Terms & Conditions

Welcome at Crowded. Crowded offers software (hereinafter: "**Software**") which enables users to create an online community ("**Community Website**") for various purposes. For example to facilitate networking, stimulate innovation or promote knowledge sharing, etc. The Community Website can be managed and configured using our admin interface ("**Admin Panel**") which is included in our Software. Crowded offers this Software together with several services, e.g. for the initial setup of a Community Website ("**Services**"). The Software and Services are offered online through www.crowded.co (the "**Website**").

These terms and conditions (the "**Terms**") apply to the relationship between Crowded B.V. ("**Crowded**") and its users ("**Users**"), for any use of the Software, (Community) Website and Services offered by Crowded. Crowded offers use of the Software, (Community) Website and Services under the condition that the User accepts these Terms.

For questions regarding these terms and conditions, reach out to support@crowded.co

Crowded B.V.
Herengracht 420
1017BZ Amsterdam
The Netherlands

Registered at the Dutch Chamber of Commerce with number *62972537* and Dutch Tax Authority with VAT ID *NL855034956B01*

1. Who is Crowded and who are you?

1.1. **Crowded:** A private company with limited liability incorporated under the laws of the Netherlands (*besloten vennootschap met beperkte aansprakelijkheid*). Crowded has its registered seat in Amsterdam and its office at Herengracht 420, 1017BZ Amsterdam. Crowded is registered with the Trade Register (*Handelsregister*) with number 62972537. Crowded is also referred to as "**we**".

1.2. **User**: A legal entity (this includes employees of legal entities) making use of the Software, (Community) Website or Services. Also referred to as "**you**".

2. How do I register and create an Account?

2.1. **Account**: Personal account that every User gets after registration and payment through the Website. In case of a trial, no payment is required. Users can use the Software and ask for Services through their Account.

2.2. **Sign up:** You can sign up with your first- and last name, e-mail address, phone number.

2.3. **Accurate and complete information:** You agree to provide complete and accurate information during your registration and for all use of the Software, (Community) Website and Services. You agree to promptly update your Account, including your e-mail address and phone number, so we can contact you if needed.

2.4. **Password:** If you create an Account, you will be asked to provide a password to access your Account. Choose a password that is at least 8 characters long and includes letters, symbols and numbers. Do not share your password with others – you are responsible for keeping your password safe.

3. What do I need to pay?

3.1. **Software Fees:** Fees are displayed on the Website If other fees are agreed in writing by both User and Crowded the prices agreed on in this document will prevail and will be binding.

3.2. **Service Fees:** For the use of Services, an extra fee will be agreed on by separate agreement. Some examples of these Service fees are already proposed in these Terms.

3.3. **Offers and proposals by Crowded:** All our offers and proposals through the Website, the Terms or other means are non-binding until agreed by both User and Crowded, unless agreed otherwise in writing. Parties can express their agreement by signature, e-mail or by ticking a box next to the relevant statement in the Website-interface. An offer or proposal only applies to and becomes a "**Contract**", such as a "**Software-contract**", with regard to the assignment specified therein, and not for possible future assignments.

3.4. **Pay in advance:** All payments must be done in advance of (the start of) the use of the Account, Software and/or Services by any User. Crowded accepts SEPA Bankt Transfer and any other methods of payment, as clearly advertised on the Website or as agreed in writing.

3.5. **Unfulfilled payments:** Crowded is allowed to suspend your use of the (Community) Website, Software and their Services, if your payment has not been fulfilled. In that case, Crowded grants you a grace period of thirty (30) days to fulfil your payment obligations. If you have not met your payment obligations after this grace period, you will be in default ("*verzuim*"). A notice of default ("*ingebrekestelling*") will not be necessary, which i.a. means that a legal interest rate starts to run after the grace period ends and your payment has not been received by us.

3.6. **Changing fees:** Crowded is allowed to change Software fees. Service fees will be changed in case of unforeseen additional work or other circumstances as agreed in writing. Change of Software fees will be announced at least sixty (60) days before a new prolongment of your Software-contract. You will be able to end your Software-contract, if the change constitutes an increase of the Software Fees and you not wish to change to the new pricing.

4. How can I make use of the Software and Community website?

4.1. **No resell**: Users are free to use a Community Website, the Software, Website and Services for commercial means, but are not allowed to (re-)sell, distribute or sublicense a Community Website, the Software, Website and Services without our approval.

4.2. **Your data is (ex)portable:** All content uploaded by Users in the Software and/or Community Website is (ex)portable. Crowded reserves the right to choose the format of (ex)portable data.

