

For the purpose of these General Purchasing Terms and Conditions “CLIENT” is understood as

**Name:** ICT Netherlands B.V.

**Place:** Barendrecht

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**Conditions:** [www.ict.eu](http://www.ict.eu)

## A - GENERAL PROVISIONS

### 1. APPLICABILITY AND DEFINITIONS

- 1.1 These General Purchasing Terms and Conditions are applicable to any and all Negotiations with, proposals to and any and all contracts of the CLIENT to the SUPPLIER with regard to the delivery of Goods and/or the supply of Licences and/or the performance of Services as also to any and all Agreements in connection therewith. These General Purchasing Terms and Conditions consist of general provisions, which are related to all 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 hiring.  
 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 (sale, payment and/or delivery) terms and conditions of the SUPPLIER is expressly excluded.
- 1.5 The SUPPLIER can only rely on terms and conditions that differ from these General Purchasing Terms and Conditions if and to the extent that the said terms and conditions were accepted by the CLIENT in writing.
- 1.6 The SUPPLIER with whom a contract has already been concluded on the basis of these General Purchasing Terms and Conditions agrees with the applicability of these General Purchasing Terms and Conditions to subsequent negotiations with and Agreements by and between the SUPPLIER and the CLIENT.
- 1.7 “General Purchasing Terms and Conditions” is understood as these General Purchasing Terms and Conditions of ICT Netherlands B.V.
- 1.8 “Cloud Services” is understood as the remote (online) availability of Software and/or Documentation to the CLIENT by the SUPPLIER. 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, 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 to be supplied and/or supplied to the CLIENT by the SUPPLIER 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 deviations, mistakes or shortcomings occurring in the Software and/or Hardware as a result of which the Software and/or Hardware does not (no longer) comply with the Specifications and the provisions otherwise set forth in these General Purchasing Terms and Conditions (including the warranties as intended in articles 20 and 26).
- 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 “SUPPLIER” is understood as the party who acts in the course of a business or profession, or in the context of a public duty, and with whom the CLIENT concluded an Agreement to which these General Purchasing Terms and Conditions are applicable.
- 1.17 “Licence” is understood as the, in time and scope, unlimited right of the CLIENT to use the Software made available to the CLIENT by the SUPPLIER in the broadest sense of the word.
- 1.18 “Customised Software” is understood as Software developed by the SUPPLIER for the benefit of the CLIENT.
- 1.19 “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.
- 1.20 “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).
- 1.21 “Agreement” is understood as each and every agreement with regard to the delivery of Goods and/or the supply of Licences and/or the performance of Services to the CLIENT by the SUPPLIER.

- 1.22 "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.), Documentation and any and all New Versions, Updates, expansions, changes and improvements of respectively in the same.
- 1.23 "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 CLIENT.
- 1.24 "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.
- 1.25 "Goods" is understood as items, also including Software, Hardware and Documentation.

## **2. NEGOTIATIONS WITH THE CLIENT**

- 2.1 These General Purchasing Terms and Conditions are also applicable to any and all discussions between the CLIENT and the SUPPLIER with regard to the inventory of a potential Agreement (hereinafter referred to as: the "Negotiations"). The CLIENT 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 3.2, the SUPPLIER already starts the performance of Services at the express written request of the CLIENT then the CLIENT shall be liable to pay the fee(s) already stipulated for this in the context of the Negotiations. If an Agreement is, unexpectedly, not concluded then the CLIENT shall reimburse the relevant Services up to the moment that the SUPPLIER discontinued the Services, provided that the relevant Services were, at the reasonable discretion of the CLIENT, performed properly and the results are usable to the CLIENT. As the occasion arises the said Services shall exclusively be performed subject to applicability of these General Purchasing Terms and Conditions.

## **3. PROPOSALS, CONTRACTS AND AGREEMENTS**

- 3.1 Unless expressly stipulated otherwise, offers of the SUPPLIER are irrevocable during a period of sixty (60) days after the offer has reached the CLIENT. Agreements are concluded through written acceptance by the CLIENT of the offer of the SUPPLIER. If and to the extent that acceptance by the CLIENT takes place after the aforementioned period, the Agreement is concluded, unless the SUPPLIER rejects the contract in writing within seven (7) working days after the date of the acceptance sent. Any and all costs that are related to the preparation of an offer are at the expense of the SUPPLIER.

- 3.2 The CLIENT shall only be bound when and as the CLIENT accepted an offer by means of an Agreement. Oral promises or arrangements by or with its staff shall not have binding effect on the CLIENT barring and in as much as the CLIENT confirmed them in writing.
- 3.3 Unless expressly stipulated otherwise, the SUPPLIER is not entitled to fully or partly outsource its obligations pursuant to the Agreement concluded with the CLIENT.
- 3.4 If the SUPPLIER works under the authority of the CLIENT on the basis of subcontracting (or on the basis of a similar construction) then the SUPPLIER is equally bound by the legal conditions (including but not limited to the provisions regarding delivery periods, warranties, penalties and liability) that are applicable between the CLIENT and its client, as if the SUPPLIER were personally a party. The SUPPLIER hereby already accepts, as the occasion arises, the applicability of the said back-to-back construction.

## **4. PRICE**

- 4.1 Prices quoted by the SUPPLIER or stipulated with the CLIENT are in euros, fixed for the term of the Agreement, exclusive of VAT and inclusive of potential import or export duties, the costs of packaging, shipment insurance and installation.
- 4.2 If and to the extent that the SUPPLIER reduces its prices of the Goods and/or Services in its standard price lists or catalogues before having delivered the Goods to the CLIENT and/or having performed the Services then the SUPPLIER is held to allocate a corresponding price reduction to the CLIENT.

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

- 5.1 Unless expressly stipulated otherwise, delivery periods are fatal and in case of an overstepping of a delivery period the SUPPLIER shall be in default without a notice of default being required. The delivery is only deemed to have been completed after the Goods and/or Services were delivered completely in accordance with the Agreement at the delivery location specified by the CLIENT and at the time stipulated by and between the parties.
- 5.2 If circumstances occur on the basis of which an overstepping of a stipulated delivery period may be expected then the SUPPLIER must forthwith inform the CLIENT accordingly in writing. If the SUPPLIER oversteps a stipulated delivery period then the SUPPLIER forfeits, without any prior notice of default being required, an immediately claimable penalty of 1% of the price of the relevant delivery per calendar day with a maximum of 10% of the said price. The collection or settlement of the said penalty shall not affect the right of the CLIENT regarding compliance, full compensation and rescission. The CLIENT may agree with a changed delivery date, however the CLIENT is equally entitled to, should it have reason to do so, proceed with full or partial rescission (cancellation) of the Agreement. This kind of rescission shall by no means imply that the CLIENT is liable pay any compensation (for damages) to the SUPPLIER. In all instances the SUPPLIER takes appropriate measures to prevent the aforementioned overstepping in the future.
- 5.3 Barring different provisions in the Agreement, the delivery takes place by the SUPPLIER on the basis

of the Incoterm DDP. Hence, the SUPPLIER shall deliver on the stipulated delivery date and/or within the stipulated delivery period and at the (delivery) address specified by the CLIENT. If an express delivery period was not stipulated then it amounts to five (5) working days. Any and all costs and risks that are associated with the transport of the Goods are at the expense of the SUPPLIER. The latter also implies payment of applicable import duties as well as the responsibility for compliance with the relevant formalities.

- 5.4 The SUPPLIER provides for proper packaging as also for such transport that the Goods reach the delivery location in a good condition. The SUPPLIER uses, where possible, sustainable packaging materials and provides for an environmentally friendly disposal of the same.
- 5.5 The SUPPLIER shall inform the CLIENT in a timely fashion of the exact time of the delivery. If the SUPPLIER delivers, without prior written consent of the CLIENT, earlier or in partial deliveries then the CLIENT shall be entitled to reject the said (partial) deliveries. As the occasion arises the CLIENT is also authorised to return the Goods at the risk and expense of the SUPPLIER.
- 5.6 The CLIENT is entitled to postpone the delivery. As the occasion arises, the SUPPLIER is held to store the Goods for the CLIENT up to the moment of the postponed delivery, without charging additional costs for this. The stored goods must be secured, preserved and insured adequately and must also be marked as designated for the CLIENT. The CLIENT shall not rely on the right as intended in article 5.6 if this brings about disproportionate (adverse) consequences for the SUPPLIER, in which instance both parties shall enter into discussions in order to reach a solution that is satisfactory to both parties.
- 5.7 Any and all Goods to be delivered to the CLIENT by the SUPPLIER can, if so required by the CLIENT, first be submitted to an inspection and/or an acceptance test. The inspection and/or acceptance by or on behalf of the CLIENT does not imply acknowledgement that the delivered goods comply with the warranties as intended in article 13. The acceptance of Software is specified in more detail in article 18 and for Hardware in article 24.

## 6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 Unless expressly stipulated otherwise in writing, the Intellectual Property Rights on or in connection with the Goods delivered by the SUPPLIER for the benefit of the CLIENT (expressly also including source codes of Customised Software, which source codes shall in all instances be transferred to the CLIENT) and/or on results of the Services performed by the SUPPLIER for the CLIENT (expressly also including results of activities performed during a hiring period in conformity with article 30) shall be vested in the CLIENT. The SUPPLIER hereby already transfers, as the occasion arises, the said Intellectual Property Rights to the CLIENT (in advance), which transfer is hereby, as the occasion arises, already accepted by the CLIENT. Otherwise the SUPPLIER shall also unconditionally do everything that is conducive to the effectuation of the said transfer, including signing (having signed) potential authorisations and deeds (of transfer). The aforementioned transfer is not applicable to Intellectual Property Rights that already

exist with the SUPPLIER or with a licensor of the SUPPLIER prior to the conclusion of the Agreement. The SUPPLIER grants the CLIENT an exclusive, worldwide, unlimited and perpetual (and hence non-cancellable) Licence with regard to the said already existing Intellectual Property Rights.

- 6.2 The SUPPLIER hereby waives, where required and to the extent permitted by the law, also on behalf of its employees (staff), potential personality rights vested in the SUPPLIER as intended in Section 25 of the Dutch Copyrights Act. The SUPPLIER guarantees vis-à-vis the CLIENT that it is entitled to also waive this on behalf of its employees.
- 6.3 Unless stipulated otherwise in writing, the SUPPLIER shall provide the CLIENT with both the Executables and the source codes of the Software.
- 6.4 The SUPPLIER guarantees that the Goods made available as well as the Services performed do not infringe Intellectual Property Rights of third parties.

## 7. TRANSFER OF RISK AND TITLE

- 7.1 The risk (of, in particular, damage or loss) for the Goods to be delivered by the SUPPLIER shall be vested in the CLIENT from the moment of delivery and written acceptance of the relevant Goods by a relevantly competent person of the CLIENT.
- 7.2 The title of the delivered Goods transfers to the CLIENT at the moment of delivery of the Goods.
- 7.3 If the CLIENT makes goods available to the SUPPLIER for the benefit of the delivery then they shall remain the property of the CLIENT and the SUPPLIER is held to keep the said goods in its possession clearly marked as the property of the CLIENT.

## 8. FORCE MAJEURE

- 8.1 The SUPPLIER shall not be in default and shall not be held to pay compensation or penalties if there is question of a shortcoming that cannot be blamed on the SUPPLIER (force majeure), the latter, however, on the condition that the SUPPLIER informed the CLIENT without delay and in any case within the period stipulated for compliance with the relevant obligation in writing of the shortcoming and the relevant cause. However, the following circumstances are, in any case, deemed to be allocable to the SUPPLIER: a lack of staff, a lack of machines, lockouts, industrial action, sickness of staff and breach of contract (including but not limited to late delivery) of subcontractors of the SUPPLIER.
- 8.2 If the force majeure has continued for more than three months then the CLIENT shall be entitled to rescind the Agreement either in whole or in part. The said rescission shall, pursuant to Section 271 of Book 6 of the Dutch Civil Code, imply an obligation to undo, unless the CLIENT is of the opinion that the already delivered performance has actual use and/or the CLIENT otherwise wants to retain the already delivered performance, in which instance the CLIENT shall merely be held to pay the SUPPLIER the pro rata price of the already delivered performance.

## 9. LIABILITY, INDEMNIFICATION AND INSURANCE

- 9.1 The SUPPLIER shall be liable for any and all direct and indirect damages that the CLIENT incurs as a result of a failure to comply with an Agreement allocable to the SUPPLIER and/or an unlawful act committed by the SUPPLIER vis-à-vis the CLIENT.

The SUPPLIER indemnifies the CLIENT against any and all claims of third parties in connection therewith.

9.2 The SUPPLIER shall take out and maintain adequate insurance against the statutory liability and liability pursuant to an Agreement (including but not limited to professional liability, business liability, product liability, cyber incidents (e.g. viruses, hacks, DDoS attacks, ransom-ware and system break-ins) as also against fire and theft) and the CLIENT shall, on demand, immediately provide complete insight into the relevant policy (terms and conditions) and also provide the CLIENT with evidence regarding payment of the premium. In advance, the SUPPLIER transfers any and all claims regarding payment(s) of the insurance benefits deriving from the insurances as intended in this paragraph for damages inflicted on the CLIENT by the SUPPLIER. Insurance benefits, which are paid by the insurance company (insurance companies) directly to the CLIENT, are, as the occasion arises, deducted from the compensation payable to the CLIENT by the SUPPLIER regarding the insured occurrence.

## 10. INDEMNIFICATION INTELLECTUAL PROPERTY RIGHTS

10.1 The SUPPLIER indemnifies the CLIENT in full and unconditionally against any and all claims that derive from an infringement of the Intellectual Property Rights (in this case also comprising personality rights as intended in Section 25 of the Dutch Copyrights Act and similar rights pursuant to other jurisdictions) of third parties, directly or indirectly related to the Goods made available or Services performed by the SUPPLIER and the SUPPLIER shall compensate the CLIENT for any and all damages deriving from the same (incurred by the CLIENT). On account of the said indemnification the SUPPLIER shall, on demand of the CLIENT, provide for the defence in any proceedings that may be instituted against the CLIENT. The SUPPLIER also indemnifies the CLIENT against any and all damages and costs that the CLIENT would be ordered to pay in proceedings as also against the costs of the proceedings, also including costs that the CLIENT incurs to gain legal advice.

10.2 In case the use of the Goods, Services or any part of the same infringes Intellectual Property Rights of a third party, at least if the CLIENT can be and/or is denied the use of the Goods, Services or a part of the same as a result of a claim, the SUPPLIER shall, at its own expense and at the discretion of the CLIENT:

- acquire the right for the CLIENT to continue the use of the Goods, Services of the relevant part of it;
- replace the Goods, Services or the relevant part of it by Goods that do not infringe as intended above;
- change the Goods and/or Services in such manner that the infringement is terminated;
- take back the Goods and/or Services or the relevant part of it whilst paying compensation for any and all damages incurred by the CLIENT.

10.3 A change and/or replacement of the Goods, Services or the relevant part of it implemented in conformity with article 10.2 cannot imply that the CLIENT is limited in the user options of the Goods and/or Services and does expressly not affect the other (statutory) rights of the CLIENT.

10.4 Without prejudice to the provisions set forth elsewhere in this article 10, the CLIENT is entitled to proceed with immediate rescission of the Agreement if it would be addressed in court by a third party on account of infringement of Intellectual Property Rights as intended in this article. The said rescission does not affect any and all other rights of the CLIENT vis-à-vis the SUPPLIER, including the right to claim compensation.

