

# ICTWaarborg General Terms and Conditions – B2B

Version July 2022

These General Terms and Conditions contain provisions for the legal relationship between the Contractor and its clients. The General Terms and Conditions are divided into various modules tailored to the various forms of business services that can be offered by participants of ICTWaarborg, i.e.:

Module A. Algemeen  
Module B. Ontwikkeling (web)applicaties  
Module C. Hosting / SaaS  
Module D. Hardware  
Module E. Telecom  
Module F. Detachering  
Module G. Huur Hardware  
Module H. Onderhoud en ondersteuning  
Module I. Advies en cursus

This version of the general terms and conditions for Alfa Automatisering BV only includes the following modules applicable to this agreement.

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<a href="#">Module B. Ontwikkeling (web)applicaties</a>	12
<a href="#">Module C. Hosting / SaaS</a>	15
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If a specific module applies, it will prevail over the General Module. Subject to any conflicts with applicable provisions from specific modules, the general part applies as well throughout. The definitions of terms with an initial capital letter apply to all modules.

## Definitions

In these General Terms and Conditions the terms below are defined as follows:

- **Acceptance Test:** is a (limited) compulsory test effort to be made by the 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, etc. The Agreement specifies the Services concerned and these General Terms and Conditions will lay down further rules for specific Services.
- **Fault:** failure to meet the Specifications.
- **User:** the (end) user who uses the Service/Project provided by the Contractor for the purpose of the Client.
- **Hardware:** equipment supplied by the Contractor to the 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, engaged by the Contractor or who performs work for the benefit of the Client.
- **Module:** a module of these General Terms and Conditions containing provisions relating to a specific field of activity.
- **Quotation:** an offer by the Contractor for the provision of Services.
- **Client:** the natural person or legal entity with whom the Contractor has effected an Agreement. It also refers to the person who enters into negotiations with the Contractor in this regard, as well as his representative(s), authorised representative(s), successor(s) in title and heirs.
- **Contractor:** Alfa Automatisering BV, established in Rijnsburg and registered with the Chamber of Commerce under number 28050436 and participant in the trade association ICTWaarborg.
- **Agreement:** the agreement between the Contractor and the Client.
- **Force Majeure:** a default which 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 to be performed by the Contractor for the Client as described in the Offer and/or in the Agreement.
- **Project Management System:** electronic system that may be used for the management of the Project and for communications between the Contractor and the Client regarding the execution of the Agreement.
- **Results:** the results of the work performed by the Contractor pursuant to the Agreement.
- **Written/In Writing:** in these General Terms and Conditions, Written/In Writing also includes email and communication by fax, provided that the identity of the sender and the integrity of the message is sufficiently established.
- **SLA:** Service Level Agreement.
- **Specifications:** the functional and technical description of the Project.
- **Website:** <https://www.alfapro.com/>

## Identity of Contractor

<b>Name (of Contractor)</b>	Alfa Automatisering BV
<b>Trading as</b>	ALFA PRO
<b>Location</b>	Laan van Verhof 10 2231 BZ Rijnsburg
<b>Postal address</b>	Laan van Verhof 10 2231BZ Rijnsburg
<b>Telephone number</b>	071-4021191
<b>E-mail address</b>	info@alfapro.com
<b>VAT number</b>	NL820819529B01
<b>Chamber of Commerce number</b>	28050436

