



GENERAL TERMS AND CONDITIONS

CONTENT

GENERAL	2
SOFTWARE LICENSE	9
SOFTWARE DEVELOPMENT	12
SECONDMENT	14

GENERAL

This chapter always applies and contains general agreements that relate to all Quotations and Services of My Cubes B.V. The subsequent chapters contain specific provisions for the various Services of My Cubes B.V.

Article 1. DEFINITIONS

- 1.1 **General Terms and Conditions:** the present document, consisting of a general part and a number of additional chapters that also apply to the provision of specific Services.
- 1.2 **Service(s):** services as described in the Agreement.
- 1.3 **Continuing performance agreement:** an agreement that relates to the periodic or constant provision of Services and that therefore does not automatically end when certain tasks or activities are performed.
- 1.4 **Seconded:** the natural person who is made available to the Customer by MyCubes for a certain number of hours per week to perform work for the Customer.
- 1.5 **Intellectual Property Rights:** all intellectual property rights and related rights, including but not limited to copyrights, database rights, domain names, trade name rights, trademark rights, design rights, related rights, patent rights, as well as rights to know-how.
- 1.6 **Office hours:** the hours between 9:00 am and 6:00 pm (Dutch time) on working days (Monday to Friday), with the exception of official Dutch holidays.
- 1.7 **Customer:** the natural or legal person acting in the exercise of a profession or business, with whom MyCubes concludes the Agreement.
- 1.8 **Customer data:** all data sent or otherwise processed by the Customer through the Service(s).
- 1.9 **Customization:** all software developed by MyCubes exclusively for the benefit of the Customer.
- 1.10 **Materials:** all websites, (web) applications, brochures, leaflets, lettering, corporate identities, logos, leaflets, documentation, advice, reports, advertisements, marketing and/or communication plans, concepts, images, texts, sketches and (other) products of the mind, as well as preparatory material thereof and the data carriers on which these materials are located.
- 1.11 **MyCubes:** My Cubes B.V. located at Johan Huizingalaan 400 (1066 JS) in Amsterdam, registered with the Chamber of Commerce under number 70468915.
- 1.12 **Quotation:** a written offer from MyCubes, in which MyCubes indicates which Services it is willing to provide to the Customer and what prices the Customer owes MyCubes for this.
- 1.13 **Agreement:** any agreement concluded between the Customer and MyCubes on the basis of which Services are provided, including these General Terms and Conditions and any other documents and attachments applicable between the Parties, such as a processor agreement or an SLA.
- 1.14 **Party(s):** MyCubes and the Customer together or separately.
- 1.15 **SLA:** the service level agreement concluded between MyCubes and the Customer.
- 1.16 **Standard work:** all software that MyCubes delivers to the Customer on the basis of the Agreement and that does not qualify as Customization.
- 1.17 **Confidential Information:** non-public information that is related to one or both Parties, information that a Party indicates is confidential, or that, depending on the nature of the information or under the circumstances under which the disclosure takes place, should be considered confidential and information that is known or reasonably ought to be confidential in nature. The content of the Agreement is in any case Confidential Information.

Article 2. APPLICABILITY OF GENERAL TERMS AND CONDITIONS AND ORDER OF PRECEDENCE

- 2.1 The General Terms and Conditions apply to all Quotations from MyCubes, the execution of work by or on behalf of MyCubes and the execution of (future) Agreements.
- 2.2 Deviations from and additions to the General Terms and Conditions are only valid if they have been agreed in writing between the Parties.
- 2.3 The applicability of any purchase and/or other conditions of the Customer is expressly excluded.

- 2.4 These General Terms and Conditions consist of a general part, followed by a number of additional chapters. The provisions of the general part shall apply to each Agreement. Depending on the Services, one or more additional chapters may apply. At the beginning of each chapter, the types of Services covered by that chapter are described.
- 2.5 If provisions of the General Terms and Conditions conflict with the provisions of another document that forms part of the Agreement, the following order of precedence applies (from highest to lowest):
- a. Accepted Offer(s);
 - b. Processor agreement;
 - c. SLA;
 - d. Any other documents relating to the Agreement;
 - e. These Terms and Conditions.
- 2.6 In the event of contradictions between the general part of these General Terms and Conditions and one of the additional chapters, or in the event of contradictions between the additional chapters themselves, the chapter discussed later always takes precedence over the chapter previously dealt with.

