



# GENERAL CONDITIONS

CYSO B.V.

## CONTACT DATA

Cyso B.V.  
Wognumsebuurt 3  
1817 BH Alkmaar  
Netherlands

[www.cyso.com](http://www.cyso.com)  
[servicedesk@cyso.com](mailto:servicedesk@cyso.com)  
+31 72 7513400

**Version:** Version AV.v.1/2019



# 1. GENERAL

## 1.1 APPLICABILITY

- 1.1.1 These conditions have been drafted in order to further a pleasurable cooperation amongst parties and for the protection of each other's interests. Please read further.
- 1.1.2 These conditions are applicable to all proposals and agreements between Cyso and Customer, the resulting provisions and related activities regardless of whether or not they are based on a verbal, written, and/or electronic agreement.
- 1.1.3 Cyso may make alterations to the General Conditions Cyso. The modified General Conditions Cyso will become applicable, unless objections against modifications are made in writing within 30 (thirty) days of the notification date of the change.
- 1.1.4 Changes in and additions to the General Conditions Cyso and/or agreements made between Cyso and Customer are only valid when agreed to by Cyso in writing.
- 1.1.5 If the business name used by Customer denotes more than one (legal) person or organization, each will be responsible for the entire fulfilment of the obligations that may flow forth from the agreement with Cyso.
- 1.1.6 The headings above the clauses of these conditions are only intended to increase the legibility of this document. The content and meaning of a clause placed under a particular heading is, therefore, not limited to the meaning and content of the heading.

## 1.2 DEFINITIONS

- 1.2.1 In the General Conditions Cyso the following words and expressions are capitalized. Any of the following words and expressions shown in the singular shall have the same meaning when used in the plural and vice-versa.
- 1.2.2 Advance:  
As specified in clause 6.5.
- 1.2.3 Application Software:  
An application that provides users with a certain functionality. This can be either a (software) Cyso Product or Service, a (software) Third Party Product or Service or software of Customer or of a third party licenced to Customer. Application Software may be provided via Hosting. In that case, the clauses regarding Hosting will also apply.
- 1.2.4 Back-up:  
Spare copies of digital data and/or information.
- 1.2.5 Colocated Hosting:  
The delivery of Hosting by Cyso on Customer's servers.
- 1.2.6 Customer:  
Anyone who requests and orders the delivery of Products and Services
- 1.2.7 Cyso:  
Cyso B.V. and its rightful successors or affiliated organizations and partners that will enter into an agreement with Customer and has declared the General Conditions Cyso applicable.
- 1.2.8 Cyso Products and Services:  
All Products and Services and services provided by Cyso, the resulting provisions and the related activities, which do not originate from third parties and of which Cyso holds all intellectual property rights, industrial property rights and other rights.
- 1.2.9 Cyso Network:  
The transfer hardware and, where applicable, the routing hardware and other technical resources that make the transfer of signals between connection points possible via cables, radio waves, optical resources, and other electromagnetic resources, for so far as such is under the direct control of Cyso.
- 1.2.10 Data center:  
A facility where servers can be connected to a network-environment, e.g. the Internet.
- 1.2.11 Third Party Products and Services:  
All Products and Services and services provided by Cyso, the resulting provisions and related activities, which originate from third parties and whose intellectual property rights, industrial property rights and other rights are not held by Cyso.
- 1.2.12 Fair Use:  
Reasonable use by Customer of the Products and Services.
- 1.2.13 Fixed Price:  
As specified in clause 6.3.

- 1.2.14 Error:  
As specified in clause 5.7.
- 1.2.15 Hosting:  
The provision of, Maintenance of, and/or access to web space for the purpose of storing information, data, images, or other content (e.g. Application Software) on Datacenters. Colocated Hosting is a form of Hosting.
- 1.2.16 Identification Codes:  
Usernames, passwords, address codes and/or other codes.
- 1.2.17 IP address:  
A unique assigned number to which a specific task, (domain) name, or host can be connected.
- 1.2.18 Maintenance:  
Maintenance on Application Software and/or Maintenance on Hosting.
- 1.2.19 Maintenance on Application Software:  
Preventive and corrective maintenance on Application Software.
- 1.2.20 Maintenance on Hosting:  
Preventive and corrective maintenance on the Cyso Network and the servers used for Hosting directly connected to it which are property of Cyso and placed in the Datacenter of Cyso or Customer.
- 1.2.21 Object code:  
The computer programming code principally in binary form. Object Code is immediately executable by a computer after processing, but without reverse engineering, compilation or assembling.
- 1.2.22 Process data:  
The data entered within the Products and Services/or computer hardware of the by Customer and/or a third party.
- 1.2.23 Products and Services:  
All Cyso Products and Services and/or Third Party Products and Services provided by Cyso, the resulting provisions and related activities.
- 1.2.24 Subsequent Calculation:  
As specified in clause 6.4.
- 1.2.25 Source Code:  
The computer programming code that may be displayed in a form readable and understandable by a programmer of ordinary skill. It includes related Source Code level system documentation, comments and procedural code. Source Code does not include Object Code.
- 1.2.26 Support:  
As specified in clause 3.3.
- 1.2.27 Third Party General Conditions:  
Conditions applicable to Third Party Products and Services
- 1.2.28 Spam:  
The unrequested sending of a large amount of e-mail with same content and/or the unrequested posting of a large amount of messages with the same content on the Internet in news groups. This includes spam that via any other provider is sent with reference to a website, e-mail address, or other service from Cyso.
- 1.2.29 Work Days:  
Normal Dutch working hours (9.00-18.00) and days (Monday through Friday) with the exception of public holidays.

## 1.3 CONFIRMATION

- 1.3.1 Verbal agreements, assignments or other expressions of whatever nature by employees of Cyso are only valid and binding when they have been confirmed in writing by authorized representatives of Cyso.

## 1.4 OFFERS

- 1.4.1 All offers made by Cyso are without commitment, unless the offer explicitly indicates otherwise in writing.
- 1.4.2 Offers made by Cyso are based on the data, information or requirements made known by Customer as set out in clause 1.6.

## 1.5 AGREEMENTS

- 1.5.1 An agreement between Cyso and Customer, for which no further term has been agreed, has a term of 1 (one) year if the delivery concerns a Product or Service for which a periodic fee is charged. If this agreement is not terminated or not terminated on time, it shall be extended repeatedly in increments of 1 (one) year.
- 1.5.2 Termination of the agreement as described in clause 1.5.1 occurs by means of a registered letter, which must be received by the other party no later than 30 (thirty) days prior to commencement of



the extension date of the agreement.

- 1.5.3 Contrary to clause 1.5.2, a continuing performance agreement between parties cannot be terminated as long as a further and/or additional agreement is in force between the parties. Termination of the agreement will in that case take place on the date that the further agreement with the longest remaining term expires between parties, with a minimum termination period of 3 (three) calendar months.
- 1.5.4 Each party has the right to terminate the agreement wholly or partially without judicial intervention by means of a signed registered letter. This can be done if, after notifying the breaching party in writing of a failure to fulfil its obligations, the breaching party then fails to meet the aforesaid obligations within a reasonable period of time.
- 1.5.5 Cyso has the right to, notwithstanding its right to claim full compensation for damages, immediately terminate the agreement, wholly or partially, without judicial intervention through means of a non-judicial declaration and/or withdraw and/or annul an offer if Customer is a person and becomes deceased, if Customer submits a legal request for debt restructuring, if bankruptcy or suspension of payment has been filed for Customer, if Customer is in a state of bankruptcy or suspension of payment has been granted or if Customer's company is liquidated or ended for any reason other than reconstruction or company merger. In these cases, any claim by Cyso will be immediately due, and Cyso will not be liable for this termination.
- 1.5.6 in the event an agreement between Cyso and Customer is concluded electronically and the parties have signed this agreement digitally, parties mutually agree that the digital signature will have the same legal effects as a handwritten signature.
- 1.5.7 If Cyso, in order to perform an agreement with Customer, needs to receive certain goods from third parties and/or to deliver certain goods to third parties such as the application for, the transfer of, the termination of, or the change of information from domain names, in the name of Customer, then Cyso is authorized to do such in the name and for the risk of Customer. Customer shall fully indemnify Cyso in this regard.

