

# TERMS AND CONDITIONS

## DUTCH DIGITAL AGENCIES

Us Media uses the conditions of Dutch Digital Agencies, the trade association of internet agencies in the Netherlands of which Us Media is a member.

### Article 1 Definitions

1.1 The following terms are capitalised in these DDA Terms and Conditions, both in the singular and in the plural. These terms have the following meanings:

**Agreement:** The agreement between Us Media and the Client regarding the provision of the Service;

**Client:** A natural person who or legal entity that has concluded, or will conclude, an Agreement with Us Media;

**DDA:** Dutch Digital Agencies, the trade association and knowledge organisation of internet agencies in the Netherlands of which Us Media is a member;

**DDA Terms and Conditions:** These terms and conditions of Us Media including all applicable Schedules;

**IP Rights:** All intellectual property rights and associated rights such as copyrights, trademark rights, patent rights, design rights, trade name rights, database rights and related rights, as well as rights to know-how and performances on a par with these rights;

**Parties:** Us Media and the Client;

**Personal data:** Any information relating to an identified or identifiable natural person within the meaning of and Article 4(1) of the General Data Protection Regulation;

**Schedule:** An appendix to the DDA Terms and Conditions with specific provisions relating to the Service to be provided; and

**Service:** The services to be provided to the Client by Us Media pursuant to the Agreement, including, if applicable, results of services.

### Article 2 General

2.1 The DDA Terms and Conditions apply to and form an integral part of all offers and quotations of Us Media, Agreements and any other legal acts related thereto between Us Media and the Client or its legal

successor. In addition to these DDA Terms and Conditions, the specific Schedule(s) to the DDA Terms and Conditions that have been agreed between Us Media and the Client also apply.

- 2.2 If the DDA Terms and Conditions state that an act must be carried out in writing, this is deemed to refer to email as well.
- 2.3 Any departures from the DDA Terms and Conditions are only valid if they have been agreed explicitly in writing by Us Media and the Client and they only apply to the specific agreement for which they were agreed.
- 2.4 The DDA Terms and Conditions will always prevail over any purchasing or other terms and conditions used by the Client.
- 2.5 Once these DDA Terms and Conditions have been applied to a legal relationship between Us Media and the Client, the Client is deemed to have agreed in advance to the applicability of these DDA Terms and Conditions to any Agreements concluded or to be concluded thereafter.
- 2.6 If and to the extent that any provision in these DDA Terms and Conditions is declared to be null and void or is annulled, the other provisions in the DDA Terms and Conditions will remain in full force. In that case the Parties will consult to determine a new provision to replace the provision that is null and void or that has been annulled, thereby taking the purport of the void or annulled provision into account as far as possible.
- 2.7 In the event of a conflict between provisions in an Agreement and the DDA Terms and Conditions, the provisions of the Agreement will prevail. In the event of a conflict between the DDA Terms and Conditions and a specific Schedule, the provisions in the specific Schedule(s) will prevail.
- 2.8 Electronic communication between the Parties will be deemed to have been received on the day it was sent, unless proof to the contrary is furnished.

### **Article 3      Quotations and formation of the Agreement**

- 3.1 Quotations and other offers made by Us Media are without obligation and should be regarded as an invitation to make an offer to form an Agreement, unless Us Media has indicated otherwise in writing.
- 3.2 Offers and quotations lose their validity four weeks after their date, unless otherwise indicated in writing.
- 3.3 The Client warrants that the details disclosed by it to Us Media, on which Us Media has based its offer, are correct and complete. If those details should prove not to be correct or complete, Us Media is entitled to modify the offer.
- 3.4 An Agreement is formed by written confirmation from the Client of an unmodified valid quotation and/or offer made by Us Media.

