



**General terms and conditions**

**Indica NL B.V. / Indica R&C B.V.**

**Version 1.0 – 15 March 2017**

These General Terms and Conditions apply to every offer or proposal submitted by Indica NL B.V. in respect of its Services and form an integral part of every Agreement between Indica NL B.V. and the Client. Provisions or terms and conditions stipulated by the Client which differ from or do not appear in these General Terms and Conditions will only be binding upon Indica NL B.V. if and to the extent that they have been explicitly accepted by Indica NL B.V. in writing.

## MODULE A – GENERAL

## MODULE B – DELIVERY OF ON PREMISE SOFTWARE AND PRIVATE CLOUD

## MODULE C – DELIVERY OF SOFTWARE-AS-A-SERVICE

## MODULE A – GENERAL

### 1. DEFINITIONS

The terms spelled with capital letters in these General Terms and Conditions are defined as follows.

1. **General Terms and Conditions:** the provisions set out in this document.
2. **Services:** the service(s) that Indica will perform for the Client, including but not limited to delivering the On Premise Software, Private Cloud and/or providing access to the SaaS.
3. **End User(s):** the natural person who has obtained access to the Software and uses the functionalities of the Software under the Client's responsibility.
4. **Indica:** Indica NL B.V., established at Hengeveldstraat 29 in Utrecht and registered with the Chamber of Commerce under number 58085823.
5. **Starting Date:** the date on which the Agreement becomes effective and on which the delivery of the service commences.
6. **Intellectual Property Rights:** all intellectual property rights and related rights, including but not limited to copyrights, database rights, domain names, trade name rights, trademark rights, design rights, neighbouring rights, patent rights, as well as rights to knowhow.
7. **Licence** the non-exclusive, non-transferable and non-sublicensable right of use that has been granted by Indica to the Client with a view to the use of the On Premise Software and/or Private Cloud.
8. **Customisation:** the (supplementary) modules developed specifically for the Client for the use of the Software and which form part of the Software.
9. **Major Updates:** systematic modifications and upgrades of the Software in connection with adding functionalities.
10. **Minor Updates:** modifications and updates in the Software in connection with bug fixing, improving the functionality and/or correcting errors.
11. **Module:** a module of these General Terms and Conditions containing provisions relating to a specific area of activity.
12. **Maintenance:** all Services to be performed by Indica intended to lead to lasting optimal operation of the Software and releasing of Updates with regard to the Software, including but not limited to installing those Updates.

13. **Support:** all actions to be performed by Indica in connection with supporting the communication between the Parties and the performance of the Software, including but not limited to answering the Client's questions concerning the operation of the Software.
14. **On Premise Software:** the on premise software of Indica, to be installed, by or on behalf of the Client.
15. **Client:** the natural person or legal entity with whom Indica has entered into an Agreement.
16. **Agreement:** any agreement between the Client and Indica under which Indica supplies Services to the Client.
17. **Parties:** Indica and the Client jointly.
18. **Private Cloud:** the software of Indica, which is delivered to one specific Client, which manages the software itself and supports it within its own environment, and in which connection the Client provides the software to the End User(s) via its own infrastructure.
19. **SaaS:** the software-as-a-service of Indica, in which connection Indica grants access to the Client. Available in Indica's cloud environment.
20. **SLA:** the Service Level Agreement concluded separately between Indica and the Client in which the agreements on the level, the quality and the method of solving problems with regard to the Services are set out.
21. **Software:** the On Premise Software, Private Cloud and SaaS jointly.
22. **Updates:** the Major Updates and Minor Updates jointly.

## 2. APPLICABILITY AND ORDER OF PRIORITY

1. The specific Modules are applicable if the Services requested or offered are within the scope of application described in the Module. Where a specific module applies, it prevails over Module A.
2. The definitions as described in Article 1 apply to all Modules of these General Terms and Conditions, unless a meaning is assigned elsewhere in the Agreement and/or General Terms and Conditions.
3. In the event of a conflict between the provisions of the Agreement, the General Terms and Conditions or appendices thereto, the following order of priority will apply:
  - a. the Agreement
  - b. any processor's agreement that has been concluded;
  - c. any SLA that has been concluded;
  - d. any appendices (including the data processing agreement);
  - e. these General Terms and Conditions.

