



# Harborn

**Terms of Service Harborn - Version 3.0,**  
October 16, 2024

# 1. Definitions

TERM	DEFINITION
<b>Business days/hours</b>	Standard business days/hours are Monday to Friday from 8:30 to 17:30 CET with the exception of public holidays in the Netherlands.
<b>Harborn</b>	Harborn B.V. a Dutch limited liability company with registration number 24302539 and as registered address Westblaak 39, 3012 KD Rotterdam, the Netherlands.
<b>Harborn Product</b>	A software application, standard or specifically developed for Customer, licensed by Harborn to Customer as identified in the relevant Order.
<b>Customer</b>	Party who was issued a License to use a Harborn Product and/or concluded an Order for Services with Harborn.
<b>Customer Data</b>	Data which is (i) imported by Customer in a Harborn Product, (ii) separately provided by Customer to Harborn in order to enable the provision of Services by Harborn or (iii) produced by Customer using the Harborn Product (excluding any data made available by Harborn itself via or as part of the Harborn Product).
<b>Documentation</b>	Any documentation made available by Harborn to Customer for a Harborn Product, including end-user manuals and technical documentation.
<b>Hosting Services</b>	Providing and managing a computer environment connected to the internet to host a Harborn Product and enabling the Customer to use such Harborn Product over the public internet.
<b>Intellectual Property Rights</b>	All copyrights, patents, database rights, rights in trademarks, designs, know-how, logos, confidential information, rights in domain name registrations and similar rights (whether registered or unregistered).
<b>License</b>	A license granted to an Customer to use a Harborn Product as documented in an Order and subject to the License Conditions.
<b>License Conditions</b>	The usage conditions and restrictions applicable to a License as set out in the relevant Order and in these Terms of Service.
<b>Modification</b>	Update to a Harborn Product to make a change to the Harborn Product, such as implementation of new features, changing its configuration, settings, functionality, interfaces or technical capabilities.
<b>Offer</b>	Written offer issued by an authorized representative of Harborn for the provision of Services to the Customer.
<b>Order</b>	Offer which is accepted by the Customer or other mutual written agreement between Harborn and Customer for the delivery of Services to Customer by Harborn.
<b>Pre-paid Service Package</b>	A prepaid number of hours procured by Customer as a package from Harborn for the provision of Services (generally also referred to as a "Strippenkaart").
<b>Professional Services</b>	All forms of Services (other than Support Services, Hosting Services and the sale of Licenses) including but not limited to Modification, training, consultancy, development and installation services. Fees for Professional Services are not included in the fees agreed or quoted by Harborn for Licenses, Hosting Services and Support Services.
<b>Services</b>	All services of Harborn including the issuing of Licenses, Support Services, Hosting Services and Professional Service.

<b>Specifications</b>	The expressly agreed functional specifications for the Harborn Product as documented in writing.
<b>Support Services</b>	The support, maintenance and / or extended warranty services agreed to be provided by Harborn to the Customer with respect to that specific Harborn Product as agreed in an Order, subject to the terms set out in clause 5.
<b>Support Definitions</b>	The then current terms and procedures for support, maintenance and / or extended warranty services agreed to as part of Support Services, which details the operational aspects of the Support Services agreed to be provided under an Order (subject to Customer specific arrangements if expressly agreed to apply as documented in the Order or a Customer specific Support SLA as attached to or referred to in the Order). If Hosting of the Harborn Product is part of the Services agreed to be provided to the Customer, the Support SLA for the Hosting Services will also set out the committed service levels for such Hosting Services. Material changes to Support definitions are announced by Harborn in writing and at least 2 months in advance.
<b>Support Updates</b>	Updates to a Harborn Product provided by Harborn as part of standard Support Services such as to correct Technical Errors and to ensure future proper technical functioning.
<b>Technical Error</b>	(i) A technical programming error in the Harborn Product; or (ii) (if Harborn provides for the Hosting of the Harborn Product for Customer) an error in the Hosting Services which causes such Harborn Product to materially mal-function technically (e.g. crash, inability to access or operate available functions, inability to log in, unworkable slow performance). Technical Errors exclude any requests for changes to a Harborn Products functionality, even if this deviates from the Specifications and configurations regarding desired or required functionality, user management and new technical features. Technical Errors exclude issues caused by user error or external events for which Harborn is not responsible.
<b>Terms of Service</b>	These terms of Services of Harborn which are applicable to all Services of Harborn.
<b>Update</b>	Support Updates and Modifications.

