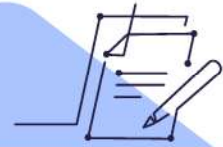


# NLdigital Terms 2025



The NLdigital Terms 2025 – the standard terms for the digital sector - have been deposited by NLdigital at the District Court Midden-Nederland, location Utrecht. In the event of disputes concerning the interpretation of the English version of the NLdigital Terms, the Dutch text takes precedence.

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## Chapter 1. General provisions

*This chapter always applies, regardless of the type of product or service that supplier delivers. This chapter provides for the overarching topics such as the applicability of these NLdigital Terms, applicable law, competent court, the duration of the agreement, intellectual property, confidentiality and liability.*

### Article 1 Applicability NLdigital Terms

- 1.1 These NLdigital Terms 2025 (hereinafter also to be referred to as: NLdigital Terms) apply to all offers and agreements wherein supplier delivers to client.
- 1.2 Client and supplier make arrangements about the reciprocal performances, including about price and payment and about what is included in the price or not. Everything in these NLdigital Terms applies only in the event that parties have not made any explicit written arrangements to the contrary.
- 1.3 Client's purchase or other terms do not apply and are explicitly excluded.
- 1.4 If supplier makes products or services of a third party supplier available to client, the licensing or sales terms of this third party supplier apply to the relationship between supplier and client, if these licensing or sales terms have been declared applicable by supplier and client has been given a reasonable opportunity to take note hereof. In that case, provisions in these NLdigital Terms that deviate from those other terms do not apply. A client as referred to in Article 6:235(1) or (3) of the Netherlands Civil Code cannot invoke a failure on the part of supplier to meet the aforementioned obligation.
- 1.5 If, for any reason whatsoever, the terms of a third party supplier do not or no longer apply between client and supplier, these NLdigital Terms apply in full.
- 1.6 If a part of these NLdigital Terms is null and void or is annulled, the remainder of these NLdigital Terms remain fully applicable and effective. In that case, supplier and client will, in consultation with each other, try as to arrange for new similar provisions that will replace the provisions that are null and void or that have been annulled.

### Article 2 Offers

- 2.1 All of supplier's offers and other forms of communication are without obligation, unless supplier indicates otherwise in writing. Client guarantees the correctness and completeness of the information provided, with the exception of obvious typing errors,

by or on behalf of client to supplier and on which information supplier has based its offer.

### Article 3 Price and payment

- 3.1 All prices are in euros, exclusive of turnover tax (VAT) and exclusive of other product or service-specific levies imposed by authorities.
- 3.2 Client cannot derive any rights from any budget issued by supplier. A budget communicated by client is considered a fixed or alternative price arrangement only if this has been explicitly agreed by parties in writing.
- 3.3 If client consists of several legal or natural persons, each of these persons is jointly and severally liable to supplier for the performance of the agreement.
- 3.4 Where the activities performed by supplier and the sums due by client for these activities are concerned, the information in supplier's administration provides full evidence, without prejudice to client's right to provide evidence to the contrary.
- 3.5 In the event client is under a periodic payment obligation, supplier may adjust the applicable prices and rates, in writing and in accordance with the index or any other criterion included in the agreement, within the period specified in the agreement. If the agreement does not explicitly provide for the possibility to adjust the prices or rates, supplier may adjust the applicable prices and rates in writing with due observance of a period of at least three months, and no more than once a year. If, in the latter case, client does not want to accept the price adjustment, client may terminate the agreement by serving notice of termination (*opzeggen*) in writing, within thirty days following the notification of the adjustment and effective from the date on which the new prices and/or rates would take effect. Price increases by third parties may be charged onto client.
- 3.6 In their agreement parties lay down the date or dates on which supplier invoices the fee for the activities agreed on with client. Any sums due are paid by client in accordance with the payment terms agreed on or as stated in the invoice. Client may not suspend any payments or set off any of the sums due.
- 3.7 If client fails to pay the sums due or does not pay these on time, client must pay the statutory interest for commercial agreements on any outstanding sum, without a reminder or notice of default being required. If client fails to pay the sum due even after a reminder or notice of default, supplier can pass on the claim for collection and client is obliged to pay, within reason and in addition to the total sum due at that time, all judicial and extrajudicial costs, including all costs charged by external experts – all of which is without prejudice to any of supplier's statutory and contractual rights.



or preclude the processing thereof. This also includes guaranteeing the relevant licences or permission. Client indemnifies supplier against any claim of a third party based on the allegation that making any of this available and/or that the use, maintenance, processing, installation or integration infringes a right of that third party.

- 7.7 Supplier is entitled to use client's trade mark, logo or name in their external communication.

## **Article 8 Performance of services**

- 8.1 Supplier performs their services with care to the best of their ability, where applicable in accordance with the arrangements and procedures agreed on with client in writing. All services provided by supplier are performed on the basis of a best-efforts obligation unless and insofar as supplier has explicitly promised a result in the written agreement and the agreement describes that result in a sufficiently precise manner.
- 8.2 If client deviates from the supplier's advice or recommendations, or if client chooses to proceed with a wish or instruction despite supplier having indicated that this is unrealistic, unsuitable or technically unfeasible, supplier is not liable for any possible consequences, such as damage or extra work.
- 8.3 If parties have entered into the agreement with a view to it being performed by one specific person, supplier is nevertheless always entitled to replace this person by one or more other persons who have the same and/or similar qualifications.
- 8.4 Supplier is not obliged to follow client's instructions when performing the services, more particularly not if these instructions change or add to the content or scope of the services agreed on. If supplier follows such instructions, however, they may charge their applicable rates for these activities.
- 8.5 At clients request, supplier endeavours to cooperate within a reasonable term with exit activities necessary for the transition to a third-party supplier or to client. Supplier may charge its applicable rates for these activities.
- 8.6 Supplier is not bound to perform data conversion, unless they explicitly agreed upon this with client in writing.

## **Article 9 Service Level Agreement**

- 9.1 Any arrangements about a service level (Service Level Agreement) will be explicitly agreed on in writing only. Client will always inform supplier immediately of any circumstances that affect or may affect the service level and its availability.
- 9.2 If arrangements have been made about a service level, the availability of software, systems and related services is measured excluding any downtime announced in advance by supplier due to preventive, corrective or adaptive maintenance or other forms of service, as well as circumstances beyond supplier's control. Unless client provides evidence to the contrary, the availability measured by supplier is considered full proof.

