

## SCHEDULE B - GENERAL CONDITIONS

### **1. DEFINITIONS**

This Schedule serves as Schedule B to the License Agreement signed by and between Sendsteps and Licensee. Schedule B forms an integral part of the License Agreement. Terms used in Schedule B have the same meaning ascribed to them in the License Agreement. In addition, the following terms are used in the following meanings:

- a. **“Conditions”**: the general conditions recorded in this Schedule B;
- b. **“Confidential Information”**: the information referred to in clause 15 below;
- c. **“Intellectual Property Rights”**: patents, trademarks, trade names, copyright, database rights, registered and unregistered design rights, trade secrets and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of them which may subsist anywhere in the world, whether or not registered and including applications for registration;
- d. **“Services”**: the Website and all other products and services which Sendsteps makes available to the Licensee, in addition to the Licensed Technology;
- e. **“Website”**: the website of Sendsteps, [www.sendsteps.com](http://www.sendsteps.com).

### **2. GENERAL**

2.1 The Conditions are applicable to any Agreement concluded between Sendsteps and Licensee.

2.2 Any exceptions or deviations to the Conditions are only valid if both Parties explicitly agree to such exception or deviation in writing.

2.3 Any general or purchase conditions or other terms used or referred to by Licensee, shall not be applicable to the Agreement and are hereby explicitly rejected.

### **3. OFFERS AND TENDERS**

3.1 All offers of Sendsteps are non-committal, unless the offer contains a term of acceptance.

3.2 Sendsteps is only bound to tenders if the acceptance by Licensee is confirmed within 30 days. Confirmation has to be in writing. Licensee is responsible for the accuracy and completeness of the information which is given by it or on its behalf to Sendsteps on which Sendsteps bases its offer.

3.3 If the acceptance deviates from the offer given, Sendsteps is not bound to that offer or to the deviating acceptance.

3.4 A combined offer does not oblige Sendsteps to conduct a portion at a corresponding part of the specified price.

3.5 Offers or tenders do not apply automatically for future Agreements.

3.6 Sendsteps has the right, with giving reasons, not to accept orders.

3.7 Obvious errors or mistakes on the Website, in Sendsteps' leaflets, its publications, in its offers and in indicated information do not bind Sendsteps.

### **4 INTELLECTUAL PROPERTY RIGHTS**

4.1 All Intellectual Property Rights to all developed or made available Licensed Technology, indicated information such as analysis, design, documentation, reports, user manuals, quotations, as well as preparatory material, shall remain exclusively vested in Sendsteps or its (third party) licensors.

4.2 For the Term of the Agreement, Licensee acquires only a non-exclusive and non-transferable license, without the right to sub-license, for downloading, installing and using the Licensed Technology for the sole purposes for which it has been made available and delivered to Licensee by Sendsteps.

Only for internal use, such as creating a back-up, Licensee is allowed to make a limited number of copies of the Licensed Technology.

4.3. Licensee is not allowed to make the Licensed Technology available to a third party or grant a third party - whether or not remotely - access to the Licensed Technology or to provide username(s) and password(s) to any third party. A third party also includes people employed within the organization of Licensee, who do not have user rights granted to them or do not necessarily use the Licensed Technology, equipment and/or other materials.

4.4 Licensee is aware that the Licensed Technology and other information and material submitted by Sendsteps, may contain confidential information and trade secrets of Sendsteps or its (third party) licensors. Licensee shall keep the Licensed Technology, information and materials secret, not disclose or give in use any of it to any third party.

4.5 Licensee is not allowed to remove or modify any indication regarding Intellectual Property Rights of the Licensed Technology, information or materials. This includes indications about the confidentiality and secrecy of the Licensed Technology.

4.6 Notwithstanding clause 15 with regard to Confidential Information, both Parties shall have the right to use all information and materials with respect to the Licensed Technology, including trademark(s), trade name(s) and logos of the other Party, for purposes of publicity and promotion.

## **5. SOFTWARE DEVELOPMENT**

5.1 In case of development of specific software (elements) or functionality, Parties will specify in writing the methods, processes and other terms of such development. Sendsteps will develop the software based on data and information provided by Licensee. Licensee is responsible for the accuracy, completeness and consistency of such data and information.

5.2 Sendsteps shall be entitled but not obliged to investigate the accuracy, completeness and consistency of the data or information made available by Licensee and, if any imperfections or errors are found, suspend all development which was agreed upon until Licensee has repaired or removed the imperfections or errors.

