

Terms and Conditions

Terms and Conditions of Telemagic B.V. for the provision of Services.

1. Definitions

In these Conditions the following terms have the following meaning:

1. **Telemagic**: Telemagic BV, located at Oscar Hammersteinstraat 11, 3543 CV, Utrecht, registered with the Trade Register of the Chamber of Commerce in Enschede under the number 34139585;
2. **Contractor**: the service consumer with whom Telemagic has entered into the agreement;
3. **Agreement**: the agreement between Telemagic and the Contractor under which Telemagic delivers the Services;
4. **Service**: the specified service, that Telemagic agrees upon with the Contractor, as stated in the Agreement;
5. **Traffic**: data on the use of a Service by the Contractor, such as information about received and made phone calls, FAX messages, SMS messages, audio messages, received voice mail messages;
6. **Terms and Conditions**: these Terms and Conditions for the provision of Services by Telemagic;
7. **Disputes Committee**: the Geschillencommissie Telecommunicatie, PO Box 90600, 2509 LP The Hague.

2. General provisions

2.1. The Contractor is aware of these Terms and Conditions and accepts the applicability of these to the Agreement. The Terms and Conditions can at all times be modified by Telemagic both electronically by publication on its website and communication via e-mail, as well as on paper. The changes shall also apply to existing agreements. The changes will be come into force on the date set by Telemagic, taking into account a notice period of one month. Telemagic is obliged to give the Contractor an opportunity to receive an announcement of the change via a specially assigned mailing list of Telemagic. The applicability of possible purchase or other conditions of the Contractor are explicitly excluded from this.

2.2. The Contractor must provide a suitable address for Telemagic before receiving the Terms and Conditions and announcements concerning these. The Contractor is responsible for the storage and printing out, if so desired, of these Terms and Conditions and the Agreement by means of facilities available on the website, in the browser or elsewhere. The Contractor shall also bear the responsibility making and keeping the saved copy accessible for himself.

2.3. Deviations from or additions to these Terms and Conditions and Agreements apply only if the Contractor and Telemagic agree upon them in writing. Upon termination of the Agreement these additional and different terms will expire.

2.4. These Terms and Conditions shall apply to all legal relationships between Telemagic and the Contractor, unless the applicability of these Terms and Conditions is expressly excluded in writing. In the event of conflict between provisions of the Agreement, Terms and Conditions or Appendices (of the Agreement), the following order of precedence applies:

- I. The Agreement;
- II. The Appendices;
- III. The Terms and Conditions.

2.5. If any provision of these Terms and Conditions is null and void or annulled, the remaining provisions of these Terms and Conditions will remain fully in force, and Telemagic will, in accordance with Article 2.1., provide new provision(s) to replace the invalid provision(s), in which the purpose and intent of the invalid provision(s) is taken into consideration as much as possible.

2.6. The Contractor shall, if it is stated in the agreement that the agreed upon Service or the delivery of a Product is not designed for commercial, business or economic purposes, such as the exercise of a profession or business, act at his own risk, if he does use the Service or Product for this. The Contractor shall indemnify Telemagic for damages that may arise as a result of that form of usage and Telemagic has in this case the right to terminate the agreement with immediate effect, without prejudice to its other rights and without being responsible for any damage whatsoever.

2.7. Telemagic may transfer rights and obligations of the Agreement to third parties and shall, if required by law, inform the Contractor. If the transfer of obligations to a third party is unreasonably onerous for the Contractor, the Contractor has the right to terminate the Agreement within 30 days after receiving said announcement.

3. Conclusion of an Agreement

3.1. Unless explicitly stated otherwise, an agreement between Telemagic and the Contractor is established:

- 1. When the confirmation of an order, signed by Telemagic and Contractor, is received in return to Telemagic, or;
- 2. From the time of signing of the Agreement by the parties, or;
- 3. From the time that Telemagic has accepted or confirmed the application of the Contractor in writing and the Contractor has taken or could have taken notice of this confirmation, or;
- 4. From the moment that Telemagic has commenced execution of the order and the Contractor has taken or could have taken notice of this.

3.2. The above list is not limited. Therefore, the parties are free to prove that the agreement has been reached by other means.

3.3. All offers of Telemagic are free of obligation, and are valid for 14 days after date of issue, unless indicated otherwise. Telemagic will be bound by such offers only if the other party thereof confirms the acceptance in writing within 14.

