

March 2022

# Mysolution®

The one-stop-solution for recruitment and staffing

*Service Terms and Conditions*

**Mysolution**

## Mysolution Service Terms and Conditions – March 2022

### 1. DEFINITIONS

Term	Definition
Configuration Services	Consultancy Services for the implementation of changes to the Client Configuration by Mysolution.
Consultancy Services	Mysolution services other than Support Services and Licensing, such as training, consultancy, installation, and Configuration Services.
Services	All Mysolution services including Licensing, Support Services, Software as a Service (SaaS), and Consultancy Services.
Service Terms and Conditions	These Mysolution Service Terms and Conditions that govern all Services provided by Mysolution, including those provided by SaaS Partners.
Documentation	The end user manuals (applicable at the time of issue) made available by Mysolution to the Client as part of the Mysolution Product.
Functional Deviation	A material deviation from the Specifications in the functionality and/or Client Configuration of the Mysolution Product and/or product provided by a SaaS Partner.
Hotfix	An interim small Support Release for a Mysolution Product in the form of a software patch that Mysolution may provide as part of its Support Services to resolve a Technical Fault.
Intellectual Property Rights	All copyrights, patents, database rights, rights to brands, designs, know-how, logos, confidential information, rights to domain name registration and similar rights (whether registered or not).
Licence	A Licence issued to the Client for the use of a Mysolution Product specified in a Contract, as detailed in Article 9
Licence Terms and Conditions	The terms of use and the restrictions that apply to a Licence as described in the relevant Contract and these Service Terms and Conditions, as further specified in Article 9.
Major Release	A Release for a Mysolution Product that introduces a major structural change to the Mysolution Product, such as switching to a new version of Microsoft Dynamics, making major structural changes to the Mysolution Product to support major changes in law or regulation, or other major changes or improvements to the Mysolution Product of a fundamental nature.
Mysolution	Mysolution B.V., a private limited company, registered with the Chamber of Commerce under number 30202683 and with registered office at Bouw 149 in Houten, the Netherlands.
Mysolution Product	A software application licensed to the Client by Mysolution as specified in the relevant Contract.
Offer	A written offer issued by an authorised representative of Mysolution for the delivery of Services to the Client.
Contract	An offer that the Client has accepted or another written agreement between Mysolution and the Client regarding Mysolution providing Services to the Client.
Client	The party to whom a Licence has been issued for the use of a Mysolution Product and/or with whom a Contract for the Services of Mysolution has been agreed.
Client Configuration	The Client-specific settings and configuration of a Mysolution Product to align it with the Client's preferences and processes such as report settings, workflow settings, Client-specific text and data, interface configurations, API settings for interfaces with other systems, user account configurations, etc.

Term	Definition
Client Data	Data that: (i) the Client has imported into a Mysolution Product; (ii) has been separately provided by the Client to Mysolution to enable the provision of Services; (iii) has been created by the Client using the Mysolution Product (excluding all data made available by Mysolution itself through or as part of the Mysolution Product).
Release	Support Releases and Major Releases.
SaaS	Mysolution's hosting and technical management of a Mysolution Product for the Client, and making this Mysolution Product available for the Client to use via the internet, as further described in Article 9. The Mysolution Product runs on the IT resources made available to Mysolution by third parties, including Microsoft Azure software, Amazon Web Service, and Salesforce as SaaS Partners, so that the SaaS Partner's licence and maintenance terms and conditions also apply (Article 3), which are accessible via the following hyperlinks: <a href="#">Legal   Microsoft Azure</a> <a href="#">Legal   Salesforce.com</a>
SaaS Partner	The third party on whose system Mysolution runs the Mysolution Product on a SaaS basis.
Mysolution Cloud (service)	The Mysolution Product or Mysolution Products that Mysolution provides to the Client as a service in partnership with the SaaS Partner.
Specifications	The functional specifications explicitly agreed in writing for the Mysolution Product and the Client Configuration.
Support Services	The maintenance and support services that Mysolution and the Client agreed on for Mysolution to provide to the Client with respect to a Mysolution Product, as specified in a Contract.
Support Release	A new version of a Mysolution Product provided by Mysolution to all its clients on a general roll-out as part of its standard Support Services, such as to correct Technical Faults, comply with amendments to laws and regulations, keep up with general technological developments, or keep the product aligned with general end user needs.
Support SLA	The Mysolution support policy (applicable at the time of issue) for Support Services. This document specifies the operational aspects of the Support Services.
Technical Faults	A technical or programming error in the Mysolution Product that renders existing features in the Mysolution Product (temporarily) inaccessible or unusable.
Non-Technical Faults	Functional Deviations and change requests for the Client Configuration.
Working hours/days	Standard working hours/days are 9 a.m. to 5.30 p.m. Dutch time on Monday to Friday, except for on Dutch public holidays.

## 2. APPLICABILITY SERVICE TERMS AND CONDITIONS

- 2.1. Introduction: These Service Terms and Conditions apply to all Mysolution Services, including the Mysolution Cloud, all Offers from Mysolution and all Contracts Mysolution enters into with a Client concerning the provision of Services by Mysolution. If the Client accepts applicability of the Service Terms and Conditions (see also Article 3) for a Contract, the Client also accepts this for all subsequent Contracts and Offers between Mysolution and the Client.
- 2.2. Offers and Contracts: The Client accepts Offers issued by Mysolution by signing and returning them to Mysolution or by accepting them online (if the Offer has been submitted online for approval and electronic signature). Offers lapse if not accepted by the Client within 30 days from the day they are issued, unless a different expiry date has been expressly stated. Offers issued online by Mysolution may be withdrawn without notice. Apparent errors and typos do not bind Mysolution; Mysolution can only dissolve Contracts based on

Offers that contain apparent errors or typos if Mysolution does this immediately upon discovering the error and/or typo.

