

GENERAL CONDITIONS

FRESHPORTAL SOFTWARE B.V.

version 2023

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1 GENERAL

1.1 Introduction

- 1.1.1 The purpose of these conditions is to facilitate pleasant cooperation and to protect each other's interests.

1.2 Applicability

- 1.2.1 These conditions are applicable to all agreements and/or legal relationships between FreshPortal and Customer.
- 1.2.2 FreshPortal can make alterations and/or additions to the General Conditions FreshPortal. The modified General Conditions FreshPortal will become applicable, unless objections against modifications are made in writing within 30 (thirty) days of the notification date of the change.
- 1.2.3 If the business name used by Customer denotes more than one (legal) person or organization, each will be jointly and severally responsible for the entire fulfilment of the obligations that may flow forth from the agreement with FreshPortal.
- 1.2.4 The headings above the clauses of these conditions are only intended to increase the legibility of this document. The content and meaning of a clause placed under a particular heading is, therefore, not limited to the meaning and content of the heading.
- 1.2.5 In these General Conditions FreshPortal the English language intends to describe Dutch legal concepts only and the consequences of the use of this language in English law or any other law shall be disregarded. In case of conflicts between Dutch legal concepts and the English translation thereof as used in this agreement the Dutch text, and its meaning thereof under Dutch law, will prevail.
- 1.2.6 These General Conditions FreshPortal are translated from the original Dutch version and the intention thereof is valid in any disagreement.

1.3 Definitions

- 1.3.1 In the General Conditions FreshPortal the following words and expressions are capitalized. Any of the following words and expressions shown in the singular shall have the same meaning when used in the plural and vice-versa.
- 1.3.2 Advance:
As further specified in clause 6.5
- 1.3.3 API:
A set of definitions on the basis of which FreshPortal Software can communicate with Customer Software. This can be a Custom Work Product.
- 1.3.4 As is:
The properties of Products and Services are not (fully) described, and the Customer indicates that it is sufficiently aware of and / or has tested the properties of Products and Services and that it accepts the Products and Services as it is offered. The Customer buys on its own profit and loss and the parties rule out an error. With an As is delivery parties waive their right to invoke the provisions of Book 7:17 of the Dutch Civil Code and waive the right to initiate (partial) dissolution, termination or cancellation of that agreement after the delivery or completion or claim this right.
- 1.3.5 As specified:
Delivery of Products and Services is in accordance with the

written specifications Documentation.

- 1.3.6 Business Days:
Normal Dutch business days (Monday to Friday) and hours (from 8.00 until 17.00 CET), with the exception of Dutch public holidays.
- 1.3.7 Cloud hosting:
The on-demand availability of computer system resources that makes available a virtual cluster of computers that are continuously available via the Internet. Cloud services often have functions distributed across multiple locations, with each location being a data centre. Cloud hosting is offered as part of SaaS as a Third Party Product and Service.
- 1.3.8 Customer:
Anyone who acquires SaaS Services from FreshPortal and/or orders the delivery of (additional) Products and Services.
- 1.3.9 Customer Software:
The application(s) that Customer also uses and that, if agreed upon, can be interoperable with SaaS, via an API.
- 1.3.10 Custom Work:
The result of Products and Services that are developed or to be developed in commission by Customer, such as a specific API.
- 1.3.11 Documentation:
The (functional) description, the online knowledge database and support website, of the Products and Services, delivered to Customer.
- 1.3.12 Errors:
The reproducible (full) non-compliance of Products and Services with the Documentation.
- 1.3.13 Fixed Price:
As further specified in clause 6.3.
- 1.3.14 FreshPortal:
FreshPortal Software B.V. and its legal successors or affiliated organizations and partners that will enter into an agreement with Customer and have declared the General Conditions FreshPortal applicable.
- 1.3.15 FreshPortal Products and Services:
All products and services provided by FreshPortal and the resulting provisions and related activities, which do not originate from third parties and of which FreshPortal holds all possible intellectual property rights, industrial property rights and other rights.
- 1.3.16 FreshPortal Software:
The application, offered via SaaS, providing functionality to Customer.
- 1.3.17 Identification Codes:
Usernames, passwords, secret sharing, API keys, and/or other codes.
- 1.3.18 Interface Customer Software:
The compatible API/APIs facilitated through Customer, which allow the Customer Software to be linked to the FreshPortal Interface so that the applications are Interoperable upon delivery.
- 1.3.19 Interface FreshPortal:
The (generic) API/APIs facilitated by FreshPortal, which allow FreshPortal Software to be linked with Interface Customer Software, so that the applications are Interoperable upon

- delivery.
- 1.3.20 Interoperability:
Applications are interoperable if they can work together without significant limitations.
- 1.3.21 Maintenance:
As further specified in clause 2.3
- 1.3.22 Object Code:
The computer programming code principally in binary form. Object Code is immediately executable by a computer after processing, but without reverse engineering, compilation or assembling.
- 1.3.23 Process Data:
The data entered within the SaaS-service by Customer and/or data entered by third parties.
- 1.3.24 Products and/or Services:
All FreshPortal Products and Services and/or Third Party Products and Services provided by FreshPortal, the resulting provisions and related activities.
- 1.3.25 SaaS (Software as a Service)
constitutes the direct and/or indirect (through a third party) provision of FreshPortal Software via Cloud hosting.
- 1.3.26 Source Code:
The computer programming code that may be displayed in a form readable and understandable by a programmer of ordinary skill. It may include related Source Code level system documentation, procedural codes and comments. Source Code does not include Object Code.
- 1.3.27 Subsequent Calculation:
As further specified in clause 6.4
- 1.3.28 Support:
As further specified in clause 2.5
- 1.3.29 Third Party General Conditions:
Conditions applicable to Third Party Products and Services, such as Cloud hosting.
- 1.3.30 Third Party Products and Services:
All Third-Party Products and Services provided by FreshPortal, the resulting provisions and related activities.
- 1.4 Confirmation**
- 1.4.1 Verbal agreements, assignments or other expressions of whatever nature by employees of FreshPortal are only valid and binding when they have been confirmed in writing by authorized representatives of FreshPortal.
- 1.5 Agreements**
- 1.5.1 An agreement between FreshPortal and Customer, for which no further term has been agreed, has a term of 1 (one) year. If this agreement is not terminated or not timely terminated, it shall be extended repeatedly in increments of 1 (one) year.
- 1.5.2 Termination of the agreement occurs by means of an e-mail addressed to the other party's authorised representative with proof of receipt, which must be received by the other party no later than 40 (forty) days prior to commencement of the extension date of the agreement.
- 1.5.3 Each party has the right to terminate the agreement immediately wholly or partially without judicial intervention by means of an e-mail addressed to the other party's authorised representative with proof of receipt. This can be done if, after notifying the breaching party in writing of a failure to fulfil its obligations, the breaching party then fails to meet the aforesaid obligations within a reasonable period