Article 3. CONCLUSION OF THE AGREEMENT, QUOTATIONS AND ADDITIONAL WORK

- 3.1 A Quotation from MyCubes is valid for the duration of 30 days. MyCubes is not obliged to accept the Quotation by the Customer after the expiration of this period, but if MyCubes does so, the Quotation will still be considered accepted.
- 3.2 The Agreement is concluded by the written acceptance by the Customer of the Quotation.
- 3.3 MyCubes is only bound by a deviating acceptance of a Quotation by a potential customer, whether or not on minor points, if MyCubes expressly accepts the deviating acceptance in writing.
- 3.4 If the Customer does not explicitly indicate that he agrees with the Quotation, but nevertheless agrees, or gives the impression, that MyCubes performs work or delivers products that fall within the description of the Quotation, the Quotation will be considered accepted. The same also applies if the Customer requests MyCubes to perform certain activities or to provide Services without waiting for a Quotation.
- 3.5 If the Customer requests additional work, additional work or services that are not included in the accepted Quotation, the Parties will consult on this and MyCubes can send the Customer a Quotation for this. MyCubes will only carry out the additional work after acceptance of the Offer by the Customer.
- 3.6 For additional work that MyCubes can demonstrate is reasonably necessary for the provision of the Services, or that reasonably follows from the Customer's instructions, MyCubes does not need an approved Quotation.
- 3.7 Additional work as referred to in Article 3.6 will be carried out on the basis of subsequent calculation at the hourly rate of MyCubes that applies at the time of the execution of the work. Other costs incurred may also be charged.

Article 4. EXECUTION OF THE AGREEMENT

- 4.1 MyCubes makes every effort to start the execution of the Agreement as soon as possible after the Agreement has been concluded.
- 4.2 MyCubes will execute the Agreement with due care and craftsmanship.
- 4.3 All Services performed by MyCubes on the basis of the Agreement are best efforts obligations, unless, and insofar as, the Parties have expressly agreed on a certain result in writing.
- 4.4 (Delivery) deadlines communicated by MyCubes are indicative and do not count as strict deadlines.
- 4.5 The Customer shall ensure that it will provide MyCubes with all information and cooperation necessary for the execution of the Agreement in a timely manner, including in any case:
- a. all data and other information that MyCubes indicates are necessary, or that the Customer must reasonably understand to be necessary for the execution of the Agreement; and

- b. give MyCubes access to all places, services and accounts under its control (such as server rooms and web hosting accounts) if and to the extent necessary for the execution of the Agreement.
- 4.6 If the employees of MyCubes perform work at the Customer's office or at a location designated by the Customer, the Customer will provide all reasonable support and facilities necessary for this free of charge.
- 4.7 The Customer warrants that it has all required permits, licenses and permissions to use the Services, and that its use is in accordance with applicable laws and regulations. The Customer indemnifies MyCubes for all damages related to the use of the Services by or on behalf of the Customer in violation of this article.

Article 5. SUSPENSION OF SERVICES

- 5.1 MyCubes has the right to suspend the use of the Services by the Customer (whether or not in phases), taking into account the legitimate interests of the Customer and of MyCubes and the circumstances of the case, if: (i) abuse or improper use has been detected including, but not limited to, the use referred to in Article 22; (ii) there is a deterioration in the solvency of the Customer that gives rise to reasonable doubts about the Customer's ability to pay and creditworthiness or (iii) the Customer repeatedly fails to pay the invoices submitted by MyCubes on time.
- 5.2 The Customer will continue to owe any amounts due periodically during the suspension.

Article 6. ENGAGING THIRD PARTIES

- 6.1 MyCubes has the right to engage third parties in the execution of the Agreement.
- 6.2 Costs related to the use of third parties as referred to in Article 6.1 will only be borne by the Customer if this has been agreed in advance.
- 6.3 If the execution of an assignment is part of the Agreement and the assignment has been granted with a view to the execution of that assignment by a specific person, MyCubes may also have the assignment carried out by another person under its responsibility.
- 6.4 Services and/or products of third parties may form part of the Agreement. If that is the case, the conditions of those third parties may additionally apply to (the use of) those services and/or products.

Article 7. PRICES AND PAYMENT

- 7.1 The Customer pays MyCubes a fee for the Service(s) as stated in the Quotation.
- 7.2 Unless expressly stated otherwise, all prices mentioned by MyCubes are exclusive of sales tax (VAT) and other levies imposed by the government.
- 7.3 All prices in each Quotation and on the MyCubes website(s) are subject to programming and typing errors. In the event of any inconsistency between the MyCubes website(s) and the Agreement, the Agreement shall prevail at all times.
- 7.4 If a price in a Quotation is based on information provided by the Customer and this information turns out to be incorrect, MyCubes has the right to adjust the prices accordingly. The latter also applies after the Agreement has been concluded.
- 7.5 MyCubes is entitled to increase the prices used in the Agreement once a year on the basis of the CBS Consumer Price Index, or on the basis of any other market changes. In the event that a supplier of MyCubes increases its prices for a certain product or service, MyCubes is entitled to pass on this increase to the Customer. The Customer is not entitled to terminate the Agreement in connection with adjustments pursuant to this Article 7.5.
- 7.6 In principle, the work is carried out by MyCubes during Office hours. If MyCubes performs work outside Office Hours on behalf of the Customer, these overtime hours will be tracked and charged as follows:
 - a. if there is overtime on Monday to Saturday, the Customer will pay 150% of the usual hourly rate to MyCubes for this overtime;
 - b. if there is overtime on a Sunday, Dutch national holiday or a day of which MyCubes has indicated that it is closed, 200% of the usual hourly rate of the relevant employee(s) will be charged to the Customer per overtime.