## 2. Application of Terms

- 2.1. Introduction:** These Terms of Service apply to all Services of Harborn, all Offers of Harborn and all Orders entered into by Harborn with the Customer with respect to the supply of Services by Harborn. If Customer accepted the applicability of the Terms of Service for any Order, Customer agrees they will also be applicable to all subsequent Orders and Offers between Harborn and Customer.
- 2.2. Offers and Orders:** Customer may accept Offers issued by Harborn by signing them and sending these to Harborn or by accepting them online (if the Offer is offered online for acceptance and electronic signature). Offers expire if not accepted by Customer within 30 days of the date they were provided, unless another expiry date is expressly included. Offers made by Harborn online may be revoked without notice. Apparent typos and errors in Offers do not bind Harborn and Harborn may reject or terminate Orders based on Offers containing such apparent errors, provided Harborn does so promptly after discovering the error or typo.

## 3. License Terms

- 3.1. License grant:** If Customer is granted a License to use a Harborn Product, such non-transferable and non-exclusive License will be personal to Customer to use solely for its own business purposes, for the expressly permitted scope of use as set out in the Order and subject to the usage limitations set out in such Order and these Terms of Service. The License term is set out in the Order, and may be perpetual, for a limited term or subscription based.

- 3.2. License scope:** Customer shall only use the Harborn Product within the License boundaries specified in the Order (e.g. number of users, accounts, or other quantitative boundaries). If a license is granted for a limited number of users, only that number of user accounts may be configured, and each account can only be assigned to an individual employee or contractor (account sharing is not allowed). However, accounts may be transferred if an employee or contractor changes function or leaves. If Customer configures more accounts than originally licensed, Customer must notify Harborn, and Harborn will invoice the license fees at the applicable standard rates.
- 3.3. Copies and modifications:** Customer may not copy or use any part of a Harborn Product, including any concept, knowhow, data model, process flow or other proprietary aspects other than as required for use within the scope of the License. It is strictly prohibited to (try to) amend, modify or change, reverse engineer, decompile, or create derivative works of a Harborn Product or to enable or instruct third parties to do so, except this restriction is prohibited applicable law. This restriction does not apply to Customer Data, which Customer may use in any way it sees fit.
- 3.4. Object code license:** Unless expressly otherwise agreed for individual Harborn Products, the License only applies to the Harborn Product in compiled / object code form (so excluding any access or license to use the underlying source code used by Harborn to create the compiled / object code version of the Harborn Product).
- 3.5. Harborn / licensor marking:** Customer will not remove any product identification marks or copyright symbols or messages indicating Harborn's or its licensor's rights on any computer program, modules, modifications, manuals etc. connected with Harborn Products.
- 3.6. Test/ beta/ evaluation license:** Any License granted as a 'test' / 'beta' / 'acceptance' / 'training' / 'demo' License (or similar indication that the License is not a full commercial use license), shall be used by Licensee for the sole purpose of evaluation or testing of the Harborn Product and may not be used for normal operational / commercial use. Such License is provided without warranty on an "as is" basis and without entitlement to any Support Services (unless expressly agreed otherwise in the Order) and may be revoked by Harborn at any time for any reason.
- 3.7. Unlicensed use of Harborn Product:** Any use beyond the agreed scope by Customer without an additional Order entitles Harborn to invoice Customer for additional usage made at Harborn's then current standard pricing for expanded use, and to terminate the License for cause.
- 3.8. License warranty:** Each Harborn Product is licensed to Customer with the following warranty commitments:
- a. Harborn will indemnify and hold Customer harmless from any claim from a third party that the use of the Harborn Products by the Customer infringes any third party's Intellectual Property Rights in accordance with clause 10 below; and
  - b. Harborn guarantees that all Harborn Products are free of malware, viruses or any other harmful code; and
  - c. Harborn guarantees that Harborn will offer additional services for support, maintenance and / or extended warranty services on all Harborn Products for at least the duration of three years after the initial development of the Harborn Product; and  
Harborn guarantees that all Harborn Products will be developed using security best practises in accordance with Harborn's ISO27001 compliant security procedures; and
  - d. Harborn guarantees that any security incident related to any Harborn Product will be addressed in accordance with Harborn's ISO27001 compliant security procedures; and
  - e. Harborn guarantees that all Harborn Products will be usable for the purpose Customer has unambiguously made clear and Harborn has agreed to; and
  - f. All Harborn Products are licensed "as is", without any further warranty of any kind except for the warranty mentioned in this article.
- 3.9. Third party software:** The License Conditions in clause 3 do not apply to third party software, such as open source software, provided through Harborn for Customer's use. Instead, the usage limitations and

