

# Cubycard General Terms and Conditions

Pieter Coppelmans 'CEO Cubycard' trading under the name of Cubycard (hereinafter: Cubycard) is registered with the Chamber of Commerce (KvK) under number 74895141 and has its registered office at Arke Noëstraat 7 (5041LK) in Tilburg.

## Article 1 - Definitions

In these general terms and conditions the following terms are used in the following sense, unless explicitly stated otherwise:

1. **Offer:** Any written offer to Customer for the delivery of Products by Cubycard to which these terms and conditions are inextricably linked.
2. **Subscription:** the (monthly) Subscription with which Customer can make unlimited use of the Application.
3. **Application:** the Application developed by Cubycard that allows Customer to make connections with a personalised digital fishing card.
4. **Services:** the Services offered by Cubycard are the provision of the Application. Not all versions of the Application offered by Cubycard create an Agreement between Cubycard and Customer.
5. **Cubycard:** the legal entity acting in the exercise of a profession or business that supplies Products and Services to Customer.
6. **Card:** the Card (Cubycard) made available or to be made available to Customer by Cubycard. This Card may be made available to Customer by Cubycard in a standard form, or in the form of a custom Card, whereby either Customer provides Cubycard with the design to be printed on the Card or Customer orders Cubycard to conceive a design to be printed on the Card afterwards.
7. **Customer:** the natural and/or legal person acting in the exercise of a profession or business that Cubycard has appointed, provides projects to Cubycard for specific Services that are performed by Cubycard, or to which Cubycard has made a proposal on the basis of an Agreement.
8. **Agreement:** any Agreement and other obligations between Customer and Cubycard, as well as Cubycard's proposals for Services by Cubycard provided to, and accepted by Customer and executed by Cubycard, wherewith these general terms and conditions form an indivisible whole.
9. **Products:** the Card (Cubycard) to be made available or made available by Cubycard for the execution of the Cubycard Application. Cubycard supplies Customer with a Card containing a chip. Such Cards can be linked to digital profiles. The chip can be scanned by a mobile phone/smartphone, allowing profiles to be shared with others who have installed this Application on the mobile phone/smartphone.
10. **SaaS:** the remote provision and maintenance of the Application, whereby a physical medium containing the relevant Application is provided to Customer.

## Article 2 - Applicability

1. These general terms and conditions apply to every Cubycard Offer, every Agreement between Cubycard and a Customer and to every Product and/or Service offered by Cubycard.

2. Before concluding an Agreement (or distance contract), Customer will be provided with these general terms and conditions. If this is not reasonably possible, Cubycard will indicate to Customer how Customer can consult the general terms and conditions.
3. Deviation from these general terms and conditions is not possible. In exceptional situations, it is possible to deviate from the general terms and conditions insofar as this has been explicitly agreed in writing with Cubycard.
4. These general terms and conditions also apply to additional, amended and follow-up agreements of Customer.
5. If one or more provisions of these general terms and conditions are partially or completely null and void or have been annulled, the other provisions of these general terms and conditions will remain in force and the null and void/nullified provision(s) will be replaced by a provision with the same purport as the original provision.
6. Uncertainties about the content, explanation or situations that are not regulated in these general terms and conditions should be assessed and explained in the spirit of these general terms and conditions.
7. The applicability of Sections 7:404 and 7:407, paragraph 2 of the Dutch Civil Code (BW) is explicitly excluded.
8. If in these general terms and conditions reference is made to him/her, this shall also be understood as a reference to him/her/them, if and in so far as applicable.
9. In the event that Cubycard has not always demanded compliance with these general terms and conditions, it shall retain its right to demand compliance with these general terms and conditions in whole or in part.

### **Article 3 - The Offer**

1. All offers made by Cubycard are without obligation, unless explicitly stated otherwise in writing. If the Offer is limited or valid under specific conditions, this will be explicitly stated in the offer. An Offer is only considered as such if it has been recorded in writing.
2. Cubycard is only bound by an Offer if its acceptance is confirmed in writing by Customer within 30 days. Nevertheless, Cubycard has the right to refuse an Agreement with a potential Customer providing a valid reason.
3. The Offer contains an accurate description of the offered Product and/or Service with corresponding prices. The description is detailed enough to enable Customer to make a proper assessment of the Offer. Obvious mistakes or errors in the Offer are not binding for Cubycard. Any images and specific data in the Offer are only an indication and cannot be a ground for any compensation or the dissolution of the Agreement (or distance contract).
4. Offers or quotations do not automatically apply to follow-up orders.
5. Delivery times and deadlines mentioned in the Cubycard offer are indicative and, if exceeded, do not entitle Customer to dissolution or compensation, unless explicitly agreed otherwise.
6. A composite quotation does not oblige Cubycard to deliver any part of the items included in the Offer or quotation for a part of the quoted price.

