

# General Terms and Conditions of ICTWaarborg – B2B

Version September 2018

These General Terms and Conditions govern the legal relationship between the Contractor and its Clients. The General Terms and Conditions have been divided into different modules focusing on the various forms of service provision offered by the Contractor.

They consist of the following modules:

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Where a specific module applies, it prevails over the General Module. To the extent the general section does not contravene the applicable provisions stipulated in the specific modules, the general section will always apply. The definitions of the terms written with a capital letter apply to all modules.

## Definitions

In these General Terms and Conditions, the terms below have the following meanings:

- **Acceptance test:** is a delineated compulsory test performed by the Client in order to round off the Project.
- **General Terms and Conditions:** these terms and conditions, which are made up of a number of modules.
- **Service:** the service to be supplied by the Contractor, including the development and/or maintenance of software, applications, etc. The Agreement specifies which Services are involved and these General Terms and Conditions set more detailed rules for specific Services.
- **Defect:** failure to satisfy the Specifications.
- **User:** the user or end user who uses the Service/Project provided by the Contractor on the Client's behalf.
- **Hardware:** equipment supplied by the Contractor to the Client.
- **Materials:** for example, applications (web or other), software, advice or reports.
- **Employee:** an employee, freelancer or self-employed worker without employees or an agent hired from a third party by the Contractor who are deployed by the Contractor for the benefit of the Client or who perform activities for the Client.
- **Module:** a module of these General Terms and Conditions containing provisions relating to a specific area of activity.
- **Client:** the natural person or legal entity with whom the Contractor has concluded an Agreement. This also means the party with whom the Contractor enters into or is currently conducting negotiations on the Agreement as well as its representative(s), authorised agent(s), the acquiring legal entities/person(s) and beneficiaries.
- **Contractor:** the contractor, with its registered offices in Utrecht and registered with the Chamber of Commerce under number 56612664 and a member of ICTWaarborg.
- **Agreement:** the agreement between the Contractor and the Client.
- **Force Majeure:** a shortcoming which cannot be attributed to the debtor, if it cannot be blamed for it, or if the shortcoming cannot be ascribed to the debtor under the law, legal transaction or by convention.
- **Project:** the work carried out by the Contractor on behalf of the Client, as described in the quotation and/or Agreement.
- **Project Management System:** electronic system that can be used for the management of the Project and for communication between the Contractor and the Client about the implementation of the Agreement.
- **Results:** the results of the activities carried out by the Contractor under the Agreement.
- **In Writing:** the term 'in Writing' used in these General Terms and Conditions includes e-mail and fax communication, provided that the sender's identity and the message integrity have been sufficiently established.
- **Specifications:** the functional and technical description of the Project.
- **Website:** <https://www.simplefly.nl>

## Identity of Contractor

<b>Name (Contractor)</b>	Simplefly BV
<b>Operating as</b>	Simplefly B.V.
<b>Registered address</b>	Europalaan 500 3526 KS Utrecht
<b>Postal address</b>	Europalaan 500 3526 KS Utrecht
<b>Telephone</b>	+31(0)307009717
<b>E-mail</b>	info@simplefly.nl
<b>VAT number</b>	NL852215010B01
<b>CoC number</b>	56612664

## **Module A. General**

### **Article A.1. Quotation, offer and acceptance**

- A.1.1 A quotation drawn up by the Contractor is without obligation and will be valid for 14 days after the date on which it was sent by the Contractor, unless stated otherwise in the quotation.
- A.1.2 The Client should preferably accept the quotation in Writing, but if the Client accepts or creates the impression that it has accepted it by other means, the Contractor may consider the quotation as accepted.
- A.1.3 The Client's provisions or terms and conditions that differ from, or do not appear in, these General Terms and Conditions will only be binding for the Contractor if, and to the extent that, these have been explicitly accepted by the Contractor in Writing.
- A.1.4 Without prejudice to the power of the Contractor to withdraw the quotation in accordance with Article A.1.1., the Agreement may only be changed after acceptance with the consent of both parties. In the event of a conflict between the provisions in the documents below, the following order of precedence applies:
  - 1. the Agreement;
  - 2. any appendices, apart from brochures;
  - 3. these General Terms and Conditions;
  - 4. any additional conditions, apart from brochures.

### **Article A.2. Implementation of the Project & provision of information**

- A.2.1 Following conclusion of the Agreement, the Client will carry out the Project as soon as possible, in accordance with the offer, taking into account any reasonable wishes of the Contractor.

The Contractor will endeavour to carry out the Project to the best of its ability, exercising due care and professionalism. The Client is obliged to enable the Project to be implemented correctly and in a timely manner. In particular, the Client shall ensure that all information, which the Contractor has stated to be required or with regard to which the Client can reasonably understand that it is required for the implementation of the Project, is made available to the Contractor in time. The necessary commitment on the part of the Client should be of adequate quality and timely. This applies both to the support provided by the contact persons and to the planned deployment of Project staff on the Project activities.

- A.2.2 If the Client fails to do the above, the Contractor is entitled to charge extra costs and it is possible that the Project will overrun. Any delay to the Project caused by the Client is reported via the Project Management System or, if no project management system is being used for the Project, by email, or, in the absence of functioning email correspondence, by another means in Writing. If this situation arises, the Contractor will inform the Client of any extra costs to be charged.

### **Article A.3. Term, termination and dissolution**

- A.3.1 The Agreement will be deemed as having been terminated if the services stipulated in it have been provided by both parties.
- A.3.2 Contrary to Article 3.1, agreements for services are tacitly extended on a monthly basis after the end of the term. Such agreements are terminated in Writing.
- A.3.3 The delivery dates given by the Contractor are always an indication only. In the event of an agreed final delivery date, the Contractor will first be in default after the Client has declared it to be in default in Writing, subject to the mandatory situations prescribed by law in which default occurs by operation of law.
- A.3.4 If the Client fails to perform any obligation to which it is subject under the Agreement, the Contractor has the right to suspend performance of all agreements concluded with the Client concerned, without requiring notice of default or judicial intervention, and without prejudice to the Contractor's right to compensation, loss of profit and

interest, unless such non-fulfilment is of minor significance.

