



## NEDAP INC. GENERAL TERMS AND CONDITIONS

### A. TERMS APPLICABLE TO ALL TRANSACTIONS AND PRODUCTS

#### 1 Definitions

- 1.1 Agreement:  
shall mean an agreement between the Customer and Nedap for the delivery of Nedap Products, Software and/or Services.
- 1.2 Customer(s):  
shall mean any natural or legal person with whom Nedap and its employees deal in the course of its business, including representative(s), agent(s), successor(s) and visitors of the Nedap website.
- 1.3 Error:  
shall mean any substantive failure of the Products, Software and/or Services to comply with functional or technical specifications mutually agreed by the Parties.
- 1.4 Nedap:  
shall mean Nedap Inc.
- 1.5 Party or Parties:  
shall mean Nedap and Customer, individually or collectively.
- 1.6 Product(s):  
shall mean the Nedap products provided pursuant to the Agreement, including but not limited to telecommunications equipment, office equipment and computer equipment and/or other equipment, supplies, goods, parts relating to automatic vehicle identification systems, energy systems, healthcare administration systems, library solutions, livestock management systems, security and management and information systems, lighting products, record keeping systems.
- 1.7 Service(s):  
shall mean the full assortment of Nedap' services, including but not limited to consulting, research, application service provision, software as a service and/or other computer services.
- 1.8 Software:  
shall mean computer software, with accompanying documentation and specifications, including embedded software, non-final and/or uncompleted software and materials.
- 1.9 Terms and Conditions:  
shall mean these Nedap Inc. General Terms and Conditions

#### 2 Applicability

- 2.1 These Terms and Conditions apply to all offers by Nedap and exclusively govern the relationship between Nedap and Customers, any Agreement or other agreements between Nedap and Customers and any subsequent amendment to any agreement or the Agreement. These Terms and Conditions shall be applicable even if Nedap uses third parties to deliver Products.
- 2.2 No other terms and conditions shall be binding upon Nedap unless accepted by it in writing. Nedap expressly rejects any general terms and conditions used by Customer. Customer may issue a purchase order for administrative purposes only. Additional or different terms and conditions contained in any such purchase order will be null and void and do not bind Nedap.
- 2.3 Nedap reserves the right to amend these Terms and Conditions at any time. New or amended general terms and conditions shall be applicable upon thirty (30) days' notice to Customer.
- 2.4 In case of inconsistencies between the terms of an Agreement and those contained in these Terms and Conditions, those in the Agreement shall prevail.

#### 3 Offers and Acceptance

- 3.1 All offers of Nedap are non-binding and may be revoked at any time, unless Nedap stated otherwise in writing. Any amendments made by Nedap in writing shall entail a new offer, automatically revoking the previous offer. Any amendments by Customer of a Nedap offer will be deemed a new offer by Customer, which Nedap may accept or reject in its sole discretion. Offers will only be deemed accepted by Nedap if it does so in writing.

- 3.2 All information, data or undertakings provided verbally or in documentation, price lists or other material related to Products and/or Services, whether in electronic or any other form, are binding only to the extent that they are by reference expressly included and confirmed in writing in the Agreement with Nedap.
- 3.3 All offers are based on the information and documentation provided by Customer, and Nedap may rely on the accuracy thereof. Customer warrants the accuracy, completeness and reliability of the information and documentation, even if it originates with or is acquired from third parties.
- 3.4 Customer hereby understands and accepts that all samples, drawings, models, figures, dimensions, weights or any other specifications for Products and/or Services are estimates only, although Nedap will use best efforts to ensure their accuracy.

#### 4 Prices and Taxes

- 4.1 Configurations and prices of Products, Software and/or Services are subject to change at any time, and Nedap shall at all times be entitled to modify price lists, brochures, printed matter, quotations and other documents. Customer agrees to any such changes of prices or configurations if it does not object in writing to Nedap within seven (7) business days of when Customer receives an invoice incorporating said changes.
- 4.2 All prices are exclusive of, and Customer shall pay, all taxes, duties, levies or fees, or other similar charges imposed on Nedap or Customer by any taxing authority and related to Customer's order, unless Customer has provided Nedap with an appropriate resale or exemption certificate for the delivery location, which is the location where Products and/or Software are used or Services are performed. In case of changes in law such that a tax is levied that is or becomes irrecoverable with a consequent increase to the costs to Nedap of delivering the Products, Software and/or Services, Nedap is entitled to increase its prices accordingly and retro-actively.
- 4.3 The prices or fees quoted are in U.S. dollars, or in another currency if stated by Nedap in writing. Customer shall bear any exchange rate risk, unless otherwise agreement in writing.
- 4.4 All Agreements for the delivery of Products, Software and/or Services to Customer shall be treated as separate agreements.

