

**Module: General**

**1. Applicability of the IT office Terms and Conditions**

1.1 The General Terms and Conditions have been drawn up to be used by Solid Flex Solutions B.V., registered at the Dutch Chamber of Commerce under number 71181296 and located in Hoofddorp, 2132 NH, Planetenweg 5, further mentioned as "Supplier". By "Supplier" is also meant "Solid Solutions International Pvt. Ltd", seated in Chennai, India. These Terms and Conditions consist of the present General Module and the following separate, specific modules:

1. Software license
2. Development of software
3. Maintenance of software
4. Application Service Provision, Software as a Service and Computer Service
5. Secondment services
6. Courses and training programs
7. Advice, consultancy and project management
8. Processing agreement

1.2 This General module of the Terms and Conditions shall apply to all offers and agreements whereby the Supplier provides the Client with any goods and/or services whatsoever and however described. The specific module or modules of the Terms and Conditions agreed between the Supplier and the Client shall also apply. If any part of this General module of the Terms and Conditions conflicts or is incompatible with any of the provisions of the specific module or modules of the Terms and Conditions agreed between the Supplier and the Client, the provisions of the specific module or modules in question shall prevail.

1.3 Where the Terms and Conditions refer to 'general terms and conditions', this shall be understood to mean the provisions of this General module in combination with the provisions of one or more agreed specific modules of the Terms and Conditions.

1.4 Additions to or deviations from these general terms and condition shall only apply where agreed in writing between the parties.

1.5 The applicability of any of the Client's purchasing or other conditions is expressly rejected.

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

**2. Offers**

2.1 All offers and other statements issued by the Supplier are non-committal, except where specified otherwise in writing by the Supplier.

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

**3. Price and payment**

3.1 All prices are exclusive of turnover tax (VAT) and other government levies that have been or are later imposed. Except where agreed otherwise, all prices are in euros in all cases and the Client must effect all payments in euros.

3.2 All costs, estimates and budgets issued by the Supplier shall be merely indicative, except where specified otherwise in writing by the Supplier. The Client can under no circumstances derive any rights or expectations from any cost estimates or budgets issued by the Supplier. An available budget made known by the Client to the Supplier shall under no circumstances apply as a (fixed) price agreed between the parties for the service to be provided by the Supplier. The Supplier shall only be obliged to notify the Client that there is a risk that a cost estimate or budget issued by the Supplier will be exceeded if this has been agreed between the parties in writing.

3.3 If the Client consists of more than one natural person and/or legal entity, each of these persons/entities shall be joint and severally liable in respect of payment of the amounts due on the basis of the agreement.

3.4 The relevant documents and information from the Supplier's administration or systems shall be conclusive evidence of the service provided by the Supplier and the amounts payable by the Client in return for this service, without prejudice to the Client's right to submit evidence to the contrary.

3.5 If the Client is subject to a periodic payment obligation, the Supplier shall be entitled to adjust the applicable prices and rates in writing subject to advance notice of at least three months. If the Client does not wish to agree to this change, the Client shall be entitled to terminate the agreement in writing with effect from the date on which the change is due to enter into force within thirty days following the date of notification. The Client shall not enjoy this right of termination, however, if the parties have agreed that the applicable prices and rates shall be adjusted subject to due observance of an index or other standard agreed between the parties.

3.6 The parties shall set out the date or dates on which the Supplier shall invoice the fee for the agreed services to the Client in the agreement. Amounts due shall be paid by the Client in accordance with the payment terms that have been agreed or that are stated on the invoice. If no specific arrangements have been made, the Client shall effect payment within a period after the date of invoice to be determined by the Supplier. The Client shall not be entitled to suspend any payments or to offset any amounts due.

3.7 If the Client fails to pay the amounts due or to pay the amounts due in a timely manner, statutory commercial interest shall be payable by the Client on the outstanding amount without a demand or notice of default being required. If the Client still fails to pay the amount owed after receiving a demand or notice of default, the Supplier may refer the debt for collection, in which case the Client shall also be obliged to pay all in-court and out-of-court expenses in addition to the total amount due, including all costs charged by external experts.

#### **4. Confidentiality and taking over of personnel**

4.1 The Client and the Supplier shall ensure that all information received from the other party that is known or should reasonably be known to be of a confidential nature is kept secret. The party that receives such confidential information shall only use this information for the purpose for which it has been provided. Information shall in any event be regarded as confidential if it is designated as such by one of the parties.

4.2 During the term of the agreement and for one year following the termination of the agreement, each of the parties shall only engage or otherwise employ, directly or indirectly, members of staff of the other party who are or were previously involved in the execution of the agreement after obtaining the prior written consent of the other party. Conditions may be attached to the aforementioned consent.

#### **5. Privacy, data processing and protection**

5.1 If the Supplier deems this to be necessary for the purpose of executing the agreement, the Client shall, upon request, notify the Supplier immediately in writing with regard to the manner in which the Client executes its obligations pursuant to legislation in respect of the protection of personal data.

5.2 The Client shall indemnify the Supplier against any claims by individuals whose personal data is recorded or processed within the context of a register of personal data that is maintained by the Client or for which the Client is otherwise responsible under the law, unless the client proves that the facts underlying the claim are to be attributed exclusively to the supplier.

5.3 The Client shall guarantee the Supplier that the content, the use and/or the processing of the data is not unlawful and does not infringe any rights of third parties. The Client shall indemnify the Supplier against legal claims by third parties, of whatever nature, in relation to this data or the execution of the agreement.

5.4 If the agreement stipulates that the Supplier is obliged to provide some form of information security, this security shall meet the specifications in respect of security agreed between the parties in writing. The Supplier shall not guarantee that the information security will be effective under all circumstances. If the agreement does not include an explicit description of security measures, the security measures shall be of such a level that, having regard to the state of the art, the sensitivity of the data and the costs associated with the implementation of the security measures are not unreasonable.

5.5 If computer, data or telecommunications facilities are used during the execution of the agreement or otherwise, the Supplier shall be entitled to assign access or identification codes to the Client. The Supplier shall be entitled to change the access or identification codes assigned. The Client shall treat the access and identification codes as confidential and with due care and shall only disclose these codes to authorized members of staff. The Supplier shall under no circumstances be liable for any damage or costs arising from the use or misuse of access or identification codes, except where misuse was possible as a direct result of an act or omission on the part of the Supplier.

## **6. Retention of title and rights, creation of items and suspension**

6.1 All objects delivered to the Client shall remain the property of the Supplier until such time as all amounts owed by the Client to the Supplier pursuant to the agreement concluded between the parties have been paid in full. A Client that acts as a retailer shall be entitled to sell and resell all objects that are subject to the Supplier's retention of title in so far as this is customary within the context of the normal course of its business. If the Client creates a new item (partly) from items delivered by the Supplier, the Client shall only create this item for the benefit of the Supplier and the Client shall retain the newly created item for the Supplier until such time as the Client has paid all amounts due pursuant to the agreement; in this case the Supplier shall remain the owner of the newly created item until the Client has met its payment obligations in full.

6.2 The property law consequences of the retention of title of an item intended for export are governed by the law of the destination state if that law contains more favorable provisions for the supplier.

6.3 Rights, including rights of use, shall be granted to the Client or transferred, where appropriate, subject to the condition that the Client has paid all of the fees due pursuant to the agreement concluded between the parties in full. If the parties have agreed that the Client shall be subject to a periodic payment obligation in respect of the granting of a right of use, the Client shall be entitled to the right of use for as long as it continues to meet its periodic payment obligation.

6.4 The Supplier may retain any items, products, proprietary rights, data, documents, software, data files and (interim) results of the service provided by the Supplier received or created within the context of the agreement, contrary to an existing obligation to deliver or transfer these, until such time as the Client has paid all amounts due to the Supplier.

## **7. Risk**

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

## **8. Intellectual property rights**

8.1 If the Supplier is willing to undertake to transfer an intellectual property right, such an undertaking may only be entered into explicitly and in writing. If the parties agree in writing that an intellectual property right in respect of software, websites, data files, hardware or other material specifically developed for the Client shall be transferred to the Client, this shall not affect the Supplier's right or option to use and/or to exploit the components, general principles, ideas, designs, algorithms, documentation, work, programming languages, protocols, standards and suchlike that form the basis of the development work for other purposes without any restrictions, on its own behalf or on behalf of a third party. The transfer of an intellectual property right shall also not affect the Supplier's right to carry out development work, on its own behalf or on behalf of a third party, that is similar or derived from the development work that is being carried out or has been carried out on behalf of the Client.

8.2 All intellectual property rights to the software, websites, data files, hardware or other materials such as analyses, designs, documentation, reports, quotations and related preliminary material developed or made available to the Client on the basis of the agreement shall remain exclusively vested in the Supplier, its licensors or its own suppliers. The Client shall only acquire those rights of use that are explicitly granted in these general terms and conditions and by law. Any rights of use granted to the Client shall be non-exclusive, non-transferable to third parties and non-sublicensable.

8.3 The Client shall not be permitted to remove or amend any details in relation to the confidential nature or in relation to copyrights, brand names, trade names or any other intellectual property right from the software, websites, data files, hardware or materials.

8.4 Even if the agreement does not explicitly provide for such authority, the Supplier shall be permitted to install technical provisions for the purpose of protecting the software, hardware, data files, websites and suchlike in relation to an agreed restriction on the content or the term of the right to use these objects. The Client shall under no circumstances be permitted to remove or circumvent such technical provisions or to arrange for this to be carried out.

8.5 The Supplier shall indemnify the Client against any legal claims from third parties based on the assertion that software, websites, data files, hardware or other materials developed by the Supplier itself infringe an intellectual property right of the third party in question, under the condition that the Client notifies the Supplier immediately in writing of the existence and content of the legal claim and leaves the disposal of the case, including any settlements effected, entirely to the Supplier. To this end, the Client shall provide the Supplier with the powers of attorney, information and cooperation that it requires in order to defend itself, where necessary in the name of the Client, against these legal claims. This obligation to indemnify shall not apply if the alleged infringement relates to (i) materials made available to the Supplier by the Client for the purpose of use, adaptation, processing or incorporation, or (ii) changes made by the Client, or by a third party on behalf of the Client, to the software, website, data files, hardware or other materials, without the Supplier's prior written consent. If it is irrevocably established in court that the software, websites, data files, hardware or other materials developed by the Supplier itself constitute an infringement of any intellectual property right vested in a third party or if the Supplier believes that there is a good chance that such an infringement may occur, the Supplier shall, where possible, ensure that the Client can continue to use the software, websites, data files, hardware or materials delivered, or functionally similar alternatives. All other or further-reaching obligations to indemnify on the part of the Supplier shall be excluded.

8.6 The Client warrants that no rights of third parties preclude the provision to the Supplier of software, hardware, material intended for websites (visual material, text, music, domain names, logos, hyperlinks etc.), data files or other materials, including draft materials, for the purpose of use, adaptation, installation or incorporation (e.g. in a website). The Client shall indemnify the Supplier against all claims by third parties based on the assertion that such provision, use, adaptation, installation or incorporation constitutes an infringement of any rights of the third party in question.

## **9. Obligations to cooperate**

9.1 The parties acknowledge that the success of activities in the field of information and communication technology generally depends on proper and timely mutual cooperation. In order to facilitate the proper execution of the agreement by the Supplier, the Client shall at all times

provide the Supplier with all data or information that the Supplier deems to be useful, necessary and desirable and to give its full cooperation in a timely manner. If the Client deploys its own personnel and/or agents within the context of providing cooperation in the execution of the agreement, these personnel and agents shall have the necessary knowledge, expertise and experience.

9.2 The Client shall bear the risk of the selection, the use, the application and the management within its organization of the software, hardware, websites, data files and other products and materials and of the services to be provided by the Supplier. The Client itself shall arrange for the correct installation, assembly and commissioning and for the application of the correct settings to the hardware, software, websites, data files and other products and materials.

9.3 If the Client fails to make the data, documents, hardware, software, materials or employees that the Supplier deems useful, necessary or desirable for the purpose of executing the agreement available to the Supplier, to make these available in good time or in accordance with the agreements, or if the Client fails to meet its obligations in any other way, the Supplier shall be entitled to suspend the execution of the agreement in part or in full and shall also be entitled to invoice the resulting costs in accordance with its standard rates, without prejudice to the Supplier's right to exercise any other statutory and/or agreed right.

9.4 If the Supplier's employees are carrying out activities on the Client's business premises, the Client shall ensure that any facilities reasonably requested by these employees, such as a workspace containing computer, data and telecommunication facilities, are provided free of charge. The workspace and facilities shall meet all statutory and other applicable requirements in relation to working conditions. The Client shall indemnify the Supplier against any claims by third parties, including the Supplier's employees, who suffer injury in connection with the execution of the agreement as a result of an act or omission on the part of the Client or of unsafe situations within the Client's organization. The Client shall notify the employees deployed by the Supplier of any applicable company rules or security rules prior to the commencement of the activities.

9.5 If use is made of computer, data or telecommunication facilities, including the internet, during the execution of the agreement, the Client shall be responsible for selecting the correct resources required for this purpose and for ensuring that these are available in full and in a timely manner, with the exception of those facilities that fall under the direct use and management of the Supplier. The Supplier shall under no circumstances be liable for losses or costs arising as a result of transmission errors, breakdowns or the non-availability of these facilities, unless the Client is able to demonstrate that these losses or costs are the result of intentional acts or deliberate recklessness on the part of the Supplier's management.

## **10. Delivery dates**

10.1 All (delivery) periods and (delivery) dates agreed or specified by the Supplier shall be established to the best of the Supplier's knowledge on the basis of the information available to it at the time of entering into the agreement. Interim (delivery) dates agreed between the parties or specified by the Supplier shall in all cases be target dates, shall not have a binding effect on the Supplier and shall in all cases be merely indicative. The Supplier shall make every reasonable effort to observe final (delivery) periods and final (delivery) dates wherever possible. The Supplier shall not be bound by a (delivery) period or (delivery) date, final or otherwise, that can no longer be achieved as a result of circumstances outside of the Supplier's control that occurred after the date on which the agreement was concluded. The Supplier shall also not be bound by a (delivery) date or (delivery) period, final or otherwise, if the parties have agreed on a change to the content or scope of the agreement (additional work, change in specifications etc.) or a change in the approach to the execution of the agreement. If there is a risk that a time period will be exceeded, the Supplier shall consult with the Client in order to discuss the implications of the overrun for the rest of the schedule.