## **Article 10 Obligation to provide information and render assistance**

- 10.1 Parties acknowledge that, for the performance of their activities, supplier depends on proper and timely mutual cooperation and exchange of information with client. Client undertakes always to fully cooperate and provide information, within reason, and on time.
- 10.2 Client vouches for the correctness, completeness, quality, relevance and representativeness of the data, information, designs and specifications provided by or on client's behalf to supplier. If this information provided by client contains apparent

inaccuracies, supplier will request client to provide further information.

- 10.3 Supplier is not obliged to warn client about risks that lie outside the scope of the agreement. If supplier nevertheless issues a warning or notification, this is done without obligation and without any obligation or liability arising for supplier.
- 10.4 For reasons of continuity, client designates a contact person or contact persons who act in that capacity for the time supplier performs their services. Client's contact persons have the relevant experience required, specific knowledge of the subject matter and a proper understanding of the objectives that client wishes to achieve.
- 10.5 Client bears the risk of selecting the goods and/or services to be provided by supplier. Client always exercises the utmost care to guarantee that the requirements set for supplier's performance are correct and complete. Measurements and data provided in drawings, images, catalogues, websites, offers, advertising material, standardisation sheets and the like are not binding on supplier unless supplier explicitly states otherwise.
- 10.6 If client deploys employees and/or auxiliary persons in the performance of the agreement, these employees and auxiliary persons must have the knowledge and experience required.
- 10.7 If supplier's employees perform activities at client's premises, client ensures the facilities required are available, such as a workspace with computer and network facilities, on time and free of charge. Supplier is not liable for damage suffered or costs incurred by transmission errors, malfunctions or the non-availability of these facilities unless client proves that intent or deliberate recklessness on the part of supplier's management caused this damage or these costs.
- 10.8 The client's workspace and facilities must meet all statutory requirements. Before the activities to be performed start, client informs the employees deployed by supplier about the company rules, information rules and security rules that apply in client's organisation or company. Client indemnifies supplier against claims of third parties, including supplier's employees, who, when performing the agreement, suffer damage caused by client's acts or omissions or by unsafe situations in client's organisation or company.
- 10.9 Client is responsible for the management, including checks of the settings and the use of the products or services provided by supplier, and the way in which the results of the products and services are implemented. Client is also responsible for appropriately instructing users and for the use of the products and services that users make.
- 10.10 Client himself is responsible for the hardware, infrastructure and auxiliary software on-premise or in the cloud and ensures that on the infrastructure under their management the required software and auxiliary software are installed, organised, configured, parameterized, tuned, any data is converted and uploaded, ensure back-ups and, where required, that the infrastructure, hardware, other software and auxiliary software and the operating environment used are adjusted and kept updated, and that the interoperability wanted by client is effected.
- 10.11 Supplier provides available user documentation in Dutch or English in a format that supplier determines. Client assesses the user documentation provided by supplier for suitability for their users and, if necessary, provide additional explanations.



access and/or use the services, ends without supplier being required to cancel these rights.

#### Article 15 Supplier's liability

- 15.1 Supplier's total liability for an imputable failure in the performance of the agreement or arising from any other legal basis, explicitly including each and every failure to meet a guarantee or indemnification obligation agreed on with client, is limited to the compensation of damages as described in more detail in this article.
- 15.2 Direct damage is limited to a maximum of the price stipulated for the agreement in question (excluding VAT). If the agreement is mainly a continuing performance contract with a duration of more than one year, the price stipulated for the agreement is set at the total sum of the payments (excluding VAT) stipulated for one year. In no event does supplier's total liability for any direct damage, on any legal basis, exceeds EUR 500,000 (five hundred thousand euros).
- 15.3 Supplier's total liability for any damage arising from death or bodily injury or arising from material damage to goods is limited to the amount of EUR 1,750,000 (one million seven hundred and fifty thousand euros).
- 15.4 Liability for indirect damage, consequential loss, loss of profits, lost savings, reduced goodwill, loss due to business interruption, loss as a result of claims of client's clients, loss arising from the use of goods, materials or software of third parties prescribed by client to supplier and any damage and loss arising from contracting suppliers client has recommended to supplier is excluded.
- 15.5 The exclusions and limitations of supplier's liability described in articles 15.2 up to and including 15.4 are without any prejudice to the other exclusions and limitations of supplier's liability described in these NLdigital Terms.
- 15.6 The exclusions and limitations referred to in articles 15.2 up to and including 15.5 cease to apply if and insofar as intent or deliberate recklessness caused the damage on the part of supplier's management.
- 15.7 Unless performance by supplier is permanently impossible, supplier is exclusively liable for an imputable failure in the performance of an agreement if client promptly serves supplier with a written notice of default, granting supplier a reasonable period of time to remedy the breach, and supplier still imputably fails to meet their obligations after that reasonable term has passed. The notice of default must describe supplier's failure as comprehensively and in as much detail as possible so that supplier has the opportunity to respond adequately.
- 15.8 The right to compensation of damages exclusively arises if client reports the damage to supplier in writing as soon as possible after the damage has occurred. Any claim for compensation of damages filed against supplier lapses by the mere expiry of a period of twenty-four months following the inception of the claim unless client has instituted a legal action for damages prior to the expiry of this term.
- 15.9 Client indemnifies supplier against any and all claims of third parties arising from product liability because of a defect in a product or system that client delivered to a third party and that consisted in part of hardware, software or other materials delivered by supplier, unless and insofar as client is able to prove that the hardware, software or other materials referred to caused the loss.
- 15.10 All limitations and exclusions of liability referred to in these NLdigital Terms also apply in favour of all natural persons and legal persons that supplier and supplier's suppliers contracts or deploy for the performance of the agreement.

#### Article 16 Force Majeure

- 16.1 Neither party is obliged to meet any obligation, including any statutory and/or agreed guarantee obligation, if they are prevented from doing so by circumstances beyond their control (*overmacht*). Circumstances beyond supplier's control include, among other things: (i) circumstances beyond the control of supplier's suppliers, (ii) the failure by supplier to properly meet obligations that supplier contracted on client's instructions, (iii) defects in goods, hardware, software or materials of third parties that supplier uses on client's instructions, (iv) measures by public authorities, including import and trade restrictions, (v) fire, power failures, (vi) failures of the digital infrastructure and telecommunications facilities, (vii) strikes or a pandemic, (viii) crime or cyber crime, vandalism or cyber vandalism, war or terrorism and (ix) general transport problems.
- 16.2 If a force majeure situation lasts for more than sixty days, either party has the right to terminate the agreement, in writing, for breach (*ontbinden*). In such event, all that has already been performed under the agreement must be paid for on a proportional basis, without anything else being due by either party to the other party.