## **Article 4 - Conclusion of the Agreement**

1. The use of the Application is in principle without obligation and does not create any obligation to pay and no Agreement will be concluded between Cubycard on the one hand and the other party through installation and/or use of the Application. If a specific version (e.g.: "premium version") of the Application is used and/or if Customer takes out a Subscription offered by Cubycard, an Agreement will be concluded between Cubycard and Customer and possible payment obligations will be created as a result.
2. The Agreement is concluded when Customer has accepted an Offer, i.e. an Agreement from Cubycard, by returning a signed copy (scanned or original) to Cubycard, or explicitly and unambiguously agreed to the Offer by e-mail.
3. An Offer can be made by Cubycard via the Application website, by e-mail or by telephone.
4. If Customer has accepted the Offer by concluding an Agreement with Cubycard, Cubycard will confirm the Agreement with Customer in writing, at least by e-mail or otherwise, electronically.
5. If the acceptance deviates (on minor points) from the Offer, Cubycard shall not be bound by it.
6. Cubycard shall not be bound by an Offer if Customer could reasonably have expected or should have understood that the Offer contains an obvious mistake or clerical error. Customer cannot derive any rights from this mistake or error.
7. Customer's right of withdrawal is excluded, unless agreed otherwise.

## **Article 5 - Subscription and duration of the Agreement**

1. The Agreement relating to the use of the Services is entered into in the form of a Subscription and/or after a specific version of the Application (e.g.: "premium version") has been used by Customer, after which Cubycard will impose a one-off and/or periodic payment obligation on Customer, whether or not in the form of a Subscription. For the sake of convenience, the latter (one-off and/or periodic payment obligation) will be equated with a Subscription for the purpose of further understanding of this article.
2. The Subscription shall be tacitly renewed after the end of the subscription period, unless Customer has terminated the Agreement at least one (1) month before the expiry of the relevant period without refunding any amount already paid.
3. After renewal of the first subscription period, the Subscription may be cancelled monthly subject to one (1) months' notice.
4. If a Customer wishes to delete his/her account and related data, Customer is entitled to contact Cubycard by e-mail [Info@cubycard.com](mailto:Info@cubycard.com) who will delete the account and related data after the request.
5. Customer is responsible for the use that is made of his username and password. Cubycard therefore advises Customer to use a unique password and to carefully keep this password secret.
6. The account is personal, and Customer is not entitled to let others use his account.
7. Customer is responsible for the accuracy of the data in its own account.
8. Both Customer and Cubycard can terminate the Subscription on the basis of an attributable failure in the fulfilment of the Agreement if the other party has been given notice of default in writing and a reasonable period of time to fulfil its obligations, and it do so correctly at that time. This also includes the payment and cooperation obligations of Customer.

9. The dissolution of the Subscription does not affect Customer's payment obligations to the extent that Cubycard has already performed work or provided Services at the time of dissolution. Customer must pay the agreed fee.

10. Both Customer and Cubycard may terminate the Subscription in full or in part in writing with immediate effect, without further notice of default being required, in the event that one of the parties is in suspension of payment, has filed for bankruptcy or the company in question is terminated by liquidation. If a situation such as the above occurs, Cubycard will never be obliged to refund any funds and/or compensations already received.

## **Article 6 - Implementation of the Agreement**

1. Cubycard will make every effort to offer the agreed Service to Customer insofar as possible, without interruption, but does not guarantee full availability of the Services. Cubycard is entitled to suspend the use of the Services if and insofar as, in its opinion, there is a risk to the faultless functioning of the Services. Cubycard is also entitled to take all measures it reasonably deems necessary to guarantee the effective functioning of the Services.

2. The Agreement on the basis of which Cubycard carries out the Services shall guide the scope and extent of the services. The Agreement will only be executed for the benefit of Customer. Third parties cannot derive any rights from the content of the Services performed in connection with the Agreement.

3. The information and data provided by Customer are the basis on which the Services offered by Cubycard and the prices are based. Cubycard has the right to adjust its services and prices if the information provided turns out to be incorrect and/or incomplete.

4. During the execution of the Services, Cubycard is not obliged or bound to follow the instructions of Customer if this changes the content or scope of the agreed Services. If the instructions result in further work for Cubycard, Customer is obliged to reimburse the additional costs accordingly on the basis of a new quotation.