conditions of the relevant third party license apply. However, any modifications or additions made by Harborn to such software and licensed to Customer are fully subject to the terms in this clause 3.10

## 4. License Terms

- 4.1. Terms and dates:** All delivery dates and periods in Harborn's Orders or Offers for Services are based on information known to Harborn at the time and may change. Harborn will make reasonable efforts to observe the agreed delivery dates and periods, subject to the Customer's timely performance of its obligations and details disclosed and discovered in the process, and will notify Customer if any communicated periods or dates are expected to change.
- 4.2. Customer co-operation:** The Customer must furnish Harborn in a timely manner with all information and cooperation which is reasonably requested by Harborn to enable Harborn to provide the Services. Customer will further provide Harborn with relevant information and co-operation to enable Harborn to provide the Services efficiently. Business specific functionality is implemented under the responsibility of Customer and on the basis of its input and its active collaboration with Harborn in establishing what is required for the effective support of Customer's business requirements.
- 4.3. Customer responsibility for legal use of Harborn Products:** Customer is responsible for the compliance to applicable laws for all its use (or any enabled third party use), all data uploaded and distributed via the Harborn Products, and all related instructions given to Harborn in developing, configuring and using the Harborn Product for Customer. Customer must ensure that its use (and if applicable of Hosting Services), its instructions to Harborn regarding Services and Customer Data do not violate any third party rights (including any Intellectual Property Rights) or constitute torts (e.g. spam, discrimination, fraud). Harborn's agreement to provide the Services to Customer, to process Customer Data or to perform Services in accordance with the instructions of Customer shall not be held to imply any legal advice by Harborn to Customer or any waiver with respect to any restriction under this clause. Customer will indemnify and hold Harborn harmless from any third party claim caused by any violation by Customer of this clause.
- 4.4. Proposals and approvals:** Harborn can, at its sole discretion, create additional proposals or not and / or wait for formal approval of such proposals in response to Customer requests or urgent and required activities. Not receiving a proposal and / or withholding a formal approval does not waive, release, or otherwise discharge Customer's obligation to make payments as a result of such activities. Harborn will only refrain from creating proposals and / or waiting for approvals in case of:
- Obvious customer requests, like, but not limited to, an email requesting a reasonable change to a website or application; or
  - Informal approvals, defined any approval which is not a signed document where it has not been made clear beforehand by either party that a signed document is required; or
  - Urgent matters, like, but not limited to, security incidents or outages.