- A.3.5 The Client shall be obliged to comply with all relevant legislation and the obligations arising from related regulations.
- A.3.6 The Contractor has the power to dissolve or suspend the Agreement in full or in part with immediate effect, without judicial intervention, in Writing and without any obligation to pay compensation or grant indemnification, if:
  - the Client has not fulfilled the obligations stipulated in the Agreement in full, adequately or on time;
  - after having concluded the agreement, the Contractor learns of circumstances that provide every reason to fear that the Client will not fulfil its obligations;
  - when concluding the Agreement, the Client has been requested to provide security in order to fulfil its obligations under this Agreement, and such security has not been forthcoming or is inadequate;
  - due to delay on the Client's side, the Contractor can no longer be required to fulfil the Agreement under the terms and conditions originally agreed;
  - in the event of the death of the Client, or if an application is made for a moratorium on payments or a winding up order;
  - the Client's business is wound up;
  - the Client's activities are halted or wound up;
  - any of the client's assets are seized;
  - circumstances arise, the nature of which renders fulfilment of the Agreement impossible, or such that the Contractor cannot be reasonably required to maintain the Agreement unchanged.
- A.3.7 Any claims owed by the Client to the Contractor shall become immediately due and payable upon dissolution of the Agreement. The Contractor suspending the fulfilment of the obligations does not affect its statutory rights or any entitlements under the Agreement.
- A.3.8 If dissolution is attributable to the Client, the Contractor has the right to compensation for any damage/losses, arising either directly or indirectly as a result thereof.

#### **Article A.4. Procedure upon termination of the Agreement**

- A.4.1 Upon termination of the Agreement, the parties are mutually obliged to immediately return any property in their possession which the other party owns or is entitled to. Certain goods, such as data (and data carriers) may be erased or destroyed instead of being returned, if the entitled party has given consent to this in Writing.
- A.4.2 All data provided or entered by the Contractor remains its property at all times. The Client only receives a non-exclusive, transferable licence which is necessary to implement the Agreement.

#### **Article A.5. Prices**

- A.5.1 Prices are exclusive of sales tax (VAT) and other duties levied by the government.
- A.5.2 If a price in an offer is based on information provided by the Client and the information proves to be incorrect, the Contractor has the right to adjust the prices to reasonable prices based on the correct information, even after the Agreement has already been concluded.
- A.5.3 All prices given in the quotation are subject to typing and calculation errors.

## Article A.6. Terms of payment

- A.6.1 The Contractor will send the Client an invoice for the amount payable by the Client. If the Project is delivered in phases, the Contractor is entitled to invoice at the completion of each phase, monthly or based on hours worked (at the Contractor's discretion). The payment term for invoices is within 14 days of the date of the invoice, unless agreed otherwise between the Contractor and the Client.
- A.6.2 If the Client has failed to make the full payment in good time, effective 30 days after the payment term the Client will be held in default by operation of law without requiring notice of default. If an amount owed is not paid within the payment term, 2% per month and an administrative charge of EUR 15 will be payable on the outstanding amount without requiring any further notice of default from the Contractor.
- A.6.3 In the event the Client fails to pay by the due date, the Client is obliged to pay any and all judicial and extra-judicial collection costs, including the costs of lawyers, bailiffs and debt-collection agencies, in addition to the amount payable and the relevant interest due.
- A.6.4 The amount due is payable immediately in the event the Client is put into involuntary liquidation, applies for a moratorium on payments or if the Client passes away, and also if the Client's business is wound up or dissolved.
- A.6.5 In the cases referred to above, the Contractor will also have the right to terminate or suspend implementation of the Agreement or any part thereof that has not yet been implemented without notice of default or judicial intervention being required, and without the Client being entitled to compensation.

## Article A.7. Additional work

- A.7.1 If the volume of work that the Contractor has to do under this Agreement increases as a result of the Client's requirements, which the Contractor could reasonably consider to be amendments or additions to what was set out in the quotation (including a delay or overrun of the Project attributable to the Client), this constitutes additional work.
- A.7.2 If the Contractor is of the opinion that additional work is involved, it will notify the Client as soon as possible and request approval in Writing for the proposed additional work and for its offer including the delivery period.
- A.7.3 The Client will always take the decision on proposed additional work within five (5) working days. The activities to be carried out as part of the accepted additional work will be put in Writing and approved by both parties.
- A.7.4 The Client is responsible for any overrun of the delivery periods stipulated in the original quotation due to additional work.
- A.7.5 The provisions of these General Terms and Conditions apply to all additional work to be carried out by the Contractor, in so far as the parties have not agreed any other terms and conditions.

## Article A.8. Liability

- A.8.1 For each event or series of related events, the Contractor's liability for direct damage/losses incurred by the Client as a result of a culpable shortcoming in the Contractor fulfilling its obligations under the Agreement, which also expressly includes any shortcoming in fulfilling a guarantee commitment agreed with the Client, or an unlawful act on the part of the Contractor, its employees or third parties engaged by the Contractor, is limited to a sum equal to the payments the Client is obliged to make under this Agreement each year (excluding VAT). Under no circumstances however will the total compensation to be paid for any direct loss or damage exceed a sum of EUR 25,000 (excluding VAT).
- A.8.2 The Contractor's total liability for damage/loss arising from death or physical injury or material damage to property will under no circumstances exceed a sum of EUR 500,000 for each event causing damage, in which case a series of related events counts as one event.

- A.8.3 The Contractor's liability for indirect loss or damage, including consequential loss, loss of profit, lost savings, corruption or loss of data (business or otherwise), and losses due to business stagnation is excluded.
- A.8.4 Except for the cases referred to in paragraphs 1 and 2 of this article, the Contractor will not be held liable for any damage/losses whatsoever, regardless of the grounds on which an action for compensation might be based. The exclusions and limitations referred to in this article cease to apply if and to the extent the damage or loss is a consequence of an intentional act or wilful recklessness on the part of the Contractor's management.
- A.8.5 The Contractor's liability for an attributable failure to perform the Agreement will only arise if the Client immediately notifies the Contractor of its default in Writing, setting a reasonable period to remedy the failure, and the Contractor continues to culpably fail to perform its obligations even after that period. The notice of default should contain a description of the failure in as much detail as possible to enable the Contractor to respond adequately.
- A.8.6 Any right to claim compensation will at all times be subject to the condition that the Client notifies the Contractor of the damage or loss in Writing within 30 days of it arising.
- A.8.7 The Client will indemnify the Contractor against all third-party claims on account of liability resulting from a defect in the Project/Service provided by the Client to a third party, and which also comprised items, Materials or Results supplied by the Contractor, subject to and to the extent that the Client proves that the losses/damage were caused by those items, Materials or Results. The Client will indemnify the Contractor against claims concerning non-compliance with licences by the Client and/or third parties (including Users) that fall under the Client's responsibility.
- A.8.8 Contractor liability for shortcomings in the products and Services of third parties, including software, is expressly ruled out.