#### 5 Payment

- 5.1 Customer agrees to pay, without the right to set-off any amount, all invoiced amounts within fourteen (14) days of the invoice date, unless stated otherwise in the Agreement or on the invoice. However, all amounts will be due immediately, in case Customer terminates or suspends all or a substantial portion of its business activities, becomes insolvent, admits its inability to pay its debts, or in case of the voluntary or involuntary filing of a petition for or adjudication of bankruptcy of Customer under any federal, state or municipal bankruptcy or insolvency act, the appointment of a receiver, trustee, custodian, or liquidator, or any act or action constituting a general assignment by Customer of its properties and/or interest for the benefit of creditors.
- 5.2 Where payment is not made within the terms set forth in this article, contractual interest shall be owed at a rate of 1.5% a month, or the highest rate allowed by law, if higher, with effect from the first day following expiration of the payment term referred to in this article; part of a month shall be considered a full month.
- 5.3 Payments made by Customer shall always be used first to meet all interest and costs owed and subsequently for the settlement of claims under the Agreement which have remained outstanding for the longest period of time, even when Customer specifies that the payment relates to another claim.
- 5.4 Customer shall not be entitled to refuse to discharge or to suspend the discharge of its payment obligations on account of alleged disturbance of, defect or Error in the Products, Software and/or Services or on any other account whatsoever.
- 5.5 Nedap has the right to demand that Customer immediately furnish security in a form to be determined by Nedap and/or make an advance payment, if Nedap believes that Customer's financial position and/or payment performance justifies such action. If Customer fails to furnish the desired security, Nedap has the right without prejudice to its other rights, to immediately suspend the

further execution of the Agreement, and that what Customer owes to Nedap for whatever reason will become immediately due and payable.

- 5.6 Customer shall be liable for amounts which Nedap incurs to collect payment, including without limitation, collection agency fees, reasonable attorneys' fees and arbitration or court costs.
- 6 Lead Times, Implementation, Risk of Loss and Maintenance**
- 6.1 Nedap shall deliver the Products, Software and/or Services in accordance with the Agreement. Delivery and/or development times and dates are merely estimates, as well as lead times or any other deadlines, and Nedap cannot be held liable for any damages as a result of delay in delivery of the Products, Software and/or Services. Unless otherwise agreed in writing, failure to meet delivery times or delivery dates stated shall never be considered fatal, and if the time for delivery is exceeded, Customer shall not be entitled to cancel or terminate the Agreement, or to claim any damages.
- 6.2 If any delivery period or lead time risks to be exceeded, Nedap will inform Customer as soon as reasonably possible and the Parties will enter into consultations in order to determine a new delivery period.
- 6.3 Nedap is entitled to engage the services of third parties for the execution of an Agreement and to make partial deliveries.
- 6.4 Unless agreed in writing differently, delivery of Products shall be made EXW Hudson, NH (Ex Works Incoterms 2010). Customer must accept delivery of Products during normal business hours, failing which all costs arising thereof (including storage charges and freight charges) shall be charged in conformity with Nedap's rates or local charges.
- 6.5 Claims in connection to shortages or errors in shipping must be reported in writing to Nedap within three (3) business days of receipt of such shipment. If Customer fails to report timely, Nedap will have no obligation to correct such shipments, unless Customer bears all expenses thereof.
- 6.6 Immediately upon receipt of the Products, Customer shall inspect it for defects and non-conformance with the Agreement and will notify Nedap in writing within seven (7) days of receipt of a Product, of any defects or non-conformance. After such seven (7) day period, Customer shall be deemed to have irrevocably accepted the Products, if not already previously accepted. After acceptance, Customer shall have no right to reject the Products for any reason or to revoke acceptance. Customer hereby agrees that a seven (7) day period is a reasonable amount of time for inspection and revocation.
- 6.7 In the case of any alleged shortage, errors, defects or nonconformance with the Agreement, Customer shall allow Nedap to inspect the Products subject to the alleged defect.
- 6.8 Notwithstanding the above, Nedap will have no obligation to replace or repair any Products if the Products have been handled, processed or stored improperly by the Customer, or if the Products have already been processed and or if the Customer has not fully met its obligations under these Terms and Conditions.
- 6.9 The risk of loss or damage of Products shall pass to Customer at the moment of delivery Ex Works, or when the Customer, or an agent or subcontractor acting on its behalf, has effectively assumed control of the Products, whichever is sooner, even if Nedap has not yet transferred ownership thereof. Any damage to the Products, or any loss related thereto, shall be for the account of Customer.
- 6.10 THE SOLE AND EXCLUSIVE REMEDY FOR ALLEGEDLY DEFECTIVE PRODUCTS IS REPLACEMENT OR REPAIR, AT NEDAP'S SOLE DISCRETION, OF SUCH PRODUCTS OR PARTS OF SUCH PRODUCTS, AT NO COSTS FOR CUSTOMER.
- 6.11 Maintenance is not included in any Agreement unless explicitly stated in writing. If installation and/or maintenance is provided for in the Agreement, Customer shall provide Nedap access to all materials relevant to the installation of the Products, Software and/or Services and must provide for adequate working space and facilities, and access to and use of information, and Customer's resources and facilities as reasonably determined necessary by Nedap. If Customer fails to provide such access, resulting in Nedap's inability to install or maintain or service the Products, Software and/or Services, Nedap shall be entitled to charge Customer its standard rates for all related travel time and time Nedap personnel is present at the Customer's premises. Customer must notify Nedap in advance if Customer's

