Nmbrs®

Nmbrs® General Terms and Conditions of Delivery

1. Definitions

1.1 **Subscriber**: The natural or legal person who is legally entitled to accept the agreement on behalf of the entity.

1.2 **Subscription**: Obtaining the right to access and use Nmbrs® for the duration of the agreement period.

1.3 **Administrator User**: The registered End User who has been granted administrative rights and has been designated by the Subscriber to administrate the Subscriber's Environment.

1.4: **API(s)**: Standard software based on web standards, designed to enable third-party computer programmes/software applications to communicate/exchange data with Nmbrs®.

1.5 **Application Manager**: The Subscriber or a natural person designated by the Subscriber who is familiar with (the functionalities of) Nmbrs®. The Application Manager serves as a point of contact and is authorised to act on behalf of the Subscriber to perform tasks such as registering End Users and Administrator Users, all in compliance with these Terms and Conditions.

1.6 **Company/Companies**: A legal person or specific administrative entity for whom Nmbrs® is used to administer a payroll to which End Users optionally have access.

1.7 **Contract Owner (referred to in Nmbrs® as the Legal Owner)**: The Subscriber or a natural person designated by the Subscriber who serves as (Client) data owner and is authorised to upgrade/downgrade the Subscription on behalf of the Subscriber.

1.8 **End User**: A natural person who uses Nmbrs® under the control of the Subscriber and who can log into the Subscriber's Environment as a user and gain access to one or more Companies.

1.9 **Breach**: A security violation which unintentionally or illegally results in deletion, loss, modification, unauthorised sharing or unauthorised access to Personal Data that has been submitted, saved or otherwise processed.

1.10 **Infrastructure**: The hardware, data-communication facilities and system software used by Nmbrs B.V. to provide the SaaS.

1.11 **Nmbrs®**: The computer programme/software application for HR and Payroll services, which is exclusively available on a SaaS basis and is supplied by Nmbrs B.V.

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1.12 Nmbrs B.V.: Nmbrs B.V., legally registered in Amsterdam, the Netherlands, and headquartered at Naritaweg 70, 1043 BZ Amsterdam, listed in the Dutch commercial registry under number 34150521

1.13 Environment: An environment within Nmbrs® with a collection of companies associated with a Subscriber or accountant (or similar) organisation, to which only End Users of the accountant's own clients have access.

1.14 Agreement: Confirmation of the order to purchase/begin a Subscription for the agreed monthly fee.

1.15 Personal Data: Personal data as defined by Applicable Law, which Nmbrs B.V. processes at the behest of the Subscriber in accordance with the Agreement.

1.16 SaaS: The provision of (a module of) the software installed on Nmbrs B.V. Infrastructure at a location chosen by Nmbrs B.V. which is made available via (multi-tenant) remote access to multiple subscribers simultaneously.

1.17 Standard Price: The current price for each Administrator User, End User or Employee in accordance with the current price list displayed on the website of Nmbrs B.V. and in accordance with the predefined values at the time the Agreement is accepted.

1.18 Applicable Law: Current applicable data protection legislation, including the General Data Protection Regulation (EU) 2016/679 of 27 April 2016, which protects natural persons with regard to the processing of personal data and to the free movement of this data, and which supersedes Directive 95/46/EG (the Data Protection Directive), along with current implementing regulations.

1.19 Processing: Part or all of the processing performed with regard to personal data in whole or in part which may be executed by automated means, including but not limited to the collection, recording, organisation, structuring, storage, editing or modification, retrieval, inspection, use, issuing by means of sending, distribution or release by any means, aggregation or combination, isolation, deletion or destruction of data.

1.20 Employees: Natural persons working in an employment capacity who receive a salary payment from a specific company within a period.

2. Applicabilty of Conditions

2.1 These conditions apply to all orders and subsequent follow-up orders for Nmbrs® Subscriptions. The General Terms and Conditions may be consulted by the Subscriber and downloaded from the website www.nmbrs.nl (in these Terms and Conditions: the Website).

2.2 Nmbrs B.V. is never obliged to supply the Subscriber with a physical data carrier containing Nmbrs®.

2.3 By starting a Subscription or placing an order for one, the Subscriber declares his/her agreement with the content and applicability of these Terms and Conditions.

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2.4 Nmbrs B.V. is entitled to modify the applicable General Terms and Conditions at any time during the Agreement period. In such an event, Nmbrs B.V. shall inform the Subscriber of this at least three (3) months before such changes take effect.

2.5 The applicability of any purchase or other conditions of the Subscriber is explicitly excluded. If Nmbrs B.V. signs or (tacitly) agrees to documents provided by the Subscriber to which such general terms and conditions apply, then this shall not constitute an acceptance of such terms and conditions.

2.6 Should any provision of these Terms and Conditions be or become nullified, then the remaining provisions of the Terms and Conditions shall remain in effect without prejudice. Nmbrs B.V. and the Subscriber shall in that case enter into consultations with the aim of agreeing on new provisions to replace the nullified provisions, taking the purpose and intent of the nullified provisions into account to the greatest extent possible.

2.7 Nmbrs B.V. is entitled to set conditions for the qualifications and number of Application Managers that the Subscriber appoints.

3. Proposals and origination of agreement

3.1 All offers and other expressions by Nmbrs B.V. are without obligation, unless indicated otherwise by Nmbrs B.V. in writing.

3.2 An agreement comes into effect between Nmbrs B.V. and the Subscriber upon receipt of the order confirmation by the Subscriber.

4. Price, amount to be paid and payment

4.1 All prices are exclusive of sales tax (VAT) and other levies imposed or to be imposed by the authorities. Unless otherwise agreed, all prices are always in euros and the Subscriber must issue all payments in euros.