## 1.6 CO-OPERATION AND INFORMATION REQUIREMENTS

- 1.6.1 All assignments are carried out by Cyso on the basis of data, information, requests and/or requirements made known to Cyso by Customer.
- 1.6.2 Customer shall provide all necessary cooperation to Cyso and shall make timely known all useful and necessary data and/or other information required for an adequate execution of the agreement. Customer shall ensure the accuracy of this data and/or other information.
- 1.6.3 If data, information and/or requirements necessary for execution of the agreement, is not provided, not timely provided and/or not provided in accordance with the agreement, or if Customer fails to meet its obligations in any other way; then Cyso has in any case the right to terminate or dissolve the agreement or to suspend execution of the agreement and Cyso has the right to charge the costs incurred at its usual rates.
- 1.6.4 If changes and/or new facts arise in regard to data, information, requests and/or requirements previously provided, Cyso will always be fully entitled, in consultation with Customer, to adjust the agreement to these new circumstances or to dissolve or annul the agreement.
- 1.6.5 Cyso may give recommendations about the way Customer's business ought to be organized for an optimal functioning of the Products and Services. Cyso is not liable for the consequences to the functioning of the Products and Services in case Customer does not follow these recommendations.
- 1.6.6 In the event Cyso performs activities in a location other than its own, Customer will be responsible for providing free of charge reasonably requested facilities, such as office space and telecommunication facilities.

## 1.7 CONFIDENTIALITY/NON-COMPETITION

- 1.7.1 Cyso and Customer mutually commit themselves to the confidentiality of all data and information concerning each other's organization, clients, files and Products and Services and services,

of which they become aware while working for each other or for Customer's clients. Data and information may only be used in order to carry out the agreement between parties.

- 1.7.2 Cyso is authorized to place the name and logo of Customer or Customer's clients who are given rights to the Products and Services on the Cyso website and/or reference list and to make them available to third parties for information.
- 1.7.3 The value of Cyso is mostly represented in its employees. To protect this capital of Cyso, Customer and its clients will not enter into any direct or indirect commercial, employment, or other such relations with employees from Cyso during the agreement and for a period of 12 (twelve) months after termination or dissolution of the agreement, without the written consent of Cyso. Customer will ensure that its clients will comply with the foregoing obligation.
- 1.7.4 In the event that Customer breaches clause 1.7.3, Customer will be charged, without further notification required, a fine of € 50,000.- (fifty thousand euros) for each breach, undiminished the right of Cyso to claim full compensation for damages incurred.

## 1.8 LIABILITY

- 1.8.1 Cyso's total liability shall be limited, in accordance with clauses 1.8.2 and 1.8.3 to compensation for direct damage and to a maximum of the amount received by Cyso of the price stipulated in the agreement (excluding VAT) to a maximum of € 250.000.- (two hundred fifty thousand euros), whereby a sequence of events is regarded as one event.
- 1.8.2 If the agreement also includes an agreement over time with a term of more than 1 (one) year and Cyso's liability flows forth from the agreement over time, the stipulated price will be calculated on the basis of the total amount (excluding VAT) as actually paid by Customer to Cyso on the basis of the agreement over time for 1 (one) year (this being the year in which the damage occurred) to a maximum of € 250.000.- (two hundred fifty thousand euros).
- 1.8.3 The total liability of Cyso for a failure in the performance of a warranty obligation and/or an offered indemnification constitutes an exception to clauses 1.8.1 and 1.8.2; this is limited to twice the total amount of the compensations (excluding VAT) received by Cyso from Customer for 1 (one) year, with a maximum of € 350.000.- (three hundred fifty thousand euros), whereby a sequence of events is regarded as one event.
- 1.8.4 Cyso has insured itself against liability for damage. Cyso is in no case liable for further damage and will not compensate for any further damage which Customer may suffer on the basis of the agreement entered into with Cyso, however caused, including possible claims of liability against Customer by third parties, than is covered and actually compensated for by the insurance increased with Cyso's deductible (own risk), except in case of malicious intent ("opzet") or reckless disregard ("bewuste roekeloosheid").
- 1.8.5 Cyso's total liability for damage resulting from death or physical injury will in no event amount to more than € 1.000.000.- (one million euros), whereby a sequence of events is regarded as one event.
- 1.8.6 Direct damage is exclusively understood as:
  - a) The reasonable costs made in determining the cause and extent of the damage;
  - b) The reasonable costs incurred in prevention or limitation of the damage, to the degree that Customer can demonstrate that these costs have led to the limitation of the damage.
- 1.8.7 Cyso's liability for indirect damage, including consequential damage, loss of profit, loss of savings, mutilated and/or lost data, delays, losses, damage as a result of a failure of Customer to provide the required information or assistance, damage through corporate inactivity and/or claims from third parties against Customer, is expressly rejected.
- 1.8.8 With the exception of the cases mentioned in article 1.8, Cyso has no liability for damage compensation regardless of what an action towards compensation is based upon.
- 1.8.9 Cyso's liability exists solely when Customer immediately and appropriately notifies Cyso of the deficiency in writing, proposing therein a reasonable time period for correction of the deficiency and Cyso then culpably fails to meet the aforesaid obligations. The notification of deficiency ought to be as detailed a description of the deficiency as possible so that Cyso is able to react adequately.
- 1.8.10 The condition for the existence of any right to compensation is



always that Customer notifies Cyso in writing by registered mail within 60 (sixty) days after the damage came into existence and takes the necessary measures to limit the damage as much as possible.

- 1.8.11 Customer indemnifies Cyso from all liability regarding third parties due to allegations as a consequence of deficiency in a product, system or service provided by Customer to third parties that consisted of a delivery made by Cyso.
- 1.8.12 Cyso is not liable for damage regardless of its nature caused by Third Party Products and Services. If possible, Cyso will transfer its rights for damage compensation from the supplier of the Third-Party Product and Service in question to Customer.
- 1.8.13 Unless otherwise agreed upon in a service level agreement, Cyso is not liable for any damage regardless of its nature, which is the result of a failure to provide Support, Maintenance and/or Warranty on time.
- 1.8.14 Cyso does not accept any liability for damage regardless of its nature caused by Third Party Products and Services which Cyso has delivered to Customer. If possible Cyso will transfer its rights for damage compensation from the supplier of the Third-Party Product in question to Customer.

## 1.9 TRANSFER

- 1.9.1 The agreement between Cyso and Customer and the rights and obligations, which flow from this agreement, cannot be transferred to a third party by Customer without the prior written consent from Cyso.
- 1.9.2 Customer gives Cyso in advance the right, without needing the explicit approval of Customer, to transfer the whole agreement or parts thereof to:
  - a) holding-, sister- and/or subsidiary companies;
  - b) a third party in the case of merger or acquisition of Cyso.

