

**FU
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MENTS**

General Terms and Conditions.

September 11, 2026

Expert in Private Clouds.



Article 1.

Definitions

The capitalised terms have (in their singular as well as plural forms) the meanings set out in this article.

1. **Account:** the Client's account that provides access to the online Fundaments Client Portal with which Client can manage and/or configure the Services and in which Client can purchase additional Services or change the purchased Services. The Client Portal can be reached via the link portal.fundaments.nl.
2. **General Terms and Conditions:** these general terms and conditions, including the Annexes.
3. **Annexes:** all annexes attached to and inextricably linked to the General Terms and Conditions.
4. **Data:** the data that the Client, a Client of the Client or an end user of the Services stores on equipment of Fundaments during the term of the Agreement.
5. **Data Traffic:** data that are sent and received over the Internet. The unit used is the byte, often expressed in Megabytes (MB) and Gigabytes (GB) or in Terabytes (TB) for large-scale use.
6. **Third Party or Third Parties:** any natural or legal person not being Fundaments or the Client.
7. **Services:** the products and/or services that Fundaments will provide to the Client pursuant to an Agreement.
8. **Fundaments:** Fundaments B.V., having its registered office at M.H. Tromplaan 52A in Enschede and registered in the Commercial Register of the Chamber of Commerce under number 56941412, and all its affiliated enterprises, including: Oxilion B.V. with Chamber of Commerce no. 08088014 and Oxilion Infrastructure B.V. with Chamber of Commerce no. 50989685.
9. **Intellectual Property:** all intellectual property rights and associated rights, including but not limited to copyrights, database rights, rights to domain names, trade name rights, rights to know-how, trademark rights, design rights, neighbouring rights and patent rights.
10. **Client:** any legal entity or natural person acting in the conduct of a profession or business with which or whom Fundaments concludes an Agreement, or to which or whom Fundaments makes an offer.
11. **Materials:** all works, such as websites and applications/web applications, software, corporate identities, logos, flyers, brochures, leaflets, lettering, advertisements, marketing and/or communication plans, drafts, images, texts, sketches, documentation, consultancy, reports and other creations of the mind, as well as the preparatory material thereof and the data carriers (whether or not encoded) on which the materials are stored.
12. **Agreement:** agreement(s) between the Client and Fundaments on the basis of which Fundaments provides its Services to the Client and of which the General Terms and Conditions form an integral part.
13. **Products:** all products, hardware, Software or user rights to Software provided or made available to the Client by Fundaments or a Third Party or Third Parties engaged by it.
14. **Regulations concerning Privacy:** the General Data Protection Regulation (GDPR) (EU) 2016/679, the General Data Protection Regulation (Implementation) Act (Uitvoeringswet Algemene verordening gegevensbescherming) and the other applicable personal data protection legislation and regulations.
15. **Resell(ing):** the reselling, re-leasing or otherwise making the Services available by the Client to its Clients for a fee.
16. **SLA:** a Service Level Agreement agreed between Fundaments and the Client in which specific agreements are made regarding the quality of the Services provided by Fundaments.

17. **High-Risk Applications:** applications where a defect in the Services could result in death or serious injury, serious environmental damage or loss of data, including personal data, with substantial consequential loss or damage. Examples of High-Risk Applications include transport systems where a defect could result in derailing trains or aircraft accidents; medical systems in which a defect could result in a patient receiving no treatment or the wrong treatment; systems on which a substantial part of the population relies for obtaining crucial government services, such as DigiD identification codes in the Netherlands; and systems storing (large volumes of) medical data or other special categories of data within the meaning of the General Data Protection Act or other highly sensitive data.
18. **Software:** Software or user rights to software provided by Fundaments under its own label or under the label of a Third Party or Third Parties (Third-Party Software)
19. **Confidential Information:** any information that has been marked as being confidential or that the receiving Party should reasonably understand to be intended to be confidential. In any event, the contents of quotations and other offers made by Fundaments, as well as prices stated and Agreements concluded by Fundaments, are confidential.
20. **Website:** the Fundaments website, accessible via the domain www.fundaments.nl, or subdomains and other domain extensions belonging to Fundaments.

Article 2.

Formation of the Agreement

1. An Agreement between Fundaments and the Client is formed by the Client's acceptance of a quotation or other offer from Fundaments.
2. The Client may directly request Services on the website. The Agreement is in that case formed when Fundaments sends the email (which may or may not have been generated automatically) confirming that the request has been accepted.
3. In derogation from the provisions of Section 6:225 lid 2 of the Dutch Civil Code, Fundaments is not bound by an acceptance by a Potential Client that is at variance with an offer by Fundaments. In addition, Fundaments has the option of revising an offer it has made and that the client has accepted within five working days.
4. A quotation is free of obligation and valid for 30 days before signature (acceptance), unless stated otherwise in the quotation or the accompanying letter.
5. Fundaments has the right to refuse a Client at its own discretion without giving any reason.
6. The Agreement shall run from the moment that notice of acceptance by the Client of the offer of Fundaments is received by Fundaments.
7. In the event of a conflict between the provisions of the Agreement, the General Terms and Conditions or Annexes thereto, the following order of priority will apply:
 - a) the Master Agreement;
 - b) quotations (further agreements);
 - c) the Service Level Agreement for Enterprise Support Service and any descriptions of services;
 - d) the Fundaments General Terms and Conditions, April 22, 2025 v1.0 version;
 - e) the processing agreement (included in these General Terms and Conditions);
 - f) the Microsoft Licence Terms (included in these General Terms and Conditions);
 - g) The Broadcom Licence Terms (Included in these Terms and Conditions).
8. The Master Agreement of Fundaments applies to every Agreement. It is assumed that the Client has taken note of the contents of the Master Agreement.

Article 3.

Delivery of the Services

1. After the Agreement has been formed, Fundaments will endeavour to perform the Services as soon as possible and in accordance with the Agreement, with due care and professional competence.
2. The Client is obliged to do everything that is reasonably desired and required to ensure that the Services can be performed correctly and in time. In particular, the Client will ensure that all data that Fundaments indicates are essential, or in respect of which the Client should reasonably understand that these are required for the purpose of performing the Services, are provided to Fundaments in good time. The term, if any, within which Fundaments is required to perform the Agreement will not commence until all the data Fundaments has requested and requires have been received.
3. The Client will grant Fundaments access to all locations, services and accounts under its management that Fundaments or the employee made available by Fundaments reasonably requires in order to provide the Services.
4. If and where required for the proper performance of the Agreement, Fundaments is entitled 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.
5. If the Client knows or can assume that Fundaments will need to take additional or other measures to comply with its obligations, the Client will inform Fundaments thereof without delay. This obligation applies, for instance, if the Client knows or should be able to anticipate that the systems of Fundaments will be affected by an exceptional peak load, as a result of which there is some likelihood that Services will become unavailable. This particularly applies if the Client knows that the same systems Fundaments uses to provide Services to the Client are used to provide Services to other parties as well. Upon receiving warning thereof, Fundaments will make every effort to prevent the Services from becoming unavailable. All reasonable additional costs incurred in connection with this may be charged to the Client.
6. The Client may not use the Services for High-Risk Applications, unless the Service has expressly been designated as being suitable for such applications. If none of the Services have been designated as suitable, the Client may submit a request to Fundaments for a tailor-made Service. See also article 1.17 of this document.
7. If the Client requires any licence or further consent from government authorities or third parties for the Client's specific use or intended use of the Services, the Client itself will ensure that it obtains this. The Client guarantees in respect of Fundaments that it holds all the necessary licences and/or consent for the Client's use of the Services.

Article 4.