4.2 If the Subscriber consists of several natural persons and/or legal persons, each of those persons is jointly liable to pay the sums due under the Subscription.

4.3 The relevant documents and information from the administration or system of Nmbrs B.V. constitute full proof of the services rendered by Nmbrs B.V. and the resulting amounts owed by the Subscriber, without prejudice to the right of the Subscriber to supply proof to the contrary.

4.4 Nmbrs B.V. reserves the right to change these prices each year without prior notice on the grounds of indexation and/or general increases in prices and costs.

4.5 Nmbrs B.V. reserves the right to change the Subscription fees no more than twice per year, with notice issued at least three (3) months in advance to the Subscriber, for reasons other than those stated in Paragraph 4.4. Furthermore, Nmbrs B.V. reserves the right to change these prices with advance notice of one (1) month in the event that Nmbrs B.V. is subject to a price increase by one of its subcontractors.

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4.6 Settlement for the use of Nmbrs® is based on the number of salaried Employees. The Subscriber is automatically invoiced at the end of each month for the number of salaried Employees. In the case of weekly salaries, the number of salaried Employees is calculated once every four (4) weeks (an employee with a weekly salary is calculated only once every four (4) weeks).

4.7 The Subscriber is automatically invoiced for registered End Users and Administrator Users in accordance with Paragraphs 4.8 and 4.9, starting with the month in which these users are registered (regardless of day of the month on which the registration took place). No charges shall be invoiced for Administrators and End Users who are registered and deregistered within one and the same month and who have not logged in.

4.8 If the Subscriber is an accounting (or similar) organisation, the Subscriber may register accounts for its own clients for using Nmbrs® as End Users within the Environment. The Subscriber shall remain responsible for registering accounts for all types of End Users and for the timely removal of End Users from the Environment who have cancelled their subscription with the Subscriber or have erroneously been registered by its End Users.

4.9 The Subscriber may create accounts for an unlimited number of new Administrator Users and End Users within the Environment, and the Subscriber shall be charged for each End User at either the Standard Price for that type of End User, or at the price specified in the Agreement (if different). If a second account is created for an End User using a username and password that has already been registered within the Environment, the Subscriber shall be charged only once for that End User, at a price that is based on the system role with the most rights linked to that End User for the month in question.

4.10 All amounts owed by the Subscriber to Nmbrs B.V. shall be paid via direct debit.

4.11 If direct debits for any reason whatsoever do not lead to full (timely) payment of the fee owed, the Subscriber, without any payment reminder or notice required, shall by default owe statutory interest on the outstanding amount owed. If the Subscriber fails to settle the amount after being issued a payment reminder or notice, Nmbrs B.V. escalate the claim to a debt collection agency, in which case the Subscriber shall be obliged to pay the total amount owed as well as all collection fees, including any costs charged by external experts, without prejudice to the right of Nmbrs B.V. to total or partial suspension of the execution of the Subscription and without prejudice to the right of Nmbrs B.V. to exercise any other statutory and/or agreed right.

5. Confidentiality

5.1 The Subscriber and Nmbrs B.V. shall take due care to ensure that it shall treat a secret any information received from the other Party that is known to be or can reasonably be assumed to be confidential. The Party which receives such confidential information shall only use it for the purpose for which it has been provided. In any case, any information that is specified as confidential by either of the parties shall be treated as such.

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6. Privacy, data processing and protection

6.1 In executing its obligations on the Agreement, Nmbrs B.V. processes Personal Data belonging to (clients of) the Subscriber. Nmbrs B.V. processes this Personal Data for the purposes of performing the HR- and Payroll-related processes of (clients of) the Subscriber. This processing takes place at the behest and under the control of the Subscriber.

6.2 Nmbrs B.V. functions as the Data Processor with respect to the data for which the Subscriber can be considered the Data Controller; or as the sub-processor of data for which the Subscriber can be considered the Data Processor, as defined by Applicable Law.

6.3 The Subscriber provides Nmbrs B.V. with Personal Data of Employees (including potential employees, freelancers, volunteers), Former Employees and Benefits Recipients (of clients) of the Subscriber (hereinafter: Data Subjects), which Nmbrs B.V. processes at the behest of the Subscriber.
6.4 When fulfilling its obligations and rendering services to the Subscriber as defined in the Agreement, Nmbrs B.V. may process Personal Data that includes but is not limited to the types listed below:

Name, address and location information, (Copies) of personal identification (ID)	Employment information
Social security ID number (Dutch BSN)	Education information
Contact details (including telephone numbers and email addresses)	Leave and absenteeism information
Marital status and family details	Job description
Financial/salary information	Bank account numbers
Compensation, benefits and/or pension information	Cash inflows/outflows and employment contracts

6.5 Nmbrs B.V. shall process the Personal Data based on instructions (including the order as formulated within the Agreement and General Terms and Conditions) of the Subscriber. The Subscriber is responsible for ensuring that its instructions are compliant with the applicable legislation. The Subscriber shall continue to extend the order to Nmbrs B.V. to process Personal Data for the entire period in which the data is processed. Nmbrs B.V. shall process the Personal Data in a proper and careful manner. Nmbrs B.V. shall immediately inform the Subscriber if it is of the opinion that any instruction constitutes a violation of Applicable Law.

6.6 Nmbrs B.V. shall process the Personal Data whenever obligated to do so by law, including the processing necessary pursuant to an official court order, an order issued by the competent authority, an instruction or legal request from the relevant competent supervisory authority, such as the Dutch Data Protection Authority. Nmbrs B.V. shall inform Subscriber without undue delay of any instruction or other notification issued by a competent authority (such as the Dutch Data Protection Authority) with regard to the Personal Data. Insofar as this legal obligation exceeds the contractual obligations of the Data Processor as defined in the Agreement and may have consequences for agreed costs and scheduling, the obligation to execute such Data Processing exists only after the Parties have reached an agreement on this.

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6.7 Nmbrs B.V. shall process Personal Data exclusively upon the Subscriber's instructions and/ or in compliance with the obligations pursuant to the Agreement. Nmbrs B.V. understands these obligations to include the provision of (aggregated and anonymised) analyses to the Subscriber by means of artificial intelligence algorithms; conducting statistical research; use of information for invoicing purposes; conducting statistical research and carrying out product improvements on Nmbrs®; and (possible) renders of services to the Subscriber.

6.8 Nmbrs B.V. is entitled to use data related to the use of Nmbrs® which has been input and/or generated by the Subscriber and/or its End Users for the supply, development, security and/or maintenance of Nmbrs® and new products and/or services. Nmbrs B.V. may share this data with parties affiliated with Nmbrs B.V. under the understanding that any such affiliated party may use this data exclusively for the supply, development, security and/or maintenance of its products and/or services.

6.9 In its capacity as a Data Processor, Nmbrs B.V. is entitled to perform the processes required to render data anonymous so that the data described in Paragraph 6.8 can no longer be used to identify a Data Subject and/or can be considered Personal Data under Applicable Law.

6.10 The Subscriber guarantees that it has fulfilled all the requirements for the lawful processing of the Personal Data which is input by the Subscriber, including the requirement that the Personal Data is obtained in a manner that accords with current legal regulations, particularly those pursuant to Applicable Law. The Subscriber guarantees Nmbrs B.V. that the content of the data, the use of the data by or on behalf of the Subscriber, as well as the instructed processing of the data, is in no way unlawful and in no way constitutes an infringement of the Data Subject's rights.

6.11 The Subscriber indemnifies Nmbrs B.V. against any claims from persons whose Personal Data is registered or processed in the course of a personal registration performed by the Subscriber or for which the Subscriber is otherwise responsible on legal grounds, unless Subscriber proves that Nmbrs B.V. is solely culpable for the underlying facts of the claim.

6.12 Nmbrs B.V. is bound to confidentiality with regard to Personal Data provided by the Subscriber, except to the extent necessary pursuant to the instructions as defined in the Agreement, pursuant to any additional written instruction from the Subscriber or to a legal obligation (including processing necessary under an official court order, instructions issued by the competent authority, an instruction or legal request from the relevant competent supervisory authority, such as the Dutch Data Protection Authority) or when the Subscriber's written consent is obtained in advance.

6.13 Nmbrs B.V. guarantees anyone acting under its authority is bound to confidentiality with regard to the Personal Data to which he or she has access, in accordance with the provisions of the previous paragraph.

6.14 Nmbrs B.V. is entitled to assign access and identification codes to the Subscriber. Nmbrs B.V. is also entitled to change assigned access and identification codes. In the event that an access or identification code is changed, Nmbrs® shall consult with the Subscriber to provide new access or identification codes and not pose any undue limitations on the Subscriber's access to Nmbrs®. The Subscriber shall treat the access and identification codes as confidential and handle them with due care, making them known on a strictly individual basis to authorized staff members only.

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6.15 Nmbrs B.V. is not liable for any damages or costs resulting from the use or misuse of access or identification codes. In the event of damages or costs incurred by the Subscriber as a result of 'regular use' by 'authorised users', then both Parties shall consult with each other in good faith to devise a suitable solution.

6.16 Nmbrs B.V. shall provide its support to the Subscriber for the fulfilment of its legal obligations pursuant to the Applicable Law. Nmbrs B.V. will do so to the extent possible and insofar as this obligation lies reasonably within the sphere of influence of Nmbrs B.V., by means of appropriate technical and organisational measures, also taking into consideration the nature of the processing. Nmbrs B.V. is entitled to transfer to the Subscriber the reasonable costs thus incurred.

6.17 Nmbrs B.V. shall adopt appropriate technical and organisational security measures, which, given the current state of the technology and the related costs, correspond to the nature and sensitivity of the Personal Data and the purpose for which the data is processed, for the protection of the Personal Data against loss or unlawful processing, as defined in Article 32 of the General Data Protection Regulation (GDPR).

6.18 Nmbrs B.V. shall take care to ensure that for the duration of the Agreement period, it demonstrably meets the internationally accepted norm(s), assurance standard(s) and/or internationally accepted certification(s) that are relevant with regard to Nmbrs® and the services rendered by Nmbrs B.V. Upon request, Nmbrs B.V. shall provide the Subscriber (free of charge) with the order letter and/or cover letter of the certification declaration ('assurance report'). Upon request, Nmbrs B.V. shall also provide the Subscriber with the full certification statement (assurance report), under the required conditions and for a reasonable fee. Nmbrs B.V. reserves the right to replace the certification and/or assurance standard in use with another adequate and generally accepted certification and/or assurance standard, based on international standards.

6.19 The Subscriber can obtain an overview of all the technical and organisational measures currently in place by requesting/obtaining the most recent applicable 'assurance report' and/or the Nmbrs® IT white paper (or similar information source released by Nmbrs B.V.).

