

# General Terms and Conditions of QONQORD

## Part 1 - General Provisions

### 1. Definitions

The capitalised terms used in these General Terms and Conditions are defined as follows:

- 1.1. **Acceptance:** the determination by the Client that the Products and/or Services delivered comply with the Specifications or Documentation.
- 1.2. **Acceptance Test:** the test or tests that demonstrate that the Products and/or Services have been delivered in accordance with the Specifications or Documentation.
- 1.3. **General Terms and Conditions:** these General Terms and Conditions of QONQORD.
- 1.4. **Equipment:** the hardware to be delivered or made available by QONQORD, as further specified in the Agreement or in an Annex.
- 1.5. **Annex(es):** appendix/appendices to the Agreement that form part of the Agreement.
- 1.6. **Data:** all data (including text, photo, video, and sound files, illustrations and other information) that the Client stores, distributes or otherwise processes using the Products and/or Services or makes available to QONQORD for the delivery of the Products and /or Services.
- 1.7. **Services:** the work to be performed by QONQORD as set out in the Agreement.
- 1.8. **Documentation:** the descriptions pertaining to the Products and/or Services of the functionalities and/or potential uses of the Products and/or Services delivered or made available by QONQORD.
- 1.9. **Defect:** the demonstrable and reproducible non-compliance of a Product or Service with the Specifications or Documentation of that Product or Service.
- 1.10. **User:** a person who uses the applications that are made available to them as a result of the Products and/or Services delivered or made available to the Client by QONQORD.
- 1.11. **Hosting:** providing a Hosting Environment with which the Client can store, edit, distribute and further process Data.
- 1.12. **Hosting Environment:** the servers (including associated and additional facilities) as specified in more detail in the Agreement or in an Annex and are accessible via the internet or another network.
- 1.13. **New Version:** a modified version of the Software enhancing its functionality.
- 1.14. **QONQORD:** QONQORD or the relevant subsidiary or group company that delivers the Products and/or Services or makes them available to the Client.
- 1.15. **Agreement:** the written document (in the form of a quotation, offer or separate agreement) from QONQORD with a description of the Products and/or Services to be delivered or made available by QONQORD and to which these General Terms and Conditions apply.
- 1.16. **Client:** the natural person with whom or entity with which QONQORD has concluded an Agreement.
- 1.17. **Party:** a Party to the Agreement.
- 1.18. **Products:** the items (including Equipment) and/or Software to be delivered or made available by QONQORD, as specified in more detail in the Agreement or in an Annex.

- 1.19. **Regulations:** the regulations that apply to the use of the Products and/or Services and are stated in the Agreement.
- 1.20. **SLA:** the Service Level Agreement included as an Annex to the Agreement.
- 1.21. **Software:** the computer software developed by QONQORD and/or its suppliers, in computer-readable form (object code), as specified in more detail in the Agreement or in an Annex.
- 1.22. **Specifications:** the agreed (functional and technical) requirements with regard to the Products and/or Services as specified in more detail in the Agreement or in an Annex.
- 1.23. **Confidential Information:** has the meaning as defined in Article 11.2.
- 1.24. **Improved Version:** a modified version of the Software that corrects defects in the Software or improves logical coherence.

## **2. Applicability / priority in case of conflict**

- 2.1. These General Terms and Conditions apply to all Agreements and assignments performed by QONQORD as well as to all (legal) acts between QONQORD and the Client. Deviations from or additions to these General Terms and Conditions are only valid if agreed in writing between the Parties. Unless expressly otherwise agreed, the applicability of general purchase and/or payment conditions of the Client or other general or special conditions is expressly excluded.
- 2.2. By entering into the Agreement or by the actual use of the Products and/or Services by the Client, the Client agrees to the contents of these General Terms and Conditions.
- 2.3. In the event of contrariety between the content of an Agreement and these General Terms and Conditions, these General Terms and Conditions take precedence, unless the Agreement expressly deviates from these General Terms and Conditions. In the event of contrariety between the provisions in this part 1 of the General Provisions and a part with specific provisions, the relevant specific provisions take precedence.
- 2.4. The Regulations apply alongside and in addition to the General Terms and Conditions to the use by the Client of the Products and/or Services as stated in the Agreement. In the event of contrariety between the provisions in the Regulations and these General Terms and Conditions, the General Terms and Conditions take precedence, unless the Regulations expressly deviate from these General Terms and Conditions.
- 2.5. These General Terms and Conditions have also been stipulated for those (legal) persons and third parties that are engaged by QONQORD for the delivery of the Products and/or Services.
- 2.6. With regard to the Products and/or Services delivered by QONQORD that QONQORD purchases from third parties and resells, only the conditions of the relevant supplier of QONQORD as stated in the Agreement apply.
- 2.7. If the present terms and conditions are drawn up in a language other than Dutch and there is a conflict between that translation and the Dutch text relating to any part, the Dutch text of the said part will take precedence.

## **3. Offer, formation and amendment of the Agreement**

- 3.1. All quotations and offers are valid for fourteen (14) days, unless stated otherwise in the quotation or offer. In the event of a change to a quotation or offer, the previously issued quotation or offer will lapse.
- 3.2. All quotations and offers are drawn up to the best of QONQORD'S knowledge and ability on the basis of information provided by the Client. The Client guarantees the correctness and completeness of that information.
- 3.3. An Agreement is formed by the written acceptance of the quotation or offer by the Client, or by the actual commencement of the delivery of the Products or Services by QONQORD at the Client's request.

- 3.4. Deviations from the Agreement are only valid if agreed in writing between the Parties. QONQORD cannot be held to a quotation or offer if the Client should reasonably understand that that quotation or offer contains an obvious mistake or error.

#### **4. Delivery**

- 4.1. Delivery terms stated by QONQORD are determined in good faith on the basis of the information known to QONQORD at the time of entering into the Agreement and will be observed as much as possible.
- 4.2. Agreed delivery terms only take effect if and in so far as the Client has made all necessary data, information, materials, facilities and other supplies available to QONQORD and any payments that are due at the start of the work have been received by QONQORD.
- 4.3. Changes to the Specifications requested by the Client must be recorded in writing and may lead to a change in the delivery terms and/or a change in the agreed fees.
- 4.4. The mere exceeding of a delivery term does not put QONQORD in default and does not give the Client the right to dissolve the Agreement. If a delivery term is exceeded, QONQORD will only be in default after written notice of default stating a further and reasonable term.
- 4.5. QONQORD will inform the Client if any term threatens to be exceeded. The parties will then enter into consultation as soon as possible in order to determine a new delivery term.

#### **5. Transport / risk**

- 5.1. The risk of loss of or damage to the Products to be delivered by QONQORD passes to the Client as soon as the Products have left the location of QONQORD or its suppliers.
- 5.2. Transport of the Products is at all times at the Client's expense. The method of shipment and packaging of the Products is determined by QONQORD, unless expressly otherwise agreed in writing.

#### **6. Client's cooperation**

- 6.1. The Client will always provide QONQORD in a timely manner with all data, information, materials, (technical) facilities and other supplies necessary for the proper performance of the Agreement and provide the necessary cooperation.
- 6.2. The Client guarantees QONQORD that it is entitled to freely use the data, information, materials, facilities and other supplies made available to QONQORD and indemnifies QONQORD against all claims in this regard.
- 6.3. If the materials required for performance of the Agreement have not been made available to QONQORD, or have not been made available on time or in accordance with the agreements, or if the Client fails to fulfil its obligations in any other way, QONQORD is entitled to suspend execution of the Agreement and to charge any costs incurred as a result in accordance with its usual rates.
- 6.4. If employees of QONQORD and/or third parties in the company of the Client or at another location designated by the Client are required to perform work for performance of an Agreement, the Client will provide the facilities reasonably required by those employees free of charge, including but not limited to a workspace with telecommunications facilities.
- 6.5. The Contractor is not liable for damage sustained by employees of the Client and/or third parties in connection with the performance of the above activities as a result of acts or omissions of the Client and/or unsafe situations in its company or at the location designated by it and will indemnify QONQORD against claims in this regard.
- 6.6. The Client is liable for damage and/or the total or partial loss of items belonging to QONQORD that QONQORD has made available to the Client for the performance of an Agreement.

