



General terms and conditions of Kemari Digital B.V.

**Version: March 2023**

## TABLE OF CONTENTS

1	Defenitions	3
2	Application of these terms	4
3	Offers and Quotations	4
4	Formation of the agreement	4
5	Execution of the agreement and delivery	4
6	Warranty obligations	5
7 -	Complaints and acceptance	5
8 -	Prices and payments	6
9 -	Change of agreement and additional work	6
10 -	Client obligations	7
11 -	Intellectual property	7
12 -	Usage right	8
13 -	Privacy	8
14 -	Liability	8
15 -	Force majeure	9
16 -	Confidentiality	9
17 -	Duration and termination of the agreement	9
18 -	Applicable law and disputes	10
19 -	Other provisions	10
APPENDIX A: Software		11
APPENDIX B: Hosting		12
APPENDIX C: Domain names		13

## DEFINITIONS

**1.1** In these Terms and Conditions, the following terms with an initial capital letter are used, both in singular and plural.

These terms shall have the following meanings:

<b>Article:</b>	an article in these Terms and Conditions;
<b>Attachment/Annex:</b>	an annex to these Terms and Conditions with specific provisions regarding a Service to be provided;
<b>Service:</b>	all services to be provided by Kemari under the Agreement, including, where applicable, the results of services;
<b>Intellectual Property Rights:</b>	all intellectual property rights and related rights, such as copyrights, trademarks, patent rights, design rights, trade name rights, database rights, neighboring rights, as well as know-how rights;
<b>Kemari:</b>	the private company with limited liability Kemari Digital B.V. (registered in the trade register under number 67691293), established and having its office at (7545 MV) Enschede, Parkweg 102;
<b>Assignment:</b>	any order for the provision of Services to the benefit of the Client, including any amendment or supplement to the relevant order, as well as all (legal) actions for the preparation and execution thereof;
<b>Client:</b>	any natural or legal person to whom Kemari will provide services;
<b>Agreement:</b>	the Agreement concluded between Kemari and the Client;
<b>Parties:</b>	Kemari and the Client jointly;
<b>Performances:</b>	all Services and other delivered (physical or non-physical) products/items;
<b>Software:</b>	Websites, software applications ("apps") or other software/programs that Kemari develops for the Client under the Agreement;
<b>In writing:</b>	including by e-mail;
<b>Confidential Information:</b>	information whose confidentiality has been expressly communicated by the counterparty, information whose confidentiality arises from its nature, and information that the other party must reasonably understand to be confidential based on facts and/or circumstances;
<b>Terms and Conditions</b>	these general terms and conditions.

## 2 - APPLICATION OF THESE TERMS

- 2.1** These Terms and Conditions apply to all existing and future legal relationships between Kemari and the Client, including all offers, quotations, and Agreements.
- 2.2** These Terms and Conditions also apply to Agreements with Kemari for the execution of which third parties need to be engaged by Kemari.
- 2.3** These Terms and Conditions apply to all existing and future legal relationships between Kemari and the Client, including all offers, quotations, and Agreements.
- 2.4** Any deviations from these Terms and Conditions can only be agreed upon in writing between Kemari and the Client for each Agreement. If such a deviation is agreed upon between the parties, the Client cannot rely on this deviation for subsequent Agreements.
- 2.5** If there is any ambiguity regarding the interpretation of one or more provisions of these Terms and Conditions (including the Appendices), the interpretation should be based on the “spirit” of these provisions.
- 2.6** If a situation arises between the parties that is not regulated in these Terms and Conditions (or the Appendices), this situation should be judged based on the “spirit” of these Terms and Conditions.
- 2.7** If there is a contradiction between different provisions of these Terms and Conditions (or the Appendices), the provision that Kemari chooses to rely on prevails.

## 3 - OFFERS AND QUOTATIONS

- 3.1** All offers and quotations from Kemari are non-binding and do not oblige Kemari, unless expressly stated otherwise in the Agreement.
- 3.2** Offers and quotations from Kemari lose their validity after thirty (30) days from the date, unless otherwise stated in writing.
- 3.3** Kemari cannot be held to its offer or quotation if the Client can reasonably understand that the offer or quotation, or a part thereof, contains an obvious mistake or clerical error.
- 3.4** The Client cannot derive any rights from promotional expressions, such as texts, recommendations, and other advertising material that comes from Kemari.
- 3.5** The prices stated in an offer or quotation are exclusive of VAT and other government levies, as well as any costs to be incurred in the context of the Agreement, including travel, accommodation, shipping, and administrative costs, unless otherwise stated.

- 3.6** If Kemari makes an estimate of the size of the assignment and the number of hours to be spent in an offer or quotation, the Client cannot derive any rights from this estimate.

