

## ANNEX 1

### GENERAL TERMS & CONDITIONS

#### 1 GENERAL

##### 1.1 Applicability

- 1.1.1 These Terms & Conditions apply to all (legal) acts between Ingy and the Client and will remain applicable until termination unless it is stipulated otherwise in this Agreement. The applicability of any other conditions (of use) or agreements is explicitly rejected, unless and insofar as Parties explicitly agreed on their applicability. A derogation or amendment from this Agreement will only be valid if Parties have agreed upon it in writing.
- 1.1.2 Ingy may amend the Terms & Conditions from time to time. The notification hereof can be made in writing, by e-mail. The amendments will enter into effect one (1) month after notification, unless stipulated otherwise. If Client does not wish to agree to these amendments, they must be rejected within fifteen (15) days of being so informed. In that case, Ingy will discuss with Client, or decide to end the Agreement with a month's notice.
- 1.1.3 Any tender or offer made by Ingy is non-binding and revocable, and has a validity of one month from the offer date unless explicitly stated otherwise.
- 1.1.4 Transfer by the Client of an Agreement or the rights and obligations contained in it requires our prior written permission, which permission will not be withheld unreasonably. Client hereby gives Ingy permission in advance, as referred to in Book 6, Section 159 of the Dutch Civil Code (BW), to transfer such Agreement at any time desired to a third party to be indicated by us. If and insofar as necessary or desirable, you undertake to confirm the aforementioned permission in writing.

##### 1.2 Sub-licensing

- 1.2.1 Where the Client has the right to sub-license any right or license under the Agreement the following will apply.
- 1.2.2 If the Client may grant sub-licenses (including the right to grant further sub-licenses) these sub-licenses are only valid and enforceable during the term of the Agreement, provided that (i) each sub-license is in writing; (ii) its terms and conditions include these Terms and Conditions by reference, (iii) that Ingy is given notice of the sub-license and Ingy may require an overview of sub-licensees; (iv) Client shall be fully responsible for the performance of the sub-license; (v) any act or omission by the sub-licensee shall be treated as an act or omission of Client.
- 1.2.3 Any sub-license is without prejudice to any of Clients obligations under the Agreement.
- 1.2.4 Termination of the Agreement will end sub-licenses forthwith, but Ingy may decide to negotiate a License agreement with the sub-licensee in good faith.

##### 1.3 Definitions

- 1.3.1 *Agreement*: is this agreement between the Parties related to the delivery of Services or any other Deliverable, including these Terms & Conditions, the cover sheet and the Annex(es):
- 1.3.2 *Fees*: are all payments and charges payable to Ingy under this Agreement whether or not included in the Cover sheet and / or Annexes, such as License fees, Subscription Fees, Fees for Professional Services and any other payment and expenses due to Ingy.
- 1.3.3 *Client*: The legal entity or entities with which the Agreement with Ingy is entered into.
- 1.3.4 *Confidential Information*: are (i) the contents of this Agreement and any other document related hereto, (ii) unregistered Intellectual Property Rights owned by a Party, (iii) any information received from a Party that is identified or that shall be deemed to be

- understood as confidential, (iv) the Software, and (v) any and all information of any kind whatsoever, whether written or oral, including without limitation financial information, trade secrets, client lists and other proprietary business information, regarding a Party or any of its affiliated companies.
- 1.3.5 *Deliverables*: the entirety of deliverables provided to the Client by Ingy as described in the Agreement.
- 1.3.6 *Faults*: as further defined in art. 3.2.
- 1.3.7 *Nodes*: an Ingy-capable device commissioned as a node in a wireless mesh by an Ingy Gateway.
- 1.3.8 *Ingy*: Ingy B.V. and its legal successors or a company or partner affiliated with Ingy B.V.
- 1.3.9 *(Ingy) Beyond Lighting - License*: a license to use the Ingy Beyond Lighting Infrastructure, consisting of the Ingy Gateway, Ingy Nodes, Ingy Cloud Connector and Ingy API with a data subscription, based on an active Ingy Beyond Lighting - Agreement.
- 1.3.10 *Ingy Cloud Connector*: is the Cloud-based software-as-a-service that makes acquisition of data from Nodes possible through the Ingy API.
- 1.3.11 *(Ingy) Hardware Partner – License*: License to embed Ingy Software in hardware, making these Ingy enabled, based on the on the Ingy Hardware Partner - Agreement.
- 1.3.12 *Ingy Gateway*: is a device with Ingy software arranged to establish a wireless mesh of Nodes reporting to an Ingy Cloud Connector.
- 1.3.13 *Intellectual Property Rights*: are all industrial and intellectual property rights, including pending applications for registration of such rights and the right to apply for registration of such rights, and further including, but not limited to, patents, utility models, design patents, registered designs, design rights, copyright and moral rights, rights in inventions, technical information, trademarks, service marks, trade names, corporate names, domain names, know-how and proprietary information, rights in respect of databases, software (including object and source codes), processes, models, formulae and experiments and all rights of equivalent or similar effect to any of those which may subsist anywhere in the world.
- 1.3.14 *Hardware*: The hardware supplied by Ingy or its Partners as part of or in relation to the Deliverable.
- 1.3.15 *Identification Information*: Log-in name, passwords, address information and/or other codes.
- 1.3.16 *Interference*: the non-availability of a business-critical component of Products. An Interference exists only if it can be demonstrated and reproduced.
- 1.3.17 *License fee*: is a fee due for the instalment of a Software-Stack unto a single device.
- 1.3.18 *Maintenance fee*: is a fee agreed for maintenance, e.g. in an implementation plan.
- 1.3.19 *Object Code*: the computer code mainly in a binary format suited to be executed by a computer without requiring reverse engineering, compilation or assembly.
- 1.3.20 *Party or Parties*: are Ingy and/or the Client (as applicable).
- 1.3.21 *Partner(s)*: Third parties employed by Ingy that provide Deliverables to Client.
- 1.3.22 *Products*: are all Ingy products or Third-Party Products provided under this Agreement.
- 1.3.23 *Professional Services*: are services other than those included in the Ingy Cloud Connector subscription, to be agreed to specifically by Ingy, such as consultancy, training, support regarding commissioning of the platform, integration of the Ingy Cloud Connector, onsite support, advice on the use of the Ingy application.
- 1.3.24 *Software*: is any developed or licensed software delivered to the Client including any future corrections and/or updates