## 1.10 FORCE MAJEURE

- 1.10.1 Neither party is obligated to fulfil any obligation if they are prevented from doing so as a result of circumstances, which can be considered beyond their fault, and for which a party cannot be held accountable by law, legal act, or generally accepted practices. The aforementioned circumstances include circumstances that are beyond Cyso' power as well as business risks of Cyso, these include but are not limited to failure to perform by a supplier of Cyso, the late or non-availability of required information and specifications and/or changes in such information, incorrect functional specification of Third Party Products and Services and/or Products and Services delivered by a third party, bad weather conditions, fire, explosions, electricity failures, (D)Dos-attacks, hacking, cracking or any downtime or unavailability caused by unlawful conduct by third parties, the destruction, damaging or disabling of any automated system or any system for telecommunication by whoever, causing interference in the course or the working of such system, or frustrating by whoever of a security measure taken with respect to such system, interference in networks, floods, illness, lack-of-staff, strike or other employment conflicts, accidents, actions by the government, not being able to obtain required licenses and/or permits, lack of materials, theft, traffic disruptions and/or transportation problems.
- 1.10.2 When force majeure is of a temporary nature, Cyso has the right to suspend its commitments until the force majeure has ceased to exist without being obliged to any form of damage compensation.
- 1.10.3 Cyso reserves the right, in the case of force majeure, to collect payment for obligations already fulfilled before force majeure was known.
- 1.10.4 In the event that the force majeure of either party surpasses a three-month period, either party has the right to terminate the agreement without being obliged to any form of damage compensation regarding such termination.

## 1.11 NULLITY

- 1.11.1 If one or more terms (or part of a term) of the agreement are nullified, declared to be nullified, annihilable or have lost their validity in another way, the other terms (or part of the term in question) of this agreement will remain in force undiminished.
- 1.11.2 With regard to terms (or part of the term) that are nullified, declared to be nullified, annihilable or lose their validity in another way, parties shall consult with each other to try to reach a

substitute arrangement with which the parties shall strive for the maintenance of the gist of this agreement (or the remainder of the term in question) in its totality.

## 1.12 APPLICABLE LAW AND DISPUTE RESOLUTION

- 1.12.1 All agreements made between Cyso and Customer are governed by the laws of The Netherlands, unless otherwise agreed upon in writing. Parties explicitly agree that the United Nations Convention on Contracts for the International Sale of Goods (CISG) is not applicable.
- 1.12.2 Any disagreement between parties because of any agreement will be solved through arbitration of the Stichting Geschillenoplossing Organisatie en Automatisering (SGOA) (The Dutch arbitration court (foundation) for ICT related matters), by 1 (one) arbitrator in accordance with the SGOA's regulations for arbitration. With the mutual agreement of both parties, prior to arbitration, parties may try to solve their disagreement through other provisions offered by the SGOA for the settlement of disputes.
- 1.12.3 If the SGOA declares itself unauthorized or if parties mutually agree to such, disagreements will be placed before a qualified court in Alkmaar, The Netherlands.
- 1.12.4 The foregoing shall, without waiving any remedy under the agreement, not constitute an obstruction for parties to take precautionary legal measures and/or to institute proceedings for interim relief, or to initiate a (debt) collection proceedings from the qualified court in Alkmaar, the Netherlands .

## 1.13 USER RIGHTS SOFTWARE PROGRAMS

- 1.13.1 Customer is granted for the term of the agreement, the non-exclusive right to use the Products and Services and - if present at Cyso - corresponding Documentation.
- 1.13.2 User rights are limited exclusively to own use of the Products and Services for the agreed upon Central Processing Unit (CPU), number of users, servers and/or workstations. If no limitations have been agreed upon, user rights will be limited to the CPU on which the Products and Services were first installed and the number of users, servers and/or workstations will be limited to 1 (one).
- 1.13.3 User rights for software Products and Services are limited to the Object Code. Rights to the Source Code are not provided, unless explicitly agreed upon otherwise in writing.
- 1.13.4 It is prohibited for Customer directly or indirectly (through a third party) to copy, duplicate or alter the Products and Services in any way, without the prior written approval from Cyso.
- 1.13.5 User rights on the Products and Services cannot be transferred to any third party (third parties also include holding-, sister- and/or subsidiary companies).
- 1.13.6 Customer does not have the right to make the Products and Services available, under any title or in any way whatsoever, to any third party (third parties also include holding-, sister- and/or subsidiary companies of Customer).
- 1.13.7 Reverse engineering, decompilation or any other alternation of the Products and Services to a for humans readable form is not permitted by Customer, unless such is explicitly permitted by mandatory law.
- 1.13.8 The user rights shall go into effect after Customer has made the required payments and fulfilled its other obligations.
- 1.13.9 The extent of the user rights on Third Party Products and Services is determined by the Third Party General Conditions. Where the aforementioned does not deviate from the Third Party General Conditions, the aforementioned will also be applicable.

## 1.14 VERIFICATION

- 1.14.1 Cyso is entitled to incorporate technical limitations and control mechanisms in the Products and Services in order to prevent and/or verify that the actual number of users, servers and/or workstations does not surpass the agreed upon number of simultaneous users, servers and/or workstations.
- 1.14.2 Cyso is entitled itself or through the use of a third party, as long as Customer makes use of the Products and Services, to make unannounced verification visits to the locations where the Products and Services are used. Customer shall provide all necessary cooperation and access. In the event Customer refuses cooperation and/or access, Cyso will be entitled to terminate the agreement immediately. In this event Customer will no longer be entitled to use the Products and Services and will be obligated to return all



Products and Services and destroy any copies made thereof within 30 (thirty) days after the first request of Cyso.

- 1.14.3 If, on the basis of the above described verification procedure or otherwise, it appears that the actual number of users, servers and/or workstations surpasses the number of simultaneous users, servers and/or workstations agreed upon, Customer will be obligated to immediately acquire the missing number of users, servers and/or workstations, increased with a penalty of 25% of the additional amount indebted. The indebted amounts for the missing users, servers and/or workstations will be charged from the moment of delivery of the previously agreed upon number of simultaneous users, servers and/or workstations. In addition, Cyso reserves the right to report to the Software Alliance (BSA).

## 2. HOSTING

### 2.1 DELIVERY OF HOSTING

- 2.1.1 After the agreement is in effect, Cyso will deliver Hosting as soon as possible.
- 2.1.2 Customer shall provide all documents, information, data carriers, and other material necessary for the delivery of the Hosting completely, reliably, and timely to Cyso.
- 2.1.3 Customer shall follow instructions from Cyso regarding the delivery of the Hosting.

### 2.2 HOSTING IN GENERAL

- 2.2.1 The Hosting will only take place at a Datacenter and with equipment approved by Cyso.
- 2.2.2 Cyso may, at its sole discretion, provide Customer with the possibility to make enhancements, additions and/or changes in the Hosting. If this possibility is offered by Cyso, Customer will be responsible and liable for all enhancements, additions and/or other changes made and consequences that may flow forth therefrom.
- 2.2.3 With regard to the access and use of the Hosting, Customer has equipment and software directly or indirectly available which comply with the standards and/or requirements set by Cyso of which Customer has been notified directly or indirectly. Customer is required to maintain compliance with the conditions set out in this clause. If equipment and/or software do not comply with this clause, the obligations of Cyso to provide access to the Hosting and the use of such may be postponed by Cyso.
- 2.2.4 Customer will enable Cyso to verify if the standards and/or requirements as set out in clause 2.2.3 are met.
- 2.2.5 If Customer, after the verification as set out in clause 2.2.4, still fails to meet the standards and/or requirements as set out in clause 2.2.3, Cyso will have the right to terminate or dissolve the agreement wholly or partially without prior notification and/or judicial intervention.
- 2.2.6 Customer is required to follow instructions given by Cyso regarding the Hosting.
- 2.2.7 Cyso is entitled to view log files and the like for purposes of analyzing the use of the Hosting. The results of such an analysis will not be made available to third parties (third parties do not include holding or subsidiary organizations of Cyso). This does not apply to figures and data with regard to the use of the Hosting, which are not directly traceable to Customer's use.
- 2.2.8 In the event Customer signals a malfunction, Customer must immediately report such to Cyso. After Customer has notified Cyso of the malfunction, Cyso will take the necessary steps, which will or could lead to a solution.
- 2.2.9 The costs for resolving the malfunction are for the account of Customer if it appears that the malfunction is the result of Customer's act or failure to act in accordance with the agreement.
- 2.2.10 Cyso will inform Customer prior to the commencement of intended Maintenance with regard to the Hosting, if Maintenance will lead to problems with regard to gaining access to the Hosting or the non-availability of the Hosting. In this case Maintenance will take place from 00.00 until 06.00 hours (CET). Other Maintenance will take place during Work Days.

