

# ICTWaarborg General Terms and Conditions - B2B

Version September 2021

These General Terms and Conditions govern the legal relationship between Contractor and its clients. The General Terms and Conditions are divided into different modules, which are geared to the various forms of business services that participants of ICTWaarborg can offer, namely:

Module A. General  
Module B. Development (web) applications  
Module C. Hosting / SaaS  
Module D. Hardware  
Module E. Telecom  
Module F. Secondment  
Module G. Hardware rental  
Module H. Maintenance and Support  
Module I. Advice and Training

This version of the General Terms and Conditions for HUMBLE B.V. only includes the following modules that are applicable to this agreement.

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If a specific module applies, this will take precedence over the General Module. Insofar as the General Part does not conflict with applicable provisions in specific modules, the General Part always applies as well. The definitions of capitalised terms apply to all modules.

## Definitions

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

- ♦ **Acceptance test:** is a (limited) obligatory test effort to be made by Client in order to complete the Project.
- ♦ **General Terms and Conditions:** these terms and conditions, which have a modular structure.
- ♦ **Service:** the performance to be provided by the Contractor, including the development and/or maintenance of software, applications, programs, etc. The Services concerned will be determined in the Agreement and further rules will be laid down for specific Services in these General Terms and Conditions.
- ♦ **Defect:** failure to meet the Specifications.
- ♦ **User:** the (end) user who uses the Service/Project provided by Contractor for the benefit of Client.
- ♦ **Hardware:** equipment supplied by Contractor to Client.
- ♦ **Materials:** for example (web) applications, software, advice or reports.
- ♦ **Employee:** an employee, freelancer or self-employed person without personnel or an auxiliary person hired by the Contractor from a third party who is deployed by the Contractor for the benefit of the Client or who performs work.
- ♦ **Module:** a module of these General Terms and Conditions containing provisions relating to a specific field of work.
- ♦ **Client:** the natural person or legal entity with whom the Contractor has entered into an Agreement. Also meant is the person who enters into negotiations with the Contractor in this respect, as well as his representative(s), authorised representative(s), successor(s) in title and heirs.
- ♦ **Contractor:** HUMBLE B.V., established in Utrecht and registered with the Chamber of Commerce under number 81427549 and participant in the trade association ICTWaarborg.
- ♦ **Agreement:** the agreement between the Contractor and the Client.

- ♦ **Force majeure:** a shortcoming that cannot be attributed to the debtor if it is not due to his fault, nor for his account pursuant to law, legal act or generally accepted practice.
- ♦ **Project:** the work that the Contractor is to perform for the Client, as described in the quotation and/or in the Agreement.
- ♦ **Project management system:** electronic system that may be used for the management of the Project and for communication between the Contracted Party and the Client regarding the execution of the Agreement. **Results:**
- ♦ the results of the work performed by the Contractor under the Agreement.
- ♦ **Written:** in these General Terms and Conditions, written also includes email and communication by fax, provided that the identity of the sender and the integrity of the message is sufficiently established.
- ♦ **Specifications:** the functional and technical description of the Project.
- ♦ **Website:** <http://www.humble-online.com>

## Identity of the Contractor

<b>Name (Contractor)</b>	HUMBLE B.V.
<b>Acting under</b>	HUMBLE B.V.
<b>Office address</b>	Pythagoraslaan 101 3584BB Utrecht
<b>Postal address</b>	Pythagoraslaan 101 3584BB Utrecht
<b>Phone number</b>	030-2090990
<b>E-mail address</b>	info@humble-online.com
<b>VAT number</b>	NL858870666B01
<b>Chamber of Commerce number</b>	81427549

## **Module A. General**

### **Article A.1. Offer, quotation and acceptance**

- ♦ A.1.1 An offer, drawn up by Contractor, is free of obligation and valid for 14 days after its date, unless indicated otherwise in the offer.
- ♦ A.1.2 The Client should preferably accept the quotation in writing, but if the Client agrees or creates the impression that it has accepted the quotation in any other way than in writing, the quotation may be regarded as accepted by the Contractor.
- ♦ A.1.3 Provisions or conditions of the Client that deviate from, or do not appear in, these General Terms and Conditions are only binding for the Contractor if and insofar as they have been explicitly accepted in writing by the Contractor.
- ♦ A.1.4 Without prejudice to the Contractor's authority to withdraw the offer in accordance with article 1 paragraph 1, the Agreement may only be amended after acceptance by mutual consent. In the event of conflict between the provisions of the documents below, the following order of precedence will apply:
  - 1. the Agreement;
  - 2. any annexes, with the exception of brochures;
  - 3. these General Terms and Conditions;
  - 4. any additional conditions, with the exception of brochures.

### **Article A.2. Implementation of the Project & Provision of Information**

- ♦ A.2.1 After the Agreement has been concluded, the Contractor will execute the Project as soon as possible in accordance with the quotation, taking into account the reasonable wishes of the Client.

Contractor shall make every effort to perform the Project to the best of its ability, exercising due care and expertise. The Client is required to facilitate a timely and correct execution of the Project. In particular, the Client shall ensure that all information which the Contractor indicates is necessary or which the Client should reasonably understand is necessary for the fulfilment of the Project, is provided to the Contractor in good time. The necessary commitment of Client must be provided with sufficient quality and timeliness. This applies both to the support to be provided by contact persons and to the planned deployment of project staff within the project activities to be performed.

- ♦ A.2.2 If Client fails to do the above, Contractor is entitled to charge additional costs and it is possible that the Project will be delayed. Any delay of the Project, caused by Client, shall be reported via the project management system or, if no project management system has been deployed for the Project, by e-mail or, in the absence of functioning e-mail correspondence, or in any other Written form. Should this situation arise, Contractor shall inform the Client of any additional costs to be charged.