3.4. For Services that are delivered from the central data network of Telemagic, the Contractor is responsible for providing adequate infrastructure to said central data network.

3.5. Telemagic reserves the right not to carry out an order in case of the absence of technical possibility of services delivery and / or in case of a technical specificity that does not meet the requirements recommended by the Telemagic.

3.6. Telemagic reserves the right not to carry out an order without stating reasons, as long as Telemagic has not confirmed it yet to the Contractor. Besides, Telemagic always has the right not to accept an

application if there is a reasonable and well-founded suspicion that the Contractor would not be able to comply properly with the Agreement. At least considered to be of reasonable suspicion are circumstances that give cause to doubt the creditworthiness of the Contractor, or bad performance of the Contractor towards Telemagic or third parties. Telemagic always has the right to perform a credit check to verify the creditworthiness of the Contractor.

3.7. If the Agreement for the supplying of Service has been established completely by electronic means of communication, the Contractor shall be entitled to a period of seven working days after the conclusion of the Agreement to terminate the Agreement by means of a written notice to Telemagic, without giving reasons, unless the Contractor has used the Service within this period.

4. Execution of the Agreement

4.1. Telemagic shall carry out the services with due care in the best way possible, in accordance with the requirements of good workmanship, based on the currently known state of science, and, where appropriate, in accordance with agreements and procedures established in writing with the Contractor.

4.2. If, and to the extent that, in the opinion of Telemagic this is required for proper execution of the agreement, Telemagic has the right to have certain work done by third parties.

4.3. The Contractor shall ensure that all data which Telemagic deems necessary or which the Contractor reasonably understands to be necessary for the execution of the agreement, is provided to Telemagic on time. If the data required for proper execution of the agreement is not timely provided to Telemagic, Telemagic has the right to postpone the execution of the Agreement and/or charge the Contractor for the additional costs resulting from the delay, according to the usual rates.

4.4. The Contractor is responsible for the use and application, in his organization, of the equipment recommended or approved by Telemagic and services provided by Telemagic, as well as for the checking and security procedures and for adequate system management.

4.5. Telemagic is not responsible for damages of any kind, when Telemagic has relied on erroneous and/or incomplete data provided by the Contractor, unless such inaccuracy or incompleteness was ought to be known by Telemagic.

4.6. If it is agreed that the Agreement will be implemented in phases, Telemagic has the right to postpone the execution of certain parts, belonging to a subsequent phase, until the Contractor has approved the results of the preceding phase in writing.

4.7. If during the execution of the Agreement it becomes apparent that it is necessary for its proper execution to amend or supplement the agreement, the parties shall promptly amend the agreement accordingly, on a timely basis by mutual consent, in a further agreement (in writing).

4.8. If the parties agree that the Agreement shall be amended or supplemented, the time of completion of the implementation can be affected by this. Telemagic shall inform the Contractor of this as soon as possible.

4.9. If the amendment or supplement to the Agreement will have financial and/or qualitative consequences, Telemagic will notify the Contractor of this as much in advance as possible.

4.10. Notwithstanding Article 4.9., Telemagic will charge no extra fees if the amendment or supplement is the result of circumstances which can be attributed to Telemagic.

5. Conditions of Service delivery

5.1. Telemagic endeavors to deliver the Services to the Contractor as soon as possible, but does not provide any guarantee regarding delivery times. The delivery times specified by Telemagic are indicative only. Exceeding of any delivery time does not entitle the Contractor to compensation, or the right to cancel the order or to terminate the agreement, unless the delay in delivery is such that the Contractor cannot be required to maintain the agreement in accordance with the standards of fairness and reasonableness. The Contractor is then entitled to cancel the order or to terminate the agreement to the extent that this is necessary.

5.2. The delivery of Services offered by Telemagic to the Contractor depends on the quality of Services offered to the Contractor by a third party operator. It concerns the specificity of the network configuration and Broadband connection.

6. Provided space (Collocation)

6.1. If Telemagic provides a physical space to the Contractor for implementation of the Agreement, the following applies.

6.2. The space provided to the Contractor for the implementation of the Agreement may be used for the purpose of the implementation of the Agreement only.

6.3. The Contractor shall himself use the space provided for the purpose of the implementation of the Agreement with effect from the commencement date of the Agreement and in accordance with the Agreement and these Conditions in a careful and proper manner.

