

CLOUDBILLING 

# Software License Agreement and Support Terms

June 2023

## SOFTWARE LICENSE AGREEMENT AND SUPPORT TERMS

### CLOUDBILLINGCLOUD SERVICES

#### IMPORTANT - PLEASE READ THIS CAREFULLY

This Software License Agreement (hereinafter "**License Agreement**") and Service Terms ("**Terms**") is a legal agreement between you as a sole trader, company or organization (hereinafter "**Customer**") and CloudBilling B.V. (hereinafter "**CloudBilling**") in respect of the CloudBilling software (hereinafter "**Software**"). These Licenses are intended to govern all the rights and obligations of the Parties in relation to the Service, the Support and the use of the Platform, as specified in the Offer Letter. The agreement between parties consists of the Offer Letter and these Terms ("**the Agreement**").

If you do not understand or agree to the terms of this License Agreement, then you have no right to use the Software. By opening or otherwise using the Software, the Customer agrees to be bound by the terms of this Agreement, with the following specifics:

- If the Customer wishes to use the Software for its commercial and professional activity, Customer must acknowledge this License Agreement by means of signing the accompanying Offer Letter and returning this Offer Letter to CloudBilling.
- If the Customer wishes to use the Software for demo purposes it can be used on condition that the demo environment is not used for commercial or professional activity. The demo software can also not be packaged as part of an install suite. Demo licenses are normally restricted in functionality.
- If the Customer wishes to use the Software for educational purpose, a separate agreement must be entered into with CloudBilling.
- If the Customer wishes to use the Software for ASP-services, a separate agreement must be entered into with CloudBilling.
- Except when clearly expressed by CloudBilling in respect of certain CloudBilling software, CloudBilling does not grant any right of use of the Software to private persons for private use or for any other purpose than for the Customers economical and professional activity.

Particular attention should be paid to the limitation and exclusion of liability clauses in this License Agreement.

The Software is licensed, not sold.

## Article 1. Commencement

- 1.1. This License Agreement comes into force from the moment the Software is installed, run, copied or used for the first time whatever is earlier.
- 1.2. Except if the Software is used for demo purposes as described above, the Software cannot be used unless the Offer Letter has been signed and returned to CloudBilling.

## Article 2. Interpretation and Definitions

2.1. For the purpose of the Agreement, the following definitions apply:

Acceptance Test: means a test, agreed upon by Parties, to determine if the Platform reasonably satisfies the Documentation.

Additional Service: means any additional services purchased by the Customer in connection to the Platform and/or the Service, through an order form, which Additional Service is subject to the conditions as attached as Schedule 2.

CloudBilling: means the limited liability company CloudBilling B.V., having its statutory residence at (1411 DC) NAARDEN at Gooimeer 1, registered at the Chamber of Commerce under number 55485243.

Customer: means the entity or person to which an Offer Letter is addressed.

Data: means the information and data - including but not limited to the price plan, purchase data records, pricing, customer data, product data, usage data, audit data, service data, client's usage percentages and other, related billing details accruing from time to time in respect of certain sales of goods and/or services delivered and/or rendered by Customer, processed by Customer through use of the Service.

Documentation: means the configuration manuals and the online manuals for the use of the Service (which may be amended by CloudBilling from time to time).

Error: means a substantial, demonstrable and reproducible failure of the Platform to perform in accordance with the Documentation and/or the interrupted or insufficient availability of the Platform in breach of the Desired Availability.

IP-Rights: means any patent right, copyright, design right, trade mark right, sui generis rights in databases, whether registered or not, as well as any application to register any of the aforementioned rights, and

(rights in) trade secrets, or know-how and any other intellectual or industrial right of whatever nature in any part of the world.

<u>Offer Letter:</u>	means the document by which the Customer orders Software, Support and Additional Services and which is executed by the Parties.
<u>Parties:</u>	means the Customer and his organization and CloudBilling, which engage or have engaged into a collaboration under the terms and conditions as described in the Offer Letter.
<u>Platform:</u>	<p>means the CloudBilling software platform; this includes, but is not limited to:</p> <ul style="list-style-type: none"><li>- The CloudBilling portal, including all import, rating, billing, invoicing and export functionality;</li><li>- All CloudBilling APIs;</li><li>- All CloudBilling connectors (including the connectors with third-party platforms);</li><li>- The CloudBilling Business Intelligence software and database engine, including the BI database structures that are implemented and maintained and the synchronization functionality that synchronizes data with the BI database structures.</li></ul> <p>The full definition of Platform includes but is not limited to all programs, database structure, documentation, source codes, object codes, variations, memory maps, algorithms, plans, charts, graphs and other materials now or hereafter relating to or incorporated therein together with all future revisions to or updates thereof and all technical and operating manuals and any other documentation relating to it.</p>
<u>Schedule:</u>	means an exhibit to the Agreement.
<u>Service:</u>	means the distant access and use of the Platform by the Customer for billing purposes and/or integration purposes, as further specified in the Offer Letter.
<u>Service Fee:</u>	means the fee to be paid by the Customer to CloudBilling for use of the Service.
<u>Software:</u>	means the software platforms as described under <i>Platform</i> .
<u>Support:</u>	specified in Schedule 1.
<u>Support Fee:</u>	means the fee to be paid by Customer to CloudBilling for the Support, as specified in the Offer Letter.

## Article 3. Subject of the Agreement

- 3.1. Subject to the terms and conditions of the Agreement, (i) CloudBilling shall use reasonable efforts in setting-up, installing and configuring a version of the Platform for the purposes of having Customer test the Platform through the Acceptance Test, in accordance with the Configuration Plan, and (ii) after Acceptance, CloudBilling shall use reasonable efforts in providing the Service to the Customer as well as the Support in accordance with Schedule 1 and, if applicable, any Additional Services in accordance with Schedule 2.
- 3.2. CloudBilling hereby grants the Customer a limited, personal, non-transferable, non-exclusive, non-sub-licensable right, upon both Acceptance and payment of the Service Fee, to use the Service in accordance with the Agreement.

## Article 4. Configuration and Acceptance

- 4.1. CloudBilling shall use reasonable efforts in setting-up, installing and configuring the Platform based on the Data for the purposes of having Customer test the Platform through the Acceptance Test.
- 4.2. Customer shall at all times and/or at CloudBilling's first request, furnish to CloudBilling all Data or information which is necessary in order to allow CloudBilling to set-up, install and configure a version of the Platform for the purposes of having Customer test the Platform through the Acceptance Test.
- 4.3. After the configuration of the Platform, CloudBilling grants Customer a limited, personal, non-transferable, non-exclusive, non-sub-licensable right to access and use this version of the Platform only during the Acceptance Test and only for purposes of Acceptance Testing by Customer. This license right will automatically terminate after expiry of the agreed Acceptance period.
- 4.4. During the Acceptance Test period, Customer is not entitled to have other persons than the nominated persons access and use the Platform, unless CloudBilling has issued prior written consent. Customer is also responsible for the nominated users keeping passwords and login codes strictly confidential and/or using these codes with due care, acknowledges and agrees that the test version of the Platform is configured to it 'as is', i.e., without any warranty of any kind. The access and use of the Platform during the Acceptance Test period is, therefore, for Customers own, entire risk and responsibility.
- 4.5. CloudBilling's liability for any and all damages (including but not limited to direct and indirect damages) resulting from and/or related to (i) setting-up, installing and configuring a version of the Platform for the purposes of having Customer test the Platform through the Acceptance Test and/or (ii) the Acceptance Test itself, shall be fully excluded, whether based upon (attributable) default tort or otherwise. This exclusion shall, however, not apply if and insofar as the damage is the result of willful intent or gross negligence by the board of directors or the executive management of CloudBilling.
- 4.6. CloudBilling is free to use any ideas, suggestions or recommendations provided by Customer to CloudBilling regarding the use of the Platform and/or as a result of further activities relating to the configuration ("Feedback") and is free to

incorporate such Feedback in CloudBilling's products or Services, without payment of royalties or other consideration to Customer. Customer agrees that any IP-rights in the Feedback will exclusively vest in CloudBilling, and Customer agrees, at the first request of CloudBilling, to unconditionally co-operate in executing any documents necessary for a transfer of these IP-rights in the Feedback, if necessary, under the applicable law.

- 4.7. During the Acceptance Test period, Customer is not allowed to access and/or use the Platform and/or Service for productive or operational purposes, nor provide such access to or allow such use of the Service by third parties. Customer shall perform the Acceptance Test at its own expense, with sufficiently qualified personnel and sufficiently thorough. Any support by CloudBilling, requested by Customer in writing, with the Acceptance Test is at the risk of Customer and considered an Additional Service. Customer shall report the test results to CloudBilling, in writing in an orderly and understandable manner, ultimately on the last day of the period for the Acceptance Test. Errors that prevent Customer from operational use of the Platform are considered Priority 1 Errors.
- 4.8. CloudBilling shall, to its best abilities, remedy any Errors specified by Customer in its test report and accepted by CloudBilling as such, within a reasonable time. CloudBilling may use temporary solutions, workarounds or problem evading limitations for remedying Errors in the Platform.
- 4.9. The Platform shall be Accepted by Customer if:
  - i. On the first day after the period of the Acceptance Test, as provided in the Configuration Plan; or
  - ii. The date of receipt of the report if the report does not specify any Priority 1 Errors; or
  - iii. The moment the Priority 1 Errors as specified in the report are remedied; or
  - iv. The moment the customer used the platform for the purposes of Production Billing and/or Integration of data sources or services.
- 4.10. Acceptance shall not be withheld by Customer on grounds that do not relate to the specifications of the Platform as specified in the Documentation, nor on the existence of small Errors that do not prevent the operational and productive use of the Platform and/or Service by Customer, none withstanding the obligation of CloudBilling to remedy these Errors. Upon Acceptance of the Platform, Customer fully and unconditionally discharges CloudBilling of its obligations relating to the configuration of the Platform and upon Acceptance, Customer agrees and acknowledges that the Platform and the Service meets the Documentation.

## **Article 5.** Duties and obligations of CloudBilling relating to the Service and Support

- 5.1. CloudBilling will use best efforts in providing the Service to the Customer. CloudBilling will use best efforts in providing Support to the Customer, in accordance with the specifications and service levels as set out in Schedule 1.

