General module

1. Applicability
1.1 The ICreative Terms and Conditions consist of the present General module and the following separate, specific modules:
   • Consultancy and project management
   • Software license
   • Maintenance and support
1.2 This General module of the ICreative Terms and Conditions shall apply to all offers and agreements whereby the Supplier provides the Client with any goods and/or services whatsoever and however described. The specific module or modules of the ICreative Terms and Conditions agreed between the Supplier and the Client shall also apply. If any part of this General module of the ICreative Terms and Conditions conflicts or is incompatible with any of the provisions of the specific module or modules of the ICreative Terms and Conditions agreed between the Supplier and the Client, the provisions of the specific module or modules in question shall prevail.
1.3 Where the ICreative Terms and Conditions refer to ‘general terms and conditions’, this shall be understood to mean the provisions of this General module in combination with the provisions of one or more agreed specific modules of the ICreative Terms and Conditions.
1.4 Additions to or deviations from these general terms and condition shall only apply where agreed in writing between the parties.
1.5 If any provision of these general terms and conditions is null and void or is voided, the other provisions of these general terms and conditions will remain fully in effect. In this case, the Supplier and the Client will consult with one another to agree new provisions to replace the void or voided ones. In doing so, the purpose and meaning of the void or voided provision will be taken into account as far as possible.
1.6 In the event of any discrepancy between the original Dutch version of these Terms and Conditions and this translation of them, the original Dutch version shall always prevail.

2. Offers, price and payment
2.1 The Client shall guarantee the accuracy and completeness of the information that it submits to the Supplier and on which the Supplier bases its offer. The Client shall at all time exercise the greatest possible care to ensure that the requirements that the Supplier’s services must meet are accurate and comprehensive.
2.2 All prices are exclusive of turnover tax (VAT) and other government levies that have been or are later imposed. Except where otherwise specified otherwise, all prices are in euros. In all cases and the Client must effect all payments in euros.
2.3 All cost estimates and budgets issued by the Supplier shall be merely indicative, except where specified otherwise in writing by the Supplier. The Client may under no circumstances derive any rights or expectations from any cost estimates or budgets issued by the Supplier.
2.4 If the Client is subject to a periodic payment obligation, the Supplier shall be entitled to adjust the applicable prices and rates in writing subject to advance notice of at least two months. If the Client does not wish to agree to this change, the Client shall be entitled to terminate the agreement in writing with effect from the date on which the change is due to enter into force within two months before the change will take place. The Client shall not enjoy this right of termination, however, if the parties have agreed that the applicable prices and rates shall be adjusted subject to due observance of an index or other standard agreed between the parties.
2.5 If the Client still fails to pay the amount owed after receiving a demand or notice of default, the Supplier may refer the debt for collection, in which case the Client shall also be obliged to pay all in-court and out-of-court expenses in addition to the total amount due, including all costs charged by external experts.

3. Confidentiality and taking over of personnel
3.1 The Client and the Supplier shall ensure that all information received from the other party that is known or should reasonably be known to be of a confidential nature is kept secret. The party that receives such confidential information shall only use this information for the purpose for which it has been provided. Information shall in any event be regarded as confidential if it is designated as such by one of the parties.
3.2 During the term of the agreement and for one year following termination of the agreement, each of the parties shall only engage or otherwise employ, directly or indirectly, members of staff of the other party who are directly and/or indirectly involved in the execution of the agreement after obtaining the prior written consent of the other party. Conditions may be attached to the aforementioned consent.

4. Privacy, data processing and protection
4.1 Responsibility for the data processed using the service provided by the Supplier shall lie with the Client. The Client shall guarantee the Supplier that the content, the use and/or the processing of the data is not unlawful and does not infringe the rights of third parties. The Client shall indemnify the Supplier against legal claims by third parties, of whatever nature, in relation to this data or the execution of the agreement.
4.2 If computer, data or telecommunications facilities are used during the execution of the agreement or otherwise, the Supplier shall be entitled to assign access or identification codes to the Client. The Supplier shall be entitled to change the access or identification codes assigned. The Client shall treat the access and identification codes as confidential and with due care and shall only disclose these codes to authorised members of staff. The Supplier shall under no circumstances be liable for any damage or costs arising from the use or misuse of access or identification codes, except where misuse was possible as a result of an act or omission on the part of the Supplier.

5. Retention of title and rights, creation of items and suspension
5.1 All objects delivered to the Client shall remain the property of the Supplier until such time as all amounts owed by the Client to the Supplier pursuant to the agreement concluded between the parties have been paid in full.
5.2 Rights, including rights of use, shall be granted to the Client or transferred, where appropriate, subject to the condition that the Client has paid all of the fees due pursuant to the agreement concluded between the parties in full. If the parties have agreed that the Client shall be subject to a periodic payment obligation in respect of the granting of a right of use, the Client shall be entitled to the right of use for as long as it continues to meet its periodic payment obligation.

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

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

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

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

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

7. Obligations to cooperate

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

7.2. The Client shall bear the risk of the selection, the use, the application and the management within its organisation of the software, hardware, websites, data files and other products and materials and of the services to be provided by the Supplier.

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

7.4. If the Supplier’s employees are carrying out activities on the Client’s business site, the Client shall ensure that any facilities reasonably requested by these employees, such as a workspace containing computer, data and telecommunication facilities, are provided free of charge. The workspace and facilities shall meet all statutory and other applicable requirements in relation to working conditions. The Client shall indemnify the Supplier against any claims by third parties, including the Supplier’s employees, who suffer injury or damage as a result of an act or omission on the part of the Client or of unsafe situations within the Client’s organisation.

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

8. Delivery dates

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

8.2. The mere fact that a (delivery) period or (delivery) date, final or otherwise, specified by the Supplier or agreed between the parties has been exceeded, shall not mean that the Supplier is in default of the agreement – therefore also in the event that the parties have agreed a final (delivery) period or (delivery) date explicitly in writing - the Supplier shall not be in default as a result of the fact that a delivery period or date has been exceeded unless it has already duly carried out or services that it has been agreed to perform. The notice of default. The notice of default must contain as comprehensive and detailed a description of the breach as possible, in order to ensure that the Supplier has the opportunity to respond adequately.

9. Termination and cancellation of the agreement

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

9.2. If the Client has already received services for the purpose of executing the agreement as referred to in Article 9.1, these services and the related payment obligation cannot be revoked unless the Client is able to demonstrate that the Supplier is in default in respect of a substantial part of these services. Any amount that the Client has invoiced before rescission in connection with work that it has already duly carried out or services that it has duly provided for the purpose of executing the agreement, shall remain due in full, subject to due observance of the provisions of the preceding sentence, and
shall become immediately due and payable at the time of rescission.

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

10. Liability of the Supplier

10.1 The total liability of the Supplier due to an attributable failure to perform this agreement or due to any other reason, explicitly including any failure to comply with a guarantee obligation agreed with the Client, shall be limited to compensation of the direct damage or loss not exceeding the sum stipulated for this agreement (excl. VAT). This limitation of liability shall apply mutatis mutandis to the Supplier’s obligation to indemnify referred to in Article 6.4 of this General module. If the agreement is essentially a continuing performance contract with a term of more than one year, the sum stipulated for the agreement shall be set at the total fees (excl. VAT) stipulated for one year. The total liability of the Supplier for direct damage or loss, for any reason whatsoever, shall, however, under no circumstances exceed €500,000 (five hundred thousand euro).

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

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

10.4 The exclusions and restrictions to the Supplier’s liability, as described in the preceding paragraphs of Article 10, shall not affect the remaining exclusions and restrictions to the Supplier’s liability set out in this General module and the other agreed modules of these general terms and conditions in any way.

10.5 The exclusions and restrictions referred to in Article 10.1 to 10.4 shall no longer apply if and in so far as the loss is the result of intentional acts or deliberate recklessness on the part of the Supplier’s management.

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

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

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

11. Force majeure

11.1 Neither of the parties shall be obliged to meet any obligations, including any guarantee obligation agreed between the parties, if it is prevented from doing so as a result of force majeure. Force majeure shall include: (i) a situation of force majeure encountered by the Supplier’s own suppliers, (ii) failure by secondary suppliers engaged by the Supplier on the Client’s instructions to duly meet their obligations, (iii) the defectiveness of items, hardware, software or materials provided by third parties that the Supplier has been instructed to use by the Client, (iv) government measures, (v) electricity failure, (vi) faults affecting the internet, computer network or telecommunication facilities, (vii) war, (viii) workload, (ix) strike action, (x) general transport problems and (xi) the unavailability of one or more members of staff.

11.2 If a situation of force majeure lasts for longer than ninety days, either of the parties shall be entitled to terminate the agreement in writing. The services already performed on the basis of the agreement shall in this case be settled on a pro rata basis.

12. Changes and additional work

12.1 If the Supplier has carried out work or performed other services that fall outside of the content or scope of the agreed work and/or services at the request or with the prior consent of the Client, such work or services shall be paid for by the Client in accordance with the agreed rates. If no rates have been agreed, the Supplier’s standard rates shall apply. The Supplier shall under no circumstances be obliged to comply with such a request, and where it does comply, it may require the Client to enter into a separate written agreement for this purpose.