## Module A. General

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

- A.1.1 An Offer prepared by the Contractor is free of obligation and valid for 14 days after its date, unless stated otherwise in the Quotation.
- A.1.2 The Client should preferably accept the Quotation In Writing, but if the Client agrees or creates the impression that it accepts 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 depart from or are not included in these General Terms and Conditions are only binding upon the Contractor if to the extent they have been explicitly accepted by the Contractor In Writing.
- A.1.4 Without prejudice to the Contractor's authority to withdraw the Quotation in accordance with Article 1 paragraph 1, the Agreement may only be changed after acceptance by mutual consent. In the event of conflict between the provisions of the following documents, the following order of precedence will apply:
  - 1. the Agreement;
  - 2. any appendices, 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 Upon conclusion of the Agreement, the Contractor will execute the Project in accordance with the Quotation as soon as possible, with due allowance for the Client's reasonable needs and requirements.
- A.2.2 The 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 proper execution of the Project. The Client shall in particular ensure that all information which the Contractor indicates as required or which the Client should reasonably understand is necessary for the fulfilment of the Project, is provided to the Contractor in good time. The Client's required efforts 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.2.3 If the Client fails to perform the above, the Contractor is entitled to charge additional costs and the Project may be delayed. Any delay in the Project caused by the Client shall be reported through 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 another Written form. In the event that this situation arises, the Contractor shall inform the Client of any additional costs to be charged.

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

- A.3.1 If the Agreement relates to the development of certain Materials, the Agreement shall be deemed to have been entered into for the term specified in the Agreement. If the duration is not described in the Agreement, the Agreement shall be regarded as terminated when the resulting performances have been delivered reciprocally.
- A.3.2 If the Agreement is a continuing performance agreement, it shall be deemed to have been concluded for a minimum period of twelve (12) months, unless otherwise agreed in writing. Without written notice of termination, subject to a notice period of three (3) months, the Agreement shall be tacitly renewed for an equal period, unless otherwise agreed in writing.
- A.3.3 Unless otherwise agreed in writing or if these General Terms and Conditions provide otherwise, the Client may terminate the Agreement prematurely by paying a buy-out amount. The amount of the buy-out is equal to the

remaining payments that would have been due if the Agreement had not been terminated prematurely. The buy-out amount is immediately payable by the Contractor to the Client.

- A.3.4 Delivery periods stated by the Contractor are always indicative. Even in the event of an agreed deadline, the Contractor shall not be in default until the Client has given it notice of default in writing, except in those situations which are mandatory by law and in which default occurs by operation of law.
- A.3.5 In the event that the Client fails to fulfil any of his obligations under the Agreement, the Contractor will be entitled to suspend the performance of all Agreements concluded with the Client in question, without any notice of default or court intervention being required and without prejudice to the Contractor's right to compensation for damage, loss of profits and interest, unless the non-performance in question is of minor significance.
- A.3.6 The Contractor is entitled to dissolve or suspend all or part of the Agreement with immediate effect, without court intervention, In Writing and without any obligation to pay damages or compensation, if:
  - the Client fails to comply with the obligations under the Agreement, or does not do so fully or on time;
  - after the Agreement has been concluded, circumstances come to the Contractor's knowledge that give it a valid reason to fear that the Client will not fulfil its obligations;
  - the Client was requested to provide security for the fulfilment of its obligations under this Agreement when the Agreement was concluded and this security is not being provided or is insufficient;
  - due to the 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, requests a suspension of payments 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 such that performance of the Agreement becomes impossible or that the unaltered continuation of the Agreement cannot reasonably be required of Contractor.
- 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 dissolution is to be attributed to the Client, the Contractor shall be entitled to compensation for any damage directly and indirectly caused.

#### **Article A.4. Procedure upon 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 shall remain the property of the Contractor at all times. The Client will only receive a non-exclusive, transferable licence that 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 a Quotation is based on information provided by the Client and this information proves to be inaccurate, the Contractor has the right to adjust the prices to the prices that reasonably correspond to the proper data, even after the Agreement has already been concluded.
- A.5.3 All prices stated in the Contractor's Quotation are subject to typing and calculation errors.

- A.5.4 The Contractor has the right to change prices from time to time. Changes will be announced to the Client at least 30 days in advance and in writing. The Contractor may increase the prices by 3% or less, without the Client's permission, no more than 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 become effective.