## **Article A.9. Failures and Force Majeure**

- A.9.1 Neither party may be bound to perform any obligation if a circumstance beyond the parties' control that could not or should not have already been predicted when concluding the Agreement negates every reasonable opportunity to perform. The parties can only invoke Force Majeure in dealings with each other, if, as soon as possible after the occurrence of the shortcoming, the party affected informs the other party in Writing that it is invoking Force Majeure and submits the necessary documentary evidence.
- A.9.2 The circumstances envisaged in paragraph 1 could, for example, consist of: (a) failures of the Internet or other telecommunication facilities; (b) shortcomings by parties on whom the Contractor depends for providing the Services; (c) defective items, Hardware, software or Materials, which the Client has obliged the Contractor to use; (d) the non-availability of one or more staff members (due to illness or otherwise); and (e) government measures.
- A.9.3 In the event of Force Majeure, fulfilment of the obligations concerned and other associated obligations will be suspended in part or in full for the duration of such a Force Majeure situation without the parties being liable to pay each other any compensation. The parties can only invoke Force Majeure in dealings with each other, if, as soon as possible after the occurrence of the shortcoming, the party affected informs the other party in Writing that it is invoking Force Majeure and submits documentary evidence.
- A.9.4 In the event of Force Majeure, the party that has invoked Force Majeure shall endeavour to ensure that the shortcoming which is excused by the Force Majeure continues for as short a period as possible.
- A.9.5 If a Force Majeure situation has lasted for thirty (30) days, or as soon as it is certain that the Force Majeure situation will continue for more than three months, each party has the right to terminate the Agreement in Writing, unless the nature or scope of the shortcoming would not justify premature termination. In such an event, that which has already been performed under the Agreement shall be paid for on a proportional basis without the parties owing each other anything else.

## Article A.10. Intellectual property rights

- A.10.1 The Contractor or its licensors hold all intellectual property rights to all of the Materials developed or made available within the context of the Project.
- A.10.2 The Client will acquire the exclusive user rights and powers explicitly assigned in Writing under these General Terms and Conditions, the Agreement or otherwise, and in all other respects the Client will not reproduce or publish the software, Services or other Materials.
- A.10.3 The Client is not permitted to remove or modify any markings relating to copyrights, trademarks, trade names or other intellectual property rights from the Materials, including markings relating to the confidential nature and secrecy of the Materials.
- A.10.4 The Contractor is permitted to take technical measures to protect the Materials, for example with passwords or encryption. If the Contractor has used technical measures to protect the Materials, the Client is not permitted to remove or circumvent the relevant protection.
- A.10.5 Any use, reproduction, or publication of the Materials falling outside the scope of the Agreement or the rights of use granted will infringe the intellectual property of the Contractor or its licensors.
- A.10.6 The Client will pay the Contractor a penalty of EUR 5,000 due and payable immediately for each act of infringement and EUR 25,000 for each deliberate act of infringement, without prejudice to the Contractor's right to receive compensation for the damage/losses it incurs as a result of the infringement or to allow other legal action to be taken for the purpose of terminating the infringement and/or recovering the damage/losses. After the elapse of one working day after the Contractor has informed the Client of an infringement, a penalty of EUR 5,000 will also be payable by the Client for each day that the infringement has not been brought to an end.

## Article A.11. Processing personal details

- A.11.1 If, in performing the Services, the Contractor is to process personal data, under the General Data Protection Regulation ("GDPR"), the Contractor and the Client are required to assume obligations in respect of the data processed by the Contractor for the purpose of safeguarding the technical and organisational protection measures pertaining to the data to be processed. In the absence of a separately agreed, detailed 'data processing agreement' the provisions set out in this article apply as obligations within the meaning of the GDPR.
- A.11.2 For duration of the Agreement, Contractor solely processes the personal data under the supervision of Client and solely for the purpose of making available its Services. Client shall be regarded as the controller, and Contractor as the processor.
- A.11.3 The personal data, of the data subjects, that can be processed by Contractor in this regard, are further specified within the Agreement.
- A.11.4 In case, within the meaning of these General Terms and Conditions, or within the Agreement, the Wbp is referred to, from the 25th of May 2018 onwards, the corresponding provisions of the General Data Protection Regulation ("GDPR") are meant.
- A.11.5 The Contractor shall, to the best of its ability, make reasonable efforts to have sufficient technical and organisational measures in place with regard to the processing of personal data, and will endeavour to meet the security at a level that is not unreasonable, considered the state of the technology, the sensitivity of the data and the costs involved in making the security arrangements.
- A.11.6 The Contractor shall ensure that all persons acting under its authority, insofar as they have access to personal data from Client, will only process such personal data on the Client's instructions.
- A.11.7 The Contractor is allowed to process the personal data in countries within the European Union. In addition, Client grants Contractor its approval to process the personal data within a country outside the European Union, in compliance with the relevant applicable laws and regulations. Upon request, Contractor shall notify Client as to which country or countries outside the European Union the personal data is being processed in.

