

## 1. Scope

- 1.1. These General Terms and Conditions, hereafter “GT&C”, apply to any and all current and future delivery of services and/or products from ITCE to Customer.
- 1.2. Together with the ST&C, and the Third-Party Supplier T&C, these GT&C form the Agreement.

## 2. Definitions

The capitalized terms within these GT&C shall have the following meaning throughout the Agreement:

- 2.1. **‘Agreement’**: these GT&C, the ST&C and, where applicable, the Third Party Supplier T&C and/or Data Processing Agreement.
- 2.2. **‘Bespoke SaaS Solution’**: ITCE’s standard SaaS solution, complemented with the necessary implementation works (e.g. configurations and parameterizations) on the basis of the Customer’s requirements.
- 2.3. **‘Confidential Information’**: Any information of a confidential nature that is exchanged between the parties in the context of this Agreement, e.g. financial, commercial, market sensitive, operations, processes, product information, personal data, etc.. Information will in any event be considered confidential if so designated by either of the Parties.
- 2.4. **‘Consultant’**: employees of ITCE or its affiliated companies, independent consultants, subcontractors and directors of ITCE involved in the provision of the Services.
- 2.5. **‘Customer’**: The customer making use of ICTE’s Products and/or Services, as indicated in the ST&C.
- 2.6. **‘Data Processing Agreement’**: the agreement between Parties that sets out the Parties their rights in relation to ITCE’s processing of personal data.
- 2.7. **‘Force Majeure’**: An event or circumstance beyond the control of the party invoking it, such as but not limited to fire, flood, war, terrorism, unfavourable weather conditions, sickness of Consultants, defects or bugs in goods, equipment, materials, software etc. of third parties, government measures, electricity outages, acts of third parties such as introduction of viruses, (D)DoS attacks, hacking etc., unavailability of third party servers, disruption of internet, network or telecom facilities, general transportation problems, force majeure of Third- Party Suppliers or subcontractors of ITCE.
- 2.8. **‘ITCE’**: IT Centre of Excellence bvba, a company incorporated under the laws of Belgium, with company number 0887.268.797, having its registered office at Pluyseghemstraat 50, B-2550 Kontich.
- 2.9. **‘Parties’**: ITCE and the Customer.
- 2.10. **‘Private Cloud’**: provision and delivery of (cloud) solutions by ITCE through use of its own leased datacentres. Private Cloud solutions can be cloud-based, dedicated or shared.

- 2.11. **'Public Cloud'**: provision, delivery and/or reselling of (IaaS, PaaS, SaaS) cloud solutions offered by ITCE or its Third-Party Suppliers (e.g. Microsoft O365).
- 2.12. **'Products'**: Any software, hardware or other products delivered to the Customer by or through ITCE. Products shall most often be Third-Party Supplier products.
- 2.13. **'Services'**: all services, including the provision of cloud, implementation, development, consultancy or other Services, training and/or the reselling/sublicensing of Products and Services of Third-Party Suppliers provided by ITCE under this Agreement, as may be further described in the ST&C.
- 2.14. **'ST&C'**: one or more agreements (e.g. the Quote, an order form, statement of work, work order, accepted offer etc.), subject to these GT&C, which describes the specific performance modalities of the Agreement.
- 2.15. **'Third-Party Supplier'**: The manufacturer or supplier of the Products and/or Services (e.g. maintenance or helpdesk services) Customer purchases through ITCE, where ITCE acts as a (SPLA or standard) reseller, sub- licensor or intermediate or that Customer purchases itself directly from the Third-Party Supplier.
- 2.16. **'Third-Party Supplier T&C'**: The terms and conditions of the Third-Party Supplier, as are applicable to the Products and/or Services owned, licensed or created by a Third-party Supplier, and in particular the intellectual property conditions and restrictions thereof.

### **3. Modalities of performance**

- 3.1. Under this Agreement, ITCE will perform Services and/or deliver Products in the field of information and communication technologies.
- 3.2. ITCE will rely on one or more Consultants to perform the Services. Unless expressly agreed otherwise in writing, ITCE will be free to determine which Consultants will perform the Services (provided that a certain level of experience and seniority might be agreed upon) and may replace them from time to time at its own discretion.
- 3.3. For certain Services, ITCE will access the Customer's premises. In this event, Customer must provide working space and facilities that are safe and secure and in compliance with all requirements of law. Notwithstanding any term to the contrary, the Customer at all times remains responsible for the security and access control policy, registration, de-registration and withdrawal of the access rights of ITCE's Consultants to the Customer's systems and premises. Customer shall only grant ITCE's Consultants access to its systems and data if and to the extent strictly required for the performance of the Agreement and solely for the term as such is required. The Customer shall notify the concerned Consultants of the house rules and safety procedures applicable to its premises, prior to the initiation of the Services.
- 3.4. The Customer is at all times remains responsible for its existing infrastructure and Customer must make sure to implement the necessary procedures to allow recuperation of lost or altered files, data or programmes. This includes e.g. taking back-ups on a daily basis. The Customer must take a full back-up of its entire IT environment and all of its data, before ITCE initiates its Services and before each important alteration of its IT environment (such as but not limited to important updates, implementation of new software or hardware, etc.).