## **7. Acceptance**

- 7.1. If an Acceptance Test has been stipulated in the Agreement, the Client will, after delivery of the Products and/or completion of the Services, have the opportunity to test the Products and/or Services by performing an Acceptance Test. The Acceptance Test must be completed within ten (10) working days of delivery of the Products and/or completion of the Services, unless provided otherwise in the Agreement.
- 7.2. Immediately after the Acceptance Test, a test report will be drawn up and signed by the Parties, stating whether or not the Products and/or Services have been accepted by the Client. In case of Acceptance, the date stated in the test report will be considered the date of Acceptance. If Defects are found by the Client during an Acceptance Test, QONQORD will endeavour to repair the Defects stated in the test report to the best of its ability.
- 7.3. After repair of Defects as referred to in Article 7.2, the Client has the option of performing an Acceptance Test, in which case Articles 7.1 and 7.2 apply accordingly. Such a subsequent Acceptance Test only relates to the Defects identified during the previous Acceptance Test(s).
- 7.4. The Client is obliged to notify QONQORD as soon as possible in writing of the Defects found during an Acceptance Test.
- 7.5. Defects that by their nature and/or number do not prevent the operational commissioning of the Products and/or Services will not be a reason for withholding Acceptance, without prejudice to QONQORD's obligation to endeavour to repair such Defects.
- 7.6. The Products and/or Services are deemed to have been accepted by the Client if the Acceptance Test is not started and completed within the term referred to in Article 7.1, or if the Software is put into operational use by the Client.

## **8. Complaints**

- 8.1. Complaints must be submitted in writing to QONQORD no later than ten (10) working days after the Products or Services are delivered or made available, at the risk of forfeiting this right of the Client.
- 8.2. If a complaint is declared well-founded by QONQORD, the Products concerned can be returned to QONQORD and QONQORD will supply or make available replacement Products free of charge or provide the Services again, without the Client being able to assert any right to compensation against QONQORD.
- 8.3. Submitting complaints does not suspend the Client's payment obligations. A complaint does not have any consequences for other Products and/or Services already delivered or made available or Products and/or Services still to be delivered or made available.

## **9. Fees and rates**

- 9.1. The fees and rates owed by the Client for the Products and Services to be delivered or made available by QONQORD are stated in the Agreement. If not stated in the Agreement, travel time, travel and accommodation costs and transport and shipping costs will be charged separately. All fees and rates are in Euros, exclusive of turnover tax (VAT) and other levies imposed by the government.
- 9.2. Quotations and offers are exclusive of work in connection with installation, set-up, (inter) connection, testing, operation, transport and commissioning of Equipment and (additional) facilities (such as fire watch, first aid and security). QONQORD will perform such work and make facilities available if this is expressly stated in the Agreement and at the fee stated in the Agreement.

- 9.3. Products and/or Services that are not specified in the Agreement are regarded as additional work. Delivery of Products and/or Services outside office hours (i.e. Monday to Friday from 9 am to 5 pm, with the exception of public holidays generally recognised in the Netherlands) is regarded as overtime. Additional work and overtime must be agreed in writing and QONQORD will never be obliged to accept any additional work and/or overtime.
- 9.4. QONQORD has the right to adjust the fees and rates annually in accordance with the price index for business services as published from time to time by Statistics Netherlands by means of a written notification to the Client and with a term of 30 days.
- 9.5. QONQORD moreover has the right to adjust the fees and rates if one of the cost-determining factors of a Product or Service changes in the period between the date of entering into the Agreement and the date of delivery (including in any case: increase in material, purchase and transport prices, levies, taxes and/or currency changes) without this being attributable to QONQORD or foreseeable for QONQORD at the time of entering into the Agreement.

## **10. Payment**

- 10.1. The Client will pay the fees and rates in the currency and in accordance with the payment method and payment term stated in the Agreement.
- 10.2. If no payment terms are stated in the Agreement, a payment term of fourteen (14) days from the invoice date applies and QONQORD will invoice the fees, in Euros, as follows:
  - 10.2.a. one-off fees will be invoiced immediately prior to delivery of the Products or Services;
  - 10.2.b. periodic fees will be invoiced prior to the relevant period;
  - 10.2.c. additional work will be invoiced immediately after being performed;
  - 10.2.d. other fees will be invoiced monthly in arrears based on actual costs.
- 10.3. If the payment term is exceeded, the Client will be in default by operation of law without a prior summons or notice of default from QONQORD being required and the Client will owe statutory commercial interest as referred to in Section 6:119a of the Dutch Civil Code on the outstanding amount. The Client is obliged to fully reimburse the judicial costs and extrajudicial costs, regardless of whether these costs have actually been incurred. The extrajudicial costs amount to 15% of the principal sum, with a minimum of €200.
- 10.4. If the Client continues to fail to pay the debt after notice of default, QONQORD can refer the debt for collection, in which case the Client will also be obliged to pay all judicial and extrajudicial costs in addition to the amount owed, without prejudice to all other rights of QONQORD.
- 10.5. If any payment term is exceeded, QONQORD will be entitled to suspend its obligations under the Agreement and any other current agreements until full payment has been made, without prejudice to QONQORD's right to compensation and without being obliged to compensate the Client for any damage. In that case (a) the Client will no longer be entitled to use the Software, and (b) QONQORD will be entitled to deactivate user rights with regard to the Software.
- 10.6. The Client waives any right to set off any claim. The Client can therefore never withdraw from a payment obligation towards QONQORD by relying on setoff.
- 10.7. Any items, materials, equipment and the like made available by the Client to QONQORD, even if they are the property of third parties, will only be returned after all payments owed by the Client have been made in full.
- 10.8. QONQORD is at all times entitled to demand full or partial advance payment and/or security (additional or otherwise) from the Client for payment of the price. QONQORD is not obliged to start or continue performance of the Agreement before the required advance payment has been made or security has been provided. The costs associated with provision of security will be borne by the Client.

- 10.9. QONQORD retains ownership of delivered Products until the Client has fulfilled all its obligations under the Agreement on the basis of which the Products were delivered and has paid the costs of additional services and/or claims of QONQORD in connection with the Client's failures to fulfil the Agreement in full. Until that moment, the Client will only be entitled to use the Products delivered by QONQORD for its normal business operations, but the Client will not be entitled to alienate or encumber the Products or otherwise withdraw them from QONQORD's assets. In so far as necessary, the Client will always inform third parties about the rights of QONQORD and immediately inform QONQORD if a third party should in any way implement precautionary measures or measures for enforcing a judgement with regard to those Products. Rights are only granted or transferred to the Client on the condition that the Client pays the agreed fees in full and on time.