6.20 The Subscriber has the right to conduct audits under the terms and conditions described in this article. If the Subscriber makes a request to conduct an audit in accordance with the terms and conditions of this article, Nmbrs B.V. shall grant auditors access to the locations where Personal Data is processed on behalf of the Subscriber. Nmbrs B.V. shall offer full cooperation and any information that Subscriber may reasonably require for the audit. Such an audit shall be carried out by an independent third party, which shall be selected by the Subscriber in consultation with Nmbrs B.V. This party shall at least be qualified as an independent expert auditor certified to verify compliance with Applicable Law. The auditor must be willing to sign a confidentiality agreement prior to the audit. The audit (including the documentation and other information to which the Audit extends) and the results thereof shall be treated as confidential by the Subscriber and the external party. The Subscriber shall provide Nmbrs B.V. with a complete, unabridged copy of the results of the audit as soon as possible in a legible and lasting form for Nmbrs B.V. insofar as the results of the audit relate to Nmbrs B.V. (and any of its sub-processors). The audit and the results may be provided to a third party for inspection only with prior consent of Nmbrs B.V. Such consent shall not be withheld on unreasonable grounds. The costs (both internal and external) of the audit shall be for the account of the Subscriber, unless the audit reveals significant failures on the part of Nmbrs B.V. to adhere to the obligation contained in this article either at present or in the past. Before the start of an audit, both parties shall agree on the scope, planning and duration and determine the hourly rate which Nmbrs B.V. and its sub-processors may charge the Subscriber for the support provided.

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The Subscriber is not permitted to request an on-site audit if Nmbrs B.V. can present a recent internal or external audit report that covers the same locations for which the Subscriber requests an audit, unless the Subscriber demonstrates that such an internal or external audit report does not meet the requirements as stated in Applicable Law.

6.21 In the event of a Breach with respect to Personal Data processed by Nmbrs B.V. or its sub-processors, Nmbrs B.V. shall inform the Subscriber without unreasonable delay (in any case, within 48 hours) once the breach has been discovered. Nmbrs B.V. shall provide the Subscriber with all information deemed reasonably necessary under Applicable Law to enable the Subscriber to report this correctly, completely and in a timely manner to the competent regulatory authority (such as the Dutch Data Protection Authority) and the relevant Data Subjects. If any new and relevant developments occur after the Subscriber has been notified as described in this article, including measures adopted by Nmbrs B.V. (including its sub-processor) to limit the consequences of the incident on its part and to prevent recurrence, Nmbrs B.V. shall immediately inform the Subscriber.

6.22 Nmbrs B.V. shall, where necessary, assist the Subscriber in adequately informing the competent regulatory authority or authorities and Data Subjects regarding the Breach in question, in accordance with the relevant provisions of Applicable Law. Without prejudice to the provisions of Article 6.12, the Parties shall observe strict confidentiality with regard to any Breach and the Parties shall report Breaches only to the competent regulatory authority or authorities and to the Data Subject or Subjects concerned, in accordance with the provisions of Applicable Law.

6.23 The Subscriber hereby authorises Nmbrs B.V., in general, to use the services of sub-processors as part of the Agreement, as specified on the website of Nmbrs B.V. https://www.nmbrs.com/security/subprocessors. On this website, the Subscriber also has the option to register to receive notifications pertaining to proposed changes or additions of sub-processors.

6.24 The Subscriber hereby authorises Nmbrs B.V., in general, to use, in the context of the Agreement, the services of sub-processors located within the European Economic Area as well as those of sub-processors located in countries of which the European Commission has deemed to offer an adequate level of protection. In the event that Nmbrs B.V. wishes to make use of the services of sub-processors located in a country which does not offer an adequate level of protection under the terms alluded to above, Nmbrs B.V. must first obtain prior written consent from the Subscriber, which the Subscriber shall not withhold without reasonable grounds. The Subscriber shall not withhold its consent if Nmbrs B.V. ensures that the data exchange in question will occur by means of a CJEU-approved method and that a suitable level of security will be provided.

6.25 Nmbrs B.V. shall, before replacing a sub-processor or engaging a new sub-processor, ensure that the overview is updated on https://www.nmbrs.com/security/subprocessors. The Subscriber shall regularly consult https://www.nmbrs.com/security/subprocessors; if, on reasonable grounds, the Subscriber is unable to agree with a proposed change or addition of a particular sub-processor, the Subscriber has the right to object, within 10 working days after the notification. In the event of such an objection, Nmbrs B.V. may, within a period of four (4) weeks, propose an alternative to continue the relevant service. If Nmbrs B.V. does not offer an alternative, the Subscriber has the right to terminate the Agreement, without Nmbrs B.V. being liable to pay damages to the Subscriber as a result of this termination. Any sub-processors that Nmbrs B.V. contracts with shall be subject to the same obligations as Nmbrs B.V. applies to itself, pursuant to Article 6.

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7. Dissolution, termination and modification of the agreement

7.1 The Subscription can be cancelled by the Subscriber with a notice period of one (1) month before the end of a calendar month in writing and by Nmbrs B.V. with due observance of a written notice period of two (2) months at the end of a calendar year. Parties shall never be obliged to pay any compensation for termination.

7.2 After the Agreement has expired or been prematurely cancelled, Nmbrs B.V. shall transfer all Personal Data within Nmbrs® to the Subscriber within a reasonable timeframe, and/or delete or destroy all Personal Data at the Subscriber's request and confirm to the Subscriber in writing that all Personal Data within Nmbrs® has been deleted or destroyed. If Nmbrs B.V. is required by law to continue processing data, then it shall comply with the Subscriber's consent to the fullest extent allowed under Applicable Law.

7.3 Either Party may terminate the Subscription in writing, wholly or in part, with immediate effect and without any notice of default being required if the other Party is granted suspension of payments, whether or not temporary, if bankruptcy is declared with regard to the other Party or if the business of the other Party is liquidated or terminated other than as part of a reorganisation or merger, or if the executive authority over the business of the Subscriber changes. Nmbrs B.V. shall never be under any obligation to refund any payments that have already been received or payment of any damage as a result of this termination. In the event of the Subscriber's bankruptcy, the Subscriber legally forfeits its right to use the software, websites and other related facilities.

7.4 The Subscriber has the right to change the agreed subscription form on the first day of a calendar month (upgrade or downgrade). Starting on the date of the change, the Subscriber shall owe the fee that is charged for the new subscription type.