6.4. The Contractor is obliged to use the space provided for the purpose of the implementation of the Agreement in such manner that there is no nuisance or inconvenience caused towards Telemagic, third parties and further surroundings.

6.5. The Contractor is prohibited to provide to third parties in whole or in part, or in any other way allow the third parties to use the space provided for the purpose of the implementation of the Agreement.

6.6. The Contractor is prohibited to change the shape, appearance and/or the layout of the space provided for the purpose of the implementation of the Agreement, or to make any changes to the space or the associated piping and wiring, or to carry out any work on the space to improve its physical appearance, without prior written permission of Telemagic.

6.7. The Contractor must timely notify Telemagic by written notice if there are threats of damage to the space, or if such damage could be inflicted. The same applies if any defects in the space occur or have occurred.

6.8. If the Contractor places equipment owned by him in the space provided for the purpose of the implementation of the Agreement, the Contractor must take care of adequate insurance coverage of this equipment.

7. Use and availability of the Service

7.1. Telemagic may impose restrictions on the use of the Service. Telemagic will inform the Contractor about this.

7.2. If the Contractor does not (longer) have a functioning broadband connection, Telemagic can put the Service out of use. If the Broadband connection of the Contractor (no longer) operates and is no longer going to operate, for whatever reason, the Contractor must inform Telemagic as soon as possible.

7.3. Telemagic is entitled to change the technical specifications of the Service if this is in the interest of the performance of the Service or for the protection of the justified interests of Telemagic. Telemagic will timely notify the Contractor of a change, unless this is not reasonably possible.

7.4. Contractor will use the Service for normal business or private use, even if there is a fixed rate (flat fee). In case of excessive use, Telemagic is entitled to nonetheless charge for the use that exceeds the standards.

7.5. Telemagic endeavors to allow the Service to run as undisturbed as possible. Telemagic, however, provides no guarantees regarding the availability and quality of Service. In addition to the regular obligation of efforts, the Contractor may, if desired, conclude an additional Service Level Agreement.

7.6. The quality of Service is dependent on the Broadband connection used by the Contractor and its peripheral devices (including the number and type of telephones and accessories). Furthermore, (simultaneous) use of the Broadband connection by the Contractor for other applications besides the Service (for example, downloading) can affect the quality and availability of the Service.

7.7. Telemagic is not liable for any direct or indirect damage that the Contractor suffers as result of the Service not being (entirely) available due to circumstances, such as failures on the side of third party operators and/or providers, and/or suppliers on which Telemagic depends for supplying the Service. Telemagic stresses that under these circumstances; the emergency number (112) may also be (temporarily) inaccessible.

7.8. Telemagic is not liable for any direct or indirect damage that the Contractor suffers as result of the Service not being (entirely) available due to circumstances, such as power failure or overloading of the Broadband connection on the side of the Contractor, because of which the Service may temporarily not (entirely) be available. Telemagic stresses that under these circumstances; the emergency number (112) may also be (temporarily) inaccessible.

7.9. If the Contractor moves to another address, the Agreement shall continue unchanged, unless this is not reasonably possible. The Contractor shall immediately inform Telemagic of the relocation.

7.10. Additional costs for Telemagic due to the relocation of the Contractor shall be borne by the Contractor.

7.11. If the Contractor turns out to owe above-average amounts in a limited period of time, Telemagic is entitled to proceed to blocking of certain destinations, until the Contractor has paid all amounts owed or has provided security in a way which will be declared by Telemagic.

8. Maintenance and Faults

8.1. For maintenance, Telemagic can, without prejudice to its other rights and without being liable for damages, shut down the Service in whole or in part. The shutting down will be announced in due time by Telemagic, except in the case of short or limited interruptions. Telemagic will not temporarily constrain or shut down the Service without urgent or valid reasons.

8.2. Telemagic will investigate disruptions as soon as possible and will endeavor to solve the disruptions as soon as possible.

8.3. Telemagic can modify the technical characteristics of the Service. Telemagic will take the interests of the Contractor into account to reasonable extent. Telemagic is not liable for damages resulting from a change in technical characteristics.

9. Obligations of the Contractor

9.1. If a third party has placed limitations on, or applied conditions to, the use of certain materials, products or services, the Contractor must take these limitations and conditions into account. The Contractor is responsible for all damage caused to Telemagic and/or third parties due to nonobservance of these restrictions and conditions.