## Article A.6. Terms of payment

- A.6.1 The Contractor shall submit an invoice to the Client for the amount due by the Client. If the Project is delivered in phases, the Contractor is entitled to submit invoices per phase delivered, on a monthly basis or on the basis of hours worked (which 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 the Contractor and the Client.
- A.6.2 If the Client fails to pay an invoice within the payment term, the Client is in default by operation of law, without a prior reminder or notice of default being required. In such a case, the Contractor is entitled to charge the statutory interest for commercial transactions or (if higher) an interest of two percent per month on the outstanding amount.
- A.6.3 In the event of late payment, the Client is obliged, in addition to the amount owed and the relevant interest, 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 is liquidated, is dissolved or if bankruptcy is granted.
- A.6.5 In the above cases, the Contractor is moreover entitled to terminate or suspend performance of the Agreement or any part of the Agreement not yet performed without notice of default or court intervention, without the Client acquiring any right to compensation as a result.
- A.6.6 If, on the basis of facts and circumstances, there is reasonable doubt as to whether the Client will be able to meet its payment obligations, the Contractor has the right to demand financial security from the Client. For instance in the form of a pledge, deposit or bank guarantee.

## Article A.7. Additional work

- A.7.1 In the event that due to requirements on the part of the Client, which can reasonably be considered by the Contractor as a modification of or supplement to the provisions of the Quotation or the Agreement (which also includes a delay or overrun with regard to the Project that can be attributed to the Client), the amount of work to be performed by the Contractor pursuant to this Agreement increases, this will be regarded as additional work.
- A.7.2 If the Contractor believes 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 with respect to this, including the delivery period.
- A.7.3 The Client shall every time decide on the proposed additional work within five (5) working days. The work to be carried out with respect to the 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 Offer 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, to the extent that the parties have not agreed otherwise.

## Article A.8. Liability

- A.8.1 The Contractor shall only bear liability to the Client for direct damage resulting from an attributable breach in the performance of the relevant Agreement. Direct damage means the damage incurred to rectify the breach. Direct damage exclusively means:
  - the damage caused to material goods, also called (material) property damage;
  - costs incurred by the Client to induce the Contractor to fulfil the Agreement properly after all;
  - costs incurred by the Client to limit, prevent or repair the direct damage;
  - costs incurred by the Client to have the performance still meet the requirements of the Agreement;
  - costs incurred to establish the cause and extent of the damage, where 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 Contractor's liability for other forms of liability is expressly 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 its obligations under the Agreement, which expressly includes any failure to fulfil a guarantee obligation agreed on with the Client, or as a result of an unlawful act on the part of the Contractor, its employees or third parties engaged by it, will be limited for each event or a series of related events to an amount equal to the annual payments due by 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 Contractor's total liability for damage resulting from death or physical 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 one event.
- A.8.4 The Contractor's liability for indirect damage, including consequential damage, loss of profit, lost savings, mutilation or loss of (business) data and damage due to business interruption is excluded.
- A.8.5 The exclusions and limitations referred to in this article will cease to apply if and insofar as the damage is the result of intent or deliberate recklessness on the part of the Contractor's operational 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, stating 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 the most detailed description possible of the breach, so that the Contractor will be in a position to respond adequately.
- A.8.7 A condition for the existence of any right to compensation shall at all times be that the Contractor must have been notified of the damage by the Client in writing, within 30 days of its occurrence.
- A.8.8 The Client indemnifies the Contractor against any third-party claims due to liability as a result of a Fault 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 insofar as the Client proves that the damage was caused by those items, Materials or Results. The Client furthermore indemnifies the Contractor against claims concerning non-compliance with licences by the Client and/or third parties (including Users) who are the Client's responsibility.
- A.8.9 The Contractor's liability for shortcomings in products and Services of third parties, including software and software, is excluded.

## Article A.9. Failure 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 anticipated when the Agreement was concluded, cancels 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 invocation of Force Majeure as soon as possible after the failure has occurred, on submission of any required documentary evidence.