premises, or parts thereof, might pose a health or safety hazard to Nedap's employees or subcontractors. Nedap may postpone installation, service or maintenance until Customer remedies such hazards, without being liable to Customer for any damages. Customer shall always have a representative present when Nedap provides services or maintenance or installation at Customer's site.

**7 Intellectual Property Ownership and Right of Use**

- 7.1 All intellectual property rights, e.g., patents, copyrights, trademarks, designs, models, know-how and all proprietary and/or commercial rights and trade secret rights, tools, documentations, etc., in relation to the Products, Software and/or Services, including modifications thereto, delivered and/or used by Nedap, are owned by Nedap or its licensor(s). No transfer or other grant of rights is given to Customer, unless explicitly stated in writing. This applies even if Products, Software and/or Services have been specifically designed, developed or compiled for Customer.
- 7.2 Unless otherwise agreed in writing, Customer may not make repairs or modifications to the Products, Software and/or Services, nor allow or enable any third parties to do so. Customer may not, nor may enable and/or allow third parties to copy, translate, or reverse engineer any Products, Software and/or Services.
- 7.3 Nedap, at its sole discretion, may implement technical measures aimed at protecting the Products, Software and/or Services, and Customer is prohibited from attempting to remove or circumvent such protections.
- 7.4 Customer shall not be permitted to affix any other trademark to the Products, Software and/or Products, or to remove any copyright, trademark or other proprietary rights notices on same, or to use the relevant mark in any other way, or to register it in Customer's own name, and specifically Customer shall not be permitted to register any patent involving, based upon, or for any of the Products, Software and/or Services.
- 7.5 If a third party threatens to infringe any of the intellectual property rights of Nedap and Customer has knowledge of it, Customer is obliged to alert Nedap immediately and to take all measures necessary to prevent the infringement, and Customer shall lend its full cooperation to any investigation to be conducted by or on behalf of Nedap in relation to the Customer's compliance with the agreed restrictions of use and at first request by Nedap, Customer shall grant Nedap or its representatives access to Customer's buildings and systems.

**8 Customer's Cooperation**

- 8.1 Customer shall timely provide Nedap with all details and information required by Nedap for the development of Products or Software and/or the delivery of Services, specifications for which will be set forth by Nedap in writing.
- 8.2 Customer understands that Products and/or Software will be developed and/or Service(s) will be performed based on details, information, specifications and requirements supplied by the Customer, and Nedap shall rely thereupon, and Customer shall guarantee that they are accurate and comprehensive, and meet the specifications as Nedap shall set forth in writing.
- 8.3 If Customer furnishes software, materials or data on information carriers to Nedap in connection to the development of Products and/or Software or the performance of Services, these shall meet specifications as Nedap shall set forth in writing, and Nedap shall be entitled to suspend performance of the Agreement, as well as charge additional costs in accordance with its customary rates, in the event that such software, materials or data are not made available in the time required or in the prescribed quality or manner.

**9 Confidential Information**

- 9.1 Confidential Information means (i) the existence and terms of any agreement between the Parties and (ii) any non-public, confidential or proprietary information relating to a disclosing Party, whether or not technical in nature, including any that is designated by the disclosing Party as Confidential Information at the time of its disclosure, either by a written or visual confidentiality designation, or otherwise if such information would, under the circumstances, appear to a reasonable person to be confidential or proprietary.

Notwithstanding the foregoing, Confidential Information does not include information, technical data or know-how which: (i) is in the public domain at the time of disclosure or becomes available thereafter to the public without restriction, and in either case not as a result of the act or omission of the receiving Party; (ii) is rightfully obtained by the receiving Party from a third party without restriction as to disclosure; (iii) is lawfully in the possession of the receiving Party at the time of disclosure by the disclosing Party and not otherwise subject to restriction on disclosure; (iv) is approved for disclosure by prior written authorization of the disclosing Party; or (v) is developed independently and separately by either Party without use of the disclosing Party's Confidential Information.

