

**PARTIES:**

(1) the private company with limited liability 'Timewax B.V.', established in The Netherlands in Amsterdam at Asterweg 17A1, hereinafter called **Timewax**,

and

(2) You, hereinafter called: **Client**,

Hereinafter jointly called 'Parties'

**STATE THE FOLLOWING:**

- a. Timewax is an organisation that performs Services for the benefit of conducting project administration operations and making the Functionality thereof as a SAAS Service available to organisations;
- b. The Client wishes to obtain Services from Timewax;
- c. Timewax will deliver these Services in accordance with the accompanying Service Level Agreement <https://www.timewax.com/sla/>
- d. These Services are subject to the accompanying Data Processing Addendum: <https://www.timewax.com/dpa/>
- e. For the performance of this agreement the parties agree to the following provisions.

**CHAPTER 1. GENERAL PROVISIONS**

Article 1. Definitions

In these general terms and conditions of delivery a number of definitions have been defined, which are referred to with a capital letter and which have the meanings specified here.

- 1.1 API: Application Programming Interface from Timewax that makes it possible for Client's systems to communicate directly with the Timewax platform.
- 1.2 API service: a URL of a server at Timewax for performing a Function or part of a Function.
- 1.3 API request: a request made by the Client to Timewax's API for the use of an API service.
- 1.4 Client: Timewax's contractual other party to an agreement.
- 1.5 Consultancy: Service consisting of various (general) consultancy operations.
- 1.6 Consumption: the extent to which the Client uses the platform, expressed in numbers of Consumption Units.
- 1.7 Consumption Units: the number of days on which an Employee or a company asset is scheduled in the Period, regardless of the number of hours per day and with the exception of Public holidays. If nothing is planned on a day, but actual spent time is registered, this day will also be taken into account.
- 1.8 Data Breach: the disclosure or unlawful processing of data.
- 1.9 Defect: an imperfection in the Functionality as a result of which it does not meet the specifications, or a disruption in the availability of the Functionality.
- 1.10 Documentation: the user manual(s) drawn up by Timewax in respect of the (functional) use of the SAAS Service provided.
- 1.11 Edition: a bundle of Functions purchased by the Client and specified on the Timewax website.
- 1.12 Employee: an internal or external staff member of the Client to whom Personal Data relates.
- 1.13 Function: the smallest unit of the Functionality in the form of a window within the Software that can be initiated and authorised separately.

- 1.14 **Functionality:** the user functions and possibilities of the Software subdivided in Functions.
- 1.15 **Guaranteed Availability:** the percentage of the time of the Service Window in which the Client can use the Functionality.
- 1.16 **Legacy Edition:** an Edition that is no longer offered by Timewax and is therefore no longer listed on the Timewax website for entering into new agreements.
- 1.17 **Maintenance Window:** the time period in which the SAAS Service does not need to be available and which is reserved for regular maintenance.
- 1.18 **Period:** the agreed period of one (1) month or twelve (12) months during which the SAAS Service is purchased.
- 1.19 **Personal Data:** any information relating to an identified or identifiable natural person (Data Subject) who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
- 1.20 **Public holiday:** New Year's Day, Easter Sunday, Easter Monday, Ascension Day, Whit Sunday, Whit Monday, Christmas Day and Boxing Day.
- 1.21 **SAAS Service:** Service consisting of the Functionality provided remotely by Timewax for the benefit of the Client, and also Support.
- 1.22 **Service Window:** the time period falling outside the Maintenance Window in which the SAAS Service must be available pursuant to an agreement.
- 1.23 **Services:** the work to be performed for the Client by Timewax on the basis of an agreement and the performances to be delivered in this framework.
- 1.24 **Set-up:** Service consisting of making ready for operation, setting up, adjusting and preparing the Functionality for the putting into use by the Client and familiarising the User(s) with it (not being training courses).
- 1.25 **SLA:** Service Level Agreement, being a document in connection with the agreed quality standards of the Service(s) to be performed, which forms an integral and inseparable part of an agreement.
- 1.26 **Software:** computer software with accompanying Documentation and materials.
- 1.27 **Support:** Service consisting of support and management activities of Timewax aimed at the support of Users and the maintenance of the Functionality.
- 1.28 **Total Availability:** the percentage of time both on Working Days and Non-Working Days in which the Client can use the Functionality both inside and outside the Working Hours of the Functionality.
- 1.29 **Training:** Service consisting of a form of transfer of know-how whose purpose is to inform the Users of the Functionality of the Software to be delivered by Timewax, and the training in its use, so that they will be able to work with it in an adequate manner from the time of availability of the Functionality as required for their specific activities.
- 1.30 **User:** a staff member of the Client for whom a user licence is purchased within an Edition, with which the staff member is entitled to use the SAAS Service, can log in and use the Functions in the Software.
- 1.31 **Working Days:** Monday through Friday, Public Holidays excepted.
- 1.32 **Working Hours:** hours on Working Days between 09:00 and 17:00 hours.