Delivery and acceptance

1. Work or parts thereof will be delivered if, in the opinion of Fundaments, the work performed meets specifications that may have been set and/or is suitable for use. The Client may not start using the Services until Fundaments has given its consent.
2. Any terms stated by Fundaments are indicative only and will not be considered strict delivery periods.
3. If the Client does not reject products and/or services delivered in writing within seven days after delivery, they shall be deemed to have been accepted. Invoicing of the delivered products and/or services starts on the date of delivery.
4. The Client may only reject products and/or services delivered in writing if they do not comply with the

technical and/or functional specifications agreed in advance or (provided this use has been agreed upon between the parties in advance) are not suitable for the use as intended and made known to Fundaments. The Client must specify the reason for a rejection sufficiently clearly before the deadline laid down in Article 4.3.

5. If the Client rejects products and/or services delivered within the aforementioned period (Article 4.3), Fundaments will endeavour to remedy the reason for rejection within a reasonable period of time or state, providing reasons, why the reason is not valid. If, after the aforementioned effort, the Client again rejects the products and/or services delivered, the parties will be entitled to terminate the Agreement. In that case, the Client will compensate Fundaments for the hours worked by Fundaments, in accordance with the hourly rate applicable at that time, and Fundaments will not be liable for compensation or liable towards the Client, unless the Client demonstrates that there was an attributable failure on the part of Fundaments and the loss or damage occurred as a result. Both the Client and Fundaments will make every effort to ensure delivery within a maximum period of 3 months.

Article 5.

Third-party products and services

1. If the Client purchases products or services from third parties via Fundaments, the provisions set out in this Article shall apply for this.
2. Fundaments has the right to place an order for products or services with third parties at the Client's request and on behalf of the Client. Fundaments has no influence on whether or not this order is accepted by the party concerned and cannot provide any guarantees on this.
3. The use of third-party products or services may be subject to separate general terms and conditions of the relevant third party. These terms and conditions are made available by Fundaments via the Website. The Client is aware that these terms and conditions may be amended in the interim and is itself responsible for regularly checking the Website for amended versions.
4. If and insofar as, for whatever reason, the conditions of third parties referred to in the preceding paragraph are deemed not to apply or are declared inapplicable in the relationship between the Client and that third party, the provisions of these General Terms and Conditions shall apply in full.
5. Unless otherwise agreed, a direct agreement will be concluded between the Client and the relevant third party for the products or services of third parties. Fundaments is not a party to this agreement and is not responsible for any rights and obligations arising from it. Fundaments is explicitly not responsible for the purchase and use of Services that the Client purchases from third parties through it.
6. Invoicing of third-party products or services can be effected both via Fundaments and directly to the Client. If invoicing is effected via Fundaments, the Client shall not be entitled to suspend payment in the event of a failure in the fulfilment of the agreement by the third party concerned.
7. The Client recognises that divergent terms and/or grounds for termination may apply to agreements with third parties. Fundaments shall be entitled to terminate or dissolve these agreements on the Client's request, in accordance with the terms and conditions of the third party concerned that apply for this.
8. If Client uses software via Fundaments that has been declared end of life (EOL) by the supplier, Fundaments will inform Client of this. If Client chooses not to upgrade the EOL software but to continue using it, Client will indemnify Fundaments in writing for any possible consequences thereof. The services provided to which the EOL software is applied will then be maintained by Fundaments on a best effort basis. Fundaments is in no way liable for any damage or consequential damage whatsoever arising from the use of end of life software.

Article 6.

Account

1. If necessary for the performance of the Agreement, Fundaments will provide the Client with access to an Account. The Account will be accessible by entering username and password data.
2. Each action performed by means of the Client's Account or an Account created by the Client is deemed to take place under the responsibility and at the risk of the Client. If the Client suspects or should reasonably suspect or know that the Account is being misused, the Client must report this to Fundaments as soon as possible to enable the latter to take measures.
3. Without the agreement of Fundaments, the Client is prohibited from making available to third parties the login details for the Services. The Client is itself responsible for keeping the relevant login details confidential.
4. Additional Agreements may be concluded via the Account by or on behalf of the Client (for example by completing an online order form). An existing Agreement may also be amended via the Account (for example by modifying certain Services or by agreeing to new or amended arrangements with Fundaments online).
5. Communication about existing Agreements, whether or not amended or newly concluded via the Account, will be sent to the email address linked to the Account. The Client declares that the email address provided to Fundaments is suitable for such communication and is under the sole control of the Client. The Client is obliged to pass on any change of email address or other relevant data (such as name, address and/or account number) directly via the Account.

Article 7.

Intellectual Property Rights

1. All Data will remain the property of the Client, the Client's Clients or the end users of the Services. Fundaments will not make any ownership claims in respect thereof and will only use the Data to the extent necessary for the performance of the Agreement.
2. Client must ensure that the terms of its licenses on, among other things, the application layer are complied with and paid on time. At the first request of Fundaments, Client must prove within two weeks that the licenses have been paid, for example as a result of a Microsoft Audit.
3. All Intellectual Property Rights to all of the Materials developed or made available by Fundaments as part of the Agreement are vested exclusively in Fundaments or its licensors.
4. Nothing in the Agreement provides for the transfer of Intellectual Property in whole or in part. Intellectual Property Rights may only be transferred to the Client if this is explicitly stated in the Agreement.
5. The Client solely acquires the rights of use and powers arising under the Agreement or those rights of use and powers assigned in writing. In all other respects, the Client will not reproduce or publish works or other results of the Services.
6. Unless expressly stated otherwise, the rights of use granted by Fundaments are non-exclusive, non-sublicensable and non-transferable to third parties.
7. The issue of source code of Materials is only mandatory if this has been explicitly agreed in writing.
8. If the Client is required to purchase licences from third parties in connection with the Agreement, Fundaments will inform the Client accordingly.
9. If the Client uses software that is subject to licences, the Client is obliged to purchase these licences correctly and completely. At the request of Fundaments, the Client will submit proof of this.

10. The Client is not permitted to remove or modify any markings concerning copyrights, trademarks, trade names or other Intellectual Property Rights from the Materials, including markings concerning the confidential nature and secrecy of the Materials.
11. The Client is not permitted to retrieve the source code of the Materials by means of decompilation, reverse engineering or otherwise, unless this is permitted by mandatory law.
12. The Client will indemnify Fundaments against any claims, including those of Third Parties, made for whatever reason in relation to or arising from use of the Products and/or Services (including liability for Intellectual Property infringements, infringement of the Regulations concerning Privacy and cross-border data traffic) and will compensate Fundaments for all costs, loss or damage and penalties arising from such claims. The Client will further indemnify Fundaments against any claims, including those of Third Parties, for product liability as a result of a defect in a Product or system provided by the Client to a Third Party that consisted in part of Products, Software or other materials provided by Fundaments, unless and in so far as the Client proves that the loss or damage was caused by the Products, Software or other materials.
13. Fundaments is authorised to put technical measures in place to protect its Materials and the Materials of its licensors. If Fundaments has protected these Materials using technical safeguards, the Client is forbidden from removing or circumventing such protection, except where mandatory law provides otherwise.
14. In the performance of the Agreement, Fundaments may use software (whether or not originating from third parties) to verify that the Client has the correct quantity and type of licences necessary in the context of the Services. This software scans the Services and automatically prepares reports on that basis. The Client agrees in advance to the use of this software and will, at the request of Fundaments, provide all cooperation and access necessary to install and/or to render and keep this software operational.

Article 8.