developed which may be released by Ingy during the term of this Agreement.

- 1.3.25 *Software-Stack*: is the Ingy Software to be embedded in a device and the instructions regarding this Software.
- 1.3.26 *Source Code*: The computer code in a format that is readable and understandable for a reasonably skilled programmer, including system documentation, comments and procedural codes. The Source Code does not include the Object Code.
- 1.3.27 *Support*: with regard to Software, as further defined below in 2.4.
- 1.3.28 *Terms & Conditions*: These terms & conditions, which are an integral part of the Agreement.
- 1.3.29 *Territory*: is the geographical area indicated in the Cover Sheet in which you have our license to use our Software and Intellectual Property Rights.
- 1.3.30 *Third-party Products*: products and services provided Ingy, including software programs, that are provided by third parties and of which any intellectual property rights in principle do not lie with Ingy.
- 1.3.31 *Third-party General Terms and Conditions*: Third-party General Terms and Conditions among other things include the delivery conditions, licensing conditions, warranty conditions and other conditions used by third parties.
- 1.3.32 *Unit*: is a device into which an Ingy Software-Stack is installed.
- 1.3.33 *Year Total*: the total number of individual Nodes that have reported to the Client's Cloud Connector(s) in a calendar year.
- 1.3.34 (PM)

#### 1.4 Deliverables

- 1.4.1 Ingy will deliver the agreed Deliverables. Deliverables can include (i) Hardware, such as the Infrastructure Gateway hardware, the procured Ingy-capable devices with Ingy Software-Stack; (ii) Software, such as the Ingy control app, the various API's, or

custom integration programming, (iii) Software as a Service (Saas), such as the Ingy Cloud Connector Module and data subscription, and (iv) Services, such as the site commissioning, training remote support and integration services, or any other agreed deliverable(s). The delivery of the Deliverables is considered a best-effort obligation by default.

- 1.4.2 While all (delivery) time estimates for the Deliverables are determined by Ingy to the best of its knowledge and upheld as much as possible, they are never considered deadlines. Ingy will consult with the Client as soon as it is aware of circumstances that may impede timely delivery. The Client is not entitled to compensation due to late delivery.

- 1.4.3 Ingy may use Partners for the delivery of agreed Deliverables. Products or services delivered to the Client by such Partners may be subject to Partner Conditions, to be provided to the Client by Ingy or the Partner. If the Client wishes to use the products or services of the Partner, they must agree and strictly comply with the Partner Conditions. Ingy has no influence on the contents of the Partner Conditions. If the Client objects to the Partner Conditions, they must so inform Ingy without delay. Ingy has no influence on the quality, safety or legality of (the offer of) products or services of Partners, insofar as they are delivered directly by the Partner, or the correct functioning of the products or services of the Partners, and is not liable for them.

#### 1.5 Term and Termination.

- 1.5.1 Agreements commence on the start date provided therein and have an unlimited term unless a limited term is expressly included. Agreements for a limited can only be terminated early on grounds provided in the Agreement. Agreements for a limited term are automatically converted into an

Agreement for an unlimited term after the agreed term has ended and can then be terminated in accordance with this here Article 1.4.

1.5.2 Agreements for an unlimited term may always be terminated by each Party in writing (including email) at the end of the calendar month with a notice term of two (2) calendar months.

1.5.3 Ingy has the right to terminate an Agreement immediately and without notice of default if the Client is granted suspension of payment, is declared bankrupt or the Client's company is liquidated or otherwise terminated for reasons other than reconstruction or merging of companies.

1.5.4 Without prejudice to the above, each Party will have the right to terminate the Agreement if the other Party is in breach of obligations under the Agreement and, after giving written notice of default, the other Party fails to meet to remedy that breach within a reasonable term of the notice being sent. In case of a breach (*tekortkoming*) by the Client, Ingy will be entitled to suspend its obligations resulting from the Agreement without first sending a notice of default.