- A.11.8 Client, hereby, grants Contractor its approval to engage third parties for the processing of personal for performance of the Services, considering the relevant applicable laws and regulations. Upon request of Client, Contractor shall in any event ensure that such third parties will be obliged to agree in writing to the same duties that are agreed upon between Client and Contractor, and will take care of correct authorizations. Contractor shall inform Client upon request about the third parties engaged. Client has the right to object against any, by Contractor, engaged, third parties. In case of objection by Client, Client and Contractor will try to come to an agreement to solve this situation.
- A.11.9 The Client guarantees and warrants that it will enter personal data or otherwise make it available to the Contractor only in a manner that is fully compliant with the applicable laws and regulations and does not infringe any rights of a third party. In this context, Client indemnifies Contractor of all claims and actions related to the processing of personal data.
- A.11.10 If the Client is required by a legal obligation or exercise of the legal rights by one of the data subjects, to extract, adjust, transfer, delete or hand over personal data stored in the Contractor's systems, the Contractor will facilitate this activity to the best possible extent. The costs for the relevant activities may be invoiced separately. Where a data subject directly submits a request to Contractor to exercise one of its legal rights, Contractor will forward this request to Client. Client will then deal with this request independently.
- A.11.11 Client has the right to conduct an audit, by an independent third party who shall be bound to confidentiality, to control compliance of Contractor with this article A.11. This audit may only be undertaken when there are specific grounds for suspecting the misuse of personal data by Contractor. The by Client initiated audit, will take place two weeks after Client has provided Contractor with written notice about this. The costs of the audit will be borne by Client.
- A.11.12 All personal data received by Contractor from Client and/or compiled by Contractor for performance of the Services is subject to a duty of confidentiality vis-à-vis third parties. This duty of confidentiality will not apply in the event that Client has expressly authorised the furnishing of such information to third parties, where the furnishing of the information to third parties is reasonably necessary for performance of the Services, or if there is a legal obligation to make the information available to a third party. If Contractor is legally required to provide information to a third party, Contractor shall inform Client of this immediately to the extent permitted by law.
- A.11.13 The Client, as the controller within the meaning of the GDPR, is at all times responsible for reporting a data breach (by which is meant: a security breach of personal data that leads to a serious risk of adverse effects, or has serious negative consequences for the protection of personal data) to the relevant supervisory authority(ies) and/or the data subjects. In order to enable the Client to comply with this legal obligation, the Contractor shall inform the Client as soon as possible and ultimately within forty-eight (48) hours after discovery of the data breach. If there is any legal obligation or requirement for Contractor to assist Client, Contractor will assist Client in informing the relevant supervisory authority and/or data subjects.
- A.11.14 The duty to report the data breach includes in any event the duty to report the fact that a breach has occurred including, for as far as known by Contractor, the following details:
  - the date at which the breach has occurred (the period in which the breach occurred suffices in case the Contractor is unable to determine the exact date at which the breach occurred);
  - the (suspected) cause of the breach;
  - the date at which the breach has become known by Contractor, or by any engaged third party;
  - the number of individuals who are or may be affected by the breach (a minimum and maximum number of affected individuals suffices in case the exact number cannot be determined);
  - a description of the group of individuals who are or may be affected by the data breach, including the type of personal information which has been breached;
  - whether the personal data has been encrypted, hashed or in any manner has been made incomprehensible or inaccessible to unauthorized individuals;
  - the proposed and or taken measures to end the breach and to limit its consequences;
  - information about the first point of contact regarding the notification.
- A.11.15 Upon expiration of the Agreement, Contractor shall delete or return the personal data referred to in this article A.11.3, upon choosing of Client.



## **Article A.12. Staff**

- A.12.1 Where an Employee has to perform activities at the Client's site for the performance of the Agreement (unlike where the Client and the Contractor enter into an Agreement for the secondment of an Employee), the following provisions shall apply.
- A.12.2 The Client shall provide the Contractor's Employee who, for the purposes of performing the Agreement, is performing activities at the Client's site, with all the support necessary for the performance of the activities. The Client shall be obliged to do everything that is necessary to enable the Employee to carry out his work properly and safely.
- A.12.3 The Contractor shall undertake to ensure that the Employee has the correct job description and skills. The Client may not select specific Employees unless this has been agreed expressly. The Contractor shall be entitled to exchange an Employee for an Employee with comparable skills and a comparable job description.
- A.12.4 The Client may not limit access to certain Employees only. Nor is there any guarantee that the Client will be able to have a permanent team of Employees, where such is relevant.
- A.12.5 During the term of the Agreement and for two (2) years after its end, the Client shall not be permitted to employ Employees of the Contractor, enter into direct or indirect business relationships with them or arrange for them to perform activities other than within the framework of the Agreement without the Written consent of the Contractor, such being subject to a contractual penalty due and payable immediately of €10,000 per breach, plus €500 for each day that this breach continues, which penalty amounts shall be payable to the Contractor. This article shall also apply where the Client and Contractor have entered into an agreement for the secondment of an Employee.

## **Article A.13. Confidentiality**

- A.13.1 The Parties will treat the information they provide each other before, during or after the performance of this Agreement as confidential, if such information has been marked as confidential or if the recipient party is aware or should reasonably assume that the information is intended to be confidential. The Parties will also impose this obligation on their employees as well as on any third parties they have engaged to perform the Agreement.
- A.13.2 The Contractor will not access the information stored by the Client and/or distributed via the Contractor's Services unless this is required for the proper performance of the Agreement or for the quality of the Projects, or if the Contractor is obliged to do so pursuant to a legal provision or an injunction. In that case, the Contractor will undertake to limit access to the information as far as possible, to the extent that this is within its power.
- A.13.3 This obligation remains in force after termination of the Agreement irrespective of the reason, and for as long as the party providing the information can reasonably claim that the information is confidential.

## **Article A.14. Amendments to the General Terms and Conditions**

- A.14.1 In the case of a continuing performance agreement, the Contractor reserves the right to amend or supplement the General Terms and Conditions and all Modules contained therein.
- A.14.2 Amendments also apply to agreements already concluded with due observance of a term of 30 days following publication of the amendment on Contractor's Website or by electronic communication. Minor changes can be implemented at any time.
- A.14.3 If the Client is a natural person who is not acting in the course of a profession or the operation of a business and, as a result of the amendment, the Client is provided with a service that substantially differs from the original service, the Client shall be entitled to terminate the Agreement as of the date on which the amended Terms and Conditions come into effect.

## Article A.15. Settlement of disputes

- A.15.1 The Agreement, as well as any agreements and other legal acts arising from it or related to it, are exclusively governed by Dutch law.
- A.15.2 All disputes, including those which are only deemed by one party to be a dispute, which arise from or are connected with this Agreement and its implementation and/or with other agreements ensuing from or related to this Agreement will be settled through the mediation offered by ICTWaarborg (hereinafter referred to in this article as Mediation).
- A.15.3 The parties undertake to cooperate with each other on settling disputes through Mediation and commit themselves to each bearing half of the Mediation costs.
- A.15.4 Mediation comprises two phases. In the first phase the parties seek a possible solution with which they can both agree. If agreement can be reached, the mediator will put that which has been agreed into a settlement agreement. If it proves impossible to reach an agreement that is acceptable to both parties in the first phase, the process will go into a second phase. In the second phase the mediator will work out an agreement that is binding upon both parties and then set this out in a settlement agreement.
- A.15.5 Parties shall at all times have the right to submit their disputes to the legally competent Dutch court, however, only when both Parties give their explicit written prior consent and agree to refrain from Mediation.

