

DATAPROVIDER.COM

Terms of service

These Terms and Conditions of Use, or Terms of Service (the "**Terms**") apply to every offer or quotation submitted by Dataprovider.com in respect of its Services as defined below and form an integral part of every Agreement between Dataprovider.com and the Client. Provisions of terms or conditions stipulated by the Client that differ from, or do not appear in, these Terms and Conditions are only binding upon Dataprovider.com if and to the extent that they have been expressly accepted by Dataprovider.com.

"You" or "your" means the Client, i.e. the individual or organization, company or (other) legal entity accepting these Terms. If you accept these Terms on behalf of an organization, company or (other) legal entity, you represent that you have the legal authority to bind that organization, company or (other) legal entity as well as its Affiliates to these Terms, in which case the term "you" or "your" , i.e. the Client, refers to such entity and its Affiliates.

"We" or "us" or "ours" refers to Dataprovider.com as defined below.

1. Definitions

1.1 The following words and terms shall have the meaning set forth below when they are used in these Terms:

"Account" means the personal environment managed by Dataprovider.com, to which the Client gains access to the Dashboard by entering the Login Details.

"Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common Control with the subject entity.

"Control", for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"Agreement" or **"Agreements"** means each and every agreement between Dataprovider.com and a Client relating to access to and use of the Services via an Account.

"Business Day" means any day excluding Saturday, Sunday and any day which is a legal holiday under the applicable law.

"Client" means in the case of an individual accepting these Terms on his or her own behalf, such individual, i.e. the User, or in the case of an individual accepting these Terms on behalf of a company or other legal entity, the company or other legal entity that is represented by the individual and for which such individual is accepting these Terms, and that has been assigned an Account for the Service.

"Commencement Date" means the date of commencement of the Agreement.

"Confidential Information" means any information, technical data, or know-how (including but not limited to, information relating to research, products, software, services, developments, inventions, processes, techniques, marketing, customers, pricing, internal procedures, business and marketing plans or strategies, finances, Technology, employees and business opportunities) disclosed by the

Discloser to the Recipient in connection with the Cooperation, either directly or indirectly in any form whatsoever (including, but not limited to, in writing, in machine readable or other tangible form, orally or visually), either on or after the Effective Date, that (i) has been marked as confidential or (ii) due to its character, nature, or method of transmittal, a reasonable person under like circumstances would understand to be confidential, including but not limited to information in relation to know-how, data, documentation, (draft) agreements, financial, technical and commercial information, business plans, specifications, drafts, techniques, drawings, schemes, processes and other information/business data with regard to the Technology or the business of either Party.

"Crawler" means the application with which Data on websites is crawled and sent to Dataprovider.com for the purpose of being analyzed and summarized which creates the ability to search and obtain summarized Data and Reports.

"Dashboard" means the interface that gives the Client access to the Deliverables and allows it to generate Reports.

"Data" means summarized information on the specifications of websites, including technical information, marketing information and e-commerce information. This information is collected by the Crawler and via third parties.

"Dataprovider.com" means the private limited company Dataprovider B.V., having its registered address at Van Elmpstraat 10, 9723 ZL Groningen, the Netherlands, registered with the Chamber of Commerce under number 37142377, telephone +31 50 850 7009, e-mail info@dataprovider.com, VAT number 8195.66.342.B01, and active on the website www.dataprovider.com [<https://www.dataprovider.com>].

"Data Protection Laws" means the GDPR, as transposed into domestic legislation of each Member State and as amended, replaced or superseded from time to time, including by the GDPR and laws implementing or supplementing the GDPR.

"Deliverables" means access to the Data and Reports and the service as part of the subscription that provides the ability to export data to a location designated by the User.

"Downgrade" means the change from the chosen Purchased Services to a lower level.

"Effective Date" means the date of commencement of the Agreement, being the first Business Day after the signature of the Client.

"GDPR" means the EU General Data Protection Regulation 2016/679.

"Intellectual Property Rights" means all the intellectual property rights, including but not limited to all existing copyrights as well as those created during the term of this Agreement, patents (received and applied for), registered and unregistered design rights, database rights, know-how, trademark-and trade name rights, trade secrets under applicable law (and identified as such upon disclosure), licensing rights, or any other rights which have the same or a similar effect as the aforementioned rights and other rights that are vested in or resulting from the Confidential Information disclosed by the Disclosing Party to the Recipient hereunder.

"Know-how" means all information and knowledge related to the Service and, more specifically, with regard to the Programs and to obtaining the Data and producing the Reports with the aid of the Programs.

"Login Details" means a username and a password with which the Client obtains access to the Dashboard.

"Parties" means Dataprovider.com and the Client jointly.

"Personal Data" has the meaning given in the GDPR.

"Programs" means the software on which the Crawler and the Dashboard are based.

"Purchased Services" means the Services that Client purchases online, as distinguished from Free Services or those provided pursuant to a free

trial.

"Reports" means all output, including reports, diagrams and overviews, that is presented on the Dataprovider.com platform, based on the Client's queries.

"Services" means the provision by Dataprovider.com to the Client of making available remotely the Deliverables and Reports that the Client accesses through the Dashboard.

"Terms" means these Dataprovider.com Terms of Service, which apply to the Agreement.

"Upgrade" means any new version of software that represents a significant change or major improvement.

"Subscription" means the chosen Free Trial or any of the Purchased Services.

"Subscription Term" means the term of the chosen Free Trial or any of the Purchased Services.

"Software" means the software and computer programs used by Dataprovider to perform the Services and provide the Deliverables.

"Technology" means technology that either Party has developed and is exclusively owned by either Party. In so far as it concerns Dataprovider, Technology means technology developed by Dataprovider and exclusively owned by Dataprovider that: (a) indexes the web with in-house developed crawler technology; (b) classifies and compiles the indexed information with in-house classifying and compiling technology; (c) stores the classified and compiled data on systems/existing databases. The systems/ existing databases owned by Dataprovider contains more than 150 million unique indexed domains and information on these domains; and (d) permits access to the classified and compiled data which is made available in full or in part, as a subscription service to its clients through an online interface/dashboard and/or Application Interface (API).

"User" means, in the case of an individual accepting these Terms on his or her own behalf, such individual, or, in the case of an individual accepting these Terms on behalf of a company or other legal entity, an individual who is authorized by the Client to use a Service, for whom the Client has purchased a subscription (or in the case of any Services provided by Dataprovider.com as free trial without charge, for whom a Service has been provisioned), and to whom the Client (or, when applicable, Dataprovider.com at the Client's request) has supplied a user identification and password (for Services utilizing authentication). Users may include, for example, employees, consultants, contractors and agents of the Client, and third parties with which the Client transacts business.

2. Agreement

- 2.1** These Terms apply to the exclusion of licensing or any other terms and conditions of the Client, to all Agreements with the Client and to each and every use made by the Client of the Services. These Terms also apply to the use of the Services by third parties via the Client's Account.
- 2.2** The text of these Terms shall be made available to the Client before or, at the latest, at the time of concluding the Agreement.
- 2.3** The text of these Terms shall be made available to you by electronic means in such a way that it can be easily printed and/or stored by you on a durable data carrier. At your request, these Terms will be sent electronically.
- 2.4** The Client is obliged to accept these Terms before or at the latest at the time of entering into the Agreement, failing which no Agreement is concluded. Placing an electronic order and accepting the text: "I have read and agree to Dataprovider.com Terms and Conditions of Use" constitutes acceptance of these Terms.
- 2.5** If any provision in these Terms is void or is declared invalid, the other provisions of the Terms will continue to apply in full. In that case the Parties will enter into consultations with the object of agreeing new provisions to replace the provisions that are void or have been declared invalid, whereby the object and the tenor of the conditions that are void or that have been declared invalid will be taken into consideration to the extent possible.
- 2.6** We are at all times authorized to amend, modify or supplement these Terms. The most up-to-date Terms can always be found on our website (www.dataprovider.com). The amended, modified or supplemented Terms will be brought to your attention during your use of the Services. If you continue to use the Services after the Terms have been amended, modified or supplemented, by such action you irrevocably accept the amended, modified or supplemented Terms. If you do not agree to the amended, modified or supplemented Terms, you may cease using the Services and accordingly terminate the Agreement as of the date on

which the amendment and/or modification and/or supplement takes effect.

3. Services

- 3.1** We grant you the right to access and use the Services in accordance with these Terms.
- 3.2** You shall do any and all things that may reasonably be requested from you to allow us to timely perform the Services and/or provide the Deliverables, failing of which gives us the right to suspend our obligations to the extent the delayed performance and/or provision was caused by you.
- 3.3** Our ability to perform our obligations is dependent on you fulfilling the following responsibilities:
- 1.** to provide us with such information, cooperation and assistance, as is stipulated in these Terms, including the Zone File, to enable us to perform the Services;
 - 2.** to give prompt attention to any matter raised by us relating to your obligations and the performance of the Services;
 - 3.** to manage, including the checking of the settings, the use of the Services and the Deliverables and the manner in which the Deliverables are used.
- 3.4** You are responsible for maintaining secrecy with regard to the Login Details for your Account. As soon as you know or have reason to suspect that your Login Details have come into the hands of unauthorized persons, you must inform us thereof without delay, without prejudice to your own obligation to immediately take effective action, such as modifying your Login Details. You therefore accept and acknowledge that you are at all times responsible and liable for the use of the Service by third parties via your Account.
- 3.5** You indemnify us against any and all damage and costs arising from and/or related to the use of the Service by third parties via your Account.
- 3.6** To the best of our ability, we will make efforts to provide the Services with due care. Unless explicitly agreed otherwise in writing, the Services are provided on the basis of a best efforts obligation.

- 3.7** We shall use reasonable efforts to ensure that the Services keep abreast of the relevant technological developments and shall evaluate the extent to which the Services may be improved on a regular basis.
- 3.8** We shall ensure that the services, standards and techniques used in providing the Services comply with and are delivered in accordance with good professional standards and best practices in the industry.
- 3.9** We may make amendments to the contents or the scope of the Services. We will inform you thereof as soon as possible. In the event that the amendment(s) result in a modification of the Services which is substantial in relation to the Services as defined in these Terms, you are entitled to terminate the Agreement in writing within thirty days after the notification as of the date on which the adjustment would take effect. Such termination takes effect immediately.
- 3.10** We may continue to perform the Services using new or modified versions of the Programs. Unless explicitly agreed otherwise in writing, we are not obliged to maintain, alter or add certain characteristics or functionalities of the Services or the Programs specifically for you.
- 3.11** We may temporarily take the Services offline in full or in part and/or restrict its use if, in its view, this is necessary, for example for purposes of preventive, corrective or adaptive maintenance. We will notify you of the temporary unavailability or restricted use of the Services as soon as possible, but at least five business days in advance. In case of emergency, due to which the Services have to be taken offline or restricted immediately, we will inform you as soon as reasonably possible.
- 3.12** We only provide support in relation to the Services if and to the extent that this has been agreed in these Terms.

4. Guarantees and Warranties

- 4.1** We provide the Services, and thereby the Data and Reports, 'as is', 'with all faults' and 'as available'. Each and every use of the Services is for your risk and responsibility.
- 4.2** We provide no warranties, guarantees or conditions, whether express, implied, statutory, or otherwise, including warranties of merchantability, fitness for a particular purpose and non-infringement.
- 4.3** We are not liable for loss, damage, inaccuracy and/or incompleteness of Data or Reports.
- 4.4** Dataprovider.com will have no liability under the Agreement (including any indemnification obligations) arising out of or related to any use of Beta Features by the Client, its Affiliates, or its or their clients or partners. Any use of Beta Features will be solely at the Client's own risk and may be subject to additional requirements as specified by Dataprovider.com. Dataprovider.com is not obligated to provide support for Beta Features and Dataprovider.com may, at its sole discretion, cease providing Beta Features as part of any Services. Beta features may be charged on a per request including response basis. If no response or empty response is delivered a no-charge policy will apply.
- 4.5** Unless explicitly agreed otherwise in writing, we do not guarantee that the Services will be accessible at all times and without interruptions or malfunctions. Malfunctions in the Services may occur (but not exclusively) as a result of malfunctions in the internet or the telephone connection or due to viruses or faults/defects. We are in no way whatsoever liable, or liable to pay compensation to you, for any damage arising or resulting from the Services being (temporarily) unavailable or for failures or outages of the Services.
- 4.6** We do not warrant that the Programs to be made available and remain available to you in the context of the Services are error-free and will operate without interruptions.
- 4.7** We are not responsible for the purchase and/or the proper operation of your infrastructure or of third parties. We are never liable for damage or

