

# GENERAL TERMS AND CONDITIONS

## EMENDIS B.V.

Version 1.1  
Date 14 December 2018

|   |    |
|---|----|
| Table of contents                               |    |
| MODULE A - GENERAL                              | 1  |
| MODULE B - DEVELOPMENT OF WORKS                 | 10 |
| MODULE C - HOSTING AND DOMAIN NAME REGISTRATION | 14 |

### MODULE A - GENERAL

#### **ARTIKEL A.1.** DEFINITIONS

Capitalised terms used in the General Terms and Conditions have the following meanings.

- A.1.1. General Terms and Conditions: the provisions contained in the present document.
- A.1.2. Service(s): the service(s) to be performed by Emendis on behalf of the Client, including but not limited to:
  - a. Web design and software development: Service consisting of developing, configuring and/or adapting Works such as websites, applications, layouts, data files, software, documentation, advice, reports, analyses, designs.
  - b. Hosting services and domain name registration: Service consisting of storage and/or transmission of material provided by the Customer to third parties, such as in the case of web hosting, virtual servers and e-mail services or mediating the acquisition of a domain name.
  - c. Other services as described in Emendis' offer or quotation.
- A.1.3. Emendis: the company Emendis B.V., established in Veenendaal and registered with the Chamber of Commerce under file number 51400251.
- A.1.4. Effective Date: the date on which the Agreement enters into force and on which the provision of the Service commences.
- A.1.5. Intellectual Property Rights: all intellectual property and related rights, including but not limited to copyrights, database rights, domain names, trade name rights, trademark rights, design rights, neighbouring rights, patent rights, as well as rights to know-how.
- A.1.6. Office hours: hours on Working Days between 09:00 and 17:00.
- A.1.7. Client: the natural person or legal entity with whom Emendis has entered into an Agreement. It also means the person who is or is entering into negotiations with

Emendis about this, as well as his representative(s), authorised representative(s), assignee(s) and heirs.

- A.1.8. Agreement: any agreement between Emendis and Client pursuant to which Emendis provides Services to Client.
- A.1.9. SLA: the separately concluded Service Level Agreement between Emendis and Customer in which the agreements on the level, quality and manner of problem solving with respect to the Service are included.
- A.1.10. Website: the website of Emendis, accessible via the domain [www.emendis.nl](http://www.emendis.nl).
- A.1.11. Working days: Monday to Friday, excluding Dutch national holidays, with 5 May being a bank holiday once every five (5) years.
- A.1.12. Works: all works, such as websites and (web) applications, software, concepts, documentation, advice, reports and other products of the mind, as well as preparatory material thereof and files or data carriers (encrypted or otherwise) on which the Works are located.

#### **ARTIKEL A.2.** APPLICABILITY AND RANKING

- A.2.1. These General Conditions and Module A apply to any quotation or offer from Emendis in respect of Services and form an integral part of any Agreement.
- A.2.2. The specific modules apply if the Services requested or offered fall within the scope defined in the module. If a specific module applies, it shall prevail over Module A.
- A.2.3. The definitions set out in clause A.1 apply to all modules of these General Terms and Conditions, unless a meaning is assigned elsewhere in the Agreement and/or General Terms and Conditions.
- A.2.4. Provisions or conditions made by the Client which deviate from, or do not appear in, these General Conditions are only binding for Emendis if and insofar as they have been expressly accepted by Emendis in writing.
- A.2.5. In case of conflict between provisions in the Agreement, General Terms and Conditions or annexes thereto, the following order of precedence shall apply:
  - a. the Agreement;
  - b. the Service Level Agreement entered into, if any;
  - c. any annexes to the Agreement;
  - d. these General Terms and Conditions.

#### **ARTIKEL A.3.** OFFERS AND CONCLUSION OF AGREEMENT

- A.3.1. The Agreement is established by express written acceptance of the quotation or offer by the Client. The quotation must be signed and returned in writing by the Client.
- A.3.2. If the Client does not explicitly indicate its agreement with the quotation or the offer, but nevertheless agrees, or creates that impression, that Emendis performs activities that fall within the description of the Services, the quotation is considered to be accepted. This also applies when the Client requests Emendis to perform certain activities without waiting for a formal quotation.
- A.3.3. Quotes from Emendis are non-binding and valid for the period indicated in the quote. If no term is indicated, the offer is valid until thirty (30) days after the date on which the offer was made.
- A.3.4. If it appears that the data provided by the Client at the time of the application for the Agreement were incorrect and/or incomplete, Emendis is entitled to adjust the prices accordingly.

- A.3.5. The Agreement runs from the moment communication containing acceptance by Customer is received by Emendis and/or the Service is technically delivered to Customer ("the Effective Date"), unless another Effective Date has been agreed in writing.

