3.3.2. QOLLABI shall be entitled to use the Deliverables for its own and/or its licensors own all intellectual property rights in the Deliverables. In all invoice the Customer as per the Effective Date for the Subscription Fee and the fee for the delivery of the phase in question. During the acceptance period the Customer may not use the Customer Data. The Customer acknowledges and agrees that QOLLABI may use the Deliverables for its own and/or its licensors own all intellectual property rights in the Deliverables. The Customer shall be entitled to use the Deliverables for its own purposes before the formal moment of acceptance. The Customer (the "Authorised User") shall have the right to use, copy and modify the Deliverables in the form of the Application and therefore art of the Application and therefore's duly authorised contractors or agents. If the Application is the processor of the Customer Data (w

QOLLABI shall charge the Customer, and the Customer shall pay, the fees applicable based on clause 3.2 QOLLABI may automatically adjust the Subscription Fee in accordance with the latest official Belgian Consumer Price Index. In addition. QOLLABI shall be entitled to increase the Subscription Fees upon 90 (ninety) days prior notice to the Customer.

9. Proprietary rights
9.1. The Customer acknowledges and agrees that QOLLABI and/or its licensors own all intellectual property rights in the Software, the Application ("QOLLABI IPR") Except as expressly stated herein the Agreement does not grant the Customer any rights in or to, in patents, trademarks, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences respect of QOLLABI IPR.

9.2. QOLLABI acknowledges and agrees that QOLLABI and/or its licensors own all intellectual property rights in the Customer Data.

9.3. As part of the Services or the Right of Use the Application might be customized for the Customer (the "Personalisation"). The Personalisation is limited to the customization of the Customer specific settings of the Application and does not involve any material adjustments to the Software itself. The Personalisation and all results thereof are part of the Application and therefore QOLLABI IPR.

10. Acceptance
10.1. If an acceptance procedure has been agreed upon in writing, the acceptance period shall amount to 10 (ten) days after delivery or, if a phase to be implemented by QOLLABI has been agreed upon in writing, after completion of the phase in question. In case of acceptance period the Customer may not use the Application or Deliverables or other results of the Services for productive or operational purposes.

10.2. If the Deliverables or other results of the Services shall be deemed to have been accepted by the Customer:

10.2.1. on completion of the provision of Services, in case an acceptance test has not been agreed between parties;

10.2.2. on the first day after the acceptance period, in case an acceptance test period has been agreed between parties, the Deliverables and all results thereof, the Application and all other results of the Services for productive or operational purposes.

10.2.3. When the Customer notifies QOLLABI in any way before the end of the acceptance period that the Deliverables or other results of the Services are accepted or that only imperfections remain that do not prevent the Customer from using the Application or Deliverables the Customer may make use of the Services and/or any Deliverables provided, for productive or operational purposes before the formal moment of acceptance.
11. Confidentiality
11.1. Each party may be given access to confidential information from the other party (“Confidential Information”) in order to perform its obligations under the Agreement. A party’s Confidential Information shall not be disclosed to include information that:

11.1.1. is or becomes publicly known other than through any act or omission of the receiving party;
11.1.2. was in the other party’s lawful possession before the disclosure;
11.1.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
11.1.4. is independently developed by the receiving party, which independent development can be proven by written evidence; or
11.1.5. is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

11.2. Each party shall hold the other’s Confidential Information in confidence and, unless required by law, not make the other’s Confidential Information available to any third party, or use the other’s Confidential Information for any purpose other than the implementation of the Agreement.

11.3. Each party shall take all reasonable steps to ensure that the other’s Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Agreement.

11.4. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

11.5. QOLLABI acknowledges that the Customer Data is the Confidential Information of the Customer.

11.6. This clause 11 shall survive termination of the Agreement, however arising.

12. Indemnity
12.1. The Customer shall defend, indemnify and hold harmless QOLLABI against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the – the processing of the Customer Data or related to use of the Application and/or Services in a manner not permitted under the Agreement, provided that:

12.1.1. the Customer is given prompt notice of any such claim;
12.1.2. QOLLABI provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer’s expense; and
12.1.3. the Customer is given sole authority to defend or settle the claim.

12.2. QOLLABI shall, subject to clause 13, defend the Customer, its officers, directors and employees against any claim that QOLLABI infringes any EU patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

12.2.1. QOLLABI is given prompt notice of any such claim;
12.2.2. the Customer provides reasonable co-operation to QOLLABI in the defence and settlement of such claim, at QOLLABI’s expense; and
12.2.3. QOLLABI is given sole authority to defend or settle the claim.

12.3. In the defence or settlement of any claim, QOLLABI may procure the right for the Customer to continue using the Services and/or Application or replace or modify the Services and/or Application so that they no longer infringe or, if such remedies are not reasonably available, terminate the Agreement on (seven) days notice to the Customer without any additional liability or obligation to pay liquidated damages or any reasonable costs to the Customer.

12.4. In no event shall QOLLABI, its employees, agents and subcontractors be liable to the Customer to the extent that the alleged infringement is based on or caused by:

12.4.1. a modification of the Services, Application or Software by anyone other than QOLLABI; or
12.4.2. the Customer’s use of the Services or Application in a manner contrary to the instructions given to the Customer by QOLLABI or
12.4.3. the Customer’s action in processing the Customer Data or Application after notice of the alleged or actual infringement from QOLLABI or any appropriate authority.

12.5. The foregoing states the Customer’s sole and exclusive rights and remedies, and QOLLABI (including QOLLABI’s employees’, agents’ and subcontractors’) entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

13. Limitation of liability
13.1. Except as expressly and specifically provided otherwise in the Agreement:

13.1.1. the Customer assumes sole responsibility for results obtained from the use of the Services and the Application by the Customer, and for conclusions drawn from such use;
13.1.2. all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Agreement;
13.1.3. the Services, the Application, the Software and the Deliverables are provided to the Customer on an “as is” basis.

13.2. Except as of gross negligence or wilful misconduct of QOLLABI or its directors, QOLLABI’s total aggregate liability arising in connection with the Agreement:

13.2.1. includes any loss of profits, loss of business, loss of goodwill, loss or corruption of data or information and any special, indirect or consequential loss, costs or damages however arising under the Agreement; and
13.2.2. shall be limited to direct damages up to the total fees paid under the Agreement during the 12 (twelve) months immediately preceding the date on which the claim arose.

14. Term and termination
14.1. Without prejudice to any other right or remedy to which the parties may be entitled, either party may terminate this Agreement (without prejudice to the other if:

14.1.1. the other party commits a breach of any of the essential obligations of the Agreement and (if such breach is remediable) fails to remedy that breach within 30 (thirty) days of that party being notified in writing to the other party;
14.1.2. an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or any other event which results in a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors.

14.2. On termination of the Agreement for any reason:

14.2.1. the Right of Use shall immediately terminate;
14.2.2. each party shall return and make no further use of any equipment, property, Confidential Information and other items (and all copies of them) belonging to the other party; and
14.2.3. QOLLABI may destroy or otherwise dispose of any of the Customer Data in its possession unless QOLLABI receives, no later than 10 (ten) days after the effective date of the termination of the Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. QOLLABI shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 (thirty) days of receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination.