

# General Delivery Terms Add-Ons

## 1. DEFINITIONS

- 1.1. Definitions applied in these Terms and Conditions have the meaning attributed to them in the Agreement or as described below:
- a. **Terms and Conditions:** the present terms and conditions for the use and delivery of the Services.
  - b. **Services:** the services that Visma Nmbros provides to Customer as described in the Agreement.
  - c. **End-user:** a natural person who under the responsibility of Customer makes use of and is able to log in as a user in the environment of the Software of Customer.
  - d. **Customer:** the person purchasing the Services pursuant to the Agreement.
  - e. **Agreement:** the order confirmation, agreement, or the addendum or a similar legally binding document on the basis of which Customer and Visma Nmbros establish the provision of Services.
  - f. **Party/Parties:** Visma Nmbros and Customer individually as a Party or jointly as Parties.
  - g. **Software:** the Service consisting of a software functionality that is provided and kept available to Customer on the basis of Software as a Service at a distance via the internet or a different data network.
  - h. **Visma Nmbros:** the legal entity that is a part of the Visma-group and that provides the Services as further specified in the Agreement.
  - i. **Visma-group:** Visma Nederland B.V. and all its direct and indirect daughter companies.

## 2. SCOPE

- 2.1. These Terms and Conditions are applicable to all offers and agreements, also including the Agreement, whereby Services are delivered by Visma Nmbros to Customer.
- 2.2. Visma Nmbros has the right during the term of the Agreement to modify these Terms and Conditions following prior written notification to Customer with due regard for a term of at least 3 months before entry into effect. In case a modification entails a material deterioration of the position of Customer, Customer has the right to cancel the Agreement against the effective date of the modified Terms and Conditions.
- 2.3. If any provision of the Terms and Conditions is void or is annulled, the other provisions of the Terms and Conditions will remain fully effective. In such case, Visma Nmbros will inform the customer regarding the new provision that is to replace the void or annulled provisions, whereby the purpose and tenor of the void or annulled provisions are observed as much as possible.
- 2.4. Verbal statements, commitments, offers, or arrangements expressly do not have legal force, unless they have been confirmed in writing by Visma Nmbros.

## 3. IMPLEMENTATION AGREEMENT

- 3.1. Visma Nmbros will exert itself to carry out the Services as a good contractor and with care, in accordance with what is established in the Agreement and the Terms and Conditions. The Services are conducted on the basis of a best-effort obligation, unless explicitly established otherwise.

- 3.2. Customer will timely provide Visma Nmbros with the information and assistance reasonably deemed necessary for the implementation of the Agreement. Customer guarantees that the information provided by him is correct and complete.
- 3.3. Customer is responsible for the management, including the control of the settings, of the use of the Services provided by Visma Nmbros and the manner in which the results of the Services are deployed. Customer is also responsible for instruction to and use by End-users.
- 3.4. In case collaborators of Visma Nmbros carry out activities on location of Customer, Customer procures, free of charges, the facilities reasonably desired by those collaborators, such as a working area with computer-, data-, and telecom facilities. The work area and facilities will meet all legal and otherwise effective requirements regarding labour conditions. Customer will communicate the internal and security rules that apply within his organisation before the start of the activities to the collaborators deployed by Visma Nmbros.

#### 4. USE OF DATA

- 4.1. When using the Software, the Customer adds data to the Software (**Customer Data**) and user data are generated by the End-users (in the following "**User Data**"), jointly referred to as **Data**. Customer Data and User Data may contain both Personal Data and non-personal data.
- 4.2. Data consist of:
  - A. *Technical information and traffic data*, such as the type of operating system, browser type, device, keyboard language, and IP-address;
  - B. *Aggregated data, generated by Customers or End-users*, such as the duration of sessions, the number of invoices sent, financial years created, the resetting of passwords, and the likes, the number and type of processed documents and files;
  - C. *Non-aggregated data generated by Customers or End-users*, such as the context and content of support tickets, chat boxes, security logbooks, and the likes, and;
  - D. *Production data*, such as pictures, files, or databases of Customer Data, subject to strict guarantees.
- 4.3. The use of Data, as set forth above, is limited to the following purposes:
  - A. *The improvement of Software and user experience*, for example by analysing aggregated user patterns, the enabling of individual user preferences, or as set forth above for limited production data;
  - B. *Marketing and the displaying of relevant information*, for example for additional Software or Software that adds value and for the provision of relevant market updates or information;
  - C. *Security and related purposes*, for example by analysing session and login data (also in real-time), incident registrations and the likes to prevent, investigate, and document security issues and incidents (such as breaches, fraud, and various forms of hacking), and to improve the security of the Software;
  - D. *Statistics and research*, for example regarding the number of invoices that passes through our systems, including the use of aggregated and anonymous statistics in general marketing, and as Software or services with an added value, such as on in-app market statistics that are relevant for the Customer;
  - E. *Compliance*, Visma Nmbros can use and analyse User Data for compliance purposes with respect to the Terms and Conditions, for example by logging when a Customer accepts the Terms and Conditions;
  - F. *Development and testing*, for example by analysing aggregated user patterns, the provision of Data for the development of new technologies and products, the improvement of the user experience, the testing of the load on new or updated Software, or the feasibility of technology.