12.2 The Client accepts that work or services as referred to in this article may affect the agreed or anticipated time of completion of the services and the mutual responsibilities of the Client and the Supplier. The fact that (the demand for) additional work arises during the execution of the agreement shall under no circumstances constitute grounds for the Client to terminate or rescind the agreement.

12.3 In so far as a fixed price has been agreed in respect of the service, the Supplier shall, upon request, notify the Client in writing regarding the financial implications of the additional work or services as referred to in this Article.

13. Applicable law and disputes

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

13.2 Before instituting arbitral proceedings, either of the parties shall commence mediation. The other party shall undertake to actively participate in any mediation proceedings that are instituted, and shall in any event be legally obliged to attend at least one joint meeting between the mediators and the parties, in order to ensure that this extrajudicial form of dispute resolution has a chance of success.
Module Consultancy and project management

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

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

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

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

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

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

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

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

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

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

1. Applicability

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

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

2. Right of use

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

2.2 Except where agreed otherwise in writing, the Supplier’s obligation to provide and the Client’s right of use shall solely extend to the so-called software object code. The Client’s right of use shall not extend to the software source code.

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

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

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

3. Restrictions on use

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

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

3.2 The Supplier shall be entitled to arrange for technical measures to be taken at any time in order to protect the software against unlawful use and/or against use in a manner or for purposes other than those agreed between the parties.

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

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

3.5 The Client shall not be permitted to sell, rent out, transfer or grant restrictive rights to the software, the media on which the software is recorded and the certificate of authenticity issued by the Supplier on provision of the software, or to make these available to third parties in any way or for any purpose.

4. Acceptance test and acceptance

4.1 If the parties have not agreed that an acceptance test will be carried out, the Client shall accept the software in the condition that it is in at the time of delivery (‘as is’), therefore with all visible and invisible errors and defects, without prejudice to the Supplier’s obligations pursuant to the guarantee scheme in Article 6 of this module.

4.2 If the parties have agreed to an acceptance test in writing, the provisions of Article 4.3 to 4.7 inclusive of this module shall apply.

4.3 Where this module refers to ‘errors’, this shall be understood to mean the substantial failure to meet the functional or technical specifications of the software made known by the Supplier in writing and, if the software is entirely or partly custom-designed, the functional or technical specifications explicitly agreed between the parties in writing. An error shall only be deemed to exist if the Client is able to demonstrate the error and if it can be reproduced. The Client is obliged to notify the Supplier immediately in the event of errors.

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

4.5 If on carrying out the agreed acceptance test it emerges that the software contains errors, the Supplier shall make every effort to fix the errors identified within a reasonable period of time, whereby the Supplier shall be entitled to install temporary solutions, workarounds or problem-avoiding restrictions in the software.

4.6 Acceptance of the software may not be withheld on grounds that do not relate to the specifications explicitly agreed between the parties, nor due to the existence of minor defects, these being defects that cannot reasonably be deemed to prevent the operational or productive use of the software, without prejudice to the Supplier’s obligation to fix these minor defects. Acceptance may also not be withheld on the basis of aspects of the software that can only be assessed subjectively, such as aesthetic aspects and aspects relating to the design of user interfaces.

4.7 Acceptance of the software by one of the methods referred to in this Article shall mean that the Supplier is discharged in respect of compliance with its obligations in relation to the provision and delivery of the software and, if it has been agreed that the Supplier will carry out the installation, with its obligations in relation to the installation of the software.

5. Modification of the software

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

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

6. Guarantee

6.1 The Supplier shall make every effort to fix errors in the software within the meaning of Article 4.3 of this module within a reasonable period of time if the Supplier receives detailed, written notification of these errors within a period of
three months following delivery or, if the parties have agreed to an acceptance test, within three months of acceptance. The Supplier shall be entitled to invoice the costs of fixing errors at its standard rates in the event of operational errors or improper use by the Client, or other causes that are not attributable to the Supplier.

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

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

7. **Software from third party suppliers**

7.1 If and in so far as the Supplier provides the Client with software from third parties, the (license) terms imposed by such third parties in relation to the software shall apply. The Client accepts the above mentioned terms imposed by third parties. These terms shall be available to the Client for inspection on the Supplier’s premises and the Supplier shall provide the Client with a copy of the terms free of charge upon request. If and in so far as the abovementioned terms imposed by third parties in the relationship between the Client and the Supplier are deemed not to apply for any reason whatsoever, or are declared to be inapplicable, the provisions of these general terms and conditions shall apply in full.
Module Maintenance and support

1. Applicability
1.1 The ICreative Terms and Conditions consist of the General module as well as one or more specific modules per product or service. The provisions of this module shall apply in addition to the provisions of the General module in the event that the Supplier provides software maintenance and support services.
1.2 The provisions of this module are inextricably linked with the provisions of the General module. In the case of conflict between the provisions of the General module and the provisions of this module, the latter shall prevail.

2. Services
2.1 If agreed the Supplier shall carry out maintenance and support work on the software specified in the agreement between the parties. The maintenance obligation shall include the fixing of errors in the software in accordance with Article 3 of this module and only where agreed in writing between the parties - the provision of new versions of the software in accordance with Article 4 of this module. The support will include the web-portal, email and telephone assistance via the Service Center of the Supplier in accordance with Article 5 of this module.
2.2 Except where agreed otherwise in writing, the Supplier shall not be obliged to carry out data conversion.
2.3 If the agreement stipulates that the service provided by the Supplier shall also include the provision of support to users of the software, the Supplier shall issue advice by telephone or e-mail on the use and operation of the software referred to in the agreement.
2.4 The Supplier may impose conditions in relation to the qualifications and the number of contacts who are eligible for support. The Supplier shall deal with properly substantiated requests for support within a reasonable period of time and in accordance with its standard procedures. Except where agreed otherwise in writing, support shall only be provided on working days during the Supplier’s standard business hours, from 8:30 am to 17:30 pm. Working days means all days except Saturdays, Sundays and public holidays.
2.5 If the agreement stipulates that the service provided by the Supplier shall also include the provision of so-called ‘standby services’, the Supplier shall ensure that one or more members of staff are available during the days and times specified in the agreement. If this is the case, the Client shall be entitled to request urgent support from the members of staff on standby in the event of a serious failure in the operation of the software. The Supplier shall not guarantee that all failures will be corrected in a timely manner should this situation arise.
2.6 The maintenance and any other agreed services shall be carried out with effect from the day on which the agreement was concluded.

3. Provision of services
3.1 The Supplier shall make every effort to ensure that the services are provided with due care and in accordance with the arrangements and procedures agreed in writing with the Client where applicable. The Supplier shall provide all services on the basis of a best efforts obligation, unless and in so far as the Supplier has explicitly undertaken in the written agreement to achieve a specific result and the result in question is sufficiently determined.
3.2 The Client shall submit a detailed report of any errors identified in the software. Following receipt of the report, the Supplier shall make every effort to fix the errors and/or make improvements to future new versions of the software in accordance with its standard procedures. The results shall be made available to the Client in a manner and at a time to be determined by the Supplier, depending on the degree of urgency. The Supplier shall be entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the software.
3.3 Client keeps Supplier accurately informed of any problems and makes use of the procedures that Supplier provides.
3.4 The Client shall lend any cooperation required by the Supplier for the purpose of the maintenance work, including the temporary suspension of use of the software by the Client if the Supplier deems this to be necessary. If the Client fails to lend the cooperation requested, the Supplier may suspend or limit the maintenance work. If the Supplier is providing services on the basis of information to be provided by the Client, this information shall be prepared in accordance with the conditions to be imposed by the Supplier and provided at the risk and expense of the Client.
3.5 The maintenance work by the Supplier shall not affect the Client’s responsibility to manage the software, which includes monitoring settings, the use of the software and the manner in which the results obtained through the use of the software are used. The Client shall also be responsible for training given to and use by users.

4. New versions of the software
4.1 The maintenance work shall only include the provision of new versions of the software if and in so far as this has been agreed in writing. If the maintenance work includes the provision of new versions of the software, the provision of this software shall take place at the Supplier’s discretion.
4.2 Once three months have passed since the date on which the Supplier provided an improved version of the software, the Supplier shall no longer be obliged to fix any errors in the previous versions or to provide support and/or carry out maintenance work in relation to the previous versions.
4.3 The Supplier may require the Client to enter into a new written agreement with the Supplier prior to the provision of a version with new options and functions, and is entitled to apply a new fee to this version. The Supplier may copy functionality from a previous version of the software unchanged, however it does not guarantee that each new version will incorporate the same functionality as the previous version. The Supplier shall not be obliged to maintain, change or add certain features or functionalities of the software specifically for the Client.
4.4 The Supplier may require the Client to adapt its system (hardware, software etc.) if this is necessary in order to ensure the proper functioning of a new version of the software.
4.5 The maintenance and support of the software specified in the agreement does not provide for the implementation of new versions of the software.

