

GENERAL TERMS AND CONDITIONS

ZEN SOFTWARE

dated December 2018

1. Definitions

- 1.1. **Supplier:**
ZEN SOFTWARE B.V. or any of its affiliates, to the extent that it declares these General Terms and Conditions applicable to an offer and/or Agreement.
- 1.2. **Client:**
any Party who, by signing a document or otherwise, accepts the applicability of these General Terms and Conditions.
- 1.3. **Party:**
the Supplier or the Client.
- 1.4. **Parties:**
the Supplier and Client.
- 1.5. **General Terms and Conditions:**
these terms and conditions.
- 1.6. **Agreement:**
any Agreement whereby the Supplier provides the Client with any goods and/or services whatsoever and however described.
- 1.7. **ZEN Team Delivery Services:**
the service whereby Supplier provides the Client the possibility to access multiple Tools through the Single Sign On environment (SSO) and pay for the use of all Tools with one monthly invoice, as further described in the Agreement.
- 1.8. **Single Sign On environment (SSO):**
the secured portal that provides access to the Tools as described in the Agreement.
- 1.9. **The Tools:**
the business solution tools specified in the Agreement under ZEN Team Delivery Services.
- 1.10. **Right holders:**
the right holders to the respective Tools.

- 1.11. **ZEN Agile Team Health:**
Software developed by Supplier that provides the Client the possibility to make performance data available to the customizable analytics offered through Google's Data Studio and/or other software as described in the Agreement.
- 1.12. **End User License Agreement (EULA):**
the license establishing the end user's right to use the Tools or any other software used by or made available to the Client under the Agreement.
- 1.13. **ZEN Consultancy Services:**
onsite and/or offsite consultancy services provided to Client by one of more Consultants.
- 1.14. **Consultant:**
a professional who provides expert advice in a particular area, who may or may not be an employee of the Supplier.

2. Applicability of the ZEN SOFTWARE Terms and Conditions

- 2.1. This General Terms and Conditions shall apply to all offers and Agreements whereby the Supplier provides the Client with any goods and/or services whatsoever and however described. If any part of the General Terms and Conditions conflicts or is incompatible with any of the provisions of the Agreement agreed between the Supplier and the Client, the provisions of the Agreement in question shall prevail.
- 2.2. Additions to or deviations from the General Terms and Conditions shall only apply where agreed in writing between the Parties.
- 2.3. The applicability of any of the Client's purchasing or other conditions is expressly rejected.
- 2.4. If any provision of the General Terms and Conditions is null and void or is

voided, the other provisions of the General Terms and Conditions will remain fully in effect. In this case, the Supplier and the Client will consult with one another to agree new provisions to replace the void or voided ones. In doing so, the purpose and meaning of the void or voided provision will be taken into account as far as possible.

3. Offers

- 3.1. All offers and other statements issued by the Supplier shall be subjected to contract, except where specified otherwise in writing by the Supplier.
- 3.2. The Client shall guarantee the accuracy and completeness of the information that it submits to the Supplier and on which the Supplier bases its offer. The Client shall at all-time exercise the greatest possible care to ensure that the requirements that the Supplier's services must meet are accurate and comprehensive. Information stated in drawings, pictures, catalogues, (functional) designs, websites, quotations, advertising material, standard sheets etc. shall not have a binding effect on the Supplier, except where explicitly specified otherwise by the Supplier.

4. Price and payment

- 4.1. All prices are exclusive of turnover tax (VAT) and other government levies that have been or are later imposed. Except where agreed otherwise, all prices are in euros in all cases and the Client must effect all payments in euros.
- 4.2. All cost estimates and budgets issued by the Supplier shall be merely indicative, except where specified otherwise in writing by the Supplier. The Client may under no

circumstances derive any rights or expectations from any cost estimates or budgets issued by the Supplier. An available budget made known by the Client to the Supplier shall under no circumstances apply as a fixed price agreed between the Parties for the service to be provided by the Supplier. The Supplier shall only be obliged to notify the Client that there is a risk that a cost estimate or budget issued by the Supplier will be exceeded if this has been agreed between the Parties in writing.

