

Article 1. Definitions

In these General Terms and Conditions, the following terms will have the meanings given below unless expressly stated otherwise.

CityXP.net : the complete set of various modules of the website, XP Studio, Consultation and Services, mobile (WebXR-) app(s), functionalities etc. in support of all that is separately as well as jointly offered under the name CityXP.net;

Client: the legal entity or natural person with which or whom an Agreement has been concluded;

Employee: an employee of the Client, or a natural person who is authorised to perform work for and/or under the responsibility of the Client;

Customer (consumer): a customer of the Client, or a natural person, using the CityXP.net;

User: all Users of CityXP.net;

Manager: a User with Management Rights who has been appointed by the Client as Manager of the Client's environment;

Account: individual registration with CityXP.net, that provides for the granting of unique access privileges on XP Studio or the (WebXR-)app for the User concerned;

Services: all services to be provided by the Provider on behalf of the Client, with respect to the development and making available of CityXP.net, XP Studio, the (WebXR-)App, and software as well as all items that are the subject matter of an Agreement, which the Provider performs specifically for the Client;

(WebXR-)App: App that allows Users to use the content that is developed on CityXP.net;

Scenario: a virtual reality scenario is a non-linear network of choices, possibilities, interaction elements and directions that together describe the virtual reality interactive environment;

Consultancy Services: advice, training or software development activities carried out by the Provider on behalf of the Client in addition to or in deviation of the functionalities of CityXP.net / XP Studio, or the development and/or design of a Scenario by the Provider and/or the filming and editing of 360 videos (also by third parties) at the Client's request;

Plan: A Plan comprising a number of functionalities to be purchased for a certain amount, per month or all at once, with which the Services of CityXP.net are paid for;

Agreement: the agreement between the Provider and the Client to perform or supply Services;

Processing Agreement: the agreement where the Client ("controller") instructs Provider ("processor") to process the personal data of third parties in the context of the Services.

SLA: Service Level Agreement, which describes the quality and guarantees of CityXP.net;

Provider: the private limited liability company CityXP.net, and all associated trade names as known to the Chamber of Commerce under number 68483228, with its registered office and principal place of business at Schiekade 189, unit 406 in Rotterdam, the Netherlands.

Terms and Conditions: these general terms and conditions of the Provider.

Article 2. Applicability of and compliance with the Terms and Conditions

1. The Provider's general Terms and Conditions apply to any quotation, Agreement or offer made by CityXP.net.
2. If one or more of the provisions of the Terms and Conditions is null and void or is voided, the other provisions of the Terms and Conditions will remain fully applicable.
3. The Provider only accepts the Client's purchase terms and conditions if the Provider has confirmed this in writing in the quotation. If nothing is included in the quotation, the Provider explicitly rejects the Client's purchase terms and conditions. In the event of any inconsistency between the Client's purchase terms and conditions these Terms and Conditions will prevail.
4. The Client is wholly responsible for ensuring their Users agree to the Terms and Conditions.
5. The Provider may unilaterally amend the Terms and Conditions. The Client and Users are advised to check the Terms and Conditions regularly for amendments through the normal channels via CityXP.net. If the Client and/or User continue to make use of CityXP, even after amendment of the Terms and Conditions, the Client and/or User will be deemed to have irrevocably accepted the amended Terms and Conditions.

Article 3. Formation of agreement and quotation

1. All quotations, price estimates or offers are without obligation, and valid for 30 days after sending.
2. An Agreement between the Client and the Provider will be concluded if and insofar as the Provider accepts an assignment in writing or by e-mail or if the Provider carries out an assignment and the Client cooperates with the performance of the assignment and/or makes a down payment, or concludes the agreement online by creating an Account and agreeing to these Terms and Conditions.
3. Changes to the originally concluded Agreement between the Client and the Provider will not be valid until such changes have been accepted by both parties through a Supplementary or Amended Agreement.
4. Offers or quotations will not automatically apply to future assignments.