CloudBilling will use best efforts in providing any Additional Service to the Customer, in accordance with the additional terms as set out in Schedule 2.

- 5.2. CloudBilling will provide (online) training to the users of the Service nominated by the Customer (Customers key users). Such training is considered an Additional Service.
- 5.3. CloudBilling shall be allowed to take technical measures to protect the Service and/or the Platform or with a view to agreed restrictions in the duration of the right to use the Service. The Customer shall not be allowed to remove or evade such technical measures.
- 5.4. By separate agreement, the Customer and CloudBilling may agree to have CloudBilling provide the Service as a white-label service.
- 5.5. During and after the Agreement, CloudBilling will not publicly make any negative statements regarding the Customer nor otherwise take any actions in this respect that may harm the name and reputation of the Customer.
- 5.6. CloudBilling has arranged for a continuity plan in the event of a bankruptcy of CloudBilling, which allows Customer to continue to use the Service.

### Article 6. Duties and obligations of Customer

- 6.1. The Customer may not – nor permit any third party to – make use of the Service other than as expressly stipulated in the Agreement and/or as expressly and explicitly allowed by overriding mandatory law, such as the Copyright Act.
- 6.2. During the term of the Agreement the Customer shall, if so required by CloudBilling, at its own cost provide CloudBilling with a means of remote access to its IT systems so as to enable the provision by CloudBilling of a remote diagnostic service as part of the Support and for this purpose shall install a modem and any related equipment or software as CloudBilling shall provide or specify (the modem and related equipment and/or software remaining property of and under the control of CloudBilling).
- 6.3. During the term of the Agreement the Customer shall, if so required by CloudBilling, at its own cost co-operate fully with CloudBilling's employees in the performance of the Agreement and, without prejudice to the generality of the foregoing, make available to the CloudBilling all information and materials reasonably required by CloudBilling to enable CloudBilling to perform the Agreement.
- 6.4. Where the (Additional) Service and/or Support is provided by CloudBilling at the Customers site(s):
  - i. provide adequate working space and reasonable computer, telephone, telecommunication, typing and photocopying facilities at the sites for use by CloudBilling's personnel in the performance of the Agreement;
  - ii. take all reasonable and proper precautions to protect the health and safety of CloudBilling's employees;
  - iii. provide CloudBilling with full, safe and uninterrupted access to the site(s) and all related systems, equipment and software for the purpose of the Agreement.

CloudBilling agrees that its personnel will comply with guidelines and health and safety regulations that apply at the relevant site, provided however that the Customer duly informs CloudBilling's personnel beforehand in that respect.

- 6.5. The use of the Service by the Customers nominated users is personal ("named users"). Therefore, the users may not give any other person remote or other access to Platform. The login and password made available to the user are also personal. The user must keep these codes strictly confidential and/or use these codes with due care. The use of said codes shall be solely the responsibility of and the risk of user. The Customer shall indemnify, defend, and hold harmless CloudBilling from any claim, proceeding, loss or damages based upon any use, misuse, or unauthorized use of user's login code and/or password relating to the Service.
- 6.6. During and after the Agreement the Customer will not publicly make any negative statements regarding CloudBilling, the Service (including Support) or the Platform, nor otherwise take any actions in this respect that may harm the name and reputation of CloudBilling.
- 6.7. The Customer will adhere to its responsibilities as outlined in the SLA Agreement, and will also follow up all reasonable instructions and guidelines issued by CloudBilling in connection with the Service, Support and/or Additional Services.
- 6.8. The Customer is responsible for delivering and processing correct, complete and adequate Data through the Platform; the Customer agrees and understands that any inadequate, incorrect or incomplete Data will negatively impact the Service. The purchase, use and maintenance of electronic communication facilities and the Customers own IT-infrastructure (including software and hardware) in order to be able to use the Service, is for the Customers own account and risk. This also includes for instance necessary access of the Platform to third party platforms which are used by the Customer. CloudBilling will in no event be liable for any damage, loss or costs, including loss of Data, or any inability to use the Service as a result of a shortcoming, defect, invalid or expired user credentials to gain access to third party platforms, other malfunction and/or any other non-availability of the aforesaid electronic communication facilities and/or IT-infrastructure and/or the Customer using inadequate Data.
- 6.9. Unless agreed otherwise, Customer agrees that CloudBilling for general marketing purposes can indicate publicly that Customer has become a client of CloudBilling including a short explanation of the collaboration between Customer and CloudBilling.
- 6.10. In using the Service, the Customer is responsible for compliance with all laws and regulations that apply to it.

### **Article 7.** Payment of applicable fees

- 7.1. Customer agrees to pay CloudBilling the applicable Service Fee and Support Fee ("the Charges"), as specified in the Offer Letter.
- 7.2. Customer shall reimburse CloudBilling for all out-of-pocket cost relating to the Support. This includes hotel, travelling and all other out of pocket expenses reasonably and properly incurred by CloudBilling.
- 7.3. The Charges will be invoiced by CloudBilling once a month. Service fees and Support fees for using the CloudBilling service will be billed monthly upfront. Customer will pay the CloudBilling invoices promptly in accordance with the terms on the invoice, without claiming any rights of set-off, transfer cost, or



counterclaim. CloudBilling will be entitled to charge Customer a default interest rate in case of late payment at a rate of the trade statutory interest.

- 7.4. All payments made between Customer and CloudBilling are subject to prevailing tax laws & regulations in The Netherlands.
- 7.5. Associated charges for any (financial) transfer are at all times at Customers expense.

CloudBilling will be entitled to adjust the applicable prices and rates. CloudBilling will in any event have such right to adjust prices. Price adjustments can be the result of when the price increase is the result of one of the following factors like, but not limited to: i) increase of taxes or other levies and/or government rights, ii) changing exchange rates, iii) increase of wages, transport costs, supplier purchase prices and/or purchase prices, etc., iv) inflation, v) increase of product functionality. Price changes will normally occur annually and will become effective as per January 1st of each year. CloudBilling will provide written notice of such changes as part of its invoicing process.

### **Article 8. Intellectual property**

- 8.1. All IP-rights related to the Platform, Service, Documentation and Support will vest and will remain vested exclusively in CloudBilling or its parent holding company. The Customer acquires limited rights of use only in as far as explicitly granted under the Agreement. Furthermore, CloudBilling exclusively owns and/or may use all rights in any ideas, concepts, know-how and techniques with respect to the Service, Support, the Platform and/or the Documentation as well as the technology in connection thereto.
- 8.2. The Customer is aware that the Platform, Service, and Support and other materials provided contain confidential information and trade secrets of CloudBilling. Both during the Agreement and for a period of 5 years thereafter, the Customer undertakes to keep such secret and not to make third parties acquainted with them or grant their use to the same, and to use them only for the purpose of the Agreement. The expression 'third parties' includes affiliated organizations of the Customer and any such persons working in Customers organization not nominated by the Customer to use the Service, equipment and/or other materials.
- 8.3. It is explicitly acknowledged and agreed that (i) the Customer may not and shall not permit any third party to reverse engineer, disassemble, decompile, or otherwise attempt to derive the source code of the Platform, (ii) the Customer may shall not, and shall not permit any third party, to copy, make error corrections or otherwise modify or adapt the Platform nor create derivative works based on the Platform, and/or (iii) the Customer may not sell, (sub-)license, assign, transfer or lease the Service nor use the Service for commercial time-sharing, rental, or service bureau use.
- 8.4. Except in the event of a white-label service, Customer will not be permitted to remove from or change any designation concerning copyrights, trademarks, trade

names or other intellectual or industrial property rights, including any indications concerning confidential nature and/or secrecy.

- 8.5. Any Intellectual Property Rights that vest in the Customer prior to the Agreement, remain vested in the Customer. Furthermore, by using the Service, the Customer grants CloudBilling:
- 8.5.1.** a free, unencumbered, non-exclusive license to use the Data in connection with the Service; and
  - 8.5.2.** a free, unencumbered, non-exclusive license to reproduce the Data in connection with the Support;
  - 8.5.3.** a free, unencumbered, non-exclusive license to use the Data (whether or not in aggregated format) in connection with both improving the Service and/or statistical purposes. This right will survive the termination of the Agreement for whatever reason.

### **Article 9.** Use for illegal purposes

- 9.1. The Customer is obliged to ensure that the Software is not used in such a way that would breach the laws of the Territory. The Customer will indemnify CloudBilling against all claims and losses arising from any such use and from any use that is not in accordance with the terms of this License Agreement.
- 9.2. The Software may be used to reproduce materials. The Software is licensed to the Customer only for reproduction of non-copyrighted materials, materials in which the Customer owns the copyright, or materials the Customer is authorized or legally permitted to reproduce.

### **Article 10.** Duration and termination

- 10.1. The Agreement is valid for the period as specified in the Offer Letter and will commence on the date of execution or acceptance of the Offer Letter. After this term, the Agreement will automatically be renewed for, each time, a period of one year, unless terminated by either Party with a notice period of six months before expiry of the renewed period (the end-date defined as the "Termination Date"). The right of either Party to early terminate for convenience is excluded.
- 10.2. The Agreement will automatically terminate, without CloudBilling becoming liable whatsoever to Customer, if CloudBilling is not entitled to provide the Service and/or Support any longer for whatever reason, including but not limited to changes in the applicable law.
- 10.3. Either Party may terminate the Agreement if the other Party, after having been given proper notice of default in writing specifying as many details as possible and stating a reasonable period within which to remedy the failure, fails to meet, and

can be held accountable for not performing, any material obligations arising from the Agreement.

