



GUIDELINES:

SUCCESSFULL COLLABORATION SUPPLIER - USER

ON THE ROAD TO MORE PREDICTABILITY AND TRANSPARENCY IN THE
RELATION BETWEEN VENDORS AND USERS OF SOFTWARE



INTRODUCTION

The market for software is characterised by rapid developments, users' heavy reliance on a limited number of large vendors, very complex products and terms of use, and other specific elements that even till this day regularly give rise to sometimes escalated disputes and frustrations on both sides of the market. Still, both users and vendors recognise that software will become even more important in the future as part of primary processes in almost every sector. Consequently, it is of importance to prevent, and in case they do occur de-escalate, conflicts. That will take some time, but a first step must be taken.

CIO Platform Nederland and **NLdigital** have taken this first step by identifying some of the frequently occurring situations and by making proposals to prevent or solve these. The objective is to increase the predictability of the relationship and the situations that can lead to conflict, so that they can be avoided.

The texts below provide direction for possible solutions that can help prevent escalations during negotiations about contracts, audits and follow-ups of audit results, among other things. They are not legally binding for any party, unless they are adopted in contracts. We will regularly evaluate how they are used in practice and will edit the texts when appropriate.

Besides ensuring the legal regulation of the relationship, it is also important that both vendors and users meet each other more frequently outside the context of a zero-sum contract situation, to discuss technological developments, terms of use, and the maintenance and use of software assets. CIO Platform Nederland and NLdigital will collectively organise meetings and invite members from both organisations to attend them regularly.

INSTALLATION, USE AND MAINTENANCE OF SOFTWARE, AUDITS AND PROCESSING

Licensee is responsible for the use of the purchased software within the agreed contractual terms and conditions of an agreement (hereafter: "licence-agreement"). Wherever possible the license-provider (hereafter: "vendor" and/or "licensor") makes available tools, knowledge and best practices in order to implement asset management cost-effectively. If licensor provides a tool, and this tool is used as intended (in accordance with the terms of use) then the results of such a tool can generate reliable input that can be included in an audit process. A licensor can make tools available and/or certify tools. Certification(s) of a tool are issued by a licensor.

Licensee is responsible for the installation of the software within the agreed contractual terms and conditions. Licensor is called upon to provide the possibility for advice, upon request from licensee, regarding the purchased software and contractual conditions for installation and use, in accordance with the licence agreement.

Licensee and licensor are called upon to agree in a licence agreement on the minimum or maximum frequency of an audit. Licensee is open and transparent towards licensor when licensor informs about the use of the software. Licensor is active in periodically providing information about the licenses towards the licensee, possible modifications, new versions etc. These sessions are explicitly not used to give sales pitches. As a guideline: licensor provides 3-4 knowledge sessions on licenses per year. Licensees should actively participate in knowledge sessions of strategic licensors.

During an audit, licensor starts with an explanation about the licensing rules and the associated audit, as included licence-agreement between licensor and licensee. This explanation concerns i.a. an indication of the baseline used during the audit. Licensee and licensor are encouraged to lay down the audit process, communication channels and timelines in a realistic project plan, where both parties make an effort to keep the overall time needed as short as possible.

Licensor will be lenient when licensee installed unused or non-purchased software because the software installation is unavoidable. In other examples of non-purchased software that is nevertheless installed, licensor and licensee are called upon to come to a reasonable and fair solution (NL: in redelijkheid en billijkheid). The licensee can obtain possible missing licenses according to the terms and conditions in the license-agreement.



UP- AND DOWNSCALING

Organisations have to deal, sometimes regularly, with acquisition of businesses or business units and/or divestment of business units. The specifics of the case vary. Licensor and licensee are therefore called upon to start a dialogue to discuss any change(s) in the needs of software use as soon as possible. In case of divestment of a business units for which licences have been acquired, licensee is called upon to discuss with licensor what licensing-scenarios can be provided to make the situation after a divestment of the business or business unit cost-effective.

Vendors are called upon to provide conversion/transition-options from existing licensing models to Cloud-solutions. For SaaS/PaaS/IaaS solutions, in general, the payment model is based on measured usage. As a result, up- and downscaling is made possible, unless agreed otherwise in the cloud-agreement. Users of Cloud solutions offered by vendors have to try to be as clear as possible in the trade-off between the flexibility of up- and downscaling and the corresponding cost stability, and any discounts in the event of a higher contractual purchase.

PROFESSIONALISING PROCUREMENT AND ASSET MANAGEMENT

To prevent conflicts in the relationship, licensee and licensor make every effort to professionalise Software Asset Management. A vital step in this, is a better understanding of the motivations, developments in technologies and services, tooling to facilitate maintenance of licenses, transparency of conditions, and possibilities to meet the needs of the user etc. In other words, gaining insights into the developments in the market. To that end, CIO Platform Nederland and NLdigital will cooperate to organise meetings where insights will be shared about concrete developments, situations that occur and how they are resolved and/or best practices, from the perspective of the user, the vendor, and neutral parties. In addition to these general meetings, the specific knowledge sessions offered by vendors will also be made more accessible.

March 2021

This document has been produced in close cooperation with CIO Platform Nederland and NLdigital. Do you have any questions? Please contact us at bureau@cio-platform.nl or info@nldigital.nl.