## Article 2. Agreement

- 2.1 These general conditions of delivery shall be applicable to all Timewax's agreements between Timewax and the Client. Applicability of general conditions of delivery and payment or other general or special conditions of the Client is explicitly excluded.

- 2.2 The agreement is realized by the Client in accepting a quote from Timewax with which the Client explicitly accepts the general conditions of delivery.
- 2.3 Timewax is entitled to unilaterally change these general conditions of delivery. In that case, Timewax will inform the Client of the changes in good time. There will be at least one (1) month between this notification and the entry into force of the amended terms and conditions.

**Article 3. Client's Obligations**

- 3.1 The Client undertakes in respect of Timewax to accept the Services to be performed as stipulated and specified in an agreement and to render the required cooperation.
- 3.2 The Client shall always inform Timewax correctly and fully regarding facts and circumstances related to the proper performance of an agreement.
- 3.3 If the Client fails to provide information that is necessary for the performance of an agreement, including any information of which the Client may presume that this is required for the performance, Timewax shall not be obliged to perform more than to the best of its ability for the duration of this default.
- 3.4 The Client shall not be allowed to resell Services and/or to relet and/or otherwise perform acts of disposition in relation to rights that he acquires by virtue of an agreement.
- 3.5 The Client shall not be allowed to use the Services in such a manner that damage can arise to Timewax, its organisation or the products to be used, or to a third party or as a result of which breakdowns in Timewax's Services could arise.
- 3.6 The Client shall not be allowed to use Timewax's Services for the possession and/or publication of information that infringes the rights of others, also including copyrights and other intellectual property rights in violation of the law, public order or public morality.
- 3.7 The Client shall indemnify Timewax against claims of third parties based on actions of the Client that are contrary to this article.
- 3.8 The additional costs and fees arising from any delay in the performance of an agreement on account of failure to make available the information, documents, facilities and/or personnel requested by Timewax in due time or properly shall be entirely for the account of the Client.

**Article 4. Periods, plan of action and delay**

- 4.1 All the dates, periods and the like indicated by Timewax to the best of its knowledge within the context of the performance of an agreement shall be approximate only. Timewax will try to comply with agreed dates, periods and the like as much as possible. Failure to meet a date, delivery and the like cannot lead to the occurrence of default or any liability on the part of Timewax.
- 4.2 Possible supply of Consultancy shall in principle be effected on the basis of a plan of action drawn up by Timewax. This plan of action shall entail at any rate a time schedule with a number of defined deadlines.
- 4.3 If there is a risk of delay in the performance of the work or delay has already arisen, Timewax shall notify this to the Client as soon as possible and indicate the cause of the delay and the consequences for the further performance of the Set-Up.
- 4.4 If a party identifies that the other party does not make sufficient efforts, it will inform the other party in writing after which they will enter into consultation.

**Article 5. Additional work**

- 5.1 If Timewax believes that additional work will be required it shall inform the Client in writing as soon as possible stating the supposed cause.
- 5.2 Additional work means additional adjustments desired and additional Functionality desired or additional services.
- 5.3 Before the additional work is started Timewax shall make an offer in writing in relation to the size of the additional work expected by Timewax and the accompanying costs. The Client shall decide as soon as possible about the proposed additional work. Timewax shall only proceed to perform the additional work after written instruction of the Client.

**Article 6. Fees and methods of settlement**

- 6.1 All prices and rates are exclusive of VAT and any other compulsory taxes, levies and/or surcharges imposed by the authorities.
- 6.2 A surcharge may be charged for hours worked outside working hours.
- 6.3 Travel and accommodation expenses shall be charged separately and are therefore not included in the prices and rates.
- 6.4 Depending on the Edition that the Client subscribes to, the fees for the SAAS Service are based on number of Users or based on Consumption.

