

# iBabs General Terms and Conditions



**iBABS**

A EURONEXT COMPANY

# Chapter 1: General provisions

## 1. DEFINITIONS

- 1.1 Acceptance procedure: the acceptance procedure as described in Article 27;
- 1.2 General Provisions: the provisions of these General Terms and Conditions that apply irrespective of the manner in which iBabs delivers the software;
- 1.3 General Terms and Conditions: the present General Terms and Conditions;
- 1.4 Constructive Maintenance: the Service regarding the execution of maintenance by iBabs, consisting of the launch of upgrades (new releases) and/or updates of the Standard Software;
- 1.5 Corrective Maintenance: the Service in relation to the execution of maintenance by iBabs as a result of Defects that have occurred;
- 1.6 Service: any services iBabs provides to the Client in addition to the Software described in the Agreement;
- 1.7 Documentation: the user and technical documentation as part of the Maatwerksoftware (Customised Software) and/or Standard Software;
- 1.8 Defects: the substantial failure to comply with the functional specifications as expressly agreed in writing between the Parties. A defect is concerned only if the Client can demonstrate this and if it can be reproduced;
- 1.9 User(s): a natural person who makes use of the Software on behalf of and for the benefit of the Client and who has access to this using a username and password.
- 1.10 Recovery period: the time between (i) the moment iBabs establishes a Defect or the Client reports a Defect, and (ii) the time at which the Defect is solved, (the Defect in) the Software is replaced, or a workaround has been created as established by iBabs;
- 1.11 iBabs: the iBabs B.V. private company with limited liability, having its business address at Maelsonstraat 28-4, 1624 NP in Hoorn. Registered at the Chamber of Commerce under number 60962062;
- 1.12 Intellectual Property Rights: all intellectual property rights and related rights, such as copyrights, trademark rights, patent rights, design rights, trade name rights, database rights and neighbouring rights, as well as domain names and rights to know-how;
- 1.13 Client: the party iBabs has entered into the Agreement with;
- 1.14 Customised software: the customised software that has been specifically developed for the Client based on the Standard Software, including, but not limited to the accompanying Documentation, look-and-feel, interfaces, layout and other matters as further described in the Agreement;
- 1.15 Materials: materials including, but not limited to analyses, designs, documentation, reports and tenders;
- 1.16 Additional work: the activities or other performances carried out or to be carried out by iBabs, which fall outside the content and/or scope of the agreed activities and/or performance and/or changes thereof;
- 1.17 Maintenance: the Service iBabs can provide to the Client based on a separate Agreement consisting of the Corrective Maintenance and Constructive Maintenance;
- 1.18 Agreement: the agreement between the Client and iBabs;
- 1.19 Party (Parties): the Client and/or iBabs;
- 1.20 Programs: the Software iBabs delivers to the Client on a physical carrier;
- 1.21 Response time: the time between (i) the moment at which a Client reports a Defect and (ii) the time at which iBabs starts repairing the Defect, as established by iBabs;
- 1.22 SaaS Service: iBabs' making and keeping available of the Software to the Client 'remotely' through the Internet or another data network, without providing the Client with a physical carrier containing the Software concerned;
- 1.23 Software: the SaaS Service and Programs: the Standard Software and any Customised Software as described in the Agreement;
- 1.24 Standard Software: the iBabs standard software, including, but not limited to the accompanying Documentation, look-and-feel, interfaces, layout and other matters as further described in the Agreement;

## 2. APPLICABILITY, REALISATION AND EXECUTION

- 2.1 The General Terms and Conditions apply to the Agreement, the use of the Software, the carrying out of Services and all special offers by iBabs.
- 2.2 The Client enters into the Agreement with iBabs by consenting with the Agreement.
- 2.3 iBabs is entitled to refuse a Client without stating the reasons.
- 2.4 Deviations from and supplements to the General Terms and Conditions and/or Agreement are valid only if they have been agreed between the Parties in writing.
- 2.5 If a provision of the General Terms and Conditions proves to be in conflict with the stipulations of the Agreement, the stipulation of the Agreement shall prevail.
- 2.6 iBabs expressly dismisses any of the Client's purchase conditions or other conditions.
- 2.7 The Client must have a valid Microsoft Office licence for the execution of the Agreement and the functioning of the Software. iBabs is not obliged to check whether the Client has a licence and is in no way liable for the failure or affected functioning of the Software if the Client does not have a Microsoft Office licence. Having the Microsoft Office licence available and maintaining it is entirely at the Client's expense and risk.
- 2.8 If any provision of the General Terms and Conditions is void or annulled, the other provisions of the General Terms and Conditions shall remain in full force. iBabs will replace the void or annulled provisions by new provisions; the objective and the purpose of the void or annulled provision are to be complied with as much as possible.
- 2.9 The information by iBabs is leading, except for evidence to the contrary by the Client.