5. Cubycard is entitled to engage third parties for the execution of the Services at its own discretion.

6. The performance of the Services is based on the information provided by Customer. If the information needs to be changed, this may have consequences for any planning that has been established. Under no circumstances is Cubycard liable for the adjustment of the planning. If the commencement, progress or delivery of the Services is delayed because, for example, Customer has not provided all requested information or has not provided it on time or in the desired format, does not cooperate sufficiently, any advance payment has not been received on time by Cubycard, or if there is a delay due to other circumstances at the expense and risk of Customer, Cubycard is entitled to a reasonable extension of the delivery period. All damage and additional costs as a result of a delay due to a cause as referred to above shall be at the expense and risk of Customer.

## **Article 7 - Customer's obligations**

1. Customer is obliged to provide all information requested by Cubycard as well as relevant appendices and related information and data in a timely manner and/or before the start of the work and in the desired form for the correct and efficient execution of the Agreement. In the absence of this, Cubycard may not be able to realise a complete execution and/or delivery of the documents concerned. The consequences of such a situation are at all times at the expense and risk of Customer.

2. Cubycard is not obliged to check the correctness and/or completeness of the information provided to it or to update Customer with respect to the information if this has changed over time, nor is Cubycard responsible for the correctness and completeness of the information compiled by Cubycard for third parties and/or provided to third parties within the framework of the Agreement.
3. Cubycard may request additional information as necessary for the implementation of the Agreement. Failing this, Cubycard shall be entitled to suspend its activities until the information has been received, without being obliged to pay any compensation for any reason whatsoever to Customer. In the event of changed circumstances, Customer must inform Cubycard of this immediately, or at the latest 5 working days after the change has become known.
4. Customer is obliged to protect all technical security and other facilities of the Cubycard Application and to respect the intellectual property rights of the Application.
5. Cubycard is not responsible for malfunctions or disruptions of the Internet, telecommunications infrastructure that lie outside Cubycard's sphere of influence and which may lead to interruptions in the availability of the Application. Customer is responsible for adequate security of its (wireless) Internet connection.
6. Customer shall provide suitable equipment and/or an operating environment.
7. From the moment Customer first uses the Application, Customer indemnifies Cubycard against all damage resulting from the use of the Application.
8. Customer must refrain from inflicting any damage or performing any actions of which he can reasonably suspect that other users of the Application or the servers (of Cubycard) will be harmed.
9. Customer is responsible for the proper security of the (mobile) device on which he uses the Application, as well as for the security and confidentiality of his own login details.

## **Article 8 - Delivery of Products**

1. If the commencement, progress or delivery arising from the Agreement is delayed due to, for example, Customer not providing all requested information or not providing all requested information in a timely manner, insufficient cooperation, late receipt of payment by Cubycard or any delay due to other circumstances beyond Cubycard's control, Cubycard is entitled to a reasonable extension of the delivery term. All agreed delivery periods are never final deadlines. Customer must give Cubycard written notice of default and allow Cubycard a reasonable period of time to still be able to deliver. Customer is not entitled to any compensation due to the delay.
2. If Customer refuses to take delivery or is negligent in providing information or instructions necessary for the delivery, Cubycard is entitled to store the goods at the expense and risk of Customer.
3. If the Product is delivered by Cubycard or an external carrier, Cubycard is entitled to charge any delivery costs, unless agreed otherwise in writing. These will then be invoiced separately.
4. If Cubycard requires information from Customer within the framework of the execution of the Agreement, the delivery time will only commence after Customer has provided Cubycard with all information necessary for the execution of the Agreement.
5. If Cubycard has indicated a time frame for delivery, it is indicative. Longer delivery periods apply to deliveries outside the Netherlands.

6. Cubycard is entitled to deliver the goods in parts unless this has been deviated from by Agreement or the partial delivery does not have any independent value. Cubycard is entitled to separately invoice the goods thus delivered.

7. Deliveries will only be made if all invoices have been paid unless explicitly agreed otherwise. Cubycard reserves the right to refuse delivery if there is a well-founded fear of non-payment.

## **Article 9 - Development of Designs**

1. Customer shall record all wishes and requirements for the development of a design in writing, electronically or otherwise. Cubycard may, in consultation with Customer, deviate from this if it deems it necessary and/or desirable to achieve the envisioned result.

2. The development of the design will take place, unless the Parties agree on a different working method, in accordance with the following working method in 4 phases:

1. Phase I: concept development. Parties consult with each other to translate Customer's wishes into a design. The information provided by Customer regarding, among other things, the number and visual characteristics is crucial in this process. Cubycard then draws up an offer, which Customer must approve or reject in the agreed manner.
2. Phase II: visualization. After approval of the quotation, depending on the product(s) a suitable design will be created that will fit the corporate identity of Customer or will be the beginning of the corporate identity of Customer which will serve as a basis for further creative development. Cubycard will provide a sketch/example. The sketch will be elaborated. After approval of such a design, as well as the quotation drawn up for it, this design can be regarded as a product of Customer, which will serve as a basis for further creative elaboration. Customer can choose colour variations on the design.
3. Phase III: Feedback. Such a product is then further tuned to Customer's instructions. Customer is entitled to six (6) adjustments, as determined by Cubycard at the time of entering into the Agreement. Customer is obliged to assess the Design and/or give its approval within a maximum period of seven (7) days, unless another period has been explicitly agreed. Parties may agree that after an initial approval, Customer is still entitled to an additional number of modifications. If more adjustment rounds are necessary, or drastic changes, a surcharge may be applied for this.
4. Phase IV: delivery. After the reflection period as mentioned in phase III, the developed design is final, provided that no adjustments/feedback have been made. In the other case, Cubycard will carry out a final round of adjustments and the design will be definitive after this. In accordance with the offer or agreement, Customer will receive the design.

3. Customer only obtains a full non-transferable license to use the graphic design. All earlier designs and sketches and other products remain the property of Cubycard and cannot be used by Customer unless further agreements are made about this.

4. Customer is forbidden to make changes or have changes made to Cubycard's designs without prior express written consent.

## **Article 10 - Printed Products**

1. If agreed, Cubycard will perform printing for Customer. The scope of the obligation to have the design delivered by Cubycard printed extends to what has been explicitly agreed by the Parties. In this respect, the Parties will also agree on the specifications with regard to the printed matter, which in any case includes the number of prints, the format of the prints and the colour.
2. Cubycard will hire a third party to execute of the printing. If the agreement concerns printed matter, the general terms and conditions of the hired third party shall also apply.
3. Customer must first give his approval before the delivered design is printed. Cubycard is never liable for obvious typing, typesetting and printing errors.
4. The colours of the designs as shown in the example to which Customer must agree may differ due to differences in monitor type, monitor settings and monitor quality.
5. Customer must accept the given example after he has agreed to it.

## **Article 11 - Delivery and installation software**

1. Cubycard will, in accordance with the Agreement, either deliver the software or make it available online for delivery to Customer. Any user documentation agreed upon will be provided to Customer either in writing or digitally.
2. Customer accepts the software in the state in which it is at the time of delivery ('as is'), therefore with all visible and invisible defects.
3. Customer must register and activate his/her account.
4. If the start, progress or delivery of the software is delayed due to, for example, Customer not providing all requested information or not providing all requested information on time, insufficient cooperation, the advance payment is not received on time by Cubycard or due to other circumstances, which are at the expense and risk of Customer, Cubycard is entitled to a reasonable extension of the delivery term. Under no circumstances are the stated terms fatal, nor can Cubycard be held liable for exceeding the agreed term.
5. All damage and additional costs as a result of delay due to a cause mentioned in paragraph 4 are at the expense and risk of Customer and will be charged to Customer by Cubycard.
6. If Customer needs to give its approval, Cubycard is entitled to suspend the execution of the Agreement until Customer has given its approval.
7. Cubycard shall make every effort to provide its services within the agreed period of time, insofar as this can reasonably be demanded of them. In the event of an emergency, Customer is obliged to reimburse Cubycard for the additional costs involved.
8. Cubycard makes every effort to provide the Service as much as possible in accordance with the Offer.
9. Cubycard has the right to sign all designs designed and/or developed by it or to mention its name or have it mentioned. Cubycard also has the right to use all of its designs, sketches and all items subject to its intellectual property rights for the purpose of its own promotion and/or publicity without (prior) express permission from Customer.
10. After delivery, the responsibility lies with Customer for correct compliance with the relevant licenses of third parties when using the developed with Customer. Cubycard will adequately inform Customer about the applicable licence conditions.

## **Article 12 - Maintenance and/or support**

1. Cubycard undertakes vis-à-vis Customer to maintain and/or repair the delivered goods and/or Software during the subscription period.
2. Customer must report any defects, faults, or other malfunctions to Cubycard in writing or by telephone, after which Cubycard, in accordance with its usual procedures, will repair the defects as soon as possible and to the best of its ability. If repair is not or no longer possible, Cubycard shall replace the defective software and/or hardware.
3. Customer must report any theft of the product to Cubycard in writing or by telephone. Cubycard will then send Customer a replacement as soon as possible. The cost of the replacement Software will be charged to Customer.
4. Maintenance does not affect Customer's own responsibility for the management and use of the Application and the way in which it is deployed. Customer is also responsible for the instruction(s) on the use of the Application by third parties engaged by Customer.
5. If agreed, Cubycard will (periodically) make a backup of Customer's data in accordance with the manner stipulated in the Agreement. Cubycard will keep the backup during the agreed period of time, or in accordance with the usual period of time at Cubycard.

