

TERMS AND CONDITIONS LOADGEN B.V.

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Article 1 - Definitions

1.1 In these terms, the following definitions apply. "LoadGen" means LoadGen B.V., having its statutory seat in The Hague and its office in Zoetermeer, or any LoadGen affiliate that enters into the agreement. "Customer" means the business counterparty that purchases Software, Cloud Services, Support or Services from LoadGen.

1.2 "Software" means all software made available by or on behalf of LoadGen, including desktop applications, agents, recorders, launchers, engines, analysers, dashboards, connectors, API components, scripts, libraries and updates. "Cloud Service" means an online service hosted or managed by LoadGen, including tenants, portals, monitoring, analytics, API testing, SessionSight, uptime monitoring and related functionality.

1.3 "Order" means any quotation, order confirmation, statement of work, online order, subscription, trial confirmation or other written arrangement that sets out the Software, Cloud Service, support, services, term, price, License Metrics or other applicable terms.

1.4 "License Metrics" means the usage metrics set out in the Order, such as number of users, virtual users, launchers, agents, tenants, environments, test runs, API calls, monitoring checks, sessions, data volume, devices or other agreed limits.

1.5 "Customer Data" means all data, content, test scenarios, configurations, scripts, measurement results, reports, log files and personal data entered into, processed by or generated through the Software or Cloud Service by or on behalf of Customer, excluding LoadGen Materials.

1.6 "LoadGen Materials" means the Software, Cloud Service, documentation, designs, methodologies, templates, scripts, source code, object code, know-how, dashboards, technical information, report templates, branding materials and other materials of LoadGen or its licensors.

1.7 "Services" means implementation, configuration, consultancy, training, support, managed services, customisation, proof-of-concept assistance, test guidance and other professional services performed by LoadGen for Customer.

1.8 "Business Day" means Monday through Friday, excluding official public holidays in the Netherlands. "Written" or "in writing" also includes electronic communication, including email and communication through a portal designated by LoadGen.

Article 2 - Applicability and order of precedence

2.1 These terms apply to all offers, Orders, agreements, deliveries, licences, Cloud Services, support and Services of LoadGen.

2.2 Deviations from these terms apply only if expressly accepted by LoadGen in writing. General terms and conditions or purchasing terms of Customer are expressly rejected.

2.3 In the event of conflict, the following order of precedence applies: (a) an agreement or Order signed by both parties; (b) a data processing agreement or data processing addendum, to the extent it concerns personal data; (c) a statement of work or SLA; (d) these terms; and (e) documentation or online product information.

2.4 If any provision is void or voidable, the remaining provisions remain in force. The parties will replace the invalid provision with a valid provision that reflects the purpose and intent of the original provision as closely as possible.

2.5 These terms apply exclusively to business customers. If LoadGen nevertheless contracts with a consumer, mandatory consumer protection rules prevail over these terms.

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Article 3 - Offers, contract formation and trials

3.1 All offers made by LoadGen are non-binding unless the offer expressly states a validity period and binding nature.

3.2 An agreement is formed when LoadGen accepts an Order in writing, makes the Software or Cloud Service available, or starts performing Services.

3.3 Information, advice, demos, calculations, capacity indications and test proposals from LoadGen are based on the information provided by Customer. Customer is responsible for the accuracy and completeness of that information.

3.4 A trial, proof of concept, pilot or beta is provided "as is", solely for evaluation, for the agreed period and subject to the agreed restrictions. LoadGen may modify or terminate a trial at any time in case of abuse, security risks or exceedance of reasonable usage limits.

3.5 LoadGen may reject a request where it has reasonable grounds to do so, including compliance, export, sanctions, security, reputational or credit risks.

Article 4 - Prices, invoicing and payment

4.1 All prices are exclusive of VAT, taxes, travel and accommodation expenses, shipping costs, cloud consumption, third-party costs and other additional costs, unless expressly stated otherwise in writing.

4.2 LoadGen invoices in accordance with the Order. Unless otherwise agreed, subscriptions, licences and support are invoiced in advance. Professional Services may be invoiced in advance, periodically or after performance.