4.3. **You are responsible for your Community Website:** Users are responsible for all data, content and activity in their Community Website. This also means that Users are to be regarded as Data Controllers (see article 9.3) and are expected to have proper legal arrangements in place, such as user agreements and privacy policies.

4.4. **Fair use:** The Software-contract includes data traffic-, infrastructure- (e.g. SSL certificates, Content Delivery Networks) and hosting services. In this regard , a fair use policy is in place. When you exceed the moderate use of aforementioned services, Crowded is allowed to suspend your use of the (Community) Website, Software and our Services or charge additional costs pro rata. Your suspension or additional payment obligations correspond to your overusage or to the rates you pay based on your Software-contract with Crowded. To exceed moderate usage includes, but is not limited to, abuse or usage of which the costs of traffic-, infrastructure or hosting-services exceed your monthly or annual Software Fee with 50%.

5. Which requirements do I have to meet before Crowded can get to work?

5.1. **The things you need to send us:** In order to use the Software and make use of our Services, User is required to fulfil the following requirements:

(a) User needs to deliver all branding materials (e.g. trademark(s), logo(s) and branding guidelines) necessary to design the Community Website;

(b) User needs to deliver assets in vector formats;

(c) For the domain used in relation to the Community Website, Crowded needs to have access to (e.g. by contact person) the DNS server of User; and

(d) User needs to have compatible equipment, internet access and the necessary minimum specifications and a browser we support (as specified in article 12.1).

5.2. **Your payment obligations continue:** If a User does not fulfil the requirements as specified in article 5.1, by which his use of the Software and our Services is delayed, User is still obliged to fulfil his payment obligations as specified in article 3.

6. Does Crowded adjust and alter the software and Website?

6.1. **Yes, we alter:** Crowded is allowed to change, improve and remove functionality of the Website and the Software and build new features, at any time without prior notice. This may have consequences with regard to your use of the Community Website, Software and Website. Alteration of the Software i.a. entails upgrades to add support for new functions and services.

6.2. **No obligation to alter:** Users can request new functionalities. Crowded is never obliged to change, improve and remove functionality of the (Community) Website and the Software. You cannot cancel a Contract with Crowded based on us not building (new) functionalities.

6.3. **Feature requests:** Crowded prioritises alteration requests based on actionable data and positive consequences for all Users. Crowded takes the final decision about new features that are going to be build and is never obliged to explain its decision. However, whatever the outcome, Crowded is always glad to receive feature requests, and encourages all Users to do so.

7. What is the duration of my software-contract with Crowded?

7.1. **Minimum period:** The Software-contract has a minimum period of one (1) year during which Users cannot terminate the Software- contract.

7.2. **After one year:** After the first year, the Software-contract will be extended automatically. If a User has agreed to pay his Software Fees monthly, the Software-contract is extended monthly after the first year and can be cancelled by User before the start of a new month with a notice period of 30 days. If a User has agreed to pay his Software Fees annually, the Software-contract is extended yearly after the first year and can be cancelled by User before the start of a new year with a notice period of 30 days, after the first period User is allowed to switch from annual to monthly payment.

7.3. **Right of cancellation by Crowded:** Crowded is entitled to cancel or terminate a Contract with immediate effect in writing, stating the reason for termination, in case a User does not comply (on time or properly) with any obligation under the Contract or these Terms. Such default justifies termination of the Contract provided that Crowded gives User a prior notice of its default and reasonable period of time to remedy the failure, and User still fails to comply with its obligations after this period. A Contract may be terminated by Crowded with immediate effect (without notification of User) if a petition for bankruptcy is filed for or on behalf of User or if a User ceases to operate its business or undertaking.

8.   Privacy natural persons

8.1.   **Privacy policy:** We at Crowded respect privacy. When you make use of our Website and Software, we may collect certain personal data to allow proper use of the (Community) Website and Software. In this respect, we are to be regarded as Data Controller within the meaning of the   "**Relevant Privacy Legislation**"[1]. As for the data and content on the Community Websites of our Users, we are to be regarded as Data Processor within the meaning of the Relevant Privacy Legislation.

In our Privacy Policy you can read which personal data we collect as Data Controller and for what purposes. You can find our Privacy Policy on crowded.co/privacy.

9.   Intellectual property

9.1.   **Intellectual Property Rights Crowded**: Crowded is the exclusive owner of all intellectual property rights vesting in, emanating from and relating to the Software (such as custom build themes, templates and page-types), Website and Services, such as – but not limited to – patents, patent applications, trademarks, trademark applications, service marks, trade names, copyrights, trade secrets, licenses, domain names, know how, property rights and processes ("**Intellectual Property Rights**").

