

## **General Terms and Conditions of LBi**

### **Article 1. General**

For the purposes of these General Terms and Conditions, the following terms have the meanings given below.

- 1.1 Customer: the party issuing the Assignment Contract.
- 1.2 Service Provider: LBi Belgium SA/NV, a company limited by shares, Boulevard du Souverain/Vorstlaan 191, B-1160 Brussels, Belgium, entered in the Register of Companies under the number BE 00456.630.072.
- 1.3 Assignment Contract: the contract or confirmation of the assignment, as the case may be. A description of the assignment setting out the works to be performed by the Service Provider on behalf of the Customer. Depending on the nature of the assignment, the tasks to be performed may be set out in a detailed draft agreement, in a work order giving a description, the price and the delivery schedule, or in an order form.
- 1.4 Service Level Agreement (SLA): all assignments relating to hosting and housing services are covered by an SLA that specifies the level of service to be provided to the Customer by the Service Provider at the price and under the terms agreed. The SLA sets out the minimum infrastructure available, the performance and connectivity of the systems concerned, the services offered and the contact persons who may act for each party for the purposes of the SLA.
- 1.5 Working Day: 7 hours and 36 minutes.

### **Article 2. Scope**

- 2.1 These General Terms and Conditions apply to all services provided to the Customer by the Service Provider unless waived in the Assignment Contract.
- 2.2 The application of the Customer's general terms and conditions is specifically excluded by the Service Provider unless expressly indicated otherwise in the Assignment Contract.
- 2.3 These General Terms and Conditions shall apply for the term of the Assignment Contract and for the guarantee period set out below, i.e. from agreement to the assignment through completion of the assignment to expiry of the guarantee period. The parties shall be bound by the provisions of the Contract intended, expressly or tacitly, to ensure that these General Terms and Conditions continue to apply after the Assignment Contract has ended.

### **Article 3. Performance of the Assignment Contract**

- 3.1 All works performed by the Service Provider are undertaken on a best-effort basis in line with best industry practices and applying state-of-the-art technology and know-how.
- 3.2 The Service Provider has sole discretion as to whether it uses for the works its own employees or freelance consultants, hereinafter referred to collectively as «the staff».
- 3.3 The Service Provider has sole discretion as to the way in which the Assignment Contract is performed, but shall take into account, as far as possible, the demands expressed by the Customer. If staff are named in the Assignment Contract, the Service Provider shall endeavour

to ensure that those persons are available for the duration of the Assignment Contract. That notwithstanding, the Service Provider may, subject to the consent of the Customer, replace them by other staff, notably if the staff member concerned terminates his employment.

- 3.4 Subject to the prior consent of the Customer, the Service Provider may undertake additional works and bill these to the Customer as the works progress.
- 3.5 The Service Provider has the right to subcontract the entire assignment, or certain parts of it, to a third party.
- 3.6 The Service Provider shall ensure that any subcontractors are provided with the content of the Assignment Contract and comply with the obligations arising therefrom in the same way as internal staff.
- 3.7 Under these General Terms and Conditions, the Service Provider is responsible at all times for all works performed by its subcontractors with respect to the Customer, unless expressly specified otherwise by the Customer.
- 3.8 Unless otherwise specified, all communications between the Customer and subcontractors shall go through the Service Provider or, at the very least, be undertaken in consultation with the Service Provider.
- 3.9 The Customer may not involve any third parties in performance of the Assignment Contract without the prior written consent of the Service Provider given that such involvement, be it direct or indirect, may have a significant impact on the proper performance by the Service Provider of the Assignment Contract. Should such involvement occur, the Service Provider reserves the right to receive the planning schedule and details of the cost.

