

General Terms and Conditions of Circular IQ B.V.

GENERAL PROVISIONS

1. Offer and Agreement

- 1.1 All offers and other statements by Supplier shall be without obligation, unless Supplier expressly indicates otherwise in writing.
- 1.2 Customer warrants the accuracy and completeness of the data on which Supplier bases its offer and which have been stated by or on behalf of Customer to Supplier.
- 1.3 If any provision of these General Terms and Conditions is null and void or annulled, the other provisions of these General Terms and Conditions shall remain in full force.

2. Price and payment

- 2.1 All prices shall be exclusive of turnover tax (VAT) and other levies imposed by the government.
- 2.2 All prices shall be fixed for the period specified in the Agreement. Upon expiration of this period, unless agreed otherwise in writing, Supplier shall be entitled to adjust the applicable prices and rates by providing written notice at least three months in advance. If Customer does not wish to agree to such an adjustment, Customer shall, within thirty days after the notice, be entitled to terminate the Agreement before the date on which the adjustment would have become effective.
- 2.3 Customer shall pay invoices in accordance with the payment conditions stated on the invoice. In the absence of a specific provision, Customer shall pay within thirty days after the invoice date. Customer shall not be entitled to set off or to suspend a payment.
- 2.4 If Supplier for any reason anticipates that Customer may not be able to comply with its payment obligations, or in the event that the credit insurance obtained by Supplier no longer covers the risk of such non-compliance, then Supplier shall have the right to reject or suspend the performance of all the Agreement which are likely to be affected by Customer's non-compliance until such time that Customer has provided adequate additional payment security in a form reasonably acceptable to Supplier.
- 2.5 All licenses and other rights granted to Customer by Supplier have been granted under the condition precedent that all amounts owed by Customer under the Agreement, as well as all other amounts which Customer owes to Supplier due to a breach of its payment obligations, have been paid fully to Supplier.
- 2.6 The price payable by Customer shall be due with immediate effect if Customer:
 - a) becomes insolvent or is unable to pay its debts as they fall due; or
 - b) seeks to be declared bankrupt; or
 - c) is granted suspension of payments or similar relief under a legal procedure;
 - d) is subject to such a procedure; or
 - e) the Agreement is terminated for any reason.

3. Cooperation by Customer

- 3.1 Customer shall always furnish Supplier in a timely manner with all data or information which is useful and necessary to execute the Agreement properly and provide full cooperation. If Customer utilises its own employees in cooperating in the execution of the Agreement, these employees shall possess the necessary know-how, experience, abilities and characteristics.
- 3.2 Customer shall bear the risk of selecting, using and applying in its organisation the software, websites, databases and other products and materials and the services to be provided by Supplier.

- 3.3 If Customer does not provide Supplier with the data, information or employees necessary to execute the Agreement, or does not provide this in a timely manner or in accordance with the agreements made, or if the Customer otherwise does not fulfil its obligations, the Supplier shall be entitled to suspend execution of the Agreement in whole or in part, and it shall be entitled to charge the ensuing expenses in accordance with its usual rates, all of this without prejudice to the Supplier's right to exercise any other legal right.
- 3.4 In the event that employees of Supplier perform work on-site at Customer, Customer shall provide the facilities reasonably desired by those employees free of charge, such as a working space with computer and telecommunications facilities. The working space and facilities shall comply with all applicable statutory and other requirements and provisions concerning working conditions. Customer shall indemnify Supplier against claims by third parties, including Supplier's employees, who, in executing the Agreement, suffer injury which is the result of acts or omissions by Customer or of unsafe situations in its organisation. Customer shall provide timely notice to Supplier's employees to be utilised of the company and security rules applicable within its organisation.