- 9.2 Each Party agrees it will safeguard the confidentiality of the Confidential Information supplied by the other Party and it will observe the same due care with respect to such information as it would observe with respect to its own Confidential Information. The other Party shall not sell, copy and/or distribute in any way Confidential Information to third parties, without disclosing Party's prior written consent, which consent may be granted or withheld at such Party's sole and absolute discretion.
- 9.3 Each Party agrees it will restrict the circle of employees or third parties it retains who have access to the other Party's Confidential Information as much as possible and provide such access only on a need to know basis and after binding such employees and third parties to the same level of confidentiality as set forth in these Terms and Conditions.
- 9.4 Immediately following the receipt of a written request to this effect by the disclosing Party the receiving Party will return any and all Confidential Information received from the disclosing Party or destroy such Confidential Information, if the disclosing Party so requests.

#### **10 Duration, Termination and Suspension of Performance**

- 10.1 The duration of the Agreement for a recurring, subscription or periodic Products and/or Services is one (1) year, unless otherwise agreed in writing by the Parties. Such an Agreement shall automatically renew for subsequent one (1) year periods unless one Party notifies the other Party in writing, with a notification period of three (3) months before the expiration date of the initial or extended period, that it will terminate the Agreement.
- 10.2 Any Agreement for a certain project will end upon completion of such project.
- 10.3 Customer cannot terminate the Agreement for convenience, except in accordance with section 10.1.
- 10.4 If Customer believes that Nedap has failed to perform under the Agreement, it must notify Nedap in writing and allow two (2) weeks for Nedap to cure if it has failed to perform.
- 10.5 If Customer fails to make payment of any amount due on the due date or Customer otherwise fails to perform its obligations under the Agreement or these Terms and Conditions, or if Nedap reasonably expects that Customer will not fulfill its obligations, Nedap may in its sole and absolute discretion suspend performance under its agreement with Customer and/or terminate the Agreement (in whole or part), with immediate effect, without being liable for any damages to Customer.
- 10.6 Notwithstanding the above and without any obligation to return any service fee or prepaid expenses, Nedap may terminate its relationship with Customer, or may terminate or suspend delivery of Products, Software and/or Services at any time, or terminate or suspend Customer's use of the Software and/or Services at any time if: (i) Customer is in breach of these Terms and Conditions and/or the Agreement; (ii) Nedap reasonably suspects that Customer is using Products, Software and/or Services to breach the law or infringe third party rights; (iii) Nedap reasonably suspects that Customer is trying to unfairly exploit or misuse the complaint policy, or any of Nedap's policies; (iv) Nedap reasonably suspects that Customer is using Products, Software and/or Services fraudulently, or that Products, Software and/or Services provided to Customer are being used by a third party fraudulently; (v) a force majeure event continues for more than ten (10) days upon notice; (vi) Customer fails to pay any amounts due to Nedap; (vii) required due to change in laws/regulation by a regulator or authority with a lawful mandate, or

by any of Nedap's partners; (viii) in respect to a particular Nedap Product, Software and/or Service, upon thirty (30) days' notice, Nedap decides to cease offering such Product, Software and/or Service; (ix) the bankruptcy of the Customer has been applied for; (x) an attachment is levied on the goods of Customer; (xi) Customer is liquidated or discontinued; and/or (xii) Customer is in violation of any applicable laws or regulations.

- 10.7 Upon suspension and/or termination, all invoiced sums will become immediately due and payable. In the event of suspension of performance by Nedap, Nedap may at its sole discretion resell any Products, Software and/or Services ordered by Customer, at a public or private sale without notice to Customer and without affecting Nedap's rights to hold the Customer liable for any loss or damage caused by breach of contract by Customer.

#### **11 Warranty**

- 11.1 Nedap warrants its Products and/or Services against errors and defects in materials and workmanship for one (1) year and its Software against errors and defects in materials and workmanship for three (3) months from the date of delivery, during which time it will use its best efforts to repair any Errors as may be found during such period. However, any such problems encountered in the use of the Products, Software and/or Services as arise out of user errors or inept use on the part of Customer and any problems involving any such Errors as could have been brought to light in the context of any acceptance test being performed pursuant to these Terms and Conditions, or out of any other causes not attributable to Nedap, shall be for Customer's risk and account.
- 11.2 Nedap will, at its sole discretion, either repair or replace any Errors and/or defective Product during the warranty period.
- 11.3 The warranties hereunder do not cover faults or damages arising from faulty, careless, or improper treatment, faulty and unauthorized commission, improper storage or unloading and unauthorized use or misuse of Products, Software and/or Services, and improper or defective environmental circumstances, or a failure caused by a product for which Nedap is not responsible.
- 11.4 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEDAP, ITS LICENSORS, THIRD PARTY SUPPLIERS, AND AFFILIATES HEREBY DISCLAIM ALL WARRANTIES, CONDITIONS, CLAIMS OR REPRESENTATIONS WITH RESPECT TO THE NEDAP PRODUCTS, SOFTWARE AND/OR SERVICES WHETHER EXPRESS, IMPLIED OR STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, QUALITY, NON-INFRINGEMENT, COMPATIBILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM NEDAP OR ELSEWHERE, WILL CREATE ANY WARRANTY OR CONDITION NOT EXPRESSLY STATED IN THESE TERMS AND CONDITIONS.