**ARTIKEL A.4. PERFORMANCE OF THE CONTRACT**

- A.4.1. After the conclusion of the Agreement, Emendis will fulfil it to the best of its ability and under application of sufficient care and skill, in accordance with the offer.
- A.4.2. Delivery periods stated by Emendis are always indicative in nature and in no case serve as deadlines.
- A.4.3. If and insofar as the proper execution of the Agreement so requires, Emendis has the right to have certain activities performed by third parties. Any related unexpected additional costs will only be for the account of the Client if this has been agreed in writing in advance. These General Conditions also apply to the work performed by third parties within the framework of the Agreement.
- A.4.4. Emendis will make itself available to provide a reasonable level of customer support as defined in the SLA, during regular Business Days and Business Hours.
- A.4.5. All changes in the Agreement, either at the request of the Customer or as a result of the fact that, due to any circumstances, a different performance is necessary, shall be considered as additional work when additional costs are involved. These will be invoiced to Principal accordingly. Client shall under no circumstances claim reimbursement of costs as a result of less work.

**ARTIKEL A.5. OBLIGATIONS OF THE PRINCIPAL**

- A.5.1. The Client is obliged to do and refrain from doing everything that is reasonably necessary and desirable to enable a timely and correct execution of the Agreement. In particular, the Client shall ensure that all data which Emendis indicates to be necessary or which the Client should reasonably understand to be necessary for the performance of the Services are provided to Emendis in a timely manner. The period within which Emendis must perform the Agreement shall not commence until all requested and required data have been received by Emendis.
- A.5.2. If the Client knows or can suspect that Emendis will have to take certain (additional) measures to be able to meet its obligations, the Client will inform Emendis thereof without delay.
- A.5.3. If the Client requires any permit or other permission from government agencies or third parties for the specific use it gives or intends to give to the Services, the Client must take care of obtaining the same. Client warrants to Emendis that it holds all permits and/or consents necessary for Client's use of the Services.
- A.5.4. In addition to the previous paragraph, the Client must ensure correct compliance with the applicable Dutch laws and regulations. Emendis is in no case liable for correct compliance with the applicable Dutch laws and regulations.

**ARTIKEL A.6. CONSULTANCY AND PROJECT SUPPORT**

- A.6.1. Emendis will perform consultancy and project supervision to the best of its ability under application of sufficient care and skill.
- A.6.2. Consultancy and project supervision under the Agreement is at all times a best-efforts obligation, unless otherwise agreed in writing.

- A.6.3. Client is aware that following Emendis' advice is entirely at Client's risk. Emendis is only liable for damages suffered to the extent arising from the Agreement.
- A.6.4. Emendis will, as far as possible, announce the time and costs relating to the work to be performed in advance to the Client. The time required for the relevant work is thereby dependent on various factors, including the cooperation of the Client.

#### **ARTIKEL A.7. DETACHING**

- A.7.1. There is secondment if Emendis makes one or more employees available to the Client for several hours a week and these employee(s) are under the management of the Client.
- A.7.2. The Client shall only deploy the Seconded Person for the work as agreed by the parties. In the event of a change in work, the parties will consult again. All results of the work carried out are entirely at the Client's risk.
- A.7.3. The client shall always provide the seconded party with all information and intelligence relevant to the proper performance of the work in a timely manner.
- A.7.4. The Client shall ensure an adequate and safe workplace for Seconded Person in accordance with the applicable working conditions regulations and/or working conditions legislation.
- A.7.5. The Client is not allowed to place the seconded person with third parties for the purpose of performing work without prior permission from Emendis.
- A.7.6. Emendis will pay the wage taxes and all social insurance premiums of the seconded person to the appropriate authorities and indemnifies the Client against claims of third parties in this respect.
- A.7.7. Emendis is entitled, without being liable for compensation and/or reimbursement of costs, to replace the seconded person by another seconded person.
- A.7.8. In case of illness, Emendis and/or seconded party will cancel with the Client as early as possible. Emendis is not obliged to replace Seconded Person in case of illness. If Seconded Person is absent for more than thirty (30) days due to illness and no replacement Seconded Person is available, the Client and/or Emendis shall be entitled to terminate the Agreement in accordance with article A.14 (Duration and termination).
- A.7.9. Emendis will invoice the Client on a monthly basis for the hours worked by the seconded person. Travel time and travel and accommodation costs will be charged separately to the Client, unless otherwise agreed. If requested by the Client, Emendis will report the hours worked by the Seconded Person and send them to the Client within ten (10) Working Days.

#### **ARTIKEL A.8. INTELLECTUAL PROPERTY RIGHTS**

- A.8.1. All Intellectual Property Rights to all Works developed or made available by Emendis in the context of the Agreement shall belong exclusively to Emendis or its licensors, unless otherwise agreed in writing.
- A.8.2. The Intellectual Property Rights with respect to the open source software used by Emendis, lie with the developer of that software or another right holder. Under no circumstances can such rights be transferred to Client. Client is itself responsible for compliance with the open source software licences and indemnifies Emendis against claims of third parties regarding compliance with these licences.
- A.8.3. Customer shall only acquire the rights of use and powers explicitly granted in these General Terms and Conditions, the Agreement or otherwise in writing, and Customer

shall not otherwise reproduce or disclose these Works. The foregoing is an exception if unmistakably inadvertently the Customer has failed to explicitly grant such a right. Delivery of source code of Works, however, is at all times only mandatory if explicitly agreed in writing.