Availability of the Services

1. Fundaments will strive to ensure uninterrupted availability of its systems and networks and access to data stored by Fundaments. However, Fundaments does not guarantee the availability of its systems and networks or access to data, unless agreed otherwise in an SLA. To the extent not provided for otherwise in such an SLA, the provisions of this Article apply to availability. Nor will Fundaments be responsible for loss of Data.
2. Fundaments will make every effort to keep the Software and firmware it uses up to date. However, in this respect, Fundaments is dependent on its supplier(s). Fundaments is entitled not to install certain updates or patches if it believes installing such updates or patches will not be beneficial to the Service.
3. Fundaments will endeavour to ensure that the Client can make use of the networks that are either directly or indirectly connected to the network of Fundaments. However, Fundaments cannot guarantee that these networks (of third parties) will be available at any particular time.

Article 9.

Use and notice-and-takedown

1. The Client guarantees that the Services will not be used in a manner that is contrary to Dutch law or other applicable legislation or regulations. The Client shall refrain from unauthorised use of the Services and shall act and behave in accordance with what may be expected of a careful user of the Services.
2. Regardless of whether or not this is legal, it is forbidden to use the Services to offer or spread Materials that:
 - a) are primarily intended to aid others in infringing the rights of third parties, such as websites that exclusively or mainly use hack tools or provide information on computer crime with the obvious intention of enabling the reader to commit a crime or making the reader commit a crime, and not to enable the reader to defend against such crimes;
 - b) are libellous, defamatory, insulting, racist or discriminating or incite hatred;
 - c) contain child pornography or bestiality pornography or obviously aim to assist others, other than investigative authorities, in locating such Materials;
 - d) violate the privacy of third parties, in any case including but not confined to distributing third-party personal data without permission or necessity or repeatedly harassing third parties by providing them with unwanted communications;
 - e) contain hyperlinks, torrents or references to (the location of) Material that infringes copyright, neighbouring rights or portrait rights;
 - f) contain malicious content, such as viruses or spyware.
3. The Client is solely permitted to distribute (unsolicited) commercial, charity-related or ideals-related communications via the Services with due observance of the applicable laws and regulations.
4. The Client will refrain from hindering other clients of Fundaments or Internet users or inflicting damage on the systems or networks of Fundaments or third parties. The Client is forbidden from starting up processes or programs which the Client is aware or may reasonably assume will obstruct or inflict damage on Fundaments, its clients or Internet users.
5. If, in the opinion of Fundaments, the operation of the computer systems or the network of Fundaments or of third parties and/or service provision via the Internet is hindered, damaged or otherwise at risk, in particular due to the transmission of excessive amounts of email or other data, (D)DOS attacks, inadequately secured systems or virus activities, Trojan horses and similar software, Fundaments is authorised to take all reasonable measures it deems necessary to avert or prevent such risk. If the Client can be blamed for this, Fundaments may charge the costs that are reasonably associated with these measures to the Client.
6. If Fundaments receives a complaint about the Client having acted in violation of this article, or comes to the conclusion that this appears to be the case by itself, Fundaments will inform the Client of the complaint or violation as soon as possible. The Client will respond as soon as possible, after which Fundaments will decide on the measures to be taken. Fundaments will not inform the Client of the complaint or violation if Fundaments is not entitled to do so on the basis of applicable laws, regulations or instructions from investigative authorities.
7. If Fundaments is of the opinion that there has been a violation, it will block access to the relevant Material, without removing this Material definitively (unless this proves to be technically impossible, in which case Fundaments will create a back-up). Fundaments will endeavour to make sure that this does not affect other Materials. Fundaments will inform the Client as soon as possible of the measures taken.

8. Fundaments will at all times be authorised to report any criminal acts discovered. In addition, Fundaments is authorised to provide the Client's name, address and other identification data to a third party who has complained that the Client has breached its rights or these General Terms and Conditions, provided that, within reason, the accuracy of the particular complaint is sufficiently plausible and the third party has a clear interest in being provided with these data.
9. While Fundaments endeavours to act with due care and as reasonably and adequately as possible following complaints concerning the Client, Fundaments can in no circumstances be held liable for damage or loss arising from the measures referred to in this article.
10. The Client hereby grants Fundaments an unlimited licence to distribute, store, forward or copy all materials supplied by the Client on the Fundaments systems, in any manner deemed appropriate by Fundaments, but solely to the extent this is reasonably required for the purpose of Fundaments' fulfilment of the Agreement.
11. Any damage or loss caused by incompetence or a failure to act in accordance with the provisions of this Article will be borne by the Client.

Article 10.

Data Traffic

1. Each month, the current consumption of the Client with regard to Data Traffic will be reviewed. Fundaments may impose a maximum limit on the amount of data traffic the Client may or can actually use each month within the framework of the Services.
2. Data Traffic is not transferable to a subsequent month or contract or another client, unless agreed otherwise.
3. Should the Client exceed the applicable limits, Fundaments may subsequently charge for the additional use without warning, according to the rates in the Agreement or, in the absence thereof, the usual rates of Fundaments.
4. Fundaments accepts no liability for the consequences of the inability to send, receive, store or modify data if an agreed limit has been exceeded.
5. If an excessive amount of Data Traffic is caused by an external cause (such as a (D)DOS attack), Fundaments shall be entitled to charge the costs to the Client in all reasonableness, unless the Client has purchased a specific anti-(D)DOS Service from Fundaments. If the nature of the Service does not refer to Data Traffic and/or bandwidth, a fair use policy applies. In that case, based on the units and numbers purchased, a realistic amount of data traffic or bandwidth will be determined that the Client may use per month in the context of the Service.

Article 11.

Back-ups

1. Fundaments will not make back-up copies (back-ups) available to the Client, unless expressly agreed otherwise in writing. It is therefore the Client's responsibility to make back-up copies of the data stored at Fundaments. Nor is Fundaments responsible for the functioning of back-ups and any tests required for them, unless otherwise agreed in writing.
2. If the Services to the Client under the Agreement include making back-up copies of the data stored at Fundaments, Fundaments will endeavour to make back-up copies of the Client's data in its possession, with due observance of the periods agreed in writing and in accordance with the method agreed in writing. Fundaments shall retain the back-up copies for the duration of a term agreed in writing, or for the duration of the term that is customary at Fundaments if agreements have not been made in this regard.

Article 12.

IP addresses

1. The Client is obliged to observe the rules that the registration authorities set for the application for and for the assignation and use of IP addresses, such as the Réseaux IP Européens (RIPE). Fundaments only plays a mediatory role in the application for IP addresses and cannot guarantee that any application will be accepted.
2. The IP addresses made available to the Client remain under the management of Fundaments and cannot be carried over in the event of relocation/termination by the Client. Furthermore, multiple Fundaments clients may operate under one IP address.
3. Fundaments has the right at all times to change the IP address or to assign another IP address to the Client. The procedure described in Article 23 of the General Terms and Conditions applies for changes of IP addresses.
4. Fundaments is entitled to render the IP address inaccessible or unusable if the Client demonstrably remains in default in fulfilling the Agreement, which action will however last exclusively for the period that the Client remains in default and exclusively following the expiry of a reasonable term to perform fulfilment as set out in a written notice of default.

Article 13.