9.2. The Contractor is responsible for all use of the Service through his Broadband connection, even if this happens without his permission. All costs incurred for the use of the Service are for the account of the Contractor.

9.3. The Contractor is obliged to notify Telemagic immediately in case of a (provisional) suspension of payments, bankruptcy, a debt settlement arrangement being legally declared or loss of legal capacity of the Contractor.

9.4. The Contractor shall in no way hinder Telemagic with the delivery of the Service. The Contractor is not permitted to (make others) act in such ways, which can harm the justified interests of Telemagic or third parties, or which can inflict damage to Telemagic and/or third parties.

9.5. The Contractor is not permitted to resell the Service provided by Telemagic. Access to, and use of, the Service may also not be transferred to third parties.

10. Use of telephone numbers

10.1. The use of a number intended for telephony, is bound to the prefix area for which it is issued. The Contractor warrants that the number is only used within this prefix area, and indemnifies Telemagic for the consequences if the Contractor fails to do so. Telemagic is at any time entitled to request evidence from the Contractor that demonstrates that the Contractor holds address within the valid prefix area.

10.2. If applicable to the Service, Telemagic will allocate a telephone number to the Contractor. Telemagic reserves the right to limit the number of telephone numbers per Contractor.

10.3. The Contractor is obliged to adhere to the laws and regulations associated with telephone numbers held and/or used by him. This concerns, but is not limited to, the Telecomwet, the Besluit Universele Dienstverlening en Eindgebruikersbelangen (BUDE) and the Regeling Universele Dienstverlening en Eindgebruikersbelangen (RUDE).

10.4. Telemagic can change the telephone number if Telemagic deems this necessary, for example, in the interests of the proper functioning of the Service, or if this is necessary on the basis of regulations. Telemagic will thereby take the interests of the Contractor into account to reasonable extent. Telemagic is not liable for damages resulting from the changing of a telephone number.

10.5. If the Contractor already has a telephone number in use at another provider, he can submit a request to Telemagic to retain the telephone number. The telephone number can be retained, if the agreement with this provider is terminated and the provider cooperates in retaining the number.

10.6. In order to carry out a request for number portability, the Contractor will follow instructions from Telemagic. Telemagic can request a one-time fee for carrying out the request for number portability.

10.7. If the Contractor has a telephone number in use at Telemagic and wishes to switch to another provider, while keeping this number, the Contractor shall address the request to retain the telephone number allocated to the Contractor by Telemagic, with a new provider of public electronic communications services, to this new provider. Telemagic will handle requests for number portability in accordance with the regulations in force in the Telecomwet and the overarching agreements between telecom operators.

10.8. The phone number assigned to the Contractor will lapse irrevocably if the Agreement is terminated, and the Contractor has not requested number portability.

11. Fees and Payments

11.1. The Contractor owes Telemagic sums, defined by Telemagic. These are determined on basis of the price list, valid at the appropriate time. For the determination of the amounts due, Telemagic's administration is binding, unless it is proven that this data is not correct. If Contractor believes that the amount due on the invoice is incorrect, the Contractor must make objections towards Telemagic by written notice before the due date of the invoice. Upon receiving the objection, Telemagic will investigate the accuracy of the amount due on the invoice. The portion of the invoiced amount to which no objection is made remains due. Payment of that portion may not be suspended.

11.2. Telemagic is at all times entitled to change the price list (electronically); changes will be announced in advance. The current price list is available on the website and on request from Telemagic.

11.3. If the Contractor does not agree with the raise in prices and rates expressed by Telemagic, as referred to in Article 11.2., the Contractor is entitled to terminate the agreement by written notice within four weeks after the date of the disclosure, referred to in that article, with the agreement being expiring on the date referred to in the disclosure, on which the raise in prices or rates comes into force.

11.4. If Telemagic has entered an agreement with a third party on behalf of the Contractor and that third party raises its rates, Telemagic is entitled to immediately enforce these rate raises.

11.5. Telemagic may, in addition to the agreed upon fee, charge costs for provision of the additions to the Service, Service support and additional devices.

11.6. Telemagic may, in addition to the agreed upon fee, charge a fee for the specifications of the invoices, contract acquisition, modification of ascription and similar operations.