## 3. PROPOSALS AND FORMATION OF AGREEMENT

1. The Agreement is formed by the written acceptance of the proposal or the offer by the Client.
2. If the Client does not explicitly indicate that it agrees to the proposal or the offer, but nevertheless agrees to Indica carrying out work that falls within the scope of the description of Services, or gives rise to that impression, the proposal shall be deemed to be accepted. The same applies if the Client requests Indica to carry out certain work, without waiting for a formal proposal to be made.

3. Proposals of Indica are non-binding and are valid for the term stated in the proposal. If no term is stated, the proposal shall be valid until thirty (30) days after the date on which the proposal is issued.
4. If the information provided by the Client at the time of the application for the Agreement turns out to be incorrect and/or incomplete, Indica has the right to adjust the prices accordingly.
5. The Agreement commences as of the time when notification of the acceptance by the Client is received by Indica and/or the Services have been technically delivered to the Client ("the Starting Date"), unless a different Starting Date has been agreed in writing.

#### **4. PERFORMANCE OF THE AGREEMENT**

1. Indica will perform the Agreement upon formation to the best of its ability and with due care and professional competence, in accordance with the proposal.
2. The delivery periods stated by Indica are always indicative and shall in no case constitute final deadlines.
3. If and where required for the proper performance of the Agreement, Indica is authorised to have certain activities performed by third parties. Any unforeseen additional costs relating to the above will only be borne by the Client if this has been agreed upon in writing in advance. These General Terms and Conditions also apply to the activities performed by third parties within the framework of the Agreement.
4. Any changes to the Agreement, either at the request of the Client or as a result of the fact that an alternative performance is required, regardless of the circumstance causing this, will be considered to be contract extras if they involve additional costs. These contract extras will be invoiced to the Client accordingly.

#### **5. OBLIGATIONS OF THE CLIENT**

1. The Client is obliged to do and refrain from doing everything that is reasonably required and desired to facilitate the correct and timely performance of the Agreement. In particular, the Client shall ensure that all information, of which Indica indicates that it is required or with regard to which the Client can reasonably understand that it is required for the provision of the Services, is made available to Indica in time. The period within which Indica is required to perform the Agreement will not commence until all the data that Indica has requested and requires have been received.
2. If the Client knows or can assume that Indica will need to take additional or other measures to comply with its obligations, the Client will inform Indica thereof without delay.
3. The Client shall grant Indica access to all locations, services and accounts under its management that Indica reasonably requires in order to provide the Services. In special cases it can be agreed that the Client itself enters the necessary data or itself modifies these services or accounts.
4. The Client shall designate a permanent contact person and provide the latter's contact details to Indica. The contact person shall act as focal point for consultation concerning all aspects of the Agreement.
5. Indica shall always be informed without delay of any changes of the contact persons or the contact details that are relevant for the performance of the Agreement.

6. The Client itself shall be responsible for checking the data that is entered by the Client by means of the Services. This check shall include – but not be limited to – checking the quality, accuracy, readability and completeness. Indica shall never be liable for loss or damage due to data supplied incorrectly or incompletely or incorrectly processed data as a result thereof.
7. Supplying the data that has been stored by the Client via the Services takes place in full at the Client's own risk. Indica is in no case obliged to provide support for exporting or supplying the data.

## **6. PROVISION OF MAINTENANCE, UPDATES AND CUSTOMISATION**

1. If separately agreed by means of an SLA, Indica will provide Maintenance to the Client for the proper operation of the Software. Maintenance is expressly not understood to include maintaining the hardware and/or infrastructure on which the Software has been installed. A fee is payable for Maintenance as agreed in the Agreement.
2. Indica has the right to adapt the Software, in its entirety or in part, in order to improve its functionality and/or to correct errors. From time to time, Indica will therefore issue Minor Updates that can rectify errors or improve the operation of the Software. No separately agreed SLA is required in order to obtain Minor Updates.
3. If separately agreed by means of an SLA, Indica will from time to time issue Major Updates that implement systematic modifications and upgrades of the Software in connection with the addition of functionalities.
4. For issuing Updates, Indica depends on obtaining access to the environment of the Client. If the environment is protected, Updates will not be issued to the Client, unless separately agreed by means of an SLA.
5. Indica may be dependent on its supplier(s) in carrying out Updates. Indica is entitled not to install certain corrections or updates if it believes installing such corrections or updates will not benefit the correct operation of the Software.
6. Indica is entitled to stop providing (components of) the Software with Updates or maintenance.
7. The Client can request Indica to add modifications and new functionality to the Software. Indica is however at all times entitled to refuse such a request for any reason whatsoever.
8. If the modifications and/or new functionalities as referred to in the preceding section are developed specifically for the Client, those modifications and/or new functionalities will be considered to be Customisation. Indica is entitled to charge additional costs for performing Customisation.

