

# General Delivery terms

## 1. DEFINITIONS

- 1.1. **Subscriber:** the natural person or legal person who has the legal right to conclude the agreement on behalf of the entity.
- 1.2. **Subscription:** the acquisition of access and user rights for Nmbros; for the duration of the agreement.
- 1.3. **Administrator User:** the End-user created who has administrative rights and who has been appointed by the Subscriber as administrator of the Environment of the Subscriber.
- 1.4. **API(s):** standard software based on web standards intended to enable computer software/software applications of third parties to communicate/exchange data to/with Nmbros.
- 1.5. **Company:** a legal entity or a specific administrative unit for which a payroll administration is conducted within Nmbros, to which End-users optionally have access.
- 1.6. **End-user:** a natural person who makes use of Nmbros under the responsibility of the Subscriber and who as a user can log in in the Environment of the Subscriber and gains access to one or more Companies.
- 1.7. **Breach:** breach of the security that by accident or unlawfully leads to the destruction, the loss, the alteration, or the unauthorised provision of or the unauthorised access to forwarded, stored, or otherwise processed Personal Data.
- 1.8. **Infrastructure:** the hardware, cloud infrastructure, data communication facilities and system software used by Nmbros B.V. for the provisions of the SaaS service.
- 1.9. **Nmbros:** the computer software/software application for HR and Payroll services, which is exclusively available as a SaaS service and is provided by Nmbros B.V..
- 1.10. **Nmbros B.V.:** Nmbros B.V., with legal seat in Amsterdam, offices at Naritaweg 70, 1043 BZ in Amsterdam, listed in the trade register under number 34150521
- 1.11. **Environment:** an environment within Nmbros with a collection of Companies associated with one Subscriber or accounting (or similar) organisation, to which exclusively the End-users of the own customers of the accountant have access.
- 1.12. **Agreement:** the order confirmation to purchase/conclude a Subscription against the monthly fee agreed upon.
- 1.13. **Party/Parties:** Nmbros B.V. and Subscriber individually as a Party or jointly as Parties.
- 1.14. **Personal Data:** the personal data as referred to in the Applicable Law that are processed by Nmbros B.V. for the benefit of the Subscriber under the Agreement.
- 1.15. **SaaS service:** (a module of) the software installed on Nmbros B.V.'s Infrastructure at a location selected by Nmbros B.V. which by way of access at a distance is made available to several subscribers simultaneously (multi-tenant).
- 1.16. **Applicable Law:** the applicable effective legislation and regulations for the protection of personal data, including the General Data Protection Regulation (EU) 2016/679 of 27 April 2016 regarding the protection of natural persons in connection with the processing of personal data and regarding the free movement of such data and for the withdrawal of Directive 95/46/EC - (the "GDPR") and associated effective implementing regulations.
- 1.17. **Process/Processing:** a processing operation or a whole of processing operations regarding personal data or a whole of personal data, whether or not conducted via automated processes, such as the collection, recording, ordering, structuring, storing, updating or modifying, requesting, perusing, using, provision by way of forwarding, distribution or provision in another manner, aligning or combining, shielding, deletion, or destruction of data.
- 1.18. **Employees:** natural persons with an employment contract who receive a wage payment in a period within a specific Company.
- 1.19. **Lawful Owner:** Subscriber, or a natural person designated by Subscriber, who acts as (Customer) data owner and is authorised to upgrade/downgrade the Subscription on behalf of the Subscriber.

## **2. APPLICABILITY OF CONDITIONS**

- 2.1. These general delivery terms (in the following “Terms and Conditions”) are applicable to all orders and subsequent orders flowing therefrom for Subscriptions. The Terms and Conditions can be consulted by Subscriber and downloaded from the website <https://www.nmbrs.com/nl/algemenevoorwaarden> (in these conditions: the Website).
- 2.2. By concluding a Subscription, by placing the order to such effect, Subscriber declares to agree with the applicability and substance of these conditions.
- 2.3. Nmbrs B.V. has the right during an Agreement to proceed with the modification of the applicable Terms and Conditions. Nmbrs B.V. will accordingly inform Subscriber at least three months before the effective date.
- 2.4. The applicability of purchasing or other conditions of Subscriber is expressly rejected. The signing or (tacit) acceptance by Nmbrs B.V. of documents of Subscriber to which such General Conditions have been declared applicable never counts as the acceptance thereof.
- 2.5. 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. Nmbrs B.V. and Subscriber in such case will enter into consultations with the purpose of establishing new provisions to replace the void or annulled provisions, whereby the purpose and tenor of the void or annulled provisions are observed as much as possible.
- 2.6. Nmbrs B.V. can set conditions for the qualifications and the number of application administrators of Subscriber. An application administrator is designated by Subscriber. The application administrator acts as a contact person and is authorised to conduct, on behalf of Subscriber, administrator's actions, such as the registration of End-users and Administrator Users, all matters in accordance with these conditions.

## **3. OFFERS AND ADOPTION AGREEMENT**

- 3.1. All offers and other expressions of Nmbrs B.V. are non-committal, unless indicated otherwise by Nmbrs B.V. in writing. An Agreement is adopted between Nmbrs B.V. and the Subscriber after receipt of the order confirmation by Subscriber.