8. Integrations and data exchange with third parties

8.1 The Subscriber has the right to enter into contracts with third parties for the purpose of integrations/data exchanges and/or the purchase of services to complement the services provided by Nmbrs B.V.

8.2 The Subscriber shall enter into contracts alluded to in Article 8.1 directly with these third parties, whereby Nmbrs B.V. will not, in any way whatsoever, be involved. These third parties will not be sub-processors of Nmbrs B.V., and Nmbrs B.V. will not, in any way whatsoever, be liable for the actions of these third parties.

8.3 If the Subscriber chooses to (directly) connect/integrate its Nmbrs® Environment to a third party, whether or not it uses one or more APIs of Nmbrs B.V., the Subscriber hereby authorises the exchange of data between Nmbrs B.V. and the third party for all data indicated as relevant/required by the third party. This may include the exchange of (personal) data and the storage of access or identification codes/tokens for the purpose of facilitating the exchange/integration of data.

8.4 The Subscriber is responsible for the correct installation and set-up of the integrations/data exchanges (including authorisations) between Nmbrs® and the third parties selected by the Subscriber, whether or not one or more APIs of Nmbrs B.V. is/are used.

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8.5 Nmbrs B.V. is never responsible and/or liable for the (correct) functioning of software belonging to the Subscriber and/or third parties which communicate/exchange data with Nmbrs® using the APIs of Nmbrs B.V.

8.6 If the Subscriber uses one or more APIs from Nmbrs B.V. such as those made available by Nmbrs B.V. and/or via its website, then the Subscriber is granted a non-transferable, non-exclusive and non-sublicensable right to use the API for the duration of the Subscription within its own organisation and solely for internal purposes.

8.7 Nmbrs B.V. is entitled at its own discretion to apply a request limit ('throttling') whenever API traffic generated by the Subscriber overloads the system to the point that it negatively impacts or prevents performance for other subscribers/users.

8.8 Nmbrs B.V. reserves the right to charge additional fees to the Subscriber and/or third parties for the use of the API.

9. Contacting users, offering services

9.1 Nmbrs B.V. is entitled to communicate directly with End Users within Nmbrs® (i) to the extent necessary for ensuring the security and/or quality of its services; (ii) to make announcements related to maintenance, new functionalities and/or products; and (iii) to directly offer related services to Companies and/or End Users.

10. Retention of title and rights, conversion and suspension

10.1 Rights, including rights of use are granted in this case to the Subscriber under the condition that the Subscriber upholds all its payment obligations as defined in the Agreement.

10.2 Nmbrs B.V. is entitled to retain possession of proprietary rights, information, documents, software, databases and results of the services of Nmbrs B.V. which are received or generated as part of the Subscription, despite an existing obligation to relinquish or transfer, until the Subscriber has paid all the sums owed to Nmbrs B.V.

11. Intellectual property rights

11.1 By accepting the Agreement, the Subscriber obtains a limited, non-exclusive, non-transferable, non-sublicensable right to use Nmbrs® for the duration of the Agreement period, in observation of the limitations described in the Order Confirmation and these General Terms and Conditions.

11.2 All intellectual property rights to software, websites, databases (not the data entered by the Subscriber into Nmbrs®) used by Nmbrs B.V. in the execution of the Subscription, or provided to the Subscriber or maintained to that end, as well as preparatory materials in that regard, shall be held solely by the Nmbrs B.V. or its suppliers. A Subscriber's right of use is non-exclusive, non-transferable to third parties and cannot be sub-licensed. Any right of use for Nmbrs® exclusively covers the use of Nmbrs® on the Infrastructure of Nmbrs B.V. (referred to in Article 19 Paragraph 1); this right does not include a right of use by Nmbrs® on computer systems other than the infrastructure of Nmbrs B.V.

11.3 The Subscriber shall not be allowed to remove or modify any designation concerning the confidential nature or concerning copyrights, trademarks, trade names or any other intellectual property rights from Nmbrs® manuals, websites, databases or materials.

11.4 Nmbrs B.V. indemnifies the Subscriber against any legal action from a third party based on the allegation that software, websites, databases or other materials developed by Nmbrs B.V. infringe on an Intellectual Property right of that third party, provided that the Subscriber informs Nmbrs B.V. in writing forthwith about the existence and the contents of the legal action and leaves the disposal of the case, including agreeing possible settlements, entirely to Nmbrs B.V. For that purpose, the Subscriber shall grant Nmbrs B.V. the necessary authorisations, information and cooperation to Nmbrs B.V. This duty of indemnification shall be cancelled if the infringement concerned is related to (i) materials made available to Nmbrs B.V. by the Subscriber to use, edit, process or incorporate, and/or (ii) modifications which the Subscriber has made in the Software, website, databases, Equipment or other materials or has ordered third parties to make without written permission from Nmbrs B.V. If it has been irrevocably established by law that software, websites, databases or other materials developed by Nmbrs B.V. itself infringe on any Intellectual Property Right belonging to a third party or if, in Nmbrs B.V.'s opinion, there is a serious chance that such infringement shall occur, Nmbrs B.V. shall, if possible, ensure that the Subscriber can continue to use the delivered, or functionally equivalent other software, websites, databases or other materials concerned undisturbed. Any other or further-reaching obligation by Nmbrs B.V. to indemnify is excluded.
The Subscriber warrants the rights of third parties are not incompatible with provision to Nmbrs B.V. of databases or other materials designed for use, adaptation or installation. The Subscriber indemnifies Nmbrs B.V. against any claim by a third party based on the allegation that such provision, use, adaptation, installation or incorporation infringes on any right of that third party.

