agree to the additional costs concerned, it has the right to cancel the part of the Additional Work that has not been carried out yet, though without the right to a refund or remission of the costs for any completed Additional Work.

## Article A.7. Intellectual Property Rights

- A.7.1. The Intellectual Property Rights with regard to the Services, the associated software, the Standard Software, reports and performance of a Candidate, as well as all information and images, are vested in DearBytes and/or its licensors. Except in those cases in which it is legally permitted, these rights may not be copied or used in any way whatsoever without the separate written permission of DearBytes.
- A.7.2. Nothing in this Agreement is intended to transfer any Intellectual Property Rights to the Client. The use the Client may make of the Services is limited to that which is described in the Agreement. The Client will refrain from doing anything that might infringe DearBytes' Intellectual Property Rights and/or those of its licensors.
- A.7.3. DearBytes grants the Customer a non-exclusive and non-transferable right of use for the duration of the Agreement, serving to enable the Customer to use the Services in accordance with the present General Terms and Conditions.
- A.7.4. DearBytes is authorised to refrain from granting or revoke the right of use as referred to in the preceding paragraph if the Client has failed to comply with its obligations under the Agreement. Supplementary to the above, the Client will no longer be entitled to install (new) Updates and/or Upgrades if it fails to comply with the Agreement and/or if the Agreement is terminated.
- A.7.5. DearBytes may make third-party software available to the Client. This may be subject to the (open source) (licence) conditions of those third parties. The Client guarantees that it accepts and will strictly comply with these third-party conditions.
- A.7.6. The Client indemnifies DearBytes against all third-party claims in connection with the guarantee provided in the preceding paragraph.
- A.7.7. Information, including Data, that the Client stores or processes through the Services is and will continue to be the property of the Client. DearBytes is authorised to use this information in providing the Services, including future aspects thereof.
- A.7.8. By sending DearBytes feedback on an error or a suggestion for improvement, the Client gives DearBytes an unlimited and perpetual right of use to use this information for the benefit of the Services. This does not apply to information the Client explicitly marks as confidential.

## Article A.8. Prices

- A.8.1. The Client will pay DearBytes a compensation for the Services as stated in the offer.
- A.8.2. Unless expressly stated otherwise with regard to an amount, all prices referred to by DearBytes are exclusive of turnover tax and other duties levied by the government.
- A.8.3. DearBytes is authorised to charge the Client for additional fees if work is done outside of Working Days and/or Working Hours.
- A.8.4. If a price is based on information provided by the Client and the information proves to be incorrect, DearBytes is authorised to adjust the prices accordingly, even after the Agreement has already been formed. This includes – without limitation – circumstances in which it is established that, as a result of organisational changes, the Client no longer complies with the conditions on the basis of which it was graded upon entry into this Agreement.
- A.8.5. DearBytes is authorised to adapt its prices in the event of renewal of the Agreement. In addition, DearBytes is authorised to increase the prices on an annual basis during the term of the Agreement, in accordance with the relevant price index figures as published by Statistics Netherlands (*in Dutch: Centraal Bureau voor de Statistiek – CBS*). However, if a supplier of DearBytes increases its prices in the interim, DearBytes will always be authorised

to charge this increase on to the Client on a 1-to-1 basis, with immediate effect. DearBytes will communicate any price changes in writing.

## Article A.9. Terms of payment

- A.9.1. DearBytes will invoice the Client any one-off amounts owed in advance. Periodically owed amounts will be invoiced to the Client prior to the relevant period.
- A.9.2. DearBytes will send electronic invoices to the email address of the Client that is known to DearBytes. The Client agrees to this invoicing method.
- A.9.3. Unless agreed otherwise in writing, invoices are subject to a payment term of thirty (30) days after the invoice date.
- A.9.4. If the Client has not yet paid by the end of the payment term, DearBytes will give the Client another opportunity to pay the invoice amount within seven (7) days. If the Client has still not paid an invoice in full after this term, it will automatically be in default without notice of default being required.
- A.9.5. In the event that the Client fails to pay by the due date, the Client is obliged to pay any and all judicial and extrajudicial costs, including the costs of lawyers, bailiffs and debt collection agencies, in addition to the amount payable and the applicable statutory (commercial) interest due.
- A.9.6. In the event that the Client fails to comply with any obligation under the Agreement, DearBytes will be authorised to suspend the Services, without prejudice to DearBytes' right to compensation of loss, lost profit and interest.
- A.9.7. If, based on facts and circumstances, reasonable doubt arises as to whether the Client will be able to fulfil its payment obligations, DearBytes has the right to require the Client to provide financial security in the form of a security deposit for six (6) months of service provision.

