

# ICT~Office Terms and Conditions

## General Module



**ICT~OFFICE**

# ICT~Office Terms and Conditions

*The ICT~Office Terms and Conditions are filed with the Chamber of Commerce for the Central Netherlands under number 30174840.*

## ALGEMEEN

### 1. Applicability of the ICT~Office Terms and Conditions

- 1.1 The ICT~Office Terms and Conditions have been drawn up by ICT~Office. The ICT~Office Terms and Conditions consist of the present General module and the following separate, specific modules:
  1. Software license
  2. Development of software
  3. Maintenance of software
  4. Application Service Provision, Software as a Service and Computer Service
  5. Development and maintenance of a website
  6. Webhosting
  7. Secondment services
  8. Courses and training programmes
  9. Advice, consultancy and project management
  10. Other services
  11. Sale of ICT, telecommunication and office equipment and other goods
  12. Renting out ICT, telecommunication and office equipment
  13. Maintenance of ICT, telecommunication and office equipment
  14. Internet access
  15. Telecommunication services
  16. Financing and leasing of ICT.
- 1.2 This General module of the ICT~Office Terms and Conditions shall apply to all offers and agreements whereby the Supplier provides the Client with any goods and/or services whatsoever and however described. The specific module or modules of the ICT~Office Terms and Conditions agreed between the Supplier and the Client shall also apply. If any part of this General module of the ICT~Office Terms and Conditions conflicts or is incompatible with any of the provisions of the specific module or modules of the ICT~Office Terms and Conditions agreed between the Supplier and the Client, the provisions of the specific module or modules in question shall prevail.
- 1.3 Where the ICT~Office Terms and Conditions refer to 'general terms and conditions', this shall be understood to mean the provisions of this General module in combination with the provisions of one or more agreed specific modules of the ICT~Office Terms and Conditions.
- 1.4 Additions to or deviations from these general terms and condition shall only apply where agreed in writing between the parties.
- 1.5 The applicability of any of the Client's purchasing or other conditions is expressly rejected.
- 1.6 If any provision of these general terms and conditions is null and void or is voided, the other provisions of

these general terms and conditions will remain fully in effect. In this case, the Supplier and the Client will consult with one another to agree new provisions to replace the void or voided ones. In doing so, the purpose and meaning of the void or voided provision will be taken into account as far as possible.

### 2. Offers

- 2.1 All offers and other statements issued by the Supplier shall be subject to contract, except where specified otherwise in writing by the Supplier.
- 2.2 The Client shall guarantee the accuracy and completeness of the information that it submits to the Supplier and on which the Supplier bases its offer. The Client shall at all time exercise the greatest possible care to ensure that the requirements that the Supplier's services must meet are accurate and comprehensive. Measurements and information stated in drawings, pictures, catalogues, websites, quotations, advertising material, standard sheets etc. shall not have a binding effect on the Supplier, except where explicitly specified otherwise by the Supplier.

### 3. Price and payment

- 3.1 All prices are exclusive of turnover tax (VAT) and other government levies that have been or are later imposed. Except where agreed otherwise, all prices are in euros in all cases and the Client must effect all payments in euros.
- 3.2 All cost estimates and budgets issued by the Supplier shall be merely indicative, except where specified otherwise in writing by the Supplier. The Client may under no circumstances derive any rights or expectations from any cost estimates or budgets issued by the Supplier. An available budget made known by the Client to the Supplier shall under no circumstances apply as a (fixed) price agreed between the parties for the service to be provided by the Supplier. The Supplier shall only be obliged to notify the Client that there is a risk that a cost estimate or budget issued by the Supplier will be exceeded if this has been agreed between the parties in writing.
- 3.3 If the Client consists of more than one natural and/or legal persons, each of these persons shall be joint and severally liable in respect of payment of the amounts due on the basis of the agreement.
- 3.4 The relevant documents and information from the Supplier's administration or systems shall be conclusive evidence of the service provided by the Supplier and the amounts payable by the Client in return for this service, without prejudice to the Client's right to submit evidence to the contrary.
- 3.5 If the Client is subject to a periodic payment obligation, the Supplier shall be entitled to adjust the applicable



- prices and rates in writing subject to advance notice of at least three months. If the Client does not wish to agree to this change, the Client shall be entitled to terminate the agreement in writing with effect from the date on which the change is due to enter into force within thirty days following the date of notification. The Client shall not enjoy this right of termination, however, if the parties have agreed that the applicable prices and rates shall be adjusted subject to due observance of an index or other standard agreed between the parties.
- 3.6 The parties shall set out the date or dates on which the Supplier shall invoice the fee for the agreed services to the Client in the agreement. Amounts due shall be paid by the Client in accordance with the payment terms that have been agreed or that are stated on the invoice. If no specific arrangements have been made, the Client shall effect payment within a period after the date of invoice to be determined by the Supplier. The Client shall not be entitled to suspend any payments or to offset any amounts due.
- 3.7 If the Client fails to pay the amounts due or to pay the amounts due in a timely manner, statutory commercial interest shall be payable by the Client on the outstanding amount without a demand or notice of default being required. If the Client still fails to pay the amount owed after receiving a demand or notice of default, the Supplier may refer the debt for collection, in which case the Client shall also be obliged to pay all in-court and out-of-court expenses in addition to the total amount due, including all costs charged by external experts.
- 4. Confidentiality and taking over of personnel**
- 4.1 The Client and the Supplier shall ensure that all information received from the other party that is known or should reasonably be known to be of a confidential nature is kept secret. The party that receives such confidential information shall only use this information for the purpose for which it has been provided. Information shall in any event be regarded as confidential if it is designated as such by one of the parties.
- 4.2 During the term of the agreement and for one year following termination of the agreement, each of the parties shall only engage or otherwise employ, directly or indirectly, members of staff of the other party who are or were previously involved in the execution of the agreement after obtaining the prior written consent of the other party. Conditions may be attached to the aforementioned consent.
- 5. Privacy, data processing and protection**
- 5.1 If the Supplier deems this to be necessary for the purpose of executing the agreement, the Client shall, upon request, notify the Supplier immediately in writing with regard to the manner in which the Client executes its obligations pursuant to legislation in respect of the protection of personal data.
- 5.2 The Client shall indemnify the Supplier against any claims by individuals whose personal data is recorded or processed within the context of a register of personal data maintained by the Client or for which the Client is responsible pursuant to the law or otherwise, unless the Client is able to demonstrate that the acts that form the basis of the claim are exclusively attributable to the Supplier.
- 5.3 Responsibility for the data processed using the service provided by the Supplier shall rest solely with the Client. The Client shall guarantee the Supplier that the content, the use and/or the processing of the data is not unlawful and does not infringe the rights of third parties. The Client shall indemnify the Supplier against legal claims by third parties, of whatever nature, in relation to this data or the execution of the agreement.
- 5.4 If the agreement stipulates that the Supplier is obliged to provide some form of information security, this security shall meet the specifications in respect of security agreed between the parties in writing. The Supplier shall not guarantee that the information security will be effective under all circumstances. If the agreement does not include an explicit description of security measures, the security measures shall be of such a level that, having regard to the state of the art, the sensitivity of the data and the costs associated with the implementation of the security measures are not unreasonable.
- 5.5 If computer, data or telecommunications facilities are used during the execution of the agreement or otherwise, the Supplier shall be entitled to assign access or identification codes to the Client. The Supplier shall be entitled to change the access or identification codes assigned. The Client shall treat the access and identification codes as confidential and with due care and shall only disclose these codes to authorised members of staff. The Supplier shall under no circumstances be liable for any damage or costs arising from the use or misuse of access or identification codes, except where misuse was possible as a result of an act or omission on the part of the Supplier.
- 6. Retention of title and rights, creation of items and suspension**
- 6.1 All objects delivered to the Client shall remain the property of the Supplier until such time as all amounts owed by the Client to the Supplier pursuant to the agreement concluded between the parties have been paid in full. A Client that acts as a retailer shall be entitled to sell and resell all objects that are subject to the Supplier's retention of title in so far as this is customary within the context of the normal course of its business. If the Client creates a new item (partly) from items delivered by the Supplier, the Client shall only create this item for the benefit of the Supplier and the Client shall retain the newly created item for the Supplier until such time as the Client has paid all amounts due pursuant to the agreement; in this case the Supplier shall remain the owner of the newly created item until the Client has met its payment obligations in full.
- 6.2 The property law consequences of retention of title in respect of an item that is destined for export shall be governed by the law of the State of destination if this law incorporates provisions that are more favourable for the Supplier in this regard.



- 6.3 Rights, including rights of use, shall be granted to the Client or transferred, where appropriate, subject to the condition that the Client has paid all of the fees due pursuant to the agreement concluded between the parties in full. If the parties have agreed that the Client shall be subject to a periodic payment obligation in respect of the granting of a right of use, the Client shall be entitled to the right of use for as long as it continues to meet its periodic payment obligation.
- 6.4 The Supplier may retain any items, products, proprietary rights, data, documents, software, data files and (interim) results of the service provided by the Supplier received or created within the context of the agreement, contrary to an existing obligation to deliver or transfer these, until such time as the Client has paid all amounts due to the Supplier.

## **7. Risk**

- 7.1 The risk of loss, theft, misappropriation of or damage to items, products, data, documents, software, data files or data (codes, passwords, documentation etc.) produced or used within the context of the execution of the agreement, shall pass to the Client when the Client or one of the Client's agents comes into actual possession of them. In so far as these objects are in the actual possession of the Supplier or one of the Supplier's agents, the Supplier shall bear the risk of loss, theft, misappropriation or damage.

## **8. Intellectual property rights**

- 8.1 If the Supplier is willing to undertake to transfer an intellectual property right, such an undertaking may only be entered into explicitly and in writing. If the parties agree in writing that an intellectual property right in respect of software, websites, data files, hardware or other material specifically developed for the Client shall be transferred to the Client, this shall not affect the Supplier's right or option to use and/or to exploit the components, general principles, ideas, designs, algorithms, documentation, work, programming languages, protocols, standards and suchlike that form the basis of the development work for other purposes without any restrictions, on its own behalf or on behalf of a third party. The transfer of an intellectual property right shall also not affect the Supplier's right to carry out development work, on its own behalf or on behalf of a third party, that is similar or derived from the development work that is being carried out or has been carried out on behalf of the Client.
- 8.2 All intellectual property rights to the software, websites, data files, hardware or other materials such as analyses, designs, documentation, reports, quotations and related preliminary material developed or made available to the Client on the basis of the agreement shall remain exclusively vested in the Supplier, its licensors or its own suppliers. The Client shall only acquire those rights of use that are explicitly granted in these general terms and conditions and by law. Any rights of use granted to the Client shall be non-exclusive, non-transferable to third parties and non-sublicensable.

- 8.3 The Client shall not be permitted to remove or amend any details in relation to the confidential nature or in relation to copyrights, brand names, trade names or any other intellectual property right from the software, websites, data files, hardware or materials.
- 8.4 Even if the agreement does not explicitly provide for such authority, the Supplier shall be permitted to install technical provisions for the purpose of protecting the software, hardware, data files, websites and suchlike in relation to an agreed restriction on the content or the term of the right to use these objects. The Client shall under no circumstances be permitted to remove or circumvent such technical provisions or to arrange for this to be carried out.
- 8.5 The Supplier shall indemnify the Client against any legal claims from third parties based on the assertion that software, websites, data files, hardware or other materials developed by the Supplier itself infringe an intellectual property right of the third party in question, under the condition that the Client notifies the Supplier immediately in writing of the existence and content of the legal claim and leaves the disposal of the case, including any settlements effected, entirely to the Supplier. To this end, the Client shall provide the Supplier with the powers of attorney, information and cooperation that it requires in order to defend itself, where necessary in the name of the Client, against these legal claims. This obligation to indemnify shall not apply if the alleged infringement relates to (i) materials made available to the Supplier by the Client for the purpose of use, adaptation, processing or incorporation, or (ii) changes made by the Client, or by a third party on behalf of the Client, to the software, website, data files, hardware or other materials, without the Supplier's prior written consent. If it is irrevocably established in court that the software, websites, data files, hardware or other materials developed by the Supplier itself constitute an infringement of any intellectual property right vested in a third party or if the Supplier believes that there is a good chance that such an infringement may occur, the Supplier shall, where possible, ensure that the Client can continue to use the software, websites, data files, hardware or materials delivered, or functionally similar alternatives. All other or further-reaching obligations to indemnify on the part of the Supplier shall be excluded.
- 8.6 The Client warrants that no rights of third parties preclude the provision to the Supplier of software, hardware, material intended for websites (visual material, text, music, domain names, logos, hyperlinks etc.), data files or other materials, including draft materials, for the purpose of use, adaptation, installation or incorporation (e.g. in a website). The Client shall indemnify the Supplier against all claims by third parties based on the assertion that such provision, use, adaptation, installation or incorporation constitutes an infringement of any rights of the third party in question.

## **9. Obligations to cooperate**

- 9.1 The parties acknowledge that the success of activities in the field of information and communication technology generally depends on proper and timely



- mutual cooperation. In order to facilitate the proper execution of the agreement by the Supplier, the Client shall at all times provide the Supplier with all data or information that the Supplier deems to be useful, necessary and desirable and to give its full cooperation in a timely manner. If the Client deploys its own personnel and/or agents within the context of providing cooperation in the execution of the agreement, these personnel and agents shall have the necessary knowledge, expertise and experience.
- 9.2 The Client shall bear the risk of the selection, the use, the application and the management within its organisation of the software, hardware, websites, data files and other products and materials and of the services to be provided by the Supplier. The Client itself shall arrange for the correct installation, assembly and commissioning and for the application of the correct settings to the hardware, software, websites, data files and other products and materials.
- 9.3 If the Client fails to make the data, documents, hardware, software, materials or employees that the Supplier deems useful, necessary or desirable for the purpose of executing the agreement available to the Supplier, to make these available in good time or in accordance with the agreements, or if the Client fails to meet its obligations in any other way, the Supplier shall be entitled to suspend the execution of the agreement in part or in full and shall also be entitled to invoice the resulting costs in accordance with its standard rates, without prejudice to the Supplier's right to exercise any other statutory and/or agreed right.
- 9.4 If the Supplier's employees are carrying out activities on the Client's business premises, the Client shall ensure that any facilities reasonably requested by these employees, such as a workspace containing computer, data and telecommunication facilities, are provided free of charge. The workspace and facilities shall meet all statutory and other applicable requirements in relation to working conditions. The Client shall indemnify the Supplier against any claims by third parties, including the Supplier's employees, who suffer injury in connection with the execution of the agreement as a result of an act or omission on the part of the Client or of unsafe situations within the Client's organisation. The Client shall notify the employees deployed by the Supplier of any applicable company rules or security rules prior to the commencement of the activities.
- 9.5 If use is made of computer, data or telecommunication facilities, including the internet, during the execution of the agreement, the Client shall be responsible for selecting the correct resources required for this purpose and for ensuring that these are available in full and in a timely manner, with the exception of those facilities that fall under the direct use and management of the Supplier. The Supplier shall under no circumstances be liable for losses or costs arising as a result of transmission errors, breakdowns or the non-availability of these facilities, unless the Client is able to demonstrate that these losses or costs are the result of intentional acts or deliberate recklessness on the part of the Supplier's management.

## 10. Delivery dates

- 10.1 All (delivery) periods and (delivery) dates agreed or specified by the Supplier shall be established to the best of the Supplier's knowledge on the basis of the information available to it at the time of entering into the agreement. Interim (delivery) dates agreed between the parties or specified by the Supplier shall in all cases be target dates, shall not have a binding effect on the Supplier and shall in all cases be merely indicative. The Supplier shall make every reasonable effort to observe final (delivery) periods and final (delivery) dates wherever possible. The Supplier shall not be bound by a (delivery) period or (delivery) date, final or otherwise, that can no longer be achieved as a result of circumstances outside of the Supplier's control that occurred after the date on which the agreement was concluded. The Supplier shall also not be bound by a (delivery) date or (delivery) period, final or otherwise, if the parties have agreed on a change to the content or scope of the agreement (additional work, change in specifications etc.) or a change in the approach to the execution of the agreement. If there is a risk that a time period will be exceeded, the Supplier shall consult with the Client in order to discuss the implications of the overrun for the rest of the schedule.
- 10.2 The mere fact that a (delivery) period or (delivery) date, final or otherwise, specified by the Supplier or agreed between the parties has been exceeded, shall not mean that the Supplier is in default. In all cases – therefore also in the event that the parties have agreed a final (delivery) period or (delivery) date explicitly in writing - the Supplier shall not be in default as a result of the fact that a delivery period or date has been exceeded until such time as the Client has given written notice of default. The notice of default must contain as comprehensive and detailed a description of the breach as possible, in order to ensure that the Supplier has the opportunity to respond adequately.

## 11. Termination and cancellation of the agreement

- 11.1 Both of the parties shall only be authorised to rescind the agreement as a result of an attributable failure to perform this agreement if the other party, in all cases following written notice of default providing as many details as possible and setting a reasonable term in which the breach can be remedied, attributable fails to meet its fundamental obligations arising from this agreement. The Client's payment obligations and all other obligations to cooperate imposed on the Client or on a third party to be engaged by the Client shall in all cases be regarded as fundamental obligations arising from the agreement.
- 11.2 If the Client has already received services for the purpose of executing the agreement at the time of rescission as referred to in Article 11.1, these services and the related payment obligation cannot be revoked unless the Client is able to demonstrate that the Supplier is in default in respect of a substantial part of these services. Any amounts that the Supplier has invoiced before rescission in connection with work that it has already duly carried out or services that it has duly provided for the purpose of executing the agreement, shall remain due in full, subject to due



- observance of the provisions of the preceding sentence, and shall become immediately due and payable at the time of rescission.
- 11.3 If an agreement that by its nature and content is not brought to a close is entered into for an indefinite period of time, this may be terminated in writing by either party following consultation and stating reasons. If the parties have not agreed a notice period, a reasonable period of time must be observed on termination. The parties shall under no circumstances be obliged to pay any compensation as a result of termination of the agreement.
- 11.4 The Client shall under no circumstances be entitled to terminate an agreement regarding the provision of services that has been entered into for a fixed term before the end of the term.
- 11.5 Either of the parties shall be entitled to terminate the agreement in part or in full, with immediate effect, in writing without notice of default if the other party is granted a moratorium of payments, provisionally or otherwise, if a winding-up petition is filed in respect of the other party, if the other party's company is wound up or terminated for reasons other than reconstruction or the merger of companies, or if there is a change in the individual or board that has decisive control over the Client's company. The Supplier shall under no circumstances be obliged to reimburse any sums of money that have already been received or to pay any compensation in the event of such termination. If the Client becomes bankrupt or is liquidated, the right of use of the software, websites and suchlike made available to the Client shall terminate by operation of law.
- 12. Liability of the Supplier**
- 12.1 The total liability of the Supplier due to an attributable failure to perform this agreement or due to any other reason, explicitly including any failure to comply with a guarantee obligation agreed with the Client, shall be limited to compensation of the direct damage or loss not exceeding the sum stipulated for this agreement (excl. VAT). This limitation of liability shall apply mutatis mutandis to the Supplier's obligation to indemnify referred to in Article 8.5 of this General module. If the agreement is essentially a continuing performance contract with a term of more than one year, the sum stipulated for the agreement shall be set at the total fees (excl. VAT) stipulated for one year. The total liability of the Supplier for direct damage or loss, for any reason whatsoever, shall, however, under no circumstances exceed €500,000 (five hundred thousand euro).
- 12.2 The liability of the Supplier for loss as a result of death, physical injury or due to material damage to items shall under no circumstances exceed €1,250,000 (one million two hundred and fifty thousand euro).
- 12.3 The liability of the Supplier for indirect damage or loss, resulting loss, loss of profit, loss of savings, reduced goodwill, loss due to business interruption, loss as a result of claims from the Client's customers, loss in connection with the use of items, materials or software provided by third parties that the Supplier is instructed to obtain by the Client and loss in connection with the engagement of secondary suppliers by the Supplier on the Client's instructions shall be excluded. The liability of the Supplier due to the scrambling, destruction or loss of data or documents shall also be excluded.
- 12.4 The exclusions and restrictions to the Supplier's liability, as described in the preceding paragraphs of Article 12, shall not affect the remaining exclusions and restrictions to the Supplier's liability set out in this General module and the other agreed modules of these general terms and conditions in any way.
- 12.5 The exclusions and restrictions referred to in Article 12.1 to 12.4 shall no longer apply if and in so far as the loss is the result of intentional acts or deliberate recklessness on the part of the Supplier's management.
- 12.6 Except where performance by the Supplier is permanently impossible, the Supplier shall only be liable as a result of an attributable failure to perform an agreement if the Client gives the Supplier immediate notice of default in writing, setting a reasonable term in which the breach can be remedied, and the Supplier still attributable fails to meet its obligations after this period. The notice of default must contain as comprehensive and detailed a description of the breach as possible, in order to ensure that the Supplier has the opportunity to respond adequately.
- 12.7 A condition for the existence of any right to compensation shall in all cases be that the Client notifies the Supplier in writing of the loss or damage as soon as possible after it occurs. Any claims for damages against the Supplier shall expire by the mere passage of twenty four months from the date on which the claim arose.
- 12.8 The parties acknowledge that active and constructive participation in an ICT-Mediation process is a reasonable and suitable measure for preventing or limiting the risk of damage or loss if this potential damage or loss is connected to failure by the Supplier to meet any contractual obligation or to meet such obligations properly and in good time. The Client therefore undertakes to actively, constructively and unconditionally participate in an ICT-Mediation process, at the Supplier's first written request, in accordance with the ICT-Mediation Regulations of the Foundation for the Settlement of Automation Disputes [Stichting Geschillenoplossing Automatisering], with its registered office in The Hague (see [www.sgoa.org](http://www.sgoa.org) and [www.sgoa.eu](http://www.sgoa.eu)).
- 12.9 The Client shall indemnify the Supplier against all claims by third parties due to product liability as a result of a fault in a product or system delivered by the Client to a third party and that partly consisted of hardware, software or other materials provided by the Supplier, unless and in so far as the Client is able to demonstrate that the damage or loss was caused by this hardware, software or other materials.
- 12.10 The provisions of this article and all other restrictions and exclusions of liability referred to in these general terms and conditions shall also apply in favour of all (legal) persons that the Supplier engages to execute the agreement.