### 3. LICENCE TERMS AND CONDITIONS

- 3.1. Licensing: If a Licence for the use of a Mysolution Product or the Mysolution Cloud has been granted to the Client, this Licence is, as a minimum personally and exclusively for the Client, non-transferable, non-exclusive, for the Client's own internal business operations, and only for the expressly permitted scope of use described in the Contract with due observance of the terms of use laid down in the relevant Contract and these Service Terms and Conditions. The Licence term is set out in the Contract and may be perpetual, for a specified term or on a subscription basis. If the Mysolution Product is made available on a SaaS basis, the Licence then runs for the SaaS term; the Licence is understood here to be a non-exclusive rental of the Mysolution Product due to the nature and manner of making the Mysolution Cloud available (see also Article 3.8).
- 3.2. Licence scope: The Client may only use the Mysolution Product within the Licence limits set out in the Contract (i.e. limited to the agreed number of users, accounts or other quantitative limits as set out in the Contract). If a Licence is granted for a limited number of users, this means (unless a different model is expressly agreed in writing in the relevant Contract) that user accounts may only be configured in the Mysolution Product for that specified number of users and that each such user account may only be used by one individual employee or freelancer of the Client.
- 3.3. Multiple users ban: Enabling multiple users to share (whether or not simultaneously) 1 user account in a Mysolution Product – although in principle not possible in the Mysolution Cloud – is expressly prohibited unless this has been specifically agreed in writing in the relevant Contract for certain specific agreed forms of joint use of certain accounts. This means sharing one user account between multiple employees or freelancers is expressly forbidden. However, a user account may be transferred to a new employee or freelancer if the previous employee/freelancer changes jobs or no longer works for the Client and has permanently ceased using the account in question.
- 3.4. Copies and changes: The Client may not copy or duplicate any part of a Mysolution Product, including any concept, know-how, data model, process flow or other proprietary aspect of the Mysolution Product, not even to the extent necessary to be able to use the Mysolution Product within the scope of the Licence provided, because of the indicated rental title. Furthermore, it is strictly prohibited to (attempt to) modify, adapt or alter, reverse engineer, decompile or create derivative works from a Mysolution Product, or to enable or instruct any third party to do so, except to the extent this restriction is prohibited under applicable mandatory law. It is obvious to state that this restriction does not apply with regard to Client Data, which the Client is free to use in any way.
- 3.5. Object code and source code: Unless expressly agreed otherwise for individual Mysolution Products, the Licence applies only to the Mysolution Product in compiled/object code form (thus excluding access to, or licence to, the underlying source code used by Mysolution to create the compiled/object code version of the Mysolution product). When using Mysolution Cloud, no access to, or licence to, the underlying object or source code applies.
- 3.6. Mysolution/licensor marking: The Client shall refrain from removing any names, copyright symbols or messages stating the rights of Mysolution or its licensors with regard to computer programmes, modules, modifications, manuals, etc. associated with Mysolution Products.
- 3.7. No use for/by third parties allowed: The Client may only use the Mysolution Products for its own internal business operations. The Client may not make the Mysolution Products available for use by third parties, nor use Mysolution Products for the benefit of third parties, such as on the basis of recommercialisation or by combining them with (electronic) services provided by the Client to third parties. This expressly includes a prohibition to use the Mysolution Products for, or allow the use by, group companies, sister companies or subsidiaries of the Client's, unless expressly agreed otherwise in writing in the Contract.
- 3.8. Test/beta/evaluation licence: Any Licence issued as a 'test'/'beta'/'acceptance'/'training'/'demo' Licence (or equivalent indication that the Licence is not a full Licence for commercial use) may only be used by the Licensee for the purpose of evaluating or testing the Mysolution Product and may not be used for normal operational/commercial use. Any such Licence is provided on an 'as is' basis without guarantee and without entitlement to Support Services, and may be revoked by Mysolution at any time without notice.
- 3.9. Unlicensed use of Mysolution Products: Any use of a Mysolution Product by the Client outside the agreed limits of use without prior agreement in a Contract gives Mysolution the right to invoice the Client for any additional use at the standard Mysolution rates applicable at the time, plus any additional charges imposed on Mysolution by third-party licensors for unlicensed use by the Client of the software belonging to those third-party licensors, and also gives Mysolution the right to terminate the Licence for breach of contract.

