General terms of payment and delivery FLOWSPARKS The Netherlands

These general terms and conditions are made up of the following chapters.

- General provisions
- Software-as-a-Service (SaaS)
- Development of custom software and content

The general provisions shall apply to each agreement. These are supplemented by the more specific provisions which depend on the type of agreement concluded with the Customer. In the event of a conflict between the general and specific provisions, the latter shall prevail.

Chapter 1: General provisions

In these general terms and conditions, the following terms are used in the following sense, unless expressly stated otherwise:

FLOWSPARKS The Netherlands	The user of the general terms and conditions, being the following private companies with limited liability: **FLOW**SPARKS Nederland BV
Supplier	**FLOW**SPARKS The Netherlands
Customer	The contracting party of **FLOW**SPARKS The Netherlands
Agreement	The agreement between **FLOW**SPARKS The Netherlands and the Customer
Offer	All offers from **FLOW**SPARKS The Netherlands including order forms and work orders
Parties	**FLOW**SPARKS The Netherlands and Customer named together
Software-as-a-Service or SaaS	The making available and keeping available of software to Customer via the internet or another remote data network by Supplier, without a physical carrier containing the relevant software being provided to Customer on a non-exclusive, non-transferable, non-pledgeable and non-sublicensable basis
Software	The software developed by **FLOW**SPARKS The Netherlands at the request of the Customer
Content	Training materials including, among other things, texts, images, videos, graphics, etc. which are produced and/or processed by **FLOW**SPARKS The Netherlands, if necessary made available by the Customer

Article 1 Applicability of general terms and conditions for FLOWSPARKS The Netherlands

1.1. These general terms and conditions apply to all offers and agreements in which **FLOW**SPARKS The Netherlands supplies goods and/or services of any kind and under any name to the Customer.

1.2. By accepting an offer or agreement from the Supplier, these general terms and conditions are considered accepted, unless the Customer can prove that they were not able to take prior notice of the general terms and conditions.
1.3. Deviations from and additions to these general terms and conditions are only valid if these have been agreed or accepted in writing between the parties. A change or addition by the Supplier shall be deemed to have been accepted after notification to the Customer who does not object to the proposed change or addition within a period of fifteen (15) days.
1.4. The applicability of purchase or other conditions of the Customer is expressly rejected.
1.5. If any provision of these general terms and conditions is void or annulled, the remaining provisions of these general terms and conditions shall remain in full force and effect. In that case, the parties shall enter into consultations with the aim of agreeing new provisions to replace the invalid or annulled provisions which, as far as this can be legally valid, are closest to what the parties pursued with the invalid or annulled provision.

Art. 2 Offers - orders

2.1. All offers and other expressions of the Supplier are without obligation for the Customer, unless otherwise specified by the Supplier in writing. The Customer is responsible for the accuracy and completeness of the data provided by or on behalf of him to the Supplier on which the Supplier has based its offer.
2.2. After acceptance by the Customer, the agreement is concluded. Orders will only be accepted by the Supplier if they arrive in writing, dated and signed, whether or not electronically.
2.3. Any cancellation of an order by the Customer must be made in writing. In the event of cancellation of a tailor-made project, the Customer owes a flat-rate compensation equal to 20% of the total amount of the canceled order, and at least the costs and hours already spent, insofar as this would be more. For SaaS, interim cancellation within a contract period is not possible.

Art. 3 Price and payment

3.1. All comments on the invoice must be duly substantiated by registered letter within fifteen (15) days of the date of the invoice or bill, failing which the invoice will be considered accepted.
3.2. All invoices are payable at the registered office, on the due date and without discount, unless otherwise stated.
3.3. All prices are exclusive of sales tax (VAT) and other taxes that are or are imposed by the government. All prices announced by the Supplier are always in euros and the Customer must pay all payments in euros.
3.4. If the Supplier is obliged to upload the invoice to a digital platform at the request of the Customer, an administrative cost of € 25 (twenty-five euros) per invoice will be charged. If for any reason the Supplier fails to upload the invoice to the platform, it will be sent by e-mail. In any case, not charging to the platform gives the Customer the right to refuse the invoice or delay or suspend payment.
3.5. No rights can be exercised by the Customer on a preliminary calculation or budget issued by the Supplier, unless the parties have agreed otherwise in writing. An available budget made known by the Customer to the Supplier is only valid for the purpose of information, unless this amount has been expressly agreed otherwise in writing as a flat rate.
3.6. If, according to the agreement concluded between the parties, the Customer consists of several natural persons and/or legal entities, each of these (legal) persons is jointly and severally bound to the Supplier to fulfill the agreement.
3.7. If there is a periodic payment obligation on the part of the Customer, the Supplier shall be entitled to adjust the applicable prices and rates in writing, in accordance with the price revision clause included in the agreement, to the period specified in the agreement. If the agreement does not expressly provide for the possibility for the Supplier to adjust the prices or tariffs, the Supplier shall always be entitled to adjust the applicable prices and tariffs provided written notice (via online communication or by ordinary letter post) of at least three (3) months in advance. If the Customer in the latter case does not wish to agree to the adjustment, the Customer is entitled to terminate the agreement by registered letter within thirty (30) days after notification of the adjustment, whereby the agreement will end on the date on which the new prices and/or tariffs would come into effect.