- 4.4. Visma Nmbros can also make use of relevant information from public or commercially available sources and combine such information with Data as described above, for example to offer search functions in company registers.
- 4.5. A condition for the use of Data for the purposes indicated above is that such use is in accordance with the applicable legislation, also including the necessary security measures to assure the confidentiality, the integrity, and the availability of the Data. To the extent Personal Data are a part of such Data Processing, they must be anonymised. If anonymisation is not possible due to technical or practical reasons, Visma Nmbros will take alternative measures to guarantee the same level of protection.
- 4.6. Visma Nmbros can share Data with other companies in the Visma-group, sellers and partners, with due observance of the same conditions and restrictions as set forth in the present. Visma Nmbros will only share Data with third parties in the following situations:
- A. to comply with legislation or regulations, or to respond to a legally binding request from authorities, such as a court order or warrant;
  - B. to investigate or prevent serious threats to security or fraud;
  - C. a reorganisation, merger, sale, or purchase of Visma Nmbros, total or partial, whereby confidential information can be disclosed to other companies of the Visma-group, or to potential buyers who observe the obligations comprised therein by way of a non-disclosure agreement;
  - D. as a part of the provision of services to Customer in conformity with the Agreement, as described in article 8.22 and 8.23.
- 4.7. Unless established otherwise in the present, Visma Nmbros will not sell, let, or lease Data to third parties.
- 4.8. Visma Nmbros will immediately inform the Customer of any request for the disclosure of Data that is received directly from government agencies, unless such a notification is legally prohibited. Visma Nmbros will not grant such requests, unless the Customer has given permission to such effect. Visma Nmbros will only disclose Data to government agencies to comply with legally binding requests, such as a court order or warrant.
- 4.9. Customer remains the rightsholder of the Data. Customer decides himself and is responsible for what Data are stored, adapted, processed, or otherwise entered with the aid of the Software. Visma Nmbros is not obliged to control the correctness and completeness of the Data and for this reason is not liable for the consequences of the use of incorrect and/or incomplete Data supplied by Customer. Customer safeguards Visma Nmbros against claims by third parties for the compensation of damage that these third parties could claim from Visma Nmbros in any manner, to the extent such claim is based on the use made of the Software by Customer.

## **5. INTELLECTUAL PROPERTY RIGHTS**

- 5.1. All rights of intellectual property to the Software or other materials developed on grounds of the Agreement or provided to Customer lie exclusively with Visma Nmbros, their licensors, or suppliers. Customer acquires the rights of use that are expressly granted by these Terms and Conditions, the Agreement, and the law. A right of use falling to Customer is non-exclusive, non-transferable, non-pawnable, and non-sub-licensable.
- 5.2. Visma Nmbros safeguards Customer against any claim by a third party that is based on the contention that Software or other materials developed by Visma Nmbros itself infringe on a right of intellectual property of that third party, on the condition that Customer forthwith informs Visma Nmbros in writing regarding the

existence and substance of the claim and leaves the processing of the matter, also including the reaching of possible settlements, to Visma Nmbros entirely. To such effect, Customer will grant the required authorisations, information, and assistance to Visma Nmbros to allow it to defend itself against such claims. This indemnification obligation lapses if the alleged infringement is related (i) to materials supplied by Customer for use, adaptation, processing, or maintenance to Visma Nmbros, or (ii) to changes that Customer has applied or has had applied to the Software or other materials without the written permission of Visma Nmbros. If it has been irrevocably established judicially that the Software or other materials developed by Visma Nmbros itself infringe on any right of intellectual property belonging to a third party or if in the opinion of Visma Nmbros there is a reasonable chance that such an infringement occurs, Visma Nmbros will, if possible, make sure that Customer will continue to be able to use the delivered Software or functionally equivalent different software. Any other or further indemnification obligation on the part of Visma Nmbros on account of a violation of a right of intellectual property of a third party is excluded.