- 4.3. If the Client consists of more than one natural and/or legal persons, each of these persons shall be joint and severally liable in respect of payment of the amounts due on the basis of the Agreement.
- 4.4. The relevant documents and information from the Supplier's administration or systems shall be conclusive evidence of the service provided by the Supplier and the amounts payable by the Client in return for this service, without prejudice to the Client's right to submit evidence to the contrary.
- 4.5. If the Client is subject to a periodic payment obligation, the Supplier shall be entitled to adjust the applicable prices and rates in writing subject to advance notice of at least one month. If the Client does not wish to agree to this change, the Client shall be entitled to terminate the Agreement in writing with effect from the date on which the change is due to enter into force within fourteen days following the date of notification. The Client shall not enjoy this right of termination, however, if the Parties have agreed that the applicable prices and rates shall be adjusted subject to due observance of an index or other standard agreed between the Parties.

- 4.6. The Parties shall set out the date or dates on which the Supplier shall invoice the fee for the agreed services to the Client in the Agreement. Amounts due shall be paid by the Client in accordance with the payment terms that have been agreed or that are stated on the invoice. If no specific arrangements have been made, the Client shall effect payment within a period after the date of invoice to be determined by the Supplier. The Client shall not be entitled to suspend any payments or to offset any amounts due.
- 4.7. If the Client fails to pay the amounts due or to pay the amounts due in a timely manner, statutory commercial interest shall be payable by the Client on the outstanding amount without a demand or notice of default being required. If the Client still fails to pay the amount owed after receiving a demand or notice of default, the Supplier may refer the debt for collection, in which case the Client shall be obliged to pay all in-court and out-of-court expenses in addition to the total amount due, including all costs charged by external experts.
- 4.8. At written request of the Supplier, the Client shall provide Supplier with personal or collateral security, which security will cover all financial obligations towards Supplier arising from the Agreement.

5. Confidentiality

- 5.1. The Client and the Supplier shall ensure that all information received from the other Party that is known or should reasonably be known to be of a confidential nature is kept secret. The Party that receives such confidential information shall only use this information for the purpose for which it has been provided. Information shall in any event be

regarded as confidential if it is designated as such by one of the Parties.

6. Privacy, data processing and protection

- 6.1. If the Supplier deems this to be necessary for the purpose of executing the Agreement, the Client shall, upon request, notify the Supplier immediately in writing with regard to the manner in which the Client executes its obligations pursuant to legislation in respect of the protection of personal data.
- 6.2. The Client shall indemnify the Supplier against any claims by individuals whose personal data is recorded or processed within the context of a register of personal data maintained by the Client or for which the Client is responsible pursuant to the law or otherwise, unless the Client is able to demonstrate that the acts that form the basis of the claim are exclusively attributable to the Supplier.
- 6.3. Responsibility for the data processed using a service provided by the Supplier shall rest solely with the Client. The Client shall guarantee the Supplier that the content, the use and/or the processing of the data is not unlawful and does not infringe the rights of third Parties. The Client shall indemnify the Supplier against legal claims by third Parties, of whatever nature, in relation to this data or the execution of the Agreement.

7. Intellectual property rights

- 7.1. If the Supplier is willing to undertake to transfer an intellectual property right, such an undertaking may only be entered into explicitly and in writing. If the Parties agree in writing that an intellectual property right in respect of software, websites, data

files, hardware or other material specifically developed for the Client shall be transferred to the Client, this shall not affect the Supplier's right or option to use and/or to exploit the components, general principles, ideas, designs, algorithms, documentation, work, programming languages, protocols, standards and suchlike that form the basis of the development work for other purposes without any restrictions, on its own behalf or on behalf of a third Party. The transfer of an intellectual property right shall also not affect the Supplier's right to carry out development work, on its own behalf or on behalf of a third Party, that is similar or derived from the development work that is being carried out on behalf of the Client.

- 7.2. All intellectual property rights to software, websites, data files, hardware or other materials such as analyses, designs, documentation, reports, quotations and related preliminary material developed or made available to the Client on the basis of the Agreement shall remain exclusively vested in the Supplier, its licensors or its own suppliers. The Client shall only acquire those rights of use that are explicitly granted in these general terms and conditions and by law. Any rights of use granted to the Client shall be non-exclusive, non-transferable to third Parties and non-sublicensable.
- 7.3. The Client shall not be permitted to remove or amend any details in relation to the confidential nature or in relation to copyrights, brand names, trade names, or any other intellectual property right from the software, websites, data files, hardware or materials.
- 7.4. The Client warrants that no rights of third Parties preclude the provision

to the Supplier of software, hardware, material intended for websites (visual material, text, music, domain names, logos, hyperlinks etc.), data files or other materials, including draft materials, for the purpose of use, adaptation, installation or incorporation (e.g. in a website). The Client shall indemnify the Supplier against all claims by third Parties based on the assertion that such provision, use, adaptation, installation or incorporation constitutes an infringement of any rights of the third Party in question.

