

## GENERAL TERMS & CONDITIONS – SERVICE

### 0. Definitions

**General Terms & Conditions:** The present document titled “*General Terms & Conditions*”, including its appendices.

**General (License) Terms & Conditions of Third-Party Suppliers:** The applicable general (license) terms & conditions (including payment terms) relating to the products delivered by Service Provider and/or embedded Products of Third-Party Suppliers, as well as any Third-Party terms of service provided by the maintenance services, as amended from time to time, which the Customer hereby expressly and completely accept and which forms an integral part of this Contract.

**Bugs:** An error, flaw, malfunction or defect in a computer program or system, as a result of which it does not (entirely) fulfil its function according to specifications and leads to incorrect and/or unexpected results and/or program crashes or shutdowns.

**Data:** The totality of data belonging to the Customer and/or the Users to which the Service Provider gains or can gain access to within the framework of the service. The Customer remains at all times fully responsible for this Data.

**Third-Party Suppliers:** Third parties, more specifically producers and/or suppliers of hard and/or software specified in the Specific Terms & Conditions, for which the Service Provider acts as a reseller and/or the one included by the Service Provider in its Services, including the maintenance services of these Third-Party Suppliers for the hardware and/or software.

**Services:** The services that the Service Provider shall provide to the Customer, as described in the Specific Terms & Conditions. These services are governed at all times by the General and Specific Terms & Conditions.

**Services on Time & Material Basis:** Services provided by the Service Provider to the Customer, which are thus invoiced to the Customer per hour and/or per day.

**Services on Fixed Price Basis:** Services provided by the Service Provider, for which the Parties have agreed on a fixed price and for which, if applicable, the General Terms & Conditions [...] - Fixed Price also applies.

**Service Provider:** iAdvise BV located in Breda, registered in the Chamber of Commerce under number 71914374.

**Own Development Products:** The hardware and/or software developed by the Service Provider, and to which the general (license) Terms & Conditions of the Service Provider apply in full, and which may also include Third-Party Products.

**User(s):** The end consumer(s). Depending on the Services provided, these are the customers of the Customer and/or the employees/staff or other (third-party) authorized agents of the Customer, to whom the Customer grants permission to use the Products/Services/IaaS, PaaS and/or SaaS. The Customer is exclusively responsible for the Users to whom it provides access.

**IaaS (“Infrastructure as a Service”):** is the most "stripped down" form of cloud computing, in which a processing capacity (a virtual server) and/or storage capacity is offered as a service. The Customer is thus not required to invest in its own IT hardware. The storing of applications or data within the infrastructure (the purchased processing and/or storage capacity) is the full responsibility of the Customer. This concerns the capacity provided to the Customer for the provision of processing, storage, network and other basic IT resources with which the Customer can run and roll out any software, which may include operating systems. The underlying cloud infrastructure is not managed or controlled by the Customer and, for which, if applicable, the General Terms & Conditions [...] - General Cloud Terms & Conditions (IAAS, PAAS, SAAS) are additionally applicable.

**Customer:** The Customer stated in the Specific Terms & Conditions/purchase order.

**Employees:** Personnel Members, personnel members of Affiliated Companies, independent employees, subcontractors, consultants, and any other natural or legal persons directly or indirectly involved in the provision of the Services.

**Contract:** These General Terms & Conditions, the Specific Terms & Conditions and the General (License) Terms & Conditions of Third-Party Suppliers, as well as the appendices of this contract, which form an integral part thereof, if and insofar applicable.

**Force Majeure:** The situation in which one of the Parties is impeded in the performance of the Contract, whether in whole or in part and whether temporarily or permanently, beyond the control of the Party or Parties. This includes (but is not limited to): fire, war, terrorist attacks, unfavourable weather conditions, natural disasters, force majeure of the suppliers/subcontractors, Service Provider, failure to properly fulfil obligations of suppliers prescribed by Customer to Service Provider, defective goods, equipment, software or materials of third parties whose use is prescribed by the Customer to the Service Provider, government measures, Internet disruption, data network or telecommunications facilities, the unavailability of third-party servers, Bugs in the software of third parties, strikes, unavailability of Employees, general transport problems and power failure. All this regardless of whether the force majeure occurs at the Service Provider or at one of its suppliers.

**PaaS ("Platform as a Service"):** The development platform that consists of a collection of standard services on the basis of which a developer can quickly develop (own) (web) applications. The PaaS services enable organisations to quickly develop new (web) applications. The final application remains the exclusive responsibility of the Customer and for which, if applicable, the General Terms & Conditions [...] - General Cloud Terms & Conditions (IAAS, PAAS, SAAS) are additionally applicable.

**Party/Parties:** Service Provider and/or the Customer.

**Products:** The Products of Third-Party Suppliers and/or Own Development Products.

**Products of Third-Party Suppliers:** The hardware and/or software for which the Service Provider acts as a reseller and/or is (partially) included in Own Development Products and/or IaaS, PaaS or SaaS solution(s) offered by the Service Provider, and on which the General (License) Terms & Conditions of Third-Party Suppliers apply in full.

**Assignment:** The totality of reciprocal services and cooperation between the Parties as described in the Specific Terms & Conditions.

**SaaS ("Software as a Service"):** is a ready-made application of the cloud computing services, whereby the Customer uses the standard functionality as offered by the Service Provider of the SaaS service. In most cases, the Service Provider in turn uses one or more underlying cloud services. It concerns the capacity provided to the Customer to use the Service Provider's applications running on

the cloud infrastructure. The applications are accessible from various devices of the Customer via an interface provided by the Customer (such as a web browser) or a program interface. The underlying cloud infrastructure, including the network, the servers, the storage, the operating systems and even the individual application possibilities, is not managed or controlled by the Customer, with the possible exception of limited user-specific configuration settings of applications, and for which the General Terms & Conditions [...] - General Cloud Terms & Conditions (IAAS, PAAS, SAAS) also apply, if applicable.

**Specific Terms & Conditions:** Contract/purchase order subject to these General Terms & Conditions and describing the specific performance modalities of this Contract.

**Consultant:** The Employee(s) who the Service Provider appeals to for the performance of this Contract.

**Affiliated Company(-ies):** Company(-ies) within the meaning of article 24 a and b of the Civil Code Book 2 Legal Persons.

**Confidential Information:** All information, in any form whatsoever (oral, written, graphic, electronic, etc.) exchanged between the parties within the context of this Contract.

## 1. Contracting, duration and termination

1.1. All offers and other expressions by the Service Provider are without obligation, unless the Service Provider states otherwise in writing. The Customer guarantees the correctness and completeness of the data provided by or on behalf of the Service Provider on which the Service Provider has based its offer.

1.2. The Service Provider is only bound to perform the Contract after its explicit acceptance of the order for the Products and/or Services in writing.

1.3. If the Service Provider deals with the order or the Services stated in the Specific Terms & Conditions at the request of the Customer before the Contract has been signed, then the processing of the order and/or the start of the Services shall be deemed to be an acceptance of the General Terms & Conditions, the Specific Terms & Conditions and the applicable General (License) Terms & Conditions of Third-Party Suppliers. By installing the Products or by downloading or using them, the Customer accepts and takes notice of these General Terms & Conditions, the Specific Terms & Conditions, as well as any General (License) Terms & Conditions

of Third-Party Suppliers and/or any general license terms & conditions of the Service Provider.

1.4. If and in so far as the Contract concluded between the Parties is a continuing performance agreement, the Contract is entered into for the term agreed between the Parties as stated in the Specific Terms & Conditions and, if this agreement does not exist, a term of one year applies.

1.5. The term of the Contract is tacitly renewed every time for the duration of the originally agreed period, unless the Customer or Service Provider terminates the Contract in writing with due observance of a notice period of three months before the end of the relevant period.

1.6. Without prejudice to its entitlement to compensation of damages, the Service Provider may, at its own discretion, suspend the Contract, or terminate or rescind the Contract by operation of law, with no notice of breach required, with immediate effect and without judicial intervention, by the simple delivery of a registered letter:

- (a) in the event of repeated or serious violation of the contractual obligations (such as late payment and/or non-payment on any individual payment deadline) by the Customer;
- (b) in the event that the Customer - whether or not provisionally - is granted a suspension of payment, or is in a state of bankruptcy or discontinuation of payment or his credit line is in jeopardy or is obviously insolent, or if the Customer's company is liquidated or terminated other than for the purpose of reconstruction or a merger of companies;
- (c) if the decisive control over the business of the Customer directly or indirectly changes;
- (d) In the event the Customer refuses to sign, confirm or accept the time sheet or any other time accounting system without valid reason;
- (e) the Customer offers an agreement to its creditors or discontinues the business;
- (f) should any or all of the assets of the Customer be under foreclosure and/or a garnishment order at the request of a creditor or in the event of other executive or protective measures with respect to the Customer's assets;
- (g) in the event of proof or serious suspicions of fraud committed by the Customer;
- (h) in the event that the Customer refuses to provide the requested information or has provided incorrect and/or false information.

The Service Provider is never obliged to refund any amounts already received or to pay damages due to the termination as referred to in Article 1.6.

In the event that the Customer is irrevocably bankrupt, the Customer's right to use the software, websites and other products supplied by the Service

Provider will automatically end, as well as the Customer's right to access and/or use the services of the Service Provider, without a cancellation procedure being required on the part of the Service Provider.

1.7. Further, either Party may terminate the Contract if the other Party commits a demonstrated serious error or material Contractual failure and does not rectify this within a period of thirty (30) calendar days after being notified by registered letter of default by the Party invoking the error or failure. Extension of the aforesaid period for remedy of the default will not be refused on unreasonable grounds if during the remedy period of thirty (30) calendar days the Party in default has commenced remedying the default and is making reasonable efforts to continue to do so.