11.7. Amounts as specified in the Agreement and as described in this Article, are expressed in Euro and include VAT.

11.8. Telemagic will charge the fees owed by the Contractor by means of an invoice. Payment shall be made within the term mentioned on the invoice, counting from the date of the invoice, in the manner specified by Telemagic, and in the invoice currency. The moment of payment is the moment at which Telemagic has received the sum owed. If the Contractor has authorized Telemagic to collect the amount due, Telemagic will state this on the invoice.

11.9. The amounts set for the Service will be charged (i) with regard to the subscription, monthly in advance, and (ii) with regard to the costs of using the Service, once these exceed a minimum to be determined by Telemagic, but in any case quarterly afterwards.

11.10. An invoice or notice of default sent electronically shall be deemed to have been received by the Contractor on the day of sending. Invoices or notices of default sent by post shall be deemed to have been received by the Contractor within 2 days after the postmark date for Contractors located in the Benelux and within 5 days after the postmark date for Contractors located in other countries.

11.11. Termination of the Agreement does not affect existing payment obligations.

11.12. In case of liquidation, bankruptcy or suspension of payment of the Contractor, Telemagic's claims and the Contractor's debts owed to Telemagic shall be immediately due and payable.

11.13. Payments made by the Contractor shall initially always serve for payment of all interest and costs due, and subsequently for payment of the longest outstanding payable invoices, even if the Contractor states that the payment relates to a later invoice.

11.14. In the event that the Contractor has not paid within the period referred to in Article 11.8., Telemagic shall be entitled, after having at least once demanded the Contractor to pay, to charge the Contractor the legal interest starting from the date on which the payment was originally due until the day of payment in full, without further notice of default or prejudice to Telemagic's other rights. Telemagic also has the right to suspend further execution of the agreement immediately or to dissolve the agreement, without prejudice to Telemagic's right to claim compensation, until all amounts owed by the Contractor to Telemagic are compensated in full.

11.15. In the event that the Contractor is in default or fails to perform one or more of his obligations, all collection charges, out of court or in court, shall be for the Contractor's account. For this, the Contractor is, in any case, due:

of the first € 5,000.-	15 %
of any remaining amount up to € 12,000.-	10 %
of any remaining amount up to € 25,000.-	8 %
of any remaining amount up to € 50,000.-	5 %
of any remaining amount	3 %

11.16. If Telemagic demonstrates to have incurred higher costs that were reasonably required, these also come into consideration for payment.

11.17. If Telemagic believes that the Contractor's financial situation or payment practices warrant it, Telemagic is entitled to require the Contractor to provide a(n) (additional) security immediately, in a form to be determined by Telemagic. If the Contractor neglects to provide the requested security, Telemagic will be entitled, notwithstanding its other rights, to suspend further execution of the agreement immediately and all amounts owed by the Contractor to Telemagic for any reason will be due immediately.

11.18. In the case of an order given jointly, the Contractors, insofar as the work was performed for the joint Contractors, will be severally liable for payment of the invoice amount.

12. Use of identifying information

12.1. Telemagic shall make identifying information, addressing information and/or codes solely available to the Contractor for the execution of the agreement. Contractor shall handle this identifying information, addressing information and/or codes with care. In case of loss, theft and/or other forms of irregular use, Contractor shall inform Telemagic of this immediately, so that both parties can take appropriate measures.

12.2. Contractor shall pay all fees associated with and/or arising from the use of the identifying information, addressing information and/or codes.

12.3. If on a reasonable base can be assumed that due to the Contractor, there has been abuse of the identifying information, addressing information and/or codes of the Contractor, Telemagic can provide instructions to the Contractor regarding this matter, which the Contractor must obey.

12.4. If it is determined that the Contractor has abused the identifying information, addressing information and/or codes, or that the Contractor has not obeyed the instructions as referred to in the preceding paragraph, the Contractor shall immediately be in default.

13. Privacy and Personal data

13.1. Telemagic collects and processes (personal) data of the Contractor, in compliance with the current privacy legislation. Traffic data is also included under (personal) data.