## 4 - FORMATION OF THE AGREEMENT

- 4.1** The Agreement shall enter into force once the offer or quotation has been accepted. Acceptance shall be deemed to have taken place as soon as the Client agrees to the relevant offer or quotation. Acceptance shall also be deemed to have taken place if Kemari may reasonably consider the Client’s conduct as an indication of agreement with the offer or quotation.
- 4.2** The Agreement is entered into exclusively between Kemari and the natural or legal person designated as the Client in the Agreement. No agreement shall be entered into between the Client and the person who executes the Assignment on behalf of or is involved in the execution of the Assignment by Kemari under any legal relationship, even if the Assignment is given with a view to its execution by that person within the meaning of Article 7:404 of the Dutch Civil Code. The provisions of Article 7:404 and Article 7:407(2) of the Dutch Civil Code are excluded hereby.

## 5 - EXECUTION OF THE AGREEMENT AND DELIVERY

- 5.1** Kemari shall execute the Agreement to the best of its knowledge and ability and in accordance with the requirements of good craftsmanship. However, the obligations of Kemari shall be performed exclusively on the basis of a best efforts obligation, unless Kemari explicitly issues a guarantee in writing in accordance with the provisions of Article 6.
- 5.2** When executing the Agreement, Kemari is not obliged to comply with the Client’s instructions, particularly if these instructions change the content and/or scope of the Agreement or supplement it. To the extent that Kemari chooses to follow these instructions, it is entitled to charge a fee for this (‘additional work’, see also Article 9 of these Terms).
- 5.3** The intended delivery periods and dates are stated in the Agreement, as well as the manner (and, where applicable, the place) in which delivery and/or (where applicable) delivery of the Performances to be provided by Kemari takes place. It should be emphasised that the lead time for an Assignment depends on various factors and circumstances, including the cooperation of the Client and relevant third parties and the quality of the data and information provided to Kemari. The delivery times agreed are therefore intended

solely as indications and cannot be considered as 'fatal deadlines'.

- 5.4** If any agreed (delivery) period or date is in danger of being exceeded, the Parties shall, if necessary, consult with each other in order to take appropriate measures. The Client shall never be entitled to any damages or other form of compensation if an agreed (delivery) period or date is exceeded.
- 5.5** The Client acknowledges and accepts that, in the context of the performance of its Performances, Kemari is also dependent on the services and/or products of third parties. Kemari shall not be liable for the services and/or products of third parties.
- 5.6** General or specific terms and conditions of third parties employed by Kemari for the performance of the Agreement shall apply to the Agreement, unless Kemari and the Client have expressly excluded the applicability of such terms and conditions. This means that Kemari may also rely on these terms and conditions of third parties against the Client, without prejudice to Kemari's right to rely on the Terms instead if Kemari so chooses. Upon first request of the Client, Kemari shall provide a copy of the applicable terms and conditions of third parties.
- 5.7** Kemari has the right to perform the Agreement in phases. In that case, Kemari may suspend the execution of those parts that belong to a subsequent phase or phases until the Client has approved the results of the preceding phase in writing.
- 5.8** If the Agreement is executed in phases, Kemari has the right to invoice each executed portion separately and demand payment for it. If and as long as this invoice is not paid by the Client, Kemari is not obliged to carry out the next phase and has the right to suspend the Agreement.

## 6 - WARRANTY OBLIGATIONS

- 6.1** If Kemari - contrary to the provisions of Article 5 - is willing to undertake one or more warranty obligations, this must be explicitly agreed upon. This means that it must be clearly indicated (in words) that a particular obligation constitutes a warranty obligation, and the guaranteed result must also be sufficiently concrete and specific.
- 6.2** It should be noted that all liability limitations, forfeiture clauses, and force majeure provisions included in these Terms and Conditions fully apply to any warranty obligations undertaken by Kemari.
- 6.3** Any warranty obligations undertaken by Kemari expire automatically if the Client makes changes to, or carries out or

authorizes repairs to the Deliverables, or if the Client uses the Deliverables for purposes other than normal business purposes.

- 6.4** The Client acknowledges and accepts that Kemari cannot guarantee that the Services, and in particular the Software, will function without incidents. 'Incidents' include, among other things, interruptions, glitches, (network) failures, and errors.