- 3.5. In derogation of the above, if Customer purchases back-up services, ITCE (or the Third-Party Supplier where applicable) will be responsible for back-up of the Customer's data in such cloud, in accordance with the ST&C and/or the Third-Party Supplier T&C.
- 3.6. ITCE can under no circumstances be held responsible for the absence of license rights for products, software and applications that are being used by the Customer, whether on its own systems, or on any systems provided by ITCE. Customer guarantees that he has the commercial rights required to use the applications deployed by it. The Customer shall indemnify, defend and hold ITCE harmless from and against any and all costs (including legal fees), expenses, fines, penalties, damages, claims and proceedings ITCE would incur due to the absence of such licenses and/or user rights of the Customer.

#### **4. Cooperation**

- 4.1. Committed and timely cooperation from the Customer is essential for the successful delivery of Products and Services in the field of information and communication technologies. The Customer must assign committed Personnel with the relevant expertise and must provide all reasonable cooperation requested by ITCE.
- 4.2. The Customer shall provide ITCE with all information, technical or general documentation or other explanatory material necessary for the performance of the Services. ITCE will deliver its Services within the scope and limits of this Agreement and in accordance with the information and instructions provided by Customer. Customer must make sure all information, documentation, dimensions, requirements, specifications and other data provided to ITCE is accurate and complete, as ITCE may rely on such information for the delivery of the Products and Services. Customer's failure to provide the required information, documentation, dimensions, requirements, specifications and other data in time, may extend agreed delivery times and may lead to additional costs.
- 4.3. Customer shall remain responsible for all content and information it provides to ITCE and indemnifies ITCE from all claims, fines, losses, expenses (including attorney's fees) lawsuits and damages resulting from incorrect, incomplete or unlawful information, data, content or instructions.

#### **5. Development Services**

- 5.1. In the course of providing the Services, ITCE may develop software or a Bespoke SaaS Solution upon the Customer's request and according to the Customer's requirements.
- 5.2. The Parties will jointly decide on the methodology to be followed.

##### ***Waterfall (Traditional method)***

- 5.3. The Customer will provide ITCE with its requirements that will form the basis of the design to be made by ITCE. ITCE will develop and implement the software or Bespoke SaaS Solution on the basis of its design.
- 5.4. In the event the development is done on a fixed price basis, any change in scope or any additionally required developments or implementations that were not requested by the Customer in the design phase will give rise to additional costs that will be charged as agreed between Parties.

## **Agile**

- 5.5. The agile methodology requires a team of ITCE Consultants and Customer staff (**'Development Team'**) to work together to reach the end result. The requirements defined in the initial stage will serve as a starting point that can be adapted by the Parties throughout the development lifecycle.
- 5.6. The Customer will ensure that its staff that forms part of the Development Team have the required expertise and authorizations to manage the project and to make decisions relating to scope and budget.
- 5.7. The Development Team will jointly decide on the priorities to be given to a specific part of the development and will allocate the workload to each part of the project.
- 5.8. The Development Team will designate a person in charge of maintaining the prioritized list of development and the progress so far (**'Backlog'**).
- 5.9. The development lifecycle will be divided into a recurring period of weeks (a **'Sprint'**) (e.g. recurring periods of two weeks) wherein Parties agree to reach a certain result based on the priorities and requirements as set out at the beginning of the Sprint. At the end of each Sprint, Parties will evaluate the result, decide on the next steps (e.g. by redefining priorities, redefining the timing, adding or removing requirements, etc.) and update the Backlog accordingly.
- 5.10. The Parties may agree to work in time and material or according to a budget. In the event the Parties have agreed to a budget, the Development Team will allocate parts of the budget to the Sprints as they go along. In the event that the Development Team threatens to go over the budget, ITCE will inform the Customer and the Parties can then jointly agree on the steps forward (e.g. changing the scope of the development to stay within budget or amending the budget).

## **6. Training Services**

- 6.1. ITCE may make available training Services to the Customer. The Customer will make available the necessary accommodation (e.g. location) and equipment (e.g. beamer) for the training Services, unless agreed otherwise in writing.
- 6.2. ITCE will undertake reasonable efforts to ensure training sessions will take place as scheduled.
- 6.3. In the event, due to Force Majeure, ITCE could not or could only partially provide a training session, ITCE is entitled to postpone the course or to wholly or partially dissolve the Agreement.
- 6.4. In the event the Consultant indicated in the ST&C would not or would no longer be available for the performance of the training Services for any reason other than Force Majeure, ITCE will use its best endeavours to assign another Consultant with the same level of expertise in the field of the Training to be provided. In the event ITCE is not able to propose a suitable replacement, the Customer may choose to annul the applicable training Services, or to postpone the training.
- 6.5. Without prejudice to article 6.4 and unless agreed otherwise in writing, training sessions are not cancellable by Customer.
- 6.6. In the event cancellation modalities are provided in the ST&C, notwithstanding any term to the contrary, all costs and expenses (such as reservation of train tickets, flights, hotels, etc.) made prior to cancellation, must be remunerated in full by the Customer.

