



# Terms of service

Connect Holland - Version 1.0, 14 December 2016

## 1. Definitions

| TERM                                | DEFINITION  |
|-------------------------------------|---|
| <b>Business days/hours</b>          | Standard business days/hours are Monday to Friday from 9:00 to 17:30 CET with the exception of public holidays in the Netherlands.  |
| <b>Connect Holland</b>              | Connectholland B.V. a Dutch limited liability company with registration number 24302539 and as registered address Kratonkade 9, Rotterdam, the Netherlands.   |
| <b>Connect Holland Product</b>      | A software application licensed by Connect Holland to Customer as identified in the relevant Order.   |
| <b>Custom Software</b>              | An enhancement, modification or add-on expansion of an existing Connect Holland Product or a software application separately developed by Connect Holland on the suggestion or request of Customer.   |
| <b>Customer</b>                     | Party who was issued a License to use a Connect Holland Product and/or concluded an Order for Services with Connect Holland.  |
| <b>Customer Data</b>                | Data which is (i) imported by Customer in a Connect Holland Product, (ii) separately provided by Customer to Connect Holland in order to enable the provision of Services by Connect Holland or (iii) produced by Customer using the Connect Holland Product (excluding any data made available by Connect Holland itself via or as part of the Connect Holland Product). |
| <b>Documentation</b>                | The then-current end user manuals made available by Connect Holland to Customer published by Connect Holland for a Connect Holland Product.   |
| <b>Functional Deviation</b>         | A material deviation of the functionality and/or configuration of the Connect Holland Product from the Specifications.  |
| <b>Hosting Services</b>             | Providing and managing a computer environment connected to the internet to host a Connect Holland Product and enabling the Customer to use such Connect Holland Product over the public internet.   |
| <b>Intellectual Property Rights</b> | All copyrights, patents, database rights, rights in trademarks, designs, know-how, logos, confidential information, rights in domain name registrations and similar rights (whether registered or unregistered).  |
| <b>License</b>                      | A license granted to an Customer to use a Connect Holland Product as documented in an Order and subject to the License Conditions.  |
| <b>License Conditions</b>           | The usage conditions and restrictions applicable to a License as set out in the relevant Order and in these Terms of Service.   |
| <b>Modification</b>                 | Update to a Connect Holland Product to make a change to the Connect Holland Product, such as implementation of Custom Software, changing its configuration, settings, functionality, interfaces or technical capabilities.  |
| <b>Offer</b>                        | Written offer issued by an authorised representative of Connect Holland for the provision of Services to the Customer.  |
| <b>Order</b>                        | Offer which is accepted by the Customer or other mutual written agreement between Connect Holland and Customer for the delivery of Services to Customer by Connect Holland.   |
| <b>Pre-paid Service</b>             | A pre-paid number of hours of Services procured by Customer as a package from Connect Holland for the provision of Services as described in the relevant Order (generally also referred to as a "Strippenkaart").   |
| <b>Package</b>                      | Services of Connect Holland other than Support Services, including but not limited to training, consultancy, development and installation services.   |
| <b>Professional Services</b>        | All services of Connect Holland including the issuing of Licenses, Support Services, Hosting Services and Professional Services.  |
| <b>Services</b>                     | The expressly agreed functional specifications for the Connect Holland Product as documented in writing.  |

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| <b>Specifications</b>                         | The maintenance and support services agreed to be provided by Connect Holland to the Customer with respect to a Connect Holland Product as agreed in an Order, subject to the terms set out in clause 5.   |
| <b>Support Services</b><br><b>Support SLA</b> | The then current maintenance and support policy of Connect Holland for the relevant Connect Holland Product which details the operational aspects of the Support Services agreed to be provided under an Order (subject to Customer specific arrangements if expressly agreed to apply as documented in the Order or a Customer specific Support SLA as attached to or referred to in the Order). If Hosting of the Connect Holland Product is part of the Services agreed to be provided to the Customer, the Support SLA for the Hosting will also set out the committed service levels for such Hosting Services.   |
| <b>Support Updates</b>                        | Updates to a Connect Holland Product provided by Connect Holland as part of standard Support Services such as to correct Technical Errors and to ensure future proper technical functioning.   |
| <b>Technical Error</b>                        | (i) A technical programming error in the Connect Holland Product; or (ii) (if Connect Holland provides for the Hosting of the Connect Holland Product for Customer) an error in the Hosting Services which causes such Connect Holland Product to materially mal-functional technically (e.g. crash, inability to access or operate available functions, inability to log in, unworkable slow performance). Technical Errors exclude Functional Deviations of the Connect Holland Product and other requests for changes to Customer specific settings and configurations regarding desired or required functionality, user management and new technical features. Technical Errors exclude issues caused by user error or external events for which Connect Holland is not responsible. |
| <b>Terms of Service</b>                       | These terms of Services of Connect Holland which are applicable to all Services of Connect Holland.  |
| <b>Update</b>                                 | Support Updates and Modifications  |

## 2. Application of Terms

- 2.1 **Introduction:** These Terms of Service apply to all Services of Connect Holland, all Offers of Connect Holland and all Orders entered into by Connect Holland with the Customer with respect to the supply of Services by Connect Holland. If Customer accepted the applicability of the Terms of Service for any Order, Customers agrees they will also be applicable to all subsequent Orders and Offers between Connect Holland and Customer.
- 2.2 **Offers and Orders:** Customer may accept Offers issued by Connect Holland by signing them and sending these to Connect Holland or by accepting them online (if the Offer is offered online for acceptance and electronic signature). Offers expire if not accepted by Customer within 30 days of the date they were provided, unless another expiry date is expressly included. Offers made by Connect Holland online may be revoked without notice. Apparent typo's and errors in Offers do not bind Connect Holland and Connect Holland may reject or terminate Orders based on Offers containing such apparent errors, provided Connect Holland does so promptly after discovering the error or typo.