4. Delivery periods

All delivery and other periods stated or agreed by Supplier have, to the best of its knowledge, been determined based on data known to Supplier when it entered into the Agreement. Supplier shall properly exert commercially reasonable efforts to observe agreed delivery and other periods. The mere fact that a stated or agreed delivery or other period has been exceeded shall not cause Supplier to be in default. In all cases, hence, even if the Parties have expressly agreed on a firm date in writing, Supplier shall not be in default because of a time period being exceeded until Customer has provided it with a written notice of default. Supplier shall not be bound by firm or non-firm delivery or other periods which can no longer be met on account of circumstances beyond its control which have occurred after the Agreement was concluded. Nor shall Supplier be bound by firm or non-firm delivery periods if the Parties have agreed to modify the substance or scope of the Agreement (additional work, change in specifications etc.). If any period threatens to be exceeded, Supplier and Customer shall consult with each other as soon as possible.

5. Confidentiality

- 5.1 For the purpose of this Article 5.1, Confidential Information shall mean any information (i) that is designated by the disclosing Party as "confidential" or "proprietary" or (ii), if orally disclosed, is identified by the disclosing Party as confidential or proprietary prior to disclosure and is subsequently reduced to writing and marked by the disclosing Party as "confidential" within fifteen (15) business days of such disclosure, or (iii) the confidential nature of which is reasonably apparent. Notwithstanding the foregoing, information disclosed by the disclosing Party pursuant to the Agreement shall not be Confidential Information to the extent that it can be proven that the information:
- a) is in or enters the public domain other than through the fault or negligence of the receiving Party and without breach of the Agreement;
 - b) is in the possession of the receiving Party prior to receiving it from the disclosing Party other than as a result of the receiving Party's breach of any legal obligation or a prior confidential disclosure by the disclosing Party;
 - c) is obtained by the receiving Party from a third party without restriction on disclosure and which is under no obligation of confidentiality (either direct or indirect) to the disclosing Party which respect to such Confidential Information; or
 - d) is developed by the receiving Party completely independently of and without use of any such disclosure by the disclosing Party.
- 5.2 All Confidential Information disclosed or transferred by either Party to the other shall remain the property of the disclosing Party. Except as otherwise expressly set forth in this Agreement, the receiving Party acknowledges and agrees that it does not, by implication or otherwise, acquire any intellectual property rights, title or ownership with respect to any Confidential Information disclosed by the disclosing Party hereunder.

- 5.3 The receiving Party shall during the term of the Agreement and a period of five (5) years thereafter:
- a) not use the Confidential Information for any purpose other than the performance of the Agreement;
 - b) maintain in confidence the Confidential Information, except that the receiving Party may disclose, solely to effect the performance of the Agreement, the Confidential Information to third parties who are its employees and (with the disclosing Party's prior written consent) its agents and consultants, all of whom must have a need to know.

The receiving Party agrees to use the same degree of care to maintain the confidentiality of all Confidential Information received from the disclosing Party that it uses to maintain the confidentiality of its own information of similar importance, but in no event will it use less than reasonable care.

- 5.4 If a receiving Party is required, pursuant to administrative or judicial action or subpoena, to disclose the other's Confidential Information, the receiving Party shall use reasonable efforts to maintain the confidentiality of the Confidential Information, e.g. by asserting in such action any applicable privileges. Immediately after gaining knowledge or receiving notice of such action or subpoena, the receiving Party shall notify the disclosing Party thereof and give the disclosing Party the opportunity to seek any other legal remedies so as to maintain such Confidential Information in confidence, including a reasonable protective order.

6. Intellectual or industrial property rights

- 6.1 All intellectual and industrial property rights to software, websites, databases, or other deliverables developed or provided under the Agreement (the "**Deliverables**"), such as analyses, designs, configurations, documentation, reports, offers, as well as preparatory materials in that regard, shall be held solely by Supplier, its licensors or its suppliers. Customer shall only acquire the rights of use expressly granted in the Agreement and these Terms and Conditions. Customer's rights of use shall be non-exclusive and non-transferable to third parties.