## **7. SUPPORT**

1. Indica shall endeavour to provide Support upon delivery of the Services in the form of support by telephone or assistance from a distance that in Indica's judgment is of a supporting nature and can be carried out swiftly and simply. However, Indica provides no

- guarantees for the response times or extent of support, unless otherwise agreed in the proposal or by means of an SLA.
2. In addition to the Support referred to in section 1, Indica is prepared to perform certain other activities for the Client. On the Client's request, Indica will prepare a proposal for the activities concerned.
  3. Insofar as possible, Indica will inform the Client of the costs of the Support before the activities are carried out.

## **8. INTELLECTUAL PROPERTY RIGHTS**

1. The Intellectual Property Rights with regard to the Software, including but not limited to the Intellectual Property Rights to the source code, documentation, look-and-feel, interfaces, (third) party connectors and lay-out shall be vested exclusively in Indica or its licensor(s).
2. Nothing in this Agreement is intended to transfer any Intellectual Property Rights to the Client. The use that the Client can make of the Software is limited to what is described in this Agreement. The Client shall not perform any actions that may infringe the Intellectual Property Rights of Indica or its licensors, including but not limited to publishing and/or making copies of the Software or licensing or selling it to third parties and registering domain names, trademarks or Google Adwords search terms (keywords) that are similar to or identical with any mark in respect of which Indica or its licensors can assert Intellectual Property Rights. The Client acknowledges and accepts that any unauthorised use of the Software, documentation, look-and-feel, interfaces, lay-out or other materials subject to Intellectual Property Rights infringes the Agreement and the applicable legislation.
3. The Client is not permitted to modify the Software in whole or in part, without the prior permission of Indica. Indica is always entitled to refuse its permission or to attach conditions to its permission – including conditions concerning the manner and quality of the performance of the modifications requested by the Client. The Client shall bear the entire risk of all changes that it makes or changes made by third parties on its instructions, whether or not with Indica's permission.
4. The Client will exclusively acquire the rights of use and powers expressly assigned in writing under these General Terms and Conditions, the Agreement or otherwise, and in all other respects the Client will not make copies of or publish the software.
5. Indica is entitled not to grant, or to withdraw, the right of use as referred to in the preceding section if the Client has not fulfilled its obligations pursuant to the Agreement.
6. Indica is entitled to take technical measures to protect the Software against unlawful use and/or against use in a manner or for purposes other than the manner or purposes agreed between the Parties. The Client may not remove or bypass such technical measures or have such technical measures removed or bypassed.
7. Indica can provide software of third parties to the Client and the Software can contain open source software components. The (open source) (licence) conditions of those third parties may be applicable to this while setting aside the conditions from these General

Terms and Conditions. The Client guarantees that it will accept and strictly comply with these conditions of third parties.

8. The Client is not permitted to remove, make unreadable, to conceal or to modify notifications or statements with regard to Intellectual Property Rights.
9. Indica shall at no time be obliged to provide (a physical carrier with) the Software in source code or other software used in the development of the Software (whether or not in source code form) to the Client, unless this is necessary for the performance of the Agreement.
10. Any use, reproduction or publication of the Software falling outside the scope of the Agreement or issued Licence is deemed an infringement of the Intellectual Property Rights. The Client shall pay to Indica a penalty due and payable immediately amounting to EUR 10,000 for each act of infringement and EUR 1,000 for each day that the infringement continues, without prejudice to the right of Indica to demand compensation for loss or damage as a result of the infringement or to take other legal action for the purpose of terminating the infringement.

## **9. PRICES**

1. Unless expressly stated otherwise with regard to an amount, all prices referred to by Indica are exclusive of turnover tax (VAT) and other duties levied by the government.
2. Updates are included in the fees stated by Indica for Maintenance, if an SLA is part of the Agreement. As soon as the Client fails to pay the costs for Maintenance and/or terminates the Agreement concerning the Maintenance, the Client shall no longer be entitled to install (new) Updates.
3. If a price is based on information provided by the Client and the information proves to be incorrect, Indica is authorised to adjust the prices accordingly, even after the Agreement has already been formed.
4. Indica is entitled to change the prices it applies whenever the Agreement is extended by a maximum increase of five (5) percent. However, if a supplier of Indica increases its prices in the interim, Indica is entitled to pass on this increase immediately to the Client on a 1-on-1 basis. Indica will provide written notification of price adjustments.
5. Indica is entitled to change the pricing conditions in the interim and to charge the Client an additional amount if it turns out that the Client, due to organisational changes, no longer satisfies the conditions determined for him upon entering into the Agreement.

