Supplemental terms and conditions Governing ICT (AVICT-12-01)

Article 0 Definition of terms

The capitalised terms and phrases used in these General Terms and Conditions governing ICT have the following meaning:

Modification:	A modification to the Software if the infrastructure is changed;
Acceptance:	The Client's acceptance within the meaning of Article 3 of these General Terms and Conditions governing ICT;
Hardware:	The hardware including the related, most recent version of the System Software on which or in connection with which the Software must be used or implemented by the Client;
Source Code:	The text of the Software that underlies the Object Code and is written in a commonly used programming language, together with the related technical documentation;
Corrective Maintenance:	Detecting and repairing Defects in the Software and Documentation after they have been reported by the Client;
Documentation:	The functional, technical and administration documentation related to the Result;
Functional Design/ Basic Design:	The design in which the functional and non-functional specifications and the Client's requirements are laid down with respect to the Result to be realised.
Defect:	A failure in whole or in part to comply with the agreed requirements, specifications or characteristics;
Implementation:	Setting up the Software and the technical installation of the Software on the Hardware and if necessary modifying the Software or other Software so that the Software operates in accordance with the agreed specifications;
Information Carriers:	The material carriers on which data, information and/or Software that are manufactured and/or developed for the benefit of the Client or whose rights (including ownership rights) otherwise accrue to the Client, in the broadest sense of the words, are recorded;
Licence:	The Client's right to use Standard or other Software in respect of which the IP rights accrue to a party other than the Client.
Custom-made Software	The Software to be developed and modified by the Contractor for the benefit of the Client, including the changes and supplements to the Standard Software, including the related Documentation and materials;
New Version:	A changed version of the Software as a result of Renovating and/or Preventative Maintenance;
Object Code:	The instructions from software that is 'readable' by the computer;
Action Plan:	The Action Plan will in any event lay down the date of delivery, the date of implementation, the phases, if any, in which Custom-made Software will be developed or implemented and the interim for final results to be achieved in those phases, the performance of interim or final system tests, the performance of interim or final Acceptance tests and a provision pursuant to which Custom-made Software must always be developed and/or implemented on the basis of the Functional Contractual Documents;
Preventative: Maintenance	Maintaining the Software, i.e. taking appropriate measures and safeguards so that the Software operates in accordance with the specifications;
Software:	The entirety of the Standard and Custom-made Software together with the related New Versions and Improved Versions, Documentation and materials;
SLA:	A technical and detailed specification of the services to be provided on the ground of the Agreement and for each specified part of those services the requirements that that specific part in particular must meet;
Standard Software:	The software that is not developed specifically for the Client's benefit;
System Software:	The operating system that is independent of the information system together with the related Documentation and materials;
Technical Design:	The translation of the Functional Design/Basic Design into technical specifications;
Improved Version:	A changed version of the Software as a result of Preventative and/or Corrective Maintenance;
Renovating Maintenance:	The modification of the Software based on new technological insights and/or new statutory schemes and/or improvements or expansions of the functionality.

1 Payment

1.1. Subsequent costing and estimate

In the event that the parties agree that payment will be made on the basis of subsequent costing an estimate will have to be submitted in advance and under no circumstances may the amount to be invoiced exceed the estimate by more than 5.00%.

1.2. Checking whether the invoice is correct

In the event that the Client disputes that all or part of the invoice is correct, the parties will consult in order to resolve the situation. The Client is entitled at all times to have substantive correctness of the invoice sent by the Contractor audited by an account, within the meaning of Article 2:393(1) of the Dutch Civil Code (Burgerlijk Wetboek), to be designated by the Client. The Contractor will allow the accountant in question to inspect its books and records and will provide him with any and all data and information that he requests. The audit will be confidential and will not exceed the scope of what is required to verify the invoice. The accountant will issue his report to both parties as quickly as possible. The Client will pay the costs of the audit unless it appears from the accountant's audit that the invoice(s) was/were not correct in respect of the disputed points or was/were incomplete, in which case those costs will be paid by the Contractor. The Client will not owe any interest on the period of the audit.

1.3. Suspension of payment

The Client will be entitled to suspend the payment of all or part of an invoice in respect of which the parties disagree during the period of the audit.

The Client will exercise that power only if it has reasonable doubt about the correctness of the invoice in question.