### **Article 4      Performance of the Agreement and delivery**

- 4.1 Us Media will perform the Agreement to best of its knowledge and ability and in accordance with the standards of the profession and on the basis of the latest scientific and technical knowledge. The Agreement to be formed between Us Media and the Client involves a best efforts obligation, unless and to the extent that Us Media has explicitly promised a particular result in the written Agreement and the result

concerned is also described in the Agreement in a sufficiently precise manner. Any arrangements about a service level (Service Level Agreement) will always be agreed in writing.

- 4.2 In the Agreement the Parties will determine the delivery term and delivery dates as well as the place and manner in which the Services will be delivered and/or provided. The duration of an assignment depends on various factors and circumstances, such as the quality of the data and information disclosed by the Client and the cooperation of the Client and relevant third parties. The aforementioned delivery terms are therefore not strict deadlines, unless the Parties have explicitly agreed otherwise in writing. In the event that a delivery term or other term is exceeded, or is likely to be exceeded, the Parties will consult with each other as soon as possible in order to take suitable measures.
- 4.3 If it has been agreed that the Agreement will be performed in phases, Us Media is authorised to postpone the commencement of the Services that from part of a subsequent phase until the Client has approved the results of the prior phase in writing.
- 4.4 Us Media is not obliged to follow instructions that alter or add to the content or scope of the agreed Services; if such instructions are followed, the activities concerned will be paid in accordance with Us Media's usual rates and Us Media will notify the Client of this.
- 4.5 Us Media is entitled to have the Agreement carried out by third parties wholly or in part, or to engage third parties for the performance of the Agreement.
- 4.6 Services will be deemed by the Parties to have been accepted if the Client has not substantiated in writing and in detail within five (5) working days after delivery of the Services concerned why the Services have not been accepted. If they are not accepted, Us Media must replace the Services or make adjustments to them within a reasonable term. If the Client again does not accept the Services, the Parties will perform the acceptance procedure again. This procedure will be repeated if the Client again substantiates during the new acceptance test why the Services have not been accepted.
- 4.7 The risk of loss, theft, misappropriation or damage to items of property, products, information/data, documents or programs created or used in the context of the performance of the Agreement passes to the Client when the Client or an auxiliary person, servant or agent of the Client has taken actual possession of the goods.

## **Article 5 Prices and terms of payment**

- 5.1 All prices are exclusive of turnover tax (VAT) and other government levies.
- 5.2 Unless explicitly agreed otherwise, price indications, estimates, budgets and/or cost estimates issued by Us Media are merely for information purposes, and no rights or expectations may be derived from them. Only if the Parties have so agreed is Us Media obliged to inform the Client when a cost estimate or estimate will be exceeded.
- 5.3 The Parties will set down in the Agreement the date or dates on which Us Media will charge the fee for Services to the Client. The Client will pay invoices in accordance with the terms of payment stated on the invoice. In the absence of a specific arrangement, the Client will pay within fourteen (14) days after the invoice date.

- 5.4 If the Client does not pay the amounts due on time, the Client will owe statutory interest on the outstanding amount without any demand or notice of default being required. If after a demand or notice of default the Client still fails to pay the claim, Us Media may refer the debt for collection, in which case the Client will be obliged to pay, in addition to the total amount due, all judicial and extrajudicial costs, including costs of external experts.
- 5.5 Us Media is entitled to retain Services that are still in its possession if the Client does not comply with its payment obligation, until the Client has settled its payment obligation, regardless of whether the arrears are related to the Services retained by Us Media.
- 5.6 During the term of an Agreement, Us Media is authorised to increase the prices for its Services each year with effect from 1 January in conformity with the price index figure for the preceding calendar year as published by Statistics Netherlands (CBS) (consumer price index for 'all households'), plus a maximum of fifteen percent (15%). Us Media is entitled to implement the cost increase at a later date if it finds this desirable from an administrative point of view.
- 5.7 Comments or complaints about invoices, bills and fee statements must be made known in writing within fourteen (14) days after receipt of the invoice, bill or fee statement concerned, failing which they will be deemed to have been accepted. Such complaints do not suspend the obligation to make payment.
- 5.8 Us Media is entitled to send the Client interim invoices and/or to invoice on the basis of advance payments, to offset or to require security for compliance by the Client.
- 5.9 The Client agrees to electronic invoicing by Us Media.