## 3. SCOPE OF IBABS' OBLIGATION TO DELIVER

- 3.1 In the Agreement, the Parties agree to the concrete conditions concerning iBabs' making available of the Software and Documentation to the Client.

- 3.2 Unless otherwise agreed in writing, iBabs is not obliged to make any other Software or program or data libraries available than as agreed, even if this is required for the use of the Software and/or maintenance. If, in deviation from the above, iBabs must make available Software and/or programme or data libraries other than agreed, iBabs can request the Client to enter into a separate written agreement for this.
- 3.3 iBabs decides on the form, content and language in which the Documentation is provided.
- 3.4 The Client is entitled to use the Software only for the use intended in the Agreement.
- 3.5 iBabs will support the Client by telephone and on-line in the use of the Software. The support is provided via telephone and e-mail (also refer to the support page on [www.ibabs.eu](http://www.ibabs.eu)). iBabs will make every effort to answer the questions adequately and within a reasonable period of time.

## 4. THE OBLIGATIONS OF THE CLIENT AND THE CARRYING OUT OF ACTIVITIES

- 4.1 The Client acknowledges that the success of the activities under the Agreement, which include but are not limited to the making available of the Software and/or the delivery of Services as included in the Agreement, depends on a correct and timely mutual collaboration. In order to allow iBabs to appropriately carry out the Agreement, the Client will provide iBabs with the data and/or information iBabs considers to be useful, required and desirable in good time and render every assistance. iBabs will make every effort to deliver the Software and/or Services with due regard to sufficient care and expertise.
- 4.2 If, within the framework of providing assistance in the execution of the Agreement, the Client deploys their own staff and/or auxiliary persons, the staff and these auxiliary persons will avail themselves of the knowledge, expertise and experience required.
- 4.3 If it has been agreed that the Client will make equipment, programs, Material or information on data carriers available to iBabs, this must comply with the specifications required to carry out the activities.

- 4.4 If iBabs employees carry out activities at the Client's site, the Client will ensure the facilities, which include but are not limited to a workroom with a computer, data and telecommunication facilities and availability thereof, that are reasonably desired by the employees, free of charge. The workroom and facilities shall comply with all legally applicable requirements in relation to working conditions.
- 4.5 If iBabs employees carry out activities at the office of the Client, the Client will ensure that these employees can carry out their activities undisturbed. The Client will provide the facilities that the employees reasonably desire and require, such as a PC, free of charge.
- 4.6 If the Client fails to make the information, documents, equipment, programs, materials or employees that is/are useful, required or desirable for iBabs in relation to the execution of the Agreement available or available in good time, or in accordance with iBabs' desires, iBabs is entitled to fully or partially suspend the execution of the Agreement and iBabs is also entitled to charge the costs arising from this according to iBabs' usual rates, without prejudice to iBabs' right to execute any other legal and/or agreed right.

## 5. PAYMENT

- 5.1 The Client pays iBabs the price for the Software and possibly the Service as stated in the Agreement.
- 5.2 The Client cannot keep iBabs to special offers or prices of which she might reasonable expect that the offer and/or price concerns a clear mistake or writing error.
- 5.3 All prices are exclusive of turnover tax (VAT) and other government levies.
- 5.4 The Client shall pay iBabs in the currency as stated in the Agreement.
- 5.5 Any cost estimations and budgets provided by iBabs are indicative only, unless iBabs has clearly expressed otherwise in writing. If the Client indicates an available budget to iBabs, this is never considered an agreed (fixed) price between the Parties for the performances to be carried out by iBabs. iBabs is only obliged to inform the Client if a cost estimation or budget threatens to be exceeded if the Parties have clearly agreed this in writing.
- 5.6 In relation to the amounts paid and/or owed by the Client, the relevant documents and data from iBabs' administration provide complete evidence, without prejudice to the Client's provision of evidence to the contrary.
- 5.7 iBabs is entitled to change the prices in the Agreement without prior notice. If the Parties have agreed a periodic payment obligation, iBabs is entitled to adapt the prices and rates within a period of three (3) months. If the Client does not agree with this price change, the Client is entitled to terminate the Agreement in writing within 30 days following the notification of the change, by the date on which the change was to enter into force. The Client is not entitled to terminate if the Parties have agreed that the prices and/or rates are adapted with due observance of an index or other standard agreed between the Parties.
- 5.8 The Client shall pay all of the invoices in accordance with the payment terms stated in the Agreement and/or on the invoice. In the absence of specific conditions, the Client shall pay within thirty (30) days following the invoice date.
- 5.9 The Client is not entitled to deduct or suspend any payment for whatever reason.
- 5.10 If the Client fails to settle the amounts due within the agreed period of time, the Client shall owe the legal commercial interest on the outstanding amount as referred to in Article 6:119a of the CC without a notice of default being required. If the Client remains in default of settling the claim after a warning or notice of default, iBabs can pass the claim on, in which case the Client is obliged to, in addition to the total amount owed, completely compensate any costs both in and out of court, including all costs for lawyers and external experts.
- 5.11 If the creditworthiness of the Client gives rise to this, iBabs may require additional security, in default of which iBabs is entitled to suspend the execution of the Agreement. The Client guarantees the correctness and completeness of the information provided to iBabs by her or on her behalf, on which iBabs bases its offer. The Client makes every effort that the requirements the Service or iBabs and/or the Software must comply with are correct and complete. Information in illustrations, catalogues, websites, tenders, advertising material and such are not binding for iBabs.