- 6.2 Supplier shall be allowed to take technical measures to protect any software made available to Customer or with a view to agreed restrictions in the duration of the right to use the software. Customer shall not be allowed to remove or evade such a technical measure.

- 6.3 If any claim is brought against Customer alleging that the use of any Deliverable infringes intellectual property or industrial property rights of any third party, Customer shall provide Supplier with full details of such claim as soon as reasonably practicable and Supplier shall defend, or at its option, settle the dispute and, subject to the limitations set forth in Article 7, Supplier shall pay the damages irrevocably awarded to such third party or agreed by Supplier with such third party. Notwithstanding the above, if at any time after notice to Supplier of any such claim the use of such Deliverables is enjoined, Supplier shall: (i) procure for Customer the right to continue using such Deliverables on terms reasonably acceptable to Customer; or (ii) modify the Deliverables so that they become non-infringing; or (iii) replace the Deliverables no additional charge with non-infringing products acceptable to Customer. If none of the remedies under (i) to (iii) would be reasonably available to Supplier, Supplier shall have the right to terminate the licenses granted hereunder without any further liability. Supplier shall have no obligation under this Article 6.3 if the alleged infringement concerns (i) materials made available to Supplier by Customer for use, modification, processing or maintenance or (ii) changes made or commissioned by Customer in the Deliverables without Supplier's written permission. The foregoing constitutes Supplier's sole obligations and Customer's sole remedies in the event of an infringement of any third party's intellectual or industrial property rights. Any further liability is explicitly excluded.

- 6.4 Customer shall be invited to participate in evaluations, presentations, meetings, surveys or discussions (collectively, "Discussions") for the purpose of informing Customer of Supplier's business and technology direction, and to allow Customer, at its sole discretion, to provide Supplier with input, comments or suggestions regarding Supplier's business and technology direction and/or the possible creation, modification, correction, improvement or enhancement of the products and/or services of Supplier, (collectively "Feedback"). Customer grants to Supplier a non-exclusive, perpetual, irrevocable, worldwide, transferable, royalty-free license, with the right to sublicense, under all relevant Customer's intellectual property rights, to use, publish, disclose, perform, copy, make, have made, use, modify, create derivative works, distribute, sell, offer for sale and otherwise benefit from Feedback in any manner and via any media.

7. Supplier's liability; indemnity

- 7.1 Supplier's total liability for imputably failing to perform the Agreement shall be limited to compensating direct damage, up to at most 25 % of the amount of the price (exclusive of VAT) stipulated for that Agreement. If the Agreement is primarily a continuing performance agreement with a term exceeding one year, the price stipulated for the Agreement shall be set at 25 % the total of the fees (exclusive of VAT) stipulated for one year. "Direct damage" shall solely mean:
- a. reasonable expenses which Customer would have to incur to make Supplier's performance conform to the Agreement; this alternative damage shall not be compensated, however, if the Agreement is rescinded by or at the suit of Customer;
 - b. reasonable expenses incurred to determine the cause and scope of the damage, insofar as the determination relates to direct damage within the meaning of these Terms and Conditions;
 - c. reasonable expenses incurred to prevent or mitigate damage, insofar as the Customer demonstrates that these expenses resulted in mitigation of direct damage within the meaning of these Terms and Conditions.
- 7.2 Supplier's liability for injury or damage through death or bodily injury or because of material damage to objects shall per event be limited to the amount actually paid in relation to such event by Supplier's insurance company.
- 7.3 Supplier's liability for consequential damage, consequential loss, lost profits, lost savings, loss of goodwill, damage through business interruptions, damage ensuing from claims by the Customer's customers, mutilation or loss of data, damage relating to the use of objects, materials or software of third parties prescribed by Customer for Supplier, damage relating to engagement of suppliers prescribed by Customer for Supplier and all other forms of damage or injury besides those mentioned in Article 7.1 and 7.2, on any account whatsoever, shall be excluded.
- 7.4 The limitations mentioned in the preceding paragraphs of this Article 7 shall not apply if and insofar as the damage or injury is the result of intentional acts or omissions or gross negligence by Supplier or its managers.
- 7.5 Supplier's liability because of an imputable failure to perform an Agreement shall in all cases only arise if Customer immediately and properly provides a written notice of default to Supplier, with a reasonable time period for remedying the failure being given and Supplier still imputably failing to perform its obligations after that period as well. The notice of default must contain a description of the breach which is as complete and specific as possible, so that Supplier can respond adequately.
- 7.6 For any right to damages to exist, Customer must always report the damage or injury to Supplier in writing as soon as possible after it occurs. Any claim to damages against Supplier shall be extinguished by the mere lapse of 24 months after the claim arises.
- 7.7 The provisions of this Article 7 shall also apply for the benefit of all legal and natural persons utilised by Supplier in executing the Agreement.