### **Article 4. Delivery deadlines - Delivery**

- 4.1 Unless otherwise specified, the delivery deadlines given by the Service Provider are for information only and are not binding, given that the length of time required to complete the assignment may vary depending on a number of factors, such as the quality of information provided by the Customer and the cooperation put in place. The delivery deadlines cited are always expressed in working days.
- 4.2 The Customer cannot terminate the Contract because a delivery deadline is exceeded unless the Service Provider fails to complete the assignment, in full or in part, within a reasonable time specified in writing when the contractual deadline expires – or unless continued performance is thereby rendered impossible.
- 4.3 Delivery and the consequent risk transfer is deemed to take place when the Service Provider informs the Customer that the services, documents, products and compiled program codes are at the latter's disposal on the latter's premises/servers or at another pre-agreed location. Transfer of ownership takes place on payment of the full price.
- 4.4 In principle, delivery is confirmed by the Customer's signature on an acceptance document in which the

Customer can set out any failings or remarks and indicates whether any of the deliverables are non-compliant.

- 4.5 In the absence of an acceptance document and unless otherwise expressly indicated in the Assignment Contract, tacit acceptance of the deliverables is implicit on delivery, unless the Customer informs the Service Provider, by registered post within ten days of the delivery date, of any non-compliance, in full or in part, of the deliverables. If the Customer does not give acceptance, he must set out the reasons therefore in sufficient detail and indicate the nature of the purported failings.
- 4.6 Where this is the case and unless specific reference is made to a new planning schedule, the Service Provider must ensure that the problem is resolved as quickly as possible and that work on the assignment restarts.

#### **Article 5. Changes to the contract**

- 5.1 Should the Customer wish to change the assignment in the course of performance, he must set out the terms in writing. Should this be the case, the Service Provider reserves the right to change the planning schedule for performance and the price.
- 5.2 The Customer must ensure that all the data and documents that the Service Provider needs for proper performance of the assignment in due time are made available to the latter by the date and in the form set by the latter.
- 5.3 The Customer must ensure that the Service Provider is informed immediately of any facts or circumstances that may be relevant to proper performance of the assignment.
- 5.4 The Customer is responsible for the accuracy, completeness and reliability of the data and documents provided to the Service Provider, even if that information comes from third parties.
- 5.5 The Customer shall bear the costs and charges arising from any delay in performance of the assignment that is attributable to information, data, documents, instructions and codes having being provided late or in insufficient detail.

#### **Article 6. Price, billing and payment**

- 6.1 The price to be paid by the Customer to the Service Provider is indicated in the Assignment Contract. All prices indicated do not include VAT and any other taxes.
- 6.2 The Service Provider shall not charge transport costs for journeys of less than 120 km distance from the Service Provider offices in Brussels or Ghent.. For all other travel, the actual cost will be billed to the Customer. When travel is undertaken at the request of the Customer, the hours worked are billed from the time of departure from the Service Provider's offices until the return time.
- 6.3 If there is any change in factors such as the index, affecting the price after the Contract is concluded but before the assignment is completed, the Service Provider may adjust the price previously agreed to reflect this.
- 6.4 All bills issued by the Service Provider must be paid within thirty days of the billing date to bank account no. ING 1036230 – IBAN BE18 3101 0362 3065 - BIC BBRUBEBB.

6.5 If a bill is not paid by due date, the mechanism established under the Act of 2 August 2002 on combating delays in the payment of commercial transactions will apply.

- 6.6 Unless otherwise agreed, the Customer shall pay an advance of 30% of the total price when he places the order for an assignment. Subsequent Payment is then made on the basis of monthly bills issued as the works progress.
- 6.7 The Customer's payment obligations are not suspended in the event of a reasoned rejection of one or more items. Under no circumstances can rejection of one assignment, or a part of that assignment, be used by the Customer as a ground for deferring or refusing to pay for other assignments, or parts of those assignments, which are not directly linked to the first.
- 6.8 All expenditure on software licences and hardware are billed on receipt of the supplier's invoice.
- 6.9 Copyright, licences, DNS registration fees and all online purchases linked to the assignment amounting individually to less than EUR 100 are billed to the Customer before they are ordered by the Service Provider from his suppliers.