### 2.3 USE OF THE HOSTING

- 2.3.1 Customer is prohibited from reselling and/or leasing the Hosting, unless otherwise agreed upon.
- 2.3.2 Customer is prohibited from using hardware or software in a

manner that may result in damage to the Hosting or a disruption in the Hosting.

- 2.3.3 Customer must request in writing a change or move of the Hosting from Cyso. Cyso is authorized to charge additional costs by change or move of the Hosting.

### 2.4 REQUIREMENTS CYSO

- 2.4.1 Cyso shall ensure the provision of the Hosting. Cyso shall, to the best of its ability and in as far as this can be influenced by Cyso, strive for a further to be indicated availability percentage.
- 2.4.2 The percentages mentioned in clause 2.4.1 are measured over a calendar year. The time for Maintenance is not included.
- 2.4.3 Cyso does not guarantee, amongst others, that the telephone lines, the Internet and/or other networks will offer optimal access.
- 2.4.4 Cyso does not have any obligations with regard to availability, reliability and/or other performance requirements with regard to the telephone lines, the Internet and/or other networks and the resulting provisions.
- 2.4.5 Cyso will strive to provide all useful and necessary measures to ensure adequate operability and continuity of the Hosting. Cyso makes use of the most recent and used virus protection programs in the market.
- 2.4.6 Cyso will strive, in accordance with the most current technology available, to provide adequate physical and logical security measures against unauthorized access by third parties to computer systems or computer programs used by Cyso and/or stored Process-data, in light of the provisions provided for under the agreement. If the Customer wishes specific security measures (for example in view of the specific nature of Process-data), the Customer must expressly make this request know to Cyso, so that – if the desired security measures are reasonable possible – Cyso can make an implementation and cost proposal for this request.

### 2.5 USE OF NETWORKS

- 2.5.1 Customer can make use of networks which are directly and/or indirectly connected with the Cyso Network under the condition that as soon as Customer provides access to a third party's network, Customer shall follow all legal and other conditions, which are application at that moment for the use of that network. It cannot be reasonably expected that Cyso provide all conditions as indicated in this article. Customer shall indemnify Cyso from any claim, accusation, or court procedure which results from the non-compliance with this article.
- 2.5.2 Customer shall not cause any disruption in the functioning of the Cyso Network, third party networks, or connections between the networks via (the substance of) data traffic or its actions or failure to act.
- 2.5.3 If, in the reasonable opinion of Cyso, a danger exists to the functioning of the Cyso Network and/or the provision of services to clients of Cyso, such as but not limited to Spam, open relay, port scan, or hacking by Customer and/or due to Customer or otherwise, then Cyso can give Customer instructions which must be followed within the indicated time period.
- 2.5.4 Customer is in default, without any notification being required, if Customer fails to follow the instructions, as indicated in clause 2.5.3, and/or if (the substance of) the data traffic or the actions and/or failure to act by Customer appear to cause a disruption in the functioning of the Cyso Network, third party networks, or connections between these networks. Customer is liable for all damage of Cyso as a result here from.
- 2.5.5 Customer is explicitly forbidden to carry out Spam activities from and/or via the IP addresses which belong or refer to the Cyso Network. Spamming can result in disconnection.
- 2.5.6 Customer is only allowed to send e-mail mailings if these are based on the confirmed opt-in principle. Confirmed opt-in means that the owner of the e-mail address has given explicit consent for the receipt of e-mails by the sender. This consent is given by the owner of the e-mail address after a request by the sender sent after the first registration.
- 2.5.7 Abuse reports concerning suspected Spam activities from the IP addresses in use by Customer shall be forwarded to Customer. Customer is required, within one Workday, to demonstrate that the abuse report is not the result of Spam activities. A failure to respond to an abuse report can lead to disconnection.



## 2.6 BROWSER

- 2.6.1 The Hosting is accessible by Customer through a browser. The Hosting has been optimized for the browsers as indicated by Cyso. The browsers for which the Hosting has been optimized at the moment of entering into the agreement will be made known by Cyso.
- 2.6.2 Cyso is not obligated to keep access to the Hosting optimal through the browsers as mentioned in clause 2.6.1. Cyso is entitled, without any form of (damage) compensation being required, to make changes in the Hosting which may influence the browser used by Customer and/or advised by Cyso.
- 2.6.3 In the event that the situation as described in clause 2.6.2 takes place, Cyso will use all reasonable endeavors to enable Customer to make a transition to a different browser. The costs incurred by Customer in doing so are for the account of Customer.

## 2.7 USE OF IDENTIFICATION CODES

- 2.7.1 Cyso will make Identification Codes solely available to Customer for the use of Products and Services. Customer will use these Identification Codes with care. Customer will notify Cyso in the event of loss, theft and/or other forms of unauthorized use, in order to enable parties to take the proper actions.
- 2.7.2 Customer carries all responsibility, liability and costs related to the use of Identification Codes used and/or distributed by Customer. In no event will Cyso be liable for the misuse and/or unauthorized use of Identification Codes.
- 2.7.3 If there is a reasonable suspicion of misuse or unauthorized use of Identification Codes, Cyso can provide Customer with instructions, which must be carried out.
- 2.7.4 If it is determined that misuse has been made of Identification Codes or if Customer ignores instructions given as set out in clause 2.7.3, Customer will be in default immediately.

## 2.8 CHANGES IN THE HOSTING

- 2.8.1 Cyso is entitled, following a written notification taking into account a reasonable notification period and without any compensation to Customer, to make adjustments to and/or changes in the Hosting offered such as but not limited to:
- a) entrance procedures, such as:
    - procedures regarding operational rules, and
    - security procedures.
  - b) changes in a third-party provider/supplier, location, hardware, software and other facilities necessary for the provision of the Hosting.
- 2.8.2 If any changes made have a significant negative impact on Customer's business or the functionality of the Hosting, Customer may, after providing relevant proof of the deterioration in writing, request in writing that Cyso provide an alternative. If Cyso then fails to provide an alternative, Customer will have the right to terminate the use of the Hosting, without any damage compensation required by Cyso and/or third party or restitution of amounts paid.

## 2.9 DATA TRAFFIC OF CUSTOMER

- 2.9.1 Cyso does not have any influence on or any insight in the data traffic from and/or to Customer. Cyso is merely a passive channel. Cyso does not give any warranties with regard to content of data such as but not limited to reliability and completeness.
- 2.9.2 Customer is responsible for the content of data traffic originating from Customer. Where applicable the Code of Conduct as set out in article 2.12 will apply to Customer and its users.
- 2.9.3 Customer indemnifies and will keep Cyso free from any damage compensation regarding any claim, accusation or court procedure from a third party with regard to the (content of) the data traffic or the information originating from Customer.
- 2.9.4 Contrary to the terms of clause 7, Process Data will remain the (intellectual) property of Customer. Customer grants Cyso, without charge, a perpetual user and revision right of the Process Data for the purpose of delivering and improving the Products and Services.
- 2.9.5 Process-data will initially, for the duration of the agreement, be preserved for a maximum period of 3 (three) years. After termination of the agreement Cyso will no longer be required to preserve Process-data.
- 2.9.6 Cyso will offer cooperation in transferring Process-data and/or other data to another application as requested by Customer. Cyso

does not warrant that the available Process-data and/or other data during the agreement and/or after the agreement can be transferred to another application.