1.4. Continuity

The Client's exceeding a payment term or failure to pay an invoice because the Client disputes that the invoice is correct or because the Client is of the opinion that the Contractor has committed a breach in respect of its compliance with its obligations under the Agreement will not entitle the Contractor to suspend its obligations under the Agreement or to dissolve the Agreement.

1.5. Additional work

There can be deemed to be additional work only if an authorised representative of the Client has explicitly required such work in writing. The Contractor must notify the Client in writing as quickly as possible in the event that the Contractor is of the opinion that additional work will be necessary. The Contractor will not commence performing the additional work until it has been given written instructions to do so. Additional work does not include extra work that the Contractor reasonably could or should have foreseen when the Agreement was concluded. Additional work will be paid for at the original rate. The conditions and provisions stipulated in the Agreement govern additional work.

2 Intellectual Property rights

2.1. Source code

In the event that the Contractor makes software available to the Client that already existed before the Agreement was entered into, if the Contractor is entitled to have the Source Code of that Software at its disposal it will conclude an escrow agreement in respect of that Source Code and all the necessary technical documentation immediately at the Client's request, which agreement will give the Client the right to demand that that Source Code and technical documentation be surrendered to it immediately in the event that:

a. a petition for bankruptcy or an application for a suspension of payments is filed in respect of the Contractor or the Contractor is declared bankrupt or is granted a suspension of payments or a dissolution procedure is commenced for the company with which the agreement was entered into; or

b. the Contractor fails to comply with any obligation that it has towards the Client with respect to that Software.

2.2. Transfer

If the Contractor transfers IP rights to one or more third parties the Contractor guarantees that the Client's rights will be maintained in full.

3 Acceptance

3.1. Acceptance Procedure

Everything that the Contractor will deliver to the Client in the context of an Agreement will first be subjected to an Acceptance Procedure within the term and in the manner stipulated.

3.2. Acceptance Test

During an Acceptance Test the Client will be entitled to make full operational use of whatever has been made available for that purpose. If any defects appear during any Acceptance Test the Contractor will be obliged to remedy those defects within the shortest possible term and to offer the whole to the Client once again for Acceptance. In the event that the Client once again discovers defects during the second Acceptance Test, the Client will be entitled to dissolve the Agreement in whole or in part effective immediately without any further notice of default being required, without prejudice to the Client's other rights. The foregoing provision fully applies in respect of the Client's rights on the ground of the Contractor's exceeding any term (including delivery term) stipulated in the Agreement.

3.3. Guarantees

A prior inspection/Acceptance Test by or on behalf of the Client does not imply any acknowledgement that what has been delivered is in compliance with the guarantees referred to in Article 4.

4 Guarantees

4.1. Guarantees

The Contractor guarantees that:

a) it has the expertise necessary to perform as agreed with the Client;

b) before it made the Offer to the Client it fully acquainted itself with the Client's requirements and wishes and it is not aware and was not required to be aware of any circumstances that should have led the Client to refrain from entering into the Agreement, or in any event not in the same form;

c) every Offer that it makes is correct and complete and provides a full presentation of what is being offered;

d) it is able to fully and correctly perform as agreed within the time stipulated;

e) in the case of development of, Implementation of and/or installation of Software and or computer systems and/or networks and/or other systems, it will strictly and fully apply the agreed methodology, unless the parties have explicitly deviated from it in writing;

f) before it makes the Result available to the Client for an Acceptance Procedure it will have ensured that it is in compliance with the applicable requirements stipulated in the Agreement;

g) no further cooperation is required from the Client and/or employees or other workers of the Client's in order to perform the Agreement, other than the agreed – specified – cooperation;

h) it is entitled to use everything that it delivers to the Client in the context of the Agreement for the purpose for which it is delivered, without any restriction;

i) it will provide detailed user manuals and Documentation for what it delivers, which will enable the Client to use what (or have used) and maintain (or have maintained) what is delivered at the same level as that at which the Contractor itself is able and it will provide the Client with the Source Code for all the Software that is developed for the Client's benefit;

j) all the Source Codes that the Contractor supplies the Client will be of such quality that with the aid of those Source Codes the Object Code that the Contractor supplies to the Client can be generated in the customary manner and will enable the Client to maintain the Software that has been delivered;

k) when it is performing work on the Client's computer system and other systems it will ensure that the data and/or information stored on those systems are safeguarded such that they cannot possibly be lost and/or damaged;

l) in the case of maintenance of systems the Contractor will keep the Client apprised in writing of any and all changes made to the systems, of any kind whatsoever;

m) all the new and/or modified versions of Software that the Contractor supplies to the Client on the basis of the agreements made will be compatible both