- of time.
- 1.5.4 FreshPortal has the right to, notwithstanding its right to claim full compensation for damages, immediately terminate the agreement, wholly or partially, without judicial intervention through means of a non-judicial declaration and/or withdraw and/or annul an offer if Customer is a person and becomes deceased, if Customer submits a legal request for debt restructuring, (also including WSNP), if bankruptcy or suspension of payment has been filed for Customer, if Customer is in a state of bankruptcy or suspension of payment has been granted or if Customer's company is liquidated or ended for any reason other than reconstruction or company merger, or a substantial part of its assets are subject to a prejudgment and / or execution order or the Customer's company loses the free disposal thereof. In these cases, any claim by FreshPortal will be immediately due, and FreshPortal will not be liable for this termination.
- 1.5.5 After the agreement has been ended, for any reason, Customer can no longer obtain any of the rights provided by the agreement, leaving unhindered the existence of the obligations of both parties which by their nature continue automatically after the conclusion of their agreement, such as but not limited to, obligations concerning property rights, confidentiality, and non-competition.
- 1.6 Confidentiality/Non-Competition**
- 1.6.1 FreshPortal and Customer mutually commit themselves to the confidentiality of all data and information concerning each other's organization, clients, files and Products and Services, of which they become aware while working for each other or for Customer's clients. Data and information may only be used in order to carry out the agreement between parties.
- 1.6.2 Customer acknowledges that all Products and Services originating from FreshPortal contain trade secrets of FreshPortal and/or FreshPortal's suppliers, and that Customer shall treat all Products and Services originating from FreshPortal as such.
- 1.6.3 FreshPortal is authorized to place the name and logo of Customer on the FreshPortal website and/or reference list and to make them available to third parties for information.
- 1.6.4 Customer will not enter into any direct or indirect commercial, employment, or other such relations with staff members of FreshPortal during the agreement and for a period of 12 (twelve) months after termination or dissolution of the agreement, without the written consent of FreshPortal.
- 1.6.5 In the event that Customer breaches clause 1.6.4, Customer will be charged, without further notification required, a fine of € 50,000.- (fifty thousand euros) for each breach, undiminished the right of FreshPortal to claim full compensation for damages incurred.
- 1.7 Liability**
- 1.7.1 FreshPortal's total liability shall be limited, in accordance with clauses 1.7.2 and 1.7.3, to compensation for direct damage and to a maximum of the amount received by FreshPortal of the price stipulated in the agreement (excluding VAT) to a maximum of € 50,000.- (fifty thousand euros), whereby a sequence of events is regarded as one

- event.
- 1.7.2 If the agreement also includes an agreement over time with a term of more than 1 (one) year and FreshPortal's liability flows forth from the agreement over time, the stipulated price will be calculated on the basis of the total amount (excluding VAT) as actually paid by Customer to FreshPortal on the basis of the agreement over time for 1 (one) year (this being the year in which the damage occurred) to a maximum of € 50,000.- (fifty thousand euros).
- 1.7.3 The total liability of both parties for a failure in the performance of a warranty obligation and/or an offered indemnification constitutes an exception to clauses 1.7.1 en 1.7.2; this is limited to twice the total amount of the compensations (excluding VAT) received by FreshPortal from Customer for 2 (two) years, with a maximum of € 100,000. (hundred thousand euros), whereby a sequence of events is regarded as one event.
- 1.7.4 FreshPortal has insured itself against damage. FreshPortal is in any case not liable for further damage and will not compensate for any further damage which Customer may suffer on the basis of the agreement entered into with FreshPortal, however caused and irrespective of the basis, including possible claims of liability against Customer by third parties, than is covered and actually compensated for by the insurance, increased with FreshPortal's deductible (own risk), except in case of malicious intent ("opzet") or reckless disregard ("bewuste roekeloosheid").
- 1.7.5 Direct damage is exclusively understood as:
- The reasonable costs made in determining the cause and extent of the damage;
 - The reasonable costs incurred in prevention or limitation of the damage, to the degree that Customer can demonstrate that these costs have led to the limitation of the damage.
 - reasonable costs incurred to repair damage, insofar as Customer demonstrates that these costs have led to the repair of damage and FreshPortal, upon written request, is unable to offer a timely solution to repair damage itself.
- 1.7.6 FreshPortal's liability for indirect damage, including consequential damage is expressly rejected. Consequential damage is understood as not being direct damages as exhaustively worded 1.7.4, such as, but not limited to, loss of profit, missed savings, destruction or loss of files and/or data, damage caused by delay, suffered loss, damage caused by the Customer's failure to provide information and/or cooperation, damage due to business stagnation or third-party claims on the Customer.
- 1.7.7 With the exception of the cases mentioned in clause 1.7, FreshPortal has no liability for damage compensation regardless of what an action towards compensation is based upon.
- 1.7.8 No event relating to the execution of the agreement by FreshPortal shall be construed by Customer as implying an expression by FreshPortal that FreshPortal will fail in the performance of its obligations, or that FreshPortal's performance is permanently impossible, unless FreshPortal expressly notifies Customer in writing in so many words with that intention.
- 1.7.9 FreshPortal's liability exists solely when Customer immediately and appropriately notifies FreshPortal of the deficiency in writing, proposing therein a reasonable time period for correction of the deficiency and FreshPortal then culpably fails to meet the aforesaid obligations. The notification of deficiency ought to be as detailed a description of the deficiency as possible so that FreshPortal is able to react adequately.
- 1.7.10 The condition for the existence of any right to compensation is always that Customer notifies FreshPortal in writing by e-mail addressed to the authorised representative of FreshPortal, with proof of receipt, within 60 (sixty) days after the damage came into existence and takes the necessary measures to limit the damage as much as possible.
- 1.7.11 Customer indemnifies FreshPortal from all liability regarding third parties due to allegations as a consequence of deficiency in a product, system or service provided by Customer to third parties that also consisted of a delivery made by FreshPortal.
- 1.7.12 FreshPortal is not liable for damage regardless of its nature caused by Third Party Products and Services which FreshPortal has delivered to Customer. If possible FreshPortal will transfer its rights for damage compensation from the supplier of the Third Party Product in question to Customer.
- 1.7.13 Unless otherwise agreed upon in a Service Level Agreement, FreshPortal is not liable for any damage regardless of its nature, which is the result of a failure to provide Support and/or Maintenance on time. FreshPortal is not liable for damage of any kind that is the result of the fact that FreshPortal must comply with certain, changing and new legislation and other regulations.
- 1.8 Transfer**
- 1.8.1 The agreement between FreshPortal and Customer and the rights and obligations, which flow forth from this agreement, cannot be transferred to a third party without the prior written consent from FreshPortal.
- 1.8.2 Customer gives FreshPortal in advance the right, without needing the explicit approval of Customer, to transfer the whole agreement or parts thereof to:
- holding-, sister- and/or subsidiary companies;
 - third party in the case of merger or acquisition of FreshPortal.
- 1.8.3 In the event this happens, FreshPortal will inform Customer.
- 1.9 Force Majeure ("niet-toerekenbare tekortkoming")**
- 1.9.1 Neither party is obligated to fulfil any obligation if they are prevented from doing so as a result of circumstances, which can be considered beyond their fault, and for which a party cannot be held accountable by law, legal act, or generally accepted practices. The aforementioned circumstances include circumstances that are beyond FreshPortal's power, these include but are not limited to failure to perform by a supplier of FreshPortal, Errors in Third Party Products and Services, fire, explosions, electricity failures, (D)Dos-attacks, hacking, cracking or any downtime or unavailability caused by unlawful conduct by third parties and/or by (cyber)crime, (cyber)vandalism, the destruction, damaging or disabling of any automated system or any system for telecommunication by whoever, causing interference in the course or the working of such system, or frustrating by whoever of a security measure taken with respect to such system,