## Article A.10. Personal data and security

- A.10.1. If the Client provides DearBytes with personal data and the latter processes these on the Client's instruction, both the Client and DearBytes will be subject to the Dutch Personal Data Protection Act (*in Dutch: Wet bescherming persoonsgegevens – Wbp*) and, from 25 May 2018 onwards, the General Data Protection Regulation (GDPR).
- A.10.2. In the event that DearBytes processes personal data on the instruction of the Client in accordance with the preceding paragraph, a processors' agreement, in which additional safeguards with regard to the processing of personal data are laid down, will form part of the Agreement.

## Article A.11. Liability

- A.11.1. The total liability of DearBytes for an attributable failure to perform the Agreement, an unlawful act or otherwise, will be limited to a compensation of direct loss for every event or series of connected events, up to the amount of twelve (12) months' worth of the compensations stipulated in the Agreement. Under no circumstances, however, will the total compensation for direct loss exceed EUR 500,000 (excluding VAT) per year.
- A.11.2. Only the following will be considered direct loss:
  - a. damage caused directly to tangible objects ('property damage');
  - b. the reasonable and demonstrable costs the Client has had to incur in demanding that DearBytes properly perform the Agreement (again);
  - c. the reasonable costs incurred in determining the cause and the extent of the loss, to the extent relating to the direct loss as referred to here;

- d. the reasonable and demonstrable costs incurred by the Client in preventing or minimising the direct loss as defined in this article.
- A.11.3. DearBytes will under no circumstances be liable for compensation of indirect loss or consequential loss or loss due to lost turnover or profit.
- A.11.4. The limitation of liability as referred to in the preceding paragraphs of this article will lapse if and insofar as the loss is due to wilful misconduct or gross negligence on the part of DearBytes' management.
- A.11.5. DearBytes can be held liable for an attributable breach of the Agreement only if the Client promptly gives DearBytes proper notice of default in writing, stating a reasonable time period in which to remedy the breach, and DearBytes continues to attributable breach its obligations even after that period. The notice of default must describe the failure in the greatest possible detail, so as to enable DearBytes to provide an adequate response.
- A.11.6. The Client indemnifies DearBytes against third-party claims and procedures (including those of clients of the Client) for compensation of loss, costs or interest in connection with a failure to comply with the obligations under the Agreement or under the applicable laws and regulations that can be attributed to the Client and/or a subcontractor engaged by the Client.

### Article A.12. Force majeure

- A.12.1. In the event of force majeure as referred to in Section 6:75 of the Dutch Civil Code, neither Party can be obliged to perform any obligation under the Agreement, and the parties will under no circumstances be liable to compensate loss suffered as a result thereof. Force majeure must be understood to include, among other things: breakdowns in the public infrastructure; breakdowns in DearBytes' infrastructure and/or Services caused by computer crimes; defectiveness of items, equipment, programs or other source material, the use of which the Client has prescribed; unavailability of staff members/secondees (due to illness or otherwise); default on the part of suppliers of DearBytes that DearBytes could not have foreseen; government measures; general transport problems and strikes.
- A.12.2. If a force majeure situation lasts longer than thirty (30) days, either Party is entitled to terminate the Agreement in writing. In such case, that which has already been performed under the Agreement will be paid for on a proportional basis, without the Parties owing each other anything else.

### Article A.13. Confidentiality

- A.13.1. The Parties will treat the information that they provide each other before, during or after the performance of this Agreement as confidential if such information has been marked as confidential or if the receiving Party is aware or may reasonably assume that the information was intended to be confidential. The Parties will similarly impose this obligation on their employees, as well as on any third parties that they engage in the performance of the Agreement.
- A.13.2. The duty of confidentiality also remains in force after termination of the Agreement for whatever reason, and for as long as the Party providing the information can reasonably claim that the nature of the information is confidential.

### Article A.14. Duration and cancellation

- A.14.1. The Agreement is entered into for the term specified in the offer or the Agreement, failing which it is entered into for one year. The Agreement can only be terminated as stipulated in these General Terms and Conditions.
- A.14.2. Unless otherwise agreed in writing, early termination of the Agreement by the Client is excluded. Supplementary to that, the Parties can terminate the Agreement by mutual consent.