- 6.7. Customer accepts and acknowledges that the Consultant(s) and training Services are not certified, unless explicitly provided otherwise in the ST&C. In the event of certification, details thereof will be provided in the ST&C.
- 6.8. Unless explicitly agreed otherwise in the ST&C, ITCE is not required to make training material available (e.g. PowerPoints, hand-outs, books, syllabi, teaching structures, schedules, etc.) to the Customer and/or attendees.
- 6.9. If ITCE does make available training material, such will, at ITCE's discretion, be drawn up in English or Dutch, unless Parties explicitly agree otherwise in the ST&C.
- 6.10. The cost of hand-outs and possible other training materials provided to attendees of training Services are not included in the prices.
- 6.11. ITCE shall not be under any obligation to update any training material to take into account events occurring after the training material has been issued to Customer.
- 6.12. Training materials are intended for internal use only. The Customer is not allowed to disclose training materials to any third party, without prior written consent of ITCE.
- 6.13. Customer is not allowed to remove or alter any indication pertaining to copyright, trademark, tradename or any (other) intellectual or industrial property right.

## **7. Prices and orders**

- 7.1. All prices, brochures and other product data offered or visible on the website are purely informative and approximate. Solely an express offer from ITCE, titled "Quote", shall be binding to ITCE, for a maximum term of fifteen (15) days, or as otherwise stipulated in the offer.
- 7.2. The agreed prices of the Products and Services shall be included in the ST&C and apply solely for the Customer's first order as described therein. Any additional order shall require a new quote, except where ITCE would decide otherwise.
- 7.3. Allowing ITCE the commencement of the Services, shall be considered a binding order from the Customer's part and acceptance from ITCE's quote (if applicable).
- 7.4. Solely the Customer is responsible for the correctness of its orders and any errors therein. The Customer (with exclusion of ITCE) shall be liable to ensure the suitability of the Products and/or Services regarding the result the Customer wishes to achieve. Except where expressly stipulated otherwise, the Customer is irrevocably deemed to be a professional user acting in the context of its professional activities.
- 7.5. ITCE may at all times modify prices of Third- Party Supplier Products and/or Services by means of a written notification, if this is the result of a price adjustment by the Third Party Supplier or as a result of exchange rate variations.
- 7.6. Prices are excl. VAT, taxes and levies, duties, transport prices, import duties and other reasonable costs and expenses. Any such taxes and costs shall be borne by the Customer.
- 7.7. Unless expressly agreed otherwise, prices are excl. of travel costs. Solely travel time to Customer's premises as indicated in the ST&C is included.

- 7.8. The Services performed by ITCE shall be invoiced on a time and material basis (i.e. remuneration of actual performed service hours and incurred expenses), unless expressly agreed otherwise in the ST&C. The applicable hourly rates shall be indicated in the ST&C. Interventions on a time and material basis shall be invoiced with a minimum of four (4) hours. Except where expressly written 'maximum price' or 'fixed price', any reference to a total price or timing will not be binding to ITCE and is purely indicative.
- 7.9. Public Cloud or Private Cloud will be invoiced on a monthly basis per server/resource or license as per the rates as set out in the ST&C.
- 7.10. If a minimum commitment applies to certain (Third Party Supplier) Services, then the Customer shall be held to pay for the full amount of the fees that correspond to the entire minimum commitment period, even if the Services are terminated for any reason.
- 7.11. ITCE may adjust the agreed prices annually in January, in accordance with the following formula:
- New price = Initial price \* (0.2 + 0.8 \* (New index/Initial index)). Whereby:
- Initial price = price at the start of the Agreement;
  - Initial index = the index published by Agoria "reference national average wage cost" of the month preceding the signing of the order;
  - New Index = the index published by Agoria "reference national average wage cost" of the month preceding the anniversary of the order.
- 7.12. In the event, upon request or approval of the Customer and/or in urgent situations, ITCE would perform Services over 38h per week and/or outside of normal business hours, the following increases will be applied (highest rate applicable, non-cumulative):
- performance > 38 hours/week: + 50%; performance > 7.6 hours/day: + 50%;
  - performance between 10 PM and 7 AM: + 100%;
  - performance on Saturday: + 50%;
  - performance on Sunday or public holiday: 200%.
- 7.13. If fundamental changes in circumstances occur that affect the agreed prices and disturb the contractual equilibrium and that were not reasonably foreseeable when the price was set (e.g. increased price of raw materials or fuel, increased production costs, highly variable exchange rates, etc.), Parties will meet to renegotiate the concerned part of the Agreement. If no agreement is reached within twenty (20) calendar days from the request to renegotiate the Agreement, the requesting party has the right, at its sole discretion, (i) to request a competent court to adapt the Agreement so that the contractual equilibrium would be restored; or (ii) to terminate the Agreement with a period of notice of thirty (30) calendar days, by the mere sending of a registered letter to the other party.

## **8. Invoicing and payment**

- 8.1. Unless agreed otherwise in the ST&C, ITCE will invoice the Customer monthly in arrears for Services performed, Products delivered, Public Cloud and Private Cloud consumption and expenses incurred. Invoices are payable within thirty (30) days from invoicing date.
- 8.2. If an advance payment is requested, ITCE is only bound to start the Services, deliver Products and/or order Products from a Third-Party Supplier, after payment of the said advance.

