



## GENERAL MODULE

INSIGHT Location Intelligence Delivery of Goods and Services

### 1. General: Applicability of the Terms and Conditions

1.1 The Terms and Conditions consist of the present General module and the following separate, specific modules:

1. -- reserved
2. -- reserved
3. -- reserved
4. *Application Service Provision, Software as a Service and Computer Service*
5. -- reserved
6. -- reserved
7. -- reserved
8. -- reserved
9. -- reserved
10. -- reserved
11. *Sale of ICT, telecommunication and office equipment and other goods*
12. -- reserved
13. -- reserved
14. -- reserved
15. -- reserved
16. -- reserved

1.2 This General module of the Terms and Conditions shall apply to all offers and agreements whereby the Supplier (Nesa Solutions Inc.) provides the Client with any goods and/or services whatsoever and however described. The specific module or modules of the Terms and Conditions agreed between the Supplier and the Client shall also apply. If any part of this General module of the Terms and Conditions conflicts or is incompatible with any of the provisions of the specific module or modules of the Nesa Solutions Terms and Conditions agreed between the Supplier and the Client, the provisions of the specific module or modules in question shall prevail. Further, in the event of any inconsistency between any module and the Agreement with the Client, the Agreement with the Client shall prevail.

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- 1.3 Where the Terms and Conditions refer to 'general terms and conditions', this shall be understood to mean the provisions of this General module in combination with the provisions of one or more agreed specific modules of the Terms and Conditions.
- 1.4 Additions to or deviations from these general terms and condition shall only apply where agreed in writing between the parties.
- 1.5 The applicability of any of the Client's purchasing or other conditions is expressly rejected.
- 1.6 If any provision of these general terms and conditions is null and void or is voided, the other provisions of these general terms and conditions will remain fully in effect. In this case, the Supplier and the Client will consult with one another to agree new provisions to replace the void or voided ones. In doing so, the purpose and meaning of the void or voided provision will be taken into account as far as possible.

## 2. Offers

- 2.1 All offers and other statements issued by the Supplier shall be subject to contract, except where specified otherwise in writing by the Supplier.
- 2.2 The Client shall guarantee the accuracy and completeness of the information that it submits to the Supplier and on which the Supplier bases its offer. The Client shall at all time exercise the greatest possible care to ensure that the requirements that the Supplier's services must meet are accurate and comprehensive. Measurements and information stated in drawings, pictures, catalogues, websites, quotations, advertising material, standard sheets etc. shall not have a binding effect on the Supplier, except where explicitly specified otherwise by the Supplier.

## 3. Price and payment

- 3.1 All prices are exclusive of turnover tax (VAT) and other government levies that have been or are later imposed. Except where agreed otherwise, all prices are in dollars in all cases and the Client must effect all payments in dollars.
- 3.2 All cost estimates and budgets issued by the Supplier shall be merely indicative, except where specified otherwise in writing by the Supplier. The Client may under no circumstances derive any rights or expectations from any cost estimates or budgets issued by the Supplier. An available budget made known by the Client to the Supplier shall under no circumstances apply as a (fixed) price agreed between the parties for the service to be provided by the Supplier. The Supplier shall only be obliged to notify the Client that there is a risk that a cost estimate or budget issued by the Supplier will be exceeded if this has been agreed between the parties in writing.
- 3.3 If the Client consists of more than one natural and/or legal persons, each of these persons shall be joint and severally liable in respect of payment of the amounts due on the basis of the agreement.
- 3.4 The relevant documents and information from the Supplier's administration or systems shall be conclusive evidence of the service provided by the Supplier and the amounts payable by the Client in return for this service, without prejudice to the Client's right to submit evidence to the contrary.

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- 3.5 If the Client is subject to a periodic payment obligation, the Supplier shall be entitled to adjust the applicable prices and rates in writing subject to advance notice of at least three months. If the Client does not wish to agree to this change, the Client shall be entitled to terminate the agreement in writing with effect from the date on which the change is due to enter into force within thirty days following the date of notification. The Client shall not enjoy this right of termination, however, if the parties have agreed that the applicable prices and rates shall be adjusted subject to due observance of an index or other standard agreed between the parties.
- 3.6 The parties shall set out the date or dates on which the Supplier shall invoice the fee for the agreed services to the Client in the agreement. Amounts due shall be paid by the Client in accordance with the payment terms that have been agreed or that are stated on the invoice. If no specific arrangements have been made, the Client shall effect payment within a period after the date of invoice to be determined by the Supplier. The Client shall not be entitled to suspend any payments or to offset any amounts due.
- 3.7 If the Client fails to pay the amounts due or to pay the amounts due in a timely manner, statutory commercial interest shall be payable by the Client on the outstanding amount without a demand or notice of default being required. If the Client still fails to pay the amount owed after receiving a demand or notice of default, the Supplier may refer the debt for collection, in which case the Client shall also be obliged to pay all in-court and out-of-court expenses in addition to the total amount due, including all costs charged by external experts.