8. Termination and cancellation of the Agreement

- 8.1. Each Party shall be entitled to terminate the Agreement on account of an attributable shortcoming in the implementation of the Agreement if the other Party fails attributable in the fulfilment of essential obligations under the Agreement. Termination shall only be possible following an as detailed notice of default as possible, containing a reasonable term within which the shortcoming can be corrected. Payment obligations of the Client and all other obligations to cooperate on the part of the Client or a third Party engaged by the Client shall always be considered essential obligations under the Agreement.
- 8.2. If the Client has already been rendered performance in the implementation of the Agreement at the moment of the termination referred to in article 8.1, that performance and the corresponding payment obligations can never be subject of undoing, unless the Client is able to prove that the Supplier is in default in respect of an essential part of that performance. Amounts already invoiced by the Supplier prior to termination in connection with

what it has already performed or delivered in the implementation of the Agreement, shall, with due regard for the provisions of the previous sentence, remain payable and fall due immediately as at the moment of termination.

- 8.3. If an Agreement, which due its nature and substance does not end by completion, is effected for an unspecified period of time, then each of the Parties may cancel that Agreement subject to mutual consultation and a statement of reasons. If in respect to an Agreement for an unspecified period of time no notice period has been agreed between the Parties, a notice period of six months shall apply.
- 8.4. The Client shall not be entitled to early termination of an Agreement which has been effected for a specified period of time, such as but not restricted to a service contract or an Agreement for services. If the Client termination of an Agreement
- 8.5. Each of the Parties shall be entitled to immediately fully or partially terminate the Agreement without prior notice if the other Party, whether or not provisionally, is granted a moratorium, if a petition is filed for the bankruptcy of the other Party, if the other Party is declared bankrupt, or if the business of the other Party is liquidated or discontinued other than for the purpose of reconstructing or merging companies. The Supplier shall never be bound to the reimbursement of already received payments, nor to any compensation for damages as a result of termination. The right of the Client to use software and the like made available to him by Supplier shall expire by operation of law in the event of bankruptcy of the Client.

9. Liability

- 9.1. The Supplier will not be liable for any costs, losses, damage and interest that may arise as a direct or indirect result of:
- a) force majeure, as described in further detail below;
 - b) any acts or omissions on the part of the Client, its subordinates, or any other persons deployed by or on behalf of it;
 - c) any errors and/or defects in software provided by Supplier or third parties that were not actually known by the Supplier at the time of the event that has caused the Suppliers costs, losses or damages.
- 9.2. In no event will the Supplier be liable to compensate any indirect and/or consequential damage suffered by the Client. Indirect and/or consequential loss will include, but not limited to, all and any damage or loss that is the result of any loss of profits, loss of savings, damage due to the loss or temporary non-availability of data or the non-availability or interruption of any of the services of Supplier such as ZEN Team Delivery Services, Single Sign On environment (SSO) or Zen Agile Team Health-software, or damages as a result of third-Party claims against the Client on any basis whatsoever.
- 9.3. The Client will indemnify the Supplier against any third-party claims in respect of infringement of such parties' patent, trademark or copyright (or any other intellectual property rights), wrongful act or default, as a result of or in connection with the Agreement.
- 9.4. In no event will the Supplier be liable for damage of any nature whatsoever caused by third-party hacking.
- 9.5. The Supplier will not be liable for any viruses etc. causing damage to

hardware or software of the Supplier and/or the Client.

- 9.6. In the event that, despite the provisions of this article 9, the Supplier is still liable vis-à-vis the Client, such liability will at all times be limited to the total amount owed by the Client to Supplier under the Agreement in the three months prior to the event, act or omission that has caused the Suppliers losses.

10. Force majeure

- 10.1. For the purpose of the General Terms and Conditions, force majeure means an event beyond the reasonable control of the Supplier, including but not limited to failure of services provided to Supplier by third parties, strikes, shortage or non-availability of personnel, changes in law or regulations, changes in terms and conditions of third parties engaged by Supplier or breakdown or malfunction of any hardware of Supplier, to the extend such breakdown or malfunction is not caused by any act or omission of Supplier.