#### Article 17 Transfer of rights and obligations

- 17.1 Client is not entitled to sell, transfer or pledge (*verpanden*) their rights and obligations under an agreement to a third party without the prior supplier's consent.
- 17.2 Supplier is entitled to sell, transfer or pledge (*verpanden*) any claims they have to payment of any sums due to a third party.

#### Article 18 Applicable law and disputes

- 18.1 The agreements between supplier and client are governed by the laws of the Netherlands. Applicability of the Vienna Convention 1980 (The United Nations Convention on Contracts for the International Sale of Goods (CISG)) is excluded.
- 18.2 Any disputes between parties are resolved by arbitration in accordance with the Arbitration Regulations of the Foundation for the Settlement of Automation Disputes (*Stichting Geschillenoplossing Automatisering – SGOA – (www.sgoa.eu)*). This without prejudice to either party's right to request preliminary relief in preliminary relief proceedings or arbitral preliminary relief proceedings and to attach property before judgment. Arbitration proceedings take place in Amsterdam, or in any other place designated in the Arbitration Regulations.
- 18.3 If a dispute is within the jurisdiction of the cantonal section of the Netherlands District Court (*rechtbank, sector kanton*), either party may choose, notwithstanding the provisions of article 18.2, to bring the case as a cantonal court case before the competent district court in the Netherlands. This option expires if arbitration proceedings concerning the dispute have earlier been instituted under article 18.2. If, with due observance of the provisions of this article 18.3, the case has been brought before the competent district court to be heard and decided, the cantonal judge of that district court is competent to hear the case and to decide on it.
- 18.4 Either party is entitled to institute ICT mediation proceedings in accordance with the ICT Mediation Regulations of the Foundation for the Settlement of Automation Disputes (*Stichting Geschillenoplossing Automatisering – SGOA – (www.sgoa.eu)*). The other party is then in a legally enforceable manner obliged to actively participate in these ICT mediation proceedings. Active participation at least implies attending one joint meeting of mediators and parties to give this extrajudicial form of dispute resolution a chance of success. After this first joint meeting of mediators and parties, either party is entitled to terminate the ICT





further arrangements in this respect. Failing this, the procedure as described below applies.

- 22.3 Client first sends supplier a written request, as detailed as possible, to provide the information required by law or to fulfil the obligation to cooperate. Supplier makes the mandatory information available within a reasonable period of time. This information may include the submission of relevant certification, a valid Data Pro Verified label, or an audit report (Third Party Memorandum) prepared by an independent expert on supplier's behalf. If client's request concerns a data sharing request as referred to in the Data Act, the procedure as described in Chapter 5 applies.
- 22.4 If, despite the aforementioned information, client is still unable to comply with their legal obligations or with instructions from competent authorities, or if parties agreed on a contractual right to audit or access certain locations, client may, at their own expense, have an audit carried out or, if reasonably possible, gain access to the locations where the services are provided for inspection purposes, but no more than once a year – at least no more often than strictly necessary – at their own expense or, if reasonably possible, gain access to the locations where the services are provided for inspection. An independent, certified external expert with demonstrable experience in this field must carry out the audit or inspection. The audit or inspection is limited to checking whether supplier complies with their legal obligations towards client or the arrangements in the contract. The expert has a duty of confidentiality and reports only what is necessary for the information obligation towards competent authorities or if they find an attributable shortcoming. The expert provides a copy of the report to supplier. Supplier may refuse an expert, audit, instruction or access if, in their opinion, this is contrary to legislation, if their competitive position is affected by the expert or if this constitutes an unacceptable breach of the security measures taken.
- 22.5 Parties consult as soon as possible on the findings in the report. Parties follow up on the proposed improvement measures set out in the report insofar as this can reasonably be expected of them. Supplier implements the proposed improvement measures insofar as they deem these appropriate, taking into account the risks associated with their product or service, the state of the art, the implementation costs, the market in which they operate and the intended use of the product or service.
- 22.6 If necessary and legally required for client, supplier provides further information and assistance in a reasonable manner in the event of an incident involving supplier's product or services.
- 22.7 Supplier may charge client for the reasonable costs incurred in implementing this article.
- 22.8 If supplier makes a mandatory or non-mandatory report to or cooperates with a request from authorities, supplier is not liable for any damage suffered by client or a third party as a result of the report or such cooperation.
- 22.9 Client is not entitled to recover from supplier any administrative fine imposed on them by authorities on any legal basis.

## Chapter 3. Cyber security

*This chapter applies, regardless of the type of product or service that supplier provides, if supplier is required by laws, regulations or agreement to comply with certain security standards. Among other things, this chapter provides further details on various open standards from laws and regulations in the field of security.*

### Article 23 Security level

- 23.1 The cyber security of the products and services complies with the security specifications parties have agreed on in writing. If an explicitly described method of security is lacking, the cyber security complies with a level that is not unreasonable, taking into account the state of the art, the implementation costs, the nature, scope and context of supplier's intended purpose of the product or service and the data contained therein, as known to supplier, the likelihood and severity of foreseeable use and associated risks for supplier, the consequences of incidents and the rights and freedoms of those involved. Supplier does not guarantee that the cyber security is effective under all circumstances.

### Article 24 Use of security devices

- 24.1 The security devices provided to client via supplier, including Multi-Factor Authentication, encryption, access or identification means, codes or certificates, are confidential and will be treated as such by client. The security devices are disclosed only to persons specifically authorised by client. Supplier is entitled to modify or replace assigned security devices. Client is responsible for managing the security devices and authorisations, including providing, adjusting and revoking them in a timely manner. Client ensures proper access data management, including the use of strong passwords and password management.
- 24.2 Supplier is not liable for any damage or costs resulting from the use or misuse of access or identification codes, certificates or other security measures, unless such misuse is the direct result of intent or deliberate recklessness on the part of supplier's management.