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

- ♦ A.3.1 The Agreement shall be regarded as terminated when the performances arising therefrom have been reciprocated.
- ♦ A.3.2 Notwithstanding Clause 3.1, Agreements relating to services will be tacitly renewed on a monthly basis after the expiry of the term. Termination of such Agreements shall take place in writing.
- ♦ A.3.3 Delivery periods stated by the Contractor are always indicative. Even in the event of an agreed deadline, the Contractor will not be in default until the Client has given him notice of default in writing, except in the situations prescribed by mandatory law in which default occurs by operation of law.

- ♦ A.3.4 In the event that the Client fails to fulfil any of his obligations under the Agreement, the Contractor is entitled to suspend the fulfilment of all Agreements concluded with the Client in question, without any notice of default or judicial intervention being required and without prejudice to the Contractor's right to compensation for damage, loss of profit and interest, unless the non-fulfilment in question is of minor significance.
- ♦ A.3.5 The Client is obliged to comply with all relevant legislation and the obligations arising from related regulations.
- ♦ A.3.6 The Contractor is entitled to terminate or suspend all or part of the Agreement with immediate effect, without judicial intervention, in writing and without any obligation to pay damages or compensation, if:
  - Client does not comply with the obligations under the Agreement, or does not do so fully or on time;
  - after the Agreement has been concluded, circumstances become known to the Contractor which give him good reason to fear that the Client will not fulfil his obligations;
  - Client was requested to provide security for the fulfilment of his obligations under this Agreement when it was concluded and that this security is not provided or insufficient;
  - due to a delay on the part of the Client, the Contractor can no longer be required to fulfil the Agreement on the originally agreed conditions; the Client dies, applies for a moratorium or files a petition for
  - bankruptcy;
  - the Client's bankruptcy is granted;
  - the Client's activities are discontinued or liquidated; any part of the
  - Client's assets are seized;
  - circumstances arise which are of such a nature that performance of the Agreement becomes impossible or that the unaltered maintenance of the Agreement cannot reasonably be required of the Contractor.

Contractor shall never be obliged to refund monies already received or to pay damages for termination in the event of the Client's bankruptcy, the Client's application for a suspension of payments or filing for bankruptcy.

- ♦ A.3.7 If the Agreement is dissolved, the Contractor's claims against the Client will be immediately due and payable. If the Contractor suspends fulfilment of its obligations, it shall retain its claims under the law and the Agreement.

- ♦ A.3.8 If the Client is accountable for the termination, Contractor shall be entitled to compensation for the losses it has incurred directly and indirectly.

## **Article A.4. Procedure after termination**

- ♦ A.4.1 The Parties are mutually obliged to return any goods of which the other Party is the owner or entitled party and which are in the possession of one Party, to the other Party without delay after termination of the Agreement. Certain goods, such as data (carriers), may also be erased or destroyed instead of being returned, if the entitled party has given its consent to this in writing.
- ♦ A.4.2 All data provided or entered by the Contractor remain the property of the Contractor at all times. The Principal will only receive a non-exclusive, transferable licence which is required for the performance of the Agreement.

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

- ♦ A.5.1 Prices are exclusive of sales tax (VAT) and other government levies.
- ♦ A.5.2 If a price in an offer is based on information provided by Client and this information proves to be incorrect, Contractor has the right to adjust the prices to the prices that reasonably correspond to the correct data, even after the Agreement has already been concluded.
- ♦ A.5.3 All prices quoted in the Contractor's offer are subject to typing and calculation errors.

- ♦ A.5.4 The contractor is entitled to change the prices from time to time. Changes will be announced to the Client in writing at least 30 days in advance. Price increases of 3% or less may be made by the Contracted Party, without the Client's permission, once a year, in the month of January. In the event of price increases of more than 3%, the Client will have the right to terminate the Agreement on the date on which the new prices come into effect.

## **Article A.6. Terms of payment**

- ♦ A.6.1 Contractor will send an invoice to the Client for the amount due by Client. If the Project is delivered in phases, the Contractor is entitled to invoice for each phase delivered, on a monthly basis or on the basis of hours worked (this at the discretion of the Contractor). The payment term of an invoice is 14 days after the date of the invoice, unless agreed otherwise between Contractor and Client.
- ♦ A.6.2 If Client does not pay in full and on time, he will be in default by operation of law as of 30 days after the payment deadline, without any notice of default being required. If an amount due is not paid within the term of payment, a contractual interest of 2% per month and 15,- for administration costs without further notice of default by Contractor.
- ♦ A.6.3 In the event of late payment, the Client is obliged, in addition to the amount owed and the interest thereon, to pay in full both extrajudicial and judicial collection costs, including the costs of lawyers, bailiffs and collection agencies.
- ♦ A.6.4 The claim for payment shall be immediately due and payable in the event that the Client is declared bankrupt, applies for a suspension of payments, the Client dies and furthermore, if the Client goes into liquidation, is dissolved or if the bankruptcy is granted.
- ♦ A.6.5 In the above cases, the Contractor is also entitled to terminate or suspend performance of the Agreement or any part thereof not yet performed without notice of default or judicial intervention, without the Client acquiring any right to compensation as a result.