12. (Other) the Subscriber responsibilities

12.1 To enable Nmbrs B.V. to execute the Subscription adequately, the Subscriber shall at all times supply Nmbrs B.V. with the data and information which is needed to enable Nmbrs B.V. to execute the Agreement adequately including the supplying of information regarding all facts and circumstances that may have an impact on the service and its availability.

12.2 The Subscriber shall bear the risk of the selection, the (proper) use, the proper application and proper management, including control of the configurations, in its organization of Nmbrs®, websites, databases and other products and materials and services to be provided by Nmbrs B.V. The Subscriber is responsible for the (control of the) the accuracy of the data processed using a service provided by Nmbrs B.V. and the way in which the results of the service are deployed. The Subscriber is also responsible for the instruction to users and the use by users, whether or not these users are in a relationship of authority with the Subscriber.

12.3 Nmbrs B.V. is not responsible for the proper operation of infrastructure (other than the Infrastructure of Nmbrs B.V.) which belongs to the Subscriber or third party and is necessary for the use of the Subscription. Nmbrs B.V. shall never be liable for damages or costs due to transmission errors, failure or non-availability of these facilities, unless the Subscriber proves that these damages or costs result from intent or gross negligence by the Nmbrs B.V. management.

12.4 The Subscriber must at all times use the most recent version of the standard user manual(s) associated with the agreed service(s) and as made available by Nmbrs B.V. through its website, and regularly check the website of Nmbrs B.V. for new versions of the said guide(s).

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12.5 The Subscriber shall make an inventory of the risks for his organisation on the basis of information supplied by Nmbrs B.V. with regard to steps for the prevention or limitation of the consequences of breakdowns, defects in the services, mutilation or loss of data or other incidents, and if necessary, take additional measures. Nmbrs B.V. is prepared to grant reasonable cooperation in taking further precautions at the request of the Subscriber on (financial) conditions to be stated by Nmbrs B.V. Nmbrs B.V. shall never be responsible for the repair of mutilated or lost data.

12.6 The Subscriber shall be responsible and liable to Nmbrs B.V. for any use by the Subscriber of the Nmbrs Subscription for third parties. The Subscriber shall indemnify Nmbrs B.V. against third parties for compensation of damage in that respect.

12.7 At all times and in all cases, the Subscriber shall use the Subscription with due care and in compliance with Applicable Law. Specifically, the Subscriber shall at all times respect the property rights and other rights of third parties as well as the privacy of third parties, and shall not unlawfully distribute data, allow unauthorised access to systems or distribute viruses or other harmful software, and shall refrain from any criminal act or violation of any legal obligation.

12.8 In order to avoid any liability towards third parties or to limit the consequences of this, Nmbrs® is at all times entitled to take measures with regard to an action or omission by or at the risk of the Subscriber. The Subscriber is obliged to remove information (including uploaded images, logos, texts etc.) forthwith at the first written request by Nmbrs B.V. Failure to do so entitles Nmbrs B.V. to opt to remove the data or to render access thereto impossible. Furthermore, Nmbrs® is, in case of breach or threat of breach of the Agreement, entitled to, with immediate effect and without any notice of default, refuse the Subscriber access to the systems of Nmbrs B.V. and/or the use of a subdomain name, e-mail address and/or system name and is therefore not liable to the Subscriber for damages. The aforementioned specifically leaves any other measures or the execution of other rights of Nmbrs B.V. towards the Subscriber intact. In that event Nmbrs B.V. is also entitled to terminate the Agreement with immediate effect, without being liable towards the Subscriber in this connection.

12.9 Nmbrs B.V. cannot be expected to form a judgement regarding the foundation of the liabilities of third parties or the defence of the Subscriber or to be involved in any way in a dispute between a third party and the Subscriber. The Subscriber shall have to come to an understanding with the third party concerned and inform Nmbrs B.V. in writing and with well-founded documents.

13. Delivery terms

13.1 All (delivery) periods and (delivery) terms are indicative.

13.2 Nmbrs B.V. shall only be in default after prior full and detailed written notice with a reasonable period within which to comply.

14. General execution of services

14.1 Nmbrs B.V. shall render the service with due care, to the best of its ability, and, in this case, in accordance with the written agreements and procedures established in consultation with the Subscriber. All services provided by Nmbrs B.V. are rendered on the basis of an obligation to perform.

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14.2 Nmbrs B.V. shall not guarantee that as part of the Subscription the service shall be error-free or function without interruptions. Nmbrs B.V. shall endeavour to repair defects in the software within a reasonable period of time in accordance with the provisions of these Terms and Conditions. Nmbrs B.V. cannot guarantee that defects in Software that has not been developed by Nmbrs B.V. can be remedied.

14.3 Nmbrs B.V. renders the service solely at the Subscriber's behest. If Nmbrs B.V. carries out work activities involving the Subscriber's data on the grounds of a request or official order issued by a government body or in connection with a legal obligation, then the associated costs shall be charged to the Subscriber.

14.4 Nmbrs B.V. may alter the content of scope of the service in response to changes in relevant legislation or regulations or other guidelines issued by competent authorities. If such alterations result in a change to the procedures that are in force with the Subscriber, Nmbrs B.V. shall inform the Subscriber of this as soon as possible and the costs of this alteration shall be charged to the Subscriber.

14.5 Nmbrs B.V. may continue the execution of the service using a new or amended version of Nmbrs®, where the functionality shall be equivalent or improved compared to the agreed functionality. Nmbrs B.V. is not obliged to maintain, change or add certain features or functionalities of the service or Nmbrs® specifically for the Subscriber. Nmbrs B.V. is entitled to charge additional fees for new functionalities.