4.3 Invoices must be paid within 30 days after the invoice date, unless the Order specifies a different payment term or mandatory law prescribes a shorter term.

4.4 Customer may not suspend payment or set off amounts, unless the claim has been acknowledged by LoadGen in writing or has been finally established by a court.

4.5 In case of late payment, Customer is automatically in default and owes statutory commercial interest, plus reasonable extrajudicial collection costs. For business customers, the parties may agree different collection costs to the extent permitted by law.

4.6 LoadGen may suspend its obligations if Customer fails to pay on time, if a credit risk arises or if Customer exceeds the License Metrics. Suspension does not affect Customer's payment obligations.

4.7 LoadGen may adjust prices for ongoing services annually as from a new contract period or calendar year. A material price increase, other than indexation or pass-through of demonstrable cost increases, will be announced at least 60 days in advance.

Article 5 - Right of use and licence terms

5.1 After payment of the applicable fees, LoadGen grants Customer a limited, non-exclusive, non-transferable and revocable right to use the Software and Cloud Service during the agreed term and within the agreed License Metrics.

5.2 Customer may use the Software and Cloud Service only for internal business purposes, for its own IT environment or for environments for which Customer is demonstrably authorised to perform tests, monitoring or analyses.

5.3 Customer may not copy, rent, sell, sublicense, make available, reverse engineer, decompile, disassemble, circumvent, benchmark for publication or otherwise use the Software outside the scope of the Order, unless mandatory law permits this.

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5.4 Customer may not remove, modify or circumvent security, licensing, usage, logging or technical protection measures.

5.5 Customer is responsible for all activities under its accounts, API keys, tenants, agents and users. Customer must ensure strong authentication, careful access rights management and timely revocation of rights of departing employees or suppliers.

5.6 LoadGen may apply technical measures to monitor License Metrics, prevent misuse, safeguard security and improve the product, provided such measures are reasonable and proportionate.

5.7 If Customer exceeds the License Metrics, LoadGen may charge additional fees from the moment of exceedance or restrict use to the agreed level.

Article 6 - Cloud Service, availability and changes

6.1 LoadGen will use reasonable efforts to provide the Cloud Service carefully and professionally. Unless a separate SLA has been agreed, availability, response times and recovery times are provided on a commercially reasonable efforts basis.

6.2 LoadGen may modify, improve, secure, extend or replace components of the Cloud Service, provided that the core functionality of the agreed service is not materially reduced.

6.3 LoadGen may perform maintenance. Where reasonably possible, LoadGen will announce scheduled maintenance in advance. Emergency maintenance may be performed without prior notice if required for security, continuity or compliance with law and regulation.

6.4 LoadGen is not responsible for outage or delay caused by internet connections, customer environments, identity providers, endpoints, third-party platforms, hyperscalers, hosting providers or other factors outside LoadGen's reasonable control.

6.5 Customer remains responsible for its own backups, exports, configuration management and retention of essential test scenarios, unless LoadGen has expressly accepted a specific backup obligation for the relevant Cloud Service in writing.

Article 7 - On-premises software, installation and updates

7.1 If Software is installed on-premises, on endpoints, agents, servers or customer infrastructure, Customer is responsible for a suitable technical environment, access, permissions, network connections, third-party licences, security policies and management.

7.2 LoadGen is only required to perform installation or configuration work if this has been agreed in writing. Customer must provide the necessary cooperation, information and access in a timely manner.

7.3 Updates, patches and new versions may include functional changes. Customer is responsible for timely installation of updates where the Software is managed by Customer, especially where updates contain security or stability improvements.

7.4 LoadGen generally supports only current versions and versions designated by LoadGen as supported. Support for older versions may be refused or provided for an additional fee.

7.5 Customer may not use Software in an environment that does not meet the documentation, system requirements or reasonable security standards.