- A.8.4. Emendis is entitled not to grant or to withdraw the right of use as referred to in the previous paragraph if the Client has not fulfilled its obligations under the Agreement.
- A.8.5. Unless otherwise agreed in writing, the Client is not allowed to remove or change any indication concerning Intellectual Property Rights from these Works, including indications concerning the confidential nature and secrecy of the Works.
- A.8.6. Emendis is permitted to take technical measures to protect its Works. If Emendis has secured these Works by means of technical protection, the Client is not permitted to remove or evade this protection, except if and insofar as the law imperatively provides otherwise.

#### **ARTIKEL A.9. PRICES**

- A.9.1. Unless explicitly stated otherwise with an amount, all prices quoted by Emendis are exclusive of turnover tax and other levies imposed by the government.
- A.9.2. If a price is based on data provided by the Client and these data prove to be incorrect, Emendis shall be entitled to adjust the prices accordingly, even after the Agreement has already been concluded.
- A.9.3. If the Agreement is a continuing performance agreement, Emendis is entitled to increase the rates charged once a year in accordance with the percentage applicable for the past year on the basis of the CBS index for commercial services (dpi index).

#### **ARTIKEL A.10. PAYMENT TERMS**

- A.10.1. Emendis will invoice the amounts owed by the Client to the Client. In doing so, Emendis may issue electronic invoices to the e-mail address of the Client known to Emendis. Emendis has the right to periodically
- A.10.2. charge amounts due prior to the provision of the Services.
- A.10.3. The payment term of an invoice is thirty (30) days from invoice date, unless otherwise agreed in writing.
- A.10.4. If the Client has not paid in full after fourteen (14) days after the payment deadline, it is automatically in default without notice of default being required.
- A.10.5. In the event of late payment, in addition to the amount due and the interest accrued thereon, Client shall be liable for full compensation of extrajudicial and judicial costs, including full attorney's fees.
- A.10.6. Unless Client is a consumer, reliance by Client on suspension, set-off or deduction is not permitted.
- A.10.7. In case the Client fails to fulfil any obligation under the Agreement, Emendis is entitled, without any notice of default, to take back goods delivered in addition to suspension of Services, without prejudice to Emendis' right to compensation for damage, lost profit and interest.

#### **ARTIKEL A.11. OVERVIEW**

- A.11.1. Neither of the parties can be held to fulfil any obligation if a circumstance beyond the control of the parties, which could not or should not already have been foreseen when the Contract was concluded, nullifies any reasonable possibility of fulfilment.

- A.11.2. Force majeure includes (but is not limited to): failures of public infrastructure which is normally available to Emendis, and on which the provision of the Services depends, but over which Emendis cannot exercise any actual power or contractual performance obligation, such as networks in the Internet with which Emendis has not entered into a contract; failures in infrastructure and/or Services of Emendis caused by computer crime, for example (D)DOS attacks or successful or unsuccessful attempts to circumvent network security or system security; shortcomings of suppliers of Emendis, which Emendis could not foresee and for which Emendis cannot hold its supplier liable, for example because the supplier in question was (also) subject to force majeure; Defectiveness of goods, equipment, software or other source material the use of which was prescribed by the Client; Unavailability of personnel (due to illness or otherwise); government measures; general transport problems; strikes; wars; terrorist attacks and civil commotion.
- A.11.3. If a force majeure situation lasts longer than ninety (90) days, each of the parties has the right to dissolve the Agreement in writing. What has already been performed under the Agreement shall in that case be settled proportionally, without the parties owing each other anything else.

#### **ARTIKEL A.12. LIABILITY**

- A.12.1. The liability of Emendis for damage resulting from an attributable failure in the performance of the Agreement, or in tort or otherwise, is excluded.
- A.12.2. Insofar as exclusion of liability is not possible under the law, Emendis shall only be liable to the Client for direct damage resulting from
- A.12.3. an attributable failure in the performance of this Agreement. Direct damage is exclusively understood to mean all damage consisting of:
  - a. damage directly caused to tangible property ("property damage");
  - b. reasonable and demonstrable costs which the Client has had to incur to induce Emendis to (again) properly fulfil the Agreement;
  - c. reasonable costs to determine the cause and extent of the damage insofar as relating to direct damage as referred to here;
  - d. reasonable and demonstrable costs incurred by the Customer to prevent or limit the direct damage as referred to in this article.
- A.12.4. Emendis shall in no case be liable for compensation of indirect damage or consequential damage or damage due to loss of turnover or profit, damage to image, damage due to delay, damage due to loss of data, damage due to exceeding deadlines as a result of changed circumstances, damage as a result of the provision of inadequate cooperation, information or materials by the Client and damage due to information or advice given by Emendis, the content of which does not explicitly form part of the Agreement.
- A.12.5. The maximum amount that will be paid in case of liability pursuant to paragraph 2 of this article is limited per event or a series of related events to the amount that the insurance of Emendis will pay out. If the insurance does not pay out, the liability will be limited to the payments owed by the Client under this Agreement in the past twelve (12) months (excluding VAT). In no case, however, will the total compensation for direct damage exceed EUR 15,000 (excluding VAT).