## **6. RATES AND PAYMENT**

- 6.1. The rates to be paid by Customer to Visma Nmbros are listed in (an appendix to) the Agreement.
- 6.2. All rates are listed exclusive of VAT and in Euros.
- 6.3. Visma Nmbros has the right to annually increase the rates on the basis of indexation or as a result of general price and cost increases. In addition, Visma Nmbros can change the fees for the Services twice a year following prior notification to Customer of at least 3 months.
- 6.4. Parties will establish the date or dates on which Visma Nmbros bills the fee for the established performances to Customer in the Agreement. Amounts owed are paid by Customer in accordance with the payment terms that are established or that are listed on the invoice. In the absence of a specific arrangement, Customer will pay within a 30-day term after the invoice date. Payment must occur on a bank account to be indicated by Visma Nmbros. If Customer does not agree with the amount stated on the invoice, Customer must report this no later than within 30 days after the date of signing of the invoice to Visma Nmbros in writing, including substantiation. After expiry of said term, Customer is deemed to have agreed with the invoice. Customer does not have the right to suspend any payment, nor to set off amounts owed.
- 6.5. Unless established otherwise in writing, all fees are owed in advance and are not refundable, also including unused credits, user accounts, Software, or days remaining in a subscription period. This, unless the availability of the Software has significantly decreased for reasons that can be exclusively attributed to Visma Nmbros. Visma Nmbros can at its own discretion and as a sole remedy offer a reasonable refund for the fees that were accumulated during such a period of reduced availability.
- 6.6. If Customer does not pay the amounts owed within the established term, Customer will owe, instantly and without requiring any further default notice to such effect, the statutory interest rate for commercial transactions on the outstanding amount. If the claim is transferred, Customer is also obliged to pay a reasonable fee for the extrajudicial expenses and the actual costs involved in a legal procedure related to the collection of this claim or in the exercise of rights otherwise.
- 6.7. In case Customer does not comply with his undertakings vis-a-vis Visma Nmbros and is in default, Visma Nmbros has the right, following the careful weighing of interests and written notification, to suspend the further implementation of the Agreement, completely or in part.

- 6.8. Additional work will only be invoiced after the granting of a written order by Customer on the next invoice or after completion of the additional work. By additional work are intended the activities that fall outside the content or scope of the activities established in writing.

## **7. CONFIDENTIALITY**

- 7.1. Each Party may obtain Confidential Information from the other Party that must reasonably be considered the property of the providing Party, to be confidential, or to be competition-sensitive (Confidential Information). The Parties will keep Confidential Information confidential and take reasonable measures to protect the Confidential Information of the other Party and not disclose such to third parties, unless the other Party is authorised to do so, or if this is required by mandatory legal provisions.
- 7.2. Customer acknowledges that the Services conducted by Visma Nmbros always have a confidential character and that these contain business secrets of Visma Nmbros, their suppliers, or the manufacturer of the Software.
- 7.3. Unless established otherwise in writing, it is permitted to Visma Nmbros to report in one or more (press) statements the adoption or the existence of the Agreement. Visma Nmbros has the right to place the name and logo of Customer on the Visma Nmbros website and/or a list of references and to provide such to third parties for their information.

## **8. PRIVACY AND PROCESSOR AGREEMENT**

### Introduction

- 8.1. Upon the implementation of the Agreement, Visma Nmbros processes Personal Data of Customer. Visma Nmbros processes these Personal Data for the purpose of the HR and/or Payroll processes of Customer. This processing occurs by order and under responsibility of Customer.
- 8.2. Visma Nmbros has the role of Processor with respect to the data for which Customer can be qualified as Data Controller; or attributed the role of sub-Processor with respect to the data for which Customer can be qualified as Processor.

### Definitions

- 8.3. The definitions such as Data Controller, Data Subject, Personal Data, Breach in connection with Personal Data, Processing, Processor, and Sensitive Data (categories of Special Personal Data) have the same meaning as used in EU 2016/679 General Data protection Regulation (the 'GDPR').

### Scope

- 8.4. These Terms and Conditions will also apply as a Processor Agreement between Parties as intended in article 28.3 of the GDPR, unless Parties conclude or have concluded a Processor Agreement that in such case will function as such.
- 8.5. The Processor Agreement arranges the Processing of Personal Data by Visma Nmbros on behalf of Customer, and sketches how Visma Nmbros will contribute to the assurance of privacy on behalf of Customer and his registered Data Subjects, by way of technical and organisational measures in accordance with the applicable privacy legislation, including the GDPR.
- 8.6. The purpose of the Processing of Personal Data by Visma Nmbros on behalf of Customer is the implementation of the Agreement(s) and this Processor Agreement.

- 8.7. This Processor Agreement takes precedence over conflicting provisions regarding the Processing of Personal Data in the Agreement or in other, earlier agreements or written communications between the Parties. This Processor Agreement is valid for as long as the Agreement applies.