## 3. License Terms

- 3.1 **License grant:** If Customer is granted a License to use a Connect Holland Product, such License will be personal to Customer, non-transferable, non-exclusive, for its own internal business purposes, for the expressly permitted scope of use as set out in the Order and subject to the usage limitations set out in such Order and these Terms of Service. The License term is set out in the Order, and may be perpetual, for a limited term or subscription based.
- 3.2 **License scope:** Customer shall only be allowed to make use of the Connect Holland Product within the License boundaries set out in the Order (so only with the agreed number of users, accounts or other quantitative boundaries set out in the Order). Where a license is granted for a limited number of users, this means (unless another model is expressly agreed in writing to apply in the relevant Order) that only for that number of users user accounts may be configured in the Connect Holland Product and that each such user account may only be used by one named individual employee or contractor of Customer (so the sharing of one account by multiple employees or contractors is expressly not allowed, but an account may be transferred to a new employee or contractor if the previous employee / contractor changes function or leaves the employment of Customer). If Customer configures more user accounts in the Connect Holland Product than originally licensed, Customer must notify Connect Holland and Connect Holland will then invoice the license fees to Customer at the applicable standard rates.
- 3.3 **Copies and modifications:** Customer may not copy or use any part of a Connect Holland Product, including any concept, knowhow, data model, process flow or other proprietary aspect of the Connect Holland Product other than as required to be able to use the Connect Holland Product within the scope of the granted License. Furthermore it is strictly prohibited to (try to) amend, modify or change, reverse engineer, decompile, modify or create derivative works of a Connect Holland Product or to enable or instruct third parties to do so, except to the extent such restriction is prohibited under applicable mandatory law. For the avoidance of doubt, this restriction does not apply to Customer Data, which Customer may use in any way it sees fit.
- 3.4 **Object code license:** Unless expressly otherwise agreed for individual Connect Holland Products, the License only applies to the Connect Holland Product in compiled / object code form (so excluding any access or license to use the underlying source code used by Connect Holland to create the compiled / object code version of the Connect Holland Product).
- 3.5 **Connect Holland / licensor marking:** Customer will refrain from removing any product identification marks or copyright symbols or messages indicating Connect Holland's or its licensor's rights on any computer program, modules, modifications, manuals etc. connected with Connect Holland Products.
- 3.6 **No use for/by third parties allowed:** Customer may only use the Connect Holland Products for its own internal business purposes. Customer may not make the use of the Connect Holland Products available for use by any third party, nor use the Connect Holland Products for the benefit of any third party on any basis including by reselling them or by combining them with the services provided by Customer to third parties. This expressly includes a prohibition to use the Connect Holland Product for or allow the use by corporate affiliates / group companies / subsidiaries of Customer unless this is expressly otherwise agreed in the Order.
- 3.7 **Test/ beta/ evaluation license:** Any License granted as a 'test' / 'beta' / 'acceptance' / 'training' / 'demo' License (or similar indication that the License is not a full commercial use license), shall be used by Licensee for the sole purpose of evaluation or testing of the Connect Holland Product and may not be used for normal operational / commercial use. Any such License is provided without warranty on an "as is" basis and without entitlement to any Support Services (except as may be expressly otherwise agreed in the Order) and may be revoked by Connect Holland at any time for any reason.
- 3.8 **Unlicensed use of Connect Holland Product:** Any use of a Connect Holland Product beyond the agreed usage scope by Customer without prior agreement in an Order entitles Connect Holland to invoice Customer for the additional usage made at Connect Holland's then current standard pricing for such expanded use and entitles Connect Holland to terminate the License for cause.
- 3.9 **License warranty:** Each Connect Holland Product is licensed to Customer by Connect Holland with the following standard warranty commitments:

1. Connect Holland will indemnify and hold Customer harmless from any claim from a third party that the use of the Connect Holland Products by the Customer infringes any third party's Intellectual Property Rights in accordance with clause 10 below; and
  2. For a period of 8 weeks after the Connect Holland Product is first made available to Customer (and for as long as Customer procures Support Services from Connect Holland for the Connect Holland Product), Connect Holland commits to use its reasonable efforts to address and resolve all Technical Errors in the Connect Holland Product in accordance with the applicable Support SLA. For Custom Software the specific warranty commitment set out in clause 8.5 below applies. Subject to the above warranties, all Connect Holland Products are licensed "as is", without any further warranty of any kind, including but not limited to the implied warranties of merchantability, fitness for a particular purpose and non-infringement and use of the Connect Holland Products is entirely at Customer's own risk.
- 3.10 **Open source software:** The License Conditions set out in this clause 3 do not apply to third party open source software that is made available through Connect Holland for use by Customer. With respect thereto the usage limitations that apply as set out in the relevant third party open source license terms as applicable to such open source software. However with respect to any modifications and additions made by Connect Holland to such third party open source software and licensed by Connect Holland to Customer pursuant to an Order, the commitments in this clause 3 apply in full.