## **4. PRICE, FEE OWED, AND PAYMENT**

- 4.1. All prices are exclusive of sales tax (VAT) and other levies that have been or are imposed by the authorities. Prices are always listed in Euros and Subscriber must settle all payments in Euros.
- 4.2. If Subscriber consists of multiple natural persons and/or legal persons, each of those persons can be held severally and jointly accountable for the settlement of the sums owed for the Subscription.
- 4.3. In the matter of the performances conducted by Nmbrs B.V. and the sums owed for them by Subscriber, the relevant documents and data from the administration or systems of Nmbrs B.V. provide full proof, without prejudice to the right of Subscriber to provide proof to the contrary.
- 4.4. Nmbrs B.V. reserves itself the right on grounds of indexation or respectively general price and cost increases to annually implement price changes without prior notification.
- 4.5. Nmbrs B.V. reserves itself the right outside the grounds indicated in article 4.4 to change the fees for the Subscription no more often than twice a year following prior notification to Subscriber of at least 3 months. Nmbrs B.V. in addition reserves itself the right with prior notification of 1 month in advance to

implement a price change in the event that Nmbros B.V. is subject to a price increase by one of its subcontractors.

- 4.6. Settlement of the use of Nmbros occurs on the basis of the number of Employees payrolled. Subscriber is invoiced monthly retrospectively for the number of Employees payrolled. In case of weekly payrolling, the number of payrolled Employees is calculated and invoiced once every 4 weeks.
- 4.7. Payment of the fees owed by Subscriber to Nmbros B.V. occurs by way of direct debit.
- 4.8. If direct debit for whatever reason does not lead (timely) to the full settlement of the fee owed, or the invoice has not been settled within the term set for it, Subscriber falls into default immediately and owes, without any warning or default notice being required, the statutory commercial interest rate and collection costs on the outstanding amount. If Subscriber after warning or default notice remains negligent with paying the claim, Nmbros B.V. can transfer the claim, in which case Subscriber will be obliged, besides the total amount then owed, to compensate all collection costs as well, also including all costs charged by external experts, all matters without prejudice to the right of Nmbros B.V. to suspend the implementation of the Subscription completely or in part, and without prejudice to the right of Nmbros B.V. to exercise any other legal and/or established right.

## **5. NON-DISCLOSURE**

- 5.1. Each Party can obtain Confidential Information from the other Party that must reasonably be considered to be the property of the providing Party, to be confidential, or competition-sensitive (Confidential Information). Parties will keep Confidential Information confidential and take reasonable measures to protect the Confidential Information of the other Party and not disclose it to third parties, unless the other Party is authorised to do so, or if this is required by mandatory legal provisions.
- 5.2. Subscriber acknowledges that the services conducted by Nmbros B.V. always have a confidential character and that these contain business secrets of Nmbros B.V., its suppliers, or the manufacturer of the software.
- 5.3. Unless established otherwise in writing, it is permitted to Nmbros B.V. to mention in one or more (press) statements the entry into or the existence of the Agreement. Nmbros B.V. has the right to post the name and the logo of Subscriber on the Nmbros B.V. website and/or a list of references and to provide such to third parties for information.

## **6. PRIVACY, DATA PROCESSING, AND SECURITY**

- 6.1. Upon the implementation of the Agreement, Nmbros B.V. processes Personal Data of (customers of) Subscriber by order and under the responsibility of Subscriber.
- 6.2. Nmbros B.V. has the role of Processor with respect to the data for which Subscriber can be qualified as Data Controller; or the role of Sub-processor with respect to the data for which Subscriber can be qualified as Processor in the sense of the Applicable Law.
- 6.3. Subscriber provides Nmbros B.V. with Personal Data of collaborators (also including potential employees, self-employed workers, volunteers), former collaborators, and receivers of benefits (of customers) of Subscriber (in the following, Data Subjects). Nmbros B.V. processes these personal data by order of Subscriber.
- 6.4. Upon the conducting of the activities, as indicated in the Agreement, Nmbros B.V. in the context of the provision of services to Subscriber can process the following (non-exhaustive listing of) types of Personal Data of Data Subjects:

Name, Address, residence information, (copy) ID/proof of identity	Details profession
Social security number/BSN	Details training
Contact details (e.g., phone numbers and e-mail addresses)	Details of leave and absence
Family composition	Performance information
Financial information/Wage information	Bank account numbers
Remuneration, allowance and/or pension information	In-/outflow mutations/employment relationships