1.8. The Service Provider is entitled to suspend its obligations automatically by sending a mere notification to the Customer by registered letter, if the Customer does not fulfil its obligations under this Contract, so the Service Provider can suspend the services provided and/or cease and/or disable software.

1.9. Excepting where the Customer terminates the Contract based on serious error or material failing on the part of the Service Provider, the Customer shall compensate the Service Provider for all ordered products and the Services performed and hours worked at the moment of termination. The effective work hours performed at the moment of termination shall be billed at the Service Provider's applicable hourly rates, without prejudice to the Service Provider's option to use any and all legal means to demonstrate any damages suffered in excess thereof.

1.10. If the Contract is rescinded by one of the Parties, this rescission is considered to be effective as from the date of the postmark of the registered letter giving notice that the Contract is rescinded.

1.11. If the Contract is entered into for a definite period of time, the Customer is not entitled to terminate the Contract prematurely.

1.12. If an agreement which, by its nature and content, does not end with completion, has been concluded for an indefinite period of time, it can be terminated in writing by either party after proper consultation and stating the reasons therefore. If no notice period has been agreed between the Parties, a reasonable period must be observed in the case of the termination. The Service Provider will never be obliged to pay any compensation for termination.

## **2. Price and payment modalities**

2.1. The Customer undertakes the obligation to pay a fee equal to the number of (hours) days of performance times the rates for consultancy services agreed in the Specific Terms & Conditions. Unless otherwise agreed in the Specific Terms & Conditions, a minimum intervention will be at least four (4) hours. Any estimates in, for example, price or time quotations from the Service Provider are purely indicative.

The price and payment modalities for the Products are laid down in the Specific Terms & Conditions.

The Service Provider is in all cases entitled to adjust the prices for Products and Services by means of a written notification to the Customer if this is the result of a price adjustment by its Third-Party Suppliers or due to exchange rate differences.

2.2. The fees are in euros and exclude VAT (revenue tax) and any other levies imposed or to be imposed by the government. Unless otherwise stated in the Specific Terms & Conditions, these fees exclude travel times, incidental expenses and all other reasonable costs. All these costs are to be borne by the Customer.

2.3. If, according to the Contract concluded between the Parties, the Customer consists of several natural persons and/or legal entities, each of those (legal) persons shall be jointly and severally liable towards the Service Provider to perform the Contract.

2.4. The Service Provider is entitled to adjust the applicable prices and rates annually in writing, in accordance with the consumer price index published by the Dutch Central Bureau of Statistics.

2.5. The Service Provider shall take all reasonable steps to perform the Services in accordance with the Customer's work schedule. Barring any agreement to the contrary between the Parties, the work schedule will be assumed to be 40 hours per week. If there are more than 40 hours, the following increases are applied (not cumulated):

- performance 40 hours/week: + 50%;
- performance > 8 hours/day: + 50%;
- performance between 10 PM and 7 AM: + 100%;
- performance on Saturday: + 50%;
- performance on Sunday or public holiday: + 100%.

2.6. Barring a Contract in writing between the Parties to the contrary, the Consultant will have his/her performance hours signed off by the Customer in the form of timesheets or some other timekeeping system agreed between the Parties.

2.7. In the event of a sudden fundamental change in circumstances with an effect on the agreed price that was both unforeseeable at the time of the determination of the price and that constitutes a disruption of the contractual equilibrium, then, upon demand by either Party, the Parties will meet to agree on a reasonable adjustment of the Contract. If the Parties are unable to reach a consensus after thirty (30) calendar days from the moment of the request to adjust the Contract, either Party has the option to cancel the Contract by virtue of notice by registered letter with a notice period of thirty (30) calendar days, without giving rise to any obligation for compensation on the part of the cancelling Party.

2.8. The Parties should determine the date or dates in the Specific Terms & Conditions on which the Service Provider will invoice the fees for the agreed performance to the Customer. Excepting where agreed otherwise in the Specific Terms & Conditions, the Service Provider shall invoice the Customer on a monthly basis. All invoices are payable thirty (30) calendar days after the date of invoice, unless specified otherwise in the Specific Terms & Conditions. The absence of written contestation of an invoice within eight (8) business days from the date of sending of the invoice constitutes irrevocable acceptance of the invoice, the Products mentioned therein, any corresponding maintenance agreements and/or the Services listed therein.

2.9. If the Customer does not pay the amounts due or does not pay them on time, the Customer is liable to pay statutory interest on trade agreements for the outstanding amount, without the need for a reminder or notice of default. This interest is calculated as from the deadline for payment of the invoice up until the date of full payment.

2.10. In the event of late payment of an invoice:

- (i) the Service Provider is entitled to increase the amount of invoice by 15% as compensation;
- (ii) all costs, the extrajudicial collection of the invoice, and the costs of legal proceedings and enforcement are to be borne by the Customer;
- (iii) all claims against the Customer not yet due are immediately incurred, exigible and payable; and
- (iv) The Service Provider is entitled to suspend all its Services in regard to the Customer without prior notification.

This is without prejudice to the other legal and contractual rights of the Service Provider.

2.11. The Customer is not entitled to settlement of the amounts owed or suspension of any payment.

2.12. Payments made by the Customer to the Service Provider will be charged initially to the costs incurred by the Customer, then to the interest owed and, only in the last instance, to the principal owed.

2.13. The Service Provider reserves the ownership of the delivered hardware until the Customer has paid the invoice in full, including interest and damage clause (retention of ownership).

2.15. If in the opinion of the Service Provider, the Customer's creditworthiness so dictates, the Service Provider may, even after the signing of the Contract, require the Customer to furnish security requested by the Service Provider for the payment of the Services yet to be provided, and the Service Provider may suspend performance as long as the security is not furnished.

2.16. The Customer may not derive any rights or expectations from a preliminary calculation or budget issued by the Service Provider, unless the Parties have agreed otherwise in writing. An available budget made known by the Customer to the Service Provider only applies as a (fixed) price agreed between the Parties for the services to be provided by the Service Provider if and insofar as this has been expressly agreed in writing.

2.17. If, without valid reason, the Customer cancels its order in whole or in part or remains in default of receiving and accepting any or all of the Products and/or Services provided without valid reason, the Service Provider is entitled to rescind the Contract or demand fulfilment. The damages suffered by the Service Provider will be a minimum of 50% of the value of the order or the unfulfilled portion thereof, without prejudice to the Service Provider's right to demonstrate actual damages suffered, using any and all means to do so, if such damages are greater.

### **3. Implementation modalities and cooperation obligations**

3.1. The Service Provider undertakes to execute the Services to the best of its ability on behalf of the Customer and/or the Products listed in the Specific Terms & Conditions and to provide any (maintenance) services that may be required. The Service Provider will take the technical instructions and guidelines it receives from the Customer into account.

3.2. The Customer declares that it has been fully informed by the Service Provider concerning the options for the Products and/or Services (type, characteristics, operation, use potential and limitations, warranties, required environment, costs)

as well as in regard to the issues of modification, installation or integration and expansion that may arise and the impact of this on the existing hardware and/or software and/or licenses already installed at the Customer's. The Parties agree that the Service Provider cannot be held liable for this.

3.3. The Customer bears full liability for the selection of the Products and/or Services as well as for errors and/or omissions in the order of the Products and/or Services. The Service Provider is fully informed concerning the needs and expectations of the Customer exclusively in the form of the Specific Terms & Conditions. The contractual obligations of the Service Provider can only be derived from the Contract. The Products and Services shall be developed and/or delivered by the Service Provider in the state in which they are at the moment of delivery (as is), and therefore with all visible and invisible errors and defects. Under no circumstances does the Service Provider warrant the suitability or marketability of the Products and/or Services for the performance of specific tasks envisioned by the Customer unless said tasks are explicitly covered in the Specific Terms & Conditions and/or the description of the functional specifications. As a consequence, the Customer is itself responsible for the order, the suitability of the Products and/or Services rendered to achieve the results intended by the Customer. Under no circumstances can the Service Provider be held liable in the event of incorrect services and/or an incorrect choice of product or failings in product specialization in the Specific Terms & Conditions.

3.4. Insofar as the Specific Terms & Conditions do not refer to any other capacity of the Customer, the Customer is irrevocably deemed to be a professional user acting in the context of its professional activities. The Customer is deemed to possess the relevant know-how in relation to the Products and/or Services to be performed, and to provide personnel with the relevant expertise.

3.5. For the performance of this Contract the Service Provider will draw on the services of one or more Consultants. The Service Provider reserves the right to determine what Consultant shall be assigned to the performance of the Services, and to replace the Consultant as the Service Provider sees fit throughout the duration of the Contract.

3.6. Where deemed necessary or desirable by both Parties, the Parties may also agree to charge another Consultant with the performance of the Contract, either temporarily or permanently.

3.7. If the Consultant does not or no longer meets the set requirements, brings the Customer's

good name into disrepute or does not perform or no longer performs the Contract in accordance with any reasonable definition, the Customer is entitled to request the Service Provider to replace the Consultant. This does not discharge the Customer from its obligation to continue to pay for the Services performed by the Consultant. If the Service Provider agrees to the replacement of the Consultant, it undertakes the obligation to provide the Customer with a replacement as quickly as reasonably possible. If the Service Provider is unable to provide a qualified replacement within a term of two (2) weeks, the Customer is entitled to terminate the portion of the Contract pertaining to the Consultant to be replaced.

3.8. If during the term of the Contract the material specifications for the performance of the Contract change, the Customer will compensate the Service Provider for the additional training of the Consultant. If the Customer itself provides a training to the Consultant, then barring any provision to the contrary in the Specific Terms & Conditions the costs for this training are to be borne by the Customer.

3.9. To the extent possible, the Service Provider must report any scheduled interruptions of the performance of the Services (such as short-term illness, Consultant leave days, etc.) to the Customer in a timely manner.