#### 4. Confidentiality

- 4.1 The Client and the Supplier shall ensure that all information received from the other party that is known or should reasonably be known to be of a confidential nature is kept secret. The party that receives such confidential information shall only use this information for the purpose for which it has been provided. Information shall in any event be regarded as confidential if it is designated as such by one of the parties.

#### 5. Privacy, data processing and protection

- 5.1 If the Supplier deems this to be necessary for the purpose of executing the agreement, the Client shall, upon request, notify the Supplier immediately in writing with regard to the manner in which the Client executes its obligations pursuant to legislation in respect of the protection of personal data.
- 5.2 The Client shall indemnify, defend and hold harmless the Supplier against any claims by individuals whose personal data is recorded or processed within the context of a register of personal data maintained by the Client or for which the Client is responsible pursuant to the law or otherwise, unless the Client is able to demonstrate that the acts that form the basis of the claim are exclusively attributable to the Supplier.
- 5.3 Responsibility for the data processed using the service provided by the Supplier shall rest solely with the Client. The Client shall guarantee the Supplier that the content, the use and/or the processing of the data is not unlawful and does not infringe the rights of third parties. The Client shall indemnify, defend and hold harmless the Supplier against legal claims by third parties, of whatever nature, in relation to this data or the execution of the agreement.
- 5.4 If the agreement stipulates that the Supplier is obliged to provide some form of information security, this security shall meet the specifications in respect of security agreed between the parties in writing. The Supplier shall not guarantee that the information security will be effective

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under all circumstances. If the agreement does not include an explicit description of security measures, the security measures shall be of such a level that, having regard to the state of the art, the sensitivity of the data and the costs associated with the implementation of the security measures are not unreasonable.

5.5 If computer, data or telecommunications facilities are used during the execution of the agreement or otherwise, the Supplier shall be entitled to assign access or identification codes to the Client. The Supplier shall be entitled to change the access or identification codes assigned. The Client shall treat the access and identification codes as confidential and with due care and shall only disclose these codes to authorized members of staff. The Supplier shall under no circumstances be liable for any damage or costs arising from the use or misuse of access or identification codes, except where misuse was possible as a result of an act or omission on the part of the Supplier.

#### 6. Retention of title and rights, creation of items and suspension

6.1 All objects delivered to the Client shall remain the property of the Supplier until such time as all amounts owed by the Client to the Supplier pursuant to the agreement concluded between the parties have been paid in full. A Client that acts as a retailer shall be entitled to sell and resell all objects that are subject to the Supplier's retention of title in so far as this is customary within the context of the normal course of its business. If the Client creates a new item (partly) from items delivered by the Supplier, the Client shall only create this item for the benefit of the Supplier and the Client shall retain the newly created item for the Supplier until such time as the Client has paid all amounts due pursuant to the agreement; in this case the Supplier shall remain the owner of the newly created item until the Client has met its payment obligations in full.

6.2 The property law consequences of retention of title in respect of an item that is destined for export shall be governed by the law of the State of destination if this law incorporates provisions that are more favorable for the Supplier in this regard.

6.3 Rights, including rights of use, shall be granted to the Client or transferred, where appropriate, subject to the condition that the Client has paid all of the fees due pursuant to the agreement concluded between the parties in full. If the parties have agreed that the Client shall be subject to a periodic payment obligation in respect of the granting of a right of use, the Client shall be entitled to the right of use for as long as it continues to meet its periodic payment obligation.

6.4 The Supplier may retain any items, products, proprietary rights, data, documents, software, data files and (interim) results of the service provided by the Supplier received or created within the context of the agreement, contrary to an existing obligation to deliver or transfer these, until such time as the Client has paid all amounts due to the Supplier.