## 11. INVOICING, PAYMENT AND SECURITY

11.1 The invoices must be sent in a single copy with reference to the (order) number of the relevant order to the address communicated to the SUPPLIER by the CLIENT, in the course of which the invoice must properly specify the relevant Goods and/or Services. The invoice must, moreover, comply with potential instructions of the CLIENT in connection therewith. For the duration that the invoice does not comply with the provisions set forth in this paragraph the CLIENT shall be entitled to suspend its payment obligation, which shall not result in default on the part of the CLIENT and the SUPPLIER shall therefore not be entitled to suspend or terminate its delivery and/or Services. The CLIENT is authorised to settle its exigible claims vis-à-vis the SUPPLIER with amounts payable to the SUPPLIER.

11.2 Payment must take place within sixty (60) days after receipt of the relevant correct invoice by the CLIENT. Payment by the CLIENT of an invoice does by no means imply a waiver of any right of the CLIENT.

11.3 If the invoice is only related to hours realised by the employee of the SUPPLIER (e.g. in case of the hiring of an employee of the SUPPLIER in conformity with article 30) then the CLIENT shall effectuate the payment of the invoice in a divided manner, namely fifty-five per cent (55%) of the hourly rate invoiced by the SUPPLIER to the G account of the SUPPLIER and the remaining forty-five per cent (45%) to the account as specified by the SUPPLIER on the relevant invoice. To that end the SUPPLIER shall maintain a G account at a renowned bank during the term of the Agreement. It is only possible to deviate from the foregoing after prior written consent of the CLIENT.

11.4 The SUPPLIER waives any right to settle reciprocally payable amounts.

11.5 If the CLIENT has cause to do so, on the basis of good reasons of its own, then the CLIENT can have an invoice sent by the SUPPLIER audited on (substantive) correctness by a registered accountant to be designated by the CLIENT. To this end the SUPPLIER shall provide the relevant accountant insight into the relevant books and documents. The costs for this kind of audit are at the expense of the CLIENT, unless it follows from the aforementioned audit that the invoice is not correct or not complete, in which instance the aforementioned costs shall be at the expense of the SUPPLIER.

11.6 The CLIENT is entitled to stipulate from the SUPPLIER that the latter provides security for compliance with its obligations that derive from an Agreement. The said security must be provided by the SUPPLIER in the form of an unconditional and irrevocable guarantee issued by a financial institution recognised in the Netherlands and approved by the CLIENT. The bank guarantee must have been

prepared in conformity with a “model bank guarantee” made available to the SUPPLIER by the CLIENT. The security remains in full force and effect up to the moment that the obligations of the SUPPLIER pursuant to the relevant Agreement were met.

## **12. CONFIDENTIALITY AND PERSONAL DATA PROTECTION**

12.1 The parties shall make all reasonable efforts to keep the confidential information received from the other party secret. Without written consent of the CLIENT the SUPPLIER shall, moreover, refrain from mentioning an Agreement in publications or advertising expressions or from using the CLIENT as a reference. 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. The SUPPLIER shall, in any case, keep any and all business information that originates from the CLIENT secret and shall not disclose or duplicate documents, specifications, models, drawings, designs and the like that are related to the Agreement other than expressly permitted pursuant to the relevant Agreement. Moreover, any and all information that originates from the CLIENT 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 CLIENT pursuant to the Dutch Business Secrets (Protection) Act.

12.2 If the SUPPLIER processes personal data for the CLIENT in the context of the implementation of the Agreement then the SUPPLIER 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. Without prejudice to the provisions set forth in this article, the SUPPLIER shall always be willing to conclude a separate processing agreement with the CLIENT, which agreement must comply with the requirements laid down in the GDPR. The SUPPLIER shall take appropriate technical and organisational measures to secure the personal data against loss or any form of unauthorised processing. The said measures guarantee, in consideration of the state of the art and the costs of the relevant implementation, an appropriate level of protection having regard to the risks that the processing and the nature of the data to be protected bring about. The SUPPLIER establishes these measures in writing. The SUPPLIER guarantees the CLIENT that the personal data are processed in a proper, diligent manner and in accordance with the applicable legislation and regulations and, where applicable, the code of conduct or instruction provided by the CLIENT. The above also applies in the event of cross-border transmission and/or distribution and/or supply of personal data to non-EU countries, which shall, however, always require the prior written consent of the CLIENT. The SUPPLIER indemnifies the CLIENT

against claims of third parties that may be filed against the CLIENT on account of a violation of the obligations of the SUPPLIER as intended in this article. The SUPPLIER lends its full cooperation to the CLIENT in order to ensure that data subjects within the meaning of article 4.1 of the GDPR can exercise 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 if they were incorrect or, if the CLIENT disputes the standpoint of the SUPPLIER, have recorded that the data subject deems his personal data to be incorrect. In case of a breach of personal data as intended in article 4 paragraph 12 of the GDPR (data breach) the SUPPLIER shall forthwith, however in any case within 24 hours after the discovery of the data breach, inform the CLIENT orally and in writing, such irrespective of the impact of the data breach. In case of a security incident / data breach the SUPPLIER shall take any and all reasonable measures to prevent the consequences of the incident and/or a new incident. The SUPPLIER shall lend any and all cooperation to the CLIENT in order to assess the security incident and to comply with its potential statutory notification requirement and its potential obligation to inform data subjects. The obligation as intended in paragraph 1 with regard to confidentiality applies in full to the processing of personal data.

## **13. WARRANTY GENERAL, QUALITY AND FEATURES**

13.1 The SUPPLIER warrants that upon delivery of the Goods: a) the Goods are of good quality and free from defects; b) the Goods are and function fully in accordance with the Agreement, specifications and reasonable expectations of the CLIENT (with regard to, in particular, features and quality); c) the Goods comply fully with any and all applicable statutory requirements (also including European regulations regarding, inter alia, CE marking and RoHS) and official rules as well as any and all relevant legislation and regulations regarding import and export of the Goods in any and all applicable jurisdictions, including those of the (Export Administration Regulations of the) US Department of Commerce; and d) the Goods are completely suitable for the purpose for which the CLIENT intends to use the Goods. The SUPPLIER warrants that upon the delivery of Services: a) the Services are performed by relevantly professional staff and whilst making use of the latest materials, knowledge and technology; b) the Services are fully performed in conformity with the Agreement as also in conformity with the reasonable expectations of the CLIENT (in particular with regard to quality); c) the Services comply with the norms and standards common in the relevant industry / sector; d) the Services are completely performed in accordance with any and all applicable statutory

requirements (also including applicable European regulations) and official rules; and e) the uninterrupted continuity of the Services. Upon the delivery of the Goods and the performance of the Services it falls under the responsibility of the SUPPLIER that any and all required authorisations, permits and licences with regard to the Goods and Services were obtained (in a timely fashion).

13.2 Without prejudice to the provisions set forth in article 13.1 the SUPPLIER warrants that it is prepared for potential contingencies that may jeopardise the business continuity (for instance natural disasters, terrorism, power failures and cyber attacks) and to this end the SUPPLIER shall, where applicable in consultation with the CLIENT, maintain an up to date disaster recovery plan.

13.3 If a CE marking, or similar certifications that are imposed pursuant to applicable Dutch, European or other applicable legislation and regulations, is required then it is noted that it must be obtained and placed on the Goods by the SUPPLIER and that the said marking is included in the stipulated price. Obtaining and placing the CE marking shall not affect the stipulated delivery dates. If and to the extent that CE marking also affects other products already present at the CLIENT or products to be delivered by the CLIENT (to its customers) then the SUPPLIER shall inform the CLIENT accordingly in a timely fashion in order that the CLIENT can comply with its obligations vis-à-vis its customers. The SUPPLIER indemnifies the CLIENT against potential (direct and/or indirect) damages that the CLIENT incurs as a result of a violation by the SUPPLIER of the obligations pursuant to this article 13.3, including an overstepping of the indicated delivery dates.

13.4 The CLIENT attaches importance to corporate social responsibility. The CLIENT only does business with undertakings that respect the law and that comply with ethical standards and principles. The SUPPLIER guarantees that in its business operations and during the implementation of the Agreement it shall comply with the 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). The SUPPLIER moreover guarantees that it complies 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. Without prejudice to the above, the SUPPLIER is not allowed to offer or provide, in any way whatsoever, money, goods or services to employees of the CLIENT.