3.8. Incomplete or late delivery or performance shall not give rise to a refusal of payment. The examination of a complaint does not in any way mean that the Supplier acknowledges the possible validity of that complaint. A complaint can never result in the Customer being able to suspend his payment obligation.
3.9. Subject to the written agreement of the Supplier, the Customer may not invoke any debt setting-off, regardless of the rights or claims which form the basis of the Customer wanting to assert debt setting-off.
3.10. If the Customer does not pay the amounts due or does not pay them on time, the Customer owes interest of 10% ipso jure and without notice of default, as well as a lump sum compensation in the amount of 10% of the invoiced amount with a minimum of € 125 (one hundred and twenty-five euros).

Art. 4 Duration of the agreement
4.1. Unless otherwise agreed in writing, the duration of the agreement is one (1) year.
4.2. If the agreement is of a fixed-term basis, the duration of the agreement will be tacitly extended and renewed for the duration of the originally agreed period, unless the Customer or Supplier terminates the agreement in writing with due observance of a notice period of three (3) months before the end of the relevant period.

Art. 5 Terms
5.1. The indication of delivery periods only constitutes an indication and is not binding, unless otherwise agreed in writing.
5.2. In all cases – including if the parties have agreed on an ultimate (delivery) term or (delivery) date – the Supplier will only be in default due to time exceeding the agreed or reasonable term after notification by Customer in writing about the default, whereby 1) a description of the shortcoming as detailed as possible shall be given and 2) the Customer grants the Supplier a reasonable period to clear the shortcoming and 3) this reasonable period has expired.
5.3. If it has been agreed that the delivery of the agreed work will take place in phases, the Supplier is entitled to postpone the start or continuation of the work of the current phase until the Customer has approved the results of the preceding phase in writing.
5.4. The Supplier shall not be bound by any deadline or delivery term if the parties make a change to the content or scope of the agreement (additional work, change of specifications, etc.) or if a change in the approach to the execution of the agreement has been agreed, or if the Customer fails to fulfill (in time, partly or in full) his obligations resulting from the agreement.

Art. 6 Cooperation and information obligations
6.1. The parties recognize that the successful functioning of information and communication technology depends on proper and timely cooperation between them. The Customer shall always provide all reasonably desired cooperation and requested or necessary data by the Supplier in a timely manner.
6.2. The Customer guarantees the correctness and completeness of the data, information, designs and specifications provided by him to the Supplier. The Customer shall appoint a contact person or contacts who will act as such for the duration of the Supplier's activities. Contacts of the Customer will have the necessary experience, specific material knowledge and insight into the objectives desired by the Customer. The Supplier shall (periodically or when necessary) provide the contact person or contacts of the Customer with information about the performance of the work.
6.3. If the Customer uses personnel and/or subcontractors in the execution of the agreement, these personnel and subcontractors will have the necessary knowledge and experience. If employees of the Supplier perform work at the Customer's location, the Customer shall provide the necessary facilities in a timely manner and free of charge, such as a workspace with computer and network facilities. The Supplier shall not be liable for damage or costs due to transmission errors, malfunctions or non-availability of these facilities, unless the Customer proves that these damage or costs are the result of intent or deliberate recklessness on the part of the Supplier.
6.4. When work is carried out on site, the Customer shall comply with the applicable legislation on the welfare of employees in the performance of their work and the implementing decisions. The workspace and facilities will meet all legal requirements. The Customer indemnifies the Supplier against claims by third parties, including employees of the Supplier, who suffer damage in connection with the execution of the agreement that is the result of acts or omissions of the Customer or of unsafe situations in his organization.

The Customer shall notify the employees employed by the Supplier of the housekeeping and security rules applicable within his organization before the start of the work.

6.5. If Customer makes software, equipment or other resources available to Supplier in connection with Supplier's services and products, Customer is responsible for obtaining all necessary licenses or approvals with regard to these resources that Supplier may need.

6.6. The Customer is responsible for the management, use of the products and/or services provided by the Supplier and the manner in which the results of the products and services are used. Customer is also responsible for the instruction to, and use by users.

6.7. The Customer shall install, set up, parameterize and tune the (auxiliary) software required on its own equipment and, if necessary, adapt the equipment, other (auxiliary) software and operating environment used therein and achieve the interoperability desired by the Customer.