### 13. Force majeure

- 13.1 Neither of the parties shall be obliged to meet any obligations, including any guarantee obligation agreed between the parties, if it is prevented from doing so as a result of force majeure. Force majeure shall include:
- (i) a situation of force majeure encountered by the Supplier's own suppliers, (ii) failure by secondary suppliers engaged by the Supplier on the Client's instructions to duly meet their obligations, (iii) the defectiveness of items, hardware, software or materials provided by third parties that the Supplier has been instructed to use by the Client, (iv) government measures, (v) electricity failure, (vi) faults affecting the internet, computer network or telecommunication facilities, (vii) war, (viii) workload, (ix) strike action, (x) general transport problems and (xi) the unavailability of one or more members of staff.
- 13.2 If a situation of force majeure lasts for longer than ninety days, either of the parties shall be entitled to terminate the agreement in writing. The services already performed on the basis of the agreement shall in this case be settled on a pro rata basis, and the parties shall not owe one another any other amounts.

### 14. Changes and additional work

- 14.1 If the Supplier has carried out work or performed other services that fall outside of the content or scope of the agreed work and/or services at the request or with the prior consent of the Client, such work or services shall be paid for by the Client in accordance with the agreed rates. If no rates have been agreed, the Supplier's standard rates shall apply. The Supplier shall under no circumstances be obliged to comply with such a request, and where it does comply, it may require the Client to enter into a separate written agreement for this purpose.
- 14.2 The Client accepts that work or services as referred to in this article may affect the agreed or anticipated time of completion of the services and the mutual responsibilities of the Client and the Supplier. The fact that (the demand for) additional work arises during the execution of the agreement shall under no circumstances constitute grounds for the Client to terminate or rescind the agreement.
- 14.3 In so far as a fixed price has been agreed in respect of the service, the Supplier shall, upon request, notify the Client in writing regarding the financial implications of the additional work or services as referred to in this Article.

### 15. Transfer of rights and obligations

- 15.1 The Client shall not be entitled to sell and/or transfer the rights and/or obligations arising from the agreement to a third party.
- 15.2 The Supplier shall be entitled to transfer its rights to the payment of fees to a third party.

### 16. Applicable law and disputes

- 16.1 The agreements between the Supplier and the Client shall be governed by Dutch law. The applicability of the Convention on Contracts for the International Sale of Goods 1980 is excluded.
- 16.2 Any disputes that may arise between the Supplier and the Client on the basis of an agreement concluded

between the Supplier and the Client or as a result of further agreements that arise from such an agreement, shall be settled through arbitration in accordance with the Arbitration Regulations of the Foundation for the Settlement of Automation Disputes, with its registered office in The Hague, without prejudice to the right of either of the parties to request an injunction in summary arbitral proceedings and without prejudice to the right of either of the parties to take precautionary legal measures (see [www.sgoa.org](http://www.sgoa.org)).

- 16.3 Contrary to the provisions of Article 16.2, either of the parties shall be entitled, however not obliged, to bring the matter before the District Court, Subdistrict Sector, if the matter relates to a dispute that according to the statutory rules governing jurisdiction falls within the subject-matter jurisdiction of the District Court, Subdistrict Sector. This shall only be the case, however, where the Supplier and/or the Client has/have not already brought arbitral proceedings for the resolution of disputes arising on the basis of the agreement concluded between the parties or further agreements that arise from such an agreement before the Foundation for the Settlement of Automation Disputes in accordance with the Foundation's Arbitration Regulations. If the matter is brought before the District Court, Subdistrict Sector, by one or more of the parties for processing and a decision, subject to due observance of the previous subclause, the District Court, Subdistrict Sector, shall have jurisdiction to process the matter and reach a decision.
- 16.4 Before instituting arbitral proceedings as referred to in Article 16.2, either of the parties shall commence ICT-Mediation proceedings in accordance with the ICT-Mediation Regulations of the Foundation for the Settlement of Automation Disputes in The Hague. ICT-Mediation proceedings in accordance with these regulations are aimed at mediation by one or more mediators. The other party shall undertake to actively participate in any ICT-Mediation proceedings that are instituted, and shall in any event be legally obliged to attend at least one joint meeting between the mediators and the parties, in order to ensure that this extrajudicial form of dispute resolution has a chance of success. Either of the parties shall be at liberty to terminate the ICT-Mediation proceedings at any time following an initial discussion between the mediators and the parties. The provisions of this subclause shall not prevent either of the parties from requesting an injunction in summary (arbitral) proceedings or from taking precautionary legal measures where they deem this to be necessary (see [www.sgoa.org](http://www.sgoa.org) and [www.sgoa.eu](http://www.sgoa.eu)).

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# ICT~Office Terms and Conditions

## Module 1 Software License

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### 1. Applicability

- 1.1 The ICT~Office Terms and Conditions consist of the General module as well as one or more specific modules per product or service. The provisions of this module shall apply in addition to the provisions of the General module in the event that the Supplier makes software available to the Client for use on the basis of a license.
- 1.2 The provisions of this module are inextricably linked with the provisions of the General module. In the case of conflict between the provisions of the General module and the provisions of this module, the latter shall prevail.

### 2. Right of use

- 2.1 The Supplier shall make the computer programs specified in the agreement and the corresponding user documentation, hereinafter referred to as 'the software', available to the Client for use.
- 2.2 Except where agreed otherwise in writing, the Supplier's obligation to provide and the Client's right of use shall solely extend to the so-called software object code. The Client's right of use shall not extend to the software source code. The software source code and the technical documentation produced during the development of the software shall not be made available to the Client under any circumstances, even if the Client is prepared to pay financial compensation for this information.
- 2.3 Except where agreed otherwise in writing, the Supplier shall not be obliged to provide any software or program or data libraries other than those agreed, even if these are required for the use and/or maintenance of the software. If, contrary to the foregoing, the Supplier is required to provide software and/or program or data libraries other than those agreed, the Supplier may require the Client to enter into a separate written agreement for this purpose.
- 2.4 Except where otherwise agreed in writing, the Supplier's performance obligations shall not include the maintenance of the software and/or the provision of support to the users of the software. If, contrary to the foregoing, the Supplier is also required to provide such maintenance and/or support, the Supplier may require the Client to enter into a separate written agreement for this purpose.

- 2.5 Without prejudice to the provisions of the General module, the right of use of the software shall in all cases be non-exclusive, non-transferable and non-sublicensable.

### 3. Restrictions on use

- 3.1 The Client shall strictly observe the restrictions on the right of use of the software agreed between the parties at all times. The Client is aware that the violation of an agreed restriction on use shall constitute both breach of the contract with the Supplier and an infringement of the intellectual property rights in respect of the software. The agreed restrictions on use may relate to such aspects as:
  - the kind or type of hardware that the software is designed for, and/or
  - the maximum number of processing units that the software is designed for, and/or
  - specific – referred to by name or job title or otherwise – individuals who may use the software within the Client's organisation, and/or
  - the maximum number of users who may use the software – simultaneously or otherwise – within the Client's organisation, and/or
  - the location at which the software may be used, and/or
  - specific forms and purposes of use (e.g. commercial use or use for private purposes), and/or
  - any other quantitative or qualitative restriction.
- 3.2 If the parties have agreed that the software may only be used in combination with specific hardware or a specific kind or type of hardware, the Client shall be entitled in the event of malfunction of the relevant hardware to use the software on other hardware of the same kind or type until the original hardware is restored to working order.
- 3.3 The Supplier may require the Client to refrain from using the software until such time as the Client has requested and obtained one or more codes (passwords, identity codes etc.), required for use, from the Supplier, its own supplier, or the software manufacturer. The Supplier shall be entitled to arrange for technical measures to be taken at any time in order to protect the software against unlawful use and/or against use in a manner or for purposes other than those agreed between the parties.





- 3.4 Under no circumstances shall the Client remove or circumvent technical provisions intended to protect the software, or arrange for this to be carried out.
- 3.5 Except where agreed otherwise in writing, the Client shall only be permitted to use the software within and on behalf of its own company or organisation and only for the intended use. Except where agreed otherwise in writing, the Client shall not use the software to process data on behalf of third parties, e.g. for services such as 'time-sharing', 'application service provision', 'software as a service' and 'outsourcing'.
- 3.6 The Client shall not be permitted to sell, rent out, transfer or grant restrictive rights to the software, the media on which the software is stored and the certificates of authenticity issued by the Supplier on provision of the software, or to make these available to third parties in any way or for any purpose. The Client shall also refrain from granting third parties access – remote or otherwise – to the software or providing the software to a third party for the purpose of hosting, even if the third party in question only uses the software on behalf of the Client.
- 3.7 Upon request, the Client shall immediately lend its full cooperation to any investigations to be conducted by or on behalf of the Supplier in relation to the Client's compliance with the agreed restrictions on use. At the first request of the Supplier, the Client shall grant the Supplier access to its buildings and systems. The Supplier shall maintain the confidentiality of all company information to be regarded as confidential that the Supplier obtains from or on the premises of the Client within the context of this type of investigation, in so far as this information does not relate to the use of the software itself.

#### 4. Delivery and installation

- 4.1 The Supplier shall deliver the software to the Client on data media in the agreed format or, if no clear agreements have been made in this regard, on data media in a format to be determined by the Supplier. Alternatively, the Supplier shall deliver the software to the Client using telecommunication facilities (online). The Supplier shall determine the delivery method.
- 4.2 The Supplier shall only install the software on the Client's premises if this has been agreed between the parties in writing. If no explicit agreements have been made in this regard, the Client itself shall install, set up, parameterise and tune the software, and adapt the hardware used and operating environment where necessary. Except where agreed otherwise in writing, the Supplier shall not be obliged to carry out data conversion.

- 4.3 The user documentation shall be provided in paper or digital format, with the content to be determined by the Supplier. The Supplier shall decide on the format and language in which the user documentation is provided.

#### 5. Acceptance test and acceptance

- 5.1 If the parties have not agreed that an acceptance test will be carried out, the Client shall accept the software in the condition that it is in at the time of delivery ('as is'), therefore with all visible and invisible errors and defects, without prejudice to the Supplier's obligations pursuant to the guarantee scheme in Article 9 of this module.
- 5.2 If the parties have agreed to an acceptance test in writing, the provisions of Article 5.3 to 5.10 inclusive of this module shall apply.
- 5.3 Where this module refers to 'errors', this shall be understood to mean the substantial failure to meet the functional or technical specifications of the software made known by the Supplier in writing and, if the software is entirely or partly custom-designed, the functional or technical specifications explicitly agreed between the parties in writing. An error shall only be deemed to exist if the Client is able to demonstrate the error and if it can be reproduced. The Client is obliged to notify the Supplier immediately of any errors.
- 5.4 If an acceptance test has been agreed to, the test period shall be fourteen days following delivery or, if it has been agreed in writing that the Supplier will carry out the installation, following completion of the installation. The Client is not entitled to use the software for productive or operational purposes during the test period. The Client shall carry out the agreed acceptance test on the software using appropriately qualified personnel, with an adequate scope and in sufficient depth, and will provide the Supplier with a written, clear and understandable report on the test results.
- 5.5 If an acceptance test has been agreed to, the Client shall be obliged to assess under its full and exclusive responsibility whether the software delivered conforms to the functional or technical specifications made known by the Supplier in writing and, if the software is entirely or partly custom-designed, the functional or technical specifications agreed between the parties in writing. Except where agreed otherwise in writing, the assistance provided by the Supplier during the performance of an acceptance test shall be entirely at the Client's risk.
- 5.6 The software shall be deemed to have been accepted between the parties:
  - a. if the parties have not agreed to an acceptance test: on delivery or, if it has been



- agreed in writing that the Supplier will carry out the installation, on completion of the installation, or
- b. if the parties have agreed to an acceptance test: on the first day following the test period, or
  - c. if the Supplier receives a test report as referred to in Article 5.7 before the end of the test period: at such time as the errors described in the test report have been fixed, notwithstanding the presence of defects that do not preclude acceptance according to Article 5.8. Contrary to the above, if the Client uses the software for productive or operational purposes before the time of explicit acceptance, the software shall be deemed to have been accepted in full from the time at which such use commenced.
- 5.7 If on carrying out the agreed acceptance test it emerges that the software contains errors, the Client shall notify the Supplier of the errors no later than on the last day of the test period by means of a written and detailed test report. The Supplier shall make every effort to fix the errors identified within a reasonable period of time, whereby the Supplier shall be entitled to install temporary solutions, workarounds or problem-avoiding restrictions in the software.
- 5.8 Acceptance of the software may not be withheld on grounds that do not relate to the specifications explicitly agreed between the parties, nor due to the existence of minor defects, these being defects that cannot reasonably be deemed to prevent the operational or productive use of the software, without prejudice to the Supplier's obligation to fix these minor defects within the context of the guarantee scheme in Article 9, if and in so far as applicable. Acceptance may also not be withheld on the basis of aspects of the software that can only be assessed subjectively, such as aesthetic aspects and aspects relating to the design of user interfaces.
- 5.9 If the software is delivered and tested in stages and/or parts, the non-acceptance of a specific stage and/or part shall not affect the acceptance of a previous stage and/or other part, where appropriate.
- 5.10 Acceptance of the software by one of the methods referred to in this Article shall mean that the Supplier is discharged in respect of compliance with its obligations in relation to the provision and delivery of the software and, if it has been agreed that the Supplier will carry out the installation, with its obligations in relation to the installation of the software. Acceptance of the software shall not affect the Client's rights pursuant to Article 5.8 in relation to minor errors and Article 9 in relation to the guarantee scheme.
- 6. Term of the agreement**
- 6.1 The agreement regarding the provision of the software has been entered into for the term agreed between the parties. If no term has been agreed, a term of one year shall apply. The agreement shall commence on the day on which the Client is provided with the software. The term of the agreement shall be extended automatically by the term of the original period each time, unless the Client or the Supplier terminates the agreement in writing with due observance of a notice period of three months prior to the end of the period in question.
- 6.2 The Client shall return all copies of the software that it has in its possession to the Supplier immediately following expiry of the right of use of the software. If the parties have agreed that the Client will destroy the relevant copies at the end of the agreement, the Client shall notify the Supplier immediately in writing that this has been carried out. The Supplier shall not be obliged to provide the Client with assistance on or after expiry of the right of use with a view to data conversion required by the Client.
- 7. Right of use fee**
- 7.1. Except where agreed otherwise in writing, the right-of-use fee agreed between the parties shall be due on the dates agreed between the parties or, if no dates have been agreed:
- a. if the parties have not agreed that the Supplier will carry out the installation of the software: on delivery of the software or, if the right-of-use fee is due periodically, on delivery of the software and subsequently on commencement of each new right-of-use period;
  - b. if the parties have agreed that the Supplier will carry out the installation of the software: on completion of the installation of the software or, if the right-of-use fee is due periodically, on completion of the installation of the software and subsequently on commencement of each new right-of-use period.
- 7.2 Except where agreed otherwise in writing, the Supplier shall not be obliged to install or adapt the software. If, contrary to the foregoing, the Supplier is also required to carry out installation activities or activities in relation to the adaptation of the software, the Supplier may require the Client to enter into a separate written agreement for this purpose. Such work shall be invoiced separately at the Supplier's standard rates as the occasion arises.
- 8. Modification of the software**
- 8.1 Except where agreed otherwise in writing and notwithstanding exceptions set out in law, the Client shall not be entitled to modify the software in part or in full without the prior written consent of the Supplier. The Supplier shall at all times be entitled to refuse its



- consent or to attach conditions to its consent, including conditions in relation to the method and quality of implementation of the modifications required by the Client.
- 8.2 The Client shall bear all risks associated with modifications carried out by or on behalf of the Client by third parties with the consent of the Supplier or otherwise.
- 9. Guarantee**
- 9.1 The Supplier shall not guarantee that the software made available to the Client will be fit for the actual and/or intended use by the Client. The Supplier shall also not guarantee that the software will operate with no interruptions, errors or defects or that all errors and defects will always be fixed.
- 9.2 The Supplier shall make every effort to fix errors in the software within the meaning of Article 5.3 of this module within a reasonable period of time if the Supplier receives detailed, written notification of these errors within a period of three months following delivery or, if the parties have agreed to an acceptance test, within three months of acceptance. Errors shall be fixed free of charge, unless the software was developed on behalf of the Client other than at a fixed price, in which case the Supplier shall invoice the costs associated with fixing the errors at its standard rates. The Supplier shall be entitled to invoice the costs of fixing errors at its standard rates in the event of operational errors or improper use by the Client, or other causes that are not attributable to the Supplier, or if the errors could have been discovered during the execution of the agreed acceptance test. The Supplier shall not be obliged to fix errors if the Client has made changes to the software, or has arranged for this to be carried out, without the written consent of the Supplier. Such consent shall not be withheld on unreasonable grounds.
- 9.3 The fixing of errors shall take place at a location to be determined by the Supplier. The Supplier shall be entitled to install temporary solutions, workarounds or problem-avoiding restrictions in the software at any time.
- 9.4 Under no circumstances shall the Supplier be obliged to recover scrambled or lost data.
- 9.5 The Supplier shall not be obliged to fix errors that are reported following expiry of the guarantee period referred to in Article 9.2 of this module, unless the parties have entered into a separate maintenance agreement that incorporates an obligation to this effect.
- 10. Confidentiality**
- 10.1 The Client acknowledges that the software is of a confidential nature and that this software contains trade secrets of the Supplier, its own suppliers and/or the software manufacturer.
- 11. Maintenance agreement**
- 11.1 If the Client has not entered into a maintenance agreement with the Supplier at the same time as concluding an agreement regarding the provision of the software, the Supplier shall not be obliged to enter into a maintenance agreement in respect of the software at a later point in time.
- 12. Software from third party suppliers**
- If and in so far as the Supplier provides the Client with software from third parties, the (license) terms imposed by such third parties in relation to the software shall apply, provided that the Supplier has notified the Client of such terms in writing, notwithstanding any varying provisions in these general terms and conditions. The Client accepts the abovementioned terms imposed by third parties. These terms shall be available to the Client for inspection on the Supplier's premises and the Supplier shall provide the Client with a copy of the terms free of charge upon request. If and in so far as the abovementioned terms imposed by third parties in the relationship between the Client and the Supplier are deemed not to apply for any reason whatsoever, or are declared to be inapplicable, the provisions of these general terms and conditions shall apply in full.

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# ICT~Office Terms and Conditions

## Module 2 Development of software

*The ICT~Office Terms and Conditions are filed with the Chamber of Commerce for the Central Netherlands under number 30174840.*

### **1. Applicability**

- 1.1 The ICT~Office Terms and Conditions consist of the General module as well as one or more specific modules per product or service. The provisions of this module shall apply in addition to the provisions of the General module in the event that the Supplier develops software on behalf of the Client for the Client or one or more third parties and installs the software where applicable.
- 1.2 The provisions of this module are inextricably linked with the provisions of the General module. In the case of conflict between the provisions of the General module and the provisions of this module, the latter shall prevail.

### **2. Specifications of the software**

- 2.1 If the Supplier has not already been provided with specifications or a design by or on behalf of the Client before entering into the agreement, the parties shall draw up written specifications in consultation with regard to what software will be developed and how the development will take place. The parties both acknowledge that effective coordination and good mutual communication are essential factors in the proper specification, design and development of software. Collaboration and mutual communication will take place wherever possible subject to due observance of any project plan, arrangements and/or procedures agreed between the parties in writing.
- 2.2 The Client shall at all times guarantee the correctness, completeness and consistency of any information, specifications and designs submitted to the Supplier, even if such information, specifications and designs have been provided by a third party. Any errors, omissions or inconsistencies shall at all times be at the risk and expense of the Client.
- 2.3 The Supplier is entitled, however not obliged, to check the correctness, completeness and consistency of the information, specifications or designs submitted to it and on identifying any errors or omissions to suspend the agreed work until such time as the Client has fixed the errors or omissions in question. The Client undertakes to notify the Supplier in all cases as soon and in as much detail as possible of any errors or omissions in the specifications or the design for

the software to be developed of which it becomes aware.

- 2.4 If the parties are using a development method that is characterised by the basic principle that the design and/or development of parts of the software shall be governed by a prioritisation in relation to the specifications that is to be determined in greater detail during the execution of the agreement, this prioritisation shall in all cases be drawn up in consultation between the parties.