5.3 Notwithstanding clause 4 above, Intellectual Property Rights in and to any software (elements) developed by Sendsteps in accordance with this article 5, shall remain vested in Sendsteps or - if any - its licensors. In addition, for the Term of the Agreement Licensee will be granted a non-exclusive, royalty-free, perpetual, irrevocable license to use the software that has been developed according to this clause 5 for business purposes within its organization.

5.4 Sendsteps has the right to make use of open source components.

## **6. OBLIGATIONS AND RESPONSIBILITIES OF LICENSEE**

6.1 Licensee shall ensure that all data, equipment and premises, which Sendsteps indicates necessary or which Licensee can reasonably understand that it is necessary for the fulfillment of the Agreement, will be timely provided to Sendsteps or granted access to. Licensee further acknowledges that Sendsteps is only committed to (further) implement and execute the Agreement if Licensee has provided the data and information desired by Sendsteps. This data and information has to be in the form and manner as specified by Sendsteps.

6.2 If Licensee provides software, Facilities, websites, materials, databases or data on a medium to Sendsteps, this would meet the specifications prescribed by Sendsteps. Sendsteps will never be liable for any damages or costs due to transmission errors, failures or non-availability of the aforementioned facilities, unless such damage or costs result from willful misconduct or gross negligence of Sendsteps.

6.3 Licensee will ensure the proper functioning of its equipment used for accessing and using the Services.

6.4 Licensee shall inform Sendsteps immediately about facts and circumstances relating to the implementation and execution of the Agreement which may be of interest to Sendsteps.

6.5 Licensee shall withhold from any behavior which makes it impossible for Sendsteps to properly implement and fulfill the Agreement.

6.6 Licensee accepts that by using the Licensed Technology, it may be exposed to offensive, indecent or unwanted content.

6.7 If any alleged infringement of any Dutch copyright or patent is asserted against Licensee based on its use of the Licensed Technology, Sendsteps will indemnify Licensee in investigation of, preparation and defense against or settlement of such claim, provided that Licensee shall not admit any liability or comprise the claim without Sendsteps' written consent and Sendsteps shall have received notice of the claim from Licensee within 5 working days of the assertion thereof and is given the exclusive right if it chooses to direct and control the investigation, defense and settlement of such claim. Sendsteps will have Licensee's reasonable cooperation. Sendsteps shall be under no liability to indemnify Licensee under this clause 6.7 if any alleged infringement arises as a result of any damage caused to or adaption or modification of the Licensed Technology or any use of the Licensed Technology that was not allowed.

6.8 Licensee is not allowed:

- a. to use the Licensed Technology to capture or monitor communications, or damage or change communication that is not intended for Licensee;
- b. to use spiders, viruses, worms, Trojan horses, time bombs or other codes or instructions that are designed to disrupt, delete, damage or dismantle the Licensed Technology or any communication;
- c. to use or provide Sendsteps with material or content on which Intellectual Property Rights of third parties apply, unless Licensee has obtained a license or permission from those third parties.

6.9 Licensee shall immediately inform Sendsteps in writing of any changes in its name, address, e-mail and its bank account number.

## **7. DELIVERY**

7.1 The delivery times specified by Sendsteps shall not be considered as a strict time limit.

7.2 Sendsteps will provide Licensee with the Licensed Technology in object code via an appropriate data carrier or electronically over the internet through a password protected web page at Sendsteps' option together with one copy of the user manual either in printed or in electronic format irrespective of the number of Authorized Users.

7.3 The risk of loss of or damage to the Licensed Technology, is borne by Licensee at the time of delivery in accordance with clause 7.2 above.

## **8. MAINTENANCE**

8.1 Sendsteps is entitled to (temporarily) block access to the Licensed Technology or (temporarily) switch certain functionality of the Licensed Technology off, in order to be able to perform necessary maintenance or perform (necessary) updates or improvements to the Licensed Technology. In case the Licensed Technology is temporarily unavailable and this period of non-availability is not unreasonably long, Licensee has no rights to claim any compensation from Sendsteps. Sendsteps will

strive to perform maintenance in accordance with Schedule D (Service Level Agreement) and to keep the nuisance to an absolute minimum. Sendsteps will – if possible – inform Licensee in a timely manner.