## 6. ADDITIONAL WORK

- 6.1 If iBabs carries out Additional Work at the request or with prior consent of the Client, the Client shall pay iBabs for this Additional Work according to the usual iBabs rates. iBabs is not obliged to comply with the Client's request to carry out Additional Work and may require the entering into a separate written agreement for this.
- 6.2 The Client accepts that Additional Work may result in the agreed and/or expected time for delivery of the Software, the mutual responsibilities of the Client and iBabs and the possible agreed fixed price being affected and/or changed. The fact that (the demand for) Additional Work occurs during the execution of the Agreement, is no foundation for the Client's termination or dissolution of the Agreement.
- 6.3 The purchase of new software, licences, equipment and such and repairs by third parties fall outside the standard rates and are charged separately to the Client, possible directly by this third party.

## 7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 The Intellectual Property Rights to the Software (including source codes),
- 7.2 Documentation, programs, websites, data files or Materials as well as (other) preparatory material thereof, remain vested in iBabs and/or their licensor(s) only. The Client obtains the user rights that are assigned through the Agreement and these General Terms and Conditions only, unless otherwise has been expressly agreed in a written document signed by iBabs and the Client.
- 7.3 The Client is not permitted to remove or have removed, or modify or have modified any indication concerning Intellectual Property Rights from the Software, Documentation, programs, websites, data files or Materials, including, but not limited to indications concerning the confidential character and nondisclosure of the Software, Documentation, programs, websites, data files or Materials.

- 7.4 The Client shall not carry out any actions that may infringe iBabs' and/or her licensors' Intellectual Property Rights, including, but not limited to disclosing and/or copying of the Software without authorisation and the registering of domain names, brands or Google AdWords search terms (keywords) that are similar or identical to any sign iBabs and/or her licensors have a title to, except if this is permitted by law.

## 8. RIGHTS OF IBABS

- 8.1 iBabs is permitted to take technical measures to protect the Software, Documentation, programs, data files, websites or Materials.
- 8.2 iBabs shall never be obliged to provide the Client with (a physical carrier containing) the Software in source code or any other software used for developing the Software (whether or not in the form of source code) or preparatory material.
- 8.3 iBabs can make programs by third parties available to the Client. The (licence) conditions of these third parties may apply to this, replacing the deviating stipulations in the General Terms and Conditions and the Agreement. The Client guarantees that he/she shall strictly comply with these conditions of third parties. If and insofar as the conditions of third parties intended in the relationship between the Client and iBabs are deemed not to apply for whatever reason or are declared not to apply, that which is stipulated in the General Conditions applies unimpaired.
- 8.4 iBabs retains the right to check (or to have checked) (by a third party) whether the Client uses the Software, Documentation, programs, websites, data files or Materials as well as (other) preparatory material in compliance with the assigned rights. If requested, the Client will immediately render full assistance in an investigation to be carried out by or on behalf of iBabs concerning the Client's compliance with the agreed user limitations. On iBabs' first demand, the Client will provide iBabs, or a third party involved by iBabs, access to her buildings and systems.
- 8.5 If, in iBabs' opinion, there is a risk to the

functioning of the computer systems or the network of iBabs or third parties and/or of the servicing through a network, iBabs is entitled to take any measure that is reasonably required to avert or prevent this risk.

## 9. INFORMATION IN THE SOFTWARE

- 9.1 The Client determines the information that is stored and/or exchanged using the Software. iBabs has no knowledge about this information. iBabs accepts no liability whatsoever for the information stored and/or exchanged using the Software.
- 9.2 Should iBabs have knowledge of or come to the realisation that information the Client has stored and/or exchanged using the Software is unlawful, iBabs will immediately act to delete this information or block access to it. In such cases, iBabs also retains the right to delete or block the Client's information, at iBabs' discretion. iBabs will in no case be liable for the damage that arises from such actions.
- 9.3 If fraud or abuse of the Software is suspected, iBabs is entitled to present the Client's (personal) details to the competent authorities.
- 9.4 The Client is not permitted to provide more or other Users than stated when entering into the contract access to the Software without express consent.
- 9.5 The Client is fully responsible for its users' actions.
- 9.6 If iBabs has secured the Software, Documentations, programs, data files, websites or other Materials using technical protection, the Client is not permitted to remove or circumvent this security or have it removed or circumvented.

## 10. GUARANTEES

- 10.1 The Client accepts that the Software only includes the functionality and other properties as they exist when starting to use the Software ('as is'), thus with all visible and invisible faults and defects.
- 10.2 iBabs does not guarantee that the Software is suitable for the actual and/or intended use by

the Client. iBabs does not guarantee that the Software will function without Defects or that all Defects will always be rectified.

- 10.3 iBabs will make every effort to repair Defects in the Software within a reasonable period of time if they are reported to iBabs using a detailed description and in writing within a period of three (3) months after acceptance as referred to in Article 27. iBabs may charge her usual rates for the repair of Defects if user faults or injudicious use by the Client or by other causes that cannot be attributed to iBabs are concerned, or if the Defects could have been discovered during the carrying out of the Acceptance procedure.
- 10.4 The above obligation to repair is cancelled if the Client modifies the Software or has it modified without iBabs' prior written consent.
- 10.5 The repair of Defects takes place at a location to be decided by iBabs. iBabs is always entitled to apply temporary solutions or software workarounds or problem avoiding limitations in the Software.
- 10.6 iBabs is not obliged to repair Defects that have been reported after the lapsing of the warranty period as referred to in Article 10.1, unless a separate Agreement has been entered into by the Parties for the benefit of Maintenance that includes such an obligation to repair.
- 10.7 In order to function properly, the Software depends on objects, rights and services of third parties, including, but not limited to software and hardware of the programs and the data connection of the Client. Limitations or blocking in the functionalities of objects, rights and services of third parties as stated above are beyond iBabs' control and thus outside iBabs' warranty.

## 11. PRIVACY

- 11.1 If iBabs considers this to be of importance for the execution of the Agreement, upon request, the Client will immediately inform iBabs in writing about the manner in which the Client interprets her obligations based on relevant legislation in the area of the protection of personal details.



- 11.2 iBabs will not process personal details other than for the benefit of providing the Software and/or the Service, including, but not limited to the optimisation of the functioning of the Software and/or the Service and the creation of statistics.
- 11.3 iBabs will not share any personal details originating from the Client with third parties, unless iBabs has received permission from the Client or is obliged to do so based on the law.
- 11.4 The liability for the personal details which are processed using the Software and/or Service, solely lies with the Client. The Client guarantees that the content, the use and/or processing of the personal details is not unlawful and that this does not violate any right of third parties. The Client indemnifies iBabs against any legal action by third parties for whatever reason relating to these personal details.
- 11.5 The Client indemnifies iBabs against claims by persons whose personal details are processed by or on behalf of the Client, or for which the Client is liable in any other way based on the law, and for penalties or claims by competent authorities, unless the Client proves that the facts that form the basis of the claim should be solely assigned to iBabs.
- 11.6 The Client acknowledges and guarantees that persons under sixteen (16) do not make use of or have access to the Software and/or the Service, unless these persons have consent from their legal representatives.
- 11.7 If the Client enters personal details, both the Client and iBabs come under the relevant legislation in the area of the processing of personal details, where according to the terminology of this law the Client is the party 'responsible' and iBabs the 'editor'.
- 11.8 Based on the law, the party responsible and the editor must enter into an agreement in relation to the processing of personal details carried out by the Client or iBabs. In the absence of a further explicitly agreed 'editor agreement', the stipulations in this article will apply as an agreement within the meaning of the law.
- 11.9 iBabs will ensure a suitable level of security in the processing of personal details in view of the risks involved in the processing and the nature of the details to be protected, but only if and

insofar as these are in the iBabs' Software or infrastructure. iBabs does not guarantee that security is effective in all circumstances. If the Agreement does not contain any specifications in relation to security, or if the Agreement does not contain an express description of security, it will comply with a reasonable level in view of the state of the art, the sensitivity of the information and the costs involved in security.

- 11.10 iBabs also guarantees that each person who acts under the authority of iBabs, insofar as he/she has access to personal details that the Client is responsible for, processes these only by order of the Client.
- 11.11 If, within the framework of a legal obligation, the Client must modify, delete or surrender details that are stored in iBabs' Software, iBabs will be helpful in this as much as possible. iBabs can

## 12. SECURITY AND PUBLICATION

- 12.1 12.1 The Client ensures that all of the details received by iBabs, of which it knows or should reasonably know that this is confidential, remain secret. Information is confidential if iBabs indicates this as such. The Client knows that the programs and other material made available, including, but not limited to the preparatory material, may contain confidential information and business secrets of iBabs. Subject to iBabs' prior written consent, the Client will not make the information and data carriers that are available to it available to third parties and/or disclose this to its personnel and/or third parties outside the framework of that which is permitted in the Agreement insofar as this is not required for carrying out the agreed performances. The Client shall use the confidential information solely for the objectives for which it has been provided.
- 12.2 12.2 The Client will impose secrecy obligations

on its personnel and guarantees compliance thereof.