13.5 Non-compliance (incomplete compliance) with the provisions set forth in articles 13.2, 13.3 and/or 13.4 shall entitle the CLIENT to rescind the Agreement with immediate effect (out of court) without thus creating any form of liability vis-à-vis the SUPPLIER and without prejudice to the other rights

of the CLIENT, also including the right to claim compensation.

13.6 If the Goods and/or the Services do not comply with the provisions set forth in article 13.1 then the SUPPLIER shall be held to replace or repair the Goods or perform the Services again within two weeks at its sole risk and expense (hence free of charge) and subject to the approval of the CLIENT. The provisions set forth in the first sentence shall not affect the other statutory rights of the CLIENT. The CLIENT is entitled to proceed (have proceeded) with repair, replacement or renewed performance at the expense of the SUPPLIER, and whether or not whilst relying on third parties, if and to the extent that the SUPPLIER fails to comply with its warranty obligations.

13.7 If the relevant Agreement does not include a different warranty period then the warranty period shall amount to 24 months, taking effect on the moment of delivery of the Goods, or at the moment of completion of the Services. The warranty period shall be renewed for the duration that the Goods and/or Services do not comply with the provisions set forth in article 13.1 and shall every time (again) apply to replaced, repaired or again performed parts of the Goods and/or Services.

13.8 The warranty terms and conditions with regard to Software are included in article 20 and with regard to Hardware in article 26.

#### **14. SUSPENSION AND RESCISSION**

14.1 The CLIENT is entitled to suspend its payment obligations for the duration that the SUPPLIER, at the discretion of the CLIENT, fails to comply with an obligation on account of an Agreement.

14.2 Without prejudice to the provisions set forth otherwise in this article 14, the CLIENT 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 SUPPLIER is established or in the country where the SUPPLIER is otherwise subject to an obligation to deliver pursuant to the Agreement irrespective of the fact if the CLIENT can consequently not comply, either in whole or in part, with the Agreement respectively as a result of which the CLIENT cannot take delivery of Goods and/or Services by the SUPPLIER.

14.3 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 by registered post 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 the provisions set forth in the Agreement and, after it has consequently been given written notice of default, does not 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 SUPPLIER of the provisions set forth in article 6 ((Intellectual Property) Rights);



- d. if the other party repeatedly failed to comply or failed to comply to such degree that continuation of the Agreement can reasonably no longer be required of the other party;
  - e. In the instances as intended above under c and d it is not required to provide a period as intended under b.
- 14.4 If the CLIENT fully or partly rescinded in pursuance of the provisions set forth in article 14.3 then each and every claim of the CLIENT vis-à-vis the SUPPLIER immediately falls due.
- 14.5 If the CLIENT fully or partly rescinds the Agreement in pursuance of this article 14 then in pursuance of Section 271 of Book 6 of the Dutch Civil Code this shall imply an obligation to undo, the latter without prejudice to the right of the CLIENT to claim compensation. This shall only be different if, at the discretion of the CLIENT, the performance already delivered by the SUPPLIER has actual use to the CLIENT and/or the CLIENT otherwise wants to retain the already delivered performance, in which instance the CLIENT shall merely be held to pay the SUPPLIER the pro rata price of the already delivered performance.
- 14.6 In the event the CLIENT proceeds with full or partial rescission of the Agreement and irrespective of the reason for it, the SUPPLIER shall not be entitled to compensation for damages potentially incurred by the SUPPLIER or third parties as a result of the rescission. In this respect the SUPPLIER indemnifies the CLIENT against claims of third parties.
- 14.7 The provisions set forth in article 14.3 shall not affect the other rights of the CLIENT to rescission by law and pursuant to the provisions otherwise set forth in these General Purchasing Terms and Conditions.

## 15. MISCELLANEOUS

- 15.1 During the term of the Agreement and during a period of twelve (12) months thereafter the parties 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.
- 15.2 If so required, the SUPPLIER is held to designate one or more employees who shall act as a contact person for the CLIENT.
- 15.3 If a provision (provisions) of these General Purchasing Terms and Conditions is (are) invalid or nullified then the other provisions of these General Purchasing 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 and/or nullified provision (provisions), in the course of which the objective and the scope of the invalid and/or nullified provision (provisions) are observed as much as possible.
- 15.4 Provisions set forth in an Agreement, including relevant provisions from these General Purchasing Terms and Conditions, which are, due to their nature, meant to also remain in full force and effect after termination of the Agreement, shall also remain applicable after termination of the Agreement. These kinds of provisions regard, inter alia, provisions that are related to liability, Intellectual Property Rights, insurance and confidentiality.

- 15.5 Barring specific different provisions in these General Purchasing Terms and Conditions reciprocal written communication between the SUPPLIER and the CLIENT takes place by post, facsimile and/or email, which is accepted by the parties as documentary evidence.
- 15.6 The CLIENT is entitled to change these General Purchasing 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 CLIENT ([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 CLIENT 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 Purchasing Terms and Conditions and a translated version of these General Purchasing Terms and Conditions, the Dutch version shall be binding. The CLIENT 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 CLIENT).

## B - SPECIAL PROVISIONS

### B1 - SOFTWARE

## 18. DEVELOPMENT, ADJUSTMENT AND ACCEPTANCE OF SOFTWARE

- 18.1 If it was stipulated that the SUPPLIER shall develop Software or adjust Software then the SUPPLIER shall develop and/or adjust the Software strictly in accordance with the Specifications. The SUPPLIER declares that it obtained sufficient knowledge about the environment in which the Software shall operate, that it is fully familiar with the objective for which the CLIENT intends to use the Software, that the Software is, both individually and in combination with potentially available (with the CLIENT or a customer of the CLIENT) infrastructures, suitable for the aforementioned objective as also that the SUPPLIER is responsible for the proper functioning of the Software in the said environment and/or in combination with the said infrastructure. 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 only the SUPPLIER is responsible for a correct interpretation and application of the said standard(s).
- 18.2 After the Software has been developed by the SUPPLIER, the SUPPLIER shall first personally test the Software in order to determine that the Software complies fully with the Specifications and does not contain Errors. The SUPPLIER shall then make the

Software available to the CLIENT and, if so required, install and implement it on the instructions of the CLIENT after which the CLIENT shall personally submit the Software to an acceptance test. If the CLIENT observes Errors in the Software during the acceptance test then the SUPPLIER shall communicate this in writing - in a manner as specified as reasonably possible. Errors that, at the reasonable discretion of the CLIENT, do not hinder the functioning or the use of the Software shall not give cause to withhold acceptance by the CLIENT, without prejudice to the obligation of the SUPPLIER to remedy these kinds of Errors as soon as possible - however at the latest within fifteen (15) working days. After conclusion of the acceptance test the CLIENT shall inform the SUPPLIER in writing of the acceptance (or not). If the CLIENT withholds its acceptance on account of observed and reported Errors then the SUPPLIER shall forthwith - however at the latest within five (5) working days - remedy the said Errors and the CLIENT shall repeat the acceptance test at least once. If, as the occasion arises, the CLIENT again observes Errors and reports them to the SUPPLIER then the CLIENT shall be entitled - however not held - to rescind the relevant Agreement, to the extent that it is related to the said Software, and the CLIENT shall be entitled to personally, whether or not whilst relying on third parties, remedy the Errors at the expense of the SUPPLIER. If the CLIENT, as the occasion arises, does not rescind the Agreement then the SUPPLIER shall forthwith - however at the latest within five (5) working days - remedy the Errors and again present the same to the CLIENT for acceptance.

18.3 If partial acceptance tests were stipulated then the same procedure as included in article 18.2 shall apply to the said partial acceptance tests.

18.4 If it was not determined during what period the (partial) acceptance test (tests) shall be carried out by the CLIENT then the test (tests) shall be carried out within twenty-one (21) days after the availability of the Software to the CLIENT.