## Article A.16. Concluding provisions - General Module

- A.16.1 If any provisions in this Agreement are declared null and void, the validity of the Agreement as a whole shall remain unaffected. In such case, for the purpose of replacing any such provisions the Parties will stipulate a new provision or new provisions reflecting the purport of the original Agreement and the General Terms and Conditions as far as possible on a legal basis.
- A.16.2 If disputes arise from this Agreement which cannot be settled through the settlement arrangements, they will be brought before the competent court in Amsterdam.
- A.16.3 Information and notices on the Contractor's Website may be subject to errors.
- A.16.4 The version of any communications received or stored by the Contractor (including log files) shall be regarded as authentic, subject to proof to the contrary to be produced by the Client.
- A.16.5 For the purpose of promoting its services, the Contractor has the right to show third parties which Projects it provides the Client, unless reasonable interests on the Client's part render this unacceptable or it has been agreed otherwise in Writing.
- A.16.6 The Contractor has the right at all times to engage third parties in performing the Agreement.
- A.16.7 The Contractor and the Client may transfer their rights and obligations under the Agreement to third parties, provided the other party consents to the transfer in Writing beforehand.

## Module B. Development of (web)applications

Module B applies to customised work delivered by the Contractor to the Client, for example the design and/or development of applications (web or other), software, advice, reports or other specific content-related work.

### Article B.1. Delivery & acceptance

- B.1.1 The Contractor will make every effort to deliver the Materials to be accepted by the Client in accordance with the Specifications.
- B.1.2 When the Materials are delivered to the Client for acceptance, the Client will subject them to an Acceptance Test at its own expense and under its own responsibility, during the acceptance period of one week. By accepting the Materials, the Client will release the Contractor from all its obligations in respect of the Results.
- B.1.3 If the Client does not reject the Materials (in part or in their entirety) within the period referred to in paragraph 2, they will be deemed accepted and delivered.
- B.1.4 The Client is equally deemed to have accepted the Materials if it has taken them into operation or if the Client has failed to notify the Contractor within ten days of delivery in Writing that the Materials will for whatever reason(s) not be accepted.
- B.1.5 If the Materials are not accepted, the Contractor will specify what adjustments will be made, stating the time required and any costs. The Client will then state whether it agrees to the specified adjustments, the time required and any costs, or whether it has decided against rejecting the materials. The Contractor will make every effort to remedy the reproducible Defects discovered by the Client within the term agreed by the parties and, if such a date is omitted, within a reasonable term.
- B.1.6 Adjustments in response to the rejection of a Material may be made in a production environment or an acceptance environment. This is at the Contractor's discretion.
- B.1.7 If the Client has accepted the Results (with the exception of Defects in functionalities, exterior Defects or minor Defects), the guarantee term of 30 days enters into effect. Within this term, the Results will be deemed to have been accepted, but it will remain possible to make notification of Defects that could not reasonably have been discovered during the Acceptance Test. The Contractor will itemise any Defects and add the expected time required and, if the Defects cannot be remedied easily and within 30 days, any additional costs for modifying those components. This guarantee period therefore cannot be considered a prolonged Acceptance Test and does not entitle the Customer to more guarantees than stipulated in this paragraph.
- B.1.8 Minor Defects, including Defects which cannot be deemed in either nature or number to form a reasonable impediment to operational utilisation of the Materials, will not constitute a reason for withholding acceptance, without prejudice to the obligation of the Contractor to repair such Defects. The Parties will consult with each other on this matter.
- B.1.9 If the Project is carried out in phases, the Client shall submit its approval or rejection of the Materials after delivery of each phase, with due observance of the above procedure. The Client is not permitted to base the approval or rejection of the Materials of a later phase on matters approved in a previous phase.
- B.1.10 The Contractor is entitled to postpone commencement of a new phase until the Client has given its explicit approval for the previous phase.
- B.1.11 The Contractor provides no guarantee that the goal pursued by the Client in respect of the work developed, or to be developed, by the Contractor will in fact be achieved.
- B.1.12 The Contractor makes every effort to develop and supply its products/works to be as effective and free of faults as possible.
- B.1.13 The Contractor has the right to create temporary solutions restricting certain functionalities in order to avoid serious errors.

## Article B.2. Progress

- B.2.1 The Client and the Contractor will consult each other to reach agreement on specific phases, delivery dates and periods for the Project, for example in the quotation or in the Agreement.
- B.2.2 The Contractor will contact the Client at least once every fourteen days, by email, on the telephone or via the Project Management System, to keep the Client informed on the progress of the Project.

## Article B.3. Specifications & Materials/source Material

- B.3.1 The parties will specify in Writing the work to be developed, the requirements the work must satisfy and how the work will be carried out. The Contractor will ensure that the work is developed with due care on the basis of the information provided by the Client. The Client will guarantee the accuracy, completeness, consistency and timeliness of the instructions and information it provides.
- B.3.2 A written specification as referred to in Article 3.1 is not required if the Client has expressed the wish to give the Contractor a large amount of freedom in the development of the works and how this is done. If the the works have been developed in this way, the Client cannot subsequently invoke Specifications drawn up in Writing to which the Contractor has not agreed.
- B.3.3 The Contractor has the right, but is under no obligation, to verify the accuracy, completeness and consistency of the Materials/source Materials, requirements or Specifications made available to the Contractor, and in the event that any faults are established, to suspend the agreed activities until such time as the Client has fixed the relevant faults.
- B.3.4 If the Materials/source Materials provided by the Client to the Contractor are protected by any intellectual property rights, the Client will at all times guarantee that it holds all the required licences for provision to and the intended use by the Contractor within the scope of the Agreement.
- B.3.5 Unless agreed otherwise, the Contractor has the right to use images, software and third-party components, including open source software for the development of the work. After delivery, the Client shall be responsible for ensuring correct compliance with the relevant third-party licences when using the developed works. The Contractor will provide the Client with sufficient information on the applicable licence terms. Costs associated with the licences that are necessary for the implementation of the Agreement, will be charged to the Client. This is specified in the quotation.
- B.3.6 The Client itself is responsible for updating its own applications, Services, and infrastructure to ensure interoperability with the Contractor's products and Services. This is in connection with any links. Applications may not work properly if this is not done.
- B.3.7 The Contractor is not liable for the Project/Service being unusable if this is due to the fact that the Client has not migrated its systems to the current standards in good time (on the Contractor's instructions), or if the Client is using standards that are no longer supported in the industry. The Contractor no longer considers a standard introduced 24 months ago to be current. This liability exclusion also applies if the Client is working with a version of an Internet browser, use of which and support for which can no longer be taken for granted because a new version of that Internet browser has been released.