## 4. General Terms Services

- 4.1 **Professional Services vs other Services:** All forms of Service that may be provided by Connect Holland other than Support Services, Hosting Services and the sale of Licenses, are Professional Services. Fees for Professional Services are not included in the fees agreed or quoted by Connect Holland for Licenses, Hosting Services and Support Services.
- 4.2 **Terms and dates:** All delivery dates and other periods included by Connect Holland in Orders or Offers for Services are determined on the basis of the information known to Connect Holland when it agreed or communicated such dates or periods and may be subject to change. Connect Holland will use its reasonable efforts to observe agreed delivery dates and other periods as much as possible, subject to the Customer's timely performance of its obligations and will give notice to Customer in case any specifically communicated period or date is expected to change.
- 4.3 **Customer co-operation:** The Customer must furnish Connect Holland in a timely manner with all information and cooperation which is reasonably requested by Connect Holland to enable Connect Holland to provide the Services. Customer will further provide Connect Holland with information and co-operation which it knows to be relevant for Connect Holland to enable Connect Holland to provide the Services in an efficient manner. With respect to Custom Software, business specific functionality is implemented under the responsibility of Customer and on the basis of its input and its active collaboration with Connect Holland in establishing what is required for the effective support of Customer's business requirements.
- 4.4 **Customer responsibility for legal use:** Customer is responsible for the compliance to applicable laws for all use Customer makes (or enables any third party to make) of the Connect Holland Products, all data it uploads to and distributes via the Connect Holland Products and all related instructions it gives to Connect Holland in developing, configuring and using the Connect Holland Product for Customer. Customer shall at all times ensure that the use made of the Connect Holland Product (and if applicable of Hosting Services), all its instructions to Connect Holland with respect to the Services and all Customer Data, do not violate any third party rights (expressly including any Intellectual Property Rights) and do not constitute a tort against any third party (e.g. spam, discrimination, fraud etc.). Connect Holland's agreement to provide the Services to Customer, to process Customer Data or to perform Services in accordance with the instructions of Customer shall not be held to imply any legal advice by Connect Holland to Customer or any waiver with respect to any restriction under this clause. Customer will indemnify and hold Connect Holland harmless from any third party claim caused by any violation by Customer of this clause.

## 5. Support Services

- 5.1 **Support Services:** Customer is entitled to receive Support Services from Connect Holland for a Connect Holland Product if it procures Support Services for such Connect Holland Product under a signed Order and has paid all applicable fees for such Support Services when due. The scope of the Support Services is as agreed in the relevant Order and the related procedures, service levels and operational and technical terms of use are described in the then current Support SLA of Connect Holland for the Support Services for the relevant Connect Holland Product (and if also procured, the associated Hosting Services) as communicated by Connect Holland to Customer from time to time. Material changes to Support SLAs are announced by Connect Holland in writing and at least 2 months in advance.
- 5.2 **Remote Access:** As standard Support Services are provided remotely from Connect Holland's own office locations. If Customer itself arranges for the hosting environment on which the Connect Holland Product is used by Customer, then Connect Holland must be enabled by Customer to access the Connect Holland Product on such hosting environment online in accordance with the technical requirements of Connect Holland to enable the provision of Support Services. Onsite support is not included in standard fees for Support Services and in case on site assistance is required for any reason, this will be separately charged to Customer as Professional Service.
- 5.3 **Customer responsibilities for receiving Support Services:** Customer must ensure that employees contacting Connect Holland to receive general support and/or to report Technical Errors have been suitably trained to operate the Connect Holland

Products and have consulted the available Documentation of the Connect Holland Products before contacting Connect Holland for support. General user support (excluding reporting Technical Errors) is subject to a maximum of 1 hour per month (or such other maximum as may be agreed in the Order or set out in the Support SLA) and additional hours are invoiced as Processional Service.

- 5.4 **Technical Errors:** Customer must when reporting a Technical Error provide all relevant information and co-operation to Connect Holland as reasonably requested to enable Connect Holland to identify, reproduce and resolve the Technical Error. Connect Holland reserves the right not to resolve issues as part of Support Services: (i) caused by failures to follow usage instructions set out in the Documentation, (ii) caused by uploaded data not compliant with the related technical requirements; (iii) with respect to restoring Customer data; (iv) issues in hardware or third party software used in combination with the Connect Holland Product not provided by Connect Holland; (v) requests for Modifications; and (vi) other external events for which Connect Holland is not responsible. Assistance with respect to such issues may, if agreed to be provided by Connect Holland, be separately charged by Connect Holland as Professional Service to Customer.
- 5.5 **Support Updates:** As part of Support Services, Connect Holland may install Support Updates of the Connect Holland Product. Their implementation may temporarily effect availability of the Connect Holland Product for use by Customer. Connect Holland will announce and perform Support Update implementations in accordance with the procedures set out in the relevant Support SLA. If Customer provides for the hosting of the Connect Holland Product itself, Customer must enable the installation of the Update when requested by Connect Holland. Connect Holland may refuse to address Technical Errors if Customer does not enable the installation of a Support Update that would prevent or resolve such Technical Error. If Connect Holland cannot perform the installation of an Update remotely on a hosting environment arranged for by Customer in accordance with the technical requirements of Connect Holland to perform such service efficiently, then the implementation is performed as a Professional Service.
- 5.6 **Modifications:** Creating and implementing Modifications is not part of standard Support Services and are performed as Professional Services for which Customer may procure Pre-Paid Service Packages. Connect Holland may also offer optional Modifications to Connect Hollands Products to offer new or improved functionality which may be subject to additional license fees. License fees for such optional Modifications are not mandatory for the Customer to order and are only chargeable to Customer if Customer expressly agreed to the applicable additional license fee in writing.
- 5.7 **Term and renewal Support Services:** Unless otherwise set out in the Order, Support Services are ordered and provided for an initial term of 1 year. The initial term for procured Support Services will start the date the Connect Holland Product is first made available by Connect Holland for use by Customer. After the expiry of the applicable initial term for the Support Services, Support Services are automatically renewed for additional one year periods until either party, by giving at least 2 months prior written notice, indicates not to wish to renew the Support Services for an additional term.
- 5.8 **Quality commitment Support Services:** Connect Holland will provide Support Services in a professional and diligent manner and commits to use its reasonable efforts to address and resolve Technical Errors in the Connect Holland Product for which the Support Services are provided in accordance with the applicable Support SLA. Connect Holland expressly does not warrant it will resolve all Technical Errors or that the Connect Holland Products will operate without Technical Error and/or uninterrupted. Resolution of a Technical Error in the Connect Holland Product may require the co-operation of Customer and may require Customer to temporarily accept minor other shortcomings or to install an Update of the Connect Holland Product.

