

For the purposes of these General Delivery Terms and Conditions "ICT" is deemed to refer to any subsidiary or any other company constituting part of the ICT Group which, acting on its own behalf, has presented an offer to another party – which party is deemed to act for the purposes of conducting a business, practising a trade or performs a public duty (hereinafter: the "Client") – or which has given an undertaking to a Client on its own behalf and in respect of which it has declared these General Delivery Terms and Conditions to be applicable.

All of the legal entities and companies which are associated with ICT Group B.V. in accordance with the provisions of Sections 2:24a to 2:24c of the Dutch Civil Code constitute part of the ICT Group as well as those legal entities and companies that ICT otherwise has communicated as being part of the ICT Group B.V. These terms and conditions are also available on the internet: [www.ict.eu](http://www.ict.eu).

## A - GENERAL PROVISIONS

### 1. APPLICABILITY AND DEFINITIONS

- 1.1 These General Delivery Terms and Conditions are applicable to any and all Negotiations with, proposals of and any and all contracts to the Contractor with regard to the delivery of movable goods (including but not limited to Hardware) and/or the supply of Licences and/or the performance of Services as also to any and all Agreements in connection therewith. These General Delivery Terms and Conditions consist of the aforementioned activities, and special provisions, which are related to the activities specified in the same.
- 1.2 The provisions set forth in article 1.1 result in the following applicability:  
 The parts A and B1 are applicable to Software (including development, warranty, Licence and Cloud Services).  
 The parts A and B2 are applicable to Hardware (including development and warranty).  
 The parts A and B3 are applicable to maintenance (Software and Hardware).  
 The parts A and B4 are applicable to secondment.  
 The parts A and B5 are applicable to training.
- 1.3 In case of discrepancies between the general provisions and the special provisions, the special provisions shall prevail.
- 1.4 The applicability of (purchase) terms and conditions of the Client (whether or not through reference to or inclusion of the (purchase) terms and condition on a purchase order) is expressly rejected.
- 1.5 The Client can only rely on terms and conditions that differ from these General Delivery Terms and Conditions if and to the extent that the said terms and conditions were accepted by the Contractor in writing.
- 1.6 A Client with whom a contract has already been concluded on the basis of these General Delivery Terms and Conditions agrees with the applicability of these General Delivery Terms and Conditions to subsequent negotiations with and Agreements by and between the Client and the Contractor.
- 1.7 "General Delivery Terms and Conditions" is understood as these "General Delivery Terms and Conditions" of the Contractor.
- 1.8 "Cloud Services" is understood as the remote (online) availability of Software and/or Documentation to the Client by the Contractor. This also includes the activities "Software as a Service" (SaaS), "Application Service Provider" (ASP), "Mobility as a Service" (MaaS), "Platform as a Service" (PaaS) and "Hosting".
- 1.9 "Services" is understood as activities and/or work performed by or on behalf of the Contractor, including but not limited to software development, consultancy, (technical) installation and commissioning, support, Cloud Services, training, secondment and maintenance activities with regard to Software and Hardware.
- 1.10 "Documentation" is understood as any and all documents supplied to the Client by the Contractor in conjunction with the Software and/or Hardware, including (where applicable) documents of third parties, in which the technical and/or functional specifications, including AutoCAD and/or e-Plan printouts and files, of the Software and/or Hardware and/or the user manual of the Software and/or Hardware are included.
- 1.11 "Executables" is understood as computer files that can be executed by a computer, not being source codes.
- 1.12 "Extreme Diseases" is understood as large-scale, contagious and/or otherwise extreme diseases, disease waves, epidemics or pandemics.
- 1.13 "Errors" is understood as any and all significant (clear / major) deviations from the Specifications occurring in the Software and/or Hardware. Something is only an Error if it can be demonstrated and reproduced by the Client.
- 1.14 "Hardware" is understood as computers and ancillary equipment, including but not limited to PCs, controllers, servers, devices, (control) cabinets, instrumentation, cabling and related Documentation, accessories, parts and Updates.
- 1.15 "Intellectual Property Rights" is understood as copyrights, related rights, drawing and model rights, database rights, patent rights, breeders' rights, trademark rights, trade name rights, topography rights, rights with regard to the protection of know-how and any and all other similar rights.
- 1.16 "Licence" is understood as the right of the Client to use Software in accordance with these General Delivery Terms and Conditions.
- 1.17 "New Version" is understood as a changed and/or improved version ("upgrade") of the Software and/or Hardware as a result of which the functionality or data structure of the Software and/or Hardware is expanded or changed. A New Version can normally be recognised because the first number of the version number is increased by one, e.g. from version 1.4 to version 2.0.
- 1.18 "Open Source Software" is understood as software that falls under the definition prepared by the Open Source Initiative ([www.opensource.org](http://www.opensource.org)), which must, in any case, be understood to include the open source software mentioned on [www.github.com](http://www.github.com).

- 1.19 "Agreement" is understood as each and every written agreement with regard to the delivery of movable goods (including but not limited to (physical carriers of) Software and/or Hardware) and/or the supply of Licences and/or the performance of Services to the Client by the Contractor.
- 1.20 "Software" is understood as each and every form of computer program, including all the thereto-pertaining preparatory design material, algorithms, flowcharts, source codes, object codes, software included in equipment (including operating software, firmware, etc.), software solution, Documentation and any and all New Versions, Updates, expansions, changes and improvements of respectively in the same.
- 1.21 "Specifications" is understood as any and all technical and functional features of the Software and/or Hardware that are included in the Documentation and/or in another document prepared or approved by the Contractor.
- 1.22 "Updates" is understood as a changed version of the Software and/or Hardware as a result of which Errors in the Software and/or Hardware are remedied through 'patches', the security is improved or the logical coherence of the Software and/or Hardware is improved. An Update can normally be recognised because the second number of the version number is increased by one, e.g. from version 1.2 to version 1.3. In case a problem can be remedied fast and easily then a 'bug fix' is carried out. This can be recognised because the third number of the version number is increased by one, e.g. from version 1.2.1 to version 1.2.2.

## 2. NEGOTIATIONS WITH THE CONTRACTOR

- 2.1 These General Delivery Terms and Conditions are also applicable to any and all discussions between the Contractor and the Client with regard to the inventory of a potential Agreement (hereinafter referred to as: the "Negotiations"). The Contractor is always authorised to break off the Negotiations without being liable to pay compensation or being held to continue the Negotiations.
- 2.2 If, before an Agreement is concluded in accordance with article 3.5, at the request of the Client the Contractor already starts the performance of the Services or if the Client takes notes of the same but does not object to it in writing then the Client is held to pay the fee(s) already stipulated during the Negotiations or otherwise the fee(s) commonly calculated by the Contractor. If an Agreement is unexpectedly not concluded then the Client shall reimburse the relevant Services up to the moment that the Contractor discontinues the Services. As the occasion arises the said Services shall exclusively be performed subject to applicability of these General Delivery Terms and Conditions.

## 3. PROPOSALS, CONTRACTS AND AGREEMENTS

- 3.1 Any and all proposals of the Contractor are subject to contract. The Contractor can still revoke its proposal shortly after receipt of the acceptance, unless the said proposal contains a period for acceptance and the period has not expired yet.

- 3.2 Any and all proposals of the Contractor are of a confidential nature and can only be used by the Client during consultation with the Contractor and/or for the benefit of a selection between the Contractor and other providers in the course of which the other providers do not receive information from the proposal of the Contractor and/or obtain insight into the same. The provisions set forth in articles 13.1 and 13.2 of these General Delivery Terms and Conditions are equally applicable.
- 3.3 Any and all proposals of the Contractor are based on correctness and completeness of the (technical) information, designs, drawings, calculations, specifications, etc. obtained from the Client. If during the preparation of the proposal the Contractor discovers shortcomings and/or obscurities in the information etc. received from the Client then the Contractor shall warn the Client accordingly. If during the contracted Services shortcomings or obscurities are yet detected in the information etc. received from the Client then they shall, in conformity with article 19 for Software and article 25 for Hardware of these General Delivery Terms and Conditions, be settled. During the performance of the Services the Client shall also supply the information, designs, drawings, etc. to the Contractor in a timely fashion.
- 3.4 Contracts and acceptances of proposals by the Client are deemed to be irrevocable.
- 3.5 The Contractor shall only be bound when and as the Contractor accepted a contract by means of an Agreement. Oral promises or arrangements by or with its staff shall not have binding effect on the Contractor barring and in as much as the Contractor confirmed them in writing.
- 3.6 The Contractor is entitled to fully or partly outsource its obligations pursuant to the Agreement concluded with the Client.
- 3.7 Unless the parties expressly stipulate otherwise in writing, the Contractor shall, if it performs activities for the Client in the capacity of sub-contractor (or through a similar construction), never be bound by back-to-back applicability of (legal) terms and conditions in the relationship between the Client and (its) principal.

## 4. PRICE

- 4.1 Prices indicated by the Contractor or stipulated with the Client are in EUR and net, hence, inter alia, exclusive of VAT and exclusive of potential import and export duties, and are only applicable delivery ex office. Prices are, moreover, exclusive of the costs for packaging, shipment, insurance and installation.
- 4.2 If the Contractor has taken on the packaging, shipment, insurance and/or installation without a price expressly having been stipulated for it in writing then the Contractor shall be entitled vis-à-vis the Client to charge the actual costs and/or to charge the rates common at the Contractor for this.
- 4.3 Prices indicated by the Contractor or stipulated with the Contractor are based on wages and cost prices at the time of the proposal or the acceptance of a contract by the Contractor and on normal working hours, i.e. A normal working week (Monday up to and including Friday), and working times (08:00 o'clock

until 18:00 o'clock). If the wages and/or cost prices are afterwards subject to an increase then the Contractor is entitled to charge a corresponding price increase to the Client, in so far as this is reasonable and not stipulated otherwise in the Agreement.

- 4.4 Any and all Services that are performed outside the normal working hours are settled at the rates and surcharges established in the Agreement, departing from the normal working hours of the Contractor. Any and all waiting hours, respectively downtime, for employees of the Contractor caused by the Client are settled on the basis of the rates established in the Agreement,
- 4.5 Barring if and to the extent that a fixed price is expressly stipulated in writing, it is noted that the Services are performed on the basis of Time & Material(s) (in the course of which the Client therefore reimburses the hours actually worked by the Contractor as well as the thereto-pertaining materials).
- 4.6 If a fixed price was stipulated and the Client intends to implement changes in or additions to the contract, then the Contractor shall inform the Client of the consequences of the said changes and additions for the price.