#### **12 Liability, Limitation of Damages and Indemnification**

- 12.1 NEDAP DISCLAIMS ANY AND ALL RESPONSIBILITY OR LIABILITY IN RELATION TO ITS PRODUCTS, SOFTWARE AND/OR SERVICES. NEDAP NOR ITS OFFICERS OR AFFILIATES MAY BE HELD LIABLE WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER FORM OF LIABILITY, FOR ANY CLAIM, DAMAGE, OR LOSS, (AND CUSTOMER HEREBY WAIVES ANY AND ALL SUCH CLAIMS OR CAUSES OF ACTION), ARISING FROM OR RELATING TO ALL SUCH PRODUCTS, SOFTWARE AND/OR SERVICES.
- 12.2 CUSTOMER IS SOLELY RESPONSIBLE AND LIABLE FOR ALL ACTIVITIES CONDUCTED THROUGH NEDAP'S PRODUCTS AND/OR SOFTWARE BY CUSTOMER'S USERS, EVEN IF SUCH ACTIVITIES WERE TO OCCUR WITHOUT CUSTOMER'S PERMISSION. NEDAP DISCLAIMS ANY AND ALL RESPONSIBILITY OR LIABILITY IN RELATION TO THE ACTS AND OMISSIONS OF CUSTOMER'S USERS THROUGH NEDAP'S PRODUCTS AND/OR SOFTWARE. NEDAP NOR ITS OFFICERS OR EMPLOYEES OR AFFILIATES MAY BE HELD LIABLE WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER FORM OF LIABILITY FOR ANY CLAIM, DAMAGE, OR LOSS, (AND CUSTOMER HEREBY WAIVES ANY AND ALL SUCH CLAIMS OR CAUSES OF ACTION), ARISING OR RELATING TO ALL SUCH ACTS AND OMISSIONS.
- 12.3 IN NO EVENT SHALL NEDAP, ITS AFFILIATES OR ITS LICENSORS BE LIABLE, HOWEVER CAUSED AND WHETHER ARISING UNDER

CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER FORM OF LIABILITY, FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF INCOME, BUSINESS, SALES, PROFITS (WHETHER ACTUAL OR ANTICIPATED), LOSS OF OR CORRUPTION TO DATA, OR INTERRUPTION OF BUSINESS.

12.4 NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT TO THE CONTRARY, NEDAP'S AGGREGATE LIABILITY FOR ALL CLAIMS OF ANY KIND SHALL NOT EXCEED THE TOTAL PAID BY CUSTOMER FOR THE PRODUCTS, SOFTWARE AND/OR SERVICES IN CONNECTION TO WHICH THE DAMAGING EVENT OCCURRED.

12.5 THE LIMITATIONS ON NEDAP'S LIABILITY ABOVE SHALL APPLY WHETHER OR NOT NEDAP, ITS EMPLOYEES, LICENSORS OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES ARISING.

### **13 Indemnification**

13.1 CUSTOMER AGREES TO INDEMNIFY, DEFEND AND HOLD NEDAP, ITS PRESENT AND FUTURE OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS AND ITS AFFILIATES HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, LOSSES, DAMAGES, PENALTIES, LIABILITY AND COSTS, INCLUDING REASONABLE ATTORNEYS FEES, IN CONNECTION WITH OR ARISING OUT OF ANY USE OF THE NEDAP PRODUCTS, SOFTWARE AND/OR SERVICES OR BREACH OF THIS AGREEMENT, BY CUSTOMER OR ITS USERS.

13.2 CUSTOMER AGREES TO INDEMNIFY, DEFEND AND HOLD NEDAP, ITS PRESENT AND FUTURE OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS AND ITS AFFILIATES HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS AND THREATENED CLAIMS BY ANY THIRD PARTY, INCLUDING EMPLOYEES OF CUSTOMER ARISING OUT OF, UNDER OR IN CONNECTION WITH (1) THE DEATH OR BODILY INJURY OF ANY THIRD PARTY, INCLUDING ANY AGENT, EMPLOYEE, CUSTOMER, BUSINESS INVITEE OR BUSINESS VISITOR OF CUSTOMER, OR, (2) THE DAMAGE, LOSS OR DESTRUCTION OF ANY TANGIBLE PERSONAL OR REAL PROPERTY AT CUSTOMER'S PREMISES, BOTH ONLY TO THE EXTENT THAT SUCH WAS NOT A RESULT OF GROSS NEGLIGENCE BY NEDAP OR ITS PERSONNEL.

### **14 Insurance**

Nedap and Customer shall pay all necessary costs to maintain sufficient insurance policies to cover its personnel and premises for activities contemplated by or performed in connection with the Products, Software and/or Services.