- 3.10. Licence guarantees: Mysolution licenses every Mysolution Product to the Client with the following standard guarantees:
- Mysolution shall indemnify the Client against claims by third parties that use of the Mysolution Product by the Client infringes Intellectual Property Rights of those third parties in accordance with Article 10 below,
  - During a period of 8 weeks after the Mysolution Product (or a Major Release thereof) is first made available to the Client (and thereafter for as long as the Client purchases the Support Services from Mysolution for the Mysolution Product), Mysolution shall make reasonable efforts to address and resolve Technical Faults in the Mysolution Product in accordance with the applicable Support SLA. For Configuration Services related to a Mysolution Product, the specific guarantee commitment described in Article 8.2 is applicable.
  - Subject to the above guarantees, all Licences for Mysolution Products are provided on an 'as is' basis without any further guarantees of any kind, such as implied guarantees of merchantability, fitness for a particular purpose and non-infringement. The use of a Mysolution Product is entirely at the Client's own risk.
- 3.11. Microsoft and other third-party licence terms and conditions: If an agreement is made under a Contract for the use of standard software from third-party licensors (for example, standard software from Microsoft® such as SQL or Dynamics NAV® software or Salesforce Cloud Services), this shall be licensed as part of, or used in conjunction with, a Mysolution Product (hereinafter referred to as **Third-Party Software**); the standard licence and terms of use as prescribed by the relevant licensor with respect to that Third Party Software, as shared by Mysolution with the Client, are applicable, in addition to and where relevant in deviation from Mysolution's Licence Terms and Conditions. However, the fees owed to the third-party licensors for the Client's use of the Third-Party Software (provided as part of and within the Licence limits for the relevant Mysolution Product) are included in the fees for the Licence for the relevant Mysolution Product, unless expressly stated otherwise in writing in the Contract.
- 4. GENERAL TERMS AND CONDITIONS FOR SERVICES**
- 4.1. Consultancy Services vs. other Services: All Services Mysolution provides in addition to Support Services and the sale of Licences are Consultancy Services. Fees for Consultancy Services are not included in the fees agreed or quoted by Mysolution for Licences and Support Services.
- 4.2. Terms and dates: All delivery dates and other terms detailed in Contracts or Offers by Mysolution for Services are based on the information known to Mysolution when it agreed or communicated such dates or terms, and are subject to change. Mysolution shall make reasonable efforts to observe the agreed dates or terms, provided the Client also fulfils its obligations in a timely manner, but there are no strict deadlines. Mysolution shall inform the Client if it is expected that a previously communicated term or date shall change.
- 4.3. Cooperation from the Client: The Client must, in a timely manner, provide Mysolution with all information and cooperation that can be reasonably requested by Mysolution for Mysolution to provide the Services. The Client shall further provide Mysolution with information and cooperation that the Client knows is relevant in order for Mysolution to be able to provide the Services in an efficient manner.
- 4.4. The Client's Responsibility for legal use: The Client is responsible for compliance with all applicable laws and regulations with regard to the use the Client makes (or enables third parties to make) of the Mysolution Products, all data that the Client uploads to or distributes via the Mysolution Products, and all associated instructions the Client gives to Mysolution for Configuration Services and the use of the Mysolution Product for the Client. The Client shall, at all times, warrant that the use of the Services, all instructions to Mysolution with regard to the Services, and all Client Data, do not infringe any rights of third parties (expressly including Intellectual Property Rights) and do not constitute an unlawful act against a third party (such as spam, discrimination, fraud, etc.). Mysolution's agreement to provide the Services to the Client and/or to process Client Data in accordance with the Client's instructions is in no way intended as legal advice to the Client as to its legality and cannot be construed as the abandonment by Mysolution of any right under this article. The Client shall indemnify and hold harmless Mysolution from any third-party claim caused by the Client's violation of this article.
- 5. SUPPORT SERVICES**
- 5.1. Support Services: The Client is only entitled to receive Support Services from Mysolution for a Mysolution Product if the delivery of Support Services has been explicitly agreed in the relevant Contract and the Client has paid all applicable fees on time. The scope of the Support Services will be as agreed in the relevant Contract and related procedures, service levels and operational and technical terms of use as laid down in the applicable Support SLA for the Support Services for the relevant Mysolution Product. Mysolution shall give 3 months' written notice of changes to the Support SLA. Configuration Services are not part of the standard Support Services and are performed as a Consultancy Service.
- 5.2. Remote Access: Standard Support Services are provided remotely by Mysolution via the internet. The Client hereby consents to Mysolution accessing the Mysolution Product over the internet or through the Mysolution

Cloud. On-site support is not included in the standard fee for Support Services. If on-site support is required for whatever reason, the Client will be charged for it separately as a Consultancy Service.

- 5.3. The Client's responsibility in receiving Support Services: The Client must ensure any persons who contact Mysolution in order to receive general support and/or to report Technical Faults be adequately trained to work with the Mysolution Product and have consulted the Documentation made available for the Mysolution Products before contacting Mysolution for support. The Client must register those persons allowed to purchase Support Services on behalf of the Client with Mysolution in advance. General user support is intended to deal with product-related general user queries not covered by Mysolution's available documentation and training; it is not intended as a substitute for attending training, reading available documentation or for providing advice about executing Configuration Services. If the Client submits requests for support not included in the Support Services, Mysolution shall charge this as a Consultancy Service after reporting this to the Client as soon as Mysolution becomes aware of this.
- 5.4. Technical Faults: When reporting a Technical Fault, the Client must provide all relevant information and cooperation as may in all reasonableness be requested to enable Mysolution to identify, reproduce, and resolve the Technical Fault. Mysolution reserves the right not to resolve issues as part of its Support Services if:  
(i) the issues were caused by a failure to adhere to user instructions from the Documentation;  
(ii) the issues were caused by uploaded data that does not meet the relevant technical requirements;  
(iii) the issues relate to recovery of Client Data; (iv) it concerns issues in or caused by third-party hardware or software used in combination with a Mysolution Product and not provided by Mysolution to the Client; (v) it concerns a request for Configuration Services; or (vi) the issues were caused by other external events for which Mysolution is not responsible. Assistance with regard to such issues or requests may, if Mysolution agrees to provide it, be charged separately by Mysolution as a Consultancy Service.
- 5.5. Support Releases: As part of its Support Services, Mysolution may offer Support Releases for the Mysolution Product. Support Releases should be installed as soon as possible. Mysolution may refuse to address Technical Faults if the Client has not yet performed the installation of a Support Release that could have prevented or resolved such a Technical Fault.
- 5.6. Optional modules and Major Releases: Mysolution may offer optional modules for Mysolution Products that contain new functionality. Mysolution may also offer Major Releases for a Mysolution Product. Mysolution may charge for an additional Licence for such optional modules and Major Releases. The Client is not under an obligation to purchase such optional modules and Major Releases.
- 5.7. Installation of Releases: Installation of all Release types is the responsibility of the Client. On request, Mysolution can install Releases as a Consultancy Service. The installation of a Release may have an impact on the Client Configuration. The Client is strongly advised to always install and test Releases in a non-operational test environment before using them in an operational environment. If the Mysolution Product Mysolution Cloud is made available on a SaaS basis, Mysolution shall ensure the Support Releases are installed as part of the SaaS, as further specified in Article 9. Installation of a Release may temporarily affect the availability of the Mysolution Product for use by the Client.
- 5.8. Term and extension of Support Services: Unless another initial term has been agreed in the Contract, Support Services have an initial term of 1 year. The initial term for Support Services starts from the date the Mysolution Product is first made available by Mysolution for use by the Client. After expiry of the initial term for the Support Services, the term is automatically extended by 1 year each time until one of the parties, subject to a notice period of at least 3 months, notifies the other in writing that it does not wish to extend the Support Services for an additional term. After the release of a Major Release for a Mysolution Product, Mysolution shall prematurely terminate Support Services for a previous Major Release of a Mysolution Product subject to a notice period of at least 12 months. If the Mysolution Product is made available on a SaaS basis, the Support Services are part of the SaaS and have the same duration as the SaaS.
- 5.9. Support Service quality commitment: Mysolution shall perform the Support Services professionally and carefully, and Mysolution shall make reasonable efforts in accordance with the Support SLA to address and solve Technical Faults in the Mysolution Product for which the Support Services are provided. Mysolution expressly does not guarantee that all Technical Faults shall be resolved or that all Mysolution Products shall operate without Technical Faults or interruption. The Client shall cooperate with the resolution of a Technical Fault where necessary, and the resolution of a Technical Fault may temporarily cause minor other shortcomings or require the installation of a Hotfix or Support Release of the Mysolution Product. If these temporary minor shortcomings occur, Mysolution shall remedy this as soon as possible.