1.5.5 Ingy is not liable for any damages resulting from the dissolution or termination of the Agreement.

1.5.6 When an Agreement is terminated, any license or right to use derived from that Agreement ends on the expiry date. Client will then end all use of Ingy's Products or functionalities provided under the Agreement.

## 2 SOFTWARE

### 2.1 License and use rights

2.1.1 Unless agreed otherwise, the Client shall have a non-exclusive and non-transferable license to make use of the Ingy Software, including the use of Intellectual Property Rights incorporated therein, in the Territory and to the extent that such use is necessary

for the performance of the Agreement, for the term of the Agreement and subject to the timely payment of the relevant Fees and other agreed payments to Ingy.

2.1.2 Ingy will charge fees associated with the use, as a lump-sum or as periodical fees (for instance yearly or monthly).

2.1.3 Unless agreed otherwise, the Client's use rights are restricted to the Object Code, and do not include the Source code. Source codes will only be provided based on written agreement only. Parties do not consider the Agreement to be a purchasing agreement with respect to Software.

2.1.4 Client is shall **not** disclose, reproduce or modify any Software or to resell, or distribute the Software.

2.1.5 Client shall **not** decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or discover any Source code or underlying ideas, user interface techniques or algorithms, file formats or programming or interoperability interfaces of the Software, or remove any product identification, copyright or other notices, or without our prior written consent modify or incorporate the Software into or with other software or services or make derivative works thereof, or take any action that would cause the Software placed in the public domain. Furthermore, the Client shall not allow third parties to do any of the above.

2.1.6 If Software includes Open Source Software, the license terms and conditions of the applicable Open Source Software apply.

2.1.7 If the Agreement ends or if the Client no longer meets the agreed upon periodic payments, this License and use right expires. The moment the rights of use of the Products expire, the Client is no longer permitted to use the Products and the Client is obliged at own costs and risk to return the Products to Ingy and to destroy any copies thereof.

2.1.8 The scope of the rights of use of Third-party Products is determined by the Third-party General Terms and Conditions as is set out in **article 6.2**. Where there are no deviations from the Third-party General Terms and Conditions in the above, then the above applies by analogy.

## **2.2 Checks**

2.2.1 Where the due License Fees, Subscription Fees or other charges are determined by the number of relevant Products, Ingy may include technical limitations and control mechanisms in the Products in order to prevent and/or inspect that the actual number of Nodes does not exceed the agreed upon number of Products. Furthermore, Ingy may monitor and inspect the data acquired by Client for this purpose at any moment. If it does so, Ingy will keep record thereof.

2.2.2 In addition, Ingy is authorized to perform announced and unannounced inspections either by itself or through a third party during the Agreement, also on the Client's premises, taking due account of the interests of the Client for secrecy and/or privacy. The Client will provide full cooperation and access to this end.

2.2.3 If Ingy concludes from an inspection, or otherwise, that the actual number of number or relevant Products exceeds the agreed upon number, Ingy may ask the Client to make payment for the missing Fees retroactively and without delay.

2.2.4 Ingy will provide reasoned specifications of its findings to the Client, who will be deemed to have accepted the specification as correct, if it is not contested with evidence to the contrary within 7 days.

2.2.5 If the client wishes to lower the previously agreed number of relevant Products, the Client must indicate this to Ingy at ninety (90) days before the end of the calendar year.

## **2.3 Maintenance, updates**

2.3.1 It may be necessary to from time to time maintain or update the Ingy Software. Ingy has the right to update or upgrade its Software at its discretion. When possible, Ingy will inform the Client of the processing of updates, upgrades and/or changes to Software in due time, and Ingy shall do so, if it believes it will have a material effect on the use of Software.

2.3.2 If the Client operates Software components that are part of a wider Ingy Infrastructure, Client will make sure to keep equipment and Software up to date and in a good work order. Ingy may require that Client installs updates of its Software as a condition for further access or service.

2.3.3 It is the responsibility of the Client to maintain integration of the Software with third party platforms, and this also applies where an update makes it necessary to restore this integration, even if that had previously been performed by Ingy.

## **2.4 Support**

2.4.1 Support of Software consists of efforts to repair Faults in the Products. It is not normally provided with the Products. Any right to Support will end with expiry of the Agreement.

2.4.2 Unless agreed otherwise in writing Ingy will make support available to you remotely by sufficiently experienced staff, during our office hours (presently Monday to Friday from 09:00 AM to 17:00 PM CET).

2.4.3 If reasonably needed and requested by Ingy, support may be subject to having access to your hardware, samples, software, information and/or documentation and/or a sufficiently knowledgeable counterpart from Licensee.

2.4.4

2.4.5 Unless agreed otherwise, Support is not provided on location, but online, by

telephone and email, within a reasonable time following the Clients report of a Fault.

2.4.6 It is the responsibility of the Client to report any Fault and then provide to Ingy the information that is required to act.

2.4.7 For the sake of clarity, it is noted that the following is not Support or Maintenance: upgrades, providing functional adjustments, design, UI-improvement, integration with third-party software and/or third-party templates, or any on-site activity.