- 7.7 If MyCubes has to perform the work at a location other than the usual location, MyCubes is entitled to charge the Customer extra costs for this. These costs include: travel costs, (travel) insurance costs, costs of accommodation and related accommodation costs.

Article 8. INVOICING AND PAYMENT

- 8.1 MyCubes may send electronic invoices to the Customer's e-mail address known to MyCubes. The Customer agrees to this method of invoicing.
- 8.2 The payment term of the invoice is 30 days after the invoice date. If the Customer fails to pay the invoice in full within this payment term, MyCubes will still give the Customer the opportunity to proceed to full payment within 14 days. If full payment is not made after this period, the Customer is immediately in default from that moment on, without any notice of default being required, and obliged, in addition to reimbursement of the amount due and the statutory commercial interest thereon, to fully reimburse the extrajudicial and judicial costs, including full collection costs and/or costs of legal assistance.
- 8.3 MyCubes is entitled to charge periodic amounts in advance to the Customer.
- 8.4 The Customer is not entitled to set off any payment obligation incumbent on it against any claim against MyCubes for any reason whatsoever.

Article 9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 All Intellectual Property Rights resting on the Customer Data or other Materials supplied by the Customer remain vested in the Customer.
- 9.2 All Intellectual Property Rights resting on the Service are and remain vested in MyCubes or its licensors, if and insofar as otherwise provided in the Agreement (as in Article 30).
- 9.3 The Customer indemnifies MyCubes against any claims from third parties on the basis of an infringement of an (Intellectual Property) right due to the Customer Data or Materials as originating from the Customer or its end users.
- 9.4 The Customer is not entitled to make changes to the Services and is not entitled to a copy of the source files of the Services, except in cases where this is mandatory permitted by law or when the Parties have agreed otherwise in writing.
- 9.5 MyCubes is permitted to use the (company) name, logo and a general description of the Customer for its own promotion and/or publicity.

Article 10. OWNERSHIP DATA

- 10.1 The ownership of all Customer Data is and remains the property of the Customer.
- 10.2 MyCubes may use the Customer Data to the extent necessary for the provision of the Services.
- 10.3 After termination of the Agreement, MyCubes will destroy or delete all Customer Data, provided and insofar as this Customer Data is (still) stored by MyCubes, taking into account the provisions of Article 16 (Exit) and the provisions of Article 11 (Privacy).

Article 11. PRIVACY

- 11.1 If MyCubes processes personal data on behalf of the Customer and within the framework of the Agreement, MyCubes will, at the customer's first request, cooperate in concluding a processing agreement as referred to in Article 28 paragraph 3 of the General Data Protection Regulation ("GDPR").
- 11.2 If personal data are processed within the framework of the Agreement while there is no "processor relationship" within the meaning of the GDPR, but "joint responsibility", the Parties will conclude a data exchange agreement together in accordance with the provisions of Article 26 of the GDPR.

Article 12. DURATION AND END OF THE AGREEMENT

- 12.1 The Agreement shall be entered into for the duration laid down in the Agreement. If no duration is included in the Agreement, the Agreement shall be deemed to have been entered into for the duration necessary for the provision of Service.

- 12.2 An Agreement that has been agreed for a definite period or that ends by completion cannot be terminated prematurely by the Customer unless otherwise stipulated in these General Terms and Conditions.
- 12.3 If and insofar as the Agreement concerns a Continuing Performance Agreement, it applies that it is entered into for the agreed duration, failing which the duration of 1 year (12 calendar months) applies, and is tacitly extended by the same term each time.
- 12.4 The Continuing Performance Agreement that has been agreed for a definite period can be terminated in writing by the Parties at the end of the agreed duration of the Agreement with due observance of a notice period of 1 calendar month.
- 12.5 MyCubes may terminate the Agreement at any time and immediately, if (i) the Customer has been declared bankrupt; (ii) the Customer has been granted suspension of payments; (iii) the Customer's business is dissolved or liquidated; (iv) (part of) the Client's assets have been seized.
- 12.6 If the Agreement is dissolved, this does not mean that any performance must be cancelled.