9.2.   **License from Crowded to you:** Crowded grants its Users a personal and non-exclusive license to install and use the Software. The license starts on the day on which a Software-contract is agreed to by both Crowded and User, and ends when the Software-Contract is cancelled or terminated, unless specified differently in writing. Regarding sublicenses and transferability, Users are only granted the right to let their employees use the Software, unless agreed otherwise in writing. Users are not allowed to (re-)sell, distribute or sublicense the Software, or access it in other ways as described in this clause.

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[1] These terms refer to and correspond with the terms used in the Data Protection Directive 95/46/EC ("**DPD**"), of which directive the Dutch Data Protection Act (*Wet Bescherming Persoonsgegevens*, hereafter: "**DDPA**") is an implementation, and must be interpreted accordingly. As per 25 May 2018, this legislation will be replaced by new EU-wide privacy legislation: the General Data Protection Regulation ("**GDPR**"). All aforementioned legislation shall be referred to as "**relevant (privacy) legislation**".

9.3. **Intellectual Property Rights Users:** Users own all the data and content of their Community Website, making them responsible for said data and content. In this respect, Users are to be regarded as Data Controllers and Crowded as Data Processor within the meaning of the Relevant Privacy Legislation. Crowded does not claim any (intellectual property) rights in respect of trademarks, logo's and other content and data of the Community Website, provided by Users with regard to the Community Website.

9.4. **Our client portfolio:** You allow Crowded to use your trademark(s) and/or logo(s) on its Website and in its communications, together with publicly available content, for the purpose of informing prospects of Crowded's client portfolio. Crowded will not share confidential information as explained in article 15.

10. I have (support) questions about Crowded. how can I reach you?

10.1. **Support questions:** Crowded wants to make sure you are happy. Users are never charged for "**support questions**". Support questions match all following criteria:

(a) The question is sent via e-mail to support@crowded.co or the integrated chat in our Software;

(b) The question is about using or problems you experience while using the (Community) Website or Software, or things you do not understand regarding the (Community) Website, Software or any service from Crowded; and

(c) The question is asked by you, or someone else from your Organization as specified in our Admin Panel(the "**Community Managers**").

10.2. **Our answer:** Crowded aims to respond to your support question within 24 (twentyfour) hours, during "**Business Hours**" (Monday to Friday from 9 am to 5 pm). Crowded does not offer support by phone. However, Crowded can contact you by phone to discuss a problem or situation in more detail.

10.3. **Manual adjustments:** Crowded can manually perform the following actions, which are included in your Software-contract and will not lead to additional costs:

(a) Textual changes with regard to texts that are not possible for you to alternate, such as in moment of writing e- mails, page-type descriptions, the homepage and sign-up page.

(b)   Configuration changes. Such as changing tracking services, analytics, social logins, used page-types and their settings, and profile fields or other settings that cannot be changed using our Admin Panel.

(c)   Export of all content and other data with regard to specific Users   that cannot be performed by you using our Admin Panel. ("**Advanced Exports**"). Advanced Exports can only be performed once per month, during Business Hours. Advanced Exports take up to 3 (three) work days to process. You should take that in consideration when requesting an Advanced Export.

(d)   Removal of content or other data and/or Users that cannot be performed using our Admin Panel

10.4.   **Bugs:** When features of the Software are not working properly ("**Bugs**"), User has to file a report to support@crowded.co. Only Bugs reported via this e-mailaddress will be taken in consideration by us. Crowded will assess the problem based on different factors such as: the amount of registered and activated user-accounts in the Communtiy Website ("**Community Members**") that are impacted by it, its severity and its risks. Based on the different factors, we prioritise building a fix or solving the bug, in a reasonable period.

10.5.   **Priority of solving Bugs:** The following Bugs are considered critical and Crowded commits to solving them with highest priority:

(a)   Data leakage of personal information.

(b)   Bugs causing Community Websites not to load at all for a significant amount of Community Members.

The following Bugs have a low priority:

(c)   Bugs with regard to experimental features that User opted into.

(d)   Bugs with regard to features that are available only to the Community Managers.

(e)   Bugs regarding custom made features.

10.6.   **No support to others than your Community Managers:** Crowded is not responsible for delivering services, training or support to other members of your organisation than the Community Managers or to any Community Member. However, if other members of your organisation or Community Website   run into bugs or other problems, your Community Managers are allowed to forward questions and request our help, when they are unable to solve the problem. The Community Managers are never allowed to point members of your organisation or your Community Website directly to Crowded.

10.7. **Additional Community Coaching:** When you require more training or support, we offer "**Community Coaching**" as an additional Service. When making use of our Community Coaching, the following applies;

(a) You are entitled to a 30 (thirty) minute call with Crowded each week. The call will be set on a repeating timeslot each week, during Business Hours.