‘upwards’ and ‘downwards’;

n) in the event that Software is delivered it will train a number of employees to be indicated by the Client in the use of that Software for the purposes of the Acceptance Procedure before the Acceptance Procedure referred to in Article 9 of this Agreement takes place;

o) in the event that the Client requests the Contractor to submit an SLA with its Offer that SLA will be in compliance with all the general quality requirements and the quality requirements that the Client requests in particular and will contain a proposal for discounts for cases in which the agreed service level is not achieved; and

p) unless the parties agree otherwise, after delivery it will be able to supply parts for the goods delivered and/or services to the Client, for a term of at least thirty-six (36) months.

4.2. Complaints
The Client will give the Contractor written notice of any complaints with respect to what is delivered, or in any event as soon as it is reasonably possible to discover the cause.

5 Maintenance

5.1. Service levels
The service levels (quality and level) of the maintenance will be worked out in more detail in an SLA, to be agreed by the Client and the Contractor in consultation.

5.2. Changes to Software
The Contractor is not permitted to make any changes to the Client's Software unless the Client has given prior written permission to do so or has explicitly requested that such changes be made.

6 Defects and Corrective Maintenance

6.1. Reporting defects
The SLA will stipulate the manner in which a Defect must be reported to the Contractor. In the event that the SLA does not contain any stipulation in this respect a Defect must be reported to the Contractor in writing (preferably by e-mail) as quickly as possible and in as much detail as possible.

6.2. Priority categorisation
Unless the parties have classified Defects in other categories in this Agreement, in the context of performing Corrective Maintenance Defects will be classified into the following categories:
- Priority 1:
  The Software does not operate at all or to a large extent and in all reasonableness no longer can be used.
- Priority 2:
  The Software shows signs of serious loss of functionality but, in the Client's opinion, still can be used.
- Priority 3:
  The Software shows signs of annoying defects but can be used normally.
  The Client will decide in which priority group a Defect is classified.

6.3. Terms
The SLA will stipulate for each priority group within what term the Contractor must commence Corrective Maintenance and within what term the Defect must be remedied. The repair period will commence at the time of the report within the meaning of the first subsection of this Article.

6.4. Continuation of maintenance
In the event that Corrective Maintenance commences within the agreed hours the Client will be entitled to request that that Corrective Maintenance continue outside those hours if it is of the opinion that the nature of the Defect gives cause to do so.

6.5. Report of repair
The SLA will stipulate the manner in which the Contractor will report to the Client that the Defect has been remedied and the manner in which the Contractor will report on the Defect and the manner in which it is remedied.

6.6. Temporary problem resolutions
Corrective Maintenance also includes providing temporary problem resolutions. The Contractor will not implement software detours or problem avoidance or workaround restrictions unless the Client has given written permission to do so, in which context the Contractor must demonstrate when making such a request that for the time being the Defect cannot be remedied in any other manner.

7 Improved versions arising from Preventative and Corrective Maintenance

7.1. Improved versions
The Contractor is obliged to sufficiently investigate whether on the basis of Preventative and/or Corrective Maintenance that it has performed there is reason to develop Improved Versions of the Software and to make them available to the Client. The Client is not obliged to purchase such Improved Versions.

7.2. Continued use and support and maintenance of older versions
The provisions stipulated in Articles 8.2 and 8.3 apply mutatis mutandis.

7.3. Acceptance Test
The Client will be entitled to have the Improved Version subjected to an Acceptance Test.

8 Renovating maintenance

8.1. New versions
The Contractor is obliged to sufficiently investigate the possibility of qualitatively improving the Software and to make New Versions available to the Client as soon as there is reason to do so. The Client is not obliged to purchase such New Versions.

8.2. Continued use
For a term of six weeks after a successful Implementation of the New Version the Client will be entitled to notify the Contractor that it does not wish to continue using the New Version.

8.3. Support and maintenance of older versions
The Contractor will ensure that all prior versions of the Software will be supported and maintained for a term of two years after a New Version is or New Versions are issued, starting from and including the version(s) that the Client has submitted for maintenance.

8.4. Acceptance Test
The Client will be entitled to have the New Version subjected to an Acceptance Test.

9 Modifications

9.1. Modifications
If possible and when necessary, to be determined by the Client, at the Client's request the Contractor will Modify the Hardware or the System Software or the Software or the Custom-made Software or the Standard Software.