#### 12.3 The Parties:

- (a) will consult each other before publishing a press report or other publication or advertisement in relation to the Agreement;
- (b) will not publish a press report, publication or advertisement without the prior consent of the other Party; this consent will not be withheld or delayed on unreasonable grounds;
- (c) may, without the other Party's prior consent, make public pronouncements if this is obliged based on the law or a judgement.

## 13. NON-COMPETITION

- 13.1 Except with written consent, the Client shall refrain from employing or in any other way having iBabs employees directly or indirectly work for them if they have been involved in the execution of the Agreement during the prior six (6) months, nor make any attempts to this. This stipulation becomes void in the case of a declared bankruptcy or moratorium on payments to iBabs.

## 14. PENALTIES

- 14.1 In the case of a violation of Article 12 and/or 13, the Client will immediately inform iBabs of the violation through a written notification, when the violation was committed and any other information that may be relevant. The Client will undertake any reasonable measures to prevent further violations. The Client will provide iBabs with all required assistance to defend iBabs' rights, including, but not limited to providing iBabs with the opportunity to possibly take (other) (legal) measures to prevent further violation.
- 14.2 In the case of a violation of Article 12 or 13, the Client shall forfeit an immediately payable penalty of EUR 50,000.00 (in words: fifty thousand euros) for each violation and EUR 5,000.00 (in words: five thousand euros) for each day that the violation continues to iBabs, which does not qualify for any deduction. This stipulation is without prejudice to iBabs' right to execute any other legal and/or agreed right, including, but not limited to the right to claim

(additional) compensation (whether or not combined with the above fine).

## 15. LIABILITY

- 15.1 For each event (a series of subsequent events shall be taken to mean one single event), iBabs' liability for damages resulting from an attributable shortcoming in the compliance of the Agreement or from an unlawful act or otherwise is limited to the compensation of direct loss to a maximum of the amount of the compensations paid in the month prior to the event that caused the damage. iBabs' total liability for direct loss will never exceed EUR 100,000.00. Consequential damage will be taken to mean all damage consisting of:
- (a) damage directly caused to material objects ('property damage');
  - (b) reasonable costs to establish the cause and the scope of the damage insofar as this relates to the direct loss as referred to here; and
  - (c) reasonable and demonstrable costs the Client has incurred to prevent or limit the direct loss as referred to in this Article.
- 15.2 iBabs' total liability for damage caused by death or physical injury or material damage to objects will in no case amount to more than 50,000.00 euros for each damaging event, for which a series of coherent events shall be considered to be one single event.
- 15.3 iBabs is never liable for damage caused by force majeure (refer to Article 16, force majeure).
- 15.4 iBabs' liability for consequential damage is excluded. Consequential loss shall be taken to mean any damage that is not direct damage and thus in any case, but not limited to consequential damage, lost profit, missed savings, decreased goodwill, damage as a result of company discontinuation, damage resulting from not achieving marketing objectives, damage as a result of claims of the Client, damage relating to the use of data or data files prescribed by the Client, or loss, mutilation or destruction of data and data files.
- 15.5 The exclusions and limitations referred to in this Article are annulled if and insofar as the damage is the result of an intentional act or omission or conscious recklessness by iBabs



or its management.

- 15.6 Unless iBabs' compliance is permanently impossible, iBabs' liability due to an attributable shortcoming in the performance of the Agreement arises only if the Client immediately gives iBabs written notice of default, for which a reasonable term for the curing of the failure is set, and iBabs remains to fail imputively in the compliance of her obligations after this term. The notice of default is required to include an as complete and detailed as possible description of the shortcoming so iBabs can respond adequately.
- 15.7 A condition for any right to compensation is that the Client reports the damage to iBabs in writing within 30 days after its occurrence.
- 15.8 Each claim for compensation by the Client against iBabs that the Client has not specifically and explicitly reported becomes void by the single lapse of twelve (12) months after the occurrence of the claim.

## 16. FORCE MAJEURE

- 16.1 iBabs is not obliged to comply with any obligation if it is prevented from doing so as a result of force majeure as referred to in Article 6:75 CC. Force majeure shall (also) be taken to mean: (a) force majeure of iBabs' suppliers; (b) the failure to properly comply with the obligations of suppliers the Client has prescribed to iBabs; (c) faultiness of objects, equipment, programs or materials of third parties the use of which the Client has prescribed to iBabs; (d) government measures; (e) power failures; (f) Internet, computer network or telecommunication facility failures; (g) war; (h) work occupation; (i) strike; (j) general transport issues, and (k) the unavailability of one or several employees.
- 16.2 If the situation of force majeure lasts longer than ninety (90) days, each of the Parties is entitled to dissolve the Agreement in writing.