- A.9.2 The circumstances referred to in paragraph 1 may include: (a) failures of the Internet or other telecommunications facilities, (b) failures in the performance by third parties on which the Contractor depends for 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 fulfilment of the obligation(s) in question and the related obligations shall be suspended in whole or in part throughout the period of such Force Majeure, without the parties being liable to pay any damages. The parties may only invoke Force Majeure with respect to each other if the party in question notifies the other party in writing of such an invocation of Force Majeure as soon as possible after the occurrence of the shortcoming, submitting documentary evidence.
- A.9.4 In the event of Force Majeure, the party invoking the Force Majeure shall endeavour to ensure that the period of the shortcoming, which is exonerated by the Force Majeure, is as short as possible.
- A.9.5 If a situation of force majeure has continued for thirty (30) days, or as soon as it is clear that the situation of force majeure will continue for more than three months, each of the parties shall have the right to dissolve the Agreement in writing, unless the nature or scope of the failure does not justify premature termination. Any performance already made on the basis of 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 provided under the Project are vested exclusively in Contractor or its licensors. Intellectual property rights mean: all (future) rights of intellectual property, including but not limited to trademark rights, patent rights, design rights, copyrights and related rights, trade name rights, database rights, know-how, trade secrets and domain names.
- A.10.2 The Client will only acquire the rights of use and powers explicitly granted in these General Terms and Conditions, the Agreement or otherwise in writing, and in any other respect, the Client will not reproduce or publish the software, Services or other Materials. These user rights are valid for as long as an Agreement between the Client and the Contractor exists.
- 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 to protect the Materials, for instance with passwords or encryption. If the Contractor has secured the Materials through technical protection, the Client is not allowed to remove or circumvent such protection.
- A.10.5 Any use, reproduction or publication 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 EUR 5,000 for each act of infringement and 25,000 for each deliberately infringing act to the Contractor, without prejudice to the Contractor's right to have its damage caused by the infringement compensated or to take other legal measures in order to have the infringement terminated and/or to recover the damage. After the expiry of one working day after 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 has not been terminated.
- A.10.7 Any delivery, provision or disclosure, whether or not by way of an offer or Agreement of Services to the Client shall never constitute a transfer of intellectual property rights, unless otherwise agreed.
- A.10.8 The Client guarantees that no third-party rights oppose the provision of equipment, software, material intended for websites, data files and/or other materials, designs and/or other works for the purpose of use,

maintenance, processing, installation or integration, including the availability of the appropriate licences. The Client indemnifies the Contractor against any claim by a third party on the basis of the claim that such provision, use, maintenance, adaptation, installation or integration infringes any right of that third party.

- A.10.9 The Contractor shall be entitled to use the Client's logo or name in its external communications without the Client's prior consent.

## Article A.11. Personal data processing

- A.11.1 If the Contractor is to process personal data in the performance of the Services, the General Data Protection Regulation ("GDPR") imposes on the Contractor and the Client the obligation to enter into commitments regarding the processing to be carried out by the Contractor that provides 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 'processing agreement', the provisions of this article shall apply as the obligations referred to in the GDPR.
- A.11.2 The Contractor shall only process the personal data under the authority of the Client and solely for the purpose of performing the Services, for as long as the Agreement continues. In this respect, the Client is 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 with respect to the Services, are further specified in the Agreement.
- A.11.4 If these General Terms and Conditions or the Agreement refer to provisions of the Data Protection Act, the corresponding provisions of the General Data Protection Regulation ("GDPR") apply from 25 May 2018.
- 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 meets a level that is not unreasonable in view of the state of the art, the sensitivity of the personal data and the costs involved in taking the security measures.
- A.11.6 The Contractor guarantees that anyone acting under the authority of the Contractor, insofar they have access to personal data originating from the Client, will only process these data on the Client's instructions, subject to any deviating legal obligations.
- A.11.7 The Contractor may process the personal data in countries within the European Union. The Client also gives the 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, the Contractor shall inform the Client in which countries, outside the European Union, personal data are processed by the Contractor.
- A.11.8 The Client hereby gives the Contractor permission to make use of a third party when processing personal data for the purpose of providing the Services, in compliance with the applicable laws and regulations. The Contractor will ensure that these third parties will assume the same duties as the Client and the Contractor have agreed upon in writing, and will ensure the appropriate authorisations. On the Client's request, the 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 the Contractor. If the Client objects to any third parties engaged by the Contractor, the Client and the Contractor shall consult with each other to find a solution.
- A.11.9 The Client guarantees that it will only enter personal data in a fully lawful manner or provide them in another lawful manner to the Contractor, without infringing any third-party rights. The Client indemnifies the Contractor against any related claims and demands related.
- A.11.10 If, with respect to a statutory obligation or exercise of the statutory rights of those involved, the Contractor must provide, change, move, remove or surrender personal data stored in the Contractor's systems, the Contractor shall 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 statutory rights and makes a