## 5. Support Services

- 5.1. Support Services:** Customer receives Support Services if procured under a signed Order and has paid all applicable fees when due. The scope is as agreed in the relevant Order and the related procedures, service levels and operational and technical terms of use are described in the then current Support Definitions, like the Support SLA of Harborn, for the Support Services for the relevant Harborn Product (and if also procured, the associated Hosting Services and / or other Support Services) as communicated by Harborn to Customer from time to time.
- 5.2. Remote access:** Support Services are provided remotely. If Customer arranges the hosting environment on which Harborn Products are used, Customer enables Harborn access on such hosting environment online in accordance with the technical requirements of Harborn to provide Support Services. In case onsite support is required, this will be separately charged to Customer as Professional Service.
- 5.3. Customer responsibilities for receiving Support Services:** Only employees that are suitably trained to operate the Harborn Products can contact Harborn for general support and/or to report Technical Errors after they consulted the available Documentation. All efforts made by Harborn in response to Customer

requests are invoiced as Professional Service unless activities are explicitly included in the applicable Support Definition.

- 5.4. Technical Errors:** Customer must, when reporting a Technical Error, provide all relevant information and co-operation to Harborn as reasonably requested to enable Harborn to identify, reproduce and resolve the Technical Error. Harborn reserves the right not to resolve issues as part of Support Services: (i) caused by failures to follow usage instructions set out in the Documentation, (ii) caused by uploaded data not compliant with the related technical requirements; (iii) with respect to restoring Customer data; (iv) issues in hardware or third party software not provided by Harborn used in combination with the Harborn Product; (v) requests for Modifications; and (vi) other external events for which Harborn is not responsible.
- 5.5. Support Updates:** The implementation of Support Updates may temporarily affect availability of the Harborn Product. Harborn will announce and perform Support Updates in accordance with the relevant Support Definitions whenever reasonable. If Customer provides the hosting it will install the Update when requested by Harborn. Harborn may refuse to address Technical Errors if Customer did not install a Support Update that would prevent or resolve such Technical Error. If Harborn cannot install an Update remotely on a hosting environment arranged for by Customer in accordance with the technical requirements of Harborn to perform such service efficiently, then the implementation is performed as a Professional Service.
- 5.6. Modifications:** are performed as Professional Services for which Customer may procure Pre-Paid Service Packages. Harborn can offer new or improved functionality as optional Modifications. These may be subject to additional license fees which are only charged if Customer agrees to the additional license fee in writing.
- 5.7. Term and renewal Support Services:** Unless otherwise set out in the Order, Support Services are provided for terms of 1 year, starting on the date the Harborn Product is first made available for use by Customer. After 1 year Support Services are automatically renewed each time for 1 year until either party terminates the Support Services by giving at least 3 months prior written notice before the end of the term.
- 5.8. Quality commitment Support Services:** Support Services are provided in a professional and diligent manner where its reasonable efforts are used to address and resolve Technical Errors in accordance with the applicable Support Definition. Harborn cannot warrant it will resolve all Technical Errors or that the Harborn Products will operate without Technical Error and/or interruptions. Resolution of a Technical Error may require the cooperation of Customer and may require Customer to temporarily accept minor other shortcomings or to install an Update.

## 6. Professional Services - General

- 6.1. Scope:** The scope and content of the Professional Services will be specified in the Order or separately agreed in writing pursuant to the Order.
- 6.2. Fees for Professional Services:** Unless expressly otherwise agreed, Professional Services are charged on a time and material basis against the standard hourly rates of Harborn or the hourly rates as agreed in the relevant Order. Given budgets for specific activities or deliverables are non-binding estimations and subject to assumptions, conditions and experiences in other projects. Therefore, the estimated budget may change if assumptions are incorrect, conditions change or any other information becomes apparent, regardless if Harborn could have possibly known or guessed this.. Harborn will only provide its Professional Services beyond the agreed estimated budget after Customer's consent. If Customer plans work in a sprint (see 8.4) or requests efforts otherwise, this is considered as such consent.
- 6.3. Service hours:** The Professional Services shall be performed on Business Days and during Business Hours. Other communicated fees will apply for requested Professional Services agreed and performed outside these timeframes.
- 6.4. Quality commitment Professional Services:** Harborn will provide Professional Services in a professional and diligent manner and all warranty commitments as described in 3.8 apply to all Professional Services.