8.2 Sendsteps reserves the right in its sole discretion to add additional features or program adjustments, updates and upgrades to the Licensed Technology. Sendsteps has no obligation to provide Licensee with any follow-up versions of the Licensed Technology.

8.3 If provided to Licensee, Licensee is required to install the most recently released version of the Licensed Technology. If Licensee downloads, installs or uses a new version of the Licensed Technology, Licensee will also have to accept the latest version of the Conditions.

## **9. PAYMENT**

9.1 Payment of the License fees shall be made by Licensee within 30 days after the invoice date and at least 7 days before the first use of the Licensed Technology and/or Service.

9.2 If Licensee, after having received a notification including an additional payment term of 5 working days, does not pay amounts due and payable within the appropriate term, interest shall accrue on such amounts, calculated from the due date to the date of payment at the statutory interest rate, pursuant to clause 6:119a of the Dutch Civil Code (*Burgerlijk Wetboek*).

9.3 Any payment by Licensee seeks primarily for the satisfaction of any recovery costs incurred by Sendsteps, then the amount of interest due and finally the outstanding License fees.

## **10. TERMINATION AND SUSPENSION**

10.1 Either Party is entitled to terminate the Agreement with immediate effect by written notice via registered mail to the other Party, if that other Party commits a material breach of the Agreement and, in case the breach can be remedied, fails to remedy that breach within the remedy period specified in a written notice of default, providing full details of the breach and requiring the breach to be remedied.

10.2 Sendsteps may terminate the Agreement with immediate effect by written notice – or may suspend the Services and/or the use by Licensee of the Licensed Technology and/or remove Licensee's user account(s) - without prejudice to any other rights it may have with regard to claiming compensation of damages and dissolving the Agreement, and without any liability to compensate Licensee's costs, without the intervention of the court and without sending a notice of default, if one or more of the following events arises:

- (a) Licensee has been declared insolvent, a request for bankruptcy of Licensee has been filed by or against Licensee or Licensee has submitted a request for suspension of payments or such request for bankruptcy or suspension of payments has been granted;
- (b) Licensee's business is wound up or discontinued;
- (c) Licensee lost control of the majority part of its assets due to receivership or otherwise;
- (d) Licensee at the conclusion of the Agreement was requested by Sendsteps to secure the fulfillment of its obligations under the Agreement and this security has not been provided (yet) or is inadequate;
- (e) Licensee violates Intellectual Property Rights of third parties;
- (f) Licensee engages in fraudulent, immoral or illegal activities, or
- (g) circumstances arise of such a nature that fulfillment of the Agreement is impossible or that to standards of reasonableness and fairness it can no longer be demanded or if other

circumstances arise of such a nature that an unaltered fulfillment of the Agreement cannot reasonably be expected.

## **11. EFFECTS OF TERMINATION**

11.1 Upon termination or expiry of the Agreement for whatever reason:

- (a) the License and all rights to use the Licensed Technology granted under the Agreement shall cease immediately and forthwith. Licensee shall immediately stop using (any part) of the Licensed Technology, except for the part which is considered 'free' according to the Website and for which no specific license needs to be obtained;
- (b) notwithstanding clause 11.1 (a) above, Licensee is obliged to de-install and return the Licensed Technology and any materials and all copies thereof to Sendsteps and erase the Licensed Technology from any memory or data storage apparatus and other storage media. Licensee will provide Sendsteps with a written undertaking that Licensee no longer holds or has access to any copies of the Licensed Technology. If Sendsteps has made products available to Licensee in the implementation of the Agreement, Licensee is obliged to return these matters within 14 days after termination of the Agreement in original condition, complete and free from defects.

11.2 It is agreed that the provisions of clauses 4, 6.7, 11, 13 and 15 shall remain in full force and effect as between the Parties and will survive the termination or expiry of the Agreement.

## **12. REPRESENTATIONS OF SENDSTEPS**

12.1 Sendsteps warrants to Licensee that it has the right to enter into the Agreement and to grant Licensee the right to use the Licensed Technology.

12.2 The Licensed Technology and all information and data made available by Sendsteps pursuant to the Agreement are provided on an "AS IS" basis. Sendsteps makes no representation or warranty as to the validity of the Licensed Technology or the quality and suitability of the Licensed Technology, other than that the Licensed Technology will materially comply with its specifications.