interference in networks, floods, illness, lack-of-staff, strike or other employment conflicts, accidents, actions by the government, not being able to obtain required licenses and/or permits, lack of materials, theft, war, terrorism, traffic disruptions and/or transportation problems.

1.9.2 When force majeure is of a temporary nature, FreshPortal has the right to suspend its commitments until the force majeure has ceased to exist without being obliged to pay any form of damage compensation.

1.9.3 FreshPortal reserves the right, in the case of force majeure, to collect payment for obligations already fulfilled before force majeure was known.

1.9.4 In the event that the force majeure of either party surpasses a three-month period, either party has the right to terminate the agreement without being obliged to pay any form of damage compensation regarding such termination.

1.10 Nullity

1.10.1 If one or more terms (or part of a term) of the agreement are nullified, declared to be nullified, annihilable or have lost their validity in another way, the other terms (or part of the term in question) of this agreement will remain in force undiminished.

1.10.2 With regard to terms (or part of the term) that are nullified, declared to be nullified, annihilable or lose their validity in another way, parties shall consult with each other to try to reach a substitute arrangement with which the parties shall strive for the maintenance of the gist of this agreement (or the remainder of the term in question) in its totality.

1.11 Applicable Law and Dispute Resolution

1.11.1 All agreements made between FreshPortal and Customer are governed by the laws of The Netherlands, unless otherwise agreed upon in writing. Parties explicitly agree that the United Nations Convention on Contracts for the International Sale of Goods (CISG) is not applicable.

1.11.2 Disputes between parties which cannot be resolved amicably, will be solved through arbitration of the Stichting Geschillenoplossing Organisatie en Automatisering (SGOA) (The Dutch arbitration court (foundation) for ICT related matters), in accordance with the SGOA's regulations for arbitration by one arbiter. With the mutual agreement of both parties, parties may try to solve their disagreement through other provisions offered by the SGOA for the settlement of disputes prior to arbitration.

1.11.3 If the SGOA declares itself unauthorized or if parties mutually agree to such, disputes will be placed before the qualified court of Amsterdam, location Amsterdam.

1.11.4 Either party also may, without waiving any remedy under the agreement, seek from the qualified court of Amsterdam, location Amsterdam, any interim or provisional relief that is necessary to protect the rights or property of that party, or start a debt collection procedure at this court.

2 PRODUCTS

2.1 Products and Services General

2.1.1 Customer makes explicit choices within the framework of the cooperation with FreshPortal for the purchase of certain Products and Services, and more particularly in the framework of the Service Level Agreement (SLA), back-up facilities, Cloud hosting and security measures, if any.

2.1.2 The choices made by Customer when purchasing these services have direct consequences for what Customer may expect from FreshPortal within the framework of the services. Customer explicitly waives all claims, demands or claims directly or indirectly based on the view that more could be expected from FreshPortal within the framework of its services than FreshPortal is obliged to do on the basis of the choices made by Customer for the purchase of these services.

2.1.3 If Customer is of the opinion that it has insufficient knowledge or skills to be able to make a well-considered choice with regard to the supplies or services to be purchased, Customer will indicate this to FreshPortal on its own initiative in good time, so that FreshPortal can advise Customer accordingly.

2.2 User Rights Software FreshPortal

2.2.1 Customer is granted the non-exclusive right to use the Products and Services and corresponding documentation.

2.2.2 User rights are limited exclusively to own use of the Products and Services and for the agreed upon number of (simultaneous) users (licence). If no limitations have been agreed upon, user rights will be limited to 1 (one) individual end user.

2.2.3 User rights for software Products and Services are limited to the Object Code. Rights to the Source Code are not provided, unless explicitly agreed upon otherwise in writing and / or unless the right of use concerns a reproduction that takes place in the context of loading, displaying or correcting Errors.

2.2.4 It is prohibited for Customer directly or indirectly (through a third party) to copy, duplicate or alter the (Custom Work) Products and Services in any way, without the prior written approval from FreshPortal. Customer is prohibited from adding functionalities to (Custom work) Products and Services.

2.2.5 User rights on the Products and Services cannot be transferred to any third party (third parties also include holding-, sister- and/or subsidiary companies).