### **15 Severability**

If any provision of these Terms and Conditions, the Agreement or any other agreement between the Parties, is held to be null, void or otherwise ineffective or invalid by a court of competent jurisdiction, (i) such provision shall be deemed to be restated to reflect as nearly as possible the original meaning of the terms or agreement in accordance with applicable law, and (ii) the remaining terms, provisions, covenants and restrictions shall remain in full force and effect.

### **16 Force Majeure**

Nedap will not be liable for any delay in performing or failure to perform any of its obligations under these Terms and Conditions or the Agreement caused by events beyond its reasonable control. Nedap will notify Customer promptly in writing of the reasons for the delay or stoppage (and the likely duration) and will take all reasonable steps to overcome the delay or stoppage.

### **17 Assignment**

Customer is not permitted to assign, delegate or otherwise transfer the Agreement or any rights hereunder. Any such attempted assignment, delegation or transfer will be null and void. Nedap is permitted at its sole discretion to assign the Agreement or any rights or obligations hereunder to any third party, without giving prior notice.

### **18 Entire Agreement**

The Agreement and these Terms and Conditions contain the entire agreement between Nedap and Customer regarding Customer's purchase of the Products and/or Services, and supersedes and replaces any previous communications, representations or agreements, or Customer's additional or inconsistent terms, whether oral or written.

### **19 No Waiver**

The failure to exercise, or delay in exercising, a right, power or remedy provided by the Agreement or these Terms and Conditions or by law shall not constitute a waiver of that right, power or remedy. If Nedap waives a breach of any provision of these Terms and Conditions or the Agreement, this shall not operate as a waiver of a subsequent breach or that provision or as a waiver of a breach of any other provision.

### **20 No Beneficiaries**

Any agreement between the Parties is for the sole benefit of the Parties thereto and, except as otherwise contemplated therein, nothing therein expressed or implied shall give or be construed to give any person, other than the Parties thereto, any legal or equitable rights thereunder.

### **21 No Partnership**

Nothing contained in any agreement between the Parties shall be read or construed so as to constitute the relationship of principal and agent or of partnership between the Parties. Neither of the Parties may pledge or purport to pledge the credit of the other Party or make or purport to make any representations, warranties, or undertakings for the other Party.

### **22 Injunctive Relief**

Customer acknowledges that Nedap shall suffer irreparable injury in case of breach of the obligations under sections 7, 9, 26 and 27. Accordingly, in the event of such breach, Customer acknowledges that Nedap will be entitled to injunctive relief in any state or federal court of competent jurisdiction within the State Massachusetts. Customer further submits to the personal jurisdiction of such courts for the purposes of any such action.

### **23 Governing Law and Arbitration**

Unless stated otherwise in writing, any and all agreements between the Parties shall be governed by and construed in accordance with the laws of the State of Massachusetts, notwithstanding conflict of law principles, and without giving effect to the United Nations Convention on the Contracts for the International Sale of Goods. All disputes and controversies arising out of or relating to these Terms and Conditions or the relationship of the Parties shall be finally and bindingly resolved under the International Arbitration Rules of the American Arbitration Association in front of a sole arbitrator. The place of arbitration shall be Wakefield, Massachusetts. The language of the arbitration shall be English. Any award, verdict or settlement issued under such arbitration may be entered by any party for order of enforcement by any court of competent jurisdiction. ANY CAUSE OF ACTION AGAINST NEDAP, REGARDLESS WHETHER IN CONTRACT, TORT OR OTHERWISE, MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

## **B. SUPPLEMENTAL TERMS SOLELY APPLICABLE TO SOFTWARE AND/OR SERVICES**

### **24 Delivery and Completion**

24.1 Delivery of the Software and/or Services will be deemed completed the moment when made available to Customer, or if agreed, upon installation of Software at the Customer's premises. In no event shall Nedap be responsible for the purchase and/or correct functioning of the Customer's infrastructure or that of third parties. The Software and /or Services is deemed to be accepted, if it materially meets the written specifications agreed by the Parties.

- 24.2 Nedap shall provide Software and/or Services on the basis of a best efforts obligation, unless and in so far as Nedap has explicitly undertaken in writing to achieve a specific result and the result in question is sufficiently determined.
- 24.3 Unless explicitly agreed in writing, Nedap shall not be obliged to install any Software on Customer's premise, or set up, install, parameterize, tune or adapt the Software and/or Services, or to provide any data conversion related thereto, or to achieve any interoperability desired by Customer.
- 24.4 Under no circumstances shall Nedap be obliged to provide Customer with a physical data carrier containing the Software to be made and kept available to the Customer within the context of the Services, or the Software to be used by Nedap in connection to the Services.
- 24.5 Customer shall solely be responsible for training given to and use by users of the Software and/or Services.
- 24.6 Customer understands and agrees that downtime or inaccessibility may result from Nedap's implementation of updates, upgrades, or other maintenance activities related to the Software and/or Services, and Nedap shall not be liable for any damages relating to such downtime or inaccessibility.
- 24.7 Nedap may make adjustments to the content and scope of the Services. If such adjustments result in a change in the procedures that apply to the Customer, Nedap shall notify Customer as soon as possible and the costs of this change will be borne by Customer.