**Article 7. Fees and orders based on Users**

- 7.1 The fee for the SAAS Service is based on the Edition, the Period, the number of Users for whom the Client wishes to purchase a user licence and the price per User per Edition per Period.
- 7.2 Ordering licenses in case of payment by bank transfer, is only possible for a Period of twelve (12) months and with a minimum purchase of fifty (50) user licenses.
- 7.3 The Client may at any time purchase additional user licences and upgrade to a higher Edition, with a higher Edition being defined as an Edition that contains the same Functions as the current Edition purchased by the Client and containing extra Functions in addition thereto.
- 7.4 The fee for additional user licences or an upgrade to a higher edition, will be charged proportionally based on the number of days between the day of ordering and the end date of the Period.
- 7.5 In case of payment by bank transfer, ordering additional user licenses can only be done in bundles of ten (10) user licenses, unless agreed otherwise.
- 7.6 In the interim increase of the number of user licenses where the total number of licenses are entitled to a volume discount, this volume discount will apply from the first new Period.
- 7.7 When the number of user licences are reduced or downgraded to a lower Edition, Timewax will charge the new fee with effect from the first new Period.
- 7.8 Timewax shall be entitled to adjust the agreed prices and rates annually, for the first time in the calendar year following the calendar year of the commencement date of the agreement. As far as the SAAS Service is concerned a rate adjustment shall be based on the development of the CBS (Statistics Netherlands) price index figure for union negotiated wages per hour including special remuneration for the Business Services industry on the most actual time basis with as basis 2010 is 100. Changes in prices and rates shall only be in effect as of the 1<sup>st</sup> of January and shall be notified by Timewax to the Client at the latest one (1) month prior to the commencement date.

**Article 8. Fees and orders based on Consumption**

- 8.1 The fee for the SAAS Service is based on the Edition, the Period, the expected Consumption that the Client wishes to purchase and the associated rates of the Consumption Units to be purchased per Period.
- 8.2 Consumption Units are purchased in bundles as stated on the Timewax website. A lower rate per additional bundle applies, with which a quantity discount is automatically provided to the Client.
- 8.3 If the Client consumes a quantity of Consumption Units during the Period that corresponds to a higher bundle than the purchased bundle of Consumption Units, Timewax will immediately upgrade the Client to a higher bundle and possibly a higher Edition if the maximum number of Consumption Units of the current Edition is exceeded.
- 8.4 Unused Consumption Units will expire at the end of the Period and will not be carried over as a credit to the next Period.
- 8.5 At the end of the Period, Timewax will determine whether the actual Consumption in the Period exceeds the total number of ordered Consumption Units. In the event of an overrun, Timewax will charge an overage fee for the number of exceeded Consumption Units. The fee is based on the applicable rates for overages as stated on the Timewax website.
- 8.6 When upgrading to a higher Edition or a higher bundle of Consumption Units within the current Edition, the additional fee will be charged pro rata based on the number of days between the date of the upgrade and the end date of the Period.
- 8.7 When reducing the number of Consumption Units or downgrading to a lower Edition, Timewax will charge the new fee with effect from the first new Period.
- 8.8 If the Client exceeds the number of monthly API requests included in the Edition, Timewax will charge a fee afterwards. The fee is based on the applicable rates for API requests as stated on the Timewax website.
- 8.9 Payment by bank transfer is only possible per Period of twelve (12) months and with an expected Consumption of at least ten thousand (10,000) euros.
- 8.10 Timewax shall be entitled to adjust the agreed prices and rates annually with five (5) percent, for the first time in the calendar year following the calendar year of the commencement date of the agreement. If the CBS index is higher than five (5) percent, this percentage will be applied. As far as the SAAS Service is concerned a rate adjustment shall be based on the development of the CBS (Statistics Netherlands) price index figure for union negotiated wages per hour including special remuneration for the Business Services industry on the most actual time basis with as basis 2010 is 100. Changes in prices and rates shall only be in effect as of the 1<sup>st</sup> of January and shall be notified by Timewax to the Client at the latest one (1) month prior to the commencement date.

**Article 9. Invoicing and payment**

- 9.1 Timewax will send electronic invoices to the Client. On all the invoices Timewax will mention the date, the period in which the Service(s) has/have been or is/are being performed, the amount due in Euros and the VAT due and/or other compulsory levies imposed by the authorities.
- 9.2 On commencement of the SAAS Service Timewax will charge a fee in advance as provided in Article 7.1 and Article 8.1.
- 9.3 The fee for Training shall be fully due in advance.
- 9.4 Other Services than mentioned in article 7.2 and 7.6 will be calculated afterwards on the basis of subsequent calculation, unless otherwise agreed.
- 9.5 Each payment by the Client shall be effected without entitlement to deduction, discount or settlement.