18.5 If the SUPPLIER develops a (mobile) app for the CLIENT and the Client intends to exploit the said (mobile) app via an online app shop then it falls under the exclusive responsibility of the SUPPLIER that the said app is accepted in online app shops (e.g. Google, Apple or Windows).

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

19.1 The CLIENT is entitled to require changes in the nature and scope of the Software to be delivered and/or the Services to be performed from the SUPPLIER. The CLIENT shall inform the SUPPLIER of this kind of change in writing, after which the SUPPLIER must inform the CLIENT within five (5) working days after receipt of the require change whether and to what degree the said change(s) has (have) consequences for the stipulated delivery time and price. If, at the discretion of the SUPPLIER, there is question of contract extras then the SUPPLIER must provide the CLIENT with a written offer (for contract extras) within the said time limit of five (5) working days. The relevant contract extras can only be performed after written acceptance by the CLIENT of the aforementioned offer (for contract extras). There is, in any case, no question of contract extras

if the relevant change in the nature or scope of the activities for the SUPPLIER was foreseeable upon the conclusion of the Agreement or should otherwise reasonably be at its expense. If and to the extent that the CLIENT does not want to agree with the said offer (for contract extras) then the CLIENT shall be entitled to rescind the Agreement, in the course of which the CLIENT shall, as the occasion arises, only be held to pay compensation for the reasonable, actually incurred costs of the SUPPLIER, to the extent that they are directly related to the implementation of the Agreement, up to the moment of the rescission.

19.2 Settlement of the contract extras 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 Without prejudice to the applicability of the provisions set forth in article 13, the SUPPLIER warrants that 1) the Software functions fully in accordance with the Specifications; 2) the Software was written in an efficient, proper and mutually coherent manner; 3) the Software complies with (international) technical standards; 4) the Software does not contain security measures that were not stipulated as also that the Software does not contain foreign elements (e.g. viruses, worms, etc.); 5) the response times mentioned in the Agreement and/or Specifications are met; 6) any and all functionalities built in the Software are described in the Documentation; 7) the Software complies with applicable legislation and regulations, including but not limited to the GDPR; 8) the Software complies with relevant security standards like ISO 27001 and NEN 7510, 7512 and 7513 as well as assurance certificates, including ISAE3402 statements, which are, if so requested, issued by the SUPPLIER in a timely fashion; and 9) the Software does (without prejudice to the provisions set forth in article 22) not contain Open Source Software (elements), unless the CLIENT gave its express prior written consent to the same. The warranty also consists of the free repair of Errors in accordance with the provisions set forth in these General Purchasing Terms and Conditions.

20.2 Unless stipulated otherwise in writing, the warranty period amounts to twenty-four (24) months after delivery or - if an acceptance test was stipulated - after the success of the acceptance test.

20.3 If during the term of the warranty the Software delivered by the SUPPLIER contains, at the discretion of the CLIENT, Errors then the CLIENT shall inform the SUPPLIER accordingly within a reasonable period. Forthwith after receipt of the said communication the SUPPLIER shall uninterruptedly proceed with remedy of the Errors. Errors that (i) render the functioning of the Software impossible are solved within four (4) office hours after the notification of the CLIENT to the SUPPLIER, potentially by means of a temporary (program) workaround, without prejudice to the obligation of the SUPPLIER to remedy the Errors as soon as possible; (ii) interrupt the functioning of the Software are solved within twenty-four (24) hours after the notification of the CLIENT to the SUPPLIER, potentially by means of a temporary (program) workaround, without prejudice



to the obligation of the SUPPLIER to remedy the Errors completely as soon as possible.

- 20.4 If the SUPPLIER implements a temporary solution for the performance of the warranty as intended in article 20.3 then it shall pay compensation for the (potential) damages that the CLIENT consequently incurs.
- 20.5 The SUPPLIER warrants that it shall perform the activities on the basis of the relevant Agreement as well as maintenance in accordance with (technical) norms and standards, which are applicable in the latest and properly functioning IT practice.

## 21. SOFTWARE LICENCE

- 21.1 In the event that the SUPPLIER makes Software available to the CLIENT, the provisions set forth in this article apply.
- 21.2 Barring different arrangements in the Agreement, the Licence granted by the SUPPLIER is irrevocable, worldwide and perpetual (and can therefore not be terminated). The CLIENT is, moreover, always entitled to make copies of the Software and the Documentation and use the said copies for 1) contingencies or not functioning (correctly) of the Software, 2) for testing, or 3) for the use of the Software and the Documentation intended by the CLIENT.
- 21.3 The Licence in respect of the Software and the Documentation also entails the right of the CLIENT to 1) have the Software and the Documentation maintained and/or managed by third parties (including outsourcing or similar services of third parties), and 2) license the Software and Documentation to third parties (sub-licensing).
- 21.4 The provisions set forth in articles 21.2 and 21.3 are also applicable to Software to which the SUPPLIER is not an entitled party. As the occasion arises, the SUPPLIER shall ensure to have been authorised by the entitled party to grant the rights as intended in articles 21.2 and 21.3 to the CLIENT on behalf of the same. On demand the SUPPLIER provides the CLIENT with a copy of the said authorisation.
- 21.5 The SUPPLIER shall apply a consistent version policy and provide for timely availability of New Versions and Updates of the available Software. In this respect the SUPPLIER shall regularly assess the need to issue New Versions and Updates and shall inform the CLIENT as soon as possible about the outcome of this kind of assessment. On demand the SUPPLIER makes a copy of the New Version available to the CLIENT for test and evaluation purposes. However, the CLIENT shall never be held to commission a New Version.
- 21.6 In the event that the SUPPLIER is declared to be insolvent and the receiver terminates the Agreement in place between the parties, the parties hereby already agree, as the occasion arises, that the CLIENT shall then be entitled to continue using the Software and the Documentation in pursuance of Section 45j of the Dutch Copyrights Act. The parties hereby already agree, as the occasion arises, that the use intended with the Software does, in any case, include:
- The right to install the Software on an unlimited number of computers;
  - The right to use (have used) the Software for an open term at an unlimited number of locations

and by an unlimited numbers of users of the CLIENT;

- The right to maintain (have maintained) the Software by the CLIENT and/or by a third party;
  - To continue performing the acts in respect of the Software that the CLIENT had already been performing before the SUPPLIER was declared to be insolvent. The provisions set forth in this article are qualified as a Settlement Agreement pursuant to Section 900 of Book 7 of the Dutch Civil Code, which are, due to their nature, meant to remain in full force and effect after termination of the Agreement.
- 21.7 In the event that the undertaking of the CLIENT is (fully or partly) transferred to a third party, the SUPPLIER shall tolerate that the use of the Software and the Documentation by the said acquiring party is continued, provided that the said party confirmed to the SUPPLIER, if so requested, that it shall comply with the licensing conditions.
- 21.8 The CLIENT is always entitled to transfer the use of the Software and the Documentation to a related undertaking.
- 21.9 On demand of the CLIENT, the SUPPLIER shall file a copy of the source codes of the Licensed Software as well as a copy of the Documentation with an Escrow agent, which agent must have been approved by the CLIENT, in the course of which the CLIENT acquires the right to use the source codes of the Software in an unlimited manner in case the SUPPLIER becomes insolvent or does otherwise not observe the maintenance obligations vested in the same.
- 21.10 If the provisions set forth in these General Purchasing Terms and Conditions - including this article 21 - are in violation of, or deviate from, conditions on the basis of which the SUPPLIER Licenses the Software and Documentation then the provisions set forth in these General Purchasing Terms and Conditions shall prevail.

## 22. OPEN SOURCE SOFTWARE

- 22.1 Barring prior written consent of the CLIENT, the SUPPLIER shall not be entitled to, during the development of Software and the granting of Licences, use Open Source Software. The aforementioned consent can only be given if the SUPPLIER made it exhaustively transparent to the CLIENT in a timely fashion (i.e. prior to the development, the granting of the licence and/or the conclusion of the Agreement) what Open Source Software shall be used, which (licensing) conditions are applicable to the same, what legal implications this brings about and after assessment of the said information the CLIENT is of the opinion that the Open Source Software can be used. Consent given by the CLIENT (which can be subject to conditions) does not affect the obligation of the SUPPLIER to indemnify the CLIENT against any and all damages and costs in case the use of the Open Source Software gives cause to claims of third parties and otherwise neither prejudices user rights, warranties and indemnifications granted by the SUPPLIER.