5. Support
5.1 Regarding support, solving a problem begins at the latest within the following deadlines:
- Emergency: 4 hours
- Class A, High: 1 business day
- Class B, Average: 2 business days
- Class C, Low: 4 business days

Description of the levels:
- Emergency means that the entire production is out of use or the standard software or an essential part of it does not work and / or cannot be started again and no temporarily alternative is available.
- Class A High applies if the standard software or part if it has a problem that is less critical in nature and / or cannot be used for the purpose for which it is intended. There is a recurring error in an important service and there is no, or no temporary, alternative available.
- Class C Low applies when there is limited functionality of the overall performance of the software through mistakes/ errors. Greatly decreasing performance or regular occurrence of the unavailability of the system and there is an alternative available.
- Class B Average applies when there is limited unavailability in a broad sense. This applies when a smaller number of users are affected by the problem.

5.2 In case a ‘critical problem’ cannot be resolved within 4 hours, supplier commits himself to the following escalation procedure to give effect: within 4 and 8 hours activation of a project manager who immediately mobilizes the necessary assistance, for example system engineering and development capacity to find a viable solution for the client.
5.3 Client shall provide all information regarding all circumstances that may affect the services and their availability. If service level agreements are made, the availability is measured disregarded admission of previously announced ‘shutdown’ for maintenance or to circumstances beyond the control of the supplier and in accordance with the service as a whole during the term of the agreement.

5.4 Supplier can never be held responsible for failure to fulfill obligations for maintenance and support, as a result of force majeure due to the responsible improper performance of obligations by suppliers from supplier.

6. **Term**

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

6.2 Unless otherwise agreed in writing, a period of one calendar year include the duration, which means that the contract starts on 1 January and ends on 31 December. Regarding the first contract is a term for the remaining period of the current year, plus any one or more calendar years, in accordance with agreed.

7. **Payment**

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

7.2 The fee for maintenance and support can be increased annually. While Supplier maintaining the right to refrain from increasing.

8. **Exclusions**

8.1 The maintenance and support of the software shall not include the fixing of errors, defects or shortcomings arising from or related to:
- usage errors or the improper use of the software, including errors that occur during the data input process or in the data itself;
- changes to the software other than those carried out by or on behalf of the Supplier;
- use of the software contrary to the applicable conditions or contrary to the instructions in the user documentation;
- changes to or errors, defects or shortcomings in the hardware or software that is not included within the scope of the maintenance work to be carried out by the Supplier;
- failure by the Client to have maintenance work carried out on the software in a timely manner;
- the use of an older version of the software that is no longer maintained by the Supplier;
- the recovery of scrambled or lost data;
- other causes that are not attributable to the Supplier.

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

1. Applicability

1.1 The provisions of this module shall apply in addition to the provisions of the General module of the iCreative Terms and Conditions in the event that iCreative provides services in the field or under the name of Application Service Provision (ASP), Software as a Service (SaaS) and/or Computer Service.

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

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

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

2. Services

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

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

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

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

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

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

3. Provision of services

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

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

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

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

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

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

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

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

4. Service Level Agreement

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

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

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

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

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

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

7.4 On the basis of the information provided by the Supplier in relation to measures for the purpose of preventing and limiting the consequences of interruptions or shortcomings in the service, the scrambling or loss of data or other incidents, the Client shall identify and list the risks for its organization and take additional measures where necessary. The Supplier declares that it is prepared to lend its cooperation in respect to the request of the Client, subject to (financial) conditions to be imposed by the Supplier. Under no circumstances shall the Supplier be responsible for the recovery of scrambled or lost data.

7.5 The Supplier shall not guarantee that the software to be made and kept available to the Client within the context of Application Service Provision and/or Software as a Service, and the software used by the Supplier within the context of Computer Service will be adapted according to changes in relevant legislation and regulations in a timely manner.

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

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

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

1. Applicability
1.1 The provisions of this module shall apply in addition to the provisions of the General module of the ICreative Terms and Conditions in the event of the financing and/or leasing of any objects.
1.2 The provisions of this module are inextricably linked with the provisions of the General module of the ICreative Terms and Conditions. In the case of conflict between the provisions of the General module and the provisions of this module, the latter shall prevail.

2. Financing
2.1 The agreement shall be entered into for the fixed term agreed between the Supplier and the Client.
2.2 The Supplier and the Client shall specify the entire (purchase) price of the object that forms the subject of the financing arrangement, the schedule for the regular payment of the instalments and the other conditions in writing in the agreement. The agreement provides for the payment of all instalments in full.

3. Payment
3.1 The Client undertakes to make all payments to the Supplier in legal Dutch tender, at no cost to the Supplier, and on the day that they become due and payable by means of transferring the sum to an account designated by the Supplier. The Client can only discharge from its obligations by paying the outstanding amount in the abovementioned manner.
3.2 By entering into the agreement, the Client grants the Supplier its irrevocable and unconditional permission to collect the amounts due from the Client by means of direct debit. The Client shall at all times ensure that its account contains sufficient funds and shall also grant all necessary cooperation to payment by direct debit.
3.3 Except where agreed otherwise, amounts shall in each case be payable in advance per calendar month. If default interest has been agreed, this shall be payable by the Client with effect from the first day of default.
3.4 The Supplier may decide to postpone payment of an instalment if the Client submits a request to this effect, accompanied by reasons, in writing before the instalment in question falls due. If the Supplier grants a postponement, at the explicit request of the Client or otherwise, this shall take place subject to all rights.
3.5 The amounts received by the Supplier from the Client shall be deducted from the costs due in the first instance, then from the interest, and finally from the principal sum.

4. Protection of (intellectual) property rights
4.1 The Client shall be obliged to inform the Supplier immediately of any damage to, depreciation or loss of the object and to take all necessary measures, such as for the purpose of limiting further damage, and also follow any instructions issued by the Supplier in this regard in order to protect the Supplier’s (intellectual) property rights as referred to in Articles 6 and 8 of the General module.
4.2 The object must be maintained in a good condition by the Client at its own costs and for the agreed purpose. The Client shall not change the appearance or fitting out of the object, or rent out, sell or encumber, grant the enjoyment of or use the object contrary to any statutory provision.
4.3 The Client shall be obliged to notify any party that asserts any rights in respect of the object of the Supplier’s (intellectual) property rights and to notify the Supplier immediately of such claims by third parties upon submission of all documentation.
4.4 The Client shall hold the object at its own expense and risk and shall ensure that it is kept and secured safely.

5. Purchase option
5.1 If it has been agreed that the (intellectual) property rights in respect of the object (or any part thereof) shall not be transferred from the Supplier to the Client until payment of a final optional instalment has been effected, the Client shall notify the Supplier in writing that it wishes to make use of this option no later than three months before the end of the term of the agreement.

6. Termination and implications
6.1 The Client shall be in default vis-à-vis the Supplier if the Client fails to pay one or more instalments or fails to pay in a timely manner, or if it acts contrary to any of the obligations arising from this agreement.
6.2 If the Client is in default, the Supplier shall be entitled to terminate the agreement with immediate effect by means of a written declaration and without bringing the matter before the Court, to immediately regain custody of the object and to exercise all other rights conferred by law.
6.3 With the exception of termination on the grounds of Article 9 of the General module in the ICreative Terms and Conditions, termination of the agreement by the Client shall be excluded.
6.4 Termination of the agreement shall not affect any of the Client’s obligations vis-à-vis the Supplier and shall mean that all amounts owed by the Client become immediately due and payable.
6.5 The termination or declaring of the agreement to be void as a result of defects in or circumstances relating to the object or the use of the object shall be explicitly excluded.

7. Return
7.1 If the agreement explicitly stipulates that the Client shall be entitled to return the object or if the Supplier exercises its right to reclaim the object, the object must be provided to the Supplier in good condition and at a time and place to be designated by the Supplier. The Client shall be obliged to reimburse any costs of repairs to, the replacement or depreciation of the object or parts thereof. The object must be returned to the Supplier in its original, working and acceptable condition. The Client shall ensure that the object is packaged and transported in a sound manner. The Client shall be obliged to remove any parts, facilities, data and software that do not form part of the object. If the Client fails to do so, the Supplier may proceed to carry this out without leading to any obligations on the part of the Supplier.

8. Provision of security and transfer
8.1 Upon the Supplier’s first request, the Client shall be obliged to provide security in respect of compliance with all of its obligations vis-à-vis the Supplier. If the security provided is or becomes insufficient, the Client shall be obliged to supplement or replace the security upon first request.
8.2 The Supplier shall be entitled to transfer the legal relationship with the Client to a third party.

9. Administration and execution of the agreement
9.1 The Client shall notify the Supplier in writing in advance of any changes to the Client’s address and the location of the object.
9.2 The relevant documents or information from the Supplier’s administration shall serve as prima facie evidence of the amounts owed by the Client to the Supplier, unless the Client submits proof to the contrary.
9.3 If the Supplier has made an error in the execution of the agreement, the Client shall be obliged to notify the Supplier immediately on discovering the error and to grants its full cooperation to the rectification of the error.

10. Additional services and additional costs
10.1 Regardless of the description of the agreement, the price or the periodic fee, the agreement shall only include the services explicitly agreed in writing between the Supplier and the Client.
10.2 If additional services form part of the agreement, the Supplier shall be entitled to impose additional or amended conditions and to pass on changes in the costs of these services, such as those of insurance premiums, maintenance
costs, taxes, government levies and the hourly rate imposed by the Supplier in respect of services, on to the Client.