## **25 Testing, Acceptance and Backup**

- 25.1 In the event that the Parties agreed in writing that Customer be entitled to test the Software before accepting it, acceptance shall be deemed to be made fourteen (14) days from the delivery or installation of the Software and no written complaint specifically detailing purported Errors has been received by Nedap. If a written complaint detailing purported Errors has been received by Nedap, acceptance shall be deemed to be made fourteen (14) days from completion of repairs of items specifically detailed in the written complaint. Notwithstanding the above, Software and or Services shall be deemed accepted upon Customer making any use of the Software for any purpose related to its business operations, or accesses the Services for any reason.
- 25.2 In the event Customer reports any purported Errors in the Software within fourteen (14) days after delivery or installation, such written report shall provide a detailed description of Customer's testing, and the nature of any purported Errors. In the event the Software is found to contain Errors, Nedap will make reasonable repair or replace the Software, at its sole discretion and within a reasonable period of time.
- 25.3 If Software and/or Services are delivered and tested in stages and/or parts, the non-acceptance of a specific stage and/or part shall not affect the acceptance of a previous stage and/or other part, where appropriate.
- 25.4 If the Agreement provides, Nedap will examine the functionality of Services and will address material Errors and substantiated requests for support within a reasonable period of time, in no event less than three (3) business days, upon written notice from Customer. Nedap does not guarantee the accuracy, completeness or timeliness of any responses or support provided.
- 25.5 If the Agreement provides that Services provided to Customer shall also include the creation of backups of Customer's data, Nedap shall create a full backup of the Customer data in its possession with due observance of the periods agreed between the Parties in writing. If no periods have been agreed, a backup shall be created once a week. Nedap shall retain the backup for a period of time to be agreed by the Parties and if no agreement has been reached in this regard, for Nedap's standard period of time. Nedap will handle and store the backup with due care and diligence. Nedap shall not be obliged to have a backup center or other backup facilities, unless otherwise explicitly agreed in writing.
- 25.6 Under no circumstances shall Nedap be responsible for the recovery of scrambled or lost data.
- 25.7 THE SOLE AND EXCLUSIVE REMEDY FOR ALLEGED ERRORS OR ANY DEFECT IN THE SOFTWARE AND/OR SERVICES IS THE REPAIR OR THE DELIVERY OF REPLACEMENT SOFTWARE AND/OR SERVICES, AT NEDAP'S SOLE DISCRETION, AT NO COSTS FOR CUSTOMER.

## **26 Intellectual Property and Use**

- 26.1 Customer will have a personal non-exclusive, non-transferable and non-sublicensable license to use the Software and/or Services and other material according to these Terms and Conditions and the Agreement, solely for Customer's personal use while the Customer complies with the terms of the Agreement and these Terms and Conditions.
- 26.2 Customer understands and hereby accepts that the source code related to the Software and/or Services shall not be available to the Customer. Unless otherwise agreed in writing, Nedap shall not be required to provide Customer any program or data libraries, even if these are required for the use and/or maintenance of the Software and/or Services.
- 26.3 Nedap shall have the right to change Software and/or Services and/or to discontinue Software and/or Services from time to time and shall not be liable for any loss or damage of whatever kind or nature suffered or incurred by Customer as a result thereof.
- 26.4 Nedap may implement upgrades and/or updates available from time to time with regard to the Software and/or Services, but is under no obligation to do so. Customer is required to use always the latest upgrades and updates of the Software and/or Services.
- 26.5 All hardware, software and items used by Nedap in providing the Services shall remain the property or the intellectual property of Nedap or its own suppliers, even if the Customer pays a fee in respect of the development or purchase of these by Nedap.
- 26.6 To gain access to the Services, Customer's users may be required to have a user ID and a password. Customer shall instruct its users to take all measures that may reasonably be required from them to prevent unauthorized use of the user ID/password. If and to the extent that Customer's user suspects a case of unauthorized use, it must be reported to Nedap immediately.