#### 7. Risk

7.1 The risk of loss, theft, misappropriation of or damage to items, products, data, documents, software, data files or data (codes, passwords, documentation etc.) produced or used within the context of the execution of the agreement, shall pass to the Client when the Client or one of the Client's agents comes into actual possession of them. In so far as these objects are in the actual possession of the Supplier or one of the Supplier's agents, the Supplier shall bear the risk of loss, theft, misappropriation or damage.

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## 8. Intellectual property rights

- 8.1 If the Supplier is willing to undertake to transfer an intellectual property right, such an undertaking may only be entered into explicitly and in writing. If the parties agree in writing that an intellectual property right in respect of software, websites, data files, hardware or other material specifically developed for the Client shall be transferred to the Client, this shall not affect the Supplier's right or option to use and/or to exploit the components, general principles, ideas, designs, algorithms, documentation, work, programming languages, protocols, standards and suchlike that form the basis of the development work for other purposes without any restrictions, on its own behalf or on behalf of a third party. The transfer of an intellectual property right shall also not affect the Supplier's right to carry out development work, on its own behalf or on behalf of a third party, that is similar or derived from the development work that is being carried out or has been carried out on behalf of the Client.
- 8.2 All intellectual property rights to the software, websites, data files, hardware or other materials such as analyses, designs, documentation, reports, quotations and related preliminary material developed or made available to the Client on the basis of the agreement shall remain exclusively vested in the Supplier, its licensors or its own suppliers. The Client shall only acquire those rights of use that are explicitly granted in these general terms and conditions and by law. Any rights of use granted to the Client shall be non-exclusive, non-transferable to third parties and non-sublicensable.
- 8.3 The Client shall not be permitted to remove or amend any details in relation to the confidential nature or in relation to copyrights, brand names, trade names or any other intellectual property right from the software, websites, data files, hardware or materials.
- 8.4 Even if the agreement does not explicitly provide for such authority, the Supplier shall be permitted to install technical provisions for the purpose of protecting the software, hardware, data files, websites and suchlike in relation to an agreed restriction on the content or the term of the right to use these objects. The Client shall under no circumstances be permitted to remove or circumvent such technical provisions or to arrange for this to be carried out.
- 8.5 Reserved.
- 8.6 The Client warrants that no rights of third parties preclude the provision to the Supplier of software, hardware, material intended for websites (visual material, text, music, domain names, logos, hyperlinks etc.), data files or other materials, including draft materials, for the purpose of use, adaptation, installation or incorporation (e.g. in a website). The Client shall indemnify, defend and hold harmless the Supplier against all claims by third parties based on the assertion that such provision, use, adaptation, installation or incorporation constitutes an infringement of any rights of the third party in question.

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**9. Obligations to cooperate**

- 9.1 The parties acknowledge that the success of activities in the field of information and communication technology generally depends on proper and timely mutual cooperation. In order to facilitate the proper execution of the agreement by the Supplier, the Client shall at all times provide the Supplier with all data or information that the Supplier deems to be useful, necessary and desirable and to give its full cooperation in a timely manner. If the Client deploys its own personnel and/or agents within the context of providing cooperation in the execution of the agreement, these personnel and agents shall have the necessary knowledge, expertise and experience.
- 9.2 The Client shall bear the risk of the selection, the use, the application and the management within its organization of the software, hardware, websites, data files and other products and materials and of the services to be provided by the Supplier. The Client itself shall arrange for the correct installation, assembly and commissioning and for the application of the correct settings to the hardware, software, websites, data files and other products and materials.
- 9.3 If the Client fails to make the data, documents, hardware, software, materials or employees that the Supplier deems useful, necessary or desirable for the purpose of executing the agreement available to the Supplier, to make these available in good time or in accordance with the agreements, or if the Client fails to meet its obligations in any other way, the Supplier shall be entitled to suspend the execution of the agreement in part or in full and shall also be entitled to invoice the resulting costs in accordance with its standard rates, without prejudice to the Supplier's right to exercise any other statutory and/or agreed right.
- 9.4 If the Supplier's employees are carrying out activities on the Client's business premises, the Client shall ensure that any facilities reasonably requested by these employees, such as a workspace containing computer, data and telecommunication facilities, are provided free of charge. The workspace and facilities shall meet all statutory and other applicable requirements in relation to working conditions. The Client shall indemnify, defend and hold harmless the Supplier against any claims by third parties, including the Supplier's employees, who suffer injury in connection with the execution of the agreement as a result of an act or omission on the part of the Client or of unsafe situations within the Client's organization. The Client shall notify the employees deployed by the Supplier of any applicable company rules or security rules prior to the commencement of the activities.
- 9.5 If use is made of computer, data or telecommunication facilities, including the internet, during the execution of the agreement, the Client shall be responsible for selecting the correct resources required for this purpose and for ensuring that these are available in full and in a timely manner, with the exception of those facilities that fall under the direct use and management of the Supplier. The Supplier shall under no circumstances be liable for losses or costs arising as a result of transmission errors, breakdowns or the non-availability of these facilities, unless the Client is able to demonstrate that these losses or costs are the result of intentional acts or deliberate recklessness on the part of the Supplier's management.