3.10. Unless otherwise specified in the Specific Terms & Conditions, the Services are to be performed in the spaces of the Customer. The Customer will give the Service Provider free access to the work environment and provide the necessary facilities, such as a workspace with computer, printer, data, Internet, telephone and network facilities. If required, the Customer must provide all necessary security measures, such as but not limited to VPNs and tokens. Additionally, the Customer will make arrangements for the required facilities for the design, testing and operational use of the ICT system to be developed. If the Service Provider deems this necessary, the system and related services (system administration) of the Customer must also be available outside normal business hours. the Service Provider is not liable for damage or costs due to transmission errors, malfunctions or non-availability of these facilities, unless the Customer proves that such damage or costs are the result of intent or deliberate recklessness on the part of the Service Provider's management.

3.11. The work space and facilities will be in compliance with all requirements of law. The Customer indemnifies the Service Provider against claims of third parties, including the Employees of the Service Provider, who suffered damages in connection with the performance of the Contract and

resulting from the acts or omissions of the Customer or from unsafe situations in the Customer's organisation. The Customer shall notify the Consultant(s) of the house rules and safety procedures prior to the start of the Services.

3.12. The setup and alteration of the location where the Services will be carried out, at the Customer's expense, with the Customer being liable for all damages and associated costs incurred by the Service Provider as a result of late, incorrect or faulty performance thereof.

3.13. If the unavailability of employees and/or facilities and/or material of the Customer reasonably deemed necessary for the performance of the Services result in extra costs, including but not limited to extra time spent by Employees of the Service Provider, these extra costs will be invoiced to the Customer.

3.14. The Parties acknowledge that the success of activities in the field of information and communication technology depends on timely cooperation. The Customer shall at all times promptly grant all reasonable cooperation desired by the Service Provider. The Customer shall at all times promptly grant all reasonable cooperation desired by the Service Provider and/or provide crucial information.

3.15. If the Customer employs his own personnel and/or auxiliary staff during the execution of the Contract, these personnel will have the necessary knowledge and experience at their disposal.

3.16. The Service Provider provides the Services within the limits of this Contract and the information provided by the Customer. The Customer warrants the accuracy, completeness and timeliness of the information it provides, stated dimensions, requirements, specifications of the Services and other data crucial to allow the Services Provider to fulfil the obligations under this Contract. The Customer indemnifies the Service Provider for all damages resulting from incorrect, late or incomplete provision of information.

3.17. If the Customer provides software, equipment or other resources to the Service Provider in connection with the Products and Services of the Service Provider, the Customer is solely responsible for obtaining all necessary licenses and/or approvals with regard to these resources that the Service Provider may require.

3.18. The Customer is responsible for the management, including monitoring of the settings, the correct use of the Products and/or Services

provided by the Service Provider and the manner in which the results of the Products and Services are used. The Customer is also responsible for the instruction of Users, as well as their use.

3.19. The Customer shall install, set up, parametrize, refine the (auxiliary) software needed on its own hardware and, if necessary, adapt the equipment used for this, including other auxiliary equipment, other auxiliary software operating environments and ensure the interoperability required by customers.

3.20. The Service Provider is only obliged to periodically provide the Customer with information on the execution of the work through the contact person appointed by the Customer.

3.21. Under normal circumstances the Customer shall at all times bear the end responsibility for the running projects of which the Products and Services of the Service Provider may be a part.

3.22. The performance is rendered by the Service Provider with all due care that can be reasonably expected in accordance with the state of the art.

#### **4. Products of Third-Party Suppliers**

4.1. Products of Third-Party Suppliers and/or open source technology may be required for the delivery of the Services.

4.2. If Products of Third-Party Suppliers and/or open source technology is being offered as a part of the Services provided by the Service Provider, the Customer agrees that such Products from Third-Party Suppliers and open source technologies are licensed under the terms & conditions and modalities of the respective Third-Party Supplier's General (License) Terms & Conditions and not under the Terms & Conditions of this Contract. Any General (License) Terms & Conditions of Third-Party Suppliers shall apply fully and form an integral part of the present Contract.

4.3. The Customer hereby expressly accepts the applicability of the General (License) Terms & Conditions of Third-Party Suppliers as amended from time to time, and the Customer acknowledges to have taken notice. If Parties agree that new Products from Third-Party Suppliers and/or open source technology will be used in the implementation of the Services, the applicable General (License) Terms & Conditions of Third-Party Suppliers will automatically become part of the present Contract and will be applicable to the Customer, who will strictly comply with them.

4.4. The Customer accepts that the Service Provider is not liable for Products of Third-Party

Suppliers and/or open source technology, nor the related maintenance agreements.

4.5. If and to the extent that the aforementioned General (License) Terms & Conditions of Third-Party Suppliers, for whatever reason shall not apply to the relationship between Customer, Service Provider and Third-Party Suppliers or if these General (License) Terms & Conditions of Third-Party Suppliers are declared inapplicable, the provisions of this Contract will be integral, and fully applicable.

4.6. The Customer may no longer exercise rights regarding the open source technology and/or Products provided by the Third-Party Suppliers than in the corresponding General (License) Terms & Conditions of Third-Party Suppliers.

4.7. The Customer is exclusively responsible for the compliance with all license (information) obligations and the associated usage limits.

4.8. The Service Provider is not responsible for any activities and/or orders that take place under the account keys (obtained from the Service Provider and/or Third-Party Suppliers that provide direct access to Services), regardless of whether these activities have carried out by the Customer or a third party (including Customer's Employees). The Service Provider is also not responsible for unauthorized access to these accounts.

4.9. The Customer acknowledges that the Service Provider is not liable for any Third-Party Products and open source technology which was introduced in the environment by the request of the Customer himself and the related maintenance services. The Customer will only be able to address the Third-Party Suppliers within the limits of the relevant General (License) Terms & Conditions of the Third-Party Supplier or of the maintenance agreement. The Customer guarantees that he has received the commercial rights to use the rolled-out applications on the virtual machines. The above provisions also apply to any changes, updates or upgrades.

4.10. The Customer is aware that installation of the Third-Party Supplier Products supplied by the Service Provider may have consequences for the existing hardware and/or software and/or the licenses already installed at the Customer. The Parties agree that the Service Provider cannot be held liable for this.

4.11. The Service Provider is not liable for damage caused by the use of the Products purchased from Third-Party Suppliers by the Customer or for damage caused by the Customer's non-compliance with the present Contract, the Specific Terms &

Conditions and/or the General (License) Terms & Conditions of Third-Party Suppliers. The Customer undertakes to indemnify the Service Provider and hold it harmless against any reimbursements, losses, liabilities, damages, costs or expenditures that the Service Provider may suffer or incur as a result of the use of the open source technology and Products of Third-Party Suppliers and/or the Customer's non-compliance with the General (License) Terms & Conditions set forth above as well as against claims and settlements with any third parties.

**5. Terms**

5.1. The (interim) delivery dates specified by the Service Provider or agreed between the Parties always apply as target dates, are not binding for the Service Provider and are always indicative in nature.

**6. Confidentiality**

6.1. Confidential information is defined as all information of any form whatsoever (oral, written, graphic, electronic, etc.) exchanged between the Parties in the context of this Contract. Information shall be regarded as confidential if it has been designated as such by one of the Parties or regarded as confidential by a reasonably careful and trustworthy person. The Customer acknowledges that the software originating from the Service Provider is always of a confidential nature and that it contains business secrets of the Service Provider, its suppliers or Third-Party Suppliers.

6.2. Each Party and its Employees must keep confidential all confidential information received from the other Party in the performance of this Contract. Additionally, the Parties may only use the confidential information for the purposes of this Contract. The Parties may not disclose the confidential information to third parties without the written consent of the other Party.

6.3. The confidentiality obligation shall continue to exist for a period of three (3) years after disclosure, and will in any event end no later than three (3) years after the end of this Contract, regardless of the cause of the termination of the Contract.

6.4. The following are not considered to be confidential information:

- (a) information obtained legally from a third party not bound by any confidentiality obligation or secrecy;
- (b) information that a Party already knew before it was provided for the purposes of this Contract;
- (c) information a Party developed independently without violating this Contract;

(d) information that came into the public domain without the doings or error of the Party receiving the information;

(e) information that must be made public pursuant to a judicial or administrative decision.

6.5. The Service Provider may also include the Customer in its customer list, publish a brief description of the assignment and use the Customer's name and trademark for publicity purposes and PR activities.

6.6. The Customer hereby explicitly acknowledges and accepts the confidentiality clauses in the General (License) Terms & Conditions of Third-Party Suppliers.

**7. Intellectual Property Rights**

7.1. All intellectual property rights on the Products and/or the results of the Services of the Service Provider are exclusively vested in the Service Provider and/or Third-Party Suppliers, its licensors or its suppliers. Excepting where stated otherwise in the Specific Terms & Conditions, the Service Provider extends the Customer a limited, non-exclusive, non-sublicensable, non-pledgeable and non-transferable right of use in respect of the Products and/or results of the Services it performs, as from the moment of full payment of all invoices as well as all other amounts that the Customer owes as a result of the failure in payment obligation. The Customer shall only use the Products and/or results of the Services in the manner prescribed by the Service Provider.

7.2. The General Terms & Conditions and modalities related to the intellectual property rights and usage rights, as contained in the relevant General (License) Terms & Conditions of these Third-Party Suppliers, are fully applicable to the Products of Third-Party Suppliers. The Customer indemnifies the Service Provider for all damages, claims and liabilities arising from an infringement of the intellectual property rights of Third-Party Suppliers.

7.3. The risks associated with the Products and Services provided transfer to the Customer at the moment of delivery. The delivery Terms & Conditions of Third-Party Suppliers are directly applicable to the Customer.

7.4. The Customer is not permitted to remove or alter any indication concerning the confidential nature pertaining to copyright, trademark, trade name or any intellectual or industrial property right from the software, websites, databases, equipment or materials.