- 9.6 Complaints in connection with the incorrectness of the invoice(s) or the quality of the Services provided must have been notified to Timewax in writing within fourteen (14) days after the invoice date or discovery of the faulty quality - but at the latest thirty days (30) after completion of the work.
- 9.7 The submission of a complaint shall not release the Client from his payment obligations. Timewax will immediately investigate the complaint after receipt. In the event of a justified objection the Client shall be entitled to repayment, or the correction of the rejected Service free of charge.
- 9.8 If the Client has not paid the invoices within the period agreed, statutory interest on the outstanding amount shall be due from the due date without any notice of default being required. If after the notice of default, the Client also fails to pay the claim within the reasonable period set by Timewax, Timewax shall be entitled to claim full compensation of judicial and extrajudicial costs whose amount is determined to at least fifteen per cent (15%) of the total invoice amount.
- 9.9 In the event of late payment of an invoice by the Client, Timewax shall be entitled to suspend its Services unless the Client has contested the correctness of the invoice as regards content or the quality of the work performed in the manner as provided in article 7.9. in good time.

**Article 10. Intellectual property**

- 10.1 All the intellectual property rights related to the results realized by Timewax in the performance of an agreement, such as reports, advice, documentation, functional and system designs, working methods, software, data, data files and/or other information, everything in the widest sense of the word, (remain) vested in Timewax. Timewax shall be at liberty to use these products or results and acquired know-how elsewhere.
- 10.2 The Client obtains a user right on the results realized by Timewax in the performance of an agreement, including the right to multiply and use the products delivered or results realized for his own use within the own organisation. Unless otherwise agreed in writing the Client shall not be allowed to show these results to third parties, to give insight into them or to make them known otherwise.

**Article 11. Duration, termination and renewal**

- 11.1 An agreement shall take effect at the time that the Client has completed the order and payment of an Edition on Timewax's website. An agreement is entered into for the duration of the Period belonging to the Edition that the Client has ordered.
- 11.2 If the Client has a Legacy Edition, Timewax has the right to convert this Legacy Edition as of the end date of the current Period of the agreement into an Edition currently offered on the basis of equivalent Functionality and against the currently applicable fees.
- 11.3 The Parties may terminate an agreement with effect of the end date of the present Period.
- 11.4 If an agreement is not terminated, the agreement shall be renewed after the end of the (initial) duration for the same Period by operation of law, everything subject to the same terms and conditions, but in accordance with the provisions in article 6.5.
- 11.5 Outside the provisions agreed elsewhere in an agreement either party shall be entitled to dissolve an agreement extrajudicially and with immediate effect by means of a registered letter with recorded delivery if:
- a. the other party fails to meet his/its obligations following from the relevant agreement and also persists in it after notice of default, whereby the defaulting party is given a reasonable period to fulfil his/its obligations as yet.
  - b. the other party applies for suspension of payments or suspension of payment has been granted to him/it; the bankruptcy of the other party is applied for or in the event he/it is declared bankrupt; the enterprise of the other party is liquidated or terminated otherwise than for the benefit of the merger of enterprises; a substantial part of the assets of the other party or the assets involved in

- the performance of an agreement has been attached, or if the other party must be considered no longer capable to perform the obligations from an agreement.
- 11.6 If an agreement related to the SAAS Service is dissolved by the Client pursuant to the provisions in article 9.4, the Client shall, on first request, remain entitled to continue to use the Functionality for a period of two (2) consecutive months, everything against a reasonable fee yet to be determined and to be paid in advance. Every other manner of termination of an agreement shall immediately result in the termination of the use and withholding of access to the Functionality.
  - 11.7 Timewax shall be entitled to terminate an agreement in writing with immediate effect if at least four (4) months have passed in which the Client has not used the SAAS Service. The provisions in article 28.4 shall be applicable.
  - 11.8 Obligations that from their nature are intended to continue after the termination of that agreement shall continue to exist after termination of the agreement. The termination of the agreement shall explicitly not release the parties from the provisions in connection with secrecy, liability, intellectual property, applicable law and choice of forum.