### Article 25 Responsibilities

- 25.1 If the security or testing thereof, for example by means of Threat Led Penetration Tests (TLPTs), relates to software, equipment or infrastructure that supplier themselves has not supplied to client, client guarantees that all necessary licences or approvals have been obtained to perform the intended service. Supplier is not liable for damage arising in connection with the performance of such services. Client indemnifies supplier against any legal action on any grounds in connection with the performance of such services.
- 25.2 It is up to client to assess whether the products and services are appropriate and proportionate in view of the security risks for their organisation, in its context as a whole, and whether they have taken appropriate technical and organisational measures to ensure compliance with the legal security requirements applicable to them and that the rights of data subjects are sufficiently safeguarded. Client adequately secures their own systems and infrastructure and ensure sufficient backups.
- 25.3 If client is of the opinion that the security measures taken by supplier are insufficient to meet their minimum legal requirements, client informs supplier of this in writing and in as much detail as possible. Article 19.5 applies mutatis mutandis.
- 25.4 Client discloses information from supplier about vulnerabilities, incidents, risk mitigation and corrective measures to their users where necessary.
- 25.5 Client reports incidents, possible security breaches, vulnerabilities or gaps in security to supplier or manufacturer as soon as possible.
- 25.6 If client discovers a possible breach, vulnerability or gap in a product or service for which supplier is not the manufacturer, and no contact address for the manufacturer of the product or service has been made available to client, client may submit the report to



readable format. Supplier may charge their applicable rates for this.

- 30.2 The provisions in article 30.1 do not apply if a statutory provision prevents supplier from erasing or returning all or part of the personal data. In such a case, supplier continues to process the personal data only to the extent necessary to comply with their legal obligations. The provisions in article 30.1 do not apply either if supplier is the controller within the meaning of the GDPR with regard to the personal data.

#### **Article 31 Rights of data subjects and Data Protection Impact Assessment (DPIA)**

- 31.1 Where possible, supplier cooperates with reasonable requests from client relating to the rights of data subjects invoked by data subjects at client. If supplier is approached directly by a data subject, it refers them to client where possible.
- 31.2 If client is obliged to do so under the GDPR, supplier will, upon reasonable request, cooperate with a data protection impact assessment (DPIA) or any subsequent prior consultation.
- 31.3 Supplier may charge their applicable rates for the activities referred to in this article.

#### **Article 32 Sub-processors**

- 32.1 Supplier has stated in the agreement whether, and if so which third parties (sub-processors) supplier engages in the processing of personal data.
- 32.2 Client gives supplier permission to engage other sub-processors to fulfil their obligations arising from the agreement.
- 32.3 Supplier informs client of any change in the third parties engaged by supplier. Client has the right to object to the aforementioned change by supplier.

## **Chapter 5. Data sharing**

*This chapter applies if the Data Act applies, for example if supplier provides connected products and related services, including Internet of Things (IoT), or data processing services, including SaaS, IaaS and PaaS (cloud services), as referred to in the Data Act. This chapter sets out the obligations relating to data sharing for such products and services.*

#### **Article 33 General provisions for data sharing requests**

- 33.1 If parties have not made any specific written arrangements about access to data, client may submit a request for data sharing to supplier via supplier's usual channels. Supplier only processes requests that have been submitted in writing in sufficient detail. Supplier has the right to check whether the request has been submitted lawfully and (to what extent) they are obliged to comply with such a request. Upon request, client provides all information necessary to assess the legitimacy and scope of the request. If supplier themselves does not have access to the relevant data and is therefore unable to comply with the request, they where possible, provide reasonable assistance in referring client to the relevant party or parties.
- 33.2 Supplier makes data that they are required to provide under the Data Act available in a commonly used machine-readable format. Supplier is not obliged to implement the data at the data recipient.

- 33.3 Client ensures that they and the data recipient and/or third party comply without delay with requests from supplier within the scope of Article 11 of the Data Act.

- 33.4 Supplier may, to the extent permitted by law, charge client and data recipient transfer costs or data extraction costs, future or ongoing, and a reasonable fee for making the data available, or charge costs for additional services relating to the data sharing request at their applicable rates.

#### **Article 34 Data sharing in the event of connected products and related services (IoT)**

- 34.1 In the event of a data sharing request in relation to connected products and related services, supplier is obliged to only provide the readily available data concerning the performance, use and environment of connected products and/or related services and, if necessary, the relevant metadata. In any case, these data do not include information derived from or resulting from such data, nor do they include data relating to content. Supplier is exempt from sharing data as referred to in this article if they are a small business as referred to in Article 7 of the Data Act, or if client has direct access to these data.
- 34.2 In accordance with Articles 4 and 5 of the Data Act, supplier may impose regulations on the availability, use or further sharing of data as referred to in this article with client or a third party, in particular if this could undermine the security requirements of the connected product or related service, or if the data sharing affects trade secrets. Client ensures that data provided to a third party is not shared further.
- 34.3 Client may not use the data to develop a product or service or have these developed if these compete with the product or service from which the data originates, or to gain insight into the economic situation, assets and production methods of the manufacturer or supplier.

#### **Article 35 Data sharing upon exit or in the event of ongoing parallel use of data processing services (cloud services)**

- 35.1 If client submits a data sharing request for data processing services, supplier will, for the purposes of this request, supply at least the exportable data, insofar as this does not concern internal data that poses a risk of breach of a trade secret, or assets or data protected by intellectual property rights. Supplier is not obliged to make data available for testing and evaluation purposes or to facilitate this.
- 35.2 If client submits a data sharing request for data processing services, they specify in detail:
- which data processing service/services are concerned;
  - whether client wishes to switch from data processing service or services and/or wishes to terminate and have the data erased (exit), or whether client wishes to continue to use supplier's data processing service or services (in parallel); and
  - to which party or parties the data must be transferred, including relevant contact details.
- 35.3 If client does not indicate within the notice period how they want the data sharing request to be carried out, supplier may consider the request as a request to erase the data and terminate the data processing service (exit).
- 35.4 The transition period starts no later than two months after receipt of the data sharing request. The transition period lasts for a maximum of 30 days. If this is technically not feasible, supplier may inform client within 14 working days of receiving the request about an alternative transition period, which will not exceed seven months. Client may submit a one-off written request,



possible and the costs of these changes are at client's expense. In the event that these costs are considerable, client may serve notice of termination of the agreement (*opzeggen*), which termination takes effect on the date on which the modification takes effect, unless the modification is related to amendments in relevant legislation or other instructions issued by public authorities, or the modification is at supplier's expense.