- A.14.3. DearBytes may suspend or cancel the Agreement with immediate effect in writing, if at least one of the following extraordinary grounds applies:
- The Client has failed to comply with a material obligation.
  - A petition has been filed for winding up the Client's business.
  - The Client has applied for a moratorium.
  - The Client's activities are discontinued or wound up.
- A.14.4. If DearBytes suspends compliance with the obligations, this will not affect its statutory rights or rights under the Agreement, including the right to payment for the Services that it has suspended.
- A.14.5. Upon termination of the Agreement, any claims of DearBytes on the Client will become immediately due and payable. In the event that the Agreement is terminated, the amounts already invoiced for the services already provided will remain payable without any obligation to reverse, and under no circumstances will DearBytes be obliged to repay any payments already received from the Client or be obliged to compensate any loss the Client suffers as a result of the termination.
- A.14.6. The right to suspend in the above cases simultaneously applies to all the Agreements entered into with the Client, even if the Client is only in default with regard to one Agreement, without prejudice to DearBytes' right to compensation for loss, lost profit and interest.
- A.14.7. Application of Section 6:271 et seq. of the Dutch Civil Code is excluded. This section of the law details the tenet of rescission. Rescission of the Agreement is explicitly excluded.

### Article A.15. Amendment of the Agreement

- A.15.1. DearBytes reserves the right to amend or supplement the Services and these General Terms and Conditions. Amendments also apply to Agreements already entered into, subject to a notice period of thirty (30) days following the announcement of the amendment.
- A.15.2. Changes to the General Terms and Conditions will be announced on DearBytes' website, by means of an email to the Client or via another channel that allows DearBytes to prove that the Client received the notice. Non-substantive minor amendments can be implemented at all times, without requiring notification.
- A.15.3. If the Client does not wish to accept an amendment to the General Terms and Conditions, the Client must inform DearBytes thereof in writing within fourteen (14) days of being informed thereof, stating reasons. This may give DearBytes cause to review the amendment. If DearBytes does not subsequently revoke the amendment, the Client may terminate the Agreement with effect from the date on which the new terms and conditions take effect.

### Article A.16. Miscellaneous provisions

- A.16.1. The Agreement is subject to Dutch law.
- A.16.2. To the extent that the rules of mandatory law do not prescribe otherwise, all disputes that may arise from the Agreement will be submitted to the competent Dutch court in the district of Noord-Holland, Haarlem branch.
- A.16.3. In these General Terms and Conditions, the term 'written/in writing' also includes communication by email, provided that the identity and integrity of the email have been sufficiently established.
- A.16.4. If any provisions in the Agreement are declared null and void, this will not affect the validity of the entire Agreement. In such case, the parties will stipulate a new provision or new provisions to replace any such provisions, reflecting the purport of the original Agreement and the General Terms and Conditions as much as legally possible.
- A.16.5. DearBytes' log files and electronic or other administrative records constitute conclusive evidence of DearBytes' statements, and the version of any electronic or other communication received or stored by DearBytes is considered authentic, subject to evidence to the contrary to be submitted by the Client.



- A.16.6. At all times, the Parties will inform each other in writing without delay of any changes in name, postal address, email address and telephone number, as well as bank and giro account numbers, if requested.
- A.16.7. DearBytes is entitled to assign its rights and obligations under the Agreement to a third party that takes over the Service or the relevant business activity from DearBytes. The Client is only entitled to transfer its rights and obligations under the Agreement to a third party that takes over the service or the relevant business activity from it with DearBytes' written permission.
- A.16.8. Applicability of the duties of disclosure (including with regard to information on the languages in which the Agreement may be entered into and any codes of conduct to which DearBytes is subject) in Section 6:227b, subsection 1 and Section 6:227c of the Dutch Civil Code is expressly excluded.

## MODULE B – SUPPLY OF THE STANDARD SOFTWARE

If the Service involves or also involves supplying Standard Software, the conditions in this module apply as well.

### Article B.1. Supply of Standard Software

- B.1.1. DearBytes hereby grants the Client a Licence for the use of the Standard Software for the duration and under the conditions of the Agreement. Further terms and conditions ('Licence Conditions') may apply to the delivery and use of the Standard Software. Where applicable, these further conditions will be communicated by the Supplier of the Software.
- B.1.2. The Client is authorised to use the Standard Software under the Licence for the Client's business or institution. The restrictions, including but not limited to the number of user accounts and available functions, are stated in the Licence Conditions.
- B.1.3. In particular, the Client is expressly forbidden from:
  - a. reverse engineering the source code of the Standard Software or decompiling the Standard Software, except where this is permitted pursuant to mandatory law;
  - b. giving a copy of the Standard Software to third parties;
  - c. sublicensing or making the Standard Software available to third parties by means of rental, software-as-a-service constructions or otherwise;
  - d. making changes to the Standard Software, except where this is permitted pursuant to mandatory law;
  - e. deleting or rendering unreadable designations of DearBytes and/or its licensors as the owner of the Standard Software or parts thereof.