## **Article A.7. Additional work**

- ♦ A.7.1 In the event that the Contractor's wishes, which can reasonably be regarded by the Client as changes to or additions of the provisions in the quotation or the Agreement (which also includes a delay or overrun with regard to the Project that can be attributed to the Client), result in an increase in the amount of work to be performed by the Contractor under this Agreement, this will be regarded as additional work.
- ♦ A.7.2 If the Contractor is of the opinion that additional work is involved, it will report this to the Client as soon as possible and request written approval for the performance of the proposed additional work and the offer made by the Contractor for this, including the delivery period.
- ♦ A.7.3 The Client shall always decide on the proposed additional work within five (5) working days. The work to be carried out within the framework of accepted additional work shall be laid down in writing and agreed upon by both parties.
- ♦ A.7.4 The Client is responsible for any delays in the delivery dates mentioned in the original quotation due to additional work.
- ♦ A.7.5 The provisions of these General Terms and Conditions apply to all additional work to be carried out by the Contractor, insofar as the parties have not agreed otherwise.

## Article A.8. Liability

- ♦ A.8.1 A.8.1 The Contractor is only liable to the Client for direct loss resulting from an attributable breach of contract. Direct loss is understood to mean the loss incurred in order to rectify the breach. Direct damage is exclusively understood to mean:
  - the damage caused to tangible property, also called (material) property damage;
  - costs incurred by the Client in order to induce the Contractor to duly perform the Agreement after all;
  - costs incurred by the Client to limit, prevent or remedy the direct damage;
  - costs incurred by the Client in order to have the performance still satisfy the Agreement;
  - costs incurred in establishing the cause and extent of the damage, in so far as this concerns direct damage as referred to in this provision;
  - costs incurred that are proportionate to ending or limiting a data breach (as referred to in the GDPR).

Without prejudice to the above, the liability of the Contractor for other forms of liability is explicitly excluded.

- ♦ A.8.2 The Contractor's liability for direct damage suffered by the Client as a result of an attributable failure on the part of the Contractor to fulfil his obligations under the Agreement, which expressly includes any failure to fulfil a guarantee obligation agreed on with the Client, or as a result of a wrongful act on the part of the Contractor, his employees or third parties engaged by him, will be limited per event or a series of related events to an amount equal to the annual payments due from the Client under this Agreement (exclusive of VAT). In no event, however, will the total compensation for direct loss exceed EUR 25,000 (exclusive of VAT).
- ♦ A.8.3 The total liability of the Contractor for damage resulting from death or bodily injury or for material damage to property shall in no event exceed EUR 500,000 per damaging event, whereby a series of connected events shall be regarded as a single event.
- ♦ A.8.4 The Contractor is not liable for indirect damage, including consequential damage, loss of profit, lost savings, mutilation or loss of data or business data and damage due to business interruption.
- ♦ A.8.5 The exclusions and limitations referred to in this article will lapse if and insofar as the damage is the result of intent or deliberate recklessness on the part of the Contractor's management.
- ♦ A.8.6 The Contractor's liability on account of an attributable failure in the performance of the Agreement will only arise if the Client immediately gives the Contractor notice of default in writing, stipulating a reasonable period in which to remedy the failure and if the Contractor continues to fail attributable in the performance of its obligations even after that period. The notice of default must contain as detailed a description as possible of the breach, so that the Contractor is in a position to respond adequately.
- ♦ A.8.7 The existence of any right to compensation is always conditional upon the Client reporting the damage, in writing, to the Contractor within 30 days of its occurrence.
- ♦ A.8.8 The Client will indemnify the Contractor against all third party claims due to liability as a consequence of a Defect in the Project/Service provided by the Client to a third party and which partly consisted of items, Materials or Results provided by the Contractor, except if and to the extent the Client proves that the damage was caused by those items, Materials or Results. The Client also indemnifies the Contractor against claims concerning non-compliance with licences by the Client and/or third parties (including Users) for which the Client is responsible.
- ♦ A.8.9 Liability of the Contractor for shortcomings in products and Services of third parties, including software and software, is excluded.

## Article A.9. Malfunctions and force majeure

- ♦ A.9.1 Neither party can be held to fulfil any obligation if a circumstance beyond the control of the parties, which could not or should not have been foreseen when the Agreement was concluded, nullifies any reasonable possibility of fulfilment. The parties may only invoke Force Majeure against each other if the party in question notifies the other party in writing of such Force Majeure as soon as possible after the failure has occurred, on submission of the necessary documentary evidence.
- ♦ A.9.2 The circumstances referred to in paragraph 1 may for example be understood to mean: (a) failures of the Internet or other telecommunications facilities, (b) failures in the performance by third parties on which the Contractor depends in the provision of the Services, (c) defectiveness of items, equipment, software or Materials of which the Client has prescribed the use by the Contractor, (d) the unavailability of one or more members of staff (due to illness), (e) mobilisation, (f) war, (g) delays in transport, (h) strikes, (i) delays in supply, (j) fire, (k) natural disasters, (l) diseases, epidemics or quarantines and (m) government measures.
- ♦ A.9.3 In the event of Force Majeure, the performance of the obligation(s) in question and the related obligations shall be suspended in whole or in part for the duration of such Force Majeure, without the parties being liable to pay any compensation in this respect. The parties may only invoke Force Majeure with respect to each other if the party in question notifies the other party in writing of its wish to invoke Force Majeure as soon as possible after the failure has occurred, submitting documentary evidence.
- ♦ A.9.4 In the event of Force Majeure, the party that has invoked the Force Majeure shall endeavour to ensure that the shortcoming cured by the Force Majeure is of as short a duration as possible.
- ♦ A.9.5 If a situation of force majeure has lasted thirty (30) days, or as soon as it is clear that the situation of force majeure will last longer than three months, each of the parties will be entitled to dissolve the Agreement in writing, unless the nature or scope of the failure does not justify the premature termination. Any work already carried out pursuant to the Agreement shall in that case be settled proportionately, without the parties owing each other anything else.