costs on account of transmission errors, malfunctions or non-availability of computer, data or telecom facilities, including the internet.

- 4.8** You are responsible for the management, including checking the settings, the use of the Services and the manner in which the results of the Services, including the Reports, are used.
- 4.9** You guarantee that you will not use the Services and/or the Reports and/or the Data in a way that:
- 1.** infringes the rights of us or of third parties, including but not limited to Intellectual Property Rights or rights in relation to the protection of privacy;
 - 2.** is contrary to any current applicable legislation or regulations; and/or
 - 3.** is contrary to any provision in these Terms.
- 4.10** You guarantee that you will use the Deliverables and other information obtained from the Services only within your organization for internal use and that you will not sell, resell or (sub)license or distribute them to third parties without Dataprovider's prior written consent.
- 4.11** You indemnify us against all damage and costs arising from and/or related to claims of third parties based on the assertion that the Data requested and/or the Reports generated by you with the help of the Services infringe in any way on the rights of third parties and/or are wrongful vis-à-vis third parties.
- 4.12** You are responsible for the lawful use and processing of Personal Data in any further use made of the Reports or the Data. You indemnify us against all damage and costs arising from and/or related to claims of third parties, on any basis whatsoever, in connection with the further processing of these details.

5. Intellectual Property Rights and User Rights

- 5.1** The Intellectual Property Rights in relation to the Services, including the Intellectual Property Rights on the Know-how, the Programs, the Data and the Reports are held by us. To the extent that such a right can only be obtained by means of filing or registration, we are exclusively authorized to do so. Nothing in these Terms is intended to entail to you any transfer of Intellectual Property Rights.
- 5.2** Upon accepting these Terms, we grant you a limited, personal, revocable, non-exclusive, non-sublicensable and non-transferable right to use the Data and the Reports solely for your own internal business purposes. Without the explicit prior written consent of us, you are not permitted to make the Data or the Reports (in full or in part) public to or share them with third parties or use them in some other (commercial) manner.
- 5.3** Save to the extent that it is allowed by mandatory statutory law, you may not reproduce or decompile the Programs or apply reverse engineering to them. Furthermore, removal and/or circumvention of security measures or technical limitations (to use) of the Service and/or the Programs is not allowed.
- 5.4** The rights granted to you in this clause explicitly do not include the right to provide third parties access to the Dashboard.
- 5.5** We are not obliged to furnish you with a physical information carrier containing the Programs to be made available to you in the context of the Services.
- 5.6** In the event of infringement of this clause 5, you will incur an immediately due and payable, non-offsettable penalty to us of fifty thousand Euro per infringement as well as five thousand Euro per day or part of a day that the infringement continues, without prejudice to the other legal remedies available to Dataprovider.com under these Terms and/or the applicable law, including the right to (additional) compensation.
- 5.7** Any publication made by you in relation to us and/or the Services shall require the prior the prior written approval of us and shall be

accompanied by the following text "made available by Dataprovider" or any other text to be determined at the sole discretion of us.