- 6.5. Nmbros B.V. will process the Personal Data on the basis of instructions (also including the order as formulated in the Agreement and the Terms and Conditions) of Subscriber. Subscriber is responsible for making sure that his instructions are in accordance with the Applicable Legislation. Subscriber will continue to grant order to Nmbros B.V. during the term of the data processing to process the Personal Data. Nmbros B.V. will process the Personal Data in an appropriate and diligent manner. Nmbros B.V. immediately informs Subscriber if in its opinion any instruction results in the violation of the Applicable Legislation.
- 6.6. Nmbros B.V. will process the Personal Data if there is a legal obligation to do so for Nmbros B.V., including the processing that is necessary on account of a competently issued court order, a charge granted by the competent authorities, a competently issued instruction or lawful request of the relevant competent oversight authority, such as Autoriteit Persoonsgegevens. Nmbros B.V. will inform Subscriber without unnecessary delay of an instruction or other communication issued by an authority competent to such effect (such as Autoriteit Persoonsgegevens) regarding the Personal Data. To the extent this legal obligation exceeds the contractual obligations of processor as established in the Agreement and it may have consequences for a planning of costs and time that has been established, the obligation to carry out such processing only arises after Parties have reached a consensus concerning.
- 6.7. Nmbros B.V. processes Personal Data in accordance with the obligations flowing from the Agreement. By these obligations, Nmbros B.V. intends, among other matters, the provision of (aggregated and anonymised) analyses to Subscriber with the aid of artificial intelligence algorithms; the carrying out of statistical research; the use of data for invoicing; the conducting of statistical research and product improvement of Nmbros as well as the (possible) provision of services to Subscriber.
- 6.8. It is permitted to Nmbros B.V. to use data regarding the use of Nmbros, that were entered and/or generated by Subscriber and/or his End-user(s) for the delivery, development, security and/or maintenance of Nmbros and new products and/or services associated therewith. Nmbros B.V. may share these data with parties affiliated with Nmbros B.V., under the proviso that such an affiliated party may exclusively use the data for the delivery, development, security and/or maintenance of its products and/or services.
- 6.9. It is permitted to Nmbros B.V. in its capacity of Processor to carry out the processing required for the purpose of anonymisation, so that the data described in article 6.8 can no longer identify a Data Subject and/or can be qualified as Personal Data under the applicable law.
- 6.10. Subscriber guarantees that all requirements for the lawful processing of the Personal Data that were entered by Subscriber have been met, including the one that the Personal Data have been obtained in a manner that corresponds with the effective legal regulations, especially those flowing from the Applicable Law. Subscriber guarantees towards Nmbros B.V. that the content, the use by or on behalf of Subscriber and the processing ordered are not unlawful and do not violate rights of Data Subjects.

- 6.11. Subscriber safeguards Nmbros B.V. against claims by persons whose Personal Data were registered or are processed in the context of a personal registration conducted by Subscriber or for which Subscriber is otherwise responsible on grounds of the law, unless Subscriber proves that the facts on which the claim is based must be exclusively attributed to Nmbros B.V.
- 6.12. Nmbros B.V. is obliged to observe the secrecy of the Personal Data that are provided to it by Subscriber, barring to the extent this inevitably flows from the order as set forth in the Agreement, it flows from an additional written instruction of Subscriber or from a legal obligation (including if processing is necessary on account of a competently issued court order, a warrant issued by the competent authorities, a competently issued instructions or lawful request of the relevant oversight authority, such as Autoriteit Persoonsgegevens) or the prior written permission of Subscriber was obtained to such effect.
- 6.13. Nmbros B.V. makes sure that everyone working under its authority is obliged to observe the secrecy of the Personal Data that he/she takes cognisance of in accordance with what is established in the previous section.
- 6.14. Nmbros B.V. has the right to allocate access or identification codes to Subscriber and has the right to alter allocated access or identification codes. When changing access or identification codes, Nmbros B.V. will provide Subscriber, in proper consultation, with new access or identification codes and not deny Subscriber access to Nmbros on unreasonable grounds. Subscriber treats the access and identification codes with confidentiality and care and communicates these only on a personal basis to authorised staff members.
- 6.15. Nmbros B.V. is not liable for damage or costs that are the result of use or abuse that is made of access or identification codes. In case of damage or costs for Subscriber that have occurred as a result of "regular use" by "authorised users", Parties will enter into consultations with each other in good faith in order to reach a suitable solution.
- 6.16. Nmbros B.V. will render its assistance, if this reasonably lies within its sphere of influence and taking into account the nature of the Processing, by way of appropriate technical and organisational measures, to the extent possible, to the Subscriber upon the fulfilment of his legal obligations on grounds of the Applicable Law, such as in case of requests of Data Subjects and the general compliance with articles 32 through 36 of the GDPR. Nmbros B.V. has the right to bill the reasonable costs that are involved therein to Subscriber.
- 6.17. Nmbros B.V. will take appropriate technical and organisational security measures which, considering the state of the art and the costs involved correspond with the nature, as known, of the Personal Data and the order upon which the data are processed, for the protection of the Personal Data against loss or unlawful processing, as intended in article 32 GDPR.
- 6.18. Nmbros B.V. makes sure that during the term of the Agreement it demonstrably complies with internationally accepted framework(s) of standards, (assurance standards) and/or internationally accepted certification(s) that are relevant with respect to Nmbros and the services offered by Nmbros B.V. Upon request, Nmbros B.V. will share (free of charges) the order letter and/or the cover sheet of the certification statement ('assurance report') with Subscriber. Nmbros B.V. will upon request, under the necessary assurances and against a reasonable compensation, provide the full certification statement concerning ('assurance report') to Subscriber. Nmbros B.V. reserves itself the right at all times to replace the certification and/or assurance standard in use by a different, adequate and general certification and/or assurance standard, based on international standards.
- 6.19. A summary and descriptions of the current implemented technical and organisational measures can be obtained by Subscriber by requesting/obtaining the most recent and applicable 'assurance report' and/or available whitepapers (or similar source of information made available by Nmbros B.V.).