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## 10. Delivery dates

- 10.1 All (delivery) periods and (delivery) dates agreed or specified by the Supplier shall be established to the best of the Supplier's knowledge on the basis of the information available to it at the time of entering into the agreement. Interim (delivery) dates agreed between the parties or specified by the Supplier shall in all cases be target dates, shall not have a binding effect on the Supplier and shall in all cases be merely indicative. The Supplier shall make every reasonable effort to observe final (delivery) periods and final (delivery) dates wherever possible. The Supplier shall not be bound by a (delivery) period or (delivery) date, final or otherwise, that can no longer be achieved as a result of circumstances outside of the Supplier's control that occurred after the date on which the agreement was concluded. The Supplier shall also not be bound by a (delivery) date or (delivery) period, final or otherwise, if the parties have agreed on a change to the content or scope of the agreement (additional work, change in specifications etc.) or a change in the approach to the execution of the agreement. If there is a risk that a time period will be exceeded, the Supplier shall consult with the Client in order to discuss the implications of the overrun for the rest of the schedule.
- 10.2 The mere fact that a (delivery) period or (delivery) date, final or otherwise, specified by the Supplier or agreed between the parties has been exceeded, shall not mean that the Supplier is in default. In all cases – therefore also in the event that the parties have agreed a final (delivery) period or (delivery) date explicitly in writing - the Supplier shall not be in default as a result of the fact that a delivery period or date has been exceeded until such time as the Client has given written notice of default. The notice of default must contain as comprehensive and detailed a description of the breach as possible, in order to ensure that the Supplier has the opportunity to respond adequately.

## 11. Reserved.

## 12. Liability of the Supplier

- 12.1 The total liability of the Supplier due to an attributable failure to perform this agreement or due to any other reason, explicitly including any failure to comply with a guarantee obligation agreed with the Client, shall be limited to compensation of the direct damage or loss not exceeding the sum stipulated for this agreement (excl. VAT). This limitation of liability shall apply mutatis mutandis to the Supplier's obligation to indemnify referred to in Article 8.5 of this General module. If the agreement is essentially a continuing performance contract with a term of more than one year, the sum stipulated for the agreement shall be set at the total fees (excl. VAT) stipulated for one year. The total liability of the Supplier for direct damage or loss, for any reason whatsoever, shall, however, under no circumstances exceed \$25,000 (twenty five thousand dollars).
- 12.2 The liability of the Supplier for loss as a result of death, physical injury or due to material damage to items shall under no circumstances exceed \$50,000 (fifty thousand dollars).
- 12.3 The liability of the Supplier for indirect damage or loss, resulting loss, loss of profit, loss of savings, reduced goodwill, loss due to business interruption, loss as a result of claims from the Client's customers, loss in connection with the use of items, materials or software provided by third parties that the Supplier is instructed to obtain by the Client and loss in connection with the engagement of secondary suppliers by the Supplier on the Client's instructions shall be excluded.

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The liability of the Supplier due to the scrambling, destruction or loss of data or documents shall also be excluded.

12.4 The exclusions and restrictions to the Supplier's liability, as described in the preceding paragraphs of Article 12, shall not affect the remaining exclusions and restrictions to the Supplier's liability set out in this General module and the other agreed modules of these general terms and conditions in any way.

12.5 The exclusions and restrictions referred to in Article 12.1 to 12.4 shall no longer apply if and in so far as the loss is the result of intentional acts or deliberate recklessness on the part of the Supplier's management.

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

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

12.8 Reserved.

12.9 The Client shall indemnify, defend and hold harmless the Supplier against all claims by third parties due to product liability as a result of a fault in a product or system delivered by the Client to a third party and that partly consisted of hardware, software or other materials provided by the Supplier, unless and in so far as the Client is able to demonstrate that the damage or loss was caused by this hardware, software or other materials.