## Article A.10. Intellectual property rights

- ♦ A.10.1 All intellectual property rights on all Materials developed or made available in the context of the Project are held exclusively by Contractor or its licensors.
- ♦ A.10.2 The Client shall only acquire the rights of use and powers explicitly granted in these General Terms and Conditions, the Agreement or otherwise in writing, and for the rest the Client shall not reproduce or publish the software, Services or other Materials.
- ♦ A.10.3 The Client is not permitted to remove or change any indication concerning copyrights, brands, trade names or other intellectual property rights from the Materials, including indications concerning the confidential nature and secrecy of the Materials.
- ♦ A.10.4 The Contractor is allowed to take technical measures, such as passwords or encryption, to protect the Materials. If Contractor has secured the Materials by means of technical protection, Client is not allowed to remove or circumvent this protection.
- ♦ A.10.5 Any use, reproduction or disclosure of the Materials beyond the scope of the Agreement or rights of use granted will infringe the intellectual property of the Contractor or its licensors.
- ♦ A.10.6 Client shall pay an immediately due and payable penalty of 5,000 euros per act of infringement and 25,000 per deliberately infringing act to the Contractor, without prejudice to the Contractor's right to be compensated for its damage caused by the infringement or to take other legal action in order to have the infringement terminated and/or to recover the damage. After the expiry of one working day after

If the Contractor has notified the Client of an infringement, the Client will also owe a penalty of EUR 5,000 for each day that the infringement is not terminated.

## **Article A.11. Processing of personal data**

- ♦ A.11.1 If the Contractor is to process personal data in the performance of the Services, the General Data Protection Regulation ("GDPR") obliges the Contractor and the Client to enter into undertakings in respect of the processing to be carried out by the Contractor which offer guarantees in respect of the technical and organisational security measures relating to the processing to be carried out. In the absence of a further, separately agreed 'processor's agreement', the provisions of this article will apply as the obligations referred to in the GDPR.
- ♦ A.11.2 Contractor shall only process the personal data under the authority of Client and exclusively for the purpose of performing the Services, for as long as the Agreement continues. The Client is in this case to be considered the controller, and the Contractor the processor.
- ♦ A.11.3 The personal data of those involved, which may be processed by the Contractor in the context of the Services, are set out in more detail in the Agreement.
- ♦ A.11.4 If these General Terms and Conditions, or the Agreement, refer to provisions of the Wbp, as of 25 May 2018 the corresponding provisions of the General Data Protection Regulation are meant.
- ♦ A.11.5 The Contractor will make every effort to take appropriate technical and organisational measures with regard to the processing of personal data to be carried out and will endeavour to ensure that the security measures meet a level that is not unreasonable in the light of the state of the art, the sensitivity of the personal data and the costs involved in taking measures to ensure the security.
- ♦ A.11.6 Contractor guarantees that anyone acting under the authority of Contractor, to the extent that they have access to personal data originating from Client, will only process these data on behalf of Client, except for deviating legal obligations.
- ♦ A.11.7 Contractor may process personal data in countries within the European Union. Client also gives Contractor permission to process personal data outside the European Union. Processing outside the European Union will only take place in compliance with the applicable laws and regulations. On request of the Client, Contractor shall inform Client in which countries, outside the European Union, he processes the personal data.
- ♦ A.11.8 The Client hereby gives the Contractor permission to use a third party for the processing of personal data for the purpose of providing the Services, in compliance with the applicable laws and regulations. Contractor will ensure that these third parties will assume the same duties as Client and Contractor have agreed upon in writing, and will ensure the correct authorizations. On the Client's request, Contractor shall inform the Client as soon as possible about the third parties engaged by him. The Client has the right to object to any third party engaged by Contractor. If the Client objects to any third party engaged by Contractor, the Client and Contractor will consult each other to resolve the matter.
- ♦ A.11.9 Client guarantees that he will only enter personal data in an entirely lawful manner or otherwise make them available to Contractor, without violating any rights of third parties. Client indemnifies Contractor against all claims and demands related thereto.
- ♦ A.11.10 If the Client must provide, change, move, remove or surrender personal data stored in the Contractor's systems in the context of a statutory obligation or exercise of the statutory rights of those involved, the Contractor will assist the Client as much as possible in this regard. The costs of the work involved may be invoiced separately. In the event that a data subject wishes to exercise one of his/her legal rights and addresses this request to Contractor will forward this request to Contractor. The Client will then deal with the request independently.