## **10. TERMS OF PAYMENT**

1. Indica shall invoice the Client in advance for any non-recurring amounts payable. The periodically payable amounts will be invoiced to the Client after the end of the period concerned.
2. Indica can issue electronic invoices to the e-mail address of the Client as known to Indica. The Client accepts this invoicing method.

3. Indica will send the Client an invoice for all amounts payable by the Client. Invoices are payable within thirty (30) days after receipt of the invoice and to a Dutch bank account to be designated by Indica.
4. If the Client has failed to pay within fourteen (14) days of the due date, the Client will be held in default by operation of law without notice of default being required. If an amount owed is not paid within the payment term, the outstanding amount will be subject to statutory interest without any further notice of default by Indica being required.
5. In the event the Client fails to pay by the due date, the Client is obliged to pay any and all judicial and extra-judicial collection costs, including the costs of lawyers, bailiffs and debt-collection agencies, in addition to the amount payable and the relevant interest due.
6. In the event that the Client fails to comply with any obligation under the Agreement, Indica will be authorised, without any notice of default being required, to suspend the Services, without prejudice to Indica's right to compensation of loss or damage, lost profit and interest. The Client is not entitled to any compensation of loss or damage that may arise from this.
7. In the event that the Client is held in default, Indica will be authorised to restrict its service provision, for instance by restricting access to the Service and/or the Software, provided it notifies the Client thereof at least 48 hours in advance. The Client is not entitled to any compensation of loss or damage that may arise from this.
8. The demand for payment is due and payable immediately in the event that the Client is declared bankrupt, applies for a suspension of payments, or an attachment is made on all of the Client's capital assets, and furthermore if the Client's business is wound up or dissolved.

## **11. PERSONAL DATA AND SECURITY**

1. The personal data to be processed by Indica in performing the Services are subject to the Personal Data Protection Act (*Wet bescherming persoonsgegevens - Wbp*), in connection with which, according to the terminology of that Act, the Client shall be the 'controller' and Indica shall be the 'processor'.
2. Indica will ensure an appropriate level of security considering the risks involved in processing the data to be protected and the nature thereof. However, this will only apply if and insofar as this data is located in Indica's systems or infrastructure.
3. A processor's agreement in which additional safeguards have been included with regard to the processing of personal data is part of the Agreement.

## **12. LIABILITY**

1. Indica accepts statutory liability to pay compensation only insofar as stipulated in this Article.
2. Indica excludes any liability for breach of contract in complying with the Agreement, owing to unlawful acts or otherwise. Insofar as exclusion of liability is not possible pursuant to the law, Indica shall only be liable to the Client for direct loss or damage as a result of an attributable shortcoming in the fulfilment of the Agreement. Direct loss or damage is understood exclusively to comprise any loss or damage consisting of:
  - a) Damage inflicted directly on tangible objects ("property loss or damage");



- b) Reasonable and demonstrable costs that the Client had to incur to remind Indica to properly comply (again) with the Agreement;
  - c) Reasonable costs incurred in determining the cause and the extent of the loss or damage, insofar as this relates to direct loss or damage as referred to here;
  - d) Reasonable and demonstrable costs that the Client has incurred to prevent or limit the direct loss or damage as referred to in this article.
3. Indica can in no way be held liable for compensation of indirect loss or damage or consequential loss or damage due to lost turnover or profit, loss or damage arising from delay, data loss, exceeding of stipulated terms as the result of changed conditions; loss or damage arising from inadequate cooperation, information or materials provided by Indica and loss or damage arising from information or advice provided by Indica of which the content is not explicitly part of this Agreement.
  4. The maximum amount that can be paid out in the event of liability pursuant to section 2 of the present article is limited for each event causing loss or damage, or for each series of events causing loss or damage, to the amount that is equal to the fees payable by the Client under the Agreement in the past twelve (12) months (excluding VAT). Under no circumstances, however, will the total compensation for direct loss or damage exceed a sum of EUR 10,000 (excluding VAT).
  5. The exclusions and limitations of liability referred to in the preceding articles cease to apply if and insofar as the loss or damage is a consequence of an intentional act or wilful recklessness on the part of Indica's management.
  6. Indica's liability for an attributable failure to perform the Agreement will only arise if the Client gives Indica proper notice of default in writing without delay, providing a reasonable period to remedy its failure, and Indica continues to attributable fail to comply with its obligations even after that period. The notice of default must contain the most detailed description possible of the failure to fulfil the obligations to enable Indica to provide an adequate response.
  7. Any claim for compensation for loss or damage by the Client against Indica that has not been specified and expressly notified by the Client, shall lapse by the mere passage of twelve (12) months after the claim has arisen.
  8. Application of Section 6:271 et seq. of the Dutch Civil Code is excluded.
  9. The Client indemnifies Indica against all claims by third parties (including customers of the Client), which involve compensation for damage, costs or interest and bear a relation to the Agreement, the Service and/or the use of the Software.