- 6.20. Subscriber has the right to carry out audits on the conditions as set in this article. If the Subscriber makes a request for the conducting of an audit in conformity with the conditions of this article, Nmbros B.V. will make available those locations for an audit where Personal Data are processed for Subscriber. Nmbros B.V. offers all assistance and information that Subscriber reasonably requires for the audit. Such an audit will be carried out by an independent third party, which party is selected by Subscriber, in consultation with Nmbros B.V. This party will be qualified at least as an independent auditor who is certified to control compliance with the Applicable Law. The auditor must be willing prior to the audit to sign a confidentiality statement concerning. The audit (also including the documentation and other data that the audit covers) and the results thereof will be treated with confidentiality by Subscriber and the external party. Subscriber will provide Nmbros B.V. as soon as possible with a complete and unaltered copy of the audit's findings in a form that is simply readable and durable for Nmbros B.V. to the extent the audit's results regard Nmbros B.V. (and its possible sub-processors). The audit and the results may only be rendered accessible to third parties with the prior permission of Nmbros B.V., which permission will not be denied on unreasonable grounds. The (internal and external) costs of the audit are borne by Subscriber, unless it is evinced by the audit that Nmbros B.V. falls materially short or has fallen short in complying with its obligations as stipulated in this article. Before the start of an audit, Parties will agree with each other what the scope, planning, and duration of the audit will be and also determine what the hourly rate of Nmbros B.V. and its Sub-processors will be for the assistance rendered. It is not permitted to Subscriber to request an audit on location if Nmbros B.V. can present a recent internal or external audit report that regards the same locations for which Subscriber requests an audit, unless Subscriber proves that such an intern or external audit report does not meet the requirements as set in the Applicable Law.
- 6.21. If a breach occurs with respect to Personal Data processed by Nmbros B.V. or by the Sub-processors deployed by it, Nmbros B.V. accordingly informs Subscriber without unreasonable delay, and in any event within 48 hours after becoming aware of it. Nmbros B.V. thereby provides Subscriber of all reasonably required information as established in the Applicable Law so as to enable Subscriber to report this timely, correctly, and completely to the competent oversight authorities (such as Autoriteit Persoonsgegevens) and the relevant Data Subjects. If after the report to Subscriber as intended in this article possible new, relevant developments occur, also including the measures that Nmbros B.V. (including its Sub-processor) takes to mitigate the consequences of the incident on its part and to prevent repetition, Nmbros B.V. accordingly informs Subscriber without delay.
- 6.22. Nmbros B.V. will where necessary assist Subscriber with the informing adequately of the oversight authorities and Data Subjects regarding the relevant Breaches in conformity with what is established concerning in the Applicable Law. Without prejudice to what is established in article 6.12, Parties will mutually observe strict secrecy with respect to any possible Breaches and Parties will only report Breaches to the competent oversight authorities and possible data subject(s) in accordance with what is established in the Applicable Law.
- 6.23. Subscriber hereby grants Nmbros B.V. permission, in a general sense, to make use in the context of the Agreement of the services of sub-processors as specified on the website of Nmbros B.V. <https://www.nmbros.com/security/subprocessors>, where Subscriber also has the option of registering for the receipt of notifications regarding a possible intended alteration or addition of a certain sub-processor.
- 6.24. Subscriber hereby grants Nmbros B.V. permission, in a general sense, to make use in the context of the Agreement of the services of sub-processors within the European Economic Area as well as of sub-processors in countries for which the European Commission has established that they offer an appropriate level of security. If Nmbros B.V. wants to make use of services of sub-processors established in a country that does not offer an appropriate level of security as referred to above, Nmbros B.V. must first receive prior written permission for this from Subscriber, which permission Subscriber will not deny on

unreasonable grounds. Subscriber will not deny its permission if Nmbros B.V. guarantees that for these data exchanges an appropriate level of security is still provided in a manner that is approved by CJEU.

- 6.25. Before replacing a sub-processor or deploying a new sub-processor, Nmbros B.V. will make sure that the summary on <https://www.nmbros.com/security/subprocessors> is updated. Subscriber takes care of the periodic consultation of <https://www.nmbros.com/security/subprocessors>. If Subscriber is unable on reasonable grounds to agree to the intended change or addition of a certain sub-processor, it is permitted to Subscriber to object, within 10 business days after the sending of the notification of the change by Nmbros B.V. to Subscriber. In case of objection, it is permitted to Nmbros B.V. to offer an alternative within a 4-week term to continue the relevant service. If Nmbros B.V. does not offer an alternative, it is permitted to Subscriber to cancel the Agreement, without Nmbros B.V. being obliged towards Subscriber to provide compensation of damages on account of the termination. Nmbros B.V. will impose the same obligations on the sub-processors deployed by it as those flowing for it from this article 6.