- 2.9.7 All costs connected to the transfer of Process Data and/or other data at the request of Customer to another application will be fully for the account of Customer.

## 2.10 REQUIREMENTS CUSTOMER

- 2.10.1 In the event the Hosting includes amongst others the hosting of a website for and/or on behalf of Customer, Customer must have a domain name provided and registered by an authorized organization in accordance with the Third Party General Conditions as maintained by this organization. Customer indemnifies and will keep Cyso free from any damage compensation regarding any claim, accusation or court procedure with regard to the domain name and the use thereof on behalf of and/or by Customer.
- 2.10.2 If, through use of the Hosting, privacy information and/or other information/data are transported or commercial activities and/or other activities are undertaken, Customer will indemnify Cyso from all liability, costs or damage as a result of claims from a third party in the event privacy information and/or other information/data are transported or commercial activities and/or other activities are undertaken in violation of the relevant (privacy) laws and/or guidelines.
- 2.10.3 Customer will immediately inform Cyso in writing regarding changes that are relevant for the proper execution of the Hosting.
- 2.10.4 Customer will follow the instructions given by Cyso regarding Fair Use. If Customer fails to follow the instructions given by Cyso, Cyso will be entitled through technical means to reduce the overload or in the case of a continuous overload to stop the provision of the Hosting to Customer. Cyso will never be liable for damages of whatever nature that are incurred by Customer and/or third parties as a result of the measures undertaken by Cyso or by a third party on behalf of Cyso.

## 2.11 PERSONAL DATA

- 2.11.1 If Customer is considered to be the 'data controller' in terms of the General Data Protection Regulation (GDPR) and Cyso is considered to be a processor in terms of the GDPR, the provisions of this article 2.11 apply.
- 2.11.2 Customer acknowledges that the data processing as assigned to Cyso is lawful and Customer has ensured that Cyso offers appropriate technical and organizational measures, as referred to in the applicable privacy legislation.
- 2.11.3 Customer will indemnify Cyso against any allegation as a result of a violation of any person's privacy, related to the foregoing.
- 2.11.4 Where Customer is authorized, Customer explicitly agrees with the registration of (privacy)information of users in the privacy registration of Cyso for administrative and management purposes. The privacy registration will contain, amongst others, Identification Codes and Process-data and will only be accessible for Cyso. This information will not be provided to third parties unless Cyso is obligated to do so on the basis of a court order.

## 2.12 CODE OF CONDUCT

- 2.12.1 Customer will make use of the Hosting and/or other facilities offered in a responsible manner. It is prohibited to use the Hosting and/or other facilities offered in a manner that will result in:
- a) damage in the system of Cyso and/or third parties; or
  - b) interference with its use.
- 2.12.2 Customer will ensure that such damage and/or interference is not the result of misconfiguration on Customer's part.
- 2.12.3 It is not permitted to use the Hosting and/or facilities offered for activities that are illegal and/or in violation of the agreement. The foregoing includes amongst others the following activities:
- a) all acts and actions as indicated at <http://www.cyso.nl/cyso/legal/abuse/>
  - b) violation of a third party's rights or facilitating the violation of a third-party rights, such as but not limited to intellectual property rights and privacy rights;
  - c) noncompliance to law and other applicable regulations;
  - d) spamming (unrequested distribution (or creating the possibility for third parties) of advertisement and/or other messages);
  - e) storage/distribution of (child) pornography;



- f) causing danger to the functioning of the computer systems or the network of Cyso or third parties and/or for the services through the network, in particular caused by excessive sending of email or other data, badly secured systems or activity of viruses, Trojans or similar software;
  - g) sexual intimidation, racial prejudice and/or the harassment of individuals in any other manner;
  - h) distribution or making available to third parties in any other manner of obscene, insulting and tormenting material and/or other material of similar nature;
  - i) threats;
  - j) storage and distribution of viruses, worms and/or other destructive activities;
  - k) unauthorized access (hacking) of accounts, systems and/or networks of third parties and/or Cyso and/or the performance or non-performance of any other act that makes hacking possible.
- 2.12.4** Cyso reserves the right, at Cyso's sole discretion, if forced by law or a court order; and/or a third party informs Cyso and/or a suspicion exists that through the Hosting a violation is made of the rights of a third party; there is a breach of the General Conditions Cyso and/or the agreement and the resulting obligations in question have not been met wholly or partially, to bar access to the Hosting and/or other facilities offered, to remove the information in question and/or suspend its other obligations until Customer meets its obligations.
- 2.12.5** Cyso and/or third parties will never be liable for damage of whatever nature suffered by Customer or third parties for measures taken by and/or on behalf of Cyso on the basis of clause 2.12.4. Customer indemnifies Cyso from third parties for liability as a consequence of these measures. Payment obligations will remain in effect during the time period in which measures are undertaken by and/or on behalf of Cyso on the basis of clause 2.12.4.
- 2.12.6** If the actions and/or failure to act of Customer justifies this and/or the actions and/or failure to act of Customer continues regardless of the measures under taken by Cyso, as set out in clause 2.12.4, Cyso will be entitled in accordance with clause 1.5.3 to terminate the agreement, without any damage compensation or restitution of amounts paid being required.

### 2.13 CONSEQUENCES OF TERMINATION

- 2.13.1** In the event that the agreement is terminated, for whatever reason:
- a) Cyso shall, directly after termination of the agreement, invalidate and/collect the Identification Codes, address information and/or codes;
  - b) Cyso shall, one month after the termination of the agreement, transfer to Customer the domain name(s) registered by Cyso on behalf of Customer or make these unavailable for use;
  - c) Cyso can charge Customer reasonable termination costs.

## 3. CYSO ADDITIONAL PRODUCTS AND SERVICES AND SERVICES

### 3.1 MAINTENANCE

- 3.1.1** Cyso offers Customer, depending on the Cyso Products and Services delivered, the option of acquiring Maintenance. If Cyso provides Source codes to Customer, this is done for the sole purpose of providing Maintenance by Cyso directly or indirectly on the location of Customer, unless otherwise agreed upon. During and after the agreement regarding Maintenance, Customer is not allowed to perform Maintenance on the Products and Services himself.
- 3.1.2** Unless otherwise agreed upon, clause 3.1 will apply to Maintenance.
- 3.1.3** Maintenance on the Cyso Products and Services is based on a periodic Advance and further to be specified terms and conditions.
- 3.1.4** Maintenance on Application Software includes providing updates and documentation of the licensed Cyso Products and Services delivered to Customer, which either contain a qualitative (e.g. Error fix) or a functional improvement of the Cyso Product that has been made available. Cyso is not obliged to actively keep Customer up to date concerning possible updates of the Cyso Products and

Services.

- 3.1.5** If Maintenance results in a functional improvement, Cyso will have the right to charge extra payment to compensate for this functional improvement.
- 3.1.6** Cyso will inform Customer prior to the commencement of intended Maintenance with regard to the Hosting, if Maintenance will lead to problems with regard to gaining access to the Hosting or the non-availability of the Hosting. In this case Maintenance will take place from 00.00 until 07.00 hours (CET). Other Maintenance will take place during Work Days.
- 3.1.7** Cyso is authorized to refuse the provision of Maintenance if the Cyso Products and Services provided by Cyso or the environment in which the Cyso Products and Services operate are altered by Customer in any way or form.
- 3.1.8** If Customer refuses to install updates of the Cyso Products and Services that are offered by Cyso to Customer, then Cyso reserves the right to terminate the agreement or to adjust the agreement in accordance with the refusal to install updates.

