Chapter 1. General

The FMP360 platform is provided by supplier to the customer by means of so called 'named user' licenses. This means that a username/ login name is assigned to a license so that the number of resources are known within the system. The FMP360 customer portal counts as one user on the FMP360 platform.

Within the FMP360 pricing model the customer is able to buy a defined number of licenses by signing the agreement whereby the offer is accepted and these general terms and conditions apply.

Adding new / additional licenses can be done on every moment. The downscaling of licenses can be done once every quarter until one month prior to the start of a new maintenance period.

The mobile licenses are not Operating System ('OS') specific. The customer is required to use the licenses on devices with Operating systems that are supported with the FMP360 Platform.
Not all plug-ins are available on all Operating Systems. If the customer wishes multiple Operating Systems, then supplier can advise the customer whether the FMP360 configuration is able to support this.

Chapter 2. Right of use and restrictions on use

2.1   The supplier shall make the agreed computer programs and agreed user documentation, hereinafter referred to as the 'software', available to the customer for use for the duration of the contract on the basis of a license for use. The right to use the software is non-exclusive and may not be transferred, pledged or sublicensed.

2.2   The supplier's obligation to make available and the customer's right of use extend only to the software's object code. The customer's right of use does not extend to the software's source code. The software's source code and technical documentation prepared during the development of the software shall not be made available to the customer, not even if the customer is prepared to pay a financial amount for the source code and technical documentation

2.3   Supplier deposits its software annually at a leading independent international Escrow company. Supplier offers the customer the opportunity to engage directly with this company to enter into a two-party Escrow agreement for the software. Entering into an Escrow Agreement is outside the scope of an agreement with the supplier and requires an annual fee to be charged the customer.

2.4.   The customer may only use the software in and for its own company or organization and only insofar as doing so is necessary for the intended use.

2.5   The parties maintain that the contract concluded between the parties, insofar as the object of this contract is the making available of software for use, shall never be deemed to be a purchase contract.

2.6   Following the end of the contract, the customer shall return all copies of the software in its possession to the supplier without delay. If it has been agreed that the customer must destroy the copies concerned at the end of the contract, the customer shall report the destruction of the copies to the supplier in writing without delay.

Chapter 3. Intellectual property

3.1   All intellectual property rights to the software, websites, data files, equipment and training, testing and examination materials, as well as other materials like analyses, designs, documentation, reports and offers, including preparatory materials in this regard, developed or made available to the customer under the contract are held exclusively by the supplier, its licensors or its suppliers. The customer shall have the rights of use expressly granted under these general terms and conditions, the contract concluded in writing between the parties and the law. A right accorded to the customer is non-exclusive and may not be transferred, pledged or sublicensed.

3.2   The customer may not remove or change any indication concerning the confidential nature of or concerning the copyrights, brands, trade names or any other intellectual property right pertaining to the software, websites, data files, equipment or materials, or have any such indication removed or changed.

3.3   Even if not expressly provided for in the contract, the supplier may always take technical measures to protect equipment, data files, websites, software made available, software to which the customer is granted direct or indirect access, and the like in connection with an agreed limitation in terms of the content or duration of the right of use of these items. The customer may not remove or bypass such technical measures or have such technical measures removed or bypassed.

3.4   The supplier indemnifies the customer against any claim of a third party based on the allegation that software, websites, data files, equipment or other materials developed by the supplier itself infringe an intellectual property right of that third party, subject to the condition that the customer immediately informs the supplier in writing about the existence and content of the claim and leaves the settlement of the claim, including any arrangements made in this regard, entirely to the supplier. The customer shall provide the powers of attorney and information required to the supplier and assist the supplier to defend itself against such claims.

Chapter 4. Terms and Acceptance

4.1   The supplier shall make reasonable efforts to comply to the greatest extent possible with the terms and delivery periods and/or dates and delivery dates, whether or not these are firm deadlines and/or dates, that it has specified or that have been agreed between the parties.

4.2   If a term is likely to be exceeded, the supplier and customer shall consult with each other about the consequences of the term being exceeded in relation to further planning.

4.3   In all cases, therefore also if the parties have agreed firm deadlines and delivery periods or dates and delivery dates, the supplier shall only be in default as a result of a period of time being exceeded after the customer has declared the supplier to be in default in writing and a reasonable term that the customer granted to the supplier to remedy the breach has passed. The notice of default must describe the breach as comprehensively and in as much detail as possible in order to give the supplier the opportunity to respond adequately.