#### **Article 7. Internet use**

- 7.1 During performance of the assignment, the Customer and Service Provider will communicate by e-mail. The parties therefore agree that electronic media and correspondence constitute a legally valid means of communication.
- 7.2 Both parties acknowledge that certain risks are inherent in the use of electronic media including, but not limited to, transformation, delay and viruses. The Customer and Service Provider shall each hold the other harmless for any damage they incur as a result of the use of electronic means of communication and correspondence. They will each endeavour to prevent the occurrence of any such risks insofar as possible.
- 7.3 If there is any doubt about the accuracy of a delivery receipt for an e-mail, the content of the e-mail sent by the sender is the determining factor.

#### **Article 8. Industrial property**

- 8.1 All intellectual property rights relating to products and/or services (source code) and projects, programs, documentation and all other materials that are developed and/or used to prepare and perform the assignment or that result therefrom, are the exclusive property of the Service Provider or his suppliers. The delivery of products and/or services does not entail the transfer of the related intellectual property rights.
- 8.2 At the request of the Customer, programs (source code) and documents may be lodged with a source code escrow agent, specialising in this area and who deals with the terms of release (such as the transfer of property rights, protection limits, disposal of property, failure to renew, etc.). The Customer shall bear the cost of any such deposit.

- 8.3 On payment in full of the price, the Customer is automatically granted a non-exclusive and non-transferable right to use the deliverables and results of the services for the agreed purposes.
- 8.4 The Customer shall not publish, duplicate or make available to third parties in any way whatsoever, in full or in part, the deliverables and results of the services without the prior written consent of the Service Provider.
- 8.5 The Service Provider shall provide this user right to the Customer and shall hold it harmless in the event of any claims by third parties in this regard. This provision does not apply if and when the products and/or results of the assignment are changed and/or if their delivery coincides with the delivery of an assignment by a third party, unless, in the case of the latter, the Customer can show that the third-party claims relate solely to the deliverables and/or results delivered by the Service Provider under the Assignment Contract.

### **Article 9. Confidentiality and data protection**

- 9.1 Each party shall treat all unpublished commercial and technical information received from the other party in the course of performance of the assignment as confidential; this information may only be used for the purposes of the Contract and must only be disclosed on a need-to-know basis for the purposes of the assignment or where there is a statutory obligation to disclose. Both parties shall make every effort to maintain that confidentiality and inform staff and any third parties involved of this confidentiality.
- 9.2 All confidential information and materials made available to the parties for the purposes of the assignment are and shall remain the sole and exclusive property of the party that has made them available and shall be returned to that owner at the end of the assignment or destroyed, as agreed between the parties.
- 9.3 Neither party shall reproduce or distribute confidential information and materials, directly or indirectly, in full or in part, orally or in writing, without the prior written consent of the other party unless it is required for performance of the Contract.
- 9.4 Personal data must be processed by the Service Provider in accordance with prevailing legislation on this matter. The Service Provider shall treat personal data as confidential and inform all persons needing to access this data of their confidential nature.
- 9.5 All personal data provided by the Customer for the purposes of the assignment shall be deemed by the Service Provider to have been collated and managed by the Customer in accordance with the law. The Customer shall hold the Service Provider harmless in this regard in the event that proceedings are instituted by third parties.
- 9.6 The Service Provider may mention the Customer's name and outline of the works undertaken to its commercial contacts, provided this is solely for the purposes of providing an indication of its experience.

### **Article 10. Liability and guarantees**

- 10.1 The Service Provider has a best-efforts obligation with respect to its activities and must therefore act with the due

care that the Customer can legitimately expect. The Service Provider shall not be liable for any loss resulting from any defect attributable to inaccurate or incomplete information provided by the Customer. If the Customer can show that he has suffered loss as a result of a defect that would not have occurred if the Service Provider had acted with due care, the Service Provider shall be liable for that loss up to a ceiling equating to the total budget for the assignment concerned.