- 8.3. Any objection against an invoice (or a part thereof), must be notified by Customer to ITCE within ten (10) calendar days from the date of the invoice, together with the appropriate information supporting Customer's objection. Failure to do so implies the irrevocable acceptance of the invoice and the therein mentioned Products and/or Services. The undisputed part of the invoice must in any case be paid as foreseen.
- 8.4. From the moment of expiry of the payment term conventional late payment interest shall be due, by operation of law and without any prior formal notice, equal to the yearly interest rate as stipulated in article 5 of the Belgian Law on combating late payment in commercial transactions (Wet Betalingsachterstand 02/08/2002, B.S 07/08/2002). This interest is calculated as from the deadline for payment of the invoice up until the date of full payment.
- 8.5. Additionally, In the event of late payment:
- ITCE is entitled to increase the amount of invoice by 15% as compensation;
  - all costs, the extrajudicial collection of the invoice, and the costs of legal proceedings and enforcement are to be borne by the Customer;
  - all claims against the Customer not yet due are immediately incurred, due and payable; and
  - ITCE is entitled to suspend the performance of the Agreement without prior notification.
- 8.6. The Customer is not entitled to settlement or suspension of a payment.
- 8.7. If, to ITCE's opinion, the Customer's creditworthiness so dictates, ITCE may, even after the signing of the Agreement, require the Customer to pay in advance and/or to provide security or collateral for the payment of the Products and Services yet to be provided, and ITCE may suspend performance as long as such payment, security or collateral has not been provided.

## **9. Products and Services of a Third-Party Supplier**

- 9.1. In the event ITCE would resell, sublicense or pass-through any licenses of any Products or Services (e.g. maintenance or helpdesk services, Public Cloud, voice- over IP) from a Third-Party Supplier, the terms and conditions as set out in this clause will apply. In the event of a conflict between the terms of this article 9 'Products and Services of a Third-Party Supplier' and the other clauses embedded in these GT&C, the terms of this clause will prevail.
- 9.2. Customer acknowledges that ITCE is not the manufacturer, owner, producer or performer of the Third- Party Supplier's Products and/or Services. ITCE may solely be considered as a distributor and/or reseller.
- 9.3. ITCE shall however act as a single point of contact. This means that ITCE will act as facilitator in the event certain problems occur relating to purchased Third- Party Supplier Products and/or Services. This does not apply in the event that the Products or Services were purchased directly by the Customer.
- 9.4. Except for provisions of imperative law or public order to the contrary, ITCE is not liable in any way whatsoever regarding the Products and Services of a Third-Party Supplier. The Customer can only turn to the Third-Party Supplier within the limits of the relevant Third-Party Supplier T&C.
- 9.5. The Customer confirms that it has taken note of the Third-Party Supplier T&C, has read them and declares to accept them. The Third-Party Supplier T&C constitute an inextricable part of this Agreement and apply directly to the Customer. The Customer cannot derive any rights from the Third-Party Supplier other than those contained therein. Customer ensures that it will comply



with the Third-Party Supplier T&C and in particular the intellectual property- and user restrictions therein. The Customer shall indemnify, defend and hold ITCE harmless from and against any and all costs (including legal fees), expenses, fines, penalties, damages, claims and proceedings that ITCE may suffer or incur as a consequence of a breach of any Third-Party Supplier T&C by the Customer or its users.

- 9.6. Unless where provided otherwise in the Third- Party Supplier T&C, when cancelling an order for Products or Services of a Third-Party-Supplier, the Customer shall be liable for the entire purchase price.
- 9.7. The Customer indemnifies ITCE against any claim by the Third-Party Supplier against ITCE for unpaid invoices from the Third-Party Supplier for Products and/or Services for any reason whatsoever, as well as against any damages costs and expense resulting from it.
- 9.8. The Customer accepts and understands that the installation of the Products and Services may have an impact on the already existing hardware and/or already installed software and/or licences at the Customer. The Parties agree that ITCE cannot be held liable for this.

## **10. Cloud services**

- 10.1. Customer has the option to choose between a Public Cloud and Private Cloud. Customer, acting as a professional party, is aware and acknowledges the risks, advantages and disadvantages of the different options and is itself responsible for choosing the Service that matches the Customer's organization and needs.
- 10.2. Public Cloud Services are always subject to Third-Party Supplier T&C's.
- 10.3. The Customer is responsible for monitoring its use of the cloud Services, within the limits of the user rights it purchases. Customer must notify ITCE immediately if Customer will exceed its committed and purchased usage level (permitted volume/amount of users, etc.). In this event, Customer is responsible to take initiative to purchase additional capacity, as required to cover its actual use of the cloud Services, in accordance with the prices applicable at that time.
- 10.4. In the event the Customer does not purchase and pay for the additional capacity as required to cover its actual use, ITCE will be entitled to delete permanently any data of the Customer, for the purpose of limiting its data volume to the actual paid capacity. Customer acknowledges that it shall bear all responsibility and liability for loss of data resulting from the same. In addition hereto, the Customer is responsible and liable to pay any penalties and/or damages as imposed by the concerned Third-Party Supplier in this respect and the Customer shall indemnify, defend and hold ITCE harmless from and against any and all costs (including legal fees), expenses, fines, penalties, damages, claims and proceedings resulting from the same.
- 10.5. Where the Customer purchases Private Cloud Services, ITCE will store the Customer's data on the servers on its own ICT infrastructure and/or at a secured data center of its choice. ITCE will provide external access through secure internet connection to the server infrastructure set up in the data center. ITCE is not responsible to ensure connectivity between the data center and the Customer.
- 10.6. At any time during the provision of the Private Cloud and within thirty (30) days from termination thereof, the Customer can request a copy of the latest version of its data in a generally accepted format. The said copy and any and all assistance of ITCE required, will be invoiced on a time and material basis, in accordance with ITCE's hourly rates applicable at that time.