10.3 If and in so far as the agreement explicitly stipulates that the Supplier shall be responsible for replacing the object, the Supplier shall ensure that the Client is provided with an object that the Supplier deems to be equivalent to the original object or that has a similar functionality. The provisions of the agreement shall apply to the replacement object in full. Except where agreed otherwise, the costs of replacement shall be borne by the Client.

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GENERAL TERMS FOR BASWARE SOFTWARE LICENSES AND SERVICES

These General Terms for Basware software licenses and services (“General Terms”) apply to all purchases of such Software licenses and/or Services by the Customer from Basware (each a “Party”, and together, the “Parties”) as specified in the relevant Basware Sales Agreement signed by the Customer and Basware. These General Terms, together with the Basware Sales Agreement and all exhibits, schedules, and/or attachments appended thereto, constitute an integral part of the agreement between the Parties (“Agreement”) and are fully incorporated hereunder. Capitalized terms not otherwise defined in Section 24 of these General Terms shall have the respective meanings ascribed to such terms in the Agreement.

1 BACKGROUND AND PURPOSE

1.1 As of the Effective Date, the Parties have entered into the Agreement for the provision of Software and/or Services (Cloud Services, Professional Services and/or Support and Maintenance Services) in accordance with these General Terms.

1.2 This Agreement is hereby limited to the provision of the Software and Services to the Customer itself, unless the Basware Sales Agreement provides otherwise. Customer Affiliates and Software and Services may be added to the Agreement upon execution of a new Basware Sales Agreement. An Affiliate’s right to use the Software and Services, and all obligations of Basware towards such Affiliate, shall cease as soon as it ceases to be an Affiliate.

1.3 In order to implement the Software and/or the Services for the Customer, Basware may also perform certain Professional Services.

2 GRANT OF SOFTWARE LICENSE / LIMITATIONS

2.1 The following provisions apply to the licensing of the Software to be delivered to, and installed for, the Customer.

2.2 Subject to payment of the Fees by the Customer and pursuant to Basware’s Intellectual Property Rights, Basware grants, and the Customer accepts, a perpetual, non-exclusive, non-transferable license to use the Software in object code form in accordance with these General Terms.

2.3 The Software shall be delivered in object code form to the e-mail delivery address of the Customer specified in the Basware Sales Agreement.

2.4 Unless otherwise agreed in the Basware Sales Agreement, the grant of license is limited to the installation and use of one (1) database server license and the specified number of end-user licenses of the Software as set forth in the Basware Sales Agreement. Each end-user license is for the named user only. Any additional user rights shall be agreed upon and ordered separately by the Customer.

2.5 The license granted to the Software further includes a right of the Customer to implement and use one (1) test environment.

2.6 The Customer may use the Software only to process the Customer’s own data and only for internal operations. The Customer may, however, use third party service providers for the processing of the Customer’s own data and internal operations. Under no circumstances shall the Customer use or permit any third party to use the Software to process any other party’s data. The Customer may not use the Software to offer computer-based services to third parties.

2.7 The Customer shall be responsible for establishing reasonable backups and security precautions to guard against possible malfunctions, loss of data, or unauthorized access when using the Software.

2.8 The Customer shall not sub-license, sell, lease, lend, resell, distribute, alter or amend the Software or create derivative works, enhancements or updates/upgrade based on the Software, nor shall the Customer reverse-engineer, disassemble, decompile the Software nor any part thereof or otherwise reduce the Software to any human-perceivable form. Any license granted hereunder is to the Customer itself and may not be transferred.

2.9 The Customer shall not create technical interfaces to Basware’s platform which enable the extraction of data from the platform database, unless such activity is expressly authorized in writing by Basware.

2.10 In the event the Customer purchases Third Party Application Software from Basware, separate terms for such Third Party Application Software may apply.

2.11 Basware reserves any and all rights not expressly granted to the Customer in the Agreement.

3 CLOUD SERVICES

3.1 Basware shall provide the Customer with the Cloud Services in accordance with the Service Description describing each Service and as set forth in the related Basware Sales Agreement. Basware reserves the right to select and change, without prior notice, the underlying technology and procedures for producing the functionality of a Service. Moreover, Basware is entitled to change the Services, without prior notice, so long as any such change does not adversely impact the functionalities or usability of the Services.

3.2 The Cloud Services shall be delivered from the Service Center(s) specified by Basware. Basware shall be responsible for such Service Center(s) and shall have the right to select and change the Service Center(s) used for the production of the Cloud Services. Basware is only responsible for the Cloud Services for the time during which the Customer Data is processed by the Service Center(s). Basware shall not be liable for data and service to the extent they are provided through the interoperation with a third party network.

3.3 Basware is committed to performing the Services to the Customer in accordance with each relevant Basware standard Service Level Agreement relating to the Services.

3.4 Should the Customer subscribe to Third Party Application Services with a third party through Basware Services, separate third party terms for such Third Party Application Services may apply.

4 PROFESSIONAL SERVICES

4.1 Basware shall perform Professional Services for the Customer in preparation for the activation and use of the relevant Software and/or Service by the Customer. The Professional Services shall be performed by Basware in accordance with the applicable Delivery Documentation.

4.2 The deliverables and activities set forth in the Delivery Documentation constitute the full scope of the delivery of the Services and/or Software ordered by the Customer at the Effective Date. Additional fees will apply for activities outside the standard project delivery scope. In such case, an estimate for additional Professional Services and related fees may be presented to the Customer in the Delivery Documentation.

4.3 Any requests by the Customer for changes to the agreed scope of the delivery will be treated as change requests in accordance with the Basware change request procedure. The implementation of change requests may affect the delivery schedule and may result in additional charges.

4.4 Basware shall test the results of the Professional Services upon delivery in accordance with its practices. The Customer shall be responsible for the functional testing of the results of the Professional Services.

4.5 Errors, which do not substantially interfere with the use of the Professional Services or the results thereof, shall not preclude the acceptance of the delivery by the Customer. Delivery shall be deemed to be accepted if the Customer:
   a) accepts the delivery in writing;
   b) does not present Basware with a written complaint describing any Errors which preclude acceptance within thirty (30) days from the date of the server installation or any other delivery; or
   c) takes the Software and/or the Cloud Services into
commercial use or production use.

5 SUPPORT AND MAINTENANCE SERVICES
Support and Maintenance Services are specified in detail in the Basware standard Support Documentation.

6 BASWARE’S OBLIGATIONS
6.1 Basware shall:
   a) employ qualified personnel and use reasonable skill and care to ensure that the Services are performed in accordance with the Agreement and the Service Descriptions;
   b) employ qualified personnel and use reasonable skill and care to ensure that the Professional Services are performed in accordance with the Agreement and the agreed upon Delivery Documentation;
   c) design the Software and Services to assist the Customer in complying with legal and regulatory requirements applicable to the Customer and Customer’s use of the Software and/or Services and, in that context, shall solely be responsible for any failure of such design in accordance with the Agreement;
   d) use commercially reasonable efforts to carry out all of Basware’s other responsibilities in a timely and efficient manner as set forth in the Agreement;
   e) obtain and maintain all necessary licenses, consents, and permissions necessary for Basware, its contractors and its agents to perform their obligations under the Agreement; and
   f) ensure that its network and systems comply with the relevant specifications described in the Agreement.

7 CUSTOMER’S OBLIGATIONS
7.1 The Customer shall:
   a) provide Basware with the necessary cooperation and access to all such information as may be required by Basware for the performance of the Services, including but not limited to the Customer Data and security access information;
   b) use the Software and Services in accordance with the Agreement and the purpose for which they are provided;
   c) be responsible for determining the suitability of the Software and/or Services for Customer’s business and complying with any laws and regulations applicable to the Customer and Customer’s use of the Software and/or Services;
   d) use commercially reasonable efforts to carry out all other Customer responsibilities set out in the Agreement in a timely and efficient manner;
   e) obtain and maintain all necessary licenses, consents, and permissions necessary for the Customer, its contractors and its agents to perform their obligations under the Agreement;
   f) ensure that its network and systems comply with the relevant specifications provided by Basware from time to time, ensure the security of its network and systems, and be solely responsible for procuring and maintaining its IT systems and network connections; and
   g) be responsible for backing up and storing the Customer Data, unless the Parties expressly agree that this obligation is to be included in the Service.

8 SUBCONTRACTING
Basware reserves the right to use an Affiliate or other subcontractors to fulfill its obligations hereunder and shall be fully liable for the work of any Affiliate or subcontractor as for the work of its own. Upon request, Basware will notify the Customer of the subcontractors used. In case there is a change of subcontractor used for the provision of the Service and the Subcontractor is in direct interaction with the Customer, Basware shall notify the Customer of such change as soon as practically possible.