### **3. Development of the software**

- 3.1 The Supplier shall develop the software with due care, subject to due observance of the software specifications or design and – where appropriate – with due observance of the project plan, methods, techniques, arrangements and/or procedures agreed in writing with the Client. Before commencing the development work, the Supplier may require the Client to issue a written declaration of its full and unconditional agreement to the specifications or design. The Supplier shall be entitled to suspend its activities until such time as the Client has issued a written declaration of its full and conditional approval to the specifications or design.
- 3.2 The Supplier shall in all cases carry out the development work on the basis of a best efforts obligation, unless and in so far as the Supplier has explicitly undertaken in the written agreement to achieve a specific result and the result in question is sufficiently determined.
- 3.3 If it has been agreed that the development of the software will take place in stages or if the Supplier is using a development method that is based on phased implementation, the Supplier shall be entitled to delay the start of the services associated with a stage until such time as the Client has approved the results of the previous stage in writing.
- 3.4 Except where otherwise agreed in writing, the Supplier shall not be obliged to follow timely and well-founded instructions issued by the Client during the realisation of the development work. The Supplier shall not be obliged to follow instructions that change or extend the content or scope of the Supplier's performance obligations. If such instructions are followed, however, compensation shall be provided for



- the work in question in accordance with the Supplier's standard rates.
- 3.5 If the agreement regarding the development of software has been entered into with a view to execution by one or more specific individuals, the Supplier shall at all times be entitled to replace these individuals, following consultation with the Client, at a time to be determined by the Supplier with one or more other individuals with the same qualifications.
- 3.6 On request, the Client shall provide the Supplier with the opportunity to carry out the work outside of normal working days and working hours at the Client's offices or site.
- 4. Delivery and installation**
- 4.1 The Supplier shall deliver the software to the Client on data media of the agreed type and format, or using telecommunication facilities (online). The Supplier shall determine the delivery method.
- 4.2 The Supplier will only install the software on the Client's premises if this has been agreed between the parties in writing. If no explicit agreements have been made in this regard, the Client itself shall install, set up, parameterise and tune the software, and adapt the hardware used and operating environment where necessary. Except where agreed otherwise in writing, the Supplier shall not be obliged to carry out data conversion.
- 4.3 The user documentation shall be provided in paper or digital format. The Supplier shall decide on the format and language in which the user documentation is provided.
- 5. Acceptance test and acceptance**
- 5.1 If the parties have not agreed that an acceptance test will be carried out, the Client shall accept the software in the condition that it is in at the time of delivery ('as is'), therefore with all visible and invisible errors and defects, without prejudice to the Supplier's obligations pursuant to the guarantee in Article 11 of this module.
- 5.2 If the parties have agreed to an acceptance test in writing, the provisions of Article 5.3 to 5.10 inclusive of this module shall apply.
- 5.3 Where this module refers to 'errors', this shall be understood to mean the substantial failure to meet the functional or technical specifications explicitly agreed in writing between the parties. An error shall only be deemed to exist if the Client is able to demonstrate the error and if it can be reproduced. The Client is obliged to notify the Supplier immediately of any errors.
- 5.4 If an acceptance test has been agreed to, the test period shall be fourteen days following delivery or, if it has been agreed in writing that the Supplier will carry out the installation, following completion of the installation. The Client is not entitled to use the software for productive or operational purposes during the test period. The Client shall carry out the agreed acceptance test on the (interim) results of the development work using appropriately qualified personnel, with an adequate scope and in sufficient depth, and will provide the Supplier with a written, clear and understandable report on the test results.
- 5.5 If an acceptance test has been agreed to, the Client shall be obliged to assess under its full and exclusive responsibility whether the software delivered conforms to the functional or technical specifications made known by the Supplier in writing and, if the software is entirely or partly custom-designed, the functional or technical specifications explicitly agreed between the parties in writing. Except where agreed otherwise in writing, any assistance provided by or on behalf of the Supplier during the performance of an acceptance test shall be entirely at the risk and expense of the Client.
- 5.6 The software shall be deemed to have been accepted between the parties:
- a. if the parties have not agreed to an acceptance test: on delivery or, if it has been agreed in writing that the Supplier will carry out the installation, on completion of the installation, or
  - b. if the parties have agreed to an acceptance test: on the first day following the test period, or
  - c. if the Supplier receives a test report as referred to in Article 5.7 before the end of the test period: at such time as the errors described in the test report have been fixed, notwithstanding the presence of defects that do not preclude acceptance according to Article 5.8. Contrary to the above, if the Client uses the software for productive or operational purposes before the time of explicit acceptance, the software shall be deemed to have been accepted in full from the time at which such use commenced.
- 5.7 If on carrying out the agreed acceptance test it emerges that the software contains errors, the Client shall notify the Supplier of the errors no later than on the last day of the test period by means of a written and detailed test report. The Supplier shall make every effort to fix the errors identified within a reasonable period of time, whereby the Supplier shall be entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the software.
- 5.8 Acceptance of the software may not be withheld on grounds that do not relate to the specifications explicitly agreed between the parties, nor due to the existence of minor errors, these being errors that cannot reasonably be deemed to prevent the operational or productive use of the software, without prejudice to the Supplier's obligation to



- fix these minor errors within the context of the guarantee scheme in Article 11, if and in so far as applicable. Acceptance may also not be withheld on the basis of aspects of the software that can only be assessed subjectively, such as aesthetic aspects and aspects relating to the design of user interfaces.
- 5.9 If the software is delivered and tested in stages and/or parts, the non-acceptance of a specific stage and/or part shall not affect the acceptance of a previous stage and/or other part, where appropriate.
- 5.10 Acceptance of the software by one of the methods referred to in this Article shall mean that the Supplier is discharged in respect of compliance with its obligations in relation to the development of the software and, if it has been agreed that the Supplier will carry out the installation, with its obligations in relation to the installation of the software. Acceptance of the software shall not affect the Client's rights pursuant to Article 5.8 in relation to minor errors and Article 11 in relation to the guarantee scheme.
- 6. Right of use**
- 6.1 The Supplier shall make the software developed on behalf of the Client and the corresponding user documentation available to the Client for use.
- 6.2 The software source code and the technical documentation produced during the development of the software shall only be made available to the Client if and in so far as this has been agreed in writing. If this is the case, the Client shall be entitled to make changes to this software. If the Supplier is ordered in court to provide the Client with the source code and/or technical documentation, the Supplier may impose a reasonable fee.
- 6.3 Except where agreed otherwise in writing, the Supplier shall not be obliged to provide the auxiliary software and program or data libraries required for the use and/or maintenance of the software. If, contrary to the foregoing, the Supplier is also required to provide auxiliary software and/or program or data libraries, the Supplier may require the Client to enter into a separate written agreement for this purpose. The provision of such auxiliary software and/or program or data libraries shall be invoiced separately at the Supplier's standard rates as appropriate.
- 6.4 Except where otherwise agreed in writing, the Supplier's performance obligations shall not include the maintenance of the software and/or the provision of support to the users of the software. If, contrary to the foregoing, the Supplier is also required to provide maintenance and/or support, the Supplier may require the Client to enter into a separate written agreement for this purpose. Such work and services shall be invoiced separately at the Supplier's standard rates as appropriate.
- 6.5 Without prejudice to the provisions of the General module, the right of use of the software shall in all cases be non-exclusive, non-transferable and non-sublicensable.
- 7. Restrictions on use**
- 7.1 If the written agreement explicitly stipulates that all design and development costs shall be borne exclusively and in full by the Client, the right of use of the software developed on behalf of the Client shall not be subject to any restrictions, without prejudice to the remaining provisions of the general terms and conditions, including the provisions of Article 7.6 of this module.
- 7.2 If the parties have agreed to restrictions on use, the Client shall strictly comply with the agreed restrictions on the right of use of the software in all cases. The Client is aware that the violation of an agreed restriction on use shall constitute both breach of the contract with the Supplier and an infringement of the intellectual property rights in respect of the software. The agreed restrictions on use may relate to such aspects as:
- the kind or type of hardware that the software is intended for, and/or
  - the maximum number of processing units that the software is intended for, and/or
  - specific – referred to by name or job title or otherwise – individuals who are permitted to use the software within the Client's organisation, and/or
  - the maximum number of users who are permitted to use the software – simultaneously or otherwise – within the Client's organisation, and/or
  - the location at which the software may be used, and/or
  - specific forms and purposes of use (e.g. commercial use or use for private purposes), and/or
  - any other quantitative or qualitative restriction.
- 7.3 If the parties have agreed that the software may only be used in combination with specific hardware or a specific kind or type of hardware, the Client shall be entitled in the event of malfunction of the relevant hardware to use the software on other hardware of the same kind or type for the duration of the malfunction.
- 7.4 The Supplier may require the Client to refrain from using the software until such time as the Client has requested and obtained one or more codes (passwords, identity codes etc.), required for use, from the Supplier, its own supplier, or the software manufacturer.
- 7.5 Under no circumstances shall the Client circumvent technical provisions intended to protect the software against unlawful or



- unauthorised use, or arrange for this to be carried out.
- 7.6 Except where agreed otherwise in writing, the Client shall only be permitted to use the software within and on behalf of its own company or organisation. Except where agreed otherwise in writing, the Client shall not use the software to process data on behalf of third parties, e.g. for services such as 'time-sharing', 'application service provision', 'software as a service' and 'outsourcing'.
- 7.7 The Client shall not be permitted to sell, rent out, transfer or grant restrictive rights to the software and the media on which the software is stored, or to make these available to third parties in any way or for any purpose. The Client shall also refrain from granting third parties access – remote or otherwise – to the software or providing the software to a third party for the purpose of hosting, even if the third party in question only uses the software on behalf of the Client.
- 7.8 Upon request, the Client shall immediately lend its full cooperation to any investigations to be conducted by or on behalf of the Supplier in relation to the Client's compliance with the agreed restrictions on use. At the first request of the Supplier, the Client shall grant the Supplier access to its buildings and systems. The Supplier shall maintain the confidentiality of all company information to be regarded as confidential that the Supplier obtains from or on the premises of the Client within the context of this type of investigation, in so far as this information does not relate to the use of the software itself.
- 8. Term of the agreement**
- 8.1 The software developed on behalf of the Client shall be made available to the Client for the term agreed between the parties. If no term has been agreed between the parties, the term of the right of use shall not be subject to a time limit and the Supplier shall not be entitled to terminate the agreement by giving notice, provided that the Client strictly complies with all of its obligations vis-à-vis the Supplier arising from the agreement.
- 8.2 Where appropriate, the Client shall return all copies of the software that it has in its possession to the Supplier immediately following expiry of the right of use of the software. If the parties have agreed that the Client will destroy the relevant copies at the end of the agreement, the Client shall notify the Supplier immediately in writing that this has been carried out. The Supplier shall not be obliged to provide the Client with assistance on or after expiry of the right of use with a view to data conversion required by the Client.
- 9. Remuneration for development work**
- 9.1 If an invoicing schedule has not been agreed, all amounts relating to the development of software shall in each case be payable in arrears each calendar month.
- 9.2 Except where agreed otherwise in writing, the price for the development work shall also include the fee in respect of the right of use of the software.
- 9.3 Except where agreed otherwise in writing, the software development fee shall not include a fee for the auxiliary software and program and data libraries required by the Client, any installation services and any adjustments to and/or maintenance of the software. The right of use fee also does not include the provision of support to users of the software. Such work and services shall be invoiced separately at the Supplier's standard rates as appropriate.
- 10. Modification of the software**
- 10.1 Except where agreed otherwise in writing and notwithstanding exceptions set out in law, the Client shall not be permitted to modify the software in part or in full without the prior written consent of the Supplier. The Supplier shall at all times be entitled to refuse its consent or to attach conditions to its consent, including conditions in relation to the method and quality of implementation of the modifications required by the Client.
- 10.2 The Client shall bear all risks associated with modifications carried out by or on behalf of the Client by third parties with the consent of the Supplier or otherwise.
- 11. Guarantee**
- 11.1 The Supplier shall not guarantee that the software developed on behalf of the Client will be suitable for the actual and/or envisaged use by the Client. The Supplier shall also not guarantee that the software will operate with no interruptions, errors or other defects or that all errors and defects will always be fixed.
- 11.2 The Supplier shall make every effort to fix errors in the software within the meaning of Article 5.3 of this module within a reasonable period of time if the Supplier receives detailed, written notification of these errors within a period of three months following delivery or, if the parties have agreed to an acceptance test, within three months of acceptance. Errors shall be fixed free of charge, unless the software was developed on behalf of the Client other than at a fixed price, in which case the Supplier shall invoice the costs associated with fixing the errors at its standard rates. The Supplier shall be entitled to invoice the costs of fixing errors at its standard rates in the event of operational errors or improper use by the Client, or other causes that are not attributable to the Supplier,



or if the errors could have been discovered during the execution of the agreed acceptance test. The Supplier shall not be obliged to fix errors if the Client has made changes to the software, or has arranged for this to be carried out, without the written consent of the Supplier. Such consent shall not be withheld on unreasonable grounds.

- 11.3 The fixing of errors shall take place at a location to be determined by the Supplier. The Supplier shall be entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the software at any time.
- 11.4 Under no circumstances shall the Supplier be obliged to recover scrambled or lost data.
- 11.5 The Supplier shall not be obliged to fix errors that are reported following expiry of the guarantee period referred to in Article 11.2 of this module, unless the parties have entered into a separate maintenance agreement that incorporates an obligation to this effect.

## **12. Confidentiality**

- 12.1 The Client acknowledges that the software is of a confidential nature and contains trade secrets of the Supplier, its own suppliers and/or the software manufacturer.

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# ICT~Office Terms and Conditions

## Module 3 Maintenance of software

*The ICT~Office Terms and Conditions are filed with the Chamber of Commerce for the Central Netherlands under number 30174840.*

### 1. Applicability

- 1.1 The ICT~Office Terms and Conditions consist of the General module as well as one or more specific modules per product or service. The provisions of this module shall apply in addition to the provisions of the General module in the event that the Supplier provides software maintenance services.
- 1.2 The provisions of this module are inextricably linked with the provisions of the General module. In the case of conflict between the provisions of the General module and the provisions of this module, the latter shall prevail.

### 2. Services

- 2.1 The Supplier shall carry out maintenance work on the software specified in the agreement between the parties. The maintenance obligation shall include the fixing of errors in the software in accordance with Article 3 of this module and - only where agreed in writing between the parties - the provision of new versions of the software in accordance with Article 4 of this module.
- 2.2 Except where agreed otherwise in writing, the Supplier shall not be obliged to carry out data conversion.
- 2.3 If the agreement stipulates that the service provided by the Supplier shall also include the provision of support to users of the software, the Supplier shall issue advice by telephone or e-mail on the use and operation of the software referred to in the agreement. The Supplier may impose conditions in relation to the qualifications and the number of contacts who are eligible for support. The Supplier shall deal with properly substantiated requests for support within a reasonable period of time and in accordance with its standard procedures. The Supplier shall not guarantee the accuracy, completeness or timeliness of responses or support provided. Except where agreed otherwise in writing, support shall only be provided on working days during the Supplier's standard business hours.
- 2.4 If the agreement stipulates that the service provided by the Supplier shall also include the provision of so-called 'standby services', the Supplier shall ensure that one or more members of staff are available during the days and times specified in the agreement. If this is

the case, the Client shall be entitled to request urgent support from the members of staff on standby in the event of a serious failure in the operation of the software. The Supplier shall not guarantee that all failures will be corrected in a timely manner should this situation arise.

- 2.5 The maintenance and any other agreed services shall be carried out with effect from the day on which the agreement was concluded.

### 3. Provision of services

- 3.1 The Supplier shall make every effort to ensure that the services are provided with due care and in accordance with the arrangements and procedures agreed in writing with the Client where applicable. The Supplier shall provide all services on the basis of a best efforts obligation, unless and in so far as the Supplier has explicitly undertaken in the written agreement to achieve a specific result and the result in question is sufficiently determined.
- 3.2 The Client shall submit a detailed report of any errors identified in the software. Following receipt of the report, the Supplier shall make every effort to fix the errors and/or make improvements to future new versions of the software in accordance with its standard procedures. The results shall be made available to the Client in a manner and at a time to be determined by the Supplier, depending on the degree of urgency. The Supplier shall be entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the software. If no explicit agreements have been made in this regard, the Client itself shall install, set up, parameterise and tune the corrected software or the new version of the software provided, and adapt the hardware used and operating environment where necessary. The Supplier shall not guarantee that the software will operate with no interruptions, errors or defects or that all errors and defects will be fixed.
- 3.3 If the Supplier carries out the maintenance work online, the Client shall for its part ensure that the proper infrastructure and telecommunication facilities are in place in a timely manner. The Supplier shall be entitled to suspend or limit the maintenance work if the Client's infrastructure and telecommunication facilities do not meet the requirements imposed by the Supplier.



- 3.4 The Client shall lend any cooperation required by the Supplier for the purpose of the maintenance work, including the temporary suspension of use of the software by the Client if the Supplier deems this to be necessary. If the Client fails to lend the cooperation requested, the Supplier may suspend or limit the maintenance work. If the Supplier is providing services on the basis of information to be provided by the Client, this information shall be prepared in accordance with the conditions to be imposed by the Supplier and provided at the risk and expense of the Client. The Client shall at all times guarantee that all materials, information, software, procedures and instructions that it makes available to the Supplier for the purpose of providing the services is accurate and complete and that all data carriers issued to the Supplier meet the Supplier's specifications.
- 3.5 If the maintenance work relates to software that was not provided to the Client by the Supplier itself, the Client shall make the software source code and technical (development) documentation (including data models, designs, change logs etc.) available if the Supplier deems this to be useful, necessary or desirable for the purpose of carrying out the maintenance work. The Client shall guarantee that it is entitled to make this data and/or documentation available and that the rights of third parties do not prevent it from doing so. The Client shall grant the Supplier the right to use and adapt the software, including the source code and technical (development) documentation, within the context of performing the agreed maintenance work. The Client shall indemnify the Supplier against any claims by third parties in relation to the provision of this data and/or documentation and the Supplier's use of the data and/or documentation provided within the context of the maintenance work.
- 3.6 The maintenance work by the Supplier shall not affect the Client's responsibility to manage the software, which includes monitoring settings, the use of the software and the manner in which the results obtained through the use of the software are used. The Client shall also be responsible for training given to and use by users, regardless of whether or not there is a relationship of authority between the Client and these users. If no explicit agreements have been made in this regard, the Client itself shall install, set up, parameterise and tune the (auxiliary) software and adapt the hardware used and operating environment where necessary, as well as achieving the interoperability desired by the Client.

#### **4. New versions of the software**

- 4.1 The maintenance work shall only include the provision of new versions of the software if and in so far as this has been agreed in writing. If the maintenance work includes the provision of new versions of the software, the provision of this software shall take place at the Supplier's discretion.
- 4.2 Once three months have passed since the date on which the Supplier provided an improved version of the software, the Supplier shall no longer be obliged to fix any errors in the previous version or to provide support and/or carry out maintenance work in relation to the previous version.
- 4.3 The Supplier may require the Client to enter into a new written agreement with the Supplier prior to the provision of a version with new options and functions, and is entitled to apply a new fee to this version. The Supplier may copy functionality from a previous version of the software unchanged, however it does not guarantee that each new version will incorporate the same functionality as the previous version. The Supplier shall not be obliged to maintain, change or add certain features or functionalities of the software specifically for the Client.
- 4.4 The Supplier may require the Client to adapt its system (hardware, software etc.) if this is necessary in order to ensure the proper functioning of a new version of the software.

#### **5. Service Level Agreement**

- 5.1 Any service level agreements shall in all cases only be entered into explicitly in writing. The Client shall notify the Supplier at all times of all circumstances that may affect the service and the availability of the service. If service level agreements are entered into, any periods of decommissioning announced in advance due to maintenance work or to circumstances outside of the Supplier's sphere of influence will not be taken into account when assessing availability. The assessment will be based on the service as a whole during the term of the agreement. Barring proof to the contrary, the availability measured by the Supplier shall be conclusive evidence.

#### **6. Term**

- 6.1 The agreement shall be entered into for the term agreed between the parties. If no term has been agreed, a term of one year shall apply. The term of the agreement shall be extended automatically by the term of the original period each time, unless the Client or the Supplier terminates the agreement in writing with due observance of a notice period of three months prior to the end of the period in question.



## **7. Payment**

- 7.1 If an invoicing schedule has not been agreed, all fees relating to the maintenance of software and any other services set out in the agreement shall in each case be payable in advance each calendar month.
- 7.2 Fees in respect of the maintenance of the software and any other services set out in the agreement shall be due as of the date on which the agreement commences. The fees in respect of maintenance and any other services set out in the agreement shall be due regardless of whether the Client is using or has put the software into use, or whether it has taken advantage of the option to have maintenance work carried out.