10.2 The mere fact that a (delivery) period or (delivery) date, final or otherwise, specified by the Supplier or agreed between the parties has been exceeded, shall not mean that the Supplier is in default. In all cases – therefore also in the event that the parties have agreed a final (delivery) period or (delivery) date explicitly in writing - the Supplier shall not be in default as a result of the fact that a delivery period or date has been exceeded until such time as the Client has given written notice of default. The notice of default must contain as comprehensive and detailed a description of the breach as possible, in order to ensure that the Supplier has the opportunity to respond adequately.

## **11. Termination and cancellation of the agreement**

11.1 Both of the parties shall only be authorized to rescind the agreement as a result of an attributable failure to perform this agreement if the other party, in all cases following written notice of default providing as many details as possible and setting a reasonable term in which the breach can be remedied, attributable fails to meet its fundamental obligations arising from this agreement. The Client's payment obligations and all other obligations to cooperate imposed on the Client or on a third party to be engaged by the Client shall in all cases be regarded as fundamental obligations arising from the agreement.

11.2 If the Client has already received services for the purpose of executing the agreement at the time of rescission as referred to in Article 11.1, these services and the related payment obligation cannot be revoked unless the Client is able to demonstrate that the Supplier is in default in respect of a substantial part of these services. Any amounts that the Supplier has invoiced before rescission in connection with work that it has already duly carried out or services that it has duly provided for the purpose of executing the agreement, shall remain due in full, subject to due observance of the provisions of the preceding sentence, and shall become immediately due and payable at the time of rescission.

11.3 If an agreement that by its nature and content is not brought to a close is entered into for an indefinite period of time, this may be terminated in writing by either party following consultation and stating reasons. If the parties have not agreed a notice period, a reasonable period of time must be observed on termination. The parties shall under no circumstances be obliged to pay any compensation as a result of termination of the agreement.

11.4 The Client shall under no circumstances be entitled to terminate an agreement regarding the provision of services that has been entered into for a fixed term before the end of the term.

11.5 Either of the parties shall be entitled to terminate the agreement in part or in full, with immediate effect, in writing without notice of default if the other party is granted a moratorium of payments, provisionally or otherwise, if a winding-up petition is filed in respect of the other party, if the other party's company is wound up or terminated for reasons other than reconstruction or the merger of companies, or if there is a change in the individual or board that has decisive control over the Client's company. The Supplier shall under no circumstances be obliged to reimburse any sums of money that have already been received or to pay any compensation in the event of such termination. If the Client becomes bankrupt or is liquidated, the right of use of the software, websites and suchlike made available to the Client shall terminate by operation of law.

## **12. Liability of the Supplier**

12.1 The total liability of the Supplier due to an attributable failure to perform this agreement or due to any other reason, explicitly including any failure to comply with a guarantee obligation agreed with the Client, shall be limited to compensation of the direct damage or loss not exceeding the sum stipulated for this agreement (excl. VAT). This limitation of liability shall apply mutatis mutandis to the Supplier's obligation to indemnify referred to in Article 8.5 of this General module. If the agreement is essentially a continuing performance contract with a term of more than one year, the sum stipulated for the agreement shall be set at the total fees (excl. VAT) stipulated for one year. The total liability of the Supplier for direct damage or loss, for any reason whatsoever, shall, however, under no circumstances exceed €500,000 (five hundred thousand euro).

12.2 The liability of the Supplier for loss as a result of death, physical injury or due to material damage to items shall under no circumstances exceed €1,250,000 (one million two hundred and fifty thousand euros).

12.3 The liability of the Supplier for indirect damage or loss, resulting loss, loss of profit, loss of savings, reduced goodwill, loss due to business interruption, loss as a result of claims from the Client's customers, loss in connection with the use of items, materials or software provided by third parties that the Supplier is instructed to obtain by the Client and loss in connection with the engagement of secondary suppliers by the Supplier on the Client's instructions shall be excluded. The liability of the Supplier due to the scrambling, destruction or loss of data or documents shall also be excluded.

12.4 The exclusions and restrictions to the Supplier's liability, as described in the preceding paragraphs of Article 12, shall not affect the remaining exclusions and restrictions to the Supplier's liability set out in this General module and the other agreed modules of these general terms and conditions in any way.

12.5 The exclusions and restrictions referred to in Article 12.1 to 12.4 shall no longer apply if and in so far as the loss is the result of intentional acts or deliberate recklessness on the part of the Supplier's management.

12.6 Except where performance by the Supplier is permanently impossible, the Supplier shall only be liable as a result of an attributable failure to perform an agreement if the Client gives the Supplier immediate notice of default in writing, setting a reasonable term in which the breach can be remedied, and the Supplier still attributably fails to meet its obligations after this period. The notice of default must contain as comprehensive and detailed a description of the breach as possible, in order to ensure that the Supplier has the opportunity to respond adequately.

12.7 A condition for the existence of any right to compensation shall in all cases be that the Client notifies the Supplier in writing of the loss or damage as soon as possible after it occurs. Any claims for damages against the Supplier shall expire by the mere passage of twenty four months from the date on which the claim arose.

12.8 The parties acknowledge that active and constructive participation in an ICT-Mediation process is a reasonable and suitable measure for preventing or limiting the risk of damage or loss if this potential damage or loss is connected to failure by the Supplier to meet any contractual obligation or to meet such obligations properly and in good time. The Client therefore undertakes to actively, constructively and unconditionally participate in an ICT-Mediation process, at the Supplier's first written request, in accordance with the ICT-Mediation Regulations of the Foundation for the Settlement of Automation Disputes [Stichting Geschillenoplossing Automatisering], with its registered office in The Hague (see [www.sgoa.org](http://www.sgoa.org) and [www.sgoa.eu](http://www.sgoa.eu)).

12.9 The Client shall indemnify the Supplier against all claims by third parties due to product liability as a result of a fault in a product or system delivered by the Client to a third party and that partly consisted of hardware, software or other materials provided by the Supplier, unless and in so far as the Client is able to demonstrate that the damage or loss was caused by this hardware, software or other materials.

12.10 The provisions of this article and all other restrictions and exclusions of liability referred to in these general terms and conditions shall also apply in favor of all (legal) persons that the Supplier engages to execute the agreement.

### **13. Force majeure**

13.1 Neither of the parties shall be obliged to meet any obligations, including any guarantee obligation agreed between the parties, if it is prevented from doing so as a result of force majeure. Force majeure shall include:

- (i) a situation of force majeure encountered by the Supplier's own suppliers,
- (ii) failure by secondary suppliers engaged by the Supplier on the Client's instructions to duly meet their obligations,
- (iii) the defectiveness of items, hardware, software or materials provided by third parties that the Supplier has been instructed to use by the Client,
- (iv) government measures,
- (v) electricity failure,
- (vi) faults affecting the internet, computer network or telecommunication facilities,
- (vii) war,
- (viii) workload,
- (ix) strike action, and
- (x) general transport problems and

13.2 If a situation of force majeure lasts for longer than ninety days, either of the parties shall be entitled to terminate the agreement in writing. The services already performed on the basis of the agreement shall in this case be settled on a pro rata basis, and the parties shall not owe one another any other amounts

#### **14. Changes and additional work**

14.1 If, at the request or with the prior consent of the client, the supplier has performed activities or other performances that fall outside the content or scope of the agreed activities and/or performances, these activities or performances will be reimbursed by the client in accordance with the agreed rates and, failing this, in accordance with the usual supplier rates. The Supplier is never obliged to comply with such a request and may require that a separate written agreement be concluded for this purpose.

14.2 Client accepts that the agreed or expected time of completion of the service and the mutual responsibilities of client and supplier may be influenced by work or performance as referred to in this article. The fact that (the demand for) additional work occurs during the execution of the agreement is never a ground for the client to terminate or dissolve the agreement.

14.3 Insofar as a fixed price has been agreed on for the services, the supplier will, upon request, inform the client in writing about the financial consequences of the extra work or performance as referred to in this article.

#### **15. Transfer of rights and obligations**

15.1 The Client shall not be entitled to sell and/or transfer the rights and/or obligations arising from the agreement to a third party.

15.2 The Supplier shall be entitled to transfer its rights to the payment of fees to a third party.

#### **16. Applicable law and disputes**

16.1 The agreements between the Supplier and the Client shall be governed by Dutch law. The applicability of the Convention on Contracts for the International Sale of Goods 1980 is excluded.

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

16.3 Contrary to the provisions of Article 16.2, either of the parties shall be entitled, however not obliged, to bring the matter before the District Court, Subdistrict Sector, if the matter relates to a dispute that according to the statutory rules governing jurisdiction falls within the subject-matter jurisdiction of the District Court, Subdistrict Sector. This shall only be the case, however, where the Supplier and/or the Client has/have not already brought arbitral proceedings for the resolution of disputes arising on the basis of the agreement concluded between the parties or further agreements that arise from such an agreement before the Foundation for the Settlement of Automation Disputes in accordance with the Foundation's Arbitration Regulations.

16.4 Before commencing an arbitral procedure as referred to in Article 16.2, the most diligent party will initiate ICT Mediation proceedings in accordance with the ICT Mediation Regulations of the "Stichting Geschillencommissie Automatisering" in The Hague. An ICT Mediation procedure in accordance with these regulations is aimed at mediation by one or more mediators. The other party undertakes to actively participate in a pending ICT Mediation, which legally enforceable obligation in any case includes attending at least one joint meeting between mediators and parties, in order to give this extrajudicial form of dispute resolution a chance. Each of the parties is free to terminate the ICT Mediation procedure at any time after a joint initial discussion between mediators and parties. The provisions of this paragraph do not



preclude a party that deems this necessary from requesting an interim injunction (arbitral) or taking precautionary legal measures (see [www.sgoa.org](http://www.sgoa.org) and [www.sgoa.eu](http://www.sgoa.eu)).

## **Module 1: Software License**

### **1. Applicability**

1.1 The Terms and Conditions consist of the General module as well as one or more specific modules per product or service. The provisions of this module shall apply in addition to the provisions of the General module in the event that the Supplier makes software available to the Client for use on the basis of a license.

1.2 The provisions of this module are inextricably linked with the provisions of the General module. In the case of conflict between the provisions of the General module and the provisions of this module, the latter shall prevail.

### **2. Right of use**

2.1 The Supplier shall make the computer programs specified in the agreement and the corresponding user documentation, hereinafter referred to as 'the software', available to the Client for use.

2.2 Except where agreed otherwise in writing, the Supplier's obligation to provide and the Client's right of use shall solely extend to the so-called software object code. The Client's right of use shall not extend to the software source code. The software source code and the technical documentation produced during the development of the software shall not be made available to the Client under any circumstances, even if the Client is prepared to pay financial compensation for this information.

2.3 Except where agreed otherwise in writing, the Supplier shall not be obliged to provide any software or program or data libraries other than those agreed, even if these are required for the use and/or maintenance of the software. If, contrary to the foregoing, the Supplier is required to provide software and/or program or data libraries other than those agreed, the Supplier may require the Client to enter into a separate written agreement for this purpose.

2.4 Except where otherwise agreed in writing, the Supplier's performance obligations shall not include the maintenance of the software and/or the provision of support to the users of the software. If, contrary to the foregoing, the Supplier is also required to provide such maintenance and/or support, the Supplier may require the Client to enter into a separate written agreement for this purpose.

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

### **3. Restrictions on use**

3.1 The Client shall strictly observe the restrictions on the right of use of the software agreed between the parties at all times. The Client is aware that the violation of an agreed restriction on use shall constitute both breach of the contract with the Supplier and an infringement of the intellectual property rights in respect of the software. The agreed restrictions on use may relate to such aspects as:

- the kind or type of hardware that the software is designed for, and/or
- the maximum number of processing units that the software is designed for, and/or
- specific – referred to by name or job title or otherwise – individuals who may use the software within the Client's organization, and/or
- the maximum number of users who may use the software – simultaneously or otherwise – within the Client's organization, and/or
- the location at which the software may be used, and/or
- specific forms and purposes of use (e.g. commercial use or use for private purposes), and/or
- any other quantitative or qualitative restriction.

3.2 If the parties have agreed that the software may only be used in combination with specific hardware or a specific kind or type of hardware, the Client shall be entitled in the event of malfunction of the relevant hardware to use the software on other hardware of the same kind or type until the original hardware is restored to working order.

3.3 The Supplier may require the Client to refrain from using the software until such time as the Client has requested and obtained one or more codes (passwords, identity codes etc.), required for use, from the Supplier, its own supplier, or the software manufacturer. The Supplier shall be entitled to arrange for technical measures to be taken at any time in order to protect the software against unlawful use and/or against use in a manner or for purposes other than those agreed between the parties.

3.4 Under no circumstances shall the Client remove or circumvent technical provisions intended to protect the software, or arrange for this to be carried out.

3.5 Except where agreed otherwise in writing, the Client shall only be permitted to use the software within and on behalf of its own company or organization and only for the intended use. Except where agreed otherwise in writing, the Client shall not use the software to process data on behalf of third parties, e.g. for services such as 'time-sharing', 'application service provision', 'software as a service' and 'outsourcing'.

3.6 The Client shall not be permitted to sell, rent out, transfer or grant restrictive rights to the software, the media on which the software is stored and the certificates of authenticity issued by the Supplier on provision of the software, or to make these available to third parties in any way or for any purpose. The Client shall also refrain from granting third parties access – remote or otherwise – to the software or providing the software to a third party for the purpose of hosting, even if the third party in question only uses the software on behalf of the Client.