### **13. FORCE MAJEURE**

1. Neither Party may be bound to perform any obligation if a circumstance beyond the Parties' control, that could not or should not have been foreseen when the Agreement was entered into, negates every reasonable opportunity to perform.
2. Force majeure shall be understood to include (but not only): failures of public infrastructure that is normally available to Indica and on which the delivery of the Services depends, but over which Indica has no actual control or in respect of which Indica can make no contractual obligation to perform, such as Internet networks with which Indica has not concluded a contract; failures of the Indica infrastructure and/or Services of Indica caused

by computer crimes, such as DOS or DDOS attacks or successful or unsuccessful attempts to circumvent network security or systems security; failures of Indica's suppliers, which Indica was unable to foresee and where Indica is unable to hold their supplier liable, because force majeure similarly applied to the relevant supplier, for instance; defective items, equipment, software or other source material, the use of which has been stipulated by the Client; unavailability of staff (due to illness or otherwise); government measures; general transport problems; strikes; wars; terrorist attacks; and civil commotion.

3. Either of the Parties shall have the right to terminate the contract in writing if a situation of force majeure persists for more than ninety (90) days. In such case, that which has already been performed under the contract will be paid for on a proportional basis without the Parties owing each other anything else.

#### **14. CONFIDENTIALITY**

1. The Parties will treat the information they provide each other before, during or after the performance of this Agreement as confidential if such information has been marked as confidential or if the receiving party is aware or should reasonably assume that the information was intended to be confidential. The Parties will also impose this obligation on their employees, as well as on any third parties they have engaged to perform the Agreement.
2. Indica will not access data stored by the Client and/or distributed by the Client via Indica's systems and/or Software, unless this is required to ensure the proper performance of the Agreement or Indica is obliged to do so pursuant to a legal provision or an injunction. In such case, Indica will undertake to limit access to the information as far as possible, to the extent that this is within its power.
3. The duty of confidentiality also remains in force after termination of the Agreement for any reason whatsoever, and for as long as the party providing the information can reasonably lay claim to the confidential nature of the information.

#### **15. DURATION AND TERMINATION OF THE AGREEMENT**

1. The Agreement is entered into for the term stated in the proposal. If no term is stated, the Agreement will be entered into for a period of twelve (12) months. The Agreement can only be terminated prematurely as stipulated in these General Terms and Conditions, or subject to the approval of both parties. If the Agreement is a contract for the provision of services ("overeenkomst van opdracht"), this cannot be terminated prematurely by the Client, however.
2. If the Agreement is a continuing performance agreement ("duurovereenkomst"), this will in the absence of a written notice of termination, with due observance of the period of notice, be extended by the same period in each instance, unless otherwise agreed in writing.
3. The Client shall observe a period of notice of one (1) month. Indica shall observe a period of notice of one (1) month.

4. Indica shall be authorised to terminate the Agreement in full or in part, without notice of default being required, if at least one of the following special grounds applies:
  - a) The Client defaults on a material obligation pursuant to the Agreement.
  - b) The Client applies for a suspension of payments.
  - c) A petition has been filed for winding up the Client's business.
  - d) The Client's activities are halted or wound up.
5. If Indica suspends compliance with the obligations, this will not affect its statutory rights or rights under the Agreement, including the right to payment for the Services it has suspended.
6. Upon termination of the agreement, any claims of Indica against the Client will become immediately due and payable. In the event that the Agreement is terminated, the amounts already invoiced for the performance already delivered will remain payable without any obligation to nullify. In the event that the Client terminates the Agreement, Indica may only terminate that part of the Agreement that Indica has not yet performed. If the termination is attributable to the Client, Indica is entitled to compensation of any loss or damage arising either directly or indirectly as a result thereof.
7. In the abovementioned cases, the right to suspension applies to all the Agreements with the Client simultaneously, even if the Client is only in default with regard to one Agreement, and without prejudice to Indica's right to compensation of loss or damage, lost profit and interest.
8. Indica shall never be obliged to provide any compensation for damage owing to notice of termination, dissolution or another method of termination of the Agreement.
9. Via the Service, the Client can at any time access data that the Client stores or processes via the Service. Indica is not obliged to provide back-up files to the Client on its own initiative, unless agreed otherwise in writing by means of an SLA.
10. After termination of the Agreement for whatever reason the Client shall cease and not resume any use of the Software. The Client shall remove any back-up file (and any other copies) of the Software from its systems or return them to Indica.