13.2. Telemagic collects and processes (personal) data of the Contractor to the extent that it is necessary to provide high quality service to the Contractor. This data is processed by Telemagic and, where necessary, provided to third parties, for the following purposes:

1. Provision of high quality service and the further development of the service;
2. The payment administration, including the collection of open accounts, whether or not done by a third party;
3. The provision of information to the Contractor, the handling of complaints and the resolution of disputes;
4. Credit management and in relation thereto the conducting, whether or not done by a third party, of analysis of creditworthiness and payment behavior, as well as participation in a credit registration system;
5. Network administration and the promotion of an efficient design of the business processes;
6. Market research and the direct marketing purposes of Telemagic;
7. The prevention, investigation and combating of fraud and irregularities;
8. Compliance with legal obligations;
9. Entry in the telephone directory and/or the number information service, if the Contractor has given permission for this;
10. Specified bills;
11. Caller ID.

In addition, Telemagic can process the data, and, if necessary, provide it to third parties if this is necessary for the protection of the legitimate interests of Telemagic. Such circumstances shall in any

case include the processing required in the interests of proper business practices. Data can also be provided to third parties in the context of a transfer of business units of Telemagic.

13.3. Telemagic does not store the personal information collected for longer than is necessary for the purposes outlined above, and shall provide the appropriate technical and organizational measures to protect personal data.

13.4. If Telemagic is obliged to grant assistance to a request by a competent authority to wiretap or to record electronic communications or to provide data on the Contractor or the traffic data, then Telemagic will contribute to this request. Telemagic is not liable for damage that the Contractor suffers as result of this cooperation by Telemagic.

14. Mutual confidentiality

14.1. Each party is obliged to maintain confidentiality towards third parties of confidential data, in whatever form, obtained from and about the other party.

14.2. In the context of the Agreement, parties are not obliged to maintain confidentiality regarding information that:

1. Was already known to the party;
2. Was lawfully obtained by the party, independent of the other party;
3. Was lawfully obtained by the party from a third party without duty of confidentiality;
4. Has already been released by the right holder in the public domain.

14.3. Disclosure of confidential information to third parties may only take place in the following cases:

1. To other staff and employees of the company itself who are not involved in the provision of information, and to third parties, only to the extent which is necessary for the purposes of the Agreement;
2. To third parties, if the party who has transferred the information has given prior authorization in writing to do so;
3. To third parties, if this is sought under the legislation of the party and after a direct notification of such claim to the other party.

14.4. To the extent that third parties are involved in the execution of the Agreement, the parties shall ensure that for such third parties and their personnel, corresponding provisions shall be made regarding confidentiality.

14.5. Telemagic is not entitled to use the information, which is made available to Telemagic by the Contractor, for any purpose other than for which it was obtained. An exception is made, however, in case Telemagic represents itself in civil or criminal proceedings in which this information may be of importance.

14.6. Telemagic will impose its obligations on the basis of this article on the third parties it calls in.

15. Intellectual property

15.1. All rights of intellectual or industrial property to all software, equipment, analysis, designs, documentation, reports, tenders, preparatory material, each within the broadest meaning of the word (collectively, "(the) works") made available under the Agreement, are held solely by Telemagic or its licensors.

15.2. The Contractor is explicitly prohibited to reproduce, publish or exploit the works of Telemagic, whether or not using a third party, unless the parties have explicitly agreed otherwise in writing.

15.3. The Contractor may not hand over (carriers of) the works to third parties, other than in order to obtain an expert opinion regarding the implementation of the Agreement by Telemagic.

15.4. Telemagic shall indemnify the Contractor against any legal action which is based on the allegation that works made available by Telemagic infringe a right, which is valid in the Netherlands, concerning intellectual or industrial property, provided that the Contractor informs Telemagic immediately in writing of the existence and content of the legal action and leaves the handling of the case entirely to Telemagic, including the making of any settlements. The Contractor will accordingly provide the necessary power of attorney, information and cooperation to Telemagic to ensure that Telemagic is able to defend itself, if necessary in name of the Contractor, against these claims. The obligation to indemnify shall cease if and insofar as said infringement is related to changes the Contractor has made or caused to be made by third parties in the works.

16. Liability

16.1. The liability of Telemagic is, as far as it is covered by its liability insurance, limited to the amount of the payment, provided by the insurer of Telemagic in this specific case.

16.2. In case the insurer does not provide cover or does not proceed with the payment, and if Telemagic is liable, the liability of Telemagic is limited to the invoice value of the order, i.e. the part of the order that is related to the liability.

16.3. Contrary to the above determined in Article 16.2., in case of an order with a duration of more than six months, the liability is further limited to the portion of the fee, which is due for the last six months.