9.2. Action Plan

The Modifications will be made on the basis of an Action Plan to be drawn up in advance.

10 Changes to the scope of the maintenance

10.1. Termination of the use of the Software
In the event that the Client no longer uses Software in respect of which the maintenance fell within the scope of the Agreement at the time at which the Agreement was entered into, the scope of the Agreement will be deemed to have been modified accordingly without the Contractor having any right to compensation as a result of that change.

11 Standard Software

11.1. Licences
In the event that the Contractor delivers Standard Software or in the event that it develops Custom-made Software in addition to Software that already exists, the Contractor will provide the Licences required to use the Standard Software.

11.2. Licensing agreement
The conditions with respect to the Licence (and grant of the Licence) and the scope of the right of use will be laid down in in an appendix to the Agreement or in a separate licensing agreement.

11.3. Reserve copy and remedying errors
Pursuant to the Licence the Client in any event is entitled to make a reserve copy and to remedy errors (or to have errors remedied), the foregoing insofar as necessary in order to use the Standard Software or other Software.

12 Custom-made Software

12.1. Action Plan
An Action Plan will be drawn up with respect to the development and Implementation of the Custom-made Software.

12.2. Acceptance test
The Acceptance Test referred to in Article 13 will be set up by the Client and performed by or on behalf of the Client.

12.3. Approval and instructions
In the event that the Contractor draws up the Action Plan it will submit the Action Plan to the Client for approval. The Client is entitled to give instructions at all times in connection with the formation of the Action Plan and to request that those instructions be included in the Action Plan.

12.4. Rejection of the Action Plan
The Contractor will not commence any further work until after the Client has approved the Action Plan referred to in the fourth subsection of this Article in writing. The Client will notify the Contractor in writing in the event that the Client rejects the Action Plan, specifying and substantiating the reasons what the Action Plan has been rejected. The Client will give the Contractor an opportunity to modify the Action Plan and to offer it to the Client again within a term to be stipulated by the Client. In the event that the Client once again rejects the modified Action Plan, the Client will be entitled to immediately dissolve the Agreement extrajudicially – possibly conditionally or partially – without any demand or notice of default being required and without being obliged to pay any compensation of damage or costs

13 Acceptance Test for Custom-made Software

13.1. Acceptance Procedure
The Client will subject the Software to an Acceptance Test within the term stipulated in the Action Plan. The Contractor and the Client are jointly obliged to lay down an Acceptance Procedure in advance, which must in any event stipulate: the specifications approved by both parties in respect of which the Result must be tested, an arrangement for the division of the costs of repair work in the event that it appears that the Result is not in accordance with the specifications and the term of the Acceptance Procedure.

13.2. Official report
The Client and the Contractor will draw up and sign an official report immediately after the Acceptance Test has been performed. The official report will indicate the Defects that the Software has shown and the parts of the Software that the Client has approved or rejected.

13.3. Remedying defects
The Contractor will remedy the Defects indicated in the official report within the term stipulated in the Action Plan.

13.4. Repeating the Acceptance Test
In the event that the Client has not approved the Software after the first Acceptance Test, the Acceptance Test will be repeated within a term stipulated in the Action Plan. The second official report will indicate whether the Defects indicated in the first official report have been remedied and in the case of a rejection as described in the second subsection of this Article whether the Software has now been approved. The second and third subsections of this Article apply in respect of Defects that are not remedied.

13.5. Repeated rejection
In the event that the Client once again rejects the Software after the second Acceptance Test as described in the fourth subsection of this Article, the Client will be entitled to dissolve the Agreement effective immediately within any demand or notice of default being required. The Client will not invoke the provisions stipulated in the first sentence of this subsection if the Contractor reasonably shows, to the Client's satisfaction, that it will be possible to remedy the rejected elements in the short term.

13.6. Liability for damage
In the event of a situation as described in the fifth subsection of this Article the Contractor will be liable for any damage that the Client has sustained or will sustain in the future.

13.7. Date of Acceptance
In the event that the Client has approved all the parts of the Software, the date on which the last official report is drawn up and signed will be deemed to be the date of Acceptance.

13.8. Investigation by a third party
The Client will be entitled to have the Software or the Acceptance Test investigated by a third-party expert before accepting it or approving it. The Client will be entitled to have the Acceptance test performed by a third party. The Contractor will be obliged to cooperate in that respect.