- 10.2 The Service Provider shall not, however, be liable for any consequential loss, such as commercial or financial loss, data loss, loss of reputation, loss of profit or loss arising from legal proceedings instituted against the Customer by third parties. The Customer has sole liability for the use of the specific services, products and software resulting from the assignment and must therefore give due consideration to the special know-how, documentation and instructions of the Service Provider in this regard.
- 10.3 The Customer shall hold the Service Provider harmless in the event that proceedings are instituted by third parties for loss arising from the communication of inaccurate, incomplete or illegal information by the Service Provider, unless the Customer can show that the loss is not attributable to the purported acts or negligence on its part or that it is attributable to wilful misconduct, or gross negligence equating to wilful misconduct, on the part of the Service Provider.
- 10.4 The Customer is liable for the inaccuracy of the texts and images that he transmits or accepts, as well as the content, titles, illustrations, media, etc., and shall, without reservation, hold the Service Provider harmless in the event that any complaint is made by third parties in relation to the content of the information, texts or images published.
- 10.5 The Customer has unlimited liability for all transactions, such as orders placed, payments made, purchases undertaken, information provided, etc., and shall hold the Service Provider harmless, without reservation, in the event of any claim by third parties in relation to these transactions. The Service Provider is not a party to the relationship between the Customer and his clients and shall, at all times, be deemed a third party.
- 10.6 The Service Provider shall provide a two-month guarantee, running from the delivery date, against any latent defects that were not visible, or which could not be identified through post-delivery user testing, within the deadline for acceptance (see Article 4). The Customer must describe the purported defect within a reasonable time and show that it could not reasonably have been identified earlier. Provided the functionality concerned formed part of the assignment, the Service Provider will then proceed with its repair.
- 10.7 The terms and conditions of third-party warranties on hardware, program codes and software sold are those of the manufacturer/third party Service Provider.
- 10.8 The Service Provider is not liable for any failure to renew a licence in due time or to pay copyright fees and the like, even if the initial licence agreement was provided

through the Service Provider for the purposes of the assignment. On placing an order, the Customer is provided with a copy of the terms and conditions of any licence concerned and has sole responsibility for its renewal, unless this is expressly covered by the assignment or is specified otherwise in an SLA.

- 10.9 Subject to the guarantees expressly referred to in the Assignment Contract, the liability of the Service Provider as regards performance of the obligations imposed under the Contract corresponds to that imposed under Belgian law.

#### **Article 11. Termination of the assignment - Notice**

- 11.1 The Customer and Service Provider may terminate the contract at any time by registered post subject to two-months notice being served on the other party, running from the third working day after the registered letter is sent.
- 11.2 If the assignment is terminated prematurely by the Customer, the Service Provider reserves the right to demand payment of all works already undertaken, including all additional costs incurred in respect of the works, and may be eligible for or accept fixed compensation for loss of business amounting to 30% of the total price of the assignment. The interim results of the works performed up to the date on which the assignment terminates shall be made available to the Service Provider, with all due reservations.
- 11.3 Either party may terminate the assignment unilaterally, with immediate effect, by registered post, without notice and subject to the right to claim compensation, in the event that the other party fails to honour its debts, is declared insolvent, has a trustee in bankruptcy, administrator or liquidator appointed, ceases its activities for any reason whatsoever or commits an act of gross misconduct in the course of performance of the Assignment Contract or if some other factor renders continued proper performance of the Assignment Contract impossible.
- 11.4 If the assignment is terminated by the Service Provider, the Customer is entitled to the assistance of the Service Provider in transferring the works to third parties, unless the facts and circumstances that have led to the termination are attributable to the Customer. The Customer will be invoiced by the Service Provider for any additional costs incurred as a result of the transfer of these works.
- 11.5 On termination of the Contract, each party must return immediately all goods, belongings, documents and electronic media in its possession that belong to the other party.

#### **Article 12. Representation**

- 12.1 The existence of the Contract between the parties does not make the Service Provider an agent or representative of the Customer, nor does the latter have any authority or power over the former, and vice versa.
- 12.2 Neither party is entitled to commit the other party or accept any commitments on behalf of that other party, be

it tacitly or explicitly – by signing a document – without the express prior consent of that other party.