16.4. The limitations of liability contained in these Terms and Conditions do not apply if the damage is intentionally caused, or if it is caused by a serious misconduct of Telemagic or its subordinates.

16.5. Telemagic is not liable for consequential damages.

16.6. Liability of Telemagic caused by an attributable failure to fulfill an Agreement only arises if the Contractor notifies Telemagic immediately and properly in writing, for which the Contractor gives Telemagic a reasonable time to comply with its obligations, and Telemagic remains inadequate to comply with its obligations, even after the expiration of that period. The notice must contain an as detailed as possible of the failure, so that Telemagic is able to respond adequately.

16.7. The condition for the existence of any right to compensation is always that the Contractor reports the damage to Telemagic in writing as soon as possible, but no later than one (1) month after its occurrence.

16.8. The Contractor shall indemnify Telemagic against third party claims for damages that these third parties could recover from Telemagic in any way possible, to the extent that this claim is based on the use

made by the Contractor of the Service or where such claim is based on the communication of the Contractor using the Service.

16.9. The Contractor shall indemnify Telemagic against all claims of liability, damages, costs and expenses, including legal fees, arising out of any violation of the Terms and Conditions, done by the Contractor.

16.10. The Contractor shall indemnify Telemagic against problems with the Broadband connection and against any damage that occurs as a result of the use by the Contractor of equipment not supplied or approved by Telemagic, or caused by adjustments to the equipment supplied or approved by Telemagic, by or on behalf of the Contractor.

16.11. Telemagic is never liable if, as a result of a legal or judicial warrant, data of the Contractor must be provided to third parties, which are entitled thereto.

17. Force Majeure and/or special circumstances

17.1. In these Terms and Conditions, force majeure will be defined as, in addition to its definition in law and legal precedent, all external causes, foreseen or unforeseen, which Telemagic cannot influence, but as a result of which Telemagic is unable to perform its obligations.

17.2. Telemagic also has the right to invoke force majeure, if the circumstance that prevents (further) fulfillment of its obligations, occurs after Telemagic should have fulfilled its obligations.

17.3. In the event of force majeure, the obligations of Telemagic are suspended. If the period in which Telemagic cannot meet its obligations due to force majeure is longer than 3 months, both parties are authorized to terminate the agreement, without any obligation to pay compensation existing in that case.

17.4. If Telemagic has already partially fulfilled its obligations ensuing from the Agreement when force majeure occurs, Telemagic shall at all times be entitled to invoice the performed part separately and the Contractor shall at all times be bound to pay this invoice as if it concerned a separate transaction. However, this does not apply if the part already executed or that can be executed has no independent value.

17.5. Telemagic is not required to comply with any obligations towards the Contractor if it is prevented from doing so as a consequence of a circumstance not attributable to Telemagic's fault and which is not regarded as Telemagic's responsibility by virtue of the law, legal action or according to generally accepted standards.

17.6. In case of temporary force majeure Telemagic is authorized to extend the delivery time, or the period within which the work had to be carried out, by the length of time by which the temporary obstacle has delayed the delivery or the work.

17.7. In the event of force majeure, except for the provisions referred to in article 17.3., the client is not entitled to dissolve the agreement and/or to claim compensation for damages.

18. Suspension

18.1. Telemagic reserves the right to suspend, temporarily decommission, or limit the use of, the execution of the agreement:

1. If the Contractor fails to fulfill his payment obligations or his other obligations under the Agreement;

2. If the Contractor does not (longer) have a functioning Broadband connection;
3. Following notification to Telemagic of (provisional) suspension of payments, bankruptcy, a debt settlement arrangement being legally declared or loss of legal capacity of the Contractor.
4. In response to an order on a statutory or judicial basis;
5. If during or after application the Contractor has provided wrong or incomplete information to Telemagic;
6. If the Contractor otherwise harms Telemagic's interests to such extent that it cannot reasonably be expected that the Service is offered;
7. If (changes in) applicable laws or regulations or decisions of competent authorities require so.

18.2. The suspension will be terminated if within a reasonable period, as determined by Telemagic, the reason for suspension as referred to in sub-clause 1 is resolved and the eventual costs of decommissioning and commissioning are paid to Telemagic.