- A.12.6. The limitation of liability as referred to in the previous paragraphs of this article shall lapse if and insofar as the damage is the result of deliberate intent or gross negligence of Emendis' management.
- A.12.7. The liability of Emendis on account of attributable shortcoming in the fulfilment of the Agreement only arises if the Client gives Emendis immediate and proper notice of default in writing, setting a reasonable term to remedy the shortcoming, and Emendis continues to fail imputably in the fulfilment of its obligations even after that term. The notice of default must contain as detailed a description as possible of the shortcoming, so that Emendis is able to respond adequately.
- A.12.8. The application of Article 6:271 et seq. of the Civil Code is excluded.
- A.12.9. The Client indemnifies Emendis against all claims of third parties (including clients of the Client), in respect of compensation for damage, costs or interest, related to this Agreement and/or the Service.

#### **ARTIKEL A.13. WITHDRAWAL**

- A.13.1. Parties will keep confidential any information they provide to each other before, during or after the performance of the Agreement if this information is marked as confidential or if the receiving party knows or should reasonably suspect that the information was intended to be confidential. The parties shall also impose this obligation on their employees as well as third parties engaged by them for the performance of the Agreement.
- A.13.2. Emendis will not take cognisance of data which the Client stores and/or distributes via Emendis' systems, unless this is necessary for a proper execution of the Agreement or Emendis is obliged to do so pursuant to a statutory provision or court order. In that case Emendis will make every effort to limit the perusal of the data as much as possible, insofar as this is within its power.
- A.13.3. The obligation of confidentiality remains even after termination of the Agreement for whatever reason, and for as long as the providing party can reasonably claim the confidentiality of the information.

#### **ARTIKEL A.14. DURATION AND TERMINATION**

- A.14.1. The Agreement is entered into for the term stated in the offer. If no term is stated, the Agreement is entered into for the duration of twelve (12) months or for the duration necessary for the provision of the Service. The Agreement can only be terminated prematurely as stipulated in these General Terms and Conditions, or with the consent of both parties. However, if the Agreement concerns an assignment agreement, it cannot be terminated by the Customer in the interim.
- A.14.2. If the Agreement is a continuing performance agreement, in the absence of a written notice of termination in due time before the end of the aforementioned period, it will be tacitly renewed by the same period of time, unless otherwise agreed in writing.
- A.14.3. Client will observe a notice period of two (2) months. Emendis will observe a notice period of three (3) months.
- A.14.4. Emendis may immediately suspend or terminate the Agreement in writing if at least one of the following special grounds applies:
  - a. Client is in default in respect of a material obligation;
  - b. the Client's bankruptcy has been filed;

- c. Client has filed for suspension of payments;
  - d. the Client's business is terminated or liquidated.
- A.14.5. If Emendis suspends fulfilment of its obligations, it retains its claims under the law and the Agreement, including the claim to payment for the Services that have been suspended.
- A.14.6. If the Agreement is terminated or dissolved, the claims of Emendis against the Client shall be immediately due and payable. In the event of dissolution of the Agreement, amounts already invoiced for services rendered will remain due, without any obligation to undo. In the event of dissolution by the Client, the Client may only dissolve that part of the Agreement which has not yet been performed by Emendis. If the dissolution is imputable to the Client, Emendis is entitled to compensation of the damage caused directly and indirectly as a result.
- A.14.7. The right to suspend in the above cases applies to all Agreements concluded with the Client simultaneously, even if the Client is only in default with regard to one Agreement, and without prejudice to Emendis' right to compensation for damage, lost profit and interest.

#### **ARTIKEL A.15. CHANGE CONDITIONS**

- A.15.1. Emendis reserves the right to modify or supplement the Services and these General Conditions. Amendments shall also apply in respect of Agreements already concluded subject to a period of thirty (30) days after publication of the amendment.
- A.15.2. Changes will be announced on the Website, or by e-mail to the Client, or any other channel that Emendis can prove has reached the Client. Non-substantive changes of minor importance may be made at any time and do not require notice.
- A.15.3. If the Client does not wish to accept a change, the Client must inform Emendis in writing within fourteen (14) days after publication, giving reasons. Emendis may then reconsider the change. If Emendis does not subsequently withdraw the change, the Client may, until the date on which the new conditions enter into force, terminate the agreement by this date.