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

### 13. Force majeure

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

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13.2 If a situation of force majeure lasts for longer than ninety days, either of the parties shall be entitled to terminate the agreement in writing. The services already performed on the basis of the agreement shall in this case be settled on a pro rata basis, and the parties shall not owe one another any other amounts

#### 14. Changes and additional work

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

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

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

#### 15. Transfer of rights and obligations

15.1 The Client shall not be entitled to sell and/or transfer the rights and/or obligations arising from the agreement to a third party. The Supplier shall be entitled to transfer its rights to the payment of fees to a third party.

#### 16. Applicable law and disputes

16.1 The agreements between the Supplier and the Client shall be governed and construed in accordance with the laws of the State of Florida, without regard to principles of conflict of laws.



## **APPLICATION SERVICE PROVISION, SOFTWARE AS A SERVICE AND COMPUTER SERVICE**

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### **MODULE 4**

#### **3. Applicability**

- 1.1 Our Terms and Conditions consist of the General module as well as one or more specific modules per product or service. The provisions of this module shall apply in addition to the provisions of the General module in the event that the Supplier provides services in the field or under the name of Application Service Provision (ASP), Software as a Service (SaaS) and/or Computer Service.
- 1.2 The provisions of this module are inextricably linked with the provisions of the General module. In the case of conflict between the provisions of the General module and the provisions of this module, the provisions of the latter shall prevail.
- 1.3 For the purpose of this module, the terms 'Application Service Provision' and 'Software as a Service' shall be understood to refer to the 'remote' placing and maintaining at the disposal of the Client of software by the Supplier via the internet or another network, without providing the Client with a physical data medium on which the software in question is stored.
- 1.4 For the purpose of this module, the term 'Computer Service' shall be understood to refer to the automatic processing of data using software and hardware managed by the Supplier.

#### **2 Services**

- 2.1 The Supplier shall provide the Client with the service specified in the agreement between the parties in the field of Application Service Provision, Software as a Service and/or Computer Service, as well as the other services agreed between the parties. If specified in the agreement, the Supplier shall also install the software referred to in the agreement on the infrastructure specified by the Supplier. The Supplier shall not be responsible for the purchase and/or correct functioning of the Client's infrastructure or that of third parties.
- 2.2 Except where agreed otherwise in writing, the Client shall be responsible for the management of the software, which includes monitoring settings, the use of the service, and the manner in which the results obtained through the use of the software are used. The Client shall also be responsible for training given to and used by users, regardless of whether or not there is a relationship of authority between the Client and these users. If no explicit agreements have been made in this regard, the Client itself shall install, set up, parameterise and tune the (auxiliary) software required on its own hardware, adapt the hardware and other (auxiliary software) and operating environment where necessary used, as well as achieve the interoperability desired by the Client.
- 2.3 Except where agreed otherwise in writing, the Supplier shall not be obliged to carry out data conversion.
- 2.4 If the agreement stipulates that the service provided to the Client shall also include the provision of support to users, the Supplier shall issue such support by telephone or e-mail on the use and operation of the software referred to in the agreement and on the use of the service. The Supplier may impose conditions in relation to the qualifications and the number of contacts who are eligible for support. The Supplier shall deal with properly substantiated requests for support within a

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reasonable period of time. The Supplier cannot guarantee the accuracy, completeness or timeliness of responses or support provided. Except where agreed otherwise in writing, support shall only be provided on working days during the Supplier's standard business hours.