## **Article 6 Changes to the assignment and/or extra work**

- 6.1 The Client accepts that the time schedule of the Agreement may be affected if the scope of the Agreement is expanded and/or altered while the Agreement is still being performed. If the interim alteration affects the agreed remuneration, Us Media will notify the Client of this as soon as possible.
- 6.2 If on the basis of an alteration to the Agreement as a result of extra requests or wishes on the part of the Client Us Media must carry out extra work (additional work), this work will be charged to the Client on the basis of actual costs at the usual rates that apply at that time, unless explicitly agreed otherwise in writing.
- 6.3 Us Media is entitled to carry out this additional work without the Client's advance written permission to the extent that the costs entailed by this additional work are not more than ten percent (10%) of the originally agreed total payment.
- 6.4 If the costs of extra work are more than ten percent (10%), Us Media will inform the Client of this. In that case the Parties will consult to discuss the measures to be taken.

## **Article 7 Obligations of the Client**

- 7.1 The Client will ensure that all data and/or information that Us Media has indicated are necessary, or which the Client reasonably ought to understand will be necessary for the performance of the Agreement, including information about legislation or regulations to be complied with by Us Media that applies

specifically to the Client's field of work, are disclosed to Us Media in good time and will cooperate with Us Media to the extent that the latter requires. Quotations and offers issued by Us Media as well as the Agreement concluded afterwards are based on the information disclosed by the Client.

- 7.2 If data needed for the performance of the Agreement is not disclosed to Us Media in good time, Us Media is entitled to suspend performance of the Agreement and/or to charge to the Client the extra costs arising from the delay at the usual rates that apply at that time.
- 7.3 To the extent that in the context of the Agreement Us Media discloses user names and/or passwords, the Client is responsible for these user names and/or passwords and is entirely and independently liable for any misuse made of the user names or passwords, unless such misuse is the result of intent or gross negligence on the part of Us Media.
- 7.4 To the extent that Us Media discloses user names and/or passwords in the context of the Agreement, the Client is prohibited from disclosing these user names and/or passwords to third parties without Us Media's consent.

## **Article 8 Termination, premature termination and the consequences of these**

- 8.1 An Agreement takes effect on the date stated in Article 3 for the period agreed in writing between the Parties and ends by operation of law on the date agreed by the Parties or when the provision of Services has been completed.
- 8.2 Unless explicitly agreed otherwise, the Parties may not terminate the Agreement prematurely.
- 8.3 Each of the Parties is entitled to dissolve the Agreement wholly or in part if the other Party is declared bankrupt/insolvent or is granted a suspension of payments, as well as if the other Party's business is closed down or liquidated other than for purposes of reconstruction or merger of companies, or if the decisive control of the business of the other Party changes.
- 8.4 The Agreement may only be dissolved on the basis of attributable failure after a written notice of default has been sent that is as detailed as possible, with a reasonable term being set within which the failure can be remedied, unless these DDA Terms and Conditions or the law provide otherwise.
- 8.5 If the Agreement is dissolved, anything that Us Media has delivered and/or carried out as well as the related payment obligation will not be undone unless the Client proves that Us Media is in default with regard to the material part of those services. Amounts invoiced by Us Media before dissolution in connection with anything Us Media has already properly performed or delivered in performing the Agreement will continue to be owed in full with due observance of the provision in the preceding sentence and will become immediately due and payable at the time of dissolution.
- 8.6 If the Agreement is dissolved, all rights granted to the Client will cease to have effect. The Client will no longer be authorised to make use of the Service.
- 8.7 Articles that, by their nature, are intended to continue to apply after the end of the Agreement will remain fully effective after the Agreement is terminated.