3.7 Upon request, the Client shall immediately lend its full cooperation to any investigations to be conducted by or on behalf of the Supplier in relation to the Client's compliance with the agreed restrictions on use. At the first request of the Supplier, the Client shall grant the Supplier access to its buildings and systems. The Supplier shall maintain the confidentiality of all company information to be regarded as confidential that the Supplier obtains from or on the premises of the Client within the context of this type of investigation, in so far as this information does not relate to the use of the software itself.

#### **4. Delivery and installation**

4.1 The Supplier shall deliver the software to the Client on data media in the agreed format or, if no clear agreements have been made in this regard, on data media in a format to be determined by the Supplier. Alternatively, the Supplier shall deliver the software to the Client using telecommunication facilities (online). The Supplier shall determine the delivery method.

4.2 The Supplier shall only install the software on the Client's premises if this has been agreed between the parties in writing. If no explicit agreements have been made in this regard, the Client itself shall install, set up, parameterize and tune the software, and adapt the hardware used and operating environment where necessary. Except where agreed otherwise in writing, the Supplier shall not be obliged to carry out data conversion.

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

#### **5. Acceptance test and acceptance**

5.1 If the parties have not agreed that an acceptance test will be carried out, the Client shall accept the software in the condition that it is in at the time of delivery ('as is'), therefore with all visible and invisible errors and defects, without prejudice to the Supplier's obligations pursuant to the guarantee scheme in Article 9 of this module.

5.2 If the parties have agreed to an acceptance test in writing, the provisions of Article 5.3 to 5.10 inclusive of this module shall apply.

5.3 Where this module refers to 'errors', this shall be understood to mean the substantial failure to meet the functional or technical specifications of the software made known by the Supplier in writing and, if the software is entirely or partly custom-designed, the functional or technical specifications explicitly agreed between the parties in writing. An error shall only be deemed to exist if the Client is able to

demonstrate the error and if it can be reproduced. The Client is obliged to notify the Supplier immediately of any errors.

5.4 If an acceptance test has been agreed to, the test period shall be fourteen days following delivery or, if it has been agreed in writing that the Supplier will carry out the installation, following completion of the installation. The Client is not entitled to use the software for productive or operational purposes during the test period. The Client shall carry out the agreed acceptance test on the software using appropriately qualified personnel, with an adequate scope and in sufficient depth, and will provide the Supplier with a written, clear and understandable report on the test results.

5.5 If an acceptance test has been agreed to, the Client shall be obliged to assess under its full and exclusive responsibility whether the software delivered conforms to the functional or technical specifications made known by the Supplier in writing and, if the software is entirely or partly custom-designed, the functional or technical specifications agreed between the parties in writing. Except where agreed otherwise in writing, the assistance provided by the Supplier during the performance of an acceptance test shall be entirely at the Client's risk.

5.6 The software shall be deemed to have been accepted between the parties:

- a. if the parties have not agreed to an acceptance test: on delivery or, if it has been agreed in writing that the Supplier will carry out the installation, on completion of the installation, or
- b. if the parties have agreed to an acceptance test: on the first day following the test period, or
- c. if the Supplier receives a test report as referred to in Article 5.7 before the end of the test period: at such time as the errors described in the test report have been fixed, notwithstanding the presence of defects that do not preclude acceptance according to Article 5.8. Contrary to the above, if the Client uses the software for productive or operational purposes before the time of explicit acceptance, the software shall be deemed to have been accepted in full from the time at which such use commenced.

5.7 If on carrying out the agreed acceptance test it emerges that the software contains errors, the Client shall notify the Supplier of the errors no later than on the last day of the test period by means of a written and detailed test report. The Supplier shall make every effort to fix the errors identified within a reasonable period of time, whereby the Supplier shall be entitled to install temporary solutions, workarounds or problem-avoiding restrictions in the software.

5.8 Acceptance of the software may not be withheld on grounds that do not relate to the specifications explicitly agreed between the parties, nor due to the existence of minor defects, these being defects that cannot reasonably be deemed to prevent the operational or productive use of the software, without prejudice to the Supplier's obligation to fix these minor defects within the context of the guarantee scheme in Article 9, if and in so far as applicable. Acceptance may also not be withheld on the basis of aspects of the software that can only be assessed subjectively, such as aesthetic aspects and aspects relating to the design of user interfaces.

5.9 If the software is delivered and tested in stages and/or parts, the non-acceptance of a specific stage and/or part shall not affect the acceptance of a previous stage and/or other part, where appropriate.

5.10 Acceptance of the software by one of the methods referred to in this Article shall mean that the Supplier is discharged in respect of compliance with its obligations in relation to the provision and delivery of the software and, if it has been agreed that the Supplier will carry out the installation, with its obligations in relation to the installation of the software. Acceptance of the software shall not affect the Client's rights pursuant to Article 5.8 in relation to minor errors and Article 9 in relation to the guarantee scheme.

## **6. Term of the agreement**

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

6.2 The Client shall return all copies of the software that it has in its possession to the Supplier immediately following expiry of the right of use of the software. If the parties have agreed that the Client will destroy the relevant copies at the end of the agreement, the Client shall notify the Supplier immediately in writing that this has been carried out. The Supplier shall not be obliged to provide the Client with assistance on or after expiry of the right of use with a view to data conversion required by the Client.

#### **7. Right of use fee**

7.1. Except where agreed otherwise in writing, the right-of-use fee agreed between the parties shall be due on the dates agreed between the parties or, if no dates have been agreed:

- a. if the parties have not agreed that the Supplier will carry out the installation of the software: on delivery of the software or, if the right-of-use fee is due periodically, on delivery of the software and subsequently on commencement of each new right-of-use period;
- b. if the parties have agreed that the Supplier will carry out the installation of the software: on completion of the installation of the software or, if the right-of-use fee is due periodically, on completion of the installation of the software and subsequently on commencement of each new right-of-use period.

7.2 Except where agreed otherwise in writing, the Supplier shall not be obliged to install or adapt the software. If, contrary to the foregoing, the Supplier is also required to carry out installation activities or activities in relation to the adaptation of the software, the Supplier may require the Client to enter into a separate written agreement for this purpose. Such work shall be invoiced separately at the Supplier's standard rates as the occasion arises.

#### **8. Modification of the software**

8.1 Except where agreed otherwise in writing and notwithstanding exceptions set out in law, the Client shall not be entitled to modify the software in part or in full without the prior written consent of the Supplier. The Supplier shall at all times be entitled to refuse its consent or to attach conditions to its consent, including conditions in relation to the method and quality of implementation of the modifications required by the Client.

8.2 The Client shall bear all risks associated with modifications carried out by or on behalf of the Client by third parties with the consent of the Supplier or otherwise.

#### **9. Guarantee**

9.1 The Supplier shall not guarantee that the software made available to the Client will be fit for the actual and/or intended use by the Client. The Supplier shall also not guarantee that the software will operate with no interruptions, errors or defects or that all errors and defects will always be fixed.

9.2 The Supplier shall make every effort to fix errors in the software within the meaning of Article 5.3 of this module within a reasonable period of time if the Supplier receives detailed, written notification of these errors within a period of three months following delivery or, if the parties have agreed to an acceptance test, within three months of acceptance. Errors shall be fixed free of charge, unless the software was developed on behalf of the Client other than at a fixed price, in which case the Supplier shall invoice the costs associated with fixing the errors at its standard rates. The Supplier shall be entitled to invoice the costs of fixing errors at its standard rates in the event of operational errors or improper use by the Client, or other causes that are not attributable to the Supplier, or if the errors could have been discovered during the execution of the agreed acceptance test. The Supplier shall not be obliged to fix errors if the Client has made changes to the software, or has arranged for this to be carried out, without the written consent of the Supplier. Such consent shall not be withheld on unreasonable grounds.

9.3 The fixing of errors shall take place at a location to be determined by the Supplier. The Supplier shall be entitled to install temporary solutions, workarounds or problem-avoiding restrictions in the software at any time.

9.4 Under no circumstances shall the Supplier be obliged to recover scrambled or lost data.

9.5 The Supplier shall not be obliged to fix errors that are reported following expiry of the guarantee period referred to in Article 9.2 of this module, unless the parties have entered into a separate maintenance agreement that incorporates an obligation to this effect.

#### **10. Confidentiality**

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

#### **11. Maintenance agreement**

11.1 If the Client has not entered into a maintenance agreement with the Supplier at the same time as concluding an agreement regarding the provision of the software, the Supplier shall not be obliged to enter into a maintenance agreement in respect of the software at a later point in time.

#### **12. Software from third party suppliers**

12.1 If and in so far as the Supplier provides the Client with software from third parties, the (license) terms imposed by such third parties in relation to the software shall apply, provided that the Supplier has notified the Client of such terms in writing, notwithstanding any varying provisions in these general terms and conditions. The Client accepts the abovementioned terms imposed by third parties. These terms shall be available to the Client for inspection on the Supplier's premises and the Supplier shall provide the Client with a copy of the terms free of charge upon request. If and in so far as the abovementioned terms imposed by third parties in the relationship between the Client and the Supplier are deemed not to apply for any reason whatsoever, or are declared to be inapplicable, the provisions of these general terms and conditions shall apply in full.

## **Module 2: Development of Software**

### **1. Applicability**

1.1 The Terms and Conditions consist of the General module as well as one or more specific modules per product or service. The provisions of this module shall apply in addition to the provisions of the General module in the event that the Supplier develops software on behalf of the Client for the Client or one or more third parties and installs the software where applicable.

1.2 The provisions of this module are inextricably linked with the provisions of the General module. In the case of conflict between the provisions of the General module and the provisions of this module, the latter shall prevail.

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

2.1 If the Supplier has not already been provided with specifications or a design by or on behalf of the Client before entering into the agreement, the parties shall draw up written specifications in consultation with regard to what software will be developed and how the development will take place. The parties both acknowledge that effective coordination and good mutual communication are essential factors in the proper specification, design and development of software. Collaboration and mutual communication will take place wherever possible subject to due observance of any project plan, arrangements and/or procedures agreed between the parties in writing.

2.2 The Client shall at all times guarantee the correctness, completeness and consistency of any information, specifications and designs submitted to the Supplier, even if such information, specifications and designs have been provided by a third party. Any errors, omissions or inconsistencies shall at all times be at the risk and expense of the Client.

2.3 The Supplier is entitled, however not obliged, to check the correctness, completeness and consistency of the information, specifications or designs submitted to it and on identifying any errors or omissions to suspend the agreed work until such time as the Client has fixed the errors or omissions in question. The Client undertakes to notify the Supplier in all cases as soon and in as much detail as possible of any errors or omissions in the specifications or the design for the software to be developed of which it becomes aware.

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

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

3.1 The Supplier shall develop the software with due care, subject to due observance of the software specifications or design and – where appropriate – with due observance of the project plan, methods, techniques, arrangements and/or procedures agreed in writing with the Client. Before commencing the development work, the Supplier may require the Client to issue a written declaration of its full and unconditional agreement to the specifications or design. The Supplier shall be entitled to suspend its activities until such time as the Client has issued a written declaration of its full and conditional approval to the specifications or design.

3.2 The Supplier shall in all cases carry out the development work on the basis of a best efforts obligation, unless and in so far as the Supplier has explicitly undertaken in the written agreement to achieve a specific result and the result in question is sufficiently determined.

3.3 If it has been agreed that the development of the software will take place in stages or if the Supplier is using a development method that is based on phased implementation, the Supplier shall be entitled to delay the start of the services associated with a stage until such time as the Client has approved the results of the previous stage in writing.

3.4 Except where otherwise agreed in writing, the Supplier shall not be obliged to follow timely and well-founded instructions issued by the Client during the realization of the development work. The Supplier shall not be obliged to follow instructions that change or extend the content or scope of the Supplier's performance obligations. If such instructions are followed, however, compensation shall be provided for the work in question in accordance with the Supplier's standard rates.

3.5 If the agreement regarding the development of software has been entered into with a view to execution by one or more specific individuals, the Supplier shall at all times be entitled to replace these individuals, following consultation with the Client, at a time to be determined by the Supplier with one or more other individuals with the same qualifications.

3.6 Upon request, the Client shall provide the Supplier with the opportunity to carry out the work outside of normal working days and working hours at the Client's offices or site.

#### **4. Delivery and installation**

4.1 The Supplier shall deliver the software to the Client on data media of the agreed type and format, or using telecommunication facilities (online). The Supplier shall determine the delivery method.

4.2 The Supplier will only install the software on the Client's premises if this has been agreed between the parties in writing. If no explicit agreements have been made in this regard, the Client itself shall install, set up, parameters and tune the software, and adapt the hardware used and operating environment where necessary. Except where agreed otherwise in writing, the Supplier shall not be obliged to carry out data conversion.

4.3 The user documentation shall be provided in paper or digital format. The Supplier shall decide on the format and language in which the user documentation is provided.

#### **5. Acceptance test and acceptance**

5.1 If the parties have not agreed that an acceptance test will be carried out, the Client shall accept the software in the condition that it is in at the time of delivery ('as is'), therefore with all visible and invisible errors and defects, without prejudice to the Supplier's obligations pursuant to the guarantee in Article 11 of this module.

5.2 If the parties have agreed to an acceptance test in writing, the provisions of Article 5.3 to 5.10 inclusive of this module shall apply.

5.3 Where this module refers to 'errors', this shall be understood to mean the substantial failure to meet the functional or technical specifications explicitly agreed in writing between the parties. An error shall only be deemed to exist if the Client is able to demonstrate the error and if it can be reproduced. The Client is obliged to notify the Supplier immediately of any errors.

5.4 If an acceptance test has been agreed to, the test period shall be fourteen days following delivery or, if it has been agreed in writing that the Supplier will carry out the installation, following completion of the installation. The Client is not entitled to use the software for productive or operational purposes during the test period. The Client shall carry out the agreed acceptance test on the (interim) results of the development work using appropriately qualified personnel, with an adequate scope and in sufficient depth, and will provide the Supplier with a written, clear and understandable report on the test results.