Application for domain names

1. Application for, assignation of and any use of a domain name depend on and are subject to the applicable rules and procedures of the relevant registration authorities, such as the Foundation for Internet Domain Registration in the Netherlands (Stichting Internet Domeinregistratie Nederland, SIDN) for domain names ending in '.nl'. The authority concerned will decide on the assignation of any domain names. Fundaments only plays a mediatory role in the application process and cannot guarantee that any application will be accepted.
2. The Client is informed of the registration exclusively by the written confirmation from Fundaments, which states that the requested domain name has been registered. An invoice for the costs of registration is not a confirmation of registration.
3. The Client indemnifies Fundaments against any and all losses connected with (the use of) a domain name on behalf of or by the Client. Fundaments is not liable for the loss by the Client of its right(s) to a domain name or for the fact that the domain name has been requested by and/or assigned to a third party in the interim, except in the case of intent or wilful recklessness on the part of Fundaments.
4. The Client is obliged to observe the rules or conditions that the registration authorities set for the application for and assignation and use of a domain name.
5. Fundaments is entitled to render the domain name inaccessible or unusable or to transfer or arrange the transfer of the domain name to its own name if the Client demonstrably remains in default in fulfilling the Agreement, which action will however last exclusively for the period that the Client remains in default and exclusively following the expiry of a reasonable term to perform fulfilment as set out in a written notice of default.
6. In the event of termination of the Agreement due to breach of contract by the Client, Fundaments will be entitled to terminate a Client's domain name with due observance of a notice period of one (1) month.

Article 14.

Retention of title

1. All products supplied by Fundaments in the context of the Agreement will remain the property of Fundaments until such time as the Client has properly complied with all its payment obligations vis-à-vis Fundaments.
2. All products supplied by Fundaments that fall under the retention of title referred to in the previous paragraph may not be resold, used as means of payment, pledged or otherwise encumbered by the Client.
3. The Client must make every effort that may reasonably be expected from it to protect the property rights of Fundaments.
4. If a third party wishes to proceed to or arrange for the levying of attachment on products delivered under retention of title, or wishes to create or enforce rights in respect thereof, the Client will immediately inform Fundaments accordingly.
5. The Client grants express and unconditional permission in advance to Fundaments and third parties to be designated by Fundaments to enter the places where the property of Fundaments is located and to take back the products if the Client fails to comply with its payment obligation.
6. The products the Client purchases from Fundaments are subject to a factory guarantee. Information on what the factory guarantee entails is available on the website or in the accompanying documentation provided by the manufacturer.
7. Fundaments will comply with its statutory obligation within the framework of conformity of the products supplied but does not provide any (additional) guarantee to the Client for the products supplied by it.
8. 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 product have not been complied with;
 - d) for the condition of the products, as a result of incompetent storage or climatological or other influences.
9. If Fundaments is required to perform repairs or replacement deliveries, the Client must give Fundaments a reasonable period of time to do so.
10. The risk of theft, loss or damage to products passes to the Client at the time that the products are supplied or delivered by Fundaments to the agreed location, or at the time that they are otherwise placed under the Client's control.
11. The Client is required to inspect the products supplied or delivered for any defects and/or damage immediately after supply or delivery. The Client must immediately report any defects and/or damage to Fundaments. In any event, the products will be deemed to have been supplied or delivered free of defects and/or damage if the Client does not make such a report within 48 hours after supply or delivery.

Article 15.

Resellers

1. The Client is entitled to Resell the Services without stating the name of Fundaments as the supplier or subcontractor. If the Client proceeds to Resell the Services, the Client is acting in its own name, at its own expense and at its own risk, and is not authorised to enter into agreements for or on behalf of Fundaments or create the impression that it is an agent or representative of Fundaments.
2. The Client must impose at least the same obligations on its Clients as Fundaments imposes on the Client with regard to the Services provided. Fundaments may require the Client to provide proof of this.
3. If Clients of the Client fail to pay or pay on time, this does not release the Client from its payment obligations towards Fundaments.
4. Fundaments will only contact Clients of the Client through the Client, unless Fundaments has urgent cause for approaching these Clients directly or the Client gives permission for such direct contact. (Imminent) loss for or nuisance to third parties due to activities of the Clients' Clients will in any case be considered urgent cause. In the aforementioned cases, the Client is obliged to make the contact details of the relevant Client available to Fundaments immediately upon request.
5. If Fundaments is contacted by a Client of the Client, it cannot answer it, unless that Client asks a general question in connection with which only publicly known information is discussed.
6. The Client is not entitled to use any trade names, brand names, logos, or signs of Fundaments in promotional or commercial communications for the purpose of using the goodwill or good name of Fundaments for the recruitment of Clients by the Client. However, the Client may communicate for business purposes that it uses Services of Fundaments. Fundaments may make Materials available for this purpose.
7. The Client will at all times be fully liable for all its Clients' acts and omissions in using the systems and networks of Fundaments or its suppliers.
8. In the event of termination of the Agreement due to breach of contract by the Client, the Client will inform its Clients that they can contact Fundaments for ICT services. Fundaments is entitled to provide Services to the aforementioned Clients if they approach Fundaments.
9. Due to the large number of Clients (of various Clients), Fundaments is unable to recognise when a Client of the Client calls with a request for a quotation. Making an offer to the Client's Client at the latter's request does not constitute a failure within the meaning of Section 401 of Book 7 of the Dutch Civil Code and does not constitute an unlawful act within the meaning of Section 162 of Book 6 of the Dutch Civil Code.
10. The Client will, when Reselling services, indemnify Fundaments against any and all claims by the Client's Clients. Fundaments may also act in full in the event of violations of these General Terms and Conditions by those Clients.

Article 16.

Prices

1. Unless expressly stated otherwise with regard to an amount, all prices referred to by Fundaments are in euros, exclusive of turnover tax and other duties levied by the government.
2. If a price is based on information provided by the Client and the information proves to be incorrect, Fundaments is authorised to adjust the prices accordingly, even after the Agreement has already been formed.
3. If a supplier of Fundaments increases its prices and these prices are passed on to the Client, Fundaments will always be entitled to adjust its prices accordingly with immediate effect. In such a case, the Client is not entitled to terminate the Agreement.

4. If the Agreement qualifies as a continuing performance contract, Fundaments shall at all times be entitled to adjust the prices charged in line with inflation, as determined by reference to the DPI of the CBS. In such a case, the Customer shall not have the option to terminate the relevant Agreement. This price adjustment is separate from the price increase referred to in article 16, paragraph 3.
5. For price changes other than those referred to in paragraphs 2 to 4, inclusive, the procedure as described in Article 23 of the General Terms and Conditions applies.

Article 17.

Terms of payment

1. Fundaments will send the Client an electronic invoice for the amount payable by the Client. The Client has the right to receive invoices by post for a fee. Fundaments is entitled to charge €2.50 per invoice for this. Fundaments is authorised to periodically invoice amounts due, prior to delivery of the Services.
2. Any objection raised by the Client to the amount of an invoice will not suspend its payment obligation.
3. Unless stated otherwise on the invoice, invoices are subject to a payment term of 14 days after the invoice date. If an amount owed is not paid or not paid within the payment term, the Client will immediately be in default without notice of default being required.
4. If the Client is in default, this will, in addition to the consequences ensuing from the law and case law, have the following consequences:
 - a) the statutory interest for commercial transactions is due on the outstanding amount, or two percent (2%) per month, if this is higher;
 - b) In deviation from the Dutch Collection of Costs Act (Wet Incassokosten), the Client owes ten euros (€10) in administrative costs for each reminder letter and demand letter;
 - c) In addition to the amounts payable, the interest owed in respect thereof and any costs relating to reminders, the Client is obliged to pay in full any and all judicial and extra-judicial collection costs, including the costs of lawyers, bailiffs and debt collection agencies.
 - d) Fundaments shall be entitled to terminate or suspend the performance of the Agreement or any part thereof that has not yet been performed, without warning, notice of default or judicial intervention, until the outstanding amounts, interest and the like have been paid, without being liable for any damage that may arise for the Client as a result.
5. A claim for payment is immediately due and payable in the event that the Client files for bankruptcy or is declared bankrupt, the Client applies for a suspension of payments or is granted a suspension of payments, an attachment is levied on all of the Client's assets, or the Client enters into liquidation or is dissolved.
6. Prior to performing the Agreement or continuing the performance of the Agreement, Fundaments at all times has the right to require that the Client provides adequate security to ensure that the Client can and will fulfil its payment obligations.
7. All changes to the Agreement, whether at the Client's request or as a result of the fact that, regardless of the circumstances causing this, an alternative performance is required, will be deemed to be contract extras if they involve additional costs. These will be invoiced to the Client accordingly.
8. If, at the Client's request, invoices are sent to a third party, this will in no way release the Client from its obligations.

Article 18.

Confidentiality and personal data

1. The Parties will treat Confidential Information that they provide to each other prior to, during or after the performance of the Agreement as strictly confidential.
2. The Parties shall also impose this obligation on their employees, as well as on any third parties engaged to perform the Agreement.
3. With regard to Confidential Information of Fundaments, the Client will:
 - a) take due account of all reasonable measures to ensure safekeeping or storage of the Confidential Information, while ensuring at least the same level of security as it observes for its own Confidential Information;
 - b) not use the Confidential Information for any other purpose than the agreed purpose (the fulfilment of the Agreement);
 - c) not retain the Confidential Information for any longer than is reasonably necessary for the fulfilment of the agreed obligations and will make these data, including any copies that have been made, available to Fundaments again immediately after full compliance with the obligations referred to or will, after a copy of the Confidential Information has been handed to Fundaments and Fundaments has confirmed proper receipt thereof in writing, destroy such data.
4. The duty of confidentiality does not apply to Confidential Information that:
 - a) is public or becomes public without the receiving Party breaching its duty of confidentiality;
 - b) is lawfully made available to the receiving Party by a third party without an obligation to observe confidentiality being imposed;
 - c) demonstrably was lawfully in the possession of the receiving party prior to its receipt;
 - d) has been designated in a document In Writing as non-confidential by the other party; or
 - e) the receiving Party shares with a third party on the basis of a legal obligation.
5. The obligations concerning confidentiality continue to apply after the Agreement has ended, regardless of the reason therefore, for as long as the party providing the information can reasonably claim the confidential nature of the information.
6. If Fundaments processes personal data on behalf of the Client in the performance of the Agreement, these processing activities are subject to Annex 1 to these General Terms and Conditions.
7. If Fundaments processes personal data when providing its Services, the Client guarantees to Fundaments that the processing of personal data does not infringe any rights of third parties and is not unlawful within the meaning of the General Data Protection Regulation or other applicable privacy laws and regulations.
8. The Client itself is responsible for compliance with the General Data Protection Regulation or other applicable privacy laws and regulations.
9. If an amendment to the applicable privacy laws and regulations so requires, the parties will make new arrangements in this respect prior to the entry into force of the new legislation, in line with those laws and regulations. If it is impossible to make the new arrangements prior to the entry into force of the new legislation, the parties will in any event do so within a reasonable period of time thereafter.

Article 19.

Liability

1. Fundaments is not liable in respect of the formation or performance of the Agreement, except in the cases referred to below, and at most up to the specified limits.
2. The total liability of Fundaments vis-à-vis the Client, due to attributable failures in the performance of an Agreement or otherwise, including unlawful acts by Fundaments, its employees or third parties engaged by it, is limited to compensation of direct damage.
3. Direct damage is limited to (a) the reasonable costs to determine the cause and scope of the damage or losses; (b) any reasonable costs incurred to ensure the substandard performance of Fundaments conforms to the Agreement, unless the substandard performance cannot be attributed to Fundaments; and (c) reasonable costs incurred to prevent or limit any damage or losses, insofar as the Client is able to demonstrate that these costs have led to a limitation of the direct damage or losses.
4. Subject to the foregoing paragraphs, the liability of Fundaments for any other form of damage is expressly excluded.
5. The maximum amount for which Fundaments may be liable is the yearly based amount owed by the Client to Fundaments (exclusive of VAT) under the Agreement. If a periodic fee is due under the Agreement, the liability of Fundaments will be limited to the amounts owed by the Client to Fundaments (exclusive of VAT) for a period of one year prior to the occurrence of the damage.
6. In no circumstances will the total compensation for any damage or loss exceed the amount paid out by the insurer of Fundaments, or EUR 10,000 on an annual basis if the insurer of Fundaments does not pay out.
7. Any limitations of liability referred to in the Agreement or General Terms and Conditions will lapse if and in so far as the relevant damage:
 - a) is the result of intent or wilful recklessness on the part of the management of Fundaments;
 - b) is the result of death or physical injury.
8. The liability of Fundaments for an attributable failure to perform the Agreement will only arise if the Client gives Fundaments proper notice of default In Writing without delay, providing a reasonable period to remedy the failure, and Fundaments continues to attributably fail to comply with its obligations even after that period. The notice of default must describe the non-compliance in the greatest possible detail, so as to enable Fundaments to provide an adequate response.
9. Any right to compensation for damages will at all times be subject to the condition that the Client reports the loss to Fundaments, in writing and by registered letter, as soon as possible after it becomes known. Any claim for damages by the Client lapses by the mere passage of one month after the Client has become aware that it has suffered damage.
10. The parties agree that Section 271 of Book 6 of the Dutch Civil Code and the effect of its provisions in the following articles are excluded.
11. The Client shall indemnify Fundaments against any third-party claims arising from a breach of the Agreement by the Client.

Article 20.

Force majeure

1. Fundaments is not bound to fulfil any obligation if it is prevented from doing so by force majeure.
2. Force majeure in any event includes: disruptions or failures of the Internet, power failures, network attacks, attacks of malware or other malicious software or hacks, defectiveness of Products and Software, internal civil commotion, government measures, terrorism, mobilisation, war, obstruction in transport, strikes, supply stagnation, fire, flood, natural disasters, import and export barriers and situations in which Fundaments is placed, by its own suppliers, in a position in which it can deliver, regardless of the reason for this, as a result of which performance of the Agreement cannot reasonably be required of Fundaments.
3. If a force majeure situation has lasted for more than 90 days, the parties shall be entitled to give notice to terminate the Agreement in writing with immediate effect. 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 21.

Duration and cancellation

1. The term of the Agreement will be laid down in the Agreement, unless an Agreement ends by performing a predetermined task.
2. If the term of the Agreement is not determined in the Agreement, it will be deemed to have been entered into for the minimum period of 12 months.
3. An Agreement for a definite period of time can be terminated in writing with effect from the end of the term, subject to a notice period of at least one month.
4. In the absence of a written notice of termination with due observance of the agreed notice period, the Agreement will always be tacitly renewed for a period of 12 months.
5. Both parties are entitled to terminate an Agreement for an indefinite period of time with due observance of a notice period of 12 months.
6. Fundaments may suspend or cancel the Agreement with immediate effect in writing, without any prior notice of default being required, if at least one of the following extraordinary grounds applies:
 - a) The Client defaults on a material obligation under the Agreement.
 - b) Fundaments wishes to terminate its Service, in which case Fundaments will provide its Client with a reasonable period in which to switch.
 - c) The Client violates the General Terms and Conditions.
 - d) The Client files for bankruptcy or is declared bankrupt.
 - e) The Client has applied for or is granted a suspension of payments.
 - f) The Client's activities are terminated or the Client's business is liquidated.
 - g) If Fundaments 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.
7. Any claims of Fundaments against the Client will become immediately due and payable in the form of a fine if the Agreement is terminated or set aside. In the event the Agreement is dissolved, the amounts already invoiced for the performance already delivered will remain payable without any obligation to nullify. In the event that the Client terminates the Agreement, the Client may only terminate that part of the Agreement that Fundaments has not yet performed. If the dissolution is attributable to the Client, Fundaments is entitled to compensation of any damage or loss arising either directly or indirectly as a result thereof.