## 7 - COMPLAINTS AND ACCEPTANCE

- 7.1** Defects in Kemari's Deliverables must be reported to Kemari in writing as soon as possible after discovery (in accordance with Article 7.3). It is the Client's responsibility to check Kemari's Deliverables for defects in a timely manner. If defects are not reported in a timely manner, Kemari's Deliverables are deemed accepted. The Client may no longer rely on the defect, and all claims and entitlements of the Client related to the defect will expire.
- 7.2** If the Agreement concerns the development of Software, 'defects' also explicitly include any bugs in the Software and deviations from the functional or technical specifications expressly described in the Agreement. Such a defect only exists if the Client can demonstrate it and it is reproducible.
- 7.3** Notification of the defect must be made within 7 (seven) days after the day on which the defective performance was delivered, or, if delivery takes place through installation or implementation work to be provided by Kemari, within 7 (seven) days after completion of the relevant installation or implementation work. If the Client can demonstrate that he could not have discovered the defect earlier, contrary to the preceding sentence, the defect must be reported within 3 (three) days after the day on which the defect was discovered.
- 7.4** It should be noted that the provisions of this Article 7 also apply if a defect relates to any warranty obligation entered into by Kemari.
- 7.5** If a defect is reported to Kemari in a timely and proper manner, Kemari will process the defect. This means that Kemari will assess the defect. The Client is obliged to cooperate with Kemari in this regard. Kemari will generally remedy the defect in question free of charge. Kemari decides how this 'remediation' is carried out (repair or replacement of the defective performance). The Client will provide all requested cooperation in this regard. Kemari is not obliged to remedy defects if the defects are related to changes made

by the Client to, or repairs carried out by the Client on the Deliverables. The same applies if the Client uses Kemari's Deliverables for purposes other than the purposes that Kemari should reasonably have taken into account when entering into the Agreement.

## 8 - PRICES AND PAYMENTS

- 8.1** Kemari generally invoices its services on a monthly basis, based on actual hours worked, using a time and material model. However, the Agreement may include different pricing arrangements.
- 8.2** All prices used by Kemari are in Euro, and payment must also be made in Euro. The prices are based on work carried out during normal working hours.
- 8.3** All prices are exclusive of value-added tax (VAT), other government-imposed levies, and any disbursements/costs that third parties charge (such as, but not limited to, costs for services performed by third parties, license fees for third-party software, and transportation costs).
- 8.4** Unless otherwise agreed between the Parties, price indications, budgets, estimates, and/or pre-calculations by Kemari are for indicative purposes only, and the Client cannot derive any rights or expectations from them. Kemari is only obliged to inform the Client of an excess of a pre-calculation or budget if this has been expressly agreed between the Parties.
- 8.5** Kemari is entitled to increase the prices during the term of the Agreement. Kemari will inform the Client in advance of the proposed price increase, to the extent possible. In the event of a price increase, the Client may terminate the Agreement within 14 (fourteen) days of notification, subject to a notice period of 3 (three) months at the increased prices. This termination right does not apply if Kemari increases its prices by a maximum of 10% as of January of a new calendar year.
- 8.6** If the Client fails to pay the amounts due on time, the Client will be in default without any reminder or formal notice being required. The Client will be liable for a default interest of 8% per month on the outstanding amount. In addition, all (extra) judicial costs (including the costs of advisers/external legal support) relating to the collection of invoices will be fully borne by the Client. The legal costs claimed in the event of any legal proceedings to collect the overdue invoice(s) will not be limited to the liquidation rate used by the Judiciary, but will generally be fully borne by the Client.

- 8.7** Kemari has the right to suspend its obligations as long as the Client has not fulfilled its payment obligations, regardless of whether the payment arrears relate to the obligations that Kemari suspends.
- 8.8** All prices communicated by Kemari are subject to typing errors and/or omissions. Kemari is not bound by such errors and/or omissions.
- 8.9** Payment by the Client will be made after Kemari has issued an invoice. Unless a different payment term is stated on the invoice or in the Agreement, payment of invoices must be made within 14 (fourteen) days of the invoice date. The payment term is a deadline. All payments will be made without any deduction, suspension, or setoff.
- 8.10** Complaints about invoices sent must be made in writing within 14 (fourteen) days of receipt of the relevant invoice, failing which they will be deemed accepted. It is noted that such complaints do not suspend the Client's obligation to pay.
- 8.11** All payments to Kemari will always be applied first to repay all due interest and costs, and then to the most overdue invoices, regardless of whether the Client indicates that the payment relates to a later invoice.
- 8.12** Kemari may request payment of an advance payment when concluding the Agreement with the Client. Additionally, Kemari is entitled to request a further advance payment during the execution of the Agreement or demand other forms of compliance from the Client.
- 8.13** The Client agrees to electronic invoicing.
- 8.14** If the Client has reasonable doubts about the authenticity of invoices and/or payment instructions, the Client is obliged to immediately report this in writing to Kemari. Payment to an unauthorized party will not be considered valid payment to Kemari.

## 9 - CHANGE OF AGREEMENT AND ADDITIONAL WORK

- 9.1** The client accepts that any (time) schedule agreed upon between the Parties may be influenced by interim expansion and/or changes in the scope of the Agreement or circumstances that were not known or taken into account at the time of entering into the Agreement. If such a situation arises, Kemari will inform the client thereof.
- 9.2** Additional work includes, among other things, if the extra work to be performed exceeds the initial budget or if the intended additional work falls outside the functional description of the assignment as stated in the Agreement. If

Kemari foresees that additional work may be required, it will inform the client accordingly. The additional work will be carried out on a time and materials basis based on the hourly rates of Kemari that apply from time to time. If the additional work entails a surcharge of up to 10% compared to the originally agreed total compensation under the relevant Agreement, Kemari is authorized to perform the additional work - at the expense of the client - without the client having to be informed in advance about the additional work and the surcharge.