5.5 If an acceptance test has been agreed to, the Client shall be obliged to assess under its full and exclusive responsibility whether the software delivered conforms to the functional or technical specifications made known by the Supplier in writing and, if the software is entirely



or partly custom-designed, the functional or technical specifications explicitly agreed between the parties in writing. Except where agreed otherwise in writing, any assistance provided by or on behalf of the Supplier during the performance of an acceptance test shall be entirely at the risk and expense of the Client.

5.6 The software shall be deemed to have been accepted between the parties:

- a. if the parties have not agreed to an acceptance test: on delivery or, if it has been agreed in writing that the Supplier will carry out the installation, on completion of the installation, or
- b. if the parties have agreed to an acceptance test: on the first day following the test period, or
- c. if the Supplier receives a test report as referred to in Article 5.7 before the end of the test period: at such time as the errors described in the test report have been fixed, notwithstanding the presence of defects that do not preclude acceptance according to Article 5.8. Contrary to the above, if the Client uses the software for productive or operational purposes before the time of explicit acceptance, the software shall be deemed to have been accepted in full from the time at which such use commenced.

5.7 If on carrying out the agreed acceptance test it emerges that the software contains errors, the Client shall notify the Supplier of the errors no later than on the last day of the test period by means of a written and detailed test report. The Supplier shall make every effort to fix the errors identified within a reasonable period of time, whereby the Supplier shall be entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the software.

5.8 Acceptance of the software may not be withheld on grounds that do not relate to the specifications explicitly agreed between the parties, nor due to the existence of minor errors, these being errors that cannot reasonably be deemed to prevent the operational or productive use of the software, without prejudice to the Supplier's obligation to fix these minor errors within the context of the guarantee scheme in Article 11, if and in so far as applicable. Acceptance may also not be withheld on the basis of aspects of the software that can only be assessed subjectively, such as aesthetic aspects and aspects relating to the design of user interfaces.

5.9 If the software is delivered and tested in stages and/or parts, the non-acceptance of a specific stage and/or part shall not affect the acceptance of a previous stage and/or other part, where appropriate.

5.10 Acceptance of the software by one of the methods referred to in this Article shall mean that the Supplier is discharged in respect of compliance with its obligations in relation to the development of the software and, if it has been agreed that the Supplier will carry out the installation, with its obligations in relation to the installation of the software. Acceptance of the software shall not affect the Client's rights pursuant to Article 5.8 in relation to minor errors and Article 11 in relation to the guarantee scheme.

## **6. Right of use**

6.1 The Supplier shall make the software developed on behalf of the Client and the corresponding user documentation available to the Client for use.

6.2 The software source code and the technical documentation produced during the development of the software shall only be made available to the Client if and in so far as this has been agreed in writing. If this is the case, the Client shall be entitled to make changes to this software. If the Supplier is ordered in court to provide the Client with the source code and/or technical documentation, the Supplier may impose a reasonable fee.

6.3 Except where agreed otherwise in writing, the Supplier shall not be obliged to provide the auxiliary software and program or data libraries required for the use and/or maintenance of the software. If, contrary to the foregoing, the Supplier is also required to provide auxiliary software and/or program or data libraries, the Supplier may require the Client to enter into a separate written agreement for this purpose. The provision of such auxiliary software and/or program or data libraries shall be invoiced separately at the Supplier's standard rates as appropriate.

6.4 Except where otherwise agreed in writing, the Supplier's performance obligations shall not include the maintenance of the software and/or the provision of support to the users of the software. If, contrary to the foregoing, the Supplier is also required to provide maintenance and/or support, the Supplier may require the Client to enter into a separate written agreement for this purpose. Such work and services shall be invoiced separately at the Supplier's standard rates as appropriate.

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

## **7. Restrictions on use**

7.1 If the written agreement explicitly stipulates that all design and development costs shall be borne exclusively and in full by the Client, the right of use of the software developed on behalf of the Client shall not be subject to any restrictions, without prejudice to the remaining provisions of the general terms and conditions, including the provisions of Article 7.6 of this module.

7.2 If the parties have agreed to restrictions on use, the Client shall strictly comply with the agreed restrictions on the right of use of the software in all cases. The Client is aware that the violation of an agreed restriction on use shall constitute both breach of the contract with the Supplier and an infringement of the intellectual property rights in respect of the software. The agreed restrictions on use may relate to such aspects as:

- the kind or type of hardware that the software is intended for, and/or
- the maximum number of processing units that the software is intended for, and/or
- specific – referred to by name or job title or otherwise – individuals who are permitted to use the software within the Client's organization, and/or
- the maximum number of users who are permitted to use the software – simultaneously or otherwise – within the Client's organization, and/or
- the location at which the software may be used, and/or
- specific forms and purposes of use (e.g. commercial use or use for private purposes), and/or
- any other quantitative or qualitative restriction.

7.3 If the parties have agreed that the software may only be used in combination with specific hardware or a specific kind or type of hardware, the Client shall be entitled in the event of malfunction of the relevant hardware to use the software on other hardware of the same kind or type for the duration of the malfunction.

7.4 The Supplier may require the Client to refrain from using the software until such time as the Client has requested and obtained one or more codes (passwords, identity codes etc.), required for use, from the Supplier, its own supplier, or the software manufacturer.

7.5 Under no circumstances shall the Client circumvent technical provisions intended to protect the software against unlawful or unauthorized use, or arrange for this to be carried out.

7.6 Except where agreed otherwise in writing, the Client shall only be permitted to use the software within and on behalf of its own company or organization. Except where agreed otherwise in writing, the Client shall not use the software to process data on behalf of third parties, e.g. for services such as 'time-sharing', 'application service provision', 'software as a service' and 'outsourcing'.

7.7 The Client shall not be permitted to sell, rent out, transfer or grant restrictive rights to the software and the media on which the software is stored, or to make these available to third parties in any way or for any purpose. The Client shall also refrain from granting third parties access – remote or otherwise – to the software or providing the software to a third party for the purpose of hosting, even if the third party in question only uses the software on behalf of the Client.

7.8 Upon request, the Client shall immediately lend its full cooperation to any investigations to be conducted by or on behalf of the Supplier in relation to the Client's compliance with the agreed restrictions on use. At the first request of the Supplier, the Client shall grant the Supplier access to its buildings and systems. The Supplier shall maintain the confidentiality of all company information to be regarded as confidential that the Supplier obtains from or on the premises of the Client within the context of this type of investigation, in so far as this information does not relate to the use of the software itself.

## **8. Term of the agreement**

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

8.2 Where appropriate, the Client shall return all copies of the software that it has in its possession to the Supplier immediately following expiry of the right of use of the software. If the parties have agreed that the Client will destroy the relevant copies at the end of the agreement, the Client shall notify the Supplier immediately in writing that this has been carried out. The Supplier shall not be obliged to provide the Client with assistance on or after expiry of the right of use with a view to data conversion required by the Client.

## **9. Remuneration for development work**

9.1 If an invoicing schedule has not been agreed, all amounts relating to the development of software shall in each case be payable in arrears each calendar month.

9.2 Except where agreed otherwise in writing, the price for the development work shall also include the fee in respect of the right of use of the software.

9.3 Except where agreed otherwise in writing, the software development fee shall not include a fee for the auxiliary software and program and data libraries required by the Client, any installation services and any adjustments to and/or maintenance of the software. The right of use fee also does not include the provision of support to users of the software. Such work and services shall be invoiced separately at the Supplier's standard rates as appropriate.

## **10. Modification of the software**

10.1 Except where agreed otherwise in writing and notwithstanding exceptions set out in law, the Client shall not be permitted to modify the software in part or in full without the prior written consent of the Supplier. The Supplier shall at all times be entitled to refuse its consent or to attach conditions to its consent, including conditions in relation to the method and quality of implementation of the modifications required by the Client.

10.2 The Client shall bear all risks associated with modifications carried out by or on behalf of the Client by third parties with the consent of the Supplier or otherwise.

## **11. Guarantee**

11.1 The Supplier shall not guarantee that the software developed on behalf of the Client will be suitable for the actual and/or envisaged use by the Client. The Supplier shall also not guarantee that the software will operate with no interruptions, errors or other defects or that all errors and defects will always be fixed.

11.2 The Supplier shall make every effort to fix errors in the software within the meaning of Article 5.3 of this module within a reasonable period of time if the Supplier receives detailed, written notification of these errors within a period of three months following delivery or, if the parties have agreed to an acceptance test, within three months of acceptance. Errors shall be fixed free of charge, unless the software was

developed on behalf of the Client other than at a fixed price, in which case the Supplier shall invoice the costs associated with fixing the errors at its standard rates. The Supplier shall be entitled to invoice the costs of fixing errors at its standard rates in the event of operational errors or improper use by the Client, or other causes that are not attributable to the Supplier, or if the errors could have been discovered during the execution of the agreed acceptance test. The Supplier shall not be obliged to fix errors if the Client has made changes to the software, or has arranged for this to be carried out, without the written consent of the Supplier. Such consent shall not be withheld on unreasonable grounds.

11.3 The fixing of errors shall take place at a location to be determined by the Supplier. The Supplier shall be entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the software at any time.

11.4 Under no circumstances shall the Supplier be obliged to recover scrambled or lost data.

11.5 The Supplier shall not be obliged to fix errors that are reported following expiry of the guarantee period referred to in Article 11.2 of this module, unless the parties have entered into a separate maintenance agreement that incorporates an obligation to this effect.

## **12. Confidentiality**

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

### **Module 3: Maintenance of Software**

#### **1. Applicability**

1.1 The Terms and Conditions consist of the General module as well as one or more specific modules per product or service. The provisions of this module shall apply in addition to the provisions of the General module in the event that the Supplier provides software maintenance services.

1.2 The provisions of this module are inextricably linked with the provisions of the General module. In the case of conflict between the provisions of the General module and the provisions of this module, the latter shall prevail.

#### **2. Services**

2.1 The Supplier shall carry out maintenance work on the software specified in the agreement between the parties. The maintenance obligation shall include the fixing of errors in the software in accordance with Article 3 of this module and - only where agreed in writing between the parties - the provision of new versions of the software in accordance with Article 4 of this module.

2.2 Except where agreed otherwise in writing, the Supplier shall not be obliged to carry out data conversion.

2.3 If the agreement stipulates that the service provided by the Supplier shall also include the provision of support to users of the software, the Supplier shall issue advice by telephone or e-mail on the use and operation of the software referred to in the agreement. The Supplier may impose conditions in relation to the qualifications and the number of contacts who are eligible for support. The Supplier shall deal with properly substantiated requests for support within a reasonable period of time and in accordance with its standard procedures. The Supplier shall not guarantee the accuracy, completeness or timeliness of responses or support provided. Except where agreed otherwise in writing, support shall only be provided on working days during the Supplier's standard business hours.

2.4 If the agreement stipulates that the service provided by the Supplier shall also include the provision of so-called 'standby services', the Supplier shall ensure that one or more members of staff are available during the days and times specified in the agreement. If this is the case, the Client shall be entitled to request urgent support from the members of staff on standby in the event of a serious failure in the operation of the software. The Supplier shall not guarantee that all failures will be corrected in a timely manner should this situation arise.

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

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

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

3.2 The Client shall submit a detailed report of any errors identified in the software. Following receipt of the report, the Supplier shall make every effort to fix the errors and/or make improvements to future new versions of the software in accordance with its standard procedures. The results shall be made available to the Client in a manner and at a time to be determined by the Supplier, depending on the degree of urgency. The Supplier shall be entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the software. If no explicit agreements have been made in this regard, the Client itself shall install, set up, parameterise and tune the corrected software or the new version of the software provided, and adapt the hardware used and operating environment where necessary. The Supplier shall not guarantee that the software will operate with no interruptions, errors or defects or that all errors and defects will be fixed.

3.3 If the Supplier carries out the maintenance work online, the Client shall for its part ensure that the proper infrastructure and

telecommunication facilities are in place in a timely manner. The Supplier shall be entitled to suspend or limit the maintenance work if the Client's infrastructure and telecommunication facilities do not meet the requirements imposed by the Supplier.

3.4 The Client shall lend any cooperation required by the Supplier for the purpose of the maintenance work, including the temporary suspension of use of the software by the Client if the Supplier deems this to be necessary. If the Client fails to lend the cooperation requested, the Supplier may suspend or limit the maintenance work. If the Supplier is providing services on the basis of information to be provided by the Client, this information shall be prepared in accordance with the conditions to be imposed by the Supplier and provided at the risk and expense of the Client. The Client shall at all times guarantee that all materials, information, software, procedures and instructions that it makes available to the Supplier for the purpose of providing the services is accurate and complete and that all data carriers issued to the Supplier meet the Supplier's specifications.

3.5 If the maintenance work relates to software that was not provided to the Client by the Supplier itself, the Client shall make the software source code and technical (development) documentation (including data models, designs, change logs etc.) available if the Supplier deems this to be useful, necessary or desirable for the purpose of carrying out the maintenance work. The Client shall guarantee that it is entitled to make this data and/or documentation available and that the rights of third parties do not prevent it from doing so. The Client shall grant the Supplier the right to use and adapt the software, including the source code and technical (development) documentation, within the context of performing the agreed maintenance work. The Client shall indemnify the Supplier against any claims by third parties in relation to the provision of this data and/or documentation and the Supplier's use of the data and/or documentation provided within the context of the maintenance work.

3.6 The maintenance work by the Supplier shall not affect the Client's responsibility to manage the software, which includes monitoring settings, the use of the software and the manner in which the results obtained through the use of the software are used. The Client shall also be responsible for training given to and use by users, regardless of whether or not there is a relationship of authority between the Client and these users. If no explicit agreements have been made in this regard, the Client itself shall install, set up, parameterise and tune the (auxiliary) software and adapt the hardware used and operating environment where necessary, as well as achieving the interoperability desired by the Client.

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

4.1 The maintenance work shall only include the provision of new versions of the software if and in so far as this has been agreed in writing. If the maintenance work includes the provision of new versions of the software, the provision of this software shall take place at the Supplier's discretion.