- 10.4. Either Party may terminate the Agreement immediately if:
  - 10.4.1.** the other Party makes a composition for the benefit of creditors;
  - 10.4.2.** the other Party is insolvent or is unable to pay its debts as they fall due in the ordinary course of its business;
  - 10.4.3.** any proceedings are instituted by or against the other Party in bankruptcy or under any insolvency laws or for re-organization, receivership or dissolution.
- 10.5. Upon the termination being effective, Customer will cease:
  - 10.5.1.** any and all use of the Service;
  - 10.5.2.** any and all use of CloudBilling's IP-rights, including CloudBilling's brands.
- 10.6. Within one month after the Agreement being effective, the Parties will draw up and agree upon an exit plan, dealing with post-contractual services that may be provided by CloudBilling after the termination (for whatever reason) being effective, as well as dependencies on the part of the Customer in that respect. The purpose of the exit plan is to allow the Customer to migrate to an alternative, if the Customer so requires. The services performed by CloudBilling under an exit plan are considered Additional Services.
- 10.7. The Party terminating the Agreement pursuant to the terms hereof will not be liable to the other Party for any claims, damages, or liabilities arising against the other Party by reason of the exercise of the right to termination under the Agreement.
- 10.8. Upon termination of the Agreement, for whatever reason, the Customer agrees not to engage and/or be involved in, whether directly or indirectly, (i) activities similar to the Service, and/or (ii) developing and/or exploiting a platform similar to the Platform, for a period of 18 months after the effective termination date.
- 10.9. CloudBilling can terminate this License Agreement with immediate effect by giving written notice to the Customer if the License Fee, the Periodical Maintenance Fee or the Periodical Support Fee for the Software has not been paid within 30 days of the due date.
- 10.10. Without prejudice to CloudBilling's right to terminate the contract under clause 10.9, CloudBilling has the right to suspend the Customer's access to the system should the License Fee, or any Periodical Maintenance Fee or Periodical Support Fee for the Software not been paid within 30 days of the due date.
- 10.11. In the event of the Customers material breach of this License Agreement, CloudBilling shall have the right to terminate this License Agreement with immediate effect by written notice to the Customer and be entitled to claim damages in this connection according to applicable law and pursue all remedies available to it.
- 10.12. The Customer is aware that in case it is stipulated by mandatory, statutory legislation that the Customer is obliged to maintain accessibility to its accounting data after the Customers rights to use the Software have terminated, it is the sole responsibility of the Customer to comply with such legislation. For this purpose the Customer may, while this License Agreement is still valid, print out all required Customers data and keep it archived in printed format or transfer the data to any

other software or use any other means that it considers suitable to fulfill such Customers obligations

- 10.13. This License Agreement does not limit CloudBilling's rights to terminate the License Agreement under the provisions of the law applicable to this License Agreement

### **Article 11. Conformity and Liability**

- 11.1. CloudBilling accepts liability to the extent as shown by this Article. CloudBilling's total liability, whether based upon (attributable) failure to perform the Agreement and/or unlawful act shall per contracting year be limited to making compensation for any direct loss up to the maximum amount of the Service Fee in that relevant contract year as actually paid by the Customer. By 'direct loss' shall exclusively be understood:
- 11.1.1.** reasonable expenses which Customer would have to incur to have CloudBilling's performance fulfill the Agreement. However, such loss shall not be compensated, however, if the Customer has terminated the Agreement on the basis of termination for cause ("ontbinding");
  - 11.1.2.** reasonable expenses incurred in determining the cause and extent of the loss insofar as such determination relates to any direct loss within the meaning of the Agreement;
  - 11.1.3.** reasonable expenses incurred in preventing or reducing a loss insofar as Customer proves that such expenses have resulted in a reduction of any direct loss within the meaning of this Article.
- 11.2. CloudBilling's liability for any other loss than direct loss, including – but not limited to – indirect loss, consequential loss, damages due to late delivery, damages due to late billing, loss of and/or damage to data, incorrect data (incl. validation, transformation and/or integration), incorrect audit data, loss of revenue, loss of profits, lost savings and loss caused by interruption of operations, is fully excluded.
- 11.3. The limitations mentioned in the preceding paragraphs shall not apply if and insofar as the damage is the result of willful intent or gross negligence by the board of directors or the executive management of CloudBilling.
- 11.4. CloudBilling's liability shall not arise unless Customer forthwith and properly declares CloudBilling in default in writing, stating a reasonable period in which to remedy the failure, and CloudBilling continues, and can be held accountable for continuing to fail in the fulfillment of its obligations even after such remedy period. The notice of default must specify the failure in as much detail as possible and reported by Customer to CloudBilling in writing within five working days after it has been arisen, so that CloudBilling will be able to react adequately and timely.
- 11.5. Without prejudice to CloudBilling's limitation of liability, the Service will be in conformity with the Agreement if rendered substantially in accordance with the

Documentation, when correctly and properly used. The Customer acknowledges and accepts, however, that:

**11.5.1.** the Service will not and cannot meet all of Customers expectations;

**11.5.2.** the Service will not be free of errors and will not function without interruption; and,

**11.5.3.** not all the errors in the Services (if any) can be repaired.

- 11.6. The Customers exclusive remedy and CloudBilling's entire liability for an attributable, material breach of the conformity statement in clause 11.5 is that CloudBilling will use its commercially reasonable efforts in accordance with the Service Level Terms of Schedule 1, in order to attempt to cure such breach, provided that the Customer properly and sufficiently informed CloudBilling in writing about the breach.
- 11.7. The Customer acknowledges and accepts that CloudBilling will operate only as a facilitator between Customer and its clients and is merely and only responsible for rendering the Service and Support subject to the terms of the Agreement. The use of the Service and the processing of Data through the Service is for the Customers own account and risk. The Customer remains fully responsible for the billing process regarding its clients as well as the integration of data sources and services and the gathering of all sorts of data. The Customer acknowledges and accepts that CloudBilling is not responsible for loss, damage, alteration or destruction of Data. The Customer shall indemnify, defend, and hold harmless CloudBilling from any claim, proceeding, loss or damages resulting from and/or related to the processing of Data through the Service.

## Article 12. Force majeure

- 12.1. Neither party shall be bound to meet any obligation if prevented from doing so as a consequence of force majeure. The expression 'force majeure' shall in any event include any failure of any suppliers of CloudBilling not due to their fault or not for their risk, any DDOS attack (attempt), any viruses ion the Service and/or Platform, any hacking (attempts) of the Service and/or Platform and/or fire.
- 12.2. If a situation of force majeure has lasted for more than 60 working days, the Parties shall be entitled to terminate the Agreement by terminating it in writing. In that case any performance, which has already taken place pursuant to the Agreement, shall be settled proportionately without either Party being thereafter indebted to the other in any other amount.

## Article 13. Transfer

- 13.1. Parties cannot transfer any rights or obligations arising from the Agreement to another entity, except for an entity that takes over the shares or assets of one of the Parties. The Agreement shall be assignable by each Party to a legal entity under its control, subject to the prior written consent of the other Party.
- 13.2. CloudBilling has the right to transfer its rights and obligations under this License Agreement in whole or in part to another company within the CloudBilling Group or a third party, and the Customer hereby irrevocably agrees with such transfer.

## **Article 14.** Validity and severability

- 14.1. If any provision of this License Agreement is held to be illegal, invalid or unenforceable, such provision shall nonetheless be enforced to the fullest extent permitted by applicable law, so as to reflect the original intent of the parties, and such provision shall not affect the legality and validity of the other provisions.

## **Article 15.** Survival Clause

- 15.1. Any terms of this License Agreement which, by their nature, extend beyond the day this License Agreement comes to an end shall remain in effect and thus bind the parties.

## **Article 16.** Waiver

- 16.1. If either party does not exercise, or delays exercising, a right or remedy provided by this License Agreement or by law, that failure or delay will not amount to a waiver of that right or remedy by that party. The fact that a party does exercise a right or remedy provided by this License Agreement or by law does not prevent that party from exercising that right or remedy again, or exercising another right or remedy.

## **Article 17.** Applicable law and jurisdiction

- 17.1. The Agreement shall be governed by and construed in accordance with the laws of The Netherlands. References to any legislation in this document are construed as references to such legislation as amended or re-enacted or as otherwise modified from time to time. The Parties agree that any dispute arising from or in connection with the Agreement shall be brought before the competent court of Amsterdam.
- 17.2. Clause 17.1 (above) does not prevent CloudBilling from seeking or obtaining injunctive relief or other extraordinary relief in any courts with jurisdiction. To the extent permitted by applicable law, CloudBilling may take concurrent proceedings for injunctive relief in any number of jurisdictions.
- 17.3. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this License Agreement.

## **Article 18.** Consent to use of Data

- 18.1. By signing this License Agreement, the Customer hereby expressly accepts that any Customer specific information received from CloudBilling on the basis of the contractual relationship regulated by this License Agreement, e.g. concerning the Software, including Company Registration No., Name of Customer, Address, Tel. No., Fax No., E-mail Address, URL, Contact Name and the name of the Customer's supplier, may be used internally within the CloudBilling group only for the purpose of internal administration of the license to the Software.
- 18.2. The Customer accepts that this License Agreement establishes an ongoing relationship, where CloudBilling has the right and obligation to inform the Customer of possibilities regarding the Software or related services that might be of interest

or importance to the Customer. CloudBilling might use pop-up messages in the Software and ads in its website, along with fax, mail, email and phone text messages to communicate such information to the Customer. If the Customer wishes not to receive such information in some or all of these media, the Customer has to specifically notify CloudBilling of it

- 18.3. The Customer agrees that CloudBilling may collect and use technical and related information, including but not limited to technical information about the Customers computer, system and application software, and peripherals, that is gathered periodically to facilitate the provision of software updates, product support and other services to the Customer (if any) related to the CloudBilling software, and to verify compliance with the terms of this License Agreement. CloudBilling may use this information, as long as it is in a form that does not personally identify the Customer, to improve CloudBilling software products or to provide services or technologies to the Customer.
- 18.4. The Customer agrees that CloudBilling is allowed to make changes to the database and data records of the client for the sole purpose of improving the service, updating the service, resolving bugs & other issues, without actually changing the semantics of the data. CloudBilling will inform clients upfront about these changes.