- 9.3** Kemari is not obliged to carry out additional work and may request the client to enter into a separate agreement with Kemari for this purpose.
- 9.4** The fact that (the demand for) additional work arises during the execution of the Agreement does not give the client the right to terminate, dissolve or annul the Agreement.

## 10 - CLIENT OBLIGATIONS

- 10.1** The client is obligated to provide Kemari with all data and/or information that Kemari indicates is necessary or that the client reasonably understands to be necessary for the performance of the Agreement, including but not limited to information regarding specific laws and regulations that Kemari must comply with in the client's industry, and to provide all cooperation requested by Kemari to perform the Agreement in a timely manner. Kemari's quotes and proposals, as well as the subsequent Agreement, are based on the information provided by the client.
- 10.2** Kemari is not liable for any damages resulting from incorrect or incomplete data and information provided by the client. The client also warrants that all data shared with Kemari, in any form, as well as any requests made and use of the services, do not infringe the rights of third parties.
- 10.3** If necessary data and/or information for the performance of the Agreement is not provided or provided in a timely manner, Kemari has the right to suspend the performance of the Agreement and/or charge the client any additional costs resulting from the delay according to the applicable rates at the time.
- 10.4** The client must comply with the technical specifications set by Kemari with regard to their systems and infrastructure. It should be noted that the client is responsible for implementing appropriate technical and organizational security measures to prevent unauthorized and/or unlawful access

to and use of their systems and infrastructure.

- 10.5** To the extent that Kemari provides usernames and/or passwords in connection with the Agreement, the client is not allowed to provide or otherwise disclose these usernames and/or passwords to third parties without Kemari's permission. Additionally, the client is responsible for the accuracy of these usernames and/or passwords and is fully liable for any misuse of the usernames and passwords, unless such misuse is the result of intentional or grossly negligent conduct by Kemari.
- 10.6** If the client has simultaneously or previously entrusted the same or similar task to one or more third parties, they must inform Kemari immediately upon entering into the Agreement. This obligation to provide information also applies if the client has already entrusted the same or a similar task to one or more third parties in the past.

## 11 - INTELLECTUAL PROPERTY

- 11.1** Unless expressly agreed otherwise in the Agreement, all Intellectual Property Rights and Know-how relating to the Agreement and Performance shall be exclusively owned by Kemari. If such right can only be obtained by registration or filing, only Kemari is authorized to do so.
- 11.2** Unless expressly agreed otherwise in the Agreement, Kemari is not obliged to transfer any Intellectual Property Rights and/or Know-how to the Client.
- 11.3** Unless expressly agreed otherwise in the Agreement, it is not Kemari's responsibility to investigate the existence of any third-party Intellectual Property Rights in connection with the Agreement. The Client shall indemnify Kemari against any claims by third parties relating to any infringement of such third-party Intellectual Property Rights.
- 11.4** Kemari expressly does not waive its moral rights as referred to in Article 25 of the Copyright Act.
- 11.5** Kemari is entitled to include a reference to its name (such as a mention of its trademark and/or trade name) in (the results of) the Performance provided by Kemari in the execution of the Agreement. The Client is not allowed to remove such reference or make any adjustments that, in Kemari's opinion, would detract from the reference.
- 11.6** The Client grants Kemari an irrevocable and unconditional permission to use the Performance and materials used for the execution of the Agreement, such as designs, drawings, films, software, (electronic) files, reports, formats, etc., for its own promotion and/or publicity purposes. This provision

remains in effect even if Kemari, pursuant to Article 11.2, first sentence, has committed to transferring any Intellectual Property Right to the Client.

## 12 - USAGE RIGHT

- 12.1** If Kemari performs a Service for the Client, Kemari grants the Client a revocable, non-exclusive, and non-transferable right (the '**Usage Right**') to use the results of this Service. The Usage Right starts at the moment the results are made available to the Client for use and is limited to use for the purpose of the Assignment, as was known to Kemari when entering into the Agreement.
- 12.2** The Usage Right is granted on the condition that the Client strictly complies with the terms of the Agreement (including all payment obligations). If the Client fails to comply, the Usage Right will automatically expire. In that case, the Client must immediately cease using and refrain from using the intended result. The Client indemnifies Kemari against all damages and claims of third parties resulting from the Client's failure to comply with the obligations in this article by or on behalf of the Client.