## 6. Professional Services – General

- 6.1 **Scope:** The scope and content of the Professional Services will be specified in the Order or separately agreed in writing pursuant to the Order.
- 6.2 **Fees for Professional Services:** Unless expressly otherwise agreed, Professional Services are charged on a time and material basis against the standard hourly rates of Connect Holland or such hourly rates as may be agreed in the relevant Order. Communicated budgets for performing certain activities are (unless expressly otherwise agreed in the Order) non-binding estimations and not fixed prices. Connect Holland will only with the written consent from Customer spend and invoice time and/or costs beyond the agreed budget. Agreed fixed prices for Professional Services for certain specific activities or deliverables are subject to the assumptions and conditions as set out in the Order and on the general assumption Customer provided correct, up to date and complete information for Connect Holland to base its fixed price offer on, and may be proportionally changed by Connect Holland if such assumptions prove wrong.
- 6.3 **Service hours:** The Professional Services shall be performed on Business Days and during the standard Business Hours of Connect Holland. For Professional Services agreed by Connect Holland to be performed outside these timeframes on the express request of Customer, an uplifted fee will apply as communicated by Connect Holland.
- 6.4 **Quality commitment Professional Services:** Connect Holland will provide Professional Services in a professional and diligent manner. In case deliverables created as the result of Professional Services contain manifest errors or unprofessional shortcomings caused directly by a failure by Connect Holland to perform the Professional Services to the standard set out in this clause, and Customer reports this to Connect Holland within 30 days after the delivery of the relevant deliverable, Connect Holland will as sole remedy use its reasonable efforts to correct such material shortcoming or alternatively offer Customer a proportional reduction in the fees charged for the relevant Professional Services. For Custom Software created as Professional Service the specific warranties set out in clause 8 below apply instead of this general warranty.

## 7. Professional Services – Installation

- 7.1 **Installation scope:** In case Connect Holland agreed to provide installation services for a Connect Holland Product licensed to Customer, Connect Holland will as part of such installation Service only apply such configurations and modifications of the Connect Holland Product as may be expressly agreed in the relevant Order. Connect Holland will not be required to install or configure the Connect Holland Product in such a way that it may work or connect with other current or future software or systems of Customer or third parties, unless establishing the specific interface was expressly agreed in the Order to be created by Connect Holland as part of the agreed Services.
- 7.2 **Installation preparation:** If Connect Holland has agreed to implement a Connect Holland Product on a hosting environment arranged for by the Customer, then Customer must ensure the appropriate equipment, resources, personnel etc. are available to allow Connect Holland to implement the Connect Holland Product per the agreed date in accordance with the technical requirements of the Connect Holland Product as set out in the Support SLA and/or as separately communicated by Connect Holland. Customer is responsible to ensure at its cost that the hosting environment complies with such requirements (including potential future changes such as patching OS software, increasing processing and/or storage capacity and maintaining security of the hosting environment as needed to accommodate the proper functioning of the Connect Holland Product).
- 7.3 **Remote installation:** Connect Holland will perform the installation of Connect Holland Products (and Updates) remotely and Customer is required to enable such remote installation by making the hosting environment of the Customer available for a remote connection in accordance with Connect Holland's requirements. Should it be required that an employee of Connect Holland performs installations on site, the fees payable for the installation will be increased with travel time and expenses (unless those were expressly agreed to be included in the agreed fees for the installation in the Order).
- 7.4 **Customer Data:** Customer will ensure any Customer Data provided for installation and implementation activities complies with the relevant technical standards as set out in the Documentation and/or otherwise communicated by Connect Holland. Data conversion and migration is not part of Services offered by Connect Holland and/or included in communicated or agreed pricing except as may be expressly otherwise agreed in the Order.

