Terms of Service

These conditions and Terms of Service apply to the use of the Copernica Marketing Software. The user of Copernica Marketing Software acknowledges that these terms has been provided to him/her and agrees with these terms. These conditions have been made available to the user in English. An additional translated version of these conditions in another language might also have been made available. In case of any deviations between the English terms and conditions and a translated version, caused by translation errors for example, the English version of the conditions is always leading. User acknowledges to have received the English version of the terms and conditions.

Article 1 Definitions

These Terms of Service employ the following definitions both in singular and plural form.

1.1 Terms of Service: these Terms of Service, regardless of the form in which they are presented (on paper or electronically).
1.2 Client: the party to whom Copernica BV directs an offer, with whom Copernica BV has entered into an agreement, on whose behalf action was/is taken, or to whom Products or Services are provided.
1.3 Products: all movable property subject to an offer, agreement or other transaction between Copernica BV and Client.
1.4 Services: all employment and activity subject to an offer, agreement or any other transaction between Copernica BV and Client.

Article 2 Applicability of Terms of Service

2.1 The Terms of Service apply to and are part of all offers, agreements and other transactions, concerning the delivery of Products and/or Services by Copernica BV to or for Client, regardless whether they are transmitted orally, in writing, electronically or in any other form.
2.2 The Terms of Service also apply to Products and/or Services which Copernica BV has contracted in whole or partially from third parties, processed or unprocessed, and delivers on to Client, as well as Products and/or Services that are delivered to Client by a third party as part of an offer, agreement or transaction between Client and Copernica BV.
2.3 Deviations of the Terms of Service are valid only if they have been agreed upon explicitly in writing by both Copernica BV and Client.
2.4 General terms or conditions imposed by Client never apply.
2.5 Should any part of the Terms of Service be declared invalid or annulled, the other articles remain in effect without loss of value or validity.
2.6 Copernica BV reserves the right to unilaterally modify the Terms of Service.

Article 3 Offer, agreement and usage

3.1 All offers by Copernica BV are free of obligations unless stated otherwise explicitly in writing.
3.2 Offers by Copernica BV are valid for the time allotted in the offer. If no time is allotted, the offer stands for 2 (two) weeks from the day it was offered.
3.3 Agreements are considered agreed upon when Copernica BV accepts the assignment offered by Client, or when Copernica BV proceeds to execute said assignment.
3.4 Client receives a non-exclusive and non-transferable right of use on the Products and results of Services for the agreed upon targets. Client will observe the conditions agreed upon for usage of said Products and/or Services in the Terms of Service or otherwise imposed on Client.
3.5 Under no circumstances shall Client make use of the Products and/or Services for actions in violence of Dutch, European or other applicable (international) laws or directions, as well as Internet netiquette. Sending out messages without explicit opt-in (SPAM), including sending email messages to purchased email addresses, is strictly forbidden.
3.6 If Client violates the provisions given in Article 3.4 and/or 3.5, Copernica BV may withhold the provision of Products and/or Services. The payment obligation of Client remains unaffected.

Article 4 Prices and rates

4.1 All prices and rates referred to by Copernica BV are in Euros unless stated explicitly in writing.
4.2 All prices and rates referred to by Copernica BV do not include Dutch VAT and any other commissions charged by government, as well as transport and delivery or travel costs, unless stated explicitly in writing.
4.3 Copernica BV has the right to change its prices and rates at any time. Unless stated explicitly in writing that prices and rates are applicable for an allotted period of time, price changes for the delivery of Products and/or Services become applicable 2 (two) months after they have been announced.
4.4 Should Client not agree to a change of prices or rates announced by Copernica BV, Client has the right to terminate the agreement with Copernica BV, effective on the date the new prices or rates

become applicable, by notifying Copernica BV in writing within 8 (eight) days after the announcement.
4.5 Except for article 4.3 and 4.4, Copernica BV reserves the right to index its prices and rates. A change to the prices and rates will not take place earlier than three months after the effective date on the agreement and will be based on the Consumer Price Index published by Statistics Netherlands. Copernica will notify the Client in writing of changes to the rates one calendar month before the change enters into effect.
4.6 If the Client can be regarded as a partner and/or affiliate, the Client will charge its customers at least the prices as described on the Copernica website for the use of the Copernica software.