## **5. DELIVERY PERIODS, DELIVERY AND ACCEPTANCE**

- 5.1 Any and all (delivery) periods mentioned by the Contractor are indicative and can never be qualified as fatal deadlines. The mere overstepping of a stipulated (delivery) period shall not cause the Contractor to be in default. The Contractor and the Client shall enter into discussions in case of an imminent overstepping of a (delivery) period. A delivery period takes effect after conclusion of the Agreement as intended in article 3.5 and after the Client has supplied any and all data, documents, equipment, computer time and (office) space to the Contractor and after a potentially stipulated advance payment has been received by the Contractor or security for payment has been provided for the benefit of the Contractor.
- 5.2 The Software, Hardware, Documentation and other goods to be delivered by the Contractor are deemed to have been delivered as soon as they have left the office of the Contractor or third parties hired by the Contractor for shipment to or for the benefit of the Client. If the Client cannot or does not want to receive the Software, Hardware, Documentation and/or other goods at the stipulated time then they are deemed to have been delivered at the time that they would have left the office had there not been an impediment on the part of the Client. As the occasion arises, the Contractor shall be entitled to store the same at the expense of the Client.
- 5.3 Delivery periods are extended by the time that the implementation of the Agreement is delayed due to force majeure. The Client shall lend any and all stipulated and/or necessary cooperation in the performance of the Services of the Contractor. Delivery periods are also extended by the time that the Client is later with the performance of an

obligation than stipulated or later than can reasonably be expected by the Contractor.

- 5.4 The Contractor is entitled to deliver in instalments. For the purpose of these General Delivery Terms and Conditions each and every partial delivery is qualified as an independent delivery.
- 5.5 All the Software, Hardware and Documentation delivered by the Contractor shall, unless stipulated otherwise, be inspected by the Client within fourteen (14) days after delivery and subsequently be accepted and after remedy of potential Errors. The acceptance of Software is specified in more detail in article 18 and for Hardware in article 24.

## **6. (INTELLECTUAL PROPERTY) RIGHTS WITH REGARD TO SERVICES, SOFTWARE, HARDWARE AND DOCUMENTATION**

- 6.1 Unless expressly stipulated otherwise in writing, the Intellectual Property Rights on or in connection with the delivered Services, Software, Hardware and Documentation remain vested in the Contractor and/or its licensors and the said rights do not transfer to the Client. If these General Delivery Terms and Conditions refer to the word "deliver" or conjugations of this word then it cannot be inferred from this that a transfer of title or Intellectual Property Rights is intended.
- 6.2 If, in derogation from article 6.1, the Contractor and the Client nonetheless expressly stipulate in writing that the Intellectual Property Rights as intended in article 6.1 are vested in the Client then in all instances it is noted that: 1) the said rights only transfer to the Client after the Client has paid everything that it is liable to pay pursuant to the underlying Agreement to the Contractor in full, including damages, costs and interest, and that 2) only those rights are transferred of which this was expressly stipulated in writing.

## **7. TRANSFER OF RISK AND TITLE**

- 7.1 The risk in respect of the goods to be delivered by the Contractor (also including Hardware and carriers of Software) shall transfer to the Client from the moment of delivery and in respect of Software to be delivered or to be developed by the Contractor from the moment that the (partial) acceptance test has been successful in accordance with these General Delivery Terms and Conditions. If a (partial) acceptance test was not stipulated then the Software shall be at the risk of the Client from the moment that the Software is actually made available to the Client.
- 7.2 Any and all goods delivered by the Contractor (also including Hardware and carriers of Software) remain the property of the Contractor up to the moment that the Client has paid everything that it is liable to pay pursuant to the underlying Agreement to the Contractor in full, including damages, costs and interest. The Client is not entitled to a right of retention in respect of the said goods.

## **8. FORCE MAJEURE**

- 8.1 The Contractor is entitled to rely on force majeure if the implementation of the Agreement is, whether or not temporarily, prevented or hindered either in whole or in part by circumstances reasonably beyond its

control, including acts, rules or decisions of an official authority, natural phenomena, e.g. earthquakes and flooding, fires, riots, wars, company lockouts, industrial action, punctuality and exclusion actions, delayed delivery to the Contractor of parts, goods or services ordered with third parties, failures in networks, systems and/or connections of the Client, customers of the Client and/or suppliers of the Client or the Contractor (including hosting providers as well as other providers of Cloud Services as intended in article 23, including Microsoft Azure), sickness of employees, outbreaks of Extreme Diseases, accidents and business interruptions and failures in the computer equipment of the Contractor and/or the Client.

8.2 In case of force majeure on the part of the Contractor, its obligations are suspended. If the force majeure has continued for more than three (3) months then the Contractor is authorised to rescind the Agreement for the part that has not been implemented without thus being liable to pay damages and without prejudice to the provisions otherwise set forth in these General Delivery Terms and Conditions.

## 9. LIABILITY, INDEMNIFICATION AND INSURANCE

9.1 In all instances where the Contractor is held to pay compensation for damages, irrespective of the legal basis of the liability (unlawful act, failure to comply with the Agreement or otherwise), and in all instances per event or series of events with a common cause it shall be limited to compensation for direct damages up to at most the amount of the invoice value (excluding VAT) of the delivered goods as a result of which or in connection with which the damages are caused with a maximum of two hundred and fifty thousand euros (€ 250,000.00). In case of a continuing performance agreement the amount (excluding VAT) that was invoiced by the Contractor and that was paid by the Client for Services performed in the period of six (6) full calendar months prior to the harmful fact, on the basis of the continuing performance agreement in pursuance of which the liability arises, shall be qualified as the "invoice value", including the said maximum. If the Contractor is, pursuant to one Agreement, held to pay compensation for direct damages on multiple occasions then the maximum accumulative compensation shall never exceed the contract value (excluding VAT), the latter, however, with a maximum of five hundred thousand euros (€ 500,000.00).

9.2 The liability of the Contractor for indirect or consequential damages is always excluded. These kinds of damages also include lost profit, lost turnover, lost savings, reduced goodwill, losses due to business interruptions (also including damages as a result of a breakdown of machines or production lines) and depletion of staff, damages as a result of claims of customers of the Client, compensations or penalties payable to third parties, loss of value or loss of products, damages related to the use of goods, materials or Software of third parties prescribed to the Contractor by the Client, damages as a result of recall actions ('recalls') and damages related to the reliance on suppliers prescribed to the Contractor by the

Client. The liability of the Contractor for mutilation or loss of information and/or data of the Client and/or third parties (also including personal data and business information) is also excluded.

9.3 Limitations of liability for the benefit of the Contractor as included in these General Delivery Terms and Conditions, including this article 9, are not applicable if and to the extent that the incurred damages are caused by intent or intentional recklessness of the Contractor or its own managerial subordinates.

9.4 The articles 9.1 up to and including 9.3 are equally applicable to the indemnifications and warranties provided by the Contractor.

9.5 The Client indemnifies the Contractor against any and all claims of third parties on account of product liability as a result of a defect in the Software, Hardware or any other material that was delivered to a third party by the Client and that partly consisted of Software, Hardware or other materials delivered by the Contractor, barring and to the extent that it is established in court that the damages are caused by the Software, Hardware or other materials delivered by the Contractor. The applicability of Section 404 of Book 7 of the Dutch Civil Code is expressly excluded.

9.6 In case of delivery, development, sale, Licensing or any other availability of Software, Hardware or Services by the Contractor for the benefit of a Client who is active in the medical sector (also including hospitals and clinics), the Contractor shall never be liable for damages (including bodily harm) inflicted by diagnoses, recommendations, treatments, etc. given and/or generated by the Client as a result of, or with the help of, the relevant Software, Hardware and/or Services and the Client indemnifies the Contractor against any and all claims of third parties (also including patients and/or clients of the Client) in connection therewith. Barring express prior consent of the Contractor, the Client is not allowed to apply and/or exploit the Software, Hardware or (the result of) Services as intended in this article in the United States and/or Canada. Unless expressly stipulated otherwise in writing, the Contractor shall never be liable for obtaining authorisations from (supervisory) authorities, e.g. the U.S. Food & Drug Administration (FDA).

9.7 If in addition to compensation the parties agreed on a penalty then the potentially forfeited contractual penalties and amounts paid and/or to be paid pursuant to indemnifications shall be deducted from the potential compensation in connection with the same event.

9.8 The Contractor took out liability insurance and that maintain this to the extent that this is necessary and common according to the nature and scope of the Services and according to the practice in the industry. The Client is not included in the insurance of the Contractor as a co-insured party. If so required, the Client can obtain a copy of the relevant policy sheet.

9.9 Each and every claim vis-à-vis the Contractor, barring a claim that is recognised by the Contractor, expires due to the mere lapse of a period of six (6) months after the occurrence of the claim.

9.10 Conditions that limit, exclude or determine liability, which can be imposed on the Contractor by

the suppliers or subcontractors of the Contractor in connection with the delivered goods, can equally be imposed on the Client by the Contractor.

- 9.11 The employees of the Contractor of auxiliary persons hired by the Contractor for the implementation of the Agreement can rely on any and all remedies pursuant to the Agreement vis-à-vis the Client as if they were a party to the said Agreement.
- 9.12 The Client shall indemnify the Contractor, its employees and its auxiliary persons hired for the implementation of the Agreement against each and every claim of third parties in connection with the implementation of the Agreement by the Contractor.
- 9.13 The Contractor commits to pay payroll taxes and the national insurance contributions that are payable for the employee(s) of the Contractor pursuant to the legislation of the country where the Contractor is established in a timely and complete fashion and indemnifies the Client against each and every claim in connection therewith.
- 9.14 The Client acknowledges that products, including Software and Hardware and technology linked to the same, may be subject to certain import and export checks and only the Client shall in this respect be responsible for obtaining any and all relevant authorisations and permits and is, particularly, responsible for the fact that its use of the goods delivered by the Contractor complies with, and does not result in a violation of, relevant legislation and regulations in the area of import and export, including those of the (Export Administration Regulations of the) US Department of Commerce. The Client confirms that the obligations set forth in this article shall also remain in full force and effect after the end of the Agreement and indemnifies the Contractor against any and all claims, damages and costs as a result of a violation by the Client of this article 9.14.
- 9.15 Barring a written arrangement to the contrary or barring different mandatory statutory provisions, the Client is personally responsible for obtaining and placing CE marking or similar certifications that are imposed pursuant to applicable Dutch, European or other applicable legislation and regulations and only the Client is responsible for compliance in connection therewith and the Client indemnifies the Contractor against any and all claims of third parties in connection therewith.
- 9.16 The Client commits to always comply with (commercial and financial) export restrictions that were imposed on certain countries by, in particular, the European Union, the United States and the United Nations and the Client shall therefore not resell products to natural persons or legal persons who were included on a list of sanctioned parties. The Client confirms that the obligations set forth in this article shall also remain in full force and effect after the end of the Agreement and indemnifies the Contractor against any and all damages and claims as a result of a violation by the Client of this article 9.16.
- 9.17 The Client shall personally examine whether safety and similar measures are required in the context of the Services to be provided by the Contractor in view of the reduction of bodily harm or

other damages and shall, where required, take these kinds of measures in a timely and sufficient fashion (prior to the start of the Services). The Client indemnifies the Contractor against any and all damages (including costs of the lawyer of the Contractor) that the Contractor incurs as a result of a violation by the Client of the obligations set forth in this article 9.17.