## **11. Confidentiality**

- 11.1. Each Party will (i) treat the other Party's Confidential Information confidentially, (ii) use it only for the purpose for which the Confidential Information was received, (iii) not make it available to any third party or otherwise disclose it without the other Party's prior written consent, and (iv) only make it available to its personnel in so far as this is necessary for performance of the Agreement.
- 11.2. Confidential Information means: all written, oral or otherwise directly or indirectly received information that has been designated as confidential in any way and/or of which the recipient knows or should reasonably understand that such information is confidential, including in any case information about Products and Services, personal data, business information, technical information and financial information.
- 11.3. The rights related to the Confidential Information remain with the Party that provided the Confidential Information and are not transferred to the receiving Party.
- 11.4. The Parties will take all necessary measures to guarantee the confidentiality of the Confidential Information and to prevent the Confidential Information from being published or disclosed in any other way without permission. The Parties will oblige their employees and/or third parties to comply with this confidentiality clause.
- 11.5. The Parties undertake not to use the Confidential Information obtained from the other Party for other purposes or in any other way than for the purpose for which and the way in which the information and data were provided or became known to it during performance of the Agreement.
- 11.6. The obligations in this article do not apply to Confidential Information that (a) is generally known or accessible to the public; (b) is already known to the receiving Party without an obligation of confidentiality; (c) is collected by the receiving Party independently of the providing Party; (d) has been lawfully obtained by the receiving Party from a third party without an obligation of confidentiality; or (e) is disclosed pursuant to a legal obligation or order.
- 11.7. The receiving Party will return or destroy the Confidential Information at the providing Party's request, within a reasonable period of time.
- 11.8. QONQORD is at all times entitled to mention the fact that the Client is one of its customers in advertisements, advertising messages or otherwise within the framework of its marketing activities.

## **12. Personal data**

- 12.1. In so far as QONQORD processes personal data on behalf of the Client under the Agreement, the Client is considered the responsible party or controller of those personal data within the meaning of the applicable laws and regulations, and QONQORD processes those personal data exclusively under the responsibility of the Client, as processor within the meaning of the applicable laws and regulations.
- 12.2. The Client has control over the personal data and will determine the purpose and means for processing. QONQORD will only process the personal data under the responsibility of the Client, on the basis of written instructions from the Client and for the purpose for which the personal data have been provided to or have become known to it in the context of performance of the Agreement or on the basis of a legal obligation.
- 12.3. QONQORD is entitled, after prior notification to the Client, to engage third parties and/or provide the personal data to a third party in the context of performance of the Agreement or on the basis of a legal obligation. QONQORD is responsible towards the Client for the third parties engaged by it and will impose the obligations from this article on those third parties.
- 12.4. The Client guarantees to QONQORD that the content, use and processing of the personal data are not unlawful and do not infringe any third-party rights. QONQORD is not obliged to check the correctness or completeness of the personal data. The Client indemnifies QONQORD against claims and fines from regulatory authorities and/or persons whose personal data are processed in the context of the Agreement or for which the Client is otherwise responsible under the law, unless the Client proves that the facts underlying the claim are exclusively attributable to QONQORD.
- 12.5. QONQORD takes technical and organisational security measures to protect the personal data against loss or against any form of unlawful processing. The technical and organisational security measures agreed between the Parties and to be taken by QONQORD are stated in the Agreement.
- 12.6. It is the Client's responsibility to determine whether the security measures, taking into account the state of the art and the costs of implementation of the security measures, ensure a level of security appropriate to the risks involved in the processing and the nature of the personal data.
- 12.7. QONQORD will make every effort to ensure that the security measures meet a level that, taking into account the state of the art and the costs of implementation of the security measures, is at least customary in the industry in view of the Products and/or Services to be provided by QONQORD . QONQORD does not guarantee that the security measures will be effective under all circumstances.
- 12.8. The Client has the right to monitor compliance by QONQORD with the security measures referred to in this article under conditions to be agreed in more detail in the Agreement.
- 12.9. If a change in the security measures to be taken by QONQORD is necessary to provide an appropriate level of security, the Parties will consult on the desired change and the related costs. After agreement between the Parties, QONQORD will actually implement the changed security measures.
- 12.10. QONQORD will make every effort to inform Client about security incidents as soon as possible after QONQORD has discovered such security incidents. In the Agreement, the Parties can make further arrangements as to which security incidents will be reported to the Client by QONQORD and the manner of reporting security incidents.
- 12.11. Reporting data breaches, as referred to in the applicable laws and regulations, will at all times remain the responsibility of the Client and QONQORD will never be obliged to report data breaches to a data subject or regulatory authority.

- 12.12. QONQORD will, where possible and necessary, provide information and cooperation to the Client in the context of security incidents reported to Client by QONQORD. QONQORD may charge the costs incurred by QONQORD in this context to the Client.
- 12.13. In the event that an Agreement ends or is terminated, QONQORD will return the personal data or, if agreed by the Parties, destroy them. QONQORD can charge the costs it incurs for this to the Client. The provisions of this paragraph do not apply if returning or destroying the personal data in whole or in part by QONQORD is not permitted under applicable laws and regulations. In that case, QONQORD will only continue to process the personal data to the extent necessary under those laws and regulations.

### **13. Intellectual property rights**

- 13.1. All intellectual property rights to the Products and (the results of) the Services are vested QONQORD or its licensors and are not transferred to the Client on the basis of these General Terms and Conditions or an Agreement, unless expressly otherwise agreed. The Client acknowledges these rights and will refrain from any form of direct or indirect infringement of these rights.
- 13.2. The Client only acquires the rights and powers expressly granted to it pursuant to these General Terms and Conditions or an Agreement. Without QONQORD's prior written consent, the Client is not entitled to use the Products and Services in any other way and/or to make available, transfer and/or license the rights and/or powers granted to it in whole or in part to third parties.
- 13.3. QONQORD will indemnify the Client in the event that third parties call the Client to account for an (alleged) infringement of intellectual property rights of that third party as a result of the use of the Products or Services, provided that: (i) the (alleged) infringement is not related to changes made to the Products or Services by or on behalf of the Client; (ii) the (alleged) infringement is not related to the use of the Products or Services in a way that conflicts with these General Terms and Conditions, the Agreement or the Documentation or is attributable to an act or omission of the Client; (iii) the Client immediately informs QONQORD in writing of the claim, (iv) QONQORD will supervise the defence against the claim; (v) the Client provides all reasonable cooperation to QONQORD with regard to the course and settlement of and the defence against the claim; and (vi) the Client follows and has followed all reasonable instructions from QONQORD with regard to the (alleged) infringement and use of the Products and Services.
- 13.4. In the event that it has been irrevocably established in law that the use of the Products and/or Services infringes intellectual property rights of a third party, QONQORD may, in addition to the aforementioned indemnification, (i) acquire the right to continue to use the Products and/or Services on behalf of the Client, (ii) replace or modify the Products and/or Services in a non-infringing manner, or, if the foregoing alternatives prove not commercially viable (iii) discontinue use of the Products and/or Services in whole or in part.
- 13.5. Any further liability of QONQORD with regard to infringement of the intellectual property rights of third parties is expressly excluded.

### **14. Liability**

- 14.1. QONQORD's liability on whatever legal basis is limited to compensation for direct damage up to the amount of the price stipulated for that Agreement excluding VAT with a maximum of EUR 250,000 (in words: two hundred and fifty thousand euros) per event, whereby a series of related events is regarded as a single event. If the Agreement is mainly a continuing performance contract with a term of more than one year, the stipulated price is set at the total of the fees excluding VAT stipulated for one year with a maximum of EUR 250,000 (in words: two hundred and fifty thousand euros) per event, where a series of connected events is regarded as a single event.