Article 5 Payment

5.1 Client must pay the invoices from Copernica BV within the term of payment stated on the invoice. If no payment term is defined on the invoice, a term of 14 (days) applies.
5.2 Client waives the right to any form of postponement, setoff, or deduction of payment.
5.3 Copernica BV has the right to demand (partial) advance payment or authorization, for example by means of direct debit, on the delivery of Products and/or Services, at any time, and to postpone delivery of Products and/or Services until said payment or authorization is received. Copernica BV is further entitled to demand security of payment in a manner determined by Copernica BV, for example a bank guarantee or deposit. In such case, Copernica BV will only deliver the Products and/or Services after said security has been provided.
5.4 If Client does not fulfill payment on any invoice from Copernica BV within the term of payment, Client is automatically in default, without need for injunction or notice of default. Copernica BV holds the right to charge legal interest on the amount due without further notice.
5.5 If Client remains in default, Copernica BV can withhold the provision of Products and/or Services. The obligation of payment is not affected. In case of a continuing performance agreement, Copernica BV reserves the right to charge client the remaining terms of the agreement up until the first possible cancellation date of Client under that agreement.
5.6 Copernica BV reserves the right to outsource the collection of payment. Client is liable for both the original payment due and legal interest and any and all legal and non-legal costs involved in the collection and outsourcing. The height of these costs is at least 15% of the amount due.

Article 6 Delivery, risk and property

6.1 Terms of delivery on Products and/or Services by Copernica BV are guidelines and therefore never fatal, unless specifically agreed upon in writing.
6.2 The risk of loss of or damage to the Products which are subject to an agreement between Copernica BV and Client, are transferred to Client on the moment the Products in question are submitted to the power of Client or a deputy of Client.
6.3 Client should check all Products for possible defects or faults directly after delivery.
6.4 All goods delivered to Client remain property of Copernica BV until Client has fulfilled in full all payments due to Copernica BV, including interest and additional costs, as defined under Article 5.4 to 5.6. Where there is explicit agreement upon the granting or transfer of certain rights, these are always granted or transferred under the condition that costs involved are paid in full and on time.

Article 7 Objections

7.1 All objections of Client to an invoice of Copernica BV or a direct debit performed by Copernica BV must be reported in writing to Copernica BV within 14 (fourteen) days of invoicing date or debit date, after which time the invoiced or debited amount is deemed to have been accepted.
7.2 If Client is of the opinion that a Product and/or Service provided by Copernica BV does not comply with was agreed upon, Client must notify Copernica BV thereof in writing within 14 (fourteen) days after delivery, or 14 (fourteen) days after the supposed defect could have been known to Client.

Article 8 Intellectual property

8.1 All rights of intellectual property concerning Products and/or Services as well as designs, programming, documentation and all other materials developed and/or used in the preparation and execution of the agreement between Copernica BV and Client, or are a result of this agreement, are reserved by Copernica BV or its suppliers. The delivery of Products and/or Services does not transfer any rights of intellectual property.
8.2 Client will not, wholly or partially, (re-)produce, publish, multiply, or offer to third parties any Products and/or (results of) Services without written permission from Copernica BV in advance.
8.3 Client will not remove or change visuals from Copernica BV or its suppliers concerning copyright, brands, trade names or other rights of intellectual property.

Article 9 Data provision by Client

9.1 Client will always provide Copernica BV with the data and other information required for the

delivery of Products and/or Services, in a completely and timely fashion.
9.2 Client guarantees the correctness and completeness of the information as described under Article 9.1, as well as having the legal right to give the information to Copernica BV for the purpose of delivery of Products and/or Services.
9.3 If Client provides data to Copernica BV which can be categorized as personal data, contact details, or other privacy sensitive information, Client guarantees that this data (transfer) conforms with laws and regulations for the protection of personal data and that the use and processing of this data by Copernica BV is permitted.

Article 10 Secrecy

10.1 Parties hold themselves bound to secrecy regarding all confidential information which they receive from the other party. Parties guarantee to bind their employees and any third parties concerned in the execution of agreement between parties to that as well.
10.2 Information is regarded as confidential when at least one of the parties has tagged it as such.