## 8. Professional Services – Custom Software Services

- 8.1 **Custom Software:** If Connect Holland agrees to develop Custom Software as customisation of a pre-existing standard Connect Holland Product on request of a Customer, such Custom Software will, unless expressly otherwise agreed in the Order, be implemented by Connect Holland in generally distributed standard Updates of the Connect Holland Product. Connect Holland decides in which Update of the Connect Holland Product the Custom Software will be included, which may not be the first Update released by Connect Holland after the enhancement is agreed to be developed for Customer. The Update of the Connect Holland Product containing the enhancement is also covered by the Support Services procured by Customer for such Connect Holland Product under the same terms unless expressly otherwise agreed in the Order for the creation of such Custom Software.
- 8.2 **License Custom Software:** Customer will be granted a License for Custom Software in accordance with the License Conditions. Customer will not acquire any Intellectual Property Rights or rights to exclusivity in any Connect Holland Product, any Documentation or any Custom Software, modification or addition thereto developed by Connect Holland or a third party engaged by Connect Holland, including those paid for, suggested or requested to be developed by Customer.
- 8.3 **Acceptance of Custom Software:** Within 14 days from delivery of the Custom Software by Connect Holland to Customer, Customer will perform testing to establish that the delivered Custom Software operates and performs in accordance with the agreed upon Specifications. If it becomes apparent that the Custom Software contains Technical Errors or Functional Deviations, the Customer shall report the test results to Connect Holland in writing, with sufficient detail to enable Connect Holland to reproduce and address the reported Technical Error or Functional Deviations. Connect Holland will use its reasonable commercial efforts to remedy the reported Technical Error or Functional Deviation and subsequently make the Custom Software available for a renewed test by Customer. In case Customer has not reported a Technical Error or Functional Deviations in the delivered Custom Software within 14 days after delivery of the Custom Software and/or has started operational use of the Customer Software, it shall be deemed to be accepted by Customer per the end of the 14 day period.
- 8.4 **Minor issues do not block acceptance:** Minor Technical Errors or Functional Deviations which, by their nature and/or number, do not prevent the start of operational use by Customer of the Custom Software and/or the start of the delivery of subsequent Services (e.g. next round of development), will not prevent acceptance, without prejudice to Connect Holland's obligation to correct such minor Technical Errors or Functional Deviations.
- 8.5 **Warranty Custom Software:** For a period of 8 weeks following the date the relevant Custom Software is accepted by Customer, Connect Holland will correct (subject to the conditions of clause 5.4 above and under the commercial terms agreed in the Order): (i) Technical Errors; and (ii) Functional Deviations, which Customer could not reasonably have identified at the time of the acceptance of the Custom Software.



8.6 **Scrum / agile:** For Professional Services in the form of 'agile' / 'scrum' development of Custom Software, the budgets agreed in the Order for 'development sprint(s)' are fixed prices for performance of the relevant development sprint(s) with the agreed number of developers with the agreed expertise for the agreed number of days. The actual output in terms of software functionality ('user stories' / 'story points') realised by the end of each such sprint (and all sprints combined) is not fixed or guaranteed. Connect Holland and Customer will in each development sprint work intensively together in good faith on a best efforts basis to maximise the number of realised 'user stories' / 'story points' in the form of Custom Software ready for use by Customer by the end of each sprint. For 'agile' / 'scrum' development, the warranty as per clause 8.5 for the created Custom Software is strictly limited to the commitment to correct Technical Errors reported during the warranty period which are caused by unprofessional development work by Connect Holland staff (and the warranty expressly does not include creating or finishing the creation of not realised functionality per the end of the sprint). The warranty period for this limited warranty starts on the day after the results of the relevant development sprint are made available to the Customer.

## 9. IP Rights

- 9.1 **Ownership Connect Holland Products:** All Intellectual Property Rights in or related to the Connect Holland Products, and any modifications thereto, including those suggested or requested to be made by and/or paid for by Customer (but excluding any Customer Data) are and will remain to be fully and wholly owned by Connect Holland and its licensors.
- 9.2 **Ownership Customer Data:** All data which Customer uploads in the Connect Holland Products or requests Connect Holland to upload in the Connect Holland Product are considered Customer Data and are and will remain to be fully and wholly owned by Customer and its licensors. Connect Holland will not use the Customer Data for any other purpose than to provide the Services to Customer, to manage, maintain and improve the Services and to comply with applicable laws.

## 10. IP Indemnity

- 10.1 **IP indemnity commitment:** As far as Connect Holland is aware, the Connect Holland Products do not infringe upon any third party Intellectual Property Rights when used in accordance with the applicable License Conditions. Connect Holland shall, as sole and exclusive remedy, defend the Customer as per the terms of this clause 10 at its expense against any claim from a third party that the use of the Connect Holland Products by the Customer infringes any third party's Intellectual Property Rights (IP Claim).
- 10.2 **Conditions for IP indemnity:** Connect Holland shall as sole remedy pay all costs, damages and attorney's fees that a court finally awards to the third party making the IP Claim, or make all payments related to a settlement agreed by Connect Holland with such third party concerning such IP Claim, provided that:
1. Such IP Claim is not in any way caused by any Customer Data or by any act or omission of Customer;
  2. Customer did not violate the applicable License Conditions for the Connect Holland Product;
  3. Customer promptly notifies Connect Holland in writing of such IP Claim; and
  4. Customer allows Connect Holland to control, and fully co-operates with Connect Holland in, the defence against such IP Claim and any related settlement negotiations.
- 10.3 **Resolving infringement:** If an IP Claim is made or in the reasonable opinion of Connect Holland is likely to be made then, at Connect Holland's option:
1. Connect Holland will procure a license from the holder of the relevant Intellectual Property Rights to enable the Customer to continue to use the Services; or
  2. Connect Holland will replace the relevant part to the Connect Holland Product with a modified version thereof, which does not infringe the third party Intellectual Property Rights; or
  3. Connect Holland may terminate the relevant Order in part or in whole against a proportional repayment to Customer of the fees paid by the Customer for the relevant Connect Holland Product (applying for fees paid for perpetual Licenses a linear depreciation of the paid license fee over a 3 year period).
- 10.4 **Open source software:** the commitments set out in this clause 10 do not apply to third party open source software that is made available through Connect Holland for use by Customer. With respect to such third party open source software the applicable third party open source license terms govern this. However with respect to any modifications and additions made by Connect Holland to such third party open source software and licensed by Connect Holland to Customer pursuant to an Order, the commitments in this clause 10 will apply in full.