## 17. THIRD PARTIES

- 17.1 iBabs is permitted to transfer rights and obligations that arise from the Agreement to third parties, and the Client hereby already irrevocably agrees with this transfer. In the case of such transfer, iBabs will inform the Client of this.
- 17.2 iBabs is also entitled to involve third parties in the execution of its agreements.
- 17.3 The Client is not entitled to sell, otherwise transfer or make available the rights and/or obligations from the Agreement and these General Terms and Conditions to a third party without iBabs' prior written consent.
- 17.4 The Client guarantees that no rights of third parties oppose the making available or use of equipment, programs, Materials or information and indemnifies iBabs and her suppliers against any claims, procedures, loss and/or direct and/or consequential damage suffered by third parties based on or arising from (i) the accusation that any activity by the Client is somehow unlawful, including, but not limited to activities contrary to these General Terms and Conditions, the Agreement and/or violation of Intellectual Property Rights; and/or (ii) the unlawful and/or the Client's failure to fully comply with the Agreement, more particularly the obligations based on this Article.
- 17.5 The Client indemnifies iBabs against any claims by third parties in the matter of compensation of damage, costs or interest relating to the Agreement, these General Terms and Conditions and/or the Software.

## 18. DURATION AND TERMINATION

- 18.1 Unless expressly agreed otherwise, the Agreement is entered into for the duration of one (1) year. The duration of the Agreement is then automatically extended by one (1) year at a time, unless the Client or iBabs terminates the Agreement in writing, with due regard to a notice period of three (3) calendar months. The Client's termination is not definite until iBabs has confirmed this by e-mail. At the Client's request, information that is uploaded via the Software can be deleted.

- 18.2 If the Parties have entered into a separate Agreement for the benefit of the carrying out of maintenance, the separate Agreement is entered into for the duration of the initial Agreement. iBabs can terminate this separate Agreement – separately from the initial Agreement – in writing, with due regard to a notice period of three (3) calendar months.
- 18.3 If the initial Agreement is terminated (in the interim) in any way, the separate Agreement that serves to carry out Maintenance will be automatically terminated at the time that the initial Agreement is terminated, without a legal action by the Parties being required.
- 18.4 Each of the Parties is authorised to dissolve the Agreement due to an attributable shortcoming in the performance of the Agreement if the other Party, following an as detailed as possible written notice of default in which a reasonable term is set for repairing the shortcoming, attributable fails in the compliance with essential obligations under the Agreement. The obligations of the Client as stated in Article 4, 5, 7, 12 and 13 apply in any case as essential obligations under the Agreement.
- 18.5 If, at the time of dissolution as referred to in the above paragraph, the Client has already received performances as a result of the execution of the Agreement, these performances and related payment obligations shall not be subject to undoing. Amounts iBabs has invoiced prior to the dissolution remain payable and become immediately payable at the time of dissolution.
- 18.6 iBabs is authorised to entire or part cancellation without notice of default being required if the Client – provisionally or not – has been granted a moratorium on payments, if bankruptcy is filed for, if the Client's company is wound up or ceases activities other than for the benefit of the reconstruction or merging of companies, or if the decisive control of the Client's company changes.
- 18.7 iBabs shall never be obliged to reimburse money that has been received, or to pay any compensation resulting from termination, dissolution or any other manner of termination of the Agreement. The Client's right to the use of and access to the Software and/or the right

to Maintenance lapses by law in the case of termination, dissolution or any other manner of termination of the Agreement. In such case, the Client shall return all copies of the Software in its possession to iBabs.

- 18.8 If the Client fails to comply with its obligations under the Agreement or fails to comply completely or in good time, in particular in the case of noncompliance of that which has been stipulated in Articles 4, 5, 7, 12 and 13, iBabs is entitled to suspend the Agreement entirely or in part without any warning or notice of default being required. iBabs also retains its right to keep data, data files and/or results of the Software, despite a possible existing obligation to surrender or transfer, until the Client complies with its obligations. This stipulation is without prejudice to iBabs' right to execute any other legal and/or agreed right.
- 18.9 18.9 If a collective invoice is not paid in full, iBabs is also entitled to suspend (block access) the Software for all subscriptions for which the Client has paid.
- 18.10 18.10 The stipulations that are intended to remain applicable after the termination or dissolution of the Agreement, including, but not limited to Article 2.6, 5.11, 7, 11, 12, 13, 15, 18 and 19, will survive termination of the Agreement.