7.5. If a third party institutes a claim against the Customer because of a deliberate violation of his or



her intellectual property rights by the Service Provider, the Service Provider will, at its own expense, either (i) defend the Customer against such legal action and indemnify damage and costs assigned by a court to the claimant third party, or (ii) reach an amicable settlement with this third party regarding the dispute with the Customer.

The aforementioned obligation is only entered into if and insofar as:

- The Customer notifies the Service Provider in writing within seven (7) calendar days after the Customer has received the claim, or as soon as required by law, and;
- The Service Provider has exclusive control over the defence or settlement of such a claim, and;
- The Customer assists the Service Provider and cooperates with the Service Provider at first request and covers the costs the Service Provider in the defence or settlement of such claims.

7.6. If the Product and/or the result of the Services delivered by the Service Provider violates the intellectual property rights of third parties or, in the opinion of the Service Provider, could potentially violate them, the Service Provider has the choice to at its expense:

- replace or change the Product and/or the result of the Services (with significant retention of the use options and functionalities) to ensure there is no doubt concerning an infringement, or;
- acquire the right to continue its use on behalf of the Customer;
- accept the return of the Product and/or the result of the Services and reimburse the payments made by the Customer under the Contract with deduction of a reasonable fee for the period that the Customer has used the Product and/or the result of the Services.

The Customer acknowledges and accepts that the regulation referred to in articles 7.5 and 7.6 contains the exhaustive right of recourse for the Customer with respect to an infringement of the intellectual property rights and/or the resulting damage.

7.7. The obligation to indemnify infringements if the infringement is related (i) to materials made available to the Service Provider by the Customer for use, processing, handling or maintenance, or (ii) if the Customer made or had changes made to software, website, data files, equipment or other materials.

7.8. The Customer warrants that no rights of third parties obstruct making equipment, software, material intended for websites, data files and/or other

materials and/or designs available to the Service Provider, with the aim of use, maintenance, processing, installation or integration. The Customer indemnifies the Service Provider against any claim by a third party that is based on the assertion that such provision, use, maintenance, processing, installation or integration infringes any right of that third party.

## **8. Non-solicitation**

8.1. The Customer agrees not to actively approach the Employees of the Service Provider, directly or indirectly, for the purpose of engaging or recruiting them, during the entire term of the Contract, as well as for a period of twelve (12) months after termination of the Contract, excepting where agreed otherwise in writing by the Parties.

8.2. If the Customer Contracts an Employee of the Service Provider or recruits or use the Services of any such Employees, whether under an employment relationship, on an independent basis and/or through a company, the Customer shall pay to the Service Provider an amount equivalent to six (6) months of fees/compensations owed to that Employee. This sum shall be payable on the date on which the Employee is first engaged or on which the Employee's Services are first used.

8.3. The Customer undertakes to impose the obligations under this article on third parties with which it partners and/or contracts. The Customer commits to ensuring that these third parties will not approach any of the Employees of the Service Provider with the purpose of engaging or recruiting these persons.

## **9. Privacy and data processing**

9.1. Each Party must at all times adhere to its respective obligations under applicable law in regards to the processing of personal data in connection with personal data processed pursuant to this Contract. The Customer is solely responsible at all times for the determination of the objectives for which the Service Provider processes personal data pursuant to the Contract. For the sake of clarity, the Parties acknowledge that the Customer acts as the party responsible for the data processing, and the Service Provider acts as the processor of the personal data that must be stored, used or otherwise processed at the instruction of the Customer for the offices of this Contract, as these terms are defined in the legislation governing the processing of personal data.

If this is necessary for the performance of the Contract, the Customer will, upon request, inform the Service Provider in writing about the manner in

which the Customer performs his obligations under the legislation on the protection of personal data.

9.2. The Customer declares that it has obtained all approvals necessary for the use and processing of the personal data transferred to the Service Provider for the purposes of the Contract, and the Customer further warrants that the content, use and/or processing of the personal data is not wrongful and does not violate the rights of third parties. The Customer shall indemnify the Service Provider against claims from persons whose personal data is registered or processed in the context of a personal registration held by the Customer or for which the Customer is otherwise responsible under the law, unless the Customer proves that the facts that are relevant to the claim are exclusively attributable to the Service Provider.

9.3. The responsibility for the personal data processed by the Customer using a Product and/or Service of the Service Provider service lies entirely with the Customer. The Customer indemnifies the Service Provider against any legal claim by a third party, on any grounds whatsoever, in connection with this personal data or the performance of the Contract.

9.4. On the grounds of the legislation governing the processing of personal data, the Customer has obligations towards third parties, such as the obligation to provide information and provide access to, correcting and deleting the personal data of data subjects. The responsibility for the fulfilment of these obligations rests entirely with the Customer. The Service Provider will, as far as technically possible, provide support for the aforementioned obligations to be met by Customer. The costs associated with this support are not included in the Service Provider's agreed prices and fees and are borne by the Customer.

9.5. The Customer acknowledges and accepts that the conditions, modalities and (possible) guarantees in the sphere of privacy, as included in the General (License) Terms & Conditions of Third-Party Suppliers, are applicable in full and as a priority.

9.7. The Parties have acknowledged that Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC prescribe strict standards regarding the contractual matters to be regulated. The Parties will therefore, in due course, take the necessary steps to come to terms on a 'Processor Contract'.

9.8. The Customer gives consent to the Service Provider to process the customer data that it receives in the context of the implementation of this Contract. The main purpose of processing the data of the Customer is to manage the future and current customers of the Service Provider, which - among other things - includes management of and access to the section of the website(s) reserved for the customers as well as offering and promoting products and services. The Customer can gain access to his data or request correction(s) by sending the Service Provider a registered letter accompanied by a copy of the identity card in question. The Customer can notify the Service Provider in the same manner should they no longer wish to receive promotional offers concerning the products and services by telephone, e-mail or post. Please specifically indicate the intended means of communication.

## **10. Security**

10.1. If the Service Provider is expressly bound by the Contract to provide a form of information security, this security shall comply with the security specifications agreed in writing between the Parties. The Service provider does not guarantee that the information security will be effective under all circumstances. If an explicitly described method of security is lacking in the Contract, the security will meet a level which, in view of the state of the technology, the sensitivity of the data and the costs involved in achieving a secure environment is not unreasonable.

10.2 The access or identification codes and certificates provided to the Customer by or on behalf of the Service Provider are confidential and must be treated as such by the Customer and will only be shared with authorised personnel from the Customer's own organisation. The Service provider is entitled to change assigned access or identification codes and certificates.

10.3. The Customer will adequately secure his systems and infrastructure and will always ensure that antivirus software is in operation. The Service Provider can never be held liable for viruses in the Customer's system and the consequences thereof.

10.4. Only the Customer is responsible for setting up procedures that allow them to reconstruct lost or modified files, data or programs at any time, regardless of the cause of the loss or modification. On a daily basis, the Customer must be able to dispose of the necessary back-up copies of its computer programs, files and data. In the event of loss of Data, the Service Provider can only be held liable for the Data lost between the time of the last daily back-up and the time of establishment of the proven defect in the software delivered.

10.5. The Customer at all times bears the responsibility for its existing infrastructure (including, but not limited to: hardware, software, websites, databases, monitoring and security procedures, adequate system management, etc.) and the proper functionality and safety of all its working materials.

## **11. Liability**

11.1. The liability that the Service Provider may incur is derived from a best effort obligation that in cases of claim must be appropriately demonstrated by the Customer.

11.2. Considering the nature and technical character of computer programs, the Customer acknowledges and accepts that it is not possible according to the current state of technology and knowledge to guarantee that the Products and/or Services will be free of defects, inaccuracies or Bugs or that these will work uninterrupted in all circumstances in accordance with what was agreed or expected. Products and/or Services are delivered 'as is' and the Service Provider in no way guarantees that the Products and/or Services meet the actual purpose and/or intended use of the Customer.

11.3. Insofar as maximally permitted by applicable law, the total liability of the Service Provider based on attributable failure in the fulfilment of the Contract is limited to the reimbursement of direct damages up to a maximum of the compensation owed by the Customer for the specific Products and/or Services that gave rise to the damages (excluding VAT). If the agreed provisions extend over multiple years, then Service Provider may, for the compensation of direct damages, be held to a maximum of the value of the amounts invoiced for the performance of this Contract for the specific Products and/or Services (excluding VAT) over a period of twelve (12) months prior to the date that the damages-causing event occurred. Under no circumstances shall the total liability for all direct damages during the entire duration of the Contract exceed the fee paid by the Customer for the specific Services (excluding VAT). For damages incidents partly attributable to the Customer and/or a third party, the Service Provider may be held liable towards the Customer up to a maximum amount, within the limits defined above, of the share caused by the Service Provider's demonstrated error, to the exclusion of any joint and several liability with the other debtors. This provision applies regardless of whether the claim is brought on a contractual or extra-contractual basis. Related, similar or linked damages are always considered as a single damage case.

11.4. The Customer must inform the Service Provider in writing of any event that may call upon

the latter's liability or of any disadvantage the Customer suffers within the shortest possible time and at the latest within fifteen (15) calendar days from the occurrence of this event or disadvantage, or at least to be counted from the moment the Customer becomes aware of or reasonably could have been aware of this event or disadvantage and shall grant the Service Provider a reasonable period to remedy the shortcoming. This is in order to enable the Service Provider to determine the origin and cause(s) of the damage within a reasonable period, or possibly to rectify the shortcoming of its obligations. The notice of default must contain as complete and detailed a description of the shortcoming as possible, so that the Service Provider is given the opportunity to respond adequately. In the event of failure to comply with the written notification, the Service Provider reserves the right to refuse any compensation and it cannot be held liable.