Article 7 Implementation

7.1. All services of the Supplier shall be performed on a best effort basis, unless and insofar as the Supplier has expressly agreed otherwise in the written agreement and the relevant result has also been described in the agreement with sufficient level of detailed and desired outcome.

7.2. The Supplier shall not be liable for any damage or costs resulting from the use or misuse of access or identification codes or certificates, unless the misuse is the direct result of an intentional or knowingly reckless act or omission on the part of the Supplier.

7.3. If the agreement has been entered into with a view to execution by one particular person, the Supplier is always entitled to replace this person with one or more persons with the same and/or similar qualifications.

Art. 8 Back-up

8.1. If the service to the Customer under the agreement includes making backups of Customer data, the Supplier shall, subject to the periods agreed in writing, and failing that, once a week, make a complete backup of the Customer's data in its possession. The Supplier shall keep the backup during the agreed period, and in the absence of agreements in this regard, during the period customary with the Supplier. Supplier will safeguard the backup carefully as a good custodian.

8.2. The Customer himself remains responsible for compliance with all statutory administration and storage obligations applicable to him.

Art. 9 Security

9.1. If the Supplier is obliged to provide some form of information security under the agreement, appropriate and reasonable protection will be provided in relation to the data being managed and the costs associated with the protection. The Supplier does not guarantee that the information protection is effective under all circumstances.

9.2. The access or identification codes and certificates provided by or on behalf of the Supplier to the Customer are confidential and will be treated by the Customer as such and will only be disclosed to authorized personnel from the Customer's own organization. The Supplier is entitled to change assigned access or identification codes and certificates.

9.3. Customer shall adequately secure its systems and infrastructure and have antivirus software in operation at all times.

Article 10 Maintenance

10.1. The Supplier does not perform customer-specific maintenance services unless otherwise agreed in writing. In this case, a separate written agreement with the agreements between the parties will be drawn up.

Art. 11 Reservation of ownership and rights and suspension

11.1. All goods delivered to the Customer remain the property of the Supplier until all amounts owed by the Customer to the Supplier under the agreement concluded between the parties have been paid. The Customer is prohibited from reselling, pledging or ceding the claim on the delivered goods before the purchase price has been paid in full.

11.2. When and where appropriate, rights are granted or transferred to the Customer under the condition that the Customer has paid all amounts due under the agreement.

11.3. The Supplier may retain the data, documents, software and/or data files received or realized in the context of the agreement, despite an existing obligation to issue or transfer, until the Customer has paid all amounts due to the Supplier.

Art. 12 Risk transition

12.1. The risk of loss, theft, misappropriation or damage to goods, data (including: usernames, codes and passwords), documents, software or data files that are manufactured, delivered or used in the context of the execution of the agreement passes to the Customer at the moment when these are placed in the actual disposal of the Customer or a subcontractor of the Customer.

Art. 13 Confidentiality and non-hiring of personnel

13.1. The Customer and the Supplier shall ensure that all data received from the other party that is known or should reasonably be known to be of a confidential nature remain secret. This prohibition does not apply to parties if and insofar as the provision of the relevant data to a third party is necessary as a result of a court ruling, a legal regulation or for the proper execution of the agreement by the Supplier. The party receiving confidential information will only use it for the purpose for which it was provided. In any case, data is considered confidential if it has been designated as such by one of the parties.

13.2. The Customer acknowledges that the software originating from the Supplier always has a confidential character and that it contains trade secrets of the Supplier, its suppliers or the manufacturer of the software.

13.3. Without the prior written consent of the Supplier, the Customer is not entitled to make a communication to a third party about the working method, the methods and techniques of the Supplier and/or the content of the advice or reports of the Supplier. The Customer shall not provide the advice or reports of the Supplier to a third party or otherwise make them public.

13.4. During the term of the agreement and up to one (1) year after its end, each of the parties shall only hire or otherwise, directly or indirectly, employ employees of the other party who are or have been involved in the execution of the agreement with the prior written consent of the other party.

Art. 14 Privacy and data processing

14.1. In the context of the processing of the personal data that the parties acquire through the implementation of the agreement, the parties declare to process each other's identity and contact data, as well as those of their staff, employees, appointees and other useful contact persons involved in the realization of the project.

14.2. The parties will further make an arrangement in mutual consultation regarding compliance with the GDPR regulations.

14.3. If data is processed, this is done, unless otherwise agreed, for the following purposes: the execution and handling of the agreement, the relationship with public authorities, the management of the Suppliers/agents of each party, the accounting, as well as documents drawn up in the context of the agreement. In order to provide an optimal service in connection with the above-mentioned purposes, this personal data may be communicated to persons involved in this assignment and its handling.

14.4. The legal bases for the processing of the personal data are the execution of the agreement, the fulfillment of legal and regulatory obligations and/or the legitimate interest of the processing party.