## Article 9 IP Rights

- 9.1 Unless otherwise determined in the Agreement, all IP Rights to all the Services provided in the context of the Agreement as well as to all other materials or information made available by Us Media will be vested exclusively in Us Media and/or its licensors.
- 9.2 Nothing in these DDA Terms and Conditions and/or the Agreement implies a transfer of IP Rights. The Client will obtain solely the non-exclusive and non-transferable right of use to the Services for the purposes stipulated in the Agreement and on the conditions stipulated in the Agreement. Unless otherwise stipulated in writing, the right of use granted applies only for the Netherlands.
- 9.3 The Client is not permitted to remove or alter any identifiers concerning IP Rights from the results of Services.
- 9.4 Us Media explicitly does not relinquish its personality rights referred to in section 25 of the Dutch Copyright Act (Auteurswet).
- 9.5 Us Media is permitted to use the Services and the materials used for the implementation of the Agreement, such as designs, drawings, films, software, files whether electronic or otherwise, reports, formats and interviews, for purposes of its own promotion and/or publicity, unless otherwise stipulated in the Agreement.
- 9.6 Us Media reserves the right to introduce technical protective measures into the Services. The Client is not permitted to circumvent these technical protective measures or to offer means to do so.
- 9.7 Us Media indemnifies the Client against legal action by third parties based on the allegation that the Services or parts thereof developed by Us Media infringe any IP Right currently in force in the Netherlands on the condition that the Client informs Us Media immediately in writing of the existence and the substance of the legal action and leaves the handling of the case, including effecting a settlement, entirely to Us Media. The Client will give Us Media any powers of attorney, information and cooperation necessary to defend itself against such legal action, if necessary in the name of the Client.
- 9.8 The above-mentioned obligation to indemnify will not apply if the claimed infringement is connected with:
- a. materials made available to Us Media by the Client; and/or
  - b. changes the Client has made, or has had third parties make, to the Service.
- 9.9 If according to a binding court decision the Services developed by Us Media itself infringe any IP Right vested in a third party, or if in the opinion of Us Media there is a reasonable chance that such an infringement has occurred, Us Media will if possible ensure that the Client can continue to use the Service (or something functionally equivalent) without interruption. If in Us Media's sole opinion, it cannot ensure that the Client can continue to use the Service provided without interruption, or that it will only be able to do so in a way that is unreasonably onerous (including financially) for it, Us Media will take back that which has been delivered and will credit the acquisition costs after deducting a reasonable usage fee. Any other or further liability or obligation to indemnify on the part of Us Media on account of infringement of IP Rights of third parties is entirely excluded.

## Article 10 Privacy

- 10.1 If in the context of performing the Services Us Media must process Personal Data of customers of the Client, Us Media must be deemed to be the “processor” within the meaning of and the General Data Protection Regulation and the Client must be deemed to be the “controller”.
- 10.2 The Client and Us Media will, pursuant to article 28(3) General Data Protection Regulation, conclude a processing agreement which governs the processing of Personal Data by Us Media in accordance with relevant law.

## Article 11 Confidentiality

- 11.1 The Parties will treat all information they obtain from one another in any form whatsoever - written, verbal, electronic or physical - including but not limited to software, code, source code, programs, applications, customer details, know-how, technical specifications, documentation (“Confidential Information”) as strictly confidential and will keep it secret.
- 11.2 The Parties will only use the Confidential Information for the purposes for which it was disclosed and in doing so, they will observe at least the same duty of care and safeguards that apply to their own internal confidential information. The Parties will only disclose the Confidential Information to employees to the extent necessary in the context of the Agreement and its implementation.
- 11.3 The obligations to maintain secrecy with regard to the Confidential Information will not apply to the extent that the Party that received the information can demonstrate that the information concerned:
- a. was already known to it when it was received;
  - b. was already publicly known when it was received;
  - c. became publicly known after receipt and this is not attributable to the receiving Party;
  - d. was received in a lawful manner from a third party along with the right to communicate it to the public, free of any obligation to maintain secrecy;
  - e. must be disclosed pursuant to legislation or regulations or pursuant to a court order and the disclosing Party has informed the other Party of such an obligation to communicate it to the public;
  - f. was made public with the approval of the Party disclosing it.
- 11.4 For the duration of the Agreement and 1 (one) year after it terminates, except with the advance consent of the other Party neither Party will employ employees of the other Party who are or were involved in the implementation of the Agreement, nor will it employ them or have them work for it in some other manner, directly or indirectly.