- ♦ A.11.11 The Client is entitled to have audits carried out by an independent third party, who is bound to secrecy, to verify this Article A.11. This audit will only take place in the event of a concrete suspicion of abuse which has been demonstrated by the Client. The audit initiated by the Client will take place two weeks after prior written notification by the Client. The costs of an audit shall be borne by the Client.
- ♦ A.11.12 All personal data which the Contractor receives from the Client for the performance of the Services and/or collects itself, are subject to an obligation of confidentiality vis-à-vis third parties. This confidentiality obligation does not apply to the extent that the Client has given its express consent to provide the information to third parties, if the provision of the information to third parties is logically necessary in view of the nature of the Services, or if there is a legal obligation to provide the information to a third party. If Contractor is legally obliged to provide information to a third party, Contractor will immediately inform the Client about this to the extent permitted by law.
- ♦ A.11.13 The Client, as the responsible party in the sense of the GDPR, is at all times responsible for reporting a data leak (which is to be understood to mean: a breach of personal data security that leads to the possibility of serious adverse consequences, or has serious adverse consequences, for the protection of personal data) to the supervisory body/bodies and/or parties involved. To enable the Client to fulfil this legal obligation, Contractor shall notify the Client as soon as possible and no later than forty-eight (48) hours after the discovery of a data leak. If required by law and/or regulations, Contractor shall cooperate in informing the competent supervisor and/or those involved.
- ♦ A.11.14 The duty to report includes in any case reporting the fact that a leak has occurred. In addition, the duty of notification includes, in so far as the Contractor is aware:
  - the date on which the leak occurred (if no exact date is known: the period within which the leak occurred);
  - what the (alleged) cause of the leak is;
  - the date and time at which the Contractor or a third party or subcontractor engaged by it became aware of the leak;
  - The number of people whose data has been leaked (if an exact number is not known: the minimum and maximum number of people whose data has been leaked);
  - A description of the group of persons whose data has been leaked, including the type or types of personal data leaked;
  - Whether the data has been encrypted, hashed or otherwise made unintelligible or inaccessible to unauthorised persons;
  - the measures planned and/or already taken to plug the leak and to limit the consequences of the leak;
  - contact details for the follow-up of the report.
- ♦ A.11.15 At the end of the Agreement, the Contractor will remove or return the personal data referred to in this article A.11.3, at the Client's discretion.

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

- ♦ A.12.1 If the Employee must carry out work at the Principal's location for the implementation of the Agreement (other than if the Client and the Contractor have entered into an Agreement for the secondment of an Employee), the provisions below apply.
- ♦ A.12.2 The Client will provide all necessary support for the Staff Member of the Contractor who is carrying out work on the Principal's premises for the purpose of implementing the Agreement. Client is obliged to do everything to enable Employee to perform his work properly and safely.
- ♦ A.12.3 Contractor shall make an effort that the Employee has the correct job description and competences. It is not possible for Client to make a choice in Employees, unless this is explicitly agreed upon. Contractor shall be entitled to replace an Employee with an Employee having similar competences and a similar job description.

- ♦ A.12.4 It is not possible for Client to only give access to certain Employees. There is also no guarantee that the Client will have a permanent team of Employees at its disposal, if this is relevant.
- ♦ A.12.5 During the term of the Agreement and for two (2) years thereafter, the Client will not be permitted, without the written permission of the Contractor, to employ Employees of the Contractor, to enter into business relations with them, directly or indirectly, or to have them perform work other than in the context of the Agreement, on pain of an immediately payable penalty of  
The Client shall be liable to pay a fine of € 10,000 for each violation, to be increased by € 500 for each day that the violation continues. This article is also applicable if Client and Contractor enter into an Agreement for secondment of an Employee.

### **Article A.13. Secrecy**

- ♦ A.13.1 Parties will treat information that they provide to each other before, during or after the execution of the Agreement confidentially if this information is marked confidential or if the receiving party knows or should reasonably suspect that the information was intended to be confidential. The Parties shall also impose this obligation on their employees and on any third parties that they engage for the purposes of executing the Agreement.
- ♦ A.13.2 Contractor shall not become acquainted with data which the Client stores and/or distributes via Contractor's Services, unless this is necessary for the proper performance of the Agreement or the quality of the Projects, or Contractor is obliged to do so pursuant to a statutory provision or a court order. In that case, the Contractor will make every effort to limit the access to the data as much as possible, to the extent that this lies within its power.
- ♦ A.13.3 This obligation shall continue even after termination of the Agreement for any reason whatsoever, for as long as the providing party can reasonably claim the confidential nature of the information.

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

- ♦ A.14.1 If it concerns a continuing performance contract, the Contractor reserves the right to change or supplement these General Terms and Conditions and all Modules from them.
- ♦ A.14.2 Amendments also apply to Agreements already entered into with due observance of a period of 30 days after the announcement of the amendment on the Contractor's Website or by electronic message. Changes of minor importance may be made at any time.
- ♦ A.14.3 If the Client is a natural person who is not acting in the course of a profession or business, and the amendment results in the Client being provided with a performance that differs substantially from the original performance, this Client shall be entitled to terminate the agreement as of the date on which the amended terms become effective.

### **Article A.15. Dispute resolution**

- ♦ A.15.1 The Agreement, as well as any agreements and other legal acts arising from or related to it, are governed exclusively by Dutch law.
- ♦ A.15.2 All disputes, including those that are only considered as such by one party, resulting from or related to (the execution of) this Agreement and/or with the resulting or related agreements shall be settled by mediation as offered by ICTWaarborg (hereinafter in this article called Mediation).
- ♦ A.15.3 The parties mutually commit to cooperate in the dispute resolution process through Mediation and each undertake to bear half of the costs of the Mediation.

- ♦ A.15.4 Mediation consists of two phases. In the first phase the parties explore a possible solution in which both parties can agree to. If an agreement is reached, the mediator will summarize the agreement in a settlement agreement. If it is impossible to reach an agreement in the first phase that is acceptable to both parties, a second phase starts. During the second phase, the mediator will work out an agreement that binds both parties and that is also reflected by the mediator in an agreement of compliance.
- ♦ A.15.5 The Contractor and the Client will at all times retain the right to submit disputes to the competent court, but only if both Parties give their explicit written consent to this and both Parties declare that they will refrain from Mediation.