9 IDENTIFICATION INFORMATION FOR USE OF SERVICE
9.1 Basware shall assign user identifiers, numbers, addresses and other such identification to be used by the Customer (hereinafter “Identification Information”) in using the Service(s). Basware reserves the right to change or suspend the Identification Information if such changes are required for regulatory or technical reasons. Basware shall inform the Customer of such changes at least two (2) months before the changes take effect. Notwithstanding the foregoing, Basware shall inform the Customer of any necessary changes or suspensions caused by the enactment or modification of any relevant regulations issued by governmental authorities or if Basware has reason to suspect that the data security of the Services or the Customer so require, as soon as reasonably possible before or after such change.
9.2 The Customer is responsible for taking all necessary measures to ensure that the Identification Information is used only by its employees and remains confidential, in strict accordance with Basware’s reasonable instructions. Customer is responsible for any use or possible misuse of Identification Information given to it, and acknowledges that any data which is sent using the specific Identification Information of the Customer is, for all purposes hereunder, considered to be originating from the Customer. In the event that a third party has illegally obtained possession of Identification Information of the Customer, the Customer shall inform Basware’s customer service representatives immediately thereof. Basware is entitled to close the account with immediate effect upon receipt of the above-mentioned information.
9.3 Certain information may also be used in national and international listings to accelerate the use of e-invoicing Services by the Customer. To that end, Basware may compile a register of non-confidential Identification Information, including, without limitation, e-invoicing address details of the Customer (excluding any sensitive or confidential information or user identifier) and the Customer contact persons necessary to offer the Services, and Basware may publish such information in a written or electronic list to promote e-invoicing sending and receiving.

10 CUSTOMER DATA
10.1 The Customer shall, upon Basware’s request, provide all Customer Data necessary for the delivery and operation of the Services to the Customer and shall inform Basware of any changes to its Customer Data without delay.
10.2 The Customer shall own all rights, title and interest in and to all of the Customer Data.
10.3 The Customer represents and warrants to Basware that the Customer Data is accurate. The Customer further represents and warrants that it has the right, and all third party consents necessary, to transfer all Customer Data, including any Personal Data, to Basware in consideration of Basware’s performance of the Services, and more particularly, Basware’s usage, storage, copying, transfer and processing of the Customer Data, in and outside of the Customer’s country, for the purpose of providing the Services.
10.4 The Customer (i) grants Basware the non-exclusive right to use, store, copy, transfer and process all Customer Data for the purpose of developing, analyzing, monitoring, improving and providing the Services in and outside of the Customer’s country, and (ii) authorizes Basware to contact, communicate with and share information with third parties providing Third Party Application Software and/or Services to the Customer as described in Sections 2.10 and 3.4.
10.5 The Customer maintains full responsibility for the Customer Data and other data provided or transmitted by it to the Service, including, but not limited to, non-interference with the technical operation of the Services (such as malicious code, viruses, computer intrusions, infringements and illegal tampering of data), non-infringement of third party copyrights, and compliance with the applicable laws or regulations issued by authorities, and in case of such interference, the Customer shall promptly remedy such circumstances.
11 DATA PRIVACY

11.1 Each Party warrants that it complies with applicable data protection legislation and takes full responsibility of its data (including Customer Data and Personal Data) and its processing under such legislation.

11.2 If Basware processes any Personal Data on the Customer’s behalf when performing its obligations under the Agreement, the Parties record their intention that the Customer shall be the data controller and Basware shall be a data processor.

11.3 Basware shall process the Personal Data only in accordance with the terms of the Agreement and any lawful instructions reasonably given to it by the Customer. In performance of its obligations, Basware shall comply with the Basware privacy policy in force and as amended from time to time, a copy of which can be obtained from Basware separately upon request.

11.4 In case Personal Data is transferred outside of Customer’s country or residence as set forth in Section 10.4, Basware undertakes to guarantee an adequate level of data protection and agrees to contractually secure this with its Affiliates and subcontractors as required by the applicable data protection legislation.

11.5 Each Party shall take appropriate technical and organizational measures against the unauthorized or unlawful processing of the Personal Data or its accidental loss, destruction or damage.

12 FEES AND INVOICING

12.1 The Customer shall pay Basware for the Software and Services in accordance with the pricing and invoicing periods as defined below, unless the Basware Sales Agreement provides otherwise. Pricing for new or additional software and services shall be subject to a separate agreement between the Parties.

12.2 All prices quoted are exclusive of VAT or any other applicable sales tax and withholding tax, as the case may be, which will be added to the Fees and invoiced to the Customer.

12.3 All payments shall be made on or before the due date specified in the invoice. The term of payment shall be net thirty (30) days from the date of the invoice.

12.4 In the event that the Customer objectively and in good faith disagrees with the content of an invoice, it must, without delay, dispute the invoice by providing Basware with written notice of such dispute. The Parties shall discuss and attempt to resolve any such dispute within thirty (30) days of notice thereof. Notwithstanding the foregoing, the Customer shall pay the undisputed portion of the invoice on or before the due date specified in the invoice.

12.5 Any outstanding and overdue sums shall be subject to interest at the annual rate of ten percent (10%) or the highest rate allowed under the applicable law.

12.6 In the event that the Customer has not made a payment when due, and regardless of whether Basware has made a request for payment within sixty (60) days following the due date, all of the Customer’s other undue receivables, as well as any interest or penalties related thereto, shall become due for immediate payment, and Basware may, without any further liability, suspend the Services until the Customer has made all payments in full.

12.7 Unless otherwise agreed by the Parties, Professional Services are charged according to Basware’s valid price list. Basware has the right to change these applicable prices during the Agreement term by notifying the Customer thirty (30) days before the new prices take effect. In addition, the Customer shall be charged for travel costs, accommodation and per diem allowance (when applicable) incurred in Basware’s performance of the Professional Services.

12.8 The Support and Maintenance Fee shall be calculated from the standard license fee for the Software. The Cloud Service Support Fees shall be included in the Cloud Service Fees.

12.9 Basware shall be entitled to annually adjust the Fees in accordance with the CPI (Consumer Price Index) or similar index reflecting annual increase of costs, by informing the Customer in writing to the invoicing address last informed by the Customer at least two (2) months before the changes become effective.

12.10 The Fees shall be invoiced from the conclusion of the Agreement onwards, prior to or after delivery of the Software and/or Service, as further specified in the Basware Sales Agreement.

12.11 Basware reserves the right to invoice Customer electronically. Customer hereby consents to accept electronic invoicing and, if Customer requests a paper invoice, Customer agrees to pay for all reasonable administrative charges related thereto.

13 SOFTWARE WARRANTIES

13.1 Basware warrants that it has the right to grant the Customer the license to the Software.

13.2 Basware further warrants that for a period of ninety (90) days from the Effective Date, the Software will, if operated as directed, substantially conform to the Software Description.

13.3 In order to support a claim that the Software is defective, the Customer shall provide Basware with written notice and a detailed description of any Error.

13.4 In the event of any warranty failure, Basware shall, at its option, either correct or replace the Software or its components or provide instructions on how the Error can be circumvented.

13.5 BASWARE DOES NOT WARRANT THAT THE USE OF THE SOFTWARE WILL BE UNINTERRUPTED OR THAT THE SOFTWARE IS ERRORFREE. THE SOFTWARE IS PROVIDED “AS IS”. EXCEPT AS EXPRESSLY STATED OTHERWISE IN THE AGREEMENT, BASWARE MAKES NO WARRANTY, STATUTORY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE PROVIDED HEREUNDER AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF MERCHANTABILITY, DESCRIPTION OR FITNESS FOR A PARTICULAR PURPOSE.

14 SERVICE WARRANTIES

14.1 Limited Cloud Service Performance Warranty: Basware represents and warrants that the Service will operate in substantial conformance with the applicable Delivery Documentation and Service Descriptions during the Agreement period, provided that (i) the Service is implemented and operated in accordance with all instructions supplied by Basware; (ii) the Customer notifies Basware of any Error in the Service within ten (10) calendar days after the discovery thereof; (iii) the Customer has properly implemented all updates recommended by Basware with respect to any third party software that materially affects the performance of the Service; (iv) the Customer has properly maintained all associated equipment, software and environmental conditions in accordance with the applicable specifications and industry standards; (v) the Customer has not introduced other equipment or software that may have an adverse impact on the Service; and (vi) the Customer has paid all amounts due hereunder and is not in default of any provision of the Agreement. If, after investigation of Customer’s notification of an alleged Error, Basware determines that there is no Error or defect in the Service, Basware reserves the right to charge the Customer for the expenses incurred from such investigation.

14.2 Limited Professional Services Warranty: Basware represents and warrants that the results of the Professional Services will substantially conform to the Delivery Documentation for thirty (30) days as of the acceptance of the delivery as set forth above in Section 4.5. The identification of any Error during this warranty period does not extend the length of the warranty period. The warranty extends solely to the Customer and covers direct Errors that prevent the Software and/or the Services to function substantially in accordance with the applicable Software or Service Descriptions due to an Error in the results of the Professional Services delivery. The warranty does not cover any functional changes to the Software or the Services. Basware shall correct Errors reported in writing as soon as reasonably possible, provided that errors are not, wholly or in
part, caused by the Customer, its personnel, or the computer environment used by the Customer. The Customer hereby agrees to assist Basware to the extent required in order to rectify the Error. If, after investigation of a Customer’s notification of an alleged Error, Basware determines that there is no defect in the results of the Professional Service, Basware reserves the right to charge the Customer the expenses incurred from such investigation.