14.5. If data is processed, the parties undertake to process it in accordance with the applicable European national regulations including the rights of data subjects, such as the right of access, the right to rectification, the right to object, the right to restriction of processing, the right to erasure and the right to data portability, which may apply as the case may be.

14.6. The Supplier cannot be held liable for the fact that he himself, companies and/or persons connected with him, to whom personal data are communicated, pass on (or are obliged to pass on) data to the national government, to foreign authorities or to international institutions in execution of a legal or regulatory obligation, in execution of a court decision, or also in the context of the representation of a legitimate interest.

14.7. The parties also undertake to impose the same rules on any other contractors under this project.

14.8. The responsibility for the data processed by the Customer using a Supplier's service lies entirely with the Customer. The Customer warrants to the Supplier that the content, use and/or processing of the data are not unlawful and do not infringe any right of a third party. The Customer indemnifies the Supplier against any legal claim of a third party, for whatever reason, in connection with this data or the execution of the agreement.

Art. 15 Intellectual Property

15.1. All intellectual property rights to the software, websites, data files, equipment, training, test and examination material, etc. developed on the basis of the agreement or made available to the Customer are the exclusively ownership of the Supplier, its licensors or its suppliers. The Customer obtains the rights of use expressly granted by these general terms and conditions, the agreement concluded in writing between the parties and the law. A Customer's right of use is non-exclusive, non-transferable, non-pledgeable and non-sublicensable.

15.2. The intellectual property rights of the course/training content provided by the Customer itself, or by or uploaded to the system at the instruction of the Customer, remain under the ownership of in the Customer. The Customer assures the Supplier that it owns all intellectual property rights in relation to this content. The Supplier obtains the right to use, copy and adapt the content in the context of the execution of its assignment. The Customer shall indemnify the Supplier against any claim by a third party which is based on an assertion that the content used infringes an intellectual property right of that third party.

15.3. If the Supplier is willing to commit to the transfer of an intellectual property right, such a commitment can only be made in writing and expressly. If the parties agree in writing that an intellectual property right in respect of software, websites, data files, equipment or other materials developed specifically for the Customer will pass to the Customer, this does not affect the right or possibility of the Supplier to use and/or exploit the parts, general principles, ideas, designs, algorithms, documentation, works, programming languages, protocols, standards and the like, without any restriction, for other purposes, either for itself or for third parties. Nor does the transfer of an intellectual property right affect the Supplier's right to make developments on behalf of itself or a third party that are similar or derived from those that have been or are being made for the benefit of the Customer.

15.4. The Customer shall not remove or modify any indication(s) concerning the confidential nature or regarding copyrights, trademarks, trade names or any other intellectual property right from the software, websites, data files, equipment or materials.

15.5. Even if the agreement does not expressly provide for this, the Supplier is always permitted to make technical provisions to protect equipment, data files, websites, software made available, software to which the Customer is provided (directly or indirectly) access, and the like in connection with an agreed restriction in the content or duration of the right to use these objects. Customer shall not remove or circumvent such technical device(s).

15.6. The Supplier shall indemnify the Customer against any claim by a third party which is based on the assertion that software, websites, data files, equipment or other materials developed by the Supplier itself infringe a right of intellectual property of that third party, on the condition that the Customer immediately informs the Supplier in writing of the existence and content of the claim and leaves the handling of the matter, including the conclusion of any settlements, entirely to the Supplier. To this end, the Customer shall grant the necessary powers of attorney, information and cooperation to the Supplier in order to defend itself against these claims. This obligation to indemnify, shall lapse if the alleged infringement relates (i) to materials made available to the Supplier by the Customer for use, adaptation, processing or maintenance, or (ii) to changes that the Customer has made or caused to make to the software, website, data files, equipment or other materials without the written consent of the Supplier. If it is irrevocably established in law that the software, websites, data files, equipment or other materials developed by the Supplier itself infringe any intellectual property right belonging to a third party or if, in the opinion of the Supplier, there is a reasonable likelihood that such an infringement will occur, the Supplier will, if possible, ensure that the Customer can continue to use the delivered, or functionally equivalent other software, websites, data files, equipment or materials.

15.7. The Customer guarantees that no rights of third parties oppose the provision to the Supplier of equipment, software, material intended for websites, data files and/or other materials and/or designs, for the purpose of use, maintenance, editing, installation or integration. The Customer shall indemnify the Supplier against any claim by a third party based on the assertion that such provision, use, maintenance, editing, installation or integration infringes any right of that third party.

15.8. The Supplier is never obliged to perform data conversion, unless this has been expressly agreed with the Customer in writing.