6. Data Protection

- 6.1** When you are data controller as defined in the GDPR (a “Controller”), you must comply with all applicable laws and regulations with regard to the protection of Personal Data, in particular the GDPR.
- 6.2** When you are processor as defined in the GDPR (a “Processor”), you must process the Personal Data exclusively on the instructions of and in accordance with instructions of Dataprovider (unless otherwise required by law) and only to the extent necessary for the fulfillment of your obligations under a Subscription.
- 6.3** General obligations under the GDPR. When you store, use, retrieve or otherwise process Personal Data you may be deemed a Processor. A Processor will only process Personal Data after he has an agreement with Dataprovider on this. Each Processor must keep a register of the processing activities that he performs on behalf of Dataprovider. If you process large amounts of data, you will be eligible for an enterprise account. The personnel of the Processor (if any) must sign a confidentiality statement in which he declares to keep the Personal Data confidential. A Processor will, after instructions from Dataprovider, implement the measures to help Dataprovider comply with the rights of data subjects whose Personal Data are processed. The Processor will allow Data Protection Authorities and Dataprovider to inspect compliance with the privacy rules with the Processor. In the event of a conflict between Dataprovider’s instructions and privacy legislation, the Processor will inform Dataprovider of this immediately so Parties can find a solution for instructions that do not conflict with legislation.
- 6.4** Technical and organizational security measures. You must take demonstrable, appropriate and effective technical and organizational security measures, which, in view of the current state of technology and the associated costs, correspond to the nature of the Personal Data to be processed, protect the Personal Data against loss, unauthorized access, alteration or any form of unlawful processing, as well as to guarantee the (timely) availability of the data. The security measures include at least: (a) measures to ensure that only authorized personnel have access to the Personal Data for the purposes set out; (b) measures

whereby the Processor only gives its personnel and sub-processors access to Personal Data via registered accounts, where the use of those accounts is adequately logged and whereby the relevant accounts only give access to that Personal Data to which the access for the relevant (legal) person is necessary; (c) measures to protect the Personal Data against unintentional or unlawful destruction, unintended loss or alteration, unauthorized or unlawful storage, processing, access or disclosure; (d) measures to identify weak points with regard to the processing of Personal Data in the systems that are used to provide services to Dataprovider; (e) measures to ensure the timely availability of the Personal Data; (f) measures to ensure that Personal Data are logically separated from the Personal Data that it processes for itself or on behalf of third parties.

- 6.5** Data retention. You will process the Personal Data no longer than necessary. You will destroy the Personal Data after the end of the Subscription and at least within one year.
- 6.6** Personal Data Breach. You will actively monitor data leaks such as breaches of the security measures. As soon as a data breach occurs, has occurred or could occur, you will inform Dataprovider of this without undue delay, at the latest within 36 hours after discovery, both by telephone (+31 5085 07009); and by email privacy.officer@dataprovider.com. You will then provide all relevant information about the nature of the data breach, the (possibly) affected Personal Data, the observed and probable consequences of the data breach, and the measures that have been or will be taken to resolve the data breach or to limit the consequences / damage as much as possible. You will investigate and rectify the data breach and limit the negative consequences of the data breach on the privacy of those involved. If you are established in another EU Member State, you must also comply with the relevant and applicable privacy law of his country of establishment. You must indemnify Dataprovider for all costs incurred by Dataprovider as a result of a data breach or other violation of Personal Data.
- 6.7** Sub-processors and processing outside the EEA. The processor is not allowed to use sub-processors unless he has received explicit prior written permission from Dataprovider. The processor will not have Personal Data processed by him or by third parties in countries outside

the European Economic Area ("EEA"), unless he has agreed explicitly with Article 7.8 (EU Standard Contractual Clauses) and Article 7.9 (Supplemental Measures).

6.8 Any processing operations outside the EEA can only take place on the basis of either:

- 1.** Processor – processor "EU Standard Contractual Clauses" for the transfer of Personal Data to processors established in third countries as described in Article 46, second paragraph, under c and d of the GDPR. These can be found via this link: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32010D0087&from=en> [<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32010D0087&from=en>] (scroll down to the Annex);
- 2.** Controller – controller "EU Standard Contractual Clauses" for the transfer of Personal Data to controller established in third countries as described in Article 46, second paragraph, under c and d of the GDPR. https://ec.europa.eu/info/law/law-topic/data-protection/international-dimension-data-protection/standard-contractual-clauses-scc_en [https://ec.europa.eu/info/law/law-topic/data-protection/international-dimension-data-protection/standard-contractual-clauses-scc_en] ; or
- 3.** For US companies only: a valid certification under the EU-US Data Privacy Framework.