## 23. CLOUD SERVICES

- 23.1 If the Software and/or the Documentation are made available and/or given in use to the CLIENT in the form of Cloud Services, in addition to article 23,

the provisions otherwise set forth in these General Purchasing Terms and Conditions are applicable in full and in particular the provisions set forth in articles 5, 7, 10 and 13, with the understanding that in that case delivery takes place when the SUPPLIER enables the CLIENT to actually use the Software and/or Documentation on the stipulated date of delivery.

23.2 The Cloud Services of the SUPPLIER shall comply with certification standards (e.g. ISO27001 or NEN 7510, 7512 and 7513) imposed by the CLIENT upon the conclusion of the Agreement. The SUPPLIER shall submit a copy of the available certificates to the CLIENT and personally regularly update the said certification and again submit the renewed certificates to the CLIENT.

23.3 The CLIENT always remains the owner of any and all data that the CLIENT makes available to the SUPPLIER with the Cloud Services. The SUPPLIER shall handle these data of the CLIENT as confidential information. The SUPPLIER provides for a fall-back location or similar with the storage of data. The CLIENT grants the SUPPLIER a limited licence for the term of the Agreement to exclusively and only use the data of the CLIENT to the extent that this is required to perform the Cloud Services. Each and every other use of the data by the SUPPLIER is expressly prohibited and the SUPPLIER acknowledges that a violation of this obligation results in irreparable damages to the CLIENT for which damages the SUPPLIER shall be liable. The SUPPLIER shall, on demand, make the said data available to the CLIENT. In case of termination of the Cloud Services the SUPPLIER shall make any and all data of the CLIENT, which are present on the systems of the SUPPLIER or a third party hired by the same, available in the stipulated data formats. The said data are documented in such manner that the CLIENT is able to gain access to the data. After the said availability of any and all data to the CLIENT upon termination and after confirmation of receipt of any and all data by the CLIENT, the SUPPLIER destroys any and all data that are still present in its systems and the SUPPLIER documents the destruction acts and it shall keep the said documentation available to the CLIENT up to 5 years after expiry of the Agreement. Without prejudice to the provisions set forth in article 21.6, the SUPPLIER shall also ensure that the said data are not part of the estate in case of insolvency of the SUPPLIER.

23.4 The servers (data centres) that facilitate the storage of the data of the CLIENT (including fall-back locations) must always be located within the European Economic Area (EEA). If the SUPPLIER stores the data of the CLIENT outside the Netherlands then it requires prior written consent of the CLIENT and only the SUPPLIER shall be responsible for compliance with the legislation and regulations applicable in the relevant country with regard to, inter alia, the processing of personal data. The SUPPLIER indemnifies the CLIENT against any and all claims and damages in connection therewith.

23.5 Unless expressly stipulated otherwise, the SUPPLIER provides for back-ups of data of the CLIENT in consideration of the stipulated periods, failing which the SUPPLIER shall create a full back-up of the data of the CLIENT once a day. The SUPPLIER guarantees the CLIENT 24/7 access to

the back-up service with which files and data bases can be replaced or be downloaded. The SUPPLIER shall inform the CLIENT prior to the Agreement at what server location the data of the CLIENT are stored. In case of a public and/or private cloud server the SUPPLIER shall inform the CLIENT prior to the conclusion of the Agreement of applicable security measures (staff, key regime). The SUPPLIER enables the CLIENT to comply with its (retention) obligations on account of applicable legislation and regulations.

23.6 The SUPPLIER shall provide the individual users an individual login name and an individual password, in particular for authentication purposes. The said login names and passwords must be stored by the SUPPLIER by means of Advanced Encryption Standard (AES) 256-bit encryption, unless the CLIENT prescribed a different standard. With the availability of the login name and password the SUPPLIER ensures that it takes place in such manner that theft and/or abuse are avoided. The SUPPLIER shall have the individual users confirm their proper receipt of passwords. Passwords shall always be made available via adequately secured connections and never to third parties. The SUPPLIER provides for a solid administration of the accounts supplied to users by the same. In case of observation of unauthorised use of an account and/or password the SUPPLIER shall forthwith inform the CLIENT accordingly and the SUPPLIER indemnifies the CLIENT against any and all damages and costs incurred by the CLIENT (and/or individual users) as a result of this kind of unauthorised use, without prejudice to the obligation of the SUPPLIER to immediately remedy the required security level and to inform the CLIENT in writing of the measures taken. The aforementioned indemnification is not applicable in case the damages are the direct and exclusive result of intentional or intentionally reckless acts of the CLIENT and/or an individual user.

23.7 With the Cloud Services the SUPPLIER shall preferably use a so-called two-step verification in order to safeguard the access security.

23.8 The SUPPLIER shall provide the connection of encrypted protocols with the highest possible encryption key.

23.9 The SUPPLIER shall regularly (at least 2 times a year) have the Cloud Services tested by experts by means of, for instance, manual attack and PEN tests on state of the art security, after which the SUPPLIER shall (where required) take appropriate (security) measures on the basis of the outcome.

23.10 The SUPPLIER shall also provide for intrusion detection (the recognition of activities that are typical of hackers).

23.11 The SUPPLIER guarantees that the capacity of the Cloud Services also takes scalability of the growth expected by the CLIENT into account.

23.12 The SUPPLIER shall apply a consistent version policy and provide for timely availability of New Versions and Updates of the Software applicable to the performance of the Cloud Services. In this respect the SUPPLIER shall regularly assess the need to issue New Versions and Updates and shall inform the CLIENT as soon as possible about the outcome of this kind of assessment. If the SUPPLIER wants to apply New Versions and Updates of the Software applicable to the performance of the Cloud Services

then the SUPPLIER shall consult this with the CLIENT in advance. The SUPPLIER shall always first test New Versions and Updates extensively in a test environment and prepare the approved Software there before it, in consultation with the CLIENT, is used in the production environment in the course of which the SUPPLIER hereby guarantees that no disruptions shall occur in the Cloud Services. Only if this is necessary and if this was stipulated in advance can the SUPPLIER, as the occasion arises, fully or partly temporarily decommission the Cloud Services for maintenance purposes. The SUPPLIER shall not have the decommissioning continue longer than strictly required in the course of which the decommissioning must take place outside window hours (07:00 o'clock up to 22:00 o'clock) and after prior notification to ICT of at least 15 working days. The costs for the aforementioned maintenance (also including the said New Version and Updates) shall be included in the costs for the Cloud Services, unless the parties stipulate otherwise in writing.

23.13 Having regard to the importance of continuity of the Cloud Services to the CLIENT, the SUPPLIER hereby already declares, as the occasion arises, to agree on the following additional arrangements to reduce continuity risks:

- a) The stipulation of arrangements comprising a so-called data escrow in pursuance of which the data processed by the SUPPLIER are periodically delivered back or to a third party;
- b) the conclusion of a (tripartite) agreement with the objective that a third party disposes of any and all information and data required in order that the said third party can, where required, perform the Cloud Services instead of the SUPPLIER;
- c) the conclusion of an agreement with a third party comprising that the said third party jointly and severally commits to compliance with the Agreement.

23.14 Hosting

- a. If the SUPPLIER performs Services under the authority of the CLIENT, which are related to the hosting of websites, then the provisions set forth in this article 23.14 are moreover applicable.
- b. The CLIENT obtains complete access to the servers in connection with the management of the websites. The SUPPLIER shall in connection therewith provide the CLIENT with any and all applicable user names and passwords.
- c. The SUPPLIER makes the relevant Hosting Services available in conformity with the (service level) Agreement established between the parties and in conformity with the service levels and rates laid down in the same, as well as discounts in case the guaranteed availability percentages are not realised by the SUPPLIER. If and to the extent that the parties did not agree on the aforementioned service levels then the service levels common in the relevant industry between professional parties are applicable and the SUPPLIER shall perform the Hosting Services in accordance with the requirements of excellent professional practice, and whilst making use of any and all (technical) possibilities that can reasonably be expected by the CLIENT.
- d. The SUPPLIER shall exclusively deploy qualified staff for the Hosting Services.