Art. 16 Supplier’s Liability

16.1. The total liability of the Supplier due to an attributable shortcoming in the performance of the agreement or on any legal basis whatsoever, including expressly any shortcoming in the performance of a warranty obligation agreed with the Customer, is limited to compensation for direct damage up to a maximum of the amount of the price stipulated for that agreement (excl. VAT). If the agreement is mainly a long-term agreement with a term of more than one (1) year, the price stipulated for that agreement is set at the total of the fees (excl. VAT) for one (1) year. Under no circumstances, however, will the total liability of the Supplier for direct damage, on any legal basis whatsoever, exceed € 500,000 (five hundred thousand euros).

16.2. The total liability of the Supplier for damage caused by death, personal injury or due to material damage to goods never exceeds € 1,250,000 (one million two hundred and fifty thousand euros).

16.3. The liability of the Supplier for indirect damage, consequential damage, lost profit, missed savings, reduced goodwill, damage due to business interruption, damage resulting from claims by customers of the Customer and materials or software of third parties is excluded.

16.4. In addition, the parties agree that the liability of the Supplier shall in all cases be limited to the guarantees provided in the context of its insurance.

16.5. The exclusions and restrictions referred to in articles 16.1 to 16.4 shall lapse if and insofar as the damage is the result of intent by the Supplier.

16.6. Unless performance by the Supplier is permanently impossible, the Supplier shall only be liable if the Customer notifies the Supplier in writing without delay, setting a reasonable period for the correction of the shortcoming, and the shortcoming is not remedied within this period.

16.7. Any claim for damages against the Supplier shall lapse after the mere expiry of twelve (12) months after the claim arose, unless the Customer has filed a legal claim for compensation for the damage before the expiry of that period.

16.8. The Customer indemnifies the Supplier against all claims of third parties for product liability as a result of a defect in a product or system supplied by the Customer to a third party and which also consisted of equipment, software or other materials supplied by the Supplier, unless and insofar as the Customer proves that the damage was caused by such equipment, software or other materials.

16.9. The provisions of this article as well as all other limitations and exclusions of liability mentioned in these general terms and conditions also apply in favor of all (legal) persons whom the Supplier uses in the execution of the agreement.

Art. 17 Force majeure

17.1. Neither party is obliged to comply with any obligation, including any statutory and/or agreed warranty obligation, if it is prevented from doing so as a result of force majeure. Force majeure on the part of the Supplier is understood to include: (i) force majeure of suppliers of Supplier, (ii) failure to properly comply with obligations of suppliers prescribed by the Customer to the Supplier, (iii) defects in goods, equipment, software or materials of third parties the use of which is prescribed by the Customer to the Supplier, (iv) government measures, (v) power failure, (vi) disruption of internet, data network, work or telecommunications facilities, (vii) war, (viii) fire, (viiii) natural disasters, (x) general transport problems and (xi) strike.

17.2. If a force majeure situation lasts longer than sixty (60) days, each of the parties has the right to terminate the agreement in writing. What has already been performed on the basis of the agreement will in that case be settled proportionally, without the parties owing each other anything else.

Art. 18 Termination and cancellation of the agreement

18.1. Each of the parties shall have the power to dissolve the agreement due to an attributable shortcoming in the performance of essential obligations of the agreement only if the other party, after written notice of default in which a reasonable period is set for the elimination of the shortcoming as far as still useful or possible, fails. Payment obligations of the Customer and all obligations to cooperate and/or provide information by the Customer or a third party to be engaged by the Customer apply in all cases as essential obligations under the agreement.

18.2. Amounts that the Supplier has invoiced before dissolution in connection with what he has already duly performed or delivered for the execution of the agreement remain due and payable immediately at the time of dissolution. The same applies to services that have already been duly delivered by the Supplier before dissolution, but have not yet been invoiced.

18.3. If an agreement has been concluded for an indefinite period, it can be terminated by each of the parties in writing and without compensation. If no notice period has been agreed between the parties, a reasonable period must be observed when canceling.

18.4. The parties are not entitled to terminate an agreement that has been entered into for a fixed term.

18.5. The agreement shall end ipso jure if a certain number of services are due by the Supplier on demand and these services are not or not fully included within a period of twenty-four (24) months after the conclusion of the agreement, without refund of amounts if applicable.
18.6. This agreement shall be terminated ipso jure and without notice in the event of bankruptcy, liquidation, suspension of payment or impairment of the creditworthiness of the parties. The Supplier may also terminate the agreement in whole or in part without notice of default with immediate effect if the decisive control over the Customer's company changes directly or indirectly. Due to the termination as referred to in this article, the Supplier is never obliged to any refund of already received funds or to compensation. Upon termination, the Customer's right to use the software, websites and the like made available, as well as the Customer's right to access and/or use the services of the Supplier, ends, without a notice of termination being required on the part of the Supplier.