## 13 - PRIVACY

- 13.1** The responsibility for data, including personal data as referred to in Article 4 (1) of the General Data Protection Regulation, that is processed in any way during the performance of the Agreement, lies entirely with the Client. The Client guarantees to Kemari that the content, use, and/or processing of this data is not unlawful and does not infringe on any third party rights.
- 13.2** If Kemari performs work related to the data of the Client, its employees, or users on the basis of a request or authorized order from a government agency or in connection with a legal obligation, all associated costs may be charged to the Client.
- 13.3** If Kemari qualifies as a processor as referred to in Article 4 (8) of the General Data Protection Regulation, the Parties will enter into a data processing agreement according to Kemari's model.
- 13.4** In addition to the above provisions in this Article 13, the Client indemnifies Kemari from all (legal) claims and demands from third parties, including but not limited to (inter)national regulators and those affected, and any resulting damages, for whatever reason, in connection with the processing of this personal data under the Agreement.

## 14 - LIABILITY

- 14.1** The liability of Kemari is excluded, regardless of the legal basis on which the liability is based.
- 14.2** If and insofar as Kemari cannot rely on the provisions of Article 14.1, the liability of Kemari, regardless of the legal basis on which the liability is based, is limited in accordance with the provisions of the following paragraphs of this Article 14.
- 14.3** The liability of Kemari is limited per event (a series of consecutive events is considered one event) to compensation for direct damages up to the maximum amount that Kemari's insurer pays out in respect of the relevant case. If the insurance does not pay out compensation for the event, the liability of Kemari is limited to the invoice amount, or at least that part of the invoice to which the liability relates. However, the total cumulative liability of Kemari will never exceed an amount of €50,000.00 (fifty thousand euros).
- 14.4** The liability of Kemari for indirect damages, consequential damages, loss of profit, missed savings, reduced goodwill, damage due to business interruption, damage resulting from claims by customers of the Client, damage in connection with the use of items, materials or third-party software prescribed by the Client to Kemari, or with the engagement of third parties prescribed by the Client to Kemari, is excluded. Liability of Kemari for mutilation, destruction, or loss of data or documents is also excluded.
- 14.5** Kemari is not liable for damages covered by any insurance policy taken out by the Client.
- 14.6** The exclusions and limitations of liability of Kemari, as described in the preceding paragraphs of this Article 14, do not affect the other exclusions and limitations of liability of Kemari under the Terms and Conditions.
- 14.7** The exclusions and limitations of liability referred to in Article 14.1 to 14.6 shall cease to apply in the event and to the extent that the damage arises as a result of intent or willful recklessness of the management of Kemari.
- 14.8** Unless performance by Kemari is permanently impossible, Kemari's liability for attributable failure to perform the Agreement arises only after the Client has immediately and in writing placed Kemari in default, setting a reasonable period for rectifying the attributable failure, and Kemari remains in default of its obligations after that rectification period. The notice of default must contain as complete and detailed a description of the attributable failure as possible, so that Kemari is given the opportunity to respond adequately.
- 14.9** For any right to compensation, the Client must report the



damage to Kemari in writing as soon as possible, but in any case within thirty (30) days after the occurrence of the damage. If Kemari is not notified within the aforementioned period, Kemari will be released from any liability in connection with such damage.

**14.10** Any claim for compensation against Kemari shall automatically lapse by the mere passage of twelve (12) months after the occurrence of such claim.

**14.11** The provisions of this Article 14 as well as all other exclusions and limitations of liability mentioned in these Terms and Conditions also apply for the benefit of all (legal) persons engaged by Kemari for the performance of the Agreement.

**14.12** The client indemnifies Kemari against all possible claims and demands from third parties due to damage, arising from or in connection with the execution of the Agreement.

## 15 - FORCE MAJEURE

**15.1** Kemari is not obliged to fulfill any obligation, including any agreed-upon warranty obligation, if it is prevented from doing so as a result of force majeure.

**15.2** Force majeure on the part of Kemari includes, among other things: (i) force majeure on the part of Kemari's suppliers, (ii) failure by Kemari's suppliers to properly fulfill their obligations, (iii) defects in goods, equipment, software or materials from third parties, (iv) government measures, (v) power failure, (vi) disruptions in internet, data network or telecommunications facilities, (vii) (cyber)crime, (cyber)vandalism, war or terrorism, and (viii) general transportation problems.

**15.3** If a force majeure situation lasts longer than 30 (thirty) days, both Parties have the right to terminate the Agreement in writing, without being liable for any damages, without any obligations to undo or compensate for such termination to the other Party.

**15.4** If, at the time of force majeure, Kemari is still able to partially fulfill its obligations, or has already performed, Kemari is entitled to perform this service and invoice it separately, as if it were a separate Agreement.

## 16 - CONFIDENTIALITY

**16.1** The Parties hereby mutually and unconditionally undertake to maintain the confidentiality of Confidential Information during and after termination of the Agreement. This obligation shall not apply if and to the extent that disclosure is required by law or court order, in which case the information to be disclosed shall be kept to a minimum. The obligation

shall continue until such time as the Confidential Information becomes generally known in a manner that does not infringe upon the provisions of this article.