(b) If you – for any reason – cannot make the call, you have to ask for a reschedule one week in advance of the original date. In case your call is scheduled on a Dutch national holiday, Crowded will reach out to you to reschedule the call.

(c) Before each call, Crowded and User will discuss relevant support subjects via email or Intercom, ranging from help with third party tools to Community Website strategy advice or feature requests. This helps us to prepare the call.

11. Can I request additional Custom Work regarding my Community Website?

11.1. **Custom work:** Users are allowed to request "**custom work**", such as integrations, development or other additional changes to their Community Website, that are not covered by the Software-contract.

11.2. **Your goal and planning:** Users requesting additional custom work need to provide the following information in order for Crowded to be able to respond with a proposal:

(a) The background of the request, that is to say: the goal that User wants to achieve through the requested addition(s).

(b) The preferred delivery time of the custom work.

Based on this request, Crowded will draft a proposal i.a. estimating the time needed to perform the custom work ("Planning"). Custom work that consists of development costs €125 excluding VAT per hour, non-development (e.g. project management, design) costs €75 excluding VAT per hour, unless specified differently in the proposal.

11.3. **Two rounds of feedback:** After delivery of the custom work, User is allowed to review it and provide Crowded feedback regarding necessary improvements ("**Feedback**"), within 2 (two) working days after it was sent by Crowded to User. Crowded will do its best to implement the Feedback within 4 (four) working days. The User is allowed to review the adjusted custom work a second time and has to provide Crowded any second Feedback within 2 (two) workings days after it was sent by Crowded to User. Crowded will try to resolve Feedback from this second round within 4 (four) working days. After this second and final Feedback round, any requested changes require a new custom work request, unless specified differently in the proposal.

11.4. **Insignificant feedback:** Feedback will not consist of "**Insignificant Imperfections**", meaning imperfections that do not affect the functionality of the Community Website (such as subjective opinions about design and interface outside the specifications agreed upon by User and Crowded) and are no reason for non-acceptance of custom work by User.

11.5. **Intellectual Property custom work:** Unless specified differently, Crowded is the exclusive owner of all Intellectual Property Rights vesting in, emanating from and relating to (the made changes in) custom work, as specified in article 9.1. Crowded is e.g. allowed to alter, redistribute or integrate the outcome of the custom work into the Software, Website or its Services, or to other Users.

11.6. **Right to refuse:** Crowded has the right to refuse custom work requests without additional clarification.

11.7. **No fatal deadlines:** The Planning indicated by Crowded shall be deemed to consist of indicative terms and shall not constitute fatal deadlines. Failure to meet the Planning will not release User from its obligations towards Crowded, unless specified differently in the proposal.

12. What is the quality and/or availability of the (Community) Website and Software?

12.1. **Available for modern and most used browsers:** Crowded will use its best and most reasonable efforts to make sure that the Software and (Community) Website are available in (the most used version of) modern, most used browsers, up until their latest release. Modern and most used browsers have to have at least more than 1.5% global usage in the last 6 (six) months.

12.2. **Effort of availability:** Crowded will use its best and most reasonable efforts to make sure that the Software and (Community) Website are available at all times with all features operating properly. Crowded will – for example – put in its best efforts to:

(a)   have Community Websites that have a high performance and are loading quickly.

(b)   have Community Websites that are up at least 99.5% of the time (this excludes planned maintenance).

However, User acknowledges that the Software and (Community) Website are provided over the internet and (mobile) networks and thus the quality and availability of them may be affected by factors outside Crowded's reasonable control.

12.3. **Disclaimer availability:** Crowded does not accept any responsibility whatsoever for unavailability of the Software and (Community) Website, or a Bug or any other (communication) system failure which may result in the Software or (Community) Website being unavailable.

12.4. **Certified cloud hosts and penetration test:** Crowded hosts the Website, Community Website and other parts of the Software solely on ISO 27001 and SOC II certified cloud hosting services. Furthermore, Crowded hires a third party auditor to perform a penetration test at least once each year.

12.5. **No obligation of support or maintenance:** Crowded will use its best and most reasonable efforts to create scalable, performing Software and (Community) Website. However, Crowded will not be responsible for and/or obligated to perform any support or maintenance regarding the Software or (Community) Website - i.a. as referred to in article 6 & 10 – in the event that this support or maintenance requires unreasonable effort or time given the specific circumstances.