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

### 3 Provision of services

- 3.1 The Supplier shall make every effort to ensure that the services are provided with due care and in accordance with the arrangements and procedures agreed in writing with the Client where applicable. The Supplier shall provide all services on the basis of a best efforts obligation, unless the Supplier has explicitly undertaken in the written agreement to achieve a specific result and the result in question is sufficiently determined.
- 3.2 The Supplier shall only perform the service on behalf of the Client. If the Supplier carries out work relating to the Client's data or that of its employees or users pursuant to a request or an authorized order from a government agency or in connection with a statutory obligation, the Client shall be invoiced for all of the associated costs.
- 3.3 The Supplier may make adjustments to the content or scope of the service. If such adjustments result in a change in the procedures that apply to the Client, the Supplier shall notify the Client as soon as possible and the costs of this change shall be borne by the Client. In this case, the Client may terminate the agreement in writing with effect from the date on which the change takes effect, unless this change is related to changes in relevant legislation or other regulations issued by competent authorities or the Supplier bears the costs of this change.
- 3.4 The Supplier may continue to provide the service using a new or amended version of the software. The Supplier shall not be obliged to maintain, change or add certain features or functionalities of the service or the software specifically for the Client.
- 3.5 The Supplier may temporarily suspend the service in full or in part for the purpose of carrying out preventive, corrective or adaptive maintenance. The Supplier shall not suspend the service for longer than necessary and shall arrange for this to take place outside of office hours where possible and, according to the circumstances, shall notify the Client in advance.
- 3.6 If the Supplier is providing services on the basis of information to be provided by the Client, this information shall be prepared and supplied by the Client in accordance with the conditions to be imposed by the Supplier. The Client shall bring the data to be processed to, and collect the results of the processing from, the location at which the Supplier is providing the service. Transport and transmission, in any form whatsoever, shall take place at the risk and expense of the Client, even if this is carried out or organized by the Supplier. The Client shall at all times guarantee that all materials, information, software, procedures and instructions that it makes available to the Supplier for the purpose of providing the services is accurate and complete and that all data carriers issued to the Supplier meet the Supplier's specifications.

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- 3.7 All hardware, software and items used by the Supplier in providing the service shall remain the property or the intellectual property of the Supplier or its own suppliers, even if the Client pays a fee in respect of the development or purchase of these by the Supplier.
- 3.8 The Supplier shall under no circumstances be obliged to provide the Client with a physical data carrier containing the software to be made and kept available to the Client within the context of Application Service Provision and/or Service as a Service, or the software to be used by the Supplier within the context of Computer Service.

#### 4 Service Level Agreement

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

#### 5 Term

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

#### 6 Payment

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

#### 7 Guarantee

- 7.1 The Supplier shall not guarantee that the software to be made and kept available to the Client within the context of Application Service Provision and/or Software as a Service, and the software used by the Supplier within the context of Computer Service, are free of defects and will operate without interruptions. The Supplier shall endeavor to fix any defects in the software within a reasonable period of time if and insofar as the relevant software was developed by the Supplier itself and the Supplier has received detailed notification in writing of the defects in question and the Supplier confirms the defects are related to the functionality as intended. As and when necessary, the Supplier may postpone the fixing of defects until such time as a new version of the software is brought into use. The Supplier shall not guarantee that defects in software that was not developed by the Supplier itself will be fixed. What is and what is not a defect is based upon the judgement of the Supplier. The Supplier shall be entitled to install temporary solutions, program bypasses or

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- problem-avoiding restrictions in the software. If the software was developed on behalf of the Client, the Supplier shall be entitled to invoice the Client for the costs of fixing errors at its standard rates.
- 7.2 The Supplier shall not be responsible for checking the accuracy and completeness of the results of the service and the data generated through the use of the service. The Client itself shall regularly check the results of the service and the data generated through the use of the service.
- 7.3 If and insofar as necessary or desirable, the Supplier shall, where shortcomings in the results of the Computer Service are the direct result of products, software, data carriers, procedures or operating procedures for which the Supplier is explicitly responsible pursuant to the agreement, repeat the Computer Service for the purpose of rectifying these shortcomings, provided that the Client provides the Supplier with detailed notification in writing of the shortcomings as soon as possible, and no later than one week after obtaining the results of the Computer Service. Such repetition of the service shall only be carried out free of charge if the shortcomings in the Computer Service are attributable to the Supplier. If the shortcomings are not attributable to the Supplier and/or the shortcomings are the result of errors or shortcomings on the part of the Client, such as the provision of incorrect or incomplete data and/or information, the Supplier shall, where appropriate, invoice the Client for the costs of repetition of the service according to its standard rates. If the Supplier is of the opinion that the rectification of shortcomings that are attributable to the Supplier is not reasonably possible, the Supplier shall credit the amounts payable by the Client for the Computer Service in question, without any further or other liability vis-à-vis the Client. The Client shall not enjoy any rights as a result of shortcomings in the Computer Service other than those described in this guarantee scheme. This sub clause explicitly does not apply to Application Service Provision and Software as a Service.
- 7.4 On the basis of the information provided by the Supplier in relation to measures for the purpose of preventing and limiting the consequences of interruptions or shortcomings in the service, the scrambling or loss of data or other incidents, the Client shall identify and list the risks for its organization and take additional measures where necessary. The Supplier declares that it is prepared to lend its cooperation to further measures to be taken by the Client to a reasonable extent and at the request of the Client, subject to (financial and/or other) conditions to be imposed by the Supplier. Under no circumstances shall the Supplier be responsible for the recovery of scrambled or lost data.
- 7.5 The Supplier shall not guarantee that the software to be made and kept available to the Client within the context of Application Service Provision and/or Service as a Service, and the software used by the Supplier within the context of Computer Service, will be adapted according to changes in relevant legislation and regulations in a timely manner.