## **16. AMENDMENTS**

1. Indica reserves the right to amend or supplement the Services and these General Terms and Conditions. Amendments also apply to Agreements already entered into, subject to a notice period of thirty (30) days following the announcement of the amendment.
2. Amendments will be announced on the website, or by means of an e-mail to the Client or via another channel that allows Indica to prove that the Client received the notice. Non-substantive minor changes can be implemented at all times, without requiring notification.
3. If the Client does not wish to accept an amendment, it must inform Indica thereof, in writing, within fourteen (14) days of being notified thereof, stating reasons. This may give Indica cause to review the amendment. If Indica does not subsequently retract the amendment, the Client may terminate the Agreement with effect from the date on which the new terms and conditions take effect.

## **17. MISCELLANEOUS PROVISIONS**

1. The Agreement is subject to Dutch law.

2. All disputes that may arise between Indica and the Client shall be submitted to the competent court in the district where Indica has its registered office.
3. The term "written" in this Agreement also includes communication by e-mail or fax, provided that the identity of the sender and the integrity of the content have been sufficiently established.
4. The version of any communications received or stored by Indica shall be regarded as authentic, subject to proof to the contrary to be produced by the Client.
5. If any provisions in the Agreement are declared null and void, this will not affect the validity of the entire Agreement. In such case, the Parties will stipulate a new provision or new provisions to replace any such provisions, reflecting the purport of the original Agreement and the General Terms and Conditions as much as legally possible.
6. At all times, the Parties will inform each other in writing without delay of any changes in name, postal address, e-mail address and telephone number, as well as bank and giro account numbers, if requested.
7. Indica can transfer rights and obligations that arise from the Agreement to third parties and the Client hereby agrees irrevocably with such transfer. In the event of such a transfer, Indica will inform the Client thereof. The Client is only authorised to transfer its rights and obligations under this Agreement to a third party with the prior consent of Indica. Such consent is not required, however, in the event of a company takeover or the acquisition of the majority of the shares of the relevant party.

## MODULE B – DELIVERY OF ON PREMISE SOFTWARE AND PRIVATE CLOUD

If the Service comprises (in part) the delivery of On Premise Software and/or Private Cloud, the provisions of this module shall also apply.

### 18. GRANT OF LICENSE

1. Indica hereby grants to the Client, for the term and subject to the terms and conditions of the Agreement, a Licence for the use of the On Premise Software and/or Private Cloud. The terms and conditions apply automatically if the Client uses the On Premise Software and/or Private Cloud.
2. The Client is entitled to use the On Premise Software and/or Private Cloud under the Licence for the Client's business or institution. The restrictions, which include but are not limited to, the number of user accounts and available functions, are stated in the Agreement.
3. The Client is expressly not permitted to sell, rent out, transfer, grant or otherwise make available to third parties any rights with regard to the On Premise Software and/or Private Cloud. In derogation from the above, the Client is permitted to make available the On Premise Software and/or Private Cloud to End Users for the use of the On Premise Software and/or Private Cloud.
4. The following is also not permitted:
  - a. to reverse engineer the source code of the Software or to decompile the Software, except where this is permitted pursuant to mandatory law;
  - b. to give a copy of the On Premise Software and/or Private Cloud to third parties;
  - c. to sublicense or make the On Premise Software and/or Private Cloud available to third parties by means of rental, Software-as-a-Service constructions or otherwise;
  - d. to modify the On Premise Software and/or Private Cloud, except where this is permitted pursuant to mandatory law;
  - e. to delete or render unreadable designations of Indica and/or its licensor(s) as the right holder of the On Premise Software and/or Private Cloud or parts thereof.
5. The Client shall as a minimum impose the same terms and conditions as included in the General Terms and Conditions on the End Users with regard to the use of the On Premise Software and/or Private Cloud.
6. The Client shall if requested provide without delay its full cooperation in an investigation performed by or on behalf of Indica concerning compliance by the Client and/or End User with the agreed restrictions on use. The Client shall on the first request of Indica provide access to its buildings and systems to Indica or a third party engaged by Indica.