Article 8 - Responsible use of automated, performance and load testing

8.1 Customer will use the Software and Cloud Service solely for lawful testing, monitoring, analysis and optimisation purposes and in accordance with the agreement, documentation, applicable laws and regulations and the terms of the relevant third-party platforms.

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8.2 Customer represents that it is authorised to perform tests, synthetic monitoring, API calls, load tests, performance tests, session monitoring, scans or other measurements on the relevant systems, applications, endpoints, networks, accounts and data. If Customer is uncertain about such authorisation, Customer must not perform the activity until permission has been demonstrably obtained.

8.3 Customer may not use the Software or Cloud Service for attacks, disruption, abuse, unauthorised access, unauthorised vulnerability scanning, denial-of-service or distributed denial-of-service attacks, credential stuffing, password spraying, scraping in violation of law or contract, distribution or testing of malware, circumvention of security measures, violation of sanctions or export rules, or any other unlawful or harmful activity.

8.4 Customer will perform load tests, performance tests, stress tests and synthetic monitoring only on systems for which Customer has permission. For tests on production environments, Customer will arrange in advance appropriate planning, communication, internal approval, monitoring, rollback or fallback measures, capacity monitoring and coordination with relevant internal or external stakeholders, including hosting, cloud or network providers where reasonably required.

8.5 Customer is fully responsible for the design of test scenarios, scripts, test data, test accounts, credentials, selected load, timing, target environments, configurations, geographic origin of traffic, concurrency, frequency, duration and impact of tests and monitoring.

8.6 Customer will not use personal data in test data unless this is necessary, lawful, proportionate and appropriately secured. Where possible, Customer will use synthetic, minimised, anonymised or pseudonymised test data. Customer will not process special categories of personal data, criminal offence data, payment card data, secrets or production keys in the Software or Cloud Service, unless expressly agreed in writing and appropriate additional measures have been implemented.

8.7 Customer must ensure that accounts, API keys, tokens, credentials, test users and scripts used for tests or monitoring have been lawfully obtained, are appropriately secured and are not used to exceed access rights, circumvent security measures or obtain data to which Customer has no lawful access.

8.8 LoadGen may impose reasonable limits on volume, frequency, concurrency, API calls, monitoring checks, test duration, data processing, storage, geographic locations, agent usage or other technical parameters where required for stability, security, compliance, protection of other customers or protection of LoadGen's or third-party infrastructure.

8.9 LoadGen may immediately limit, throttle, block, suspend, remove or terminate tests, accounts, API keys, agents, tenants or features if LoadGen reasonably suspects that use results or may result in security risks, overload, disruption, unlawful conduct, breach of third-party terms, violation of sanctions or export rules, harm to third parties or reputational damage to LoadGen.

8.10 Customer will immediately notify LoadGen if Customer knows or suspects that the Software or Cloud Service is being used for unauthorised tests, misuse, incidents, violation of laws or regulations, violation of third-party terms or activities that could be regarded as an attack, disruption or unauthorised access.

8.11 Customer will indemnify LoadGen against third-party claims, fines, damages, costs and reasonable legal fees arising from unauthorised tests, unlawful use, breach of this Article, use of unlawful test data or infringement of rights or terms of third parties by Customer, its users or parties engaged by Customer.

8.12 Measurement results, dashboards and reports are intended as decision support. LoadGen does not guarantee that all errors, bottlenecks, vulnerabilities, capacity issues, security issues, regressions or user complaints will be detected or prevented.

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Article 9 - Support, maintenance and professional services

9.1 Support is provided in accordance with the Order, SLA or applicable LoadGen support policy. Without a separate SLA, support consists of reasonable efforts during normal office hours.

9.2 Customer must provide all reasonably required information with support requests, including logs, configuration, reproduction steps, version numbers, error messages and relevant environment information.

9.3 Support does not automatically include training, customisation, support for obsolete versions, recovery of configurations modified by Customer, support for third-party software, performance tuning of customer environments or work outside office hours.

9.4 Professional Services are performed by LoadGen with reasonable skill and care on a best-efforts basis, unless a specific result has been agreed in writing.