### Article B.2. Installation and delivery

- B.2.1. Unless agreed otherwise in writing, the Client bears full responsibility for the Environment, as well as for the installation of the Standard Software and future Updates and/or Upgrades.
- B.2.2. If this has been agreed in a separate SLA, DearBytes will provide support with regard to the installation of the Standard Software.
- B.2.3. If this has been agreed in a separate agreement, DearBytes is willing to perform the installation of the Standard Software for the benefit and under the responsibility of the Client. Insofar as this is possible, DearBytes will always notify the Client of the costs of the installation in writing prior to performing the activities.
- B.2.4. The Client is solely and fully responsible for the choice, purchase and management of the Environment. The Client is aware of the fact that DearBytes has no influence on the hardware and infrastructure on which the Standard Software is installed. Therefore, DearBytes provides no guarantees with regard to the availability of the hardware and infrastructure, and the availability of the Standard Software as a result of unavailability of the hardware and/or infrastructure.

### Article B.3. Guarantees and availability

- B.3.1. The Client accepts that the Standard Software contains the functionality and other features in the condition in which the Client finds them in the Standard Software at the time of delivery ('as is'), with all visible and invisible errors and defects. DearBytes does not guarantee that the Standard Software will be available, without interruption or defects, at all times.
- B.3.2. Changes that must be made as a result of technical influences will be made as part of Updates. If these are not included in the next Update, DearBytes will – insofar as this is possible – indicate the costs of the work it is required to perform in connection with the technical influences in advance.

## Article B.4. Support

- B.4.1. If this has been agreed in a separate written agreement, DearBytes will provide services in the form of telephone support or remote assistance that, in DearBytes' opinion, is supportive and fast and can be performed easily.
- B.4.2. In addition to providing the support referred to in paragraph 1, DearBytes is prepared to perform certain other work for the benefit of the Client. At the Client's request, DearBytes will draw up a quotation for the relevant work. Insofar as this is possible, DearBytes will always notify the Client of the costs of support in writing prior to performing the activities. In such case, DearBytes is authorised to invoice the Client on the basis of subsequent calculation.

## MODULE C – TRAINING COURSES

If the Service involves or also involves providing Training Courses, the conditions in this module apply as well.

### Article C.1. Registration and planning

- C.1.1. A Training Course must be registered for in writing, and registration is binding following its confirmation by DearBytes.
- C.1.2. DearBytes is authorised to change the location and the dates/times of the Training Course. The Client will be notified accordingly no later than five (5) days before commencement of the Training Course.
- C.1.3. A minimum and a maximum number of participants will be set for every Training Course. In the event of insufficient registrations, DearBytes reserves the right to reschedule the Training Course to a different date, which the Client will be informed of as soon as possible. In addition, DearBytes will be authorised to cancel the Training Course, in which case any amounts already paid will be reimbursed.
- C.1.4. The Client is entitled to cancel the Training Course free of charge up to thirty (30) days before the (first) date of the Training Course. In the event of cancellation between thirty (30) and fourteen (14) days before the date of the Training Course, the Client will owe fifty percent of the fee. In the event of cancellation less than fourteen (14) days before the date of the Training Course, or if participants fail to show up without a valid cancellation, the full fee will be owed.
- C.1.5. If the Training Course needs to be rescheduled due to the Client's actions, DearBytes is authorised to charge an administrative fee.
- C.1.6. If a trainer cannot provide the Training Course due to illness or another form of force majeure, DearBytes reserves the right to use the services of a replacement trainer or reschedule the Training Course to a different date, for which it may also use the services of a different trainer.

### Article C.2. Material

- C.2.1. The training material provided to the Client is only intended for the Client's own (educational) use. Except with the permission of DearBytes, the Client is forbidden from (a) making the training material public, (b) using the training material in providing courses/training, etc. and/or (c) using the training material in any other commercial manner.

### Article C.3. Validity of Training Courses

- C.3.1. A purchased Training Course entitles the Client to participate in the relevant Training Course. In any case, any right to participation will lapse twenty-four (24) months after entry into the relevant Agreement, unless otherwise agreed in writing.

## MODULE D – CONSULTANCY

If the Service involves or also involves providing Consultancy, the conditions in this module apply as well.