## 7. Professional Services - Installation

- 7.1. Installation scope:** Harborn offers installation Services for a Harborn Product in accordance with specific configuration and modification as agreed in the relevant Order. Harborn is not required to install or configure the Harborn Product in such a way that it may work or connect with other current or future software or systems of Customer or third parties, unless the establishment of a specific interface is expressly agreed in the Order.
- 7.2. Installation preparation:** If Harborn implements a Harborn Product on a hosting environment arranged for by the Customer, Customer ensures the availability of appropriate equipment, resources, personnel etc. to allow proper implementation in accordance with the technical requirements of the Harborn Product as set out in the Support Services and/or as separately communicated by Harborn. Customer ensures at its own cost that the hosting environment complies with such requirements (including any potential future changes needed to accommodate the proper functioning of the Harborn Product)).
- 7.3. Remote installation:** Harborn will perform the installation and Updates remotely. Customer enables remote connection in accordance with Harborn's requirements for installation . If an on-site installation by Harborn is required, fees for travel time and expenses shall apply (unless expressly agreed otherwise in the Order).
- 7.4. Customer Data:** Customer ensures that Customer Data provided for installation and implementation complies as required in the Documentation and/or communicated by Harborn. Data conversion and migration is not part of the Services, unless expressly agreed otherwise in the Order.

## 8. Professional Services - Software Development

- 8.1. License:** As Customer will get a License on a Harborn Product, it will not acquire any Intellectual Property Rights or rights to exclusivity in any Harborn Product, any Documentation or source code, modification or addition thereto developed by Harborn or a third party engaged by Harborn, including those paid for, suggested or requested to be developed by Customer.
- 8.2. Acceptance:** Within 14 days from delivery, the Customer will test the Harborn Product to ensure it meets the agreed Specifications. If it does not, the Customer shall report the test results in detail in writing, to enable Harborn to reproduce and address the findings. Harborn will make commercially reasonable best efforts (*inspanningsverplichting*) to resolve the findings and make it available for renewed testing by Customer. If Customer reported no shortcomings within these 14 days, or Customer started operational use, it will be considered accepted.
- 8.3. Minor issues do not block acceptance:** Minor reported issues which, by their nature and/or number, do not prevent the start of operational use by Customer of the Harborn Product and/or the start of the delivery of subsequent Services (e.g. next round of development or sprint), will not prevent acceptance, without prejudice to Harborn's obligation resolve such findings if the Customer requests such resolution.
- 8.4. Scrum / agile:** For Professional Services in the form of agile/ scrum development of software, the stated budgets in the Order for development sprint(s) are fixed prices regarding to: the number of developers, with the stated expertise, and the number of days. The actual output in terms of software functionally (user stories / story points) realized by the end of each sprint (and all sprints combined) is not fixed or guaranteed. Harborn and Customer will in each development sprint work intensively together in good faith on a best efforts basis to maximize the number of realized user stories / story points in the form of the Harborn Product ready for use by Customer by the end of each sprint.

## 9. IP Rights

- 9.1. Ownership Harborn Products:** All Intellectual Property Rights in or related to the Harborn Products, and any Modifications thereto, including those requested by Customer will remain fully owned by Harborn and its licensors.

**9.2. Ownership Customer Data:** All data which Customer uploads in the Harborn Products or requests Harborn to upload in the Harborn Product are considered Customer Data and will remain fully owned by Customer and its licensors. Harborn will not use the Customer Data for any other purpose than to provide the Services to Customer, to manage, maintain and improve the Services and to comply with applicable laws.