2.2.6 Customer does not have the right to make the Products and Services available, whether or not for a fee, under any title or in any way whatsoever, to any third party (third parties also include holding-, sister- and/or subsidiary companies of Customer).

2.2.7 Reverse engineering or decompilation, or in any other way change the Products and Services to a human-readable form, is not permitted by Customer, unless such is explicitly permitted by law.

2.2.8 The user rights shall go into effect after Customer has made the required payments and fulfilled its other obligations.

2.2.9 The extent of the user rights on Third Party Products and Services is determined by the Third Party General Conditions as described in clause 4. Where the aforementioned does not deviate from the Third Party General Conditions, the aforementioned will also be applicable.

2.3 Maintenance

2.3.1 Maintenance includes providing updates, including Documentation, of the licensed FreshPortal Products and Services delivered to Customer, which either contain a qualitative (e.g. Error fix) or a functional improvement of the

- FreshPortal Product that has been made available.
- 2.3.2 If Maintenance results in a functional improvement, FreshPortal will have the right to charge extra payment to compensate for this functional improvement.
- 2.3.3 FreshPortal is authorized to refuse the provision of Maintenance if the FreshPortal Products and Services provided by FreshPortal or the environment in which the FreshPortal Products and Services operate are altered by Customer in any way or form.
- 2.4 Advice**
- 2.4.1 All Products and Services that can be considered advice or which can be described as advice, will only be given to the best of FreshPortal's knowledge and capability.
- 2.4.2 FreshPortal is not responsible and/or liable if the activities that flow forth from advice result in Customer's failure to carry out a project within allocated budgets, time schedules and other agreed upon conditions.
- 2.4.3 FreshPortal will provide advice on the basis of the conditions required by FreshPortal and information received from Customer. If it appears that not all relevant information has been received and/or other problems and/or insights may arise, such as but not limited to incompatibility problems (products are unable to interoperate with each other), the given advice may be adjusted to the new circumstances.
- 2.5 Support**
- 2.5.1 Support consists of providing verbal (by telephone) and written (e-mail) advice concerning the use and operation of the FreshPortal Products and Services. In principle, Support is included in the Products and Services, but is not unlimited. FreshPortal will consult with the Customer if the Support questions or requests arise from insufficient own effort, failure to consult or misinterpret the Documentation, no or limited internal knowledge transfer at the Customer or requested advice in relation to improvement of business processes or the use of (new) FreshPortal modules. In these cases FreshPortal may issue a quotation, based on the then applicable hourly rate, to the Customer. After agreement, the requested activities will be scheduled and carried out.
- 2.6 Custom Work and Information**
- 2.6.1 All orders shall be carried out by FreshPortal on the basis of the data, information, wishes and/or requirements made known to FreshPortal by Customer.
- 2.6.2 Customer will give FreshPortal all cooperation and always timely provide all data and/or other information useful and necessary for a proper execution of the agreement. Customer will guarantee the accuracy of these data and/or other information.
- 2.6.3 If data, information, wishes and/or requirements necessary for the execution of the agreement are not at FreshPortal's disposal, not in time and/or not in accordance with the arrangements, or if Customer does not meet its obligations in any other way, FreshPortal shall in any case be entitled to terminate or dissolve the agreement or to suspend the execution of the agreement and FreshPortal shall have the right to charge the resulting costs in accordance with its usual rates.
- 2.6.4 If in the meantime changes or new facts occur in data, information, wishes and/or requirements previously

provided, FreshPortal will at all times be entitled, in consultation with Customer, to adjust the agreement to these new circumstances or to dissolve or terminate it by means of direct notice.

- 2.6.5 In case FreshPortal performs activities on location other than its own, Customer will provide the facilities reasonably required by FreshPortal, such as a working space and telecommunication facilities, free of charge.
- 2.6.6 All assignments consisting wholly or partially of Custom Work are billed on the basis of Fixed Price or Subsequent Calculation.
- 2.6.7 Parties shall specify in writing the manner of development and which the FreshPortal Product to be developed, such as realising an API. FreshPortal will carry out the FreshPortal Product development activities with due care on the basis of information provided by Customer, such as with the Interface Customer Software, for which information Customer ensures the accuracy, completeness and consistency.
- 2.6.8 FreshPortal may provide Customer with a deployment estimate prior to the performance of Custom Work, containing the initial expected activities and costs. This estimate is only indicative and not binding for FreshPortal. Actual costs will be invoiced in accordance with clause 2.6.6 on the basis of the actual time spent.
- 2.6.9 FreshPortal is authorized, but not obliged, to investigate the correctness, completeness and/or consistency of the data or specifications provided to FreshPortal and, if it is determined that there is any inaccuracy, incompleteness or inconsistency, to suspend activities until such time as Customer has remedied the deficiencies.
- 2.6.10 The development of customization in principle takes place according to phases. If Customer does not wish to follow the aforementioned phases, this will be entirely at the risk (and expense) of Customer.
- 2.6.11 If Customer does not or no longer wishes the development of a Product or Service and a (next) phase thereof, Customer shall inform FreshPortal thereof in writing, subject to the agreed notice periods. Customer shall be deemed to have agreed to the execution of (subsequent) phases and the associated costs if Customer has allowed the execution of the phase to take place without first indicating in writing that it does not or no longer wishes these (subsequent) phases.
- 2.6.12 A deviation of 10% in the prices mentioned will be deemed to be accepted by Customer and will not require further notification to and/or approval by Customer.
- 2.6.13 Intellectual property rights, industrial property rights, and other rights to Custom Work remain at all times with FreshPortal, as described in clause 7.1.
- 2.7 Additional Work**
- 2.7.1 If, in the opinion of FreshPortal, a change request by Customer is in fact a request for additional work, FreshPortal will notify Customer thereof prior to performing additional work. Upon Customer's request, the notification will be followed by a specification of the price and additional conditions. Customer will decide as soon as possible whether to carry out the additional work.
- 2.7.2 It will be assumed that Customer has agreed to the performance of additional work and the connected costs, if

Customer has allowed additional work to take place without raising objections in writing prior to the commencement of additional work.