### Article D.1. Performance and planning

- D.1.1. Insofar as this is possible, DearBytes will inform the Client of the time and costs of the work to be carried out in advance. The time required for the relevant work depends on various factors, including the Client's cooperation. DearBytes is also authorised to invoice the work to the Client on the basis of subsequent calculation.
- D.1.2. Supplementary to the preceding paragraph, DearBytes depends on the information provided by the Client. DearBytes will under no circumstances be liable for checking or obliged to check this provided information.
- D.1.3. DearBytes will at all times be authorised to cancel Consultancy in writing in advance, or to have it take place at a later date or a later time. In the event of cancellation by DearBytes, the parties will consult with each other to find a new date.
- D.1.4. The Client is authorised to cancel the Consultancy free of charge up to five (5) Working Days in writing before the date of the Consultancy. In the event of cancellation between five (5) and two (2) Working Days before the date of the Consultancy, DearBytes is authorised to invoice the Client fifty percent of the fee. If the Client cancels within two (2) Working Days before the date of the Consultancy, DearBytes is authorised to charge the Client the entire fee with regard to the Consultancy.

### Article D.2. Validity of the Consultancy budget

- D.2.1. Purchased hours with regard to Consultancy entitle the Client to provision of the relevant Consultancy services. Unless otherwise agreed in writing, this right lapses twenty-four (24) months after entry into the Agreement to that end.

## MODULE E – HARDWARE

If the Service involves or also involves supply of Hardware, the conditions in this module apply as well.

### Article E.1. General

- E.1.1. Hardware will be considered to have been delivered to the Client when it is delivered to the delivery address specified by the Client in the order and the delivery is accepted by the Client.
- E.1.2. The Client is obliged to check the Hardware immediately after receiving it. If the Client finds visible mistakes, imperfections and/or defects, this must be reported to DearBytes within 24 hours.
- E.1.3. Other complaints must be reported to DearBytes by registered letter within five (5) Working Days of receipt of the products or completion of the work.
- E.1.4. If the aforementioned complaint is not reported to DearBytes within the periods specified, the Hardware will be deemed to have been received in good condition.
- E.1.5. Small deviations compared to the measurements, weights, numbers, colours, etc. that have been indicated will not be considered a shortcoming on the part of DearBytes.
- E.1.6. Complaints do not suspend the Client's payment obligation.
- E.1.7. If the Hardware's nature and/or composition has changed since the delivery, or if the Hardware has been adapted, processed, or damaged, in full or in part, any right of complaint lapses
- E.1.8. In the event of maintenance, repair or replacement of the Hardware supplied by DearBytes, the Client is personally responsible for creating back-ups for the benefit of retaining the stored Data.

### Article E.2. Sale of Hardware

- E.2.1. If the sale of Hardware is part of the Agreement, the provisions set out below apply.
- E.2.2. As long as the Client has not paid the agreed amount in full, the Hardware supplied will continue to be the property of DearBytes. Unless otherwise agreed in writing, the ownership of the Hardware supplied only transfers after DearBytes has received the full payment of the amounts agreed with regard to the Hardware.
- E.2.3. The Hardware the Client purchases from DearBytes is subject to a factory guarantee. Information on what the factory guarantee entails is available on the website or in the documentation the Supplier provides with the Hardware.
- E.2.4. DearBytes will comply with its statutory obligation within the framework of conformity of the Hardware supplied, but does not provide the Client any (additional) guarantee for the Hardware supplied by it.
- E.2.5. The (statutory) guarantee does not apply:
  - a. if the mistakes are due to improper use or causes other than the materials or manufacture being faulty;
  - b. if the cause of the mistake cannot be clearly demonstrated;
  - c. if instructions given for the use of the Hardware have not been complied with;
  - d. for the condition of the Hardware, as a result of incompetent storage or climatological or other influences.

### Article E.3. Rental or operational lease of Hardware

- E.3.1. If the rental of Hardware is part of the Agreement, the provisions set out below apply.
- E.3.2. Unless otherwise agreed in writing, the Hardware will under all circumstances continue to be the property of DearBytes.
- E.3.3. The Client may only use the Hardware within its own company and only for the purpose for which the Hardware is intended.