4.2 Once three months have passed since the date on which the Supplier provided an improved version of the software, the Supplier shall no longer be obliged to fix any errors in the previous version or to provide support and/or carry out maintenance work in relation to the previous version.

4.3 The Supplier may require the Client to enter into a new written agreement with the Supplier prior to the provision of a version with new options and functions, and is entitled to apply a new fee to this version. The Supplier may copy functionality from a previous version of the software unchanged, however it does not guarantee that each new version will incorporate the same functionality as the previous version. The Supplier shall not be obliged to maintain, change or add certain features or functionalities of the software specifically for the Client.

4.4 The Supplier may require the Client to adapt its system (hardware, software etc.) if this is necessary in order to ensure the proper functioning of a new version of the software.

4.5 The Supplier may require the Client to adjust its system (equipment, software, etc.) if this is necessary for the proper functioning of a new version of the software.

## **5. Service Level Agreement**

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

## **6. Term**

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

## **7. Payment**

7.1 If an invoicing schedule has not been agreed, all fees relating to the maintenance of software and any other services set out in the agreement shall in each case be payable in advance each calendar month.

7.2 Fees in respect of the maintenance of the software and any other services set out in the agreement shall be due as of the date on which the agreement commences. The fees in respect of maintenance and any other services set out in the agreement shall be due regardless of whether the Client is using or has put the software into use, or whether it has taken advantage of the option to have maintenance work carried out.

## **8. Exclusions**

8.1 The maintenance of the software shall not include the fixing of errors, defects or shortcomings arising from or related to:

- a) usage errors or the improper use of the software, including errors that occur during the data input process or in the data itself
- b) changes to the software other than those carried out by or on behalf of the Supplier
- c) use of the software contrary to the applicable conditions or contrary to the instructions in the user documentation
- d) changes to or errors, defects or shortcomings in the hardware or software that is not included within the scope of the maintenance work to be carried out by the Supplier
- e) failure by the Client to have maintenance work carried out on the software in a timely manner
- f) the use of an older version of the software that is no longer maintained by the Supplier
- g) the recovery of scrambled or lost data
- h) other causes that are not attributable to the Supplier.

8.2 If the Supplier carries out maintenance work or other work in connection with the provisions of Article 8.1, the Supplier shall be entitled to invoice the costs of this maintenance work or other work in accordance with its standard rates. This shall not affect the other fees payable by the Client in respect of maintenance work.

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

##### **1. Applicability**

1.1 The terms and conditions consist of the General module as well as one or more specific modules per product or service. The provisions of this module shall apply in addition to the provisions of the General module in the event that the Supplier provides services in the field or under the name of Application Service Provision (ASP), Software as a Service (SaaS) and/or Computer Service.

1.2 The provisions of this module are inextricably linked with the provisions of the General module. In the case of conflict between the provisions of the General module and the provisions of this module, the latter shall prevail.

1.3 For the purpose of this module, the terms 'Application Service Provision' and 'Software as a Service' shall be understood to refer to: the 'remote' placing and maintaining at the disposal of the Client of software by the Supplier via the internet or another network, without providing the Client with a physical data medium on which the software in question is stored.

1.4 For the purpose of this module, the term 'Computer Service' shall be understood to refer to: the automatic processing of data using software and hardware managed by the Supplier.

##### **2. Services**

2.1 The Supplier shall provide the Client with the service specified in the agreement between the parties in the field of Application Service Provision, Software as a Service and/or Computer Service, as well as the other services agreed between the parties. If specified in the agreement, the Supplier shall also install the software referred to in the agreement on the infrastructure specified by the Supplier. The Supplier shall not be responsible for the purchase and/or correct functioning of the Client's infrastructure or that of third parties.

2.2 Except where agreed otherwise in writing, the Client shall be responsible for the management, which includes monitoring settings, the use of the service and the manner in which the results obtained through the use of the software are used. The Client shall also be responsible for training given to and use by users, regardless of whether or not there is a relationship of authority between the Client and these users. If no explicit agreements have been made in this regard, the Client itself shall install, set up, parameterise and tune the (auxiliary) software required on its own hardware and adapt the hardware used, other (auxiliary software) and operating environment where necessary, as well as achieving the interoperability desired by the Client.

2.3 Except where agreed otherwise in writing, the Supplier shall not be obliged to carry out data conversion.

2.4 If the agreement stipulates that the service provided to the Client shall also include the provision of support to users, the Supplier shall issue advice by telephone or e-mail on the use and operation of the software referred to in the agreement and on the use of the service. The Supplier may impose conditions in relation to the qualifications and the number of contacts who are eligible for support. The Supplier shall deal with properly substantiated requests for support within a reasonable period of time. The Supplier cannot guarantee the accuracy, completeness or timeliness of responses or support provided. Except where agreed otherwise in writing, support shall only be provided on working days during the Supplier's standard business hours.

2.5 If the agreement stipulates that the service provided to the Client shall also include the creation of backups of the Client's data, the Supplier shall create a full backup of the Client's data that it has in its possession with due observance of the periods agreed between the parties in writing. If no periods have been agreed, a backup shall be created once per week. The Supplier shall retain the backup for a period of time to be agreed between the parties and if no agreements have been reached in this regard, for the Supplier's standard period of time. The Supplier shall handle and store the backup with due care and diligence.

2.6 The Supplier shall only be obliged to have a back-up center or other back-up facilities if this has been explicitly agreed in writing.



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

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

3.2 The Supplier shall only perform the service on behalf of the Client. If the Supplier carries out work relating to the Client's data or that of its employees or users pursuant to a request or an authorized order from a government agency or in connection with a statutory obligation, the Client shall be invoiced for all of the associated costs.

3.3 The Supplier may make adjustments to the content or scope of the service. If such adjustments result in a change in the procedures that apply to the Client, the Supplier shall notify the Client as soon as possible and the costs of this change shall be borne by the Client. In this case, the Client may terminate the agreement in writing with effect from the date on which the change takes effect, unless this change is related to changes in relevant legislation or other regulations issued by competent authorities, or if the Supplier bears the costs of this change.

3.4 The Supplier may continue to provide the service using a new or amended version of the software.  
The Supplier shall not be obliged to maintain, change or add certain features or functionalities of the service or the software specifically for the Client.

3.5 The Supplier may temporarily suspend the service in full or in part for the purpose of carrying out preventive, corrective or adaptive maintenance. The Supplier shall not suspend the service for longer than necessary and shall arrange for this to take place outside of office hours where possible and, according to the circumstances, shall notify the Client in advance.

3.6 If the Supplier is providing services on the basis of information to be provided by the Client, this information shall be prepared and supplied by the Client in accordance with the conditions to be imposed by the Supplier. The Client shall bring the data to be processed to, and collect the results of the processing from, the location at which the Supplier is providing the service. Transport and transmission, in any form whatsoever, shall take place at the risk and expense of the Client, even if this is carried out or organised by the Supplier. The Client shall at all times guarantee that all materials, information, software, procedures and instructions that it makes available to the Supplier for the purpose of providing the services is accurate and complete and that all data carriers issued to the Supplier meet the Supplier's specifications.

3.7 All hardware, software and items used by the Supplier in providing the service shall remain the property or the intellectual property of the Supplier or its own suppliers, even if the Client pays a fee in respect of the development or purchase of these by the Supplier.

3.8 The Supplier shall under no circumstances be obliged to provide the Client with a physical data carrier containing the software to be made and kept available to the Client within the context of Application Service Provision and/or Service as a Service, or the software to be used by the Supplier within the context of Computer Service.

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

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

## **5. Term**

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

## **6. Payment**

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

## **7. Guarantee**

7.1 The Supplier shall not guarantee that the software to be made and kept available to the Client within the context of Application Service Provision and/or Service as a Service, and the software used by the Supplier within the context of Computer Service are free of defects and will operate without interruptions. The Supplier shall endeavor to fix any defects in the software within a reasonable period of time if and in so far as the relevant software was developed by the Supplier itself and the Supplier has received detailed notification in writing of the defects in question. As and when necessary, the Supplier may postpone the fixing of defects until such time as a new version of the software is brought into use. The Supplier shall not guarantee that defects in software that was not developed by the Supplier itself will be fixed. The Supplier shall be entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the software. If the software was developed on behalf of the Client, the Supplier shall be entitled to invoice the Client for the costs of fixing errors at its standard rates.

7.2 The Supplier shall not be responsible for checking the accuracy and completeness of the results of the service and the data generated through the use of the service. The Client itself shall regularly check the results of the service and the data generated through the use of the service.

7.3 If and in so far as necessary or desirable, the Supplier shall, where shortcomings in the results of the Computer Service are the direct result of products, software, data carriers, procedures or operating procedures for which the Supplier is explicitly responsible pursuant to the agreement, repeat the Computer Service for the purpose of rectifying these shortcomings, provided that the Client provides the Supplier with detailed notification in writing of the shortcomings as soon as possible, and no later than one week after obtaining the results of the Computer Service. Such repetition of the service shall only be carried out free of charge if the shortcomings in the Computer Service are attributable to the Supplier. If the shortcomings are not attributable to the Supplier and/or the shortcomings are the result of errors or shortcomings on the part of the Client, such as the provision of incorrect or incomplete data and/or information, the Supplier shall, where appropriate, invoice the Client for the costs of repetition of the service according to its standard rates. If the Supplier is of the opinion that the rectification of shortcomings that are attributable to the Supplier is not reasonably possible, the Supplier shall credit the amounts payable by the Client for the Computer Service in question, without any further or other liability vis-à-vis the Client. The Client shall not enjoy any rights as a result of shortcomings in the Computer Service other than those described in this guarantee scheme. This subclause explicitly does not apply to Application Service Provision and Software as a Service.

7.4. The client will inventory the risks for his organization on the basis of the information carried out by the execution concerning measures to prevent and limit the consequences of malfunctions, defects in the service, defects in loss of data from incidents and if necessary take additional measures. Suppliers develop to cooperate reasonably at the request of the client on further measures by the client - Solid Flex Solutions BV - v1.2 19 (financing) conditions. The Supplier is never responsible for the recovery of mutilated or lost data.

7.5. The Supplier does not guarantee that the software to be made available and to be kept available to the Client in the context of Application Service Provision and/or Service as a Service, and the software used by the Supplier in the context of Computer Service, are timely be adapted to changes in relevant laws and regulations

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

8.1 The Client shall guarantee that all of the requirements in respect of the lawful processing of personal data input by the Client in the software to be made and kept available to the Client within the context of Application Service Provision and/or Service as a Service, and the software used by the Supplier within the context of Computer Service, are met.

8.2 Without prejudice to the provisions of the General module, full responsibility for the data processed through the use of the service by the Client shall rest with the Client. The Client shall guarantee the Supplier that the data is not illegal and does not infringe the rights of third parties. The Client shall indemnify the Supplier against claims by third parties, of whatever nature, in relation to the processing of this data or the execution of the agreement.

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

## **Module 5: Secondment Services**

### **1. Applicability**

1.1 The Terms and Conditions consist of the General module as well as one or more specific modules per product or service. The provisions of this module shall apply in addition to the provisions of the General module in the event that the Supplier makes one or more employees available to the Client, on payment of a fee, for the purpose of carrying out work under the Client's management and supervision.

1.2 The provisions of this module are inextricably linked with the provisions of the General module. In the case of conflict between the provisions of the General module and the provisions of this module, the latter shall prevail.

### **2. Services**

2.1 The Supplier shall make the employee referred to in the agreement between the parties available to the Client for the purpose of carrying out work under the Client's management and supervision in accordance with the agreements reached between the parties. Except where agreed otherwise, the employee shall be made available to the Client on the basis of forty hours per week during the Supplier's standard working days.

2.2 The Client shall only be entitled to set the employee made available to work on activities other than the agreed activities or activities outside of the Netherlands if the Supplier has issued its written consent to this in advance. The Supplier may withhold the requested consent or impose (financial) conditions on such a change in activities or employment outside of the Netherlands at its own discretion.

2.3 The Client shall not be permitted to second the employee made available to a third party or to make him or her available to carry out work under the management and supervision of this third party, except where agreed otherwise in writing.

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

3.1 The agreement shall be entered into for a fixed term or an indefinite period of time. If the parties have not reached any agreements in this regard, the agreement shall be entered into for an indefinite period of time.

3.2 If the agreement has been entered into for an indefinite period of time, a notice period shall apply to each of the parties as agreed. If no specific arrangements have been made, the notice period shall be one calendar month. Notice of termination must be given in writing. The Supplier shall under no circumstances be obliged to pay any compensation as a result of termination of the agreement.

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

### **4. Replacement**

4.1 The Supplier shall make every reasonable effort to ensure that the employee made available remains available for work during the agreed days and hours for the term of the agreement. Even if the agreement has been entered into with a view to implementation by a specific individual, the Supplier shall at all times be entitled to replace this individual with one or more other individuals with the same qualifications following consultation with the Client.

4.2 The Client shall be entitled to request that the employee made available be replaced

(i) if the employee made available demonstrably fails to meet the quality requirements explicitly agreed and the Client notifies the Supplier of this in writing, stating reasons, within three working days following commencement of the work, or

(ii) if the employee made available suffers a long-term illness or leaves the employment of the Supplier. The Supplier shall respond to the request immediately and treat it as a priority. The Supplier shall not guarantee that it will always be possible to replace the employee. If it is not possible to provide a replacement or to provide a replacement immediately, the Client's right to further compliance with the agreement and all rights enjoyed by the Client in relation to non-compliance with the agreement shall lapse. The Client's payment obligations in respect

of the work carried out shall continue to apply in full.

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

5.1 The working hours, rest periods and working week of the employee made available shall be the same as the Client's standard times and week, except where agreed otherwise. The Client shall guarantee that the working hours and rest periods and the working week of the employee made available comply with the relevant legislation and regulations.

5.2 The Client shall inform the Supplier as soon as possible with regard to the intended closure of its business or organization during the term of the agreement. If the Client fails to inform the Supplier in good time, the agreed rate shall be payable in full by the Client for the period during which the business or organization is closed.