4.4   Acceptance of the software takes place by signing the acceptance document by the customer. This document is signed after the successful testing of the solution in the acceptance environment and on the basis of the agreed deliverables and acceptance criteria.

4.5   The customer may not refuse to accept the software for reasons that are not related to the specifications expressly agreed in writing between the parties and, furthermore, may not refuse to accept the software because of the existence of minor errors, these being errors that do not reasonably prevent the operational or productive use of the software, the foregoing without prejudice to the supplier's obligation to fix these minor errors in the context of the guarantee scheme referred to in Chapter 10. In addition, acceptance may not be refused because of aspects of the software that can only be assessed subjectively, such as aesthetic aspects of user interfaces.

Chapter 5. Maintenance and Support

5.1   The supplier shall strive to the best of its ability to maintain the FMP360 platform and fixe errors in the software. The operational procedures have been worked out in the FMP360 Product Support and Release Policy.

5.2   The supplier reserve the right to amend the FMP360 Product Support and Release Policy one a year in order to improve the quality and effectiveness of its services.

5.3   On third party internet services that are required or made available for the software, the conditions of that third party will apply.

Chapter 6. Services

6.1   The supplier shall perform its services with care to the best of its ability, if applicable in accordance with the agreements and procedures agreed in writing with the customer. All services by the supplier shall be performed on the basis of an obligation to use best endeavors unless and insofar as the supplier has expressly promised a result in the written contract and the result concerned has also been defined with sufficient determinability in the contract. The operational procedures for services are described in the FMP360 Project and Consultancy Policy.

6.2   The supplier reserve the right to amend the FMP360 Project and Consultancy Policy one a year in order to improve the quality and effectiveness of its services.

6.3   If the contract has been entered into with a view to performance by one specific person, the supplier shall always be entitled to replace this person with one or more persons who have the same and/or similar qualifications.

Chapter 7. Confidentiality, Privacy and Data processing

7.1   The customer and supplier must ensure that all information received from the other party that the receiving party knows or should reasonably know is confidential is kept secret. This duty of confidentiality shall not apply to the supplier if and insofar as the supplier is required to provide the information concerned to a third party in accordance with a court decision or a statutory requirement, or if and insofar as doing so is necessary for the proper performance of the contract by the supplier. The party that receives the confidential information may only use it for the purpose for which it was provided. Information shall in any case be deemed to be confidential if it has been qualified as such by one of the parties.

7.2   The customer is fully responsible for the data that it processes in the context of using a service of the supplier. The customer guarantees vis-à-vis the supplier that the content, use and/or processing of the data are not unlawful and do not infringe any right of a third party. The customer indemnifies the supplier against any claim of a third party instituted for whatever reason in connection with this data or the performance of the contract.

Chapter 8. Termination and cancellation of the contract.

8.1   Each party shall only be authorized to rescind the contract due to an attributable failure in the performance of the contract if the other party, in all cases after a written notice of default that is as detailed as possible and that grants a reasonable term to remedy the breach has been issued, is culpably failing to fulfil essential obligations under the contract. The customer's payment obligations and all obligations of the customer or a third party engaged by the customer to cooperate and/or provide information apply in all cases as essential obligations under the contract.

8.2   If, at the time of rescission, the customer has already received software or services in the performance of the contract, these software or services and the associated payment obligations shall not be undone unless the customer proves that the supplier is in default with respect to the essential part of such software or services. With due regard to the stipulation of the preceding sentence, amounts invoiced by the supplier prior to rescission in connection with what it already properly performed or delivered in the performance of the agreement shall remain payable in full and shall become immediately due and payable at the time of termination.

8.3   The customer may not terminate a contract of engagement that has been entered into for a definite period of time.

8.4   Either of the parties may terminate the contract in writing, in whole or in part, without notice of default being required and with immediate effect, if the other party is granted a moratorium, whether or not provisional, a petition for bankruptcy is filed for the other party or the company of the other party is liquidated or dissolved other than for restructuring or a merger of companies. The supplier may also terminate the contract, in whole or in part, without notice of default being required and with immediate effect, if a direct or indirect change occurs in the decisive control of the customer's company. The supplier is never obliged to repay any amount in money already received or pay any amount in compensation due to termination as referred to in this paragraph. If the customer goes irrevocably bankrupt, its right to use the software, websites and the like made available to it shall end, as shall its right to access and/or use the supplier's services, without termination by the supplier being required.