- E.3.4. The Client is forbidden from making the Hardware available to third parties and/or encumbering the Hardware with a security right. In addition, the Client is forbidden from adapting the Hardware without DearBytes' permission.
- E.3.5. The Client will act as a good borrower in respect of the Hardware. The Client will handle the Hardware with due care and will strictly comply with all DearBytes' instructions.
- E.3.6. The Client must report errors, imperfections and/or defects to DearBytes without delay. The Client must report theft of and/or damage to the Hardware to DearBytes without delay, and no later than within 24 hours of its discovery. If the Client is late in reporting this, the Client is liable for the loss, regardless of the cause of the theft and/or damage.
- E.3.7. DearBytes will make every effort to remedy defects within a reasonable term, unless remedy proves to be impossible or the costs thereof are so high that DearBytes cannot be expected to remedy the defect. In addition, in lieu of remedying the defect, DearBytes is authorised to replace the Hardware with new or comparable Hardware.
- E.3.8. DearBytes is not obliged to remedy defects if:
  - a. the defects are due to improper use or causes other than the materials or manufacture being faulty;
  - b. the cause of the defect cannot be clearly demonstrated;
  - c. instructions given for the use of the Hardware have not been complied with;
  - d. these were caused by the condition of the Hardware, as a result of incompetent storage or climatological or other influences;
  - e. the Client has accepted the defects.
- E.3.9. DearBytes is prepared to investigate defects as referred to in the preceding paragraph and, where possible, remedy them. DearBytes is authorised to charge a fee for this.
- E.3.10. DearBytes is authorised to perform preventative maintenance with regard to the Hardware. The Client is obliged to cooperate in this. The parties will determine a suitable date for the maintenance in mutual consultation.
- E.3.11. The Agreement will be terminated upon expiry of the final rental or lease term. DearBytes will disassemble and collect the Hardware in consultation with the Client. The Client will under no circumstances move or remove the Hardware from its location.

## Article E.4. Financial lease of Hardware

- E.4.1. If the Client receives the Hardware through financial leasing, the provisions of this article apply.
- E.4.2. The Hardware will continue to be the property of DearBytes, until the Client has paid all the amounts owed to DearBytes in instalments.
- E.4.3. DearBytes is not obliged towards the Client to remedy any defects in the Hardware. DearBytes will under no circumstances be liable for loss as a result of defects in the Hardware.
- E.4.4. The Client must report theft of and/or damage to the Hardware to DearBytes without delay, and no later than within 24 hours of its discovery. If the Client is late in reporting this, the Client is liable for the loss, regardless of the cause of the theft and/or damage.
- E.4.5. The Client is forbidden from moving the Hardware, giving a third party the use thereof, renting out or pledging the Hardware or otherwise encumbering it with a limited right, except with the prior written permission of DearBytes.
- E.4.6. After the Client pays the final lease instalment, the legal ownership of the Hardware will transfer to the Client. For the term of the Agreement, the Client is and will continue to be the beneficial owner of the Hardware. This means that the Client must bear all the costs of maintenance, insurance and damage itself. In particular, the Client is obliged to properly insure the Hardware against damage.



- E.4.7. If, for whatever reason, the Agreement is terminated before the end of the final lease term, the following costs will be charged to the Client:
- a. the costs of disassembling and collecting the Hardware;
  - b. the amount of the remaining lease instalments.
- E.4.8. At DearBytes' first request, the Client is obliged to provide access to the location of the Hardware so the condition of the Hardware can be checked.

### Article E.5. Installation and configuration

- E.5.1. Unless agreed otherwise in writing, the Client bears full responsibility for the Environment, as well as for the installation of the Hardware.
- E.5.2. If this is agreed upon in a separate agreement, DearBytes is prepared to perform the installation of the Hardware for the benefit and under the responsibility of the Client, by means of Consultancy. Insofar as this is possible, DearBytes will always notify the Client of the costs in writing prior to performing the activities.
- E.5.3. The Client is solely and fully responsible for the choice, purchase and management of the Environment. The Client is aware of the fact that DearBytes has no influence on the hardware and infrastructure in which the Hardware has been installed. Therefore, DearBytes provides no guarantees with regard to the availability of the Hardware as a result of unavailability of the Client's hardware and/or infrastructure.

### Article E.6. Procedure upon termination of the agreement

- E.6.1. If the Client has not paid for the Hardware in full upon termination of the Agreement, DearBytes will be authorised to take back any Hardware already delivered, without this resulting in DearBytes being liable to pay compensation.
- E.6.2. In the event of rental of Hardware, the Client is obliged to return the Hardware upon termination of the Agreement. Any costs involved in that will be at the Client's expense.
- E.6.3. In the event of rental or operational lease of Hardware, DearBytes will perform a final inspection of the Hardware upon termination of the Agreement. If this final inspection shows that there are defects, DearBytes is authorised to charge the costs of remedying these defects to the Client.
- E.6.4. At DearBytes' first request, the Client will provide DearBytes with access to the Hardware.
- E.6.5. The Client is personally responsible for creating backup copies of the Data stored on the Hardware. DearBytes will under no circumstances be obliged to make backup copies of the Data available of its own accord.
- E.6.6. The Client is responsible for remedying any loss that arises or has arisen following the removal of the Hardware.