## **Article 13 - Packaging and transport**

1. Cubycard undertakes vis-à-vis Customer to properly pack the goods to be delivered and to secure them in such a way that they reach their destination in good condition during normal use.
2. Unless otherwise agreed in writing, all deliveries shall be made inclusive of value added tax (VAT), including packaging and packaging materials.
3. Acceptance of goods without any comments on the consignment note or the receipt shall serve as proof that the packaging was in good condition at the time of delivery.

## **Article 14 - Investigation, complaints**

1. Customer shall be obliged to examine the delivered Product (or have it examined) at the time of delivery, but in any case within 7 days after receipt of the delivered Product, but only to unpack or use it to the extent necessary to assess whether it retains the Product. In doing so, Customer shall examine whether the quality and quantity of the delivered Products are in accordance with the Agreement and the Products meet the requirements that apply to them in normal (commercial) traffic.
2. Customer is obliged to investigate and inform himself in what way the Product should be used. Cubycard accepts no liability for Customer's misuse of the Product.
3. Any visible defects or shortages must be reported in writing to Cubycard after delivery to [info@cubycard.com](mailto:info@cubycard.com). Customer has a period of 7 days after delivery. Non-visible defects or shortages must be reported within 7 days of discovery, but no later than 6 months after delivery. If the Product is damaged due to careless handling by Customer himself, Customer is liable for any reduction in value of the Product.

4. If Customer wishes to return defective goods, this shall only take place with Cubycard's prior written consent, in the manner indicated by Cubycard.
5. If Customer uses his right of withdrawal, it will return the Product and all accessories to Cubycard in their original condition and packaging, insofar as this is reasonably possible, in accordance with Cubycard's return instructions. The direct costs for returns are at the expense and risk of Customer.
6. Cubycard is entitled to start an investigation into the authenticity and condition of the returned Products before any refund is issued.
7. Refunds to Customer will be processed as soon as possible, but payment may take up to 30 days after receipt of the return. Refunds will be made to the account number previously provided.
8. If Customer exercises its right of complaint, it shall not be entitled to suspend its payment obligation or to set off any outstanding invoices.
9. In the absence of a complete delivery, and/or if one or more Products are missing and this is due to Cubycard, Cubycard will, following a request to this effect from Customer, send the missing Product(s) or cancel the remaining order. The confirmation of receipt of the Products is leading in this respect. Any damage suffered by Customer as a result of the (deviating) scope of the delivery cannot be recovered from Cubycard.

## **Article 15 - Prices and payment**

1. All prices are in principle exclusive of value added tax (VAT), unless otherwise agreed.
2. Cubycard shall provide its services in accordance with the agreed price.
3. Customer is obliged to fully reimburse the costs of third parties, which are deployed by Cubycard after Customer's approval, unless explicitly agreed otherwise.
4. Parties may agree that Customer must make an advance payment. If an advance payment has been agreed, Customer must make the advance payment before a the execution of the service is started.
5. Customer cannot derive any rights or expectations from a budget issued in advance unless the parties have expressly agreed otherwise.
6. Cubycard is entitled to increase the applicable prices and rates annually in accordance with the applicable inflation rates. Other price changes during the term of the Agreement are only possible if and insofar as they are explicitly laid down in the Agreement.
7. Customer must pay these costs at once, without settlement or suspension, within the specified payment term of 14 days at the latest as stated on the invoice to the account number and details of Cubycard notified to it.
8. In the event of liquidation, insolvency, bankruptcy, involuntary liquidation, or request for payment against Customer, the payment and all other obligations of Customer under the Agreement shall become immediately due and payable.

## **Article 16 - Debt collection policy**

1. If Customer does not meet its payment obligation and has not fulfilled its obligation within the stipulated payment term, Customer shall be in default, by operation of law.

2. From the date on which Customer is in default, Cubycard will be entitled, without further notice of default being required, to the statutory commercial interest from the first day of default until full payment, and reimbursement of the extrajudicial costs in accordance with Article 6:96 of the Dutch Civil Code (BW), to be calculated in accordance with the graduated scale from the decree on compensation for extrajudicial collection costs of 1 July 2012.

3. If Cubycard has incurred more or higher costs which are reasonably necessary, these costs shall be eligible for reimbursement. The full judicial and execution costs incurred are also at the expense of Customer.

## **Article 17 - Retention of title**

1. All goods delivered by Cubycard shall remain Cubycard's property until Customer has fulfilled all subsequent obligations under all Agreements concluded with Cubycard.

2. Customer shall not be entitled to pledge the goods covered by the retention of title or to encumber them in any other way if ownership has not yet been transferred in full.

3. If third parties seize the goods delivered under retention of title or wish to establish or assert rights to them, Customer is obliged to inform Cubycard of this as soon as can reasonably be expected.