11.5. Under no circumstances shall the Service Provider be liable for (i) indirect, incidental or consequential loss, including but not limited to financial or commercial losses, loss of profit, increase of general expenses, missed savings opportunities, diminished goodwill, damages resulting from business stoppage, damages resulting from claims of customers of the Customer, disruptions in scheduling, loss of expected profit, loss of capital, loss of customers, missed opportunities, loss of information, loss of advantages, or compromising and loss of files resulting from the performance of the present Contract, (ii) damages resulting from error or negligence of the Customer and/or its Users, (iii) compensation of any direct and indirect damages caused by the (incorrect) use of the Product and/or result of the Services, (iv) compensation of any direct and indirect damages caused in whole or in part by software or hardware supplied or created by third parties, or any other element introduced into the Customer's business after the signing of the Contract, and (v) all claims of third parties brought against the Customer.

11.6. The limitation of liability as set out in these General Clauses shall not apply with respect to damages caused by an intentional and/or fraudulent error by the Service Provider.

11.7. The Service Provider can in no way be held liable for the purchase and/or proper functioning of the infrastructure of the Customer, any Users and/or other third parties.

11.8. Nothing in this Contract limits the liability of a Party in case of fraud.

11.9. The liability limitations of this article remain applicable in the event that the Service Provider is informed by the Customer of the

existence of a realistic risk of damages. The Parties acknowledge that this constitutes a reasonable distribution of risk.

11.10. In the event that the delivered developments are used for further development or commercialisation, the Customer will hold the Service Provider harmless against any third-party damages claims, even if it were established that such originated from the services and developments supplied by the Service Provider.

11.11. The Service Provider is not liable for any claims of intellectual property rights infringement based upon:

(a) use of a modified or old version of any or all of the developments, if the infringement could have been prevented by using the unmodified or last version which the Service Provider has made available; or

(b) information, design, specifications, instructions, software, data or other materials that were not developed by the Service Provider.

11.12. The Customer shall indemnify the Service Provider against all third-party claims due to product liability as a result of a defect in a product or system supplied to a third party by the Customer and which also consisted of equipment, software or other materials supplied by the Service Provider, unless and insofar as the Customer proves that the damage is exclusively caused by that equipment, software or other materials.

11.13. Except as otherwise agreed between the Parties, the Customer is responsible for its use of the Services and the manner in which the results of the Services are deployed. The Customer is also responsible for instructions provided to possible end users and their use of this information.

11.14. The provisions of this article, alongside all other limitations and exclusions of liability specified in this Contract, are stipulated in part for the benefit of the Service Provider, the Employees of the Service Provider and its Affiliated Companies.

## **12. Force Majeure**

12.1. Neither Party is obliged to fulfil any obligation, including any statutory and/or agreed warranty obligation, if it is prevented from doing so as a result of Force Majeure.

12.2. However, if full or partial performance of the obligations of a Party under this Contract is delayed or prevented as a result of Force Majeure for a period expected to last longer than fourteen (14) consecutive calendar days, the Parties shall consult

and endeavour to reach an amicable solution with a view to the continued execution of the Contract. If a situation of Force Majeure lasts longer than sixty (60) calendar days, either Party is entitled to rescind the Contract in writing. In that event, all performances already rendered under the Contract will be settled in proportion to the state of completion, without the Parties owing anything to each other beyond this proportionate compensation.

## **13. Changes and additional work**

13.1. If the Service Provider has performed Services and/or delivered Products that are outside the content or scope of the agreed Services and/or Products at the request or with the prior consent of the Customer, these additional Services and/or Products will be reimbursed by the Customer in accordance with the agreed rates and, if these have not been agreed, according to the Service Provider's usual rates. The Service Provider is not obliged to comply with such a request and may require that a separate written agreement be concluded to this end.

13.2. Insofar as a fixed price has been agreed for the service, the Service Provider will inform the Customer in writing about the financial consequences of the additional Services as referred to in this article.

## **14. Transfer - Subcontracting**

14.1. Neither this Contract nor the rights or obligations arising from it may be transferred in whole or in part without the express written consent of both Parties. Without prejudice to the foregoing, the Service Provider is at all times authorised to transfer this Contract or the rights or obligations derived from it, in whole or in part, to an Affiliated Company without requiring the explicit and written consent of the Customer.

14.2. For the performance of the Contract, the Service Provider may call upon the services of subcontractors without requiring the written consent of the Customer in advance.

14.3. The Service Provider is entitled to sell, transfer or pledge his claims for compensation payment to a third party.

## **15. Other provisions**

15.1. The nullity of any provision or part of a provision under this Contract will in no way affect the validity of the remaining portion of the provision or the rest of the provisions and clauses. By mutual Contract, the Parties will make every effort to replace the invalid clause with a valid one with the same, or largely the same, economic impact as the invalid clause had.

15.2. A Party cannot be deemed to have waived a right or claim under this Contract or relating to a default of the other Party excepting where this waiver is made explicitly and in writing.

If under application of the preceding paragraph a Party waives rights or claims that are derived from continuing breach of Contract or other default of the other Party, this waiver can never be interpreted as waiver of any other right under this Contract or concerning a continuing breach or other default of another Party, even if the two situations exhibit significant similarities.

15.3. Barring any stipulation to the contrary, all legal remedies provided in the Contract are cumulative and above and beyond (and not a replacement of) any other legal remedies available to the Parties.

15.4. These General Terms & Conditions, together with the Specific Terms & Conditions and the General (License) Terms & Conditions of Third-Party Suppliers and any other appendices are a full and complete reflection of the rights and obligations of the Parties and take the place of all previous agreements and proposals, whether oral or in writing. In the event of contradictions between the General Terms & Conditions, the Specific Terms & Conditions and the General (License) Terms & Conditions of Third-Party Suppliers, the Specific Terms & Conditions will take precedence over the General Terms & Conditions and the General (License) Terms & Conditions of Third-Party Suppliers regarding the Specific Terms & Conditions.

If and insofar as the General (License) Terms & Conditions of Third-Party Suppliers in the relationship between the Customer and Third-Party Supplier for whatever reason are deemed inapplicable or are declared inapplicable, the provisions in the General and Specific Terms & Conditions shall apply in full.

Departures from and additions to this Contract are only valid if agreed between the Parties in writing. Deviations from and additions to the General (License) Terms & Conditions of Third-Party Suppliers are, in principle, not possible. The applicability of the Customer's purchase conditions or any other general conditions are explicitly rejected, even if these conditions state otherwise.

15.5. All notifications, requests and other communication under this Contract (excluding everyday operational communications) shall be in writing by registered letter with proof of receipt or in another conventional method of communication agreed between the Parties.

15.6. All provisions of the Contract explicitly identified as extending beyond the termination

(including rescission) or expiry of the Contract, as well as all provisions of the Contract, the performance of or compliance with which is intended after the termination or expiry of the Contract, shall continue and remain fully in force beyond the termination or expiry of the Contract. Specifically, but not exhaustively, all provisions relating to liability, confidentiality and non-solicitation continue after the termination of the Contract under any and all circumstances.

15.7. Regardless of the nature and value of the juristic act to be demonstrated, the Service Provider may at all times demonstrate said act based on the following additional evidence: copies or reproductions in any form whatsoever (carbon copy, photocopy, microfilm, scan, etc.), via information carrier, fax, telex and email. This evidentiary material has the same basic force as a private instrument drafted in accordance with the provisions of the Belgian Civil Code. In the event a signed copy of the Contract is disclosed by email in a PDF or JPEG file or another form of exact copy, the signature included within it shall create a valid and binding obligation on the part of the signer (or the person in the name of whom and on whose account the document is signed) with the same value, force and effect as an original signature.

15.8. The titles and headings in this Contract are solely indicative and do not in any way affect the content or scope of the provisions or the rights and obligations derived therefrom.

15.9. The Service Provider will enjoy complete freedom and independence in the performance of the Contract. There is no hierarchical relationship between either the Service Provider and the Customer or the Customer and Consultant(s) on whom the Service Provider depends. Under no circumstances does the Service Provider transfer any employer's authority to the Customer excepting insofar as permitted by the applicable legislation. The Service Provider will ensure the timely and full payment of the wage tax, premiums for social insurance and turnover tax to be paid to the Consultant.

15.10. The Customer warrants that it will comply with all applicable import and export regulations. Further, the Customer indemnifies the Service Provider against all liability on the basis of violation of applicable import or export regulations. The Customer, with the explicit exclusion of the Service Provider, is deemed to be the exporter and/or importer in case of import or export of the Products.

15.11. The agreements between the Service Provider and Customer are governed by Dutch law, with the exclusion of the Vienna Sales Convention of 11

April

1980.

15.12. In the event of disputes concerning the implementation and/or interpretation of the present Contract which cannot be resolved amicably, only the Courts of Amsterdam will be considered

competent. Any claim of the Customer relating to the Products and/or Services provided expires six (6) months after the date on which the Customer becomes aware or reasonably could have become aware of the damages-causing events giving rise to the claim.

## **1. Applicable conditions**

1.1. The provisions included in the General Terms & Conditions [...] - Services are fully applicable to the Services provided by the Service Provider on Fixed Price Basis, except insofar as expressly deviated from below.

## **2. Price and payment modalities**

2.1. The Customer undertakes to pay an advance payment of twenty (20)% of the fixed price for the Services on Fixed Price Basis. The Service Provider is only obliged to perform the Contract upon payment of this advance. Unless another payment schedule is agreed in the Specific Terms & Conditions, the Services provided on Fixed Price Basis will be invoiced on a monthly basis.

## **3. Acceptance**

3.1 If an acceptance test has been agreed in writing between the Parties in the Specific Terms & Conditions, the Customer is responsible for organising and carrying out this test, in consultation with the Service Provider and in accordance with the provisions and the timetable in the Specific Terms & Conditions. If this acceptance test - mandatory in the presence of the project manager of the Service Provider - is partially or fully successful, the relevant part of the services will be deemed to have been accepted by the Customer. If the acceptance test is not conducted in a timely manner, the deliverable is deemed to have been accepted by the Customer. During the test period, the Customer is not permitted to use the software for productive or operational purposes.