Rights and obligations of Visma Nmbros

- 8.8. Visma Nmbros will only Process Personal Data on behalf of and in accordance with the written instructions of Customer. By entering into this Processor Agreement, Customer orders Visma Nmbros to process Personal Data in the following manner; i) exclusively in accordance with the applicable legislation, ii) to comply with all obligations according to the Agreement, iii) as further specified via the regular use by Customer of the services of Visma Nmbros and iv) as specified in this Processor Agreement.
- 8.9. Visma Nmbros has no grounds to assume that legislation that is applicable to them prevents Visma Nmbros from following the instructions listed above. Visma Nmbros will, as soon as they are aware, inform Customer of instructions or other Processing Activities by Customer that in the opinion of Visma Nmbros are in conflict with the applicable privacy legislation.
- 8.10. The categories of Data Subjects that may be subjected to Processing on grounds of this Processor Agreement are (non-exhaustively) End-users, (former) collaborators (also including potential employees, self-employed workers, volunteers), receivers of benefits, customer assistants, and contact persons for the customer. The Customer is at liberty in some cases to subject different categories of Data Subjects to Processing.
- 8.11. The categories of Personal Data that may be subjected to Processing on grounds of this Processor Agreement are (non-exhaustively) contact details (such as name, phone number, address, e-mail, etc.), function information (such as function, company, department, performance, etc.), economic information (such as wages, banking information, etc.), job application information (such as curriculum, references, etc.). The Customer is at liberty in some cases to subject different categories of Personal Data to Processing.
- 8.12. Visma Nmbros will guarantee the confidentiality, integrity, and availability of Personal Data in accordance with the privacy legislation that is applicable to Visma Nmbros. Visma Nmbros will take systematic, organisational, and technical measures to guarantee an appropriate level of security, taking into account the state of the art and the costs of implementation in proportion to the risk represented by the Processing, and the nature of the Personal Data to be protected.
- 8.13. Visma Nmbros will assist Customer with appropriate technical and organisational measures, to the extent possible and taking into account the nature of the Processing and the information that Visma Nmbros has at its disposal, upon complying with the obligations of Customer on grounds of the applicable privacy legislation with regard to the request of Data Subjects, and general compliance with privacy legislation pursuant to article 32 through 36 GDPR.
- 8.14. If Customer needs information or assistance regarding the security measures, documentation, or other forms of information on the manner in which Visma Nmbros processes Personal Data, and such requests go beyond the standard information that Visma Nmbros provides in order to comply with the applicable privacy legislation as a Processor, Visma Nmbros may bill Customer for such a request for additional services.
- 8.15. Visma Nmbros and their staff take care of secrecy regarding the Personal Data that are subject to Processing in accordance with the Processor Agreement. This provision also applies after termination of the Processor Agreement.

- 8.16. Visma Nmbros will enable Customer by informing Customer without any unnecessary delay to comply with the legal requirements regarding notification to data authorities or Data Subjects regarding privacy incidents.

Visma Nmbros in addition will, to the extent this is appropriate and lawful, inform Customer of;

- A. requests for the provision of Personal Data received from a Data Subject,
  - B. requests for the disclosure of Personal Data by government agencies, such as, though not limited to, the police.
- 8.17. Visma Nmbros will not respond directly to requests of Data Subjects, unless they are authorised to do so by Customer. Visma Nmbros will not provide any of the information associated with this Processor Agreement to government agencies, such as the police, including Personal Data, unless obliged to do so by the law, such as by a court order or a similar order.
- 8.18. Visma Nmbros has no authority over whether and how Customer makes use of integrations of third parties via the API (or similar) of Visma Nmbros, and in this connection Visma Nmbros therefore does not accept any liability. Customer bears sole responsibility for integrations of third parties.
- 8.19. Visma Nmbros can process Personal Data about users and the use of the service by Customer when this is necessary to obtain feedback and to improve the service. Customer grants Visma Nmbros the right to use and analyse aggregated data regarding system activities in connection with your use of the Services, with an eye on the optimization, improvement, or correction of the manner in which Visma Nmbros provides the Services and to enable Visma Nmbros to create new functions and functionality in connection with the Services. Visma Nmbros is considered the data controller for such processing operations and the processing therefore is not subject to this Processor Agreement.
- 8.20. Upon the use of the service, Customer will add data to the Software ("Customer Data"). Customer acknowledges and has no objection against Visma Nmbros using the Customer Data in an aggregated and anonymised format for the improvement of the services provided to customers, research, training, educational and/or statistical purposes.

#### Rights and obligations of Customer

- 8.21. By adopting the Agreement and this Processor Agreement, Customer confirms that:
- A. he is legally authorised to Process and disclose the Personal Data in question to Visma Nmbros (also including the sub-processors deployed by Visma Nmbros);
  - B. he bears responsibility for the accuracy, integrity, content, reliability, and lawfulness of the Processed Personal Data as disclosed to Visma Nmbros;
  - C. he has fulfilled his obligations to provide relevant information to Data Subjects and oversight authorities regarding the Processing of Personal Data in conformity with mandatory data protection legislation;
  - D. upon receiving the services from Visma Nmbros under the Agreement, he will not disclose/provide any Special Personal Data to Processor.

#### Deployment of third parties by Visma Nmbros and data transfer

- 8.22. As a part of the provision of services to Customer in conformity with the Agreement and this Processor Agreement, Visma Nmbros will deploy third parties (sub-processors) upon the implementation of this

Processor Agreement and Customer grants general permission for the deployment by Visma Nmbros of said sub-processors. These sub-processors may be companies within the Visma-group or external third parties. Visma Nmbros makes sure that sub-processors agree to accept the responsibilities and the corresponding obligations as set forth in this Processor Agreement.