2.8 Installation and Implementation

- 2.8.1 FreshPortal will only install and/or implement the Custom Work or have them installed and/or implemented if agreed upon in writing.
- 2.8.2 Prior to installation and/or implementation Customer will see to it, at its own expense, that all conditions required by FreshPortal have been met in order to ensure a successful installation and/or implementation.
- 2.8.3 Customer will ensure and is entirely responsible for fulfilling the necessary Third Party General Conditions of Customer Software.
- 2.8.4 If implementation and/or installation has not been performed within the agreed upon time schedule due to Customer's fault, Customer will make payments as if implementation and/or installation has been performed, undiminished the obligations of FreshPortal to proceed with installation and/or implementation at a later time period.

2.9 Activities

- 2.9.1 All activities will usually take place without interruption on Business Days and under normal working conditions.
- 2.9.2 If parties agree that activities will take place in phases, FreshPortal will be entitled to postpone activities for the following phase until Customer has accepted in writing activities performed in the previous phase.
- 2.9.3 FreshPortal will only be obligated to follow timely and reasonable instructions given by Customer when performing activities if agreed upon explicitly in writing. FreshPortal is not obligated to follow instructions that will alter the content or scope of the agreed upon activities. In the event such instructions are followed, the activities performed will be charged on the basis of Subsequent Calculation.
- 2.9.4 FreshPortal is entitled, without the explicit consent of Customer, to make use of third parties when performing activities.

3 SAAS

3.1 SaaS-Service General

- 3.1.1 SaaS will only take place via Cloud Hosting.
- 3.1.2 FreshPortal may, at its sole discretion, provide Customer with the possibility to make enhancements, additions and/or changes in SaaS. If this possibility is offered by FreshPortal, Customer will be responsible and liable for all enhancements, additions and/or other changes made and consequences that may flow forth therefrom.
- 3.1.3 With regard to the access and use of SaaS, Customer has equipment and software directly or indirectly available which comply with the standards and/or requirements set by FreshPortal of which Customer has been notified directly or indirectly. Customer is required to maintain compliance with the conditions set out in this clause. If equipment and/or software do not comply with this clause, the obligations of FreshPortal to provide access to SaaS and the use of such may be suspended by FreshPortal.
- 3.1.4 Customer will enable FreshPortal to verify if the standards and/or requirements as set out in clause 3.1.3 are met.
- 3.1.5 If Customer, after the verification as set out in clause 3.1.4,

still fails to meet the standards and/or requirements as set out in clause 3.1.3, FreshPortal will have the right to terminate or dissolve the agreement wholly or partially without prior notification like a letter of default, and/or judicial intervention.

- 3.1.6 Customer is required to follow instructions given by FreshPortal regarding SaaS.
- 3.1.7 FreshPortal is entitled to view log files and the like for purposes of analysing the use of SaaS. The results of such an analysis will not be made available to third parties (third parties do not include holding or subsidiary organizations of FreshPortal). This does not apply to figures and data with regard to the use of SaaS, which are not directly traceable to Customer's use.
- 3.1.8 In the event Customer signals a malfunction, Customer must immediately report such to FreshPortal. This report must be sent via email to an email address to be announced by FreshPortal. After Customer has notified FreshPortal of the malfunction, FreshPortal will take the necessary steps, which will or could lead to a solution.
- 3.1.9 The costs for resolving a malfunction, including malfunctions that only affect others than Customer, are for the account of Customer if it appears that the malfunction is the result of Customer's improper use, or act or failure to act in accordance with the agreement. If FreshPortal is of the opinion that possible danger occurs for the functioning of the computer systems or the network of FreshPortal or third parties and/or for the services through the network, in particular caused by excessive sending of email or other data, badly secured systems or activity of viruses, Trojans or similar software, FreshPortal is entitled to take all measures reasonably necessary to prevent this danger. The costs of these measures, including costs for informing Customer of the dangers, are for the account of Customer.
- 3.1.10 FreshPortal will inform Customer prior to the commencement of intended Maintenance with regard to SaaS, if Maintenance will lead to problems with regard to gaining access to SaaS or the non-availability of SaaS. In this case Maintenance will take place from 00.00 until 06.00 hours (CET). Other Maintenance will take place during Business Days.

3.2 Responsibilities FreshPortal SaaS

- 3.2.1 FreshPortal shall ensure the provision of SaaS. FreshPortal will on a best effort basis and where influential by FreshPortal strive an availability percentage of:
 - a. 99% from Monday through Friday between 05.00 and 23.00 hrs (CET);
 - b. 98% from Monday through Friday between 23.00 and 05.00 hrs (CET);
 - c. 98% from Saturday through Sunday between 00.00 and 24.00 hrs (CET).
- 3.2.2 The percentages mentioned in clause 3.2.1 are measured over a calendar year. The time for Maintenance is not included.
- 3.2.3 FreshPortal does not guarantee, that access to the Internet and/or other networks will offer optimal use and access.
- 3.2.4 FreshPortal does not have any obligations with regard to availability, reliability and/or other performance requirements, such as request and response times with regard to the Internet and/or other networks and the

resulting provisions. This also applies to the delivered Custom Work, such as APIs, after any modification of Customer Software or FreshPortal Software/SaaS.

3.2.5 FreshPortal will strive to provide all useful and necessary measures to ensure adequate operability and continuity of SaaS. FreshPortal uses the most recent virus protection programmes and methods that are prevalent in the market via Cloud Hosting.

3.2.6 FreshPortal shall endeavour to provide state-of-the-art physical and logical security against unauthorised access by third parties in the context of the facility(ies) agreed in the agreement. If the Customer desires specific security measures (for example, in view of the nature of the Process Data), Customer shall expressly submit this desire to FreshPortal so that FreshPortal can, if possible, make a proposal for possible implementation thereof and the prices thereof.

3.3 Browser

3.3.1 Customer can access SaaS through a browser. The browsers for which SaaS are optimized at the moment of entering into the agreement, will be made know by FreshPortal.

3.3.2 FreshPortal is not obligated to maintain optimal access to SaaS through the browsers in clause 3.3.1. FreshPortal is entitled, without any form of (damage) compensation being required, to make changes in SaaS which may influence the browser used by Customer and/or advised by FreshPortal.

3.3.3 In the event that the situation as described in clause takes place, FreshPortal will use all reasonable endeavours to enable Customer to transition to a different browser. The costs incurred by Customer in doing so are for the account of Customer.