4. In the event that Cubycard wishes to exercise its property rights indicated in this article, Customer hereby unconditionally and irrevocably authorises Cubycard, or third parties to be appointed by it, to enter all those places where Cubycard's property is located and to take these items back.

5. Cubycard has the right to retain the Product(s) purchased by Customer if Customer has not yet fulfilled its payment obligations (in full), despite an obligation to transfer or hand over Cubycard. After Customer has fulfilled its obligations, Cubycard will make every effort to deliver the purchased Products to Customer as soon as possible, but at the latest within 20 working days.

6. Costs and other (consequential) damage resulting from the retention of the purchased Products are at the expense and risk of Customer and will be reimbursed to Cubycard by Customer on first request.

## **Article 18 - Warranty**

1. Cubycard guarantees that during the term of the Subscription, the Products and/or Services comply with the Agreement, the specifications, usability and/or soundness stated in the offer and the legal rules and regulations at the time of the conclusion of the Agreement. This also applies if the goods to be delivered are intended for use abroad and Customer has explicitly notified Cubycard of this use in writing at the time of the conclusion of the Agreement.

2. Customer can only invoke the warranty given by Cubycard if Customer has fully met its payment obligations.

3. If Customer justifiably invokes the warranty, Cubycard is obliged to carry out a repair or replacement free of charge.

4. Cubycard does not guarantee that the Products and/or Services will function without errors and/or interruptions. Cubycard makes every effort to rectify errors (in the software) within a reasonable period of time.

## **Article 19 - Access to the Application**

1. Use of the Application is also subject to Cubycard's terms of use.
2. Cubycard is entitled to deny Customer access to the Application and/or terminate the use of the Application in the event of abuse and/or possible criminal offences.
3. Cubycard is not liable for damage caused by complications in connection with the availability or functioning of information from third parties, as well as damage resulting from the use of the Application in violation of conditions or for purposes other than those for which the Application is intended.
4. Cubycard strives to make every effort to offer the Application and access to the Application to Customer uninterrupted to the extent possible but does not guarantee the full availability of the Application at all times. Cubycard is entitled to suspend the use of the Application if and insofar as, in its opinion, there is a risk of error-free operation of the Application. Cubycard will also be entitled to take all measures it reasonably considers necessary to guarantee the effective functioning of the Application.
5. Cubycard is free to maintain the Application (or have it maintained) and to decommission it as a result. Under no circumstances will Cubycard be liable for the inaccessibility of the Application, but Cubycard will make every effort to make the Application available without restrictions and/or interruptions and in accordance with the applicable industry standards.
6. Cubycard is entitled to suspend all or part of the provision of services in connection with preventive, corrective or adaptive maintenance or other forms of service.
7. If Cubycard, based on a request or order from a government agency and/or a legal obligation, carries out work with respect to Customer data, the associated costs are for Customer's account only.
8. In the event of changes, Cubycard may continue to provide the Service with the modified version of the Application. Cubycard is never obliged or required to maintain, modify, or add certain functionalities and/or specific properties.
9. Cubycard provides written and/or verbal information regarding the measures to be taken by Customer to prevent and limit damage as a result of malfunctions, defects in the service, mutilation, or loss of data. If necessary, Customer will take additional measures.

## **Article 20 - Right of use and restrictions on use**

1. Cubycard will make the agreed Application and user documentation available to Customer on the basis of a user licence during the term of the Agreement. The Agreement for the use of the Application can never be regarded as a purchase agreement.
2. The use of the Application by Customer may be subject to further restrictions and may be modified by Cubycard.
3. Cubycard is at all times entitled to take measures against unlawful use and/or unauthorised use of the Application by Customer. Customer refrains from actions that undo or ineffectively undo the aforementioned measures.
4. Customer is never permitted to sell, rent out, alienate the Application, grant limited rights to it or make it available to a third party. Neither is Customer permitted to give a third-party access to the Application or to place the Application with a third party for hosting purposes, regardless of whether this third party uses the Application exclusively for the benefit of Customer.

5. Customer is never entitled to modify the Application in whole or in part without prior written permission from Cubycard. Cubycard shall never be obliged to grant the aforementioned consent and is entitled to attach conditions to the granting of its consent.

6. Upon first request, Customer shall fully cooperate with an investigation to be carried out by Cubycard regarding compliance with the agreed rights, obligations, and restrictions of use.

7. If and insofar as Cubycard makes an Application from a third party available to Customer, the terms and conditions of use and/or licence of the third party in question shall also apply to the use of that Application.

8. If and in so far as the conditions referred to in paragraph 1 of this article do not apply or are declared inapplicable, the provisions of these general terms and conditions shall apply in full.