14.6 Nmbrs B.V. may take the service fully or partly out of use temporarily for preventive, corrective and adaptive maintenance. The Subscriber shall cooperate as required by Nmbrs B.V., including the temporary suspension of the use of the service by the Subscriber if Nmbrs B.V. deems this necessary. Nmbrs B.V. shall not prolong this unnecessarily and shall perform this outside working hours as much as possible and, depending on the circumstances, perform this after having informed the Subscriber.

14.7 The Subscriber guarantees that all materials, data, software, procedures and instructions made available by him to Nmbrs B.V. in the performance of its services are always correct and complete and that all data and data carriers provided to Nmbrs B.V. meet the appropriate predetermined specifications and instructions of Nmbrs B.V. The Subscriber must have sufficient bandwidth. It is assumed that at all times at minimum, the bandwidth (both download and upload) as indicated on the website of Nmbrs <www.nmbrs.nl> is available for the workstation from which Nmbrs® is used to measure via an independent website such as www.speedtest.nl. However, it is not necessary that every individual workstation has this bandwidth.

14.8 Nmbrs B.V. is not obliged to perform data conversion.

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14.9 If and to the extent necessary or desirable, if the defects in the results of the service (processing of payroll and staff data) owing to the Subscription are a direct result of software, procedures or actions for which Nmbrs B.V., owing to the Subscription, is expressly responsible, shall Nmbrs B.V. repeat the services in order to repair these imperfections, provided the Subscriber informs Nmbrs B.V. as soon as possible but no later than one week after receiving the results, in a detailed written report. Only if the defects in service are attributable to Nmbrs B.V. shall the repetition be executed free of charge; in all other cases Nmbrs B.V. shall charge the costs of any repetition according to its usual rates. If repair of the defects attributable to Nmbrs B.V., in the opinion of Nmbrs B.V., is not technically or reasonably possible, Nmbrs B.V. shall credit the Subscriber for the relevant services owed, without further or otherwise being liable to the Subscriber. The Subscriber has no other rights owing to defects in the service other than those described above.

14.10 Nmbrs B.V. shall endeavour to modify Nmbrs® promptly to comply with changes in relevant legislation and regulations, but cannot guarantee that this will be done.

14.11 Nmbrs B.V. cannot guarantee that the subdomain and/or system name preferred by the Subscriber will be assigned to the Subscriber.

14. 12 Nmbrs B.V. is not responsible for the content and composition of the subdomain name and/or system name and the use made of the subdomain name and/or system name. The Subscriber guarantees towards Nmbrs B.V. that it is entitled to use the domain name and that its use is not unlawful towards one or more third parties. Subscriber indemnifies Nmbrs B.V. against any claim from a third party in relation to the subdomain name and/or system name.

15. Limitation of liability of Nmbrs B.V.

15.1 Nmbrs B.V.'s total liability for an attributable failure in the performance of the Subscription or any other reason, specifically including any failure to observe a warranty obligation agreed with the Subscriber, shall be limited to a reimbursement of the direct damage up to a maximum amount equal to the total of the fees (excl. VAT) that were paid for the Subscription in the twelve (12) months prior to the harmful event. The total cumulative liability Nmbrs B.V. for direct damage shall, however, under no circumstances exceed the amount of €100,000 (one hundred-thousand euros). Nmbrs B.V. can only be held liable to compensate for direct damage. The term direct damage shall be taken to mean: a) The reasonable costs incurred by the Subscriber for keeping its old system or systems and the related facilities operational out of necessity, because Nmbrs B.V. has failed to deliver on a binding final date of delivery, less any possible savings caused by the delayed delivery; b) The reasonable costs incurred to determine the cause and the amount of the damage, insofar as this assessment relates to direct damage in the sense of these Terms and Conditions; and c) The reasonable costs incurred to prevent or limit the damage, insofar as the Subscriber proves that these costs have led to prevention or a limitation of the direct damage in the sense of this article.

15.2 Nmbrs B.V.'s total liability for damage due to death or bodily injury or for property damage shall under no circumstances exceed the amount of €1,250,000 (one million, two hundred and fifty thousand euros).

15.3 The liability of Nmbrs B.V. for indirect damages, consequential damages, lost profits, fines or additional assessments, lost savings, loss of goodwill, loss due to business interruption, loss resulting from claims by customers of the Subscribers, damage relating to the use of the Subscriber to Nmbrs B.V. prescribed materials or software from third parties and damage relating to the use of the Subscriber to Nmbrs B.V. suppliers prescribed is excluded. Nmbrs B.V. cannot be held liable in any way for damage resulting from improper use of the service, such as the incorrect application of function separation, inappropriate management of passwords or misuse. Nmbrs B.V. shall also be excluded from liability due to mutilation, destruction or loss of data or documents.

15.4 The exclusions and restrictions of Nmbrs B.V.'s liability, as described in the previous paragraphs of this Article 15 are without prejudice to the other exclusions and restrictions of liability of Nmbrs B.V. under the Agreement.

15.5 The aforementioned exclusions and limitations in Article 15.1 to 15.5 shall apply only if and insofar as the damage is the result of wilful misconduct or gross negligence of the management of Nmbrs B.V.

15.6 The liability of Nmbrs B.V. due to attributable breach of contract occurs only if the Subscriber immediately submits written notice to Nmbrs B.V. of the breach whereby a reasonable term for correction of the breach is set and Nmbrs B.V. continues to fail in the fulfilment of its obligations after that term.

15.7 Any claim for damages against Nmbrs B.V. expire after a period of twenty-four months after the submission of the claim.

15.8 The Subscriber acknowledges that the aforementioned limitations of liability are discounted from the fee that the Subscriber owes for the subscription and must therefore be deemed reasonable.