5.3 The Client shall treat the employee made available in the same careful manner that it is obliged to treat its own employees.

5.4 The Client shall be obliged to comply with the relevant legislation and obligations arising from associated regulations in the field of safety in the workplace and good working conditions in general in respect of the employee made available.

## **6. Price and payment**

6.1 If the employee made available works for longer than the agreed or standard number of working hours or outside of the Supplier's standard working days on behalf or at the request of the Client, the Client shall be required to pay the agreed additional hourly rate for these hours. If no additional hourly rate has been agreed, the Supplier's standard additional hourly rate shall apply. The Supplier shall notify the Client of the applicable additional hourly rate upon request.

6.2 The Client shall be invoiced for the costs and time involved in travelling to and from work in accordance with the Supplier's standard rules and criteria. The Supplier shall notify the Client of these standard rules and criteria upon request.

6.3 If agreed between the parties in writing, the Supplier shall supply a breakdown based on timesheets together with each invoice.

6.4 The Supplier shall be entitled to adjust the rates that apply to the employee made available in the event of any changes to his or her role or job description. The Supplier shall notify the Client of any such change in rates no later than thirty days before the change takes effect. If the Client does not wish to agree to this change, the Client shall be entitled to terminate the agreement in writing with effect from the date on which the change is due to enter into force within fourteen days following the date of notification.

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

7.1 The Supplier shall be responsible for the payment, in good time and in full, of the PAYE tax, national insurance contributions and turnover tax due in respect of the employee made available in connection with the agreement with the Client. The Supplier shall indemnify the Client against all claims by the tax and customs administration, or by authorities responsible for the implementation of national insurance legislation, arising from the agreement with the Client, under the condition that the Client notifies the Supplier immediately in writing of the existence and content of the claim and leaves the disposal of the case, including any settlements effected, entirely to the Supplier. To this end, the Client shall provide the Supplier with the powers of attorney, information and cooperation that it requires in order to defend itself, where necessary in the name of the Client, against these claims.

7.2 The Supplier does not accept any liability for the selection of the employee to be made available or for the results of work carried out under the supervision and management or the authority of the Client.

7.3 The Client shall be liable for any damage suffered by the employee made available during or in connection with the work that he or she is instructed to carry out. The Client shall indemnify the Supplier against all claims from third parties arising from or leading back to the work carried out by the employee made available within the context of the agreement. The Client shall indemnify the Supplier against any liability

arising from physical injury suffered by or the death of the employee made available in connection with the execution of the agreement entered into between the Supplier and the Client.

## **Module 6: Courses and Training programs**

### **1. Applicability**

1.1 The Terms and Conditions consist of the General module as well as one or more specific modules per product or service. The provisions of this module shall apply in addition to the provisions of the General module in the event that the Supplier provides services in the field of instruction such as courses, (in company) training programs, seminars and workshops (hereinafter abbreviated to: courses).

1.2 The provisions of this module are inextricably linked with the provisions of the General module. In the case of conflict between the provisions of the General module and the provisions of this module, the latter shall prevail.

### **2. Registration and cancellation**

2.1 Registration for a course must in all cases be carried out in writing and shall be binding following confirmation by the Supplier.

2.2 The Client shall bear responsibility for the selection and suitability of the course for the participants. This shall apply in full if the Supplier admits a participant to a course that is subject to admission standards. In these general terms and conditions, the term 'participants' shall be understood to refer to individuals who have registered for a course. The lack of the required prior knowledge on the part of participants shall under no circumstances affect the Client's obligations pursuant to the agreement. The Client shall be permitted to replace a course participant with another participant after obtaining the prior written consent of the Supplier.

2.3 The Supplier shall be entitled to cancel the course, combine the course with one or more other courses, or arrange for the course to take place on a later date or at a later time at its own discretion if it is of the opinion that the number of participants registered constitutes reason to do so. The Supplier shall retain the right to change the location of the course. The Supplier shall be entitled to make organisational and substantive changes to a course where necessary.

2.4 If an agreement has been entered into with a view to implementation by a specific individual, such as a specific teacher, trainer or speaker, the Supplier shall at all times be entitled to replace this individual with one or more other individuals with the same or similar qualifications.

2.5 The consequences of cancellation of participation in a course by the Client or participants shall be governed by the Supplier's standard rules. Except where otherwise agreed, cancellation must in all cases be carried out in writing and in advance of the course or the relevant part of the course. Cancellation or non-attendance shall not affect the Client's obligations pursuant to the agreement. In the event of cancellation by the Client or a participant, it shall fall to the Supplier to decide whether a request for the provision of training material will be granted.

### **3. Implementation of courses**

3.1 The Supplier shall make every effort to ensure that the course is provided with due care and in accordance with the arrangements and procedures agreed in writing with the Client where applicable. All services in relation to courses shall be provided on the basis of a best efforts obligation. The Client accepts that the Supplier shall determine the content and scope of the course.

3.2 The Supplier shall only be obliged to follow timely and well-founded instructions issued by the Client during the performance of the service if this has been agreed in writing. The Supplier shall not be obliged to follow instructions that change or extend the content or scope of the agreed service. If such instructions are followed, however, compensation shall be provided for the work in question in accordance with the Supplier's standard rates.

3.3 Without prejudice to the Client's remaining responsibility for the conduct of the participants, the Client shall notify the participants of, and supervise compliance by participants with, the obligations arising from the agreement and the rules (of conduct) imposed by the Supplier in respect of participation in the course. Participants must strictly observe the training dates and times announced.

3.4 If the Supplier makes use of its own hardware or software during the implementation of the course, the Supplier shall not guarantee that this hardware or software is free from defects and will operate without interruptions. If the Supplier holds the course on the Client's premises, the Client shall, except where agreed otherwise in writing, ensure that properly functioning hardware and software is available.

3.5 Except where agreed otherwise in writing, the holding of examinations or tests shall not form part of the agreement.

3.6 Except where agreed otherwise in writing, a separate fee shall be payable for the documentation or other training materials or resources provided or produced for the purpose of the course. The foregoing shall also apply to any course certificates or duplicates thereof.

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

4.1 The Supplier may at any time demand payment of the applicable fee prior to commencement of the course. The Supplier may, expressly without prejudice to its remaining rights, exclude participants from taking part if the Client has failed to pay in a timely manner.

4.2 Except where the Supplier has explicitly stated that a fee is exempt from VAT within the meaning of Article 11 of the Turnover Tax Act 1968 [Wet op de Omzetbelasting 1968], the Client shall also be required to pay VAT on the fee. After entering into the agreement, the Supplier shall be entitled to adjust its prices in the event of any changes to the VAT regime for courses established under or pursuant to the law.

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

5.1 The Supplier expressly retains all intellectual property rights in respect of the documentation and the course, test and examination material.

5.2 The Client shall not be permitted to publish, exploit or reproduce information or parts of the documentation and/or course, test or examination material provided and/or extracts from the course, test or examination material provided.



## **Module 7: Advice, Consultancy and Project Management**

### **1. Applicability**

1.1 The Terms and Conditions consist of the General module as well as one or more specific modules per product or service. The provisions of this module shall apply in addition to the provisions of the General module in the event that the Supplier provides services in the field of consultancy, the provision of advice and project management.

1.2 The provisions of this module are inextricably linked with the provisions of the General module. In the case of conflict between the provisions of the General module and the provisions of this module, the latter shall prevail.

### **2. Services**

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

2.2 The term of an assignment shall depend on a number of factors and circumstances, such as the Supplier's efforts, the quality of the data and information provided by the Client and the cooperation of the Client and relevant third parties. Except where agreed otherwise in writing, the Supplier shall therefore not wish to commit to a specific assignment term in advance.

2.3 If it has been agreed that the service will be provided in stages, the Supplier shall be entitled to delay the start of the services associated with a stage until such time as the Client has approved the results of the previous stage in writing.

2.4 The Supplier shall only be obliged to follow timely and well-founded instructions issued by the Client during the performance of the service if this has been agreed in writing. The Supplier shall not be obliged to follow instructions that change or extend the content or scope of the agreed service. If such instructions are followed, however, compensation shall be provided for the work in question in accordance with the Supplier's standard rates.

2.5 Even if the agreement for the provision of services has been entered into with a view to implementation by a specific individual, the Supplier shall at all times be entitled to replace this individual with one or more other individuals with the same qualifications following consultation with the Client.

2.6 The employees to be deployed by the Supplier shall hold the qualifications agreed in writing with the Client.

2.7 If the Supplier is providing services on the basis of information to be provided by the Client, this information shall be prepared by the Client in accordance with the conditions to be imposed by the Supplier and provided at the risk and expense of the Client. The Client shall at all times guarantee that all materials, information, software, procedures and instructions that it makes available to the Supplier for the purpose of providing the services is accurate and complete and that all data media issued to the Supplier meet the Supplier's specifications.

2.7 If the Supplier is providing services on the basis of information to be provided by the Client, this information shall be prepared by the Client in accordance with the conditions to be imposed by the Supplier and provided at the risk and expense of the Client. The Client shall at all times guarantee that all materials, information, software, procedures and instructions that it makes available to the Supplier for the purpose of providing the services is accurate and complete and that all data media issued to the Supplier meet the Supplier's specifications.

2.8 The Supplier's service shall only be performed and the schedules and activities shall be based on the assumption that, except where explicitly agreed otherwise with the Client, the Supplier shall carry out the work during the Supplier's standard working days and times.

2.9 Except where agreed otherwise in writing, the use made by the Client of advice issued by the Supplier shall in all cases be at the Client's risk and expense.

2.10 Where applicable, the burden of proving that the service and the results of the service provided by the Supplier do not conform to the agreements made in writing or to what may be expected from a reasonably acting and competent Supplier shall lie solely with the Client, without prejudice to the Supplier's right to furnish evidence to the contrary by any means.

### **3. Reporting**

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

3.2 If an employee deployed by the Supplier forms part of a project or steering group which also includes one or more individuals designated by the Client, the provision of information shall take place in the manner prescribed for the project or steering group. Decisions reached within a project or steering group with this composition shall only have a binding effect on the Supplier if the decision-making process takes place subject to due observance of the agreements reached between the parties in writing or, if no agreements have been made in this regard, if the Supplier has accepted the decisions in writing. The Supplier shall under no circumstances be obliged to accept a decision that it deems to be incompatible with the content of the agreement between the parties. The Client shall guarantee that the individuals it designates to form part of a project or steering group that also includes the Supplier's employees are authorized to take decisions that will have a binding effect on the Client.

3.3 In connection with the continuity of the work, the Client shall designate a contact or contacts who will act in this capacity for the duration of the Supplier's activities. The Client's contacts shall have the necessary experience, specific relevant knowledge and an insight into the Client's desired objectives.

3.4 The Client shall not be entitled to provide third parties with information on the Supplier's working procedures, methods and techniques and/or the content of advice or reports issued by the Supplier without the Supplier's prior written consent. The Client shall not provide the Supplier's advice or reports to third parties or otherwise disclose these.

### **4. Payment**

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

4.2 Except where agreed otherwise, the Supplier shall provide an insight into the work carried out, time spent and costs incurred on behalf of the Client in accordance with the Supplier's standard procedures.

## **Module 8: Processing Agreement**

(A) The Client has hereby concluded a Service Agreement with the Supplier. In order to fulfil the Service Agreement, the Supplier will process Personal Data on behalf the Client;

(B) The Client is the Controller for the processing of the Personal Data and the Supplier is the Processor on behalf of the Client;

(C) As a processor of the Personal Data, the Supplier provides adequate guarantees that appropriate technical and organizational measures are provided to ensure that the processing of Personal Data meets the requirements of the Applicable Law and that the rights of the Data Subject are protected;

(D) The Supplier's General Terms and Conditions apply to the Service Agreement. This Processor Agreement forms an inseparable part of those General Terms and Conditions;

PARTIES DECLARE TO HAVE AGREED THE FOLLOWING:

### **1. DEFINITIONS**

With regard to this Processor Agreement, the same definitions are used as in the Service Agreement and in Applicable Law, as far as not provided otherwise in this Processor Agreement and supplemented by the following definitions:

- 1.1. Data Subject: the person to whom a Personal Data relates;
- 1.2. Processing Facilities: any equipment, system or facilities that is/are or were used for, or is/are or were relevant to, the processing of the Personal Data by Supplier or its subcontractors, including supporting documentation;
- 1.3. Appendix: Appendix to this Processor Agreement, which, after being signed by both Parties, forms part of this Processor Agreement;
- 1.4. Data breach(es): any incident resulting in (possible) accidental or unlawful destruction, loss, alteration, unauthorized disclosure of or access to the Personal Data transmitted, stored or otherwise processed;
- 1.5. Processor Agreement: this Processor Agreement that forms part of the Service Agreement and General Terms and Conditions of the Supplier, including considerations and Appendices, as well as any amendment, replacement, update or other later versions thereof;
- 1.6. Services: the services provided or to be provided by the Supplier on the basis of the Service Agreement;
- 1.7. Service Agreement: the agreement under which the Supplier processes the Personal Data on behalf of the Client, as part of the provision of the Services, including considerations and accompanying appendices, as well as any change, replacement, update or other later versions thereof;
- 1.8. Employees: the employees and other persons to be engaged by the Supplier for the implementation of this Processor Agreement, who fall under its responsibility;
- 1.9. Personal data: any data concerning an identified or identifiable natural person as defined in the Applicable Law, processed by the Supplier or its subcontractors for the Client in the context of the execution of the Service Agreement;
- 1.10. Applicable Law: the applicable law or regulation, or any (other) guidelines, policies, instructions or recommendations of any competent governmental authority, applicable to the processing of the Personal Data, including any changes, replacements, updates or other later versions thereof.

## 2. OBJECT OF THIS PROCESSING AGREEMENT

2.1. In the context of the execution of the Service Agreement, the Client is regarded as the controller for the processing of the Personal Data under the Applicable Law, and the Supplier as the processor of the Personal Data on behalf of the Client.

2.2. The Supplier will provide the Services in accordance with the provisions of the Service Agreement and this Processor Agreement.