## **Article B.4. Licensing conditions for development**

- B.4.1 The Contractor grants the Client the right to reproduce and distribute the developed Materials for the purposes intended by the Client when it entered into the Agreement.
- B.4.2 In doing so, the Contractor will never assign any intellectual property rights to which it is entitled (such as copyright) to the Client unless expressly agreed otherwise in Writing.
- B.4.3 The source code of the software supplied by the Contractor, not being open source software, and the technical documentation created during software development may not and will never be made available to the Client, nor is the Client permitted to make any changes to these, unless expressly agreed otherwise in Writing.
- B.4.4 The Contractor grants the Client the non-exclusive right to use the software developed on its behalf. The Client will always strictly comply with the restrictions on use as agreed between the parties. The right of use granted is non-transferable.
- B.4.5 The Client is not permitted to sell, rent, sub-license, dispose of the work developed or grant limited rights to such work or make it available to a third party in any way whatsoever or for whatever purpose, not even in the event that the third party uses the software exclusively on the Client's behalf, unless agreed otherwise in Writing, or in the event of or in combination with the sale of the Client's relevant business units or business activities.

## Module C. Hosting / SaaS

This module applies to the data and/or applications/web applications made available and retained as such (hosting) by the Contractor to the Client 'remotely' via the Internet or another network (known as hosting), without providing the Client with a physical carrier with the relevant software. This includes the registration and management of domain names.

### Article C.1. Execution

- C.1.1 Following conclusion of the Agreement, the Contractor will perform the Service as soon as possible, in accordance with the offer, taking into account any reasonable wishes of the Client.
- C.1.2 The Agreement specifies when the Contractor will start with the installation of the application/web application.
- C.1.3 The Contractor will endeavour to ensure that the application/web application can be ideally configured and managed, exercising due care and professionalism.
- C.1.4 The Client is obliged to do and arrange for third parties to do everything that is necessary to enable the application/web application to be installed correctly and on time. In particular, the Client will ensure that all data and facilities which the Contractor indicates are necessary, or which the Client should reasonably understand are necessary, for the installation of the application/web application are provided to the Contractor in good time.

### Article C.2. Term of the agreement

- C.2.1 The Agreement is entered into by the Client for a minimum term of twelve (12) months. After that the Agreement will be continued indefinitely. At the end of the minimum term, the Agreement may be terminated by either party giving notice of at least one (1) month. Notice to terminate the Agreement given by either the Client or the Contractor must be given in Writing.

### Article C.3. Rules of conduct

- C.3.1 The Client will refrain from storing and/or distributing or commissioning the distribution of material in contravention of the provisions of Dutch law, in any case including but not confined to: material that is insulting, defamatory, offensive, racist, discriminatory or that incites hatred; material that is erotic or pornographic (unless explicitly permitted in the offer); material that infringes third-party rights, in any case including but not confined to copyright, trademark rights and portrait rights; material that violates the privacy of third parties, in any case including but not confined to distributing third-party personal data without permission or necessity, or repeatedly harassing third parties with unwanted communications, hyperlinks, torrents or similar information of which the Client is aware or should be aware that it concerns to material that infringes third-party rights, contains unsolicited commercial, charity-related or ideals-related communications, or contains malicious content, such as viruses or spyware.
- C.3.2 The Client will refrain from obstructing other clients or Internet users or inflicting damage on the Contractor's servers. The Client is prohibited from starting up processes or programs via the server or otherwise of which the Client is aware or can reasonably assume that these will obstruct or inflict damage on the Contractor, other clients or Internet users.  
The Contractor will advise the Client of any measures taken.
- C.3.3 In addition to the legal obligations, any damage arising as a result of incompetence on the Client's part, or as a result of the Client not acting in accordance with the points stated above will be payable by the Client.
- C.3.4 To prevent the aforementioned problems such as damage and security risks, the Contractor is entitled at its own discretion to restrict the Client's management capabilities so that all management is carried out by the Contractor.

## **Article C.4. License**

- C.4.1 The Client hereby grants the Contractor an unlimited licence to distribute, store, forward or copy all Materials supplied by the Client for the Contractor's Services, in a manner deemed appropriate by the Contractor, but solely to the extent this is reasonably required for the Contractor to fulfil the Agreement.

## **Article C.5. Indemnification**

- C.5.1 The Client indemnifies the Contractor against all legal claims made by third parties relating to the use of the Services by the Client. The Contractor is not responsible for data/Services/software called via a link.
- C.5.2 If, pursuant to an authorised order from a government agency, or in connection with a legal obligation, the Contractor is required to perform activities involving information relating to the Client, its employees or Users, all costs attached to these activities will be chargeable to the Client.