## 6. CONSULTANCY SERVICES – GENERAL

- 6.1. Scope: The scope and content of the Consultancy Services shall be as described in the Contract or as separately agreed in writing on the basis of the Contract.
- 6.2. Fees for Consultancy Services: Unless expressly agreed otherwise, Consultancy Services are charged on the basis of time spent and costs incurred using Mysolution's standard hourly rates, or on the basis of the hourly rates specifically agreed in the Contract. The budgets specified in a Contract for the performance of certain activities are (unless expressly agreed otherwise in the Contract) non-binding estimates and not fixed prices. Mysolution shall only spend and invoice time and/or costs outside the budget agreed in the Contract with the written permission of the Client. Agreed fixed prices for Consultancy Services for certain activities or results to be delivered are subject to the assumptions and circumstances laid down in the Contract and under the general assumption that the Client has provided correct, current and complete information to Mysolution in order to calculate its fixed price, and that Mysolution can adjust the stipulated fee proportionally, if these assumptions turn out to be incorrect.
- 6.2.1. Consultancy services by Support: Unless expressly agreed otherwise, consultancy services are charged by the Support department based on time spent at an hourly rate of €140. The Support Department will communicate the work and the estimate of the required time in advance with the client and start the work after receiving written permission from the client. This is done based on a ticket and the agreement stated in it by the client. The response time (which starts at the moment of reporting an incident and/or request via the ticket system) is two working days.  
  
The Support Department reserves the right to schedule a consultant if the request requires it. The conditions in 6.1 and 6.2 then apply.
- 6.3. Working hours: The Consultancy Services shall be performed on Business Days and during Mysolution's standard Business Hours. For Consultancy Services performed by Mysolution at the express request of the Client outside these days and times, surcharges can be applied to the rates if Mysolution communicates this to the Client in advance.
- 6.4. Consultancy Service quality assurance: Mysolution shall perform Consultancy Services professionally and carefully. If results delivered via Consultancy Services contain obvious errors or unprofessional shortcomings that are directly caused by Mysolution having performed them unprofessionally or carelessly, and the Client reports this within 30 days after delivery of the relevant result, Mysolution shall only be obliged to make any reasonable efforts to correct such material shortcomings or, if this proves impossible, credit a proportional amount paid for the relevant Consultancy Services. For Configuration Services, the specific guarantees laid down in Article 8 are applicable in lieu of this general guarantee.

## 7. CONSULTANCY SERVICES – INSTALLATION

- 7.1. Installation scope: If it has been agreed that Mysolution shall install a Mysolution Product or Release, Mysolution shall only provide those Configuration Services as expressly agreed in writing in the relevant Contract. Mysolution shall not be obliged to install or configure the Mysolution Product in such a way that it cooperates, remains linked or is linked to existing or new software or systems of the Client or third parties unless it has been explicitly agreed in writing that Mysolution shall use the relevant link to realise the Configuration Services to be provided.
- 7.2. Installation preparation: The Client shall provide the hosting environment on which the Mysolution Product or Release shall be installed. The Client shall also make the necessary equipment, resources and personnel available for this in accordance with the technical installation requirements for the Mysolution Product as laid down in the Support SLA and/or as communicated separately by Mysolution to enable Mysolution to install the Mysolution Product or the Release per the agreed date. The Client shall make said necessary equipment, resources and personnel available in a timely manner. The Client is responsible, at its own expense, for ensuring the hosting environment meets and continues to meet these requirements (which includes meeting future requirements due to any future changes such as patching OS software, increasing the processor and/or storage capacity, and guaranteeing hosting environment security to ensure the Mysolution Product functions correctly).  
  
Remote installation: Mysolution shall perform the installation of the Mysolution Product (and Releases) remotely via the internet; the Client must make this possible by making its hosting environment accessible via the internet in accordance with Mysolution's relevant technical requirements. If it is necessary for a Mysolution employee to carry out the installation on location, the installation costs shall be increased to include travel time and other costs (unless it has been expressly agreed that these costs are included in the agreed installation fee in the Contract).
- 7.3. Installation in the Mysolution Cloud (SaaS): If the Mysolution Product is made available on a SaaS basis, the previous articles 7.1 – 7.3 are not applicable and Mysolution shall take care of the installation of the Mysolution

Product within the Mysolution Cloud from which the Mysolution Product is made available for use by the Client via the Internet, as further specified in Article 9.