Article 11 Employees

11.1 Client will provide employees of Copernica BV with all necessary support and means to perform their duties, in relationship to the delivery of Products and/or Services.
11.2 Client is not permitted, for the duration of the relationship between Client and Copernica BV as well as for 1 (one) year after that period, to employ employees of Copernica BV, directly or indirectly, without explicit written permission from Copernica BV. Employees of Copernica BV are considered all persons in the service of Copernica BV or one of Copernica BV's allied enterprises, as well as persons who have been employed at Copernica BV or one of Copernica BV's allied enterprises no longer than 6 (six) months ago.

Article 12 Liability

12.1 The legal liability of Copernica BV for an accountable shortcoming in upholding the agreement is limited to both the directly caused damage and the compensation for the delivery of Products and/or Services agreed upon in the agreement. If the agreement duration is longer than one year, the amount is maximized at the total amount of compensation agreed upon in the year in which the shortcoming takes place. The total compensation for direct damages will never be more than € 2.000,-, and in case of physical damage, no more than € 4.000,- per event. A sequence of events is considered one event.
12.2 Direct damages are considered to be those costs which Client reasonably had to make to recover from or compensate for the shortcomings of Copernica BV in delivering the Products and/or Services, as well as any reasonable costs Client had to make to prevent or restrict damage, and reasonable costs to determine the cause and size of said damage. If Copernica BV and Client have agreed upon a term of delivery explicitly in writing, the costs Client had to reasonably make to cancel out the untimely deliverance of Copernica BV, minus any possible savings, also count as direct damages.
12.3 Copernica BV is not liable for indirect damages, including but not limited to collateral damage, loss of profit, or loss of returns.
12.4 Client indemnifies Copernica BV against all claims resulting from or relating to violations by Client of the applicable terms, imposed by these Terms of Service or other otherwise agreed upon.
12.5 If Client violates Article 3.5, 8.2, 8.3 and/or 11.2, or does not comply with the arbitration procedure as described in Article 15.2, and/or the (binding) resolution that is a result of that procedure, a fine is imposed upon Client of 25,000 Euros, for every violation separately, as well as 1,000 Euros for every day that Client remains in violation, without further summation or proof of default, payable to Copernica BV. This fine does not implicate a waiver of any right of Copernica BV, such as the right to demand full indemnification of damages by Client.

Article 13 Force majeure

13.1 There is no accountable shortcoming of Copernica BV when the circumstances are beyond her control.
13.2 In case the circumstances as described above last more than 60 (sixty) days successively, Client has the right to terminate the agreement. Copernica BV cannot be held liable for any damages thus incurred. All payment obligations of Client remain in place until the termination date.

Article 14 Termination and duration

14.1 Each party has the right to terminate the agreement if the other party is deficient or negligent regarding material obligations that are part of an agreement, and, after being notified, offers no substantial redress within a reasonable timeframe. A termination does not release Client from any payment obligations regarding Products and/or Services already delivered by Copernica BV.
14.2 Copernica BV has the right to terminate an agreement with immediate effect, without further notice, and without Copernica BV becoming liable for any damages incurred by Client, if Client becomes

insolvent, goes into administration, if bankruptcy has been filed, if (parts of) Client's assets have been seized or put under constraints, or if Client's business is liquidated or terminated.
14.3 After an agreement has ended, for any reason, Client will stop using any Products and/or Services immediately, and return their possession of programming, documentation and other materials that they have been provided with under the agreement.

Article 15 Governing law

15.1 Any and all offers, agreements and other actions concerning the delivery of Products and/or Services by Copernica BV are governed by Dutch law. The 1980 United Nations Convention on Contracts for the International Sale of Goods (CISG) is not applicable.
15.2 Disputes between Copernica BV and Client resulting from or related to offers, agreements and other actions concerning delivery of Products and/or Services by Copernica BV can and will be presented exclusively to the applicable court in the local jurisdiction (arrondissement) of Amsterdam. If nevertheless the dispute falls under jurisdiction of a court outside of the Netherlands, the dispute shall be settled instead in accordance with the Arbitration Rules of the Netherlands Arbitration Institute, unless parties agree otherwise. The place of arbitration shall be Amsterdam and the proceedings shall be conducted in Dutch.