Article 22.

Exit

1. From the moment that notice of termination of the Agreement has been given until the moment that the Agreement is actually terminated, the Client may submit a request to Fundaments for the delivery of Data or cooperation in a transition of Data to another service provider.
2. Unless it poses a threat to the equipment of Fundaments or data of other Clients, or if Fundaments has another valid reason to refuse, Fundaments will cooperate, upon payment of its usual hourly rate, in a transition or the delivery of Data as referred to in paragraph 1.
3. All costs associated with a transition or the delivery of Data, as referred to in paragraph 1, will be borne by the Client.
4. A transition or the delivery of Data as referred to in paragraph 1 will take place in accordance with the instructions of Fundaments. If necessary, the Client will supply specific hardware, purchase software licences or perform other (legal) acts in order to facilitate a transition or the delivery of data as referred to in paragraph 1.
5. Upon termination or expiry of the Agreement, or (in the case of a request as referred to in paragraph 1) after the completion of the Data delivery or Data transition by Fundaments, Fundaments shall be entitled to remove all Data.

Article 23.

Changes

1. Fundaments is entitled to unilaterally make amendments or additions to the Agreement (including these General Terms and Conditions) with due observance of a period of 30 days after the announcement of the proposed change on the Website or by electronic communication to the Client. If the Client does not wish to accept a change to the Agreement, the Client may consult with Fundaments in this regard. If no agreement can be reached, the Client may terminate the Agreement with effect from the date on which the amended Agreement takes effect.
2. Fundaments shall be entitled to amend the Agreement at any time if:
 - a) this is necessary in the context of amended legislation or regulations;
 - b) these are minor changes.
3. In those cases, the Client is not entitled to terminate the Agreement (prematurely).

Article 24.

Risk transfer

1. The risk of loss, theft or misappropriation of or damage to goods, information (including user names, codes and passwords), documents, software or data files that are created for, delivered to or used by client in the context of the performance of the agreement passes to the client at the moment these are placed under the actual control of the client or an auxiliary person of the client.

Article 25.

Security

1. The Client is aware that Fundaments implements the measures agreed in the Agreement to ensure the security of the Services based on a best-efforts obligation but that it cannot provide any guarantees with regard to security.
2. If Fundaments is obliged under the agreement to provide a form of information security, that security will meet the specifications agreed in writing between the parties regarding security. Fundaments is not responsible for ensuring that the information security is effective in all circumstances.
3. If the security or the testing thereof relates to software, equipment or infrastructure that Fundaments did not supply to the Client itself, the Client will be responsible for ensuring that all the necessary licences or approvals it requires to be allowed to provide the service concerned have been obtained. Fundaments is not liable for loss or damage arising in connection with the provision of such services. The Client indemnifies Fundaments against any legal action taken for whatever reason in relation to the provision of such services.
4. Fundaments is entitled to adjust the security measures from time to time if such is necessary owing to changing circumstances.
5. The Client will provide its systems and infrastructure with adequate security and keep them adequately secured.
6. Fundaments may give instructions to the Client with regard to the security, the purpose of which is to prevent or minimise incidents or the consequences of incidents that could impair the security. If the Client does not follow such instructions issued by Fundaments or a relevant government body, or fails to follow them in good time, Fundaments will not be liable and the Client will indemnify Fundaments against any loss or damage that may arise.
7. Fundaments is entitled to take technical and organisational measures at any time to protect equipment, data files, websites, Products and Services made available, as well as Software, including in connection with an agreed restriction in the content or duration of the right to use such objects. The Client will not have such technical measures removed or circumvented.

Article 26.

Concluding provisions

1. An offer by Fundaments, the Agreements and the performance thereof are governed by Dutch law. The applicability of the Vienna Sales Convention is excluded.
2. The Client will provide employees of Fundaments who perform work at the offices of the Client or perform work on the systems of the Client for the purposes of the provision of Services with all the support they need to perform their work.
3. For as long as the relationship between the Client and Fundaments exists, and also for one year after its termination, the Client will not be permitted to employ employees of Fundaments or have them work for it in any other way, directly or indirectly, without the prior Written permission of Fundaments. In this context, employees of Fundaments are understood to mean persons employed by Fundaments or one of its affiliated enterprises. The Client will forfeit an immediately payable penalty that is not subject to judicial mitigation in the amount of three (3) gross annual salaries of the employee concerned for an infringement of the obligation laid down in this paragraph.
4. Insofar as not prescribed otherwise by the rules of mandatory law, all disputes that may arise from an Agreement will be submitted to the competent Dutch court in the district in which Fundaments has its registered office.

5. If any provisions in the Agreement prove to be contrary to mandatory law, this will not affect the validity of the entire Agreement. For the purpose of replacing such a provision, Parties will lay down a new provision or new provisions that reflect as far as possible the intention of the original Agreement under the law.
6. The version of any communications received or stored by Fundaments shall be regarded as authentic, except if the Client provides proof to the contrary.
7. Either party shall be entitled to transfer its rights and obligations under the Agreement to a third party, subject to the prior written approval of the other party. In derogation from this provision, Fundaments will at all times be entitled to transfer its rights and obligations under the Agreement to a parent company, subsidiary or sister company and any parties that wish to acquire or merge with the business of Fundaments.

Appendix 1: Processing of personal data (Agreements regarding GDPR)

Version 1.0, Date Februari 26 2018

If Fundaments processes personal data on behalf of the Client in the performance of the Agreement, the following conditions apply in addition to the General Terms and Conditions.

Article 1.

General

1. The terms in this Annex that are defined in the General Data Protection Regulation (hereinafter referred to as the 'GDPR') have the meaning given to them in the GDPR.
2. When processing personal data, the Client can be considered to be a controller, or, if the Client processes personal data on behalf of a third party, a processor. Fundaments performs the role of processor or subprocessor (depending on the capacity in which the Client processes the personal data).

Article 2.

Purposes of the data processing operations

1. Fundaments undertakes to process, subject to the conditions under the Agreement, personal data on the instructions of the Client. The data will only be processed as part of the performance of the Agreement, plus those purposes that can be reasonably associated with this or that will be determined by mutual agreement.
2. In view of the nature of the Services, Fundaments will, under the Agreement, process all personal data of all categories of data subjects that are stored using the Services or that are otherwise provided to Fundaments for processing via the Services. If special personal data are processed in the use of the Services, the Client must report this to Fundaments in advance, and the Parties will consult to determine whether additional measures need to be taken in this context.
3. Fundaments has no control over the purpose and the means of processing the personal data. Fundaments will take no independent decisions with regard to the receipt and use of the personal data, provision of the data to third parties and the duration of the storage.
4. The Client warrants that, if required by the GDPR, it will keep a register from 25 May 2018 with regard to the data processing carried out under the Agreement. The Client indemnifies Fundaments against all claims related to a failure to comply, or to comply correctly, with this requirement to keep a register.

Article 3.

Division of responsibility

1. The Parties will ensure compliance with the applicable privacy rules and regulations. Fundaments will carry out the permitted processing activities within an automated or semi-automated environment.
2. Fundaments is solely responsible for the processing of the personal data under the Agreement, in accordance with the instructions of and under the express (ultimate) responsibility of the Client.
3. Fundaments is not responsible for any other processing of personal data, which in any case includes but is not limited to the collection of personal data by the Client, processing for purposes that the Client has not communicated to Fundaments, processing by third parties and/or processing for other purposes. The responsibility for any such processing lies with the Client.
4. The Client warrants that the content, the use and the instructions for the processing of personal data are not unlawful and do not infringe any third-party right. The Client indemnifies Fundaments against all third-party claims ensuing from the Client's failure to comply with the aforementioned guarantee.