9. Cubycard is not obliged to provide the assistance required for the use and/or maintenance of the Application and/or Application and program or data libraries. Cubycard may charge a fee for providing the aforementioned assistance to the Application and/or program or data libraries.

10. The aforementioned restrictions on use do not apply insofar as the parties have expressly agreed otherwise and Customer has borne the full design and development costs independently.

## **Article 21 - New versions of the Application**

1. If expressly agreed, Cubycard will make new versions of the Application available to Customer if this is necessary at Cubycard's sole discretion.

2. When making the new Application available, Cubycard is not obliged to maintain the specific features or functionalities of Customer or to add them to the new version of the Application.

## **Article 22 - Suspension and dissolution**

1. Cubycard is entitled to suspend the execution of the service provision in whole or in part in connection with preventive, corrective or adaptive maintenance or other forms of service provision.

2. Cubycard has the right to retain the data, data files, Application and more received or realised by Cubycard if Customer has not yet (fully) fulfilled its payment obligations, even if it had paid for them.

3. Cubycard is authorised to suspend compliance with its obligations as soon as Customer is in default of compliance with any obligation arising from the Agreement, including late payment of its invoices. The suspension shall be immediately confirmed to Customer in writing. In that case, Cubycard is not liable for damage, in whatever form, resulting from the suspension of its activities.

## **Article 23 - Limitation of liability**

1. If any result laid down in the Agreement is not achieved, a failure by Cubycard shall only be deemed to exist if Cubycard has expressly promised this result upon acceptance of the Agreement.

2. In the event of an attributable shortcoming on the part of Cubycard, Cubycard shall only be obliged to pay any compensation if Customer has given Cubycard notice of default within 14 days of discovery of the shortcoming and Cubycard has not subsequently remedied this shortcoming within a reasonable

period of time. The notice of default must be submitted in writing and contain such a precise description/substantiation of the shortcoming as to enable Cubycard to respond adequately.

3. If Cubycard's performance of the Agreement results in Cubycard's liability towards Customer, this liability shall be limited to the costs charged by Cubycard in connection with the Agreement, unless the damage has arisen due to intent or gross negligence.
4. Cubycard is not liable for consequential damage, indirect damage, loss of profit and/or losses suffered, missed savings and damage resulting from the use of the delivered Products is excluded.
5. Cubycard is not liable for and/or obliged to repair damage caused by the use of the Product. Cubycard provides strict maintenance and user instructions that must be observed by Customer. All damage to the Products as a result of use is explicitly excluded from liability (including traces of use, damage arising from use, fall damage, light and water damage, theft, loss of possession, etc.).
6. Cubycard is not liable for any damage that is or may be the result of any act or omission as a result of (incomplete and/or incorrect) information on its website or the Application.
7. Cubycard is not responsible for errors and/or irregularities in the functionality of the Application and is not liable for malfunctions or the unavailability of the Application for whatever reason.
8. Customer is responsible for the proper security of his own (e)-equipment, security of passwords and more. Under no circumstances is Cubycard liable for defects in Customer's security.
9. Customer guarantees the correctness and completeness of the information and wishes provided by him with regard to the Products.
10. Cubycard does not guarantee the correct and complete transmission of the content of and e-mail sent by/on behalf of Cubycard, nor its timely receipt.
11. All claims of Customer due to shortcomings on the part of Cubycard shall lapse if these have not been reported to Cubycard in writing and substantiated within one year after Customer became aware or could reasonably have been aware of the facts on which it bases its claims. In any case, all claims of Customer expire one year after the termination of the Agreement.

## **Article 24 - Force majeure**

1. Cubycard shall not be liable if it is unable to fulfil its obligations under the Agreement as a result of force majeure.
2. Force majeure on the part of Cubycard shall be understood in any event but not limited to: (i) force majeure of Cubycard's suppliers, (ii) failure to properly fulfil obligations of suppliers prescribed or recommended to Cubycard by Customer, (iii) inadequacy of goods, equipment, Application or materials of third parties, (iv) government measures, (v) power failure, (vi) failure of the Internet, data network and telecommunication facilities (e.g. by Cubycard): cybercrime, hacking and DDoS attacks), (vii) natural disasters, (viii) war and terrorist attacks, (ix) general transport problems, (x) fire and (xi) other situations which, in the opinion of Cubycard, fall outside its sphere of influence which temporarily or permanently prevent the fulfilment of its obligations.
3. If a situation of force majeure lasts longer than two months, the Agreement may be dissolved in writing by either of the Parties. If any performance has already been made on the basis of the Agreement, in such a case settlement shall be made proportionately without any liability on the part of either Party towards each other.