## **7. RESCISSION, CANCELLATION, AND MODIFICATION OF THE AGREEMENT**

- 7.1. The Subscription can be cancelled by Subscriber with due regard for a notice period of one (1) month against the end of each calendar month in the Nmbros environment of the Subscriber and by Nmbros B.V. with due regard for a notice period of two (2) months in writing against the end of a calendar year. Parties will never be obliged to provide compensation of damages on account of cancellation.
- 7.2. After the end or in case of the intermediate termination of the Agreement, Nmbros B.V. will transfer all Personal Data within Nmbros to Subscriber within a reasonable term and/or upon request of Subscriber destroy or remove all Personal Data and confirm in writing to Subscriber that all Personal Data within Nmbros have been destroyed or removed. If Nmbros B.V. is subject to the legal obligation to continue to process, it will grant the request of Subscriber to the extent such is permitted on grounds of the Applicable Law.
- 7.3. Each of the Parties can cancel the Subscription without default notice with immediate effect completely or in part if the counterparty is granted - whether or not provisionally - suspension of payments, if bankruptcy is filed for with respect to the other Party, if the enterprise of the other Party is definitively liquidated or terminated otherwise than for the purpose of reconstruction or merger of enterprises, or if the decisional power over the enterprise of Subscriber changes. On account of such termination, Nmbros B.V. is never obliged to refund any sums already received or to compensate damage. In case of the bankruptcy of Subscriber, the right of use of software, websites, and the likes provided to Subscriber lapses legally.
- 7.4. Subscriber has the right to change the subscription form as per the first day of a calendar month (upgrade or downgrade). As from the date of the change, Subscriber will owe the fee associated with the changed subscription form.

## **8. INTEGRATIONS/DATA EXCHANGES WITH THIRD PARTIES**

- 8.1. Subscriber can conclude an agreement with third parties in order to engage in integrations/data exchanges and/or to purchase services in addition to the provision of services delivered by Nmbros B.V.
- 8.2. Subscriber will enter into the agreements referred to in article 8.1 directly with the relevant third parties, to which Nmbros B.V. is not an involved party in any form. Third parties are not sub-processors of Nmbros B.V. and Nmbros B.V. is not liable in any form for the actions of these third parties.



- 8.3. If Subscriber chooses to (directly) connect/integrate his/her Nmbros environment with a third party, whether or not by making use of one or several APIs of Nmbros B.V., Subscriber hereby grants permission to Nmbros B.V. for the exchange of data between Nmbros B.V. and the relevant third party to the extent this is designated as necessary for their services by this third party. This is also intended to include the exchange of (personal) data and the storage of access or identification codes/tokens for the purpose of realising this data exchange/integration.
- 8.4. Subscriber is responsible for (having) set up and realising correctly integrations/data exchanges (including authorisations), whether or not while making use of one or several APIs of Nmbros B.V., between Nmbros and the third party/parties selected by Subscriber.
- 8.5. Nmbros B.V. is never responsible and/or liable for the (correct) functioning of software of Subscriber and/or third parties that communicate/exchange data via the APIs of Nmbros B.V.
- 8.6. If use is made by Subscriber of one or more APIs of Nmbros B.V. as provided by Nmbros B.V., whether or not via its website, then a non-transferable, non-exclusive, and non-sub-licensable right of use is granted to Subscriber for naught for the duration of the Subscription to use the API within the own organisation for internal purposes exclusively.
- 8.7. It is permitted to Nmbros B.V. at own discretion to apply a request restriction (“throttling”) at the moment that the API traffic that is generated by Subscriber burdens the system to such a degree that the performance for other subscribers/users deteriorates/is hindered as a result.
- 8.8. Nmbros B.V. reserves itself the right to bill additional charges to Subscriber and/or third parties for the use of the API by Subscriber and/or third parties.

## **9. USERS CONTACT/SERVICE OFFERS**

- 9.1. Nmbros B.V. has the right to communicate directly with End-users within Nmbros (i) to the extent this is necessary with an eye on the assurance of 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 offer associated additional services to Companies and/or End-users directly.

## **10. RETENTION OF TITLE AND RIGHTS, OWNERSHIP THROUGH SPECIFICATION, AND SUSPENSION**

- 10.1. Rights, also including rights of use, are granted in such case as may occur to Subscriber on the condition that the Subscriber has met all periodic payment obligations that flow from the Agreement.
- 10.2. Nmbros B.V. can keep the property rights, data, documents, software, data files, and results of the services of Nmbros B.V. received or generated in the context of the Subscription under its control, despite an existing obligation of release or transfer, until Subscriber has settled all amounts owed to Nmbros B.V.

## **11. INTELLECTUAL PROPERTY RIGHTS**

- 11.1. All rights of intellectual property to the SaaS service or other materials developed or provided to Subscriber on grounds of the agreement lie exclusively with Nmbros B.V., its licensors, or suppliers. Subscriber acquires the rights of use that are granted expressly by the present Terms and Conditions, the Agreement, and the law. A right of use falling to Subscriber is non-exclusive, non-transferable, non-pawnable, and non-sub-licensable.
- 11.2. Nmbros B.V. safeguards Subscriber against any claim by a third party that is based on the contention that the SaaS service or other materials developed by Nmbros B.V. violate a right of intellectual property of such



third party, on the condition that Subscriber forthwith informs Nmbros B.V. in writing regarding the existence and substance of the claim and leaves the handling of the case, also including the reaching of possible settlements, entirely to Nmbros B.V. To such effect, Subscriber will provide the necessary authorisations, information, and assistance to Nmbros B.V. to defend itself against such claims. This indemnification obligation lapses if the alleged violation is related (i) to materials provided by Subscriber for use, adaptation, processing, or maintenance to Nmbros B.V., or (ii) to changes that Subscriber has applied or has had applied without the written permission of Nmbros B.V. to the software or other materials. If it has been irrefutably established judicially that software or other materials developed by Nmbros B.V. itself violate any right of intellectual property belonging to a third party or if in the opinion of Nmbros B.V. there is a reasonable risk of such a violation occurring, Nmbros B.V. will, if possible, make sure that Subscriber will continue to be able to use the delivered matters, or functionally equivalent different software. Any other or farther-reaching indemnification obligation of Nmbros B.V. on account of a violation of a right of intellectual property of a third party is excluded.