Article 4.

Obligations of the parties

1. With regard to the processing performed under the Agreement, Fundaments will see to it that the conditions pursuant to the GDPR that are set with regard to the processing of personal data by Fundaments based on its role are complied with.
2. At the Client's first request, Fundaments will inform the Client within a reasonable period of time of the measures taken by it with regard to its obligations under the GDPR and any other applicable privacy laws and regulations.
3. To the extent this is within its control, Fundaments will assist the Client in carrying out a data protection impact assessment (also referred to as a 'DPIA'). The costs reasonably incurred or to be incurred by Fundaments in connection with the aforementioned assistance will be reimbursed by the Client.
4. The obligations of Fundaments arising from this Annex also apply to any party processing personal data under the authority of Fundaments, such as employees.

Article 5.

Transfer of personal data

1. Fundaments will process the personal data in countries within the European Union. The Client also grants Fundaments permission to process personal data in countries outside the European Union, with due observance of the laws and regulations applicable to this.
2. Fundaments will inform the Client, on the latter's request, in which country or in which countries the personal data are processed.

Article 6.

Engaging subprocessors

1. The Client hereby authorises Fundaments to engage third parties (subprocessors) within the context of the Agreement and the data processing referred to in this Annex. Upon request, Fundaments will inform the Client as to which subprocessors it engages.
2. If Fundaments intends to engage new subprocessors for the processing of personal data, Fundaments will inform the Client of this in advance. The Client will then have two weeks to object in writing to the intention of Fundaments to engage new subprocessors. If the Client does not object within the stated period of two weeks, the Client will be deemed to consent to this.
3. If the Client objects within the aforementioned period to the intention of Fundaments to engage new third parties, both parties will endeavour to reach a reasonable solution in proper consultation. If the parties are unable to reach agreement on the intention of Fundaments to engage new subprocessors, Fundaments will be entitled to engage the relevant new third party and the Client will be entitled to terminate the Agreement with effect from the date on which the new third party is engaged.

Article 7.

Security

1. Fundaments will endeavour to take appropriate technical and organisational measures to protect the personal data against loss or any form of unlawful processing (such as unauthorised inspection, interference, alteration or provision of personal data). Fundaments operates in accordance with the ISO 27001 security standard and has, in addition, taken the measures stated on the Website.
2. The Client itself decides which personal data are processed by Fundaments and only makes personal data available to Fundaments for processing if the Client has ensured that the security measures required by the Client have been taken.

Article 8.

Data leaks

1. In the event of a personal data breach, Fundaments will make every effort to inform the Client immediately, but no later than within 72 hours, further to which the Client will assess whether or not it will inform the supervisory authorities and/or data subjects. Fundaments will make every effort to provide complete, correct and accurate information.
2. Personal data breaches are defined as follows: infringements of data security that accidentally or unlawfully lead to the destruction, loss, alteration or unauthorised disclosure of, or unauthorised access to, forwarded, stored or otherwise processed data.
3. The Client will ensure compliance with any (statutory) notification obligations. If required by the laws and/or regulations, Fundaments will cooperate in informing the relevant authorities and any data subjects.

4. The notification obligation shall in any case include reporting that a breach has occurred, as well as, insofar as these data are available:
 - a) the (alleged) cause;
 - b) the consequences that are known or are to be expected;
 - c) the solution or proposed solution;
 - d) contact details for the follow-up of the report;
 - e) who has been informed (such as the data subjects themselves and/or the supervisory authority); and
 - f) the measures already taken.

Article 9.

Requests from data subjects

1. If a data subject sends a request about its personal data to Fundaments, Fundaments will forward the request to the Client. Fundaments may inform the data subject of this.
2. Fundaments will provide the Client with the reasonably possible, necessary cooperation in the handling of the request. If the Client requires the assistance of Fundaments in processing a request from a data subject, Fundaments may charge costs for this.

Article 10.

Confidentiality

1. Fundaments will be subject to a duty of confidentiality towards third parties in relation to all personal data that it receives from the Client or collects itself in the performance of the Agreement. Fundaments will not use this information for any purpose other than the one for which it was provided to Fundaments, unless it has been rendered into a form in which it cannot be traced back to the data subjects. This duty of confidentiality will not apply:
 - a) to the extent that the Client has expressly granted permission to disclose the information to third parties;
 - b) if the disclosure of the information to third parties is logically necessary for the performance of the Agreement;
 - c) if there is a statutory obligation to disclose the information to a third party; or
 - d) if personal data are disclosed to third parties in their capacity as subprocessor.

Article 11.

Audit

1. The Client is entitled to have an audit conducted by an expert independent third party that is bound by a duty of confidentiality in order to verify compliance with this Annex and everything directly related to it.
2. This audit will only take place after the Client has requested and assessed similar relevant audit reports present at Fundaments and has presented reasonable arguments for why an audit initiated by the Client is still warranted. Such an audit is justified if the similar audit reports that Fundaments has available provide an insufficient or inconclusive answer regarding compliance with this Annex.
3. The audit initiated by the Client will take place no earlier than four weeks after prior announcement and no more than once per calendar year.
4. Fundaments will cooperate in the audit and make any relevant information, within reason, and its employees available for the audit.

5. The findings resulting from the audit performed will be evaluated in mutual consultation by the parties. As a result, changes will or will not be implemented by one of the parties or by both parties jointly.
6. All costs of the audit, including the costs incurred by Fundaments, will be borne by the Client.

Article 12.

End of the Agreement

1. After termination of the Agreement, Fundaments will remove the personal data received from the Client as soon as possible, unless the parties agree otherwise or this is contrary to a statutory obligation.

Appendix 2: Microsoft Licence Terms

Version 1.1, Date March 2025

Article 1. Definitions

In addition to the definitions in the General Terms and Conditions of Fundaments, the terms (written with capital letters) shall be defined as follows:

1. **Products:** products developed by Microsoft, including but not limited to software, media, printed materials and electronic documentation.
2. **Software:** the Microsoft software installed on a Device, which enables the Client to use the Software.

Article 2.

Use of the Products

1. Fundaments will endeavour to provide support for the Products to the Client. The Client shall not be entitled to request support from Microsoft with respect to the Products.
2. The Client acquires the right to use information carriers, Products and related licences provided by Fundaments. The Client will not use information carriers, Products and related licences obtained from Fundaments for any purposes other than those intended in the Agreement.
3. With regard to the Products, the Client is not permitted to:
 - a) delete, modify or render unreadable designations of Fundaments and/or its licensors (including Microsoft) as the owner of the Products or to delete, modify or render unreadable parts thereof;
 - b) reverse engineer, decompile or disassemble the source code of the Software, except where this is permitted pursuant to provisions of mandatory law;
 - c) make changes to the Products, except in cases in which this is permitted pursuant to provisions of mandatory law;
 - d) copy the Products without the prior consent of Fundaments;
 - e) sublease, transfer or otherwise make the Products available to third parties, except if such use is the purpose of and in accordance with the Agreement;
 - f) use the Software for High-Risk Applications.
4. Fundaments is authorised to disclose the Client's name and address details to Microsoft if Microsoft so requests. Fundaments shall not be obliged to notify the Client of such disclosure.
5. The Client shall inform any person who has or obtains access to the Microsoft Software of the fact that this Software is being made available by Microsoft for use and that this Software may only be used in accordance with this Agreement.
6. If the Software is installed locally, the Client will, in the event of termination of this Agreement in any way whatsoever, return information carriers, Products and the related licences obtained from Fundaments to Fundaments within ten (10) Business Days. In addition, the Client is obliged to irreversibly remove all copies of the Software from its equipment.
7. The Client is responsible for the applications and licenses on the servers, including the SQL (server) licenses.
8. When using products within a shared Fundaments environment, the Client is obliged to purchase the necessary Microsoft licenses from Fundaments.
9. Fundaments is entitled to inspect the Client's equipment for the purpose of verifying compliance with the obligations under this article.
10. In addition to the previous paragraph, Microsoft is also entitled to perform the inspection in accordance with the provisions of Article 4 (Audit).