### Article 19. Confidentiality Clause

- 19.1. Each Party agrees to keep strictly confidential and to use only for purposes of performing their respective obligations under the Agreement; any proprietary or confidential information of the other Party disclosed pursuant to the Agreement which is appropriately marked as confidential or which would reasonably be considered of a proprietary or confidential nature (hereinafter referred to as the "Confidential Information"). The Platform and the Data are at all times considered Confidential Information.
- 19.2. The obligation of confidentiality shall not apply to information which:
  - 19.2.1. was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing Party;
  - 19.2.2. becomes publicly known and made generally available after disclosure by the disclosing Party to the receiving Party through no action or inaction of the receiving Party;
  - 19.2.3. is already in the possession of the receiving Party and is not subject to confidentiality restrictions at the time of disclosure by the disclosing Party as shown by the receiving Party's files and records immediately prior to the time of disclosure;
  - 19.2.4. is obtained by the receiving Party from a third Party without a breach of such third Party's obligations of confidentiality; or
  - 19.2.5. is independently developed by the receiving Party without use of or reference to the disclosing Party's Confidential Information, as shown by documents and other competent evidence in the receiving Party's possession.
- 19.3. All Confidential Information remains the property of the disclosing Party. Upon any termination of the Agreement, the receiving Party will return and/or destroy all



Confidential Information of the disclosing Party and all copies thereof in the possession or control of the receiving Party. The receiving Party will provide a certification of such return or destruction upon the disclosing Party's request.

- 19.4. A receiving Party may disclose Confidential Information of the other Party if required by law or by a judicial and/or governmental order, provided that the receiving Party gives the disclosing Party prompt written notice of such requirement prior to such disclosure and reasonable assistance in obtaining an order protecting the information from public disclosure.
- 19.5. Each Party agrees not to disclose any Confidential Information of the other Party to its employees, except to those employees of the receiving Party who are required to have the information in order to perform the Agreement (need-to-know basis). Each Party agrees to protect the confidentiality of and avoid disclosure and unauthorized use of the Confidential Information of the other Party. Without limiting the foregoing, each Party will take at least those measures that it takes to protect its own confidential information of a similar nature and will ensure that its employees who have access to Confidential Information of the other Party have signed a non-use and non-disclosure agreement consistent with the provisions hereof, prior to any disclosure of Confidential Information to such employees.

### **Article 20. Infringement of Third Party Rights**

- 20.1. If a third party objects to the Customers use of the Software based on the claim that the use of the Software infringes such third party's intellectual property right (hereinafter referred to as "Infringement Claim"), CloudBilling will defend the Customer against that Infringement Claim and pay all costs, damages and legal fees that a court finally awards, provided that the Customer promptly 1) notifies CloudBilling in writing of the Infringement Claim as soon as it becomes aware of such Infringement Claim, 2) allows CloudBilling to fully control the defense and any related settlement negotiations, and 3) cooperates with CloudBilling in the defense and any related settlement negotiations by providing CloudBilling with appropriate information and assistance needed for such defense or settlement.
- 20.2. In the event of an Infringement Claim, CloudBilling shall be entitled to either: 1) obtain the continued right for the Customer to use the Software, 2) bring the infringement to an end by modifying the Software or replacing the Software with other software which, essentially, possesses the same functions as the affected Software, or 3) terminate this License Agreement with written notice and pay to the Customer an amount equal to the License Fee actually paid for the license to the Software by the Customer. CloudBilling shall only be obliged to pay the stated amount to the Customer if the infringement Claim is actually raised against the Customer within a period of (5) five years following the commencement date of the License Agreement. If an Infringement Claim is raised against the Customer after the stated period has expired, CloudBilling shall be entitled to terminate this License Agreement without payment of any amount to the Customer. The performance of CloudBilling's obligations under this Clause 20.2 shall be CloudBilling's total aggregate liability and CloudBilling's entire obligation to the Customer as a consequence of all and any Infringement Claims, and the Customer



shall have no other claims against CloudBilling as a result of such Infringement Claim. Upon termination of this License Agreement, the Customer shall promptly cease using the Software and fulfill the terms and conditions connected to termination as stated in Clause 10.5 of this License Agreement.

- 20.3. The limited warranty stated in Clause 20.1 and 20.2 is void if the Infringement Claim has resulted from accident, abuse or misapplication. Any modification of the Software by anyone other than CloudBilling voids the foregoing warranty on any portion of the Software modified or affected by such modification.

### **Article 21. General provisions**

- 21.1. Any notice, demand or other communication so addressed to the relevant Party shall be deemed to have been delivered (a) if given or made by letter, when actually delivered to the Party's address of registration and (b) if given or made by fax, when dispatched.
- 21.2. If any provision of the Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable in any respect, then the legality, validity and enforceability of the remaining provisions of the Agreement shall not be affected or impaired thereby.
- 21.3. No variation of the Agreement will be valid unless made in writing and signed by or on behalf of each of the Parties.
- 21.4. Any applicability of any terms and conditions of purchase or otherwise of Customer is rejected.
- 21.5. Each of the Parties to the Agreement expressly represents and warrants to the other Party that it has full power and authority to enter into the Agreement and has not assigned, encumbered, or in any manner transferred any of the claims covered by the Agreement.
- 21.6. Each Party to the Agreement shall pay its own costs and disbursements of and incidental to the Agreement.
- 21.7. Upon and after signing of the Agreement, Parties shall do and execute or cause to be done and executed all such further acts, deeds, documents and things as may be necessary to give effect to the terms of the Agreement.
- 21.8. The provisions of clause of the Agreement shall survive the term of the Agreement and remain in full force and effect notwithstanding the termination of the Agreement.
- 21.9. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to these terms and conditions.
- 21.10. Neither Party shall solicit or employ any employee, consultant, free-lancer, subcontractor or operative of the other party (or person who was an employee, consultant, free-lancer, subcontractor or operative within twenty-four (24) months prior to the proposed assignment) at any time during the term of the Agreement and for the period extending twenty-four (24) months after the Termination Date.
- 21.11. The Parties shall perform their obligations under the Agreement as independent contractors. Nothing contained in the Agreement shall be construed to imply a joint

venture or principal and agent relationship between the parties and neither shall have the right to create any obligation, express or implied, on behalf of the other.

### **Article 22. Notices**

- 22.1. Any notice of legal nature under this License Agreement, such as inter alia Notice of Termination of this License Agreement, shall be given by sending it by registered post to other party's registered office.
- 22.2. Any notice of informative nature which has no legal consequences can be given also by sending it by facsimile transmission or by e-mail.
- 22.3. Any such communication will be deemed to have been made to the other party:
  - If by letter, three (3) days from the date of posting; or
  - if by facsimile transmission, on the day of transmission; or
  - if by e-mail, on the day on which the communication is first stored in the other party's electronic mailbox.

### **Article 23. Priority**

- 23.1. This License Agreement, which the Customer has received in hardcopy and signed in connection with the Customers purchase of the Software license, shall be the legally binding version. In the event of any conflict between contents of this License Agreement and the contents of the License Agreement implemented electronically in the Software, the License Agreement signed in hardcopy shall prevail.
- 23.2. This License Agreement replaces any previous License Agreements and any previous representations regarding the Software and the terms of its use.
- 23.3. CloudBilling reserves the right to modify this Agreement at any time by giving 30 days notice to the customer of such change. Continued use of the CloudBilling service indicates customer's acceptance of the amended License Agreement.
- 23.4. The License Agreement covers the current version and older versions of the Software and/or Platform. A new Software License Agreement might cover newer versions of the Software and/or Platform. The Customer hereby agrees and confirms that if it uses its right according to this License Agreement to update the Software and/or Platform, this License Agreement will be replaced by the Software License Agreement valid at a time of the Upgrade. The Customer has no right to use such Update(s) of the Software and/or Platform without agreeing to the new Software License Agreement, unless specifically agreed with CloudBilling in writing. The new Software License Agreement will replace this License Agreement and any special terms that the Customer may have earlier agreed with CloudBilling in respect of the Customers right to use the Software and/or Platform, unless otherwise agreed between the parties in writing.

## SCHEDULE 1 – SERVICE LEVEL TERMS CLOUDBILLINGCLOUD SERVICES

### Article 1. Definitions

In these Service Level Terms ("SLT"), the following terms, indicated with a capital, whether single or plural, will have the following meaning. Other terms indicated with a capital that are not defined below, are defined in the applicable terms and conditions.

<u>Actual Availability:</u>	means the percentage of time the Platform was actually available in a given period;
<u>Constructive Maintenance:</u>	means maintenance that is performed by CloudBilling and that consists of i) launching Updates and/or Patches of the Platform and/or ii) performing requests for change initiated by the Customer;
<u>Consultancy:</u>	means advice, training or assistance given to the Customer by a Billing Consultant on the optimum use of the CloudBilling Platform or activities performed by a Billing Consultant on behalf of the customer for the purposes of using the Platform.
<u>Corrective Maintenance:</u>	means maintenance performed in order to fix Errors;
<u>Desired Availability:</u>	means the target availability level, as a percentage of time, of the Platform in a given period;
<u>Emergency Situation:</u>	means the situation where the access to and the use of the Platform is entirely or on critical elements impossible and/or where the entire Platform will be unavailable if CloudBilling does not take immediate action;
<u>Helpdesk:</u>	means the service point that CloudBilling that can be contacted by the Customer in case of questions regarding the Platform;
<u>CloudBilling:</u>	means the limited liability company CloudBilling B.V., having its statutory residence at (1411 DC) NAARDEN at the Gooimeer 1, registered at the Chamber of Commerce under number 55485243.
<u>Included Consultancy:</u>	means consultancy that is included in the standard SLA. This is limited in duration, but increased consultancy can be purchased as part of a Supplementary Package.

<u>Maintenance:</u>	means the collective of Constructive, Corrective or Preventative Maintenance;
<u>Maintenance Window:</u>	means the time period from 22:00 to 8:00 AM, Dutch Time Zone;
<u>Preventative Maintenance:</u>	means the maintenance performed by CloudBilling in order to prevent Errors;
<u>Recovery Time:</u>	means the number of hours between the time when CloudBilling determines an Error or the Customer notifies CloudBilling regarding an Error and the time when the Error is completely solved, or a workaround or temporary fix is implemented to allow the service to continue.
<u>Response Time:</u>	means the number of hours between the time when the Customer notifies CloudBilling regarding an Error and the time when CloudBilling starts efforts to solve the Error;
<u>Supplementary Package:</u>	means a purchasable package that entitles the customer to increased amounts of Included Consultancy, reduced response times and other benefits as detailed in the particular package contract.
<u>Support:</u>	means investigations and corrective measures taken by CloudBilling to overcome issues related to hardware or software failures in the CloudBilling Platform.
<u>Training:</u>	means instructions delivered by CloudBilling on how to best use the CloudBilling Platform. Also includes electronic instruction material available through the Helpdesk or delivered to the Client.
<u>Working days:</u>	means Monday through Friday 09.00-17.00, with the exception of official holidays as recognized in the Netherlands.