## 10. IP Indemnity

- 10.1. IP indemnity commitment and conditions:** when used under the License Conditions, Harborn Products do not infringe third party Intellectual Property Rights.. Harborn shall, as sole and exclusive remedy, defend the Customer as per the terms of this clause 10 at its expense against any claim that the use by the Customer infringes any third party's Intellectual Property Rights (IP Claim).
- 10.2. Conditions for IP indemnity:** Harborn shall as sole remedy pay all costs, damages and attorney's fees that a court finally awards to the third party making the IP Claim, or make all payments related to a settlement agreed by Harborn with such third party concerning such IP Claim, provided that:
1. Such IP Claim is not caused by Customer Data or actions/omissions of Customer;
  2. Customer complied with the License Conditions ;
  3. Customer promptly notifies Harborn in writing of such IP Claim; and
  4. Customer allows Harborn to control, and fully co-operates with Harborn in the defence against such IP Claim and any related settlement negotiations.
- 10.3. Resolving infringement:** If an IP Claim is made or in the reasonable opinion of Harborn is likely to be made then, at Harborn's option, it:
1. will procure a license for Customer to continue to use the Services; or
  2. will replace or modify the Harborn Product; or
  3. may terminate the relevant Order in part or in whole against a proportional repayment to Customer of the fees paid by the Customer for the relevant Harborn Product.

## 11. Price and payment

- 11.1. Fees, taxes and costs:** Fees for all Services are set out in the Order or as set out in the then current standard pricelists of Harborn. All fees are exclusive of turnover tax (VAT) and other applicable taxes, tariffs, withholding taxes, levies or duties imposed by governmental authorities. Applicable transportation, travel and accommodation costs incurred to provide the Services, will be charged separately on the invoice..
- 11.2. Payment terms:** Fees for Licenses are invoiced directly upon agreement of the Order. Payment terms for Professional Services are set out in the Order, or in absence thereof, bi-weekly in arrears on the basis of actual hours spent and costs incurred. Fees for Services provided on a recurring basis (such as Support Services, Hosting Services and Licenses granted on a fee per usage period) are invoiced per initial term and per renewal term in advance per the start of the applicable initial or renewal term. The Customer pays invoices within fourteen (14) days after the invoice date. The Customer is not entitled to set-offs or to suspend payment of invoices.
- 11.3. Fees for recurring Services:** Fees provided on a recurring basis mentioned under 11.2 are fixed for each 1-year term (subject to corrections for inflation as per clause 11.5 below). With every renewal term, Harborn may change the fees by giving prior written notice to Customer, which is at least 3 months if the fees increase with more than the inflation as per clause 11.5.
- 11.4. Late payment consequences:** Any amount that is due to Harborn and not paid in time, will be considered a breach of contract and Customer will automatically be in default. No notification or summons from Harborn will be necessary and Customer will be fully liable for legal interests (according to the current Dutch legal interest rate for businesses) on the outstanding amounts and all reasonable costs incurred by Harborn in its attempt(s) to collect payment, including the costs of lawyers, legal advisors, collection agencies, bailiffs etc. Harborn reserves the right to suspend the relevant Services in case payment of



the outstanding invoice is not made within 10 Business Days after Harborn has sent a written reminder to Customer to pay the outstanding invoice.

- 11.5. Indexation:** All prices of Services, also those for which pricing is documented in the Order during the initial term for the relevant Services, may be increased by Harborn once per year in accordance with the movement in business services price index published by the Dutch Central Bureau for Statistics ("CBS") (CBS zakelijke dienstverlening) since the date the relevant price was agreed or last adjusted for inflation.
- 11.6. Pre-paid Service Package ("strippenkaart"):** If Customer procures a Prepaid Service Package, Customer must use such prepaid Services within 2 years after the date it was invoiced to the Customer. The pre-paid Service hours are only valid for the type of Services for which they are procured and for the functions identified in the Order. If Customer calls off prepaid Services, these will be planned to be delivered by mutual agreement between the parties as soon as practical after Customer's request.