18.3. Telemagic has the right to terminate the Agreement with immediate effect, without prejudice to its other rights and without being liable for damages:

1. If the Service has been decommissioned on the basis of Article 18.1. and the Contractor has not met his obligations after the decommissioning within the reasonable period as defined in Article 18.2.;
2. In case of termination, withdrawal or amendment of licenses, whether or not of third parties, under which Telemagic offers its Service;
3. If agreements between Telemagic and other parties (third party operators and/or providers, and/or suppliers) on which Telemagic depends for supplying the Service are terminated or modified for any reason, thereby causing Telemagic to no longer reasonably be able to properly provide the Service;
4. If technical reasons (such as the situation under Articles 7.6. or 7.8.), economic reasons or (changes in) laws and regulations require so.

19. Duration and termination

19.1. The Agreement is concluded for an indefinite period of time with a minimum of 1 year, unless the parties agree otherwise explicitly and in writing.

19.2. If a term is agreed within the term of the Agreement for the completion of certain activities, such a term is deemed indicative and is never a firm term. If such a term is exceeded, the Contractor must give Telemagic notice of default in writing, and state a reasonable period for Telemagic to fulfill its obligations.

19.3. If the Agreement is concluded for an indefinite period of time, either party may terminate the Agreement by written notice at the end of a billing period, subject to a notice period of one calendar month, unless otherwise agreed.

19.4. If the Agreement is concluded for a definite period of time, either party may terminate the Agreement by the end of the defined period, subject to a notice period of one calendar month, unless otherwise agreed.

19.5. An Agreement between Telemagic and the Contractor may immediately be dissolved in the following cases:

1. If, after the conclusion of the Agreement, circumstances come to Telemagic's knowledge, which give Telemagic good reasons to fear that the Contractor will not fulfill his obligations;
2. If, upon entering into the agreement, Telemagic has requested the Contractor to provide security for compliance and if this security is not or insufficiently provided, in spite of demands to do so.

19.6. In the mentioned cases, Telemagic shall be authorized to suspend any further performance of the agreement or to dissolve the agreement, without prejudice to Telemagic's right to claim compensation.

19.7. In cases mentioned, Telemagic's claims on the Contractor are immediately due and payable.

19.8. Each party has the right to terminate the Agreement with immediate effect without judicial intervention and without notice of default, if:

1. The other party has requested, or has been granted, (provisional) suspension of payments;
2. The other party is bankrupt or has filed a bankruptcy petition;
3. The other party's company is liquidated;
4. The business activities are discontinued;
5. The other party is in default.

19.9. Any termination must be done by written notice.

19.10. Immediately after termination of the Agreement, Telemagic shall retrieve or block any identifying information, addressing information and/or codes that it has made available.

19.11 Telemagic may charge the Contractor a reasonable termination fee;

19.12. All commitments made, which should remain in force, either explicitly or by virtue of their nature, shall remain in force.

20. Complaints and disputes

20.1. Disputes between the Contractor and Telemagic about the conclusion or execution of the Agreement can be presented to the Disputes Committee by both the Contractor and Telemagic.

20.2. The Disputes Committee will only handle a dispute if the Contractor has first presented his complaint to Telemagic in writing.

20.3. Telemagic shall respond to the complaint within 30 days of receipt thereof, unless this is not reasonably possible. In that case, the Contractor will be notified in writing within the said period as to when the response to the subject of his complaint will be forthcoming.

20.4. Within 30 days of receipt of the response to the subject of the complaint from Telemagic, or within 30 days after the expiration of the period in which a response should have been forthcoming in accordance with the provisions of article 20.3., the Contractor may submit the dispute to the Disputes Committee.

20.5. If the Contractor submits a dispute to the Disputes Committee, Telemagic shall be bound by this choice. If Telemagic wishes to do this, it shall ask the Contractor in writing to pronounce his/her agreement within five weeks. Telemagic shall also notify the Contractor that after said period has expired, it shall deem itself at liberty to submit the dispute to the ordinary courts.

20.6. The Disputes Committee shall render its decision with due observance of the provisions of regulations applicable to the Disputes Committee. The regulations of the Disputes Committee shall be provided upon request. The decisions of the Disputes Committee are in the form of binding opinion. A fee must be paid for the handling of a dispute.

20.7. Disputes between the Contractor and Telemagic on the conclusion or implementation of the Agreement with regard to Services, provided or to be provided by Telemagic, shall be submitted to the District Court of Almelo, unless a section cantonal court is competent by virtue of a mandatory provision.

20.8. The Agreement shall be governed exclusively by Dutch law.