## Article 2. Purpose and applicability of the SLT

- 2.1 This SLT is an Exhibit to the Agreement. The conditions stipulated in the Offer Letter and the applicable terms and conditions (being either the License and Service Terms or the On-Premise Install Terms) apply in full to this SLT.
- 2.2 Parties have the responsibility to inform each other in a timely manner regarding issues that are of importance for a successful performance of this SLT.
- 2.3 The remedies stated in this SLT are the sole remedies of the Customer regarding Maintenance and/or Actual Availability.

## Article 3. Helpdesk

- 3.1 CloudBilling offers Support by way of the Helpdesk. The Agreement describes which Support is included in the purchased service and if so, how much Support per month (in minutes or hours) is included; if not specified, Support is provided and charged on a time/material basis.
- 3.2 The employees of the Helpdesk shall use their best effort to provide assistance on the use and operation of Platform.

When	Contact
Working Days 09.00-17.00	by raising a ticket on: <a href="https://support.cloudbilling.nl/">https://support.cloudbilling.nl/</a> by email: <a href="mailto:support@cloudbilling.nl">support@cloudbilling.nl</a> by telephone: +31 35 524 8909 by mail: CloudBilling B.V., Gooimeer 1, 1411 DC, NAARDEN, The Netherlands
Other	by raising a ticket on <a href="https://support.cloudbilling.nl/">https://support.cloudbilling.nl/</a> by email: <a href="mailto:support@cloudbilling.nl">support@cloudbilling.nl</a> by mail: CloudBilling B.V., Gooimeer 1, 1411 DC, NAARDEN, The Netherlands

- 3.3 In case of contact by telephone, the helpdesk employee will provide an assessment of the Recovery Time. In case of contact by e-mail, a Helpdesk employee will contact the Customer within the target response time. All Blocking issues must be reported by telephone in addition to raising a ticket on <https://support.cloudbilling.nl/> or by email: [support@cloudbilling.nl](mailto:support@cloudbilling.nl).

## Article 4. Availability

- 4.1 CloudBilling will strive to achieve a Desired Availability for the Service twenty-four (24) hours a day, seven (7) days a week throughout the month of at least 99.5%. CloudBilling will calculate the Actual Availability (AA) on a monthly basis, as follows:

$$AA = \frac{PA - DT}{PA} * 100\%,$$

PA = Possible Availability (in hours)

AA = Actual Availability (in percentage)

DT = Down Time (in hours)

- 4.2 Non-availability due to:
- causes beyond CloudBilling's control,
  - force majeure or
  - Emergency Situations which require CloudBilling to respond immediately and take the Platform temporarily offline,
- will not be included as unavailability in calculating Actual Availability.
- 4.3 Non-availability due to constructive, corrective or preventative maintenance will not be included as unavailability in calculating Actual Availability.
- 4.4 Non-availability caused by software, hardware, the customer system or other technical infrastructure of the Customer and/or by action or omission of the Customer itself, will not be included as unavailability in calculating the Actual Availability. This includes time waiting for replies or clarifications from customers to questions during system non-availability.
- 4.5 Barring proof to the contrary, the availability and service level measured by CloudBillingshall be conclusive evidence.
- 4.6 The Customer shall notify CloudBillingat all times of all circumstances that may affect the Platform and the availability of the Platform.
- 4.7 If the Desired Availability is not achieved, the sole and exclusive remedies that apply are those described in Article 14.

## Article 5. Maintenance

- 5.1 CloudBilling will carry out Maintenance, insofar as possible during the Maintenance Window. If Maintenance is carried out outside the Maintenance Window, CloudBilling will strive to carry out the Maintenance outside Working Days.
- 5.2 The Customer accepts that, as a result of Maintenance and/or Updates/Patches, the functionalities of the Platform may change and/or the interoperability with third party software/hardware may be lost. CloudBilling is entitled to charge Customer the then current fees for amending the Platform and/or the operability with the third-party software/hardware. In the event CloudBilling suspects that Maintenance and/or Updates/Patches will lead to changes to the Platform and/or

the interoperability with third party software, it will inform Customer thereof on a timely basis.

### Article 6. Preventative Maintenance

- 6.1 Preventative Maintenance is performed upon CloudBilling's initiative and will, be performed on a regularly basis.
- 6.2 CloudBilling will inform the Customer by e-mail regarding the planned Preventative Maintenance in advance in the case that CloudBilling suspects that Preventative Maintenance will have significant impact on the use of the Platform by the Customer. In the event CloudBilling suspects that the Preventative Maintenance will lead to Errors, it will inform the Customer thereof.
- 6.3 In case of an Emergency Situation, CloudBilling may deviate from article 6.2, insofar as it deems necessary. CloudBilling will inform the Customer as soon as possible about the Emergency Situation, the activities to be carried out and the estimated duration.

### Article 7. Corrective Maintenance

- 7.1 CloudBilling will endeavor to fix Errors in the Platform in so far as the relevant Platform was developed by CloudBilling itself and CloudBilling has received detailed notification in writing of the Errors in question.
- 7.2 If CloudBilling detects an Error or if the Customer notifies CloudBilling of an Error, CloudBilling will process the notification as soon as possible and assign a level of priority to the Error. The following priorities are employed by CloudBilling:
  - Urgent (i.e. priority 1): The Service cannot be used, without correction of this Error;
  - High (i.e. priority 2): The Service can be used, but the use of the Service is severely hindered or severely limited by the Error;
  - Medium (i.e. priority 3): An Error that occurs daily and hinders End-users in using the Service. The Error needs to be corrected in the next Update or Patch of the Service. The date for the release of the next Update or Patch will be determined jointly by Parties.
  - Low (i.e. priority 4): An Error that occurs weekly and hinders End-users in using the Service. or an Error that causes only minor inconvenience that must be corrected but has no priority for Customer.
- 7.3 The priority of the issue will be determined by CloudBilling. The Customer should inform CloudBilling as soon as they receive notification of the priority if they believe that the priority set is incorrect.

7.4 CloudBilling will use its best endeavors to meet the following Response Times and Recovery Times for Issues:

PRIO	LEVEL	TARGET RESPONSE TIME	TARGET RECOVERY TIME	TARGET UPDATE NOTIFICATION	TIME SPAN
1	Urgent	95% < 30 minutes	95% < 8 hours	On Customer request	Working days
2	High	95% < 60 minutes	95% < 12 hours	On Customer request	Working days
3	Medium	95% < 8 hours	At or before next release of software	Ad-hoc when status changes	Working days
4	Low	95% < 8 hours	In future release of software	Ad-hoc when status changes	Working days

\* Note that if something is reported as an issue and is subsequently identified as a training or consultancy item (i.e. not resulting from an error in the hardware or software of the CloudBilling Platform) then these will be billed as Additional Services at the standard consultancy rates

- 7.5 As and when necessary, CloudBilling may postpone the fixing of Errors until the launch of an Update or Patch.
- 7.6 CloudBilling is entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the Platform.
- 7.7 CloudBilling is not obliged to fix Errors CloudBilling reasonably believes was caused by (a) the Customer's modifications to the Platform; (b) operation of software other than the Platform (for example, operating system or database software) or any hardware or other equipment owned by the Customer; (c) use of the Platform in conjunction with the Customer's data that does not conform with the format of data as required for the Platform, (d) misuse by the Customer of the Platform, or (e) Customer's failure to use an Update delivered to the Customer by CloudBilling. In the event CloudBilling provides Error correction services and, in doing so, reasonably determines that the Error was not caused by the Platform, CloudBilling shall be entitled to charge and the Customer shall pay for the time and materials expended at CloudBilling's then-standard commercial rates.

## Article 8. Requests for Training and Advice

- 8.1 CloudBilling can provide access through its Helpdesk to Consultancy. The Agreement states if Consultancy is included in the purchased service and if so, how much Consultancy per month (in minutes or hours) is included; if not specified, Consultancy is provided and charged on a time/material basis.



## Article 9. Constructive Maintenance

- 9.1 CloudBilling will offer Updates and/or Patches at its sole discretion.
- 9.2 If the Customer requests Constructive Maintenance, CloudBilling will provide the Customer with an offer regarding the costs thereof. If the Customer accepts the offer, the relevant costs will be invoiced at the end of the month, including a detailed overview of the activities performed.

## Article 10. Reports

- 10.1 At the end of each month CloudBilling will compile a report, which will state:
  - i) the number of Errors and the duration thereof over the previous month;
  - ii) availability of the CloudBilling Portal;
  - iii) availability of the CloudBilling API;
  - iv) the percentual Response Times to Support tickets.
- 10.2 This report will be available to the Customer on request, by emailing the Helpdesk (support@cloudbilling.nl).