## **8. Exclusions**

- 8.1 The maintenance of the software shall not include the fixing of errors, defects or shortcomings arising from or related to:
  - a) usage errors or the improper use of the software, including errors that occur during the data input process or in the data itself
  - b) changes to the software other than those carried out by or on behalf of the Supplier
  - c) use of the software contrary to the applicable conditions or contrary to the instructions in the user documentation
  - d) changes to or errors, defects or shortcomings in the hardware or software that is not included within the scope of the maintenance work to be carried out by the Supplier
  - e) failure by the Client to have maintenance work carried out on the software in a timely manner
  - f) the use of an older version of the software that is no longer maintained by the Supplier
  - g) the recovery of scrambled or lost data
  - h) other causes that are not attributable to the Supplier.
- 8.2 If the Supplier carries out maintenance work or other work in connection with the provisions of Article 8.1, the Supplier shall be entitled to invoice the costs of this maintenance work or other work in accordance with its standard rates. This shall not affect the other fees payable by the Client in respect of maintenance work.



# ICT~Office Terms and Conditions

## Module 4 Application service provision, software as a service and computer service

*The ICT~Office Terms and Conditions are filed with the Chamber of Commerce for the Central Netherlands under number 30174840.*

### 1. Applicability

- 1.1 The ICT~Office terms and conditions consist of the General module as well as one or more specific modules per product or service. The provisions of this module shall apply in addition to the provisions of the General module in the event that the Supplier provides services in the field or under the name of Application Service Provision (ASP), Software as a Service (SaaS) and/or Computer Service.
- 1.2 The provisions of this module are inextricably linked with the provisions of the General module. In the case of conflict between the provisions of the General module and the provisions of this module, the latter shall prevail.
- 1.3 For the purpose of this module, the terms 'Application Service Provision' and 'Software as a Service' shall be understood to refer to: the 'remote' placing and maintaining at the disposal of the Client of software by the Supplier via the internet or another network, without providing the Client with a physical data medium on which the software in question is stored.
- 1.4 For the purpose of this module, the term 'Computer Service' shall be understood to refer to: the automatic processing of data using software and hardware managed by the Supplier.

### 2. Services

- 2.1 The Supplier shall provide the Client with the service specified in the agreement between the parties in the field of Application Service Provision, Software as a Service and/or Computer Service, as well as the other services agreed between the parties. If specified in the agreement, the Supplier shall also install the software referred to in the agreement on the infrastructure specified by the Supplier. The Supplier shall not be responsible for the purchase and/or correct functioning of the Client's infrastructure or that of third parties.
- 2.2 Except where agreed otherwise in writing, the Client shall be responsible for the management, which includes monitoring settings, the use of the service and the manner in which the results obtained through the use of the software are used. The Client shall also be responsible for training given to and use by users, regardless of whether or not there is a relationship of authority between the Client and these users. If no explicit agreements have been made in this regard, the Client itself shall install, set up, parameterise and tune the (auxiliary) software required on its own hardware and adapt the hardware used, other (auxiliary software) and operating environment where necessary,

as well as achieving the interoperability desired by the Client.

- 2.3 Except where agreed otherwise in writing, the Supplier shall not be obliged to carry out data conversion.
- 2.4 If the agreement stipulates that the service provided to the Client shall also include the provision of support to users, the Supplier shall issue advice by telephone or e-mail on the use and operation of the software referred to in the agreement and on the use of the service. The Supplier may impose conditions in relation to the qualifications and the number of contacts who are eligible for support. The Supplier shall deal with properly substantiated requests for support within a reasonable period of time. The Supplier cannot guarantee the accuracy, completeness or timeliness of responses or support provided. Except where agreed otherwise in writing, support shall only be provided on working days during the Supplier's standard business hours.
- 2.5 If the agreement stipulates that the service provided to the Client shall also include the creation of backups of the Client's data, the Supplier shall create a full backup of the Client's data that it has in its possession with due observance of the periods agreed between the parties in writing. If no periods have been agreed, a backup shall be created once per week. The Supplier shall retain the backup for a period of time to be agreed between the parties and if no agreements have been reached in this regard, for the Supplier's standard period of time. The Supplier shall handle and store the backup with due care and diligence.
- 2.6 The Supplier shall only be obliged to have a backup centre or other backup facilities if this has been explicitly agreed in writing.

### 3. Provision of services

- 3.1 The Supplier shall make every effort to ensure that the services are provided with due care and in accordance with the arrangements and procedures agreed in writing with the Client where applicable. The Supplier shall provide all services on the basis of a best efforts obligation, unless and in so far as the Supplier has explicitly undertaken in the written agreement to achieve a specific result and the result in question is sufficiently determined.
- 3.2 The Supplier shall only perform the service on behalf of the Client. If the Supplier carries out work relating to the Client's data or that of its employees or users pursuant to a request or an authorised order from a government agency or in connection with a statutory



- obligation, the Client shall be invoiced for all of the associated costs.
- 3.3 The Supplier may make adjustments to the content or scope of the service. If such adjustments result in a change in the procedures that apply to the Client, the Supplier shall notify the Client as soon as possible and the costs of this change shall be borne by the Client. In this case, the Client may terminate the agreement in writing with effect from the date on which the change takes effect, unless this change is related to changes in relevant legislation or other regulations issued by competent authorities, or if the Supplier bears the costs of this change.
- 3.4 The Supplier may continue to provide the service using a new or amended version of the software. The Supplier shall not be obliged to maintain, change or add certain features or functionalities of the service or the software specifically for the Client.
- 3.5 The Supplier may temporarily suspend the service in full or in part for the purpose of carrying out preventive, corrective or adaptive maintenance. The Supplier shall not suspend the service for longer than necessary and shall arrange for this to take place outside of office hours where possible and, according to the circumstances, shall notify the Client in advance.
- 3.6 If the Supplier is providing services on the basis of information to be provided by the Client, this information shall be prepared and supplied by the Client in accordance with the conditions to be imposed by the Supplier. The Client shall bring the data to be processed to, and collect the results of the processing from, the location at which the Supplier is providing the service. Transport and transmission, in any form whatsoever, shall take place at the risk and expense of the Client, even if this is carried out or organised by the Supplier. The Client shall at all times guarantee that all materials, information, software, procedures and instructions that it makes available to the Supplier for the purpose of providing the services is accurate and complete and that all data carriers issued to the Supplier meet the Supplier's specifications.
- 3.7 All hardware, software and items used by the Supplier in providing the service shall remain the property or the intellectual property of the Supplier or its own suppliers, even if the Client pays a fee in respect of the development or purchase of these by the Supplier.
- 3.8 The Supplier shall under no circumstances be obliged to provide the Client with a physical data carrier containing the software to be made and kept available to the Client within the context of Application Service Provision and/or Service as a Service, or the software to be used by the Supplier within the context of Computer Service.
- 4. Service Level Agreement**
- 4.1 Any service level agreements shall in all cases only be entered into explicitly in writing. The Client shall notify the Supplier at all times of all circumstances that may affect the service and the availability of the service. If service level agreements are entered into, any periods of decommissioning announced in advance due to maintenance work or to circumstances outside of the

Supplier's sphere of influence will not be taken into account when assessing availability. The assessment will be based on the service as a whole during the term of the agreement. Barring proof to the contrary, the availability and service level measured by the Supplier shall be conclusive evidence.

#### **5. Term**

- 5.1 The agreement shall be entered into for the term agreed between the parties. If no term has been agreed, a term of one year shall apply. The term of the agreement shall be extended automatically by the term of the original period each time, unless the Client or the Supplier terminates the agreement in writing with due observance of a notice period of three months prior to the end of the period in question.

#### **6. Payment**

- 6.1 If an invoicing schedule has not been agreed, all amounts relating to the service provided by the Supplier shall in each case be payable in advance each calendar month.

#### **7. Guarantee**

- 7.1 The Supplier shall not guarantee that the software to be made and kept available to the Client within the context of Application Service Provision and/or Service as a Service, and the software used by the Supplier within the context of Computer Service are free of defects and will operate without interruptions. The Supplier shall endeavour to fix any defects in the software within a reasonable period of time if and in so far as the relevant software was developed by the Supplier itself and the Supplier has received detailed notification in writing of the defects in question. As and when necessary, the Supplier may postpone the fixing of defects until such time as a new version of the software is brought into use. The Supplier shall not guarantee that defects in software that was not developed by the Supplier itself will be fixed. The Supplier shall be entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the software. If the software was developed on behalf of the Client, the Supplier shall be entitled to invoice the Client for the costs of fixing errors at its standard rates.
- 7.2 The Supplier shall not be responsible for checking the accuracy and completeness of the results of the service and the data generated through the use of the service. The Client itself shall regularly check the results of the service and the data generated through the use of the service.
- 7.3 If and in so far as necessary or desirable, the Supplier shall, where shortcomings in the results of the Computer Service are the direct result of products, software, data carriers, procedures or operating procedures for which the Supplier is explicitly responsible pursuant to the agreement, repeat the Computer Service for the purpose of rectifying these shortcomings, provided that the Client provides the Supplier with detailed notification in writing of the shortcomings as soon as possible, and no later than



one week after obtaining the results of the Computer Service. Such repetition of the service shall only be carried out free of charge if the shortcomings in the Computer Service are attributable to the Supplier. If the shortcomings are not attributable to the Supplier and/or the shortcomings are the result of errors or shortcomings on the part of the Client, such as the provision of incorrect or incomplete data and/or information, the Supplier shall, where appropriate, invoice the Client for the costs of repetition of the service according to its standard rates. If the Supplier is of the opinion that the rectification of shortcomings that are attributable to the Supplier is not reasonably possible, the Supplier shall credit the amounts payable by the Client for the Computer Service in question, without any further or other liability vis-à-vis the Client. The Client shall not enjoy any rights as a result of shortcomings in the Computer Service other than those described in this guarantee scheme. This subclause explicitly does not apply to Application Service Provision and Software as a Service.

- 7.4 On the basis of the information provided by the Supplier in relation to measures for the purpose of preventing and limiting the consequences of interruptions or shortcomings in the service, the scrambling or loss of data or other incidents, the Client shall identify and list the risks for its organisation and take additional measures where necessary. The Supplier declares that it is prepared to lend its cooperation to further measures to be taken by the Client to a reasonable extent and at the request of the Client, subject to (financial) conditions to be imposed by the Supplier. Under no circumstances shall the Supplier be responsible for the recovery of scrambled or lost data.
- 7.5 The Supplier shall not guarantee that the software to be made and kept available to the Client within the context of Application Service Provision and/or Service as a Service, and the software used by the Supplier within the context of Computer Service will be adapted according to changes in relevant legislation and regulations in a timely manner.

## **8. Processing of personal data**

- 8.1 The Client shall guarantee that all of the requirements in respect of the lawful processing of personal data input by the Client in the software to be made and kept available to the Client within the context of Application Service Provision and/or Service as a Service, and the software used by the Supplier within the context of Computer Service, are met.
- 8.2 Without prejudice to the provisions of the General module, full responsibility for the data processed through the use of the service by the Client shall rest with the Client. The Client shall guarantee the Supplier that the data is not illegal and does not infringe the rights of third parties. The Client shall indemnify the Supplier against claims by third parties, of whatever nature, in relation to the processing of this data or the execution of the agreement.

- 8.3 Pursuant to legislation in respect of the processing of personal data (such as the Personal Data Protection Act [Wet Bescherming Persoonsgegevens]), the Client has obligations vis-à-vis third parties, such as an obligation to provide information, and an obligation to allow the inspection, correction and removal of personal data of parties involved. The Client is fully and exclusively responsible for ensuring compliance with these obligations. The parties agree that, with regard to the processing of personal data, the Supplier is the 'processor' within the meaning of the Personal Data Protection Act. The Supplier shall, as far as technically possible, lend its cooperation in respect of the obligations to be met by the Client. The costs associated with such cooperation are not included in the Supplier's agreed prices and fees and shall be borne in full by the Client.

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# ICT~Office Terms and Conditions

## Module 5 Development and maintenance of a website

*The ICT~Office Terms and Conditions are filed with the Chamber of Commerce for the Central Netherlands under number 30174840.*

### **1. Applicability**

- 1.1 The ICT~Office Terms and Conditions consist of the General module as well as one or more specific modules per product or service. The provisions of this module shall apply in addition to the provisions of the General module in the event that the Supplier is commissioned to design, develop, manage and/or maintain a website.
- 1.2 The provisions of this module are inextricably linked with the provisions of the General module. In the case of conflict between the provisions of the General module and the provisions of this module, the latter shall prevail.

### **2. Specifications of the website**

- 2.1 If the Client has not already provided the Supplier with specifications or a – rough or otherwise – design or prototype of the website to be developed before or on entering into the agreement, the parties shall draw up written specifications in consultation with regard to the website to be developed. The parties both acknowledge that effective coordination and good mutual communication are essential factors in the proper specification, design and development of a website. Collaboration and mutual communication will take place wherever possible subject to due observance of any project plan, arrangements and/or procedures agreed between the parties.
- 2.2 The specifications of the website to be developed may relate to the style and number of the webpages to be developed by the Supplier (including a 'homepage' and next pages) and the text files, forms, logos, photo and video images, graphics files, codes and/or other material to be included or incorporated in the website. The specifications or design must also provide a clear indication of the functional, aesthetic and technical properties that the website must have, such as the use of frames and e-mail facilities. The specifications may also include the communication objectives and the language or languages of the website.
- 2.3 The parties shall reach timely agreements with regard to the information and material to be developed by the Supplier for the purpose of inclusion or incorporation in the website, and the information and material to be provided to the Supplier by the Client or a third party to be engaged by the Client. If no agreements are made in this regard, the Client shall provide the materials required for the purpose of inclusion or incorporation in the website.

- 2.4 The Client shall at all times guarantee the correctness, completeness and consistency of any information, specifications and designs submitted to the Supplier, even if such information, specifications and designs have been provided by a third party. Any errors, omissions or inconsistencies shall be at the risk and expense of the Client.
- 2.5 The Supplier is entitled, however not obliged, to check the correctness, completeness and consistency of the information, specifications or designs submitted to it and on identifying any errors or omissions to suspend the agreed work until such time as the Client has fixed the errors or omissions in question. The Client undertakes to notify the Supplier in all cases as soon and in as much detail as possible of any errors or omissions in the specifications or the design for the website to be developed of which it becomes aware or of which it should reasonably be aware.
- 2.6 If the content and/or style of the website is entirely or partly dependent upon decisions to be reached at a later date during the execution of the agreement, the Supplier shall make these decisions, taking into account any of the Client's ideas and criteria of which it is aware wherever possible.

### **3. Development of the website**

- 3.1 The Supplier shall develop the website with due care, subject to due observance of the website specifications or design and – where appropriate – with due observance of the project plan, methods, techniques, arrangements and/or procedures agreed in writing with the Client. Before commencing the development work, the Supplier may require the Client to issue a written declaration of its full and unconditional agreement to the specifications or design. The Supplier shall be entitled to suspend its activities until such time as the Client has issued a written declaration of its full and unconditional agreement to the specifications or design.
- 3.2 The Client shall provide the materials required for the purpose of inclusion or incorporation in the website in a timely manner, with due observance of the deadlines referred to in the agreement and in a format to be determined by the Supplier.
- 3.3 The Supplier shall be entitled to create a draft version or prototype of the website to be developed on the basis of the specifications it receives. The Supplier may suspend further development work on the website until such time as the Client has approved the draft version or prototype in writing.

- 3.4 The Supplier shall carry out the development work on the basis of a best efforts obligation, unless and in so far as the Supplier has explicitly undertaken in the written agreement to achieve a specific result and the result in question is sufficiently determined.
- 3.5 If the Supplier requires one or more translations for the purpose of including or incorporating one or more text files in the website, the Client shall arrange for the translation work to be carried out at its own expense, except where agreed otherwise in writing. If the Supplier arranges for the translation work to be carried out, it shall submit an invoice, or arrange for an invoice to be submitted, to the Client for the associated costs.
- 3.6 If it has been agreed that the design and development services will take place in stages, the Supplier shall be entitled to delay the start of the services associated with a stage until such time as the Client has approved the results of the previous stage in writing.
- 3.7 Within the bounds of reasonableness to be determined by the Supplier, the Supplier shall comply with reasonable and timely instructions issued by the Client during the realisation of the design and development work, provided that the Supplier deems such instructions to be technically and otherwise sound.
- 3.8 Except where agreed otherwise in writing, the Supplier shall not be obliged to apply to the appropriate authorities for a domain name for the website.

#### 4. Delivery and installation

- 4.1 Unless the agreement stipulates that the Supplier shall host the website on its own computer system on behalf of the Client, the Supplier shall deliver the website to the Client on a data medium and in a format of its own choice.
- 4.2 The Supplier shall only install the website on the premises of the Client or those of a third party (host-provider) designated by the Client if this has been agreed in writing between the parties.

#### 5. Acceptance test and acceptance

- 5.1 If the parties have not agreed that an acceptance test will be carried out, the Client shall accept the website in the condition that it is in at the time of delivery ('as is'), therefore with all visible and invisible errors and defects, without prejudice to the Supplier's obligations pursuant to the guarantee scheme in Article 10 of this module.
- 5.2 If the parties have agreed to an acceptance test in writing, the provisions of Articles 5.3 to 5.10 inclusive of this module shall apply.
- 5.3 Where this module refers to 'errors', this shall be understood to mean the substantial failure to meet the specifications explicitly agreed in writing between the parties. An error shall only be deemed to exist if the Client is able to demonstrate the error and if it can be reproduced. The Client is obliged to notify the Supplier immediately of any errors.
- 5.4 If an acceptance test has been agreed to, the test period shall be fourteen days following delivery or, if it has been agreed in writing that the Supplier will carry out the installation, following completion of the

installation. The Client is not entitled to use the website for productive or operational purposes during the test period. The Supplier may at any time demand that the Client carry out a proper test, using appropriately qualified personnel, with an adequate scope and in sufficient depth, on the (interim) results of the development work and that it provide the Supplier with a written, clear and understandable report on the test results.

- 5.5 If an acceptance test has been agreed to, the Client shall be obliged to assess under its full and exclusive responsibility whether the website delivered conforms to the specifications agreed between the parties in writing. Except where agreed otherwise in writing, any assistance provided by or on behalf of the Supplier during the performance of an acceptance test shall be entirely at the risk and expense of the Client.
- 5.6 The website shall be deemed to have been accepted between the parties:
  - a. if the parties have not agreed that the Client will carry out an acceptance test: on delivery or, if it has been agreed in writing that the Supplier will carry out the installation, on completion of the installation, or
  - b. if the parties have agreed that the Client will carry out an acceptance test: on the first day following the test period, or
  - c. if the Supplier receives a test report as referred to in Article 5.7 before the end of the test period: at such time as the errors described in the test report have been fixed, notwithstanding the presence of defects that do not preclude acceptance according to Article 5.8. Contrary to the above, if the Client uses the website for productive or operational purposes before the time of explicit acceptance, the website shall be deemed to have been accepted in full from the time at which such use commenced.
- 5.7 If on carrying out the agreed acceptance test it emerges that the website contains errors, the Client shall notify the Supplier of the errors no later than on the last day of the test period by means of a written and detailed test report. The Supplier shall make every effort to fix the errors identified within a reasonable period of time.
- 5.8 Acceptance of the website may not be withheld on grounds that do not relate to the specifications explicitly agreed between the parties, nor due to the existence of minor defects, these being defects that cannot reasonably be deemed to prevent the operational or productive use of the website, without prejudice to the Supplier's obligation to fix these minor defects within the context of the guarantee scheme in Article 10, if and in so far as applicable. Acceptance may also not be withheld on the basis of aspects of the website that can only be assessed subjectively, such as style, aesthetic aspects and aspects relating to the design.
- 5.9 If the website is delivered and tested in stages and/or parts, the non-acceptance of a specific stage and/or part shall not affect the acceptance of a previous stage and/or other part, where appropriate.
- 5.10 Acceptance of the website by one of the methods referred to in this Article shall mean that the Supplier is





discharged in respect of compliance with its obligations in relation to the design and development of the website and, if it has been agreed that the Supplier will also carry out the installation, with its obligations in relation to the installation of the website. Acceptance of the website shall not affect the Client's rights pursuant to Article 5.8 in relation to minor faults and Article 10 in relation to the guarantee scheme.

## **6. Right of use**

- 6.1 The Supplier shall make the website developed on behalf of the Client and the corresponding user documentation available to the Client for use.
- 6.2 Without prejudice to the provisions of the General module of the general terms and conditions, the Supplier shall only grant the Client a non-exclusive, non-transferable and non-sublicensable right of use of the website.
- 6.3 The user documentation shall be provided in paper or digital format. The Supplier shall decide on the format and language in which the user documentation is provided.

## **7. Maintenance and management**

- 7.1 Except where agreed otherwise in writing, the Supplier shall not be obliged to provide the auxiliary software required for the use, maintenance and management of the website and/or a so-called 'content management system' .
- 7.2 If, contrary to Article 7.1, the parties agree that the Supplier shall also be required to provide auxiliary software required for the use, maintenance and management of the website and/or a 'content management system', the Supplier may require the Client to enter into a separate written agreement for this purpose.
- 7.3 Except where otherwise agreed in writing, the Supplier's performance obligations shall not include the maintenance and/or management of the website or the provision of support to website administrators responsible for technical aspects or content.
- 7.4 If, contrary to Article 7.3, the parties agree that the Supplier shall also be required to provide maintenance and management services, the Supplier may require the Client to enter into a separate written agreement for this purpose. The content and scope of these services shall also be agreed, however if no agreements are reached in this regard, the Supplier's obligation shall be limited to ensuring that it makes every effort to fix errors in the reproduction of the website and in the technical operation of the website within a reasonable period of time.