## **Article A.16. Final clauses Module General**

- ♦ A.16.1 If any provision of this Agreement proves to be invalid, this will not affect the validity of the entire Agreement. The parties will in that case adopt (a) new provision(s) by way of replacement, which will give shape to the intention of the original Agreement and General Terms and Conditions as much as is legally possible.
- ♦ A.16.2 If any disputes arise from the Agreement that cannot be resolved through the dispute resolution procedure, they will be submitted to the competent court in Amsterdam.
- ♦ A.16.3 Information and announcements on the Website of Contractor are subject to errors.
- ♦ A.16.4 The version of any communication received or stored by Contractor is deemed authentic (including log files), unless the Client provides proof to the contrary.
- ♦ A.16.5 In order to promote its services, the Contractor is entitled to show third parties which Projects it supplies to the Client, unless the reasonable interests of the Client render this unacceptable or it has been agreed otherwise in writing.
- ♦ A.16.6 The Contractor is entitled at all times to involve third parties in the performance of the Agreement.
- ♦ A.16.7 The Contractor and the Client may transfer their rights and obligations under the Agreement to third parties, provided that the other party consents to this in writing prior to the transfer.

## Module B. Development (web) applications

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

### Article B.1. Completion & acceptance

- ♦ B.1.1 Contractor shall make every effort to deliver the Materials in accordance with the Specifications for acceptance by Client.
- ♦ B.1.2 When the Materials have been delivered to the Client for acceptance, the Client will subject these to an Acceptance test at his own expense and under his own responsibility during the acceptance period of one week. By accepting the Materials, the Client will discharge the Contractor from all obligations concerning the Results.
- ♦ B.1.3 If Client does not reject the Materials (wholly or partially) within the period mentioned in paragraph 2, they are deemed to have been accepted and delivered.
- ♦ B.1.4 The Client will also be deemed to have accepted the Materials if the Client has started to use the Materials or if the Client has not informed the Contractor in writing, within ten days after delivery at the latest, that and for what reason he does not accept the Materials.
- ♦ B.1.5 If Materials are not accepted, Contractor shall specify which adjustments will be made, along with the time or costs involved. The Client shall subsequently indicate whether it agrees to the said adjustments and the corresponding time and costs or whether it rejects them. The Contractor will make every effort to remedy the Defects identified by the Client and capable of being reproduced within the period agreed by the parties and, failing that, within a reasonable period.
- ♦ B.1.6 The implementation of adjustments following a rejection of a Material can take place in a production environment or in an acceptance environment. This is at the discretion of Contractor.
- ♦ B.1.7 If the Client has accepted the Results (with the exception of Defects in functionalities and external appearance; minor Defects), the guarantee period of 30 days will commence. Within this period, the Results will be deemed accepted, but it is possible to report Defects that could not reasonably have been discovered during the Acceptance Test. The Contractor will specify and supplement any Defects with the expected time and, if the Defects cannot be easily remedied within 30 days, any additional costs for modification of those parts. This guarantee period is therefore not to be regarded as an extended Acceptance Test and does not provide any more guarantees than those provided for in this paragraph.
- ♦ B.1.8 Minor Defects, including Defects which, by their nature and/or number, do not reasonably prevent the Commercial use of the Materials, shall not be a reason for withholding acceptance, without prejudice to the Contractor's obligation to remedy such Defects. Parties shall consult with each other in this respect.
- ♦ B.1.9 If the Project is performed in phases, Client shall approve or disapprove the Materials of that phase upon completion of each phase and the procedure set forth above shall also apply. Client may not base an approval or disapproval of the Materials of a later stage on items approved in an earlier stage.
- ♦ B.1.10 Contractor is entitled to wait with the start of a new phase until Client has explicitly accepted the old phase.
- ♦ B.1.11 The Contractor does not guarantee that what the Client aims to achieve with the work developed or to be developed by the Contractor will actually be achieved.
- ♦ B.1.12 The Contractor shall make every effort to develop and make available its products/works as well and as error-free as possible.

- ♦ B.1.13 The Contractor is entitled to set up temporary solutions, whereby certain functionalities are limited in order to prevent serious errors.

## **Article B.2. Progress**

- ♦ B.2.1 The Client and the Contractor will agree on the phases, completion dates and deadlines specific to the Project in mutual consultation, for example in the Quotation or the Agreement.
- ♦ B.2.2 Contractor will keep Client informed of the progress of the Project at least once every fourteen days by e-mail, telephone or the project management system.

## **Article B.3. Specifications & (source) materials**

- ♦ B.3.1 The Parties will specify in writing which work will be developed, the requirements it must meet and the manner in which it will be developed. The Contracted Party will carry out the development with due care on the basis of the information to be provided by the Client. The Client warrants the accuracy, completeness, consistency and timeliness of its instructions and information.
- ♦ B.3.2 A Written Specification as referred to in Article 3.1 is not required if the Client has expressed the wish to offer the Contractor a high degree of freedom in developing the Work and the manner in which this is done. If the development has taken place in this manner, the Client may not subsequently invoke Specifications that have been drawn up in writing and to which the Contractor has not agreed.
- ♦ B.3.3 Contractor is entitled, but not obliged, to examine the correctness, completeness or consistency of the (source) Materials, requirements or Specifications made available to him and, upon discovery of any imperfections, to suspend the agreed work until Client has eliminated the imperfections concerned.
- ♦ B.3.4 If any (source) Materials provided by the Client to the Contractor are protected by any intellectual property rights, the Client guarantees that he has at his disposal at all times all licences necessary for the provision to and the intended use by the Contractor in the context of the Agreement.
- ♦ B.3.5 Unless otherwise agreed, Contractor has the right to use images, software and components of third parties, including open source software, in the development of the works. After delivery, the responsibility for correct compliance with the relevant third-party licences when using the developed work lies with the Client. Contractor will adequately inform the Client about the applicable licensing conditions. Costs related to the licenses, which are necessary for the execution of the Agreement, will be charged to Client. This will be specified in the quotation.
- ♦ B.3.6 The Client is responsible for ensuring that its own applications, Services and infrastructure
  - ♦ to keep it up to date for interoperability with the products and the Service of the Contractor. This is in connection with any links. Applications may not work properly if this is not the case.
- ♦ B.3.7 The Contractor is not liable for the Project/Service being unusable if the unusability is caused by the Client's
  - ♦ failure to migrate in good time (on the instructions of the Contractor) to current standards or use of standards that are no longer supported in the industry. A standard introduced 24 months ago is no longer considered current by the Contractor. This exclusion of liability also applies if the Client works with a version of an internet browser, the use and support of which is no longer guaranteed due to a new version of that internet browser.