## Article 11. Security

- 11.1 CloudBilling will take all reasonable and suitable organizational and technical security measures to protect the continuity and the performance of the Platform.
- 11.2 The CloudBilling organization is ISO 27001 certified. CloudBilling is hosted in data centers that comply with key industry standards, such as ISO 27001 and ISO 9001, for security and reliability. Periodical audits are being conducted to ensure continued conformation to these industry standards as well as the highest level of professional hosting services.
- 11.3 The following security measures has been taken regarding physical access to the datacenters:
  - a. Platform services are delivered through a network of datacenters based in the Netherlands, each designed to run 24 x 7, and each employing various measures to help protect operations from power failure, physical intrusion, and network outages;
  - b. The datacenters are compliant with applicable industry standards for physical security and reliability; managed, monitored, and administered by operations staff;
  - c. Highly secured access mechanisms are used, limited to a small number of operations personnel. Datacenter access, and authority to open datacenter access tickets, is controlled in conjunction with local datacenter security practices.
- 11.4 The Platform is designed to provide "Defense in Depth," reducing the risk that failure of  
any one security mechanism will compromise the security of the entire environment. The Defense in Depth layers include:
  - a. Filtering routers reject attempts to communicate between addresses and ports not configured as allowed. This helps to prevent common attacks that use botnets searching for vulnerable servers. Although relatively easy to block, these types of attacks remain a favorite method of malicious attackers

in search of vulnerabilities. Filtering routers also support configuring back end services to be accessible only from their corresponding front ends;

- b. Firewalls restrict data communication to (and from) known and authorized ports, protocols, and destination (and source) IP addresses;
- c. TLS with at least 128-bit cryptographic keys is used to protect control messages sent between datacenters and between clusters within a given datacenter;
- d. Security patch management is an integral part of operations to help protect systems from known vulnerabilities. The platform utilizes integrated deployment systems to manage the distribution and installation of security patches;
- e. Security is monitored with the aid of centralized monitoring, correlation, and analysis systems that manage the large amount of information generated by devices within the environment, providing pertinent and timely monitoring and alerts;

11.5 The following security measures have been taken regarding the protection of data:

- a. Each layer of the platform infrastructure is designed to continue operations in the event of failure, including redundant network devices at each layer. Failover is in most cases automatic (requiring no human intervention), and the network is monitored by the Network Operations Center 24x7 to detect any anomalies or potential network issues;
- b. CloudBilling will back up regularly all data and will keep these backups at a different location.

### Article 12. Term

12.1 With regard to the term, the applicable articles in the Agreement apply.

12.2 In the event the Agreement is terminated, for whatever reason, this SLT will also automatically terminate.

### Article 13. Remuneration

13.1 The remuneration that applies to the Support performed under the SLT are stated in the Agreement.

### Article 14. Exclusive Remedies

14.1 If CloudBilling attributably fails to meet the Desired Availability, Customer will inform CloudBilling regarding the default ("SLT Notice"). The SLT Notice is either yellow or red, as laid down in the below schedule. Customer agrees that the SLT Notice must be sent within 30 days after the month upon which the SLT Notice applies, upon pain of forfeiture of the SLT Notice and all related rights and remedies.

Actual Availability	SLT Notice

>= 99,5%	No SLT Notice
>= 90% & < 99,5%	Yellow SLT Notice
< 90%	Red SLT Notice

- 14.2 Customer may only use one (1) SLT Notice per month. A yellow SLT Notice is without any direct remedy or (legal) consequence. If, however, in the subsequent month, a second yellow SLT Notice for the same service level has been sent by the Customer, the SLT Notice will become red. If, however, in the subsequent month, no SLT Notice for the same service level applies nor has been sent by the Customer, the first yellow notice will expire. A red SLT Notice expires twelve (12) months after it was issued.
- 14.3 If Customer sends more than five (5) Red SLT Notices within one calendar year, Customer has the right to terminate the Agreement. This termination will in that case be effective at the end of the calendar year in which more than 5 Red SLT Notices were sent.

### Article 15. Compatibility

- 15.1 CloudBilling provides various connectors to our applications for integration between external applications and the CloudBilling suite of products. It is the customer's responsibility to ensure that the version of the systems that they are running are supported by the CloudBilling connectors. CloudBilling undertakes to inform the customer in writing giving six (6) months' notice of any older versions that will no longer be supported. Should the customer plan to upgrade to a newer version they should contact CloudBilling and enquire whether any upgrade activities need to be performed to ensure continued compatibility. Any upgrades done without this consultation may not operate correctly and CloudBilling accepts no liability in this case.

### Article 16. Fair Use

- 16.1 CloudBilling assumes fair use by Customer of the CloudBilling Portal and platform including the CloudBilling Business intelligence software and database(s). When Customer – in the opinion of CloudBilling– does not use these CloudBilling services in a fair manner, CloudBilling is entitled to change the active contractual agreements and agree with Customer upon additional usage criteria and/or additional charges.
- 16.2 With respect to the usage of the CloudBilling services, at least the following fair use clauses apply:
- Processing of purchases: Changes in rules and product/customer cluster structures can prompt recalculation of invoices. This requires a single purchase to be processed multiple times. CloudBilling assumes that a purchase is processed for a single invoice on average in CloudBilling by Customer at most 30 times a month (on average once every 24 hours). If this amount or time interval is exceeded or needs to change, CloudBilling can contact Customer and agree on different or additional terms of processing.

- b. Volume of purchases processing: Our fair use policy assumes that on average 100 (one hundred) purchases per invoice can be processed. If this amount is exceeded, CloudBilling can contact Customer and agree on different or additional terms of processing.
- c. Transformations: Once a transformation (to HTML, PDF, CSV, etc.) is created, it can be kept up to date with the underlying invoice(s). This means that every change to the invoice afterwards, causes the transformation to be performed again. CloudBilling assumes a transformation is processed in CloudBilling by Customer at most 30 times per month (once a day) per invoice. If this amount is exceeded, CloudBilling can contact Customer and agree on different or additional terms of processing.
- d. Storage duration: CloudBilling reserves the right to remove underlying data for invoice generation (purchases, invoice lines, audit lines, etc.) from the CloudBilling platform after a period of 12 months. The generated and transformed invoice result documents and structures (HTML's, PDF's, Excel files, CSV files, XML files, etc.) will be stored for the amount of time agreed upon in the contract (normally 12 months). CloudBilling reserves the right to remove the generated and transformed invoice result documents and structures after this period. The option exists to store the underlying data and the PDF's for a longer period of time, for instance by moving the PDF's to a secondary storage facility. If Customer requires this, Customer will contact CloudBilling and agree on terms of additional storage duration.
- e. Storage volume: Our fair use policy assumes a fair amount of Giga Byte (GB) of storage per full CloudBilling environment (including generated data, documents, etc.), including the CloudBilling Business Intelligence database. A maximum storage amount can be agreed upon in the license agreement. If such maximum amount is exceeded or if fair usage of storage is not applicable anymore in the opinion of CloudBilling, CloudBilling can charge for extra storage if described in the license agreement or contact Customer and agree on different or additional terms of storage volumes.
- f. API calls: Our fair use policy assumes that the CloudBilling API is used at a reasonable load:
  - The API can be used for inserting and updating Customer data, Purchase records, Ratings, Price Rules, Meta data, etc. as part of the billing and invoicing process. If insertion/update API calls exceed normal operation, CloudBilling can (temporarily) throttle the Insert/Update usage of the API in order to keep a normal operating standard. In case the insert/update load via the API exceeds normal operation standards, CloudBilling can contact Customer and agree on different or additional terms of API usage.
  - The API can also be used for extracting data and data elements from CloudBilling. The usage of this feature needs to be included in Customer's license package. If extraction API calls exceed normal operation, CloudBilling can (temporarily) throttle the extraction usage of the API in order to keep a normal operating standard. In case the extraction load via the API is not included in the Customer's license package or exceeds

normal operation standards, CloudBilling can contact Customer and agree on different or additional terms of API usage.

### **Article 17.** Changes to the SLT

- 17.1 CloudBilling reserves the right to modify this Agreement at any time by giving written notice to Customer of such change. Continued use of the CloudBilling service indicates Customer's acceptance of the amended Service Level Terms.

## SCHEDULE 2 – CLOUDBILLING GENERAL TERMS AND CONDITIONS FOR ADDITIONAL SERVICES

### Article 1. Definitions

<u>General Terms and Conditions:</u>	these general terms and conditions;
<u>Additional Service:</u>	all (consultancy) service provision of whichever nature and under whichever name that CloudBilling performs or must perform under terms of an Additional Agreement with the Customer;
<u>IP Rights:</u>	all intellectual property and ancillary rights, such as copyrights, trademark rights, patent rights, design rights, trade name rights, database rights and related rights, as well as know-how rights and performances on a par with intellectual property rights;
<u>Customer:</u>	the natural person or company that has entered into an Additional Agreement with CloudBilling;
<u>Additional Agreement:</u>	the additional agreement CloudBilling enters into with a Customer, in which the nature of the Additional Services is further described;
<u>Parties:</u>	CloudBilling and Customer jointly;
<u>CloudBilling:</u>	CloudBilling B.V., the private company with limited liability, with its registered office in NAARDEN (Gooimeer 1, 1411 DC), listed in the Commercial Register of the Chamber of Commerce under file number 55485243.

### Article 2. Applicability

- 2.1 These General Terms and Conditions are applicable to all legal acts of CloudBilling, all legal relationships between Parties and all offers and Additional Agreements whereby CloudBilling provides Additional Services to the Customer.
- 2.2 Deviations from and additions to these General Terms and Conditions are only valid if agreed by the Parties in writing.
- 2.3 The applicability of purchasing or other conditions of the Customer is expressly rejected.
- 2.4 If any provision of these General Terms and Conditions is void or voidable or is or becomes entirely or partly invalid for any other reason, the other provisions of

these General Terms and Conditions will remain in full force and effect. CloudBilling will replace the invalid provision with a provision that is valid and of which the legal consequences, having regard to the content and purpose of these General Terms and Conditions, corresponds as far as possible with those of the invalid provision.

### Article 3. Additional Agreement

- 3.1 Quotations and other offers by CloudBilling are without obligation and should be regarded as an offer to enter into an Additional Agreement, unless otherwise indicated by CloudBilling in writing.
- 3.2 Offers and quotations become invalid after the expiry of four weeks from the date they were made, unless otherwise indicated in writing.
- 3.3 An Additional Agreement will come into existence at the first of the following times: the time that the Customer accepts the offer of CloudBilling or the time when CloudBilling commences the performance of the offer. In the latter case the offer will constitute the Additional Agreement between the Parties.
- 3.4 The Customer warrants the accuracy and completeness of the information provided to CloudBilling by or on his behalf and upon which CloudBilling bases its offer. If these particulars prove to be inaccurate or incomplete, CloudBilling will have the right to amend the offer or to terminate the Additional Agreement with immediate effect and without becoming liable towards the Customer for such termination.
- 3.5 Amendments or additions to agreed Additional Services at the request of the Customer may only take place with the written consent of CloudBilling. CloudBilling is not obliged to implement an amendment or addition and may require a separate written agreement be concluded in respect thereof.
- 3.6 If there are amendments or additions which result in a change to the scope of the agreed Additional Services, for example through additional work, the extra activities arising therefrom will be paid for in accordance with the rates of CloudBilling that are applicable at the time of the performance of the work. In so far as a fixed price has been agreed for the Additional Services, CloudBilling will on request inform the Customer in writing about the financial consequences of the extra activities as referred to in this article.
- 3.7 The turnaround time of Additional Services is dependent on various factors and circumstances, such as the quality of the data and information provided by the Customer and the cooperation of the Customer and relevant third parties. Stated delivery dates are therefore not regarded as strict deadlines, unless the Parties have expressly agreed otherwise in writing.
- 3.8 The Customer accepts that additions or amendments to the Additional Agreement may influence the agreed or expected time of completion of the Additional Services and the reciprocal responsibilities of CloudBilling and the Customer. The fact that (the demand for) additional work arises during the implementation of the Additional Agreement will not entitle the Customer to cancel or terminate the Additional Agreement.