2.4.8 Support and/or Maintenance may be refused if the Products have been altered by the Client without Ingy's prior approval; or if Support is required as a result of incorrect use, by Client or Client's customers or end users, or outside force; or if the Client refuses to install new versions or updates.

2.4.9 If Client is in breach of any obligation under this Agreement, or if Ingy have a reasonable suspicion of such a breach, we may suspend part of or all services under this Agreement at our discretion.

2.4.10 If Ingy decides to discontinue any Software we will nevertheless continue Maintenance support for up to a year following the notice of discontinuation.

2.4.11

## 2.5 Software Made-to-order

2.5.1 Any assignments for Made-to-order Software will be based on a statement of work to be agreed between Ingy and Client. The work will be charged on Subsequent Calculation basis, unless agreed otherwise. Ingy will perform its work based on the information to be provided by the Client. Client will make sure to make sufficient and sufficiently knowledgeable staff available for the project.

2.5.2 Ahead of delivery Ingy will test the Product for technical consistency and correct operation. The Client will be responsible for testing the functional and quantitative workings of the Product.

2.5.3 Intellectual property rights remain with and inure to Ingy at all times.

## 2.6 Installation and implementation

2.6.1 Client will be responsible for the correct installation of the delivered Software. Ingy will only install and/or implement the Products or have them installed and/or implemented based on a written agreement.

2.6.2 If Ingy undertakes installation or implementation, it is the responsibility of the Client to make sure at its costs that the conditions set out by Ingy have been. If applicable, the Client will ensure that required Third Party Licenses have been obtained in order to allow for a legal installation.

2.6.3 If the installation and/or implementation was delayed through no fault of Ingy, the Client will make payments as if the installation and/or implementation was completed. A new place and time for installation will then be determined.

## 3 DELIVERY

### 3.1 Terms.

3.1.1 Any and all delivery terms have been determined by Ingy to the best of its knowledge on the basis of the information that has been provided to Ingy. They will be taken into account as much as possible. As such, however, (delivery) terms are never considered to be absolute terms in which delivery must take place. When a term is exceeded, the Client will need to send Ingy a written notice of default. In the case of such an event, Ingy needs to be given a reasonable period of time to still implement the agreement. If there is a possibility that any term will be exceeded, Ingy and the Client will deliberate as soon as possible with respect to a new term. Ingy will under no circumstances accept liability if a (delivery) term were to be exceeded.

### **3.2 Faults.**

3.2.1 Fault(s) are defined as the failure to meet the functional specifications determined in writing by Ingy and, in case of developing Custom Products, the functional specifications agreed upon expressly in writing. A Fault exists only if it can be demonstrated and reproduced. The Client is obliged to notifying of the Fault through a written service request without delay.

3.2.2 No obligation to repair exists where Faults are caused by: use of the Software contrary to the Agreement or written instructions or other misuse whether by Client, or Client's customers or end-users; by other software or product used by you; a change made to the Software by Client or by a third party. Every right to repair Faults expires if the provided Products have been altered in any way or any form by the Client. Also, any correction of Faults is subject to receiving a description and specification of the Fault in a written service request.

3.2.3 Ingy may as repair implement temporary solutions, emergency solutions, bypasses, and/or other problem-limiting measures, all by providing written instructions, or timely updates without the Fault. Acceptance of the Products cannot be withheld on grounds other than those related to the specifications expressly agreed upon between the parties and thus not due to the existence of small Faults that do not reasonably hamper operational or productive use of the Products.

3.2.4 Ingy does not warrant that the Software delivered to the Client is suited to the actual or intended use by the Client. Ingy also does not warrant that the Software will run without interruption, Faults or defects or that all Faults and defects will always be repairable. Ingy will make best efforts to repair Faults in the Software within a reasonable term in accordance with the agreements to be entered into with the Client. Ingy will charge

the costs of repair according to their usual rates. Ingy is never obliged to repair illegible or lost data.

## **4 HARDWARE**

**4.1** This Article applies if Ingy delivers Hardware to the Client under the Agreement. This will include the Ingy Gateway Hardware, but Ingy may also source devices for the Client, such as mounts, detectors, etc., that contain the Ingy wireless Software-Stack.

4.1.1 Hardware shall be delivered Ex Works (Incoterms 2020), unless otherwise agreed in writing. Delivery dates communicated or acknowledged by Ingy are estimates only, and Ingy shall not be liable for, nor shall Ingy be in breach of its obligations to Client because of any delivery made before or after the stated delivery date. Ingy shall use commercially reasonable efforts to meet the requested delivery dates provided that the Client provides all necessary order and delivery information sufficiently prior to the agreed delivery date. Risk of loss shall pass to Client upon Ingy's delivery as agreed. Title in the Hardware shall pass to Client upon full payment of all amounts due by Client.

4.1.2 Client will ensure that Hardware is installed, used and maintained by competent persons, and in accordance with all applicable legal and safety norms and standards.

### **4.2 Warranty.**

4.2.1 Ingy warrants for a period of twelve (12) months after delivery to the Client that the Hardware will conform with specifications provided. Ingy will repair defects in the Hardware and/or other supplied items free of charge and within a reasonable term if they are reported in detail to Ingy's satisfaction in the twelve (12) months following delivery. Ingy is at liberty to

replace the Hardware or part thereof with equivalent equipment. Any replaced Hardware or parts will become the property of Ingy.