- 9.18 The exclusions and limitations of liability as intended in this article 9 shall not affect the other exclusions and limitations of liability of the Contractor on account of these General Delivery Terms and Conditions, which shall remain in full force and effect.

## 10. WARRANTY GENERAL

- 10.1 The warranty obligations of the Contractor vis-à-vis the Client for parts that the Contractor purchases from third parties shall never exceed or be of a longer term than the warranty obligations of the said third parties vis-à-vis the Contractor. In this respect the Contractor shall be released if it transfers its claim vis-à-vis the said third party to the Client.
- 10.2 The Client is, if so required, held to enable the Contractor to provide the warranty and shall, in connection therewith, make, inter alia, computer time, (office) space and communications facilities available to the Contractor.
- 10.3 The warranty terms and conditions with regard to Software are included in article 20 and with regard to Hardware in article 26.
- 10.4 (Non-)conformity is only and exclusively determined in pursuance of these General Delivery Terms and Conditions and/or the Agreement and Section 17 of Book 7 of the Dutch Civil Code is therefore never applicable.

## 11. INDEMNIFICATION INTELLECTUAL PROPERTY RIGHTS

- 11.1 The Contractor indemnifies the Client against claims of third parties regarding infringements of patent rights, copyrights and/or database rights that are related to (the use of) the Software and/or Hardware developed by the Contractor on the condition that the Client: (a) forthwith informs the Contractor of these kinds of claims; (b) does not acknowledge the claims, and (c) lends cooperation in the defence against these kinds of claims.
- 11.2 The liability of the Contractor with regard to the aforementioned infringements is completely and exclusively limited to the obligations set forth in this article 11.
- 11.3 In case it is established irrevocably in court that the use of the Software and/or Hardware or any part of it infringes patent rights, copyrights and/or database rights of a third party as a result of an act or omission of the Contractor, and as a result thereof the Client can be and/or is denied the use of the Software and/or Hardware or a part of it by or on behalf of the rights holder, the Contractor shall at its own expense, at its sole discretion:
- acquire the right for the Client to continue the use of the Software and/or Hardware or the relevant part of it;

- b. replace the Software and/or Hardware or the relevant part of it by programming and/or components that do not infringe as intended above;
- c. change the Software and/or Hardware in such manner that the infringement is terminated;
- d. take back the Software and/or Hardware or the relevant part of it upon reimbursement of an amount to, as the occasion arises, reasonably be determined by the Contractor.

11.4 A change and/or replacement of the Software and/or Hardware or the relevant part of it implemented in conformity with article 11.3 shall, where possible, not imply that the Client is limited substantially in the options to use the Software and/or Hardware.

11.5 The indemnification obligation as intended in this article 11 expires if and to the extent that a) the relevant infringement is related to changes that were made in the Software and/or Hardware by the Client or that were made by third parties (also including undertakings related to the Client, distributors, agents or subcontractors of the Client) without prior written consent of the Contractor, b) it regards an indirect infringement, c) the relevant infringement originates from a combination of the Software and/or Hardware with other products or (whether or not Open Source) programming, d) the relevant claim is reported after expiry of a period of three years after delivery by the Contractor to the Client, e) the infringement is related to a design, specifications or instructions of the Client, f) the infringement arises if the Software was developed by (an Employee of) the Contractor in the context of an Agreement in the course of which the Client manages and supervises the Employee of the Contractor, e.g. in case of secondment, g) the infringement derives, either directly or indirectly, from unauthorised use by the Client of the goods delivered by the Contractor (including a violation of the scope of a Licence), h) the relevant claim derives, either directly or indirectly, from (whether or not Open Source) Software or prototypes delivered by the Client to the Contractor, i) the relevant claim derives from an infringement of Intellectual Property Rights of third parties that refer to a standard that was adopted by a standardisation institution and/or was stipulated by and between, at least, two companies, or j) an infringement can otherwise be blamed on or allocated to the Client.

## 12. PAYMENT AND SECURITY

- 12.1 Payment must take place within thirty (30) days after the date of the invoice. However, the Contractor is always entitled to require full or partial advance payment and/or to otherwise obtain payment security.
- 12.2 The right of the Client to settlement or suspension regarding amounts payable to the Contractor is excluded.
- 12.3 If the invoice is only related to realised hours of the Employee of the Contractor then the Client can stipulate that the Client can split the payment of the invoice, namely thirty per cent (30%), equal to the statutory obligations regarding withholding and payment of payroll taxes and national insurance

contributions (the "Statutory Obligations") of the hourly rate invoiced by the Contractor, to the G account of the Contractor and the remaining seventy per cent (70%) to the account as defined by the Contractor on the relevant invoice. To that end the Contractor shall maintain a G account at a renowned bank during the term of the Agreement.

12.4 Objections to the amounts invoiced by the Contractor must be communicated to the Contractor in writing prior to the expiry of the payment term, failing which the correctness of the invoiced amounts after the expiry of the payment term is deemed to be an established fact between the parties. The data of the Contractor are decisive for the determination of the amounts payable by the Client, unless the Client demonstrates that the said data are incorrect.

12.5 If the Client does not pay an amount payable by the same in conformity with the previous articles then the Client shall be in default without notice of default. As soon as the Client is in payment default any and all other claims of the Contractor vis-à-vis the Client shall fall due and the default shall also take immediate effect with regard to the said claim. Effective from the day that the Client is in default, the Client shall be liable to pay the Contractor the statutory interest rate as intended in Section 119a and Section 120 of Book 6 of the Dutch Civil Code (statutory commercial interest rate) as well as the reasonable (extrajudicial) costs and collection costs.

## 13. CONFIDENTIALITY AND PERSONAL DATA PROTECTION

13.1 The parties shall make all reasonable efforts to keep the confidential information received from the other party secret. Information is confidential if 1) it would be qualified as confidential information by a diligent entrepreneur, irrespective of the fact if the said information was qualified as "confidential" or "proprietary", and/or 2) reasonably appears to be confidential or proprietary in the light of the circumstances of disclosure or the nature of the information itself. Moreover, any and all information that originates from the Contractor that is protected on the basis of the Dutch Business Secrets (Protection) Act is also expressly qualified as confidential information. The confidentiality obligation is applicable during the term and up to ten (10) years after termination of the Agreement, the latter however without prejudice to the (in time unlimited) rights of the Contractor pursuant to the Dutch Business Secrets (Protection) Act.

13.2 The Client commits to, in the light of the above, make all reasonable efforts to keep the Software and/or Hardware and/or the Documentation secret.

13.3 If the Contractor processes personal data for the Client in the context of the implementation of the Agreement then the Contractor is qualified as the "processor" within the meaning of the General Data Protection Regulation (GDPR) and the Agreement is equally qualified as an agreement as intended in article 28 paragraph 3 of the GDPR. The Contractor shall take reasonable technical and organisational measures to secure the personal data against loss or unlawful processing and shall otherwise also commit

to the provisions set forth in article 28 paragraph 3 (under a up to and including h) and paragraph 4 of the GDPR. The Client guarantees that the content, the use and the processing of personal data are not unlawful and do not infringe a right of a third party. Moreover, the Client guarantees that it fully applies the principles of 'privacy by design' and 'privacy by default' in its contractual relationship with the Contractor as also in the (IT) systems in which the Contractor is active as a processor. The Client indemnifies the Contractor against any and all claims of third parties, on any account whatsoever, including claims of the Dutch Data Protection Authority (DPA) or similar supervisory authorities outside the Netherlands and/or data subjects whose personal data are processed by the Contractor in the context of the implementation of the Agreement, unless the Client demonstrates that the facts on which the claim is based can be blamed on the Contractor. A (administrative) fine imposed on the Client by the DPA can never be recovered from the Contractor, unless there is question of intent or intentional recklessness on the part of the Contractor or its managerial subordinates. In case of a breach in connection with personal data as intended in article 4 paragraph 12 of the GDPR (data breach), the Contractor shall forthwith, preferably within 24 hours after the detection of the data breach, inform the Client accordingly in writing, following which the Client shall inform the relevant supervisory authority (supervisory authorities). Notification of a data breach is and remains the exclusive responsibility of the Client. The Client shall, on demand, inform the Contractor in writing how the Client complied with its obligations deriving from privacy legislation and regulations, including the GDPR, and shall inform the Contractor if a processing act pursuant to an Agreement falls under the scope of the GDPR and if the said processing act was reported to the DPA. The Client guarantees the Contractor that the Client has any and all authorities required for the lawful processing of personal data before the said personal data are transferred to the Contractor.

#### 14. SUSPENSION, RESCISSION AND FINANCIAL CONSEQUENCES OF EARLY TERMINATION

14.1 The Contractor is entitled to suspend its Services if and as soon as the Client does not comply with one or more of its obligations or not in a timely fashion or not properly. Moreover, the Contractor shall be entitled to suspend the implementation of the Agreement if it becomes apparent that in practice implementation deviates significantly from the provisions set forth in the Agreement or otherwise increases the scope of the activities considerably and the parties have not reached agreement about the consequences of the said deviation yet in terms of the price and term of the Agreement. In the instances as intended in article 14.1 any and all costs of the suspension shall be at the expense of the Client.

14.2 Each party shall, in the instances outlined below and insofar as allocated below, be entitled to rescind the Agreement, either in whole or in part, with immediate effect or to terminate the same by giving

notice, the latter at the discretion of the terminating party.