- 8.23. An overview of the current sub-processors with access to Personal Data can be consulted via this website: <https://www.nmbros.com/security/subprocessors>. Visma Nmbros can deploy different companies of the Visma-group established in the EU/EEA as sub-processors without the Visma company being included on the website and without the prior approval or notification to Customer. This normally occurs for the purpose of development, support, activities, etc. Customer may request detailed information about sub-processors from Visma Nmbros.
- 8.24. If sub-processors are established outside the EU, Customer authorises Visma Nmbros to transfer Personal Data outside the borders of the EU for the benefit of Customer, so that legitimate legal grounds are assured for the purpose, by establishing the EU Model Clauses.
- 8.25. Customer is informed beforehand of any change of sub-processors that process Personal Data. If Customer objects against a new sub-processor within 30 days after notification, Visma Nmbros and Customer will assess the documentation regarding the compliance efforts of the sub-processor in order to guarantee compliance with the applicable privacy legislation. If Customer continues to have objections and has reasonable grounds for such, Customer cannot oppose the use of such a sub-processor (especially considering the nature of on-line standard software), but Customer may cancel the Agreement.

#### Security

- 8.26. Visma Nmbros commits itself to offer a high level of security for its products and services. Visma Nmbros provides for its security level by way of organisational, technical, and physical security measures, in accordance with the requirements regarding IT security measures as set forth in article 32 GDPR.

#### Audit rights

- 8.27. Customer can control no more frequently than once a year whether Visma Nmbros observes this Processor Agreement. If the legislation applicable to Customer requires such, Customer can request more frequent audits. In order to request an audit, Customer must present a detailed audit plan to Visma Nmbros at least four weeks before the proposed audit date, including a description of the proposed scope, duration, and the starting date of the audit. If a third party must carry out the audit, this must be mutually established in writing between parties. If the processing environment, however, is a multi-tenant or similar environment, Customer grants Visma Nmbros the authority for processing for safety reasons to decide that the audits are carried out by a neutral third-party auditor at the option of Visma Nmbros.
- 8.28. If the requested scope of the audit is treated in an ISAE, ISO or similar assurance report that was conducted within the preceding twelve months by a qualified auditor and Visma Nmbros confirms that there are no known material changes to the controlled measures, Customer agrees to accept those findings instead of requesting a new audit for the measures that the report is in regard to.
- 8.29. In any event, the audits must be carried out during regular office hours at the relevant branch, with due regard for the policy of Visma Nmbros, and they may not hinder the business activities of Visma Nmbros in an unreasonable manner.
- 8.30. Customer is responsible for all costs that flow from the controls requested by Customer. Charges may be billed for requests for assistance from Visma Nmbros.



### Duration and termination

- 8.31. This Processor Agreement is valid for as long as Visma Nmbros processes Personal Data on behalf of Customer following the Agreement or as established otherwise.
- 8.32. This Agreement is terminated automatically upon termination of the Agreement. Upon termination of this Processor Agreement, Visma Nmbros will delete or return Personal Data that were processed on behalf of Customer, in accordance with the applicable clauses in the Agreement. Such removal will occur as soon as is reasonably possible, unless EU or local legislation requires further storage. Unless established otherwise in writing, the costs of such actions will be based on; i) hourly rates for the time spent by Visma and ii) the complexity of the process requested.

### Liability

- 8.33. In order to prevent misunderstandings, Parties hereby establish and acknowledge that each Party will be liable and is responsible for the payment of administrative fines and compensation of damages to Data Subjects if this payment obligation was imposed on this Party by the relevant personal data agency or a competent court of law in accordance with applicable legislation. Liability issues between Parties are governed by the relevant provisions regarding liability as established in the Agreement and the associated Terms and Conditions.

## **9. TERMS**

- 9.1. All terms indicated by Visma Nmbros were established to the best of their knowledge on grounds of the information that was known upon entry into the Agreement at Visma Nmbros and will be observed as much as possible.
- 9.2. To the extent delivery dates and/or terms are stated in any Agreement, appendix, plan of action, or quotation, these are indicative and do not constitute strict time limits, unless expressly established otherwise. In all cases, that is, if Parties have established a deadline expressly and in writing as well, Visma Nmbros only falls into default after it has been declared in default by Customer in an appropriate manner, detailed, and in writing, and Visma Nmbros after expiry of the reasonable term granted in that default notice still does not properly comply.
- 9.3. Visma Nmbros is not bound by (delivery) terms that due to circumstances that lie outside of its control that have occurred after adoption of the Agreement can no longer be met. If the overrunning of any term is imminent, Visma Nmbros and Customer will enter into consultation as soon as possible.

## **10. INFORMATION**

- 10.1. If on the part of Visma Nmbros (for example by the service centre, by sales staff, or by consultants) substantive information or advice is provided to collaborators of Customer in the field of taxes, legislation and regulations and/or other topics of a legal or administrative nature, this is done on the conditions and with the expectation that Customer verifies the information and/or advice or has such verified by experts. Visma Nmbros does not accept any responsibility or liability for the correctness and/or completeness of this information/advice.

## **11. LIABILITY**

- 11.1. The total liability of Visma Nmbros on account of an attributable shortcoming in complying with the agreement or on any legal grounds whatsoever, also expressly including any shortcoming in complying

with a warranty obligation or waiver established with Customer, is limited to the compensation of direct damage up to a maximum of the amount stipulated for that agreement (excl. VAT). If the agreement mainly is a continuing performance agreement with a term of more than one year, the price stipulated for that agreement is set at the total of the fees (excl. VAT) stipulated for one year. Under no circumstance will the total, cumulative liability of Visma Nmbros on any account whatsoever exceed EUR 100,000 (one hundred thousand Euros).