## MODULE F – CLOUD SERVICES

If the Service involves or also involves supplying cloud services, the conditions in this module apply as well.

### Article F.1. Use of the Service

- F.1.1. The Service is made available to the Client in the form of an online software service (software-as-a-service). DearBytes will inform the Client when the Service will be made available.
- F.1.2. DearBytes will grant the Client access to the Service as soon as possible after the Commencement Date of the Agreement. The Service will be accessible by using the login details as provided by DearBytes. The Client is aware that loss of these login details may lead to unauthorised access to the Service. The Client will secure the login details against unauthorised access and unauthorised persons.
- F.1.3. In particular, the Client must keep the password strictly confidential. DearBytes may assume that all the activities carried out through the Client's Account after the user name and password is used to log in take place under the supervision and control of the Client. This means that the Client is liable for all actions.
- F.1.4. In the event of a suspicion of abuse of the account, the Client must inform DearBytes of this without delay and amend the (login) details.

### Article F.2. Rules of use

- F.2.1. The Client is prohibited from using the Service to violate Dutch law or other laws and regulations applicable to the Client or DearBytes, or to violate the rights of other parties.
- F.2.2. The Client may only use the Service for its own use. Using the Service for the benefit of third parties, or giving third parties access to the Account, is expressly forbidden.
- F.2.3. In particular, the Service may not be used in such a way that it inconveniences or hinders third parties. This includes using the Client's own scripts or programs or excessive use of the Service.
- F.2.4. If DearBytes finds that the Client has violated the above conditions, or receives a complaint, it will give the Client a warning. If this does not lead to a satisfactory solution, DearBytes itself may intervene to end the violation. In urgent or serious cases, DearBytes may intervene without warning.
- F.2.5. If, in DearBytes' opinion, the operation of the computer systems or network of DearBytes or third-parties and/or the services provided through the Internet threaten to be hindered or damaged or are otherwise at risk, in particular as a result of the transmission of excessive amounts of email or other data, (distributed) denial-of-service attacks, inadequately secured systems or virus activities, Trojan horses and similar software, DearBytes is authorised to take all reasonable measures it deems necessary to avert or prevent such risk. DearBytes may recover the costs that are reasonably associated with these measures from the Client.
- F.2.6. DearBytes will at all times be authorised to report any criminal acts discovered. In addition, DearBytes is authorised to provide the name, address, IP address and other identification data of the Client to a third party who has complained that the Client has breached their rights or this Agreement, provided that the accuracy of that complaint is reasonably and sufficiently plausible, there is no other way in which these details could be obtained and the third party has a clear interest in being provided with these data.
- F.2.7. DearBytes may recover from the Client any loss suffered as a result of violation of these rules of use. The Client indemnifies DearBytes against all third-party claims pertaining to loss arising from a violation of these rules of use.

### Article F.3. Software and Updates

- F.3.1. DearBytes will make every effort to keep the software it uses up-to-date. However, in doing so, DearBytes depends on suppliers, and DearBytes is entitled not to install certain updates or patches if it believes installing such updates or patches will not be beneficial to the Service.
- F.3.2. If this is required for a Service, DearBytes will provide the Client with access to the (management) software by providing user name(s) and password(s).

### Article F.4. Availability and maintenance

- F.4.1. DearBytes will make every effort to ensure the services are available, but does not guarantee uninterrupted availability.
- F.4.2. DearBytes has the right to take the Services temporarily out of operation for the purpose of (scheduled and unscheduled) maintenance. Maintenance that may reduce availability may be performed at any time. The Client is aware of the fact that the changes in the details cannot be (completely) processed in the event of reduced availability of the Service.
- F.4.3. DearBytes reserves the right to adapt its systems, including the Service, or parts thereof from time to time in order to improve its functionality.

### Article F.5. Storage and data limits

- F.5.1. DearBytes may set a maximum for the amount of storage space and/or data traffic the Client may use per month within the framework of the Service, provided that this is laid down in the Agreement. Unused storage space, bandwidth and/or data traffic cannot be carried over to a subsequent period (such as a subsequent month or year).
- F.5.2. Should the Client exceed the applicable limits, DearBytes is authorised to charge the Client an additional amount per data unit (e.g. MB or GB) up to the amount of the excess for this excess, or to (temporarily) suspend the Service.
- F.5.3. DearBytes accepts no liability for the consequences of not sending, receiving, storing or modifying data if the agreed storage space or data traffic limited has been exceeded.