## **Article C.6. Provisions of services and availability**

- C.6.1 All of the Contractor's Services will be performed on the basis of a best-efforts obligation, unless and to the extent that the Contractor has pledged an explicit result in the Agreement and the relevant result has also been adequately described.
- C.6.2 Electronic transmission of the Client's data as part of the Services, by whatever method, is for the Client's account and risk.
- C.6.3 The Contractor is never obliged to also provide the Client with a physical data carrier (for instance a CD or USB stick) containing the remote applications that it has made available.
- C.6.4 If the Services are (also) provided via the Contractor's Services and/or networks, the Contractor will undertake to ensure that downtime is kept to a minimum.
- C.6.5 The Contractor provides no guarantee of the exact amount of uptime unless otherwise agreed in the offer by means of an SLA in which uptime is specified. To the extent not provided for otherwise in an applicable SLA, the provisions of this article apply.
- C.6.6 Subject to proof of the contrary, the availability and service levels measured by the Contractor will serve as complete proof.
- C.6.7 The Contractor will undertake to ensure that the Client can make use of the networks that are either directly or indirectly connected to the Contractor's network. However, the Contractor cannot guarantee that these networks will be available at any particular time. Legal and contractual conditions may be attached to use of networks by third parties. The Contractor will undertake to inform the Client of this in good time.
- C.6.8 If, in the Contractor's opinion, the functioning of the Services, the Contractor's network, third-party networks and/or service provision via a network is at risk, in particular as a result of sending excessive amounts of e-mail or other data, inadequately protected Services or activities of viruses, Trojan horses and similar software, the Contractor has the right to take all reasonable measures it deems necessary to prevent such risk.
- C.6.9 The Contractor has the right to take the Services or parts thereof temporarily out of operation for the purpose of maintenance, adjustment or improvement. The Contractor will endeavour to ensure that as far as possible any such period of inactivity only takes place outside office hours, and will undertake to inform the Client in good time of the scheduling of periods of inactivity. However, the Contractor is never obliged to pay compensation for any damage/loss arising from taking the Services out of operation for the above purposes unless expressly agreed otherwise in Writing, for instance in an SLA.
- C.6.10 The Contractor is only obliged to have an alternative centre or other alternative facilities at its disposal if expressly agreed in Writing.

- C.6.11 Unless provided for otherwise in the Agreement, the Contractor is not obliged to make copies (backups) of the data stored by the Client on the Contractor's Services. Any backups made may be destroyed at any time after termination of the Agreement. It is the Client's responsibility to request a backup in the event the Agreement is terminated or dissolved.

## **Article C.7. Changes**

- C.7.1 The Contractor has the right to adapt the applications made available as it sees fit throughout the duration of the Agreement. If an adjustment causes a considerable change in functionality, the Contractor will undertake to inform the Client of this. The Client may continue to use an older version of the application on request, only if this is technically feasible and does not require a disproportionate effort on the part of the Contractor. The Contractor may charge additional costs for providing this option.

## **Article C.8. Storage and data limits**

- C.8.1 The Contractor may impose a maximum limit on the amount of storage space or data traffic the Client may use each month within the framework of the Service. The Client will not exceed the limits unless the consequences thereof are expressly laid down in the Agreement. In the event this maximum is exceeded, the Contractor is authorised to charge an additional amount in accordance with the amounts charged for additional storage space or data traffic as specified in the Agreement. If no storage and/or data limits have been agreed, the Contractor's fair use policy applies.

## **Article C.9. Procedure upon termination of the Agreement**

- C.9.1 The Contractor will ensure that, upon termination of the Agreement, the Client is given a reasonable opportunity to transfer its data that are stored in the Contractor's systems to its own systems or to the systems of a new supplier. To this end, the Contractor will endeavour to be able to provide the data in a standard file format.



## Module F. Secondment

This Module shall apply to Contractors seconding Employees to Clients' premises.

### Article F.1. Seconding Employees

- F.1.1 Where necessary for the performance of the Agreement, an Employee will perform activities at the Client's premises. The Agreement ("Secondment Agreement") contains specific provisions concerning, among other things, the activities to be performed, the duration and the price.
- F.1.2 The Contractor shall place the Employee designated in the Agreement at the disposal of the Client to perform activities as agreed between the parties under the Client's direction and supervision.
- F.1.3 The Client shall use the Employee only for the agreed activities within the Client's company.
- F.1.4 The secondment of an Employee by the Client to a third party shall be permitted only after Written consent has been given by the Contractor. The Contractor may withhold consent without giving any specific justification for doing so, or attach (financial) conditions to any such secondment.
- F.1.5 The Contractor shall undertake to ensure that the posted Employee has the correct job description and skills. The Client may not select specific Employees unless this has been agreed expressly. The Contractor shall be entitled to exchange an Employee for an Employee with comparable skills and a comparable job description.
- F.1.6 The Client shall be entitled to request the replacement of the posted Employee where the Employee does not meet the job description or quality requirements and/or lacks the correct skills, at least not as agreed between the parties. The Client shall send any such request in Writing, accompanied by reasons, to the Contractor within five (5) working days after commencement of the activities by the Employee.
- F.1.7 In the event of sickness lasting (expected to last) more than five (5) working days, or termination of the Employee's employment, the Contractor shall try to arrange a suitable replacement within a reasonable time.
- F.1.8 The Contractor shall deal with the provisions set out in the previous two articles concerning a replacement as a matter of urgency. The Contractor does not guarantee that a replacement will always be possible. Where a replacement is not possible, or is not wholly or immediately possible, the Client's claims in respect of further performance of the Agreement, including claims for non-performance of the Agreement, shall lapse. The Client's payment obligations with regard to the activities already performed shall remain unaffected.

### Article F.2. Terms and conditions of employment

- F.2.1 The Employee shall comply with the Client's instructions and house rules.
- F.2.2 The Client shall behave towards and treat the posted Employee in the same way as it would or does behave towards and treat its own employees and/or staff.
- F.2.3 The Client shall be obliged to comply with all relevant legislation and to meet the obligations arising from related regulations in the area of safety at work and good working conditions in general.

### Article F.3. Responsible parties

- F.3.1 The Contractor shall be responsible for the payment of the income tax and national insurance contributions and turnover tax payable for the posted Employee. The Contractor shall indemnify the Client against all claims from the Tax and Customs Administration and/or agencies responsible for the implementation of social security legislation which are due and payable on account of the Agreement with the Client. The Client shall always notify the Contractor in Writing as soon as possible where any such claim exists.
- F.3.2 F.3.2 The Contractor shall accept no liability for the selection of the posted Employee and/or for the results of activities effected under the supervision and direction of the Client, unless the Contractor has knowingly failed

to implement the provisions set out in article F.1.5.