**Article 12. Secrecy; security; publicity**

- 12.1 Both parties shall observe strict secrecy concerning the information of each other's organisation, the operation of the Software, Functionality, data, particulars and all other information that, both beforehand and in the realisation of its performance, have been communicated to each other within the framework of the agreement. Subject to prior permission of the other party in writing either party shall not make available information and/or data carriers made available to him/it to third parties and only inform his/its personnel to the extent necessary for the performance of the agreed services. Either party shall ensure that the employees and third parties involved with the work are contractually bound to secrecy.
- 12.2 Concerning all the information mentioned in article 10.1, originating from the other party, which is vested in a party in whatever form or on whatever information carrier or provided to him/it either party undertakes:
  - a. to observe all reasonable measures for secure saving or storage;
  - b. not to use the data for any other purpose than agreed;
  - c. not to hold the data any longer than reasonably required for the performance of the agreed obligations and to make these data, including any copies made, immediately available again to the other party after full fulfilment of said obligations, or to destroy them after permission obtained from the other party;
  - d. to have the agreed obligations only performed by persons of whom the party with whom the obligations rests, reasonably believes that they are reliable;
  - e. to cooperate in the supervision of the storage and use of data by or on behalf of the other party.
- 12.3 Timewax will immediately inform the Client of any request for cognizance, provision or other form of retrieval and communication of the data of the Client in breach of the confidentiality obligation contained in this article.
- 12.4 Either party shall use his/its best efforts to ensure that his/its staff members and/or third parties working for him/it are informed of the obligations mentioned in article 12.2 and will comply with them punctually.
- 12.5 Timewax ensures that all Timewax employees and working third parties, which are involved in processing the data of the Client, declare to fulfil all the obligations around confidentiality by signing a confidentiality agreement.
- 12.6 If Timewax detects unlawful processing or breaches of security, Timewax will inform the Client and take all reasonable measures necessary to end, prevent or mitigate these and further unlawful processing or infringements.



- 12.7 Timewax will inform Client adequately and as soon as possible in case of a Data Breach. After a breach, Timewax will inform Client of new developments related to the Data Breach and the measures taken by Timewax to limit the impact of the Data Breach and to prevent repetition.
- 12.8 Timewax shall be entitled to mention the Client as reference with (prospective) customers and/or its website to give an impression of the experience and capacities of Timewax, everything in accordance with the provisions in this article.

**Article 13. Liability**

- 13.1 The party who fails imputably in the performance of his/its obligations(s) shall be liable in respect of the other party for compensation of the damage or loss suffered or to be suffered by the party.
- 13.2 The liability of both parties for attributable failure to perform an obligation on the basis of an agreement shall be limited to direct damage and per event or series of related events to the value of the periods which were sent and paid by the Client to Timewax in the three (3) months prior to the occurrence of the damage. Direct damage shall only mean:
- a. reasonable costs that the Client would have to incur to have Timewax's performance comply with the agreement. This substitute damage shall however not be compensated if the agreement is or has been dissolved by the Client;
  - b. reasonable costs incurred for the determination of the cause and the extent of the damage, in so far as the determination relates to direct damage within the meaning of this article;
  - c. reasonable costs incurred for the prevention of restriction of damage, in so far as the Client demonstrates that these costs have resulted in restriction of direct damage within the meaning of the present general terms of delivery.
  - d. reasonable costs involved with loss of data files.
- 13.3 Liability for other forms of damage than mentioned in article 11.2 shall be excluded.
- 13.4 The restrictions of liability contained in article 13.2 and Article 13.3 shall lapse:
- a. in the event of claims for compensation of third parties as a result of death or injury;
  - b. in the event of wilful misconduct or gross negligence on the part of either party, including his/its employees or engaged third parties;
  - c. in the event of violation of any statutory regulation.
- 13.5 In the events mentioned in article 13.4 the maximum liability of both parties shall be restricted to at most the value of the fee paid in connection with the nine (9) months prior to the occurrence of the damage.
- 13.6 The liability of a party on account of failure to perform an agreement only arises after the defaulting party has been given notice of default by the other party, unless the fulfilment of the relevant obligations is already permanently impossible, in which event the defaulting party shall be immediately in default. The notice of default shall be effected in writing, while the defaulting party shall be granted a reasonable period to fulfil his/its obligations as yet.

**Article 14. Force Majeure**

- 14.1 In the event of force majeure, the fulfilment of the relevant and corresponding obligation(s) shall be suspended in whole or in part for the duration of the force majeure, without the parties being obliged to pay any compensation to each other. The parties can only rely on force majeure in respect of one another if the party relying on the force majeure informs the other party in writing as soon as possible with submission of the necessary documentary evidence.



- 14.2 If a party fails to fulfil an obligation following from the agreement due to force majeure, the other party, if it is an established fact that fulfilment has become permanently impossible, or if a period of more than forty (40) Working days has elapsed, may dissolve the agreement extrajudicially in whole or in part by means of a registered letter with immediate effect, without the parties being obliged to pay one another any compensation.
- 14.3 Force majeure shall at any rate not mean failure of a third party to comply with obligations or failure to comply with them in due time that the third party has undertaken in respect of either party, unless the relevant party demonstrates that the non-fulfilment or late fulfilment by that third party is due to force majeure of that third party and the relevant party cannot reasonably be required to purchase his products or services in that case from another than that third party.
- 14.4 Furthermore force majeure shall not mean: sickness of or lack of personnel, strikes, serious traffic jams, breakdown of electricity, unsuitability of equipment (in so far as it does not meet the requirements set by Timewax) or Software, and/or liquidity or solvency problems on the part of the Client. Power failures and/or breakdown of network connections on the part of Timewax shall not constitute force majeure either.