### Article F.6. Procedure upon termination of the agreement

- F.6.1. The Client may inspect or store the Data at all times. Before or upon termination of the Agreement, the Client must ensure that the relevant Data is stored, managed and safeguarded itself.
- F.6.2. After termination of the Agreement, DearBytes is authorised to delete all Data, without being obliged to make the Data available to the Client.

## MODULE G – SECONDMENT

If the Service involves or also involves DearBytes making a natural person available to the Client in order to perform work for the Client, the conditions in this module apply as well.

### Article G.1. Obligations of DearBytes upon Secondment

- G.1.1. DearBytes will ensure that the Candidate is available to the Client for the agreed number of days.
- G.1.2. DearBytes will ensure that, within the framework of the performance of the work, the Candidate complies with the Client's reasonable (standard) procedures and/or house rules.
- G.1.3. Unless otherwise agreed, neither DearBytes nor the Candidate is authorised to bind the Client at law.
- G.1.4. In the event of secondment, DearBytes will pay all income tax and national insurance contributions owed in respect of the Candidate to the relevant authorities.

### Article G.2. Obligations of the Client

- G.2.1. The Client will provide the Candidate with an adequate and safe workplace in accordance with the applicable Working Conditions Regulations and/or workplace legislation.
- G.2.2. The Client will always provide the Candidate with all the data and information that are important in the proper performance of the work in due time.
- G.2.3. All accidents involving the Candidate will be registered and reported to DearBytes without delay.

### Article G.3. Working Days, Working Hours and location

- G.3.1. Unless otherwise agreed, a Working Day will consist of a maximum of eight (8) hours during DearBytes' Working Hours.
- G.3.2. The work will be performed at a location/locations to be indicated by the Client.

### Article G.4. Training, expertise and experience

- G.4.1. DearBytes will ensure that, in terms of their level of training, expertise and experience, the Candidate can adequately perform the intended work.
- G.4.2. If, in the Client's reasonable opinion, the Candidate does not have one of the abovementioned qualifications or is not performing the work properly, the Client is authorised to request that the Candidate be replaced. In the event of such a request, DearBytes will make every effort to replace the Candidate as soon as possible, or reject the Client's request, providing reasons.

### Article G.5. Replacement, illness and leave in the event of Secondment

- G.5.1. DearBytes is authorised to replace a Candidate with a different Candidate, without being liable to pay compensation and/or a contribution towards the costs.
- G.5.2. In the event that, due to illness or any other cause, the Candidate is unable to perform work for the benefit of the Client for longer than five (5) Working Days, DearBytes will make every effort to provide a replacement Candidate as soon as possible, whose qualifications will be as similar as possible.

## Article G.6. Fees

- G.6.1. In the event of Secondment, the fee is the rate per hour as indicated in the Agreement.
- G.6.2. Unless otherwise agreed, travel time and travel and subsistence expenses will be charged to the Client separately.
- G.6.3. Unless DearBytes deploys a replacement Candidate, the Client will not owe DearBytes any fee in respect of a period in which the Candidate is unable to perform the agreed work due to illness, holidays or any other reason.
- G.6.4. If and insofar as, according to the Client, the Candidate is required to work additional hours outside of DearBytes' Working Hours, the Client will be charged a surcharge.
- G.6.5. The costs of induction training of Candidate(s) is at the Client's expense, even if DearBytes replaces the Candidate of its own accord without a prior request from the Client.

## Article G.7. Invoicing, payment and time recording

- G.7.1. Even if the Client uses a time sheet, the Client will be invoiced on the basis of the hours booked into DearBytes' time recording system. The data from DearBytes' time recording system will always be decisive.
- G.7.2. Unless otherwise agreed, DearBytes will draw up an invoice per calendar month for every Candidate. At the Client's first request, DearBytes will provide a written overview of the time recorded.

## Article G.8. No takeover of personnel

- G.8.1. In the event of Secondment, for the term of the Agreement and for a term of twelve (12) months after termination of the Agreement, the Client and its affiliates are forbidden from entering into a direct agreement with the Candidate themselves or through or for the benefit of third parties or entering into a collaboration of any kind with the Candidate, except with the prior written permission of DearBytes.
- G.8.2. A violation of this article will result in the (potential) Client being liable to pay DearBytes a penalty to the amount of twelve times the gross monthly salary of the relevant Candidate. This penalty will be immediately due and payable based on the mere fact of the violation, but is without prejudice to DearBytes' right to claim full compensation.