8. Force Majeure

- 8.1 A Party shall not be obliged to perform any obligation if it is prevented from doing so by a situation of force majeure. "Force majeure" shall also include a situation of force majeure for Supplier's suppliers, improper performance of obligations by suppliers prescribed by Customer for Supplier, as well as power failures, internet, data network or telecommunication facilities failures, and defects in objects, materials or software of third parties which Customer has required Supplier to use.

8.2 If a situation of force majeure lasts for more than 60 days, the Parties shall be entitled to terminate the Agreement by rescinding it in writing. What has already been performed pursuant to the Agreement shall in that case be settled proportionately, without the Parties otherwise owing each other anything.

9. Term and termination of the Agreement

9.1 The Agreement shall be concluded for the term specified therein. Upon expiration of such term, the Agreement shall be tacitly renewed for the same term, unless either Party has provided the other Party with a written notification of its intention to terminate the Agreement at the end of the then-current term. Such notification must be provided no later than three (3) months prior to the end of the then-current term.

9.2 Each of the Parties shall only be entitled to rescind the Agreement if the other Party imputably fails to perform material obligations under the Agreement - in all cases, after having received a proper written notice of default which is as detailed as possible and in which it has been given a reasonable time period to remedy the breach.

9.3 Each of the Parties may partly or completely terminate the Agreement in writing with immediate effect and without a notice of default if the other Party is granted a provisional or non-provisional suspension of payments, if a petition for liquidation is filed with regard to the other Party or if the other Party's business is wound up or terminated for other reasons besides a business reconstruction or merger. Supplier shall never be obliged on account of this termination to refund funds already received or to pay damages. In the event of Customer's liquidation, the right to use software provided to Customer shall be extinguished by law.

9.4 If, at the time of the rescission referred to in Article 9.2, Customer has already received performance in connection with execution of the Agreement, this performance and the related payment obligation shall not be cancelled, unless Customer proves that Supplier is in default with regard to that performance. Amounts which Supplier has invoiced before the rescission in connection with what it has already properly performed or delivered to execute the Agreement shall, subject to the provisions in the preceding sentence, continue to be owed in full and shall be immediately payable at the time of rescission.

10. Applicable law and disputes

10.1 Dutch law shall govern the Agreements between Supplier and Customer. The Vienna Sales Convention of 1980 shall not apply.

10.2 Disputes arising between Supplier and Customer in connection with an Agreement concluded between Supplier and Customer or in connection with further agreements which arise under this Agreement, shall be settled through arbitration in accordance with the Arbitration Regulations of the Foundation for the Settlement of Automation Disputes in Haarlem, the Netherlands, all of this without prejudice to the Parties' right to request relief in interlocutory arbitration proceedings and without prejudice to the Parties' right to take protective pre-judgment measures.