- a. if the other party is granted provisional or definitive suspension of payment or if it is declared to be bankrupt;
- b. if the other party acts in violation of an essential obligation pursuant to the Agreement and it does not, after it has consequently been given written notice of default, yet comply with its obligations within a reasonable period;
- c. if the other party acted in violation of the Agreement and compliance or remedy is not (no longer) possible, also including a violation by the Client of the provisions set forth in article 6 ((Intellectual Property) Rights with regard to Services, Software, Hardware and Documentation) and/or article 21 (Software Licence);
- d. In the instance under c of article 14.2 it is not required to provide a period as intended under b.

14.3 Without prejudice to the provisions set forth otherwise in this article 14, the Contractor is always entitled to suspend its obligations pursuant to the Agreement or to rescind the Agreement with immediate effect if there is question of Extreme Diseases in the country where the Client is established or in the country where the Contractor is otherwise subject to an obligation to deliver pursuant to the Agreement.

14.4 Without prejudice to the provisions set forth otherwise in this article 14, the Client is, in case of early termination of the Agreement, other than on account of rescission due to an essential failure to comply of the Contractor established in court, held to compensate the Contractor for the rates stipulated (in the Agreement) up to the date of actual termination of the Services as also to compensate the Contractor for the already reserved working time of the relevant Employees of the Contractor (or, where applicable, auxiliary persons hired by the same) (on the basis of the aforementioned rates). The obligations to undo pursuant to Section 271 of Book 6 of the Dutch Civil Code are always excluded.

#### 15. MISCELLANEOUS

15.1 Corporate social responsibility is an important part of the organisation of the Contractor. The Contractor operates as ethically and transparently as reasonably possible in view of the interests of shareholders, employees, the surroundings and the environment. To this end it uses a Code of Conduct, which Code shall be made available to the Client on demand. The Contractor only does business with undertakings that respect the law and that comply with ethical standards and principles. The Client guarantees that it shall use the goods delivered by the Contractor in accordance with applicable legislation and regulations in the area of human rights (as intended in the Universal Declaration of Human Rights), competition, working conditions, the prevention of corruption, bribery and cyber criminality and the protection of the environment. The aforementioned legislation and regulations include, for instance, the Dutch Criminal Code, the Dutch

Money Laundering and Terrorist Financing (Prevention) Act, the Dutch Competition Act, the OECD Corruption Directive and, where applicable, the UK Bribery Act and the American Foreign Corrupt Practices Act (FCPA). If the Client acts in violation of the legislation and regulations as intended in this article 15.1 then this can give the Contractor cause to proceed with immediate termination of the Agreement without thus resulting in any form of liability towards the Client.

15.2 During the term of the Agreement and during a period of twelve (12) months thereafter both the Client and the Contractor shall refrain from recruiting each other's members of staff (either as an employee or as a contracting party via a third party) who are involved in the implementation of the Agreement. If the parties act in violation of the said obligation then the relevant party forfeits an immediately claimable penalty to the other party that is not subject to moderation of 100% of the gross annual salary of the relevant employee, all without prejudice to the right of the other party to claim the actual damages incurred by the same from the relevant party in full (to the extent that it exceeds the forfeited penalty).

15.3 On demand of the Contractor the Client shall make equipment, materials, building facilities, access to premises, (office) space, telecommunications facilities, data on data carriers, etc. available to the Contractor for the provision of the Services that derive from the Agreement concluded by and between the parties. Any and all goods must comply with the specifications of the Contractor and the work and/or office space must comply with the applicable working conditions, health and safety and other statutory requirements with regard to the working conditions. It falls under the responsibility of the Client that at the location the Contractor can apply the SCC guidelines and NEN 3140, in the course of which the Client cannot prescribe anything as a result of which the safety is prejudiced. The Client indemnifies the Contractor against any and all claims of the Employee(e) or third parties hired by the Contractor vis-à-vis the Contractor in pursuance of Section 658 of Book 7 of the Dutch Civil Code in case of non-compliance with this article 15.3.

15.4 If so required, the Client is held to designate one or more employees who shall act as a contact person for the Contractor.

15.5 If a provision (provisions) of these General Delivery Terms and Conditions is (are) invalid or nullified then the other provisions of these General Delivery Terms and Conditions shall remain in full force and effect and the parties shall enter into discussions in order to agree on a new provision (new provisions) to replace the invalid or nullified provision (provisions), in the course of which the objective and the scope of the invalid or nullified provision (provisions) are observed as much as possible.

15.6 Written communication between the Client and the Contractor takes, on both sides, place with the help of post, facsimile and/or email, which are qualified as documentary evidence by the parties.

15.7 The Contractor is entitled to change these General Delivery Terms and Conditions. The

changes take effect four weeks after the announcement or on a later date mentioned in the announcement. The announcement is posted on the website of the Contractor ([www.ict.eu](http://www.ict.eu)).

## 16. DISPUTES AND APPLICABLE LAW

16.1 Any and all disputes that arise between the parties shall exclusively be settled by the competent court in Rotterdam and higher courts, unless the Contractor prefers an otherwise competent court.

16.2 The relationship between the parties is, also during Negotiations, exclusively subject to Dutch law, with the exclusion of the rules regarding the choice of applicable law pursuant to the rules of international private law. The applicability of the Vienna Sales Convention (United Nations Convention on Contracts for the International Sale of Goods) is expressly excluded.

## 17. INCONSISTENCY BETWEEN THE DUTCH TEXT AND TRANSLATION(S)

17.1 In case of an inconsistency between the Dutch version of these General Delivery Terms and Conditions and a translated version of these General Delivery Terms and Conditions, the Dutch version shall be binding. The Contractor shall always be authorised to adjust a translated version (early) linguistically without communicating this (the latest version can, however, always be consulted on the website of the Contractor).

## B - SPECIAL PROVISIONS

### B1 - SOFTWARE

## 18. DEVELOPMENT, ADJUSTMENT AND ACCEPTANCE OF SOFTWARE

18.1 If it was stipulated that the Contractor shall develop Software or adjust Software then the Contractor shall develop and/or adjust the Software in accordance with the Specifications included in the document signed by both parties. The Client acknowledges that the Specifications are also based on data to be supplied by the Client, in the course of which the Client guarantees the correctness, completeness and consistency of the said data. If the design of the Software is based on a statutory standard, quality standard and/or a standard otherwise used or common in the industry then the Client shall be responsible for the correct interpretation of the said standard and in such manner that it enables the Contractor to adequately set up the Specification on the basis of the same.

18.2 In the instances as intended in article 18.1 it shall be established on the basis of an acceptance test to be carried out by and under the responsibility of the Client whether the Contractor complied with the contract awarded to the same. This is the case if it follows from the acceptance test that the Software essentially functions in accordance with the Specifications as intended in article 18.1.

In case of a successful acceptance test the Client shall within three (3) days after the success of the acceptance test sign and submit an acceptance certificate to the Contractor in which the success of the acceptance test is confirmed.



- The acceptance test shall consist of the performance of a collection of test situations to be stipulated further (the "Test Plan"). On demand of the Contractor or the Client the Client or the Contractor, respectively, shall submit a proposal for this kind of Test Plan.
- 18.3 If the Software only deviates, at the discretion of the Contractor, from the Specifications as intended in article 18.1 on non-essential components then the acceptance test shall be successful. These kinds of deviations shall be mentioned in the acceptance certificate as intended in article 18.2 and the Contractor shall make an effort to remedy the said deviations as soon as possible.
- 18.4 As soon as possible after the Client has informed the Contractor in writing that:
- the progress of the acceptance test is, due to deviations from the Specifications as intended in article 18.1, hindered such that the acceptance test can reasonably not be carried out;
  - or
  - the acceptance test is, due to deviations from the Specifications as intended in article 18.1, not successful;
- the Contractor shall start the performance of any and all activities that are required to accomplish the progress respectively the success of the acceptance test. The acceptance test shall then be continued or start again, after which the scheme of this article is applied until the acceptance test is successful.
- 18.5 If the Client did not at the latest within three (3) days after the expiry of the period that is foreseen in the planning or in another document for the performance of the acceptance test made one of the notifications as intended in article 18.4 or submitted the acceptance certificate as intended in article 18.2 to the Contractor then the acceptance test is deemed to have been successful and it is an established fact that the Contractor complied with the contract awarded to the Contractor.
- 18.6 If prior to the moment of acceptance the Client makes any use (other than for test purposes) of the Software then the Software shall already have been deemed to have been accepted in full from the start of the said use. Damages that are inflicted in case of the said use are fully at the expense of the Client.
- 18.7 If partial acceptance tests were stipulated then the same procedure as included in article 18.2 up to and including 18.6 shall apply to the said partial acceptance tests.
- 18.8 If it was not determined during what period the (partial) acceptance test (tests) shall be carried out then the test (tests) shall be carried out within fourteen (14) days after the availability of the Software.
- 18.9 If it was stipulated that an Agreement shall be implemented in phases then the Contractor shall be entitled to suspend the activities with regard to a subsequent phase until the Client has approved the results of the previous phase in writing or - if the phase is concluded with a partial acceptance test - the relevant acceptance test was successful. In case the suspension cannot entirely be blamed on the Contractor then the Client is held to compensate the Contractor for the (delay) damages incurred by the Contractor as a result of the suspension. The provisions set forth in article 19.6 are applicable in full.
- 18.10 The procedure included in article 18.2 up to and including article 18.9 is also applicable if the Contractor made standard software (of third parties) available to the Client and it was, in derogation from article 5.2, stipulated that an acceptance test must be carried out by the Client.
- 18.11 The Contractor shall by no means be held to reconstruct and/or repair lost or mutilated information and/or data.
- 18.12 Any and all contractual obligations of the Contractor with regard to (the part of) the Software shall have been complied with on the day that the Client accepted (the part of) the Software in accordance with this article 18, with the exception of the obligations included in article 20 of these General Delivery Terms and Conditions, where applicable.
- 18.13 If the Contractor develops a (mobile) app for the Client for further exploitation by the Client and pursuant to the Agreement the Client can exploit the said (mobile) app in online app shops then it falls under the exclusive responsibility of the Client that the said app is accepted in online app shops (e.g. Google, Apple or Windows). It falls under the exclusive responsibility of the Client that the applicable terms and conditions of the said online app shops are complied with. The client indemnifies the Contractor against any and all claims, damages and costs that could arise from the non-compliance with the said terms and conditions on the part of the Contractor.
- 18.14 As the occasion arises, it can be stipulated with the Client that the Software shall be developed on the basis of Agile Scrum. The Client acknowledges that with this form of development the ultimate result cannot be specified and that there is merely question of a best efforts obligation on the part of the Contractor. The Client moreover acknowledges that within Agile Scrum the cooperation of the Client and its staff is of utmost importance to a successful development. The Client ensures that its staff that are involved in the development dispose of the skills and experience required for the duties that they must perform as also that the said staff shall be available at the times that this may be required.