## **8. Term of provision of the website and maintenance services**

- 8.1 The website developed on behalf of the Client shall be made available to the Client for the term agreed between the parties. If no term has been agreed between the parties, the term of the right of use shall not be subject to a time limit and the Supplier shall not be entitled to terminate the agreement by giving notice, provided that the Client strictly complies with all of its

obligations vis-à-vis the Supplier arising from the agreement.

- 8.2. Where appropriate, the Client shall return all copies of the website that it has in its possession to the Supplier immediately following expiry of the right of use of the website. If the parties have agreed that the Client will destroy the relevant copies on expiry of the right of use, the Client shall notify the Supplier immediately in writing that this has been carried out.
- 8.3 Where applicable, the agreement for the provision of maintenance and/or management services shall be entered into for the term agreed between the parties. If no term has been agreed, a term of one year shall apply. The term of the agreement shall be extended automatically by the term of the original period each time, unless the Client or the Supplier terminates the agreement in writing with due observance of a notice period of three months prior to the end of the period in question.

## **9. Payment**

- 9.1 If an invoicing schedule has not been explicitly agreed, all amounts relating to the design and development of the website shall in each case be payable in arrears each calendar month. The Supplier may also demand that an advance payment be made.
- 9.2 Except where agreed otherwise in writing or stated by the Supplier, the price for the design and development work shall also include the fee in respect of the right of use of the website.
- 9.3 Except where otherwise agreed in writing, the fee for the design and development of the website shall not include a fee for the auxiliary software required by the Client, 'content management system', installation services and maintenance and management of the website. The right of use fee also does not include the provision of support to website administrators responsible for technical aspects and content. Such work and services shall be invoiced separately at the Supplier's standard rates as appropriate.

## **10. Guarantee**

- 10.1 The Supplier shall not guarantee that the website will function effectively in conjunction with all types or new versions of web and internet browser or any other software. The Supplier also does not guarantee that the website will function effectively in conjunction with all types of hardware.
- 10.2 The Supplier does not guarantee that the website will be suitable for the use or purpose envisaged by the Client. The Supplier also does not guarantee that the website will operate with no interruptions, errors or other defects or that all errors and other defects will always be fixed. The Client accepts that errors and defects in the operation of a website can be caused by the actions of one or more third parties.
- 10.3 The Supplier shall make every effort to fix errors in the reproduction of the content of the website or shortcomings in the technical operation of the website that are attributable to the Supplier within a reasonable period of time provided that the Supplier receives detailed, written notification of these errors within a



period of three months following delivery or, if the parties have agreed to an acceptance test, within three months of acceptance. Errors shall be fixed free of charge, unless the website was developed on behalf of the Client other than at a fixed price, in which case the Supplier shall invoice the costs associated with fixing the errors at its standard rates. The Supplier shall be entitled to invoice the costs of fixing errors at its standard rates in the event of operational errors or improper use by the Client, or other causes that are not attributable to the Supplier, or if the errors or defects could have been discovered during the implementation of the agreed acceptance test. The Supplier shall not be obliged to fix errors if the Client has made changes to the website, or has arranged for this to be carried out, without the written consent of the Supplier. Such consent shall not be withheld on unreasonable grounds.

- 10.4 The fixing of errors or defects shall take place at a location to be determined by the Supplier. The Supplier shall be entitled to install temporary solutions, bypasses or problem-avoiding restrictions in the website at any time.
- 10.5 Under no circumstances shall the Supplier be obliged to recover scrambled or lost data.
- 10.6 The Supplier shall not be obliged to fix errors or defects that are reported following expiry of the guarantee period referred to in Article 10.3 of this module, unless the parties have entered into a separate maintenance agreement that incorporates an obligation to this effect.

## 11. Liability

- 11.1 Without prejudice to the provisions of the General module, the provisions of this Article in respect of liability shall also apply. Any liability on the part of the Supplier for the unavailability – temporary or otherwise - of the website designed, developed, maintained or managed by the Supplier shall be excluded. Any liability on the part of the Supplier for failure of the content of the website to appear, or to appear accurately or in full, as well as for the release of data - confidential or otherwise - from a closed part of the website, shall also be excluded.



# ICT~Office Terms and Conditions

## Module 6 Webhosting

*The ICT~Office Terms and Conditions are filed with the Chamber of Commerce for the Central Netherlands under number 30174840.*

### 1. Applicability

- 1.1 The ICT~Office Terms and Conditions consist of the General module as well as one or more specific modules per product or service. The provisions of this module shall apply in addition to the provisions of the General module in the event that the Supplier provides 'webhosting' and related services.
- 1.2 The provisions of this module are inextricably linked with the provisions of the General module. In the case of conflict between the provisions of the General module and the provisions of this module, the latter shall prevail.

### 2. The hosting services

- 2.1 The Supplier shall provide the hosting services agreed with the Client.
- 2.2 If the agreement includes the provision of disk space on hardware, the Client shall not exceed the agreed disk space, unless the agreement explicitly sets out the consequences of this. The Client shall only use the disk space for the posting of one or more webpages of a website referred to in the agreement. The agreement shall only include the provision of disk space on a server reserved exclusively and specifically for the Client if this has been explicitly agreed in writing. All use of disk space, data communications and other burdens placed on systems and infrastructure shall be limited to the agreed maximums and subject to the company rules drawn up by the Supplier for the benefit of, and which apply to, users. Except where agreed otherwise in writing, the data communication capacity that is not used by the Client during a specific period cannot be carried over to the next period. If the agreed maximums are exceeded, the Supplier shall charge an additional fee according to the standard rates.
- 2.3 If the agreement includes the provision of access to the internet, the Supplier shall, except where agreed otherwise in writing, make every effort to establish connections with the internet via the Supplier's system, including access to the website hosted by the Supplier. The Supplier is not responsible for infrastructure belonging to the Client or third parties.
- 2.4 Except where agreed otherwise in writing, the Client shall be responsible for the management, which includes monitoring settings, the use of the service and the manner in which the results obtained through the use of the software are used. The Client shall also be responsible for training given to and use by users, regardless of whether or not there is a relationship of authority between the Client and these users. If no explicit agreements have been made in this regard, the Client itself shall install, set up, parameterise and tune

the (auxiliary) software and adapt the hardware used, other software and operating environment where necessary, as well as achieving the interoperability desired by the Client. Except where agreed otherwise in writing, the Supplier shall not be obliged to carry out data conversion.

- 2.5 If the agreement stipulates that the service provided by the Supplier shall also include the provision of support to users, the Supplier shall issue advice by telephone or e-mail on the use and operation of the websites hosted. The Supplier may impose conditions in relation to the qualifications and the number of contacts who are eligible for support. The Supplier shall deal with properly substantiated requests for support within a reasonable period of time. The Supplier cannot guarantee the correctness, completeness or timeliness of responses or support provided. Except where agreed otherwise, support shall only be provided on working days during the Supplier's standard business hours.
- 2.6 The agreement shall only include the organisation or provision of backup, fallback and recovery services if this has been agreed in writing.
- 2.7 If the agreement stipulates that the Supplier shall provide the Client with services in relation to a domain name, including the application for, renewal, sale or transfer of a domain name to a third party, the rules and procedures of the relevant authority or authorities must be observed. Upon request, the Supplier shall provide the Client with a written copy of these conditions. The Supplier expressly does not accept any responsibility for the accuracy or timeliness of the services or the realisation of the results envisaged by the Client.
- 2.8 All costs associated with the application and/or registration process shall be payable by the Client according to the agreed rates. If no rates have been agreed, the Supplier's standard rates shall apply.
- 2.9 The Supplier shall not guarantee that the domain name desired by the Client shall be assigned to the Client.
- 2.10 The Supplier shall not be responsible for the content and composition of the domain name or the use of the domain name. The Client shall guarantee the Supplier that it is entitled to use the domain name and that such use is not unlawful vis-à-vis one or more third parties. The Client shall indemnify the Supplier against any claims by third parties in relation to the domain name, even if the Client's domain name was not registered by the Supplier.
- 2.11 The agreement shall only include the provision of e-mail addresses to the Client if this has been agreed in

writing. The parties shall agree the number of e-mail addresses to be provided.

### **3. Provision of services**

- 3.1 The Supplier shall make every effort to ensure that the services are provided with due care and in accordance with the arrangements and procedures agreed in writing with the Client where applicable. The Supplier shall provide all services on the basis of a best efforts obligation, unless and in so far as the Supplier has explicitly undertaken in the written agreement to achieve a specific result and the result in question is sufficiently determined.
- 3.2 The Supplier shall only perform the service on behalf of the Client. If the Supplier carries out work relating to the Client's data or that of its employees or users pursuant to a request or an authorised order from a government agency or in connection with a statutory obligation, the Client shall be invoiced for all of the associated costs.
- 3.3 The Supplier may make adjustments to the content or scope of the service. If such adjustments result in a change in the procedures that apply to the Client, the Supplier shall notify the Client as soon as possible and the costs of this change shall be borne by the Client.
- 3.4 The Supplier may temporarily suspend the service in full or in part for the purpose of carrying out maintenance work. The Supplier shall not suspend the service for longer than necessary and shall arrange for this to take place outside of office hours where possible and, according to the circumstances, shall notify the Client in advance.
- 3.5 The Client shall adequately protect its systems and infrastructure and shall operate anti-virus software at all times.

### **4. Rules of Conduct; Notice and Take Down**

- 4.1 If the Supplier imposes general rules of conduct that apply to all of its clients, the Supplier shall issue these to the Client upon request and the Client shall be obliged to comply with these rules of conduct strictly and in full. The Client shall behave towards third parties with due care and in a lawful manner at all times and in all cases. The Client shall at all times specifically respect the intellectual property rights and other rights of third parties, as well as the privacy of third parties, and shall refrain from distributing data in contravention of the law and from providing illegal access to systems, distributing viruses or other harmful programs, committing offences and from infringing any other statutory obligations.
- 4.2 With the aim of avoiding any liability vis-à-vis third parties or limiting the consequences of this, the Supplier shall at all times be entitled to take measures in relation to an act or omission by or at the risk of the Client. The Client shall be obliged to remove information immediately on the first written request of the Supplier. If it fails to do so, the Supplier shall be entitled to remove the information or prevent access to this information at its own discretion. In the event of the infringement or imminent infringement of the provisions of Article 4.1, the Supplier shall also be entitled to

refuse the Client access to the Supplier's systems with immediate effect and without prior notice. The foregoing expressly does not affect any other measures or the exercising of other rights by the Supplier vis-à-vis the Client. In this case, the Supplier shall also be entitled to terminate the agreement with immediate effect, without this resulting in any liability vis-à-vis the Client.

- 4.3 The Supplier cannot be required to form an opinion on the validity of the claims of third parties or of the Client's defence, or to become involved in any way in a dispute between the Client and a third party. The Client will need to consult with the third party in question and provide the Supplier with information in writing that is properly substantiated with documents.

### **5. Service Level Agreement**

- 5.1 Any service level agreements shall in all cases only be entered into explicitly in writing. The Client shall notify the Supplier at all times of all circumstances that may affect the service and the availability of the service. If service level agreements are entered into, any periods of decommissioning announced in advance due to maintenance work or to circumstances outside of the Supplier's sphere of influence will not be taken into account when assessing availability. The assessment will be based on the service as a whole during the term of the agreement. Barring proof to the contrary, the availability measured by the Supplier shall be conclusive evidence.

### **6. Term and transfer of the website**

- 6.1 The agreement shall be entered into for the term agreed between the parties. If no term has been agreed, a term of one year shall apply. The term of the agreement shall be extended automatically by the term of the original period each time, unless the Client or the Supplier terminates the agreement in writing with due observance of a notice period of three months prior to the end of the period in question.
- 6.2 The Supplier shall only lend its cooperation in the transfer of the website and the corresponding domain to the Client or another supplier of webhosting services on or following termination of the agreement – on payment by the Client of a fee to be determined by the Supplier and subject to due observance by the Client of all conditions determined by the Supplier – if this has been agreed in writing.

### **7. Payment**

- 7.1 If an invoicing schedule has not been explicitly agreed, all amounts relating to the services provided by the Supplier shall in each case be payable in advance each calendar month.

### **8. Guarantee**

- 8.1 The Supplier shall not guarantee that the service will be provided without errors or interruptions. Partly due to the nature of the internet and the way that it works, the Supplier cannot guarantee that the internet will be available or accessible at all times and that it will be



- possible to access and consult the websites hosted by the Supplier at all times and without disruptions.
- 8.2 The Supplier is not responsible for checking the correctness and completeness of the service. The Client shall check the results of the service itself on a regular basis.
- 8.3 On the basis of the information provided by the Supplier in relation to measures for the purpose of preventing and limiting the consequences of interruptions or shortcomings in the service, the scrambling or loss of data or other incidents, the Client shall identify and list the risks for its organisation and take additional measures where necessary. The Supplier declares that it is prepared to lend its cooperation in further measures to be taken to the Client to a reasonable extent and at the request of the Client, subject to (financial) conditions to be imposed by the Supplier. Under no circumstances shall the Supplier be responsible for the recovery of scrambled or lost data.
- 8.4 The Client shall be responsible for the data processed by the Client through the use of the service. The Client shall guarantee the Supplier that the data is not illegal and does not infringe the rights of third parties. The Client shall indemnify the Supplier against claims by third parties, of whatever nature, in relation to this data or the execution of the agreement.

#### **9. Processing of personal data**

- 9.1 The Client shall guarantee that all of the requirements in respect of the lawful processing of personal data input or processed by the Client or third parties on the website or otherwise hosted or processed by the Supplier have been met.
- 9.2 Without prejudice to the provisions of the General module, responsibility for the data hosted or processed through the use of the service by the Client shall rest with the Client. The Client shall guarantee the Supplier that the data is not illegal and does not infringe the rights of third parties. The Client shall indemnify the Supplier against claims by third parties, of whatever nature, in relation to this data or the execution of the agreement.
- 9.3 Pursuant to legislation in respect of the processing of personal data (such as the Personal Data Protection Act [Wet Bescherming Persoonsgegevens]), the Client has obligations vis-à-vis third parties, such as an obligation to provide information, and an obligation to allow the inspection, correction and removal of personal data of parties involved. The Client is fully and exclusively responsible for ensuring compliance with these obligations. The parties agree that, with regard to the processing of personal data, the Supplier is the 'processor' within the meaning of the Personal Data Protection Act. The Supplier shall, as far as technically possible, lend its cooperation with regard to compliance with the obligations to be met by the Client. The costs associated with such cooperation are not included in the Supplier's agreed prices and fees and shall be borne in full by the Client.



# ICT~Office Terms and Conditions

## Module 7 Secondment services

*The ICT~Office Terms and Conditions are filed with the Chamber of Commerce for the Central Netherlands under number 30174840.*

### **1. Applicability**

- 1.1 The ICT~Office Terms and Conditions consist of the General module as well as one or more specific modules per product or service. The provisions of this module shall apply in addition to the provisions of the General module in the event that the Supplier makes one or more employees available to the Client, on payment of a fee, for the purpose of carrying out work under the Client's management and supervision.
- 1.2 The provisions of this module are inextricably linked with the provisions of the General module. In the case of conflict between the provisions of the General module and the provisions of this module, the latter shall prevail.

### **2. Services**

- 2.1 The Supplier shall make the employee referred to in the agreement between the parties available to the Client for the purpose of carrying out work under the Client's management and supervision in accordance with the agreements reached between the parties. Except where agreed otherwise, the employee shall be made available to the Client on the basis of forty hours per week during the Supplier's standard working days.
- 2.2 The Client shall only be entitled to set the employee made available to work on activities other than the agreed activities or activities outside of the Netherlands if the Supplier has issued its written consent to this in advance. The Supplier may withhold the requested consent or impose (financial) conditions on such a change in activities or employment outside of the Netherlands at its own discretion.
- 2.3 The Client shall not be permitted to second the employee made available to a third party or to make him or her available to carry out work under the management and supervision of this third party, except where agreed otherwise in writing.

### **3. Duration and termination of the agreement**

- 3.1 The agreement shall be entered into for a fixed term or an indefinite period of time. If the parties have not reached any agreements in this regard, the agreement shall be entered into for an indefinite period of time.
- 3.2 If the agreement has been entered into for an indefinite period of time, a notice period shall apply to each of the parties as agreed. If no specific arrangements have been made, the notice period shall be one calendar month. Notice of termination must be given in writing. The Supplier shall under no circumstances be obliged to pay any compensation as a result of termination of the agreement.

- 3.3 If the agreement has been entered into for a fixed term, it shall terminate by operation of law at the end of the agreed term.

### **4. Replacement**

- 4.1 The Supplier shall make every reasonable effort to ensure that the employee made available remains available for work during the agreed days and hours for the term of the agreement. Even if the agreement has been entered into with a view to implementation by a specific individual, the Supplier shall at all times be entitled to replace this individual with one or more other individuals with the same qualifications following consultation with the Client.
- 4.2 The Client shall be entitled to request that the employee made available be replaced (i) if the employee made available demonstrably fails to meet the quality requirements explicitly agreed and the Client notifies the Supplier of this in writing, stating reasons, within three working days following commencement of the work, or (ii) if the employee made available suffers a long-term illness or leaves the employment of the Supplier. The Supplier shall respond to the request immediately and treat it as a priority. The Supplier shall not guarantee that it will always be possible to replace the employee. If it is not possible to provide a replacement or to provide a replacement immediately, the Client's right to further compliance with the agreement and all rights enjoyed by the Client in relation to non-compliance with the agreement shall lapse. The Client's payment obligations in respect of the work carried out shall continue to apply in full.

### **5. Working week, working hours and working conditions**

- 5.1 The working hours, rest periods and working week of the employee made available shall be the same as the Client's standard times and week, except where agreed otherwise. The Client shall guarantee that the working hours and rest periods and the working week of the employee made available comply with the relevant legislation and regulations.
- 5.2 The Client shall inform the Supplier as soon as possible with regard to the intended closure of its business or organisation during the term of the agreement. If the Client fails to inform the Supplier in good time, the agreed rate shall be payable in full by the Client for the period during which the business or organisation is closed.

- 5.3 The Client shall treat the employee made available in the same careful manner that it is obliged to treat its own employees.
- 5.4 The Client shall be obliged to comply with the relevant legislation and obligations arising from associated regulations in the field of safety in the workplace and good working conditions in general in respect of the employee made available.

## **6. Price and payment**

- 6.1 If the employee made available works for longer than the agreed or standard number of working hours or outside of the Supplier's standard working days on behalf or at the request of the Client, the Client shall be required to pay the agreed additional hourly rate for these hours. If no additional hourly rate has been agreed, the Supplier's standard additional hourly rate shall apply. The Supplier shall notify the Client of the applicable additional hourly rate upon request.
- 6.2 The Client shall be invoiced for the costs and time involved in travelling to and from work in accordance with the Supplier's standard rules and criteria. The Supplier shall notify the Client of these standard rules and criteria upon request.
- 6.3 If agreed between the parties in writing, the Supplier shall supply a breakdown based on timesheets together with each invoice.
- 6.4 The Supplier shall be entitled to adjust the rates that apply to the employee made available in the event of any changes to his or her role or job description. The Supplier shall notify the Client of any such change in rates no later than thirty days before the change takes effect. If the Client does not wish to agree to this change, the Client shall be entitled to terminate the agreement in writing with effect from the date on which the change is due to enter into force within fourteen days following the date of notification.

## **7. Recipient's liability, other liability and indemnity**

- 7.1 The Supplier shall be responsible for the payment, in good time and in full, of the PAYE tax, national insurance contributions and turnover tax due in respect of the employee made available in connection with the agreement with the Client. The Supplier shall indemnify the Client against all claims by the tax and customs administration, or by authorities responsible for the implementation of national insurance legislation, arising from the agreement with the Client, under the condition that the Client notifies the Supplier immediately in writing of the existence and content of the claim and leaves the disposal of the case, including any settlements effected, entirely to the Supplier. To this end, the Client shall provide the Supplier with the powers of attorney, information and cooperation that it requires in order to defend itself, where necessary in the name of the Client, against these claims.
- 7.2 The Supplier does not accept any liability for the selection of the employee to be made available or for the results of work carried out under the supervision and management or the authority of the Client.
- 7.3 The Client shall be liable for any damage suffered by the employee made available during or in connection

with the work that he or she is instructed to carry out. The Client shall indemnify the Supplier against all claims from third parties arising from or leading back to the work carried out by the employee made available within the context of the agreement. The Client shall indemnify the Supplier against any liability arising from physical injury suffered by or the death of the employee made available in connection with the execution of the agreement entered into between the Supplier and the Client.

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# ICT~Office Terms and Conditions

## Module 8 Courses and training programmes

*The ICT~Office Terms and Conditions are filed with the Chamber of Commerce for the Central Netherlands under number 30174840.*

### 1. Applicability

- 1.1 The ICT~Office Terms and Conditions consist of the General module as well as one or more specific modules per product or service. The provisions of this module shall apply in addition to the provisions of the General module in the event that the Supplier provides services in the field of instruction such as courses, (in company) training programmes, seminars and workshops (hereinafter abbreviated to: courses).
- 1.2 The provisions of this module are inextricably linked with the provisions of the General module. In the case of conflict between the provisions of the General module and the provisions of this module, the latter shall prevail.