respective request to the Contractor, the Contractor will forward the request to the Client. The Client will subsequently deal with the request independently.

- A.11.11 The Client is entitled to have an audit carried out by an independent third party, who is bound to secrecy, for the purpose of verification of this Article A.11. This audit will only take place in the event of a specific suspicion of abuse demonstrated by the Client. The audit initiated by the Client shall 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 in respect of third parties. This duty of confidentiality does not apply to the extent that the Client has given express permission 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 in case of a legal obligation to provide the information to a third party. If the Contractor is legally obliged to provide information to a third party, the Contractor shall immediately inform the Client 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 means a breach of personal data security resulting in 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. In order to enable the Client to comply with this legal obligation, the Contractor shall notify the Client as soon as possible and no later than forty-eight (48) hours after discovery of a data leak. If required by law and/or regulations, the 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, to the extent the Contractor has such information:
  - the date on which the leak occurred (if no exact date is known: the period within which the leak occurred);
  - the (alleged) cause of the leak;
  - 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 persons whose data have been leaked (if an exact number is not known: the minimum and maximum number of persons whose data have been leaked);
  - a description of the group of persons whose data have been leaked, including the type or types of personal data leaked;
  - whether the data have been encrypted, hashed or otherwise made unintelligible or inaccessible to unauthorised persons;
  - the measures planned and/or already taken to seal the leak and to limit the consequences of the leak;
  - contact details for the follow-up of the report.
- A.11.15 After 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 perform work at the Client's location for the implementation of the Agreement (other than in case the Client and the Contractor enter into an Agreement for the secondment of an Employee), the provisions below apply.
- A.12.2 The Client will provide all necessary assistance for the Contractor's Employee who is carrying out work on the Client's premises for the purpose of implementing the Agreement. The Client shall do everything to enable the Employee to perform his work properly and safely.
- A.12.3 The Contractor shall make an effort to make sure that the Employee has the appropriate job description and competences. It is not possible for the Client to make a choice in Employees, unless this is explicitly agreed upon. The Contractor shall be entitled to replace an Employee by an Employee with similar competences and a similar job description.

- A.12.4 It is not possible for the 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 is not permitted, without the written permission of the Contractor, to employ Employees of the Contractor, to enter into direct or indirect business relations with them or to have them perform work other than under the Agreement, on pain of an immediately payable penalty of € 10,000 for each infringement, to be increased by € 500 for each day that the infringement continues. This article is also applicable if the Client and the Contractor enter into an Agreement for secondment of an Employee .

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

- A.13.1 The Parties will observe confidentiality with regard to information which they provide to each other before, during or after the implementation of the Agreement if this information is marked as confidential or if the receiving party knows or should reasonably suspect that the information was intended to be confidential. Parties shall also impose this obligation on their employees as well as on third parties engaged by them for the execution of the Agreement.
- A.13.2 The Contractor shall not become acquainted with data which the Client stores and/or distributes through the Contractor's Services, unless this is necessary for the proper performance of the Agreement or the quality of the Projects, or the Contractor is obliged to do so pursuant to a statutory provision or 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 is within the confines of its power.
- A.13.3 This obligation shall continue even after termination of the Agreement for any reason, and for as long as the providing party can reasonably claim the confidentiality of the information.