#### **ARTIKEL A.16. OTHER PROVISIONS**

- A.16.1. The Agreement is governed by Dutch law.
- A.16.2. Insofar as not otherwise prescribed by the rules of mandatory law, all disputes that may arise as a result of the Agreement will be submitted to the competent Dutch court for the district in which Emendis has its registered office.
- A.16.3. In these General Terms and Conditions, "in writing" includes communication by e-mail provided that the identity of the sender and integrity of the content are sufficiently established.
- A.16.4. If any provision of the Agreement turns out to be null and void, this shall not affect the validity of the Agreement as a whole. In that case, the parties will determine (a) new provision(s) to replace it, which will give shape to the intention of the original Agreement and General Terms and Conditions as much as legally possible.
- A.16.5. Information and notices, including price indications, on the Website are subject to programming and typing errors. In case of any inconsistency between the Website and the Agreement, the Agreement shall prevail.
- A.16.6. The log files and other records, electronic or otherwise, of Emendis constitute full proof of statements made by Emendis and the version of any (electronic)



communication received or stored by Emendis shall be deemed authentic, subject to proof to the contrary to be furnished by the Client.

- A.16.7. The parties shall always promptly notify each other in writing of any changes in name, postal address, e-mail address, telephone number and, if requested, bank or giro account number.
- A.16.8. Each party shall only be entitled to transfer its rights and obligations under the Agreement to a third party with the prior written consent of the other party. However, such consent is not required in the case of business acquisition or acquisition of the majority of the shares of the relevant party.

## MODULE B - DEVELOPMENT OF WORKS

If the Service (also) extends to the development, configuration and/or adaptation of Works such as websites, applications, lay-out, data files, software, documentation, advice, reports, analyses, designs, the provisions of this module also apply.

### **ARTIKEL B.1.** DEVELOPMENT OF WORKS

- B.1.1. Prior to development, the parties jointly consult which specifications underlie the Works to be developed. Emendis uses the following development methods:
  - a. Development by the hour: the specifications of the Works to be developed will be determined in advance by the Client. Emendis' work will be carried out under the supervision of the Client. Emendis will charge the realised hours to the Client;
  - b. Agile/SCRUM: the specifications of the Works to be developed will be continuously adapted during the development process. The Work will be performed in time blocks (sprints). Emendis will charge Customer in advance for the time blocks (sprints). Emendis does not guarantee that the Works will be delivered according to certain specifications and within a certain term and/or within certain time blocks (sprints);
  - c. Fixed fee: the specifications of the Works to be developed are jointly and in advance determined by the parties. The Works will be performed by Emendis on the basis of a fixed price. Emendis guarantees that the Works will be delivered in accordance with the specifications, provided this is not unreasonable.

If applicable, the development method used by Emendis will be included in Emendis' quotation.

- B.1.2. If a Service extends to the development, configuration and/or adaptation of Works, Emendis is entitled, unless otherwise agreed, to use images, software and components of third parties in the development, configuration or adaptation of Works.
- B.1.3. Emendis is permitted to make use of open source software whose rights are held by third parties. This means among other things that Emendis may supply open source software to Client and may incorporate open source software in Works that Emendis creates or adapts in the context of a Service. If the licence of certain open source software entails that Client can only distribute (parts of) the Works as open source, Emendis will adequately inform Client of all applicable licence conditions.

- B.1.4. After delivery, the responsibility for correct compliance with the relevant third-party licences when using the developed Works lies with Client.
- B.1.5. Emendis is permitted to include a name statement in the Works. If the Client objects to this, Emendis will remove this name mention free of charge.
- B.1.6. Emendis is not obliged to provide a manual as standard with the delivered Works. If the Client requests a manual, Emendis is entitled to charge additional costs. To the extent possible, Emendis will inform the Client of these costs in advance.

#### **ARTIKEL B.2. TESTS AND TEST ENVIRONMENT**

- B.2.1. Prior to delivery, Customer will be enabled to test the Works in an acceptance environment. Emendis will provide Customer with access to this test environment by means of sending a location (URL) and, if necessary, login details.
- B.2.2. Access to this test environment is strictly bound to Client. Client is not allowed to give third parties access to this test environment by forwarding the location (URL) and/or login details to these third parties.
- B.2.3. Client is aware that the test version is not suitable for production purposes in any form. It is therefore not permitted to use the test environment for these purposes.
- B.2.4. Emendis is not obliged to move the Data stored in the test environment to a production environment, unless otherwise agreed in writing.
- B.2.5. Emendis shall under no circumstances be liable for loss and/or disclosure of the Data stored in the test environment.
- B.2.6. Client is aware that the Work may send communications (e.g. e-mail) to specified addresses. Emendis is not liable for these sent communications.
- B.2.7. Emendis gives no guarantees regarding the availability, completeness and correct operation of the test environment. Also, no guarantees can be derived from an already concluded SLA regarding the test environment.