- 14.2. Direct damage within the meaning of these General Terms and Conditions is exclusively understood to mean:
- 14.2.a. the reasonable costs incurred by the Client to have QONQORD's performance comply with the Agreement; however, this damage will not be compensated if the Client has dissolved the Agreement;
  - 14.2.b. the reasonable costs incurred by the Client for the necessity to keep the systems in use by the Client and related facilities operational for longer because QONQORD has not delivered the Products and/or Services on a delivery date that is binding on it, less any cost savings as a result of the delayed delivery;
  - 14.2.c. damage to or loss of property;
  - 14.2.d. the reasonable costs incurred to determine the cause and extent of the direct damage;
  - 14.2.e. the reasonable costs incurred to prevent or limit direct damage.
- 14.3. QONQORD's liability for damage other than direct damage is excluded, which other damage includes but is not limited to consequential damage, loss of profit, lost savings, damage due to business interruption and/or goodwill of the Client, damage due to loss or damage to Data.
- 14.4. QONQORD's total liability for damage resulting from death or physical injury is limited to EUR 1,000,000 (in words: one million euros) per event, whereby a series of related events is regarded as a single event.
- 14.5. The limitations of liability included in this article do not apply if and in so far as the damage is the result of intent or wilful recklessness on the part of QONQORD's executive personnel.
- 14.6. QONQORD's liability only arises if the Client gives QONQORD immediate and proper notice of default in writing, with a reasonable term for QONQORD to still fulfil its obligations, and QONQORD continues to fail imputably in the fulfilment of its obligations after that term. The notice of default must contain as detailed a description of the shortcoming as possible to enable QONQORD to respond adequately.
- 14.7. At the risk of forfeiting the right to compensation, a claim for compensation must be lodged within 6 months after the moment at which the Client became aware or could reasonably have become aware of the existence of the damage.

## **15. Force Majeure**

- 15.1. In the event of force majeure, the Party affected by force majeure will immediately notify the other Party in writing, stating the cause, the nature, the expected duration of the force majeure and the obligations under the Agreement that cannot be fulfilled as a result thereof. The performance of the relevant obligations is suspended for the duration of the force majeure situation.
- 15.2. In so far as not already included, force majeure is in any case understood to mean: strike, occupation, blockades, embargo, government measures, war, revolution and/or any similar situation, power failures, disruptions in (data) communication connections, fire, explosion, water damage, flood and/or earthquake, lack of or illness of personnel of QONQORD, as well as delays, default or force majeure on the part of suppliers of QONQORD.
- 15.3. If the force majeure situation has lasted three (3) months or as soon as it has been established that the force majeure situation will last longer than three (3) months, each of the Parties will be entitled to terminate the Agreement in writing in whole or in part without notice period. In that case, what has already been performed on the basis of the Agreement will be settled proportionately, without the Parties otherwise owing each other anything.

## **16. Engagement of third parties / Third-party Products and Services**

- 16.1. If QONQORD deems it necessary, it is entitled to engage third parties for the performance of its obligations, including external experts and/or external facilities and provisions.
- 16.2. In the event that QONQORD engages third parties on its own initiative, QONQORD remains fully responsible for the performance of its obligations towards the Client.
- 16.3. In the event that the Client explicitly requests QONQORD to engage third parties and QONQORD agrees to this in writing, QONQORD will reasonably cooperate and the Client will be fully responsible for any acts and omissions of that third party.
- 16.4. When QONQORD engages third parties, any additional costs thereof will be borne by QONQORD, except if the Client explicitly requests QONQORD to engage third parties.
- 16.5. If QONQORD delivers or provides to the Client Products and/or Services of third parties under the Agreement, the terms and conditions of the relevant supplier apply to the delivery or provision of those Products and/or Services instead of these General Terms and Conditions. By using the relevant Products and/or Services, the Client agrees to the applicable terms and conditions of the relevant supplier that apply between the Client and the relevant supplier.
- 16.6. If a supplier of QONQORD terminates, does not fulfil or suspends an agreement with QONQORD, QONQORD will be entitled to replace the products or services provided and/or to be provided by this supplier with an equivalent product or service, or, if replacement is not commercially feasible, to cancel the Agreement in whole or in part with immediate effect. The Client will not be entitled to compensation in that case.

## **17. Commencement, term and termination**

- 17.1. Unless otherwise stated in the Agreement, the Agreement is entered into for an initial period of three (3) years. Early termination by the Client is not possible during this initial period. After the expiry of this initial period, the Agreement will be tacitly renewed each time for a period of one (1) year, unless one of the Parties wishes to end the Agreement at the end of the then applicable period by means of termination.
- 17.2. Termination takes place at least three (3) months before the end of the agreed term by sending a registered letter to the other Party.
- 17.3. Each of the Parties is entitled to terminate the Agreement in whole or in part by means of a registered letter out of court and with immediate effect if the other Party, even after a written reminder stating a reasonable term, fails to fulfil its obligations under the Agreement.
- 17.4. QONQORD is furthermore entitled to terminate the Agreement in whole or in part, without any reminder or notice of default being required, out of court and with immediate effect if (a) the Client does not pay the agreed fees within the agreed term; (b) the Client applies for or is granted a suspension of payments; (c) the Client applies for bankruptcy or is declared bankrupt; (d) the Client's business is wound up; (e) the Client discontinues its current business operations or professional practice; or (f) control over the Client changes or the Client acquires a company or cooperates with a company to which QONQORD objects.
- 17.5. In the event that an Agreement on the basis of which the Client has been granted a right to use the Software ends or is terminated, the Client is obliged to immediately discontinue use of the Software and to that end remove the Software from the computer equipment as well as return the Software and the Documentation (including any Improved and New Versions provided as well as all copies made thereof) to QONQORD within seven (7) days of termination or destroy it and confirm such destruction to QONQORD.

- 17.6. If QONQORD has already performed activities under the Agreement at the time of termination, the payment obligations related to those activities will become immediately due and payable. Amounts that QONQORD has invoiced before the termination in connection with what it has already performed or delivered under the Agreement will remain due in full and become immediately due and payable at the time of termination.
- 17.7. In the event of dissolution of the Agreement, no obligations to undo will arise with regard to the Products and/or Services delivered by QONQORD that have already been paid or invoiced.

## **18. Applicable law and dispute settlement**

- 18.1. These General Terms and Conditions, an Agreement and any resulting or related disputes are exclusively governed by Dutch law, to the exclusion of the rules of private international law with regard to the applicable law. The applicability of the Vienna Sales Convention 1980 (CISG) is expressly excluded.
- 18.2. Any disputes that arise with regard to the Agreement and/or these General Terms and Conditions will in the first instance be submitted exclusively to the competent court in the district where the user is domiciled or established, or the Court of Midden-Nederland.
- 18.3. The provisions of the previous paragraph are without prejudice to the Parties' obligation to make every effort to resolve disputes in mutual consultation wherever possible.

## **19. Other provisions**

- 19.1. The Parties will consult in cases not provided for in these General Terms and Conditions, or if amendment of these General Terms and Conditions is necessary. Amendments to these General Terms and Conditions or additions thereto are only valid in so far as they have been agreed in writing.
- 19.2. If one of the provisions of these General Terms and Conditions is void or nullified, the other provisions of these General Terms and Conditions will remain in force and the Parties will agree on a replacement provision by mutual agreement.
- 19.3. The Agreement contains all agreements applicable between QONQORD and the Client with regard to the delivery of Products and/or Services by QONQORD and supersedes all previous oral or written agreements between the Parties.
- 19.4. The Annexes attached to the Agreement and the documents mentioned therein and referred to therein form an integral part of the Agreement.
- 19.5. Notifications that the Parties will make to each other on the basis of these General Terms and Conditions and/or the Agreement will be made in writing. Oral statements, commitments or agreements have no legal effect unless confirmed in writing. In these General Terms and Conditions, in writing is also understood to mean a message by means of an electronic means of communication.
- 19.6. The Client is not permitted to transfer the rights under the Agreement to a third party. The Client is also not permitted to have the Products and/or Services used by a third party for the benefit of the Client.
- 19.7. QONQORD is entitled to engage third parties in the performance of its obligations under these General Terms and Conditions. QONQORD is entitled to transfer its rights and obligations under these General Terms and Conditions to a third party, with which transfer the Client will cooperate and to which it agrees in advance.
- 19.8. Failure by one of the Parties to demand compliance with any provision within a period specified in these General Terms and Conditions does not affect the right to still demand compliance, unless the relevant Party has expressly agreed to the non-compliance in writing.