- 11.2. Visma Nmbros can exclusively be held accountable for the compensation of direct damage. By direct damage is exclusively intended: a) the costs that Customer has incurred for the forcedly keeping operational his old system or systems for longer and the associated facilities because Visma Nmbros has not performed on a date binding for it, minus any possible savings that are the result of the delayed performance; b) reasonable costs, incurred to determine the cause and scope of the damage, to the extent the determination regards direct damage in the sense of this article; c) reasonable costs, incurred to prevent, mitigate, or restore damage, to the extent Customer proves that these costs have led to the mitigation of direct damage in the sense of this article; d) the costs of emergency measures, such as diversion to different systems, the hiring of third parties, or the application of emergency procedures or deviating work methods.
- 11.3. Visma Nmbros is not liable for any indirect damage, also including loss of turnover and profit, loss of data, (damage) claims by third parties, fines or retroactive tax bills, missed proceeds or savings, damage to the reputation or image, or other indirect damage or consequential damage that flows from or is related to non-compliance with any obligation or any unlawful actions of Visma Nmbros.
- 11.4. Condition for any right to compensation of damages to arise always is that Customer reports the damage as soon as possible after discovery (though no later than within one (1) month) to Visma Nmbros in writing.
- 11.5. The liability of Visma Nmbros for damage due to death, physical injury, or on account of the material damaging of objects never exceeds EUR 1,250,000 (one million two hundred and fifty thousand Euros) in total. The previous sections of this article are not applicable if and to the extent the relevant damage was caused by the wilful intent or deliberate recklessness of Visma Nmbros.

## **12. FORCE MAJEURE**

- 12.1. In case of the force majeure of one of the Parties, the obligations on grounds of this Agreement will be suspended for as long as the situation of force majeure continues. By force majeure is intended as well as a shortcoming of suppliers of Visma Nmbros. The suspension will not apply, however, for the obligations that the force majeure is not in regard to and/or the obligations that have arisen before the situation of force majeure has become effective already.
- 12.2. If the situation of force majeure lasts for more than sixty days, Parties have the right to terminate the Agreement by way of registered mail, unless it can be foreseen that the situation of force majeure will be resolved within a reasonable term. What has been performed already as a result of the Agreement in such case is settled in proportion, without Parties owing each other something otherwise.

## **13. SUB-CONTRACTING AND TRANSFER**

- 13.1. It is permitted to Visma Nmbros to deploy third parties upon the implementation of its obligations. The effect of article 7:404 BW (Civil Code) thereby is expressly excluded. It is not permitted to Customer to transfer the rights from the Agreement to a third party without the prior written permission of Visma Nmbros.

#### **14. DURATION AND TERMINATION**

- 14.1. The Agreement commences on the date established in the Agreement or, in the absence thereof, the date of signing of the Agreement by both Parties. The Agreement is adopted for the duration specified in the Agreement. After the end of the initial period, the Agreement is tacitly extended each time by a period that is equal to the initial period.
- 14.2. Unless expressly established otherwise, Visma Nmbros exclusively has the right to cancel the Agreement in writing and Customer has the right to cancel in the Nmbros environment of Customer, against the end of the established duration of the Agreement, with due regard for a notice period of one (1) month.
- 14.3. Unless expressly established otherwise in the Terms and Conditions or established in the Agreement, it is not permitted to Parties to cancel the Agreement intermediately. Article 7:408 BW (Civil Code) is not applicable.
- 14.4. In addition to the right to terminate the Agreement in accordance with Article 14.2, a Party has the right to rescind the Agreement with immediate effect, without default notice and without judicial intervention, completely or in part, without any obligation to compensate any possible damage of Parties arising, if one of the following circumstances occurs:
- A. the other Party is declared bankrupt;
  - B. suspension of payments (whether or not provisional) is granted to the other Party;
  - C. the enterprise of the other Party is liquidated or ceased.
- 14.5. In case of rescission, the rescission will exclusively have effect for the obligations that arise after the moment of rescission and such rescission therefore will not have retroactive effect.
- 14.6. Upon termination of the Agreement, all rights of Customer with respect to the Services lapse. Rights and obligations from the Agreement between Visma Nmbros and Customer, that by their nature and substance are intended to continue, also including those regarding intellectual property, liability, non-disclosure, force majeure, and the settlement of disputes, remain fully effective after termination or rescission of the Agreement.

#### **15. FURTHER PROVISIONS SOFTWARE**

- 15.1. The provisions as described in this article 15 are exclusively applicable to the provision of Services by Visma Nmbros and the use thereof by Customer if it regards Software.