## Article 12 Liability

- 12.1 Us Media's liability for attributable failure to perform its obligations and/or on the basis of an unlawful act is limited to the reimbursement of direct damage sustained by the Client up to a maximum of the amount paid out in the case concerned by Us Media's insurance, or up to a maximum of the amount of the fee stipulated for the performance of the Agreement, with the fee stipulated for one year applying in cases of continuing performance contracts.
- 12.2 Direct damage is exclusively taken to mean:
- a. reasonable costs the Client would have to incur so for Us Media's performance to conform with the Agreement; however, this alternative damage will not be reimbursed if the Agreement is dissolved by or on the demand of the Client;
  - b. reasonable costs incurred by the Client because it was necessary to keep its old system or systems and the associated facilities operational longer because Us Media did not deliver on a delivery date which was a binding deadline for it, less any savings that result from the deferred delivery;
  - c. reasonable costs incurred to determine the cause and the scope of the damage, to the extent that this relates to direct damage in the sense meant in this Agreement;
  - d. reasonable costs incurred to prevent or limit damage, to the extent that the Client demonstrates that these costs resulted in a limitation of direct damage in the sense meant in this Agreement.
- 12.3 Any liability of Us Media for anything other than direct damage ("indirect damage"), including but not limited to consequential damage, loss and/or damage to data, loss of profits and loss of sales, is excluded.
- 12.4 The limitations referred to in the preceding paragraphs of this article will not apply if and to the extent that the damage is the result of intent or wilful recklessness on the part of Us Media or its management ("own acts").
- 12.5 In all cases, Us Media is only liable on account of an attributable failure to perform the Agreement if the Client immediately and in the form of a proper written notice informs Us Media that it is in default, stating a reasonable term in which the attributable failure can be remedied, and after this term Us Media continues to fail attributable to perform its obligations, except in the event of permanent attributable failure. The notice of default must comprise a description of the failure that is as complete and detailed as possible, so that Us Media is able to respond adequately.
- 12.6 The creation of any right to compensation is always conditional on the Client reporting the damage to Us Media in writing as soon as possible after it has come about. Any claim for compensation against Us Media will cease to exist simply by the passage of twelve (12) months after the claim arose.
- 12.7 The Client bears the full risk and responsibility for its use of the Services. Us Media does not accept any liability for the use made by the Client of the Services. The Client indemnifies Us Media against any claims of third parties arising from the Client's use of the Services.



### **Article 13 Force majeure**

- 13.1 In the event of force majeure there is no attributable failure in the performance of the Agreement by the Parties.
- 13.2 Force majeure includes, among other things, disruptions in the supply of electricity, strikes, riots, government measures, fire, natural disasters, floods, failure on the part of the Parties' suppliers, failure on the part of third parties enlisted by the Parties, disruptions in the internet connection, hardware malfunctions, malfunctions in networks, including telecommunication networks, and other unforeseen circumstances.
- 13.3 If the force majeure lasts at least thirty (30) days, the Parties are entitled to dissolve the Agreement without being obliged to reimburse any damage, to undo any work or to pay any compensation for such dissolution.
- 13.4 If Us Media can still perform in part at the time of the force majeure, or if it has performed, it is authorised to perform this service and to invoice it separately, as if it concerned a separate Agreement.

### **Article 14 Transfer of rights and obligations**

- 14.1 The Parties may only license, sublicense or transfer the rights and obligations arising from the Agreement to third parties if the other Party agrees to this in writing.