**Article 15. Guarantee**

- 15.1 As far as Services are concerned Timewax guarantees:
- a. that they will be performed in an expert manner, to the best of its ability and understanding and in accordance with all reasonable care;
  - b. that their results will meet the agreed qualifications;
  - c. that its personnel are and will remain sufficiently qualified for the duration of the agreement;
  - d. an agreed service level in so far as laid down in an SLA.
- 15.2 Timewax guarantees the access to the Software up to and including its infrastructure. Timewax is not responsible for the telecommunication connections from its infrastructure to the Client, also including the telecommunication connections of the Client.
- 15.3 In connection with the Training Timewax guarantees that the trainers and/or teachers engaged are professional and possess sufficient didactic skills.
- 15.4 Timewax offers no guarantee whatsoever that the SAAS Service will be suitable for a specific purpose or that it will correspond to the needs of the Client.
- 15.5 Client is not entitled to compensation if the desired result with the SAAS Service is not achieved.
- 15.6 The Client may claim guarantee if Timewax has been immediately informed in writing after discovery of a Defect about the nature of the Defect.

**Article 16. Audits**

- 16.1 The Client shall be entitled to have an independent accountant perform an audit at Timewax to verify the correctness as far as the content of sent invoices is concerned.
- 16.2 In connection with the SAAS Service the Client shall be entitled to have the quality thereof and also the realised level of security of Personal Data examined by an auditor.
- 16.3 For the performance of every audit the Client shall engage an independent expert, who will perform the investigation with the required cooperation of Timewax as soon as possible. Timewax may refuse an auditor if it has a reasonable ground to do so. In that case the Client will appoint another auditor.
- 16.4 The Client shall always communicate an audit to Timewax in a timely manner.
- 16.5 An audit should not unnecessarily disrupt the Timewax business activities.

- 16.6 Every audit as referred to in this article is of a confidential nature and does not extend any further than required for the verification.
- 16.7 The Client shall use his audit right with restraint and only exercise it if he has reasonable ground to doubt the correctness of the invoices, the quality of the SAAS Service or security level for personal details.
- 16.8 The costs of an audit shall be for account of the Client, unless the result of the investigation demonstrates unmistakably that Timewax has been structurally or seriously in default, in which case Timewax shall bear the reasonable investigation costs.
- 16.9 Timewax shall be entitled to charge the costs, which have been reasonably incurred by it for the cooperation to be provided to an audit, to the Client.

**Article 17. Transfer of rights and obligations; subcontracting**

- 17.1 The Client may not transfer any right or obligation from an agreement to a third party without Timewax's prior written permission.
- 17.2 Timewax shall be authorised to transfer rights and obligations following from an agreement to enterprises associated with Timewax.
- 17.3 Timewax shall be entitled to use the services of third parties in the performance of an agreement(s), either by subcontracting or by the temporary hiring of personnel. This power of Timewax is without prejudice to Timewax's responsibility and liability for the fulfilment of the obligations resting on it in by virtue of the agreement and the obligations resting on it pursuant to tax and social insurance legislation as an employer and main contractor.

**Article 18. Applicable law; disputes**

- 18.1 All agreements between Timewax and the Client shall be governed by Dutch law.
- 18.2 In the event of a dispute either party shall inform the other party in writing that there is a dispute, and also make a brief statement of the matter that is the subject of the dispute in the opinion of that party.
- 18.3 Any disputes that should arise in connection with or as a result of the agreement or additional agreements for the performance of the agreement between the parties and their legal successors shall be submitted to an arbitration panel of Stichting Geschillenoplossing Automatisering (SGOA) [Foundation for the Settlement of Automation Disputes] at Rijswijk.
- 18.4 Before submitting the dispute to the arbitration panel, the parties shall try to solve the dispute by means of other forms of alternative settlement of disputes, such as binding advice, ICT mediation.
- 18.5 The above shall not affect the power of the parties in urgent cases to apply for a provisional measure from the Provisional Measures Judge of the District Court of Amsterdam, or to take protective measures.
- 18.6 The provisions in the articles 18.3 through 18.5 shall not affect the obligation of the parties to make a maximum effort to solve disputes relating to the performance of the agreement as much as possible in consultation.