9.5 Additional work arises if Customer requests additional work or if performance is made more difficult by incorrect information, missing access, scope changes, Customer delays or circumstances outside LoadGen's control. Additional work is invoiced at the applicable rates, unless otherwise agreed.

Article 10 - Acceptance of deliverables

10.1 Standard Software and Cloud Services are deemed delivered once they have been made available or activated. No separate acceptance procedure applies, unless otherwise agreed in writing.

10.2 For specifically agreed deliverables, Customer must accept or reject the deliverable in writing within 10 Business Days after delivery, with reasons, due to material deviations from the agreed specifications.

10.3 If Customer does not respond on time, uses the deliverable in production or builds upon it, the deliverable is deemed accepted.

10.4 Minor defects that do not materially prevent normal use do not prevent acceptance. LoadGen will remedy such defects within a reasonable period.

Article 11 - Customer Data, test data and data export

11.1 Customer retains all rights in Customer Data. LoadGen obtains only the rights required to provide, secure, maintain, analyse and improve the Software, Cloud Service, support and Services as permitted under the agreement.

11.2 Customer is responsible for the lawfulness, accuracy, quality and suitability of Customer Data, test data, scripts, credentials and configurations. Where possible, Customer uses synthetic, minimised, anonymised or pseudonymised test data.

11.3 Customer will not process special categories of personal data, criminal offence data, medical data, payment card data, secrets, production keys or other high-risk data in the Software or Cloud Service, unless expressly agreed and appropriate additional measures have been implemented.

11.4 During the term, Customer may export available Customer Data through the functionality provided by LoadGen for that purpose. After termination, LoadGen will enable Customer to perform a reasonable export of available Customer Data for [30] days, unless otherwise agreed or required by law.

11.5 After the retention period expires, LoadGen may delete Customer Data, unless legal retention obligations, security reasons, disputes or backup cycles justify temporary retention.

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11.6 To the extent the EU Data Act or other mandatory rules on data portability, switching or export apply, the parties will comply with those rules and no provision of these terms will be interpreted as limiting mandatory customer rights.

Article 12 - Privacy and data protection

12.1 The parties will comply with applicable privacy laws, including the GDPR. For personal data processed by LoadGen for its own business operations, such as contact persons, administration, invoicing, security logging and account management, LoadGen acts as controller.

12.2 For personal data processed by LoadGen solely on behalf of Customer within the Software, Cloud Service, support or Services, LoadGen acts as processor and Customer acts as controller, unless the parties agree otherwise in writing.

12.3 Where LoadGen acts as processor, Schedule 1 Data Processing Terms applies. In case of conflict between Schedule 1 and the other terms, Schedule 1 prevails for the relevant privacy matter.

12.4 Customer is responsible for a valid legal basis, transparency towards data subjects, any required consents, cookie or tracking obligations, retention periods and handling data subject requests for processing activities determined by Customer.

12.5 For functionality such as SessionSight, visitor analytics, monitoring, replay, heatmaps or similar digital experience measurements, Customer must assess whether additional notices, consent, a DPIA, works council involvement or contractual arrangements with end customers are required.

12.6 LoadGen may use aggregated or anonymised data for statistics, security, capacity planning, product improvement and benchmarking, provided that such data cannot be traced back to Customer or data subjects.

Article 13 - Security

13.1 LoadGen will implement appropriate technical and organisational measures that are reasonably suitable for the nature of the Software, Cloud Service, Customer Data and risks. The specific measures may be described in a security statement, data processing schedule, SLA or Order.

13.2 Customer remains responsible for the security of its own systems, endpoints, networks, accounts, identity providers, credentials, test accounts, firewall rules, allowlists, agents and configurations.

13.3 The parties will inform each other without undue delay of relevant security incidents that may materially affect the Software, Cloud Service, Customer Data or each other's systems.

13.4 Customer will report vulnerabilities responsibly and will not exploit vulnerabilities. LoadGen may set reasonable rules for responsible disclosure and vulnerability testing.