- 10.7. In the event that the Customer purchases Public Cloud through ITCE, the Parties agree that in such a case, ITCE shall solely act as a single point of contact. This means that ITCE will act as facilitator in the event certain problems occur relating to the functioning of the Public Cloud or portions thereof.

## **11. Acceptable use policy**

- 11.1. This acceptable use policy ('AUP') sets out the obligations and responsibilities of the Customer and the end-users. The Customer shall and shall procure that its end-customers comply with this AUP .
- 11.2. ITCE will not monitor the activities of the Customer, nor will it verify the content or materials, which have been placed on the Private Cloud or the Public Cloud by the Customer and/or the end-users. ITCE is however entitled to remove those materials of which it may reasonably assume that they violate the AUP. In such event, and to the extent possible, ITCE will inform the Customer, in order to allow the Customer to take the necessary actions to prevent or terminate such activities. In the event of severe violations or in the event that ITCE was not in the possibility to inform the Customer in advance, it suffices that the Service Provider informs the Customer afterwards.
- 11.3. The Customer must at all times comply with applicable law and may not use the Services for unlawful, obscene, offensive or fraudulent content or activity. Is not permitted (non-exhaustive) (i) advocating harm, hate or violence or causing harm to people, (the security of) companies or institutions, (ii) interfering with or violating the integrity or security of a network or (communication) system, (iii) evading filters, (iv) sending unsolicited, abusive, fraudulent, or deceptive messages, (v) spreading or introducing viruses or harmful code or programs (e.g. Trojan horses, worms), (vi) collecting personal data or information about a person without the permission of such person, including but not limited to phishing, internet scamming, theft of passwords, spidering or harvesting, (vii) (attempting to) gain access to accounts, networks, computers, security, hardware and systems of third parties, or (viii) violating third party rights, such as third party intellectual property rights and licenses (is in any event not permitted in such respect: creating derivative works of the Services and Products, reverse engineering, decompiling or disassembling Services or Products, accessing the Services, Products or documentation in order to create a competing services or products, remove or modify any copyright or other proprietary rights notice).

The Customer may not use any resources, software, tools procedures or routines that might prejudice or interfere the servers, Services or software, or its accessibility, security or proper functioning.

- 11.4. The Customer shall at all times be responsible and liable for any abuse of his or Users account(s). The Customer shall take all necessary steps to prevent that unauthorized third parties gain access to its account(s). The Users shall also not access the accounts of other Users.
- 11.5. The Customer shall use all reasonable efforts to ensure:
- (a) That the password to access the account(s) shall remain secret. To the extent necessary, the Customer shall impose a similar obligation to end-users who make use of the Public Cloud, Private Cloud and/or the Services of ITCE;
- (b) That sufficient security measures are taken to prevent any abuse the account(s) by third parties.

11.6. It is also prohibited:

- (a) To bypass the user identification or security of the Private Cloud, Public Cloud, network or account. This includes inter alia providing itself or end-users unauthorised access to data and/or to provide itself or the end-users access to data which was not meant for him/her;
- (b) To login to or make use of a server or account of which the Customer or the end-users have no access to;
- (c) To make use of tools which are designed to bypass or break security measures, unless such tools are part of an agreed audit performed by ITCE;
- (d) To execute or launch Denial of Service (DoS) attacks or Distributed Denial of Service (DDoS) attacks, unless such attacks are part of an agreed audit;

11.7. Bypassing or breaking (or an attempt thereto) of the security of the systems or networks may be subject to civil or criminal prosecution. ITCE shall fully cooperate with the authorities and other Parties who investigate such matters.

## 12. Delivery

- 12.1. Delivery times are only given on an approximate basis. Delays legitimate by no means the annulation of the order, termination of the contract, price reduction or any demand for damages.
- 12.2. The Customer is responsible to provide the necessary information, data, products and infrastructure, in order for ITCE to be able to deliver the Products and/or Services as agreed. Any failure to do so in time, may lead to an extension of the agreed timeframe and to additional costs.
- 12.3. It is expressly stipulated that sold Products and Services shall remain the property of ITCE, until complete payment.
- 12.4. The risks associated with the Products and Services transfer to the Customer at the moment of delivery. ITCE shall not be under any obligation to update any advice, report, or Service, in relation to events occurring after the advice, report or Service has been delivered in final form.
- 12.5. Customer must check all Products for conformity, quantity, defects and visible damages immediately upon delivery. Under the penalty of decline, any such defects and/or non-conformity must be notified to ITCE in writing on the same day of delivery.
- 12.6. Given the (technical) nature of ICT programs, the Customer accepts and acknowledges that, within the current state of technique, it is impossible to guarantee that the Services or Products will function without interruption, or that they will be entirely free of bugs and errors. Except where expressly agreed otherwise, Services and Products are delivered on an as-is basis, without warranty of any kind. This means that the Customer accepts the Services as they are at the time of delivery, with all visible and invisible defects.
- 12.7. In the event (in derogation of the above) the ST&C expressly stipulate that any Services and/or deliverables are subject to acceptance, the Customer must notify ITCE in writing of its decision to accept or reject the concerned Service/deliverable, within five (5) business days from its delivery. Notification of a rejection, partial and/or conditional acceptance must include the Customer's reasons why the Services/deliverables were not accepted unconditionally. Failure to notify ITCE within five (5) business days from delivery and in accordance with the hereabove, implies the

irrevocable acceptance of concerned Service/deliverable. Customer may not use the Services/deliverables for production or operation purposes before they are duly accepted.