- 4.2.2 The above warranty will not include activities related to or liability for (i) issues or failures resulting from or related to user errors, unprofessional use of the Hardware or exterior causes that do not fall under the sphere of influence of Ingy, such as problems with the internet, data network connections, voltage or power supply, fire & water damage or links to equipment, programs or materials that were not approved by Ingy; (ii) issues resulting from or relating to changes to the Hardware other than by or on behalf of Ingy; (iii) use of Hardware in unsuitable conditions or without timely maintenance Hardware performed; (iv) issues due to Client's intent or gross negligence; (v) damage due to the Hardware being opened without permission from Ingy or by an engineer not employed by Ingy; (vi) costs of (the replacement of) consumable items such as batteries, cables and accessories; (vii) costs of (the replacement of) parts and the repair of issues that were partially or fully caused by attempts to make repairs by others than Ingy; (viii) (changes to) the IT configuration blocking connection and/or data to and from the Ingy equipment and/or cloud services (IX) Callouts for hard or software that is reported to be defective but after verification by Ingy is confirmed to operate correctly, including automatic callouts generated based on analysis of the data coming from the Ingy system potentially in conjunction with data coming from other services. X) Malfunctioning of (hosted) IT services provided and maintained by the client that is used to host the Ingy software, including both hardware and software failures other than by the software installed and maintained by Ingy.

- 4.2.3 If Ingy carries out activities not covered by warranty as indicated in this Article, Ingy may charge to Client any related costs at its usual rate (€100,- per hour excl. VAT and excluding material and travel costs).

#### **4.3 Disclaimer, Expiry**

- 4.3.1 Except as specified in this section 4, Hardware are provided "as is" and in addition to any other disclaimers Ingy hereby disclaims to the extent allowed by applicable law all express or implied conditions, representations, and warranties relating to the Hardware, including, without limitation, any implied warranty or condition of merchantability, fitness for a particular purpose, noninfringement of third party rights, satisfactory quality, or arising from a course of dealing, law, usage, or trade practice. To the extent any such warranty cannot be disclaimed, such warranty is limited in duration to the applicable warranty period. Ingy shall take every due care with regard to Client data contained in Hardware, but is never obliged to recover damaged or lost data as a result of issues, failures, repairs and/or maintenance.
- 4.3.2 Claims against Ingy are extinguished after expiry of the period of limitation (*verjaringsstermijn*) of one (1) year after the Client has, or should reasonably have, discovered the cause of the damages.

### **5 SOFTWARE AS A SERVICE**

#### **5.1 General**

- 5.1.1 The following clauses will apply where Ingy provides Software as a Service (Saas), such as the Ingy Cloud Connector.
- 5.1.2 Client will make sure the equipment and software used to access SaaS Products meets the standards and/or requirements set by Ingy, as set out to Client directly or indirectly. If not, Ingy may suspend its obligation to provide access to the Products.



The Client agrees to comply with Ingy's instructions in this respect.

5.1.3 Ingy is authorised to access log files and the like for the purpose of analysing the use of the SaaS. The results of such analyses will not be made available to third parties (this includes parent companies and/or subsidiaries not affiliated with Ingy). This does not apply for figures and data regarding the use of the SaaS that cannot be directly be traced back to the use of the Client.

5.1.4 If the Client identifies an Interference then Ingy must be informed without delay. Following receipt of r the report Ingy will take measures to prevent or mitigate the Interference. The costs associated with these steps may be charged to the Client if the cause of the Interference is a result of inexpert use, negligence or actions in contravention with the Agreement.

5.1.5 Ingy will inform the Client beforehand of intended maintenance if it is foreseeable that the Maintenance may lead to problems regarding access to or availability of SaaS. If so, maintenance will take place between 00:00 and 06:00 as much as possible. Other maintenance will take place on Working Days.

## **5.2 SaaS Subscription**

5.2.1 The SaaS is offered on a Subscription basis and is entered into for a period of at least 12 (twelve) months. If the Subscription is not cancelled or not cancelled in time by the Client, the Subscription will be extended with a period of 1 (one) year each time.

## **5.3 Obligations Ingy**

5.3.1 Ingy ensures the availability of SaaS. Ingy will strive for an availability percentage that will be indicated at a later date to the best of their abilities and in so far Ingy has any influence on it. The percentage will be measured over a calendar year. The time

required for maintenance will not be included.

5.3.2 Ingy does not warrant that telephone lines, the internet and/or other networks offer the desired use and access. Ingy does not have any obligations in terms of availability, reliability or other performance requirements with respect to telephone lines, the internet and/or other networks and the resulting facilities.

5.3.3 Ingy will include measures to ensure that SaaS is well and continuously available. Ingy will use industry accepted virus protection software and will make sure to include by design technically sufficient physical and logical security against disallowed access by third parties to the computer equipment, computer software and/or Data used by Ingy.

5.3.4 The Client can access Ingy's SaaS by browser. The browsers for which the SaaS is optimised at the time of the agreement enters into effect will be further specified by Ingy.