- 7.4. Client Data: The Client shall ensure all Client Data required for the installation and implementation activities complies with the relevant technical standards laid down in the Documentation and/or as communicated separately by Mysolution. Data conversion and migration is not part of the Service offered by Mysolution and is not included in any fees that have been communicated or agreed, unless expressly agreed otherwise in the Contract.

## 8. CONSULTANCY SERVICES – CONFIGURATION SERVICES

- 8.1. Configuration Service scope: If Mysolution performs Configuration Services, these will be based on a best-effort obligation to match the Mysolution Product with the Client's relevant company-specific preferences and requirements as closely as possible and within the specified preferences and available configuration options of the Mysolution Product. When making the choice to use a Mysolution Product for a specific business activity or choosing a specific Client Configuration of the Mysolution Product, the Client is ultimately responsible for ensuring the functionality matches the Client's company-specific requirements. The Client must provide the functional input proactively and in collaboration with Mysolution so the Mysolution Product can support the Client's company-specific needs as effectively as possible.
- 8.2. Configuration Service acceptance: The Client shall test the agreed Configuration to determine whether the Mysolution Product set up with the Client Configuration meets the agreed Specifications. This must be completed within 14 days after delivery of the agreed Configuration by Mysolution to the Client. If it appears that the delivered Client Configuration or Mysolution Product contains Technical Faults or Functional Deviations, the Client shall report these to Mysolution in writing with sufficient detail to enable Mysolution to reproduce and address the reported Technical Faults or Functional Deviations. Mysolution shall make all reasonable effort to resolve the reported Technical Faults or Functional Deviations and make the Mysolution Product with the Client Configuration available to the Client for a new test. If the Client does not report a Technical Fault or Functional Deviation within 14 days of delivery, and/or if the Client has started operational use of the delivered Client Configuration, the Client is deemed to have accepted it at the end of said 14-day period or upon start of operational use if earlier.
- 8.3. Minor issues are not a reason for blocking acceptance: Minor Technical Faults or Functional Deviations that, by their nature and/or number, do not hinder the start of the operational use of the Client Configuration by the Client and/or the start of the delivery of the subsequent Services (e.g. the next round of Configuration Services to be delivered), shall not prevent acceptance in accordance with Article 8.2. This without prejudice to Mysolution's obligation to make every effort to correct such minor Technical Faults or Functional Deviations as soon as possible thereafter.
- 8.4. Configuration Service guarantee: For a period of 8 weeks after the date the relevant Client Configuration has been accepted by the Client, Mysolution (with due observance of the conditions of Article 5.4 above and under the agreed commercial terms in the Contract) shall resolve: (i) Technical Faults; and (ii) Functional Deviations that the Client could not reasonably have discovered at the time of the Client Configuration acceptance.

## 9. SAAS

- 9.1. Scope of SaaS: If it is agreed in the Contract that the Mysolution Product will be made available in the Mysolution Cloud (i.e. on a SaaS basis), this includes: (i) the Licence to use the Mysolution Product for the term of the SaaS; (ii) installation of the Mysolution Product and any Support Releases for the Client; (iii) hosting of the Mysolution Product via the Mysolution Cloud as described in the Contract; and (iv) Support Services in support of the use of the Mysolution Product on the Mysolution Cloud provided by Mysolution.
- 9.2. Conditions for use of hosting environment: The Mysolution Cloud shall be purchased by Mysolution from the SaaS Partner, as described in the Contract. In addition, storage, processing capacity, back-up services and other options described in the Contract and applicable Support SLA are included in the price of the Mysolution Cloud. Furthermore, the SaaS Partner's licence and maintenance terms and conditions for the IT platform described in the Contract are applicable; the latter terms and conditions prevailing in the event of contradiction. The Client hereby declares familiarity and agreement with the relevant terms and conditions (see definition of SaaS services) and terms and conditions of the SaaS Partner as they are renewed and applied from time to time, unless the Client terminates the agreement with Mysolution and thus also the terms and conditions of the SaaS Partner, with a period of notice of two months.
- 9.3. Support Release installation and testing: Mysolution shall install Support Releases as part of the Mysolution Cloud as follows: Support Releases are first installed by Mysolution in a test environment for the Client to give the Client the opportunity to test the Support Release in combination with its Client Configuration in order to



make adjustments to the Client Configuration where necessary. Adjusting the Client Configuration due to a Support Release is not included in the Mysolution Cloud and will be provided as a Consultancy Service (if this is agreed separately). Hotfixes that have no expected impact on the Client Configuration and/or whose implementation is urgent in the interest of the Client, can be installed by Mysolution immediately in the Mysolution Cloud.

## 10. IP RIGHTS

- 10.1. Ownership of Mysolution Products: All Intellectual Property Rights in or relating to the Mysolution Products (including templates, scripts, sample workflows and other similar inputs from Mysolution for the Client Configurations), and all modifications or additions thereof, including those suggested or requested and/or paid for by the Client (with the exception of Client Data), are and remain the exclusive property of Mysolution, licensors and the SaaS Partner.
- 10.2. Ownership of Client Data: All the data that the Client uploads, or that the Client requests Mysolution to upload, to Mysolution Products is considered to be Client Data and is and shall remain the sole property of the Client and/or the licensors. Mysolution shall not use Client Data for any purposes other than providing Services to the Client, to manage and improve the Services, and to comply with applicable laws and regulations.