## **19. INSTALLATION AND DELIVERY**

1. Unless agreed otherwise in writing, the Client itself shall be responsible in full for the hardware, software and network environment, as well as the installation of the On Premise Software and/or Private Cloud.
2. Indica shall provide a limited level of Support in respect of the installation of the On Premise Software and/or Private Cloud, but shall at all times be entitled to charge costs for this.
3. If agreed separately in writing, Indica is prepared to perform the installation of the On Premise Software and/or Private Cloud for and under the responsibility of the Client. At the Client's request, Indica will prepare a proposal for the activities concerned. Insofar as possible, Indica will inform the Client in writing of the costs for the installation before carrying out the activities.
4. If agreed separately in writing, Indica is prepared to perform, at the Client's request, the configuration of the On Premise Software and/or Private Cloud, after installation, on the hardware, software and network environment to be designated by the Client. Indica is entitled to charge costs for this. Indica shall give instructions with regard to the desired configuration. If the designated network does not meet the requirements of Indica, Indica shall be entitled to refuse the configuration.
5. In the event that Indica performs the installation and/or configuration as referred to in sections 3 and 4 of the present article, the Client shall at Indica's request provide all required access to employees and auxiliary staff of Indica to the environment to make possible the installation, configuration, maintenance and modifications of the On Premise Software and/or Private Cloud. At Indica's request, the Client shall also make available employees of its own.
6. The selection, purchase and management of this hardware, software and network environment are the sole and full responsibility of the Client. Indica shall give instructions with regard to the desired configuration. If the designated environment does not meet the requirements of Indica, Indica shall not be responsible for any failure in the operation of the On Premise Software and/or Private Cloud.
7. On request, Indica shall inform the Client of system requirements, but can in no case be held responsible and liable for any failure in the operation of the On Premise Software and/or Private Cloud delivered on the systems of the Client or a third party engaged by the Client (including a hosting provider). In addition, Indica shall not be obliged to carry out modifications of the On Premise Software and/or Private Cloud with a view to the proper operation on the above-mentioned systems of the Client. Indica shall however provide assistance in seeking a suitable solution, insofar as it deems this reasonable. This is at the sole discretion of Indica.

## **20. GUARANTEES AND AVAILABILITY**

1. The Client accepts that the On Premise Software and/or Private Cloud contain only the functionality and other features as found by the Client in the On Premise Software and/or Private Cloud at the time of delivery ("as is"), i.e. with all visible and invisible errors and

defects. Unless otherwise agreed by means of an SLA, Indica does not guarantee that the On Premise Software and/or Private Cloud will be available at all times and without interruptions or defects.

2. Indica is not obliged to rectify problems/defects in the On Premise Software and/or Private Cloud that are identified more than three (3) months after delivery and are attributable to changes in the environment or other technical factors (including browsers, infrastructure, operating systems and modified standards).
3. Modifications that are required to be carried out as a result of technical factors as referred to in the preceding section shall be performed in Minor Updates. Insofar as possible, Indica will state in advance the costs for these activities if they are not included in the next Minor Update.
4. The Client is aware that the Indica has no control of the hardware and infrastructure on which the On Premise Software and/or Private Cloud has been installed. Indica therefore does not provide any guarantees with regard to the availability of the hardware and infrastructure, and the availability of the On Premise Software and/or Private Cloud as a result of non-availability of the hardware and/or infrastructure.

## MODULE C – DELIVERY OF SOFTWARE-AS-A-SERVICE

If the Service comprises (in part) the delivery of the SaaS, the provisions of this module shall also apply.

### 21. USE OF THE SERVICE

1. The SaaS will be made available to the Client as online software service (software-as-a-service) from the Starting Date or any other date agreed in writing. Indica shall inform the Client of when the SaaS is made available. The Client itself shall decide how it will use the Service and for which specific purposes.
2. Indica shall endeavour to send the login details of the SaaS to the Client as soon as possible after the Starting Date of the Agreement. The Client is aware that loss of these login details can lead to unauthorised access to the SaaS. The Client shall protect the login details against unauthorised access and unauthorised persons.
3. Indica hereby grants the Client a non-exclusive and non-transferable right of use for the duration of the Agreement in order to use the SaaS in accordance with the Agreement and these General terms and Conditions.
4. In particular, the Client must keep the password strictly confidential. Indica may assume that everything that takes place from the account of the Client after login with the associated user name and password, takes place under the management and supervision of the Client. This means that the Client is liable for all these actions, unless the Client has informed Indica that another person knows the password.
5. In the event of suspected misuse of the account, the Client is required to inform Indica without delay and the Client is required to change the (login) details.
6. Personal data are processed when using the SaaS. The provisions in Article 11 of these General Terms and Conditions apply to the processing of personal data.