- e. The SUPPLIER commits vis-à-vis the CLIENT to take measures of an organisational and technical nature in order to adequately and sufficiently secure the data of the CLIENT that are stored on the websites hosted by the SUPPLIER - or that can be consulted via the said websites.

23.15 Personal data

- a. The SUPPLIER guarantees that it shall always comply with any and all applicable legislation and regulations in the area of the protection of personal data (including but not limited to the GDPR) in the course of which the provisions set forth in article 12.2 shall apply in full.
- b. The SUPPLIER acknowledges that the CLIENT is always entitled to check if the SUPPLIER complies with the obligation pursuant to article 23.15 under a and the SUPPLIER shall lend its complete cooperation in this kind of check.
- c. Without prejudice to the provisions set forth in article 9, the SUPPLIER indemnifies the CLIENT against any and all damages, costs (including reasonable lawyer's fees) that the CLIENT incurs as a result of a violation by the SUPPLIER of article 23.15 under a and claims and penalties of third parties (including of the Dutch Data Protection Authority) based on a violation of legislation and regulations in the area of privacy (including the GDPR and/or similar supervisory authorities outside the Netherlands) in connection with the Cloud Services. The SUPPLIER must, moreover, remain sufficiently insured against the said risk.

## **B2 - HARDWARE**

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

- 24.1 If it is stipulated with the SUPPLIER that the SUPPLIER 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".
- 24.2 The Hardware sold to the CLIENT by the SUPPLIER shall, barring different written arrangements, be delivered at the location of the warehouse of the CLIENT.
- 24.3 The SUPPLIER shall package the Hardware according to the relevantly applicable criteria.
- 24.4 Any and all Hardware to be delivered to the CLIENT by the SUPPLIER can, if so required by the CLIENT, first be submitted to an inspection and/or an acceptance test. The inspection and/or acceptance by or on behalf of the CLIENT does not imply acknowledgement that the delivered goods comply with the warranties as intended in article 13.

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

- 25.1 If circumstances arise that result in changes and contract extras with regard to the realisation of Hardware then article 19 is equally applicable.

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

- 26.1 Without the applicability of the provisions set forth in article 13, the SUPPLIER guarantees that 1) the Hardware functions fully in accordance with the Specifications; 2) the Hardware complies with (international) technical standards; 3) the Hardware

does not contain security measures that were not stipulated, as also that the Hardware does not contain foreign elements; 4) the response times specified in the Agreement and/or Specifications are realised; and 5) any and all functionalities built in the Hardware are described in the Documentation. The warranty also consists of the free repair of Errors in accordance with the provisions set forth in these General Purchasing Terms and Conditions.

26.2 Unless stipulated otherwise in writing, the warranty period amounts to twenty-four (24) months after delivery or - if an acceptance test was stipulated - after the success of the acceptance test.

26.3 If during the term of the warranty the Hardware delivered by the SUPPLIER contains, at the discretion of the CLIENT, Errors then the CLIENT shall inform the SUPPLIER accordingly within a reasonable period. Forthwith after receipt of the said communication the SUPPLIER shall uninterruptedly proceed with remedy of the Errors. Errors that (i) render the functioning of the Hardware impossible are solved within four (4) office hours after the notification of the CLIENT to the SUPPLIER, without prejudice to the obligation of the SUPPLIER to remedy the Errors as soon as possible; (ii) interrupt the functioning of the Hardware are solved within twenty-four (24) hours after the notification of the CLIENT to the SUPPLIER, without prejudice to the obligation of the SUPPLIER to remedy the Errors completely as soon as possible.

26.4 The SUPPLIER warrants that it shall perform the activities on the basis of the relevant Agreement as well as maintenance in accordance with (technical) norms and standards, which are applicable in the latest and properly functioning IT practice.

### **B3 - MAINTENANCE**

#### **27. MAINTENANCE GENERAL**

27.1 These provisions regarding maintenance are only applicable if the CLIENT and the SUPPLIER stipulated that the SUPPLIER shall perform maintenance activities.

27.2 The SUPPLIER shall perform the maintenance with the utmost care. The SUPPLIER shall perform the maintenance in conformity with the maintenance agreement stipulated with the CLIENT and the methodologies described in the same, in the course of which the SUPPLIER shall use a consistent version policy for the Software and Hardware. The SUPPLIER is held to realise the service levels as included in the relevant maintenance agreement (SLA).

27.3 If it was stipulated that the SUPPLIER shall maintain the Software and/or Hardware and/or Documentation then the said maintenance shall start 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 SUPPLIER guarantees that any and all statutory rules regarding the Goods in respect of which the SUPPLIER performs maintenance activities are observed, including the GDPR, and the SUPPLIER indemnifies the CLIENT against any and all claims in connection therewith.

27.5 The SUPPLIER bears the risk of loss or theft of or damage to the Goods during the period that the SUPPLIER has the same in its possession for the

benefit of the performance of the maintenance. It is up to the SUPPLIER to insure the said risk in an adequate manner.

27.6 Before performing maintenance on the Goods, the SUPPLIER provides for the necessary spare copies (back-ups).

27.7 If the Software and/or Hardware contain, at the discretion of the CLIENT, Errors during the term of the maintenance agreement then the CLIENT must communicate this to the SUPPLIER within a reasonable period after the occurrence of the Errors.

27.8 The SUPPLIER guarantees that it can maintain the Software and Hardware during a period of at least five (5) years after acceptance in the manner as described in these General Purchasing Terms and Conditions. To this end the SUPPLIER is always willing to conclude a maintenance agreement with the CLIENT, which can, at the request of the CLIENT, also contain specific services levels.

#### **28. SOFTWARE MAINTENANCE**

28.1 During the term of the maintenance agreement the SUPPLIER commits to remedy Errors that were reported to the SUPPLIER by the CLIENT. Unless expressly stipulated otherwise in the maintenance agreement, the provisions set forth in article 20.3 are applicable.

28.2 Unless expressly stipulated otherwise in writing, the CLIENT can claim delivery of the source code and all other materials that are required for the performance of maintenance.

28.3 The maintenance of Software shall, in any case, extend to what was stipulated by and between the parties as well as what can reasonably be expected by the CLIENT.

28.4 The SUPPLIER provides for the updating of its expertise regarding the Software. The SUPPLIER shall register and record the data relevant to the Software maintenance regarding the activities performed on the Software in its administration. The SUPPLIER shall, on demand, provide the CLIENT insight into the thus recorded data.

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

#### **29. HARDWARE MAINTENANCE**

29.1 During the term of the maintenance agreement the SUPPLIER commits to remedy Errors that were reported to the SUPPLIER by the CLIENT. Unless expressly stipulated otherwise in the maintenance agreement, the provisions set forth in article 26.3 are applicable.

29.2 The maintenance of Hardware shall, in any case, extend to what was stipulated by and between the parties as well as what can reasonably be expected by the CLIENT.

29.3 The SUPPLIER provides for the updating of its expertise regarding the Hardware. The SUPPLIER shall register and record the data relevant to the Hardware maintenance regarding the activities

performed on the Hardware in its administration. The SUPPLIER shall, on demand, provide the CLIENT insight into the thus recorded data.

#### **B4 - HIRING**

### **30. HIRING**

30.1 These provisions regarding the hiring of an employee (employees) are only applicable if the CLIENT and the SUPPLIER stipulated that the CLIENT shall hire employee(s) from the SUPPLIER.

30.2 For the purpose of these General Purchasing Terms and Conditions hiring is understood as the situation where the CLIENT temporarily wants to be assisted by employee(s) of the SUPPLIER (in this article 30 referred to as: the "Employee(s)") during the performance of specific activities (in this article 30 referred to as: the "Activities") for the benefit of the CLIENT or for the benefit of its customers.