Article 4. Force Majeure

1. The Provider will not be obliged to comply with any obligation if it is prevented from doing so as a result of force majeure. Force majeure will be understood to include shortcomings on the part of third parties engaged by the Provider and interruptions or breakdowns in the power and/or telecommunication facilities.
2. If the force majeure situation has lasted longer than sixty (60) days, the Client will be entitled to terminate the Agreement by giving notice in writing to the Provider. Work that has already been carried out will then be settled pro rata, without the parties owing each other anything else.
3. If the Client is unable to fulfil an obligation under the Agreement as a result of force majeure, the Provider will be entitled to terminate the Agreement unilaterally after a period of 14 days. However, the Client's obligation to make payment will remain in full force and effect until the time of termination.

Article 5. Liability

1. Any liability of the Provider arising from an event giving rise to liability will at all times be limited to compensation for direct damage and will never exceed the invoice value. If the Agreement is a continuing performance agreement with a term of more than one year, the maximum compensation will be set at the total of the fees stipulated for one year. Any liability on the part of the Provider for any other form of damage or loss is excluded, including compensation for indirect loss, consequential damage or loss or damage due to loss of turnover or profit. If the Provider is insured, the Provider's liability will at all times be limited to the amount payable under the Provider's insurance policy for the matter concerned.
2. Direct financial loss is exclusively understood to mean:
 - reasonable costs which the Client would have to incur in order to ensure that the Provider's performance complies with the Agreement; however, these costs will not be reimbursed if the Agreement has been or will be terminated by or on the initiative of the Client;
 - reasonable costs incurred to determine the cause and extent of the damage, insofar as the determination relates to direct financial loss within the meaning of these Terms and Conditions;
 - reasonable costs incurred to prevent or limit damage, insofar as the Client can prove that these costs have led to the limitation of direct damage within the meaning of these Terms and Conditions.
3. If the Client and/or User fails to fulfil the obligations arising from the Terms and Conditions, the Client and/or User will be liable for any damage or loss suffered by the Provider as a result thereof.
4. The Provider will never be liable for indirect damage or loss. Indirect loss in these Terms and Conditions includes consequential damage or loss, loss of profit, lost savings and loss due to business interruption.
5. The limitation of liability will not apply if the damage or loss is caused by intent or wilful recklessness on the part of the Provider.
6. The Client itself will be liable for any damage or loss caused by errors or defects in the data, information, instructions or advice provided by the Client to the Provider or a third party, or as a result of Services and acts performed by the Client for the Provider or a third party.
7. In the event of any failure, the Provider will first be given notice of default in writing, with a reasonable period of time within which to comply with its obligations or to rectify any errors or to limit or rectify damage.
8. Any entitlement to compensation will always be conditional upon the Client giving written notice to the Provider of the damage as soon as possible after it arises. Any claim for damages against the Provider will be extinguished by the mere lapse of 12 months after the claim has arisen.
9. The limitation of liability will also apply to third parties if the Provider uses third parties for the performance of the Agreement.

Article 6. Intellectual Property Rights

1. All Intellectual Property Rights are owned by the Provider. Concepts, ideas and propositions that are developed for the Client will formally and legally stay Intellectual Property of the Provider.
2. The Client authorizes the Provider to use all materials that were produced for the Client for online promotion purposes (e.g. blog, portfolio, newsletter, social media, other websites), during conventions, and in print (e.g. flyers, expositions). The Client will not receive any financial compensations or restitutions. If the Client explicitly doesn't agree, the Client has to express this beforehand.
3. Client is not allowed to place an edited version of the end-product on the Internet without permission of the Provider.
4. All current and future intellectual property rights to the software (including all further development/expansions/adaptations) will exclusively accrue to the Provider.
5. The provision of Services does not imply a transfer of any intellectual property rights to the Services. The Client obtains only a non-exclusive and non-transferable right of use with respect to the Services in accordance with the intended use for the duration of the Agreement under the express condition that the Client fully complies with his/her obligations under the Agreement.
6. In case of infringement or abuse of these Intellectual Property Rights the Provider will hold the Client responsible. This responsibility can have legal consequences.