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

- A.14.1 In case of a long-term agreement, the Contractor reserves the right to change or supplement these General Terms and Conditions and all relevant Modules.
- 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 change results in the Client being provided with a performance that is substantially different from the performance of the other party, the Client is entitled to terminate the Agreement from the date the amended terms and conditions become effective.

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

- A.15.1 The Agreement, as well as any resulting or relating agreements and other legal acts shall be 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 to the resulting or related agreements, shall be settled by mediation offered by ICTWaarborg (hereinafter in this article called Mediation).
- A.15.3 The parties mutually undertake to cooperate in the resolution of disputes through Mediation and undertake that each of them shall bear half of the costs of the Mediation.
- A.15.4 Mediation consists of two phases. In the first phase, the parties examine a possible solution which both

parties reconcile with. If agreement is reached, the mediator will set out the agreement in a settlement agreement. If it is impossible to reach an agreement in the first phase which is acceptable to both parties, a second phase starts. During the second phase, the mediator will devise 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, subject to both Parties' explicit written consent and both Parties' statement that they will refrain from Mediation.

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

- 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 shall in that case lay down (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 Should any disputes arise as a result of the Agreement that cannot be resolved through the dispute settlement procedure, these will be submitted to the competent court in Amsterdam.
- A.16.3 Information and announcements on the Website of the Contractor are subject to errors.
- A.16.4 The version of any communication received or stored by the Contractor shall be deemed authentic (including log files), subject to evidence to the contrary to be furnished by the Client.
- 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 this is unacceptable on account of the Client's reasonable interests or provisions to the contrary have been agreed in writing.
- A.16.6 The Contractor is at all times entitled 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 the other party consents to this in writing prior to the transfer.

## Module B. Development of (web) applications

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

### Article B.1. Completion & acceptance

- B.1.1 The Contractor shall make every effort to deliver the Materials in accordance with the Specifications for acceptance by the 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 discharges the Contractor in respect of all its obligations concerning the Results.
- B.1.3 If the Client does not reject the Materials (wholly or in part) within the period mentioned in paragraph 2, they shall be deemed to have been accepted and delivered.
- B.1.4 The Client shall 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 and the time or costs involved. The Client shall subsequently indicate whether he agrees to the said adjustments and the corresponding time and costs or whether he refrains from rejection. The Contractor will make every effort to remedy the Faults identified by the Client and reproducible within the period agreed by the parties and, in the absence thereof, within a reasonable period.
- B.1.6 The implementation of adjustments following a rejection of a Material can take place on a production environment or on an acceptance environment. This is at the discretion of Contractor.
- B.1.7 If the Client has accepted the Results (with the exception of Faults in functionalities and external appearance; minor Faults), the guarantee period of 30 days will commence. Within this period, the Results are deemed accepted, but Faults may be reported that could not reasonably have been discovered during the Acceptance Test. The Contractor will specify and supplement any Faults with the expected time and, if the Faults cannot be easily remedied within 30 days, any additional costs for modification of those parts. This guarantee period is therefore not an extended Acceptance Test and does not provide any more guarantees than those stipulated in this paragraph.
- B.1.8 Minor Faults, including Faults 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 Contractor's obligation to remedy such Faults. 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. The Client shall not base an approval or disapproval of the Materials of a later phase on items approved in an earlier phase.
- B.1.10 The Contractor is entitled to postpone commencement of a new phase until the Client has explicitly accepted the former phase.
- B.1.11 The Contractor does not guarantee that the achievement aimed at by the Client through the works developed or to be developed by the Contractor will actually be made.
- B.1.12 The Contractor shall make every effort to develop and provide its products/works as well as possible and as much as possible error-free.
- 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 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 The Contractor will keep the 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 works will be developed, the requirements they must meet and the manner in which they will be developed. The Contractor will carry out the development with due care on the basis of the information to be provided by the Client. The Client guarantees the accuracy, completeness, consistency and timeliness of its instructions and data.
- B.3.2 A Written Specification as referred to in article 3.1 is not required if the Client has expressed its wish to give the Contractor a high degree of freedom in the development of works and the manner in which this is done. If the development has taken place in this manner, the Client cannot at a later date rely on Specifications, which have been laid down in writing, to which the Contractor has not agreed.
- B.3.3 The Contractor is entitled, but not obliged, to investigate the accuracy, completeness or consistency of the (source) Materials, requirements or Specifications provided to the Contractor, if any imperfections are found, to suspend the agreed work until Client has removed the imperfections concerned.
- B.3.4 If any (source) Materials provided by the Client to the Contractor are protected by any intellectual property right, the Client guarantees at all times that it has any licenses required for the provision to and the intended use by the Contractor under the Agreement.
- B.3.5 Unless otherwise agreed, the Contractor has the right to use images, software and components of third parties, including open source software, in the development of the works. Upon delivery, the responsibility for proper compliance with the relevant third-party licences when using the developed work is vested in the Client. The 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 the Client. This will be specified in the Quotation.
- B.3.6 The Client is responsible for ensuring that its own applications, Services and infrastructure is up-to-date for interoperability with the Contractor's products and Service in connection with any interfaces. Applications may not work properly if this is not the case.
- B.3.7 The Contractor is not liable for the Project/Service being not usable if the non-usability 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 the appearance of a new version of that internet browser.