## **27 Privacy, Restrictions of Use and Indemnification**

- 27.1 Customer shall comply with prevailing regulations related to the protection or privacy and processing of personal information.
- 27.2 Customer shall observe any restrictions of use of the Software and/or Services as provided in the Agreement, including without limitation (i) the kind or type of hardware that the Software and/or Services is designed for, (ii) the maximum number of processing units that the Software and/or Services is designed for, (iii) specific individuals who may use the Software and/or Services within Customer's organization, (iv) the maximum number of users who may use the Software and/or Services, simultaneously or otherwise, within Customer's organization, (v) the location at which the Software and/or Services may be used or (vi) specific forms and purposes of use (e.g. for commercial or private purposes). Customer understands that the violation of an agreed restriction of use shall constitute both breach of contract with Nedap and an infringement of the intellectual property rights in the Software and/or Services.
- 27.3 Customer is strictly prohibited from selling, multiplying, or otherwise exploiting or assigning its right of use, or encumbering same, or otherwise putting the Software and/or Services in the possession or use of a third party in any way, and Customer specifically shall not use any of the Software and/or Services to process data on behalf of third parties, e.g., for services such as time-sharing, application service provision, software as a service and outsourcing.
- 27.4 Nedap shall always be permitted to install technical provisions for the purpose of protecting the Software and/or Services, hardware, data files, websites and such in relation to an agreed restriction on the content or use of the Software and/or Services, and Customer shall under no circumstances be permitted to remove or circumvent such technical provisions or allow third parties to do so.
- 27.5 Customer undertakes to take its own precautions to prevent unauthorized access by third parties to the Software and/or Services. Customer shall notify its employees of the necessity to observe copyright law.
- 27.6 If and when requested by Nedap, Customer shall provide all cooperation and information that Nedap may reasonably request to fulfill any of its obligations towards Customer.
- 27.7 Customer agrees and warrants that all of its users agrees as well, not to: (i) copy, modify, translate, or reverse engineer any portion of the Software and/or Services; (ii) use any robot, spider, other automated

device, or manual process to monitor or copy the Software and/or Services, or parts thereof; (iii) reformat or frame any portion of the Software and/or Services; (iv) interfere with the access of any other users of the Software and/or Services to it; (v) transmit any viruses, worms, defects, Trojan horses or other items of a destructive nature through the Software and/or Services; (vi) use the Software and/or Services to violate the security of any computer network, crack passwords or security encryption codes; or (vii) use any device, software or routine that interferes with the proper working of the Software and/or Services.

- 27.8 Notwithstanding any other provision of these Terms and Conditions, Customer shall be fully responsible for the data processed through the use of the Software and/or Services. Customer also understands and agrees that the data that Customer processes through the Software and/or Services is not illegal and does not infringe the rights of third parties.
- 27.9 CUSTOMER SHALL INDEMNIFY AND HOLD NEDAP HARMLESS AGAINST CLAIMS BY THIRD PARTIES, OF WHATEVER NATURE, IN RELATION TO THE PROCESSING OF DATA THROUGH THE SOFTWARE AND/OR SERVICES.
- 27.10 CUSTOMER SHALL INDEMNIFY AND HOLD HARMLESS NEDAP AGAINST CLAIMS BY THRID PARTIES, OF WHATEVER NATURE IN RELATION TO ANY VIOLATION OF ANY REGULATIONS RELATED TO THE PROTECTION OR PRIVACY AND PROCESSING OF PERSONAL INFORMATION IN RELATION TO THE SOFTWARE AND/OR THE SERVICES.

## **28 Warranty**

- 28.1 THE NEDAP SOFTWARE AND/OR SERVICES AND NEDAP'S WEBSITE, INCLUDING ALL CONTENT, SOFTWARE, FUNCTIONS, MATERIALS, SERVICES, AND INFORMATION AVAILABLE ON OR ACCESSED BY MEANS THEREOF, IS PROVIDED AS IS. TO THE FULLEST EXTENT PERMISSIBLE BY LAW, NEDAP MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER FOR (1) THE CURRENCY, ACCURACY, OR COMPLETENESS OF ANY INFORMATION AVAILABLE BY MEANS OF THE SOFTWARE AND/OR SERVICES, (2) ANY INFORMATION PROVIDED BY THIRD PARTIES AND ACCESSIBLE ON OR THROUGH THE SOFTWARE AND/OR SERVICES, (3) ANY VIRUSES OR MALICIOUS COMPUTER CODE TRANSMITTED ON OR THROUGH THE SOFTWARE AND/OR SERVICES, (4) FOR ANY BREACH OF SECURITY OR UNAUTHORIZED ACCESS TO THE SOFTWARE AND/OR SERVICES OR CUSTOMER INFORMATION. NEDAP FURTHER DOES NOT REPRESENT OR WARRANT THAT THE NEDAP SOFTWARE AND/OR SERVICES WILL ALWAYS BE SECURE, UNINTERRUPTED, TIMELY, ACCURATE, COMPLETE, ERROR-FREE OR FREE FROM VIRUSES NOR DOES NEDAP WARRANT ANY QUALITY OF THE SOFTWARE AND/OR SERVICES. NEDAP IS NOT RESPONSIBLE FOR THE CONDUCT OF ANY USER OF THE SOFTWARE AND/OR SERVICES.