Article 7. Services

1. The Provider will provide the Services to the Client for the term of the Agreement. The Provider will provide the Client with the URL of CityXP.net/XP Studio, so that, in the URL, the Manager can use Accounts, provided by the Provider. This allows the Manager to add content to CityXP.net, which will be checked by the Provider first.
2. The Provider will provide the Services in accordance with the service levels set out in the SLA. Insofar as the SLA refers to availability percentages, these are measured over a calendar month and maintenance hours planned in advance and described in the SLA for determining the percentage are not taken into account.

Availability is understood to mean that CityXP.net can be reached remotely via the Internet at the URL provided to the Client and that XP Studio is actually offered on the server.

3. The Provider has the right to modify CityXP.net from time to time to improve functionality and correct errors. The Provider will make every effort to resolve any errors in CityXP.net, but cannot guarantee that all errors will be rectified.
4. In the event of termination of the Agreement, the right to use the Services will terminate with immediate effect.

Article 8. Account

1. Access to CityXP.net will take place through authorisation via an Account, or the use of CityXP.net (Web-)App. Users are responsible for all legal and other acts performed with or through the Account or via the Mobile App, including use and/or abuse thereof.
2. The User must provide his own personal data or that of Client during the login and authorisation process.
3. The data referred to in paragraph 2 of this article are strictly personal and may not be shared with other persons.
4. The Account of the XP Studio or (Web-)App is linked to a password or social media account. This information is strictly personal and confidential. The Provider accepts no liability for the abuse of the user name and/or password.
5. If the User suspects that a third party is using an unauthorised user name and/or password, the User must immediately contact the Provider. The Client and/or User will always be fully responsible and liable for everything that takes place through their own Account.
6. The Client and/or User is not permitted to use the Account or Mobile App for illegal or competitive purposes.
7. If an Account involves actions that do not comply with the provisions of these Terms and Conditions, the Provider will be entitled to terminate and delete the Account in question immediately. The Provider is then not liable for the inability to access the Account or the deleted content.
8. The Provider will not back up content deleted by the Client on the platform. The Provider will not be liable if the Client has deleted content.

Article 9. Rights and obligations of Users

1. The User warrants the Provider that the User is authorised to use CityXP.net and/or the Services and to act in accordance with these Terms and Conditions.
2. The User is required to act in accordance with what may be expected from a responsible and careful user of the Internet and CityXP.net. In particular, the User must comply with Dutch legislation as well as additional conditions and regulations.
3. The User is not permitted to place documents and/or data and/or materials or to perform actions that are contrary to the Terms and Conditions, legal provisions, public order and/or policy and/or decency. Similarly, the User will not infringe or otherwise violate any intellectual property rights of the Provider or third parties.
4. The result of any unauthorised actions as referred to in this article will, at the Provider's discretion, be immediately deleted from CityXP.net or corrected. Furthermore, the Provider reserves the right to recover damage and/or loss from the Client.
5. Users always log in to the most recent version of CityXP.net / XP Studio, or the most recent version of the (Web-)App. Users must regularly update the App and do so as soon as possible after an update has been made available.
6. The User must ensure to have sufficient computing and storage capacity on the devices to play videos and a working Internet connection. If these malfunction, or are temporarily unavailable, the Provider will not be liable for failure to pass on performances or scores or other messages.