14.3 Any time schedule and/or specific delivery dates set forth in the Agreement are given strictly for planning and informational purposes only.

14.4 BASWARE DOES NOT WARRANT THE UNINTERRUPTED, SECURE OR ERROR-FREE OPERATION OF THE SERVICE OR THAT BASWARE IS ABLE TO PREVENT ALL THIRD PARTY DISRUPTIONS OF THE SERVICE OR THAT BASWARE IS ABLE TO CORRECT ALL ERRORS, EXCEPT AS EXPRESSLY STATED OTHERWISE IN THE AGREEMENT, BASWARE MAKES NO WARRANTY, STATUTORY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES PROVIDED HEREUNDER AND EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY, DESCRIPTION OR FITNESS FOR A PARTICULAR PURPOSE.

15 INTELLECTUAL PROPERTY RIGHTS

15.1 All Intellectual Property Rights related to the Software and Services belong to Basware or its licensors and shall remain the property of Basware or its licensors. By signing the Agreement, no ownership as to the Basware Intellectual Property Rights shall be transferred to the Customer. The Customer is granted limited rights only as to the Software and Services as specified under the Agreement.

15.2 In the event that a claim is made by a third party against the Customer for infringement of any Intellectual Property Right of such third party by the Software or the Service, Basware shall defend the Customer, provided that the Customer immediately informs Basware of the claim in writing, permits Basware to have sole control to defend or settle the claim, and gives Basware all available necessary information, together with reasonable assistance and the authorization to do so. Moreover, provided that the Customer has acted in accordance with the foregoing, Basware shall reimburse the Customer for its reasonable costs, including necessary and reasonable legal costs already incurred, and Basware shall indemnify the Customer for the latter’s payment of damages based on its settlement with the third party, agreed to by Basware, or awarded to the third party in a trial.

15.3 Furthermore, upon being notified of such infringement claim, Basware shall, at its option: (i) defend through litigation or obtain through negotiation the right for the Customer to continue using the Software or the Service; (ii) amend the Software or the Service so as to render it non-infringing while preserving the original functionality; or (iii) replace the Software or the Service with functionally equivalent software or service. If none of the foregoing alternatives provides an adequate remedy, Basware may terminate all or any part of the Agreement and the Customer shall be refunded any Software or Cloud Service Fees already paid for the affected Software or in advance for the Cloud Services, less the value for the use of the Software or the Services by the Customer prior to the infringement.

15.4 However, Basware shall not be liable for any claim, which:
   a) is asserted by a company which exercises control over the Customer or which is controlled by the Customer or under common control with the Customer;
   b) results from the use of the Service or the Software for a purpose for which it has not been designed or approved, or use of the Service or the Software together with another product or service not delivered by Basware or against the directions given by Basware;
   c) could have been avoided by using a corresponding service or software, which had been offered to the Customer without any separate charge, provided that the corresponding service or software was offered at no additional cost to the Customer and was of the same quality, performance and functionality as the original; or
   d) is an alleged to any Open Source Software provided with the Software or used at the Service Center.

15.5 The foregoing provisions of this Section 15 set forth the full extent of Basware’s liability for infringement of Intellectual Property Rights in accordance with Section 17 (limitation of liability).

16 CONFIDENTIALITY

16.1 Each Party shall maintain confidentiality of the Confidential Information provided in connection with the Agreement and shall refrain from disclosing or using it for any other purpose than in connection with the Agreement.

16.2 Except as otherwise provided in the Agreement, all Confidential Information and documents containing Confidential Information shall remain the property of the Party originally disclosing the Confidential Information.

16.3 Each Party shall make any Confidential Information provided by the other Party available to only those of its employees, advisers, subcontractors or agents who need to know the Confidential Information in connection with the Agreement. The Parties shall inform all persons (including its employees, advisers, subcontractors or agents, and the employees of the subcontractors or agents) to whom a disclosure of Confidential Information is made, as permitted herein, of the obligations of confidentiality and any such advisers, subcontractors or agents shall execute a written agreement incorporating provisions on confidentiality no less restrictive than those of this Section 16.

16.4 The confidentiality obligations in this Section 16 shall not apply to Confidential Information, which:
   a) is in the public domain at the time of disclosure or later becomes part of the public domain through no fault of the receiving Party; or
   b) was known to the receiving Party prior to disclosure by the disclosing Party; or
   c) is disclosed to the receiving Party by a third party who did not obtain such Confidential Information, directly or indirectly, from the disclosing Party; or
   d) is required to be disclosed in response to a valid order by a court or any other governmental authority or otherwise required by applicable securities or other laws, provided that the disclosure shall be limited to the extent required for such purpose and, to the extent allowed under the applicable law, the Party shall give prior written notice thereof to the other Party so that such Party may seek to obtain a protective order or other form of protection, if available.

16.5 Upon the expiration of the Agreement or the request of the disclosing Party, whichever occurs first, the receiving Party shall return to the disclosing Party any confidential documents or materials disclosed under the Agreement.

16.6 Notwithstanding the provisions in this Section 16, Basware has the right to disclose any Confidential Information received from the other Party under the Agreement to its Affiliates as it deems necessary.

16.7 Basware reserves the right to include the Customer in its reference list. Basware also has the right to make announcements and issue press releases in connection with Agreement, including, without limitation, information relating to the value of the order, the project in question, the parties involved, and any other relevant information, unless Customer notifies Basware in writing of its objection to such disclosure. Nothing herein shall prevent the Parties from making any announcement or filing required by law, regulation, or by the rules and regulations of any stock exchange on which they are listed.

17 LIMITATION OF LIABILITY

17.1 EXCLUDING CASES OF GROSS NEGLIGENCE OR
INTENTIONAL MISCONDUCT, BASWARE’S AGGREGATE LIABILITY ARISING UNDER OR IN CONNECTION WITH THE AGREEMENT AND THAT OF BASWARE’S RESELLERS, AGENTS, REPRESENTATIVES AND EMPLOYEES, AND UNDER ANY BASIS, WHETHER IN CONTRACT OR IN TORT, IS LIMITED TO DAMAGES CAUSED BY THE SOFTWARE OR THE SERVICES UP TO A MAXIMUM AMOUNT WHICH CORRESPONDS TO:

a) FOR SOFTWARE: THE TOTAL AMOUNT OF THE LICENSE FEE PAID FOR THE PARTICULAR SOFTWARE GIVING RISE TO THE CLAIM.

b) FOR SERVICES: THE TOTAL AMOUNT OF THE SERVICE FEES FOR THE PARTICULAR SERVICE GIVING RISE TO THE CLAIM, PAID DURING THE SIX (6) MONTHS PRECEDING THE DAMAGING EVENT.

17.2 EXCEPTION FOR CASES OF GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT: IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY FOR ANY INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGES HOWSOEVER ARISING, INCLUDING, WITHOUT LIMITATION, LOST REVENUES OR PROFITS, EVEN IF THE PARTY HAS PREVIOUSLY BEEN INFORMED OF THE POSSIBILITY THAT SUCH LOSS OR DAMAGE MAY ARISE. “INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGES” SHALL MEAN ANY ECONOMIC LOSS, INCLUDING, WITHOUT LIMITATION, ANY DIRECT OR INDIRECT LOSS OF PROFITS, ANTICIPATED SAVINGS, BUSINESS CONTRACTS, INTEREST, REVENUE, TIME OR GOODWILL OR LOSS OR HARM OF DATA.

17.3 Notwithstanding any statutes of limitation which may provide otherwise, all claims under the Agreement must be made within six (6) months from the time at which the Party making the claim became aware of the event that gave rise to the claim. Such claims may, under no circumstances, be brought later than one (1) year from the event that gave rise to the claim.

18 TERM

18.1 The Agreement is of full force and effect as of the Effective Date. The Agreement shall remain in effect until such time as the Software license and all Services under the Agreement have expired or been terminated.

18.2 The Software license is perpetual as set forth in Section 2.2 above. The duration of the Support and Maintenance Services period shall be twelve (12) months (“Support and Maintenance Services Period”), and shall commence on the Effective Date. The Support and Maintenance Services shall be automatically renewed for consecutive twelve (12) month Support and Maintenance Periods, unless written notice of termination has been given by either Party to the other at least sixty (60) days prior to the expiration of each Support and Maintenance Period.

18.3 The Cloud Services period shall start as of the date set forth in the Basware Sales Agreement and shall continue until the end of the thirty-six (36) month period, unless otherwise agreed in the Basware Sales Agreement (“Cloud Services Period”). Thereafter, the Cloud Services Period shall be automatically renewed for successive twelve (12) month terms, unless written notice of termination has been given by either Party to the other at least sixty (60) days prior to the expiration of the initial Cloud Services Period or any renewal term thereof.