Article 13. LIABILITY

- 13.1 MyCubes is only liable to the Customer for direct damage as a result of an attributable shortcoming in the performance of this Agreement or on any legal basis whatsoever, which in any case includes a shortcoming in the fulfilment of a warranty obligation or indemnity.
- 13.2 Direct damage is exclusively understood as:
- a. damage directly caused to material property;
 - b. reasonable and demonstrable costs that the Customer has had to incur in order to urge MyCubes to properly comply with the Agreement;
 - c. reasonable costs to determine the cause and extent of the damage insofar as it relates to the direct damage as intended herein;
 - d. reasonable and demonstrable costs incurred by the Customer to ensure that the performance still complies with the Agreement;
 - e. reasonable costs for terminating and mitigating a data breach;
 - f. reasonable costs for repair work to prevent data loss; and
 - g. reasonable and demonstrable costs incurred by the Customer to prevent or limit the direct damage as referred to in this article.
- 13.3 MyCubes is not liable for damage other than direct damage.
- 13.4 The maximum amount that will be paid out in the event of liability of MyCubes is limited to € 50,000 (fifty thousand euros), but will in any case never exceed the amount that the MyCubes insurer pays out in the relevant case. MyCubes will make every effort to ensure that the insurer pays out.
- 13.5 The liability of MyCubes only arises if the Customer immediately and properly gives MyCubes written notice of default, setting a reasonable period to remedy the shortcoming, and MyCubes continues to fail imputably in the fulfilment of its obligations even after that period. The notice of default must contain as detailed a description of the shortcoming as possible, so that MyCubes is able to respond adequately.
- 13.6 A condition for the creation of any right to compensation is that the Customer reports the damage to MyCubes in writing within 30 days of discovery at the latest.
- 13.7 The limitation of liability as referred to in this article shall lapse if and insofar as the damage is the result of intent or deliberate recklessness on the part of the management of MyCubes.

Article 14. FORCE MAJEURE

- 14.1 MyCubes cannot be held to fulfil any obligation under the Agreement, including an agreed warranty obligation or indemnity, if performance is prevented as a result of force majeure. MyCubes can also not be held liable for any damage resulting from this.
- 14.2 Force majeure is in any case the event of power failures, internet failures, failures in the telecommunications infrastructure, attacks by malware or other malicious software,

- network attacks (including (d)dos attacks, stagnation in supply, fire and floods, war, terror, domestic disturbances, strikes and import and export barriers.
- 14.3 If a force majeure situation at MyCubes has lasted longer than 30 days, the Customer has the right to terminate the Agreement in writing immediately. The parties do not owe each other anything in connection with this termination, except for payment by the Customer of what has already been performed by MyCubes under the Agreement.

Article 15. CONFIDENTIALITY

- 15.1 Both Parties will keep Confidential Information strictly confidential and will only use it to the extent necessary for the execution of the Agreement.
- 15.2 The receiving Party shall ensure that Confidential Information receives the same level of protection against unauthorized access or use as its own confidential information, but at least a reasonable level of protection.
- 15.3 The parties will only share Confidential Information of the other Party with personnel or third parties if this is necessary in view of the purpose of provision and only if these persons or third parties are contractually or legally and regulatory bound to maintain their confidentiality.
- 15.4 The Customer acknowledges that software made available to the Customer by MyCubes and/or suppliers of MyCubes is always regarded as Confidential Information and that these contain trade secrets of MyCubes and/or these suppliers.
- 15.5 The parties shall immediately after termination of the Agreement or at the first request of the other Party destroy or delete the Confidential Information of the other Party.

Article 16. EXIT

- 16.1 In the event of a legally valid termination of the Agreement, and in accordance with the Agreement, MyCubes will, at the request of the Customer, provided that this request was submitted before or at the time of termination, make every effort to facilitate the transfer of Customer Data, insofar as this Customer Data is (still) stored by MyCubes, to another service provider. The foregoing is at all times limited to the possibilities as offered by MyCubes.
- 16.2 For the cooperation referred to in the previous paragraph, MyCubes will use its hourly rate for the Customer that is applicable at that time. All other costs of the transfer to another service provider shall also be borne by the Customer.

Article 17. PERSONNEL & COMPETITORS

- 17.1 As long as the Agreement continues, as well as one year after its end, the Customer is not permitted to hire employees of MyCubes or to have them work for him in any other way, directly or indirectly, without the prior written consent of MyCubes.
- 17.2 In this context, employees of MyCubes are understood to mean persons who are employed by MyCubes or perform work for My Cubes on any other basis, or who were not employed for MyCubes more than a year ago.
- 17.3 An exception to the prohibition in Article 17.1 applies:
- a. in the event that the MyCubes employee responds of his own accord to a vacancy or assignment offered to the general public that has been published through usual channels; or
 - b. mandatory laws or regulations prohibit such a prohibition.
- 17.4 In the event of a violation of the provisions of paragraph 1, the Customer shall forfeit an immediately due and payable fine of € 50,000, without further notice of default being required, without prejudice to MyCubes' right to compensation for the damage actually suffered and to be suffered.