- F.3.3 F.3.3 The Client shall be liable for all damage suffered by the posted Employee during or in connection with the activities assigned to him.
- F.3.4 The Client shall indemnify the Contractor against any damage the Contractor may suffer as a result of the claims of third parties, including claims of the posted Employees and those of persons employed under the responsibility of the Contractor which are connected to the goods supplied or activities performed by the Contractor, including:
  - damage which is the result of the unlawful actions of the Contractor's posted Employee and persons working under the responsibility of the Contractor and who were placed at the disposal of the Client and are working under its supervision or on its instructions;
  - damage which is the result of unsafe situations at its company, residential premises or other place at which the Agreement is performed, or of actions or omissions on the part of the Client, including giving its own interpretation to, and/or misusing knowledge and information provided by the Contractor and products and items supplied by the Contractor;
  - damage which is the result of a defect in items supplied by the Contractor which have been used, changed or resold by the Client with the addition of or in conjunction with own products, software or Services of the Client, unless the Client proves that the defect is not the result of any use, change or reselling as referred to above.

## **Article F.4. Confidentiality**

- F.4.1 The Client may impose confidentiality on the Employee with regard to all information acquired by the Employee.
- F.4.2 The provisions of the previous article shall apply by analogy where there is a situation in which the Employee is transferred. The Client shall be obliged to include the same conditions in any onward hire sub-agreement.

## **Module H. Maintenance and Support**

This Module applies to Services comprising the installation, configuration and/or maintenance of Materials and Services such as software, applications, websites, etc.

### **Article H.1. Implementation**

- H.1.1 Maintenance shall mean ensuring the functioning of existing or new (newly developed) Materials in accordance with the offer or more detailed agreement, and more generally the remedying of defects. Support shall mean offering assistance, whether or not remotely, with the maintenance of the Materials or working with them.
- H.1.2 Once the Agreement is concluded, the Contractor shall carry out the activities as soon as possible, in accordance with the offer, taking into account any reasonable wishes of the Client.
- H.1.3 The Agreement specifies the remuneration the Contractor will receive when it starts to perform the Services and activities. There may be fixed fees, but also activities based on hourly rates and subsequent calculations. The Agreement will specify clearly which activities are performed for which sums.
- H.1.4 All Services supplied by the Contractor shall be performed on the basis of a best efforts obligation unless and insofar as the Contractor has expressly promised a result in the Written Agreement and the result concerned is also described in a sufficiently precise way.
- H.1.5 The Contractor provides no guarantees concerning results unless agreed otherwise in the offer by means of a Service Level Agreement (SLA) in which results are specified. To the extent not provided for otherwise in an applicable SLA, the provisions of this article shall apply. The Contractor shall undertake to ensure that requests of the Client are executed as quickly as possible, but cannot give any firm deadlines. This shall apply to a deadline for scheduling and performing planned activities and also to response times and times for repairs where there is a request for the adjustment, repair and/or improvement of a Service and/or Materials.

## **Article H.2. Term**

- H.2.1 The Agreement shall be entered into by the Client for a minimum term of twelve (12) months. Hereafter the Agreement shall be continued indefinitely. At the end of the minimum term, the Agreement may be terminated by either party giving at least one (1) month's notice. Notice to terminate the Agreement given by either the Client or the Contractor must be given in Writing.

## **Article H.3. Specifications and Client Cooperation**

- H.3.1 If agreed, the Contractor shall install and configure the Materials on hardware and networks to be indicated by the Client. The Client shall be obliged to do everything that is reasonably necessary and desirable to enable the timely and proper installation and functioning of the Materials. In particular, the Client shall ensure that all information which the Contractor has stated to be required or with regard to which the Client can reasonably understand that it is required for the supply of the Materials, is made available to the Contractor in time.
- H.3.2 At the Contractor's request, the Client shall allow Employees and agents of the Contractor all necessary access to the computer systems concerned to facilitate installation, configuration, maintenance and adjustments of the Materials. Physical access to those systems shall take place only where such is necessary, and only after prior consultation with the Client.
- H.3.3 The selection, purchase and management of the hardware and networks to be used is the sole and complete responsibility of the Client. The Contractor shall give instructions regarding the configuration required. If the designated hardware and networks do not meet the Contractor's requirements, the Contractor shall be entitled to refuse installation or configuration.

## **Article H.4. Updates and improvements**

- H.4.1 Only where such is part of the Agreement will the Contractor undertake to ensure that the Materials are adjusted from time to time to improve functionality and remedy faults, whether or not on the basis of instructions and requests of the Client or at its own initiative, where such is specified in the Agreement.
- H.4.2 Only where such is part of the Agreement will the Contractor undertake to ensure that the Materials are kept up-to-date. However, the Contractor will in many cases be reliant on its supplier or suppliers and third parties. The Contractor shall be entitled not to install certain updates or patches if it believes such will be detrimental to the proper functioning of the software or will not be in the interest of the Service.
- H.4.3 The Contractor shall undertake to ensure that the changes and new functionality requested by the Client are added to the Materials. The Contractor shall at all times be entitled to refuse any such request where it believes such to be impracticable or liable to impede the proper functioning or availability of the Materials. Costs are associated with the Client's request to have changes and new functionality added to the Materials. The Contractor shall notify the Client of those costs in advance.
- H.4.4 Where an application, update or patch results in changed functionality within a Service or Project already developed which has a major impact on the functioning of other Materials, systems, etc., the Contractor and the Client shall discuss the consequences thereof. If a decision is made to implement that change, update or patch, the Contractor shall be entitled to invoice the hours spent separately based on actual costs.
- H.4.5 Where the Client wishes to implement a change to the Materials independently, such shall take place entirely at the Client's own risk and responsibility. In such a case, the Contractor shall not have to, or shall no longer have to, undertake to ensure that bugs or errors are remedied. All the foregoing applies unless the Client has notified the Contractor of the change required in advance and the Contractor has approved it in Writing. The Contractor may attach conditions to that approval.
- H.4.6 Unless agreed otherwise, the provision of support to end users (customers of the Client) shall not be included.

## **Article H.5. Remote support**

- H.5.1 Remote support is supplied by telephone, email and other channels to be agreed jointly.
- H.5.2 At the Client's request, the Contractor shall suggest software that enables computers to be accessed remotely. It is the Client's responsibility to ensure that its network and security environment allows such software to work.
- H.5.3 Where it turns out that remote support is not resulting in a satisfactory solution or is impracticable in view of the nature of the problem, the Contractor shall enter into consultations with the Client to find a solution on site.
- H.5.4 The Contractor may be contacted between 09:00 and 17:00 on working days (Monday to Friday inclusive, with the exception of public holidays recognised in the Netherlands and official holidays) for remote support (and also for scheduling maintenance and remedying faults).