

# ICT~Office Terms and Conditions

## Module 3 Maintenance of software

*The ICT~Office Terms and Conditions are filed with the Chamber of Commerce for the Central Netherlands under number 30174840.*

### 1. Applicability

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

### 2. Services

- 2.1 The Supplier shall carry out maintenance work on the software specified in the agreement between the parties. The maintenance obligation shall include the fixing of errors in the software in accordance with Article 3 of this module and - only where agreed in writing between the parties - the provision of new versions of the software in accordance with Article 4 of this module.
- 2.2 Except where agreed otherwise in writing, the Supplier shall not be obliged to carry out data conversion.
- 2.3 If the agreement stipulates that the service provided by the Supplier shall also include the provision of support to users of the software, the Supplier shall issue advice by telephone or e-mail on the use and operation of the software referred to in the agreement. The Supplier may impose conditions in relation to the qualifications and the number of contacts who are eligible for support. The Supplier shall deal with properly substantiated requests for support within a reasonable period of time and in accordance with its standard procedures. The Supplier shall not guarantee the accuracy, completeness or timeliness of responses or support provided. Except where agreed otherwise in writing, support shall only be provided on working days during the Supplier's standard business hours.
- 2.4 If the agreement stipulates that the service provided by the Supplier shall also include the provision of so-called 'standby services', the Supplier shall ensure that one or more members of staff are available during the days and times specified in the agreement. If this is

the case, the Client shall be entitled to request urgent support from the members of staff on standby in the event of a serious failure in the operation of the software. The Supplier shall not guarantee that all failures will be corrected in a timely manner should this situation arise.

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

### 3. Provision of services

- 3.1 The Supplier shall make every effort to ensure that the services are provided with due care and in accordance with the arrangements and procedures agreed in writing with the Client where applicable. The Supplier shall provide all services on the basis of a best efforts obligation, unless and in so far as the Supplier has explicitly undertaken in the written agreement to achieve a specific result and the result in question is sufficiently determined.
- 3.2 The Client shall submit a detailed report of any errors identified in the software. Following receipt of the report, the Supplier shall make every effort to fix the errors and/or make improvements to future new versions of the software in accordance with its standard procedures. The results shall be made available to the Client in a manner and at a time to be determined by the Supplier, depending on the degree of urgency. The Supplier shall be entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the software. If no explicit agreements have been made in this regard, the Client itself shall install, set up, parameterise and tune the corrected software or the new version of the software provided, and adapt the hardware used and operating environment where necessary. The Supplier shall not guarantee that the software will operate with no interruptions, errors or defects or that all errors and defects will be fixed.
- 3.3 If the Supplier carries out the maintenance work online, the Client shall for its part ensure that the proper infrastructure and telecommunication facilities are in place in a timely manner. The Supplier shall be entitled to suspend or limit the maintenance work if the Client's infrastructure and telecommunication facilities do not meet the requirements imposed by the Supplier.



- 3.4 The Client shall lend any cooperation required by the Supplier for the purpose of the maintenance work, including the temporary suspension of use of the software by the Client if the Supplier deems this to be necessary. If the Client fails to lend the cooperation requested, the Supplier may suspend or limit the maintenance work. If the Supplier is providing services on the basis of information to be provided by the Client, this information shall be prepared in accordance with the conditions to be imposed by the Supplier and provided at the risk and expense of the Client. The Client shall at all times guarantee that all materials, information, software, procedures and instructions that it makes available to the Supplier for the purpose of providing the services is accurate and complete and that all data carriers issued to the Supplier meet the Supplier's specifications.
- 3.5 If the maintenance work relates to software that was not provided to the Client by the Supplier itself, the Client shall make the software source code and technical (development) documentation (including data models, designs, change logs etc.) available if the Supplier deems this to be useful, necessary or desirable for the purpose of carrying out the maintenance work. The Client shall guarantee that it is entitled to make this data and/or documentation available and that the rights of third parties do not prevent it from doing so. The Client shall grant the Supplier the right to use and adapt the software, including the source code and technical (development) documentation, within the context of performing the agreed maintenance work. The Client shall indemnify the Supplier against any claims by third parties in relation to the provision of this data and/or documentation and the Supplier's use of the data and/or documentation provided within the context of the maintenance work.
- 3.6 The maintenance work by the Supplier shall not affect the Client's responsibility to manage the software, which includes monitoring settings, the use of the software and the manner in which the results obtained through the use of the software are used. The Client shall also be responsible for training given to and use by users, regardless of whether or not there is a relationship of authority between the Client and these users. If no explicit agreements have been made in this regard, the Client itself shall install, set up, parameterise and tune the (auxiliary) software and adapt the hardware used and operating environment where necessary, as well as achieving the interoperability desired by the Client.

#### 4. New versions of the software

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

#### 5. Service Level Agreement

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

#### 6. Term

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



## **7. Payment**

- 7.1 If an invoicing schedule has not been agreed, all fees relating to the maintenance of software and any other services set out in the agreement shall in each case be payable in advance each calendar month.
- 7.2 Fees in respect of the maintenance of the software and any other services set out in the agreement shall be due as of the date on which the agreement commences. The fees in respect of maintenance and any other services set out in the agreement shall be due regardless of whether the Client is using or has put the software into use, or whether it has taken advantage of the option to have maintenance work carried out.

## **8. Exclusions**

- 8.1 The maintenance of the software shall not include the fixing of errors, defects or shortcomings arising from or related to:
  - a) usage errors or the improper use of the software, including errors that occur during the data input process or in the data itself
  - b) changes to the software other than those carried out by or on behalf of the Supplier
  - c) use of the software contrary to the applicable conditions or contrary to the instructions in the user documentation
  - d) changes to or errors, defects or shortcomings in the hardware or software that is not included within the scope of the maintenance work to be carried out by the Supplier
  - e) failure by the Client to have maintenance work carried out on the software in a timely manner
  - f) the use of an older version of the software that is no longer maintained by the Supplier
  - g) the recovery of scrambled or lost data
  - h) other causes that are not attributable to the Supplier.
- 8.2 If the Supplier carries out maintenance work or other work in connection with the provisions of Article 8.1, the Supplier shall be entitled to invoice the costs of this maintenance work or other work in accordance with its standard rates. This shall not affect the other fees payable by the Client in respect of maintenance work.