## 11. IP DISCLAIMER

- 11.1. IP Disclaimer: To the best of Mysolution's knowledge, Mysolution Products do not infringe any Intellectual Property Rights of any third party when used in accordance with the Licence Terms and Conditions. If the Client is held accountable by a third party for an alleged infringement of Intellectual Property Rights of said third party with regard to the use of a Mysolution Product by the Client (**IP Claim**), Mysolution shall indemnify the Client against that IP Claim according to the conditions of Article 11.
- 11.2. Conditions of Indemnification: In the event of an IP Claim, Mysolution shall only be obliged to reimburse all costs, damages and legal costs the court ultimately orders the Client to pay as a result of the IP Claim, or to come to a settlement with such a third party, provided:
  - a. The IP Claim is in no way related to Client Data or by any act or omission of the Client;
  - b. the Client has not violated the Licence Terms and Conditions applicable to the Mysolution Product, including the SaaS Partner's terms and conditions;
  - c. the Client informs Mysolution in writing about the relevant IP Claim promptly; and
  - d. the Client allows Mysolution to control the defence against the IP Claim and related settlement negotiations, and the Client fully cooperates in this.
- 11.3. Resolving an infringement: If an IP Claim is made or is reasonably expected by Mysolution, the SaaS Partner and Mysolution shall choose to either:
  - a. purchase a licence from the owner of the relevant Intellectual Property Rights to allow the Client to continue using the Services; or
  - b. replace the relevant part of the Mysolution Product with a modified version that does not infringe on the Intellectual Property Rights of a third party; or
  - c. partially or wholly terminate the relevant Contract and offer the Client a proportional refund of the licence fees paid by the Client for the relevant Mysolution Product (in the case of a perpetual Licence being issued, linear depreciation over a period of 3 years is applied to the Licence fee already paid).

## 12. PRICES AND PAYMENT AND

- 12.1. Tax and expenses: Unless explicitly agreed otherwise, all Mysolution prices are exclusive of VAT and other applicable taxes, rates, withholding taxes, levies or excise duties imposed by government institutions and/or the SaaS Partner. The prices for Services do not include applicable transport, travel and accommodation costs incurred in order to provide the agreed Services, which shall be charged separately unless explicitly agreed otherwise in the relevant Contract. The fees to be paid for Licences, Support Services and Consultancy Services are as agreed in the relevant Contract and otherwise as described in Mysolution's standard price lists (applicable at the time of issue).
- 12.2. Payment conditions: Unless otherwise agreed in the relevant Contract, Licence fees are invoiced from the date the Contract for the Licence is entered into. Costs for Consultancy Services are invoiced in accordance with the payment schedule included in the Contract, or otherwise monthly in arrears based on the actual hours and costs. Recurring fees for ongoing Services (such as for Support Services, SaaS and Licences provided on a subscription basis) will be billed in advance of the start of the initial term for the relevant Service or Licence and subsequently in advance of the start of any renewal of that term. The Client must pay all invoices within fourteen (14) days of the invoice date. The Client is not entitled to set off payment obligations against any counterclaims, or to suspend payment of an invoice.

- 12.3. Continuing Services Fees: The fees payable for ongoing Services such as Support Services. SaaS or the provision of Licences on a subscription basis is fixed for the agreed initial term of the relevant recurring Service as agreed in the Contract (with application of any corrections for indexation as indicated in Article 12.5 below). For extensions of the term of the Contract for such recurring Services, Mysolution can adjust the compensation for the continuous Service by notifying the Client in writing about the adjustment in advance. Mysolution shall observe a notice period of at least 3 months if Mysolution increases the price agreed in the initial Contract by more than the inflation described in Article 12.5.
  - 12.4. Consequences of late payment: If an amount owed to Mysolution is not paid in time, this shortcoming in the performance of the Client shall automatically result in the Client being in default. No notice or demand from Mysolution is required for this, and once in default, the Client shall owe the statutory interest on the amount owed and reimburse all costs incurred by Mysolution for collecting payment, including costs for lawyers, legal advisers collection agencies, bailiffs, etc. Mysolution reserves the right to suspend relevant Services if the outstanding invoice is not paid within 10 Working Days after Mysolution has sent a written reminder to the Client.
  - 12.5. Indexation: All prices for Services, including the prices set out in the Contract for an initial term for the relevant Services, can be increased by Mysolution annually in accordance with the change in the price index for business services as published by Statistics Netherlands (*CBS-index zakelijke dienstverlening*) from the date the relevant price was agreed or last indexed.
- 13. LIMITED LIABILITY**
- 13.1. Limitation of liability for direct damage: Mysolution's total liability under or in connection with a Contract, including the Services provided under such Contract, due to a breach of contract, tort or under any other legal basis for all events in 1 calendar year is limited to an amount equal to 75% of the total net fees actually paid by the Client to Mysolution for Services provided during the full previous calendar year under the relevant Contract (or if no Services were provided to the Client under the relevant Contract in the previous calendar year, the total fees paid in the first 6 months of the duration of the relevant Contract).
  - 13.2. Exclusion of liability for indirect damage: Under no circumstances shall Mysolution be liable under or in connection with a Contract, including the Services provided under such Contract, due to a breach of contract, tort or any other legal basis to the Client or any third party for indirect or consequential damages, damage to data, lost revenue, lost profits, lost savings or reputational damage. Mysolution expressly and completely disclaims liability for any damage resulting from the use of a Mysolution Product at the Client's company and in connection with the Client's activities. Mysolution expressly does not guarantee that Mysolution Products or SaaS Partner products are free of faults and/or shall function without malfunctions. Mysolution shall proactively and reactively resolve any errors or malfunctions in the Mysolution Product upon discovery and notification by the Client in accordance with these terms and conditions and the associated Support SLA.
  - 13.3. No limitation: The restrictions mentioned in the previous paragraphs of this article shall lapse if and insofar as the damage or injury is the direct result of intent or reckless misconduct on the part of Mysolution.
  - 13.4. Employees and subcontractors: The provisions of Article 13 shall also apply in favour of Mysolution's employees and directors, the subcontractors used by Mysolution to perform its obligations, and the licensors whose products are sublicensed by Mysolution as part of Mysolution Products.
  - 13.5. Liability for third-party claims: The Client shall indemnify Mysolution against claims from third parties and any related legal costs caused by or in any way connected to the use of the Mysolution Product by the Client, as well as the results of the Services, unless this concerns IP Claims. Mysolution shall indemnify the Client against IP Claims in accordance with Article 11 above.
  - 13.6. Force majeure: If a party is unable to fulfil its obligations due to force majeure (including, but not limited to government measures, power failures, general failures in internet/data/network/telecommunications facilities, distributed denial-of-service (DDoS) attacks, war, attacks, extreme weather conditions, terrorism and other causes beyond the control of the relevant party or SaaS Partner), the relevant party is, without being held liable, not obliged during this force majeure situation to fulfil the obligations it cannot meet because of the force majeure situation. If the duration of such a force majeure situation exceeds 60 days, both parties are authorised to terminate the relevant Contract. The Services already performed on the basis of the terminated Contract shall be charged on a pro rata basis and the parties shall not owe each other any further amounts for such termination of the Contract.
  - 13.7. Data back-up: The Client is at all times responsible for making back-ups of the Client Data that the Client processes, creates or stores as a result of using a Mysolution Product, or that is held in a Mysolution Product; the Client is also responsible for keeping such back-up copies safe. Mysolution is not liable for loss or impairment of the Client's data due to injudicious acts or omissions of the Client unless Mysolution can be blamed for intent