## 11. Price and payment

- 11.1 **Taxes and costs:** All prices of Connect Holland are, unless explicitly otherwise agreed, exclusive of turnover tax (VAT) and other applicable taxes, tariffs, withholding taxes, levies or duties imposed by governmental authorities. Pricing of Services is excluding applicable transportation, travel and accommodation costs which will be charged separately as incurred to provide the agreed Services except as explicitly agreed otherwise in the relevant Order. Fees payable for Licenses, Support Services, Hosting Services and Professional Services are as set out in the relevant Order and otherwise as set out in the then current standard pricelists of Connect Holland.



- 11.2 **Payment terms:** Unless otherwise agreed in the relevant Order, fees for Licenses are invoiced on agreement of the Order for such Licenses. Fees for Professional Services are payable in accordance with the payment schedule set out in the Order or in absence thereof, monthly in arrears on the basis of actual hours spent and costs incurred in the previous calendar month. Recurring fees for Services provided on a recurring basis (such as Support Services, Hosting Services and Licenses granted on a fee per usage period) are invoiced per initial term and per renewal term in advance per the start of the applicable initial or renewal term. The Customer shall pay each invoice within thirty (30) days after the invoice date. The Customer shall not be entitled to set off any counterclaims or to suspend payment of an invoice.
- 11.3 **Fees for recurring Services:** Fees payable for recurring Services such as Support Services, Hosting Services or Licenses granted on a fee per usage period are fixed for the initial term agreed for such recurring Services as set out in the Order (subject to corrections for inflation as per clause 11.5 below). For renewal terms of the Order for such recurring Services, Connect Holland may change the applicable pricing for the subsequent term by giving prior written notice to Customer of the changed pricing for the next renewal period. Connect Holland will provide at least 3 months prior written notice of price changes that increase the price level agreed under the initial Order with more than the inflation as per clause 11.5.
- 11.4 **Late payment consequences:** If any amount that is due to Connect Holland is not paid in time, this will be considered a breach of contract and Customer will automatically be in default. No notification or summons from Connect Holland will be necessary and Customer will, once in default, be fully liable for legal interests (according to the current Dutch legal interest rate for businesses) on the outstanding amounts and all reasonable costs incurred by Connect Holland in its attempt(s) to collect payment, including the costs of lawyers, legal advisors, collection agencies, bailiffs etc. Connect Holland reserves the right to suspend the relevant Services in case of non-payment of an invoice by Customer in case payment of the outstanding invoice is not made within 10 Business Days after Connect Holland has send a written reminder to Customer to pay the outstanding invoice.
- 11.5 **Indexation:** All prices of Services, also those for which pricing is documented in the Order during the initial term for the relevant Services, may be increased by Connect Holland once per year in accordance with the movement in business services price index published by the Dutch Central Bureau for Statistics ('CBS') (CBS zakelijke dienstverlening) since the date the relevant price was agreed or last adjusted for inflation.
- 11.6 **Pre-paid Service Package ("strippenkaart"):** If Customer procures a Prepaid Service Package, Customer must use such prepaid Services within 2 years after the date it was invoiced to the Customer. The pre-paid Service hours are only valid for the type of Services for which they are procured and for the functions identified in the Order. If Customer calls off prepaid Services, these will be planned to be delivered by mutual agreement between the parties as soon as practical after Customer's request.

## 12. Limitation of Liability

- 12.1 **Liability limit direct damage:** The total liability of Connect Holland under or in connection with any Order and the Services provided under such Order for breach of contract, tort or under any other legal theory in any calendar year is limited to an amount equal to the 50% of the total fees actually paid by Customer to Connect Holland during the previous full calendar year under the Order (or if no Services were provided in the previous calendar year to Customer under the Order, the total fees paid in the initial 6 months of the term of the Order).
- 12.2 **Exclusion liability indirect damage:** Connect Holland shall under or in connection with any Order for breach of contract, tort or under any other legal theory not be liable towards Customer or towards third parties for any indirect or consequential damage, damage to data, lost turnover, lost profits, lost savings or damage to good name, whether such damages arise under a tort, contract or other claim. Connect Holland expressly and fully disclaims liability for any damage resulting from the use of the Connect Holland Products in the business and operations of Customer. Connect Holland cannot and does not warrant that the Connect Holland Product is free of errors and/or will function uninterrupted.
- 12.3 **No limitation:** The limitations mentioned in the preceding paragraphs of this clause shall not apply if and insofar as the damage or injury are the direct result of intentional misconduct of Connect Holland.
- 12.3 **Employees and subcontractors:** The provisions in this clause 12 shall also apply for the benefit of the employees and directors of Connect Holland, the subcontractors utilized by Connect Holland in executing its obligations toward the Customer and Connect Holland's third party licensors whose products Connect Holland sublicenses as part of the Connect Holland Products.
- 12.4 **Indemnity third party claims:** The Customer will indemnify and hold Connect Holland harmless from any third party claims and related reasonable legal costs caused by or in any way related to Customer's use of a Connect Holland Product and the results of the Services, except where this concerns IP Claims. With respect to such IP Claims, Connect Holland will indemnify and hold Customer harmless in accordance with clause 10.
- 12.5 **Force majeure:** In case one party is unable to perform its obligations due to circumstances beyond its reasonable control (which are agreed to include government measures, power failures, general internet/data network/telecommunication facilities failure, 'denial of service' (ddos) attacks, war, strikes, extreme weather, terrorism and causes beyond the reasonable control of the affected party), this is to be regarded as force majeure. As long as such force majeure situation lasts, the affected party is released from the obligations it cannot comply with due to such force majeure situation without liability. If

a situation of force majeure lasts for longer than sixty days, either of the parties shall be entitled to terminate the relevant Order. The Services already performed on the basis of the Order shall in such case be settled on a pro rata basis and the parties shall not owe one another any other amounts for such termination.