## 8 Processing of personal data

- 8.1 The Client shall guarantee that all of the requirements in respect of the lawful processing of personal data input by the Client into the software to be made and kept available to the Client within the context of Application Service Provision and/or Service as a Service, and into the software used by the Supplier within the context of Computer Service, are met.
- 8.2 Without prejudice to the provisions of the General module, full responsibility for the data processed through the use of the service by the Client shall rest with the Client. The Client shall guarantee the Supplier that the data is not illegal and does not infringe upon the rights of third parties. The Client shall indemnify the Supplier against claims by third parties, of whatever nature, in relation to the processing of this data or the execution of the agreement.

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8.3 Pursuant to legislation in respect of the processing of personal data, the Client has obligations vis-à-vis third parties, such as an obligation to provide information, and an obligation to allow the inspection, correction and removal of personal data of parties involved. The Client is fully and exclusively responsible for ensuring compliance with these obligations. The parties agree that, with regard to the processing of personal data, the Supplier is but the 'processor'. The Supplier shall, as far as possible, lend its cooperation in respect of the obligations to be met by the Client. The costs associated with such cooperation are not included in the Supplier's agreed-to prices and fees and shall be borne in full by the Client.

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## **SALES OF ICT, TELECOMMUNICATIONS AND OFFICE EQUIPMENT AND OTHER GOODS**

INSIGHT Location Intelligence Delivery of Goods and Services

### **MODULE 11**

#### **4. Applicability**

- 8.4 The Terms and Conditions consist of the General module as well as one or more specific modules per product or service. The provisions of this module shall apply in addition to the provisions of the General module in the event that the Supplier sells computer, telecommunication or office equipment and/or other equipment, supplies, consumer goods, parts and/or other items (hereinafter referred to as “items”).
- 8.5 The provisions of this module are inextricably linked with the provisions of the General module. In the case of conflict between the provisions of the General module and the provisions of this module, the provisions of the latter shall prevail.

#### **9 Purchase and sale**

- 9.1 The Supplier shall sell the items in accordance with the nature and quantity agreed between the parties in writing, and the Client shall purchase the items from the Supplier on the same basis.
- 9.2 The Client shall bear the risk associated with the selection of the items purchased. The Supplier shall guarantee that on delivery, the items are suitable for normal use and meet the specifications agreed in writing between the parties. The Supplier shall not guarantee that the items will be suitable for the use envisaged by the Client, unless the written agreement between the parties specifies the purposes of use clearly and without reservation.
- 9.3 In any event, the agreement shall not include sales of assembly and installation materials, software, consumer items, batteries, stamps, ink (cartridges), toner products, or cables and accessories, unless otherwise agreed upon in writing by the parties.
- 9.4 The Supplier shall not guarantee that the assembly, installation and operating instructions that accompany the items are free of errors or that the items incorporate the features stated in these instructions.

#### **10 Delivery**

- 10.1 The items sold to the Client by the Supplier shall be delivered to the Client ex warehouse. The Supplier shall only deliver (or arrange for delivery of) the items sold to the Client to a location to be designated by the Client if such has been agreed in writing. Where this is the case, the Supplier shall notify the Client, where possible in good time prior to delivery, of the time at which it or the carrier engaged intends to deliver the items. The delivery times stated by the Supplier shall in all cases be indicative.
- 10.2 Except where explicitly agreed otherwise, the purchase price of the items shall not include the costs of transport, insurance, tackles and hoists, the hiring of temporary facilities, etc.