11. Zen Team Delivery Services / End User License Agreement

- 11.1. The following provisions apply to Zen Team Delivery Services in addition to the other provisions in the General Terms and Conditions. In the event of any inconsistency with any of the other provisions in the General Terms and Conditions, the provisions of this clause 11 will prevail.
- 11.2. The Supplier shall make the Tools as specified in the Agreement and the corresponding user documentation available to the Client for use via the Single Sign On environment (SSO).
- 11.3. Unless explicitly determined otherwise in the Agreement and unless the respective Right holder(s) is/are not able or willing to cooperate,

the Supplier will provide the Client with one monthly invoice for the use of the Tools.

- 11.4. Unless explicitly determined otherwise in the Agreement, the Supplier acts, when entering into (license)agreements with Right holders of Tools as part of Zen Team Delivery Services, in its own name but for the account of the Client (*"middellijke vertegenwoordiging"*).
- 11.5. In the event a Rights holder terminates or suspends the right to use a Tool during the Agreement, the Supplier will in no event be liable towards the Client and the Agreement will remain in full effect with regard to the other Tools or services as specified therein. The Supplier will charge the Client to the extend the Supplier itself is (still) liable for payment under the (license)agreement with the respective Rights holder(s).
- 11.6. The End User License Conditions of the Rights holders of each respective Tool are binding for the Client and are submitted to him when entering into the Agreement. In case of a breach of the End User License Conditions, the Client shall indemnify the Supplier against all claims by third Parties based on the assertion that such provision, use, adaptation, installation or incorporation constitutes an infringement of any rights of the third Party in question.
- 11.7. The Supplier shall under no circumstances be liable for any damages or costs arising from a breach of the End User License Conditions of any Tool, or any other wrongful act, caused by the Client or any third-Party.
- 11.8. The Parties acknowledge that the Supplier is not the Rights holder of the Tools and has no control over the availability or (correct) functioning of the Tools. The Supplier shall therefore

under no circumstance be liable for any loss, damages or costs of the Client arising from unavailability, disruption, interruption, loss of service or incorrect functioning of a Tool on any basis whatsoever.

12. Software license Zen Agile Team Health

- 12.1. The following provisions apply to the use of the Information Service ZEN Agile Team Health or any other ZEN software, in addition to the other provisions in the General Terms and Conditions. In the event of any inconsistency with any of the other provisions in the General Terms and Conditions, the provisions of this clause 12 will prevail.
- 12.2. The Supplier shall make ZEN Agile Team Health or any other ZEN software available to the Client for use, under the conditions as specified in the Agreement.
- 12.3. Except where agreed otherwise in writing, the Supplier's obligation to provide and the Client's right of use of ZEN Agile Team Health or any other ZEN software shall not extend to the software source code. The software source code and the technical documentation produced during the development of ZEN Agile Team Health or any other ZEN software shall not be made available to the Client under any circumstances, even if the Client is prepared to pay financial compensation for this information.
- 12.4. Except where agreed otherwise in writing, the Supplier shall not be obliged to provide any software or program or data libraries other than those agreed, even if these are required for the use and/or maintenance of the software. If contrary to the forgoing, the Supplier is required to provide software and/or program or data libraries other than those agreed, the Supplier may

require the Client to enter into a separate written Agreement for this purpose.

- 12.5. Except where otherwise agreed in writing, the Supplier's performance obligations shall not include the maintenance of ZEN Agile Team Health or any other ZEN software and/or the provision of support to the users of the software. If, contrary to the forgoing, the Supplier is also required to provide such maintenance and/or support, the Supplier may require the Client to enter into a separate written Agreement for this purpose.
- 12.6. The right of use of ZEN Agile Team Health or any other ZEN software shall in all cases be non-exclusive, non-transferable and non-sublicensable.
- 12.7. The Client shall strictly observe the restrictions on the right of use of ZEN Agile Team Health or any other ZEN software agreed between the Parties at all times. The Client is aware that the violation of an agreed restriction on use shall constitute both breach of the contract with the Supplier and an infringement of the intellectual property rights in respect of the software.
- 12.8. The Supplier shall be entitled to arrange for technical measures to be taken at any time in order to protect ZEN Agile Team Health or any other ZEN software against unlawful use and/or against use in a manner or for purposes other than those agreed between the Parties.
- 12.9. Under no circumstances shall the Client remove or circumvent technical provisions intended to protect ZEN Agile Team Health or any other ZEN software, or arrange for this to be carried out.
- 12.10. Except where agreed otherwise in writing, the Client shall only be permitted to use ZEN Agile Team

Health or any other ZEN software within and on behalf of its own company or organization and only for the intended use. Except where agreed otherwise in writing, the Client shall not use the software to process data on behalf of third Parties, e.g. for services such as 'time-sharing', 'application service provision', 'software as a service' and 'outsourcing'.