### **Article 15 Settlement and mediation**

- 15.1 If a dispute between the Parties cannot be resolved to their satisfaction, before submitting the dispute to a court it will be submitted to the Parties' authorised representatives to investigate the possibilities of a settlement, or to an independent mediator for mediation.

### **Article 16 Applicable law and competent court**

- 16.1 These General Terms and Conditions are governed exclusively by Dutch law.
- 16.2 The applicability of the Vienna Sales Convention (CISG) is expressly excluded.
- 16.3 Any disputes that arise between Us Media and the Client in the context of or in connection with this Agreement will exclusively be submitted to the competent court in the district of Amsterdam.

## **Appendix - Agile Software Development**

### **Artikel 1      Applicability**

- 1.1 In addition to the general provisions of the DDA Terms and Conditions, the provisions set out in this Schedule apply if, on the instructions of the Client, Us Media develops computer software, hereinafter to be referred to as "Software", on the basis of a software development method characterised by a step-by-step approach to writing Software involving repetition and the absence of a pre-determined plan with specifications, with the emphasis lying on experiment and teamwork, hereinafter to be referred to as: the "Agile Software Development Method".

### **Artikel 2      Study phase**

- 2.1 Before the Parties decide to implement an Agile Software Development Method, the Parties may agree to include a study phase in which they examine the suitability of the Agile Software Development Method and provide each other with access to information that is relevant in the context of this study.
- 2.2 Each Party will ensure that all data received from the other Party in the context of the study phase, which data they reasonably ought to know is confidential, remains secret. Unless it has received prior permission from the Party issuing the data, the receiving Party will not supply the data and data carriers to third parties and/or disclose these to staff and/or third parties.
- 2.3 The Parties will impose the obligations of secrecy set out in this article on their staff and any engaged third parties and guarantee compliance with these obligations.
- 2.4 Either Party will, at the other Party's first request, sign a further agreement of secrecy.

### **Artikel 3      Framework, specifications and order of priority**

- 3.1 The Parties will agree a written framework in advance stating, if required, the number of iterations, the way in which they will be managed, which efforts are expected from which employees, and the expected timeline for completing the various iterations (hereinafter: the "Framework"). This Framework will also outline, as a point of reference, the minimum functionalities of the Software to be developed.
- 3.2 The Parties will agree the order of priority of the specifications; at any time while the Agreement is being performed, the Parties may agree to modify this order of priority (hereinafter: the "Order of Priority").
- 3.3 If required, the Parties will determine in advance who is authorised to make changes to or to approve amendments to the Framework.
- 3.4 If required, the Parties will determine in advance who is authorised to accept individual iterations in accordance with Article 5.

#### **Artikel 4      Parties and roles**

- 4.1      The Parties will determine who forms part of the group which is designated and/or approved by the Client and which is responsible for developing the Software to be developed (hereinafter: the "Team").
- 4.2      If required, the Parties will determine which person designated by the Client will be responsible for the Client's communications with the Team.
- 4.3      If required, the Parties will determine who is to be appointed to supervise the cooperation between the person designated by the Client and the Team.
- 4.4      The designated persons of this article will, in principle, be designated for the full duration of the development process.