The Customer will appoint and announce a contact person to the Service Provider who is responsible for the acceptance of each component of the Services on Fixed Price Basis.

3.2. If the Parties have not agreed on an acceptance test, the Customer accepts the Services on Fixed Price Basis in the state in which they are at the time of delivery ('as is'), thus with all visible and invisible errors and other defects. The commissioning of the Services on Fixed Price Basis and/or putting them into production by the Customer also implies full acceptance.

3.3. The acceptance procedure is an evaluation of whether the Services on Fixed Price Basis delivered are in compliance with the Specific Terms & Conditions. Additional acceptance criteria may be added insofar as approved in writing in advance by both Parties.

3.4. There are 3 possible forms of acceptance: unconditional acceptance, conditional acceptance and unconditional non-acceptance. Conditional acceptance must be accompanied by a list with the Customer's considerations regarding the acceptance of the deliverables submitted. After modification and resolution of these points, or after refutation of the considerations given, the deliverables submitted will be considered accepted in observance of a five (5) day evaluation period. Unconditional non-acceptance must be accompanied by a clear description of the justified reasons for non-acceptance. After modification by the Service Provider in observance of these reasons, the Service Provider is once again entitled to obtain acceptance from the Customer.

3.5. The parties acknowledge that it is essential for knowledge of failures in the deliverables to be exchanged in a timely manner so as to allow the appropriate adjustments to be made at the earliest possible stage. Late evaluation and acceptance will automatically result in additional costs, which may be treated as a change request, this without prejudice to the Service Provider's right to hold the Customer liable for direct and indirect damages resulting therefrom.

## **4. Implementation**

### *Timely provision of information*

4.1. During implementation, the Customer must always provide information in as timely and comprehensive a manner as possible so that the progress of the Project is not disrupted by missing information. This information provided by the Customer is an essential part of the Contract. The Customer must designate the Employees who can provide this information. The Customer must also designate one person who is capable of assessing the accuracy and completeness of this information and who, in case of debate, can decide which information will be used as a rule.

4.2. The Service Provider always assumes that the information provided by Employees of the Customer is complete and correct. The Customer is always responsible for the information it or third parties provide.

### *Decision-making power*

4.3. If the Parties have agreed to this in writing in the Specific Terms & Conditions, a "Steering Group" will meet periodically during the Project. This Steering Group is responsible for tracking the work

activities, making adjustments to the assignment of the Project and assisting the Project Team in strategic decision-making.

This Steering Group will consist of at least the following core members:

- a user representative;
- a mandated Project Leader for the Project representing the Customer;
- a Project Leader for the Project representing the Service Provider.

The Steering Group may at any time invite other persons to attend the meetings.

4.4. Within the context of the Contract, only this Steering Group has decision-making power to approve any changes and/or expansions of the Services on Fixed Price Basis as described in the Specific Terms & Conditions. To facilitate progress of the Project, both Parties will delegate one person who will have the capacity to make any urgent decisions required in the name of the Customer and the Service Provider respectively without consulting with the Steering Group. These persons may also convene meetings of the Steering Group outside of the normal meeting calendar to discuss specific issues and force any decisions that may be required.

4.5. The Steering Group must evaluate and, as required, approve all proposed changes and/or expansions in accordance with the change procedure described below.

4.5. Decisions of the Steering Group signed by the authorised persons of both Parties are considered as an appendix to the Specific Terms & Conditions.

4.6. In every Steering Group meeting, the Service Provider must discuss the progress of the Project with the members and present any problem areas, issues and options.

4.7. The Customer and Service Provider will indicate all contact persons who are mandated to take decisions on behalf of the Steering Group.

#### *Change procedure*

4.8. All changes and/or expansions, communicated both orally and in writing by the Customer, to the original specifications and changes in the framework conditions of the assignment described in the Specific Terms & Conditions fall under these clauses (a change in the framework conditions is, for example, a clear change in the working conditions of the Project Team, that will have the result of a demonstrable loss in production).

4.9. If the Customer desires a change or addition to the specifications as agreed in the Specific Terms & Conditions, this change must be formalised using this change procedure. The same procedure must be followed whenever the criteria to be met by the

Services to be delivered on Fixed Price Basis as provided for in the Specific Terms & Conditions are changed by the Customer.

4.10. The change procedure entails that first, the change in the specifications or the order are described, followed by an assessment of the impact of the change on the efforts and timeline of the Project.

4.11. In addition to approving the documents describing the amended specification, the Customer must also approve the new budget in the form of an appendix to the Specific Terms & Conditions.

4.12. The time necessary for these activities and additional Services will be invoiced on an hourly and/or daily basis to the Customer according to the applicable rates specified in the Specific Terms & Conditions. This time will be determined by the Project Manager of the Service Provider in advance and submitted to the Customer for approval.

4.13. The mere go-ahead to the Service Provider to commence these additional activities and additional Services, whether given orally or in writing by the Customer, counts as sufficient proof of the Customer's ordering of this work and as the Customer's consent to invoice these activities and additional Services.

4.14. A change is carried out after the Customer issues an instruction for the change.

4.15. A change proposal may contain the following elements:

- 1) a description of the change;
- 2) the submitter and date of the change request;
- 3) the reason for the change;
- 4) if possible, an estimate of the time required to determine the impact and consequences of the change;
- 5) if available, the approval of the estimate under point 4;
- 6) a complete description of the change, including specifications and use options;
- 7) if applicable, the cost impact (additional cost/reduced cost) of the change;
- 8) a timeline for the implementation and any applicable test procedure for the change;
- 9) a payment schedule (if applicable);
- 10) any consequences on other components of the Project;
- 11) space for Customer and Service Provider signatures.

4.16. Situations and framework conditions that fall under the responsibility of the Customer and which



necessitate extra efforts will be invoiced to the Customer.

#### *Respect for timelines*

4.17. If the Services to be performed by the Service Provider on Fixed Price Basis are part of a broader implementation of new IT systems, the timeline is partly dependent on the good cooperation and delivery of these other systems, whether or not delivered by Third Parties. The Service Provider can not be held liable for damage caused by delays in the planning caused outside its control.

### **5. Warranty**

5.1. If a warranty period has been agreed in the Specific Terms & Conditions for Services on Fixed Price Basis, the Customer will make reasonable efforts to resolve any deficiencies in writing and in detail upon identification of these deficiencies within the warranty period as soon as possible and within no more than seven (7) calendar days with regard to the Services on Fixed Price Basis rendered by the Service Provider. If there are warranty agreements made in the Specific Terms & Conditions, the Service Provider, its employees or subcontractors have the right to test or inspect the Services on Fixed Price Basis delivered. The Customer shall provide all required cooperation to allow the Service Provider, its employees and/or subcontractors to fulfil their obligations. The Service Provider will make every effort to repair any defects in the services within a reasonable period if these have occurred within the agreed warranty period. The repair is carried out free of charge, unless the Services on Fixed Price Basis on behalf of the Customer have been carried out based on a metric other than for a fixed price, in which case the Service Provider will charge the costs of repair according to its usual rates. The Service Provider may, in accordance with his usual rates, charge the costs of repair if there are errors of use or improper use by the Customer or other causes not attributable to the Service Provider, or if the errors could have been discovered in the execution of the agreed acceptance test. The repair obligation lapses if the Customer makes changes or has made changes without the written consent of the Service Provider, whose permission will not be withheld on unreasonable grounds.

5.2. Such a warranty only covers the software developed by or on commission of the Service Provider as described in the Specific Terms & Conditions. Software, software licenses and/or hardware not developed by the Service Provider, namely Products of Third-Parties, are only granted the warranty by the relevant Third-Party Suppliers in the applicable General (License) Terms & Conditions of Third-Party Suppliers.

5.3. The following is not covered under any circumstance, interventions due to any cause other than the Services on Fixed Price Basis rendered, including:

- incorrect or abnormal use or operation; negligence of the Customer or its agents; fire; power outages; accidents; use in a dusty atmosphere; static electricity; inappropriate environment; the Customer's failure to meet specifications of the environment in which the deliverable is to be used;
- any repair or maintenance, modification or alteration performed by personnel and/or subcontractors not working for the Service Provider and without the permission of the Service Provider, in which case the Customer bears all risks of any damages resulting therefrom;
- force majeure;
- data file recovery;
- non-modified infrastructure (hardware, software, etc.) of the Customer and/or irregular functioning thereof, and more generally, damages caused by material and/or software not supplied by the Service Provider;
- ....

5.4. In view of the technical nature of computer programs, the Service Provider can not guarantee its uninterrupted operation. Moreover, given the nature of every computer program, it is admitted and acknowledged by the Customer that it is not possible according to the current state of technology and knowledge to guarantee that a certain software will be free of all faults or Bugs or that it will function in all circumstances in accordance with what was agreed or provided for.

5.5. Without prior written permission, the Service Provider is not obliged to accept return shipments in the Customer's warranty period due to defects. Receipt of return shipments does not imply any acknowledgement by the Service Provider of the ground stated by the Customer for the return shipment in the warranty period due to defects. The risk of returned goods remains with the Customer. After the warranty period, the Service Provider can no longer be held liable for hidden defects.

5.6. No warranty is provided for Services on Time & Material basis, or when the Parties have not included a guarantee in the Specific Terms & Conditions. These Services are delivered 'as is'.

### **6. Deadlines**

6.1. All (delivery) deadlines for Services on Fixed Price Basis mentioned by the Service Provider have been determined to the best of its knowledge on the basis of the information known to the Service Provider when concluding the Contract and will be observed as much as possible. The delivery period should be seen as a non-binding guideline for the Customer's administrative purposes by the customer, for the scheduling of the deployment of its own personnel, and for the scheduling of the staff members required by the Service Provider. The mere exceeding of a specified delivery deadline for Services on Fixed Price Basis does not put the Service Provider in default. The Customer and Service Provider undertake to make all commercially viable efforts to comply with and respect all schedules described in the Specific Terms & Conditions, taking into account that any delays

will be considered as an adaptation of the Specific Terms & Conditions and a shift of the schedule.