- 12.6 **Back-up of Data:** At all times Customer is itself responsible to ensure back-ups are made of Customer Data which Customer processes with, creates and/or stores using a Connect Holland Product and to safely store such back-up copies at a separate location. Connect Holland is never liable for any loss or corruption of data of Customer. Any back-ups which Connect Holland may make of Customer data is considered a not warranted extra service of Connect Holland, and not intended in any way or form to reduce the own obligation of Customer to also make its own back-up copies of its own data.

## 13. Termination

- 13.1 **Term and renewal of Orders:** The applicable term of each Order will be as agreed in each Order. Orders for one time activities will automatically terminate when all Services agreed in the Order, have been provided by Connect Holland and paid for by Customer. Orders for recurring or on-going Services will specify the initial and renewal terms and in absence of any explicit initial and renewal term and will be deemed to have been agreed for an initial term of one year with subsequent renewals for additional one year terms until either party gives at least 2 months prior written notice of its intent not to renew the Order for an additional one year term.
- 13.2 **License term:** The License term is set out in the Order, and may be perpetual, for a limited term or subscription based. Orders for Licenses will specify the initial and renewal terms for the term of the License and in absence of any explicit initial and renewal term, will be deemed to have been granted for an initial term of one year with subsequent renewals for additional one year terms until either party gives at least 2 months prior written notice of its intent not to renew the License for an additional one year term.
- 13.3 **Termination rights, both parties:** A party may terminate an Order (including Licenses under such Order) by giving written notice to the other party in the following circumstances:
1. if the other party materially violates an obligation under an Order and does not remedy such violation within a reasonable period of at least 14 days set by the other party in a written notice of default sent by registered mail to the defaulting party; or
  2. if the other party is declared bankrupt or a receiver is appointed to administer its assets or otherwise becomes unable to satisfy its debts when due.
- 13.4 **Termination of License for cause:** Connect Holland may terminate any License by written notice at any time if Customer materially breaches the License Conditions. This remedy shall not be exclusive and shall be in addition to any other rights and remedies which Connect Holland may have.
- 13.5 **Termination of License in case of unauthorised transfer:** Any purported transfer or assignment of any Order or the Licenses granted thereunder by Customer or other action by Customer with a similar effect, including where this occurs as a result of Customer's bankruptcy, insolvency, or liquidation or as a result of an assignment of Customer's assets for the benefit of creditors shall be void and the Order and the Licenses granted thereunder shall thereupon automatically terminate without further notice or action by Connect Holland, notwithstanding other rights and remedies of Connect Holland for the relevant breach of obligations by the Customer.
- 13.6 **Discontinuation:** Connect Holland may early terminate the then current term of a License or Order for recurring Services in whole or in part in case Connect Holland decides to generally end support for the relevant Connect Holland Product or Service. Connect Holland will in such case use its reasonable effort to provide at least 6 months prior notice of such termination. Where possible Connect Holland will offer a migration path for Customer to an alternative Connect Holland Product or Service replacing the terminated Connect Holland Product or Service which Customer will be free to accept or reject. In case Connect Holland terminates a License or Service prior to the end of the then current term agreed for the relevant License or other recurring Service and Connect Holland does not offer such migration path or if the migration path is rejected by Customer, then Connect Holland will proportionally credit any fees pre-paid by the Customer for the relevant Service for the period after Connect Holland has terminated support of, or the License for, such Connect Holland Product or Service. In case of a termination of Support Services for perpetual Licenses within 3 years after such perpetual licenses were granted to and paid for by Customer, the prepaid License fees will be proportionally credited on the basis of a linear depreciation of the License fee over a period of 3 years.
- 13.7 **Effect of License termination:** Within ten (10) days of the date of expiration or termination of a License, Customer shall return all copies of the Connect Holland Products to Connect Holland or, if requested by Connect Holland, destroy such Connect Holland Products and certify in writing to such return or destruction. Under no circumstance will a termination of a License or Order lead to an obligation for Connect Holland to return or credit any invoiced and/or received fees from Customer except as expressly otherwise set out in these Terms of User or the Order.

## 14. Confidentiality

- 14.1 **Confidentiality commitment:** Each party (Recipient) undertakes to the other party (the Disclosing Party) to treat as confi-

dential all information in any medium or format (whether marked “confidential” or not) which the Recipient receives from the Disclosing Party either directly or indirectly which concerns the business, operations, software or Customers of the Disclosing Party and which can reasonably be deemed to be of a confidential nature (Confidential Information). The contents and existence of each Order, all Documentation and all Connect Holland Products are considered Confidential Information of Connect Holland. All Customer Data is considered Confidential Information of Customer.

**14.2 Usage restriction:** The Recipient may only use the Confidential Information for the purposes of performing the activities set out in this Agreement and to comply with legal obligations. The Recipient may only provide its employees, directors, subcontractors and professional advisers (Permitted Users) with access to the Confidential Information on a strict “need-to-know” basis for this purpose. The Recipient shall ensure that each of its Permitted Users is bound to hold all Confidential Information in confidence. Where a Permitted User is not an employee or director of the Recipient (and is not under a professional duty to protect confidentiality) the Recipient shall ensure that the Permitted User shall comply with the terms of this clause.