### 2. Registration and cancellation

- 2.1 Registration for a course must in all cases be carried out in writing and shall be binding following confirmation by the Supplier.
- 2.2 The Client shall bear responsibility for the selection and suitability of the course for the participants. This shall apply in full if the Supplier admits a participant to a course that is subject to admission standards. In these general terms and conditions, the term 'participants' shall be understood to refer to individuals who have registered for a course. The lack of the required prior knowledge on the part of participants shall under no circumstances affect the Client's obligations pursuant to the agreement. The Client shall be permitted to replace a course participant with another participant after obtaining the prior written consent of the Supplier.
- 2.3 The Supplier shall be entitled to cancel the course, combine the course with one or more other courses, or arrange for the course to take place on a later date or at a later time at its own discretion if it is of the opinion that the number of participants registered constitutes reason to do so. The Supplier shall retain the right to change the location of the course. The Supplier shall be entitled to make organisational and substantive changes to a course where necessary.
- 2.4 If an agreement has been entered into with a view to implementation by a specific individual, such as a specific teacher, trainer or speaker, the Supplier shall at all times be entitled to replace this individual with one or more other individuals with the same or similar qualifications.
- 2.5 The consequences of cancellation of participation in a course by the Client or participants shall be governed by the Supplier's standard rules. Except where otherwise agreed, cancellation must in all cases be carried out in writing and in advance of the course or

the relevant part of the course. Cancellation or non-attendance shall not affect the Client's obligations pursuant to the agreement. In the event of cancellation by the Client or a participant, it shall fall to the Supplier to decide whether a request for the provision of training material will be granted.

### 3. Implementation of courses

- 3.1 The Supplier shall make every effort to ensure that the course is provided with due care and in accordance with the arrangements and procedures agreed in writing with the Client where applicable. All services in relation to courses shall be provided on the basis of a best efforts obligation. The Client accepts that the Supplier shall determine the content and scope of the course.
- 3.2 The Supplier shall only be obliged to follow timely and well-founded instructions issued by the Client during the performance of the service if this has been agreed in writing. The Supplier shall not be obliged to follow instructions that change or extend the content or scope of the agreed service. If such instructions are followed, however, compensation shall be provided for the work in question in accordance with the Supplier's standard rates.
- 3.3 Without prejudice to the Client's remaining responsibility for the conduct of the participants, the Client shall notify the participants of, and supervise compliance by participants with, the obligations arising from the agreement and the rules (of conduct) imposed by the Supplier in respect of participation in the course. Participants must strictly observe the training dates and times announced.
- 3.4 If the Supplier makes use of its own hardware or software during the implementation of the course, the Supplier shall not guarantee that this hardware or software is free from defects and will operate without interruptions. If the Supplier holds the course on the Client's premises, the Client shall, except where agreed otherwise in writing, ensure that properly functioning hardware and software is available.
- 3.5 Except where agreed otherwise in writing, the holding of examinations or tests shall not form part of the agreement.
- 3.6 Except where agreed otherwise in writing, a separate fee shall be payable for the documentation or other training materials or resources provided or produced for the purpose of the course. The foregoing shall also apply to any course certificates or duplicates thereof.



#### **4. Prices and payment**

- 4.1 The Supplier may at any time demand payment of the applicable fee prior to commencement of the course. The Supplier may, expressly without prejudice to its remaining rights, exclude participants from taking part if the Client has failed to pay in a timely manner.
- 4.2 Except where the Supplier has explicitly stated that a fee is exempt from VAT within the meaning of Article 11 of the Turnover Tax Act 1968 [Wet op de Omzetbelasting 1968], the Client shall also be required to pay VAT on the fee. After entering into the agreement, the Supplier shall be entitled to adjust its prices in the event of any changes to the VAT regime for courses established under or pursuant to the law.

#### **5. Intellectual property**

- 5.1 The Supplier expressly retains all intellectual property rights in respect of the documentation and the course, test and examination material.
- 5.2 The Client shall not be permitted to publish, exploit or reproduce information or parts of the documentation and/or course, test or examination material provided and/or extracts from the course, test or examination material provided.

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# ICT~Office Terms and Conditions

## Module 9 Advice, consultancy and project management

*The ICT~Office Terms and Conditions are filed with the Chamber of Commerce for the Central Netherlands under number 30174840.*

### 1. Applicability

- 1.1 The ICT~Office Terms and Conditions consist of the General module as well as one or more specific modules per product or service. The provisions of this module shall apply in addition to the provisions of the General module in the event that the Supplier provides services in the field of consultancy, the provision of advice and project management.
- 1.2 The provisions of this module are inextricably linked with the provisions of the General module. In the case of conflict between the provisions of the General module and the provisions of this module, the latter shall prevail.

### 2. Services

- 2.1 The Supplier shall make every effort to ensure that the services are provided with due care and in accordance with the arrangements and procedures agreed in writing with the Client where applicable. The Supplier shall provide all services on the basis of a best efforts obligation, unless and in so far as the Supplier has explicitly undertaken in the written agreement to achieve a specific result and the result in question is sufficiently determined.
- 2.2 The term of an assignment shall depend on a number of factors and circumstances, such as the Supplier's efforts, the quality of the data and information provided by the Client and the cooperation of the Client and relevant third parties. Except where agreed otherwise in writing, the Supplier shall therefore not wish to commit to a specific assignment term in advance.
- 2.3 If it has been agreed that the service will be provided in stages, the Supplier shall be entitled to delay the start of the services associated with a stage until such time as the Client has approved the results of the previous stage in writing.
- 2.4 The Supplier shall only be obliged to follow timely and well-founded instructions issued by the Client during the performance of the service if this has been agreed in writing. The Supplier shall not be obliged to follow instructions that change or extend the content or scope of the agreed service. If such instructions are followed, however, compensation shall be provided for the work in question in accordance with the Supplier's standard rates.
- 2.5 Even if the agreement for the provision of services has been entered into with a view to implementation by a specific individual, the Supplier shall at all times be entitled to replace this individual with one or more

other individuals with the same qualifications following consultation with the Client.

- 2.6 The employees to be deployed by the Supplier shall hold the qualifications agreed in writing with the Client.
- 2.7 If the Supplier is providing services on the basis of information to be provided by the Client, this information shall be prepared by the Client in accordance with the conditions to be imposed by the Supplier and provided at the risk and expense of the Client. The Client shall at all times guarantee that all materials, information, software, procedures and instructions that it makes available to the Supplier for the purpose of providing the services is accurate and complete and that all data media issued to the Supplier meet the Supplier's specifications.
- 2.8 The Supplier's service shall only be performed and the schedules and activities shall be based on the assumption that, except where explicitly agreed otherwise with the Client, the Supplier shall carry out the work during the Supplier's standard working days and times.
- 2.9 Except where agreed otherwise in writing, the use made by the Client of advice issued by the Supplier shall in all cases be at the Client's risk and expense.
- 2.10 Where applicable, the burden of proving that the service and the results of the service provided by the Supplier do not conform to the agreements made in writing or to what may be expected from a reasonably acting and competent Supplier shall lie solely with the Client, without prejudice to the Supplier's right to furnish evidence to the contrary by any means.

### 3. Reporting

- 3.1 The Supplier shall periodically inform the Client in the manner agreed in writing with regard to the implementation of the work via the contact person designated by the Client. The Client shall notify the Supplier in advance of any circumstances that affect or may affect the Supplier, such as the method of reporting, the issues that the Client wishes to focus on, the Client's priorities, the availability of the Client's resources and personnel, special facts and circumstances and facts and circumstances of which the Supplier may not be aware. The Client shall be responsible for the further distribution and examination of the information provided by the Supplier within the Client's organisation and shall assess this information partly on the basis of this and notify the Supplier accordingly.



- 3.2 If an employee deployed by the Supplier forms part of a project or steering group which also includes one or more individuals designated by the Client, the provision of information shall take place in the manner prescribed for the project or steering group. Decisions reached within a project or steering group with this composition shall only have a binding effect on the Supplier if the decision-making process takes place subject to due observance of the agreements reached between the parties in writing or, if no agreements have been made in this regard, if the Supplier has accepted the decisions in writing. The Supplier shall under no circumstances be obliged to accept a decision that it deems to be incompatible with the content of the agreement between the parties. The Client shall guarantee that the individuals it designates to form part of a project or steering group that also includes the Supplier's employees are authorised to take decisions that will have a binding effect on the Client.
- 3.3 In connection with the continuity of the work, the Client shall designate a contact or contacts who will act in this capacity for the duration of the Supplier's activities. The Client's contacts shall have the necessary experience, specific relevant knowledge and an insight into the Client's desired objectives.
- 3.4 The Client shall not be entitled to provide third parties with information on the Supplier's working procedures, methods and techniques and/or the content of advice or reports issued by the Supplier without the Supplier's prior written consent. The Client shall not provide the Supplier's advice or reports to third parties or otherwise disclose these.

#### **4. Payment**

- 4.1 If an invoicing schedule has not been explicitly agreed, all amounts relating to the services provided by the Supplier shall in each case be payable in arrears each calendar month.
- 4.2 Except where agreed otherwise, the Supplier shall provide an insight into the work carried out, time spent and costs incurred on behalf of the Client in accordance with the Supplier's standard procedures.



# ICT~Office Terms and Conditions

## Module 10 Other services

*The ICT~Office Terms and Conditions are filed with the Chamber of Commerce for the Central Netherlands under number 30174840.*

### 1. Applicability

- 1.1 The ICT~Office Terms and Conditions consist of the General module as well as one or more specific modules per product or service. The provisions of this module shall apply in addition to the provisions of the General module in the event that the Supplier provides services in the field of information and communication technology, such as, but not limited to, the management of ICT systems and related services.
- 1.2 The provisions of this module are inextricably linked with the provisions of the General module. In the case of conflict between the provisions of the General module and the provisions of this module, the latter shall prevail.

### 2. Services

- 2.1 The Supplier shall provide the Client with the services agreed between the parties.
- 2.2 If the Supplier's service consists of the management of one or more ICT systems referred to in the agreement and the content and scope of such management has not been determined or has not been determined to a sufficient extent in the sole opinion of the Supplier, the Supplier shall draw up a management plan for the purpose of executing the agreement and shall make this management plan available to the Client within a reasonable period of time. The management plan shall set out those areas on which the management activities will focus and the way in which the different types of management activities can be carried out. The management plan may, at the discretion of the Supplier, contain one or more of the following:
  - a plan for the preventative, corrective and restorative maintenance of ICT systems
  - a plan for dealing with interruptions in service and complaints and reporting in this regard
  - a security plan
  - a plan for supporting users of the ICT systems
  - a plan for connecting new users to the ICT systems
  - a plan for training users of the ICT systems
  - a plan for the management and use of means of identification (passwords etc.)
  - a plan for licence and contract management
  - a plan for the management organisation and the administrative and financial aspects of the use of ICT systems.Following completion of the plan, the parties shall hold consultations to discuss the issue as to which of the management activities proposed by the Supplier will be carried out and the method by and the conditions under which these activities will be carried out.

- 2.3 The Supplier shall only be obliged to follow timely and well-founded instructions issued by the Client during the performance of the service if this has been agreed in writing. The Supplier shall not be obliged to follow instructions that change or extend the content or scope of the agreed service. If such instructions are followed, however, compensation shall be provided for the work in question in accordance with the Supplier's standard rates.
- 2.4 Even if the agreement for the provision of services has been entered into with a view to executing by a specific individual, the Supplier shall at all times be entitled to replace this individual with one or more other individuals with the same qualifications following consultation with the Client.
- 2.5 The employees to be deployed by the Supplier shall hold the qualifications agreed in writing with the Client.
- 2.6 If the Supplier is providing services on the basis of information to be provided by the Client, this information shall be prepared by the Client in accordance with the conditions to be imposed by the Supplier and provided at the risk and expense of the Client. The Client shall at all times guarantee that all materials, information, software, procedures and instructions that it makes available to the Supplier for the purpose of providing the services is accurate and complete and that all data carriers issued to the Supplier meet the Supplier's specifications.
- 2.7 Except where explicitly agreed otherwise, the Supplier shall only perform the service during the Supplier's standard working days and times. This shall form the basis for the Supplier's schedules and other estimates.
- 2.8 If it has been agreed that the service will be provided in stages or if the Supplier is using a working method that is based on phased implementation, the Supplier shall be entitled to delay the start of the services associated with a stage until such time as the Client has approved the results of the previous stage in writing.
- 2.9 If the service provided to the Client includes the provision of support to users, the Supplier may impose conditions in relation to the qualifications and the number of contacts who are eligible for support and shall deal with properly substantiated requests for support within a reasonable period of time. The Supplier cannot guarantee the correctness, completeness or timeliness of responses or support provided. Except where agreed otherwise in writing, support shall only be provided on working days during the Supplier's standard business hours.
- 2.10 Except where agreed otherwise, the Client shall be responsible for the use of the service and the way in which the results of the service are used. The Client

shall also be responsible for training given to and use by users, regardless of whether or not there is a relationship of authority between the Client and these users.

- 2.11 If the agreement stipulates that the service provided by the Supplier shall also include the provision of so-called 'standby services', the Supplier shall ensure that one or more members of staff are available during the days and times specified in the agreement. If this is the case, the Client shall be entitled to request urgent or immediate support from the members of staff on standby in the cases referred to in the agreement. The Supplier shall not guarantee that all failures will be rectified or the assistance provided by the experts called in will be effective should this situation arise.

### **3. Provision of services**

- 3.1 The Supplier shall make every effort to ensure that the services are provided with due care and in accordance with the arrangements and procedures agreed in writing with the Client where applicable. The Supplier shall provide all services on the basis of a best efforts obligation, unless and in so far as the Supplier has explicitly undertaken in the written agreement to achieve a specific result and the result in question is sufficiently determined.
- 3.2 All hardware, software and items used by the Supplier in providing the service shall remain the property or the intellectual property of the Supplier, even if the Client pays a fee in respect of the development or purchase of these by the Supplier.
- 3.3 If the Client makes software, hardware or other machinery and equipment available to the Supplier in connection with the service provided by the Supplier, the Client shall be responsible for obtaining all necessary licences or approvals in relation to this machinery and equipment that the Supplier may require.

### **4. Service Level Management**

- 4.1 Any service level agreements shall in all cases only be entered into explicitly in writing. The Client shall notify the Supplier at all times of all circumstances that may affect the service and the availability of the service. If service level agreements are entered into, any periods of decommissioning announced in advance due to maintenance work or service or to circumstances outside of the Supplier's sphere of influence will not be taken into account when assessing availability. The assessment will be based on the service as a whole during the term of the agreement. Barring proof to the contrary, the availability measured by the Supplier shall be conclusive evidence.

### **5. Reporting**

- 5.1 The Supplier shall periodically inform the Client in the manner agreed in writing with regard to the implementation of the work via the contact person designated by the Client. The Client shall notify the Supplier in advance of any circumstances that affect or may affect the Supplier, such as the method of reporting, the issues that the Client wishes to focus on,

the Client's priorities, the availability of the Client's resources and personnel, special facts and circumstances and facts and circumstances of which the Supplier may not be aware. The Client shall be responsible for the further distribution and examination of the information provided by the Supplier within the Client's organisation and shall assess this information partly on the basis of this and notify the Supplier accordingly.

- 5.2 If an employee deployed by the Supplier forms part of a project or steering group which also includes one or more individuals designated by the Client, the provision of information shall take place in the manner prescribed for the project or steering group. Decisions reached within a project or steering group with this composition shall only have a binding effect on the Supplier if the decision-making process takes place subject to due observance of the agreements reached between the parties in writing or, if no agreements have been made in this regard, if the Supplier has accepted the decisions in writing. The Supplier shall under no circumstances be obliged to accept a decision that it deems to be incompatible with the content of the agreement between the parties. The Client shall guarantee that the individuals it designates to form part of a project or steering group which also includes the Supplier's employees are authorised to take decisions that will have a binding effect on the Client.
- 5.3 Partly in connection with the continuity of the work, the Client shall designate a contact or contacts who will act in this capacity for the duration of the Supplier's activities. The Client's contacts shall have the necessary experience, specific relevant knowledge and an insight into the Client's desired objectives.

### **6. Term**

- 6.1 The agreement shall be entered into for the term agreed between the parties. If no term has been agreed, a term of one year shall apply. The term of the agreement shall be extended automatically by the term of the original period each time, unless the Client or the Supplier terminates the agreement in writing with due observance of a notice period of three months prior to the end of the period in question.

### **7. Payment**

- 7.1 If an invoicing schedule has not been explicitly agreed, all amounts shall in each case be payable in arrears each calendar month. The Supplier may at any time demand that an advance payment be made.
- 7.2 Except where agreed otherwise, amounts shall be due as of the date on which the agreement commences.

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# ICT~Office Terms and Conditions

## Module 11 Sale of ICT, telecommunication and office equipment and other items

*The ICT~Office Terms and Conditions are filed with the Chamber of Commerce for the Central Netherlands under number 30174840.*

### 1. Applicability

- 1.1 The ICT~Office Terms and Conditions consist of the General module as well as one or more specific modules per product or service. The provisions of this module shall apply in addition to the provisions of the General module in the event that the Supplier sells computer, telecommunication or office equipment and/or other equipment, supplies, consumer goods, parts and/or other items (hereinafter referred to as: items).
- 1.2 The provisions of this module are inextricably linked with the provisions of the General module. In the case of conflict between the provisions of the General module and the provisions of this module, the latter shall prevail.

### 2. Purchase and sale

- 2.1 The Supplier shall sell the items according to nature and quantity as agreed between the parties in writing, and the Client shall purchase the items from the Supplier on the same basis.
- 2.2 The Client shall bear the risk associated with the selection of the items purchased. The Supplier shall guarantee that on delivery, the items are suitable for normal use and meet the specifications agreed in writing between the parties. The Supplier shall not guarantee that the items will be suitable for the use envisaged by the Client, unless the written agreement between the parties specifies the purposes of use clearly and without reservation.
- 2.3 In any event, the agreement shall not include assembly and installation materials, software, consumer items, batteries, stamps, ink (cartridges), toner products, cables and accessories, except where this has been agreed between the parties in writing.
- 2.4 The Supplier shall not guarantee that the assembly, installation and operating instructions that accompany the items are free of errors and that the items incorporate the features stated in these instructions.

### 3. Delivery

- 3.1 The items sold to the Client by the Supplier shall be delivered to the Client ex warehouse. The Supplier shall only deliver the items sold to the Client to a location to be designated by the Client, or arrange for this to be carried out, if this has been agreed in writing. Where this is the case, the Supplier shall notify the Client, where possible in good time prior to delivery, of the time at which it or the carrier engaged intends to

deliver the items. The delivery times stated by the Supplier shall in all cases be indicative.

- 3.2 Except where explicitly agreed otherwise, the purchase price of the items shall not include the costs of transport, insurance, tackles and hoists, the hiring of temporary facilities etc.
- 3.3 The Supplier shall package the items in accordance with its standard criteria. If the Client requires a specific packing method, it must bear any associated additional costs. The Client shall process any packaging materials removed from the items delivered by the Supplier in accordance with the applicable government regulations. The Client shall indemnify the Supplier against claims by third parties as a result of failure to comply with such regulations. If the Client requests that the Supplier remove old materials (such as networks, casings, cable conduits, packaging materials, hardware) or the Supplier is obliged to do so, the Supplier may accept this request by means of a written assignment subject to its standard rates, on the condition that the aforementioned materials remain the property of the Client at all times.
- 3.4 If the parties have agreed this in writing, the Supplier shall install, configure and/or connect the items, or arrange for this to be carried out. Where the Supplier is obliged to install and/or configure hardware, this shall not include carrying out data conversion or the installation of software.
- 3.5 The Supplier shall provide all services on the basis of a best efforts obligation, unless and in so far as the Supplier has explicitly undertaken in the written agreement to achieve a specific result and the result in question is sufficiently determined.
- 3.6 The Supplier shall not be responsible for any licences that may be required.
- 3.7 The Supplier shall at all times be entitled to execute the agreement in the form of partial deliveries.

### 4. Test setup

- 4.1 The Supplier shall only be obliged to establish a test setup in relation to the products that the Client is interested in if this has been agreed in writing. The Supplier may attach (financial) conditions to a test setup. A test setup shall involve the temporary display of standard models of products, excluding accessories, in a space to be made available by the buyer, before the buyer reaches a final decision with regard to whether or not it wishes to purchase the products in question at the applicable prices. The Client shall be

liable for the use, damage, theft or loss of products that form part of a test setup.

## **5. Cooperation on the part of the Client**

- 5.1 Without prejudice to the provisions of the General module, the Client shall be responsible for providing an environment that meets any requirements imposed by the Supplier in respect of the items, including requirements in relation to temperature, atmospheric humidity and technical environment.
- 5.2 The Client must ensure that any work to be carried out by third parties, including construction work, is performed in an acceptable and timely manner.