Article 10. Fees

1. The Client will pay the Provider a monthly fee for the use of the Service. The amount of the fee may be determined in various ways. The Client may purchase a Plan for this purpose. The Provider will be entitled to increase the monthly amounts once a year by an amount equal to the CBS price index for household consumption in the Netherlands and/or increase the price. The Provider will inform the Client at least one month in advance of any intended increase. If the Client continues to use CityXP.net after that month, it will be deemed to have agreed to these price increases.
2. The fee as referred to in paragraph 1 of this article is fixed per year and/or per monthly Plan and can be offered on a **subscription basis**, unless stated otherwise. The Provider may choose to provide the Services only after receipt of an advance payment.
3. Unless otherwise stated, all rates and fees exclude VAT.
4. A Plan may be adjusted upwards or downwards by the Client at any time. The adjustment will take effect immediately and the Client must pay the amount of the new Plan for that month.
5. If the Client updates its Plan downwards, the Client will not receive a refund for the remaining days of the month.
6. Payment by the Client to the Provider will in principle be made by means of periodic direct debit or other payment methods offered by the Provider, unless agreed otherwise.
7. Fees to be paid by the Client must have been paid prior to the period to which the amounts relate.
8. All travel expenses and accommodation costs are considered to be additional costs. The provider applies a fee of €0,19 per kilometer. For journeys longer than 2 (two) hours, travel time allowance after the first hour will be € 25,00 per hour.
9. In the event of payment on the basis of an invoice, the Client must make 50% payment immediately after agreement. Execution of assignment will only start after receiving this deposit. The remaining amount, plus additional costs, will be paid within (14) fourteen days after the invoice date, unless another term has been agreed upon.
10. If the deadline for payment is exceeded, the Client will be in default by operation of law and the Provider will be entitled to charge statutory interest. All collection costs incurred will be for the account of the defaulting Client.

11. If the Client is in default, the Provider will be entitled to suspend performance of the Agreement (notwithstanding any other rights to which it is entitled). If, after notice of default has been given, the Client fails to pay the claim, the Client will be obliged to pay the extrajudicial collection and other costs in addition to the amounts then due in full.

Article 11. Third Party Products

1. If the Client makes use of products or services of third parties, the Client must arrange this separately and at its own expense and risk. The Provider is not responsible and/or liable for third-party products, unless otherwise agreed in writing.
2. The Provider will not provide maintenance, support or other services in respect of third-party products and the SLA expressly does not apply to such third-party products.

Article 12. Confidentiality

1. The Client is obliged to keep all information that it obtains from the Provider in whatsoever manner regarding commercial, strategic, technical data, know-how and/or other information relating to CityXP.net and/or the Services strictly confidential and the Client may not make any disclosures in this respect and/or give third parties access thereto. The Provider will keep the data— which the Client has stated is confidential— strictly confidential.
2. The provisions of paragraph 1 of this article may only be derogated from if such information was public knowledge prior to the conclusion of the Agreement or if prior consent was given for publication.

Article 13. Privacy and data processing

1. The use of CityXP.net / XP Studio may involve the collecting and processing of personal data. Unless otherwise agreed, these data are property of the Provider.
2. The Provider will take technical and organisational measures to protect personal data against loss or any form of unlawful processing. These measures will be appropriate, taking into account the state of the art and the costs involved, and will also aim to prevent unnecessary collection and further processing of personal data.
3. In case of an agreement between Client and Provider where Client will become owner of the collected data, processing of data will be regulated in a separate Processing Agreement, within the meaning of the Personal Data Protection Act (PDPA) and/or the General Data Protection Regulation (GDPR). Client will be called "Controller" and Provider "Processor". By entering into the Agreement, the Client ("controller") instructs Provider ("processor") to process the personal data of third parties in the context of the Services. Such processing will be carried out by the Provider only on instruction from the Client or if there is a legal obligation to do so.
4. The Client warrants that with regard to the personal data of third parties, the PDPA and the GDPR have and will be complied with.
5. All Users who have access to personal data will observe confidentiality with regard to the personal data that they receive, unless they are obliged to disclose this information in accordance with a legal provision.

Article 14. Applicable law and disputes

1. Dutch law applies exclusively to all legal relationships to which the Provider is a party, also if an Agreement was partly or wholly executed abroad and if the party in the legal relationship resides abroad. The applicability of the Vienna Sales Convention is excluded.
2. The parties will only appeal to the court after they have made every effort to resolve a dispute by mutual agreement.
3. All disputes arising out of offers and agreements, under whatever name, will be subject to the judgment of the court in the district where the Provider has its registered office, unless imperative law declares another court competent.