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- 3.9 Decisions taken by a project or steering group will only bind CloudBilling if the decision-making process takes place subject to a written agreement between the Parties relative thereto or, in the absence of written agreements regarding this, if CloudBilling has accepted the decisions in writing. The same will apply if one or more employees deployed by CloudBilling form part of the project or steering group.

### Article 4. Additional Service provision

- 4.1 CloudBilling will make every effort to provide to the Customer the Additional Services agreed in writing between the Parties. All Additional Services will be carried out on the basis of a best efforts obligation, unless and to the extent that CloudBilling has expressly guaranteed a result in the written Additional Agreement and the result concerned has been described in the Additional Agreement so as to be sufficiently determinable.
- 4.2 Additional Service Level Agreements will always be in writing. The availability will always be measured in respect of the entire Additional Service and for the duration of one calendar year. In measuring availability interruptions announced in advance due to maintenance or service as well as circumstances beyond the direct sphere of influence of CloudBilling will not be taken into account.
- 4.3 Additional Agreements about any form of information security will always be concluded in writing.
- 4.4 If the Additional Service is rendered in phases, CloudBilling will be entitled to postpone the commencement of work for the purpose of any phase until the Customer has approved the results of the preceding phase in writing.
- 4.5 CloudBilling will from time to time inform the Customer in writing in the manner agreed about the performance of the work via the contact person appointed by the Customer. The Customer will notify CloudBilling in advance how and in relation to which points of attention reporting is required. The Customer will not disclose any advice or report by CloudBilling to a third party or otherwise make it public.

### Article 5. Consultancy

- 5.1 If the Additional Agreement (also) entails that employees of CloudBilling must carry out work at the location of the Customer, CloudBilling will endeavor to keep the employees available for the duration of the Additional Agreement in so far as this is required for the performance of the Additional Services. CloudBilling will however at all times be entitled to replace an employee with another employee having the same and/or similar qualifications.
- 5.2 CloudBilling is responsible for the prompt payment in full of income tax, national insurance contributions and turnover tax due in respect of any employee assigned under the terms of the Additional Agreement. CloudBilling indemnifies the Customer against all claims by the tax authorities or by authorities responsible for the implementation of social insurance legislation which may be payable under the terms of the Additional Agreement, provided that the Customer informs CloudBilling immediately and in writing about the existence and the content of the claim and leaves the handling of the matter, including reaching any settlements, entirely to CloudBilling. To this end the Customer will grant the necessary powers



- of attorney, information and cooperation to CloudBilling to oppose these claims, if necessary, in the name of the Customer.
- 5.3 CloudBilling accepts no liability for the selection of any assigned employee or for the results of work performed under the supervision and guidance or direction of the Customer.
- 5.4 The Customer will be liable for all damage, which an assigned employee may incur in the course of or in connection with the work assigned to him. The Customer indemnifies CloudBilling against all claims by third parties arising or originating from the work performed by an employee assigned under the terms of the Additional Agreement. The Customer indemnifies CloudBilling against all liability arising from the physical injury or death of an employee assigned in connection with the performance of the Additional Agreement.
- 5.5 The Customer bears the risk for the selection, the use and the application of the materials, software, websites, databases and other products as well as the Additional Services within his organization and is responsible for carrying out safety and/or security procedures and proper systems management.
- 5.6 If employees of CloudBilling carry out work at the location of the Customer, the Customer will without charge ensure the provision of the facilities reasonably required by these employees, such as a workspace with computer, data and telecommunication facilities. The workspace and facilities will meet all requirements relating to working conditions that are legally or otherwise applicable. The Customer indemnifies CloudBilling against claims by third parties, including employees of CloudBilling, who may incur damage in connection with the performance of the Additional Agreement resulting from the actions or negligence of the Customer or unsafe conditions within his organization. The Customer will make the company and safety rules applicable in its organization known to the employees deployed by CloudBilling prior to the commencement of the work.
- 5.7 If use is made during the implementation of the Additional Agreement of (operational) computer, data, IT systems and/or telecommunication facilities, including Internet, the Customer will be responsible for the correct selection of the means required therefor and the timely and full availability thereof, except for facilities resorting under the direct use and control of CloudBilling. CloudBilling will never be liable for damages or costs due to transmission errors, breakdowns or non-availability of such facilities in the course of performing the Additional Agreement, unless the Customer proves that such damages or costs are attributable to intent or willful recklessness on the part of (the management of) CloudBilling.

## Article 6. Obligations of the Customer

- 6.1 The Customer must fully, properly and promptly make available to CloudBilling (upon demand by CloudBilling) all data, documents, equipment, software, materials or employees and give all cooperation deemed necessary or desirable for the implementation of the Additional Agreement, before as well as during the Additional Agreement. The Customer must furthermore take all measures

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necessary for the performance of the Additional Agreement and make available the facilities necessary therefor.

- 6.2 The Customer must accurately inform CloudBilling about the work to be carried out and the circumstances under which this must take place.
- 6.3 For continuity of the work the Customer will appoint a contact person or contact persons who will act as such for the duration of the work by CloudBilling. The contact persons of the Customer will have the necessary experience, specific subject knowledge and insight into the desired objectives of the Customer.
- 6.4 During and after the Additional Agreement, Customer will not publicly make any negative statements regarding CloudBilling or its Additional Services or otherwise take any actions in this respect that may harm the name and reputation of CloudBilling.
- 6.5 If the Customer does not promptly or fully comply with the obligations stated in this article, CloudBilling will be entitled to suspend the implementation of the Additional Agreement (in full or in part) and/or charge the Customer any additional costs according to the current standard rates of CloudBilling. This will be without prejudice to the right of CloudBilling to exercise any other legal and/or agreed right.
- 6.6 The Customer shall at all times, free of charge, follow-up on CloudBilling's reasonable instructions and requests for assistance in as far as necessary in relation to CloudBilling's performance of the Additional Services. The Customer shall at all times comply with applicable law and regulations, including but not limited to the applicable data protection laws.

## Article 7. Price and payment

- 7.1 Unless stated otherwise all amounts mentioned by CloudBilling will be in Euro and exclusive of turnover tax (VAT) and other government levies/taxes.
- 7.2 Unless expressly stated otherwise cost estimates and budgets will only serve for purposes of information and no rights or expectations can be derived therefrom. CloudBilling will only be obliged to inform the Customer when a cost estimate or budget has been exceeded if the Parties have so agreed.
- 7.3 CloudBilling will in its customary manner give the Customer insight into the work carried out, hours worked and costs for the Customer.
- 7.4 CloudBilling will be entitled to adjust the applicable prices and rates. CloudBilling will in any event have such right to adjust prices. Price adjustments can be the result of factors like, but not limited to: i) increase of taxes or other levies and/or government rights, ii) changing exchange rates, iii) increase of wages, transport costs, supplier purchase prices, etc., iv) inflation, v) increase of product functionality. Price changes will normally occur annually and will become effective as per January 1<sup>st</sup> of each year. CloudBilling will provide written notice of such changes as part of its invoicing process.
- 7.5 All amounts relating to the Additional Services will be payable in advance each and every calendar month. Invoicing details are specified in the Additional Agreement. Payments must be made within 14 days of the invoice date, unless otherwise agreed in writing or otherwise stated on the invoice.

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- 7.6 If after the expiry of this period payment (in full) has not yet been received by CloudBilling, the Customer will immediately be in default without prior demand or notice of default being required. As from the time of default the Customer will be liable for interest equal to the statutory commercial interest rate.
- 7.7 If the Customer despite demand or notice of default still fails to pay the claim, CloudBilling may hand over the claim for collection. In that event all costs incurred by CloudBilling in connection with overdue payments, such as legal costs and extra-judicial and judicial costs, including the costs of legal assistance, bailiffs and collection agencies, will be payable by the Customer. The extra-judicial costs are fixed at no less than 10% of the invoiced amount subject to a minimum of €250 excluding VAT.
- 7.8 Complaints in relation to invoices and/or the Additional Services will not suspend the payment obligations of the Customer.
- 7.9 CloudBilling will be entitled to suspend the fulfillment of its obligations until such time as the Customer has fully complied with all its due obligations.
- 7.10 If, at the request of or with prior consent from the Customer, CloudBilling has performed work or rendered other performance, which goes beyond the substance or scope of the agreed Additional Services, the Customer shall pay for that work or performance according to CloudBilling's usual rates. CloudBilling shall never be obliged to satisfy such a request, and it may require that a separate written agreement be concluded.

### Article 8. Duration and termination

- 8.1 Unless otherwise agreed, the term of Additional Agreement is specified in the Additional Agreement itself. The Additional Agreement will be tacitly extended each time by the duration of the original period unless the Customer or CloudBilling terminates the Additional Agreement in writing subject to a notice period of three months prior to the end of its duration.
- 8.2 CloudBilling may at all times terminate the Additional Agreement prematurely with immediate effect and without becoming liable towards Customer for such premature termination, unless expressly agreed otherwise in the Additional Agreement.
- 8.3 Each Party will be entitled to terminate the Additional Agreement in full or in part in the event of the other Party being declared bankrupt or granted a moratorium, as well as in the event of the closing down or liquidation of the business of the other Party other than for purposes of reconstruction or merger of enterprises, or if the controlling interest in the company of the other Party changes.
- 8.4 Termination of the Additional Agreement on the ground of an attributable breach will only be permitted following a written notice of default that is as detailed as possible whereby a reasonable period is stipulated within which the breach may be remedied, unless otherwise stipulated in these General Terms and Conditions or otherwise prescribed by law.
- 8.5 In the event of termination of the Additional Agreement, there will be no reversal or cancellation of that which CloudBilling has already delivered and/or carried out nor the related obligation to make payment, unless the Customer proves that

CloudBilling is in material default in respect of that part of the performance. Amounts invoiced by CloudBilling prior to termination in respect of that which CloudBilling has already performed or delivered properly in accordance with the Additional Agreement will remain payable in full subject to the provisions of the preceding sentence and will become due and payable at the time of the termination.