3.4 Use of Identification Codes

3.4.1 FreshPortal will make Identification Codes solely available to Customer for the use of Products and Services. Customer will use these Identification Codes with due care. Customer will notify FreshPortal in the event of loss, theft and/or other forms of unauthorized use, in order to enable parties to take the proper actions.

3.4.2 Customer carries all responsibility, liability and costs related to the use of Identification Codes used and/or distributed by Customer. In no event will FreshPortal be liable for the misuse and/or unauthorized use of Identification Codes.

3.4.3 It is prohibited for Customer to let multiple persons use the same Identification Codes without prior written permission from FreshPortal. FreshPortal may attach conditions to this permission.

3.4.4 If there is a reasonable suspicion of misuse or unauthorized use of Identification Codes of Customer, FreshPortal can provide Customer with instructions, which must be carried out.

3.4.5 If it is determined that misuse has been made of Identification Codes or if Customer ignores instructions given as set out in clause 3.4.3, Customer will be in default immediately.

3.5 Changes in the SaaS Service

3.5.1 FreshPortal is entitled, following a written notification taking into account a reasonable notification period and without any compensation to Customer, to make adjustments to and/or changes in SaaS offered such as but not limited to:

a. entrance procedures, such as:

- procedures regarding operational rules, and
- security procedures.

b. changes in a third party provider/supplier, location, hardware, software and other facilities necessary for the provision of SaaS.

3.5.2 If any changes made have a demonstrable and significant negative impact on Customer's business or the functionality of SaaS, Customer may, after providing relevant proof of the deterioration in writing, request in writing that FreshPortal provide an alternative. If FreshPortal then fails to provide an alternative, Customer will have the right to terminate the use of SaaS, without any damage compensation required by FreshPortal or restitution of amounts paid.

3.6 Data Traffic to and from Customer

3.6.1 FreshPortal does not have any influence on or any insight in the data traffic from and/or to Customer. FreshPortal is merely a passive channel. FreshPortal does not give any warranties with regard to content of data such as but not limited to reliability and completeness.

3.6.2 Customer is responsible for the content of data traffic originating from Customer.

3.6.3 Customer indemnifies and will keep FreshPortal free from any damage compensation regarding any claim, accusation or court procedure from a third party with regard to the (content of) the data traffic originating from Customer.

3.6.4 Contrary to the terms of clause 7, Process-data will remain the (intellectual) property of Customer. Customer grants FreshPortal, without charge, a perpetual user and revision right of the Process-data. Process-data may only be distributed to a third party if not directly traceable to Customer.

3.6.5 Process-data will be preserved during the agreement for a period of maximum 3 (three) years. After termination of the agreement FreshPortal will no longer be required to preserve Process-data.

3.6.6 FreshPortal will offer cooperation in transferring Process-data and/or other data to another application as requested by Customer. FreshPortal does not warrant that the available Process-data and/or other data during the agreement and/or after the agreement can be transferred to another application.

3.6.7 All costs connected to the transfer of Process-data and/or other data at the request of Customer to another application will be fully for the account of Customer.

3.7 Requirements Customer SaaS Service

3.7.1 If SaaS includes hosting a website (web shop) of Customer and / or on behalf of Customer, Customer must have a domain name, issued and registered by an authorized institution, in accordance with the institution concerned and according to the Third Party General Conditions used. Customer indemnifies and holds FreshPortal harmless against any form of claim, charge or action in connection with (the use of) the domain name on behalf of or by Customer.

- 3.7.2 If, through use of SaaS, personal data and/or other information/data are transported or commercial activities and/or other activities are undertaken, Customer will indemnify FreshPortal from all liability, costs or damage as a result of claims from a third party in the event personal data and/or other information/data are transported or commercial activities and/or other activities are undertaken in violation of the relevant (privacy) laws and/or guidelines.
- 3.7.3 Customer will immediately inform FreshPortal in writing regarding changes that are relevant for the proper execution of SaaS.
- 3.7.4 Customer will follow the instructions given by FreshPortal regarding "fair use". If Customer fails to follow the instructions given by FreshPortal, FreshPortal will be entitled through technical means to reduce the overload or in the case of a continuous overload to stop the provision of SaaS to Customer. FreshPortal will never be liable for damages of whatever nature that are incurred by Customer and/or third parties as a result of the measures undertaken by FreshPortal or by a third party on behalf of FreshPortal.

3.8 Personal Data

- 3.8.1 If Customer is the 'controller' ('verantwoordelijke') in terms of the General Data Protection Regulation (GDPR) and FreshPortal is the processor of personal data in terms of GDPR for Customer, all mentioned in clause 3.8. is applicable.
- 3.8.2 Customer acknowledges that the data processing as instructed to FreshPortal is lawful. Customer also acknowledges that it has ascertained that FreshPortal offers appropriate technical and organizational measures as referred to in Article 28 paragraph 1 of the GDPR, which also includes security measures as referred to in Article 32 of the GDPR. Customer will indemnify FreshPortal against any allegation as a result of a violation of any person's privacy related to the foregoing.
- 3.8.3 Where Customer is authorized, Customer explicitly agrees with the registration of (privacy)information of users in the privacy registration of FreshPortal for administrative and management purposes. The privacy registration will contain, amongst others, Identification Codes and Process-data and will only be accessible for FreshPortal. This information will not be provided to third parties, in the sense of GDPR, unless FreshPortal is obligated to do so on the basis of the law or a court order.

4 THIRD PARTY PRODUCTS

4.1 Third Party Products and Services

- 4.1.1 FreshPortal has the right to deliver Third Party Products and Services or make use of Third Party Products and Services in fulfilling its obligations flowing forth from the agreement. FreshPortal is not responsible for Third Party Products and Services, unless agreed upon otherwise in writing.
- 4.1.2 If FreshPortal delivers Third Party Products and Services to Customer, the Third Party General Conditions will be applicable to the agreement in addition to these General Conditions FreshPortal.
- 4.1.3 FreshPortal will deliver rights for Third Party Products and Services under the same conditions as indicated in the Third Party General Conditions.

- 4.1.4 No Maintenance, Support or other services will be carried out by FreshPortal on Third Party Products and Services, unless agreed upon otherwise in writing.
- 4.1.5 With regard to delivered Third Party Products and Services FreshPortal provides:
- a. The service on Third Party Products and Services, under no more than the same conditions as set out in the Third Party General Conditions.
 - b. The guarantee for the term and under no more than the same conditions as stated in the Third Party General Conditions.