12.3 In order to attempt to achieve an amicable resolution of an existing or potential future dispute, either Party may always initiate IT mediation pursuant to the IT Mediation Regulations of the Foundation for the Settlement of Automation Disputes in Haarlem, the Netherlands. IT mediation pursuant to these Regulations shall be based on mediation by one or more mediators. This procedure shall not result in a judgment which is binding on the Parties. Participation in this procedure shall be voluntary. The provisions in this paragraph of this Article shall not preclude a Party which so desires from skipping the IT mediation procedure and immediately pursuing the dispute procedure mentioned in Article 12.2.

SERVICES

In addition to the General Provisions in these General Terms and Conditions, the provisions set forth in this Chapter "Services" shall apply if Supplier provides services, such as feasibility studies, consultancy services, study programmes, courses and training sessions. These provisions shall not affect the provisions included in these General Terms and Conditions concerning specific services, such as services for the development of software, maintenance and support and SaaS services.

13 Performance

13.1 Supplier shall perform the services with due care and, where appropriate, in accordance with the agreements and procedures set out in writing with Customer. All of Supplier's services shall be performed on the basis of a commercially reasonable efforts obligation, unless and insofar as Supplier has expressly promised a result in the Agreement and the result concerned has also been described with sufficient definiteness. Any agreements concerning a service level must always be expressly agreed in writing.

13.2 If it has been agreed that the services shall be provided in stages, Supplier shall be entitled to postpone the start of the services which are part of a stage until Customer has approved the results of the preceding stage in writing.

14. Modification and additional work

14.1 If, at the request of or with prior consent from Customer, Supplier has performed work or rendered other performance which goes beyond the substance or scope of the agreed services, Customer shall pay for that work or performance according to Supplier's usual rates. Supplier shall never be obliged to satisfy such a request, and it may require that a separate written agreement be concluded.

14.2 Customer accepts that work or performance as referred to in Article 14.1 may affect the agreed or expected time of completion of the services and the mutual responsibilities of Customer and Supplier. The fact that additional work (or the demand for it) arises during execution of the Agreement shall never be a ground for Customer to rescind or terminate the Agreement.

14.3 Insofar as a set price has been agreed for the services, Supplier shall, upon request, inform Customer in writing in advance about the financial consequences of the extra work or performance.

15. Study programmes, courses and training sessions

15.1 Insofar as the services by Supplier consist of providing a study programme, course or training session, Supplier may always demand payment of the amount owed before it begins to provide these services. The consequences of cancellation of participation in the study programme, course or training session shall be as set out in the Agreement.

15.2 If the number of registrations justifies doing so in Supplier's judgment, Supplier shall be entitled to combine the study programme, course or training session with one or more other study programmes, courses or training sessions, or to have them take place at a later date or a later time.

DEVELOPMENT AND/OR CONFIGURATION OF SOFTWARE

In addition to the General Provisions in these General Terms and Conditions and the specific provisions in the Chapter "Services", the provisions set forth in this Chapter "Development and/or configuration of Software" shall apply if Supplier develops and/or configures software at Customer's instruction.

16. Development and/or configuration of software

- 16.1 If specifications for or a design of the software to be developed and/or configured were not already given to Supplier when the Agreement was concluded, the Parties shall in consultation specify in writing which software shall be developed and/or configured and in which manner this shall occur. Supplier shall develop and/or configure the software with due care based on data to be provided by Customer, the correctness, completeness and consistency of which Customer shall warrant.
- 16.2 Supplier shall be entitled, but not required, to examine the correctness, completeness or consistency of the data, specifications or designs given to it and, if any imperfections are discovered, to suspend the agreed work until Customer has eliminated the imperfections concerned.