## 12. Liability

- 12.1. Liability limit direct damage:** The total liability of Harborn under or in connection with any Order for breach of contract, tort or under any other legal theory in any calendar year is limited to an amount equal to the 50% of the total fees actually paid by Customer to Harborn during the previous full calendar year under the Order (or if no Services were provided in the previous calendar year to Customer under the Order, the total fees paid in the initial 6 months of the term of the Order).
- 12.2. Exclusion liability indirect damage:** Harborn shall not be liable for any indirect or consequential damage (*indirecte schade*), damage to data, lost turnover, lost profits, lost savings or damage to good name, whether such damages arise under a tort, contract or other claim. Harborn is not liable for any damage resulting from the use of Harborn Products in the business of Customer. Harborn does not warrant that the Harborn Product is free of errors and/or will function uninterrupted.
- 12.3. No limitation:** The limitations mentioned in the preceding paragraphs of this clause shall not apply if and insofar as the damage or injury are the direct result of deliberate intent (*opzet*) or willful recklessness (*bewuste roekeloosheid*) of Harborn.
- 12.4. Employees and subcontractors:** The provisions in this clause 12 shall also apply for the benefit of the employees and directors of Harborn, the subcontractors utilized by Harborn in executing its obligations toward the Customer and Harborn's third party licensors whose products Harborn sublicenses as part of the Harborn Products.
- 12.5. Indemnity third party claims:** The Customer will indemnify and hold Harborn harmless from any third party claims and related reasonable legal costs caused by or in any way related to Customer's use of a Harborn Product, except where this concerns IP Claims. With respect to such IP Claims, Harborn will indemnify and hold Customer harmless in accordance with clause 10.
- 12.6. Force majeure:** In case one party is unable to perform its obligations due to circumstances beyond its reasonable control (which are agreed to include government measures, power failures, general internet/data network/telecommunication facilities failure, 'denial of service' (ddos) attacks, war, strikes, extreme weather, terrorism and causes beyond the reasonable control of the affected party), this is to be regarded as force majeure. As long as such force majeure situation lasts, the affected party is released from the obligations it cannot comply with due to such force majeure situation without liability. If a situation of force majeure lasts for longer than sixty days, either of the parties shall be entitled to terminate the relevant Order. The Services already performed on the basis of the Order shall in such case be settled on a pro rata basis and the parties shall not owe one another any other amounts for such termination.
- 12.7. Back-up of Data:** Customer is responsible to ensure back-ups are made of Customer Data which Customer processes with, creates and/or stores using a Harborn Product and to safely store such back-up copies at a separate location. Harborn is never liable for any loss or corruption of data of Customer. Any backups which Harborn may make of Customer Data is considered a not warranted extra service of Harborn, and not intended in any way or form to reduce the own obligation of Customer to also make its own back-up copies of its own data.

- 12.8. AI or ML models:** Services or Harborn Products may include or use machine learning (ML) or artificial intelligence (AI) components. Customer is advised that ML and AI components are inherently never fully accurate/ error free as their output is based on statistical analysis of available data. Customer is itself responsible to ensure it applies an adequate level of oversight / quality control over the output of services and products that leverage AI/ML to ensure it is correctly and safely applied in its business processes. Harborn is not responsible or liable for the consequences of using incorrect output from AI or ML components.
- 12.9. Access to Customer networks or systems:** Customer is responsible for restricting access for Harborn and Harborn Products to Customer's systems, databases or network through appropriate limited roles and rights setup or firewall rules or some similar means of restricting access to a point where this complies with the 'least privilege access principle'. Harborn should not be given logical access to data and systems which Harborn does not need to have to function properly. Harborn is not responsible or liable for any costs or damages resulting from a failure by Customer to appropriately restrict access in accordance with this clause and Customer will indemnify and hold Harborn harmless from all third party claims and associated costs resulting from a failure by Customer to do so

## 13. Confidentiality

- 13.1. Confidentiality commitment:** Parties shall maintain strict confidentiality and may only use the information for the purposes of performing the activities set out in the Order with regards to all information that has come to their knowledge regarding (the implementation of) the Services and of which they know or reasonably should know the confidentiality of the information, unless disclosure is permitted or obliged by law or a court order. Parties guarantee that all individuals engaged directly or indirectly comply with the obligations mentioned in this article.