or gross negligence with regard to the loss of data and the unavailability of a back-up of the lost data. Back-ups of Client Data made by Mysolution are provided by Mysolution as a non-guaranteed extra service; Mysolution shall nevertheless endeavour to make these back-ups as safe and optimal as possible, but this service is in no way intended to replace the sole responsibility of the Client for making back-up copies of its own data. Mysolution Cloud performs back-ups periodically, which is further described in the Support SLA and included in the SaaS. Any assistance in restoring data from back-ups at the request of the Client is not included in the SaaS and is performed separately as a Consultancy Service.

## 14. TERMINATION

- 14.1. Contract term and extension: The term applicable to each Contract shall be as agreed in the Contract. Contracts for one-off activities shall be automatically terminated when all Services agreed in the Contract have been performed by Mysolution and have been paid for by the Client. For ongoing Services such as Support Services and SaaS, the Contract shall specify the initial term and the renewal term and, in the absence of an explicitly agreed initial term and/or renewal term, the initial term shall last 1 year with automatic renewal in 1 year intervals unless either of the parties, with due observance of a notice period of at least 3 months, makes it known in writing that they do not intend to extend the Contract for a further 1 year period.
- 14.2. Licence term: The Licence term is as agreed in the Contract and can be perpetual, for a limited term or on a subscription basis. In the absence of an explicitly agreed initial term and/or renewal term for the Licence, the initial term shall last 1 year with automatic renewal in 1 year intervals unless either of the parties, with due observance of a notice period of at least 3 months, makes it known in writing that they do not intend to extend the Contract for a further 1 year period.
- 14.3. Termination rights, both parties: A party may terminate a Contract (including Licences under such a Contract) with immediate effect by giving written notice to the other party in the following cases:
  - a. If the other party fails to fulfil a material obligation under a Contract and does not remedy this shortcoming within a reasonable period of at least 30 days as stated in a written notice of default to the defaulting party; or
  - b. If the other party has been declared bankrupt or a trustee has been appointed to manage the other party's assets or the other party is otherwise prevented from paying off the debts before the agreed date.
- 14.4. Termination of Licence due to a breach of contract: Mysolution may terminate a Licence by written notice and with immediate effect if the Client materially violates the Licence Terms and Conditions. This termination is without prejudice to Mysolution's other rights and remedies with regard to that violation.
- 14.5. Termination of Licence due to unauthorised transfer: Any transfer or attempted transfer of a Contract and/or Licence, and/or any other action of the Client having a similar effect (including, but not limited to bankruptcy, insolvency, or liquidation of the Client, or the transfer of security of the Client's assets for the benefit of creditors), shall result in the Contract and Licences being considered null and void. The Contract and Licences granted thereunder shall therefore be terminated automatically without need for action or notice by Mysolution; this without prejudice to the other rights and remedies of Mysolution with regard to that violation by the Contractor of his obligations.
- 14.6. Discontinuation: Mysolution may terminate early a currently applicable term of a Licence or Contract for ongoing Services, in whole or in part, if Mysolution decides to discontinue support for the relevant Mysolution Product version or Service. In such a case, Mysolution shall make reasonable efforts to announce this in writing at least 6 months in advance. Where possible, Mysolution shall offer the Client a migration path to switch to an alternative Mysolution Product or Service to replace the terminated Mysolution Product or Service. The Client may accept or decline this migration path to switch to an alternative Mysolution Product or Service at its own discretion. If Mysolution terminates the term of a Licence or Contract before the end of the currently applicable term of a Licence or Contract, and Mysolution does not offer a migration path or if the Client declines the migration path, Mysolution shall proportionally credit the amounts already paid for the relevant Service for the period after the date on which the relevant Service has been terminated. If a Support Service for a perpetual Licence is terminated within 3 years after it is granted to the Client and the Client has fulfilled the payment obligations of such a perpetual Licence, the Licence fee already paid shall be credited proportionally on the basis of a straight-line amortisation of the Licence fee over a period of 3 years.
- 14.7. Effect of Licence termination: Within ten (10) days of the expiry or termination of a Licence, the Client shall download and delete its Data so it is removed from the Mysolution Cloud, or the Client shall return all copies of the Mysolution Product or, if requested by Mysolution, destroy such Mysolution products and confirm the return or destruction in writing. Under no circumstances shall the termination of a Licence or Contract lead to Mysolution being obliged to return or credit an invoiced and/or received payment from the Client, unless explicitly stated otherwise in these Terms of Use or in the Contract.