6.9 For the purposes of these EU Standard Contractual Clause, the data exporter is Dataprovider.com, and the data importer is you, with your name and address as registered for your Subscription.

Description of the transfer.

The parties acknowledge and agree that, for the Subscription described herein, you will be acting based on the following requirements:

Data Subjects: The Personal Data transferred concern the following categories of data subjects: publicly available business data that may contain Personal Data, such as the name and business email address, for

example owners or employees of businesses, registrants of domain names.

Purposes of the transfer: The transfer is made for the following purposes: information collection as a reference tool or general resource.

Categories of data: The Personal Data transferred concern the following categories of data: publicly available business data that may contain personal data, such as the name and business email address, for example owners or employees of businesses, registrants of domain names.

Recipients: The Personal Data transferred may be disclosed only to the following recipients or categories of recipients: the Client.

Duration of Processing Activity: maximum during the Subscription Term, with a maximum of one year.

Data Retention: the retention period for the Personal Data collected and Processed as part this project shall be a maximum of one year.

Sensitive data (if appropriate): Not applicable.

Data protection registration information of data exporter (where applicable): Not applicable.

Additional useful information (storage limits and other relevant information): -

Contact points for data protection inquiries: Data exporter: privacy.officer@dataprovider.com [<mailto:privacy.officer@dataprovider.com>]; Data importer: the contact person of the Client as registered for the Subscription.

- 6.10** Technical and Organizational supplemental security measures that apply, such as but not limited to: an implemented security policy (that is documented, followed and evaluated annually on effectiveness and plausibility); Identity Access Management, Role Based Access Control (e.g. access to server rooms only with key or chip card, office rooms secured with alarm, password policies, user authorisations that are restricted to tasks), all personal data should be encrypted when in

transit, all sensitive personal data should be encryption when at rest. This applies to sensitive personal data stored on premise and in the cloud. Apply encryption for all personal data in transit: for all digital transfers (e.g. Email, FTP), Interfaces, Portable devices (e.g. Laptops, Tablets), Media (e.g. USB, CD), etc. For high risk personal data, apply further encryption on the personal data and on files at rest, both in the cloud and on premise. Specifically, consider to apply database encryption or masking. Ensure that encryption of data at rest is persisted (applying symmetric or a-symmetric techniques). In addition, ensure parties apply privacy techniques to reduce the privacy risk, such as that personal data is processed to limit the identification of individuals (e.g. differential privacy techniques, tokenization), transmission control (SSL certificate for websites), two factor authentication techniques, anonymisation, pseudonymisation (replacement of personal data by random codes).

7. Term and Termination

- 7.1** The Subscription Term of each Subscription commences by clicking a box indicating Free Trial, or any of the Purchased Services, (the Commencement Date), upon which you agree to these Terms, and have the term as specified on the website. The Commencement Date will be recorded.
- 7.2** Subscriptions will automatically renew for additional Subscription Terms equal to the expiring Subscription Term unless you have upgraded, paused or downgraded the subscription at least two days before the end of the relevant Subscription Term.
- 7.3** If during the Subscription Term you subscribe for an Upgrade, the new Purchased Services will commence immediately. If during the Subscription Term you subscribe for a Downgrade, the new Purchased Services will commence from the day the current subscription term ended and the new Subscription started.
- 7.4** You authorize us hereby to charge your credit card for each renewal.
- 7.5** In the event of an infringement of our Intellectual Property Rights (including, but not limited to a breach of clause 5), we reserve the right to shut down your Account (temporarily or permanently) without any further notification being required and/or to terminate the Agreement immediately, without becoming liable to pay compensation and without prejudice to our right to take further legal action and/or its entitlement to compensation.
- 7.6** Dataprovider is entitled to immediately terminate the Agreement in full or in part in the event that the other Party goes bankrupt or is granted a suspension of payments, or in the event that the other Party's business is closed down or liquidated, as well as in the event that Dataprovider, for reasons of its own, deems it necessary not to continue this Agreement. In the event of your bankruptcy, we are entitled to terminate the right of use it furnished, unless the consequences would be contrary to reasonableness and fairness.
- 7.7** In the event of termination of the Agreement, no reversal will take place of that which we already provided.