- 19.9. During the term of the Agreement and for a period of twelve (12) months after its expiry, the Client will not employ QONQORD employees that have been involved in performance of the Agreement.
- 19.10. These Terms and Conditions are subject to change by QONQORD. Changes will not come into effect until 14 days after the Client has been notified accordingly.
- 19.11. The references/headings of the articles in these General Terms and Conditions are for reference only and do not affect the interpretation of the articles in these General Terms and Conditions.

## Part 2 - Specific Provisions for the Development, Delivery and Maintenance of Software

The provisions contained in this Part 2 (Specific Provisions for the Development, Delivery and Maintenance of Software) are in addition to the terms in Part 1 (General Provisions) and apply to the use of the software supplied by QONQORD.

### 20. Delivery and Implementation

- 20.1. QONQORD will make the Software including the Documentation available to the Client by delivering it to the location, within the term and in the manner stated in the Agreement. The Client itself is responsible for the installation of the Software on the computer equipment, unless otherwise stipulated in the Agreement.
- 20.2. QONQORD will make every effort to implement the Software on the computer equipment specified in the Agreement in accordance with the Specifications and within the schedule stated in the Agreement.
- 20.3. QONQORD may perform the delivery and implementation of the Software in multiple, separate phases. QONQORD has the right to start the execution of a next phase only after the payments due in respect of a previous phase have been paid in full by the Client.

### 21. Software Development

- 21.1. If stated in the Agreement, QONQORD will develop custom software. In so far as no iterative method or procedure for the development of custom software is stated in the Agreement, QONQORD will, in consultation with the Client, draw up one or more functional designs based on the functional wishes of the Client and submit them to the Client for approval. The Client will inform QONQORD within ten (10) working days whether the functional designs have been approved or rejected.
- 21.2. After approval of the functional designs by the Client, QONQORD will develop the custom software based on the approved functional designs. The approved functional designs form part of the Agreement.
- 21.3. Changes to the functional designs are only valid if recorded in a document signed by the authorised representatives of both Parties. Changes to the functional designs can lead to changes in the schedule and in the agreed fees for the development of custom software. QONQORD is not obliged to accept requests from the Client for changes to the functional designs and may impose additional (financial) conditions on changes to functional designs.
- 21.4. The Client acquires a right of use with regard to the custom software developed as referred to in Article 22 of these General Terms and Conditions. All rights with regard to custom software developed by QONQORD remain with QONQORD in accordance with the provisions of Article 13 of these General Terms and Conditions.

### 22. Software licence

- 22.1. Under the Agreement, QONQORD grants the Client the non-exclusive, non-transferable right to use the Software in object code by installing, loading, displaying, executing or storing the Software on computer equipment, to the extent necessary for the use of the Software by the Client and as described in these General Terms and Conditions.

- 22.2. The Client is not permitted to transfer the user rights with regard to the Software and Documentation or one or more copies of the Software and/or the Documentation to a third party. The Client is also not permitted to have the Software and Documentation used by a third party for the benefit of the Client.

### **23. Scope of the software licence**

- 23.1. Unless otherwise stipulated in the Agreement, the right of use is limited to use for data processing within the Client's own organisation and for the purposes specified in the Agreement.
- 23.2. The Client is not permitted to transfer, hand over, sublicense, grant (limited) rights to, sell, rent out, loan, disclose, submit for inspection or otherwise make available to any third party the Software and/or Documentation or any data carrier on which the Software and/or Documentation is recorded or any copy thereof, either in whole or in part, nor to convert it, use it for the benefit of a third party and/or give a third party the opportunity to use it.
- 23.3. Furthermore, the Client is not permitted to change or remove any indication regarding copyrights, brands, trade names or other rights of (intellectual) property or any indication regarding the confidential nature of the Software and/or Documentation or any reference to QONQORD.
- 23.4. The Client will not make the Software and/or Documentation public, copy or otherwise reproduce or change the same, except in so far as this is necessary (a) for its own data processing and the purposes as stipulated in the Agreement; (b) to make a number of backup copies as necessary for the use of the Software and/or Documentation; or (c) to repair Defects in the Software.
- 23.5. QONQORD is allowed to take technical measures to protect the Software or with a view to agreed limitations in the duration or scope of the right of use. The Client is not permitted to remove or bypass the technical measures applied by QONQORD in the Software.
- 23.6. The Client is not permitted to decompile the Software, to reproduce or translate the code or to subject it to reverse engineering in any other way, except in so far as this would be done in accordance with the statutory rules for establishing interoperability of the Software with other software. In that case, the Client will first contact QONQORD in writing with a detailed request for provision of the data that the Client wishes to obtain in order to realise interoperability. QONQORD will respond to this written request from the Client within a reasonable period of time.

### **24. Maintenance**

- 24.1. Unless otherwise stated in the Agreement, the Client is obliged to purchase maintenance from QONQORD simultaneously with the delivery of the Software and on that basis the Client is entitled to the following maintenance services: (a) repair of Defects; (b) provision of Improved and/or New Versions; and (c) provision of on-demand support in the use of the Software.
- 24.2. The Client will report any Defects by email to the QONQORD Support Desk, where possible provided with a documented example of the Defect. The Client will, if required and at the request of QONQORD, collect as much detailed information as possible in order to determine the cause of a Defect as quickly and clearly as possible.
- 24.3. A Defect reported as such will be handled by QONQORD if: (a) the Defect is demonstrable and reproducible and (b) the Defect occurs in the latest or the penultimate version of the Software.
- 24.4. QONQORD will make every effort to respond to a report and start rectifying the Defect as quickly as possible. QONQORD will make every effort to remedy a Defect, taking into account the nature of the Defect, as soon as possible by making available an Improved and/or New Version or in another way at QONQORD's discretion, including a solution of a provisional nature, a program bypass, or a workaround.

- 24.5. QONQORD will release Improved and/or New Versions at its own discretion and make them available to the Client in the context of the agreed maintenance. QONQORD will inform the Client about the release of Improved or New Versions and the terms and conditions on which an Improved or New Version will be made available. QONQORD will give the Client the opportunity to make suggestions and wishes known with regard to the operation and/or functionality of the Software via the Service Operations Center and will endeavour to incorporate such suggestions and wishes in subsequent Improved and/or New Versions as much as possible. QONQORD is not obliged to incorporate all suggestions and wishes in an Improved and/or New Version.
- 24.6. Maintenance work performed by QONQORD for the Client as a result of (a) incompetent use of the Software by the Client or failure to comply with instructions given by QONQORD; (b) use in violation of these General Terms and Conditions, the Agreement and/or the Documentation; (c) use of the Software by the Client other than described in the Documentation; (d) failure by the Client to comply with the obligations under these General Terms and Conditions and/or the Agreement; (e) changes to the Software by parties other than QONQORD, will be charged to the Client at the then applicable rates of QONQORD.
- 24.7. If, due to the release of an Improved Version or New Version, the custom software in use by the Client has to be adjusted, this will be regarded as additional work and the costs thereof will be borne by the Client. QONQORD will make a quotation to the Client for adjusting the custom software. After acceptance thereof, QONQORD will adjust the custom software in accordance with the conditions of the accepted quotation and these General Terms and Conditions.
- 24.8. QONQORD reserves the right to suspend or terminate the maintenance obligations with immediate effect if the Client has not installed and is using at least the penultimate version of the Software.
- 24.9. In the event that the Client does not purchase maintenance simultaneously with the delivery of the Software, or in the event of an interruption in maintenance by the Client, the Client may still or again agree on maintenance, respectively, at the then applicable fees, increased by the amount of maintenance fees over the intervening years that would have been payable if the Client had agreed maintenance immediately or if the maintenance was not interrupted.

## **25. Training**

- 25.1. If stated in the Agreement, QONQORD will train Users in the use and operation of the functionalities of the Software as part of the delivery of the Software. All training will be provided under the conditions and at the fees stated in the Agreement.
- 25.2. QONQORD furthermore declares that it is prepared to provide Users with training in the use and operation of the functionalities of the Software under conditions and rates to be agreed at that time.