## **5.4 Using Identification Information**

5.4.1 Ingy will provide Identification Information for the use of Products only to Client. The Client will handle this Identification Information with all due care. In case of loss, theft and/or other forms of wrongful use, the Client will inform Ingy so that both parties can take fitting measures.

5.4.2 The Client is liable for damage and costs caused by the use of the Identification Information used and/or distributed by the Client, and will indemnify Ingy from any Third Party claims in this regard.

5.4.3 Ingy shall not be liable in case of such abuse and/or wrongful use of the Identification Information. If it can be reasonably suspected that the Identification Information has been abused or used wrongfully by the Client, Ingy can give the Client instructions which must be followed. If it has been

determined that the Identification Information has been abused or if the Client has not complied with the instructions, then the Client will be in breach of agreement without further notice.

## 5.5 Changes to the SaaS Service

5.5.1 Ingy may make additions and/or changes to its SaaS – services, upon giving written notice. No liability will exist in case of changes with regard to the access procedure, operational rules and security measures and requirements.

5.5.2 Ingy may also determine to make changes in the involved third-party provider or supplier, location, hardware, software and other facilities important for the provision of SaaS. If such changes result in a demonstrable and significant adverse change to the functionality of SaaS, the Client can request an alternative solution from Ingy in writing after first setting out the adverse effect. If Ingy does not provide a reasonable alternative, the Client may end the use of SaaS without Ingy owing any form of compensation or reimbursement of already paid sums.

## 5.6 Client's data traffic

5.6.1 The content of data traffic is responsibility of the Client. Client will have to comply with the code of conduct as defined in [article 5.7](#) applies to the Client and their users.

5.6.2 The Client warrants and indemnifies Ingy against any third-party claim, charge or proceedings regarding the (content of the) data traffic. All data entered by or on behalf of Client will remain the (intellectual) property of the Client.

5.6.3 The Client grants Ingy the right of use and rights to process the data without financial consideration for technical analysis. Such data can only be provided to third parties if it cannot be directly traced back to the Client.

5.6.4 In principle, data will not be stored for the duration of the agreement.

5.6.5 All costs regarding transferring Process Data and/or other data at the request of the Client to another application will be paid in full by the Client.

## 5.7 Code of Conduct

5.7.1 Ingy's SaaS services and/or the other facilities provided under this Agreement must be used responsibly.

5.7.2 Client will not use the SaaS service and/or other provided facilities in such a way that:  
a. damage may result to the systems of Ingy and/or third parties;  
b. interruptions of use.

5.7.3 It is not permitted to use the SaaS service and/or other provided facilities for practices that contravene the law or public decency and/or for matters that are in breach of the agreement. This includes among other things the following actions and behaviour:

- a) breaching the rights of third parties or facilitating a breach of the rights of third parties, such as, but not limited to, intellectual property rights and privacy rights;
- b) not complying with applicable legislation and/or other relevant regulations or instructions of competent authorities;
- c) the sending or facilitating of unsolicited distribution of commercial messages and other messages.

5.7.4 Ingy may in its own judgement, if there is an objectively reasonable suspicion of breach of Ingy's rights, or those of a third party, by means of the SaaS service, suspend or take out of service the use of the SAAS service and/or the other provided facilities, to delete the information in question and/or suspend Ingy's obligations. If the gravity of the actions and/or inaction of the Client justifies it and/or these are continued, Ingy has the right to terminate the agreement without

being obliged to pay compensation or reimburse already paid sums.

the Third-party General Terms and Conditions not to apply or declare them to apply.

## **6 THIRD-PARTY PRODUCTS**

### **6.1 Third-party Products**

6.1.1 Ingy is authorised to provide Third-party Products or to involve Third-party Products in the performance of their obligations resulting from the agreement. Ingy is not responsible for Third-party Products unless explicitly agreed upon otherwise.

6.1.2 If Ingy delivers Third-party Products to the Client, then apart from these Ingy General Terms and Conditions, the Third-party General Terms and Conditions apply to the agreement. Ingy delivers rights to Third-party Products under the conditions as described in the Third-party General Terms and Conditions.

6.1.3 Regarding delivered Third-party Products, Ingy provides: a) The service for Third-party Products under a maximum of the same conditions that are indicated in the Third-party General Terms and Conditions. b) The Guarantee for the term and under a maximum of the same conditions as indicated in the Third-party General Terms and Conditions.

### **6.2 Third-party General Terms and Conditions**

6.2.1 Third-party General Terms and Conditions that are declared to apply in these Ingy General Terms and Conditions will, if available to Ingy, only be sent on request. The Third-party General Terms and Conditions will be made available in the same format and language as Ingy has received them.

6.2.2 The Ingy General Terms and Conditions rank above the Third-party General Terms and Conditions unless otherwise specified. In case of a conflict between the Ingy General Terms and Conditions and the Third-party General Terms and Conditions, Ingy can declare the conflicting provisions in

## **7 PROFESSIONAL SERVICES**

7.1 Where Ingy performs assignments that have an advisory nature, such as, but not limited to, support and consultancy services, these will only be provided to the best of Ingy's efforts.