30.3 At the location where the Activities are performed the Employee(s) shall act in accordance with the rules applicable there and the SUPPLIER commits to instruct its Employee(s) accordingly. The Employee(s) shall in connection therewith comply with the guidelines applicable at the CLIENT or at the relevant customer as well as the applicable company rules. The CLIENT or the customer shall instruct the Employee(s) accordingly in a complete and correct manner.

30.4 In respect of each and every Employee the SUPPLIER shall comply with the statutory obligations regarding withholding and payment of payroll taxes, national insurance contributions, employee insurance schemes, turnover tax contributions and any and all other applicable statutory obligations and applicable terms and conditions of employment, including the potentially applicable Collective Labour Agreement (the "Statutory Obligations"). The SUPPLIER shall indemnify the CLIENT against claims that are related to non-compliance with the Statutory Obligations, including but not limited to claims for payment of costs and penalties (including, inter alia, the costs of accountants, tax consultants, legal consultants and lawyers). Moreover, the SUPPLIER shall, on demand of the CLIENT, compensate the CLIENT for any and all damages and costs related to the same.

30.5 The SUPPLIER establishes any and all arrangements regarding terms and conditions of employment, identity documents or relevant permits, e.g. a work permit pursuant to the Dutch Aliens (Employment) Act, for the benefit of the performance of the Activities in a transparent and accessible manner. The SUPPLIER provides, if so requested, competent authorities access to the said arrangements regarding terms and conditions of employment, identity documents respectively applicable permits and lends cooperation in checks, audits or wage validation. The SUPPLIER provides, if so requested, the CLIENT access to the said arrangements regarding terms and conditions of employment, identity documents respectively permits, if it deems this to be required in connection with a wage claim regarding work performed for the benefit of the Activities as well as in case of the detection of irregularities.

30.6 The SUPPLIER is held to impose any and all obligations included in the previous paragraph in full on any and all parties with whom it concludes

agreements for the benefit of the performance of the Activities. In this respect the SUPPLIER is also held to stipulate that the said parties subsequently include the aforementioned contractual obligations in agreements that they conclude for the benefit of the performance of the Activities.

30.7 The SUPPLIER is held to submit an opinion of a registered accountant or an accountant - administration consultant or a NEN 4400-1 or NEN 4400-2 certificate, valid for the relevant period, to the CLIENT, satisfactory to the CLIENT, comprising that:

- a. the Employee(s) made available by the SUPPLIER in the context of the Agreement are employed by the SUPPLIER during the period from the start of the Activities up to and including the latest quarter;
- b. for the Employee(s) deployed by the SUPPLIER in the context of the Agreement, of which the certificate must expressly include the name respectively the names, filing and complete payment of the Statutory Obligations took place on any and all taxable allowances paid to the Employee, from the start of the Activities for the CLIENT up to and including the latest quarter;
- c. turnover tax was contributed on the amounts charged to the CLIENT by the SUPPLIER, which are related to the activities associated with the Agreement.

30.8 The opinion as intended in article 30.7 shall be submitted by the SUPPLIER according to the situation as at 31 December, 31 March, 30 June and 30 September of every year, and without further request of the CLIENT, every time within two weeks after the said date.

30.9 Up to the moment that the CLIENT receives an opinion as intended in article 30.7 the CLIENT shall withhold an amount of 30% from the invoice amount excluding turnover tax charged to the CLIENT by the SUPPLIER in order to cover its risks regarding liability for contribution of the Statutory Obligations regarding Employee(s) made available by the SUPPLIER.

30.10 The SUPPLIER is held to ensure that:

- a) prior to the state of the activities the Employee provides the following information and/or documents to the CLIENT:
  - name, address and place of residence;
  - the date of birth;
  - the CSN (civil service number);
  - a specification of the hours worked;
  - the nationality;
  - the type of identity document, the number and the validity;
  - where applicable, the presence of an A1 statement, residence permit, work permit, notification including number and period of validity;
  - name, address and place of residence of the provider and the registration number of the provider with the Chamber of Commerce.

b) before the start of the activities the CLIENT is enabled to check the legal validity of identity documents, including - where applicable - a work permit, in respect of an Employee who is deployed by the SUPPLIER for the relevant work and to personally create a copy for the benefit of the administration of

the CLIENT. On demand of the CLIENT, the SUPPLIER shall ensure that the Employee immediately receives the information as intended in this article.

- 30.11 A violation of the obligations described in the previous paragraphs shall always entitle the CLIENT to terminate the Agreement with immediate effect, without being held to pay any compensation.
- 30.12 If the CLIENT pays the invoice with regard to the hiring, in conformity with article 11,3 of these General Purchasing Terms and Conditions, to the G account of the SUPPLIER then article 30.9 is not applicable.
- 30.13 During the full stipulated period the Employee(s) shall be employed for the CLIENT, unless they are replaced at the request of the CLIENT. The CLIENT is always entitled to require from the SUPPLIER that an employee is replaced. The said replacement employee shall dispose of the same qualifications as the employee originally employed at the CLIENT. If the replacement employee requires, at the reasonable discretion of the CLIENT, an on-boarding period then the said on-boarding period shall amount to a maximum of twenty (20) working days. The on-boarding period is not charged to the CLIENT.
- 30.14 The SUPPLIER warrants that the Dutch Assessment Working Relationships (Deregulation) Act is complied with. In the situation where self-employed persons are hired by the SUPPLIER, the SUPPLIER shall inform the CLIENT accordingly and the SUPPLIER guarantees that the agreement between the SUPPLIER and the self-employed persons was approved by the Dutch Tax Administration or is based on a model agreement of the Dutch Tax Administration. The SUPPLIER indemnifies the CLIENT against each and every (additional) assessment of payroll taxes and national insurance contributions that are related to the deployment of the self-employed persons, including any and all fines and interests calculated on the basis of the same.
- 30.15 If it follows from the Agreement that SCC requirements must be met then the SUPPLIER shall need to comply with the SCC requirements and the Employee must be in possession of the SCC Basic or the SCC COMPLETE certificate. If there is question of an Agreement with a self-employed person then the self-employed person must comply with the SCC\* requirements and must consequently be in possession of an SCC COMPLETE certificate, an RI&E (Risk Inventory and Evaluation) must have been conducted successfully and the self-employed person must use materials that were approved according to the NEN 3140 and NEN 2384 standards.
- 30.16 In conformity with article 6.1 any and all Intellectual Property Rights with regard to the results that arise during a hiring period are vested in the CLIENT.

## **B5 - TRAINING**

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

- 31.1 These provisions regarding training are only applicable if the CLIENT and the SUPPLIER stipulated that the SUPPLIER shall provide training for the CLIENT.
- 31.2 The Agreement between the CLIENT and the SUPPLIER is concluded through the written confirmation of the CLIENT of the study, course or training offered by the SUPPLIER by means of a

registration form signed by the CLIENT. As a consequence the registration form becomes the Agreement.

- 31.3 The SUPPLIER shall exclusively deploy qualified staff for the study, training or course.
- 31.4 If the number of registrations reasonably gives cause to this then the SUPPLIER is entitled, only after prior written consent of the CLIENT, 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, the latter, however, upon compensation for the damages potentially incurred by the CLIENT.
- 31.5 The CLIENT can cancel the relevant study, training or course in writing free of charge up to thirty (30) days before the start.
- 31.6 The CLIENT is, after mere notification to the SUPPLIER, always entitled to send a participant to the relevant study, course or training other than the originally registered participant.
- 31.7 The CLIENT is entirely free to use the (study, training or course) materials use and/or supplied by the SUPPLIER (also including Software) or other data in a perpetual and unlimited manner within its organisation (hence within all group companies and participating interests). This does not affect that any and all Intellectual Property Rights, particularly including copyrights, with regard to (study, course or training) materials supplied by the SUPPLIER (also including Software) and other data for the benefit of the study, course or training remain vested in the SUPPLIER.

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