4.2 Third Party General Conditions

- 4.2.1 Third Party General Conditions that are declared applicable in these General Conditions FreshPortal shall, when available to FreshPortal, be provided on request. Third Party General Conditions will be delivered in the same format and language as received by FreshPortal.
- 4.2.2 The General Conditions FreshPortal have priority over Third Party General Conditions unless indicated otherwise. When there is conflict between the General Conditions FreshPortal and Third Party General Conditions, FreshPortal has the right to declare the conflicting terms of the Third Party General Conditions inapplicable or applicable.

5 DELIVERY

5.1 (Delivery) Dates

- 5.1.1 All (delivery) dates which may be named by and may be applicable to FreshPortal are determined to the best of FreshPortal's knowledge on the basis of information made known to FreshPortal and will be taken into consideration as much as possible.
- 5.1.2 (Delivery) dates shall therefore not be considered to be absolute (delivery) dates within which must be delivered, but a time period within which FreshPortal shall strive with best efforts to deliver the agreed upon items. If it is not possible to keep to the (delivery) date, then FreshPortal and Customer will consult with each other to agree on a substitute (delivery) date.
- 5.1.3 Exceeding a given (delivery) date which may be applicable never constitutes an attributable shortcoming by FreshPortal. FreshPortal does not accept liability under any circumstances in cases where the (delivery) date may be exceeded.

5.2 Reservations

- 5.2.1 FreshPortal shall commence execution of the agreement between FreshPortal and Customer only after a signed copy of the agreement drawn up by FreshPortal has been received by FreshPortal and/or having received timely payment of all amounts due in full. Should FreshPortal commence execution of the agreement prior to receiving a signed copy of the agreement and/or having received timely payment of all amounts due in full, FreshPortal reserves the right to suspend execution of the agreement pending receipt of a signed copy of the agreement and/or full payment of all amounts due.
- 5.2.2 Customer's rights, such as but not limited to the transfer of Products, are provided under the suspended condition that Customer timely pays the agreed compensations in full. In case of failure to pay, Customer must return the Products and Services to FreshPortal at Customer's expense within

one week of receiving the instruction from FreshPortal to do so. All other remedies in law remain applicable. All other remedies will remain applicable.

- 5.2.3 If Customer fabricates a new product, on the basis of the Products delivered by FreshPortal, this will be done on behalf of FreshPortal and Customer will keep the new product for FreshPortal until all amounts due on the basis of the agreement have been paid on time and in full. FreshPortal will maintain all the rights as owner of the new product until the moment payments have been made on time and in full.

5.3 Risk

- 5.3.1 From the moment of delivery Customer will bear the risk of the Products delivered even if possible ownership or user rights have not yet been transferred. Customer will therefore be held accountable for full payment of the Products delivered regardless of the destruction of or the decline in value of the Products delivered due to circumstances for which FreshPortal cannot be held accountable.

- 5.3.2 The aforementioned will also be applicable from the moment in which Customer does not make it possible for FreshPortal to make a delivery.

5.4 Delivery, Installation and Acceptance Procedure

- 5.4.1 FreshPortal shall deliver Custom Work to Customer in accordance with the specifications established in writing by FreshPortal and, if desired by Customer, shall install them.

- 5.4.2 The delivery of Products and Services take place when the Products and Services are made available to Customer in SaaS.

5.5 Errors

- 5.5.1 Error(s) means the failure to fulfil the Documentation and, in cases of developing Custom Work FreshPortal Products and Services, the functional specifications expressly agreed upon in writing. An Error only exists where such can be demonstrated and reproduced. Customer is required to immediately report possible Errors to FreshPortal.

- 5.5.2 Every right to repair of Errors lapses if the Products and Services provided by FreshPortal are altered by Customer in any way or form.

- 5.5.3 With regards to the repair of Errors FreshPortal is entitled to install temporary solutions, emergency solutions, detours, work arounds and/or other problem-avoiding measures.

- 5.5.4 Acceptance of the Products and Services may not be withheld on grounds other than those which are related to specifications which have been expressly agreed upon between the parties nor, furthermore, due to the presence of small Errors which do not reasonably impede putting the Products and Services into productive or operational use.

5.6 Replacement Performance

- 5.6.1 FreshPortal is permitted to deliver alternative Products and Services than those Products and Services ordered by Customer if the performance and operation of such alternative Products and Services are essentially no different from the Products and services ordered.

6 PRICES/PAYMENTS

6.1 Prices and Payments

- 6.1.1 All prices exclude VAT and other levies imposed by the government. The amounts invoiced to Customer will include applicable VAT and other levies possibly imposed by the government.

- 6.1.2 FreshPortal will invoice the amount, appropriately itemized, owed by Customer on a monthly basis to Customer and/or other term indicated in the agreement. Customer will pay all amounts indebted within 14 (fourteen) days of the invoice date. These payments will not be subject to compensation, set-off ("verrekening") or suspending of obligations ("opschorting"). Complaints about the invoice must be brought to FreshPortal in writing within 30 calendar days after invoice date and with proper arguments. Disputing of a part of the invoice, whether well-founded or not, leaves unhindered the obligation to pay the undisputed part in accordance with this clause.

- 6.1.3 Should Customer fail to fulfil any payment obligation, Customer is in breach without any further notification of breach being required. Customer will be responsible for payment to FreshPortal of all costs incurred by FreshPortal, including judicial and extra-judicial expenses, with regard to the collection of debts from Customer. Extra-judicial collection costs amount to 15% of the debt, with a minimum of € 175,- (hundred seventy five euros). In any case Customer will be charged interest on a monthly basis, at the legal percentage rate increased with 3%, on all outstanding debts starting from the date of failure to pay.

- 6.1.4 Until full payment has been made, FreshPortal has the right to suspend all services and obligations to Customer. Customer's obligation to meet Customer's commitments remains unchanged.

- 6.1.5 If FreshPortal is unable to make a delivery in time due to Customer default, FreshPortal will have the right to charge a 1,5% interest reimbursement on a monthly basis over the indebted amount.