## **26. Obligations and responsibilities of the Client**

- 26.1. The Client itself will ensure, in a timely manner, the purchase, management and maintenance of the Software and/or products necessary for the use of the Software.
- 26.2. The Client will always provide all information and facilities requested by QONQORD in a timely manner and provide cooperation to QONQORD as necessary for the delivery of the Software and the related services, including the implementation of the Software, the development of custom software and the performance of maintenance.

- 26.3. If the information, facilities and/or cooperation requested by QONQORD are not provided by the Client, or not provided in a timely manner or correctly, or if the Client does not fulfil its obligations in any other way, QONQORD has the right to suspend delivery of the Software and/or the related services after QONQORD has notified the Client of this and has given the Client the opportunity to still provide the information, facilities and/or cooperation. QONQORD is entitled to charge the costs incurred in this regard to the Client at its then applicable rates.
- 26.4. In cases where the delivery of Software-related services must be performed at the Client's location, QONQORD will be provided access to the location and computer equipment on which the Software is installed.
- 26.5. In the event that QONQORD carries out work in the context of the performance of this Agreement for which QONQORD must use software of which the Client has obtained a licence from a third party, the Client guarantees that it is entitled to make that software available to QONQORD and the Client will indemnify QONQORD and hold it harmless against any claims from third parties.
- 26.6. The Client itself is responsible for the choice of the Software, for the use and application of the Software and for the data processed with the Software.
- 26.7. QONQORD is never liable for damage in any way resulting from: (a) the Client's use of the Software in violation of the Documentation; (b) the use of the Software by the Client with equipment or software not provided or recommended in writing by QONQORD and (c) changes or additions made to the Software by or on behalf of the Client, unless QONQORD has given written permission to do so.

## **27. Warranty**

- 27.1. QONQORD declares that upon delivery of the Software, the Software contains the functionality and features as set out in the Documentation and Specifications.
- 27.2. During the warranty period of three (3) months after delivery of the Software, QONQORD will repair any Defects in the Software to the best of its ability and within a reasonable period if the Client has described these Defects in detail within the aforementioned warranty period and reported them in writing to QONQORD. Defects can also be corrected by means of a problem-avoiding restriction or by providing an Improved Version. After expiry of the aforementioned warranty period, the Client is only entitled to have Defects remedied if maintenance has been agreed between the Parties.
- 27.3. QONQORD does not warrant that (a) the Software will meet the Client's objectives with regard to the use of the Software; (b) the Software will be error-free or otherwise uninterrupted and without malfunctions or Defects; or (c) all Defects can be remedied.
- 27.4. QONQORD is not responsible for Defects, or otherwise for malfunctions or errors in access to or use of the Software and/or the unavailability of the Software as a result of malfunctions or errors in the equipment, software or data communication connections of the Client or third parties engaged by the Client.
- 27.5. The warranty lapses in the event of incompetent or careless use and/or use in violation of these General Terms and Conditions, the Agreement or the Documentation, and in the event that the Client has made or has had a third party make changes to the Software without QONQORD's permission.
- 27.6. Recovery of Data as a result of Defects or any other cause is not covered by the warranty and is at the expense and risk of the Client.

## **28. Inspection / Audit**

- 28.1. Immediately on QONQORD's request, the Client will submit a statement drawn up by an independent external expert regarding the use of the Software and compliance with this Agreement.
- 28.2. QONQORD is furthermore entitled to inspect itself or to have a third party authorised by it inspect whether the Client uses the Software in accordance with these General Terms and Conditions, the Agreement and/or the Documentation. The Client undertakes to assist with such an inspection and to provide QONQORD or the third party authorised by it with access to the location and/or other areas.
- 28.3. The parties will bear their own costs associated with such an inspection. If the inspection by QONQORD shows that the Client does not use the Software in accordance with these General Terms and Conditions, the Agreement and/or the Documentation, all costs of the relevant inspection will be borne by the Client.

## **29. Third-party software / open-source software**

- 29.1. If QONQORD supplies open-source software to the Client under the Agreement, the Client will acquire a right of use with regard to that open-source software exclusively under the applicable open-source software licence terms and not under these General Terms and Conditions. By installing and/or using the relevant open-source software, the Client agrees to the applicable open-source software licence terms that apply between the Client and the rightful claimant(s) of the open-source software.
- 29.2. If QONQORD supplies software from third parties to the Client under the Agreement, the Client will acquire a right of use with regard to that software exclusively under the applicable software licence terms of the relevant software supplier and not under these General Terms and Conditions. By installing and/or using the relevant third-party software, the Client agrees to the applicable software licence terms of the relevant software supplier that apply between the Client and the relevant software supplier.

## Part 3 - Specific provisions for the Delivery and Rental of Products

The provisions contained in this Part 3 (Specific Provisions for the Delivery and Rental of Products) are in addition to the terms in Part 1 (General Provisions) and apply to the use of hired Products.

### 30. Use of hired Products

- 30.1. QONQORD grants the Client the non-transferable right under the Agreement to use the hired Products according to their intended use for its business purposes. The Products hired by the Client from QONQORD are specified in the Agreement.
- 30.2. With the exception of first-line maintenance activities such as replacing consumables, connecting and/or installing parts or accessories, the Client will not maintain, adjust and/or change or have a third party maintain, adjust and/or change the hired Products, unless this is expressly permitted under the Agreement.
- 30.3. With regard to the software that is part of the hired Products, the Client is only entitled to those actions that are necessary to be able to use that software for the purpose described in paragraph 1.
- 30.4. The Client will only use the hired Products at the place of delivery stated in the Agreement and in accordance with the applicable Regulations.

### 31. Delivery and installation

- 31.1. QONQORD will make the hired Products available to the Client by delivering them to the location, within the term, in the manner and to the Client's contact persons stated in the Agreement. Unless otherwise stated in the Agreement, the Products will be delivered to QONQORD's registered address. The rent commences on the day of delivery of the hired Products.
- 31.2. The Client itself is responsible for the installation of the hired Products, unless otherwise stipulated in the Agreement.
- 31.3. Immediately after delivery and - if agreed - installation, the Client will check, in the presence of QONQORD, whether the hired Products are undamaged, complete and functioning. The Client will immediately confirm this in writing to QONQORD or inform QONQORD that the hired Products are damaged or incomplete or do not function.
- 31.4. The Client is deemed to have received the hired Products in good condition unless the Client informs QONQORD in writing within 24 hours of delivery and - if agreed - installation that the hired Products are damaged, incomplete or not functioning.

### 32. Obligations and responsibilities of the Client

- 32.1. The Client will itself ensure in a timely manner a suitable location for the delivery, installation and use of the hired Products that meets the requirements stated in the Agreement.
- 32.2. The Client will always provide all cooperation requested by QONQORD in a timely manner and in full that is necessary for the delivery of the hired Products and related services.
- 32.3. If the location is not ready in time or if the cooperation requested by QONQORD is not provided, or is not provided in time or correctly by the Client, QONQORD has the right to suspend the delivery of the hired Products and/or related services after QONQORD has notified the Client of this and has given the Client the opportunity to prepare the location and/or to cooperate. QONQORD is entitled to charge the costs incurred in this regard to the Client at its then applicable rates.

- 32.4. The Client is responsible for the choice of the hired rented Products and for their use. QONQORD is never liable for damage in any way resulting from: (a) the use of the hired Products by the Client in violation of the Agreement; (b) the use of the hired Products by the Client with equipment not provided or recommended in writing by QONQORD and (c) changes or additions made to the hired Products by or on behalf of the Client, unless QONQORD has given written permission to do so.
- 32.5. The Client will immediately inform QONQORD in writing of any attachment of its movable or immovable property or of its bankruptcy or application for a suspension of payments and will immediately inform the bailiff levying the attachment, the insolvency practitioner or administrator about the Agreement for the use of the hired Products.