Article 18. TRANSFER OF RIGHTS AND OBLIGATIONS

Both Parties have the right in advance, without the express prior consent of the other Party, to transfer all or parts of the Agreement concluded between the Parties to its parent, sister and/or subsidiaries or a third party in the event of a merger or acquisition. The transferring Party shall notify the other Party as soon as possible if such a transfer has taken place.

Article 19. VARIOUS

- 19.1 Dutch law applies to the Agreement. The Vienna Sales Convention does not apply.
- 19.2 Unless otherwise prescribed by the rules of mandatory law, all disputes arising from or related to this Agreement will be submitted to the competent court of the district in which MyCubes is located.
- 19.3 In these General Terms and Conditions, written also includes communication by e-mail, provided that the identity of the sender and integrity of the content is sufficiently established.
- 19.4 MyCubes reserves the right to unilaterally change the General Terms and Conditions. The Customer may terminate the Agreement if he does not agree with the change(s), provided that the notification to this effect has been received by MyCubes before the date on which the change takes effect.
- 19.5 Changes to the General Terms and Conditions as referred to in Article 19.4 will take effect from 30 days after notification of these changes by MyCubes to the Customer.
- 19.6 Changes of minor importance, changes based on the law and changes in favour of the Customer, can be made at any time. In such a case, the Customer does not have the authority to terminate the Agreement.

SOFTWARE LICENSE

If the Service (also) extends to the granting by MyCubes of a right of use of software application(s) developed by MyCubes (Standard Work) to the Customer (such as FormsEngine), the provisions of this chapter apply to the Services concerned, in addition to the general part of these General Terms and Conditions.

Article 20. LICENSE

- 20.1 All Intellectual Property Rights relating to Standard Work and open source software are vested in MyCubes and /or its licensors.
- 20.2 Subject to the fees specified in the Quotation and if and to the extent agreed between the Parties in the Quotation, the Customer is granted a non-exclusive, non-transferable and non-sublicensable right of use (license) to use the Service and the Materials for the duration of the Agreement and in accordance with the terms and conditions set out in the Agreement.
- 20.3 The right of use referred to in the previous paragraph also includes all future updates and upgrades to the Service.
- 20.4 Unless otherwise agreed in writing, the Customer is not permitted to make the Service available to third parties in any way whatsoever.
- 20.5 The Customer is entitled to use the Service under the license for the customer's company or institution. Any applicable restrictions are set out in the Agreement.

Article 21. DELIVERY AND IMPLEMENTATION OF THE SERVICE

- 21.1 After the conclusion of the Agreement, MyCubes will make every effort to deliver the Service as soon as possible.
- 21.2 If at least one of the following situations occurs, it can be referred to as "delivered":
 - a. through the Customer's use of the Service;
 - b. by a communication from MyCubes to the Customer that the Service is available;
 - c. by written or electronic confirmation of delivery of the Service by the customer.
- 21.3 If the Service has to be implemented by MyCubes before commissioning by the Customer and/or configuration and/or the development of software is necessary or desired by the Customer, MyCubes will take care of this in accordance with the provisions of the Agreement. The Customer will provide all necessary cooperation and comply with the reasonable requests of MyCubes. If revision rounds are required before the Service can be delivered, a maximum of two revision rounds applies, after which the Service is designated as having been delivered.
- 21.4 Implementations, configurations and/or any software developed by MyCubes in connection with the commissioning of a standard MyCubes service (such as FormsEngine) does not count as Customization.
- 21.5 The implementation and/or configuration work and/or development of software are carried out by MyCubes on the basis of the rates as stipulated in the Agreement.
- 21.6 The Customer accepts that the Service only contains the functionality and other features as found in the Service at the time of delivery ("as is"), therefore with all visible and invisible errors and defects.