- 38.4 Supplier may continue to provide the SaaS using a new or modified version of the underlying software. Supplier is not obliged to maintain, modify or add particular features or functionalities of the SaaS specifically for client.
- 38.5 Supplier may temporarily put all or part of the SaaS out of service for maintenance services or other forms of service. Supplier ensures that the period of time during which the SaaS is disabled is as short as possible and, preferably, at times when the SaaS is usually used least intensively.
- 38.6 Supplier is not obliged to provide client with a physical carrier or download of the underlying software.
- 38.7 If no further arrangements have been made in this regard, client themselves is responsible for designing, configuring, parameterising, tuning the SaaS, converting and uploading possible data, making backups, and, where required, for adjusting the infrastructure, hardware, other software, auxiliary or not, and user environment used and keep these updated.

#### Article 39 Guarantees

- 39.1 Supplier does not guarantee that the SaaS is free of errors and works without any malfunctions. Supplier makes every effort to repair the errors in the underlying software referred to in article 44.3 within a reasonable period of time insofar as underlying software is concerned that supplier themselves has developed and client has provided supplier with a detailed, written description of the relevant errors. In a particular case, supplier may postpone repairing errors until a new version of the underlying software is put into service. Supplier does not guarantee that errors in the SaaS that supplier themselves has not developed are repaired. Supplier is entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the SaaS. If the SaaS, or part of it, has been developed on client's instructions, supplier may charge client for the costs incurred by repairing the error/errors at supplier's applicable rates. Supplier is not obliged to repair other imperfections than those referred to in this article. In the event supplier is prepared to remedy other imperfections than those referred to in this article, supplier is entitled to charge client a separate fee for this at their applicable rates.
- 39.2 On the basis of the information provided by supplier about measures to prevent and restrict the effects of malfunctions, errors and other imperfections in the SaaS, corruption or loss of data or other incidents, client identifies and lists the risks to their organisation and, where necessary, takes additional measures.
- 39.3 If client experiences a high dependency and risks of continuity for incidents and calamities, supplier is prepared, at client's request, to cooperate reasonably with further measures to be taken by client to reduce these risks, subject to financial and other conditions to be set by supplier. These arrangements may, for example, concern the periodic or real-time return of data to client or to a third party. Such additional services are not automatically part of the service provision.
- 39.4 Supplier is not obliged to restore corrupted or lost data other than by restoring the last available backup of the data in question, where possible. If parties have not agreed on data segmentation or other mechanism for data segregation, it may not be possible to restore a client-specific backup.

#### Article 40 Start of the service; payment

- 40.1 The SaaS to be provided by supplier – and, where relevant, support – starts within a reasonable period of time after the agreement has been entered into. Unless agreed on otherwise, the SaaS starts by supplier providing the means to access the SaaS. Client ensures that they have the facilities required to use the SaaS immediately after the agreement has been entered into.
- 40.2 The fee payable by client for the SaaS is included in the agreement. If no payment scheme has been agreed on, all sums related to the SaaS delivered by supplier become due and payable, in advance, per calendar month.

#### Article 41 Additional stipulations

- 41.1 The following articles equally apply to the SaaS: 42.3, 42.5, 42.8, 44.1 (excluding the reference to art. 48), 44.11, 56.4, 57.1, 57.2, 70.2 and 70.4. In these articles the word 'software' should be read as 'SaaS' and the word 'delivery' as 'start of the service'.

## Chapter 7. Software

*This chapter applies if supplier makes software, apps and AI available to client for use, together with the relevant data or databases and/or user documentation for this software– in these NLdigital Terms together to be referred to as 'software' – other than on the basis of a SaaS.*

#### Article 42 Right to use and restrictions on use

- 42.1 Supplier makes the software agreed on available for use by client on the basis of a user licence and for the term of the agreement. The right to use the software is non-exclusive, non-transferable, non-pledgeable and non-sublicensable.
- 42.2 Supplier's obligation to make the software available and client's right to use the software exclusively extend to the so-called object code of the software. Client's right to use the software does not pertain to the software's source code. The source code of the software and the technical documentation drafted when the software was developed are not made available to client, not even if client is prepared to pay a financial compensation.
- 42.3 Client always strictly complies with the agreed restrictions on the use of the software, regardless of the nature or the content of these restrictions.
- 42.4 If parties have agreed that the software may be used only in combination with particular hardware and this hardware has a malfunction, client is entitled to use the software on other hardware with the same qualifications during the period of time that the original hardware remains defective.
- 42.5 Supplier may require that client only starts using the software after they have received one or more codes needed for the use from supplier, from supplier's supplier or from the producer of the software.
- 42.6 Client is entitled to only use the software in and for its own organisation and only insofar as required for the use intended by supplier or their licensor. Client shall not use the software for the benefit of third parties, for example in the context of Software-as-a-Service (SaaS) or outsourcing.
- 42.7 Client is not entitled to sell, lease or alienate, or grant limited rights to, or make the software and the carriers on which the software is or will be recorded available to third parties, in whatever way, for whatever purpose or under whatever title. Neither is client entitled to grant - remotely or not (online) - a third party access to the software or place the software with a third





## Article 46 Payment for the right to use the software

- 46.1 Client must pay the sum due for the right to use at the agreed times or, if parties have not agreed on a time:
- if parties have not agreed that supplier provides the installation of the software: (i) upon the provision of the software, or (ii) in the event periodic payments are due for the right to use, upon the provision of the software and subsequently when each new term of the right to use starts;
  - if parties have agreed that supplier provides the installation of the software: (i) upon completion of that installation, or (ii) in the event periodic payments are due for the right to use the software, upon completion of that installation and subsequently when each new term of the right to use starts.

## Article 47 Modifications to the software

- 47.1 Except where mandatory statutory provisions provide otherwise, client is not entitled to modify all or part of the software without supplier's prior written consent. Supplier is entitled to refuse consent or to attach conditions to their consent. Client bears the entire risk of all modifications that they implement – whether or not with supplier's consent – or that client has implemented by third parties on their instructions.