### **13. Intellectual property rights**

- 13.1. Unless explicitly agreed otherwise in this Agreement, nothing herein shall constitute any transfer of intellectual property rights existing in the Products or Services. All intellectual property rights shall remain vested in ITCE or the Third-Party Supplier, as applicable.
- 13.2. Third-Party Supplier Products and Services shall be governed by the license requirements and restrictions as set out in the Third-Party Supplier T&C.
- 13.3. With respect to any software or results of Services that would reside on hardware on Customer premises or that would be physically delivered to the Customer, ITCE grants the Customer a limited, non-exclusive, royalty-free, non-transferable and non-sublicensable (unless the license, by its nature, is sublicensable) right of use for internal business purposes as from their delivery for the duration of the Agreement.
- 13.4. With respect to any cloud solution created and delivered by ITCE, ITCE grants the Customer a limited, non-transferable, user-based or general (as the case may be) right of access to the solution for the purpose of using the solution in line with its business purpose.
- 13.5. ITCE shall have the right to suspend or terminate the license or the right of access in the event of a material shortcoming by the Customer of its obligations under the Agreement. Any violation of the AUP will be considered a material shortcoming.
- 13.6. The Customer is not permitted to remove or alter any indication concerning the confidential nature or pertaining to copyright, trademark, trade name or any intellectual or industrial property right on the Products, Services, software, websites, databases, equipment or other materials. Where ITCE develops a website for the Customer, ITCE shall be entitled to include a reference with its company name and a hyperlink to its email address and/or website, at a convenient place on the internet site.

### **14. Confidentiality**

- 14.1. By entering into this Agreement, each Party commits to preserve the other Party's Confidential Information and not to disclose it to any third party, without the disclosing Party's prior consent. Confidential Information of the other Party may only be used to the extent required for the performance of the Agreement. The non-disclosure obligations hereunder shall not prohibit a Party from disclosing Confidential Information where required by law, or in accordance with a decision or injunction of a competent authority.
- 14.2. The obligation of confidentiality shall continue to exist for a period of three (3) years from termination of this Agreement, regardless of the cause of the termination of the Agreement.
- 14.3. The following is not considered to be confidential information: (a) information obtained in a lawful manner from a third party not bound by an obligation of confidentiality; (b) information known to a Party before its disclosure in the context of this Agreement; (c) information independently developed by a Party, without breach of its obligations of confidentiality; (d) information that entered the public domain without the intervention or fault of the Party that received it.

## 15. Data Protection

Each Party must at all times adhere to its obligations under applicable data protection law. The processing of personal data shall be governed by the Data Processing Agreement.

## 16. Third party

When the customer accepts the Terms and Conditions, it will automatically accept the Microsoft Customer Agreement. This Microsoft Customer Agreement is between the Customer and Microsoft and consists of the General Terms, the DPA, the applicable Product Terms and SLA's and any additional terms Microsoft presents when an order is placed. The Microsoft Customer Agreement can be requested through [sales@itce.be](mailto:sales@itce.be) and is publicly accessible on the Microsoft website.

## 17. Liability

- 17.1. Unless expressly stated otherwise, all obligations of ITCE are obligations of effort ("Middelenverbintenis").
- 17.2. ITCE shall only be required to remunerate the direct damages it causes due to its specific activities under the Agreement (and excluding any damages caused by the Third-Party Supplier or its Products).
- 17.3. Insofar as maximally permitted by applicable law, the liability of ITCE in relation to the Agreement, will be limited to the fees paid and payable by the Customer for the specific provision of Services that gave rise to the damages (excl. VAT), over a period of one (1) year prior to the day the damage occurred. For claims arising during the first contract year, an estimate thereof will be made, based on the fees payable during the month preceding the claim, multiplied by twelve (12).
- 17.4. In derogation of the above, insofar as maximally permitted by applicable law ITCE's liability in relation to Products, shall be limited to a maximum of ten per cent (10%) of the order of the Customer (excl. VAT).
- 17.5. Under no circumstances shall the total liability of ITCE exceed the total value of the Agreement.
- 17.6. Without prejudice to art. 12.5, the Customer must inform ITCE in writing of any event that may lead to ITCE's liability and of any loss or damages the Customer suffers, within the shortest possible time and at the latest within fifteen (15) calendar days from the occurrence of the event, loss or damage or at least, from the moment the Customer was aware or should have been aware of it. In the event of failure to comply with the written notification, ITCE reserves the right to refuse any compensation and to reject any liability.
- 17.7. ITCE will never be liable for (i) indirect, incidental or consequential damages such as financial or commercial losses, loss of profit, increase of general expenses, costs of engaging third parties, lost savings, diminished goodwill, damages resulting from business interruption or interruption of operation, damages resulting from claims of customers of the Customer, disruptions in planning, damages caused by the use of the result of the Services, loss of anticipated profit, loss of capital, loss of customers, missed opportunities, loss of data, loss of advantages, or corruption and loss of files resulting from the performance of the present Agreement; (ii) downtime and/or damages resulting from previously announced maintenance of urgent maintenance; (iii) network,

communication and/or connection issues between the Customer and ITCE (iv) wrongful access to the accounts of the Customer, regardless of whether the client authorized such access; (v) Products or Services of Third-Party Suppliers, including a failure or defect in such Products or Services.