Article 22. RULES OF USE OF SERVICES

- 22.1 The Customer guarantees that the Service will not be used for activities that violate any applicable laws or regulations and guarantees that it will not hinder or damage other MyCubes customers or internet users systems or networks of MyCubes or other customers of MyCubes.
- 22.2 In addition, the Customer is expressly not permitted (whether lawful or not) to offer or distribute through the Service Materials that:
 - a. contain malicious content (such as malware or other malicious software);
 - b. infringe the rights of third parties (such as Intellectual Property Rights), or are unmistakably libellous, defamatory, abusive, discriminatory or hateful;

- c. contain hyperlinks, torrents or references with (locations of) Materials that infringe copyrights or other Intellectual Property Rights.
- 22.3 If, in the opinion of MyCubes, nuisance, damage or other danger arises for the functioning of the computer systems or the network of MyCubes or third parties and/or the services via the internet due to or because of the use of the Service by the Customer, MyCubes is entitled to take all measures that it reasonably deems necessary to avert or prevent this danger. MyCubes may recover the costs that are reasonably necessary associated with these measures from the Customer.
- 22.4 Subject to the prior written consent of MyCubes, the Customer shall refrain from developing and/or operating similar Services as developed by or for the benefit of MyCubes or operated by MyCubes during the Agreement and for 1 year (12 calendar months) thereafter.

Article 23. AVAILABILITY, MAINTENANCE AND SUPPORT

- 23.1 MyCubes will make every effort to realize the uninterrupted availability of its Services, but only offers guarantees if this has been agreed in the Agreement by means of an SLA.
- 23.2 Unless otherwise specified in an SLA, availability is subject to the provisions of this article.
- 23.3 MyCubes regularly carries out maintenance, adjustments or improvements to (parts of) the Service and or to the associated software or other facilities. If said maintenance, adjustments or improvements necessitate a reduced or total decommissioning of the Service or parts thereof, MyCubes will try to carry out such maintenance as much as possible outside office hours and will make every effort to inform the Customer in advance of the planned maintenance. However, MyCubes is in no way liable for the compensation of any damage that has arisen in connection with such maintenance, adjustments or improvements.
- 23.4 If MyCubes is of the opinion that there is a danger for the functioning of its Service and/or for the associated software or other facilities, MyCubes has the right to take all measures that it reasonably deems necessary to prevent this danger. However, MyCubes is never obliged to pay any compensation for damage in connection with such measures.
- 23.5 Unless otherwise agreed in an SLA, MyCubes will provide a reasonable level of support to Customer with respect to questions about the Service. MyCubes may place restrictions on the use of the forms of support offered. In addition, MyCubes is free to determine and/or change support availability and response times, unless otherwise agreed.
- 23.6 The support as described in the previous provision is offered via a helpdesk that can be reached both by telephone and e-mail during office hours.
- 23.7 If the Customer reports a defect in the Service to MyCubes, this will only be processed if the defect is demonstrable and reproducible.
- 23.8 Recovery of damaged or lost Customer Data, the damage or loss of which is attributable to the Customer, is not covered by the support referred to in this article and will be carried out on the basis of subsequent calculation at the hourly rates applicable at that time.

Article 24. BACKUP AND RECOVERY

- 24.1 MyCubes makes daily backup copies (backups) of the data stored on its systems.
- 24.2 At the request of the Customer, MyCubes may make backup(s) of the Customer Data available to the Customer, provided and insofar as this Customer Data is (still) stored by MyCubes. MyCubes may charge the Customer a fee for this, unless a backup must be made available due to an error on the part of MyCubes.
- 24.3 Backup copies may be destroyed at any time after termination or dissolution of the Agreement, in accordance with the provisions of Article 10. It is the Customer's responsibility to request a backup copy of the Customer Data upon termination or dissolution in accordance with Article 16 (Exit).

Article 25. STORAGE, DATA AND FLOW LIMITS

- 25.1 MyCubes may set a limit on the amount of data traffic and storage that the Customer may or can actually use via the Service. If the Parties have not made any agreements about this, a limit applies on the basis of fair use.
- 25.2 Fair use occurs if the Customer uses a maximum of twice as much data traffic and storage as other MyCubes customers would do in a similar situation.
- 25.3 If the Customer consumes more than is permitted under the Agreement, MyCubes has the right to charge an additional amount afterwards in accordance with the usual rates of MyCubes.
- 25.4 MyCubes is not liable if the Service is not accessible or does not function properly if the applicable usage limits are exceeded.

Article 26. NOTICE AND TAKEDOWN

- 26.1 If the Service consists wholly or partly of services related to the storage of material and/or the transfer or provision of material to third parties, as in the case of the hosting of the software by MyCubes for the Customer, the provisions of this article apply.
- 26.2 If MyCubes is informed by a third party about unlawful information on its servers, MyCubes is entitled to remove the material or make it inaccessible. MyCubes will inform the customer and provide a reasonable opportunity to respond to the request. If the customer does not respond or does not respond on time, MyCubes can intervene itself.
- 26.3 MyCubes will never be liable for damage of any kind suffered by the Customer or its customers as a result of the closure of the Service or as a result of the deletion of the data or the provision of personal data, as referred to in this article.
- 26.4 The Customer indemnifies and will keep MyCubes free from any form of claim, complaint or dispute of a third party in connection with (the content of) the data traffic or the data placed on or distributed via the Service by the Customer, the Customer's customers and/or other third parties.