## Article 48 Guarantees

- 48.1 Supplier makes reasonable efforts to repair errors in the sense of article 44.3 within a reasonable period of time if client reports these errors, in detail and in writing, to supplier within a period of three months after delivery or, if parties have agreed on an acceptance test, within three months after acceptance. Supplier does not guarantee that the software is suitable for the actual and/or the intended use. Supplier does not guarantee either that the software works without any malfunctions and/or that all errors are always repaired. Repairs are carried out free of charge unless the software was developed on client's instructions other than for a fixed price, in which case supplier may charge the costs of the repairs to client at their applicable rates.
- 48.2 Supplier may charge the costs of the repairs to client at their applicable rates if such repairs are required as a result of usage errors or client not using the software properly, or as a result of causes that cannot be attributed to supplier. The obligation to repair errors ends when client modifies the software or has such modifications implemented without supplier's written consent.
- 48.3 Errors are repaired at a location and in a manner determined by supplier. Supplier is entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the software.
- 48.4 Supplier is not obliged to recover corrupted or lost data other than by restoring the last available backup of the data in question, where possible. If parties have not agreed on data segmentation or other mechanism for data segregation, it may not be possible to restore a client-specific backup.
- 48.5 Supplier does not have any obligation, of whatever nature or content, with respect to errors reported after the end of the guarantee period referred to in article 48.1.

# Chapter 8. Development of software and websites

*The chapter applies if supplier develops and/or designs software as described in chapter 7 and/or websites for client and possibly installs the software and/or websites.*

## Article 49 Specifications and development of software and/or websites

- 49.1 Development always takes place under an agreement for services. If no specifications or design of the software and/or website to be developed have been provided before the agreement is entered into or no specifications or design are provided when the agreement is entered into, parties specify, by consultation and in writing, the software and/or website to be developed and the manner in which this development takes place.
- 49.2 Supplier develops the software and/or website with due care and in accordance with the explicitly agreed specifications or design and - where applicable - with due regard for the project organisation, methods, techniques and/or procedures agreed on in writing with client. Before starting the development activities, supplier may require that client agrees to the specifications or design in writing.
- 49.3 If no specific arrangements have been made in the matter, the design and/or development activities start within a reasonable period of time, to be determined by supplier, after parties have entered into the agreement.
- 49.4 At supplier's request, client provides supplier with the opportunity to perform activities at client's premises outside the usual working days and working hours.
- 49.5 The development of a website includes the provision of a content management system only if parties have explicitly agreed on this in writing.
- 49.6 If parties agree that, apart from development activities, supplier also provides training courses, hosting, maintenance and/or support and/or that supplier also applies for a domain name, supplier may request that client enters into a separate, written agreement. Supplier may charge client separately for these services, at supplier's applicable rates.
- 49.7 If supplier provides services to client in the context of a domain name, such as the application for, renewal, alienation or transfer to a third party of that name, client is obliged to follow the rules and methods of this authority or these authorities. At client's request, supplier provides client with a written copy of these rules. Supplier is explicitly neither responsible for the correctness or the promptness of the services nor responsible for achieving the results client intends to achieve. Supplier may charge all costs involved in the application and/or registration at the agreed rates and, if parties have not agreed on any rates, at supplier's applicable rates. Supplier does not guarantee that a domain name client wants to use will actually be assigned to client.

## Article 50 Agile development of software/websites

- 50.1 If parties use an iterative development method – scrum, for example – parties accept: (i) that, at the start, the activities are not performed on the basis of fully detailed specifications; and (ii) that specifications which parties have earlier agreed on may be adapted during the term of the agreement, in mutual consultation and in line with the project approach of the applied development method.
- 50.2 Before starting the development, parties put together one or more teams that consist of representatives of both supplier and client. The team ensures that the communication lines remain short and direct and that consultations take place regularly. Parties both provide for the deployment of the capacity agreed on (FTEs) in terms of team members in the roles and with the knowledge and experience and the decision-making powers required to perform the agreement. Parties accept that in order to make the project successful, the capacity agreed on is a



source code and the technical development and other documentation of the software, including data models, designs, change logs and the like, available to supplier. Client guarantees that they are entitled to make the source code and documentation available. Client grants supplier the right to use and modify the software, including the source code and technical development and other documentation, so that supplier can perform the maintenance services agreed on.

#### **Article 56 New versions of the software**

- 56.1 Maintenance includes making new versions of the software available only when and insofar as parties have agreed on this in writing, or if the law prescribes this as mandatory. If maintenance includes making new versions of the software available, supplier makes these new versions available at their discretion.
- 56.2 Three months after supplier has made an enhanced version available, they are no longer obliged to repair errors in the previous version and to provide support and/or perform maintenance services on a previous version, unless the law prescribes this as mandatory in any other manner.
- 56.3 Supplier may require that client must enter into an additional written agreement with supplier for a version with new functionality and that client must make a further payment for this version. Supplier may incorporate functionality from a previous version of the software in the new version without any modifications, but supplier does not guarantee that each new version includes the same functionality as the previous version. Supplier is not obliged to maintain, modify or add particular features or functionalities in the software especially for client.
- 56.4 Supplier may require that client must modify their system (hardware, web browser, software and the like) if this is necessary for the proper functioning of a new version of the software.

#### **Article 57 Support services**

- 57.1 If the services provided by supplier under the agreement include support services to users and/or administrators of the software, supplier advises, for lack of written arrangements to the contrary, online, by telephone or by email on the use and functioning of the software specified in the agreement. Prior to a request for support, client consults the documentation provided by supplier to see whether they can solve the issue with this. Client is obliged to specify the requests for support as comprehensively and in as much detail as possible so that supplier can respond appropriately. Supplier may set conditions with respect to the way in which client requests support and the qualifications and the number of persons eligible for support. For lack of further written agreements, supplier properly deals with substantiated requests for support within a reasonable period of time and in compliance with their usual procedures. Supplier does not guarantee the correctness, completeness or timeliness of responses or of the support offered. Support services are performed on working days during supplier's usual business hours.
- 57.2 If the services provided by supplier under the agreement include standby services, supplier ensures that one or more employees are available on the days and at the times specified in the agreement. If parties have agreed on standby services, client is entitled, in urgent cases, to call in the employees on standby if there are serious errors, serious malfunctions and other serious imperfections in the functioning of the software. Supplier does not guarantee that these are promptly repaired.
- 57.3 The maintenance and other agreed services referred to in this chapter are performed starting from the date on which parties

enter into the agreement, unless parties have agreed otherwise in writing.