## 19. APPLICABLE LAW AND CHOICE OF FORUM

- 19.1 19.1 The Agreement, the General Terms and Conditions, the use of the Software and the carrying out of Services is governed by Netherlands law. The applicability of the Vienna Sales Convention is excluded.
- 19.2 19.2 A change in the management or legal form of iBabs does not affect the Agreement.
- 19.3 19.3 Insofar as the imperative rules of law do not prescribe otherwise, any disputes that arise as a result of the Agreement shall be submitted to the competent court in Amsterdam.
- 19.4 19.4 The version of any communication received or saved by iBabs, measurements carried out and monitoring by iBabs are considered authentic, unless the Client proves the contrary.

## Chapter 2: SaaS Service

In addition to the General provisions, the 'SaaS-Dienst' (SaaS Service) stipulations included in this chapter apply if iBabs provides services to the Client under the name or in the area of Software as a Service.

### 20.ACCESS

- 20.1 For the duration of the Agreement, iBabs will provide the Client with access to the SaaS Service. iBabs will provide the Client with a username and password with which the Client can use and configure the SaaS Service.
- 20.2 Access to the SaaS-Dienst can take place only if the Client has installed its programs correctly, according to the indications and on suitable equipment.
- 20.3 The Client shall keep secret the usernames and passwords iBabs provides it with. iBabs is not responsible for abuse of usernames and passwords and may assume that a Client who logs on for the SaaS Service, is indeed the Client. The Client shall inform iBabs if the Client suspects that the usernames and passwords have come in the possession of unauthorised persons. iBabs is entitled to undertake effective measures in these cases.
- 20.4 The Client is responsible for selecting and using proper infrastructure and telecommunication facilities.
- 20.5 The Client is also responsible for maintaining a properly functioning Internet connection for the equipment. All costs involved in the purchase and the proper functioning of this equipment, as well as the costs for establishing and maintaining the Internet connection are at the Client's expense and risk.

### 21.ON-LINE SERVICING

- 21.1 iBabs will provide the SaaS Service on-line to the Client using telecommunication facilities.
- 21.2 The Client shall not provide third parties with access to the SaaS Service - whether remotely or otherwise - or offer the SaaS Service to a third party.
- 21.3 The Client will immediately electronically inform iBabs of any changes to the name, e-mail addresses and other details that are important for iBabs to carry out the SaaS Service. The above data can be carried out via the SaaS Service.
- 21.4 The Client shall at all times strictly comply with the limitations in the right to use the SaaS Service as agreed between the Parties. The Client is aware of the fact that the violation of an agreed use restriction implies an imputable failure in the performance of the Agreement and these General Terms and Conditions, as well as a violation of the Intellectual Property Rights of the SaaS Service.

### 22.AVAILABILITY OF THE SaaS SERVICE AND SUPPORT

- 22.1 iBabs will make every effort to realise an uninterrupted availability (7 days a week, 24 hours a day) of the SaaS Service.
- 22.2 If the SaaS Service is not available as a result of failures, maintenance or other causes, iBabs will make every effort to inform the Client of the nature and the expected duration of the interruption.

## Chapter 3: Programs

In addition to the General provisions, the stipulations in this 'Programs' chapter apply if iBabs provides Programs.

### 23. DELIVERY, INSTALLATION AND SECURITY

- 23.1 iBabs will install the Programs at the Client only if the Parties have agreed to this in writing. In default of express agreements concerning this, the Client shall install, design, parametrise, tune the Programs and, if required, adapt the existing equipment, hardware and operating environment. Unless agreed otherwise, iBabs is not obliged to carry out data conversion.
- 23.2 Unless agreed otherwise in writing, iBabs' obligation to provide the Programs and the Client's right of use extends only to the so-called object code of the Programs.
- 23.2 iBabs will deliver the Programs to the Client in the agreed data carrier format or, in the absence of proper agreements concerning this, the data carrier format established by iBabs. iBabs establishes the method of delivery. The risk of loss, theft or damage of/ to objects, products, programs or data that are an object of the Agreement is transferred to the Client as soon as this is in the Client's right of disposal or that of an auxiliary person of the Client.
- 23.3 The Client is responsible for selecting and using properly functioning equipment. The Client shall handle any equipment and/or materials iBabs makes available to the Client with due care.
- 23.4 The Client is responsible for maintaining protective measures for the benefit of the Client's systems, such as firewalls, antivirus software and back-ups.
- 23.5 iBabs is not liable for this.

### 24. USE OF THE PROGRAMS

- 24.1 iBabs provides the Client with a licence for the use of the Programs at the Client's location. Unless otherwise agreed in writing, the right to use the
- 24.2 Programs is non-exclusive, non-transferable, for the duration of the Agreement and cannot

be sub-licensed. iBabs provides a limited user right to the Programs – there is no question of sale of (rights to) the Programs to the Client. The Client shall immediately return the Programs after this duration.