13.5 To the extent cybersecurity laws such as the Cyber Resilience Act, NIS2 or the Dutch Cybersecurity Act apply, the parties will reasonably cooperate with information requests, notifications, risk assessments and improvement measures. Each party remains responsible for its own legal obligations.

Article 14 - Confidentiality

14.1 The parties will treat all confidential information of the other party as strictly confidential and use it solely for performance of the agreement.

14.2 Confidential information includes in any event non-public product information, source code, architecture, security information, credentials, prices, commercial arrangements, test results, Customer Data, roadmap information, technical documentation and business information.

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14.3 The confidentiality obligation does not apply to information that is public without breach of these terms, was already lawfully known, was independently developed without using confidential information, or must be disclosed by law or by a competent authority.

14.4 The parties will ensure that employees, auxiliaries and engaged third parties who access confidential information are bound by appropriate confidentiality obligations.

14.5 The confidentiality obligation remains in force for five years after the end of the agreement. For trade secrets, source code, security information, personal data and Customer Data, the obligation continues for as long as the information remains confidential in nature.

Article 15 - Intellectual property

15.1 All rights in LoadGen Materials remain vested in LoadGen or its licensors. Customer obtains only the rights of use expressly granted under the agreement.

15.2 All rights in Customer Data remain vested in Customer or its right holders. Customer grants LoadGen a limited right to use Customer Data for performance of the agreement.

15.3 If LoadGen develops scripts, configurations, templates, connectors, reports or other materials as part of Services, generic components, know-how, methodologies and reusable elements remain the property of LoadGen. Customer receives a right of use for internal use with the agreed Software or Cloud Service.

15.4 Customer may not use LoadGen's trademarks, trade names, logos or product names without prior written consent, except for internal identification of the purchased products.

15.5 LoadGen may identify Customer as a business reference, including name and logo, unless Customer objects in writing in advance or the parties agree otherwise.

Article 16 - Third-party software, platforms and open source

16.1 The Software and Cloud Service may depend on or interoperate with third-party platforms, cloud providers, operating systems, browsers, Citrix, Azure Virtual Desktop, Omnisia Horizon, Microsoft RDS, Jenkins, Azure DevOps, Visual Studio Team Services, OpenAPI sources, identity providers or other external services.

16.2 LoadGen is not responsible for changes, availability, licence terms, costs, restrictions or failures of third-party platforms or services, unless LoadGen provides them to Customer as its own service.

16.3 Open-source components may be provided under their own licence terms. To the extent open-source licence terms differ from these terms, those open-source terms apply to the relevant component.

16.4 Customer is responsible for all licences, consents and rights required for the use of third-party systems on which or with which Customer tests, monitors or integrates.

Article 17 - AI, analytics and automated insights

17.1 If LoadGen offers AI or analytics functionality, outputs are intended as supporting insights. Customer remains responsible for assessment, validation and decisions based on those outputs.

17.2 LoadGen does not guarantee that AI or analytics outputs are complete, error-free, up to date or suitable for a specific purpose. Customer may not use outputs as the sole basis for decisions with legal or similarly significant effects on individuals without appropriate human review.

17.3 LoadGen will not use Customer Data to train generic AI models for the benefit of third parties, unless Customer has expressly consented or the data has been anonymised so that it cannot be traced back to Customer or data subjects.

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17.4 Customer is responsible for the content of prompts, configurations and data used within AI or analytics functionality.

Article 18 - Warranty and disclaimers

18.1 LoadGen warrants that it will provide the Software, Cloud Service and Services with reasonable skill and care.

18.2 LoadGen does not warrant that the Software or Cloud Service will be uninterrupted, error-free, entirely free of vulnerabilities or suitable for every purpose intended by Customer.

18.3 LoadGen does not warrant that tests, monitoring or analyses will detect or prevent all errors, degradations, capacity issues, security issues, user complaints or regressions.

18.4 If Customer reports a defect, LoadGen will use reasonable efforts to remedy the defect, provide a workaround or adjust the service. This is Customer's sole remedy for defects, unless mandatory law provides otherwise.