### 22. RULES OF USE

1. The Client guarantees that the SaaS will not be used for activities that conflict with Dutch law or other applicable laws and regulations.
2. The Client is only permitted to use the SaaS for its own use. It is expressly prohibited to use the SaaS on behalf of third parties, or to provide access to the account to third parties.
3. In particular, it is prohibited to use the SaaS in such a way that it causes nuisance or inconvenience to third parties. This includes using own scripts or programs to upload or download large quantities of data, or excessive use of the SaaS.
4. In addition, it is prohibited to use the SaaS:
  - to distribute information that is pornographic or erotic (even if this is legal in itself);
  - to distribute information in violation of copyrights, or to place hyperlinks to such information;



- to violate the privacy of third parties, for instance by distributing third-party personal data without permission or necessity, or repeatedly harassing third parties by providing them with unwanted communications.
- 5. If Indica ascertains that the Client has violated the above conditions, or receives a complaint, it will give the Client a warning. If this does not lead to a satisfactory solution, Indica itself may intervene to end the violation. In urgent or serious cases, Indica may intervene without warning.
- 6. If, at Indica's discretion, the operation of Indica's computer systems or network, third-party networks and/or service provision via the internet is obstructed, damaged or otherwise put at risk, in particular as a result of excessive amounts of data being sent, leaked personal data or virus activity, Trojan horses and similar software, Indica is authorised to take any reasonable measures it deems necessary to avert or prevent such risk.
- 7. Indica is entitled at all times to report any criminal acts discovered. In addition, Indica is authorised to provide the Client's name, address and other identification data to a third party who has complained that the Client has breached its rights or the Agreement, provided that, according to the principles of reasonableness and fairness, the accuracy of the particular complaint is sufficiently plausible and the third party has a clear interest in being provided with these data.
- 8. Indica may recover from the Client any losses or damage suffered as a result of violation of these rules of conduct. The Client indemnifies Indica against all third-party claims pertaining to losses or damage arising from a violation of these rules of use.

### **23. AVAILABILITY OF THE SERVICE**

1. The SaaS will be performed on the basis of a best-efforts obligation, unless and to the extent that Indica has pledged an explicit result in the SLA and the relevant result has also been adequately described.
2. Indica will make the SaaS available via the internet and ensure that it achieves the best possible response time for this for the Client.
3. Indica has the right to take its systems, including the SaaS, in their entirety or in part, temporarily out of operation for the purpose of maintenance (planned or unplanned), adjustment, or improvement. Indica will endeavour to ensure that as far as possible any downtime periods are scheduled outside office hours, and will undertake to inform the Client in good time of the scheduling of downtime periods. However, Indica is never liable for compensation for damages arising from such downtime periods.
4. Indica has the right to adapt its systems, including the SaaS, in their entirety or in part, from time to time in order to improve their functionality and/or to correct errors. If an adjustment causes a considerable change in functionality, Indica will undertake to inform the Client of this. In the event of modifications that are relevant to multiple clients, it is not possible to waive a specific modification only for the Client. Indica is not liable for any compensation for loss or damage resulting from such a modification.
5. In the event of unavailability of the SaaS due to disruptions, maintenance or other causes, Indica will make every effort to inform the Customer of the nature and expected duration of the interruption.

## **24. PROCEDURE UPON TERMINATION OF THE AGREEMENT**

1. After termination of the Agreement, as a result of cancellation, all data stored for the Client will be kept available until one week after the termination, so that the Client itself can download the data. After this period, all Client data will be deleted, regardless of whether the Client has downloaded it or not, unless otherwise agreed by means of an SLA. Indica is not obliged to provide the Client with back-up files on its own initiative, unless agreed otherwise in writing by means of an SLA.
2. The deletion of data stored for the Client will take place as standard without special precautions to make the deletion irreversible, but can on request be carried out, against additional payment, with the use of a software-based data shredder.