## **6. Guarantee**

- 6.1 The Supplier shall make every effort to ensure that any material and manufacturing defects in the hardware, or in parts delivered by the Supplier within the scope of the guarantee, are rectified within a reasonable period of time and free of charge if the Supplier receives detailed notification of such defects within three months of the date of delivery. If the Supplier deems that it is not reasonably possible to rectify the defect, that it will take too long to rectify the defect or that this would involve unreasonably high costs, the Supplier shall be entitled to replace the hardware free of charge with another, similar but not necessarily identical item of hardware. Any data conversion required as a result of the rectification of defects or replacement falls outside the scope of the guarantee. All replaced parts shall be the property of the Supplier. The obligations under the guarantee shall not apply if defects in the hardware or parts are partly or entirely the result of incorrect, negligent or incompetent use, external causes such as fire or water damage, or if the Client makes changes to the hardware or the parts delivered by the Supplier within the scope of the guarantee without the Supplier's written consent, or arranges for this to be carried out. The Supplier shall not withhold such consent on unreasonable grounds.
- 6.2 Any claims by the Client that the items delivered are not fit for purpose other than, or that extend beyond, those set out in Article 6.1 of this module shall be excluded. In any event, the Client shall not be entitled to rely on the fact that the items delivered are not fit for purpose if and in so far as it is prevented from doing so by the law.
- 6.3 The Supplier shall invoice the costs of work and the rectification of defects that fall outside of the scope of this guarantee in accordance with its standard rates.
- 6.4 The Supplier shall not be obliged to rectify defects that are reported following expiry of the guarantee period referred to in Article 6.1 of this module, unless the parties have entered into a separate maintenance agreement that incorporates an obligation to this effect.

## **7. Hardware from third party suppliers**

- 7.1 If and in so far as the Supplier provides the Client with hardware from third parties, the terms imposed by such third parties in relation to the hardware shall apply, provided that the Supplier has notified the Client of such terms in writing, notwithstanding any varying

provisions in these general terms and conditions. The Client accepts the abovementioned terms imposed by third parties. These terms shall be available to the Client for inspection on the Supplier's premises and the Supplier shall provide the Client with a copy of the terms free of charge upon request. If and in so far as the abovementioned terms imposed by third parties in the relationship between the Client and the Supplier are deemed not to apply for any reason whatsoever, or are declared to be inapplicable, the provisions of these general terms and conditions shall apply in full.

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# ICT~Office Terms and Conditions

## Module 12 Renting out ICT, telecommunication and office equipment

*The ICT~Office Terms and Conditions are filed with the Chamber of Commerce for the Central Netherlands under number 30174840.*

### **1. Applicability**

- 1.1 The ICT~Office Terms and Conditions consist of the General module as well as one or more specific modules per product or service. The provisions of this module shall apply in addition to the provisions of the General module in the event that the Supplier rents out ICT, telecommunication and/or office equipment to the Client.
- 1.2 The provisions of this module are inextricably linked with the provisions of the General module. In the case of conflict between the provisions of the General module and the provisions of this module, the latter shall prevail.

### **2. The hiring and renting out of ICT, telecommunication and office equipment**

- 2.1 The Supplier shall rent out the ICT, telecommunication or office equipment specified in the agreement to the Client together with the accompanying user documentation, hereinafter referred to as 'the equipment'.
- 2.2 Except where agreed otherwise in writing, the renting out of the equipment shall not include the provision of software and consumer items required in order to use the equipment. Consumer items shall include batteries, stamps, ink (cartridges), toner products, cables and accessories.
- 2.3 If, contrary to Article 2.2, the Client is also provided with software that is required in order to use the equipment, the Supplier may require the Client to enter into a separate (licence) agreement for this purpose. The Supplier may also require the Client to enter into a separate purchase agreement in respect of the sale of consumer items, where applicable.

### **3. Prior inspection**

- 3.1 Even if the agreement between the parties does not incorporate a provision to this effect, the Supplier shall be entitled to draw up a description of the condition of the equipment in the Client's presence by way of prior inspection before or on providing the equipment, stating any defects identified. The Supplier may require the Client to sign the report drawn up by the Supplier containing this description of the state of the equipment for approval before the

Supplier makes the equipment available to the Client for use. Except where agreed otherwise between the parties, the Supplier shall be responsible for any defects identified in relation to the condition of the equipment. If any defects are identified, the Supplier and the Client shall reach agreements with regard to how and when the defects specified in the report will be rectified. If the parties have agreed that the Client will rectify the defects or arrange for this to be carried out, the repair work shall be carried out properly and to the satisfaction of the Supplier.

- 3.2 If the Client, for any reason whatsoever, does not lend sufficient cooperation to the prior inspection as referred to in the previous subclause, the Supplier shall be entitled to conduct this inspection in the Client's absence and to draw up the aforementioned report itself. This report shall have a binding effect on the Client.
- 3.3 If no prior inspection is carried out, the Client shall be deemed to have received the equipment in good condition.

### **4. Term of the rental**

- 4.1 The rental agreement shall be entered into for the term agreed between the parties. If no term has been agreed, a term of one year shall apply. The rental agreement shall commence on the day on which the Client is provided with the equipment. The term of the rental agreement shall be extended automatically by the term of the original period each time, unless the Client or the Supplier terminates the agreement in writing with due observance of a notice period of three months prior to the end of the period in question.
- 4.2 A rental agreement that has been entered into for a fixed term shall terminate on its expiry. The Supplier and the Client shall not be required to issue notice of termination in this case.

### **5. Use of the equipment**

- 5.1 The Client shall in all cases use the equipment to the exclusion of third parties and in accordance with the intended purpose pursuant to the rental agreement. The Client shall be obliged to only use the equipment within and on





- behalf of its own organisation or company. Use of the equipment by or on behalf of third parties shall not be permitted. The right to use the equipment is not transferable. The Client shall not be permitted to sublet the equipment to any third party or to allow any third party to use or jointly use the equipment in any other way or form.
- 5.2 The equipment shall only be used at the location agreed between the parties, where applicable. The Client shall itself install, set up and make the equipment ready for use.
  - 5.3 The Client shall not be permitted to use the equipment or any part thereof as security or collateral, in any way whatsoever, vis-à-vis any third party, or to dispose of the equipment in any other way.
  - 5.4 The Client shall use the equipment with due care and shall keep the equipment in its custody. The Client shall take timely and effective measures to prevent damage to the equipment. The Client shall notify the Supplier immediately in writing of any damage to the equipment. The Client shall be fully liable for damage to the equipment vis-à-vis the Supplier and any third parties affected by the damage.
- 6. Changes to the state of the equipment**
- 6.1 The Client shall not be permitted to modify the equipment in full or in part or to add anything to the equipment without the Supplier's prior written consent. The Supplier shall at all times be entitled to refuse its consent or to attach conditions to its consent, including conditions in relation to the method and quality of implementation of the modifications and additions required by the Client. The Supplier shall also be entitled to impose an obligation on the Client or to increase the rent on issuing its consent.
  - 6.2 Except where agreed otherwise, the parties accept that any modifications and additions made shall not form part of the rented equipment.
  - 6.3 The Client must undo or remove any modifications or additions made to the equipment no later than before or on termination of the rental agreement, except where agreed otherwise between the parties.
  - 6.4 The parties shall accept that defects in respect of the modifications and additions made to the equipment by or on behalf of the Client and all defects in the equipment arising from these modifications or additions shall not constitute defects within the meaning of Article 7:204 of the Dutch Civil Code [Burgerlijk Wetboek]. The Client shall not enjoy any right vis-à-vis the Supplier in respect of such defects. The Supplier shall not be obliged to rectify or perform maintenance work in respect of such defects.
- 6.5 The Client shall be liable vis-à-vis the Supplier in respect of defects in the equipment that are related to the modifications and additions made by the Client.
  - 6.6 The Client shall not be entitled to any compensation, for whatever reason, in connection with any modifications or additions to the rented equipment made by the Client that have not been undone or removed on or following termination of the rental agreement for any reason whatsoever.
- 7. Rental price**
- 7.1 Except where agreed otherwise in writing, the rental price agreed between the parties shall be due on commencement of the rental agreement or, in the case of periodically due rental instalments, on commencement of a rental period.
  - 7.2 Except where agreed otherwise in writing, the rental price shall not include a fee in respect of the provision of software and/or consumer items.
  - 7.3 The Client shall pay the rental price due to the Supplier in advance before or no later than on the first day of the rental agreement or, in the case of periodic rental instalments, on commencement of a rental period.
- 8. Maintenance of the equipment**
- 8.1 The Client shall not carry out maintenance work on the equipment itself or arrange for this to be carried out by a third party.
  - 8.2 The Client shall notify the Supplier immediately of any defects that it identifies in the equipment.
  - 8.3 The Supplier shall make every effort to rectify any defects in the equipment that it is responsible for within a reasonable period of time by way of corrective maintenance. The Supplier shall also be entitled, but not obliged, to carry out preventive maintenance on the equipment. Upon request, the Client shall provide the Supplier with the opportunity to carry out corrective and/or preventive maintenance. The Client and Supplier shall consult one another to discuss the days and times at which maintenance work will be carried out. The Client shall not be entitled to receive replacement equipment during the period in which the maintenance work is being carried out.
  - 8.4 The following shall be excluded from the obligation to rectify defects as referred to in the previous article:
    - the rectification of defects that the Client accepted on entering into the rental agreement
    - the rectification of defects resulting from external causes
    - the rectification of defects that can be attributed to the Client, its employees and/or third parties engaged by the Client



- the rectification of defects resulting from incorrect, negligent or improper use of the equipment or use contrary to the documentation
  - the rectification of defects resulting from use of the equipment contrary to the intended use
  - the rectification of defects resulting from modifications or additions to the equipment made by or on behalf of the Client.
- 8.5 If the Supplier rectifies the defects referred to in the previous article or arranges for this to be carried out, the Supplier shall invoice the Client for the associated costs in accordance with the Supplier's standard rates.
- 8.6 The Supplier shall at all times be entitled to decide not to rectify defects and to replace the equipment with other, similar, but not necessarily identical equipment.
- 8.7 Under no circumstances shall the Supplier be obliged to recover scrambled or lost data.

### **9. Final inspection and return**

- 9.1 The Client shall return the equipment to the Supplier in its original state at the end of the rental agreement. The transport costs associated with the return of the equipment shall be borne by the Client.
- 9.2 At the Supplier's request, the Client shall lend its full cooperation to a joint final inspection of the condition of the equipment before or no later than on the last working day of the term of the rental agreement. A report of the findings made during the final inspection shall be jointly drawn up and signed by the parties.
- 9.3 If the Client, for any reason whatsoever, does not lend sufficient cooperation to the final inspection as referred to in the previous subclause, the Supplier shall be entitled to conduct this inspection in the Client's absence and to draw up the aforementioned report itself. This report shall have a binding effect on the Client.
- 9.4 The Supplier shall be entitled to rectify any defects identified in the final inspection report as referred to in the previous two articles, and that are at the risk and expense of the Client, at the expense of the Client or to arrange for such defects to be rectified by a third party. The Client shall also be fully liable for any losses incurred by the Supplier as a result of the temporary unfitness of the equipment for use or for renting out.
- 9.5 If at the end of the rental agreement the Client has failed to undo or remove any modifications or additions made to the equipment by the Client or on its behalf, the parties accept that the Client shall be deemed to have irrefutably relinquished all rights to such modifications and/or additions and shall not be entitled to receive any compensation in respect of these modifications and/or additions.

### **10. Liability**

- 10.1 Without prejudice to the provisions regarding liability in the General module of the general terms and conditions, the Supplier shall under no circumstances be liable for any losses incurred as a result of defects in the equipment of which the Supplier was not aware on entering into the rental agreement, or for losses incurred as a result of defects in the equipment that occurred after the rental agreement was entered into.
- 10.2 The Client shall in all cases be liable vis-à-vis the Supplier for any damage to the equipment that occurs - as a result of any circumstance whatsoever - during the rental period, therefore even if the damage is not attributable to the Client.
- 10.3 The Client shall be liable vis-à-vis the Supplier in all cases in the event of theft, loss or misappropriation of the equipment during the rental period.

### **11. Attachment of the equipment**

- 11.1 The Client shall notify the Supplier in writing immediately of any attachment of the equipment (including any bankruptcy proceedings), accompanied by a detailed description of the identity of the attaching party and the reason for the attachment. The Client shall immediately grant the bailiff levying the attachment access to the rental agreement. The Client shall be liable vis-à-vis the Supplier for all costs and losses incurred as a result of the attachment of the equipment.

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# ICT~Office Terms and Conditions

## Module 13 Maintenance of ICT, telecommunication and office equipment

*The ICT~Office Terms and Conditions are filed with the Chamber of Commerce for the Central Netherlands under number 30174840.*

### **1. Applicability**

- 1.1 The ICT~Office Terms and Conditions consist of the General module as well as one or more specific modules per product or service. The provisions of this module shall apply in addition to the provisions of the General module in the event that the Supplier provides services in relation to the maintenance of ICT, telecommunication and office equipment (hereinafter referred to as: the equipment).
- 1.2 The provisions of this module are inextricably linked with the provisions of the General module. In the case of conflict between the provisions of the General module and the provisions of this module, the latter shall prevail.

### **2. Services**

- 2.1 The Supplier shall carry out maintenance work on the equipment referred to in the agreement. The maintenance work carried out by the Supplier shall not affect the Client's responsibility for management, including monitoring settings, the use of the equipment and the manner in which the equipment is used. The Client shall also be responsible for training given to and use by users, regardless of whether or not there is a relationship of authority between the Client and these users.
- 2.2 The Supplier shall not accept any obligation to carry out maintenance work on equipment that has not been set up in the Netherlands, except where agreed otherwise in writing.
- 2.3 During the time that the Supplier has the equipment to be maintained in its custody, the Client shall not be entitled to temporary replacement equipment.

### **3. Provision of services**

- 3.1 The Supplier shall make every effort to ensure that the services are provided with due care and in accordance with the arrangements and procedures agreed in writing with the Client, where applicable. The Supplier shall provide all maintenance services on the basis of a best efforts obligation, unless and in so far as the Supplier has explicitly undertaken in the written agreement to achieve a specific result and the result in question is sufficiently determined.

- 3.2 The content and scope of the maintenance services to be carried out by the Supplier and any corresponding service levels shall be set out in a written agreement between the parties. If no agreements have been reached in this regard, the Supplier shall be obliged to make every effort to rectify breakdowns of which the Supplier is duly notified by the Client within a reasonable period of time. Within the context of this module, the term 'breakdown' shall be understood to refer to failure to meet the specifications of the equipment explicitly made known by the Supplier in writing, or failure to meet these specifications without interruption. A breakdown shall only be deemed to exist if the Client is able to demonstrate the breakdown and if it is reproducible. Except where agreed otherwise, the Supplier shall also be entitled, however not obliged, to carry out preventive maintenance.
- 3.3 The Client shall, immediately following the occurrence of a breakdown of the equipment, notify the Supplier by means of a detailed description of the breakdown drawn up by an employee who has expert knowledge in this area.
- 3.4 The Client shall lend any cooperation required by the Supplier for the purpose of the maintenance work, including the temporary suspension of use of the equipment. The Client shall be obliged to grant employees of the Supplier or of third parties designated by the Supplier access to the location of the equipment, to lend all other cooperation necessary and to make the equipment available to the Supplier for the purpose of carrying out the maintenance work. If the Client fails to lend the cooperation requested, the Supplier may suspend or limit the maintenance work. If the Supplier is providing maintenance services on the basis of information to be submitted by the Client, this information shall be prepared by the Client in accordance with the conditions to be imposed by the Supplier and provided at the risk and expense of the Client.
- 3.5 Before making the equipment available to the Supplier for maintenance, the Client shall ensure that a full and properly functioning backup copy is made of all software and data installed or stored in or on the equipment. Any

- liability on the part of the Supplier for the scrambling or loss of data or software as a result of the maintenance work or due to failure to advise the Client to make a backup copy shall be excluded.
- 3.6 At the request of the Supplier, an employee of the Client who has expert knowledge in this area shall be available for consultation during the maintenance work. The Client shall be entitled to remain present during all activities carried out on the Client's behalf.
  - 3.7 The Client shall be authorised to connect equipment and systems not provided by the Supplier to the equipment sold to the Client, and to install software that has not been provided by the Supplier on this equipment. The costs associated with investigating and rectifying breakdowns arising from the connection of equipment not provided by the Supplier or the installation of software not provided by the Supplier shall be borne by the Client.
  - 3.8 If the Supplier deems it to be necessary to test the connections between the equipment and other equipment or software for the purpose of carrying out maintenance work on the equipment, the Client shall make the other equipment and software in question, as well as the test procedures and data carriers, available to the Supplier. The Client shall guarantee that it is entitled to make this equipment and software available, and shall indemnify the Supplier against any claims by third parties in relation to the provision of this equipment and software and use by the Supplier of the equipment and/or software made available within the context of the maintenance work.
  - 3.9 The Client shall provide any test material required for the purpose of carrying out the maintenance work that does not form part of the Supplier's standard facilities.
  - 3.10 The Client shall provide the technical, physical and telecommunication facilities required in order to operate the equipment. The maintenance work shall explicitly not include the aforementioned facilities and connections.
  - 3.11 If the agreement stipulates that the service provided by the Supplier shall also include the provision of so-called 'standby services', the Supplier shall ensure that one or more members of staff are available during the days and times specified in the agreement. If this is the case, the Client shall be entitled to request urgent or immediate support from the members of staff on standby in the event of a serious breakdown in the operation of the equipment. The Supplier shall not guarantee that all breakdowns will be rectified should this situation arise.

#### **4. Service Level Agreement**

- 4.1 Any service level agreements shall in all cases only be entered into explicitly in writing. The Client shall notify the Supplier at all times of all circumstances that may affect the service and the availability of the service. If service level agreements are entered into, any periods of decommissioning announced in advance due to maintenance work or to circumstances outside of the Supplier's sphere of influence will not be taken into account when assessing availability. The assessment will be based on the service as a whole during the term of the agreement. Barring proof to the contrary, the availability measured by the Supplier shall be conclusive evidence.

#### **5. Term**

- 5.1 The agreement shall be entered into for the term agreed between the parties. If no term has been agreed, a term of one year shall apply. The term of the agreement shall be extended automatically by the term of the original period each time, unless the Client or the Supplier terminates the agreement in writing with due observance of a notice period of three months prior to the end of the period in question.

#### **6. Maintenance fee and payment**

- 6.1 Except where agreed otherwise, the maintenance fee shall not include:
  - the costs of (replacing) consumer items such as batteries, stamps, ink (cartridges), toner products, cables and accessories
  - the costs of (replacing) parts as well as maintenance services for the purpose of rectifying breakdowns that are partly or entirely the result of attempts to repair the equipment by anyone other than the Supplier
  - work in relation to the full or partial overhaul of the equipment
  - modifications to the equipment
  - the movement, relocation or reinstallation of equipment or activities as a result of this.
- 6.2 If an invoicing schedule has not been explicitly agreed, all amounts relating to the maintenance of equipment shall in each case be payable in arrears each calendar month. The Supplier may demand that an advance payment be made.
- 6.3 Except where agreed otherwise, maintenance fees shall be due as of the date on which the agreement governing the maintenance of the equipment in question commences. The maintenance fee shall be due regardless of whether the Client is using or has put the equipment into use, or whether it has taken advantage of the option to have maintenance work carried out.



## **7. Exclusions**

- 7.1 Activities in relation to the investigation or rectification of breakdowns resulting from or in connection with operational errors, improper use of the equipment or external causes, such as faults in communication lines, network connections or the electricity supply, or connections to hardware, software or materials that do not fall within the scope of the maintenance agreement, shall not form part of the Supplier's obligations pursuant to this maintenance agreement.
- 7.2 The Supplier's maintenance obligations shall also not include the investigation or rectification of breakdowns resulting from or in connection with any modifications to the equipment that have not been made by or on behalf of the Supplier, use of the equipment contrary to the applicable conditions and failure by the Client to arrange for maintenance work to be carried out on the equipment in a timely manner.
- 7.3 Except where agreed otherwise, the Supplier's maintenance obligations shall also not include the investigation or rectification of breakdowns resulting from or in connection with software installed on the equipment.
- 7.4 If the Supplier carries out investigations and/or maintenance work in relation to the provisions of Article 7.1, 7.2 and 7.3, the Supplier shall be entitled to invoice the costs of this maintenance work in accordance with its standard rates. This shall not affect the other fees payable by the Client in respect of maintenance work.
- 7.5 The Supplier shall under no circumstances be obliged to recover data that has been scrambled or lost as a result of breakdowns and/or maintenance work.

## **8. Miscellaneous**

- 8.1 The Supplier shall not guarantee that the equipment to be maintained will operate with no interruptions or other defects or that all defects will be rectified.
- 8.2 The Client shall bear the risk of loss or theft of, or damage to, the equipment during the period that the Supplier has the equipment in its custody for the purpose of carrying out maintenance work. The Client shall be responsible for arranging insurance cover in respect of this risk.



# ICT~Office Terms and Conditions

## Module 14 Internet access

*The ICT~Office Terms and Conditions are filed with the Chamber of Commerce for the Central Netherlands under number 30174840.*

### **1. Applicability**

- 1.1 The ICT~Office Terms and Conditions consist of the General module as well as one or more specific modules per product or service. The provisions of this module shall apply in addition to the provisions of the General module in the event that the Supplier provides services in respect of access to the internet.
- 1.2 The provisions of this module are inextricably linked with the provisions of the General module. In the case of conflict between the provisions of the General module and the provisions of this module, the latter shall prevail.