## Article B.4. Licence conditions regarding the development

- B.4.1 The Contractor grants the Client the right to reproduce and distribute developed Materials for the purposes intended by the 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, not being open source software, and the technical documentation produced during the development of the software shall and must never be provided to the Client, nor shall 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 will always 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 provide them 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 Client's business units or activities concerned. The Client is furthermore not permitted to develop similar works and/or Materials by itself or to cause a third party to do so.

## Module C. Hosting / SaaS

This module applies to the availability and continued availability of (hosting) data and/or (web) applications facilitated by the Contractor to the Client remotely through the Internet or another network, without providing the Client with a physical carrier containing the relevant software. 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 Client's reasonable wishes.
- 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 his ability, applying sufficient care and professionalism.
- C.1.4 The Client is required to do and to refrain from doing everything that is necessary to make a timely and proper installation of the (web) application possible. The Client shall in particular ensure that all information and facilities indicated by the Contractor as being necessary, or which the Client should reasonably understand to be necessary for the installation of the (web) application, are provided to the Contractor in good time.

### Article C.2. Duration of agreement

- C.2.1 The Agreement is entered into by the 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 two (2) months. Termination of the Agreement by either the Client or the Contractor must be effected 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 in any case (but not exclusively) material that is libellous, defamatory, insulting, racist, discriminatory or hate-mongering, erotic or pornographic (unless explicitly permitted in the Quotation), infringes on the rights of third parties, including in any case (but not exclusively) 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 the repeated harassment of third parties with communications they do not want, 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 not allowed 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 the Client's incompetence or failure to act in accordance with the above items shall be for Client's account.
- C.3.4 In order to prevent the aforementioned problems such as damage and security risks, the Contractor is entitled to limit the management options of the Client to such an extent that the management is performed entirely by the Contractor.

## Article C.4. License

- C.4.1 The Client hereby grants Contractor an unrestricted licence to distribute, store, pass on or copy all Materials supplied by the Client to Contractor's Services in any manner deemed suitable by Contractor, but only to the extent reasonably necessary for the performance of the Agreement by Contractor.