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

- ♦ B.4.1 Contractor grants Client the right to reproduce and distribute developed Materials for the purposes intended by Client when entering into the Agreement.
- ♦ B.4.2 The Contractor thereby never transfers any intellectual property rights (such as copyright) to the Client, unless explicitly agreed otherwise in writing.
- ♦ B.4.3 The source code of software supplied by the Contractor, which is not open source software, and the technical documentation produced during the development of the software may and shall never be made available to the Client, nor may the Client make any changes thereto, unless expressly agreed otherwise in writing.
- ♦ B.4.4 The Contractor grants the Client the non-exclusive right to use the Service/Software developed for the Client. The Client shall at all times strictly observe the restrictions on use agreed upon between the parties. The right of use granted is non-transferable.
- ♦ B.4.5 The Client is not permitted to sell, rent out, sub-license or alienate the developed works or to grant limited rights to them or to make them available to a third party in any way or for any purpose whatsoever, not even if the third party in question uses the software exclusively for the benefit of the Client, unless agreed otherwise in writing or in the event of and in combination with a sale of the Customer's relevant business units or activities.

## Module C. Hosting / SaaS

This module applies to the Contractor's making available and keeping available (hosting) data and/or (web) applications to the Client at a distance via the Internet or another network, without a physical carrier containing the relevant software being provided to the Client. This also includes the registration and management of domain names.

### Article C.1. Implementation

- ♦ C.1.1 After the Agreement has been concluded, the Contractor will perform the Service as soon as possible in accordance with the quotation, taking into account the reasonable wishes of the Client.
- ♦ C.1.2 The Agreement specifies when the Contractor will start installing and managing the (web) application.
- ♦ C.1.3 The Contractor shall make every effort to ensure that the (web) application is configured and managed to the best of its ability, applying sufficient care and skill.
- ♦ C.1.4 The Client is required to do and to refrain from doing everything that is necessary to ensure a timely and correct installation of the (web) application. In particular, the Client shall ensure that all data and facilities indicated by Contractor as being necessary, or which the Client should reasonably understand to be necessary for the installation of the (web) application, are made available to Contractor in good time.

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

- ♦ C.2.1 The Agreement is entered into by Client for a minimum period of twelve (12) months. Thereafter the Agreement shall be continued for an indefinite period. After the minimum period has expired, the Agreement may be terminated mutually, subject to a notice period of at least one (1) month. The Client or the Contractor must terminate the Agreement in writing.

### Article C.3. Rules of conduct

- ♦ C.3.1 The Client shall refrain from storing and/or distributing material in violation of the provisions of Dutch law, including (but not limited to) material that is libelous, defamatory, insulting, racist, discriminatory or hate speech, is erotic or pornographic (unless explicitly permitted in the offer), infringes the rights of third parties, including (but not limited to) copyrights, trademark rights and portrait rights, violates the privacy of third parties, including in any case (but not exclusively) the distribution of personal data of third parties without permission or necessity, or repeatedly harassing third parties with communications they consider undesirable, contains hyperlinks, torrents or similar information of which the Client knows or should know that it refers to material that infringes the rights of third parties, contains unsolicited commercial, charitable or idealistic communications, or contains malicious content such as viruses or spyware.
- ♦ C.3.2 The Client shall refrain from obstructing other Clients or Internet users or causing damage to the servers of the Contractor. The Client is forbidden to start up processes or programmes, whether or not via the server, of which the Client knows or can reasonably suspect that this will hinder or damage the Contractor, other Clients or Internet users. The Contractor will inform the Client of any such measures.
- ♦ C.3.3 In addition to the obligations under the law, damage caused by incompetence on the part of the Client or by the Client's failure to act in accordance with the above points will be borne by the Client.
- ♦ C.3.4 In order to prevent the aforementioned problems, such as damage and security risks, the Contractor is

at its own discretion, is entitled to limit the management possibilities of the Client to such an extent that the management is carried out in its entirety by the Contractor.

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

- ♦ C.4.1 Client hereby grants Contractor an unrestricted license to distribute, store, transmit or copy all Materials provided by Client to Contractor's Services in any manner deemed appropriate by Contractor, but only to the extent reasonably necessary for Contractor's performance of the Agreement.

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

- ♦ C.5.1 The Client indemnifies the Contractor against all legal claims of third parties regarding the use of the Services by the Client. Contractor is not responsible for the data/Services/software called up by means of a link.
- ♦ C.5.2 If Contractor has to perform work in connection with data of Client, his employees or Users by virtue of an authorized order of a government authority or in connection with a legal obligation, all costs related to this will be charged to Client.