**16.2** The Parties shall only use the Confidential Information for the purpose for which it was made available.

**16.3** The obligation of confidentiality shall not apply to or be in force for Confidential Information that:

- is already known at the time of disclosure;
- is of general knowledge; or
- legitimately comes into possession through third parties without being subject to any confidentiality obligation.

**16.4** If the Client fails to comply with the provisions of this Article 16, it shall forfeit an immediately enforceable penalty in the amount of € 10,000 (ten thousand euros) per violation, plus a penalty of € 1,000 (one thousand euros) for each day the violation continues, without prejudice to Kemari's right to claim damages in addition.

## 17 - DURATION AND TERMINATION OF THE AGREEMENT

**17.1** An Agreement comes into effect at the moment described in Article 4 and terminates automatically when the provision of the Services has been completed.

**17.2** If the Agreement pertains to one or more Services that have a specific duration, as is the case with Services that are subscribed to from Kemari, the following applies with regard to the duration of those Services. After the initial duration has passed, the duration is automatically renewed for an equal period. If the Client wishes to opt out of a subsequent renewal, they must notify Kemari in writing at least one month before the expiration of the current period. In that case, the Agreement terminates after the expiration of the current period and no renewal takes place.

**17.3** If the Agreement qualifies as an agreement for an indefinite period, either Party may terminate the Agreement with a notice period of 3 (three) months.

**17.4** All payment obligations remain fully in force until the Agreement has actually ended.

**17.5** If the Agreement is dissolved while the Client has already received Performance in connection with the execution of the Agreement, these Performances and the associated payment obligations will not be subject to reversal unless the Client can prove that Kemari is in default with regard to the essential part of those Performances. In addition, amounts that Kemari has invoiced before the dissolution in connection with what has already been performed or

delivered in accordance with the Agreement will remain due, without prejudice to the previous sentence, and these amounts will become immediately due and payable at the time of the dissolution.

- 17.6** Kemari is entitled to dissolve the Agreement, without judicial intervention and without being obliged to pay any form of compensation, with immediate effect in the event of the Client's bankruptcy or suspension of payments, as well as in the event of the cessation or liquidation of the Client's business other than for the purpose of reorganization or merger, or if the decisive control over the Client's business changes.
- 17.7** Notwithstanding the provisions set out in this Article 17, Kemari is at all times entitled to terminate an Agreement, regardless of whether it has a fixed or indefinite term, at any time without giving any reason.
- 17.8** In connection with termination, the Client is never entitled to a refund or any other form of compensation.
- 17.9** Provisions of these Terms and the Agreement that, by their nature, are intended to remain applicable after the end of the Agreement, remain in full force and effect after the termination of the Agreement. With regard to these Terms, these include (but are not limited to) the Articles on Intellectual Property Rights (Article 11), exclusions and limitations of liability of Kemari (Article 14), confidentiality (Article 16), and applicable law and disputes (Article 18).

## 18 - APPLICABLE LAW AND DISPUTES

- 18.1** These Terms and the Agreement are exclusively governed by Dutch law.
- 18.2** The applicability of the Vienna Sales Convention is excluded.
- 18.3** All disputes arising between the Parties, including disputes arising from the Agreement or these Terms, will in principle be settled by arbitration in accordance with the Arbitration Regulations of the Foundation for Dispute Resolution in Automation ([www.sgoa.eu](http://www.sgoa.eu)). The place of arbitration is in

principle Enschede, unless the Arbitration Regulations require a different location.

- 18.4** The provision in Article 18.3 does not affect the Parties' right to request provisional relief in (arbitral) summary proceedings and the right to take conservatory legal measures.
- 18.5** Notwithstanding Article 18.3, Kemari may also choose to bring the dispute before the competent judge of the Overijssel court, location Almelo, without prejudice to the right of appeal and cassation.

## 19 - OTHER PROVISIONS

- 19.1** Kemari is authorized to (sub)license and/or transfer its rights and obligations under the Agreement to third parties. The Client is not authorized to do so.
- 19.2** The version of communications and results regarding the Services stored by Kemari shall be considered as authentic and binding evidence, unless rebutted by the Client.
- 19.3** If any provision of these Terms is held to be invalid or unenforceable, the remaining provisions shall remain in full force and effect. The Parties shall then consult each other with the aim of agreeing on new provisions with the same effect as much as possible to replace the invalid or unenforceable provisions.
- 19.4** Kemari has the right to unilaterally modify these Terms at any time. The Client shall be notified of this in writing and Kemari shall make the new version of the Terms available to the Client.
- 19.5** If the text of these Terms is translated into a language other than Dutch, the Dutch version shall prevail in interpreting the Terms at all times.

# APPENDIX A: SOFTWARE

## APPLICABILITY

The provisions in this Appendix A are, in addition to the Terms and Conditions, applicable if Kemari provides services to Client in the field of software development. Terms starting with a capital letter in this Appendix A have the meaning assigned to them in Article 1.1 of the Terms and Conditions.