18.5 Warranties lapse if defects are caused by improper use, unsupported versions, customer modifications, third-party systems, missing updates, unsuitable infrastructure, force majeure or acts or omissions of Customer or third parties.

Article 19 - Indemnity for intellectual property infringement

19.1 LoadGen will defend Customer against a third-party claim alleging that Software or Cloud Service supplied by LoadGen infringes an intellectual property right in the Netherlands or the European Union, provided that Customer immediately notifies LoadGen in writing, gives LoadGen full control over the defence and settlement and provides reasonable cooperation.

19.2 If an infringement claim appears well-founded, LoadGen may, at its option: (a) obtain the right to continue use; (b) modify the Software or Cloud Service; (c) provide an equivalent replacement; or (d) terminate the relevant service and refund prepaid fees for the remaining period.

19.3 LoadGen is not liable for claims arising from Customer Data, Customer instructions, materials not supplied by LoadGen, combination with products not supplied by LoadGen, use in breach of the agreement or modifications by Customer or third parties.

19.4 Customer will indemnify LoadGen against claims arising from Customer Data, test data, use of third-party systems, unauthorised tests, Customer's breach of privacy laws or use of the Software or Cloud Service in breach of these terms.

Article 20 - Liability

20.1 LoadGen's total liability for attributable breach, tort or otherwise is limited to compensation for direct loss up to the amount paid by Customer to LoadGen in the 12 months preceding the event causing the loss for the relevant Software, Cloud Service or Service, subject to a maximum of EUR 25,000.

20.2 If the agreement has lasted less than 12 months, the liability limit is calculated on the basis of the agreed fee for 12 months.

20.3 LoadGen is not liable for indirect loss, consequential loss, loss of profit, lost savings, loss of revenue, reputational damage, loss of goodwill, business interruption, missed contracts, loss or corruption of data, costs of data reconstruction or damage resulting from third-party claims, unless mandatory law provides otherwise.

20.4 The limitations do not apply to loss resulting from intent or deliberate recklessness of LoadGen's management, or to liability that cannot be excluded by law.

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20.5 A separate liability limit may be agreed in the Order for privacy, security or confidentiality claims. Without a separate agreement, the general limit in this Article applies.

20.6 Customer must report damage in writing as soon as possible, but no later than 3 months after discovery. Any claim expires 12 months after the claim arose, unless mandatory law provides otherwise.

Article 21 - Term, renewal and termination

21.1 The term of subscriptions, licences, support and Cloud Services is set out in the Order. If no term is stated, an initial term of 12 months applies.

21.2 Unless otherwise agreed, a subscription renews after expiry for the same period each time, unless either party gives written notice at least 3 months before the end of the then-current period. For monthly subscriptions, a notice period of 1 month applies.

21.3 Either party may terminate the agreement in whole or in part if the other party materially breaches the agreement and fails to remedy the breach within 30 days after written notice of default. In case of urgent security, compliance or payment risks, LoadGen may suspend or terminate more quickly where reasonably necessary.

21.4 LoadGen may terminate the agreement or access if Customer is declared bankrupt, applies for suspension of payments, ceases its business, breaches the licence terms, misuses LoadGen Materials, performs unlawful tests or causes a serious security risk.

21.5 Termination does not release Customer from payment obligations that arose before termination. Prepaid amounts are not refunded, except to the extent the agreement, mandatory law or a Data Act switching right requires otherwise.

21.6 After termination, Customer must cease all use of the Software and Cloud Service, remove installed Software to the extent the right of use has ended and confirm this in writing on request.

Article 22 - Exit, switching and data portability

22.1 LoadGen will reasonably cooperate with an orderly exit and export of available Customer Data. The nature, scope, planning, costs and technical possibilities of exit assistance may be set out in a separate Order or exit plan.

22.2 LoadGen will not charge separate fees for standard export functionality, unless otherwise agreed in the Order or if additional support, customisation, conversion, consultancy or third-party costs are involved.