## **Article 25 - Transfer of risk**

The risk of loss of or damage to the Products that are the subject of the Agreement shall pass to Customer if the Products have been provided under Customer's control. This is the case if the Products have been delivered to Customer's (digital) delivery address.

## **Article 26 - Confidentiality**

1. Cubycard and Customer undertake to maintain the confidentiality of all confidential information obtained within the framework of an order. Confidentiality ensues from the order and must also be assumed if it can reasonably be expected that the information is confidential. The confidentiality does not apply if the information in question is already public/general, the information is not confidential and/or the information was not disclosed to Cubycard at Customer during the Agreement and/or was obtained by Cubycard in any other way.

2. In particular, the confidentiality relates to advice, reports, designs, working methods and/or reports drawn up by Cubycard regarding the order of Customer. Customer is explicitly forbidden to share the content of this with employees who are not authorised to take cognisance of it and with (unauthorised) third parties. Furthermore, Cubycard shall always exercise due care in the handling of all business-sensitive information provided by Customer.

3. If Cubycard is obliged on the basis of a statutory provision or a judicial decision to (co-)provide confidential information to a court or indicated third party and Cubycard cannot invoke a right to refuse to give evidence, Cubycard is not obliged to pay any compensation and Customer does not provide any grounds for dissolution of the Agreement.

4. The transfer or distribution of information to third parties and/or publication of statements, advice or productions provided by Cubycard to third parties requires Cubycard's written consent, unless such consent has been explicitly agreed in advance. Customer shall indemnify Cubycard against all claims of such third parties as a result of reliance on such information distributed without Cubycard's written consent.

5. Cubycard and Customer shall also impose the confidentiality obligation on the third parties to be engaged by them.

## **Article 27 - Intellectual Property Rights**

1. All intellectual property rights of Cubycard, including Application, data files, equipment and/or other materials made available to Customer, including but not limited to designs, analyses, reports, documentation and quotations, as well as all preparatory materials thereof, are vested exclusively in Cubycard, and/or third parties and/or suppliers if these rights already belong to parties other than Cubycard.

2. Customer is prohibited from disclosing and/or reproducing, altering, or making available to third parties all documents and Applications to which Cubycard's IP rights and copyrights apply, without Cubycard's express prior written consent and an agreed financial compensation. If Customer wishes to make changes to items delivered by Cubycard, Cubycard must explicitly agree to the intended changes.

3. Customer is forbidden to use the Products on which Cubycard's intellectual property rights rest, other than as agreed in the Agreement.
4. The parties will inform each other and take joint action against any infringement of Cubycard's IPR.
5. Customer indemnifies Cubycard against claims from third parties with respect to (possible) infringements and/or claims of third parties with respect to what has been made available to Customer within the framework of the Agreement. Customer shall immediately inform Cubycard of these infringements and/or claims.
6. Any infringement of Cubycard's IP rights (and copyrights) by Customer will be punished by a one-off fine of € 10,000 (in words: ten thousand euros) and a fine of € 500 (in words: five hundred euros) for each day that the infringement continues.

## **Article 28 - Privacy, data processing and security**

1. Cubycard treats the (personal) data of Customer and visitors to the Application(s) with care. If so requested, Cubycard will inform the party concerned concerning this matter.
2. Customer is responsible for the processing of data processed using a Cubycard service. Customer also guarantees that the content of the data is not unlawful and does not violate any rights of third parties. Within this framework, Customer indemnifies Cubycard against any (legal) claim related to these data or the execution of the Agreement.
3. If Cubycard is required by the Agreement to ensure the security of information, it shall comply with the agreed specifications and a level of security that is not unreasonable having regard to the state of the art, the sensitivity of the information, and the cost involved.

## **Article 29 - Complaints**

1. If Customer is not satisfied with Cubycard's service and/or has complaints about the (execution of the) Agreement, Customer is obliged to report these complaints as soon as possible, but at the latest within 14 calendar days after the relevant reason that led to the complaint. Complaints can be reported via [PieterCoppelmans@gmail.com](mailto:PieterCoppelmans@gmail.com) with the subject "Complaint".
2. The complaint must be sufficiently substantiated and/or explained by Customer if Cubycard is to be able to deal with the complaint.
3. Cubycard will respond substantively to the complaint as soon as possible, but no later than 14 calendar days after receipt of the complaint.
4. The parties will try to reach a solution mutually.

## **Article 30 - Applicable law**

1. The legal relationship between Cubycard and Customer is governed by Dutch law.
2. Cubycard has the right to change these general terms and conditions and shall inform Customer thereof.

3. All disputes arising from or as a result of the Agreement between Cubycard and Customer will be settled by the competent court of the District Court of Zeeland-West-Brabant, located in Tilburg, unless provisions of mandatory law lead to the jurisdiction of another court.

Tilburg, 30 July 2020