6.2. If there is a risk of exceeding any deadline, the Service Provider and the Customer will consult with each other as soon as possible.

Any delay caused by a delay in the provision of necessary information and hardware or software infrastructure by the Customer or a third party is beyond the responsibility of the Service Provider. Consequently, the Customer can not proceed to terminate the Contract.

6.3. Partial deliveries are permitted. Partial delivery of the order can under no circumstances justify the refusal to pay for the delivered Services on Fixed Price Basis.

## **1. Applicable conditions**

1.1. The provisions included in the General Terms & Conditions [...] – Services are fully applicable to the cloud Services provided by the Service Provider, except insofar as expressly deviated from below.

## **2. Definitions**

**Acceptable Use Policy/AUP:** The Acceptable Use Policy of the Service Provider, which constitutes the conditions for the use of the Services and/or the environment/platform of the Service Provider by the Customer and the Users.

**Cloud Computing:** A model for making on-demand network access quickly available to a shared pool of configurable IT resources (such as networks, servers, storage, applications and services), with a minimum of management effort or interaction with the Service Provider.

**Incident:** an unplanned interruption of a Service or a reduction in the quality of a Service.

**Incident outside the Responsibility of the Service Provider:** The events relating to parts of the Services that fall outside the control of the Service Provider (including, without limitation, the Customer's software, data processed by the Customer) and that cause Incidents for which the Service Provider must intervene to restore the IT service for the Customer and/or Users.

**Material(s):** The hardware, software, Data and other information that are placed by the Customer or the Users on IaaS, PaaS and/or SaaS.

## **3. Implementation modalities and cooperation obligations**

3.1. In order to be able to provide adequate services, the Customer undertakes to, at the first request of the Service Provider, provide all useful and/or necessary information for the provision of the Services and/or access to IaaS, PaaS and/or SaaS. The Customer guarantees the correctness and completeness of the data provided by or on behalf of the Service Provider.

3.2. The Customer will always take all reasonable safety precautions regarding the use of the Services and/or IaaS, PaaS and/or SaaS. The Customer will always comply strictly with all applicable legislation, as well as the AUP.

## **4. Suspension and termination**

4.1. The Service Provider may, at its sole discretion, suspend the Contract if:

- IaaS, PaaS and/or SaaS is being attacked or a third party utilises IaaS, PaaS and/or SaaS without the permission of the Customer, or damages or seeks to damage this;
- there are specific circumstances whereby the Service Provider is forced to suspend certain Services under this Contract to protect IaaS, PaaS and/or SaaS and/or accounts of other users.

4.2. In the event of termination of the Contract, the Customer will have access to IaaS, PaaS and/or SaaS for a maximum of one (1) month to remove and/or transfer the Material from IaaS, PaaS and/or SaaS. After this period, the Service Provider will completely remove any remaining Materials. In such a case the Service Provider can not be held liable for any loss of Material or for the damage resulting therefrom.

## **5. Payment modalities**

5.1. The Customer owes the fee for the IaaS, PaaS and/or SaaS Services included in the Specific Terms & Conditions. In the absence of an agreed payment schedule, all amounts relating to the IaaS, PaaS and/or SaaS Services provided by the Service Provider are due in advance each calendar month.

## **6. Liability**

6.1. The Service Provider will make every effort to provide the Customer with access to IaaS, PaaS and/or SaaS in accordance with the provisions of the Contract. Considering the nature and technical character of computer programs, the Customer acknowledges and accepts that it is not possible according to the current state of technology and knowledge to guarantee that the IaaS, PaaS and SaaS will be free of defects, inaccuracies or Bugs or that these will work uninterrupted in all circumstances in accordance with what was agreed or expected. IaaS, PaaS and SaaS are delivered 'as is' and the Service Provider in no way guarantees that the IaaS, PaaS and SaaS meet the actual purpose and/or intended use of the Customer.

6.2. The Service Provider will only be obliged to repair the direct damage caused by the Service Provider, this however is to a maximum amount per claim that corresponds to the compensation of the three (3) months preceding the moment at which the

events that have given rise to the claim have occurred.

6.3. Without prejudice to article 6.2., the Service Provider will in no case be liable for:

- damage to the Customer, the Users and/or other third parties resulting from the unauthorised access to the account and/or the Materials of the Customer and/or the Users, regardless of whether the Customer has permitted such use or not;
- damage to the Customer, the Users and/or to third parties arising from the software and/or hardware of third parties and/or Third-Party Suppliers;
- compensation for all direct and indirect damage caused by the improper use of the Services and/or IaaS, PaaS and/or SaaS or through the use of the Services and/or IaaS, PaaS and/or SaaS in violation of the Terms of Use;
- damage resulting from the non or improper installation of the tool provided by the Service Provider that grants access to the IaaS, PaaS and/or SaaS.
- any liability arising from a previously announced maintenance;
- any liability regarding the connectivity between the Customer and the Supplier;
- reimbursement of damage which was caused, in whole or in part, by software or hardware delivered or manufactured by third parties, or by any other element within the Customer's company or integrated into the Customer's company after the entry into force of the Contract.

6.4. Although the Service Provider strives to protect the Materials that on IaaS, PaaS and/or SaaS, it cannot offer any guarantees as to the nature of the Internet. Except as otherwise agreed between the Parties, the Customer is responsible for the proper protection of its Materials and/or those of its Users. In addition, the Service Provider has no specific knowledge of the Materials stored on IaaS, PaaS and/or SaaS, including the amount, nature, value or use thereof. The Customer should therefore take all reasonable steps to counteract any loss of data. For example, unless otherwise agreed by the Parties, the Customer will be responsible for making the necessary backups of its Materials. If the Parties explicitly agree that the Service Provider will be responsible for the backups, it will retain these backups for the duration of the agreed term of storage. In no event may the Service Provider be held liable for loss of information and/or data, insofar as this data has been changed since the Service Provider was commissioned under the Contract to perform a backup.

6.5. If the execution of the Contract requires that the Service Provider's system connects to the Internet, the Service Provider will take all commercially

viable measures to establish connection of the Service Provider's system with the Internet. The Service Provider can in no way be held liable for the purchase and/or proper functioning of the infrastructure of the Customer, any Users and/or other third parties.

6.6. Except as otherwise agreed between the Parties, the Customer is responsible for its use of the Services and the manner in which the results of the Services are deployed. The Customer is also responsible for instructions provided to the Users and their use of this information.

## **7. Intellectual Property Rights**

7.1. Nothing in this Contract shall be interpreted as the willing transfer by the Customer and/or the Users of their intellectual property rights to the Materials that the Customer and/or the Users place on IaaS, PaaS and/or SaaS (such as but not limited to agreements, annual reports, models, literary works, documents, reports, software, source code in the broadest sense, databases and know-how).

## **8. AUP**

### *Preliminary provisions*

8.1. The AUP contains a description of the obligations and responsibilities of the Customer in connection with the use of IaaS, PaaS and/or SaaS. This AUP is an integral part of the Contract and the violation of this AUP may lead to suspension or termination of this Contract.

8.2. The Customer is responsible for any breach of the obligations and responsibilities of this AUP, regardless of whether this infringement was committed by the Customer, the Users or a third party who (whether or not with the permission of the Customer) uses IaaS, PaaS and/or SaaS. The Customer is committed to incorporating this provision into the agreements it concludes with the Users of the Services and/or IaaS, PaaS and/or SaaS. The Customer indemnifies the Customer for any damage resulting from an infringement or non-compliance with this AUP.

8.3. The Service Provider does not monitor the activities of the Customer, nor does it monitor the Material that is placed by the Customer and/or the Users on IaaS, PaaS and/or SaaS. However, the Service Provider is entitled to remove Material which it may reasonably assume is contrary to the AUP. In such a case, it will, as far as possible, inform the Customer of this in advance, in order to enable the Customer to take the appropriate action to prevent or terminate these activities. However, if serious breaches are involved, or the Service Provider was unable to inform the Customer

beforehand, the Service Provider will inform the Customer of this afterwards.

8.4. The Customer acknowledges and accepts that the Service Provider will work with competent authorities and/or other third parties to investigate criminal and/or undesired activities.

8.5. As the Internet and possible ways it can be abused are continually developing, the Service Provider reserves the right to make changes to the AUP. In the event that the Service Provider makes changes to the AUP, it will be submitted to the Customer for acceptance. As far as necessary, the Customer strongly believes that the Users of the Services and/or IaaS, PaaS and/or SaaS will accept this modification to the AUP.

8.6. The Service Provider is entitled to unilaterally change this AUP at any time. In case of such a change, the Customer will be notified. In the event of non-acceptance, the Customer will be entitled to terminate the Contract with the Service Provider without incurring additional costs for either Party.