#### **Artikel 5      Acceptance**

- 5.1      Unless a different acceptance procedure is agreed, every iteration to be completed or interim result will be tested while the Agreement is still being performed, with the test period taking fourteen (14) days after completion of the iteration in question or as long as is agreed in the Agreement.
- 5.2      The Client will perform the agreed acceptance test with sufficiently qualified personnel and to a sufficient depth and extent, and the Client will report the test results clearly and comprehensibly to Us Media in writing.
- 5.3      An iteration will be deemed to be accepted on the first day after the test period or, if Us Media receives a test report as referred to in Article 5.5 before the end of the test period, when the errors referred to in that test report have been remedied, notwithstanding the presence of errors which on the basis of article 5.6 do not preclude acceptance.
- 5.4      If, when performing the agreed acceptance test, it turns out that the iteration contains errors that obstruct the progress of the acceptance test, the Client will provide detailed written information about this to Us Media, in which case the test period will be interrupted until the iteration has been modified in such a way that the obstruction has been removed.
- 5.5      If, when performing the agreed acceptance test, it turns out that the iteration contains errors, the Client will inform Us Media about the errors by means of a detailed written test report no later than on the last day of the test period. Us Media will use its best endeavours to remedy the errors within a reasonable period, with Us Media being entitled to introduce temporary solutions or software bypasses or problem-evading restrictions.
- 5.6      The Client may not withhold acceptance of an iteration due to the existence of minor errors, i.e. errors which would not reasonably preclude the operational or productive use of the iteration.
- 5.7      Us Media is not obliged to remedy errors that arise as a result of:
  - a.      a modification to an iteration which is made outside the context of the Team;

- b. use of the Software in a manner or in conjunction with other software or equipment which is not described in the Framework;
- c. incorrect use of an iteration by the Client or another party;
- d. errors in software, hardware, communications equipment, peripheral equipment or other equipment belonging to third parties, or failure by the Client to have that equipment and/or software maintained regularly; or
- e. input errors or errors connected with the data used by the Client.

5.8 Non-acceptance of a particular iteration will not have any effect on the acceptance of a previous iteration.

5.9 The Software will be deemed to be accepted on the first day after the test period of the last outstanding iteration described in the Order of Priority or, if Us Media receives a test report before the end of the test period as referred to in Article 5.5, when the errors referred to in that test report have been remedied, notwithstanding the presence of errors which do not preclude acceptance on the basis of Article 5.6.

## **Artikel 6 Interim dispute resolution**

- 6.1 If a dispute between the Parties regarding an iteration or interim result (or its acceptance or non-acceptance) cannot be resolved satisfactorily within a reasonable period, it will be submitted to authorised representatives of the Parties to investigate the possibilities of a settlement before being submitted for mediation by an independent mediator.
- 6.2 If a dispute has been resolved by mediation, the Parties will adjust the timeline for the completion of iterations within the Framework in consultation with each other.

## **Artikel 7 Payment**

- 7.1 The Parties will agree on the payment model to be used between them.
- 7.2 If the Parties have not agreed that, following every interim acceptance as referred to in Article 5 the amounts relating to the development of the interim result in question are due, all amounts relating to the development will be due in arrears at the end of every calendar month.

## **Artikel 8 Customised IP Rights**

- 8.1 Contrary to Article 9 of the general part of the DDA Terms and Conditions, all IP Rights to the Software are vested in the Client, but only to the extent that this concerns parts of the Software that have specifically been developed within the Team for the Client using the Agile Software Development Method. This right does not affect the possibility of Us Media using the principles, ideas and designs upon which this development is based for other purposes and/or other clients, without any restriction.
- 8.2 The Client grants Us Media the non-exclusive, non-transferrable and non-sublicensable right to use the parts of the Software referred to in Article 8.1 for testing, support and other operational purposes for the

benefit of the Client as well as for use in the context of Us Media's portfolio, its own promotion and publicity, unless otherwise agreed in the Agreement.

