- TERMS AND CONDITIONS -

1. DEFINITIONS

Agreement means the entire contractual relation between COGETIX and Customer, including these terms and conditions ("**Terms and Conditions**"), the relevant Order Form(s), any Specific Conditions (if applicable) and any other written document as mutually agreed upon between the Parties ;

COGETIX means Cogetix BV, having its registered office at Frans Raatsstraat 99, 2920 Kalmthout and with company number 0810.683.438;

Customer means any natural person or legal entity that enters into a contractual relationship with COGETIX;

Customer Data means all data proprietary to or held by Customer which is provided by Customer to COGETIX (as applicable) during the performance of the Agreement;

Deliverable means any output or result of the Services that is delivered to Customer, which may include Specific Software;

Force Majeure Event means an event, or series of related events, that is outside the reasonable control of the Party affected;

Hardware means any hardware that COGETIX agrees to supply to Customer, as described in the Order Form;

Intellectual Property Rights means all patent rights, trademarks, design and models, copyrights, rights in databases, proprietary rights in know-how, including trade secrets and other confidential information, and any other form of legally protectable intellectual or industrial property rights under any jurisdiction whatsoever;

Order Form means a written document signed between both Parties, regardless of its name (quotation, order form, statement of work, etc.), indicating the nature, number and other specifics of the Products and/or Services ordered by Customer, including the specific conditions under which such order is made, and which forms an integral part of the Agreement;

Party means Customer and/or COGETIX (as applicable);

Product means Deliverable, Hardware and/or Software (as applicable);

Services means any services (to be) provided by COGETIX, as set out in the Order Form;

Software means any Third-Party Software and/or Specific Software (as applicable);

Specific Conditions means any specific conditions of COGETIX, any Hardware manufacturer or any Third-Party Software provider (as applicable) that apply to certain Products and/or Services, as set out and/or referred to in the Order Form;

Specific Software any software developed for Customer by COGETIX;

Third-Party Software means such third-party software identified in the Order Form of which COGETIX is an authorised reseller.

2. APPLICABILITY

2.1 These Terms and Conditions are applicable to each Order Form executed between COGETIX and Customer and to all Products and/or Services ordered by Customer.

2.2 Customer agrees to waive its own general and special terms and conditions even where it is stated therein that only those conditions may apply and even if such terms and conditions were not protested by COGETIX.

2.3 Depending on the specific Products and/or Services ordered, additional Specific Conditions may apply.

3. PROVISION OF PRODUCTS AND/OR SERVICES

3.1 COGETIX shall use all reasonable endeavours to meet any performance and/or delivery dates specified in Order Form, but any such dates shall be estimates only and COGETIX shall not be liable for any damages resulting from any delays.

3.2 Upon delivery of any Product, Customer shall review the Product, to verify if the Product meets the requirements set out in the Agreement. Each Product shall be deemed definitively, irrevocably and unconditionally accepted if Customer:

    3.2.1 uses the Product for any purpose other than for carrying out the acceptance testing; or

    3.2.2 has failed to issue a written notice of acceptance or non acceptance within ten (10) working days following delivery.

3.3 Legal title of any Hardware that is sold to Customer will pass from COGETIX to Customer upon receipt by COGETIX of all amounts due from the Customer under the Agreement.

3.4 COGETIX shall not be liable for (i) any defects arising from alterations and/or modifications made by Customer or a third party; and/or (ii) for any services and/or products of third parties (including, but not limited to, in case of integrations of the Deliverables with services of such third parties).

3.5 Additional exceptions, exonerations and warranty limitations of the third-party manufacturer of the Hardware and/or Third-Party Software providers may apply and Customer agrees that any such exceptions, exonerations and warranty limitations may be invoked directly towards Customer by COGETIX.

4. CUSTOMER OBLIGATIONS

4.1 Customer shall:

    4.1.1 make correct use of the Products and the Services, perform regular backups of its systems and be responsible for procuring and maintaining its internet connections and telecommunication links from its systems to COGETIX;

    4.1.2 comply with all licensing terms (including any Third-Party Software licensing conditions);

    4.1.3 co-operate with COGETIX and provide such assistance, information and materials as reasonably requested by COGETIX; and

    4.1.4 if applicable, permit COGETIX and its personnel with full and free access to its facilities and premises in order to allow COGETIX to provide the Services.