## 1 - DEVELOPMENT

- 1.1 Kemari will make an effort to develop the Software in accordance with the descriptions included in the Agreement.
- 1.2 Kemari has the right to request written approval of a design and/or concept of the Software before commencing development. If approval is not received, Kemari is entitled to suspend development and charge Opdrachtgever for any resulting costs at the usual rates until approval is received.
- 1.3 Unless otherwise specified in the Agreement, Kemari is not obliged to provide or implement a so-called "content management system" for the Software to be developed. If otherwise specified in the Agreement, Opdrachtgever accepts that the management and use of the "content management system" is the sole responsibility of Opdrachtgever. Kemari cannot guarantee the use by Opdrachtgever of the "content management system" (and any influence/consequences of such use on the condition and functioning of the Software).

## 2 - DELIVERY AND ACCEPTANCE

- 2.1 Kemari will make efforts to deliver the Programmatuur in accordance with the description included in the Agreement.
- 2.1 For acceptance of the Programmatuur, reference is made, for the sake of completeness, to Article 7 (Complaints and Acceptance) of the Terms and Conditions. The parties may explicitly agree on a deviating testing and acceptance procedure in the Agreement.

## 3 - USE

- 3.1 Kemari does not guarantee that the developed Software will always function properly in conjunction with all new versions of web browsers and any other software and/or websites. Kemari also does not guarantee that the Software will work properly in conjunction with all types of equipment/hardware.
- 3.2 The Client is responsible for lawful use of the Software, including the use of textual and graphical data and content.

The Client indemnifies Kemari against all claims by third parties arising from or related to the use of the Software.

- 3.3 If Kemari places and/or reads cookies on behalf of the Client, the Client guarantees that all applicable privacy and personal data processing laws and regulations will be complied with, including but not limited to the Telecommunications Act and the General Data Protection Regulation (GDPR). The Client indemnifies Kemari against any claims by third parties, including but not limited to fines imposed.

## 4 - MAINTENANCE

- 4.1 Kemari is only obligated to perform maintenance on the Software if and to the extent that this has been expressly agreed between the Parties.
- 4.2 The maintenance obligation is primarily limited to the correction of "errors" in the Software. "Errors" are understood to mean: the substantial failure of the Software to comply with the functional or technical specifications of the Software agreed upon between the Parties. The Client must report errors to Kemari without delay in accordance with the procedures established by Kemari for this purpose. Kemari has no obligation whatsoever with respect to any other defects in or to the Software other than those relating to errors as described above.
- 4.3 Kemari is not obliged to remedy any errors as referred to in article 4.2 if they have arisen as a result of:
  - An adjustment to the Software of any kind made by someone other than Kemari;
  - Use of the Software in a manner not permitted under the Agreement;
  - Improper use of the Software, whether by the Client or others;
  - Input errors or errors related to the data used by the Client.
- 4.4 In addition to Article 4.3, Kemari is never responsible for rectifying errors if they have arisen in connection with defects in third-party hardware or (system) software used by the Client, the software supplied or advised by Kemari is not (properly) used, or the use of the Software is in violation of any applicable documentation or instructions from Kemari.
- 4.5 Only if the Parties have agreed to this in writing, maintenance also includes the obligation to provide and/or install new versions and releases of supporting software.
- 4.6 Only if the Parties have agreed to this in writing, Kemari is responsible for providing or making available security, backup, standby, and recovery services.

# APPENDIX B: HOSTING

## APPLICABILITY

The provisions listed in this Annex B apply, in addition to the Conditions, if Kemari provides services in the field of “hosting” (whether or not through a public cloud provider) and related services at the request of the Client, hereinafter referred to as “**Hosting**” or “**Hosting services**”. Terms that are capitalized hereinafter have the meaning assigned to them in Article 1.1 of the Conditions.

### 1 - HOSTINGDIENSTEN

- 1.1 Referring to Article 5.6 of the Terms and Conditions, it is emphasized that, if applicable, third parties (suppliers) may be engaged by Kemari for the execution of the Hosting services, in which case Kemari may also rely on the general or specific terms and conditions of these third parties vis-à-vis the Client. The foregoing does not affect Kemari’s right to rely on the Terms and Conditions if it prefers to do so rather than relying on the terms and conditions of the relevant supplier(s).
- 1.2 In the absence of explicit written agreements in this regard, the Client shall itself ensure the availability of the equipment and software, connections and other prerequisites necessary to enable access to the system. Kemari is never obliged to carry out data conversion.
- 1.3 Kemari will make every effort to enable the Hosting services to be used as unimpededly as possible. However, Kemari explicitly does not offer any guarantees in this regard, unless expressly agreed otherwise in a Service Level Agreement (SLA).
- 1.4 Kemari has the right to suspend or restrict the use of the Hosting services (temporarily) for work related to preventive, corrective or adaptive maintenance. Kemari will not let the suspension last longer than necessary and will inform the Client in a timely manner about the suspension. The Client is not entitled to compensation for damages or any other form of compensation in this regard.
- 1.5 Kemari is not liable for any non-availability or reduced availability of the Hosting services resulting from power failure or outage, telecommunications or internet disruptions, defects in the equipment or software of the Client, causes attributable to Kemari’s suppliers, as well as all other reasons beyond Kemari’s control and/or will.