11. In the event of non-compliance by the Client with the obligations under the Agreement, the Client shall be directly liable to Microsoft.
12. Microsoft and other licensors (expressly not including Fundaments) of the Software shall in no event be liable for the incorrect operation of the Software and/or compliance with the obligations under the Agreement.
13. The Products originate from the United States (USA) and are subject to United States Export Regulations. The Client shall at all times comply with the U.S. Export Administration Regulations and other applicable restrictions imposed by the U.S. For more information, see: <http://www.microsoft.com/exporting/>.

Article 3.

Intellectual property rights

1. The Intellectual Property Rights in respect of the Products belong to Microsoft. Except in those cases in which this is permitted under a licence or by law, the Products may not be copied or used in any way whatsoever without the separate written permission of Microsoft.
2. The mere possession, access to and/or use of the Products shall in no event transfer to the Client any Intellectual Property Rights in respect of the Products.

Article 4.

Audit

1. At any point during the term of the Agreement, Fundaments is entitled to conduct an audit to establish whether the Client is complying with all its obligations.
2. Upon the request of Fundaments, the Client will grant Fundaments or a third party appointed by Fundaments access to the Client's administration and to all locations and other information relevant in determining whether the Client is complying with its obligations under the Agreement. In this context, Fundaments will not appoint a third party that can be qualified as a direct competitor of the Client. The Client will cooperate in audits, within reason.
3. If the Client and Fundaments have agreed on a shortcoming (misstatement) as found in the audit, the Client will immediately remedy this shortcoming or, if that is not possible, remedy the shortcoming within a term that is reasonable based on the urgency of the shortcoming discovered.

Article 5.

Miscellaneous provisions

1. Contrary to the provisions of the General Terms and Conditions of Fundaments, disputes relating to Article 2(11) (Use of the Products) will be submitted to the competent court under application of the U.S. Export Regulations and other applicable restrictions imposed by the USA.

Appendix 3: **Broadcom VMware license terms**

Version 1.0, date March 21, 2024

If Client purchases Broadcom products from Fundaments, the following terms apply in addition to the General Terms and Conditions.

Article 1.

Definitions

In addition to the definitions in the Fundaments General Terms and Conditions, the terms (written in capital letters) are equal to the following definitions:

1. **Products:** products developed by Broadcom, including but not limited to software, media, printed materials and electronic documentation.
2. **Software:** the Broadcom VMware software installed on a device, with which Client obtains the possibility to use the Software.

Article 2.

Use of the Products

1. Enterprise Support does not apply to Broadcom licenses: Fundaments will make every effort to provide support for the Products to Client. Client is not entitled to request support for the Products from Broadcom.
2. Client obtains the right to use information carriers, Products and associated licenses provided by Fundaments. Client will not use information carriers, Products and associated licenses obtained from Fundaments for purposes other than those intended in the Agreement.
3. With regard to the Products, Client is not permitted to:
 - a) remove, modify or make illegible any designations of Fundaments and/or its licensors (including Broadcom) as the rightful owner of the Products or parts thereof;
 - b) reverse engineer, decompile or disassemble the source code of the Software, except in cases where this is permitted by mandatory law;
 - c) to make changes to the Products, except in cases where this is permitted by mandatory law;
 - d) to copy the Products, without prior permission from Fundaments;
 - e) to sublet, transfer or otherwise make the Products available to third parties, except if such use is the purpose of and in accordance with the Agreement;
 - f) to use the Software for Applications with an Increased Risk.
4. Fundaments has the right to make the name and address details of the Client available to Broadcom if Broadcom has requested this. Fundaments is not obliged to inform the Client of such a release.
5. The Client shall inform each person who has or obtains access to the Software of Broadcom of the fact that this Software is provided for use by Broadcom and that this Software may only be used in accordance with this Agreement.
6. If the Software is installed locally, the Client shall, in the event of termination of this Agreement in any way whatsoever, return to Fundaments any information carriers, Products and the associated licenses obtained from Fundaments within ten (10) Business Days. In addition, the Client is obliged to irreversibly remove all copies of the Software from its equipment.
7. Fundaments has the right to perform an inspection on the equipment of Client for the purpose of checking compliance with the obligations under this article.

8. In addition to the previous paragraph, Broadcom also has the right to perform the inspection in accordance with the provisions of Article 4 (Audit).
9. In the event of non-compliance with the obligations under the Agreement by Client, Client is directly liable to Broadcom.
10. Broadcom and other licensors (which expressly does not include Fundaments) of the Software are in no event liable for the incorrect functioning of the Software and/or the compliance with the obligations under the Agreement.
11. The Products originate from the United States (U.S.) and are subject to U.S. Export Regulations. Client shall at all times comply with the U.S. Export Administration Regulations and other applicable restrictions imposed by the U.S.
12. The Broadcom VMware license terms and guidelines stated and agreed to by the Client through the Broadcom RPA (= Regional Partner Agreement) apply without restriction, as the registered Broadcom VMware partner.
13. If applicable, the Client will install and run the Broadcom vCloud Usage Meter, minimum required version 4.8., to generate monthly reporting of usage and end-user data to Broadcom, via Fundaments as VCSP (= VMware Cloud Service Provider).
14. The Broadcom VMware license service is billed monthly at the stated (commit) unit price. In case of excess usage, the Broadcom vCloud Usage Meter monitoring will be used at the agreed (uncommit) unit price.
15. If no written notice of termination is given before the end of the contract term, the Agreement will be tacitly extended each time for a period equal to the previous contract period.
16. For Agreements with a term of 12 months, a notice period of at least 1 month applies, for all other terms a notice period of at least 6 months applies. After 30-09-2026, a notice period of at least 6 months applies to all Agreements.
17. The rates for the service are based on the US Dollar rate and can therefore be adjusted per month to the applicable exchange rate.
18. In the event of early termination of the Broadcom License service, a buyout fee applies. This buyout fee is based on the remaining term of the agreed contract period.

Article 3.

Intellectual property rights

1. The Intellectual Property rights in the Products belong to Broadcom. The Products may not be copied or used in any way without separate written permission from Broadcom, except in cases where this is permitted by license or by law.
2. The mere possession, access to and/or use of the Products does not transfer any Intellectual Property rights in the Products to Client.

Article 4.

Audit

1. Fundaments has the right to conduct an investigation at any time during the term of the Agreement into the question of whether Client complies with all obligations incumbent on it.
2. At the request of Fundaments, Client will grant Fundaments or a third party appointed by Fundaments access to Client's administration and to all locations and other information that is important to determine whether Client complies with the obligations under the Agreement. In this context, Fundaments will not appoint a third party that can be qualified as a direct competitor of Client. Client will cooperate in all reasonableness with audit investigations.

3. If there is agreement between Client and Fundaments about a shortcoming (deviation) as found in the audit investigation, Client will immediately remedy this shortcoming or, where this is not possible, remedy the shortcoming within a period that is reasonable based on the urgency of the shortcoming found.

Article 5.

Other provisions

1. Notwithstanding the provisions of the Fundaments General Terms and Conditions, disputes relating to Article 2, paragraph 11 (Use of the Products) will be submitted to the competent court under the application of the U.S. Export Regulations and other applicable restrictions imposed by the U.S.

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