**Article 19. General provisions**

- 19.1 The Client's general conditions of purchase and payment or other general or special conditions shall explicitly not apply to an agreement, with the exception of, and if applicable, the licensing conditions of third-party suppliers of Timewax.

- 19.2 Oral statements, promises or arrangements relating to (the performance of) an agreement shall have no legal force unless the relevant party has confirmed them in writing.
- 19.3 Notifications that the parties will give to each other in writing by virtue of the agreement or the present general conditions of delivery may also be given digitally, that is to say by fax or by email, unless it is evident from the context that actual writing is intended.
- 19.4 In the cases not provided for by an agreement or if amendment of an agreement is necessary, the parties shall consult on the subject. Amendments of the agreement and/or additions thereto shall only be valid in so far as they have been agreed in writing.
- 19.5 Failure by one of the parties to desire fulfilment of any provision within a period mentioned in an agreement shall not affect the right to claim fulfilment as yet, unless the relevant party agreed to the non-fulfilment explicitly and in writing.
- 19.6 If one of the provisions of an agreement is void or is voided, the other provisions of that agreement shall remain in force and the parties shall consult to agree on a substitute provision which comes as close as possible to the voided provision.
- 19.7 If and in so far as there are discrepancies between the offer and these general conditions the matters stated in the offer shall apply.

## **CHAPTER 2. SERVICES**

### Article 20. Services

- 20.1 Services, other than the SAAS Service or Training, which are agreed separately, may relate to:
  - a. Consultancy;
  - b. additional work, to be specified in more detail in the agreement.
- 20.2 Timewax's offer shall state which Services the Client will take, and also the work to be done, the period in which this will be done, which employees will be engaged and the applicable rates for these Services. Timewax shall start the Services as soon as the confirmation of the order signed by the Client has been received or on the date included in the confirmation of the order.

### Article 21. Consultancy

- 21.1 By virtue of an agreement Timewax may perform Consultancy for the Client.
- 21.2 Consultancy may consist of:
  - a. business consultancy, being advice on the operational management on the part of the Client;
  - b. application consultancy, consisting of advice on and realization of the arrangement of the Software;
  - c. technical consultancy, being the performance of conversion and programming work;
  - d. other consultancy work.
- 21.3 At Timewax's choice the performance of the work referred to in this article may be done at its own location or at the Client's location.
- 21.4 Performance of an agreement as referred to in this article shall be done by virtue of the insight and under the responsibility of Timewax.
- 21.5 Timewax shall determine which employee will be used for the performance of the agreement. If the Client makes a request for the deployment of a specific consultant, Timewax may comply with that but this shall be at the discretion of Timewax.

- 21.6 Timewax shall be entitled to replace an employee deployed for the benefit of the Client. If replacement is effected on the basis of a choice of Timewax, the induction costs of the new employee to be deployed shall be at Timewax's own expense and risk.
- 21.7 The Client shall be entitled to request replacement of an employee on reasonable grounds. If the cause for this request lies with Timewax, the relevant induction costs of the new employee to be deployed shall be at Timewax's own expense and risk; otherwise at the Client's expense.

### **CHAPTER 3. SAAS SERVICE**

#### **Article 22. Start of SAAS Service**

- 22.1 The SAAS Service shall be supplied in accordance with SLA, in which at least the agreed service level will have been laid down.
- 22.2 To initiate the SAAS Service Timewax shall provide the Client with log-in data, passwords, and also other relevant information or data. The time at which the SAAS Service starts in that case shall be when Timewax has sent the information or data referred to in this article. On this subject Timewax's administration shall be decisive.

#### **Article 23. General**

- 23.1 Timewax offers the SAAS Service on the basis of a fair-use principle, which entails within this framework that in principle it imposes no restrictions on the system and network load to be allocated to the Client. This on the understanding that it reserves the right to take measures in the event of excessive use, being use that is significantly higher than that of the average user.
- 23.2 Immediately after Timewax's first notification of an excessive system and/or network load, the Client must take measures to end it. Timewax shall be entitled to suspend the SAAS Service in the event of a continuous excessive system and/or network load.
- 23.3 The Client shall ensure that Users make careful use of log-in data, as they have been supplied by Timewax at the time of the start of the SAAS Service or afterwards, and also ensure that Users make careful use of log-in data as they have been generated by the Client.
- 23.4 When using the Functionality, the Client shall use supported browser software advised by Timewax.