7.2 Ingy is not responsible and/or liable if the activities including Ingy's Professional Services for the Client's project cannot be completed within the determined budget, time and any other set conditions.

7.3 For the sake of clarity it is noted that Professional Services will not imply any guarantee of successful, flaw free, working of the obtained solutions.

7.4 Professional services provided by Ingy are supplied based on the rates agreed in the Agreement or, if no agreement regarding the rates was made, the then-applicable rates of Ingy. Such services are only carried out on the usual Ingy working days and hours. The Client's use of the results of Ingy's Professional services is always at the Client's own risk and without liability for Ingy.

7.5 Consultancy is based on the information and data known to Ingy. If this was provided by the Client, the Client is responsible for it being correct, complete and current. The burden of proof that Consultancy did not comply with what was agreed upon or reasonably expected of Ingy lies entirely with the Client.

## **8 FEES, CHARGES AND PAYMENTS**

8.1.1 When entering into the Agreement, the applicable Fees and charges for the Products are included in the Agreement. If they are not provided in the Agreement, Ingy's standard rates apply. This also applies in case Ingy is assigned work that is not included in the Agreement.

- 8.1.2 If Ingy delivers products and/or services from Third Parties and/or Hardware, any applicable one-off rates will be fully invoiced in advance. Agreed prepayments and other one-off rates are invoiced 50% in advance and 50% upon delivery, unless agreed otherwise. Monthly rates are invoiced per year in advance.
- 8.1.3 Invoices are sent on a monthly basis, unless determined otherwise, and are due to be paid within 14 days off the invoice date, unless determined otherwise. Amounts that are invoiced in advance must be paid in full prior to the start of the performance.
- 8.1.4 Products and services from Partners that are not part of the Agreement will be provided by those Partners at their own rates and payment conditions. Ingy has no influence on these rates and payment conditions, nor any changes thereof.
- 8.1.5 All rates and fees applied by Ingy are provided in Euros, excluding VAT and any other government levies or taxes, unless explicitly stated otherwise.
- 8.1.6 The Client is responsible for withholding and declaring any government taxes or other levies that apply to the rates invoiced by Ingy, in accordance with the applicable payment provisions and the practices and requests of the (Dutch) tax authorities, and for any fines and interests due to overdue payments or the non-withholding and/or declaration of taxes that apply to those rates.
- 8.1.7 Ingy may from time to time change the rates it applies for its Products and services. Ingy will provide the most recent rates to existing Clients when requested. Ingy will inform Client of changes in rates and/or fees if possible at the latest two months in advance.
- 8.1.8 Without prejudice to clause 8.1.7 Ingy can increase its prices annually per 1 January based on the Producer Price Index (PPI,

“*Producentenprijsindex*”), published by Statistics Netherlands Bureau (CBS).

- 8.1.9 If the Client does not meet its payment obligations (on time or in full), the Client is in default without a notice being required. In this case, the Client forfeits an interest of 1.5% per month or part of the month as of the date when the payment was due, as well as all legal and extrajudicial (collection) costs. The extrajudicial (collection) costs will be determined at a minimum of 15% of the main sum of the claim.
- 8.1.10 If Clients do not agree with the sum of the amount due as indicated on the invoice they must inform Ingy within 14 days of receiving the invoice. Failure to do so in time results in a loss of right to contest the invoice. Contesting any invoice does not postpone the payment obligation for other amounts and/or invoices.
- 8.1.11 Offsetting any unpaid amounts by the Client is not allowed.

## **9 CONFIDENTIALITY, NON-COMPETITION**

### **9.1 General.**

- 9.1.1 Parties will treat all data and information about the other Party that is of a confidential nature as strictly confidential, secure it in an appropriate manner and not disclose them to third parties in any way whatsoever. Parties will only use the above-mentioned information in the context of the Agreement.
- 9.1.2 Such confidential information includes but is not limited to: all information that is explicitly indicated as confidential by the other Party, all information and data Parties come to know in the context of the Agreement, technical, financial and business information, drawings, formats, concepts, source codes, pilots and all other information which Parties know, or reasonably ought to know, is secret or of a confidential nature and should not be disclosed to third parties, for example because its disclosure could result in a

reasonable chance that the other Party could incur a loss or other disadvantage. Parties may not use or disclose confidential information and/or data provided to them or which they have come to know in the context of an Agreement in the event of, whether premature or not, full or partial termination of an Agreement, or in the three years following the termination of the Agreement.

- 9.1.3 Parties are entitled to disclose or hand over confidential information to the competent authorities, if and insofar as they are required to do so under applicable statutory provisions or other authority.

## 9.2 Non-competition

- 9.2.1 The Client will not enter into direct or indirect business, labour or other similar relationships with any Ingy employee during and up to 12 (twelve) months after the end or termination of the Agreement, unless Ingy consents therein. In case of a breach of this obligation the Client - without further notice of default – will forfeit an immediately claimable fine of EUR 70,000 (seventy-thousand Euro) for each breach and forfeit EUR 250 (two-hundred and fifty Euro) for each day the breach continues without prejudice to Ingy's right to claim compensation for the damage caused.