- 6.1.6 The indebted amount meant in clause 6.1.1 may be increased with third party. An increase can also take place in the event that activities have to take place outside of FreshPortal's office. In the event that activities need to take place outside of FreshPortal's office, hourly rates, travel and waiting time compensations, actual travel and/or kilometer compensation, hotel expenses and any other costs connected to such services will be charged. The travel and waiting time allowance is 50% of the current hourly wage. The means of transportation will be determined by FreshPortal. The aforementioned is also applicable to services provided outside of The Netherlands.

- 6.1.7 Above mentioned paragraphs leave all the legal rights of FreshPortal unhindered, on the grounds that Customer fails to meet Customer's commitments.

6.2 Price Changes

- 6.2.1 FreshPortal is authorized, in case of changes to one or more of the cost items (for instance Third Party Products and Services) and/or changes in the rate of exchange, changes to the Consumer Price Indices (Consumentenprijsindex (CPI)) or the CBS index for business services (CBS index Dienstenprijsindex (DPI)), to adjust prices to these changes. At least every January FreshPortal will increase its prices, based on the figures, published by CBS 'CBS

Dienstenprijsindex (DPI)', on January 1st (if necessary based on the figures of Q3). Changes will be rounded off upwards to a multiple of € 2.50,-.

- 6.2.2 FreshPortal will offer Customer the possibility to become acquainted with possible changes in prices. If Customer does not agree with a price change, Customer will only be permitted to terminate the agreement by means of giving notice from the date the change in price becomes applicable, if and as long as the total price increase during 1 (one) year exceeds the yearly inflation rate of the current year (or previous year for price increases announced for the next year) as published by the CBS (Dutch Bureau for Statistics) by 6%.

6.3 Fixed Price

- 6.3.1 In the case of a Fixed Price agreement, activities will be performed on the basis of a prior agreed upon price.
- 6.3.2 Unless FreshPortal can appeal to clause 2.6.4 extra hours will not be charged, in case a Fixed Price agreement has been made.

6.4 Subsequent Calculation

- 6.4.1 When charges are to be based on Subsequent Calculation, this means that prior to FreshPortal commencing the agreed upon activities a global estimate can be made of the expected costs. On conclusion of the activities carried out, all costs actually incurred related to the activities will be calculated and charged. Customer is, then, aware that there is a possibility that the previously made estimate could be lower than the costs actually incurred. If no agreements have been made regarding billing, activities will be performed on the basis of Subsequent Calculation.

6.5 Advance

- 6.5.1 FreshPortal has the right to charge payments in Advance. If full payment of the Advance is not made, FreshPortal has the right, undiminished its other rights that may flow forth from the agreement, to immediately suspend all its obligations and all amounts owed by Customer will be due without delay.

7 INTELLECTUAL PROPERTY RIGHTS

7.1 Rights of FreshPortal and Customer

- 7.1.1 NAAM KLANT) has the exclusive right to further develop the FreshPortal Products and Services and place them at the disposal of third parties by means of licenses.
- 7.1.2 Except where Third Party Products and Services are concerned, all intellectual property rights, industrial property rights, and other rights resulting from all activities carried out by FreshPortal, regardless of where and when carried out and regardless of whether it concerns the delivery of an existing Product or Product to be developed in the future, reside with FreshPortal.
- 7.1.3 Customer acknowledges that all present and future intellectual property rights, industrial property rights, other rights and the registration and/or application of the foregoing rights and/or similar rights for the whole term thereof and all renewals or extensions thereof, now or at any time in the future worldwide at all times shall be and are hereby assigned or will be transferred to FreshPortal.
- 7.1.4 Customer is not permitted to remove or alter any

designation concerning intellectual property rights, industrial property rights, other rights, trademarks and trade names from the Products and Services, or to have such changes made by third parties.

- 7.1.5 The intellectual property rights, industrial property rights or other rights of a Product, or a part thereof, can only be transferred to Customer by means of a written deed, if FreshPortal has these rights.

- 7.1.6 In the event that FreshPortal, Customer or a third party make functional improvements or other adjustments in the Products and Services the intellectual property rights, industrial property rights and other rights vested in the improved or adjusted Product and Services will remain unchanged with FreshPortal or the rightful third party. If the aforementioned rights do not belong to FreshPortal or the rightful third party, Customer will cooperate in transferring, without compensation, the above-mentioned rights to FreshPortal or the rightful third party free of charge.

- 7.1.7 All intellectual property rights, industrial property rights or other rights of course material and/or Documentation will remain with FreshPortal. Customer is explicitly not permitted to duplicate and/or transfer such to a third party for permanent or temporary use. Customer will ensure that its employees and/or third parties will comply with the aforementioned obligations.

7.2 Indemnification

- 7.2.1 FreshPortal shall protect Customer from any allegation to the effect that the FreshPortal Products and Services violate a copyright valid in The Netherlands. FreshPortal shall pay the damages, expenses, and court costs that Customer is ordered to pay by the final court ruling, provided that Customer:

- notifies FreshPortal immediately, but no later than within 10 (ten) days after Customer becomes aware of the infringement or could have become aware of the infringement, in writing of the existence of the allegation of infringement; and
- hands over the case completely to FreshPortal, including all negotiations and arrangements that might lead to a settlement

- 7.2.2 In case of any such allegation or possible allegation, FreshPortal reserves the right to obtain a license or sub license on the FreshPortal Product in question or to change or replace the FreshPortal Product in such a way that the FreshPortal Product will no longer infringe on a copyright valid in The Netherlands. If, at FreshPortal's sole discretion, the aforementioned remedies are not a reasonable option, FreshPortal has the right to take the delivered FreshPortal Product back against reimbursement of payments made for the FreshPortal Product in question, minus a reasonable compensation for having made use of the FreshPortal Product.

- 7.2.3 FreshPortal shall not indemnify Customer against an action in the event that:

- such is based on the fact that the Third Party Products and Services provided to Customer violate a valid intellectual property right, industrial property right or other right valid in the Netherlands or elsewhere;
- Customer has made a change in or to the Product.

7.2.4 If FreshPortal and Customer agree that the intellectual property rights, industrial property rights or any other rights of a FreshPortal Product, or a part thereof, will be transferred to Customer, Customer will indemnify FreshPortal against any action insofar as that is based on the fact that the Product, or a part thereof, violates an intellectual property right, industrial property right or any other right belonging to a third party.