4.2 Where performance of the Services is delayed as a result of any act or omission of Customer, its employees, agents or sub-contractors, any reasonable costs incurred by COGETIX as a result thereof shall be reimbursed by Customer.

4.3 COGETIX shall not be liability for damages resulting from a failure of Customer to comply with its obligations under the Agreement.

5. CUSTOMER DATA

5.1 If any Customer Data is provided to COGETIX for the purposes of providing the Products or the Services, all Customer Data (including Intellectual Property Rights vested therein) shall remain property of the Customer.

5.2 The Customer hereby grants to COGETIX (and/or the relevant Third-Party Software provider, as applicable) a non-exclusive license to copy, reproduce, store, export, adapt, edit and translate the Customer Data to the extent reasonably required for the performance of COGETIX' (and/or the Third-Party Software provider's) obligations under the Agreement.

6. FEES AND PAYMENT

6.1 Unless otherwise agreed between the Parties, the applicable fees are set out in the Order Form. Unless explicitly agreed otherwise in writing, any Services performed by COGETIX shall be invoiced on a time and materials basis on the basis of the then-current rate card of COGETIX.

6.2 Invoices will be paid by Customer to COGETIX within fifteen (15) form the invoice date, only by means of a bank transfer in EURO/or in the currency as agreed upon in the relevant Order Form.

6.3 Absence of a written contest of an invoice within ten (10) working days of its dispatch will imply the irrevocable acceptance of that invoice.

6.4 If Customer fails to make any payment to COGETIX under the Agreement by the due date for payment, then COGETIX shall automatically and without reminder be entitled to a late payment interest fee equal to the highest interest rate allowed under the Belgian late payment act ("*Wet Betalingsachterstand*") and may charge a fixed amount of damages equal to 15% of the unpaid and due amount.

6.5 Customer is not entitled to settle or suspend any payment under the Agreement.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 COGETIX and/or its licensors (as applicable) retain all rights, title and interest, including any Intellectual Property Rights in and to (i) its Confidential Information, (ii) the Products and (iii) the Services, including any modifications and improvements thereto. Customer will not acquire any rights, title or interest, other than as expressly stated in the Agreement.

7.2 Customer expressly acknowledges that COGETIX can never be denied the right to use for other projects and purposes any COGETIX software, tools, methodology, experience or know-how.

8. CONFIDENTIALITY

8.1 Each Party (the "Receiving Party") understands that the other Party (the "Disclosing Party") may disclose confidential and/or proprietary materials relating to the Disclosing Party's business (hereinafter referred to as "Confidential Information" of the Disclosing Party).

8.2 Each Party hereby undertakes to keep the Confidential Information secret and not disclose it, in whole or in part, to any person other than (i) with the prior written consent of the Disclosing Party or (ii) its employees, directors, subcontractors and consultants who have a direct need to know such Confidential Information for the sole purposes complying with its obligations under the Agreement. The Receiving Party shall ensure that these persons are bound by confidentiality obligations which are not less stringent than those set out in the Agreement.

8.3 The restrictions in this clause do not apply to the extent that any Confidential Information is required to be disclosed by any law or regulation or by any judicial or governmental order or request. In which case the Parties shall cooperate in good faith to ensure the protection of the Confidential Information concerned to the maximum extent permitted by law.

8.4 Notwithstanding anything else in the Agreement, COGETIX shall have the right to collect and analyse data and other information relating to the use and performance of various aspects of the Services and/or Products and related systems and technologies, included but not limited to Customer Data.

8.5 The provision of this clause 8 shall survive the expiration or termination of the Agreement for a period of five (5) years.

9. DATA PROTECTION

9.1 Each Party shall comply with applicable data protection legislation.

9.2 If and to the extent COGETIX processes any personal data on behalf of Customer, Parties shall enter into a data processing agreement covering such processing activities.