19 TERMINATION

19.1 Orders for Professional Services may be terminated by either Party with ninety (90) days’ prior written notice.

19.2 A Party is entitled to terminate the Agreement in writing with immediate effect, in whole or in part, and outside of any court, if:

a) the other Party has materially breached its contractual obligations and fails to remedy such breach within thirty (30) days from receipt of written notice; or

b) liquidation proceedings are commenced against the other Party; or

c) the other Party files for bankruptcy, has applied for a public summons for its creditors, or has otherwise been found insolvent; or

d) the other Party is unable to perform its obligations under the Agreement as a result of Force Majeure and such circumstances continue for more than three (3) months.

19.3 In the event of termination or expiration of the Agreement for reasons other than as set forth in Section 19.2 above, and if so requested by the Customer, Basware agrees to provide the Services for a transition period of no more than sixty (60) days after such termination or expiration of the Agreement, as to be mutually agreed by the Parties, with the terms and conditions and pricing as set forth in the Agreement, unless otherwise agreed by the Parties. At the termination or expiration of the Agreement Basware will hand over to the Customer the Customer Data in Basware’s possession.

19.4 After the termination date, online archiving services that are included under the Agreement shall continue during the archiving term as mentioned in the Service Description and in accordance with the conditions of the Agreement. However, if the Agreement is terminated by reason of Customer’s breach in accordance with Section 19.2, the online archive at Baseware shall be terminated and the Parties shall, in good faith, agree upon (i) the copying of the archived Customer Data on a tangible support or (ii) the migration of the archived Customer Data to the Customer or to a third party designated by the Customer, at the cost of the Customer.

19.5 Upon termination of the Agreement for any reason, the Customer agrees to return the Software, destroy all copies of the Software (including those in the memory of a computer), cease to use the Software, and upon request, provide Baseware with a certificate on the fulfillment of its obligations hereunder.

19.6 After the expiration of the Agreement, such contractual provisions of these General Terms, which by nature are intended to remain in effect, shall remain in effect. Such provisions include, but are not limited to, the provisions of Sections 15 (Intellectual Property Rights), 16 (Confidentiality), 17 (Limitation of Liability), and 21 (Applicable Law and Dispute Resolution).

20 TRANSFER OR ASSIGNMENT OF AGREEMENT

20.1 The Customer is not entitled to transfer or assign its rights and obligations under the Agreement, in whole or in part, to any third party without prior written consent of Baseware.

20.2 Baseware reserves the right to transfer or assign its rights and obligations under the Agreement, in whole or in part, to an Affiliate of Baseware or to a third party to which the relevant business operations concerning the Services under the Agreement are transferred. Baseware also reserves the right to transfer its receivables under the Agreement to a third party.

21 APPLICABLE LAW AND DISPUTE RESOLUTION

21.1 The Agreement shall be governed by the laws of the country of domicile of Baseware as indicated in the Baseware Sales Agreement.

21.2 Any dispute, controversy or claim arising out of or in connection with these terms, or the breach, termination or invalidity thereof, that cannot be settled by negotiations between the Parties, shall be finally settled by a court of competent jurisdiction in the domicile of Baseware.

21.3 Nothing herein shall be deemed to prevent a Party from seeking interim injunctive relief or such other relief as may be available subject to applicable law.

22 INSURANCE

Baseware shall maintain insurance coverage, from well-known and reputable insurers, in an amount sufficient to cover its obligations under the Agreement during the term of the Agreement.

23 MISCELLANEOUS
23.1 In the event that a Party is prevented from fulfilling its obligations under the Agreement due to circumstances beyond its control, which it could not or should not have reasonably taken into consideration at the time the Agreement was executed and which it could not avoid or overcome ("Force Majeure"), such Party shall immediately notify the other Party of the occurrence of the Force Majeure circumstances which may postpone the time of performance, and that Party shall be relieved from liability for damages and other sanctions. Responsibilities and obligations specified in the Agreement are subject to immediate fulfillment after the end of the Force Majeure circumstances, unless otherwise agreed upon in writing and executed by both Parties.

23.2 Excluding applications of either Party’s personnel based on general open recruitment notices, neither Party shall (i) actively recruit an employee of the other Party who has taken or takes care of essential duties relating to the Services or (ii) make any other arrangement that would result in the employment of such employee by the Party within six (6) months after the earlier of the end of the employment with a Party or the end of the performance of the Services.

23.3 All notices submitted or given hereunder shall be addressed to the contact persons given in the Basware Sales Agreement or as notified by such contact persons or their successors from time to time. All notices shall be in writing. Notices, excluding the normal day-to-day correspondence between the Customer and Basware (for which e-mail also is sufficient), shall be sent by facsimile or e-mail followed by an original letter by courier or certified mail.

23.4 Nothing in the Agreement is intended to or shall operate to create a partnership between the Parties or authorize either Party to act as agent for the other. Neither Party shall have the authority to act in the name of, on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power). The Agreement does not confer any rights on any person or party (other than the Parties to the Agreement and, where applicable, their successors and permitted assigns).

23.5 Failure or delay on the part of either Party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof. A waiver of any right under the Agreement is only effective if it is in writing and it applies only to the Party to whom the waiver is addressed and to the circumstances for which it is given.

23.7 Unless specifically provided otherwise, rights arising under the Agreement are cumulative and do not exclude statutory rights provided by law.

23.8 If any part of the Agreement is held to be invalid or unenforceable, such determination shall not invalidate any other provision of the Agreement, and the Parties shall attempt, through negotiations in good faith, to replace any part of the Agreement so held to be invalid or unenforceable. The failure of the Parties to reach agreement on the replacement provision shall not affect the validity of the remaining part of the Agreement.

23.9 No modification of or change in the Agreement, waiver of any provision or additional contractual relationship shall be valid, unless approved in the form of a written amendment to the Agreement signed by duly authorized representatives of both Parties.

23.10 The Agreement represents the entire understanding between both Parties in relation to its subject matter and supersedes all prior agreements, understandings or arrangements made by either Party, whether oral or written. Any terms and conditions on any purchase order or other document whatsoever which the Customer issues in connection with the Agreement shall not be binding on Basware, nor may they be used to interpret the Agreement.

Affiliate: a company that controls a Party, is controlled by a Party or is under common control with a Party. A company shall be presumed to be controlled by another if that other company has more than fifty percent (50%) of the votes in such entity and is involved in its management and affairs.

Authorized Users: those employees, agents and independent contractors of the Customer who are authorized by the Customer to use the Software and/or Services and the Documentation, as further described in this Agreement.

Basware Sales Agreement: the agreement document in which the Parties have defined and agreed upon the relevant details for the ordering and invoicing of the selected Software and Services.

Cloud Services: the Basware e-invoicing and SaaS (Software as a Service) based services and related services.

Confidential Information: technical and/or commercial information relating to the Parties’ respective businesses, facilities, products, techniques and processes in form of oral disclosure, demonstration, device, apparatus, model, sample of any kind, computer program, magnetic medium, document, specification, circuit diagram, or drawing and visual observation of the aforesaid, which information is proprietary to the disclosing party or to its Affiliates and is either clearly labeled as such or clearly identified either orally or in writing as Confidential Information.

Customer Data: the customer-specific data stored or otherwise provided by the Customer, Authorized Users or Basware on Customer’s behalf for the purpose of using the Software and/or Services or facilitating the Customer’s use of the Software and/or Services, as well as data generated by the Software and/or Service based on Customer or Authorized User input. Customer Data may include Personal Data. Customer Data shall not include usernames, other names and addresses allocated in the Software and/or Service for the Customer and any parameters entered into the Software and/or Service by Basware, all of which are considered to be identification information as set forth in Section 9.


Effective Date: the date of the last signature of the Basware Sales Agreement.

Error: an error or problem in the Software or Services, which prevents the Software or Services from performing substantially in accordance with the specifications set forth in the Delivery Documentation, Software Description or Service Description.

Fee(s): the Software and/or Service fees payable by the Customer to Basware for the Software and/or Services, as set forth in the Basware Sales Agreement or otherwise agreed by the Parties from time to time.

Intellectual Property Rights: any registered or unregistered rights in inventions, including patent applications, patents and utility models, design rights, copyrights, trademarks, trade names and services names, domain names, knowhow and other trade secret rights and all other intellectual property rights, derivatives thereof and forms of protection of a similar nature anywhere in the world.

Open Source Software: Software that is available in source code form and that may be distributed with a non-discriminating, royalty-free license.

Personal Data: means personal data as defined in the Directive 95/46/EC of the European Parliament and the Council of 24 October 1995, pursuant to which treatment of data is subject to regulation by the European Union, and, in all other cases, any information which identifies a natural person, such as the natural person’s name and/or other identifiers, including, but not limited to, government-issued social security, tax or license numbers.

Professional Services: installation, consultation, training, operational analysis, design and/or other preparatory project work as defined in the Delivery Documentation.

Service(s): the services as defined in the Basware Sales Agreement.
Agreement and in each Basware Service Description and Delivery Documentation, including Cloud Services, Professional Services and Support and Maintenance Services.

**Service Center(s):** the service centers operated and owned by Basware or by a subcontractor under responsibility of Basware in which the Services are produced and offered to the Customer.