#### **Article 58 Payment**

- 58.1 If parties have not explicitly agreed on a payment scheme, all sums related to the maintenance of the software and other services as meant in this section and set out in the agreement become due and payable, in advance, per calendar month.
- 58.2 Sums relating to the maintenance of the software and the other services as meant in this section and set out in the agreement are payable when parties enter into the agreement. Payment for maintenance and other services is always due, regardless whether client has taken the software into use and regardless whether client actually makes use of the maintenance or support services.

## **Chapter 10. Advisory services**

*This chapter applies if supplier provides services in the field of advice, which services supplier does not provide under client's direction and supervision, under the name advisory, consultancy, contracting, project-based activities, interim assignments or under any other name.*

#### **Article 59 Performance of advisory services**

- 59.1 Supplier performs the advisory services in a fully independent manner, at their own discretion and without client's supervision and directions, which does not involve the provision of labour as described in chapter 11.
- 59.2 Supplier does not commit to a completion time of the assignment because the completion time of an assignment in the field of advisory services depends on various factors and circumstances, such as the quality of the data and the information provided by client and the assistance rendered by client and relevant third parties.
- 59.3 Supplier performs their services only on supplier's usual working days and during supplier's usual business hours.
- 59.4 The use that client makes of any advisory report drafted by supplier is always at client's risk. The burden of proof is on client to prove that the advisory services or the way in which these are performed is not in compliance with that which parties have agreed on in writing or that which may be expected from a competent supplier acting reasonably, without prejudice to supplier's right to provide evidence to the contrary, using any legal means.
- 59.5 Without supplier's prior written consent, client may not inform any third party about supplier's way of working, methods and/or techniques and/or the content of supplier's recommendations or reports. Client does furthermore not provide supplier's recommendations or reports to a third party or otherwise make supplier's recommendations or reports public.

#### **Article 60 Reporting**

- 60.1 Supplier periodically informs client, in the manner agreed on in writing, about the performance of the advisory services. Client informs supplier, in advance and in writing, about circumstances of importance or circumstances that are or could be of importance to supplier, such as the manner of reporting, the issues to be addressed, client's prioritisation, the availability of client's resources and staff, and special facts or circumstances or facts or circumstances of which supplier is possibly unaware. Client ensures that the information provided by supplier is





## Chapter 12. Training courses

*This chapter applies if supplier provides services, under whatever name and in whatever way – for example in electronic form – in the field of education, courses, workshops, trainings, webinars, e-learning, seminars and the like (training courses).*

### Article 67 Registration and cancellation

- 67.1 Registration for a training course must take place in writing and is binding following its confirmation by supplier.
- 67.2 Client is responsible for the choice and suitability of the training course for the participants. A participant's lack of the required prior knowledge does not affect client's obligations under the agreement. Client may replace a training course participant by another participant following supplier's written consent.
- 67.3 If, in supplier's opinion, the number of registrations gives rise to this, supplier is entitled to cancel the training course, to combine it with one or more training courses or schedule it on a later date or at a later time. Supplier reserves the right to modify the location of the training course. Supplier is entitled to modify the training course in organisational terms and in terms of content.
- 67.4 If client or a participant cancels participation in a training course, the consequences of the cancellation are governed by supplier's applicable rules. In any case, cancellation must take place in writing and prior to the training course or the part of the training course concerned. Cancellation or non-attendance does not affect client's payment obligations under the agreement.

### Article 68 Implementation of training courses

- 68.1 Client accepts that supplier determines the content and the scope of the training course.
- 68.2 Client informs the participants about the obligations under the agreement and the rules of conduct and other rules prescribed by supplier for participation in the training course, and client ensures compliance by participants with these obligations and rules.
- 68.3 If supplier uses their own hardware or software in the training course, supplier does not guarantee that this hardware or software is free of errors and works without any malfunctions. If the training course is at client's premises, client ensures that an appropriate classroom and properly operating hardware and software are available. In the event the facilities at client's premises appear not to meet the requirements and the quality of the training course, therefore, cannot be guaranteed, supplier is entitled not to start or to shorten the training course or to stop it altogether.
- 68.4 By default, the agreement does not include administering an exam or a test.
- 68.5 Supplier charges client separately for the documentation, training materials or training resources made available or produced for the training course. This also applies to possible training course certificates or duplicates of training course certificates.
- 68.6 If the training course takes place as an e-learning training course, the provisions of chapter 6 apply *mutatis mutandis* as much as possible.

### Article 69 Price and payment

- 69.1 Supplier may require that client pays the sums due prior to the start of the training course. Supplier may exclude participants from participating in the training course if client fails to ensure

timely payment, without prejudice to any other rights supplier may have.

- 69.2 If supplier has carried out a preliminary study to make a training course plan or has given training course recommendations, supplier may separately charge client for any costs involved.
- 69.3 Unless supplier has explicitly indicated that the training course is VAT exempt within the meaning of Article 11 of the Dutch Turnover Tax Act 1968, VAT is payable on client's payment. Supplier is entitled to adjust their prices after parties have entered into the agreement in the event of any changes in the VAT regime for training courses as this applies under or pursuant to the law.

## Chapter 13. Hosting, including online platforms

*This chapter applies if supplier provides services, under whatever name, in the field of hosting, including IaaS, PaaS or online platforms and hosting-related services.*

### Article 70 Hosting services

- 70.1 Supplier performs the hosting services agreed on with client.
- 70.2 If the agreement's object is to provide infrastructure or storage space, client may not exceed the agreed infrastructure or storage space unless the agreement explicitly arranges for the consequences of doing so. The agreement pertains to providing infrastructure or storage space on hardware specifically reserved for client only insofar as parties have explicitly agreed on this in writing. All use of infrastructure or disk space, data traffic and other use made of systems is restricted to the maximums parties have agreed. Infrastructure, storage space and/or data traffic that client does not use in a given period may not be transferred to a subsequent period. If the agreed maximums are exceeded, supplier may charge client for an additional compensation at their applicable rates.
- 70.3 Client is responsible for the management, including checks of the settings, and use of the hosting service, and the way in which the results of the service are implemented. If parties have not made any specific arrangements in this regard, client themselves is responsible for installing, organising, parameterising and tuning the required software and auxiliary software, converting and uploading any data, making backups, and, where required, adjusting the infrastructure, hardware, other software or auxiliary software and user environment used and keeping these updated and for effecting the interoperability wanted. Supplier is not obliged to perform data conversion.
- 70.4 Additional services, such as backups, security, redundancy and recovery provisions, are part of the agreement only if parties have explicitly agreed on this in writing.
- 70.5 Supplier is entitled to temporarily put all or part of the hosting service out of operation for maintenance or adjustment of systems. Where possible, this will take place outside office hours and with reasonable notice to client.
- 70.6 If, under the agreement, supplier provides services to client in the context of a domain name, such as the application for, renewal, alienation or transfer to a third party of that name, article 49.7 applies *mutatis mutandis*.