16. Force Majeure

16.1 Force majeure shall be taken to mean force majeure of Nmbrs B.V.'s suppliers, governmental measures, electricity failure, Internet failure, computer network or telecommunications facilities failure, work occupation, strike, and the non-availability of one or more employees. If a force majeure situation exceeds thirty (30) days, each party shall have the right to terminate the Subscription in writing. Which has already been performed pursuant to the Subscription is charged proportionately in that case, without the parties owing each other anything.

17. Amendments and additional work

17.1 The Subscriber may request to restore a backup, on payment of the appropriate rate applicable at Nmbrs B.V. An appointment must be made separately for this service. Nmbrs B.V. shall endeavour to restore the backup within one (1) business day and charge the rate currently applicable.

17.2 If Nmbrs B.V. has carried out performances at the request or upon prior agreement of the Subscriber that are outside the content or the scope of the agreed work and/or performances, this work or these performances shall be paid for in accordance with Nmbrs B.V.'s usual rates. Nmbrs B.V. is never obliged to accede to such a request and may require that a separate written agreement be concluded for this.

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18. Transfer of rights and obligations

18.1 The Subscriber shall not be entitled to sell and/or transfer the rights and/or obligations under the Subscription to a third party.

18.2 Nmbrs B.V. is entitled to transfer its rights to payment of fees to a third party.

19. Applicable law and disputes

19.1 The Agreements between Nmbrs B.V. and the Subscriber are governed by Dutch law. The Vienna Sales Convention of 1980 does not apply.

19.2 Disputes which may arise between Nmbrs B.V. and the Subscriber originating from an agreement or subsequent agreements between Nmbrs B.V. and the Subscriber shall be settled by arbitration in accordance with the Arbitration Rules of the 'Stichting Geschillenoplossing Automatisering', registered in The Hague, without prejudice to the right of each party to seek remedy in interlocutory arbitration proceedings and without prejudice to the right of either party to take precautionary legal measures (see www.sgoa.eu).

19.3 Before referring an arbitration case under Article 18.2, either party shall initiate an ICT mediation in accordance with the ICT Mediation Regulations of the '"Stichting Geschillenoplossing Automatisering' in The Hague. ICT mediation in accordance with these regulations is aimed at mediation by one or more mediators. The counter party commits to actively participating in the proceedings of ICT mediation, as part of such a legally enforceable obligation in any event is attending at least one joint meeting between the mediators and the parties in order to give this extrajudicial form of dispute resolution a chance. Either of the parties is free at any time after an initial discussion between the mediators and the parties to terminate the proceedings of ICT mediation. The provisions of this subsection do not prevent a party who considers it necessary, from asking for a quick decision in (arbitration) proceedings or from taking precautionary legal measures (see www.sgoa.org and www.sgoa.eu).

20. Availability

20.1 Nmbrs B.V. makes every effort in order to achieve an availability of Nmbrs® during Service Hours of 99.6% on average per month. For the definition and calculation of availability as well as other SLA-related arrangements, see the Nmbrs® SLA.

20.2 Nmbrs B.V. is entitled at any time to change the minimum system requirements. In that case, it shall be communicated to the subscriber at least three (3) months in advance.

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19.2 Geschillen welke tussen Nmbrs BV en Abonnee mochten ontstaan naar aanleiding van een tussen Nmbrs BV en Abonnee gesloten overeenkomst dan wel naar aanleiding van nadere overeenkomsten die daarvan het gevolg zijn, worden beslecht door middel van arbitrage overeenkomstig het Arbitragereglement van de Stichting Geschillenoplossing Automatisering, statutair gevestigd te Den Haag, één en ander onverminderd het recht van elk der partijen een voorziening in arbitraal kort geding te vragen en onverminderd het recht van elk der partijen tot het treffen van conservatoire rechtsmaatregelen (zie www.sgoa.eu).

19.3 Alvorens een arbitrale procedure als bedoeld in artikel 19.2 aanhangig te maken, zal de meest gerede partij een procedure van ICT-Mediation conform het ICT-Mediation Reglement van de Stichting Geschillenoplossing Automatisering te Den Haag beginnen. Een procedure van ICT Mediation conform dit reglement is gericht op bemiddeling door één of meer mediators. De wederpartij verplicht zich actief deel te nemen aan een aanhangig gemaakte ICT-Mediation, tot welke rechtens afdwingbare verplichting in ieder geval behoort het bijwonen van tenminste één gezamenlijke bespreking van mediators en partijen, teneinde deze buitengerechtelijke vorm van geschiloplossing een kans te geven. Het staat elk der partijen vrij om op elk moment na een gezamenlijke eerste bespreking van mediators en partijen de procedure van ICT-Mediation te beëindigen. Het bepaalde in dit artikellid verzet zich er niet tegen dat een partij die dat nodig acht, een voorziening in (arbitraal) kort geding vraagt of conservatoire rechtsmaatregelen treft (zie en www.sgoa.eu).

20. Beschikbaarheid

20.1 Nmbrs BV spant zich naar beste kunnen in om een beschikbaarheid van Nmbrs® gedurende Service Uren te realiseren van 99,6% gemiddeld per maand. Voor de definitie en berekening van de beschikbaarheid alsmede overige SLA afspraken wordt verwezen naar de Nmbrs® SLA.

20.2 Nmbrs BV is te allen tijde gerechtigd de minimum systeemvereisten te wijzigen en zal in het geval dat zij de minimum systeemvereisten wijzigt, dit ten minste drie (3) maanden van te voren aan Abonnee meedelen.

21. Contact

21.1 In case of any questions and/or comments about the Terms and Conditions for Use, contact Nmbrs B.V. via: Compliance@Nmbrs.nl

* Please note this text is a translation. In case of any misunderstanding, ambiguity, confusion or error with regard to these terms and conditions due to this translation, the Dutch version prevails.

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