Art. 19 Applicable law and competent court
19.1. The agreements between the Supplier and the Customer are governed by Dutch law. Applicability of the Vienna Sales Convention 1980 is excluded.
All disputes that may arise in connection with the interpretation, execution or non-execution of this Agreement and for which an amicable settlement is not reached will be settled exclusively by the Courts of the Supplier's registered office.

Chapter 2: Software-as-a-Service (SaaS)

The provisions contained in this chapter apply in addition to the general provisions of these general terms and conditions if the Supplier provides service under the name or in the area of Software-as-a-Service (also referred to as: SaaS).

Article 20 Implementation of SaaS service
20.1. In the case of SaaS, software is made available by the Supplier remotely and kept to the Customer via the internet or another data network, without the Customer being provided with a physical carrier with the relevant software on a non-exclusive, non-transferable, non-pledgeable and non-sublicensable basis.
20.2. The Supplier only performs the SaaS service on behalf of the Customer, who will only use the software for its intended purpose. The Customer is not free to allow third parties to use the services provided by the Supplier in the field of SaaS.
20.3. If, on the basis of a request or order from a public authority or in connection with a legal obligation, the Supplier carries out work with regard to data of the Customer, its employees or users, all associated costs will be charged to the Customer.
20.4. Supplier may continue the implementation of the SaaS service using a new or modified version of the software. If such changes result in a change in the procedures applicable to the Customer, the Supplier will inform the Customer as soon as possible. The Supplier is not obliged to maintain, change or add certain features or functionalities of the service or software specifically for the Customer.
20.5. Supplier may temporarily disable the SaaS service in whole or in part for preventive, corrective or adaptive maintenance or other forms of service. The Supplier shall inform the Customer of this, not allow the decommissioning to last longer than necessary and, if possible, allow it to take place outside office hours.
20.6. The Supplier is never obliged to provide the Customer with a physical carrier containing the software to be made available and kept available to the Customer in the context of the SaaS service.

Article 21 Guarantee
21.1. The Supplier does not guarantee that the software to be made available in the context of the SaaS service is error-free and always functions without interruptions. The Supplier shall endeavor to correct errors in the software within a reasonable period of time if and to the extent that the software has been developed by the Supplier itself and the relevant malfunctions have been reported to the Supplier in writing as described in detail by the Customer.

21.2. Errors are understood to mean the substantial non-compliance of the software with the functional or technical specifications of the software expressly made known by the Supplier in writing, and, in the event that the software is wholly or partly custom-made software, with the functional or technical specifications expressly agreed in writing.
21.3. The Supplier may, if necessary, postpone the repair of the defects until a new version of the software is put into operation. The Supplier does not guarantee that defects in software that has not been developed by the Supplier itself will be remedied. In that case, the Supplier is entitled to apply temporary solutions or program detours or problem-avoiding restrictions in the software.
21.4. On the basis of the information provided by the Supplier regarding measures to prevent and limit the consequences of malfunctions, defects in the SaaS service provision, damage or loss of data or other incidents, the Customer shall assess the risks for his organization and, if necessary, take additional measures. At the request of the Customer, the Supplier declares that it is willing to provide reasonable cooperation on further measures to be taken by the Customer, against (financial) conditions to be set by the Supplier. The Supplier is never obliged to restore damaged or lost data. The Supplier does not guarantee that the software to be made available in the context of the SaaS service will be adapted in a timely manner to changes in relevant laws and regulations.

Art. 22 Commencement of service - compensation

22.1. Implementation of the SaaS service to be provided by the Supplier begins within a reasonable period of time after the conclusion of the agreement. The Customer shall ensure that he has the facilities necessary for the use of the SaaS service immediately after entering into the agreement.
22.2. The Customer owes the fee for the SaaS service that is included in the agreement. In the absence of an agreed payment schedule, all amounts relating to the SaaS service provided by the Supplier are due in advance each year.

Art. 23 Service Level Agreement

23.1. Any agreements regarding a service level (Service Level Agreement) are only expressly agreed in writing. The Customer shall always inform the Supplier without delay about all circumstances that affect or may affect the service level and its availability.
23.2. If agreements have been made on a service level, the availability of software, systems and related services will always be measured in such a way that the decommissioning announced in advance by the Supplier due to preventive, corrective or adaptive maintenance or other forms of service, as well as circumstances that are outside the sphere of influence of the Supplier, are disregarded. Unless the Customer provides evidence to the contrary, the availability measured by the Supplier shall be considered as complete evidence.

Chapter 3: Custom development of software and content

The provisions in this chapter apply in addition to the general provisions if the Supplier designs and/or develops software and/or content for the Customer and possibly installs the software and/or content.