#### **Article 24. Indemnity, escrow**

- 24.1 Timewax guarantees the Client that it has all the rights for the use of the Software whose Functionality is made available. Timewax shall indemnify the Client against all claims in connection with the intellectual property rights to the Software that realizes the Functionality.
- 24.2 Timewax shall indemnify the Client against claims of third parties with regard to the Functionality or the Software. Provided that the Client has informed it of such a claim immediately and completely, Timewax shall undertake, at its own expense, the defence and possible litigation. The Client undertakes, if necessary, to render all assistance in refuting such a claim.
- 24.3 The Client shall ensure that it has sufficient licences in connection with the Software that assists the use of the Functionality. Timewax shall indicate in good time what Software is necessary for the use of the Functionality.
- 24.4 Timewax shall be prepared on the Client's first request to cooperate in an escrow arrangement, provided that all costs involved in this are for account of the Client.

**Article 25. Version policy; updates**

- 25.1 The Client shall follow the version policy in connection with the Software, as determined by Timewax.
- 25.2 Timewax shall not be obliged to inform the Client of modifications in the Functionality, provided that these modifications do not entail any loss of Functionality, which shall be for Timewax to determine.
- 25.3 Prior to applying updates or other alterations that are expected to entail a reduction or drastic change of Functionality Timewax shall enter into consultation with the Client before implementing the updates.
- 25.4 The provisions in this article shall not apply in the event that the relevant updates must be used for security reasons.

**Article 26. Support**

- 26.1 Within the framework of the long-term use of the Functionality within the framework of rendering the SAAS Service Timewax shall set up a support desk and make and keep it available for Support, in particular for users' questions for which no solution can be found in the Documentation. Furthermore, the support desk shall be the central contact of the Client with Timewax in connection with the SAAS Service and possible corresponding services.
- 26.2 The Client shall make use of Support by Timewax in the manner as described and in accordance with the procedures as included in the SLA.
- 26.3 In the event that Users do not have adequate knowledge of the Functionality, Timewax may require of the Client that it obtains Training from Timewax in order to bring the knowledge of the Users at such a level that they no longer rely disproportionately on the support desk of Timewax. Timewax shall base such a demand on the Client in connection with a supposed lack of knowledge of Users on the history at the support desk.

**Article 27. Repair of Defects**

- 27.1 Timewax shall remedy Defects in the Functionality that could not have been discovered in reason, free of charge, if possible, via a workaround.
- 27.2 If the Client relies on a Defect in the delivery of the SAAS Service, he shall be obliged to cooperate with Timewax in finding and repairing a Defect.
- 27.3 The report of a Defect shall be made to the support desk, which shall take up and handle this report in accordance with the procedures as included in the SLA.
- 27.4 Timewax shall nevertheless be entitled to charge the Client for the cost of repair of Defects as referred to in article 27.1, if after solution of the Defect Timewax proves that the cause of the Defect can be attributed to the Client because:
  - a. a Defect has been caused by incompetent use by the Client or owing to changes in the Functionality made by the Client without Timewax's permission;
  - b. a Defect may be traced to Software or equipment not supplied or recommended by Timewax.

**Article 28. Exit service**

- 28.1 If the agreement is terminated in connection with the SAAS Service, Timewax shall return, on the Client's request, all data that are stored on its servers and subsequently delete all data within 30 days. Returning shall be done by means of a physical data carrier or otherwise and in a common format, this with a view to the continuity of the Client's information supply.

- 28.2 A request as referred to in the preceding paragraph may be made by the Client until two (2) months after termination of the agreement, provided that the agreement is not terminated in connection with a cause that lies with the Client.
- 28.3 The returning of data as referred to in this article shall be done free of charge if this is done in the manner as provided in 28.2. If the Client desires a different way of returning of data, Timewax shall comply with such a request, if reasonable. In that case, and also if a returning request has been received later than two (2) months after termination of the agreement, Timewax shall be entitled to charge reasonable costs for its work.
- 28.4 In the situation as referred to in article 11.7 the returning of data shall be done simultaneously with the notice of termination. The costs for returning shall be charged to the Client.
- 28.5 At the latest six (6) months after termination of the agreement, all data, if and in so far as still present, shall be removed by Timewax from its servers.

#### **CHAPTER 4. TRAINING**

##### Article 29. General

- 29.1 During the term of the agreement for rendering the SAAS Service Timewax shall be prepared and able to give adequate Training to personnel of the Client for the use of the Functionality made available by means of the SAAS Service.
- 29.2 Timewax guarantees that the teachers/trainers that are engaged for providing the Training have sufficient knowledge of the subject and have sufficient didactic skills to give the Training properly.
- 29.3 Timewax shall supply, if available for the relevant Training, to every student adequate course material for the student's own use. The copyright to the course material rests with Timewax. The Client shall not be permitted to multiply and/or make public the course material, unless for his own use inside the own organization.