### **33. Maintenance and replacement**

- 33.1. If stipulated in the Agreement, QONQORD will carry out the maintenance work on the hired Products as stated in the Agreement.
- 33.2. The Client must report malfunctions in the hired Products to QONQORD as soon as possible. After receiving such a report, QONQORD will take measures aimed at remedying the malfunctions.
- 33.3. The costs incurred by QONQORD for eliminating malfunctions in the hired Products resulting from careless or incorrect use of the hired Products will be charged to the Client at QONQORD's then applicable rates for such maintenance work.
- 33.4. If QONQORD fails to remedy a malfunction in the hired Products within the period stated in the Agreement or if a malfunction has occurred 3 (three) times during a period of 1 (one) month, QONQORD will replace the relevant hired Product with another, at least equivalent Product.
- 33.5. Maintenance work performed by QONQORD for the Client as a result of (a) incompetent use of the hired Products by the Client or failure to comply with instructions given by QONQORD; (b) use in violation of these General Terms and Conditions, the Agreement and/or the Documentation; (c) use of the hired Products by the Client other than described in the Documentation; (d) failure by the Client to comply with the obligations under these General Terms and Conditions and/or the Agreement; (e) changes to the hired Products by parties other than QONQORD, will be charged to the Client at QONQORD's then applicable rates.

### **34. Insurance**

- 34.1. The risk of theft or loss of or damage to the hired Products passes to the Client from the moment of delivery of the hired Products.
- 34.2. The Client will take out adequate insurance on the hired Products for the duration of the Agreement, at the value stated in the Agreement. A copy of the insurance policy and proof of premium payment(s) will be sent immediately upon QONQORD's request.

### **35. Return of hired Products**

- 35.1. In the event that the Agreement for the use of the hired Products ends or is terminated, the Client is obliged to immediately discontinue use of the hired Products and to that end switch off the hired Products and return them immediately (or have them returned) to QONQORD at its own expense and risk.
- 35.2. In the event that the agreed rental period is exceeded by the Client, the Client will, in addition to the agreed rental per day, owe a penalty for each day that the period is exceeded totalling twice the agreed rental per day, without prejudice to QONQORD's right to compensation for the damage it suffers as a result of the hired Products not being available again in time.

## **36. Cancellation**

36.1. The Client has the right to cancel the Agreement in writing and before the start of performance of the Agreement, but only under the following conditions:

- 36.1.a. in case of hiring out personnel and/or Products not being studio space or multi-camera configurations at outdoor locations, with a maximum order size of EUR 5000: up to 12 hours before the start of the rental period: at no cost. Less than 12 hours before the start of the rental period: 75% of the agreed fee;
- 36.1.b. in case of hiring out of personnel and/or Products not being studio space or multi-camera configurations at outdoor locations, with a maximum order size exceeding EUR 5000: up to 72 hours before the start of the rental period: at no cost. Less than 72 hours before the start of the rental period: 75% of the agreed fee;
- 36.1.c. in case of rental of studio space and multi-camera configurations at outdoor locations: up to 21 days before the start of the rental period: at no cost, thereafter against payment of 75% of the agreed fee.

With regard to the hours referred to in this article, only the hours during QONQORD's normal office hours will be taken into account, which are Monday to Friday from 9 am to 5 pm, with the exception of public holidays generally recognised in the Netherlands. In this article, "start of the rental period" is understood to mean the moment at which QONQORD makes the hired Products available at the request of the Client or in accordance with the schedule. 22

- 36.2. If QONQORD has concluded one or more agreements with third parties for the performance of the Agreement, the Client will, in the event of cancellation of the Agreement, be obliged to pay QONQORD the fees that QONQORD owes to the third parties concerned under those agreements.
- 36.3. QONQORD has the right to cancel the Agreement in writing before the start of performance of the Agreement without being obliged to pay any compensation to the Client.

## Part 4 - Specific Provisions for the Delivery of Services

The provisions contained in this Part 4 (Specific Provisions for the Delivery of Services) are in addition to the terms in Part 1 (General Provisions) and apply to the delivery of Services by QONQORD.

### 37. Definitions

- 37.1. In addition to the terms used in these General Terms and Conditions and defined in Part 1 (General Provisions), the following terms have the following meanings in this Part 4 (Specific Provisions for the Delivery of Services):
- 37.2. **User:** an employee of the Client or a person engaged by the Client who has access to the Hosting Environment.
- 37.3. **Incident:** a failure resulting in the Hosting Environment being unavailable that is not the result of a Defect.
- 37.4. **Login codes:** the username and password provided by QONQORD to the Client for access to and use of the Hosting Environment.
- 37.5. **Personnel:** the staff members to be made available by QONQORD or persons engaged by it.

### 38. Services

- 38.1. QONQORD will make every effort to provide the Services in accordance with the Agreement and with the care and degree of professionalism that may reasonably be expected within the industry. Any agreements regarding a specific service level or quality level apply if and in so far as they have been expressly agreed in writing in the Agreement or in an SLA.
- 38.2. If it has been agreed that the Services will be delivered in phases, QONQORD will be entitled to postpone commencement of Services belonging to a following phase until the Client has accepted delivery of the Services of the preceding phase.
- 38.3. QONQORD is not liable for the resolutions or decisions taken by the Client on the basis of the Services provided and any consequences arising therefrom.

### 39. Hosting

- 39.1. If it is stipulated in the Agreement that QONQORD will provide Hosting, QONQORD will perform the following activities for the duration of the Agreement:
  - 39.1.a. making the Hosting Environment available to the Client by establishing and maintaining a data communication connection between the Hosting Environment and the internet or another network;
  - 39.1.b. managing and maintaining the Hosting Environment;
  - 39.1.c. ensuring appropriate technical and organisational measures against any form of unauthorised access or use of the Hosting Environment and to protect the Data against loss and/or damage;
  - 39.1.d. providing user support to the Client during office hours with regard to the use of the Hosting Environment;
  - 39.1.e. if and in so far as stipulated in the Agreement, making a backup of the Data;
  - 39.1.f. if and in so far as stipulated in the Agreement, providing fallback options if access to the Hosting Environment is temporarily or permanently not possible.

- 39.2. QONQORD grants the Client access to the Hosting Environment for the duration of the Agreement and under the conditions of the Agreement, to use it exclusively for the purpose of processing the Data of its own organisation. The Client will not use the Hosting Environment for the benefit of a third party and/or give a third party the opportunity to use the Hosting Environment. The Client is not permitted to transfer, hand over, disclose, make available for inspection or otherwise provide the login codes to a third party.
- 39.3. QONQORD is allowed to take technical measures to protect the Hosting Environment or with a view to agreed limitations in the duration or scope of the right of use of the Hosting Environment. The Client is not permitted to remove or bypass the technical measures applied by QONQORD in the Hosting Environment.
- 39.4. QONQORD has the right to temporarily shut down the Hosting Environment in whole or in part for maintenance purposes or for security reasons. QONQORD will not allow the decommissioning to last longer than necessary, if possible have it take place outside office hours and, as far as possible in view of the circumstances, have it take effect after notifying the Client.
- 39.5. If restrictions are stipulated in the Agreement with regard to the use of the Hosting Environment (for example, data traffic and storage capacity), the Client will not exceed those restrictions. In the event that those restrictions are or threaten to be exceeded, QONQORD will inform the Client about this if possible and the Client will be obliged to prevent or (permanently) discontinue this (imminent) exceedance. QONQORD is entitled to suspend the Hosting if the Client has not discontinued exceedance of the restrictions after QONQORD has informed the Client thereof as referred to in this paragraph.