## **19. CONTRACT EXTRAS AND REDUCTIONS SOFTWARE**

- 19.1 When circumstances arise that lead to a cost increase or a cost reduction then the Contractor shall forthwith inform the Client accordingly.
- 19.2 Cost increasing circumstances that cannot be blamed on the Contractor are settled as activities (contract extras) in the manner as determined in article 19.6, unless the parties stipulate otherwise in writing. In other, comparable, circumstances the parties enter into discussions as soon as possible in order to arrive at a justified settlement. Contract extras require prior written consent. Contract reductions shall be processed in the same manner as contract extras.

- 19.3 There shall, in any case, be question of contract extras and reductions:
- In case of a change in the Agreement, Specifications, scope of the goods and/or Services to be delivered (changes in the specifications (the "Specifications") of the Client, the work or the conditions for performance of the work) proposed and subsequently stipulated by the Client or the Contractor;
  - in case of deviations from the amounts of stipulated estimated items and offsettable and/or estimated quantities;
  - in other instances, if determined in an Agreement and/or these General Delivery Terms and Conditions.
- 19.4 The Contractor is not held to implement a proposed change if the change:
- was not requested in writing; or
  - would result in an unacceptable disruption of the activities; or
  - if the parties do not reach agreement about the financial consequences and the consequences in terms of the planning and the work plan.
- 19.5 If the Contractor is willing to implement the change then the Contractor shall send a written quotation with the following details to the Client:
- the balance, formed by any and all direct and indirect costs, profit and risk related to the change, minus the potential savings as a result of the implementation of the change; and
  - the adjustment of the Services, planning and work plan; and
  - the adjustment of the payment instalments or payment terms.
- 19.6 Settlement of the contract extras and reductions takes place as much as possible all in once with the first following invoice, unless the parties expressly stipulate otherwise in writing.

## 20. WARRANTY IN CASE OF DELIVERY OF SOFTWARE

- 20.1 If the Contractor and the Client did not agree on an acceptance test then the Client accepts the Software "as is" (hence with any and all visible and invisible errors and defects) upon delivery, without prejudice to the obligations of the Contractor in pursuance of articles 20.2 ff.
- 20.2 The Contractor warrants that the Software essentially functions in accordance with the Specifications. The warranty consists of the repair of Errors in accordance with the provisions set forth in these General Delivery Terms and Conditions.
- 20.3 Unless stipulated otherwise in writing, the warranty period amounts to six (6) months after delivery or - if an acceptance test was stipulated - after the success of the acceptance test. After repair of Errors during the warranty period a warranty period of three (3) months applies to the said repair activities, in the course of which the total warranty period shall never amount to more than nine (9) months after delivery or acceptance.
- 20.4 If, at the discretion of the Client, the Software contains Errors during the warranty period then the Client must forthwith - however at the latest within

fourteen (14) days after the detection of the Errors - inform the Contractor in writing and in detail, failing which each and every claim vis-à-vis the Contractor expires.

- 20.5 If the Contractor, after receipt of the communication as intended in article 20.4, observes Errors then:
- if it was stipulated that the Contractor shall repair Errors through the availability of New Versions or Updates of the Software then the Contractor shall make an effort to remedy the said Errors in the first following New Version or Update, unless this is reasonably no longer possible, in which instance the Contractor shall make an effort to remedy the relevant Errors in the subsequent New Version or Update.  
The Contractor cannot be held to issue New Versions or Updates nor can the Contractor be held to do this at a time other than a time to be determined by the Contractor;
  - if it was stipulated that the Contractor shall remedy Errors other than through the availability of New Versions or Updates then the Contractor shall make an effort to remedy the Errors as soon as possible.
- 20.6 Without prejudice to the provisions set forth in article 20.7 and barring in the event of projects on a management basis, repair activities that are carried out pursuant to warranty claims recognised by the Contractor shall be carried out free of charge.
- 20.7 If it becomes apparent before, during or after the performance of repair activities by the Contractor that Errors are related to circumstances that are not at the risk and expense of the Contractor then the Contractor shall inform the Client accordingly as soon as reasonably possible and the repair activities that need to be performed or that have meanwhile been performed by the Contractor shall be charged to the client at the then applicable rates. The said repair activities are therefore not included in the warranty. Circumstances that are not at the risk and expense of the Contractor do, in any case, include but are not limited to the following facts:
- the user instructions given by the Contractor were not followed exactly and/or there is otherwise question of incorrect use or insufficient care;
  - the Software and/or (related) Hardware was used injudiciously and/or not in accordance with the Specifications and/or the Documentation;
  - the Errors can be attributed to an improper installation, transport or storage;
  - the Client or third parties that were not hired by the Contractor performed activities (including maintenance) on the Software and/or (related) Hardware without consent of the Contractor;
  - the demonstration of Errors in Hardware and/or Software of third parties that become visible as a result of the Software delivered by the Contractor;
  - the Errors can be attributed to environmental tests or other tests under special user conditions;
  - the Client did not comply with an obligation vis-à-vis the Contractor pursuant to an underlying Agreement or not properly or not in a timely fashion;

h. external causes, e.g. (rain) water, heating, fire, accidents, defects in communication lines or power supply, etc.

20.8 After expiry of the warranty period as intended in article 20.3 the Contractor shall not (no longer) be held to remedy potential Errors, barring if the Contractor and the Client agreed on a maintenance agreement that includes the remedy of the said Errors.

## 21. SOFTWARE LICENCE

21.1 Unless expressly stipulated otherwise in writing, the Licence granted to the Client by the Contractor entails the non-exclusive, non-pledgeable, non-sublicensable and non-transferable right to only use the available or developed Software and Documentation for personal applications for the term of the Agreement and in accordance with the provisions set forth in this article 21. Hence, the Client is not allowed to use (have used) the Software by, for or for the benefit of third parties (including through sale, rental, SaaS and/or outsourcing), neither if the relevant third party only uses the Software for the benefit of the Client. The Software must be used as described in the Documentation. The Contractor is entitled to take technical measures to protect the Software. The Client shall never remove or circumvent these kinds of measures.

21.2 If the Contractor and the Client agreed on a Licence for a fixed term then the said Licence shall automatically be renewed upon expiry of the relevant term, every time for a period of one (1) year, barring termination by the Client or the Contractor effective from the end of the initial term or the respective year, in consideration of a notice period of at least three (3) months. Every time the Client shall provide for timely payment of the applicable Licence fees, failing which the Contractor shall be authorised to terminate the Licence with immediate effect.

21.3 If it was stipulated that the Software can exclusively be used on one or more specifically designated computers and/or at one or more specifically designated locations then the Client is - if and as long as the use of the Software is impossible on the specifically designated computers or at the specifically designated locations in connection with failures, maintenance, contingencies, replacement or relocation - entitled to use the Software on alternative computers or at alternative locations. In that case the Client must forthwith inform the Contractor accordingly in writing. In no instance whatsoever can the Software be used on more than the stipulated number of computers or at more than the stipulated number of locations. If the enterprise of the Client changes due to a merger, division or transfer of operations by special title, as a result of which a different or a more extensive circle of users starts or could start using the Software then the Client must communicate this to the Contractor in writing in advance. The Licence on the Software comes to an end by operation of law effective from the date of the merger, division and/or transfer, unless the Contractor gave prior written consent to continuation of the Licence, on which consent the Contractor can

impose further (reasonable) conditions (e.g. regarding user restrictions, number of users and applicable fees).

21.4 Unless stipulated otherwise in writing, the Contractor shall exclusively provide the Client with the Executables of the Software. The user right does, consequently, not extend to the source code and the source code is also not made available to the Client.

21.5 The Client is not entitled to translate, process, arrange or otherwise change the Software or to (try to) create the source code of the Software through reverse engineering or otherwise if the source code is not delivered to the Client, unless the Client is permitted to do so pursuant to mandatory statutory provisions.

21.6 The Client is not entitled to duplicate or disclose the Software or to fully or partly transfer copies of it to a third party or to otherwise bring it to the knowledge or in the possession of a third party (e.g. through the granting of a (sub-)licence, rental and leasing, sale, Hosting or otherwise). Only if the Contractor does not (no longer) want to maintain the Software, for reasons other than an attributable shortcoming or an unlawful act of the Client, shall the Client be entitled to have the Software maintained by a third party.

21.7 System and/or application Software and/or Hardware of third parties to be delivered by the Contractor are delivered in conformity with the thereto-pertaining Licence and warranty conditions of the said third parties. The Client is responsible for compliance with the relevant Licence during the use. The Contractor does in no instance whatsoever accept liability for defects, delays or damages, either directly or indirectly, or consequential damages, caused by the Software and/or Hardware of the said third parties, barring and up to the amount that the said third party is willing to accept on account of its liability and to actually compensate as damages. The relevant third party remains, in conformity with the relevant Licence, the owner of any and all Intellectual Property Rights in respect of the Software and/or Hardware and the thereto-pertaining Documentation originating from the said third party that are used in conjunction with the Software and/or Services delivered by the Contractor.

21.8 If the Client uses the Software and/or Documentation Licensed by the Contractor in an unauthorised manner then the Contractor is entitled to rescind the relevant Agreement with immediate effect and the Client shall be liable for the damages that the Contractor consequently incurs (also including damages inflicted on the Contractor as a result of claims of third parties and/or its licensors). The Contractor is always entitled to check the use of the Software by the Client through technical measures.

21.9 The Contractor is entitled to terminate the Licence (early) if a user right essential to the Licence of a licensor of the Contractor is terminated and/or otherwise comes to an end. As the occasion arises, the Contractor shall, where possible, inform the Client in a timely fashion in order that the Client is able to switch to an alternative.

21.10 Upon termination of the Licence the Client must at the latest on the date of termination discontinue any and all use of the Software and thereto-pertaining Documentation, de-install the Software and return any and all media on which the Software and thereto-pertaining Documentation are stored to the Contractor. Any and all copies of the Software and thereto-pertaining Documentation that the Client installed or otherwise created must have been erased at the latest on the said date. Potential early termination of the Licence, or the actual discontinuation of the use by the Client shall not entitle the Client to restitution of already paid Licence fees or crediting of already invoiced fees. In case of early termination of the Licence, the fees still payable for the remaining stipulated duration immediately fall due in full. The foregoing is not applicable in the event the termination is the result of an imputable shortcoming of the Contractor alone.