Art. 24 Right of use

24.1. The Supplier shall make available to the Customer the software and/or educational techniques developed on behalf of the Customer and/or the formats and templates used and/or any associated user documentation on the basis of a user license. The right of use is non-exclusive, non-transferable, non-pledgeable and non-sublicensable. The content developed on behalf of the Customer becomes the property of the Customer, with a right of the Supplier to use, copy and adapt.
24.2. The Supplier’s obligation to make the service available and the Customer's right of use is restricted to the so-called object code and not to the source code of the software. Only if this has been agreed in writing, the source code of the software and the technical documentation created during the development of the software will be made available to the Customer, in which case the Customer will be entitled to make changes to the software.
24.3. The Supplier is not obliged to make available the auxiliary software and program or data libraries required for the use and/or maintenance of the software.

24.4. The Customer shall always strictly comply with the agreed restrictions, of whatever nature or content, on the right to use the software.
24.5. The Supplier may request the Customer to use the software no earlier than after the Customer has obtained one or more codes required for use from the Supplier, its supplier or the manufacturer of the software. Supplier shall always be entitled to take technical measures to protect the software from unlawful use and/or from use in a different manner or for different purposes than those agreed between the parties. The Customer shall never remove or circumvent technical provisions intended to protect the software.
24.6. The Customer is never permitted to sell, rent, dispose of or grant limited rights to the software and the media on which the software is or is recorded or to make it available to a third party in any way, for any purpose or under any title. Nor will the Customer give a third party – whether remotely (online) or not – access to the software or place the software with a third party for hosting, even if the third party in question uses the software exclusively for the Customer's benefit.
24.7. Upon request, the Customer shall immediately cooperate with an investigation to be carried out by or on behalf of the Supplier regarding compliance with the agreed usage restrictions. The Customer shall grant access to its buildings and systems at the Supplier's first request. The Supplier shall treat all confidential business information that it obtains from or at the Customer in the context of an investigation, insofar as this information does not concern the use of the software itself, confidentially.
24.8. The parties confirm that the agreement concluded between them, insofar that it has as its object the provision for the use of software, is never considered a purchase agreement.
24.9. The Supplier is not obliged to maintain the software and/or to provide support to users and/or administrators of the software. If, contrary to the foregoing, the Supplier is asked to provide maintenance and/or support with regard to the software, the Supplier may require the Customer to enter into a separate written agreement for this.

Art. 25 Specifications and development of custom software and content

25.1. If specifications or a design of the software and/or content to be developed have not already been provided to the Supplier before or when entering into the agreement, the parties will specify in good consultation in writing which software or content will be developed and in which way the development will take place.
25.2. The Supplier shall develop the software and/or content with care, all in compliance with the expressly agreed specifications or design and – if applicable – in compliance with the project organization, methods, techniques and/or procedures agreed with the Customer in writing. Before starting the development work, the Supplier may require the Customer to agree in writing to the specifications or design.
25.3. If the parties use a development method whereby the beginning of the development will not be carried out on the basis of complete or fully elaborated specifications and/or that specifications can be adapted in good consultation during the execution of the agreement, the parties will jointly make decisions in good consultation during the execution of the agreement with regard to the specifications that apply to the next phase of the project and/or to the next partial development. The Customer accepts the risk that the software and/or the content will not necessarily meet all specifications. The Customer will ensure a permanent, active and Customer-driven input and cooperation of relevant end users, including with regard to testing and (further) decision-making. The parties guarantee that the employees they employ who are appointed to key positions have the necessary decision-making powers for this position and that the decision-making process is as efficient as possible so that development can progress.
25.4. If the parties use a development method as referred to in Article 25.3, the Customer accepts the software and/or website in the state in which it is at the time of the end of the last development phase and no acceptance test is held.
25.5. In the absence of specific agreements in this regard, the Supplier shall commence the design and/or development work within a reasonable period of time after the conclusion of the agreement.
25.6. Upon request, the Customer shall give the Supplier the opportunity to carry out the work outside the usual working days and working hours at the Customer's office or location.
25.7. The performance obligations of the Supplier with regard to the development of a website do not include the provision of a so-called 'content management system' or CMS.
25.8. The Supplier's performance obligations do not include the maintenance of the software and/or the content, and/or the provision of support to users and/or administrators thereof. A separate agreement can be concluded for this, if necessary.

Art. 26 Delivery and installation

26.1. The Supplier has the choice to deliver the software on the agreed format of data carrier or, in the absence of agreements to that effect, on a format of data carrier to be determined by the Supplier or to make the software available online to the Customer for delivery. Any agreed user documentation shall be provided in paper or digital form in a language determined by the Supplier at the Supplier's option.

26.2. Only if this has been agreed, the Supplier will install the software at the customer's premises. In the absence of agreements in this regard, the Customer will install, set up, parameterize, tune the software itself and, if necessary, adjust the used equipment and operating environment.

26.3. Unless, on the basis of the agreement, the Supplier will 'host' the software and/or content on its own computer system for the benefit of the Customer, the Supplier shall deliver the content to the Customer on a suitable information carrier to be determined by it and in a form to be determined by it or make it available online to the Customer for delivery.