### 3.2 ADVICE

- 3.2.1** All Products and Services that can be considered advice or which can be described as advice, will only be given to the best of Cyso's knowledge and capability.
- 3.2.2** Cyso is not responsible and/or liable if the activities that follow forth from advice result in Customer's failure to carry out a project within allocated budgets, time schedules and other agreed upon conditions.
- 3.2.3** Cyso will provide advice on the basis of the conditions required by Cyso and information received from Customer as mentioned in clause 1.6. If it appears that not all relevant information has been received and/or other problems and/or insights may arise, such as but not limited to incompatibility problems (Products and Services are unable to interoperate with each other), the given advice may be adjusted to the new circumstances.

### 3.3 SUPPORT

- 3.3.1** Support consists of providing verbal (telephonic) and written (e-mail) advice concerning the use and operation of Products and Services. Support is initially based on a periodic Advance. If the number of hours entitled to are exceeded, the applicable hourly rate will be charged.
- 3.3.2** Cyso will only provide Support on the most current updates of the Application Software. Cyso is entitled at its sole discretion to provide Support on older versions, releases, etc. of the Application Software.

### 3.4 ADDITIONAL WORK

- 3.4.1** If, in the opinion of Cyso, a change request by Customer is in fact a request for additional work, Cyso will notify Customer thereof prior to performing additional work. Upon Customer's request, the notification will be followed by a specification of the price and additional conditions. Customer will decide as soon as possible whether to carry out the additional work.
- 3.4.2** It will be assumed that Customer has agreed to the performance of additional work and the connected costs, if Customer has allowed additional work to take place without raising objections in writing prior to the commencement of additional work.

### 3.5 INSTALLATION AND IMPLEMENTATION

- 3.5.1** Cyso will only install and/or implement the Products and Services or have them installed and/or implemented if agreed upon in writing.
- 3.5.2** Prior to installation and/or implementation Customer will see to it, at its own expense, that all conditions required by Cyso have been met in order to ensure a successful installation and/or implementation.
- 3.5.3** Customer will ensure and is entirely responsible for fulfilling the necessary Third Party General Conditions in order to let installation and/or implementation take place legally.
- 3.5.4** If implementation and/or installation has not been performed within the agreed upon time schedule due to Customer's fault, Customer will make payments as if implementation and/or installation has been performed, undiminished the obligations of Cyso to proceed with installation and/or implementation at a later time period.



### 3.6 BACK-UPS

- 3.6.1 Customer will be responsible for making Back-ups on time to the extent possible. Upon Customer's request, Cyso will inform Customer of the procedures and security measures necessary regarding securing data and the realization of Back-ups.
- 3.6.2 Only if parties have explicitly agreed that Cyso will make Back-ups, Cyso will be responsible for making Back-ups. Customer will remain solely responsible for performing regular checks as to the integrity and usability of these Back-ups.
- 3.6.3 Customer remains fully responsible for making Back-Ups in advance if Customer performs acts that may lead to data loss or has them performed by a third party with regard to the Products and Services, the environments and/or equipment or hardware on which Products and Services operate. Cyso is not liable for damages if the Customer has not complied with this clause 3.6.3.

### 3.7 ACTIVITIES

- 3.7.1 Any activities, Maintenance, Support and other services will take place without interruption on Work Days and under normal working conditions.
- 3.7.2 For every continuous period within which Cyso performs activities for less than 3 (three) hours at a location other than Cyso's place of business, Cyso will be entitled to charge Customer for a minimum of 3 (three) hours. A continuous period exists if the period in which no activities are performed, in between the one period and the next period in which activities are performed, does not exceed more than 1 (one) hour.
- 3.7.3 Activities that are performed outside of Work Days are considered as overtime. The applicable rate will be increased with 50% for overtime after or before Work Days. The applicable rate will be increased with 100% for overtime on weekends and public holidays.
- 3.7.4 If parties agree that activities will take place in phases, Cyso will be entitled to postpone activities for the following phase until Customer has accepted in writing activities performed in the previous phase.
- 3.7.5 Cyso will only be obligated to follow timely and reasonable instructions given by Customer when performing activities if agreed upon explicitly in writing. Cyso is not obligated to follow instructions that will alter the content or scope of the agreed upon activities. In the event such instructions are followed, the activities performed will be charged on the basis of Subsequent Calculation.

## 4. THIRD PARTY PRODUCTS AND SERVICES

### 4.1 THIRD PARTY PRODUCTS AND SERVICES

- 4.1.1 Cyso has the right to deliver Third Party Products and Services or make use of Third Party Products and Services in fulfilling its obligations flowing forth from the agreement. Cyso is not responsible for Third Party Products and Services, unless agreed upon otherwise in writing.
- 4.1.2 If Cyso delivers Third Party Products and Services to Customer, the Third Party General Conditions will be applicable to the agreement in addition to these General Conditions Cyso.
- 4.1.3 Cyso will deliver rights for Third Party Products and Services under the same conditions as indicated in the Third Party General Conditions.
- 4.1.4 No Maintenance, Support or other services will be carried out by Cyso on Third Party Products and Services, unless agreed upon otherwise in writing.
- 4.1.5 With regard to Third Party Products and Services delivered, Cyso will provide:
  - a) service under, at most, the same conditions as provided for in the Third Party General Conditions;
  - b) the warranty under the same terms and conditions as indicated in the Third Party General Conditions.
- 4.1.6 Repair on Third Party Products and Services:
  - a) Under no circumstances will Third Party Products and Services be replaced unless Customer makes an explicit request and pays all connected costs as an Advance.
  - b) Operational costs will be applicable on all repairs. In the event that repairs take place outside of Cyso's office,

compensation for travel and waiting time and other related costs will be charged.

### 4.2 THIRD PARTY GENERAL CONDITIONS

- 4.2.1 Third Party General Conditions that are declared applicable in these General Conditions Cyso shall, when available to Cyso, be provided on request. Third Party General Conditions will be delivered in the same format and language as received by Cyso.
- 4.2.2 The General Conditions Cyso have priority over Third Party General Conditions unless indicated otherwise. When there is conflict between the General Conditions Cyso and Third Party General Conditions, Cyso has the right to declare the conflicting terms of the Third Party General Conditions inapplicable or applicable.

## 5. DELIVERY

### 5.1 (DELIVERY) DATES

- 5.1.1 All (delivery) dates which may be named by and may be applicable to Cyso are determined to the best of Cyso's knowledge on the basis of information made known to Cyso and will be taken into consideration as much as possible.
- 5.1.2 (Delivery) dates shall therefore not be considered to be absolute (delivery) dates within which must be delivered, but a time period within which Cyso shall strive with best efforts to deliver the agreed upon items. If it is not possible to keep to the (delivery) date, then Cyso and Customer will consult with each other to agree on a substitute (delivery) date.
- 5.1.3 Exceeding a given (delivery) date which may be applicable never constitutes an attributable shortcoming by Cyso. Cyso does not accept liability under any circumstances in cases where the (delivery) date may be exceeded.