21.11 The Contractor is not held to issue New Versions and/or Updates of the Software. The Contractor shall, however, make an effort to examine possibilities to issue potential New Versions and/or Updates. The Client is held to use New Versions and/or Updates made available by the Contractor, where applicable within a stipulated reasonable period. If the Client does not do this then the Contractor is entitled to suspend or limit the maintenance activities and this shall not affect the obligation of the Client to pay the annual Licence fees during the stipulated duration of the use. Moreover, the Client shall be liable for any and all damages deriving from this.

21.12 If an Escrow scheme is stipulated by and between the parties then in case an Escrow situation occurs the Client only acquires a right to use the source codes of the applicable Software and/or Documentation. The Client shall never acquire any Intellectual Property Rights through issue or use of the source codes. The Client is only entitled to use the source codes and Documentation for the performance of corrective maintenance, including supplementation, expansion and/or improvement, in order to exploit (have exploited) the Software for personal use, however the Client shall never be allowed to sub-license and/or sell and/or otherwise exploit the (changed) source codes and thereto-pertaining Software and Documentation. The right to use the source codes comes to an end by operation of law if the Client discontinued the use of the Software or the Contractor is again able to comply with its obligations under the same or comparable conditions, in which instance the Client shall forthwith return the source code of the applicable Software and Documentation to the Contractor.

21.13 If it is, as the occasion arises, stipulated by and between the parties that the Client does not only acquire a Licence but that certain Intellectual Property Rights in respect of the Software and/or Hardware and/or Documentation developed in conformity with the Agreement shall be vested in the Client then the provisions set forth in article 6.2 are applicable and this must expressly be established in the Agreement (failing which there shall only be question of a Licence). Intellectual Property Rights of the

Contractor and/or third parties (including licensors of the Contractor) that already exist at the time of the conclusion of the Agreement ("Existing IPR") or that derive from the activities performed (to be performed) by the Contractor on or with Existing IPR shall (can), however, never be the subject of a transfer as intended above.

## 22. OPEN SOURCE SOFTWARE

22.1 The Contractor is, in particular in case of the development of Software and the granting of Licences, entitled to use Open Source Software and shall inform the Client if, as the occasion arises, the Contractor relied on Open Source Software and this, at the discretion of the Contractor, affects the use of Software developed by the Contractor and/or the Licence of the Client, e.g. in case of an obligation to only distribute the Software delivered by the Contractor (whether or not partly) as Open Source. To this end the Contractor shall also inform the Client of the (licensing) terms and conditions applicable to the said Open Source Software. The Client is exclusively personally responsible for compliance with the Open Source (licensing) terms and conditions and indemnifies the Contractor against any and all claims, damages and costs that could derive from the non-compliance with the said terms and conditions on the part of the Contractor.

22.2 The Client shall always inform the Contractor (and keep the Contractor informed) if the Software and/or Hardware of the Client on which the Contractor is performing Services (e.g. maintenance) contains Open Source. The Contractor can then impose further conditions on its provision of services and the Client indemnifies the Contractor against any and all claims, damages and costs related to the use of the Open Source Software.

## 23. CLOUD SERVICES

23.1 If the Services of the Contractor consist of the availability of Cloud Services to the Client then the provisions set forth in this article 23 are applicable.

23.2 Unless expressly stipulated otherwise, as the occasion arises, the Client acknowledges that the Cloud Services are performed and/or made available by the Client for and/or to the Client and that the Client is therefore not free to have third parties use the Cloud Services. If and to the extent that it is, nonetheless, expressly stipulated in an Agreement that third parties can use the Cloud Services then only the Client shall be responsible for the use that the said third parties make of the Cloud Services and the Client indemnifies the Contractor against any and all claims of the said third parties that they could institute against the Contractor as a result of the aforementioned use.

23.3 In the event that the Contractor offers a (Hardware and/or Software) platform in the context of the Cloud Services to the Client on which the Client can personally develop services and facilities, only the Client shall be responsible for the use of the said platform and the results based on the same and the Client indemnifies the Contractor against any and all claims of third parties that they could institute against

- the Contractor as a result of the use of the platform by the Client.
- 23.4 The Client acknowledges that login and/or access codes allocated by the Contractor are personal, secret and non-transferable. The Client guarantees that each and every user of the Client takes reasonable measures to prevent unauthorised use from taking place.
- 23.5 As a fee for the Cloud Services the Client shall be liable to pay a periodic fee (subscription) and/or a "pay-for-use" fee (e.g. depending on the number of users and/or devices). Periodic fees must be paid in advance.
- 23.6 Unless the Contractor and the Client expressly stipulate otherwise in writing, the Client shall personally be responsible for the interoperability required by the Client with the systems, infrastructure, connections, Software and Hardware already present at the Client.
- 23.7 Only the Client is responsible for the management and the use of the Cloud Services made available by the Contractor and the manner that the results of the aforementioned Cloud Services are used. If the Client and its authorised users personally enter, store and process data with the help of the Cloud Services then the Contractor does not have knowledge of the said data and it is not held to check the correctness and/or lawfulness of the same. The Contractor shall therefore not be liable for any damages that derive from the data entered by the Client and the Client indemnifies the Contractor against any and all damages and claims of third parties that are based on the use by the Client of the Cloud Services.
- 23.8 If and to the extent that with the Cloud Services Software of third parties is made available to the Client (and provided that this was communicated to the Contractor) then in respect of the said Software the terms and conditions of the said third parties shall apply, which terms and conditions shall, as the occasion arises, prevail over the provisions set forth in these General Delivery Terms and Conditions. The Client accepts the applicability of the said terms and conditions of the said third parties. In case the Contractor relies on a supplier for its Cloud Services (e.g. a third party that performs Hosting), the Contractor can never be addressed vis-à-vis the Client for the use and the potential maintenance of the Software made available via the Cloud Services other than what applies in the relationship between the Contractor and its relevant supplier. If the Contractor makes Software that is owned by the Client available to the Client through Cloud Services of the Contractor, potentially via third parties, then the Client grants the Contractor any and all relevant rights to perform the said Cloud Services for and/or on behalf of the Client.
- 23.9 The Contractor shall make an effort to always have the Cloud Services function properly and shall aim for the highest possible availability, quality and security of the Cloud Services. The Contractor does, however, not provide any guarantee in connection therewith, barring if the Agreement expressly determines otherwise. An availability potentially guaranteed by the Contractor in an Agreement is exclusively applicable up to and including the infrastructure of the Contractor. The Contractor shall not be responsible for telecommunications connections from its infrastructure, also including telecommunications connections of the Client, and only the Client shall therefore be responsible for (the proper functioning of) the infrastructure of the Client or that of relevant third parties for which the Client has user licences to be able to purchase the Cloud Services as also for the Hardware and Software (physically or otherwise) present at the Client (including potential auxiliary applications), configuration and internet connections, connection to the power grid and other connections that are necessary for access to and use of the Cloud Services. A result obligation only exists if this is expressly stipulated in writing by and between the parties in an Agreement.
- 23.10 The Contractor is allowed to continue the performance of its Cloud Services whilst making use of a New Version or Update of the Software. In this respect the Contractor is not held to maintain or change certain specific features or functionalities of the Cloud Services or Software for the Client. The Contractor shall, however, prior to the implementation of New Versions or Updates enter into consultation with the Client if they are expected to result in a loss of the performance ability or functionality of the Cloud Services (also including a reduced availability). The aforementioned obligation to consult is not applicable in the event that the New Version or Update must be applied for security reasons.
- 23.11 The Contractor is allowed to fully or partly temporarily decommission its Cloud Services for the benefit of maintenance, adjustment or improvement of the computer systems. The Contractor shall have this kind of decommissioning take place outside office hours as much as possible and inform the Client (where possible) in a timely fashion of the scheduled decommissioning. On account of this kind of decommissioning the Contractor shall never be held to pay any compensation to the Client.
- 23.12 With the use of the Cloud Services the Client shall act in accordance with applicable legislation and regulations and particularly (expressly also on behalf of its users) guarantees the following:
- that the Client does not perform (have performed) acts that may imply that failures can occur in the Cloud Services, networks or (telecommunications) infrastructures;
  - that the Client does not perform (have performed) acts that are punishable vis-à-vis the Contractor or third parties;
  - that the Client is personally responsible for the protection of its equipment, (telecommunications) infrastructure and (internet) connections against, inter alia, computer criminality (also including viruses) and/or other unlawful use by third parties;
  - that the Client shall by no means jeopardise security of the Cloud Services implemented by the Contractor and/or third parties and shall therefore, inter alia, keep supplied access codes secret;

- e. that the Client shall not send (have sent) so-called 'spam'; and
- f. that the Client shall otherwise also use (have used) the Cloud Services reasonably ('fair use').
- 23.13 The Contractor is entitled to terminate the access to - and the use of - the Cloud Services, either temporarily or permanently, with immediate effect if the Contractor has serious suspicions that the Client (or a user of the Client) acts in violation of the provisions set forth in this article 23 or a third party acts, through the account of the Client (or a user of the Client), in violation of this article 23. On account of this kind of termination the Contractor shall never be held to pay any compensation to the Client.
- 23.14 If there is question of data to be delivered to the Contractor by the Client then the transport and the transmission of the said data shall be at the risk and expense of the Client. The Client guarantees that the aforementioned data, as well as other materials, data, Software and instructions made available by the Client, are correct, complete and not in violation of rights (inter alia Intellectual Property Rights) of third parties.
- 23.15 Any and all Intellectual Property Rights in respect of any and all Software, Hardware and other goods used by the Contractor with the Cloud Services remain vested in the Contractor and/or its licensors. The Client shall not infringe Intellectual Property Rights of the Contractor, its licensors and/or other third parties. If and to the extent that the Contractor observes that material is stored, processed or otherwise used with the help of the Cloud Services and this is in violation of the aforementioned Intellectual Property Rights then the Contractor is entitled to forthwith erase the said material from the server(s) and to destroy the same. To this end the Client hereby already gives the Contractor consent, as the occasion arises. On account of this kind of erasure and/or destruction the Contractor shall never be held to pay any compensation to the Client.
- 23.16 The Contractor shall never be held to make the Software made available to the Client via Cloud Services available in physical form.
- 23.17 The Contractor shall make an effort to remedy (have remedied) Errors in the Software within a reasonable period. The Contractor does expressly not guarantee, in particular when it comes to Software not developed by the Contractor, that any and all Errors can be remedied or that the Software made available through Cloud Services is error-free and functions without interruptions. The Client commits to report Errors to the Contractor in a detailed and written manner. The Contractor is entitled to implement temporary solutions or program workarounds or problem-avoiding restrictions ("workarounds") in the Software or to wait with the remedy of Errors until a New Version. If the Software was developed for the Client then the Contractor can charge the costs for the remedy to the Client in accordance with its common pricing.
- 23.18 The Contractor shall never be responsible for remedy of mutilated or lost information and/or data nor can the Contractor be held to perform a data conversion. The Contractor makes an effort that the

Software made available through Cloud Services is adjusted to amendments in legislation and regulations in a timely fashion, but does expressly not provide relevant guarantees.