10. LIABILITY

10.1 The liability which COGETIX may incur in relation with the Agreement derives from a reasonable effort obligation ("*inspanningsverbintenis*"). Given the nature of the Software and the Deliverables, Customer recognises and accepts that it is impossible to ensure that the Software and the Deliverables will be free from flaws or errors. COGETIX shall only be liable for direct damages and COGETIX' total aggregated liability arising out of or in connection with the Agreement is limited to one hundred per cent (100 %) of the fees paid by Customer under the relevant Order Form during the twelve (12) months preceding the damage-incurring event.

10.2 Neither Party shall be liable for indirect damages, such as, but not limited to loss of profits, losses of goodwill, loss of revenue, loss of anticipated savings, loss or corruption of data, loss of chances.

10.3 Neither Party can limit its liability (i) for wilful misconduct or fraud, (ii) for death or personal injury, or (iii) which cannot be excluded or limited under applicable law.

11. TERMINATION/SUSPENSION

11.1 COGETIX may, at its sole discretion, suspend or terminate the Agreement and, partially or wholly, by written notice to Customer, if Customer fails to pay to COGETIX any amount due under the Agreement and Customer fails to cure such failure to pay within thirty (30) days from the date of a written notice of default from COGETIX to Customer.

11.2 Each Party shall have the right to immediately terminate the Agreement, without court intervention and without any compensation due, upon giving written notice to the other Party:

11.2.1 if the non-terminating Party commits a material breach of the Agreement and has failed to cure such breach within thirty (30) days following a request in writing from the terminating Party to do so;

11.2.2 if the other Party files a petition in bankruptcy, has an involuntary petition on bankruptcy filed against him which is not challenged in thirty (30) days, becomes insolvent or has a significant portion of its assets attached.

11.3 On expiration or termination of the Agreement, for any reason, and unless otherwise agreed between the Parties, Customer shall immediately pay any outstanding amounts (including those not yet invoiced, which will be invoiced at such time and become immediately due and payable) to COGETIX pursuant to the Agreement.

12. MISCELLANEOUS

12.1 **Force Majeure.** If a Force Majeure Event gives rise to a failure or delay in either Party performing any non-monetary obligation under the Agreement, that obligation will be suspended for the duration of the Force Majeure Event.

12.2 **Subcontracting.** COGETIX is entitled to use subcontractors for the performance of its obligations under the Agreement.

12.3 **Survival.** All provisions of the Agreement which are expressly marked to survive the termination or expiration of the Agreement, as well as all provisions of the Agreement which aim to enforce or execute the Agreement after the termination or expiration of the Agreement, including without limitation accrued rights to payment, use restrictions, confidentiality obligations and limitations of liability shall survive the Agreement and remain in full force.

12.4 **Public announcements.** COGETIX may include Customer's name and/or logo in its lists of current and/or former customers in promotional and marketing materials.

12.5 **Non-solicitation.** During the term of the Agreement and for a period of one year after the termination or expiration of the Agreement, Customer shall not (directly or indirectly) recruit or solicit (other than by general advertisement not directed specifically to any person or persons) for employment or engagement as an independent contractor any employee or independent contractor working for COGETIX. In case of breach of the provisions of this article 12.5 by Customer, Customer shall pay to COGETIX damages equal to a lump sum of EUR 50.000 EUR (fifty thousand euros), without prejudice to COGETIX' right to claim additional damages if it can establish that it has incurred a prejudice exceeding the above amounts.

12.6 **No assignment.** Customer may not assign the Agreement in whole or in part without the prior written consent of COGETIX.

12.7 **Severability.** If one or more provisions of the Agreement are found to be invalid, illegal or unenforceable, in whole or in part, the remainder of such provision and of the Agreement shall remain in full force and effect as if such invalid, illegal or unenforceable provision had never been contained herein.

12.8 **Relationship between the Parties.** COGETIX is entirely free and independent in performing the Services and providing the Products. There is no hierarchical relationship between COGETIX (or employees, agents or subcontractors) and Customer. Nothing in the Agreement shall be construed as a creation of partnership, joint venture, agency or otherwise between the Parties. Neither Party has the right to enter into an agreement in name of the other Party.

13. MISCELLANEOUS

13.1 The Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of Belgium.

13.2 Each Party irrevocably agrees that the courts of Antwerp (section Antwerp) shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation which cannot be settled in an amicable way.