## 14. Data Protection (Privacy) Commitments

- 14.1. Commitment to comply with privacy laws:** Each party will ensure compliance of its activities to the applicable privacy laws in using respectively providing the Services. To the extent where Services of Harborn involves the processing of personal data of Customer on the instructions and for the purpose of Customer, Harborn shall act as processor. In such capacity, Harborn will comply with all its statutory obligations as a processor. By concluding an Order, the Customer instructs Harborn to process personal data of Customer in accordance with the applicable data processing agreement offered by Harborn.
- 14.2. Security commitment:** Harborn implements appropriate technical and organizational measures to secure its systems against unauthorized access and use. Customer is responsible to verify the level of provided security is appropriate for Customer. Installation of security upgrades or other upgrades of security measures to meet increased or changed requirements compared to those expressly agreed in the Order or these Terms of Service may be separately charged (provided no upgrade or change chargeable to Customer will be implemented without its express approval of the related costs). If Harborn provides Hosting Services, it shall ensure that the data centers used to host such personally identifiable information are located in the European Economic Area and Harborn will on first request share with Customer the name, location and observed security standards committed to be employed to secure the data center and the computer environment used to host the Customer Data.
- 14.3. Ultimate responsibility:** With respect to applicable privacy and other laws Harborn may share prior experiences and perceived market practices in respect of the use of the Harborn Products, but this is done expressly without accepting any liability or responsibility with respect to the regulatory or legal aspects. Harborn is not a legal advisor or law firm and the ultimate responsibility for ensuring compliance to applicable laws in using the Harborn Products (and in particular obtaining relevant consents from persons whose personally identifiable information is used and processed by means of the Services by or on behalf of Customer) is and remains at all times with Customer. For the avoidance of doubt, changes to the functionality of a Harborn Product as may be required by Customer to enable Customer to comply with applicable law (including privacy laws) is not included in any of the agreed fees for any Services.

## 15. Hosting

- 15.1. Usage conditions:** For Hosting Services, the technical features, functionality and standard security measures applied to the hosting environment and technical conditions and restrictions for use of Hosting Services by Customer are set out in these Terms of Service or a separate Order.
- 15.2. Sizing / capacity of Hosting Service:** The capacity of the Hosting environment (in terms of processing power (CPU), memory (RAM), data storage capacity and data transfer usage) made available under the Hosting Services is sized as expressly agreed in the Order or set out in these Terms of Service and otherwise as set by Harborn on reasonably applied assumptions regarding the expected level and intensity of use by Customer of the Harborn Product. If for the actual use the capacity of the hosting environment needs to be upgraded, implementing the required upgrade will be separately offered and charged to Customer in a separate Order. Harborn is not responsible for Technical Errors caused by usage by Customer with an intensity beyond for which the hosting environment was sized.
- 15.3. Autoscaling:** Hosting Services may include autoscaling features, which automatically increase or decrease capacity based on actual use. Any cost incurred as a result of scaling the services up may be invoiced following the agreed fees for such service. Parties may agree upon a maximum cost per month for autoscaling the capacity, in which case Harborn will ensure the service is not scaled beyond the agreed maximum cost level. If further scaling of the Hosting Service is prevented because the agreed cost limit is reached, Customer may experience downtime or reduced performance as a result, for which Harborn will not be responsible or liable.

## 16. Miscellaneous

- 16.1. Rejection of third party purchasing terms:** The applicability of the Customer's purchasing or other general terms and conditions is expressly rejected. If the Customer accepts an Offer or requested an Offer with reference to additional or deviating terms or conditions of Customer (such as purchasing terms of the Customer), then such deviating or additional terms shall not apply between the parties unless these are explicitly accepted in a written statement issued and signed by the director of Harborn. In any case the terms of the Offer itself, including these Terms or Service of Harborn, shall take precedence over any deviating terms and conditions of the Customer.
- 16.2. Transfer:** Harborn shall be entitled, at any time, to assign, novate or otherwise transfer the Order to another company taking over the activities related to the relevant Harborn Product or Service from Harborn, by providing written notice to Customer of such transfer.
- 16.3. Applicable law and dispute resolution:** These terms and conditions and all agreements to which they apply shall be governed by the laws of the Netherlands. All disputes arising in connection with these terms or any agreement they are applicable to, shall be submitted to the exclusive jurisdiction of the competent courts of Rotterdam the Netherlands.