12.3 Sendsteps does not warrant that the use of the Services and the Licensed Technology and any result thereof, will meet Licensee's internal business requirements.

12.4 In performing its obligations under the Agreement, Sendsteps will work to the best of its ability and act as a professional ("*goed opdrachtnemerschap*").

12.5 Sendsteps agrees to make reasonable efforts to correct any errors which are inherent to the then most recently released version of the Licensed Technology but does not guarantee that the Licensed Technology made available to Licensee will operate with no interruptions, errors or defects.

12.6 It is acknowledged by Licensee that third parties may own Intellectual Property Rights in the field of Licensed Technology. Sendsteps makes no warranty whatsoever that the disposal of the Licensed Technology does not infringe or will not cause infringement of any Intellectual Property Rights.

## **13. LIMITATION OF LIABILITY**

13.1 The Licensed Technology cannot function without computers, data and telecommunication facilities, including the Internet. Licensee shall be responsible for selecting the Facilities required for this purpose and for ensuring that these are available in full and in a timely manner. Sendsteps shall under no circumstances be liable for damages or costs arising as a result of transmission errors, breakdowns or the non-availability of software and (telecommunication) facilities of Licensee.

- 13.2 Sendsteps is not liable for damages of any kind in case Licensee provided false and/or incomplete data, unless this inaccuracy or incompleteness had to be known to Sendsteps.
- 13.3 Sendsteps is not liable for damages caused by Licensee (i) who used the Licensed Technology for purposes other than for which it was provided, or (ii) who changed the Licensed Technology.
- 13.4 Neither Party will be liable to the other Party for consequential, indirect, incidental, special or punitive damages for any cause of action, whether in contract, tort or otherwise. For the avoidance of doubt, the foregoing damages include, but are not limited to, lost profits, lost revenues, intellectual property infringements and lost business opportunities, whether the other Party was or should have been aware of the possibility of the damages.
- 13.5 In the event that a court of competent jurisdiction renders judgment to Sendsteps' detriment with regard to any claim other than provided in clause 6.7, Sendsteps' aggregate liability to Licensee in connection with this Agreement shall in no event exceed the aggregate amount of the License fees paid by Licensee to Sendsteps under the Agreement over the twelve (12) months immediately preceding the event that gave rise to the claim.
- 13.6 In no event shall Sendsteps be liable vis-à-vis Licensee or its customers for any damages of whatever nature after the expiration or early termination of the Agreement.

#### **14. FORCE MAJEURE**

- 14.1 In case either Party is prevented from or delayed in its performance under this Agreement due to a force majeure event referred to in article 6:75 of the Dutch Civil Code ("*overmacht*"), then the Party so affected shall not be liable for the breach of the Agreement caused by such event, provided that the non-performing Party has immediately, and in any case within two (2) working days of the occurrence of the force majeure event, notified the other Party thereof. More specifically with regard to the License Technology, force majeure is also considered a failure of telecom facilities (including the Internet) at a location where the Licensed Technology is being used.
- 14.2 Force majeure shall also include a deficiency of subcontractors of Sendsteps, causing Sendsteps to be unable to fulfill its obligations timely.
- 14.3 During a force majeure event, all of Parties' obligations shall be suspended. In case the period during which the non-performing Party cannot fulfill its obligations as a result of a force majeure event continues for longer than thirty (30) days, the other Party shall be entitled to terminate the Agreement with immediate effect in writing without any obligation to pay any compensation to the non-performing Party whatsoever.
- 14.4 Sendsteps is entitled to separately invoice the work already fulfilled at the time of the occurrence of the force majeure event.

#### **15. CONFIDENTIALITY**

- 15.1 Licensee agrees that all confidential commercial and technical information, data, Intellectual Property Rights and know-how provided to Licensee under the Agreement, including the terms hereof, are and remain the property of Sendsteps. Licensee undertakes that the Licensed Technology and all aforementioned information shall be held in confidence.
- 15.2 A Party shall not disclose (i) any information about the contents of the Agreement, (ii) any non-public information about a Party that is or may come into possession of the other Party during the preparation and the Term of the Agreement, (iii) any information that is indicated as confidential by a Party, (iv) any information of individuals, including financial, health and personal information, (v) trade secrets, and (vi) any information about or received from the other Party that can reasonably be

expected by the receiving Party to be confidential (all information hereinafter referred to as “**Confidential Information**”) to third parties without the prior written consent of the other Party. This obligation will apply during the Term of the Agreement and for one (1) year thereafter, unless otherwise agreed upon.