#### **ARTIKEL B.3. DELIVERY AND ACCEPTANCE**

- B.3.1. Emendis will deliver the Works or parts thereof to be developed or adapted when, in its professional opinion, they meet the specifications or are suitable for use. Emendis is entitled to postpone the delivery of the Works until such time as the Client has fulfilled all its obligations under the Agreement.
- B.3.2. Delivery shall take place by means of provision in a test environment as referred to in Article 8 (Testing and test environment).
- B.3.3. Client must then evaluate and approve or reject the work delivered within fourteen (14) days of delivery. Acceptance of the work delivered is deemed to have taken place if:
  - a. Client has accepted the delivery by written agreement;
  - b. Client uses the completed Work for production purposes, including but not limited to transferring the Works to a production environment;
  - c. Client does not reject the delivered work within a period of ten (10) Working Days, has not requested a revision round or has not objected to delivery.
- B.3.4. If a Work is delivered in phases, the Customer must give its approval or disapproval of the part of the Work of that phase after completion of each phase in the manner stipulated in the previous paragraph. The Client may not base an approval or disapproval in a later phase on aspects approved in an earlier phase.

- B.3.5. If the Client fully or partially rejects the delivered result, Emendis will make every effort to remove the reason for rejection as soon as possible. Emendis can do this by revising the result or by rejecting the reason motivated. Client then has a period of ten (10) Working Days to approve or reject the revision or motivation.
- B.3.6. If, after the first revision or motivation, the Client has rejected all or part of the delivered work, a reasonable number of revision rounds will follow at Emendis' discretion.
- B.3.7. If parties agree that further revisions are not or no longer useful, both parties will consult about the further handling. In any case, the Client will be obliged to pay for the hours actually incurred by Emendis, up to a maximum of the quoted amount. However, this does not entitle the Client to use the Works in any way, unless otherwise agreed in writing.
- B.3.8. After acceptance of the Delivered Works, any liability for defects in the Delivered Works shall lapse unless Emendis knew or should have known of the defect at the time of acceptance. In any case, any liability for defects in a Work lapses after the lapse of twelve (12) months after acceptance of the Works delivered.
- B.3.9. Desired changes to Works must be supplied by the Client item by item and in writing. Emendis will then assess whether this work falls within the Agreement, or will be quoted separately as being additional work.

#### **ARTIKEL B.4. MOREWORK**

- B.4.1. Changes as a result of new or changed insights that have arisen during the development process shall be considered as additional work. This is entirely at the discretion of Emendis.
- B.4.2. Emendis will indicate clearly and in advance which work is to be regarded as additional work. In addition, Emendis will specify the costs involved in the additional work.

#### **ARTIKEL B.5. SERVICING**

- B.5.1. Maintenance means the operation of existing Works in accordance with the offer or further agreement, and more generally the repair of technical errors. Maintenance expressly does not mean the repair of errors resulting from incorrect use of the Works, hacks and/or other external influences (e.g. browser and other software updates).
- B.5.2. Emendis will endeavour to carry out the maintenance to the best of its ability, but in doing so it is often dependent on its supplier(s) and third parties for updates, error repair software ('patches') or spare parts. Emendis is entitled not to install certain updates or patches if, in its opinion, this does not benefit the correct operation of the Works or is not in the interests of the Customer.
- B.5.3. As part of the maintenance, Emendis will endeavour to repair errors in the Works and associated software. However, Emendis is dependent in this respect on supplier(s) and third parties. In case of new functionality or changes that may substantially alter the functioning of the Works, Emendis will consult with the Client in advance.
- B.5.4. Emendis will endeavour to add to the Works any improvements requested by the Customer as referred to in this article. Emendis is always entitled to refuse a request if, in its opinion, it is not feasible or may impede proper functioning or availability of the Works.
- B.5.5. If, in the opinion of Emendis, a requested change may negatively affect the functioning or safety of the Works, Emendis will notify the Client in writing. If the Client

nevertheless insists on the change and Emendis implements it, this shall be done at the Client's own risk and without any liability for Emendis.

- B.5.6. If the Client independently wishes to implement a change to results delivered by Emendis, this shall take place entirely at the Client's own risk and responsibility, unless the Client has reported the desired change to Emendis in advance and Emendis has approved it in writing. Emendis may attach conditions to this approval.
- B.5.7. Remote support is provided by phone, e-mail and other channels to be mutually agreed.
- B.5.8. Emendis will, at the request of the Client, propose software that allows computers to be supported to be accessed remotely. It is the responsibility of the Client to ensure that its network and security environment allows this software to operate.
- B.5.9. If it turns out that remote support does not lead to a satisfactory solution or is not feasible given the nature of the problem, Emendis will consult with Client for the search of an on-site solution.

## MODULE C - HOSTING AND DOMAIN NAME REGISTRATION

If the Service (also) serves to store and/or forward material provided by the Customer to third parties, such as in the case of web hosting, virtual servers and e-mail services or mediating in the acquisition of a domain name, the provisions in this module also apply.