### 5.2 RESERVATIONS

- 5.2.1 Cyso shall commence execution of the agreement between Cyso and Customer only after a signed copy of the agreement drawn up by Cyso has been received by Cyso and/or having received timely payment of all amounts due in full. Should Cyso commence execution of the agreement prior to receiving a signed copy of the agreement and/or having received timely payment of all amounts due in full, Cyso reserves the right to suspend execution of the agreement pending receipt of a signed copy of the agreement and/or full payment of all amounts due.
- 5.2.2 Customer's rights, such as but not limited to the transfer of Products and Services, are provided under the suspended condition that Customer timely pays the agreed compensations in full. In case of failure to pay, Customer must return the Products and Services to Cyso at Customer's expense within one week of receiving the instruction from Cyso to do so. All other remedies in law remain applicable.
- 5.2.3 If Customer fabricates a new product, on the basis of the Products delivered by Cyso, this will be done on behalf of Cyso and Customer will keep the new product for Cyso until all amounts due on the basis of the agreement have been paid on time and in full. Cyso will maintain all the rights as owner of the new product until the moment payments have been made on time and in full.
- 5.2.4 Upon the first request of Cyso, Customer shall provide, and where necessary register, a nonpossessory pledge on all goods delivered by Cyso to Customer and/or Customer's goods that are necessary for the delivery of the Cyso Products and Services to Customer as security for all existing and future claims from Cyso, for whatever reason. This nonpossessory pledge is retained and placed by Cyso on Customer's server(s) which are placed in the Data Center as part of the Colocation Hosting.

### 5.3 SUSPENSION

- 5.3.1 Cyso reserves the right if Customer fails to perform any obligation in the General Conditions Cyso and/or the agreement and such failure justifies a suspension to temporarily make Products and Services, partially or completely, unavailable and/or to seriously limit the use thereof. Payment obligations will remain in effect during the suspension period.
- 5.3.2 If Customer, within a term as indicated by Cyso, fulfills its obligations and makes payment of the amount fixed for reconnection and/or availability, the connection and/or availability





of the Hosting will be restored.

## 5.4 RISK

- 5.4.1 From the moment of delivery Customer will bear the risk of the Product delivered, even if possible ownership and user rights have not yet been transferred. Customer will therefore be held accountable for full payment of the Product delivered regardless of the destruction of or the decline in value of the Product delivered due to circumstances for which Cyso cannot be held accountable.
- 5.4.2 The aforementioned will also be applicable from the moment in which Customer fails to assist Cyso in making a delivery.

## 5.5 DELIVER, INSTALLATION AND ACCEPTANCE PROCEDURE

- 5.5.1 Cyso shall deliver the Products and Services to Customer in accordance with the specifications established in writing by Cyso and, if desired by Customer, install them.
- 5.5.2 Delivery of the Products and Services takes place when they are made available to Customer at Cyso's warehouse or a Datacenter. The costs for transport and possible insurance are for the account of Customer. The manner in which transport takes place is determined by Cyso and insurance of the Products and Services by Cyso will not take place unless agreed upon otherwise in writing.
- 5.5.3 The delivery of services by or through Cyso takes place at the place and time that the services are performed.
- 5.5.4 Only if installation is carried out by Cyso is an acceptance period immediately following completion of the installation applicable. The acceptance period for Customer runs for 14 (fourteen) days following completion of the installation. During the acceptance period, Customer is not permitted to use the Products and Services for production and/or operational purposes.
- 5.5.5 The Products and Services shall be considered by both parties as accepted:
- upon delivery if there is no acceptance period applicable, or
  - if an acceptance period is applicable, on the first day following the acceptance period, or
  - when Cyso, before the end of the acceptance period, receives a Test Report (clause 5.6): at the moment that the Errors (clause 5.7) identified in that Test Report have been repaired, notwithstanding the presence of small Errors which according to clause 5.7.4 do not hinder acceptance.
- 5.5.6 If the Products and Services are delivered and tested in phases and/or parts, the non-acceptance of a particular phase and/or part will not delay the acceptance of an earlier phase and/or another part.
- 5.5.7 Contrary to the preceding, the Products and Services shall be considered as accepted if Customer uses the Products and Services in any manner for productive or operational purposes before the moment of acceptance. The Products and Services shall be considered as accepted from the beginning of any such use.

## 5.6 TEST REPORT

- 5.6.1 If it becomes apparent during the acceptance period that the Products and Services contain Errors, as described in clause 5.7, which hinder the progress of the acceptance test, Customer shall inform Cyso no later than the last day of the acceptance period of the Errors in a written and as detailed as possible Test Report. In which case the still remaining acceptance period will be interrupted until such time as the Product is so modified that the Errors are repaired.

## 5.7 ERRORS

- 5.7.1 Error(s) means the failure to fulfill the functional specifications set down in writing by Cyso and, in cases of developing custom work Cyso Products and Services, the functional specifications expressly agreed upon in writing. An Error only exists where such can be demonstrated and reproduced. Customer is required to immediately report possible Errors to Cyso.
- 5.7.2 Every right to repair of Errors lapses if the Products and Services provided by Cyso are altered in any way or form.
- 5.7.3 The repair of Errors shall take place at the location to be determined by Cyso. Cyso is entitled to install temporary solutions, emergency solutions, detours and/or other problem-avoiding measures in the Products and Services.

- 5.7.4 Acceptance of the Products and Services may not be withheld on grounds other than those which are related to specifications which have been expressly agreed upon between the parties nor, furthermore, due to the presence of small Errors which do not reasonably impede putting the Products and Services into productive or operational use.

## 5.8 REPLACEMENT PERFORMANCE

- 5.8.1 Cyso is permitted to deliver alternative Products and Services than those Products and Services ordered by Customer if the performance and operation of such alternative Products and Services is essentially no different from the Products and Services ordered.
- 5.8.2 If the agreement is concluded with the objective of having activities carried out by a particular individual, Cyso will be entitled to replace this person with another person with the same qualifications.

## 5.9 WARRANTY

- 5.9.1 Maintenance on Hosting and/or Maintenance on the Application Service or Hosting does not cover the reconstruction and/or repair of mutilated and/or lost data and/or information. Cyso does not warrant that the Products and Services shall function without interruption or without Errors, are suitable for every intended use of Customer and/or will lead to results desired by Customer. The warranty obligation is void if Customer alters the Products and Services, or has them altered, without the written permission of Cyso.
- 5.9.2 The warranty provided on Third Party Products and Services is limited to the Third Party General Conditions as maintained by the supplier of Third Party Products and Services as described in clause 4.
- 5.9.3 Cyso is entitled to invoice its usual prices and the costs for repair, modification, or replacement of the Products and Services if the Error may be said to be caused by mistakes made by Customer as a result of improper and non-careful use by Customer, the result of other causes that may not be attributed to Cyso or if Customer could have reasonably detected the Error during the acceptance period.

## 6. PRICES/PAYMENT

### 6.1 PRICES AND PAYMENT

- 6.1.1 All prices exclude VAT and other levies imposed by the government. The amounts invoiced to Customer will include applicable VAT and other levies possibly imposed by the government.
- 6.1.2 Cyso will invoice the amount owed by Customer monthly and or according to another term agreed upon, by provision of an invoice which is appropriately itemized. Dependent on the type of contract, Customer will pay all amounts via automatic collection or other manner within 14 (fourteen) or 30 (thirty) days of the invoice date. These payments will not be subject to suspension, compensation or deduction. The moment of receipt of the owed amount by Cyso shall be considered as the moment of payment. Complaints about the invoice must be brought to Cyso in writing and with proper arguments. Disputing of a part of the invoice, whether well-founded or not, leaves unhindered the obligation to pay the undisputed part in accordance with this clause.
- 6.1.3 Should Customer fail to fulfill any payment obligation, Customer is in breach without any further notification of breach being required. Cyso reserves the right to charge all incurred costs to Customer, (including costs due to legal assistance provided by a lawyer of other authorized person) including judicial and extra-judicial expenses, with regard to the collection of debts from Customer. Extra-judicial collection costs amount to 15% of the debt, with a minimum of € 500 (five hundred euros). In any case Customer will be charged interest on a monthly basis, at the legal percentage rate increased with 3%, on all outstanding debts starting from the date of failure to pay.
- 6.1.4 Until full payment has been made, Cyso has the right to suspend all services and obligations to Customer. Customer's obligation to meet Customer's commitments remains unchanged.
- 6.1.5 If Cyso is unable to make a delivery in time due to Customer, Cyso