## 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. The Contractor is not responsible for the data/services/software invoked through a link.
- C.5.2 If the Contractor has to perform work with regard to data of the Client, his employees or Users by virtue of an authorised order of a government body or with respect to a legal obligation, all costs related to this will be charged to the 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 its ability, unless and insofar as the Contractor has explicitly promised a result in the Written Agreement and the result concerned has also been described sufficiently specified.
- C.6.2 The electronic transmission of data of Client with respect to the Services, in any manner, shall take place at the risk and expense of 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 shall make an effort to have the downtime reduced to a minimum in this respect.
- C.6.5 The Contractor provides no guarantees regarding the exact amount of uptime, unless otherwise agreed in the Offer through an SLA designated as such. In so far as 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 The Contractor shall make every effort to ensure that the Client can use the networks that are directly or indirectly connected to the Contractor's network. The Contractor cannot, however, guarantee that these networks will be available at any time. The use of third-party networks may be subject to legal and contractual conditions. the Contractor shall make every effort to inform the Client of this in good time.
- C.6.8 If, in the Contractor's opinion, the functioning of the Services or the network of the Contractor or third parties and/or the provision of services through a network is at risk, 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, the Contractor is entitled to take all measures which it reasonably considers necessary to prevent this.
- C.6.9 The Contractor has the right to put the Services or parts thereof temporarily out of operation for maintenance, adaptation or improvement. The Contractor shall try to arrange for the Services or parts thereof to be out of operation as much as possible outside office hours, and shall make every effort to notify the Client of the planned taking out of service in good time. However, the Contractor is never obliged to pay compensation for damage arising with regard to taking the Services or parts thereof out of operation, unless explicitly agreed otherwise in writing, for example in an SLA.

- C.6.10 Only if explicitly agreed upon in writing is the Contractor obliged to have a fall-back centre or other fall-back facilities.
- C.6.11 Unless the Agreement provides otherwise, the Contractor is not obliged to make backups 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. The costs of making back-ups will be borne by the Client.
- C.6.12 The Client is aware that after the deletion of the backups, these data are lost and Client no longer has access to these data.

## **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 adjustment 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. The Contractor may charge extra for providing this possibility.

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

- C.8.1 The Contractor may set a maximum amount of storage space or data traffic per month that the Client may use with respect to the Services. The Client will not exceed the limits, unless the Agreement explicitly regulates the respective consequences. If this maximum is exceeded, the Contractor is authorised to charge an additional amount in accordance with the amounts for additional data traffic stated in the Agreement. If no storage and/or data limit has been agreed, the Contractor's fair use policy will apply.

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

- C.9.1 The Contractor shall ensure that the Client is offered a reasonable opportunity to transfer the data of the Client stored in the systems of the Contractor back to its own systems or to the systems of a new provider upon termination of the Agreement. For this purpose, the Contractor will make every effort to be able to offer the data in a common file format. The costs involved will be borne by the Client.

## Module D. Hardware

This module applies to Contractors that supply Hardware to Clients.

### Article D.1. Delivery and ownership

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

### Article D.2. Guarantee

- D.2.1 For a period of 1 year after delivery, the Contractor guarantees the operation of the delivered Hardware in accordance with the specifications previously communicated to the Client and is accountable for this by the Client.
- D.2.2 If the manufacturers of the supplied Hardware have specific guarantee regulations which apply for a longer period than the guarantee issued by the Contractor, these will remain in force and the Contractor will remain responsible for the proper handling of Hardware covered by that guarantee regulation.
- D.2.3 The guarantees issued by Contractor and manufacturers do not detract from the statutory guarantee period applicable to the Hardware.
- D.2.4 The guarantee on Hardware shall become null and void in case of unauthorised 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 periods and rules, the Contractor shall make every effort to find a solution as soon as possible, for example by replacing or repairing the Hardware. The choice to opt for the solutions set out above is always at the discretion of the Contractor.
- D.2.6 The Contractor bears no liability 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 any costs are associated with the return under the guarantee arrangement, these will be at the expense of the Client.