### **ARTIKEL C.1.** EXECUTION OF SERVICE

- C.1.1. Emendis will set up a space for the purpose of the Service as soon as possible after commencement of the Agreement. If such is agreed, the login details for access to this space will be sent by Emendis to the Client.
- C.1.2. Emendis will make every effort to realise good quality and uninterrupted availability of the Service and associated systems and networks, and to realise access to data stored by the Client with these. However, Emendis offers no guarantees about quality or availability, unless otherwise agreed in the offer by means of a Service Level Agreement (SLA) designated as such.
- C.1.3. The Client hereby grants Emendis an unrestricted licence to distribute, store, transmit or copy all materials distributed by the Client through Emendis' systems in any manner deemed appropriate by Emendis, but only to the extent reasonably necessary for the purposes of Emendis' performance of the Agreement.
- C.1.4. All changes relating to the Service, whether at the request of the Customer or as a result of the fact that a different performance is required due to any circumstances whatsoever, will be considered as additional work if this involves extra costs and insofar as there are fewer costs as less work. These will be invoiced to the Customer accordingly.
- C.1.5. The Customer is not allowed to resell (resell) the Service to third parties, unless otherwise agreed in writing.
- C.1.6. Emendis will not take cognisance of data which the Client stores and/or distributes via Emendis' systems, unless this is necessary for a proper execution of the Agreement or Emendis is obliged to do so pursuant to a statutory provision or court order. In that case Emendis will make every effort to limit the perusal of the data as much as possible, insofar as this is within its power.

### **ARTIKEL C.2.** CONDUCT RULES

- C.2.1. By using the Service, the Customer is prohibited from violating Dutch or other laws or regulations applicable to the Customer or Emendis or from infringing the rights of others.
- C.2.2. It is prohibited (whether lawful or not) by Emendis from offering or distributing, using the Service, any Materials that:
  - a. are unmistakably primarily intended to assist others in violating the rights of third parties, such as websites with (exclusively or primarily) hacking tools or computer crime explanations apparently intended to enable the reader to commit the described criminal behaviour (or have it committed) and not to be able to defend themselves against it;

- b. are unequivocally defamatory, libelous, insulting, racist, discriminatory or hateful;
  - c. contain child pornography or bestiality pornography or are apparently aimed at helping others find such materials;
  - d. constitute a violation of the privacy of third parties, including at least but not limited to the dissemination of third parties' personal data without consent or necessity or repeatedly harassing third parties with communications unwanted by them;
  - e. contain hyperlinks, torrents or references to (sources of) material that clearly infringe copyright, related rights or portrait rights;
  - f. contains unsolicited commercial, charitable or idealistic communications; or
  - g. contains malicious content such as viruses or spyware.
- C.2.3. Client shall refrain from hindering other customers or internet users or causing damage to systems or networks of Emendis or other customers. The Client is prohibited from starting up processes or programmes, whether or not via Emendis' systems, of which the Client knows or can reasonably suspect that this will hinder or damage Emendis, its customers or internet users.
- C.2.4. If, in the opinion of Emendis, a nuisance, damage or other danger arises for the functioning of the computer systems or the network of Emendis or third parties and/or of the service provision via the Internet, in particular due to excessive sending of e-mail or other data, (distributed) denial-of-service attacks, poorly secured systems or activities of viruses, Trojans and similar software, Emendis is entitled to take all measures which it reasonably considers necessary to avert or prevent this danger. Emendis may recover the costs reasonably necessary associated with these measures from the Client.
- C.2.5. If the measures referred to in Article C.2.4 consist of (temporarily) suspending the Service as a result of which it is unavailable, Emendis is entitled to charge an amount of EUR 60.00 excluding VAT for reinstatement of the Service.

**ARTIKEL C.3.** NOTICE & TAKEDOWN (COMPLAINTS PROCEDURE)

- C.3.1. When Emendis receives a complaint about violation of the previous article by Client, or itself observes that this appears to be the case, Emendis will notify Client of the complaint or violation as soon as possible. The Client will respond as soon as possible, after which Emendis will decide how to proceed.
- C.3.2. If Emendis is of the opinion that there is a violation, it will block access to the material concerned, however without permanently removing this material (unless this turns out to be technically impossible, in which case Emendis will make a backup). Emendis will endeavour not to touch any other materials in the process. Emendis will inform the Client of any measures taken as soon as possible.
- C.3.3. Emendis is at all times entitled to report any criminal offences observed. Furthermore, Emendis is entitled to hand over name, address and other identifying data of the Client to a third party who complains that the Client infringes its rights or these General Terms and Conditions, provided that the accuracy of such complaint is sufficiently plausible in all reasonableness and the third party has a clear interest in handing over the data.



- C.3.4. Although Emendis shall endeavour to act as reasonably, carefully and adequately as possible following complaints about the Client, Emendis shall never be obliged to pay compensation for damage as a result of actions as referred to in this article.
- C.3.5. In case of repeated complaints about the Client or the information stored by the Client, Emendis is entitled to terminate the Agreement.