**14.3 Exclusions:** This clause 14, shall not apply to any information which:

1. is in or subsequently enters the public domain other than as a result of a breach of this clause 14;
2. has been or is subsequently received by the Recipient from a third party which is under no confidentiality obligation in respect of that information; or
3. is required to be disclosed any competent governmental or regulatory authority.

## 15. Data Protection (Privacy) Commitments

**15.1 Commitment to comply to privacy laws:** Each party will ensure compliance of its activities to the applicable privacy laws in using respectively providing the Services. Where Connect Holland processes personal data for Customer while performing the Services, it will act as data processor under the direction and responsibility of Customer as controller in accordance with EU Privacy Directive 95/46 and its implementation in Dutch law and any future applicable privacy laws. Connect Holland will only use Customer Data for the purposes of providing the agreed Services in accordance with the agreed instructions of Customer with respect to such Services. Customer will at all times ensure compliance with applicable data protection laws when using the Services and when instructing Connect Holland in providing the Services to Customer. In any case Customer shall ensure messages sent by means of a Connect Holland Product contain all relevant mandatory statements and disclosures to the recipient as prescribed by applicable law, including (where applicable) information about the sender, instructions on how the recipient can ‘opt-out’ from subsequent messages and a link to Customer’s privacy policy.

**15.2 Security commitment:** If Connect Holland as part of the Services will store and process personal data of Customer on systems managed and made available by Connect Holland to Customer, then Connect Holland shall implement appropriate technical and organisational measures to secure such systems against unauthorised access and use as agreed in the Order. Customer is responsible to verify the level of security committed to be provided is appropriate for the Customer Data it from time to time wishes to process by means of the Connect Holland Product and (if applicable) the Hosting Services of Connect Holland. Upgrades of security measures to meet increased or changed requirements compared to those expressly agreed in the Order or the relevant Support SLA may be separately charged (provided no upgrade or change chargeable to Customer will be implemented without its express approval of the related costs). If Connect Holland provides Hosting Services, it shall ensure that the data centres used to host such personal data are located in the European Union and Connect Holland will on first request share with Customer the name, location and observed security standards committed to be employed to secure the data centre and the computer environment used to host the Customer Data.

**15.3 Ultimate responsibility:** With respect to applicable privacy and other laws Connect Holland may share prior experiences and perceived market practices in respect of the use of the Connect Holland Products, but this is done expressly without accepting any liability or responsibility with respect to the regulatory or legal aspects. Connect Holland is not a legal advisor or law firm and the ultimate responsibility for ensuring compliance to applicable laws in using the Connect Holland Products (and in particular obtaining relevant consents from persons whose personal data is used and processed by means of the Services by or on behalf of Customer) is and remains at all times with Customer. For the avoidance of doubt, changes to the functionality of a Connect Holland Product as may be required by Customer to enable Customer to comply with applicable law (including privacy laws) is not included in agreed fees for Support Services, the agreed fees for Professional Services to develop Custom Software or in the license fees for standard Connect Holland Products.

## 16. Hosting

**16.1 Usage conditions:** For Hosting Services, the technical features, functionality and standard security measures committed to be applied to the hosting environment and any technical conditions and restrictions for use of Hosting Services in combination with the relevant Connect Holland Product licensed to Customer are as set out in the Support SLA for the agreed Hosting Services. The Hosting Services may not be used by Customer separate from or for other purposes than the use of the licensed Connect Holland Product in accordance with the License Conditions.

**16.2 Sizing / capacity of Hosting Service:** The capacity of the Hosting environment (in terms of processing power, data storage capacity and internet bandwidth connectivity) made available under the Hosting Services is sized as expressly agreed in the Order or set out in the Support SLA and otherwise as set by Connect Holland on reasonably applied assumptions regarding the expected level and intensity of use by Customer of the Connect Holland Product. If for the actual use made of the

Hosting Services the capacity of the hosting environment needs to be upgraded to ensure proper performance due to higher than initially anticipated levels of use, implementing the required upgrade will be separately offered and charged to Customer as agreed in a separately concluded Order for such upgrade. Connect Holland is not responsible for Technical Errors caused by usage by Customer with an intensity beyond for which the hosting environment was sized.

## 17. Miscellaneous

- 17.1 **Rejection of third party purchasing terms:** The applicability of the Customer's purchasing or other general terms and conditions is expressly rejected. If the Customer accepts an Offer or requested an Offer with reference to additional or deviating terms or conditions of Customer (such as purchasing terms of the Customer), then such deviating or additional terms shall not apply between the parties unless these are explicitly accepted in a written statement issued and signed by director of Connect Holland. In any case the terms of the Offer itself, including these Terms or Service of Connect Holland, shall take precedence over any deviating terms and conditions of the Customer.
- 17.2 **Transfer:** Connect Holland shall be entitled, at any time, to assign, novate or otherwise transfer the Order to another company taking over the activities related to the relevant Connect Holland Product or Service from Connect Holland, by providing written notice to Merchant of such transfer.
- 17.3 **Applicable law:** These terms and conditions and all agreements to which they apply shall be governed by the laws of the Netherlands.
- 17.4 **Dispute resolution:** All disputes arising in connection these terms or any agreement they are applicable to, shall be submitted to the exclusive jurisdiction of the competent courts of Rotterdam the Netherlands.