- 8.6 If the Additional Agreement ends for any reason whatsoever, all rights which the Customer enjoyed under the terms of the Additional Agreement, including – but not limited to – any right to use results and/or deliverables, will terminate at the same time. Immediately following the ending of the Additional Agreement, the Customer will delete from its systems and return to CloudBilling all copies of such results and/or deliverables developed and/or provided by CloudBilling under the terms of the Additional Agreement.

### Article 9. IP Rights

- 9.1 Unless the Parties have otherwise expressly agreed in writing, the IP Rights to all results and/or deliverables (including software, files, equipment or materials) used and/or developed by CloudBilling for the Additional Services, will remain vested in CloudBilling or its licensors, irrespective of whether the Customer makes payment for the development or purchase thereof to CloudBilling.
- 9.2 The Customer will only acquire the rights of use which are expressly granted by these General Terms and Conditions, the Additional Agreement or the law. A right of use vested in the Customer will always be non-exclusive, non-transferable to third parties and not sub licensable.
- 9.3 The Customer will not be permitted to remove or to change any specification regarding the confidential character or the relevant IP Rights in the software, files, equipment or materials.
- 9.4 CloudBilling may introduce technical facilities (or cause such facilities to be introduced) for the protection of the software, files, equipment or materials regarding an agreed restriction to the content or the duration of the right of use. The Customer will not be permitted to remove or bypass any such a technical facility (or cause it to be removed or bypassed).
- 9.5 The Customer will not be permitted to make changes or additions (or cause such to be made) or to allow third parties to carry out maintenance or repairs to the software, files, equipment or materials which have been supplied by CloudBilling.
- 9.6 If and to the extent that CloudBilling makes use of software, files, equipment or materials of the Customer during the performance of the Additional Services, the Customer guarantees that it is authorized to grant CloudBilling access to and the use of such software, files, equipment or materials for the purpose of the Additional Services. The Customer indemnifies CloudBilling against all damage and costs which CloudBilling suffers or incurs as a result of a claim of a third party in respect of such use.
- 9.7 The Customer is responsible for any and all necessary licenses and permits, including but not limited to the use of software, hardware and other (IT)

equipment and/or infrastructure under the control of Customer, in order to allow CloudBilling to perform the Additional Services.

### Article 10. Indemnities and warranties

- 10.1 The Customer is itself responsible for the use of the Additional Services of CloudBilling and the results of these Additional Services. Customer will never use the Additional Services and the results of these Additional Service in violation with applicable law and/or legislation, and agrees in particular not use these for the handling and delivery of mass unsolicited e-mail. CloudBilling does not guarantee the correctness, integrity, reliability or completeness of any result or consequence of the Additional Services.
- 10.2 CloudBilling does not guarantee that the results of the Additional Services function without interruptions. CloudBilling also does not guarantee that the results are applicable for any specific purpose.
- 10.3 Unless otherwise agreed CloudBilling will not be responsible for the purchase and/or proper operation of the infrastructure of the Customer or that of third parties. CloudBilling will not be liable for damage or costs due to transmission errors, failures or non-availability of computer, data or telecommunication facilities, including Internet.
- 10.4 Unless otherwise agreed the Customer will itself be responsible for the instructions to and use by users, irrespective of whether such users are in an authority relationship with the Customer.
- 10.5 The Customer guarantees the correctness, completeness and actuality of all information, materials, software, procedures and instructions which the Customer provides to CloudBilling for the implementation of the Additional Agreement, both before entering into the Additional Agreement and during the currency thereof.
- 10.6 The Customer guarantees that there are no rights of third parties which preclude making information, equipment, software, data or other materials available to CloudBilling for the purpose of use, adaptation, installation or incorporation by CloudBilling. The Customer indemnifies CloudBilling against all damage and costs which CloudBilling may suffer or incur due to a claim by a third party based on the allegation that such making available, use, adaptation, installation or incorporation infringes any right of that third party.
- 10.7 CloudBilling does not guarantee that the information security will be effective under all circumstances. In the absence of an expressly specified level of security in the Additional Agreement, the security will be of a standard that is not unreasonable having regard to the state of the art, the sensitivity of the data and the costs associated with the introduction of the security.
- 10.8 If CloudBilling allocates access or identification codes to the Customer in the context of the Additional Service, the Customer will at all times treat such codes confidentially and prudently and only make them known to authorized members of staff. CloudBilling will not be liable for damage or costs resulting from the use or abuse of access or identification codes.

- 10.9 The Customer indemnifies CloudBilling against all damage and costs, including – but not limited to – damage resulting from (alleged) infringements of IP Rights, claims by third parties (including (semi-)governmental authorities), collection costs, the statutory commercial interest, loss of profits, penalties incurred and legal fees, which CloudBilling incurs or which result from (i) attributable breach of the Additional Agreement by the Customer, (ii) any action of the Customer in the performance of this Additional Agreement or (iii) an unlawful act.

### Article 11. Liability

- 11.1 The aggregate, maximum, total liability of CloudBilling due to an attributable breach of its obligations and/or on account of an unlawful act will be limited to compensation for direct damage suffered by the Customer, and will in no event, exceed the amount of the total sum of all invoices actually paid by Customer to CloudBilling under the relevant Additional Agreement under which the liability has occurred.
- 11.2 Direct damage is understood to mean exclusively:
- a. reasonable costs which the Customer would need to incur to make the performance of CloudBilling correspond to the Additional Agreement; such damage will however not be compensated if the Additional Agreement is terminated by or at the suit of the Customer;
  - b. reasonable costs incurred in assessing the cause and the extent of the damage, in so far as the assessment is related to direct damage as referred to in this Additional Agreement;
  - c. reasonable costs incurred in preventing or limiting damage, in so far as the Customer proves that such costs led to a limitation of direct damage as referred to in this Additional Agreement.
- 11.3 Any liability of CloudBilling for damage other than direct damage (“indirect damages”), including – but not limited to – consequential damages, loss and/or damage of data, unavailability or non-performance of software, hardware and/or other ICT infrastructure, loss of profits and lost sales, will be excluded.
- 11.4 The restrictions mentioned in the preceding paragraphs of this article will lapse if and in so far as the damage is the result of intentional or willful recklessness on the part of CloudBilling or its managers (“own actions”).
- 11.5 The liability of CloudBilling due to attributable breach of an Additional Agreement will in all instances arise only if the Customer immediately gives proper written notice of default, whereby a reasonable period within which the attributable breach may be remedied is stipulated, and CloudBilling after this period still fails in the performance of its obligations, except in the case of lasting attributable failure. The notice of default must contain a description of the breach that is as complete and detailed as possible, to enable CloudBilling to respond adequately.
- 11.6 A condition for the creation of a right to damages will always be that the Customer must report the damage to CloudBilling in writing as soon as possible after it arises. Any claim for damages against CloudBilling will lapse by the mere expiry of a period of 12 months from the inception of the claim.

## Article 12. Force majeure

- 12.1 Neither party is liable to perform any obligation, including any warranty obligation agreed between the Parties, if prevented therefrom by force majeure.
- 12.2 Force majeure is taken to mean inter alia:
- a. force majeure affecting suppliers of CloudBilling;
  - b. failure by suppliers prescribed by the Customer to CloudBilling to perform obligations properly;
  - c. defects in objects, equipment, software or materials of third parties use of which has been prescribed by the Customer to CloudBilling;
  - d. government measures;
  - e. power failure;
  - f. failure of Internet, computer network or telecommunication facilities;
  - g. war;
  - h. sit-in;
  - i. strike;
  - j. general transport problems; and
  - k. non-availability of one or more members of staff, including but not limited to illness.
- 12.3 In the event of force majeure CloudBilling will be entitled to suspend its obligations under the terms of the Additional Agreement, or to terminate the Additional Agreement in full or in part, without incurring any liability for damages towards the Customer.
- 12.4 If a force majeure situation continues for longer than 6 months, the Customer will be entitled to terminate the Additional Agreement in writing, without CloudBilling incurring any liability for damages.

## Article 13. Confidentiality and acquisition of staff

- 13.1 The Customer will ensure that all information received from CloudBilling– including data, designs, documentation and software – which the Customer knows or should reasonably know to be of a confidential nature, remains confidential. The Customer will only use this information for the purpose for which it was provided and will not show it to third parties, make it public or make it otherwise available. The Customer will take all necessary measures to protect the confidential character of the information in the same manner and to the same degree as the confidential information of the Customer itself.
- 13.2 The Customer will not be entitled during the currency of the Additional Agreement nor for a period of one year after the end thereof to employ an employee of CloudBilling who is (was) involved in the implementation of the Additional Agreement or to otherwise use his services, directly or indirectly, unless CloudBilling has expressly consented thereto in writing.

## Article 14. Miscellaneous

- 14.1 The Customer is not entitled to transfer rights and/or obligations arising from the Additional Agreements to a third party.



- 14.2 CloudBilling is entitled to transfer its claims to payment of compensation to a third party. CloudBilling is furthermore entitled, although only with the consent of the Customer, to cause the Additional Agreement to be carried out in full or in part by third parties or at any rate involve third parties in the implementation of the Additional Agreement. Such consent will not be unreasonably withheld.
- 14.3 The Additional Agreements between CloudBilling and the Customer will be subject to Dutch law. The applicability of the Vienna Sales Convention 1980 will be excluded.
- 14.4 To the extent that national or international rules of law do not prescribe mandatory conditions to the contrary, any and all disputes arising from or related to Additional Agreements concluded under these General Terms and Conditions, or Additional Agreements that are derived therefrom, will be brought before the competent court in Amsterdam.