12.6. **Disclaimer of (implied) warranties:** To the maximum extent permitted by law, Crowded hereby disclaims all (implied) warranties with regard to the Software, (Community) Website and Services, unless agreed otherwise in these Terms or writing. The Software and (Community) Website are provided "as is" and "as available" without warranty of any kind.

12.7. **Insurance:** We are satisfactorily insured against damage of Users resulting from inaccuracies of the Software.

13. Does Crowded also provide consultancy services?

13.1. **Our rate:** Crowded provides consultancy services at an hourly rate of €125 excluding VAT.

13.2. **Right to refuse:** Crowded has the right to refuse consultancy requests without additional clarification.

13.3. **No liability and insurance:** To the maximum extent permitted by law, Crowded cannot be held accountable for any outcome of consultancy services performed by it, see also article 14 in this regard. With regard to (employees of) Crowded performing consultancy services on location of Users, User agrees that the work space and facilities have to meet legal requirements for labour circumstances. User is liable and indemnifies Crowded for all (bodily) damage suffered by an employee of Crowded connected to his work on location. User will take out an occupational accident insurance (*arbeidsongevallenverzekering*) with adequate coverage.

13.4. **Competition clause:** For the duration of any Contract and for 1 (one) year after the Contract ends, User is not allowed to hire an employee of Crowded who is (or was) involved in the execution of the Contract, directly or indirectly, unless Crowded has given its explicit written permission.

14. When is Crowded liable?

14.1. **Liability and indemnification:** Parties agree to the general legal provisions regarding liability and indemnification as provided by the Dutch Civil Code (*Burgerlijk Wetboek*), unless specified differently by these Terms or the relevant Contract.

14.2. **No liability:** Crowded is not in any event liable for:

(i)   the effect of the application of our consultancy services;

(ii)   the actions or inactions of Users;

(iii) the situation where any third party makes use of User's Account;

(iv)   failure to meet any of Crowded's obligations under these Terms, where such failure is due to events beyond Crowded's control;

(v)   any damage or alteration to User's equipment including, but not limited to, computer equipment or a handheld device, as a result of the installation or use of the Software or (Community) Website.

14.3. **Applicable law:** Nothing in these Terms shall exclude or limit Crowded's liability when it cannot be excluded or limited under applicable law.

15. Does Crowded keep my information safe and secret? and what information do I need to keep secret?

15.1. **Confidentiality:** You and Crowded will make sure that all the information received by the other party – including information, designs, documentation and programmes – which is of a confidential nature, remains a secret. You and Crowded will only use this information for the purpose that it was provided for and not disclose any of this information to third parties. User and Crowded will take all the necessary measures to protect the confidential nature of the information, in the same way and at the same level as the parties' own confidential information.

15.2. **Protection:** We work hard to protect (personal) data from unauthorized or unlawful access, alteration, disclosure, use or destruction. We encrypt our traffic and inter-instance communications using TLS encrypted. All passwords are hashed with scrypt and never stored and all user data is encrypted at rest. Employee only have access to databases on a need-to-know basis using a SSH connection and two factor authentication.

16. Does Crowded change these terms?

16.1. **Changing these Terms:** Crowded reserves the right to change these Terms. When we change these Terms in a significant way, we will post a notification on our Website along with the updated Terms. We will also notify you via your Account, and request you to accept the updated Terms before you can continue to use the (Community) Website and Software.

17. What happens when one of these Terms is not enforced or cannot be enforced?

17.1. **No waiver:** If we do not enforce (parts of) these Terms, this cannot be construed as consent or waiver of the right to enforce them at a later moment in time or against another User.

17.2. **Severability:** The invalidity or unenforceability of any provision of these Terms shall not affect the validity or enforceability of any other provision of these Terms. Any such invalid or unenforceable provision shall be replaced or be deemed to be replaced by a provision that is considered to be valid and enforceable and which interpretation shall be as close as possible to the intent of the invalid provision.

17.3. **No transfer of rights by you:** User cannot transfer the rights and obligations (resulting) from a Contract or these Terms to third parties.

17.4. **Survival clauses:** Clauses 9 and 15 will survive the cancellation, termination or expiry of a Contract.

18. Which law is applicable to our relation and where can I go to court?

18.1. **Dutch law:** These Terms shall be governed by and construed in accordance with the laws of the Netherlands.

18.2. **Court of Amsterdam:** All disputes resulting from or arising in connection with these Terms shall exclusively be submitted to the competent court of Amsterdam, the Netherlands, unless the dispute can be settled in an amicable fashion.

19. Where can I leave complaints, comments and suggestions?

19.1. Let us know: Crowded strives to give you optimal service. Please let us know if you have a complaint, comment or suggestion. You can contact us at support@Crowded.co.