- 17.8. The limitations of liability as set out in these GT&C shall not apply with respect to damages caused by deliberate or fraudulent actions of ITCE.
- 17.9. In the event the delivered Products and/or Services are used for further development or commercialisation, the Customer will indemnify, defend and hold ITCE harmless from and against any and all costs (including legal fees), expenses, fines, penalties, damages, claims and proceedings filed by third parties, even if it were established that such originated from the Products and Services supplied by ITCE.
- 17.10. ITCE is not liable for any claim concerning the infringement of intellectual property rights based upon:
- use of a modified or old version of (a part of) the developments, if the infringement could have been prevented by using the unmodified or most recent version which ITCE has made available; or
  - information, design, specifications, instructions, software, data or other materials which were not developed by ITCE.

## **18. Term and termination**

- 18.1. The term of the Agreement is stated in the ST&C
- 18.2. For certain Third Party Supplier Services a minimum term commitment of one (1) year is applicable. Such Services will automatically renew for a period of one (1) year, unless the Customer provides notice of termination no later than within thirty (30) days prior to the anniversary date of the Services.
- 18.3. Except where expressly provided otherwise, any hosting and/or maintenance agreement shall apply for an indefinite period, and may only be terminated for convenience upon three (3) months prior written notice.
- 18.4. In the event the Agreement would be renewed or extended, the Agreement will be extended under the same conditions and for the same duration as the original Agreement, unless Parties explicitly agree otherwise in writing.
- 18.5. Notwithstanding its right to claim for damages, ITCE may, at its own discretion, suspend the execution of the Agreement or dissolve the Agreement by operation of law and with immediate effect, without prior notice being required and without judicial intervention, by the mere sending of a registered letter:
- in the event of the Customer's failure to pay an invoice on its due date;
  - in the event the Customer has requested deferment of payment, files for bankruptcy, has an involuntary petition in bankruptcy filed against it or is declared bankrupt, is unable to pay its debts as they mature, has a receiver appointed over its assets, has any significant portion of its assets attached, has an unstable credit or is in general insolvent;

- in the event of dissolution and/or liquidation of the Customer's company;
- should any or all of the assets of the Customer be under attachment, garnishment or execution or in the event of other executive or protective measures on the Customer's assets;
- in the event of proof or serious suspicion of fraud committed by the Customer;
- in the event the Customer refuses to provide the requested information or has provided incorrect and/or false information

18.6. Further, either Party may terminate the Agreement if the other Party commits a demonstrated material fault or material contractual shortcoming and fails to remedy such fault or shortcoming within a period of thirty (30) calendar days after being notified thereof by registered letter, by the Party invoking the fault or shortcoming. Extension of the remediation period will not be refused on unreasonable grounds, if the Party in default has commenced remedying the default during this thirty day period and is making reasonable efforts to continue to do so.

18.7. The Customer explicitly waives the application of article 1794 of the Belgian Civil Code.

## **19. Consequences of termination**

19.1. Without prejudice to ITCE's right to claim higher damages, any Services delivered, costs and expenses incurred and hours/days performed up until the effective moment of termination, must be remunerated in full by the Customer (except where the termination results from a material fault of ITCE).

19.2. ITCE will delete the Customer's data between sixty (60) and ninety (90) days from termination of the Private Cloud Services. Before this period, the Customer is able to transfer its data to a different system. The Customer acknowledges that the Customer bears the responsibility for each and every loss of data that may be the result of this.

19.3. In the event the Customer requests termination assistance services, such services will be invoiced in time and material, as per the hourly rates as applicable between the Parties, or in the absence thereof, ITCE's applicable rates at that moment.

## **20. Non-solicitation**

20.1. The Customer is not allowed to actively approach any Consultants of ITCE that are involved in the performance of the Agreement, for the purpose of engaging such Consultant to perform any services for the Customer without involvement of ITCE, whether directly or indirectly and whether under an employment basis, through another company or on an independent basis. This shall apply during the term of the Agreement and until twelve (12) months from its termination.

20.2. In the event the Customer would breach the terms of this article 19 'Non-solicitation', the Customer shall be required to pay to ITCE an amount equal to six (6) months the daily rate of the Consultant.

## **21. Relationship between the Parties**

- 21.1. In accordance with the Law of 24 July 1987 on temporary work, temporary agency work and hiring out of workers for the benefit of users, as amended from time to time, Customer acknowledges that it is not allowed to provide any instructions to the Customer's (or its subcontractors') employees, other than those required for the proper performance of the Agreement, such as instructions and information relating to (i) required specifications for the Products, Services and any other deliverables; (ii) schedule, timeframe and progress of the Services; (iii) access to facilities where the Products and/or Services must be delivered; (iv) access to and use of tools, equipment and infrastructure of the Customer; (v) data protection and privacy.
- 21.2. ITCE shall not transfer any employer authority to the Customer. Customer is not allowed to make any decisions or provide any instructions regarding: (i) payment and employment conditions of ITCE's (or its subcontractors') employees (salaries, bonuses, reimbursements, arrangement and remuneration for overtime, breaks or holidays, days off; (ii) evaluation of employees; (iii) rewards, disciplinary measures, sanctions and dismissals; (iv) recruitment policy; (v) authorisations and motivation of absences.
- 21.3. The list hereabove may at all times be amended and complemented in mutual consent.
- 21.4. The Customer shall indemnify, defend and hold ITCE harmless from and against any and all costs (including legal fees), expenses, fines, penalties, damages, claims and proceedings resulting from the non-compliance of this article 20 'Relationship between the Parties'.