Chapter 9. Liability of the supplier

9.1   The supplier's total liability due to an attributable failure in the performance of the contract or on any legal basis whatsoever, expressly including each and every failure to fulfil a warranty obligation agreed with the customer, shall be limited to compensation for direct loss up to a maximum of the price stipulated for the contract concerned (excluding VAT). If the contract is mainly a continuing performance contract with a term of more than one year, the price stipulated for the contract shall be set at the total

amount of the payments (excluding VAT) stipulated for one year. The supplier's total liability for direct loss, on any legal basis whatsoever, shall never amount to more than EUR 500.000 (five hundred thousand euros).

For there to be any right to compensation, the customer must always report the loss to the supplier in writing as soon as possible after the loss has occurred. Each claim for compensation against the supplier shall be barred by the mere expiry of a period of 24 months following the inception of the claim unless the customer has instituted a legal action for damages prior to the expiry of this period.

9.2   The supplier's total liability for loss due to death or bodily injury or as a result of material damage to items shall never amount to more than € 1.250.000 (one million two hundred fifty thousand euros).

9.3   The exclusions and limitations referred to in paragraphs 9.1 up to and including 9.2 shall cease to apply if and insofar as the loss is the result of deliberate intent or recklessness on the part of the supplier's management.

Chapter 10. Guarantee

10.1   The supplier shall strive to the best of its ability to fix recognized errors within a reasonable term if these errors are reported in writing in a detailed manner to the supplier within a period of three months following delivery or, if an acceptance test was agreed, within three months following acceptance.

The supplier guarantees that the software will work and/or that errors will always be fixed whereby the fixing work shall be carried out free of charge for the customer when a maintenance contract with supplier is signed.

10.2   The supplier guarantees that the services are of professional quality.

10.3   The supplier may charge for the costs of fixing in accordance with its usual rates if such work is required as a result of user errors or improper use on the part of the customer, or as a result of causes that cannot be attributed to the supplier. The obligation to fix errors shall cease to apply if the customer makes changes in the software or has such changes made without the supplier's written permission.

10.4   The fixing of errors shall take place at a location and in a manner determined by the supplier. The supplier is entitled to install temporary solutions, program bypasses or problem-avoiding limitations in the software. In these general terms and conditions, 'error' means substantial failure of the software to meet the functional or technical specifications of the software expressly made known by the supplier in writing. An error only applies if it can be demonstrated by the customer and if it is reproducible. The customer must report errors without delay. Any obligation of the supplier is limited to errors within the meaning of these general terms and conditions. The supplier does not have any obligation whatsoever with respect to other defects in or on the software.

10.5   The supplier is never obliged to recover data that has been corrupted or lost.

10.6   There are no other warranties respecting the software and documentation or services provided hereunder, either express or implied, including but not limited to any warranty of design, merchantability, or fitness for a particular purpose, even if customer has been informed of such purpose. No agent of supplier, is authorized to alter or exceed the warranty obligations of supplier as set forth herein.

Chapter 11. Price, payment and index

11.1   All prices are exclusive of turnover tax (VAT) and other levies imposed by the government. All prices stated by the supplier are in euros (EUR) and the customer must make all payments in euros.

11.2   The parties shall record the date or dates on which the supplier shall charge the customer for the performance agreed in the contract. Amounts owed must be paid by the customer in accordance with the agreed payment terms or the payment terms stated on the invoice. The customer may not suspend any payment and may also not set off any amounts owed.

11.3   If the customer fails to pay amounts due or fails to do so on time, the customer shall owe statutory interest for commercial contracts on the outstanding amount without a demand for payment or a notice of default being required. If the customer fails to pay the amount due after a demand for payment or a notice of default has been issued, the supplier shall be entitled to refer the debt for collection, in which case the customer must pay all judicial and extrajudicial costs, including all costs charged by external experts. The foregoing shall be without prejudice to the supplier's other legal and contractual rights.

11.4   The supplier shall be entitled to adjust the applicable prices and rates once a year in accordance with the CBS price index: "Cao wages per month including special payments business services."

Chapter 12. Final provisions

12.1   None of the parties shall be obliged to fulfil any obligation, if it is prevented from doing so by force majeure. Force majeure means, among other things, force majeure on the part of the suppliers of the supplier.

12.2   In the event that any of these terms, conditions or provisions in the agreement or this document shall be determined invalid, unlawful or unenforceable to any extent, such term, condition or provision shall be severed from the remaining terms, conditions or provisions which shall continue to be valid to the fullest extent permitted by law.

12.3   This Agreement shall be deemed to be executed in the Commonwealth of Delaware and the Agreement shall be interpreted and enforced according to the laws of the Commonwealth of Delaware, the United States. Parties can agree that a dispute shall be resolved by arbitration.