15.3 Notwithstanding the requirements of the previous clause 15.2, Parties shall disclose Confidential Information only to their respective employees, subcontractors, consultants and group companies which are involved in the fulfilment of the Agreement and only on a need to know basis, provided that:

- (a) the disclosing Party shall remain liable for any unauthorised disclosure, and
- (b) such person or entity is under non-disclosure obligations no less restrictive than the non-disclosure obligations contained in this clause 15.

15.4 In respect of Confidential Information about a Party that is communicated to or otherwise comes into the possession of the other Party, the receiving Party shall:

- (a) take all reasonable measures to ensure safe custody and use of the Confidential Information;
- (b) not use Confidential Information for any purposes other than that for which it has been communicated;
- (c) not retain Confidential Information longer than is reasonably necessary for the fulfilment of its obligations under the Agreement and either return the Confidential Information to the other Party, including any copies which have been made, immediately after the fulfilment of all the aforementioned obligations or, after having obtained the other Party’s written consent, destroy such Confidential Information.

15.5 A Party is under no obligation to maintain confidentiality with respect to Confidential Information that:

- (a) was already in the possession of that Party on a non-confidential basis;
- (b) has lawfully come into the possession of that Party independently of the disclosing Party;
- (c) has entered the public domain without breach of any obligation of confidence;
- (d) this Party is required by law to disclose to a judicial or administrative authority, provided that that Party will notify the other Party well in advance of such required disclosure so that the other Party has a reasonable opportunity to object to such disclosure.

## **16. AUDIT RIGHTS**

16.1 Licensee will, within 10 working days from the date of receipt of a written request from Sendsteps (such requests not to be submitted by Sendsteps more than twice in any twelve (12) month period), confirm to Sendsteps in writing that (i) passwords have not been shared among people that are not Authorized Users and (ii) the number of Authorized Users has not exceeded the number specified and agreed upon in the Order Form. This confirmation shall include sufficient detail to enable Sendsteps to assess compliance by Licensee with the terms and conditions set out in the Agreement.

16.2 Sendsteps, or at Sendsteps’ discretion an independent consultant appointed by Sendsteps, shall have the right on giving 10 working days prior notice to Licensee, to enter into any premises where the Licensed Technology is held and have access to the relevant machines on which the Licensed Technology is installed for purposes of auditing the use of Licensee of the Licensed Technology in accordance with the terms and conditions set out in the Agreement. Should Sendsteps choose to exercise this right to appoint a consultant, Sendsteps shall pay the consultant’s expenses. Sendstep’s right to access all information concerning the details of the Licensed Technology, in no way can be understood as to diminish Licensee’s responsibility to inform Sendsteps of any changes to the usage of

the Licensed Technology, which exceed the agreed upon scope of the License and terms and conditions of the Agreement. If it is determined that the License granted and/or the terms and conditions governing the usage of the Licensed Technology have been exceeded, then, at Sendstep's request, the Agreement and the Order Form are to be upgraded accordingly.

## **17. ASSIGNMENT**

17.1 Licensee is not permitted to assign the Agreement, or any part thereof, or rights or obligations ensuing from the Agreement, to third parties, nor to transfer or pledge these, unless Sendsteps has given its prior written permission. Licensee is not permitted to outsource, subcontract, or otherwise have third parties perform the Agreement unless expressly agreed otherwise with Sendsteps in writing.

17.2 If permission as referred to in clause 17.1 has been granted, Licensee assigning any or all of its rights under this Agreement may disclose to a proposed assignee any information in its possession that relates to this Agreement or its subject matter and the negotiations relating to it, which are reasonably necessary to disclose for the purposes of the proposed assignment, provided that no disclosure pursuant to this clause shall be made until notice of the identity of the proposed assignee has been given to Sendsteps.

17.3 Sendsteps is entitled to assign the Agreement, or any part thereof, or rights and obligations under the Agreement to group companies and to third parties.

## **18. FINAL PROVISIONS**

18.1 Sendsteps has the right to make use of the services of subcontractors in the performance of the Agreement.

18.2 If requested by Licensee, Sendsteps will indicate which part of the Services will be provided by which subcontractor(s). Sendsteps remains fully responsible for the fulfilment of its obligations towards Licensee.