## **22. Miscellaneous**

- 22.1. ENTIRE AGREEMENT. The Agreement contains the complete representation of all rights and obligations of the Customer and ITCE and replaces all previous agreements and proposals between the parties. The applicability of the Customer's (general) terms and conditions is expressly declined, even if those terms would stipulate otherwise.
- 22.2. AMENDMENT. Unless otherwise agreed between the Parties, alterations and additions to this Agreement will only be binding if they are agreed between the Parties in writing. Deviation from the Third-Party Supplier T&C is not possible.
- 22.3. HIERARCHY. In case of any conflicts between the several parts of the Agreement, the following order of precedence shall apply:
- The Third-Party Supplier T&C;
  - The ST&C;
  - The Data Proc
- 22.4. FORCE MAJEURE: Neither Party is obliged to fulfil any obligation hereunder if prevented from doing so by Force Majeure. In the event of Force Majeure, ITCE may choose to terminate the agreement, or to extend delivery times for the term of the Force Majeure. ITCE shall be entitled to carry out partial supplies. If a situation of Force Majeure prohibits ITCE from performing one of its essential obligations under the Agreement, during a period of more than sixty (60) calendar days, the Customer is entitled to terminate (the concerned part of) the Agreement in writing. In that event, performance already rendered under the Agreement will be settled in proportion to the state of completion. Products and Services of Third- Party Suppliers may not be annulled or terminated and the according payment shall remain due, unless expressly provided otherwise in



the Third-Party Supplier T&C.

- 22.5. REFERENCES. ITCE may include the Customer's name and logo on its website and in its commercial offers as a reference, also after termination of the Agreement.
- 22.6. FORFEITURE OF RIGHTS. Neither Party shall be deemed to have waived any right or claim under this Agreement or in relation to a breach of the other Party, unless this waiver has been expressly communicated in writing. Even if a Party, in the application of this paragraph, waives a specific right or claim under this Agreement, such waiver can never be interpreted as a waiver of any other right or claim under this Agreement even if both cases demonstrate large similarities.
- 22.7. SEVERABILITY. A possible invalidity or nullity of one of the provisions of this Agreement, or a part thereof, shall in no way affect the validity of the rest of that provision and/or the other clauses of the Agreement. The Parties, in mutual consent, shall make every effort to replace the invalid or null clause, with a valid clause with the same or substantially the same economic impact as was intended with the original clause.
- 22.8. REMEDIES. Except where expressly stated otherwise, legal remedies provided in the Agreement are cumulative and above and beyond (and not in replacement of) any other legal remedies available to the Parties.
- 22.9. EVIDENCE. Regardless of the nature and value of the legal act to be proven, each Party may at all times prove said act by means of the following additional evidence: copies or reproductions in any form whatsoever (carbon copy, photocopy, microfilm, scan, etc.), via data carrier, fax, telex and email. Such evidence has the same evidential value as a private deed drawn up in accordance with the provisions of the Belgian Civil Code. In the event a signed copy of the Agreement has been sent by e-mail with a ".pdf" or "jpeg" data file or via another exact copy, the signature contained therein will create a valid and binding commitment for the signatory (or in whose name and on whose behalf the signature has been placed) with the same value, impact and effect as if it was original.
- 22.10. SURVIVAL. All provisions of the Agreement which are expressly marked to survive the termination or expiration of the Agreement, as well as all provisions of the Agreement which aim to enforce or execute the Agreement after the termination or expiration of the Agreement, shall survive the Agreement and will remain in full force. Shall in any case survive the termination or expiration of the agreement: all provisions relating to liability, confidentiality, data protection and non-solicitation.
- 22.11. NON-EXCLUSIVITY. This Agreement is non-exclusive and nothing in this Agreement shall be deemed to restrict the right of either Party to enter into similar agreements with any third party (without restriction as to number, location and subject matter of such agreement) or to deal with or provide products and/or services to any third party.
- 22.12. LAW AND FORUM. The Agreement is governed by Belgian law, with exclusion of the Vienna Sales Convention of 11 April 1980 (CISG). Solely the courts of Antwerp (section Antwerp) are competent in the event of disputes in relation to this Agreement.

*I hereby state that these Terms and Conditions are in English, that I understand the content and agree to these Terms and Conditions.*

*Ik verklaar hierbij dat deze Algemene Voorwaarden in het Engels zijn, dat ik de inhoud begrijp en akkoord ga met deze Algemene Voorwaarden.*

*Je déclare par la présente que ces Conditions Générales de vente sont en anglais, que je comprends le contenu et j'accepte ces Conditions Générales de vente.*

*Hiermit erkläre ich, dass diese Allgemeinen Geschäftsbedingungen in englischer Sprache sind, dass ich den Inhalt verstehe und diesen Allgemeinen Geschäftsbedingungen zustimme.*