22.3 To the extent the EU Data Act applies to a Cloud Service or other data processing service, LoadGen will not impose unreasonable technical, contractual or commercial switching barriers and will comply with applicable information and switching obligations.

22.4 Customer acknowledges that export or switching may be limited by technical impossibility, security risks, third-party rights, legal retention obligations, protection of LoadGen Materials, confidentiality or data that does not qualify as Customer Data.

22.5 LoadGen is not required to transfer source code, internal tools, proprietary formats, know-how, underlying models, security logs of other customers or other LoadGen Materials.

Article 23 - Force majeure

23.1 Neither party is required to perform an obligation if it is prevented from doing so by force majeure.

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23.2 Force majeure includes failures of internet, cloud, hosting or telecom providers, cyberattacks, DDoS, malware, war, terrorism, pandemic, fire, natural disasters, government measures, strikes, power outages, supply chain disruptions and failures of third-party suppliers that could not reasonably have been prevented.

23.3 The party relying on force majeure will notify the other party as soon as possible and mitigate the consequences to the extent reasonably possible.

23.4 If force majeure lasts longer than 60 days and materially prevents performance on a continuing basis, either party may terminate the affected Order without compensation. Services already performed remain payable.

Article 24 - Export, sanctions and compliance

24.1 Customer will use the Software, Cloud Service and Services in accordance with applicable export control, sanctions, anti-corruption, privacy, cybersecurity and telecommunications rules.

24.2 Customer will not use, export, re-export or make available the Software, Cloud Service, documentation or technical information in breach of applicable laws or to sanctioned persons, entities, countries or destinations.

24.3 LoadGen may refuse, suspend or terminate delivery, access or support where required due to export control, sanctions, compliance policy or reasonable suspicion of a violation.

24.4 Customer will provide all reasonably required information on request to enable compliance checks.

Article 25 - Changes to terms and product policies

25.1 LoadGen may change these terms, support terms, security statements, product policies and documentation for future Orders and renewals.

25.2 For ongoing Cloud Services or subscriptions, LoadGen will announce material changes that are adverse to Customer at least 30 days in advance, unless a change is necessary due to law, security, abuse prevention or urgent operational reasons.

25.3 If a material change materially and adversely affects Customer's contractual position, Customer may terminate the affected service as of the date the change takes effect, provided Customer notifies LoadGen in writing within 30 days after notice of the change.

25.4 Non-material changes, improvements, clarifications and changes resulting from law, security or product development do not give a right to terminate.

Article 26 - Audit and usage verification

26.1 LoadGen may request reasonable information to verify whether Customer uses the Software and Cloud Service within the agreed License Metrics and terms.

26.2 An audit will not take place more than once per calendar year, unless LoadGen has a reasonable suspicion of material exceedance or misuse. Audits will be conducted on reasonable prior notice and with minimal disruption to Customer's business operations.

26.3 If an audit shows that Customer has used more than permitted, Customer must pay the additional fees due. If the exceedance is more than 5 percent, LoadGen may also charge reasonable audit costs.

26.4 LoadGen will treat audit information as confidential and use it only for compliance with the agreement.

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Article 27 - Assignment and subcontracting

27.1 Customer may not assign rights and obligations under the agreement without LoadGen's prior written consent. LoadGen will not unreasonably withhold consent in case of an internal reorganisation or transfer of business, provided the acquiring party is sufficiently creditworthy and compliant.

27.2 LoadGen may assign rights and obligations to a group company or acquirer of its business or product line.

27.3 LoadGen may engage auxiliaries and subcontractors to perform the agreement. To the extent personal data is processed, Schedule 1 applies.

Article 28 - Personnel and non-solicitation

28.1 During the agreement and for 12 months thereafter, Customer will not actively approach or hire employees or regular contractors of LoadGen who are materially involved in performing the agreement, without LoadGen's prior written consent.

28.2 This provision does not apply to general recruitment campaigns that are not specifically targeted at LoadGen personnel.