**Service Description:** the description of each Service made available to the Customer by Basware from time to time.

**Service Level Agreement or SLA:** the applicable standard Basware Service-specific service level agreement, which sets forth agreed upon service levels and requirements for a Service, key performance indicators, and processes undertaken to achieve the agreed service level.

**Software:** the licensed software in object code form as specified in the Basware Sales Agreement and the Software Description.

**Software Description:** the description of the Software made available to the Customer by Basware from time to time.

**Support and Maintenance Services:** the support and maintenance services as to the Software.

**Support Documentation:** the Support and Maintenance Service Description, as well as the Service Description, to the extent it specifies the support services for Cloud Services.

**Third Party Application Services:** third party application services to which the Customer subscribes using electronic provisioning services provided by Basware.

**Third Party Application Software:** third party application software licensed to the Customer from or through Basware.
Kofax, Inc.
Software License Agreement

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1. Software License. Kofax, Inc. ("Kofax") grants to You a limited, non-exclusive license right (the "License") to install and use the downloaded Kofax Software Product(s) (the "Software"). The License allows You to use the Software on one or more computers (including evaluation, testing, demonstration, disaster recovery), duration and extent for which You have paid the appropriate license fees, as evidenced by one or more valid and mutually agreed upon purchase order documents between You and Kofax or an authorized Kofax reseller identifying the product(s) licensed (the "Software") and any applicable limitations on use (such as volume limitations or concurrent client module limitations). Where Your License is limited on an annual volume basis, Your authorized volume usage limit shall pertain to the 12 month period commencing from the date the Software is delivered to You. Page count licenses will expire and deactivate one year from purchase notwithstanding any existing unused image volume. Any features or functionality to be included in any future or subsequent releases of the Software are at the sole discretion of Kofax and nothing in this Agreement should be interpreted or construed to include any right on Your part to receive any specific features or functionality in the future.

2. Term & Termination. The License shall remain in effect perpetually unless terminated in accordance with the terms of this Agreement. You may terminate this Agreement and the License at any time by certifying destruction of all copies of the Software and associated documentation. This Agreement will further terminate upon Your failure to cure any material breach of this Agreement within 30 days of written notice from Kofax regarding such breach. In the event of termination, regardless of cause, the License will immediately terminate, and you will promptly destroy all copies of the Software. Sections 6, 7, and 10-17 of this Agreement, and the obligations embodied therein, will survive any termination of this Agreement.

3. Support Services. Kofax or an authorized Kofax reseller will provide support services for which You have paid the required annual support fees, subject to the terms and conditions of this Agreement and the Kofax Support Commitment (the "Support Commitment"). the current version of which are available at all times at www.Kofax.com/support/ and which is incorporated herein by reference. What is included and excluded from the services, and other requirements, is described in the Support Commitment. Kofax may make minor revisions to the Support Commitment from time to time without notice to You. Support pricing shall be as quoted and agreed upon between the Parties for the initial term, and shall increase for renewal terms by an amount not to exceed 5% of the prior year term fee, provided that increases associated with additional software license purchases, if any, shall be incorporated into the base for the purpose of calculation of each annual increase. The initial one year support services term will begin on the first day of the month following the invoice date of the Software. For as long as Kofax makes support services for the Software generally available to all of its customers, this Agreement will automatically renew on each anniversary date thereafter for a new one year term, unless You give Kofax 60 days written notice, prior to the end of the current term, of Your intent not to renew. Kofax will invoice You for renewal fees up to 60 days prior to expiration of each term. Kofax may terminate and suspend performance of all support services if You fail to pay for all amounts due under this Agreement within 30 days of written notice of such failure, in the event of any other material breach by You which remains uncured 30 days after notice thereof or if any of the Software ceases to be subject of a valid Software License Agreement. Kofax will not provide support following expiration of this Agreement. In the event You desire support to be reinstated following expiration, You agree: 1) to pay a reinstatement fee equal to the current annual support fee, and 2) to pay for at least one additional year of support services from the date of reinstatement.

4. Professional Services Engagements. All professional services engagements shall be performed under a separate professional services agreement, mutually agreed upon in writing by authorized representatives of each of us. Any fees for Software hereunder shall be due and payable under the terms set forth in Section 5 of this Agreement, and shall not be dependent or contingent in any way upon the performance or completion of any separate professional services engagements.

5. Price-Payment-Delivery. All rights granted in this Agreement are conditional upon payment of the appropriate fees. Invoices are due and payable 30 days from date of invoice. You agree to pay or reimburse all sales or use taxes and any other taxes (other than Federal income taxes) on or measured by amounts payable to Kofax hereunder. You are not responsible for Kofax’s income taxes. All tangible will be delivered FOB Kofax’s offices.

6. Copyright. The Software is proprietary commercial software developed at private expense by Kofax and/or its licensors. Kofax reserves all intellectual property rights to the Software and its documentation under U.S. Copyright Law and international copyright treaty provisions as well as trade secret, industrial property, unfair competition or similar laws applicable to the locality where you use it. No product or service provided under this Agreement will be deemed a "work-made-for-hire." In accordance with copyright law You may not, and You may not allow any third party to, 1) decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or discover any source code or underlying ideas of the Software by any means whatsoever; 2) remove any product identification, copyright legend or other notices; 3) rent, lease, lend, or sublicense the Software to third parties; 4) modify, incorporate into or with other software or create a derivative work of any part of the Software except as specified in the user documentation or as permitted under separate license agreement with Kofax; or 5) attempt to use the Software, or any portion thereof, in excess of its licensed capacity. Except as may be reasonably required to use the Software in accordance with the License, and except as strictly required for back-up and archival purposes, You may not copy the Software or any portion thereof.

7. Limited Warranty. Subject to the limitations stated herein, Kofax warrants to You, the original end user, that, for a period of 90 days from the date of receipt a) the hardware key and the media on which Software is furnished will be free of defects in materials and workmanship, and b) such Software, as delivered, will materially conform to Kofax’s then-current documentation for such Software. Your exclusive remedy, and Kofax’s entire liability, under this warranty will be, at Kofax’s option, the replacement of the non-conforming Software, hardware key, media and/or documentation or a refund of the license fee You paid, subject to Your return of the Software. This Limited Warranty is void if failure of the Software has resulted from accident, abuse or misapplication. Any replacement Software will be warranted for the remainder of the original warranty period or 30 days, whichever is longer. The services provided hereunder shall be performed in a good and workmanlike manner in accordance with generally accepted standards of the software industry. This section does not apply to the provision of professional services.

8. Disclaimer of Additional Warranties. THE EXPRESS WARRANTY ABOVE IS IN LIEU OF ALL OTHER WARRANTIES. KOFAX DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE AND ITS DOCUMENTATION, WHETHER ARISING UNDER ANY LAW, CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL THEORY, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; OR ANY WARRANTY ARISING FROM THE
12. Assignment. You may not assign this Agreement or any of the rights granted hereunder without the prior written approval of Kofax.

13. Notices. All notices under this Agreement shall be in writing, shall reference this Agreement, and shall be deemed given: 1) when delivered personally; 2) when sent by confirmed overnight mail; transmitted via facsimile three (3) days after being sent by registered or certified mail; or 4) one day after deposit with a commercial overnight carrier, with written verification of receipt.

14. Waiver/Severability. Failure by either of us to enforce any provision of this Agreement shall not be deemed a waiver of future enforcement of that or any other provision. Similarly, the provision of any accommodation exceeding the requirements of this Agreement shall not constitute a waiver of any provision hereof, nor shall it be construed to establish a course of dealing contrary to the express terms hereof. If any provision of this Agreement shall be adjudged by a court of competent jurisdiction to be unenforceable, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.

15. Resolution of Disputes. In the event of any dispute arising out of or relating to this Agreement, we shall attempt in good faith to resolve such dispute through informal means, including timely escalation of the dispute to senior management having full settlement authority. If the dispute is not resolved as a result of these efforts, the matter will be submitted to final and binding arbitration under the rules of the American Arbitration Association. We agree to cooperate in selecting an arbitrator and in scheduling the arbitration proceedings. Arbitration proceedings will be conducted by one arbitrator in the English language, applying the substantive state and federal laws of and for California, excluding its laws pertaining to "conflict of law". We specifically agree that that body of law known as the United Nations Convention on the International Sale of Goods shall not apply to this Agreement. The site of any proceedings shall be Orange County, California. The provisions of this section and any resulting award may be enforced by any court of competent jurisdiction. The prevailing party in any arbitration shall be entitled to an award of all costs, fees and reasonable expenses, including attorneys' fees, incurred as a result of the arbitration or any action to enforce the arbitration award. Punitive damages may not be awarded in connection with any arbitration proceeding arising out of or relating to this Agreement.

16. Force Majeure. Neither party to this Agreement shall be liable for non-performance to the extent that such non-performance is caused by events or conditions beyond that party's control, provided such party promptly notifies the other thereof and makes reasonable efforts to perform.

17. Complete Agreement. This Agreement, including all attachments, constitutes the entire agreement between the parties with respect to the subject matter hereof. It supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter, and it shall supersede any and all conflicting provisions of any order document(s) between the parties. This Agreement may be modified, amended or waived only by a written instrument signed by duly authorized representatives of both parties.