## **12. (OTHER) RESPONSIBILITIES SUBSCRIBER**

- 12.1. In order to enable the proper implementation of the Subscription by Nmbros B.V., Subscriber will always render Nmbros B.V. all assistance that is required to enable the proper implementation of the Agreement by Nmbros, including the information regarding all facts and circumstances that may affect the provision of services and the availability thereof.
- 12.2. Subscriber is responsible and bears the risk for the selection, the (correct) use, the correct application and correct management, also including control of the settings, of Nmbros, websites, data files, and other products and materials and of the services to be provided by Nmbros B.V. within his organisation. Subscriber is responsible for the (control of the) correctness of the data that are processed with the aid of a service provided by Nmbros B.V. and the manner in which the results of the service are deployed. Subscriber is also responsible for the instruction to and the use by users, regardless of whether these users are in a hierarchical relationship with Subscriber.
- 12.3. Nmbros B.V. is not responsible for the proper functioning of the infrastructure (not being the Infrastructure of Nmbros B.V.) of Subscriber or that of third parties that is required to be able to use the Subscription. Nmbros B.V. is never liable for damage or costs on account of transmission errors, malfunctions, or non-availability of these facilities, unless Subscriber proves that these damages or costs are the result of the wilful intent or deliberate recklessness of the management of Nmbros B.V.
- 12.4. Subscriber must at all times use the most recent version of the standard user manual(s) associated with the established service(s) and as provided by Nmbros B.V. via its website, and to such effect to regularly control the website of Nmbros B.V. for new versions of said manual(s).
- 12.5. Subscriber will chart the risks for his organisation on the basis of the information provided by Nmbros B.V. regarding measures to prevent and mitigate the consequences of malfunctions and defects in the provision of services, the maiming or loss of data or other incidents, and if necessary will take additional measures. Nmbros B.V. declares to be willing upon request of Subscriber to render assistance within reason for further measures by Subscriber against such (financial) conditions as are to be set by Nmbros B.V. Nmbros B.V. is never responsible for the restoral of maimed or lost data.
- 12.6. Subscriber is responsible and liable vis-a-vis Nmbros B.V. for the possible use of the Subscription by Subscriber. Subscriber safeguards Nmbros B.V. against claims by third parties for the compensation of damages in this connection.

- 12.7. Always and in all cases, Subscriber will use the Subscription in a diligent manner and in accordance with the applicable legislation. Subscriber will observe at all times especially the intellectual property rights, and other rights of third parties, the privacy of third parties, not to distribute data in violation of the law, not to grant unauthorised access to systems, not to distribute any viruses or other damaging software, and to refrain from criminal actions and the violation of any other legal obligation.
- 12.8. In order to prevent possible liability towards third parties or to mitigate the consequences thereof, Nmbrs always has the right to take measures in the matter of an action or omission of or at the risk of Subscriber, without being obliged to provide compensation of damages to Subscriber as a result. Subscriber is obliged upon first written request of Nmbrs B.V. to immediately remove information (including uploaded pictures, logos, texts, etc.), failing which Nmbrs B.V. has the right at its option to either remove the information or to render access thereto impossible. Nmbrs B.V. furthermore has the right in case of the violation or imminent violation of the Agreement to deny Subscriber immediately and without prior announcement access to the systems of Nmbrs B.V. and/or to deny the use of a sub-domain name, e-mail address and/or system name and without being obliged to compensate damages to Subscriber for this. The preceding leaves expressly unaffected any possible other measures or the exercise of other rights by Nmbrs B.V. towards Subscriber. Nmbrs B.V. has the right in such case to cancel the Agreement with immediate effect without being obliged to provide compensation of damages towards Subscriber for this.
- 12.9. It cannot be demanded of Nmbrs B.V. to form an opinion of the legitimacy of claims by third parties or of the defence of Subscriber or to be involved in any manner in a dispute between a third party and Subscriber. Subscriber will have to deal with the relevant third party in such case and inform Nmbrs B.V. in writing, including substantiation with documentary evidence.

### **13. TERMS**

- 13.1. All terms indicated by Nmbrs B.V. were determined to the best of their knowledge on grounds of the information that was known at Nmbrs B.V. upon adoption of the Agreement and will be observed as much as possible.
- 13.2. To the extent delivery dates and/or terms are listed 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 even if Parties have expressly established a deadline in writing, Nmbrs B.V. only falls into default after having been declared in default by Customer in the appropriate manner, in detail and in writing, and Nmbrs B.V. after expiry of the reasonable term that is listed in that default notice, still does not properly comply.
- 13.3. Nmbrs B.V. is not bound by (delivery) terms that due to circumstances lying outside its power that have occurred after adoption of the Agreement can no longer be met. If the overrunning of any term is imminent, Nmbrs B.V. and Subscriber will enter into consultation as soon as possible.