## 9.3 Shared customers

- 9.3.1 The Client's customers are free to commission or purchase Products and Services from Ingy and Ingy is free to provide these Products to those customers but will not actively offer to do so.
- 9.3.2 If Ingy has introduced the Client to a specific (prospective) customer, the Client undertakes to not propose third party solutions or technology similar to Ingy's control technologies to that customer.
- 9.3.3 Parties will specify to each other any relevant pre-existing relation with a (prospective) customer within two weeks of a proposal. The restrictions in the above

clause will not apply where a pre-existing relation (i) has been active in the last six (6) months and (ii) is on a comparable or higher level within a geographically or functionally relevant part of the organization of the (prospective) customer.

## 10 PERSONAL DATA

- 10.1.1 Insofar as Ingy processes personal data in the performance this Agreement, the Client will solely be responsible for the processing under the General Data Protection Regulation (GDRP). The Client will ensure that the personal data can be legally processed by Ingy, that no third party opposes this and that it is not in violation of any legislation or regulation.
- 10.1.2 Ingy will only process personal data for the Client and in accordance with the instructions of the Client, including those determined in data processing amendments between Parties.
- 10.1.3 It is assumed that the Client's Node-data acquired under the Ingy Beyond Lighting Agreement cannot be considered 'personal data' under any definition in the GDRP. Also, this data will not be stored by Ingy. It is the responsibility of the Client to inform Ingy if this is not the case and take the necessary compliance steps. In this respect, the Client will hold Ingy from harm and indemnify Ingy from claims and sanctions from third parties, data subjects or data authorities.
- 10.1.4 Ingy will provide the Client with information and cooperation required for compliance and/or to help rebut claims and sanctions.

## 11 LIABILITY

### 11.1 Exclusion

- 11.1.1 We are not liable for damage, loss, or injury resulting from the use of our Products or Services, other Deliverables, unless where caused wilfully or through gross negligence. We are not liable for damage resulting from

violation by third parties or end users of our terms and conditions. We have no responsibility to enforce these terms for the benefit of any user.

## **11.2 Limitation.**

11.2.1 If we are liable due to a breach of obligations or for losses otherwise incurred by the Client, our liability will exist for direct loss and not for indirect loss. Indirect loss by way of example includes, but is not limited to, loss of goodwill, lost profits, missed (investment) opportunities, and missed savings. To the extent we are liable to Client, such liability will be limited in all cases to an amount that is paid in such case under the relevant liability insurance of Ingy, plus the amount of the deductible that in such case is for the account of Ingy under the applicable insurance agreement. Upon request, a summary of the insurance cover and the insurance certificate will be sent to Client. If for any reason whatsoever no payment takes place under the insurance referred to any liability is limited to an amount not exceeding the amount invoiced to you in the six months preceding the liability event. Notwithstanding the preceding paragraphs, our liability will in all cases be limited to EUR 10,000,- (ten thousand Euros) per harmful event. A series of incidents counts as one (1) event. Any claim against us will lapse by the elapse of a period of three (3) months after the harmful event became known to Client, except in case of written acknowledgment of the claim by us.

## **11.3 Force majeure.**

11.3.1 Neither Party shall be liable for failure to meet the contractual obligations under this Agreement due to Force Majeure, including, without limitation, strikes, lockouts, labor disputes, acts of God, fire, floods, riots, wars, pandemics and government actions. This limitation of liability shall be valid only for the period of duration of Force Majeure.

The Party involved in an event of Force Majeure shall take all reasonable measures and actions to limit or minimize the consequences of such an event and inform immediately in writing the other Party on the intervention and on the cessation of such circumstance.

## **12 Intellectual property rights**

### **12.1 Right and title.**

12.1.1 Title to and all Intellectual Property Rights in and to the Ingy Products, Software, Made-to-order software, Hardware, new versions of Software, Software-Stack, Deliverables, maintenance releases, modifications, updates and other changes to the Software shall be the property of Ingy or any third party from whom we have licensed the same. Agreement does not contain or imply any transfer of Intellectual Property Rights to the Licensee.

12.1.2 All Intellectual Property Rights that may come into existence in the course of this Agreement, and that are based on Ingy's Software, the Software-Stack, other Deliverables or related items and solution, or our development, will inure to and be vested exclusively in Ingy.

12.1.3 The Client guarantees to have all the necessary rights to the software and components used with or added by the Client to our Software, Software-stack and other Deliverable and will indemnify Ingy for claims (as well as all costs incurred by Ingy in relation to such claims) made against Ingy by third parties that assert or imply that such rights are, in fact, lacking.

12.1.4 To the best of Ingy's knowledge, its Products when used correctly and in line with instructions as well as in keeping with the Agreement will not infringe third party rights. However, the occurrence of third party infringement claims caused by your software or hardware designed around our Products is for the sole risk of Licensee.

- 12.1.5 Ingy can showcase Client's projects using Ingy technology and refer and incorporate relevant material made public by Client in presentations and previous work listings. Strictly to this end Ingy and our affiliates may use Client's name, trademarks and logos in advertising, marketing or other promotional materials for positive referral.
- 12.1.6 Likewise, Client is free to refer to Ingy, its brands and logo's as part of a positive referral.