- 12.3 The Customer is formally prohibited from recruiting, directly or indirectly, any employee or consultant working for the Service Provider for the term of the Contract and for one year after the commercial relationship ends.

#### **Article 13. Special provisions on web hosting and domain name registration**

- 13.1 The Customer must appoint at least one person who will be responsible for communication with the Service Provider for the purposes of the SLA and who has the capacity and authority to take decisions and to access the data, reports and logins relating to the hosting activity. The Customer shall ensure that this/these person(s) are available and that their contact details are up to date at all times.
- 13.2 All data relating to and generated by the systems hosted and housed for the Customer under the assignment Contract (reports, log files, files, etc.) are the property of the latter and are deemed to be confidential information. The Customer shall bear the costs of making this data available and accessible.
- 13.3 Unless otherwise agreed, the specific contracts (for hosting/housing) are concluded for a one-year term. They are automatically renewed for consecutive periods of one year unless notice of termination is served by one of the parties by registered post at least two months before the anniversary date.
- 13.4 The Service Provider must guarantee the security of the site as specified in the SLA. It shall not be liable for any damage or damaging consequences attributable to any breach or sabotage of the security systems that compromises overall security, data integrity, confidentiality or the outcome of the transactions. The Customer shall have sole liability for the risks inherent in the use of and access to the sites and shall take out appropriate insurance against such risks.
- 13.5 The Service Provider has no liability whatsoever for the registration of domain names in bad faith by third parties or for registration at the request of the Customer of domain names that breach the rights of third parties. The Customer shall hold the Service Provider harmless in the event of any claim by third parties relating to registration of a domain name.
- 13.6 The Customer shall not, under any circumstances, use the services or facilities provided, including servers and storage facilities, to commit any offence or to cause any loss or nuisance to the Service Provider or third parties. Likewise, the Customer's activities shall not be such as to give rise to such acts. The Customer shall, at all times, ensure that no data, media, program, mega tags, hyperlinks, deep links, cross references or comparable information constituting a criminal or other offence is to be found on the equipment made available by the Service Provider. The Customer shall, on first demand by the Service Provider, hold the Service Provider harmless, including in respect of all court and other legal costs, and

shall act at its own expense in any proceedings instituted against the Service Provider in respect of such acts. The use of sites that publish, or make available, illegal software is prohibited. Spamming is prohibited on all hardware and systems made available by the Service Provider and shall result, *ipso jure*, in immediate termination of the Contract. The Customer shall act immediately on all requests for the removal or change of content made by the Service Provider and on all reasonable requests made in this regard by third parties or by the **moderator**. The Customer also waives the right to claim any compensation in respect of any such removal. The Service Provider also prohibits, *inter alia*, pornographic material, sites that offer content contrary to public order or legislation on business practices or which constitutes any other kind of illegal practice. Nor shall the Customer undertake any acts that infringe copyright, impinge on privacy protection or are an offence under computer crime legislation.

#### **Article 14. Mediation and the courts**

- 14.1 The parties shall endeavour to resolve any dispute relating to the validity, interpretation or performance of the Assignment Contract which cannot be settled amicably through mediation in accordance with the Rules on Mediation of the Brussels Business Mediation Centre (BBMC). Tel. +32 2373 08 76 – Fax: +32 2 375.59.69 - E-mail: [info@bbmcmediation.be](mailto:info@bbmcmediation.be). Neither party may bring an end to the mediation before both parties have been able to set out their position at an opening hearing at which both parties are present. Mediation shall commence within 15 days of a request for mediation being served by one party on the other. The mediation shall not last more than 15 days, unless otherwise expressly agreed by the parties.
- 14.2 The courts of the district of Brussels shall have sole jurisdiction for any litigation in the event that mediation fails.

#### **Article 15. Applicable law**

All contracts concluded between the Service Provider and the Customer shall be governed by Belgian law.