17. Acceptance

- 17.1 If an acceptance test has been agreed, the test period shall be 14 days after Supplier has provided Customer with a written notification that the software is ready for acceptance testing. Customer shall not be allowed to use the software for productive or operational purposes during the test period. Supplier may always require, hence, even if this has not been expressly agreed, that Customer conducts a proper test of sufficient scope and depth using sufficiently qualified employees as to interim or other results of the development and/or configuration work and that the test results be reported to Supplier in writing and in a well-organised and comprehensible manner.
- 17.2 The software shall be considered accepted by the Parties:
- a. if an acceptance test has been agreed between the Parties: at the time of Customer's first access to the software, or
 - b. if an acceptance test has been agreed between the Parties: on the first day after the test period, or
 - c. if the Supplier receives a test report as referred to in Article 17.4 before the end of the test period: at the time that the errors mentioned in that test report have been fixed, notwithstanding the existence of imperfections which do not preclude acceptance under Article 17.5. In deviation from this, if Customer makes any use of the software for productive or operational purposes before express acceptance, the software shall be considered fully accepted as from the start of that use.
- 17.3 If, when the agreed acceptance test is conducted, it turns out that the software contains errors which impede the progress of the acceptance test, Customer shall provide written, detailed notice to Supplier, in which case the test period shall be interrupted until the software has been adjusted in such a manner that this impediment is eliminated.
- 17.4 If, when the agreed acceptance test is conducted, it turns out that the software contains errors, Customer shall inform Supplier about the errors through a written and detailed test report no later than on the last day of the test period. Supplier shall use commercially reasonable efforts to fix the aforementioned errors within a reasonable time period, with Supplier being entitled to install temporary solutions, program bypasses or problem-avoiding restrictions in the software.
- 17.5 Acceptance of the software may not be withheld on other grounds besides those relating to the expressly agreed specifications between the Parties nor because of the existence of minor errors, that is, errors which do not reasonably preclude putting the software to operational or productive use, notwithstanding the Supplier's obligation to fix these minor errors. In addition, acceptance may not be withheld with regard to aspects of the software which can only be evaluated subjectively, such as the design of the user interfaces.

- 17.6 Acceptance of the software in one of the ways referred to in Article 17.2 shall have the effect that Supplier is fully discharged for performing its obligations concerning developing and/or configuring the software.

SOFTWARE AS A SERVICE

In addition to the General Provisions in these General Terms and Conditions and the specific provisions in the Chapter "Services" and the specific provisions in the Chapter "Development and/or configuration of Software, the provisions set forth in this Chapter "Software as a Service" shall apply if Supplier makes software available to Customer as a service (SaaS). For the application of these general terms and conditions, SaaS means a service by which Supplier makes software available to Customer remotely through the Internet or another data network, and maintains this availability remotely, without providing a physical carrier with the software concerned to Customer.

18. Provision of SaaS

- 18.1 In the event that Supplier provides SaaS, Supplier shall grant Customer a personal, non-exclusive and non-transferable license for Authorized Users to remotely access and use the software during the term of the Agreement, solely for Internal Business Purposes. For the purpose of this Article 18.1:
- Authorized Users shall mean: such employees of Customer and its sub-tier suppliers as are authorized by Customer to access and use the software; and
 - Internal Business Purposes shall mean: Customer's own business activities.
- 18.2 The right of the Authorized Users to remotely access and use the software shall be subject to both these General Terms and Conditions Prior to being able to access and use the software, Authorized Users shall be obliged to accept these terms and conditions.
- 18.3 A high speed Internet connection is required for proper provision of the SaaS. Customer is responsible for procuring and maintaining the network connections that connect its network to the SaaS, including, but not limited to, "browser" software that supports protocols used by Supplier, and to follow procedures for accessing services that support such protocols. Supplier is not responsible for notifying Customer of any upgrades, fixes or enhancements to any such software or for any compromise of data, transmitted across computer networks or telecommunications facilities (including but not limited to the Internet) which are not owned, operated or controlled by Supplier. Supplier assumes no responsibility for the reliability or performance of any connections as described in this Article 18.3.
- 18.4 Except as otherwise expressly set forth in the Agreement, Customer agrees that: (i) it will not, without the prior written consent of Supplier, directly or indirectly (a) transfer, assign, lease, loan, resell for profit, distribute or otherwise grant any rights in the software in any form to any third party; or (b) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the software; (c) copy, modify, translate, or create derivative works based on the software; or (d) remove or alter any notice on or in the software.
- 18.5 Customer is solely responsible for the administration, authorization and termination of all unique user identifications and passwords to access and use the software by Customer and its Authorized Users. Customer shall provide Supplier with accurate, complete and updated registration information of its Authorized Users. Customer shall be solely responsible for the security of its access to the software and the security of each Authorized User's identification(s) and password(s). Customer shall not permit Authorized Users to share user identifications and passwords with any third party.
- 18.6 Supplier may change the content or scope of the SaaS delivery model. If such changes result in a change in Customer's current procedures, Supplier shall inform Customer about the matter as soon as possible and the costs of this change shall be borne by Customer. Customer may in this case give notice of termination of the Agreement, which termination shall then take effect on the date on which the change takes effect, unless the change is related to changes in relevant legislation or other instructions issued by competent bodies, or Supplier bears the costs of a change.