### **2. Services**

- 2.1 The Supplier shall provide the Client with the services agreed between the parties in respect of access to the internet in accordance with the specifications agreed in writing. After entering into the agreement between the parties the Client shall be granted access to the internet, whereby the Supplier shall observe its standard connection periods.
- 2.2 The Supplier shall be entitled at all times to impose reasonable restrictions in relation to the transmission speeds and the Client's volume of data traffic.
- 2.3 The Supplier shall only make efforts to make available one or more (leased) lines with a capacity agreed in writing between the parties where this has been agreed in writing. The Supplier shall at all times consider favourably any request by the Client for an increase in the capacity of a (leased) line, however the Supplier shall not guarantee that such requests will be granted in all cases. The Supplier shall be entitled to impose further conditions in the event that it grants such a request.
- 2.4 The Supplier shall at all times be entitled to change the content and scope of the agreed service in respect of access to the internet if it deems this desirable for technical or commercial reasons.
- 2.5 The parties shall agree on a location or point from which the Client shall be provided with access to the internet. If the Client wishes to change or move its connection to the internet, it shall submit a written request to the Supplier to grant its cooperation in this regard. The Supplier may not refuse to grant its cooperation to such a request on unreasonable grounds. The

Supplier may at any time attach (financial) conditions to the granting of such a request.

- 2.6 The Supplier shall provide all services on the basis of a best efforts obligation, unless and in so far as the Supplier has explicitly undertaken in the written agreement to achieve a specific result and the result in question is sufficiently determined.
- 2.7 Except where agreed otherwise, the Client shall be responsible for the use of the service and the way in which the results of the service are used. The Client shall also be responsible for training given to and use by users, regardless of whether or not there is a relationship of authority between the Client and these users.

### **3. Domain names**

- 3.1 Except where agreed otherwise in writing, the service provided by the Supplier pursuant to the agreement shall not include applying for and/or registering one or more domain names with a competent authority, or arranging for this to be carried out.
- 3.2 If, contrary to Article 3.1, the Supplier applies for and/or registers one or more domain names on behalf of the Client with or via the intermediary of a third party, the conditions imposed by the third party in question shall apply mutatis mutandis. Upon request, the Supplier shall provide the Client with a written copy of these conditions. All costs associated with the application and/or registration process shall be payable by the Client according to the agreed rates. If no rates have been agreed, the Supplier's standard rates shall apply.
- 3.3 The Supplier shall not guarantee that the domain name desired by the Client shall be assigned to the Client.
- 3.4 The Supplier shall not be responsible for the content and composition of the domain name or the use of the domain name. The Client shall guarantee the Supplier that it is entitled to use the domain name and that such use is not unlawful vis-à-vis one or more third parties. The Client shall indemnify the Supplier against any claims by third parties in relation to the domain name, even if the Client's domain name was not registered by the Supplier.

### **4. Facilities, IP addresses and other codes**

- 4.1 The Client must have access to facilities that are suitable for accessing the internet, such as -



- but not limited to - adequate hardware and software.
- 4.2 The Supplier shall deploy one or more IP addresses within the context of its service to the Client. The Supplier shall exclusively determine whether the Client shall be provided with a static or a dynamic IP address. The Supplier shall determine the format and standard of the IP addresses.
  - 4.3 The Client shall guarantee that IP addresses will not be misused in any way or under any circumstances.
  - 4.4 The Supplier shall provide the Client with the codes and settings required in order to access the internet from the Client's (computer) system. The Client itself shall be responsible for ensuring that these codes and setting are entered into its (computer) system correctly.

## **5. Misuse of the internet**

- 5.1 If the Supplier imposes general rules of conduct that apply to all of its clients, the Supplier shall issue these to the Client upon request and the Client shall be obliged to comply with these rules of conduct strictly and in full. The Client shall behave towards third parties with due care and in a lawful manner at all times and in all cases. The Client shall at all times specifically respect the intellectual property rights and other rights of third parties, as well as the privacy of third parties, and shall refrain from distributing data in contravention of the law and from providing illegal access to systems, distributing viruses or other harmful programs, committing offences and from infringing any other statutory obligations.
- 5.2 With the aim of avoiding any liability vis-à-vis third parties or limiting the consequences of this, the Supplier shall be entitled to take measures in relation to an act or omission by or at the risk of the Client. The Client shall be obliged to remove information immediately at the first written request of the Supplier. If it fails to do so, the Supplier shall be entitled to prevent access to the internet at its own discretion. In the event of the infringement or imminent infringement of the provisions of Article 5.1, the Supplier shall also be entitled to refuse the Client access to the Supplier's systems with immediate effect and without prior notice. The foregoing expressly does not affect any other measures or the exercising of other rights by the Supplier vis-à-vis the Client. In this case, the Supplier shall also be entitled to terminate the agreement with immediate effect, without this resulting in any liability vis-à-vis the Client.
- 5.3 The Supplier cannot be required to form an opinion on the validity of the claims of third parties or of the Client's defence, or to become involved in any way in a dispute between the Client and a third party. The Client will need to

consult with the third party in question and provide the Supplier with information in writing that is properly substantiated with documents.

## **6. Faults**

- 6.1 If agreed between the parties in writing, the Client may notify the Supplier of a fault in writing in the manner specified by the Supplier. Where this is the case, the Supplier shall make efforts to rectify the fault in accordance with the agreements made between the parties in writing. If the Supplier deems the cooperation of the Client to be necessary or desirable for the purpose of investigating a fault, the Client shall grant any cooperation deemed by the Supplier to be useful, necessary or desirable. The Supplier shall be entitled to charge a fee if the fault is connected to negligent or improper use by the Client or failure to comply with instructions for use.
- 6.2 The Supplier shall at all times be entitled to close down access to the internet in part or in full.

## **7. Term**

- 7.1 The agreement shall be entered into for the term agreed between the parties. If no term has been agreed, a term of one year shall apply. The term of the agreement shall be extended automatically by the term of the original period each time, unless the Client or the Supplier terminates the agreement in writing with due observance of a notice period of three months prior to the end of the period in question.

## **8. Payment**

- 8.1 If an invoicing schedule has not been explicitly agreed, all amounts relating to the service provided by the Supplier shall in each case be payable in advance each calendar month.
- 8.2 The Client shall not be permitted to carry out activities intended to influence the amounts payable by the Client or to arrange for such activities to be carried out.

## **9. Guarantee**

- 9.1 The Supplier shall not guarantee the uninterrupted availability of the bandwidth agreed between the parties, where applicable. The Supplier shall also not guarantee that the Client will have uninterrupted and unlimited access to the internet at all times.

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# ICT~Office Terms and Conditions

## Module 15 Telecommunication services

*The ICT~Office Terms and Conditions are filed with the Chamber of Commerce for the Central Netherlands under number 30174840.*

### **1. Applicability**

- 1.1 The ICT~Office Terms and Conditions consist of the General module as well as one or more specific modules per product or service. The provisions of this module shall apply in addition to the provisions of the General module in the event that the Supplier provides fixed and/or mobile telecommunication services.
- 1.2 The provisions of this module are inextricably linked with the provisions of the General module. In the case of conflict between the provisions of the General module and the provisions of this module, the latter shall prevail.

### **2. Service**

- 2.1 The Supplier shall make every effort to provide the fixed and/or mobile telecommunication service agreed between the parties.
- 2.2 The Supplier shall make every effort to ensure that the service is provided with due care and in accordance with the arrangements and procedures agreed in writing with the Client, where applicable. The Supplier shall provide all services on the basis of a best efforts obligation, unless and in so far as the Supplier has explicitly undertaken in the written agreement to achieve a specific result and the result in question is sufficiently determined.
- 2.3 Except where agreed otherwise, the Client shall be responsible for the use of the service and the way in which the results of the service are used. The Client shall also be responsible for training given to and use by users, regardless of whether or not there is a relationship of authority between the Client and these users.

### **3. Assignment and retention of numbers**

- 3.1 The Supplier shall provide the Client with one or more telephone numbers for each connection, unless a telephone number that the Client is already using is accepted by the Supplier as a usable number.
- 3.2 If the Client already has one or more telephone numbers at its disposal, the Client may submit a request to retain these numbers in accordance with the Supplier's standard procedure. The Supplier shall refuse such requests in all cases if termination of the agreement with the previous telecommunication service provider proves impossible or if this previous provider refuses to cooperate in the

retention of the number. The Supplier shall be entitled to charge the Client a fee in respect of number retention.

- 3.3 The Supplier shall be entitled to change or withdraw telephone numbers as a result of legislation or regulations or any other reasons that make it necessary to change a number. The Supplier shall carry out a change in number no earlier than three months after the Client has received written notification of the change, unless it is necessary to carry out the change earlier. The Supplier shall under no circumstances be liable as a result of a change in number.
- 3.4 The Client shall only use the telephone numbers in accordance with the law.
- 3.5 On termination of the agreement, the Client may submit a written request to the Supplier to transfer the telephone number used to another supplier of telecommunication services that has entered into agreements with the Supplier in respect of number retention.
- 3.6 The Supplier shall at all times be entitled to change a telephone number provided, for example due to the relocation of the Client.

### **4. Decommissioning of connection**

- 4.1 The Supplier shall be entitled to fully or partly decommission one or more connections – temporarily or otherwise – at the Client's request or if the Client fails to meet one or more of its obligations pursuant to the agreement. The fixed (periodic) fees shall remain payable by the Client during this period of decommissioning.
- 4.2 With the exception of the provisions of the previous subclause, the Supplier shall at all times be entitled to fully or partly decommission (mobile) connections temporarily for any reason whatsoever. The Supplier shall notify the Client in advance and limit the duration of such periods of decommissioning within the bounds of reasonableness wherever possible.
- 4.3 The Supplier shall under no circumstances be liable vis-à-vis the Client for any losses or costs incurred as a result of a period of decommissioning.
- 4.4 The Supplier shall only resume the service upon the Client's written request. The Supplier may attach conditions to this and charge a reconnection fee.





## **5. Provision of information**

- 5.1 The Supplier is legally obliged to grant its cooperation to an authorised order for wiretapping issued pursuant to any statutory provision. The Supplier shall under no circumstances be liable for any losses incurred by the Client or any third party as a result of its cooperation with such a request.
- 5.2 The Supplier is obliged to exchange information on numbers with other service providers for the purpose of providing telecommunication facilities. The Supplier shall not guarantee compliance by other providers with the relevant legislation and regulations.

## **6. Service Level Agreement**

- 6.1 Any service level agreements shall in all cases only be entered into explicitly in writing. The Client shall notify the Supplier at all times of all circumstances that may affect the service and the availability of the service. If service level agreements are entered into, any periods of decommissioning announced in advance due to maintenance work or to circumstances outside of the Supplier's sphere of influence will not be taken into account when assessing availability. The assessment will be based on the service as a whole during the term of the agreement. Barring proof to the contrary, the availability measured by the Supplier shall be conclusive evidence.

## **7. Physical factors**

- 7.1 The Client acknowledges that telecommunication services can be negatively affected or temporarily or entirely unavailable in connection with physical factors (buildings, tunnels etc), and as a result of atmospheric conditions, interconnection faults and problems with the software used by the Supplier and/or the Client. The Supplier shall under no circumstances be liable vis-à-vis the Client for any losses or costs incurred as a result of such circumstances.

## **8. Improper use**

- 8.1 The Client shall not use the services, or allow the services to be used, for any purpose other than that envisaged by the Supplier.

## **9. Mobile telecommunications**

- 9.1 If the Supplier provides a mobile telecommunication service pursuant to the agreement, it shall issue a SIM card with a corresponding telephone number and security and access codes to each agreed end user, except where agreed otherwise in writing. The Supplier shall be entitled to replace this SIM card at any time, provided that the service remains available to the Client.

- 9.2 The Client shall be obliged to keep safe custody of the SIM card and the security and access codes issued or selected and to guarantee that the SIM card and codes do not fall into the hands of unauthorised individuals. In the event of loss of the SIM card or the security and access codes, the Client shall notify the Supplier in writing as soon as possible. At the Client's request, the Supplier shall then take the SIM card out of service as soon as reasonably possible. The Client shall be responsible for all costs incurred in connection with the use of the SIM card up to and including the time at which the Supplier receives the request to take the SIM card out of service.
- 9.3 The Supplier shall be entitled to change the settings of the SIM card (remotely).
- 9.4 The Client shall be obliged to return the SIM card to the Supplier on termination of the agreement or to destroy the SIM card at the Supplier's request, except where agreed otherwise in writing between the parties.
- 9.5 The Client shall under no circumstances be entitled to remove a block placed on equipment, explicitly including a SIM lock, or to arrange for this to be carried out.

## **10. Fixed telecommunications**

- 10.1 If the Supplier provides a fixed telecommunication service pursuant to the agreement, the Supplier shall provide the (leased) lines, equipment and services in accordance with the specifications agreed between the parties in writing.
- 10.2 Any equipment that is installed on the Client's premises for the purpose of providing a line or service shall remain the property of the Supplier, except where agreed otherwise between the parties in writing.
- 10.3 If the Client connects its own equipment to the connections provided by the Supplier, the Client shall ensure that this equipment meets the requirements imposed by or pursuant to the law.
- 10.4 If the Client wishes to change or move its fixed connection, it shall submit a written request to the Supplier to grant its cooperation in this regard. The Supplier may not refuse to grant its cooperation to such a request on unreasonable grounds. The Supplier may at any time attach (financial) conditions to the granting of such a request.
- 10.5 If the Supplier requires the cooperation of the Client in order to improve its service, the Client shall not refuse to grant such cooperation without good reason.

## **11. Term**

- 11.1 The agreement shall be entered into for the term agreed between the parties. If no term has been agreed, a term of one year shall apply. The term of the agreement shall be



extended automatically by the term of the original period each time, unless the Client or the Supplier terminates the agreement in writing with due observance of a notice period of three months prior to the end of the period in question. If the agreement refers to more than one service, either of the parties shall be entitled to terminate each service separately with due observance of the relevant provisions.

## **12. Payment**

- 12.1 If an invoicing schedule has not been explicitly agreed, all amounts relating to the service provided by the Supplier shall in each case be payable in advance each calendar month.
- 12.2 The Client shall not be permitted to carry out activities intended to influence the amounts payable by the Client or to arrange for such activities to be carried out.

## **13. Guarantee**

- 13.1 The Supplier shall not guarantee the uninterrupted availability of the fixed and mobile telecommunication networks.

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# ICT~Office Terms and Conditions

## Module 16 Financing and leasing of ICT

*The ICT~Office Terms and Conditions are filed with the Chamber of Commerce for the Central Netherlands under number 30174840.*

### 1. Applicability

- 1.1 The ICT~Office Terms and Conditions consist of the General module as well as one or more specific modules per product or service. The provisions of this module shall apply in addition to the provisions of the General module in the event of the financing and/or leasing of any objects.
- 1.2 The provisions of this module are inextricably linked with the provisions of the General module. In the case of conflict between the provisions of the General module and the provisions of this module, the latter shall prevail.

### 2. Financing

- 2.1 The agreement shall be entered into for the fixed term agreed between the Supplier and the Client.
- 2.2 The Supplier and the Client shall specify the entire (purchase) price of the object that forms the subject of the financing arrangement, the schedule for the regular payment of the instalments and the other conditions in writing in the agreement. The agreement provides for the payment of all instalments in full.

### 3. Payment

- 3.1 The Client undertakes to make all payments to the Supplier in legal Dutch tender, at no cost to the Supplier, and on the day that they become due and payable by means of transferring the sum to an account designated by the Supplier. The Client can only discharge from its obligations by paying the outstanding amount in the abovementioned manner.
- 3.2 By entering into the agreement, the Client grants the Supplier its irrevocable and unconditional permission to collect the amounts due from the Client by means of direct debit. The Client shall at all times ensure that its account contains sufficient funds and shall also grant all necessary cooperation to payment by direct debit.
- 3.3 Except where agreed otherwise, amounts shall in each case be payable in advance per calendar month. If default interest has been agreed, this shall be payable by the Client with effect from the first day of default.
- 3.4 The Supplier may decide to postpone payment of an instalment if the Client submits a request to this effect, accompanied by reasons, in

writing before the instalment in question falls due. If the Supplier grants a postponement, at the explicit request of the Client or otherwise, this shall take place subject to all rights.

- 3.5 The amounts received by the Supplier from the Client shall be deducted from the costs due in the first instance, then from the interest, and finally from the principal sum.

### 4. Protection of (intellectual) property rights

- 4.1 The Client shall be obliged to inform the Supplier immediately of any damage to, depreciation or loss of the object and to take all necessary measures, such as for the purpose of limiting further damage, and also follow any instructions issued by the Supplier in this regard in order to protect the Supplier's (intellectual) property rights as referred to in Articles 6 and 8 of the General module.
- 4.2 The object must be maintained in a good condition by the Client at its own costs and used for the agreed purpose. The Client shall not change the appearance or fitting out of the object, or rent out, sell or encumber, grant the enjoyment of or use the object contrary to any statutory provision.
- 4.3 The Client shall be obliged to notify any party that asserts any rights in respect of the object of the Supplier's (intellectual) property rights and to notify the Supplier immediately of such claims by third parties upon submission of all documentation.
- 4.4 The Client shall hold the object at its own expense and risk and shall ensure that it is kept and secured safely. The Client undertakes to arrange and maintain adequate insurance cover in respect of the object with an insurance company established in the Netherlands. The Supplier may impose further conditions in respect of the insurance.
- 4.5 The Client shall assign all rights in respect of the payment of insurance proceeds to the Supplier in advance on entering into the agreement. Insurance proceeds that are paid directly to the Client by the insurance company shall be deducted from the compensation to be paid by the Client to the Supplier.
- 4.6 The Supplier shall be entitled to inspect the object during normal working hours or to arrange for this to be carried out. The Client shall grant any cooperation desired by the



Supplier upon the Supplier's first written request.

## **5. Purchase option**

- 5.1 If it has been agreed that the (intellectual) property rights in respect of the object (or any part thereof) shall not be transferred from the Supplier to the Client until payment of a final optional instalment has been effected, the Client shall notify the Supplier in writing that it wishes to make use of this option no later than three months before the end of the term of the agreement.

## **6. Termination and implications**

- 6.1 The Client shall be in default vis-à-vis the Supplier if the Client fails to pay one or more instalments or fails to pay in a timely manner, or if it acts contrary to any of the obligations arising from this agreement.
- 6.2 If the Client is in default, the Supplier shall be entitled to terminate the agreement with immediate effect by means of a written declaration and without bringing the matter before the Court, to immediately regain custody of the object and to exercise all other rights conferred by law.
- 6.3 With the exception of termination on the grounds of Article 11 of the General module, termination of the agreement by the Client shall be excluded.
- 6.4 Termination of the agreement shall not affect any of the Client's obligations vis-à-vis the Supplier and shall mean that all amounts owed by the Client become immediately due and payable.
- 6.5 The termination or declaring of the agreement to be void as a result of defects in or circumstances relating to the object or the use of the object shall be explicitly excluded.

## **7. Return**

- 7.1 If the agreement explicitly stipulates that the Client shall be entitled to return the object or if the Supplier exercises its right to reclaim the object, the object must be provided to the Supplier in good condition and at a time and place to be designated by the Supplier. The Client shall be obliged to reimburse any costs of repairs to, the replacement or depreciation of the object or parts thereof. The object must be returned to the Supplier in its original, working and acceptable condition. The Client shall ensure that the object is packaged and transported in a sound manner. The Client shall be obliged to remove any parts, facilities, data and software that do not form part of the object. If the Client fails to do so, the Supplier may proceed to carry this out without this leading to any obligations on the part of the Supplier.

## **8. Provision of security and transfer**

- 8.1 Upon the Supplier's first request, the Client shall be obliged to provide security in respect of compliance with all of its obligations vis-à-vis the Supplier. If the security provided is or becomes insufficient, the Client shall be obliged to supplement or replace the security upon first request.
- 8.2 The Supplier shall be entitled to transfer the legal relationship with the Client to a third party.

## **9. Administration and execution of the agreement**

- 9.1 The Client shall notify the Supplier in writing in advance of any changes to the Client's address and the location of the object.
- 9.2 The relevant documents or information from the Supplier's administration shall serve as prima facie evidence of the amounts owed by the Client to the Supplier, unless the Client submits proof to the contrary.
- 9.3 If the Supplier has made an error in the execution of the agreement, the Client shall be obliged to notify the Supplier immediately on discovering the error and to grant its full cooperation to the rectification of the error.

## **10. Additional services and additional costs**

- 10.1 Regardless of the description of the agreement, the price or the periodic fee, the agreement shall only include the services explicitly agreed in writing between the Supplier and the Client.
- 10.2 If additional services form part of the agreement, the Supplier shall be entitled to impose additional or amended conditions and to pass on changes in the costs of these services, such as those of insurance premiums, maintenance costs, taxes, government levies and the hourly rate imposed by the Supplier in respect of services, on to the Client.
- 10.3 If and in so far as the agreement explicitly stipulates that the Supplier shall be responsible for replacing the object, the Supplier shall ensure that the Client is provided with an object that the Supplier deems to be equivalent to the original object or that has a similar functionality. The provisions of the agreement shall apply to the replacement object in full. Except where agreed otherwise, the costs of replacement shall be borne by the Client.

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