- 23.19 Without prejudice to the provisions set forth in article 13.3, the Client is, in pursuance of the relevant privacy legislation (including but not limited to the GDPR), inter alia held to give data subjects the following rights: a) the right to information (articles 13 and 14 of the GDPR), b) the right to insight (article 15 of the GDPR), c) the right to correction (article 16 of the GDPR), d) the right to data erasure (right to be forgotten, article 17 AVG), e) the right to protection of the processing (article 18 of the GDPR), f) the right to portability (data portability, article 20 of the GDPR), g) the right to object (article 21 of the GDPR), h) the right not to be submitted to an automated individual decision (article 22 of the GDPR), and i) to have demonstrated that the personal data were protected, transferred, erased or corrected. Only the Client shall be responsible for compliance with these obligations. The Contractor shall, where technically possible for the same, lend cooperation in obligations to be complied with by the Client. The costs associated with the said cooperation are not included in the stipulated price and fees of the Contractor and are therefore at the expense of the Client.

## **B2 - HARDWARE**

### **24. DEVELOPMENT, DELIVERY AND ACCEPTANCE OF HARDWARE**

- 24.1 If it is stipulated with the Client that the Contractor shall develop Hardware then with regard to the development of the Hardware article 18.1 is equally applicable where, as the occasion arises, "Software" should be read as "Hardware". The Hardware must be used as described in the Documentation.
- 24.2 The Hardware sold to the Client by the Contractor shall, barring different written arrangements, be delivered at the location of the warehouse of the Contractor. Delivery of the Hardware at a location other than the warehouse of the Contractor takes place at the stipulated delivery location in the Netherlands at the rates stipulated in the Agreement.
- 24.3 If it is stipulated that the Contractor shall package the Hardware then the Contractor shall do this according to the reasonably applicable criteria. If the Client requires a different mode of packaging then the associated (additional) costs shall be at the expense of the Client.
- 24.4 The Client is responsible for handling packaging released at the Client in accordance with the applicable official rules. The Client indemnifies the Contractor against claims of third parties in connection therewith.
- 24.5 The Client is held to inspect upon the delivery of the Hardware whether the Hardware corresponds with the Agreement.
- 24.6 Barring prior written consent of the Contractor, the Contractor is not held to accept return shipments of the Client. Return shipments are, in any case, no longer possible from the start of the installation and/or commissioning.

- 24.7 Taking delivery of return shipments by the Contractor does never imply any acknowledgement by the Client of the reason for the return shipment presented by the Client. The risk of returned Hardware remains vested in the Client until it has been credited by the Contractor.
- 24.8 Only if this was stipulated in an Agreement shall the Contractor provide for the installation of the Hardware and, where required, the adjustment of the Hardware and Software such that the Software and Hardware in conjunction with the infrastructure function in conformity with the Specifications laid down in the Agreement.
- 24.9 The Client shall be responsible for an appropriate installation location, in conformity with article 15.3, with all necessary facilities, including cabling and telecommunications facilities.
- 24.10 For the performance of the aforementioned installation activities the Client shall grant the Contractor access to the installation location.
- 24.11 The aforementioned installation activities shall take place in conformity with a (installation) plan stipulated by and between the Client and the Contractor.
- 24.12 The Hardware is deemed to have been accepted on the date of delivery, or, if installation by the Contractor was stipulated in writing, on the date of delivery (ready for operation).
- 24.13 The operational delivery of the Hardware is deemed to have taken place upon acceptance of the delivery after completion of the installation according to the installation plan.
- 24.14 The parties expressly agree that any and all contractual obligations of the Contractor with regard to (the part of) the Hardware shall have been complied with on the day that the Client accepted (the part of) the Hardware in accordance with this article 24, with the exception of the (warranty) obligations included in article 26 of these General Delivery Terms and Conditions.

## **25. CONTRACT EXTRAS AND REDUCTIONS HARDWARE**

- 25.1 If circumstances arise that result in an increase of costs or a reduction of costs with regard to the realisation of Hardware then article 19 is equally applicable.

## **26. WARRANTY IN CASE OF DELIVERY OF HARDWARE**

- 26.1 If the Contractor and the Client did not agree on an acceptance test then the Client accepts the Hardware "as is" (hence with any and all visible and invisible errors and defects) upon delivery, without prejudice to the obligations of the Contractor in pursuance of articles 26.2 ff.
- 26.2 Upon delivery of Hardware the relevant manufacturer's warranty always applies. If the Hardware was realised by the Contractor then a warranty period of six (6) months shall apply. After repair of Errors during the warranty period a warranty period of three (3) months applies to the said repair activities, in the course of which the total warranty

period shall never amount to more than nine (9) months after delivery or acceptance.

- 26.3 The provisions set forth in article 20.7 of these General Delivery Terms and Conditions are also applicable to Hardware delivered to the Client by the Contractor.
- 26.4 After expiry of the (manufacturer's) warranty as intended in article 26.2 the Contractor shall no longer be held to remedy potential Errors, barring if the Contractor and the Client agreed on a maintenance agreement that includes the remedy of Errors.
- 26.5 In case of a claim to Hardware warranty the Client shall make the relevant Hardware (or part of the Hardware) available to the Contractor at its own risk and expense. The Contractor shall not attend the location of the Client to pick up the relevant defective Hardware and/or to repair it on location, barring if this is established in a separate Agreement.
- 26.6 If there is question of repair activities by the Contractor beyond the scope of the warranty then the repair activities that are to be performed or that have meanwhile already been performed by the Contractor shall be charged to the Client at the then applicable rates.
- 26.7 With regard to externally visible shortcomings the Client must file a complaint at the latest upon inspection or test, or, if this kind of inspection or test was not stipulated, within fourteen (14) days after delivery, failing which each and every claim vis-à-vis the Contractor expires.
- 26.8 If Errors are observed after the warranty period of the Hardware then the Contractor shall not be liable for this. However, as the occasion arises the Contractor shall basically be willing to remedy the Errors at the expense of the Client, all by shipping the relevant Hardware by the Client at the risk and expense of the Client.

## **B3 - MAINTENANCE**

### **27. MAINTENANCE GENERAL**

- 27.1 These provisions regarding maintenance are only applicable if the Contractor and the Client stipulated in writing that the Contractor shall perform maintenance activities.
- 27.2 The Contractor shall make an effort to the best of its ability to perform the maintenance with the utmost care. The Contractor shall perform the maintenance in conformity with the maintenance agreement stipulated with the Client and the methodologies described in the same. The Contractor is only held to realise certain service levels if they were expressly stipulated in writing in the relevant maintenance agreement (SLA).
- 27.3 If it was stipulated that the Contractor shall maintain the Software and/or Hardware and/or Documentation then the said maintenance shall start at the latest immediately after the end of the warranty period. The maintenance consists of the remedy of Errors, all in conformity with the following maintenance provisions and the other arrangements that the parties agreed on more specifically in a maintenance agreement.
- 27.4 The Client guarantees that any and all statutory rules regarding the Software and Hardware in respect

of which the Contractor performs maintenance activities are observed, including the GDPR, and the Client indemnifies the Contractor against any and all claims in connection therewith.

27.5 The Client bears the risk of loss or theft of or damage to the Software and/or Hardware and/or Documentation during the period that the Contractor has the same in its possession for the benefit of the performance of the maintenance. It is up to the Client to insure the said risk in an adequate manner. Before making Software and/or Hardware and/or Documentation available to the Contractor, the Client ensures that the necessary backup copies were made ("Backups").

27.6 If the Software and/or Hardware and/or Documentation contain, at the discretion of the Client, Errors during the term of the maintenance agreement then the Client must forthwith - however at the latest within fourteen (14) days after the occurrence of the Errors - communicate this to the Contractor in writing.

27.7 The provisions set forth in articles 20.5 and 20.7 of these General Delivery Terms and Conditions are expressly equally applicable to maintenance activities. In addition to the circumstances mentioned in article 20.7, the maintenance on the Software does not include the remedy of Errors that are the result of or are related to:

- a. changes, mistakes or Errors in Hardware or Software other than those that fall under the maintenance of the Contractor;
- b. the late maintenance of the Software as a result of circumstances that can be blamed on the Client;
- c. the use of a version of the Software that is no longer maintained by the Contractor;
- d. other causes that cannot be blamed on the Contractor.

27.8 Remedy of mutilated or lost data and the performance of data conversions are not included in the maintenance.

27.9 If the Client does not conclude a maintenance agreement with the Contractor simultaneously with the conclusion of the Agreement for the delivery of the Software and/or Hardware then the Contractor cannot be held to yet conclude a maintenance agreement at a later time.

27.10 The Contractor reserves the right to, inter alia, suspend its maintenance obligations for the time that circumstances occur at the location of the set-up of the Software and/or Hardware and/or Documentation that, at the discretion of the Contractor, bring about risks in terms of the safety or health of employees of the Contractor and/or third parties who were hired by the Contractor for the performance of the maintenance.

27.11 Unless stipulated otherwise in the Agreement, the Contractor does not provide a warranty in respect of the maintenance activities performed by the Contractor.

## 28. SOFTWARE MAINTENANCE

28.1 If it was stipulated that the Contractor shall maintain the Software then the said maintenance shall exclusively regard the latest version or release

made available to the Client and the immediately prior version or release. Other versions and releases shall not (no longer) be maintained, unless stipulated otherwise in writing.

28.2 The Contractor is not held to issue New Versions and/or Updates of the Software. The provisions set forth in article 21.11 are applicable in full.

28.3 Unless expressly stipulated otherwise in writing, the Client cannot claim delivery of the source code and the materials that are required for the performance of maintenance. The maintenance is exclusively related to Software in a form readable to computer equipment and stored on a computer-readable material.

28.4 The maintenance of Software shall exclusively extend to the express arrangements stipulated by and between the parties. Maintenance activities with regard to Software in respect of which no express arrangements were stipulated shall be performed on the basis of subsequent calculation at the common rates.