28.3 In case of breach, Customer owes reasonable compensation equal to 25 percent of the gross annual salary or annual fee of the person concerned, without prejudice to LoadGen's right to additional damages to the extent permitted by law.

Article 29 - Governing law and disputes

29.1 All offers, Orders, agreements and these terms are governed exclusively by Dutch law.

29.2 The United Nations Convention on Contracts for the International Sale of Goods is excluded.

29.3 Disputes will be submitted exclusively to the competent court in The Hague, unless mandatory law designates another court or LoadGen chooses the court competent under the law.

29.4 The parties will use reasonable efforts to discuss disputes at management level before commencing court proceedings, unless urgent measures are required.

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Schedule 1 - Data Processing Terms

This schedule applies where and to the extent LoadGen processes personal data as processor on behalf of Customer.

1. Subject matter and duration

LoadGen processes personal data to provide, secure, support, maintain and improve the agreed Software, Cloud Service and Services, for the duration of the agreement and any applicable retention periods.

The nature and purpose of the processing consist of hosting, storage, analysis, monitoring, support, logging, reporting, troubleshooting, account management and execution of Customer's instructions.

2. Categories of personal data and data subjects

Possible categories of personal data include business contact details, account details, usernames, email addresses, technical identifiers, IP addresses, device data, session data, log data, test account data, usage data, monitoring data and data that Customer itself processes in test scenarios or reports.

Possible data subjects include employees, contractors, administrators, end users, test users, visitors of applications monitored by Customer and Customer contact persons.

Customer will not process special categories of personal data or criminal offence data, unless agreed in writing in advance.

3. Instructions

LoadGen processes personal data only on the basis of Customer's written instructions, including the agreement, documentation, configuration choices and support requests.

If LoadGen believes that an instruction breaches the GDPR or other privacy law, it will inform Customer, unless legally prohibited from doing so.

4. Security

LoadGen will implement appropriate technical and organisational measures, taking into account the state of the art, implementation costs, nature, scope, context and purposes of processing and the risks to data subjects.

Measures may include access security, authorisation management, logging, encryption where appropriate, backup and recovery processes, vulnerability management, patching, network security, confidentiality and incident processes.

5. Subprocessors

Customer gives general authorisation for the engagement of subprocessors. LoadGen maintains an up-to-date overview or provides it on request.

LoadGen imposes privacy obligations on subprocessors that are at least equivalent to those in this schedule. LoadGen remains responsible to Customer for compliance by subprocessors.

LoadGen will inform Customer of intended relevant changes to subprocessors so that Customer may object on reasonable privacy grounds.

6. Transfers outside the EEA

Transfers of personal data outside the European Economic Area will take place only where a valid legal basis exists, such as an adequacy decision, standard contractual clauses or another permitted transfer mechanism.

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LoadGen will provide reasonable information about transfers to the extent required for Customer's compliance.

7. Personal data breaches

LoadGen will inform Customer without undue delay after becoming aware of a personal data breach relating to personal data processed by LoadGen as processor.

LoadGen will provide the reasonably available information that Customer needs to assess its notification obligations. Customer remains responsible for notifications to supervisory authorities and data subjects, unless the parties agree otherwise.

8. Assistance

Taking into account the nature of the processing and the information available, LoadGen will provide reasonable assistance with data subject requests, DPIAs, prior consultation, security and personal data breach assessments.

LoadGen may charge reasonable costs for assistance outside standard functionality or regular support.

9. Audits

LoadGen will make reasonable information available to demonstrate compliance with this schedule, for example security documentation, certifications, audit reports or completed questionnaires where available.

An on-site audit or technical inspection will take place only where necessary, on reasonable prior notice, during office hours, under confidentiality and without disruption to the service or the security of other customers.

10. Return and deletion

After the end of the processing services, LoadGen will delete personal data or make it available to Customer, at Customer's choice and to the extent technically reasonable.

LoadGen may retain copies to the extent required by law, security, backup cycles or dispute retention. After the relevant period expires, these data will be deleted in accordance with the normal deletion process.