#### **40. Login Codes and Use of Hosting Environment**

- 40.1. For access to and use of the Hosting Environment, the Client obtains Login Codes with which the Client can create Login Codes for the Users in order to grant Users access to the Hosting Environment. The Client is responsible for the use of the Login Codes provided by QONQORD and the Login Codes that the Client creates for the Users.
- 40.2. The Login Codes are personal, non-transferable and secret. The Client will ensure careful use of the Login Codes by Users. The Client is responsible for the consequences of use of the Login Codes and user accounts by Users and is liable towards QONQORD for any damage caused by the use of Login Codes and user accounts in violation of these General Terms and Conditions or the Agreement. The Client indemnifies QONQORD against any claims from third parties in this regard.
- 40.3. QONQORD is entitled to immediately terminate access to and use of the Hosting Environment, temporarily or permanently, in whole or in part, if:
  - 40.3.a. QONQORD is required to do so by any applicable rule of law or court order;
  - 40.3.b. The Client or a User acts contrary to these General Terms and Conditions and/or the Agreement;
  - 40.3.c. a third party, through the account of a User, acts in violation of these Terms and Conditions and/or the Agreement.
- 40.4. QONQORD does not owe any compensation to the Client on the basis of a termination of access to and use of the Hosting Environment on the basis of the previous paragraph.
- 40.5. Termination of access to and use of the Hosting Environment as referred to in the previous paragraph is effected by sending an electronic notification to the Client in which the termination is announced or by revoking the Login Codes so that access to and use of the Hosting Environment are made impossible.

#### **41. Service Levels / Service Operations Center**

- 41.1. Specific agreements on the quality and service levels of the Hosting Environment are included in the SLA.
- 41.2. During office hours, QONQORD's Service Operations Center will provide information and advice on the use of the Hosting Environment by telephone at the request of Users, as well as provide support in resolving Incidents and Defects.
- 41.3. The Client will report any Incidents and Defects by telephone or electronically to QONQORD's Service Operations Center, the contact details of which are stated in the SLA, and provided where possible with a documented example of the Incident or Defects. The Client will, if required and at the request of QONQORD, collect as much detailed information as possible in order to determine the cause of an Incident or Defect as quickly and clearly as possible.
- 41.4. An Incident or Defect reported as such will be processed by QONQORD if the Incident or Defect is demonstrable and reproducible.
- 41.5. QONQORD will respond to a report as soon as possible during office hours and start resolving the Incident or Defect in accordance with the service levels specified in the SLA.
- 41.6. Work performed by QONQORD for the Client as a result of (a) incompetent use of the Hosting Environment by the Client or failure to comply with instructions given by QONQORD; (b) use in violation of these General Terms and Conditions and/or the Agreement; (c) use of the Hosting Environment by the Client other than described in the Documentation, will be charged to the Client at QONQORD's then current rates.
- 41.7. The provisions in this article and in the SLA regarding the level of the Hosting Environment are without prejudice to the Client's obligation to take and maintain appropriate measures itself to prevent and limit the consequences of Incidents, Defects and/or loss of or damage to Data or other incidents posing the risks to its organisation.

#### **42. Obligations of the Client / Notice and take down**

- 42.1. The Client is itself responsible for establishing and maintaining a data communication connection with the internet or another network for gaining access to the Hosting Environment.
- 42.2. The Client will take appropriate technical and organisational measures to protect its equipment, infrastructure and data communication connection against viruses, malware and similar threats and to prevent unauthorised third parties from gaining access to the Hosting Environment during and through the use of the Hosting Environment.
- 42.3. The Client will provide a complete, accurate and updated overview of all Users immediately upon QONQORD's request.
- 42.4. Unless otherwise stipulated in the Agreement, the Client is itself responsible for the management and maintenance of the Data, applications, websites and other content that the Client stores on the Hosting Environment. This in any case includes:
  - 42.4.a. installing, managing and maintaining the Data, applications, websites and other content on the Hosting Environment;
  - 42.4.b. supervising the use of the Hosting Environment and the stored Data, applications, websites and other content by the Client and the Users;
  - 42.4.c. making and keeping backups of the Data, applications, websites and other content on the Hosting Environment.

- 42.5. The Client guarantees that it is entitled to store the Data, applications, websites and other content on the Hosting Environment and indemnifies QONQORD against any claims from third parties. QONQORD will inform the Client if it is held accountable by a third party for the fact that certain Data, applications, websites and/or other content infringe the rights of that third party. The Client is obliged to remove the allegedly infringing Data, applications, websites and/or other content immediately upon QONQORD's request. If the Client fails to do so, QONQORD is entitled to remove the information in question itself. In the event of (imminent) infringement of rights of third parties, QONQORD is entitled to deny the Client access to the system with immediate effect and without prior notice.
- 42.6. QONQORD is entitled to immediately terminate the Agreement in whole or in part if the Client does not remove the allegedly infringing Data, applications, websites and/or other content immediately upon QONQORD's request to that effect.
- 42.7. QONQORD is not liable for any direct or indirect damage as a result of loss of or damage to the Data, applications, websites and other content on the Hosting Environment.

### **43. Posting of Personnel**

- 43.1. If stipulated in the Agreement, QONQORD will post Personnel for the performance of the Services set out in the Agreement on the basis of a best efforts obligation and under the direction and supervision of a project leader designated by the Client.
- 43.2. The Personnel will perform the work exclusively for the benefit of the Client. The Personnel will follow the Client's reasonable instructions, but cannot be obliged to perform work that conflicts with its assignment. The Client will use the results of the work at its own risk.
- 43.3. The Agreement states, among other things: the qualifications of the Personnel, the duration of the posting, the nature, place and times of the work to be performed, as well as a contact person to be appointed by each of the Parties who will act as a point of contact for the other Party.
- 43.4. The Personnel will declare the number of hours worked by means of time sheets to be signed by the Client. The Client is responsible for compliance with the procedures established by the Parties with regard to these time sheets.
- 43.5. The Client has the right to change the place where the work is to be performed. If the change leads to demonstrably higher costs for QONQORD, QONQORD will be entitled to demand compensation for these costs.
- 43.6. QONQORD has the right to replace the Personnel with Personnel with the same qualifications.
- 43.7. The Personnel will be posted on an hourly basis with a minimum of four (4) and a maximum of ten (10) hours a day, including travel time, unless provided otherwise in the Agreement. The compensation for the posting of Personnel is determined on the basis of actual costs, based on the number of hours worked by Personnel. The posting of Personnel commences at the moment that the Personnel starts performance of the work for the Client, whereby travel time, preparation or packing time and subsequent checking or unpacking time is regarded as the performance of work.
- 43.8. The Personnel will perform the work during office hours. If, at the request of the Client, Personnel performs work outside office hours or beyond the scope of the agreed work, QONQORD can charge that work as additional work at the (overtime) rate applicable at that time.
- 43.9. The hourly rate is laid down in the Agreement. The hourly rate only applies to the positions or employees specified in the Agreement. The hourly rate set out in the Agreement applies during the calendar year in which the Agreement was concluded. Price increases that are the result of government measures will be passed on to the Client with effect from the time of the change(s). Price increases that are the result of wage cost developments at QONQORD will be passed on annually on 1 January.

- 43.10. The Client will comply with all statutory provisions regarding working conditions and working hours and the duty of care with regard to the safety of the working environment as referred to in Section 7: 658 of the Dutch Civil Code when performing the Agreement. The Client will indemnify QONQORD and hold it harmless against all fines and claims due to violation of these provisions or failure to comply with this duty of care.
- 43.11. QONQORD will comply with its obligations under all applicable social insurance and tax legislation with regard to the Personnel it has made available to the Client. QONQORD will indemnify the Client against all claims and/or additional assessments from the industrial insurance board or tax authorities due to attributable failure to fulfil these obligations. At the Client's request, QONQORD will provide the Client with written proof of the payment of the social security contributions and taxes referred to in this paragraph.