- 18.7 Supplier may continue to provide SaaS using a new or modified version of the software. Supplier is not obliged to maintain, modify or add certain features or functionalities of the service or software specifically for Customer.
- 18.8 Supplier reserves the right, in its reasonable discretion, to temporarily suspend Customers and/or its Authorized Users' access to and use of the software made available through the SaaS: (a) during planned downtime for upgrades and maintenance to the SaaS (of which Supplier will use commercially reasonable efforts to notify Customer in advance ("Planned Downtime"); (b) during any unavailability caused by circumstances beyond Supplier's reasonable control, such as, but not limited to, acts of God, acts of government, acts of terror or civil unrest, technical failures beyond Supplier's reasonable control (including, without limitation, inability to access the Internet), or acts undertaken by third parties, including without limitation, distributed denial of service attacks; or (c) if Supplier suspects or detects any malicious software connected to the software or use of the SaaS by Customer or its Authorized Users.
- 18.9 Unless otherwise agreed in the Agreement, Customer shall be solely responsible for making timely back-ups of the data entered into, processed by or generated through the software. Where it has been explicitly agreed that Supplier shall make back-ups, Supplier shall make a complete backup of Customer's data in accordance with the periods agreed in writing or once a week if such periods have not been agreed. Supplier shall retain the backup for the duration of the agreed term. Supplier shall retain the backup with due care. Notwithstanding the foregoing, Customer remains responsible for the fulfilment of all administrative and retention obligations that apply to it by law.
- 18.10 Customer shall be solely responsible for the content of any and all data transmitted through the software. Customer shall not use the software and Supplier's or its third party provider's systems in a manner that: (i) monopolises the software and/or such systems in an unreasonable or disproportional manner; (ii) hinders the proper operation of the software and/or such systems; (iii) infringes any intellectual property or other third party right; or (iv) violates applicable law. Customer shall defend and, at Customer's sole option, settle any claim based on or resulting from Customer's breach of any of its obligations under this Article 18.8, and Customer will pay any costs and damages awarded against Supplier or its third party provider(s) or settlement with respect to such claim, provided that Supplier (i) notifies Customer promptly in writing of any such claim or proceeding, (ii) gives Customer full and complete authority, information and assistance to defend such claim, and (iii) gives Customer control of the defence and settlement of any such claim.