#### *AUP*

8.7. IaaS, PaaS and/or SaaS may not be used for illegal or irresponsible acts.

8.8. Among other things, the term illegal or irresponsible acts is defined as follows:

Illegal use: IaaS, PaaS and/or SaaS and/or Services offered by the Service Provider may not be used for illegal activities or for the support of illegal activities;

- (a) Harm to minors: IaaS, PaaS and/or SaaS and/or the Services offered by the Service Provider may not be used to inflict harm to minors. Harm to minors is understood, but not limited to, child pornography;
- (b) Threat: IaaS, PaaS and/or SaaS and/or Services offered by the Service Provider may not be used to post and/or transmit any Material that contains threats and/or incitement to violence against persons, institutions and/or possessions. Additionally, it is forbidden to distribute, publish or reproduce Material that is excessively violent, incites to violence, threatens violence or contains bullying content or hate speech;
- (c) Spread, publish or display Material that endangers one's safety or health or harms public safety or public health;

- (d) Spread, publish or display Material that is excessively violent or incites to violence;
- (e) Spread, publish or display Material that promotes illegal drugs, which involves an infringement of export regulations or is linked to illegal gambling or illegal arms trafficking;
- (f) Disrupt systems in the network and/or IaaS, PaaS and/or SaaS to disrupt network services and/or network communication;
- (g) Fraudulent activities: IaaS, PaaS and/or SaaS and/or Services offered by the Service Provider may not be used to make fraudulent offers, buy or sell goods and/or services or promote scamming practices;
- (h) Gather or use of information and/or personal data without the consent of the owner of the information;
- (i) Collect or use email addresses, display names, E-ID cards, payment and/or credit card data or other user identifiers without the consent of the identified person, including but not limited to *phishing*, *Internet scamming*, password theft, *spidering* and *harvesting*;
- (j) The deliberate spread of viruses or the introduction of other forms of malware to the network or system that are intended to harm the party systems, software or data of the Service Provider and/or third parties which threaten the Service Provider and/or third parties.
- (k) Send, distribute or reproduce any Material (via uploads or otherwise) that infringes the copyright, trademark, patent, trade and/or business secrets or other (intellectual) proprietary rights of a third party;
- (l) Abuse IaaS, PaaS and/or SaaS and/or Services offered by the Service Provider to access or attempt to access third-party accounts;
- (m) Infringe the integrity of computer and network systems. The Customer undertakes, inter alia, to refrain from intentionally developing or using programs that hinder other users or which harm and/or infiltrate a computer, computer system or network or change the software components of a computer, computer system or network;
- (n) Infiltrate, access or attempt to gain access to others' accounts, or to invoke, or attempt to invoke security measures of computer software or hardware, electronic communications systems or IaaS, PaaS and/or SaaS or any other party, regardless whether such access results in damage or loss of data.

8.9. The Customer is always responsible and liable for any abuse of its account(s). The Customer will always take the necessary steps to prevent unauthorised third-party access of its account(s). The Customer's Users will also refrain from attempting to gain access to the accounts of other Users and those who also have access to IaaS, PaaS and/or SaaS and/or Services of the Service Provider.

8.10. The Customer will ensure:

- passwords which grant access to the account(s) are kept secret. Insofar as necessary, the Customer assigns the commitment to the Users who use IaaS, PaaS and/or SaaS and/or the Services of the Service Provider;
- sufficient security measures are taken to prevent third-party abuse of the account(s);
- That the password and access to the account(s) are not shared with others (even among the Users themselves).

8.11. The Customer is also prohibited from:

- bypassing the user ID or security of IaaS, PaaS and/or SaaS, network or account. This includes, inter alia, granting access to data for which the Customer and/or the User(s) have no consent or which is not intended for him/her;
- logging into or using a server or account for which the Customer or Users have not been given permission to access;
- Using tools designed to bypass or crack security measures;
- Denial of Service (DoS) attacks, Distributed Denial of Service (DDoS) attacks to be executed or launched.

8.12. The Customer understands and accepts that the circumvention or (attempted) breach of system or network security can be prosecuted by criminal and civil law. The Service Provider will provide full cooperation to the authorities and other stakeholders investigating such matters.

## **1. Applicable conditions**

1.1. The provisions included in the General Terms & Conditions [...] – Services are fully applicable to the Service Desk - Maintenance - SLA Services provided by the Service Provider, unless explicitly deviated from below.

## **2. Definitions**

**Credits:** The credit to which the Customer may be entitled if the agreed Service Levels of the Services are not achieved.

**Grace Period:** The maximum period of 6 months, during which (i) no penalties or sanctions are due and (ii) the Service Provider can not be held liable for failure to comply with the agreed Service Levels. During this Grace Period, the Service Provider is entitled to evaluate, update and adjust the service levels to ensure their optimal operation and availability. The Grace Period commences when the Services are made available to the Customer in a production environment and the services are started, unless otherwise agreed in the relevant Specific Terms & Conditions.

**Emergency Maintenance:** Maintenance as a consequence of an urgent situation requiring an immediate solution in order to ensure the continuity and/or security of the Customer's Services.

**Maintenance Work:** Planned/unplanned or necessary/urgent work on systems (software and hardware) and/or infrastructure (power, air conditioning, fire safety), which may cause interruptions of the Services.

**Service Desk:** Central point of contact for the extensive know-how and experience of the Service Provider.

**Service Level Contract/SLA:** The description of the requirements, including service-related objectives with regard to the availability and quality of the support Services.

**Service Levels:** The requirements governing the availability and quality of the support Services.

**Grounds for Exclusion:** The following is understood under Grounds for Exclusion: (i) any act or omission on the part of the Customer or an act or omission of third parties for which the Customer is responsible, including the non-delivery or late delivery of accurate, complete and timely information at the request of the Service Provider;

(ii) a force majeure situation; (iii) the failure of a data centre to meet the requirements set by the Service Provider; (iv) routine or urgent maintenance of the Services; (v) errors in the software/hardware of Third Parties and/or loss of rights or restrictions imposed by third parties, licensors relating to software/hardware licenses; (vi) unavailability of the necessary technology or any other resources on commercially reasonable terms; (vii) all software, operating systems, databases, applications or any other code or materials not belonging to the Service Provider, including any configuration problems in this regard; (viii) the act or omission of a third party (e.g. hacking, denial of service attacks and viruses); (ix) compliance with any applicable laws and regulations or requests from government authorities; (x) any destruction, damage, loss or theft of the equipment or materials of the Service Provider if this has an adverse effect on the ability of the Service Provider to provide the Services.

## **3. Implementation modalities, maintenance and SLA**

3.1. The Customer will always inform the Service Provider of all circumstances that may affect its services and their availability.

3.2. With regard to the Service Levels, a Grace Period of 6 months will be applied.

3.3. The Customer accepts that the Service Provider and/or one of its subcontractors may from time to time perform Maintenance Work or inspections on IaaS, PaaS and/or SaaS or to/from the servers on which IaaS, PaaS and/or SaaS is made available. By accepting these General Terms & Conditions, the Customer explicitly accepts that such Maintenance Work or inspections are allowed to be carried out. The Service Provider will inform the Customer of this in advance, except in the case of Emergency Maintenance. If Emergency Maintenance is concerned, the Service Provider will inform the Customer as soon as possible of the inspections or Emergency Maintenance carried out.

3.4. During the duration of the Contract, the Service Provider will provide all commercially reasonable efforts to deliver the Services in accordance with the Service Levels agreed in the Specific Terms & Conditions.

3.4. If the Service Provider does not provide the Services in accordance with the Service Levels agreed upon in this Attachment ('Shortfall'), the Customer will be entitled to a credit ('Service Credit'), provided that no Service Credit is due if, during the two (2) months following the month in which the Shortfall was established, the Services reach a level equal to or higher than the agreed Service Levels.

3.5. In order to be entitled to a Service Credit, the Customer must notify the Service Provider in writing within five (5) calendar days after the Shortfall. The Customer should provide a complete description of the Shortfall.

3.6. Notwithstanding anything to the contrary, a Ground for Exclusion or any period of default, delay, downtime, unavailability, waiting time, degradation of the Services, response delay or any similar event or event caused by or related to such a Ground for Exclusion may be regarded as downtime, response delay, unavailability, waiting time or any degradation of the Services, which is attributable to the performance of the Service Provider in achieving the agreed SLA levels. The Customer is not entitled to a Service Credit if:

the Shortfall is the result of the action or failure to act on the part of the Customer, one of the Users or a third party for whom the Service Provider is not liable.

- the Shortfall is the result of a programming error in the software of the Customer and/or third parties;
- the Shortfall is the result of the improper installation of the tool supplied by the Service Provider to access the IaaS, PaaS and/or SaaS and/or Services;
- the Shortfall is due to a lack of connectivity;
- the Service Provider is not notified in writing within five calendar days after the Shortfall was discovered;
- if the Shortfall arises from maintenance;
- if the Customer violates a provision of the Contract.

3.7. If multiple Shortfalls occur in response to the same event, only the Shortfall with the highest amount will be reimbursed. In addition, recidivism will in no way be more severely sanctioned than a previous offence.

3.8. Except as otherwise agreed in writing between the Parties, Service Levels and Service Credits are calculated per month.

3.9. Except as otherwise agreed in writing by the Parties, the Service Levels are calculated as available percentages based on the following formula:

$$A / (T-S) * 100$$

Where:

- A = the effective availability, as measured by the Service Provider. This is calculated in minutes.
- T = the total number of minutes in a specific month.
- S = the total scheduled downtime. This is calculated in minutes.

Except as otherwise agreed in writing by the Parties, the Service Credits for the Service Levels are calculated as available percentages based on the following formula:

$$(L - P) * Q$$

Where:

- L = the availability percentage agreed between the Parties
- P = the effective availability percentage
- Q = the monthly fee for a specific Service ('Fees'). For the calculation of Fees, only the recurring fees are taken into account (and thus not the Services in question, specific costs, licensing costs, expenses and/or one-off fees payable to the Service Provider by the Customer).

3.10 The maximum amount of Service Credits for a specific month may never exceed 50% of the monthly fees for the specific Service.

3.11. The Customer acknowledges and confirms that the Service Credits credited to him constitute the exclusive and exclusive remedy of the Customer in the event of a Shortfall in the context of the agreed Service Levels.

#### **4. Availability of the services**

4.1. The applicable Service Levels are agreed by the Parties in writing.

#### **5. Helpdesk**

5.1. If and insofar as it is expressly agreed between the parties that the Service Provider will set up a Helpdesk, the conditions and modalities in this



respect will be set out in the Specific Terms & Conditions.