28.5 The Contractor provides for the updating of its expertise regarding the Software. The Contractor shall, as established in a maintenance agreement, register and record the data relevant to the Software maintenance regarding the activities performed on the Software in its administration. The Contractor shall, on demand, provide the Client insight into the thus recorded data.

28.6 The Contractor is entitled to inspect the Software as well as the Hardware on which the Software to be maintained has been installed prior to the start of the maintenance. Following the results of the said inspection the Contractor shall be entitled not to maintain the relevant Software or to impose further conditions on the maintenance. Further conditions do, in any case, include the adjustment and/or upgrade of the Software, Hardware, system programming or related networks in conformity with directions and instructions of the Contractor.

28.7 The Contractor is entitled to implement temporary solutions or program workarounds or problem-avoiding restrictions ("workarounds") in the Software. Failing express relevant arrangements the Client shall personally install, set up, parametrise and tune the corrected Software or the available New Version of the Software and, where required, the Client shall adjust the Software and user environment used in connection therewith.

28.8 If the Contractor performs the maintenance online ("remote access") then the Client shall in a timely fashion provide for a proper infrastructure and telecommunications facilities in accordance with the relevant instructions of the Contractor. In the event that the infrastructure and telecommunications facilities do not comply with the requirements of the Contractor, the Contractor shall be entitled to suspend or limit the maintenance.



## 29. HARDWARE MAINTENANCE

- 29.1 The maintenance of Hardware shall exclusively extend to the express arrangements stipulated by and between the parties. Maintenance activities with regard to Hardware in respect of which no express arrangements were stipulated shall be performed on the basis of subsequent calculation at the common rates.
- 29.2 The Contractor provides for the updating of its expertise regarding the Hardware. The Contractor shall, as established in a maintenance agreement, register and record the data relevant to the Hardware maintenance regarding the activities performed on the Hardware in its administration. The Contractor shall, on demand, provide the Client insight into the thus recorded data.
- 29.3 The provisions set forth in article 27.5 of these General Delivery Terms and Conditions are applicable with regard to backup copies of data and Software.
- 29.4 Unless expressly stipulated otherwise in writing, the maintenance price does, inter alia, not include:
- replacement of parts. This takes place if it is, at the discretion of the Contractor, necessary to remedy or prevent outages. This also includes activities for the benefit of full or partial revisions and/or modifications and updates or upgrades of the Hardware. The replaced parts become, after payment in full, the property of the Client;
  - the replacement of consumables, including but not limited to (magnetic or digital) storage media, ink or toner cartridges, ink ribbons, paper, laser heads, batteries, power packs and/or antennas;
  - the replacement costs of parts as well as maintenance activities for the remedy of failures that were fully or partly caused by attempts to remedy or activities by parties other than the Contractor or its auxiliary persons;
  - movement, relocation, re-installation of Hardware or activities resulting from the same;
  - failures that occur if the Hardware is not used in the normal office or production environment conditions where they should be placed;
  - failures or damages that are related to use or installation of consumables or parts not prescribed by the manufacturer.

## B4 - SECONDMENT

### 30. SECONDMENT

- 30.1 These provisions regarding secondment are only applicable if the Contractor and the Client stipulated that the Contractor shall second an employee (employees). Secondment only takes place in the Netherlands. Secondment outside the Netherlands always requires the prior written consent of the board of directors, which consent shall depend on locally applicable legislation and regulations.
- 30.2 For the purpose of these General Delivery Terms and Conditions secondment shall be understood as the situation where the Contractor temporarily makes one or more employees of the Contractor (in this article 30 referred to as: the "Employee(s)") available to the Client, which Employee(s) shall perform certain activities for - and under the supervision and authority

and/or the direction of - the Client (in this article 30 referred to as: the "Activities"), all as intended in Section 690 of Book 7 of the Dutch Civil Code.

- 30.3 The responsibility of the Contractor is limited to the availability of Employee(s) who shall perform the Activities during the stipulated term on the basis of a best efforts obligation, where the Contractor shall never be responsible for the result of the Activities.
- 30.4 The Contractor is entitled to replace the Employee(s) seconded at the Client provided that as a result thereof (a) the quality of the Activities remains guaranteed, and (b) the stipulated end date is only extended by the potential on-boarding time of the replacement Employee,
- 30.5 If the replacement Employee requires an on-boarding period, which shall be determined in consultation by both parties, then the said on-boarding period:
- shall amount to a maximum of ten (10) working days, in case of contracts with a total term of more than three (3) months;
  - shall amount to a maximum of five (5) working days, in case of contracts with a total term of less than three (3) months;
- 30.6 The Client and the Contractor shall in joint consultation determine to what degree the on-boarding period shall be charged to the Client and to what degree the on-boarding time shall extend the stipulated duration of the Activities.
- 30.7 Unless stipulated otherwise in writing, the rates for the Employee(s) mentioned in the Agreement are applicable up to and including 31 December of the then current calendar year. The Contractor is entitled to change the rates once a year, in January.
- 30.8 The Contractor and the Employee(s) are never liable vis-à-vis the Client for damages of any nature whatsoever that are the result of an error of the Employee(s) in the performance of the Activities.
- 30.9 As the Client supervises and has authority over the Employee(s) the Client indemnifies the Contractor against each and every liability vis-à-vis third parties in pursuance of liability for subordinates or non-subordinates, if and to the extent that it derives from or is related to the Activities.
- 30.10 Any and all Intellectual Property Rights that derive from the Activities to be performed by the Employee(s) on or with Intellectual Property Rights that are already owned by the Contractor or a third party are, upon creation, immediately vested in the Contractor.
- 30.11 The client is responsible for obtaining any and all appropriate licensing agreements or other agreements with regard to the use of potential works, models and inventions protected under copyrights or otherwise that are required for the performance of the Activities. The Client indemnifies the Contractor and the Employee(s) against the consequences of potential infringements of (Intellectual Property) rights of third parties, also comprising any and all direct and indirect damages that the Contractor may incur as a result of these kinds of infringements.
- 30.12 The Client must take out insurance with regard to the Employee(s) in connection with a potential claim (potential claims) of third parties as a result of the

performance of the Activities. The Client indemnifies the Contractor and the Employee(s) against each and every claim of a third party in connection therewith.

- 30.13 The Client shall refrain from employing Employees who are directly or indirectly encumbered with the implementation of an Agreement during the term of the Agreement (for the sake of clarity, this also comprises the period between signature of the Agreement and the actual start of the activities) or from otherwise having them work, either directly or indirectly, for the same. The said obligation is subject to an immediately claimable penalty of € 50,000 (in words: fifty thousand euros) per violation of the said prohibition.
- 30.14 If the Client intends to conclude an employment agreement with an Employee (or if an Employee shall perform, either directly or indirectly, activities for the Client on the basis of a similar agreement) after expiry of the Agreement then a reasonable fee (which shall, inter alia, take the recruitment and training of the Employee by the Contractor into account) must be paid to the Contractor as intended in Section 9a Subsection 2 of the Dutch Allocation of Labour by Intermediaries Act.
- 30.15 The Client declares to be fully familiar with the Dutch Allocation of Labour by Intermediaries Act and, in particular, Sections 8, 8a and 10 of the said Act and shall comply fully with the said Act. In the light of Section 10 of the Dutch Allocation of Labour by Intermediaries Act the Client shall inform the Contractor in a timely and complete fashion of (expected) collective actions, also including an industrial action or a lockout. In addition, the Client shall inform the Contractor in a timely and complete fashion what terms and conditions of employment as intended in Section 8 Subsection 1 of the Dutch Allocation of Labour by Intermediaries Act are applicable to its employees in identical or similar positions as the positions fulfilled by the Employee(s). The Client indemnifies the Contractor against claims, damages and/or costs that arise on the part of the Contractor as a result of non-compliance by the Client with this article 30.15.

## **B5 - TRAINING**

### **31. STUDIES, COURSES AND TRAINING**

- 31.1 These provisions regarding training are only applicable if the Contractor and the Client stipulated that the Contractor shall provide training for the Client.
- 31.2 If the services of the Contractor consist of the provision of a study, course or training then the Contractor can always require payment of the relevant amount(s) prior to the start of the same.
- 31.3 The Agreement between the Contractor and the Client is concluded through the written confirmation of the Contractor of the study, course or training requested by the Client by means of a registration form signed by the Client. As a consequence the registration form becomes the Agreement.
- 31.4 Registration for 'open registration' studies, courses or training takes place in the order of registration. In case of a surplus registration of the number of participants then article 31.5 of these

General Delivery Terms and Conditions takes effect, Provisional registrations must be finalised within three (3) working days, failing which the registration expires.

- 31.5 If the number of registrations gives, at the discretion of the Contractor, cause to this then the Contractor is entitled to cancel the study, course or training or to combine it with one or more other studies, courses or training sessions or to have it take place at a different date or at a different time, without being liable for potential damages of the Client. As the occasion arises, the Client is informed accordingly and the Client can choose between an alternative course, where applicable, or a full refund of the registration fee, if already paid.
- 31.6 The Contractor shall only be bound by cancellations that took place in writing. In case of a written cancellation by the Client up to thirty (30) days prior to the start of the relevant study, course or training fifty per cent (50%) of the offer amount is charged. In case of a written cancellation from thirty (30) days up to one week prior to the start of the relevant study, course or training seventy-five per cent (75%) of the offer amount is charged. In case of written cancellation within one week prior to the start of the relevant study, course or training the full amount is charged.
- 31.7 The Client is, in consultation with the Contractor, entitled to send a participant to the relevant study, course or training other than the originally registered participant. Replacement of a participant must be organised and confirmed by the Client in writing at the latest two (2) days prior to the start of the relevant study, course or training.
- 31.8 Any and all Intellectual Property Rights, particularly including copyrights, with regard to (study, course or training) materials supplied by the Contractor (also including Software) and other data for the benefit of the study, course or training are exclusively vested in the Contractor and/or its licensors and shall remain vested in the same. Hence, without express prior written consent of the Contractor the Client is not allowed to use the (study, course or training) materials (also including Software) or other data other than in the context of the study, course or training to be provided by the Contractor or as a reference work by the participant after having followed the relevant study, course or training. Any other use, including disclosure to third parties, is expressly prohibited.
- 31.9 Complaints about a study, course or training followed must be communicated to the Contractor - in writing and in a well-founded manner - at the latest fourteen (14) days after the end of the relevant study, course or training. The submission of a complaint shall not affect the payment obligations.

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