**ARTIKEL C.4. STORAGE AND DATA LIMITS**

- C.4.1. Emendis may impose a maximum on the amount of storage space the Customer may use per month under the Service.
- C.4.2. Unused storage space, bandwidth and/or data traffic is not transferable to a subsequent month, unless otherwise agreed in writing.
- C.4.3. Should the Client exceed the applicable limits, Emendis may, after sending at least one warning message to the Client concerning the excess, charge an additional amount per data unit (e.g. MB or GB) in the amount of the excess, according to the amounts applicable for this in the Price List.
- C.4.4. The log files and the administration of Emendis are binding proof of the actual consumption by the Client and are therefore decisive, subject to proof to the contrary by the Client.
- C.4.5. No liability exists for consequences of inability to send, receive, store or modify data if an agreed limit for storage space or data traffic is exceeded.
- C.4.6. When an excessive amount of data traffic is caused by an external cause (such as in the case of a (distributed) denial-of-service attack), Emendis is entitled to reasonably pass on the costs to the Client.

**ARTIKEL C.5. SOFTWARE**

- C.5.1. Emendis will make every effort to keep the software it uses up-to-date. However, Emendis is in this respect dependent on its suppliers, and Emendis is entitled not to install certain updates or patches if, in its opinion, this does not benefit a correct delivery of the Service.
- C.5.2. Emendis guarantees that changes in the configuration or software on its hosting infrastructure (e.g. updates) will not have a detrimental effect on the operation of the web applications hosted on it. This insofar as these web applications have been developed by Emendis and have been hosted on the Emendis infrastructure without interruption since delivery.
- C.5.3. In offering this guarantee, Emendis applies the status of the software as indicated by the relevant supplier. If software has been given "end of life" status, accelerated phasing out, no longer being maintained and/or no longer receiving updates for security problems, Emendis will also phase out this software in view of the security of its infrastructure. The guarantee mentioned in the previous paragraph will then lapse.
- C.5.4. In this case, Emendis is not obliged to assist the Customer free of charge in making required changes to the web application, or transferring the web application to a third party's hosting infrastructure.

**ARTIKEL C.6. DOMAIN REGISTRATION**

- C.6.1. Application, assignment and possible use of a domain name depend on and are subject to the applicable rules and procedures of the relevant registering authorities, such as the Stichting Internet Domeinregistratie Nederland (SIDN) in

the case of .nl domain names. The relevant authority decides on the allocation of a domain name. Emendis only plays a mediating role in the application and gives no guarantee that an application will be honoured.

- C.6.2. Client can only learn the fact of registration from Emendis' confirmation, which states that the requested domain name has been registered. An invoice for registration costs is not confirmation of registration.
- C.6.3. The Client indemnifies and holds Emendis harmless for all damages related to (the use of) a domain name on behalf of or by the Client.
- C.6.4. Emendis 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 is applied for and/or obtained by a third party in the interim, except in the case of intent or deliberate recklessness on the part of the Client.
- C.6.5. Client must conform to the rules set by registering authorities for application, assignment or use of a domain name. Emendis will refer to these rules during the registration procedure.
- C.6.6. The rules referred to in the previous paragraph will be made available to the Client by Emendis in good time and prior to registration.
- C.6.7. In the event that Emendis registers a domain name in its name on behalf of the Client, Emendis will cooperate with requests from the Client to transfer, transfer or terminate this domain name. Any resulting costs, including but not limited to "trade" costs, shall be borne by the Client.
- C.6.8. Emendis has the right to make the domain name inaccessible or unusable, or to place it (or have it placed) in its own name if the Client is demonstrably in default in the fulfilment of the Agreement, but only for the duration that the Client is in default and only after expiry of a reasonable period for fulfilment set in a written notice of default.
- C.6.9. In case of dissolution of the Agreement for breach of contract by the Client, Emendis is entitled to terminate a domain name of the Client subject to a notice period of two (2) months.

#### **ARTIKEL C.7. FAULTS**

- C.7.1. Emendis is entitled to put its systems, including the Service, or parts thereof out of operation temporarily for the purpose of maintenance, adaptation or improvement thereof. Emendis will endeavour to have such taking out of service take place as much as possible outside Working Hours and will make every effort to inform the Customer in good time of the planned taking out of service. However, Emendis shall never be liable for compensation for damage in connection with such taking out of service.
- C.7.2. Emendis has the right to modify its systems, including the Service, or parts thereof from time to time to improve functionality and to correct errors. If an adaptation leads to a significant change in functionality, Emendis will make every effort to inform Client thereof. In case of adjustments relevant to several Clients, it is not possible to waive a particular adjustment only for Client. Emendis is not obliged to pay any compensation for damage caused by such an adaptation.
- C.7.3. Emendis shall make every effort to inform the Customer of the nature and expected duration of the interruption in the event of unavailability of the Service, due to breakdowns, maintenance or other causes.

**ARTIKEL C.8.** PROCEDURE AFTER TERMINATION

- C.8.1. After termination of the Agreement, as a result of cancellation or dissolution, all data stored for Client will be kept available for one week after termination, so that Client can download the data himself. After this period, all Customer's data will be deleted, regardless of whether Customer has downloaded it or not.
- C.8.2. Deletion of data stored for Client is done by default without special precautions to make the deletion irreversible, but can be done with the help of a software-based data shredder upon request for an additional fee.