## 15. CONFIDENTIALITY

- 15.1. Confidentiality declaration: Every party (**Recipient**) undertakes to the other party (**Provider**) to treat as confidential any information the Recipient receives from the Provider, directly or indirectly, through any medium, and in any form (whether it is labelled as 'Confidential' or not) regarding the Provider's business, activities, software or clients, and which may reasonably be believed to be confidential in nature (**Confidential information**). The content and existence of each Contract, all associated Documentation, and all Mysolution Products is considered to be Confidential Information of Mysolution. All Client Data is considered to be Confidential Information of the Client.
- 15.2. Usage restriction: The Recipient may only use Confidential Information to perform the activities described in the Contract and to comply with legal obligations. The Recipient may only grant access to the Confidential Information to its employees, directors, subcontractors and professional advisers (**Permitted Users**) on a 'need to know' basis. The Recipient shall guarantee that each Permitted User is required to treat all Confidential Information confidentially. If a Permitted User is not an employee or director of the Recipient (and is not under a professional duty of confidentiality), the Recipient shall ensure the Permitted User complies with the requirements in this article.
- 15.3. Exceptions: This Article 15 shall not apply to information that:
- is or comes into the public domain other than as a result of a violation of Article 15;
  - is or will be received by the Recipient from a third party who has no obligation of confidentiality with respect to that information; or
  - must be provided to a competent government agency or legal regulator.

## 16. PRIVACY AND OTHER LEGISLATION

- 16.1. Obligation to comply with privacy legislation: Both parties shall ensure their activities in using or providing the Services comply with applicable privacy legislation. Mysolution shall process personal data for the Client when performing the Services; Mysolution shall act as 'Processor' under the instruction and responsibility of the Client as 'Controller' in accordance with the General Data Protection Regulation (GDPR) and its implementation in Dutch law, as well as any privacy laws that are applicable in the future. Mysolution shall only use Client Data for the delivery of the agreed Services in accordance with the Client's agreed instructions with respect to these Services. At all times, the Client shall guarantee compliance with any and all applicable privacy legislation when using the Services and giving instructions to Mysolution with regard to the Services to be provided, such as entering into data processing agreements.
- 16.2. Security commitment: If Mysolution provides storage and processing of the Client's personal data in the Mysolution Cloud as part of the Services, Mysolution shall take the appropriate technical and organisational measures to protect the Mysolution Cloud against unauthorised use and access as agreed in the Contract. The Client is therefore responsible for ensuring a level of security that is appropriate for the Client to access the Mysolution Cloud where the Client has Client Data processed. Mysolution provides upgrades of security measures to meet increased requirements or make changes to the measures that were originally required and that were explicitly agreed and laid down in the Contract or relevant Support SLA and that are a part of the Mysolution Cloud.
- 16.3. DISCLAIMER/ultimate responsibility for compliance with laws: Mysolution makes every effort to comply with applicable privacy, tax and other legislation, as well as practical experiences and accepted market practices regarding the use of Mysolution Products, and to communicate these to the Client if necessary, but this is then done expressly without accepting any liability or responsibility with regard to the legislative or legal aspects thereof. Mysolution strives as much as possible to support its clients in ensuring Mysolution Products comply with relevant laws and regulations as efficiently as possible, but the use of a Mysolution Product cannot be a guarantee for the user that he or she automatically complies correctly with all laws and regulations. Mysolution does not offer legal advice, and is not a law firm. Therefore, the responsibility to ensure all applicable legislation is complied with when using the Mysolution Products lies with the Client at all times. Furthermore, Mysolution cannot guarantee that Mysolution Products are fully in line with all laws and regulations at all times; errors (for example wrong percentages) cannot be completely excluded despite Mysolution making every effort to prevent them. The Client must, therefore, regularly check and test the results after using a Mysolution Product (and in particular within three weeks of implementation of adjustments) in order to ensure the Client complies with its legal obligations.

## 17. MISCELLANEOUS

- 17.1. Rejection of the Client's purchasing conditions: The applicability of the Client's purchasing conditions or general terms and conditions is expressly rejected. If the Client accepts a Contract or requests an Offer and references additional or deviating general terms and conditions (such as the Client's purchasing conditions), these deviating

or additional terms and conditions shall not apply unless expressly agreed to by a Mysolution director in a separate written statement. In any case, the terms and conditions for the Offer itself, including these Mysolution Service Terms and Conditions, shall take precedence over all deviating conditions of the Client's.

- 17.2. Transfer: At all times, Mysolution shall have the right to transfer a Contract to another legal entity that Mysolution allows to take over the activities related to the Mysolution Product or Service, by giving the Client written notice of the relevant transfer, which may be sent by registered email (guaranteed by a Trusted Third Party).
- 17.3. Applicable law: These terms and conditions, and every contract based upon them, are governed by Dutch law.
- 17.4. Dispute settlement: All disputes arising from or relating to these terms and conditions or any agreement to which these terms and conditions apply shall be submitted exclusively to SGOA (*Stichting Geschillen Oplossing Automatisering* – <https://www.sgoa.eu/>) for resolution by arbitration (with appeal) in the Netherlands.