## **Artikel 9      The Client's right of use**

- 9.1 To the extent that in developing the Software use is made of parts that have not been specifically developed for the Client within the Team, Us Media grants the Client the non-exclusive, non-transferrable and non-sublicensable right to use the parts of the Software concerned in accordance with the provisions of the Agreement. Notwithstanding the other provisions of the Agreement, the Client's right of use is limited to the right to load and run the parts of the Software concerned.
- 9.2 If use of the Software on one processing unit has been agreed, then, if there is a disruption to this processing unit, the Software may be used on another processing unit for the duration of the disruption.
- 9.3 The Client may only use the Software in and for its own business or organisation. The Client may not use the Software for processing data for third parties (time-sharing) or in any other way for third parties.
- 9.4 The Client will comply with instructions and directions given by Us Media with regard to the Software, including those given in relation to installing any patches and updates for the Software.
- 9.5 The Client will not make the Software available to third parties unless otherwise agreed in the Agreement.
- 9.6 The Client may not reproduce the Software or disclose it to third parties in any way. The Client is not permitted to do any of the following, although this list is not exhaustive:
- a. alter, translate, attempt to determine the source code of, decompile or disassemble the Software or create derived works from it; information that is needed to achieve the interoperability of an independently developed computer program with the Software (as referred to in Article 6 of Council Directive 91/250/EEC on the legal protection of computer programs) may, if required, be obtained from Us Media against payment of the administrative rates charged by Us Media at that time;
  - b. transfer (except where explicitly allowed), lend, rent out, lease, distribute or use the Software to provide services to third parties or for the benefit of third parties, or grant rights to the Software or documentation in any form to third parties, unless Us Media has granted its explicit written permission for this in advance, any applicable payment(s) has/have been made and all of Us Media's other requirements have been met; or
  - c. remove, alter or render illegible the identifiers, labels or markings on the Software or documentation regarding copyright and other IP Rights.
- 9.7 Unless otherwise agreed in writing, the source code of the Software and the technical documentation produced upon developing the Software will not be made available to the Client.
- 9.8 If the Client so requests Us Media will, at the Client's expense, place the Software in escrow with an escrow service provider selected by Us Media in order to safeguard the continuity of the Client's Services.

- 9.9 If the right to use the Software ends, the Client will immediately cease using it and will return all copies of the Software in its possession to Us Media.
- 9.10 If Us Media has secured the Services by means of technical protection (e.g. firewalls or security keys), the Client will not be permitted to remove or evade this protection. If the protection measures result in the Client not being able to make a reserve copy of the Software, Us Media will make a reserve copy available at the Client's request.
- 9.11 The Client itself is at all times responsible for the use of the Software. The Client may not use the Software for actions and/or conduct contrary to the law, public order or morals and the provisions of the Agreement. The Client indemnifies Us Media against all third-party claims with regard to breaches of the foregoing.
- 9.12 If the IP Rights to the Software (or part of it) belong to licensors of Us Media, the Client may be bound by the licence provisions and the terms and conditions of these licensors, including terms and conditions with regard to price adjustments.

## **Artikel 10 Guarantees**

- 10.1 Us Media will use its best endeavours to remedy errors in the Software within a reasonable period if these have been reported, with a detailed description of them, to Us Media within three (3) months of the Software having been fully accepted as referred to in article 5.9
- 10.2 If Us Media delivers Software or provides Services to the Client which Us Media has obtained from its suppliers, Us Media is not bound by a guarantee to the Client that is more far-reaching than that which Us Media may claim from its supplier, on condition that Us Media informs the Client of this.
- 10.3 The guarantee obligation will cease to have effect if:
- a. the Client makes alterations to the Software or has them made without Us Media's written permission;
  - b. the Client has used the Software wrongly or inexpertly;
  - c. there are other causes that are not attributable to Us Media; or
  - d. the errors could have been established when the agreed acceptance test was performed.
- 10.4 Us Media will endeavour, to the extent that this is reasonably possible, to recover impaired or lost information.

## **Artikel 11 Software from suppliers**

- 11.1 If and to the extent that Us Media makes Software (or parts of it) from third parties available to the Client, the conditions of these third parties that apply to the Software (or parts of it) will apply instead of the DDA Terms and Conditions provided that Us Media has communicated this to the Client in writing. The Client accepts the conditions of these third parties. These conditions will be available for the Client's inspection at Us Media, and Us Media will send them to the Client at its request.

- 11.2 If and to the extent that the aforementioned conditions of third parties are, for any reason whatsoever, deemed not to apply to the relationship between the Client and Us Media or they are declared inapplicable, the DDA Terms and Conditions will apply.