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- 10.3 The Supplier shall package the items in accordance with its standard criteria. If the Client requires a specific packing method, it must bear any associated additional costs. The Client shall process any packaging materials removed from the items delivered by the Supplier in accordance with any applicable government regulations. The Client shall indemnify the Supplier against claims by third parties as a result of failure to comply with such regulations. If the Client requests that the Supplier remove old materials (such as networks, casings, cable conduits, packaging materials, or hardware) or the Supplier is obliged to do so, the Supplier may accept this request by means of a written assignment subject to its standard rates, on the condition that the aforementioned materials remain the property of the Client at all times.
- 10.4 The Supplier shall, if the parties have agreed to such in writing, install, configure and/or connect the items, or arrange for this to be carried out. Where the Supplier is obliged to install and/or configure hardware, this shall not include the carrying out of data conversion or the installation of software.
- 10.5 The Supplier shall provide all services on the basis of a best efforts obligation, unless the Supplier has explicitly undertaken in the written agreement to achieve a specific result and the result in question is sufficiently determined.
- 10.6 The Supplier shall not be responsible for any licenses or subscriptions that may be required.
- 10.7 The Supplier shall at all times be entitled to execute the agreement in the form of partial deliveries.

## 11 Test setup

- 11.1 The Supplier shall only be obliged to establish a test setup in relation to the products that the Client is interested in purchasing if this has been agreed in writing. The Supplier may attach (financial and/or other) conditions to a test setup. A test setup shall involve the temporary display of standard models of products, excluding accessories, in a space to be made available by the Client, before the Client reaches a final decision with regard to whether or not it wishes to purchase the products in question at the applicable prices. The Client shall be liable for the use, damage, theft or loss of products that form part of a test setup.

## 12 Cooperation on the part of the Client

- 12.1 Without prejudice to the provisions of the General module, the Client shall be responsible for providing an environment that meets any requirements imposed by the Supplier in respect of the items, including requirements in relation to temperature, atmospheric humidity and technical environment.
- 12.2 The Client must ensure that any work to be carried out by on behalf of the Client by third parties, including construction work, is performed in an acceptable and timely manner.

## 13 Guarantee

- 13.1 The Supplier shall make every effort to ensure that any material and manufacturing defects in the hardware, or in parts delivered by the Supplier within the scope of the guarantee, are rectified within a reasonable period of time and free of charge to the Client if the Supplier receives detailed notification of such defects within three months of the date of delivery. If the Supplier deems that it is not reasonably possible to rectify the defect, that it will take too long to rectify the defect or that





to do so would involve unreasonably high costs, the Supplier shall be entitled to replace the hardware free of charge to the Client with another similar, but not necessarily identical, item of hardware. Any data conversion required as a result of the rectification of defects or replacement falls outside the scope of the guarantee. All replaced parts shall be the property of the Supplier. The obligations under the guarantee shall not apply if defects in the hardware or parts are partly or entirely the result of incorrect, negligent or incompetent use; if due to external causes such as fire or water damage; or if the Client makes changes to the hardware or the parts delivered by the Supplier within the scope of the guarantee without the Supplier's written consent or arranges for this to be carried out. The Supplier shall not withhold such consent on unreasonable grounds.

- 13.2 Any claims by the Client that the items delivered are not fit for purpose other than those set out in Article 6.1 of this module shall be excluded. In any event, the Client shall not be entitled to rely upon the fact that the items delivered are not fit for purpose if and insofar as the Supplier or Client is prevented from doing so by law.
- 13.3 The Supplier shall invoice for the costs of work and the rectification of defects that fall outside of the scope of this guarantee in accordance with its standard rates.
- 13.4 The Supplier shall not be obliged to rectify defects that are reported following expiry of the guarantee period referred to in Article 6.1 of this module, unless the parties have entered into a separate maintenance agreement that incorporates an obligation to this effect.

#### 14 Hardware from third party suppliers

- 14.1 If and insofar as the Supplier provides the Client with hardware from third parties, the terms imposed by such third parties in relation to the hardware shall apply, provided that the Supplier has notified the Client of such terms in writing, notwithstanding any varying provisions in these general terms and conditions. The Client accepts the abovementioned terms imposed by third parties. These terms shall be available to the Client for inspection on the Supplier's premises and the Supplier shall provide the Client with a copy of the terms free of charge upon request. If and insofar as the abovementioned terms imposed by third parties in the relationship between the Client and the Supplier are deemed not to apply for any reason whatsoever, or are declared to be inapplicable, the provisions of these general terms and conditions shall apply in full.

## CONTACT INFORMATION

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