### **14. IMPLEMENTATION PROVISION OF SERVICES GENERAL**

- 14.1. Nmbrs B.V. will exert itself to the best of its ability to carry out the provision of services with care, in such case as may occur in accordance with the arrangements and procedures established in writing with Subscriber. All services of Nmbrs B.V. are carried out on the basis of a best-effort undertaking.
- 14.2. Nmbrs B.V. does not guarantee that the service to be provided in the context of the Subscription will be free of errors and will function without interruptions. Nmbrs B.V. will exert itself to restore defects in the software within a reasonable term in conformity with what is established in these Terms and Conditions.

Nmbros B.V. does not guarantee that defects in software that was not developed by Nmbros B.V. itself will be resolved.

- 14.3. Nmbros B.V. only carries out the provision of services by order of Subscriber. If Nmbros B.V. conducts activities regarding data of Subscriber, his collaborators, or users, on grounds of a request or competently issued order of a government agency or in connection with a legal obligation, then all associated costs will be billed to Subscriber.
- 14.4. In connection with changes to relevant legislation and regulations, as well as with changes to other regulations issued by competent agencies, Nmbros B.V. can apply changes to the content or scope of the provision of services. If such changes entail a modification of the procedures that are effective at Subscriber, Nmbros B.V. will accordingly inform Subscriber as timely as possible and the costs of such modifications will be borne by Subscriber.
- 14.5. Nmbros B.V. can continue the implementation of the service by using a new or modified version of Nmbros, whereby the functionality will be equivalent or improved with respect to the established functionality. Nmbros B.V. is not obliged to maintain, modify, or add certain characteristics or functionalities of the service or Nmbros specifically for Subscriber. Nmbros B.V. has the right to ask an additional fee for new functionalities.
- 14.6. Nmbros B.V. can deactivate the service entirely or in part temporarily for preventive, corrective, or adaptive maintenance. Subscriber will grant all assistance requested by Nmbros B.V., also including the temporary ceasing of the use of the service by Subscriber if this is necessary in the opinion of Nmbros B.V. Nmbros B.V. will not let the decommissioning last for any longer than is necessary, if possible have it occur outside office hours, and, depending on the circumstances, will start following notification to Subscriber.
- 14.7. Subscriber guarantees that all materials, data, software, procedures, and instructions provided by him to Nmbros B.V. for the implementation of the provision of services are always correct and complete and that all data and information carriers provided to Nmbros B.V. meet the specifications and instructions of Nmbros B.V. set to such effect beforehand. Subscriber must have sufficient bandwidth at his disposal. It is thereby assumed that always at least the band width (both for downloading and uploading) is available as indicated on the website of Nmbros for the workstation from which Nmbros is used, as measured via an independent website such as [www.speedtest.nl](http://www.speedtest.nl). It is not necessary, however, for each workstation individually to have such band width available.
- 14.8. Nmbros B.V. is not obliged to carry out data conversion.
- 14.9. If and to the extent necessary or desirable, Nmbros B.V. will, if defects in the results of the provision of services (the processing of wage and personnel data) on grounds of the Subscription are a direct consequence of software, procedures, or actions for which Nmbros B.V. is expressly responsible on grounds of the Subscription, repeat the provision of services in order to restore these imperfections, on condition Subscriber communicates the imperfections as soon as possible, though no later than within one week after obtaining the results, in writing and in detail to Nmbros B.V. Only if defects in the provision of services are attributable to Nmbros B.V., the repetition is carried out for free; in all other cases, Nmbros B.V. will bill the costs of a possible repetition in accordance with its customary rates. If the restoral of defects attributable to Nmbros B.V. in the opinion of Nmbros B.V. is technically or reasonably not possible, Nmbros B.V. will credit the sums owed by Subscriber for the relevant provision of services, without being further or otherwise liable to the Subscriber. No other rights fall to Subscriber on account of defects in the provision of services than those described above.
- 14.10. Nmbros B.V. will exert itself to the best of its ability, but does not guarantee, that Nmbros will be timely adapted to changes to relevant legislation and regulations.
- 14.11. Nmbros B.V. does not guarantee that a sub-domain name and/or system name requested by Subscriber is granted to Subscriber.

14.12. Nmbros B.V. is not responsible for the content and composition of the sub-domain name and/or system name and the use that is made of the sub-domain name and/or system name. Subscriber guarantees vis-a-vis Nmbros B.V. that he has the right to use the sub-domain name and/or system name and that the use thereof is not unlawful towards one or more third parties. Subscriber safeguards Nmbros B.V. and indemnifies Nmbros B.V. against/for any claim by a third party that is related to the sub-domain name and/or system name.