##### Implementation Software

- 15.2. Visma Nmbros will exert itself to let the established Software always function properly and strives after the highest possible availability, quality, and security of the Software. Visma Nmbros reserves itself the right to intermediately alter the technical and functional characteristics of the Software and to improve them and to restore any possible errors or to comply with the applicable legislation and regulations. If such an adjustment leads to a material deviation in the functionality of the Software, Visma Nmbros will accordingly inform Customer in writing or electronically.
- 15.3. Visma Nmbros does not guarantee that the Software will function without errors, malfunctions, or interruptions. Visma Nmbros will exert itself to restore errors in the Software, devices, infrastructure and/or management environment within a reasonable term if and to the extent it regards Software, devices, infrastructure, or management environment developed or built by Visma Nmbros itself and the relevant defects have been reported by Customer to Visma Nmbros with a detailed description. In such case as may

occur, Visma Nmbros can postpone the restoral of the defects until a new version of the Software, devices, infrastructure, or management environment is commissioned. Visma Nmbros cannot guarantee that all errors are restored. Visma Nmbros has the right to apply temporary solutions or software bypasses or issue-obviating restrictions in the Software.

- 15.4. Visma Nmbros can decommission the Software completely or in part temporarily for preventive, corrective, or adaptive maintenance or other forms of service. Visma Nmbros will not let the decommissioning last any longer than is necessary and if possible will let this occur outside the office hours it customarily applies.
- 15.5. Visma Nmbros can continue the implementation of the Software by using a new or altered version of the Software. Visma Nmbros is not obliged to maintain, change, or add characteristics or functionalities of the service or Software that are determined specifically for Customer.
- 15.6. In case of the introduction of a substitute application with equivalent and/or more extended functionality than existing Software, it is permitted to Visma Nmbros to migrate the Customer to this substitute application, which subsequently will be Software in the sense of the Agreement. In such cases, Visma Nmbros has the right to bill reasonable costs for the migration to Customer separately. Visma Nmbros will announce these costs beforehand. If Customer then communicates he does not want to bear any costs, Parties have the right to terminate the Agreement intermediately, with due regard for a notice period of one year. During this notice period, Customer can make use of the original Software.
- 15.7. Visma Nmbros has the right to communicate directly with end-users within the Software (i) to the extent this is necessary with an eye on assuring safety and/or the quality of its provision of services (ii) to make announcements regarding maintenance or new functionalities and/or products, or (iii) to directly offer associated additional services.

#### Access to the Software

- 15.8. For the use of the Software, per End-user, in conformity with the protocols prescribed by Visma Nmbros, a username and a password will be generated by Visma Nmbros and/or Customer, by which the Software can be used by an End-user. This username and password are non-transferable and strictly personal. Customer and every End-user are responsible for the confidential use of username and password and for (the consequences of) any possible abuse thereof.
- 15.9. Visma Nmbros has the right to block access to the Software in case of unauthorised use or abuse of the Software by Customer and/or End-user, in case of unlawful use of the Software by third parties and/or in case of failure to pay amounts owed by Customer within the agreed term. If this is reasonably possible with an eye on the urgency of the case, Visma Nmbros will, prior to a blockade, inform End-user accordingly. In said cases, Visma Nmbros will never be obliged to provide any compensation of damages to End-user on account of blocking.
- 15.10. Customer guarantees that he, and End-user, in case of the use of the Software will observe the following rules:
  - A. Customer and End-user will protect their (peripheral) devices, software, infrastructure, and internet connection against viruses, computer crime, and (other) unlawful use by user(s) or third parties;
  - B. Customer and End-user will not disturb or damage the Software, (computer) networks, or infrastructures of Visma Nmbros or other users, or cause nuisance, restricted use, or unforeseen use (for other users) with respect thereto;

- C. Customer and End-user will not abuse any means of access or break through and/or try to break through the security of the Software;
- D. Customer and End-user will not do or omit anything for which they know or should reasonably have known that it may lead to use of the Software that is criminal or unlawful vis-a-vis Visma Nmbros and/or third parties;
- E. Customer and End-user without permission will not penetrate into a computer system or a part thereof that is connected with the Software (*hacking*);
- F. Customer and End-user will not violate in any manner the intellectual property rights of Visma Nmbros and/or third parties in connection with the Services; and
- G. Customer and End-user will not disclose, multiply, or otherwise use any information and data that Visma Nmbros provides in the context of the Software otherwise than for use within the internal business operations of Customer.
- H. Use of the Software by Customer and End-user is at own discretion and at own risk and Customer and End-user are responsible themselves for any possible damage to a computer system or loss of data that flows from the use of the Software.
- I. Customer is obliged to report errors he discovers in the Software provided by Visma Nmbros without delay to Visma Nmbros.