19. Privacy and Security

- 19.1 To the extent the data submitted to, posted in and stored within the SaaS by Customer and/or its Authorized Users ("Customer Data") include or constitute Personal Data (as defined hereinafter), Customer hereby agrees that it shall be deemed to be the data controller and Supplier shall be deemed to be the data processor as those terms are understood under the applicable law. Under no circumstances will Supplier be deemed a data controller with respect to Personal Data. For the purpose of this Article 19.1, Personal Data shall mean any information relating to an identified or identifiable natural person where an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to their physical, physiological, mental, economic, cultural or social identity.
- 19.2 Supplier will ensure that, to the extent that any Customer Data constitutes Personal Data, if Customer Data is transferred to a country or territory outside of the EEA (a "non-EEA country"); then such transfer will only take place if: (a) the non-EEA country in question ensures an adequate level of data protection; (b) one of the conditions listed in Article 26(1) of the Directive 95/46/EC on the protection of individuals with regard to the processing of Personal Data and on the free movement of such data is satisfied; or (c) Supplier has ensured that the transfer is subject to adequate safeguards (such as the model contractual clauses designed to facilitate transfers of Personal Data from the EEA to all third countries that have been adopted by the European Commission (known as the, "Standard Contractual Clauses") or adherence to the principles of the Personal Data Safe Harbors). Customer agrees and acknowledges that it is Customer's responsibility as a data controller to notify Supplier of its intent to store Personal Data from the EEA. If Customer so notify Supplier,

Customer's rights to access and use the SaaS to store such Personal Data shall be conditioned upon Customer's execution of a data processing agreement as provided to Customer by Supplier.

- 19.3 Supplier will maintain commercially reasonable administrative, physical and technical safeguards to protect the security, confidentiality and integrity of Customer Data. Notwithstanding the above, however, Customer shall be responsible to identify and list the security, confidentiality and integrity risks to its organisation and take additional measures if necessary. Supplier declares that it is prepared to provide assistance, at Customer's request, to the extent reasonable and according to the financial and other conditions set by Supplier, with respect to further measures to be taken by Customer. Supplier is never obliged to recover data that has been corrupted or lost.
- 19.4 Customer agrees that Supplier and the service providers that it utilizes to assist in providing the SaaS to Customer shall have the right to access Customer's account and to use, modify, reproduce, distribute, display and disclose Customer Data to the extent necessary to provide the SaaS, including, without limitation, in response to Customer's support requests. Any third party service providers Supplier utilizes will only be given access to Customer's account and Customer Data as is reasonably necessary to provide the SaaS and will be subject to (a) confidentiality obligations which are commercially reasonable and substantially consistent with the standards described in Article 5 and (b) their agreement to comply with the data transfer restrictions applicable to Personal Data as set forth in Article 19.4.
- 19.5 In addition to Customer Data, Supplier collects certain information (which may include Personal Data) about Customer and its Authorized Users as well as Customer's and its Authorized User's respective devices, computers and use of the SaaS. Supplier uses, discloses, and protect this information in accordance with a data processing agreement to be concluded between Supplier and Customer.
- 19.6 Customer agrees that Supplier shall have the right to use Customer Data in order to improve its products and services, to develop new products and services, and for benchmarking, reporting and data analysis purposes, provided that (i) that such Customer Data do not include any Personal Data; and (ii) that in the course of such use, Supplier shall not disclose to any third party any Customer Confidential Information.

20. Guarantee

- 20.1 Supplier warrants that it shall use commercially reasonable efforts to perform the SaaS in a professional manner, and, where applicable, in accordance with the service levels agreed upon between Supplier and Customer in a specific service level agreement.
- 20.2 Except for the express warranties set out in Article 20.1, the SaaS is provided on an 'as is' basis and Customer's use of the SaaS is at its own risk. Supplier and its third party providers do not make, and hereby disclaim, any and all other expressed and/or implied warranties. In particular, Supplier and its third party providers do not warrant that the SaaS will be uninterrupted, secure or error-free and that all software defects can be remedied. Also, Supplier does not guarantee that the software made available and held in the context of the SaaS shall be adapted to changes in relevant legislation and regulations on time. If Supplier performs work relating to the software, or to the data of Customer, its employees or users, pursuant to a request or a competently issued order of a government agency or in connection with a legal obligation, all costs associated with this work shall be charged to Customer.