## **15. LIMITATION LIABILITY NMBROS B.V.**

- 15.1. Total liability of Nmbros B.V. on account of an attributable shortcoming in complying with its obligations under the Agreement or on any other account, also including a warranty obligation and waiver, is limited to the compensation of a maximum of the amount equal to the total of the fees (exclusive of VAT) that was paid for the Subscription in the twelve (12) months preceding the fact that caused the damage. Under no circumstance will the total, cumulative liability of Nmbros B.V. exceed € 100,000 (one hundred thousand Euros). Nmbros B.V. can exclusively be obliged to compensate direct damage. By direct damage is exclusively intended: a) the costs that Subscriber has incurred for forcedly keeping operational its old system or systems and associated facilities for longer because Nmbros B.V. has not performed on a date that is 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 or mitigate damage, to the extent the Subscriber proves that these costs have led to the mitigation of direct damage in the sense of this article.
- 15.2. The liability of Nmbros B.V. for damage due to death, physical injury, or on account of the material damage of matters in total never exceeds € 1,250,000 (one million two hundred fifty thousand Euros).
- 15.3. The liability of Nmbros B.V. for indirect damage, consequential damage, lost profit, fines or retroactive tax bills, missed savings, reduced goodwill, damage due to operational stagnation, damage as a result of claims by purchasers of Subscribers, damage related to the use of materials or software of third parties prescribed by Subscriber to Nmbros B.V., and damage related to the deployment of suppliers prescribed by Subscriber to Nmbros B.V., is excluded. Nmbros B.V. cannot be held accountable in any manner for damage that flows from careless use of the service, such as the incorrect application of the division of functions, the incorrect management of passwords, or inappropriate use. Also excluded is the liability of Nmbros B.V. on account of the maiming, destruction, or loss of data or documents.
- 15.4. The exclusions and limitations of the liability of Nmbros B.V., as described in the previous sections of this article 15 leave entirely unaffected the other exclusions and limitations of liability of Nmbros B.V. on account of the Agreement.
- 15.5. The exclusions and limitations referred to in article 15.1 through 15.4 lapse if and to the extent the damage is the result of the wilful intent or deliberate recklessness of the management of Nmbros B.V.
- 15.6. The liability of Nmbros B.V. on account of attributable shortcomings in complying with an agreement only arises if Subscriber immediately declares the default of Nmbros B.V. in writing, whereby a reasonable term is set for the restoring of the shortcoming and Nmbros B.V. even after that term continues to fall short in complying with its obligations.
- 15.7. Each claim for the compensation of damages against Nmbros B.V. lapses through the simple expiry of twenty-four months after the claim arising.
- 15.8. Subscriber acknowledges that said limitations of liability are incorporated in the fee that the Subscriber owes for the Subscription and must therefore be considered reasonable.

## **16. FORCE MAJEURE**

- 16.1. In case of force majeure on the part 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 also intended a shortcoming of suppliers of Nmbros B.V. 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 having become effective.
- 16.2. 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 already been performed as a consequence of the Agreement will in such case be settled proportionally, without Parties owing each other anything otherwise.

## **17. MODIFICATION AND ADDITIONAL WORK**

- 17.1. Subscriber can request the reinstallation of a back-up, against payment of the rate applicable for this at Nmbros B.V. For this service, an arrangement must be made separately. Nmbros B.V. strives to realise his reinstallation within one business day, against the fee that applies at such time.
- 17.2. If Nmbros B.V. upon request or with the prior consent of Subscriber has conducted activities or other performances that fall outside the content or scope of the established activities and/or performances, these activities or performances will be compensated by Subscriber in accordance with the customary rates of Nmbros B.V. Nmbros B.V. is never obliged to grant such a request and may demand that a separate written agreement is concluded to such effect.

## **18. TRANSFER OF RIGHTS AND OBLIGATIONS**

- 18.1. Subscriber is not entitled to sell and/or transfer the rights and/or obligations from the Subscription to a third party.
- 18.2. Nmbros B.V. has the right to transfer its claims to the payment of fees to a third party.

## **19. APPLICABLE LAW AND DISPUTES**

- 19.1. The agreements between Nmbros B.V. and Subscriber are governed by Netherlands Law. The applicability of the Vienna Commercial Convention 1980 is excluded.
- 19.2. Disputes that may arise between Nmbros B.V. and Subscriber in connection with an agreement concluded between Nmbros B.V. and Subscriber 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 IT dispute settlement organisation 'Stichting Geschillenoplossing Automatisering', with legal seat in The Hague, all matters without prejudice to the right of each of the Parties to request 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)).
- 19.3. Before filing an arbitration procedure as referred to in article 19.2, the most interested Party will initiate an IT Mediation procedure in conformity with the IT Mediation Regulation of said 'Stichting Geschillenoplossing Automatisering' in The Hague. An IT Mediation procedure in accordance with this

regulation focuses on mediation by one or more mediators. The counterparty commits itself to participate actively in an IT Mediation that has been filed, which legally enforceable obligations include in any event the attendance of 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 at any time after a first joint meeting of mediators and Parties to terminate the IT Mediation procedure. What is established in this article section does not oppose a Party deeming such necessary requesting an injunction in a preliminary (arbitration) procedure or taking legal conservation measures (see [www.sgoa.eu](http://www.sgoa.eu)).

## **20. AVAILABILITY**

- 20.1. Nmbros B.V. exerts itself as well as it can to realise an availability of Nmbros during Service Hours of 99.6% on average per month. For the definition and calculation of availability as well as other SLA arrangements, reference is made to the Nmbros SLA.

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