2.3. This Processor Agreement contains the agreements between the Parties regarding the processing of the Personal Data in the context of the provision of the Services by the Supplier for the execution of the Service Agreement.

2.4. This Processor Agreement supplements the Service Agreement, and replaces any previously made (oral or written) agreements between the Client in its capacity as controller and the Supplier in its capacity as processor with regard to the processing of Personal Data.

2.5. In the event of any contradiction between provisions of this Processor Agreement and (the body of) the Service Agreement and General Terms and Conditions, the provisions of this Processor Agreement shall prevail, unless expressly provided otherwise in this Processor Agreement.

2.6. Supplier guarantees that it will process the Personal Data in accordance with the Applicable Law. Supplier shall notify Client immediately if, in its opinion, any instruction violates the Applicable Law.

2.7. The Supplier will only process the Personal Data on behalf of and according to the documented instructions of the Client, including the transfer of Personal Data to a third country. The Supplier has no independent control over the Personal Data processed by it. The Supplier will not process the Personal Data for its own benefit, for the benefit of third parties, or for other purposes, except for deviating legal obligations incumbent on it under the Applicable Law. In the event of an applicable deviating legal obligation under the Applicable Law, Supplier will inform Client before any processing takes place.

## 3. PROCESSING OF PERSONAL DATA

3.1. In order to execute the Service Agreement, the Supplier processes the Personal Data of the Data Subjects as described in more detail in [Appendix A](#).

3.2. Taking into account the nature of the processing and the information available to the Supplier, the Supplier shall provide the Client with all information and assist the Client in complying with the obligations resting on the Parties under the Applicable Law, in particular the obligations relating to data protection impact assessments, the principles of data protection by design and data protection by default, as well as having a prior consultation carried out by competent public authorities.

3.3. The Supplier will keep an adequately secured written or electronic register of processing activities of all processing categories for the benefit of the Client, in accordance with the Applicable Law, as far as this Processor Agreement is not yet sufficient for this.

3.4. The Supplier will only disclose the Personal Data to those Employees who need the Personal Data for the performance of their work or who must necessarily have knowledge of the Personal Data for the execution of the Service Agreement, and otherwise keep it confidential, except for deviating legal obligations under the Applicable Law.

3.5. [Appendix A](#) states which (groups of) Employees may have access to which Personal Data and also describes which processing operations these persons may perform with which type of Personal Data. The Supplier is expressly prohibited from (i) granting (groups of) persons access to the Personal Data other than those described in [Appendix A](#), and (ii) performing other processing operations with the Personal Data than those described in [Appendix A](#).

3.6. The Supplier will impose the obligations laid down in this Processor Agreement and the Service Agreement, including the security and confidentiality obligations, on the Employees engaged by it, insofar as they are not bound by an appropriate statutory obligation of confidentiality. The Supplier will ensure that these Employees and other persons appointed by it comply with the relevant obligations under this Processor Agreement and the Service Agreement.

#### 4. SUBCONTRACTORS

4.1. The Supplier is entitled to engage a third party as a subcontractor (sub-processor) for the processing of Personal Data, without the Client's prior written consent. Prior to, or at the latest upon, the engagement of that sub-processor, the Supplier will update the Appendix D (overview of sub-processors) and send it to the Client.

4.2. If the Supplier has obtained the written permission of the Client to engage a subcontractor as a sub-processor, the Supplier will enter into a written sub-processor agreement with this subcontractor (sub-processor) and thereby impose the same obligations on this subcontractor as those resting upon itself under this Processor Agreement, including but not limited to the reporting obligations incumbent on him with regard to Data Breaches. Furthermore, in this sub-processor agreement, the Supplier will prohibit the subcontractor from engaging (sub-sub) processors.

4.3. If the supplier engages a subcontractor, the supplier remains fully responsible and liable for the fulfilment of its obligations under the Service Agreement and this Processor Agreement.

#### 5. REQUIREMENTS AND SECURITY

5.1 The Supplier shall at least observe the reliability requirements from [Appendix B](#) and implement the technical and organizational security measures also elaborated in [Appendix B](#), so that these measures fulfil the reliability requirements as determined by the Client.

5.2. The Supplier guarantees that the technical and organizational security measures (to be) implemented by the Supplier provide an adequate level of protection in accordance with the Applicable Law, taking into account the current state of the art, the implementation costs and the nature, scope, context and purposes of the processing, as well as the likeliness and seriousness of the diverse risks to the rights and freedoms of individuals, including the possible risks associated with Data Breaches. These measures include, where appropriate, at least:

5.2.1. encryption of Personal Data;

5.2.2. the ability to ensure the confidentiality, integrity, availability and resilience of the Processing Facilities and Services on an ongoing basis. By means of the use of the measures mentioned under the heading "Technical security measures" in [Appendix B](#);

5.2.3. the ability to restore the availability of and access to the Personal Data in a timely manner in the event of a physical or technical incident;

5.2.4. a procedure for regularly testing, assessing and evaluating the effectiveness of the technical and organizational measures to secure the data processing.

5.2.5. preventive measures that enable the Supplier to immediately recognize a Data Breach and to inform the Client about this in a timely manner;

5.3. When implementing any security measure, Supplier will comply with the Applicable Law.

5.4. The Supplier will regularly evaluate the implemented technical and organizational security measures and update them if necessary.

## **6. SECURITY REPORTS**

6.1. Without prejudice to the Client's right to carry out an audit, the Supplier will have the processing of the Personal Data, the Processing Facilities and the security measures evaluated regularly at its own expense, in any case every year, and issue an annual written security report to the Client thereof. The Supplier shall in any event provide the written security report to the Client within two weeks of the completion of the evaluation. The evaluation will be performed by an independent third party (expert) according to appropriate audit standards.

6.2. The security report will relate to all processings of Personal Data, and at least address the status of the Processing Facilities and the security measures, the registered down time of the technical security measures, the established (non-)compliance with the organizational security measures, Data Breaches that have taken place, observed threats to security of Personal Data, and necessary and/or recommended improvements.

6.3. The Supplier will take all (immediate) measures to adequately remedy or implement any perceived threats, weaknesses and other identified problems, as well as the required and/or recommended improvements in the security report.

## **7. REPORTING DATA BREACHES**

7.1. Supplier will maintain adequate procedures aimed at detecting and taking action on any Data Breach, including procedures for preventive and corrective actions, and also to prevent the recurrence of any Data Breach. These procedures have been set up by the Supplier in such a way that both the Client and the Supplier are able to comply with the data breach notification obligations under the Applicable Law.

7.2. As soon as the Supplier detects a Data Breach or reasonably suspects that a Data Breach has occurred or may occur, the Supplier will inform the Client about this immediately, and in any case within 24 hours after detection or suspicion of a Data Breach. Such notification will be made by e-mail and telephone to the (replacement) contact persons as stated in Appendix C. If the Supplier does not immediately and directly reach the Client, the Supplier will make all reasonable efforts to contact the Client directly.

7.3. In the event of a Data Breach, the Supplier will take adequate remedial measures as soon as possible. In addition, Supplier will provide Client with all relevant information requested by Client with regard to the Data Breach. This information includes in any case:

7.3.1. a description of the nature and scope of the Data Breach, an estimate of the number of (possibly) affected Data Subjects and an indication of the nature of the Personal Data affected and whether these Personal Data were encrypted or otherwise secured or made incomprehensible/inaccessible;

7.3.2. a description of the possible consequences of the Data Breach;

7.3.3. a description of the preventive and corrective measures taken and to be taken, planned measures and recommended measures to limit the damage, including an emergency plan and the expected solution and work-around time;

7.3.4. information about which third parties, such as government agencies and (social) media, are or may be aware of the Data Breach;

7.3.5. the contact details of the authorized representative(s) of the Supplier, from whom the Client can obtain immediate and regular updates on the status of the Data Breach; and

7.3.6. any other information that may contribute to limiting the damage to the Client's organization and the privacy of the affected Data Subject(s)

7.4. The Supplier shall also provide all reasonably foreseeable assistance to the Client and share with the Client all necessary or requested information with the Client, in order for the Client to timely inform the (possibly) affected Data Subject(s) and/or the relevant government authorities or regulators authorized to judge the Processing about the Data Breach and is enabled to demonstrate and document compliance with the Data Breach reporting obligations under the Applicable Law.

7.5. Immediately after a Data Breach, Supplier will carry out an audit in order to determine and implement appropriate remedial measures to prevent (recurrence of) a comparable situation, without prejudice to any audit rights of Client.

## **8. AUDIT RIGHT OF CLIENT**

8.1. With due observance of a prior notice period of 2 weeks, the Client can subject the processing activities and the Processing Facilities to an audit or have them audited in order to investigate the technical and organizational measures taken with regard to the Personal Data.

8.2. The Client can also perform an audit (or have an audit carried out) with regard to the processing activities and the Processing Facilities to verify whether the Supplier has actually informed the Client correctly and in a timely manner about all Data Breaches, and the preventive and remedial measures taken in this regard, including any measures to prevent recurrence of a data breach.

8.3. Supplier will provide all reasonably necessary cooperation to enable Client to exercise its audit rights and demonstrate compliance with the Applicable Law, and Supplier will ensure that its subcontractors also do so. The Client can engage third parties (experts) to exercise its audit rights.

8.4. If the Client engages a third party to exercise its audit rights, the Supplier is entitled not to provide the necessary cooperation until a non-disclosure agreement has been agreed with that third party. If a third party engaged by the Client charges costs for the audit, those costs will be borne by the Client.

## **9. TRANSFER OF PERSONAL DATA**

9.1. Supplier will fully cooperate in ensuring that any transfer to a country outside the EEA takes place in accordance with the Applicable Law, including by implementing a valid (alternative) instrument for legitimizing a transfer of Personal Data to a country outside the EEA, when a transfer instrument used has been declared invalid under the Applicable Law or where a governmental authority suspends or otherwise instructs the relevant transfer of Personal Data to be terminated.

## **10. REQUESTS OF DATA SUBJECTS**

10.1. Taking into account the nature of the processing, the Supplier will provide its full cooperation by means of appropriate technical and organizational measures, so that the Client can comply with its legal obligations if a Data Subject exercises his rights to under the Applicable Law.

10.2. As soon as the Supplier receives a request, as referred to in the previous paragraph, from a Data Subject, the Supplier shall immediately inform the Client of this in writing, thereby providing the Client with a copy of all correspondence received in this regard. The Client will inform the Supplier whether the Supplier, on behalf of the Client, can respond to the request and, if so, how.

10.3. Without prejudice to its obligations under the Service Agreement, the Supplier shall immediately correct, delete or otherwise adjust the Personal Data in such a case, in accordance with the instructions of the Client.

## **11. REQUESTS FROM GOVERNMENT AUTHORITIES**

11.1. If the Supplier receives a request from a government agency to provide (access to) Personal Data, the Supplier shall immediately inform the Client of this in writing before (access to) Personal Data is provided, thereby providing the Client with a copy of all correspondence received in this regard. The Supplier will only cooperate with a request to that effect, if it is obliged to do so under the the Applicable Law. The Client may provide the Supplier with reasonable instructions in this regard, insofar as this does not preclude the fulfilment of the aforementioned legal obligation.

11.2. If there is a possibility to take legal action against the request for the provision of Personal Data or a possible prohibition on informing third parties about the request, the Supplier will make full use of this possibility, whereby the Client will reimburse the Supplier the reasonable costs incurred or to be incurred for legal assistance.

11.3. In order to guarantee the protection of the Personal Data, the Supplier will ensure that it does not provide more Personal Data to the government agency than is strictly necessary to comply with the government agency's request.

11.4. If, based on the request addressed to it to provide Personal Data, the Supplier is not permitted to inform third parties, including the Client, about the request received for and any subsequent provision to a government agency, then the Supplier will be request the controller for the processing of the Personal Data. As soon as Supplier is permitted to do so, Supplier shall immediately notify Client of any requests received and any subsequent disclosures of Personal Data, thereby providing Client with a copy of all correspondence exchanged.

## 12. (INTELLECTUAL) PROPERTY RIGHTS

12.1. All (intellectual) property rights - including any copyrights and database rights - on (the file or files of) the Personal Data, and thus explicitly not the (intellectual) property rights on the technical system made available by the Supplier to the Client, will remain at all times with the Client or its licensor(s).

12.2. By concluding this Processor Agreement, no transfer of any (intellectual) property rights on the Personal Data takes place.

## 13. INDEMNITY

13.1. The Supplier indemnifies the Client against all claims from third parties, including Data Subjects, that may be instituted against the Client due to a violation of the Applicable Law, attributable to the Supplier, to its Employees to other persons deployed by Supplier, or to Supplier's subcontractors.

## 14. DURATION AND TERMINATION

14.1. This Processor Agreement comes into effect as soon as the Supplier processes the Personal Data for the Client for the first time on the basis of the Service Agreement.

14.2. This Processor Agreement will be in force as long as the Service Agreement is in force. Upon termination of the Service Agreement, this Processor Agreement ends by operation of law without any further (legal) action being required.

14.3. Premature termination of this Processor Agreement is not possible.

14.4. As far as not dictated otherwise in accordance with the Applicable Law, Supplier will ensure, if this Processor Agreement ends -or on an earlier date when the Client indicates that the processing of (part of) the Personal Data is no longer relevant for the performance of the Services-: (i) that the Personal Data is immediately returned or provided to the Client, or a replacement Supplier designated by the Client, in a manner deemed suitable by the Client, or (ii) that the Personal Data is immediately destroyed, if the Client so requests in writing request.



14.5. The Supplier shall ensure that it will immediately cease (and keep ceased) all processing of (the relevant) Personal Data after return, provision or destruction. The Supplier will provide the Client with a written confirmation and guarantee thereof, and allow the Client to verify that the (relevant) Personal Data are no longer processed by the Supplier or by a subcontractor engaged by it.