12.11. The Client shall not be permitted to sell, rent out, transfer or grant restrictive rights to ZEN Agile Team Health or any other ZEN software, the media on which the software is stored and the certificates of authenticity issued by the Supplier on provision of the software, or to make these available to third parties in any way or for any purpose. The Client shall also refrain from granting access to third parties – remote or otherwise – to the software or providing the software to a third Party for the purpose of hosting, even if the third party in question only uses the software on behalf of the Client.

13. Consultant placement ZEN Consultancy Service

13.1. The following provisions apply to ZEN Consultancy Service, in addition to the other provisions in the General Terms and Conditions. In the event of any inconsistency with any of the other provisions in the General Terms and Conditions, the provisions of this clause 13 will prevail.

13.2. The Supplier shall make the Consultant(s) referred to in the Agreement between the Parties available to the Client for the purpose of carrying out consultancy services as described in the Agreement.

13.3. The Supplier shall make every effort to ensure that the services are provided with due care and in accordance with

the arrangements and procedures agreed in writing with the Client where applicable. The Supplier shall provide all consultancy services on the basis of a best efforts obligation, unless and in so far as the Supplier has explicitly undertaken in the written Agreement to achieve a specific result and the result in question is sufficiently determined.

13.4. If the Supplier is providing consultancy services on the basis of information to be provided by the Client, this information shall be prepared by the Client in accordance with the conditions to be imposed by the Supplier and provided at the risk and expense of the Client. The Client shall at all times guarantee that all materials, information, software, procedures and instructions that it makes available to the Supplier for the purpose of providing the services is accurate and complete and that all data media issued to the Supplier meet the Supplier's specifications.

13.5. Except where agreed otherwise in writing, the use made by the Client of advice issued by the Supplier shall in all cases be at the Client's risk and expense.

13.6. The Supplier and the Consultants shall in no case be liable towards the Client, for damages arising from acts or omissions from a Consultant in relation to the work, save to the extent the damages are a direct consequence of intent or willful recklessness.

13.7. If the Consultant carries out the work at the Client's office for (a) specific period(s) of time, the Parties agree that the work is carried out under the Client's management and supervision in accordance with the Agreement.

13.8. If the work of the Consultant is carried out at the Client's office, the Client will ensure that it provides a safe and

healthy working environment. The Client must comply with all legislation and regulations concerning employment conditions in the required manner and ensure that the location where and the equipment and materials with which the Consultants carry out their work under this Agreement meet all the applicable safety regulations, as well as do and refrain from doing anything that may reasonably be expected of the Client to prevent the Consultants from suffering harm while carrying out the work. The Client shall at all times indemnify and hold harmless the Supplier, for all losses (including reasonable attorney and expert fees and expenses), resulting from any and all claims of a Consultant or Consultants on Supplier, based on employers liability or any other basis whatsoever, to the extent such claims are related to the work at the Client's office.

14. Default and dissolution

- 14.1. In the event of failure on the part of the Client to perform any obligation whatsoever, the Client will be in default in that respect without any notice of default being required. Without prejudice to the provisions of the Dutch Civil Code [*Burgerlijk Wetboek*], the Supplier will also be entitled to suspend its obligations under the Agreement, or to consider all or part of such Agreement dissolved, without any judicial intervention being required, all at the Supplier's option, and to render the services offline without any further notice being required.
- 14.2. The Supplier will also have the rights referred to in paragraph 1 of this article if the Client is declared bankrupt, or its bankruptcy is filed for, if the Client has applied for, or been

granted, a moratorium on payment of its debts, if the Client's immovable property has been attached, its business is wound up or is, or has been, taken over by one or more third Parties. In all such events all the claims that the Supplier has against the Client will be immediately due and payable.

15. Miscellaneous

- 15.1. All negotiations, offers, quotations, Agreements and other (legal) acts between the Supplier and the Client will be governed by the laws of the Netherlands, irrespective of the place where the Agreement is performed.
- 15.2. Any disputes between the Supplier and the Client as a result of, or in relation to, negotiations, offers, quotations, Agreements and other (legal) acts will be submitted to the exclusive jurisdiction of the competent judge with the District Court for North Holland, the Netherlands, including its preliminary relief judge.