SOFTWARE DEVELOPMENT

If the Service (partly) relates to the development of Customization for the Customer, for the relevant Services, in addition to the general part of these General Terms and Conditions, the provisions of this chapter apply.

Article 27. DEVELOPMENT METHOD AND PLANNING

- 27.1 Unless the Parties agree on another development method, the development of Customization for the Customer will take place on the basis of the scrum framework as described in Article 28 of the Agreement. The scrum framework is an agile development method for developing software, consisting of several sprints.
- 27.2 When developing software, MyCubes is entitled to use open source software.
- 27.3 The activities referred to in this chapter may include discussions and agreements with the Customer, as well as the performance of (preliminary) research, programming work and implementation work for the realization of the software.
- 27.4 Before MyCubes will perform work on behalf of the Customer in the context of the realization of software, the Parties will agree in writing which hourly rate MyCubes will charge and how these hours will be charged to the Customer.
- 27.5 Unless the Parties agree otherwise, MyCubes will charge the Customer for hours spent by MyCubes at the end of each month on the basis of subsequent calculation.
- 27.6 MyCubes is entitled, based on its professional insight, to spend the agreed hours on work in the context of the realization of the software.
- 27.7 If the Customer has purchased a certain number of hours from MyCubes in advance, or if the Parties have agreed on a maximum number of hours, MyCubes will stop performing work when the purchased hours have been spent or the maximum number of hours has been reached. If MyCubes has spent hours on programming work, MyCubes can make the source code of what MyCubes has developed up to that point exclusively for the Customer available to the Customer on request. In the event that what MyCubes has developed up to that point does not (fully) meet the software intended by the Customer, or if the Customer has new wishes, the Parties may agree on additional hours that MyCubes may use for work to further develop the software in question.

Article 28. SCRUM

- 28.1 For the development of software based on the scrum framework, MyCubes will make employees available to develop software in teams with the Customer during sprints. The parties will jointly agree on the number of teams, the number of team members and the composition of the teams.
- 28.2 In consultation with the Customer, MyCubes is entitled to change one or more team members.
- 28.3 At the beginning of each sprint, MyCubes coordinates with the Customer in the sprint planning which wishes of the Customer they intend to realize in the sprint (including planning, back log and team commitment). The intended work will then be carried out during the sprint.
- 28.4 Unless the Parties agree otherwise, the Parties will discuss the result of that sprint before the end of each sprint and determine whether (1) the developed result has achieved the test cases for this sprint, or (2) a new sprint must be scheduled in order to make adjustments to the developed. The developed result of the sprint that meets the test cases is considered delivered.
- 28.5 Unless the Parties have agreed otherwise, the developed result is in any case at the expense and risk of the Customer from the moment the Customer starts using the developed result.

Article 29. TESTING AND RISK TRANSFER

- 29.1 If we do not work on the basis of the scrum framework, then what is stipulated in this article applies, unless the Parties agree otherwise.
- 29.2 When software or part thereof has been completed in the opinion of MyCubes, MyCubes will, for the purpose of the acceptance test, make the developed software available to the Customer in a test environment. If necessary, MyCubes will also make the corresponding documentation, such as version information or release notes, available to the Customer.
- 29.3 For two weeks after MyCubes has made the developed available, the Customer has the opportunity to test the developed product and provide MyCubes with feedback. At the end of the aforementioned period of two weeks, the development will be removed from the test environment and MyCubes will place the developed at the request of the Customer on a production environment (also called 'live' environment) if the Customer has concluded a further Agreement with MyCubes for this.
- 29.4 If the Customer provides MyCubes with feedback on the developed software, the Parties will discuss the feedback. The Customer can then request MyCubes to spend hours in order to make any adjustments.
- 29.5 The Customer is fully responsible for the developed software and its use when: (i) the Customer uses the developed software or (ii) MyCubes has placed the developed software on a production environment at the request of the Customer. Furthermore, MyCubes is expressly not responsible or liable for any errors or damage if the Customer or a third party engaged by the Customer has made changes to the software developed by MyCubes.