## Article 77 Guarantees

- 77.1 Supplier endeavours to repair defects in the material and manufacturing defects in the hardware and/or goods sold, as well as defects in parts delivered by supplier within the scope of the guarantee, within a reasonable period of time and free of charge if client reports these defects – for lack of an agreed period - in detail, to supplier within a period of three months following delivery. If, in supplier's reasonable opinion, the defects cannot be repaired or repair would take too long, or if repair entails disproportionately high costs, supplier is entitled to replace the hardware and/or goods free of charge with other, similar, though not necessarily identical, hardware and/or goods. The guarantee does not include any data conversion that is required because of any repair or replacement. All replaced parts are supplier's property. The guarantee obligation no longer applies when defects in the hardware, goods or parts are in full or in part caused by incorrect, careless or incompetent use or by external circumstances such as fire or water damage, or when client modifies the hardware or parts delivered by supplier under the guarantee, or has them modified, without supplier's consent. Supplier does not withhold such consent on unreasonable grounds.
- 77.2 Client cannot file any claims or further claims concerning non-conformity of hardware and/or goods delivered other than those laid down in article 77.1.
- 77.3 Supplier may charge any costs incurred by activities and repairs performed outside the scope of this guarantee at their applicable rates.
- 77.4 Supplier does not have any obligation under the purchase agreement with respect to defects and/or other faults reported after the period referred to in article 77.1 ends.

## Chapter 15. Leasing hardware

*This chapter applies if supplier leases hardware of whatever nature to client.*

### Article 78 Leasing

- 78.1 Supplier leases to client the hardware and relevant user documentation specified in the lease agreement.
- 78.2 The lease neither includes the provision of separate software nor does it include the provision of the consumer goods and articles that are required to use the hardware, such as batteries, ink and ink cartridges, toner articles, cables and accessories.
- 78.3 The lease starts on the date supplier makes the hardware available to client.

### Article 79 Prior inspection

- 79.1 By way of prior inspection, supplier may draft a report, in client's presence and prior to making the hardware available or when they have made it available, describing the state of the hardware, including any defects observed. Supplier may require that client must sign this report, prior to making the hardware available to client for use, to indicate client's agreement with the text of the report. The defects in the hardware listed in this report are at supplier's account. If any defects are observed, parties arrange whether, and if so, how and when, the defects listed in the report must be repaired.
- 79.2 If client does not properly cooperate in the prior inspection referred to in article 79.1, supplier is entitled to perform this prior inspection without client being present and to draft the report themselves. This report is binding on client.

- 79.3 If no prior inspection is carried out, client is deemed to have received the hardware in a proper and undamaged state.

## Article 80 Use of the hardware

- 80.1 Client exclusively uses the hardware in accordance with the intended purpose and at the premises agreed for their own organisation or company. Use of the hardware by or for the benefit of third parties is not allowed. The right to use the hardware is non-transferable. Client is not allowed to lease the hardware to a third party or otherwise enable a third party to use the hardware or to make use of it together with client.
- 80.2 Client himself is responsible for installing and assembling the hardware and making it ready for use.
- 80.3 Client is not allowed to use the hardware or any part of it as a security or collateral, in whatever way, or to dispose of the hardware or any part of it in another way.
- 80.4 Client uses and maintains the hardware with due care. Client takes adequate measures to prevent any damage to the hardware. Should there be any damage, client promptly informs supplier about this. For the term of the lease, client is always liable to supplier for damage to the hardware and theft, loss or misappropriation of the hardware. It is client's responsibility to potentially insure this risk.
- 80.5 Client is neither permitted to modify the hardware, either in full or in part, nor permitted to add anything to it. If client nevertheless makes any modifications or additions, they are obliged to undo or remove these modifications or additions no later than at the end of the lease agreement.
- 80.6 Parties agree that defects in the modifications or additions made to the hardware by or under client's instructions and all defects in the hardware caused by those modifications or defects are not considered defects within the sense of article 7:204 of the Netherlands Civil Code. Client cannot file a claim against supplier with respect to such defects. Supplier is not obliged to perform repairs or maintenance services with respect to such defects.
- 80.7 Client is not entitled to compensation for modifications or additions they made to the leased hardware if they do not undo or remove these modifications or additions, for any reason whatsoever, when or after the lease agreement ends.
- 80.8 Client promptly informs supplier in writing when the hardware is provisionally attached, stating the identity of the attaching party and the reason for the attachment. Client promptly allows the bailiff levying the attachment to inspect the lease agreement.

## Article 81 Maintenance of the leased hardware

- 81.1 Client is not allowed to maintain the leased hardware themselves or have the hardware maintained by a third party.
- 81.2 Client immediately informs supplier in writing about any defects that they observe in the leased hardware. Supplier endeavours, within a reasonable period of time and by means of corrective maintenance, to repair defects in the hardware that are at supplier's account. Supplier may also perform preventive maintenance services on the hardware, but is not obliged to do this. If so requested, client provides supplier with the opportunity to perform corrective and/or preventive maintenance services. Parties discuss, by consultation and in advance, the dates on which and the times at which maintenance services must be performed. Client is not entitled to replacement hardware during periods of time maintenance services are performed.
- 81.3 Supplier's obligation to repair excludes defects:
- that client accepted when entering into the lease agreement;
  - that are caused by external circumstances;



85.2 Supplier's obligations with respect to maintenance obligations do not cover - unless otherwise agreed on – the investigation or repair of malfunctions that are related to:

- a. a modification of the hardware that is not implemented by or on supplier's behalf;
- b. the use of the hardware in breach of the arrangements and the failure to have the maintenance performed on time;
- c. software installed on the hardware.

85.3 Supplier may charge the costs in connection with maintenance services and/or investigations as referred to articles 85.1 and/or 85.2, at their applicable rates.

85.4 Supplier is not obliged to recover corrupted or lost data other than restoring the most recent backup of the relevant data, where possible. If parties have not agreed on data segmentation or other mechanism for data segregation, it may not be possible to restore a client-specific backup.

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