- 1.6 If, after the expiration of the term, the Client does not wish to renew the Agreement, Kemari will cooperate in the transfer of the Hosting services to third parties, invoicing the usual (hourly) rates of Kemari.

### 2 - STORAGE AND DATA LIMITATIONS

- 2.1 Kemari is entitled to set a limit on the amount of storage space, bandwidth, and/or data traffic that the Client may use per (period) under the Agreement.
- 2.2 Unused storage space, bandwidth, and/or data cannot be carried over to, or used in, a subsequent period under the Agreement.
- 2.3 If the Client exceeds the limits mentioned in the first paragraph of this article, Kemari will notify the Client thereof. Kemari is then entitled to charge reasonable costs in connection with the aforementioned excess to the Client.
- 2.4 Only the log files and administration of Kemari are considered proof of the use of the amount of storage space, bandwidth, and/or data traffic of the Client in this regard.

### 3 - CUSTOMER OBLIGATIONS

- 3.1 The Customer shall refrain from distributing information or contributing to such distribution in any way, if and to the extent that such information is in violation of:
  1. reasonable guidelines and instructions provided by Kemari;
  2. applicable laws and regulations; or
  3. the Agreement.
- 3.2 In addition to the above, the Customer will also act as a good and careful user with regard to the information he makes public and his use of the internet. In this context, the Customer will, among other things (but not exclusively), observe the necessary etiquette (the “netiquette”) in his actions and omissions. The Customer shall also refrain from behavior that may be considered contrary to public morals or order and refrain from infringing on the intellectual property rights of third parties, infringing on the privacy of third parties, damaging the reputation of third parties, spreading spam, publishing or disseminating (child) pornography, engaging in sexual harassment or otherwise harassing third parties, launching or setting up DDoS or other types of attacks, hacking, as well as spreading viruses, worms or other programs that may cause damage to individual systems or disrupt the operation of the internet.
- 3.3 The Customer shall ensure that his use of the Hosting Ser-

vices does not in any way impede the proper functioning of the communication network and does not impede other customers' use of the Hosting Services.

- 3.4** If Kemari has reasonable indications that the Customer is not complying with the rules described in this article 3, Kemari is unconditionally entitled to take all (legal) measures that it reasonably deems necessary. The Customer shall be liable for costs incurred by Kemari in this regard, without prejudice to Kemari's right to claim full compensation for any damages suffered by it in such a case.
- 3.5** Kemari may take the measures described in article 3.4 without being obliged to pay any compensation or damages to the Customer.
- 3.6** In the context of this article 3, the Customer indemnifies Kemari against all (legal) claims and demands of third parties and the resulting damages. This includes, but is not limited to, all claims arising from information, data, and/or data made public by or through the Customer's websites and claims by Kemari's suppliers arising from the Customer's failure to fulfill one or more of his obligations under the Agreement, and more specifically under this article 3.

## 4 - TERMINATION OF HOSTING SERVICE

- 4.1** After termination of the Hosting Service, all data hosted for the Client will be made available by Kemari for the Client to download for a period of 30 (thirty) days after termination. Kemari will not provide further notice or claims to the Client regarding the availability of this data.
- 4.2** After the aforementioned period, Kemari will delete the relevant data without further notice or claims to the Client.

# APPENDIX C: DOMAIN NAMES

## APPLICABILITY

The provisions listed in this Appendix C apply, in addition to the Terms and Conditions, if Kemari provides services to Client in the field of 'domain names', such as the application, extension, disposal, or transfer of a domain name to a third party, hereinafter referred to as: 'Domain Name Service'. Terms beginning with a capital letter in this document have the meaning assigned to them in Article 1.1 of the Terms and Conditions.

## 1 - DOMAIN NAME SERVICES

- 1.1** If Kemari provides a Domain Name Service for Client on the basis of the Agreement, Client must comply with the rules and procedures of any third parties (such as the registrar and/or hosting party). Kemari will provide a copy of the relevant rules to Client upon request.
- 1.2** Client is obliged to pay all costs associated with the application and/or registration of domain names according to the agreed rates, or, in the absence of agreed rates, the rates customary at Kemari. Kemari does not guarantee that a desired domain name can be assigned to Client.
- 1.3** Kemari expressly disclaims responsibility for the accuracy or timeliness of the domain name services or the achievement of Client's intended goals and results.