- will have the right to charge a 1,5% interest reimbursement on a monthly basis over the indebted amount.
- 6.1.6** Compensation for Maintenance, Support and any other annual or periodic amounts are due as an Advance at the moment of realization of the agreement between the parties and shall be billed to Customer, appropriately itemized, prior to each year or other period that the agreement between parties continues.
- 6.1.7** The indebted amount meant in clause 6.1.2 may be increased with order costs, postage costs and costs of third parties. An increase can also take place in the event that activities have to take place outside of Cyso's office. In the event that activities need to take place outside of Cyso's office, hourly rates, travel and waiting time compensations, actual travel and/or kilometer compensation, hotel expenses and any other costs connected to such services will be charged. The travel and waiting time compensation amounts to 50% of the current hourly rate. The means of transportation will be determined by Cyso. The foregoing is also applicable on services provided outside of The Netherlands.
- 6.1.8** Above mentioned paragraphs leave all the legal rights of Cyso unhindered, when Customer fails to meet Customer's commitments.

## **6.2 PRICE CHANGES**

- 6.2.1** The Prices agreed upon by Cyso and Customer are among other things based on the costs of energy and salaries, social premiums, materials and travel and accommodation costs, etc., as well as the rate of exchange between the currencies as applicable at the time of entering into the agreement. Cyso is authorized, in case of changes to one or more of the cost items (for instance Third Party Products and Services) and/or changes in the rate of exchange, changes to the Consumer Price Indices (Consumentenprijsindices (CPI)) or the CBS index for business services (CBS Prijsindex 6202 Computeradviesing), to adjust prices to these changes.
- 6.2.2** Cyso always has the right to change the amount of the agreed upon prices and associated costs, such as but not limited to, price changes of Third Party Products and price increases as a result of changed and new laws and other legislation. A price increase shall be valid 30 days after Customer is notified of such.
- 6.2.3** Cyso will offer Customer the possibility to become acquainted with possible changes in prices. If Customer does not agree with a price change, Customer will only be permitted to terminate the agreement from the date the change in price becomes applicable, if the total price increase during 1 (one) year exceeds the yearly inflation rate of the current year (or previous year for price increases announced for the next year) as published by the CBS (Dutch Bureau for Statistics) by 5%.

## **6.3 FIXED PRICE**

- 6.3.1** In the case of a Fixed Price agreement, activities will be performed on the basis of a prior agreed upon price.
- 6.3.2** Unless Cyso can appeal to clause 1.6.4, extra hours will not be charged.

## **6.4 SUBSEQUENT CALCULATION**

- 6.4.1** When charges are to be based on Subsequent Calculation, this means that prior to Cyso commencing the agreed upon activities a global estimate can be made of the expected costs. On conclusion of the activities carried out, all costs actually incurred related to the activities will be calculated and charged. Customer is, then, aware that there is a possibility that the estimate made earlier could be lower than the costs actually incurred. If no agreements have been made regarding billing, activities will be performed on the basis of Subsequent Calculation.

## **6.5 ADVANCE**

- 6.5.1** Cyso has the right to charge payments in Advance. If full payment of the Advance is not made, Cyso has the right, undiminished its other rights that may flow forth from the agreement, to suspend all its obligations and all amounts owed by Customer will be immediately due.

# **7. INTELLECTUAL PROPERTY RIGHTS**

## **7.1 RIGHTS OF CYSO AND CUSTOMER**

- 7.1.1** Cyso has the exclusive right to further develop the Cyso Products and Services and place them at the disposal of third parties by means of licenses.
- 7.1.2** Except where Third Party Products and Services are concerned, all intellectual property rights, industrial property rights, and other rights resulting from all activities carried out by Cyso, regardless of where and when carried out and regardless of whether it concerns the delivery of an existing Product or Product to be developed in the future, reside with Cyso.
- 7.1.3** Customer acknowledges that all present and future intellectual property rights, industrial property rights, other rights and the registration and/or application of the foregoing rights and/or similar rights for the whole term thereof and all renewals or extensions thereof, now or at any time in the future worldwide at all times shall be and are hereby assigned or will be transferred to Cyso.
- 7.1.4** Customer is not permitted to remove or alter any designation concerning intellectual property rights, industrial property rights, other rights, trademarks and trade names from the Products and Services, or to have such changes made by third parties.
- 7.1.5** The intellectual property rights, industrial property rights or other rights of a Product, or a part thereof, can only be transferred to Customer by means of a written deed, if Cyso has these rights.
- 7.1.6** In the event that Cyso, Customer or a third party makes functional improvements or other adjustments in the Products and Services the intellectual property rights, industrial property rights and other rights vested in the improved or adjusted Product will remain unchanged with Cyso or the rightful third party. If the above-mentioned rights do not belong to Cyso or the rightful third party, Customer will cooperate in transferring the above-mentioned rights to Cyso or the rightful third party.
- 7.1.7** All intellectual property rights, industrial property rights or other rights of course material and/or other documentation will remain with Cyso. Customer is explicitly not permitted to duplicate and/or transfer such to a third party for permanent or temporary use. Customer will ensure that its employees and/or third parties will comply to the foregoing obligation.

## **7.2 INDEMNIFICATION**

- 7.2.1** Cyso shall protect Customer from any allegation to the effect that the Cyso Products and Services violate a copyright valid in The Netherlands. Cyso shall pay the damages, expenses, and court costs that Customer is ordered to pay by the final court ruling, provided that Customer:
- notifies Cyso immediately, but no later than within 10 (ten) days after Customer becomes aware of the infringement or could have become aware of the infringement, in writing of the existence of the allegation of infringement; and
  - gives the case completely over to Cyso, including all negotiations and arrangements that might lead to a settlement.

In case of any such allegation or possible allegation, Cyso reserves the right to obtain a license or sub-license on the Cyso Product in question or to change or replace the Cyso Product in such a way that the Cyso Product will no longer infringe a copyright valid in The Netherlands. If, at Cyso's sole discretion, the foregoing remedies are not a reasonable option, Cyso has the right to take the delivered Cyso Product back against reimbursement of payments made for the Cyso Product in question, minus a reasonable compensation for having made use of the Cyso Product.

- 7.2.2** Cyso shall not indemnify Customer against an action in the event that:
- such is based on the fact that the Third-Party Products and Services provided to Customer violate an intellectual property right, industrial property right or other right valid in the Netherlands or elsewhere;
  - what has been provided by Customer is part of or is delivered in conjunction with a Product and this combination results in a violation of an intellectual property right, industrial property right, or other right valid in the Netherlands or elsewhere;
  - Customer has made a change in or to the Product.
- 7.2.3** If Cyso and Customer agree that the intellectual property rights, industrial property rights or any other rights of a Cyso Product, or a part thereof, will be transferred to Customer, Customer will



indemnify Cyso against any action insofar as such is based on the fact that the Product, or a part thereof, violates an intellectual property right, industrial property right or any other right belonging to a third party.

## **8. CONCLUSION**

### **8.1 CONCLUDING PARAGRAPH**

**8.1.1** Thank you for taking time to read the Cyso General Conditions. We have drafted these for the protection of each other's interest, but if you would still like a few changes to be made, because you think that your interests or our interests are not well protected, then we propose to make these changes in another document, such as a proposal.