*Integrations and data exchanges with third parties.*

- 15.11. Customer can conclude an agreement with third parties in order to enter into integrations / data exchanges and/or to purchase services as an addition to the Services.
- 15.12. Customer will adopt the agreements referred to in article 15.11 immediately with the relevant third parties, whereby Visma Nmbros (in its capacity of supplier of the Services) is not an involved party in any form. Such parties are no sub-processors of Visma Nmbros and Visma Nmbros is not liable in any manner for the actions of these parties.
- 15.13. If Customer chooses to connect/integrate the environment of the Software (directly) with a third party, whether or not while making use of one or several links of Visma Nmbros, Customer hereby grants permission to Visma Nmbros for the exchange of data between Visma Nmbros and the relevant party to the extent this has been designated as required for the services by this party. Thereby can also be intended the exchange of personal data and the storage of access or identification codes/tokens for the purpose of realising this data exchange/integration.
- 15.14. Customer is responsible for the (having) set up and realised correctly integrations and/or data exchanges (including authorisations), whether or not while making use of one or several links of Visma Nmbros, between the Software and third the party/parties selected by Customer. Visma Nmbros is never responsible and/or liable for the (correct) functioning of software of Customer and/or third parties that communicate/exchange data with the Software via the links of Visma Nmbros.
- 15.15. If one or several links are made use of by Customer that are made available by Visma Nmbros, for the duration of the Agreement a non-transferable, non-exclusive, and non-sub-licensable license is granted to Customer to use the link within the own organisation for exclusively internal purposes. Visma Nmbros reserves itself the right to bill additional charges for the use of the links by Customer and/or third party/parties.

- 15.16. It is permitted to Visma Nmbros at own discretion to apply the restriction of requests (“throttling”) at the moment that the traffic that is generated by customer via the link burdens the system of Visma Nmbros to such a degree that as a result the performance worsens or is hindered for other users.

#### Consequences termination Software

- 15.17. After termination of the Agreement, Customer can request the one-time supply of the data entered upon the use of the Software. Visma Nmbros will provide the data in a generally customary format to Customer, so that this data can reasonably be processed by Customer. Other than possibly on grounds of provisions of Netherlands mandatory Law, Visma Nmbros does not accept any retention obligation or retention period for the data and information entered by Customer. In case Customer has not indicated forthwith after termination of the agreement that he wishes the afore-indicated transfer of the data, Visma Nmbros has the right to immediately remove and destroy data that were stored, adapted, processed or otherwise entered with the aid of the Software, without prior announcement, from the system they are stored on.
- 15.18. As an addition to what is established in article 15.17, Parties will in case of the termination of the Agreement (otherwise than in case of rescission by Visma Nmbros) always collaborate in good faith for such support as customer may still want after the end of the agreement with the migration of the provision of services to Customer or to a third party to be designated by Customer (*exit period*). Visma Nmbros, however, cannot be obliged to render such assistance for a period longer than 3 months and its exertions during the exit period are based on best effort and to the extent commercially reasonable (at the discretion of Visma Nmbros). An availability of the data and Services that is uninterrupted as much as possible is central during the exit period. Parties will consult at the latest 3 months before the end of the agreement regarding the scope of the exertion that Customer asks from Visma Nmbros. Visma Nmbros will bill the costs it incurs in connection with the exit period to Customer based on post-calculation.

#### Notifications

- 15.19. Information about new functions, price changes, or planned maintenance is provided in the software, on the web pages of the software, in the on-line community, or via e-mail.
- 15.20. Notifications regarding order confirmations, information of special importance, security or privacy, are sent to the e-mail address of the primary contact person.
- 15.21. The Customer is responsible for the provision at all times of current contact information, also including a primarily maintained contact e-mail.
- 15.22. All notifications are deemed to have been sent and are instantly effective when they have been sent or posted by Visma Nmbros.

## **16. APPLICABLE LAW AND DISPUTES**

- 16.1. The agreements between Visma Nmbros and Customer are governed by Netherlands Law. The applicability of the Vienna Commercial Convention 1980 is excluded.
- 16.2. Disputes that may arise between Visma Nmbros and Customer in connection with an agreement concluded between Visma Nmbros and Customer or in connection with further agreements that are the result thereof, are settled by way of arbitration in accordance with the arbitration regulation of the of the dispute settlement organisation for IT 'Stichting Geschillenoplossing Automatisering', with legal seat in The Hague, all matters without prejudice to the right of each of the Parties to ask for an injunction in a preliminary arbitration procedure and without prejudice to the right of each of the Parties to take legal conservation measures (see [www.sgoa.eu](http://www.sgoa.eu)).

- 16.3. Before filing an arbitration procedure as referred to in article 16.2, the most interested Party will initiate a procedure for ICT Mediation in conformity with the ICT Mediation Regulation of said 'Stichting Geschillenoplossing Automatisering' in The Hague. A procedure for ICT Mediation in conformity with this regulation is directed at mediation by one or more mediators. The counterparty commits itself to actively participate in an ICT Mediation that has been filed, which legally enforceable obligation includes in any event the attendance at least one joint discussion of mediators and Parties, in order to give this extrajudicial form of dispute settlement a chance. Each of the Parties is at liberty to terminate the ICT Mediation procedure at any time after a joint first discussion of mediators and Parties. What is established in this article section does not oppose a Party, deeming such necessary, asking for an injunction in a preliminary (arbitration) procedure or taking legal conservation measures (see [www.sgoa.eu](http://www.sgoa.eu)).