14.6. If at the time of (early) termination of the Service Agreement the Client chooses to continue the processing the Personal Data, and it is not reasonably possible for the Supplier at that time to provide the Personal Data to the Client -or to a replacement supplier- in a manner that the processing of Personal Data can be continued undisturbed, the Supplier will, at the request of the Client, continue the processing of the Personal Data under the identical terms and conditions as included in this Processor Agreement, until the Client -or a replacement supplier- is reasonably able to take over the processing of the Personal Data and the Personal Data can be provided in an appropriate manner. Continuation of the processing of the Personal Data by Supplier will not take place longer than is reasonably necessary, whereby a period of three months after termination of the Service Agreement can be considered reasonable. If the Service Agreement contains a more favourable emergency plan (exit arrangement) for the Client for termination, the emergency plan (exit arrangement) of the Service Agreement will prevail.

14.7. Obligations under this Processor Agreement, which by their nature are intended to continue after the termination of this Processor Agreement, continue to exist after the termination of this Processor Agreement.

## 15. CHANGES AND RENEGOTIATIONS

15.1. Deviations from and additions to this Processor Agreement are only valid if they have been expressly agreed in writing.

15.2. The parties will update the Annex(es) A, B, C and/or D in case of changes to the processed Personal Data, the processing activities of the Supplier for the Client, the applicable reliability requirements, changes in the contact details and/or changes in the sub-processors engaged by the Supplier. The relevant amendments shall become effective upon signature by both Parties of the amended annex(es).

15.3. If a change in circumstances gives reason to do so, the Parties are entitled to renegotiate this Processor Agreement.

15.4. The parties hereby agree in advance to changes to the Processor Agreement that are necessary for compliance with the Applicable Law, due to changed circumstances, including any changes that are necessary on the basis of a decision, warning, verdict or other action by a government agency.

## 16. MISCELLANEOUS TERMS

16.1. Dutch law applies to this Processor Agreement.

16.2. All disputes that may arise from this Processor Agreement will be submitted exclusively to the body that is also competent to judge disputes that may arise from the Service Agreement. Failing this, the competent court in Enschede will have exclusive jurisdiction.

16.3. Any general delivery conditions and other general or special conditions of the Client do not apply to this Processor Agreement and are expressly rejected by the Supplier.

16.4. The parties are not entitled to transfer their rights and obligations under this Processor Agreement to a third party, except with the prior written consent of the Client.

## Appendix A: Overview of the Services and related processing activities

### SERVICES OF THE CONNECTOR

The Connector is an interface between different systems (usually an Applicant Tracking System) on the one hand and on the other hand one or more Back-office systems. The interface (Connector) connects the systems, converts the data into the desired types and exchanges that data.

### CONTROLS

The controls below have been set up per environment, but can be adjusted by the Client and are only applicable if relevant for the specific data for that environment.

Purposes for which Personal data is processed	Retention period (Duration of processing)	Action	Categories of data subjects	Personal data processed by supplier		Employees who are engaged by the supplier and who (may) have access to the personal data	
				Categories	Specifications	Groups	Actions
Tasks with personal data	30 days after creation date	The physical document is deleted from the server. Logging and tasks will be deleted	Temps, contact persons, and / or consultants.	Master data temps, contact persons and/or intermediaries received/retrieved from source system	Import documents with personal data	Administrators, Consultants, Support employees, Developers	To see
Data exchange temp (candidate)	12 months after the last update	Relevant logging and data will be deleted	Temps	Relevant data of the temp that is retrieved/received and stored within the interface	Identifier's source and target system name and address data Sex Date of birth Birthplace Country of birth Marital status Nationality Preferred Language Status Social Security Number ID details Application details Contact details Salary Details social media accounts Payment details Date of employment Phase Information Partner Name and address details Notes	Administrators, Consultants, Support employees, Developers	To see To edit (support)

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Data exchange contact person client	12 months after the last update		Contact persons of the client	Relevant data of the contact person that is retrieved/received and stored within the interface	Identifier's source and target system name and address data Sex Date of birth Place of birth Country of birth Marital status Nationality Preferred Language Contact details Job title Department Notes	Administrators, Consultants, Support employees, Developers	To see To edit (support)
Data exchange consultant	12 months after the last update		Intermediary (internal employee temporary employment agency)	Relevant consultant data retrieved/received and stored within the interface	Source and target system identifiers Name and address details Sex Date of birth Birthplace Country of birth Marital status Nationality Preferred Language Status Contact details Username Job title Department Notes	Administrators, Consultants, Support employees, Developers	To see To edit (support)
Data exchange placement	12 months after the last update		Placement			Administrators, Consultants, Support employees, Developers	To see To edit (support)
Application User (Solid Online)	12 after deactivation.  Account application user can be disabled manually by an administrator. The account will be automatically deactivated 12 months after the last login action. If no login has taken place, the account will be automatically deactivated 12 months after creation	Anonymize application master data	Application users (internal employee Solid online)	Relevant application user Solid Online that is retrieved/received and stored within the interface	Name and address details Sex Date of birth Birthplace Country of birth Marital status Nationality Preferred Language Social Security Number ID details Contact details Username Job title Notes	Administrators, Consultants, Support employees, Developers	To see To edit (support)

## SERVICES OF THE TRANSFORMER

The Transformer is a toolbox that automatically and clearly manages details about “timesheets” and “invoices” per customer. The Transformer transforms, validates and enriches incoming files from customers, suppliers, and partners and thus connects the customer’s system with the back office of the temporary employment agency.

## CONTROLS

The controls below have been set up per environment, but can be adjusted by the Client and are only applicable if relevant for the specific data for that environment.

Purposes for which personal data is processed	Retention period (Duration of processing)	Action	Categories of data subjects	Personal data processed by supplier		Employees who are engaged by the supplier and who (may) have access to the personal data	
				Categories	Specifications	Groups	Actions
HR process (supply and demand of temps)	30 days after creation date	The physical document is deleted from the server. Logging data and tasks will be deleted	Temps	Master data Staffing Order (RFQ) and Staffing Order (order)	HRID (employee number) Name Address Date of birth Sex Telephone number E-mail Availability Social Security Number Nationality ID Passport/ID card Validity Passport/ID card	Administrators, Consultants, Support employees, Developers	To see
Digital services (placement and temp request/placed)	30 days after creation date	The physical document is deleted from the server. Logging and tasks are deleted. Data is only deleted if the temp has not (yet) been placed (status = new)	Temps	Master data HumanResource (new) and HumanResource (xassigned). Data from the temp and/or self-employed person required to support time and invoice processing remains available for placed candidates (xassigned) and follows the guideline as defined below	HRID (employee number) Name Address Date of birth Sex Telephone number E-mail Availability Social Security Number Nationality ID Passport/ID card Validity Passport/ID card	Administrators, Consultants, Support employees, Developers	To see

Digital services (placement and temp placed), hour processing and invoice processing	<p>26 consecutive weeks in which the flex worker did not work.</p> <p>This is validated according to the ruleset below</p> <ul style="list-style-type: none"> <li>- End date of last placement more than 26 weeks old. If at least one placement is linked to the temp without an end date, the following rule will take effect</li> <li>- Creation date last hour file more than 26 weeks ago. If no hour file has been created for the temp, the following rule will take effect</li> <li>- Start date of last posting more than 26 weeks ago. If no placement is linked to the temp, the following rule will take effect</li> <li>- Creation date temp more than 26 weeks ago</li> </ul>	Standard data for temps and/or self-employed are removed.	Temps	Master data HumanResource (new) and HumanResource (xassigned)	<p>HRID (employee number)</p> <p>Name</p> <p>Address</p> <p>We suppress the import of HumanResource (new) and HumanResource (xassigned) data that is not required for the hours or invoice process. This does not end up in the database and after deleting the physical document (as described above) this data is no longer available in the application</p>	Administrators, Consultants, Support employees, Developers	To see To edit (support)
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Hour processing	7 years after the end of the calendar year in which the hour file was processed	The physical document is deleted from the server. Logging and tasks will be deleted	Temps	Hour file received from customer (customer-approved hours of temps and/or self-employed people who have worked in a certain period), possibly supplemented with input from application users due to failure in application	Varies by customer implementation, for example: Employee code Full name First Name Last name	Administrators, Consultants, Support employees, Developers	To see To edit (support)
Hour processing	7 years after the end of the calendar year in which the hour file was processed	The physical document is deleted from the server. Logging and tasks will be deleted	Temps	Timecard xml sent to back office	HRID (employee number) Full name	Administrators, Consultants, Support employees, Developers	To see
Invoice processing	7 years after the end of the calendar year in which the hour file was processed	The physical document is deleted from the server. Logging and tasks will be deleted	Temps	Invoice document xml received from back office	Name and address details temp	Administrators, Consultants, Support employees, Developers	To see To edit (support)
Invoice processing	7 years after the end of the calendar year in which the hour file was processed	The physical document is deleted from the server. Logging and tasks will be deleted	Temps	Invoice document pdf/xml sent to customer and/or lender (ZZP-er or on-lending organization)	Name and address details temp. Varies by customer implementation	Administrators, Consultants, Support employees, Developers	To see To edit (support)
Supporting all processes (commercial message flows, hour, and invoice processing)	30 days after creation date	The physical document is deleted from the server. Logging and tasks will be deleted	Clients and/or lending organization	Master data from client or lender (contact details are not provided). Data from the client or lender (self-employed person or on-lender) required for the supporting processes remains available	HRID (employee number) if self-employed Address E-mail	Administrators, Consultants, Support employees, Developers	To see
Supporting all processes (commercial message flows, hour, and invoice processing)	7 years after the end of the calendar year in which the file has been created	The physical document is deleted from the server. Logging and tasks are deleted. User has the option the document	Temps	Documents used to set up a template converter or mapping for transforming files. User will receive a timely notification to replace the	Varies by process For example, Employee code, Full name, First name, Last name	Administrators, Consultants, Support employees, Developers	To create To see To edit (support) To delete

		used in the template to anonymize		converter or mapping template before the expiry of the retention period for those templates that are still in use, so that the existing implementations are not affected by this control			
Supporting all processes (commercial message flows, hour, and invoice processing)	7 years after the end of the calendar year in which the employment ended	The physical document is deleted from the server. Logging, data and tasks will be deleted	Temps	Placement information received from back office, which is used for various validations and enrichments within the hours and invoice processing process)	Client ID HRID (employee number) Placement number Job title  No further personal data (info about rates, reference to cost center and hour types)	Administrators, Consultants, Support employees, Developers	To see To edit (support)
Application users (internal employees)	12 months after deactivation  Account application usage can be disabled manually by an administrator. The account will be automatically deactivated 12 months after the last login action. If no login has taken place, the account will be automatically deactivated 12 months after creation	Anonymize master data application users	Application users	Master data application users.	Full name Sex Date of birth Job title E-mail Username	Administrators, Consultants, Support employees, Developers	To create To see To edit To deactivate
Reports	30 days after creation date	The physical document is deleted from the server. Logging and tasks are deleted.	Application users and/or temps	Reports with personal data (name and/or traceable data):  - Hour report (overview of hours tasks including status).  - Invoice report overview invoice tasks including status). - Treatment and functionality groups reporting (overview of roles &	Variable	Administrators, Consultants, Support employees, Developers	To see

				rights within application)			
System	Same term as linked entity, document, or task	Delete log files	Application users and/or temps	Log files generated in the application	Differs per process	Administrators, Consultants, Support employees, Developers	To see
System	7 years after the end of the calendar year in which the file has been created	Delete documents in backup folder on server	Application users and/or temps	Documents placed in the backup folder on server	Differs per document and system	Administrators	To see To edit To delete



## **Appendix B: Reliability Requirements and Security Measures**

Where applicable, differentiated on the basis of sensitivity of the (categories) of Personal Data listed in Appendix A.

### Applicable reliability requirements

The Client determines below which requirements with regard to availability, integrity and confidentiality on the matter of data processing must be met. With due observance of the requirements written below, the Supplier shall ensure that there is an appropriate level of security.

	Low	Medium	High
Availability			X
Integrity			X
Responsibility			X

### Elaboration in concrete technical and organizational measures

Where applicable, differentiated on the basis of sensitivity of the (categories) of Personal Data listed in Appendix A.

We have implemented a number of technical and organizational security measures. These are continuously being updated and expanded. The current measures are:

#### **Technical security measures**

Two-factor authentication  
Data storage within the EU Data traffic is encrypted  
Passwords are stored encrypted  
Strong passwords are mandatory  
Changes of data per user are logged  
Security and virus scanner updates are checked and performed monthly  
Firewall is checked for changes  
Each delivery undergoes a unit and regression test  
Every delivery undergoes an OWASP check  
Every delivery undergoes a performance check  
The running application is monitored for performance  
Anonymizing the data on the test server

#### **Organizational Security Measures**

Clean desk policy  
Training on privacy & security procedures to involved personnel is monitored  
Data breach incident reporting process arranged

**Appendix C: Overview of contact persons (and replacements)**

	Name and job title	Telephone numbers	Other information (e-mail)
Contact person	Support employee Solid	023-5563184	<a href="mailto:info@solidonline.com">info@solidonline.com</a>
Replacement 1	Pieter Hoekstra CEO	023-5563184	<a href="mailto:pieter@solidonline.com">pieter@solidonline.com</a>
Replacement 2	Roos Schabracq Managing partner	023-5563184	<a href="mailto:roos@solidonline.com">roos@solidonline.com</a>

**Appendix D: Overview sub processors**

Sub processor	What does the sub-processor process
<b>Microsoft Azure</b> <a href="https://www.microsoft.com/en-us/TrustCenter/Privacy/default.aspx">https://www.microsoft.com/en-us/TrustCenter/Privacy/default.aspx</a>	Azure hosts all data that Solid Flex Solutions manages, unless otherwise specified with the client in the service agreement.
<b>Solid Solutions International Pvt. Ltd.</b> HQ10 Primus SP-7A, South Phase, Guindy Industrial Estate, SIDCO Industrial Estate Guindy, Chennai, Tamil Nadu 600032, India	Solid Solutions International Pvt. Ltd. solves problems in the hour and invoicing process, where personal data can be viewed.