#### **Article C.6. Service and availability**

- ♦ C.6.1 All services of the Contractor shall be performed on the basis of an obligation to perform to the best of one's ability, unless and to the extent that the Contractor has explicitly promised a result in the Written Agreement and the result in question has also been described with sufficient definiteness.
- ♦ C.6.2 The electronic transmission of data of the Client in the context of the Services, in whatever manner, shall take place at the risk and expense of the Client.
- ♦ C.6.3 The Contractor is never obliged to provide the remotely provided applications to the Client on a physical data carrier (e.g. CD or USB stick).
- ♦ C.6.4 If the Services are (partly) provided via Services and/or networks of the Contractor, the Contractor will make every effort to ensure that there is as little downtime as possible.
- ♦ C.6.5 The Contractor offers no guarantees regarding the exact amount of uptime, unless otherwise agreed in the offer by means of an SLA designated as such. To the extent not otherwise provided for in an applicable SLA, this article applies.
- ♦ C.6.6 In the absence of evidence to the contrary, the availability and service level measured by the Contractor shall constitute full proof.

C.6.7 Contractor shall make every effort to ensure that the Client can use the networks that are directly or indirectly connected to Contractor's network. However, Contractor cannot guarantee that these networks will be available at any time. The use of third-party networks may be subject to legal and contractual conditions. Contractor will make every effort to inform the Client of these conditions in a timely manner.

- ♦ C.6.8 If, in the opinion of Contractor, the functioning of the Services or the network of Contractor or third parties and/or the provision of services via a network is endangered, in particular as a result of the excessive sending of e-mail or other data, poorly secured Services or activities of viruses, trojans and similar software, Contractor is entitled to take all measures it reasonably considers necessary to prevent this.

C.6.9 Contractor has the right to put the Services or parts thereof temporarily out of operation for

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for the purpose of maintenance, modification or improvement. The Contractor shall endeavour to arrange for such taking out of service to take place as far as possible outside office hours and shall make every effort to notify the Client in good time of the planned taking out of service. However, the Contractor is never obliged to pay compensation for damage arising in connection with such taking out of operation, unless explicitly agreed otherwise in writing, for example in an SLA.

- ♦ C.6.10 The Contractor will only be obliged to have a disaster recovery centre or other disaster recovery facilities at its disposal if expressly agreed in writing.
- ♦ C.6.11 Unless the Agreement provides otherwise, the Contractor is not obliged to make back-up copies of data stored by the Client on the Contractor's Services. Any backups made may be destroyed at any time after termination of the Agreement. It is the Client's responsibility to request a back-up upon termination or dissolution.

## **Article C.7. Amendments**

- ♦ C.7.1 The Contractor is entitled to modify the applications made available during the term of the Agreement at its own discretion. If an adaptation results in a considerable change in functionality, the Contractor will make every effort to inform the Client accordingly. Only if this is technically possible and would not require a disproportionate effort on the part of the Contractor, the Client may continue to use an older version of the application upon request. Contractor may charge additional costs for providing this possibility.

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

- ♦ C.8.1 The Contractor may set a limit on the amount of storage space or data traffic per month that the Client may use in the context of the Services. The Client will not exceed the limits, unless the Agreement explicitly regulates the consequences thereof. If this maximum is exceeded, Contractor is authorized to charge an additional amount, in accordance with the amounts for additional data traffic specified in the Agreement. If no storage and / or data limit is agreed, the fair use policy of the Contractor applies.

## **Article C.9. Procedure after termination**

- ♦ C.9.1 The Contractor shall ensure that, upon termination of the Agreement, the Client is given a reasonable opportunity to transfer the Principal's data stored in the Contractor's systems back to the Contractor's own systems or to the systems of a new Contractor. For this purpose, the Contracted Party will make every effort to be able to offer the data in a common file format.

## Module D. Hardware

This module applies to Contractors that supply Hardware to Clients.

### Article D.1. Delivery and ownership

- ♦ D.1.1 Hardware is delivered to the Client if it is delivered to the delivery address specified by the Client in the order and this delivery is accepted by the Client.
- ♦ D.1.2 The Client is obliged to check the Hardware upon delivery for defects, insofar as this is reasonably possible at that moment.
- ♦ D.1.3 The ownership of the Hardware is transferred from the Contractor (or its suppliers) to the Client at the moment of delivery to the delivery address specified by the Client in the order, but only when the Client has paid for the Hardware in full.

### Article D.2. Warranty

- ♦ D.2.1 For a period of 1 year after delivery, Contractor guarantees the operation of the delivered Hardware in accordance with the specifications previously communicated to Client and is accountable for this by Client.  
  
D.2.2 In case the manufacturers of the delivered Hardware have specific warranty regulations which are longer than the warranty issued by the Contractor, these will remain valid and the Contractor will remain responsible for the correct handling of Hardware which is covered by these warranty regulations.
- ♦ D.2.3 The warranties issued by the Contractor and manufacturers do not affect the statutory warranty period applicable to the Hardware.
- ♦ D.2.4 The warranty on Hardware is void in case of unauthorized modifications, non-compliance with the user instructions or other careless use of the Hardware by the Client.
- ♦ D.2.5 If the Client makes use of the guarantee arrangement within the set terms and rules, the Contractor will make every effort to repair the Hardware or provide replacement Hardware as soon as possible, but at the latest within 30 days after the correct receipt of the returned Hardware.
- ♦ D.2.6 Contractor shall not be liable for any loss of data resulting from the repair or replacement of Hardware.

### Article D.3. Returns

- ♦ D.3.1 In case the Client makes use of the guarantee arrangement, the Client shall return the delivered Hardware and all accessories as much as possible in their original state of delivery to the Contractor.
- ♦ D.3.2 If there are any costs associated with the return within the framework of the guarantee scheme, these will be borne by the Client.