Article 30. INTELLECTUAL PROPERTY RIGHTS

- 30.1 Subject to the provisions of this Article 30, and as far as possible under the legislation applicable to it:
- a. all Intellectual Property Rights relating to the Customization are transferred by MyCubes to the Customer;
 - b. If the transfer of certain Intellectual Property Rights to the Customization is not possible (or has not yet been effected), MyCubes hereby grants the Customer a perpetual, unlimited, transferable and exclusive license for the customization.
- 30.2 The transfer of the Intellectual Property Rights to the Customization and/or the granting of a license for the customization to the Customer as referred to in Article 30.1, only takes place under the condition of full payment of all claims that MyCubes has against the Customer.
- 30.3 If Standard Work is used in the development of software, the Intellectual Property Rights on the Standard Work rest with MyCubes and remain with MyCubes. The Customer obtains the rights of use arising from the Agreement with regard to the Standard Work.
- 30.4 If MyCubes has incorporated open source software into the Customization, MyCubes will indicate which open source licenses apply to this. The Customer shall comply with these open source licenses.

SECONDMENT

If the Service (also) requires MyCubes to make a natural person available to the Customer to carry out work for the Customer (whether or not at the Customer's location), for the relevant Services, in addition to the general part of these General Terms and Conditions, the provisions of this chapter apply.

Article 31. SECONDMENT

- 31.1 The Customer shall only use the Seconded Person for work in the field as agreed by the Parties. To the extent necessary, MyCubes will supervise the Seconded Person and guide the Seconded Person in his or her work.
- 31.2 The work will be carried out at a location to be specified by the Customer.
- 31.3 MyCubes ensures that the Seconded Person complies with the reasonable (standard) procedures and/or house rules of the Customer in the context of the execution of the work.
- 31.4 In the event of secondment, MyCubes will pay the payroll taxes and all social insurance contributions of the Seconded Person to the appropriate authorities.
- 31.5 The Customer is not entitled to second a Seconded Person or otherwise make it available to a third party.
- 31.6 The Customer is not entitled to employ a Seconded Person outside the Netherlands, unless otherwise agreed.

Article 32. OBLIGATIONS OF THE CUSTOMER

- 32.1 The Customer must ensure an adequate and safe workplace for the Seconded Person in accordance with the applicable Working Conditions Regulations and/or Working Conditions Legislation.
- 32.2 The Customer shall always provide the Seconded Person with all information and intelligence that are important for the proper execution of the work in a timely manner.
- 32.3 All accidents related to the Seconded Person will be registered and reported to MyCubes without delay.

Article 33. WORKING HOURS AND LEAVE

- 33.1 The Parties shall lay down in the Agreement what the usual working hours for the Seconded Person will be. If no working hours have been agreed, a working day of a Seconded Person consists of a maximum of eight (8) hours, conform the Office Hours of MyCubes.
- 33.2 Hours that the Seconded Person spends on training will be counted as hours worked, unless the relevant training is not followed at the request of the Customer .
- 33.3 Leave of the Seconded Person will be taken in consultation with the Customer.

Article 34. REPLACEMENT OF THE SECONDED PERSON

If the Seconded Person is unable to perform work on behalf of the Customer for a period longer than five (5) working days due to illness or any other cause beyond the Customer's control, MyCubes will make every effort to provide a replacement Seconded Person as soon as possible, with as many equivalent qualifications as possible.

Article 35. COMPENSATION

- 35.1 The Customer pays the rate per hour to MyCubes as agreed and included in the Agreement. This compensation includes the travel costs of the Seconded Person to the location agreed by the Parties.
- 35.2 The Customer does not owe any compensation to MyCubes for the period that the Seconded Person has not been able to perform the agreed work due to illness, vacation or any other cause beyond the Customer's control, unless a replacement Seconded Person is deployed by MyCubes.
- 35.3 If the Parties have agreed on a fixed or minimum number of secondment hours, the Customer will continue to owe compensation for this, even if the Customer has (temporarily) less work for the Seconded Person to carry out.

Article 36. BILLING, PAYMENT AND TIMESHEET

- 36.1 Even in the event that the Customer uses a time accounting form, the hours booked in the MyCubes time registration system will be invoiced for invoicing. The data from the MyCubes time registration system is leading at all times.
- 36.2 Unless otherwise agreed, MyCubes will draw up an invoice for each Seconded Person per calendar month with a written overview of the time justification.

Article 37. INTELLECTUAL PROPERTY RIGHTS

In the event of secondment, the Intellectual Property Rights to Custom Work will rest with the Customer and the Intellectual Property Rights on Standard Work will remain with MyCubes.

Article 38. END OF SECONDMENT

- 38.1 When the Agreement comes to an end, the secondment's posting also ends.
- 38.2 The provision of the Seconded Person also ends when the (employment) agreement between the Seconded Person and MyCubes comes to an end. In this case, the Parties will consult on a suitable replacement. If no suitable replacement can be found, both Parties may terminate the Agreement, without being obliged to compensate any resulting damage.

MyCubes B.V.
Johan Huizingalaan 400
1066 JS Amsterdam
Phone: +31 (0)20 261 02 88
Email: info@mycubes.nl
Website: www.mycubes.nl