7.8 At the end of the Subscription Term, if you have not upgraded, paused or downgraded your right to use the Services, and thereby the Data and the Reports, terminates immediately. Access to the Service will be refused and you will delete all Data and Reports in your possession. Upon your request you are entitled to retain your Account without costs for a period of maximum of one year. Within that period, you may opt for a new Subscription with retention of your Account. After that period or if you do not request to maintain your Account, Dataprovider.com will remove the Account, including any saved Data, Reports or preferences. After termination of the Subscription Term, Dataprovider.com is not obliged to furnish and/or convert to you any information, material, Data and/or Reports.

8. Liability

8.1 Our total liability on account of imputable failure to perform the Agreement or on any other ground, explicitly including each and every failure to perform a warranty obligation agreed with you, is limited to reimbursement of the direct damage up to a maximum of the total amount in fees (exclusive of VAT) stipulated for one month. In no case, however, will our total liability for direct damage on any basis whatsoever amount to more than five thousand Euro.

8.2 Direct damage is understood to mean exclusively:

- 1.** reasonable costs which you would need to incur to make our performance correspond to the Agreement; such damage will however not be compensated if the Agreement is terminated by or at the suit of you;
- 2.** reasonable costs incurred by you as a result of keeping its old system or systems and related facilities operational for a longer period out of necessity due to failure by us to deliver by the final delivery date to which it is bound, less any savings resulting from the delayed delivery;
- 3.** 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 Agreement;
- 4.** reasonable costs incurred in preventing or limiting damage, in so far as you prove that such costs led to a limitation of direct damage as referred to in this Agreement.

8.3 Our liability for indirect damage, consequential damage or loss, loss of profits, lost savings, decreased goodwill, damage due to business interruption, damage as a result of claims from contractors of your, damage related to the use of items, materials or programs of third parties the use of which you have prescribed to us in relation to the enlistment by us of suppliers prescribed by you is excluded. Our liability on account of mutilation, destruction or loss of Data or Reports is also excluded.

- 8.4** The exclusions and limitations to our liability as described in the foregoing paragraphs of this article in no way preclude the application of the other exclusions and limitations to our liability on the basis of these Terms.
- 8.5** The exclusions and limitations meant in this article will be cancelled if and to the extent that the damage is the consequence of deliberate intent or intentional recklessness on the part of our management.
- 8.6** Our liability due to attributable breach of an Agreement will in all instances arise only if you immediately give proper written notice of default, whereby a reasonable period within which the attributable breach may be remedied is stipulated, and we after this period still fail in the performance of our 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 us to respond adequately.
- 8.7** A condition for the creation of a right to damages will always be that you must report the damage to us in writing as soon as possible after it arises. Any claim for damages against us will lapse by the mere expiry of a period of twelve months from the inception of the claim.

9. Final provisions

- 9.1** E-mails are deemed to constitute written notice, unless explicitly mutually agreed otherwise.
- 9.2** You are not permitted to transfer to third parties any right derived from an Agreement concluded with us without our prior written consent.
- 9.3** We may transfer rights and obligations arising from these Terms and/or the Agreement to third parties and will notify you of this.
- 9.4** The Agreement, these Terms and the use of the Services are exclusively governed by Dutch law.
- 9.5** To the extent that national or international rules of law do not prescribe otherwise as mandatory, any disputes that arise or are related to the Agreement, these Terms and the Services and any Agreements concluded subject to these Terms, or agreements that arise therefrom, will solely be submitted to the competent court in Amsterdam, the Netherlands.