Art. 27 Acceptance

27.1. If the parties have not agreed on an acceptance test, the Customer accepts the software in the state in which it is at the time of delivery. In the aforementioned case, the software shall be deemed to have been accepted by the Customer upon delivery or, if an installation to be carried out by the Supplier has been agreed in writing, upon completion of the installation.

27.2. If an acceptance test has been agreed, the test period shall be fourteen (14) days after delivery or, if an installation to be carried out by the Supplier has been agreed in writing, fourteen (14) days after completion of the installation. During the test period, the Customer is not entitled to use the software for productive or operational purposes. Customer will perform the agreed acceptance test with qualified personnel and with sufficient scope and depth.

27.3. If an acceptance test has been agreed, the Customer is obliged to check whether the delivered software complies with the functional or technical specifications expressly made known by the Supplier in writing and, if and insofar as the software concerns tailor-made software in whole or in part, with the functional or technical specifications expressly agreed in writing.

27.4. The software will be deemed accepted between the parties:

a. If the parties have agreed on an acceptance test: on the first (1st) day after the test period, or
b. If the Supplier receives a test report as referred to in article 27.5 before the end of the test period: at the time when the errors mentioned in that test report have been corrected, without prejudice to the presence of errors that do not prevent acceptance according to article 27.7, or
c. If the Customer makes any use of the software for productive or operational purposes: at the time of the respective commissioning.

27.5. If the agreed acceptance test shows that the software contains errors, the Customer shall report the test results to the Supplier in writing, clearly, in detail and in a comprehensible manner no later than the last day of the test period. The Supplier shall make every effort to remedy the said errors within a reasonable period of time, whereby the Supplier is entitled to apply temporary solutions, program detours or problem-avoiding restrictions.

27.6. Where these general terms and conditions refer to 'errors', this shall mean the substantial non-compliance of the software with the functional or technical specifications of the software expressly made known by the Supplier in writing, and, in the event that the software is wholly or partly custom-made software, with the functional or technical specifications expressly agreed in writing. An error is only present if the Customer can prove it and it is also reproducible.

27.7. The Customer may not withhold acceptance of the software for reasons not related to the specifications expressly agreed between the parties in writing and furthermore not because of the existence of minor errors, i.e. errors that do not reasonably impede the operational or productive use of the software, without prejudice to the obligation of the Supplier to repair these minor errors within the framework of the warranty scheme of article 29. Acceptance should also not be withheld because of aspects of the software that can only be assessed subjectively, such as aesthetic aspects of user interfaces.

27.8. If the software is delivered and tested in phases and/or parts, the non-acceptance of a certain phase and/or part does not affect the acceptance of a previous phase and/or another part.

27.9. Acceptance of the software in a manner referred to in this article shall result in the Supplier being liable for the fulfillment of its obligations regarding the provision and delivery of the software and, if the installation of the software has also been agreed by the Supplier, of its obligations regarding the installation. Acceptance of the software does not affect the Customer's rights under article 27.7 regarding minor defects and article 29 regarding the warranty.

Art. 28 Compensation

28.1. In the absence of an agreed payment schedule, advances will be charged for the design and development of software and/or content according to the progress of the works.

28.2. The price for the development work does not include the fee for the right to use the software or content during the term of the agreement.

28.3. The fee for the development of the software does not include a fee for the utility software and program and data libraries required by the Customer, any installation services and any modification and/or maintenance of the software. Nor does the fee include the provision of support to its users.

Art. 29 Warranty

29.1. The Supplier does not guarantee that the software will always work without interruption.

29.2. The Supplier will, however, make every effort to rectify errors within a reasonable period of time if these have been reported to the Supplier in writing within a period of three (3) months after delivery, or, if an acceptance test has been agreed, within three (3) months after acceptance in detail. The Supplier cannot guarantee that all errors can always be corrected.

29.3. The Supplier may charge the cost of repair in accordance with its usual rates if there are errors of use or improper use by the Customer or other causes not attributable to the Supplier. The obligation to repair shall lapse if the Customer makes or has made changes to the software without the written consent of the Supplier.

29.4. Repair of faults takes place at a location and manner to be determined by the Supplier. The Supplier is entitled to apply temporary solutions or program workarounds or problem-avoiding restrictions in the software.

29.5. The Supplier is not obliged to restore damaged or lost data.

29.6. Supplier shall have no obligation of any kind or content with regard to faults reported after the expiry of the guarantee period referred to in article 29.2., except within the framework of a maintenance agreement.

29.7. The Supplier does not guarantee that its website works properly in conjunction with all types or new or outdated versions of web browsers and any other software. The Supplier also does not guarantee that the website works properly in conjunction with all common types of equipment.

Version 18/10/2023