- 24.3 The Client is expressly not permitted to modify the Programs entirely or in part without iBabs' prior consent. iBabs is always entitled to refuse consent or to attach conditions to its consent – including conditions concerning the method and quality of the execution of the modifications required by the Client. The Client bears the full risk of modifications applied by the Client or by third parties by order of the Client, whether or not with iBabs' consent.
- 24.4 The Client's user right does not extend itself to the source code of the Programs.

### 25. TERMS

- 25.1 All (delivery) terms stated by iBabs have been established to the best of its ability and based on the information that was known to iBabs when the Agreement was entered into, and they will be complied with as much as possible. The (delivery) terms stated by iBabs and/or agreed between the Parties are target dates which do not bind iBabs unless agreed otherwise. iBabs is not bound to any (delivery) term, whether firm or not that cannot be met due to force majeure. iBabs is not bound to any (delivery) term, whether firm or not, if the Parties have agreed Additional Work or a change of approach for the execution of the Agreement.
- 25.2 The mere exceeding of a (delivery) term, whether firm or not, stated by iBabs or agreed between the Parties does not mean iBabs is in default. In all cases, iBabs will not be in default because of the exceeding of a term until the Client gives iBabs written notice of default. The notice of default must include an as complete and detailed as possible description of the failure, as well as a reasonable term to repair the failure.

## 26. CUSTOMISED SOFTWARE

- 26.1 The Parties can agree that iBabs develops Customised Software for the Client. In this case, iBabs will develop the Customised Software based on specifications agreed between the Parties, as described in the Agreement. By signing the Agreement, the Client agrees with these specifications and agrees that the specifications are complete, consistent and in accordance with her demands and requirements.
- 26.2 To test whether the Customised Software complies with the agreed specifications, the Parties shall follow the Acceptance Period after the delivery of the Customised Software.
- 26.3 If the Parties agree in writing that an Intellectual Property Right in relation to Customised Software, Documentation or (other) programs, websites, data files or Materials that have been specifically developed for the Client will pass to the Client, this does not affect iBabs' right or option to use/run parts, general principles, ideas, designs, algorithms, documentation, works, programming languages, protocols, standards and such based on this development for another objective without any restriction, whether for herself or any third party. The transfer of an Intellectual Property Right does not affect iBabs' right to use and/or run the developments that are similar or derived from those that are or have been developed for the benefit of the Client for the benefit of itself or a third person.

## 27. ACCEPTANCE PROCEDURE

- 27.1 The Client shall test the Customised Software for acceptance within (14) calendar days after delivery of the Customised Software. The Client shall carry out the Acceptance Procedure for the Customised Software with sufficiently qualified personnel, scope and depth.
- 27.2 During the Acceptance Procedure, the Client is obliged to test under its complete and exclusive responsibility whether the Customised Software delivered complies with the agreed specifications. Any assistance iBabs provides

in the execution of the Acceptance Procedure is entirely at the Client's risk.

- 27.3 If, during the execution of the Acceptance Test, it proves that the Customised Software has Defects, the Client will inform iBabs of this in a written, understandable and well-organised manner using a test report to be provided not later than the last day of the Acceptance Procedure as stated in Article 27.1. iBabs shall make every effort to repair the Defects as referred to within a reasonable period of time; iBabs is entitled to apply temporary solutions, program deviations or problem-avoiding restrictions in the Customised Software. The Acceptance Procedure will be repeated in accordance with this Article until the Customised Software is accepted.
- 27.4 The Customised Software shall be considered as accepted between the Parties:
- (a) on the first day following the test period as stated in Article 27.1; or
  - (b) from the moment the Client uses the Customised Software for productive or operational objectives; this use is expressly at the Client's expense and risk; or
  - (c) if iBabs receives a test report as referred to in Article 27.3 prior to the end of the test period as referred to in Article 27.1: (i) if, in iBabs' opinion, the test report does not contain any Defects, notwithstanding imperfections that do not stand in the way of acceptance according to Article 27.5, from the date of the test report;
  - (ii) as soon as the Defects stated in the test report have been repaired, notwithstanding the imperfections that do not stand in the way of acceptance according to Article 27.5.
- 27.5 Acceptance of the Customised Software shall not be withheld based on grounds that do not relate to the agreed specifications or because of minor Defects, i.e. Defects that do not reasonably interfere with the operational or productive putting into use of the Customised Software. In addition, acceptance shall not be withheld because of aspects of the Customised Software that can only be assessed subjectively, such as aesthetic aspects and aspects in relation to the look & feel and layout of the user interfaces.

- 27.6 Acceptance of the Customised Software in one of the manners as referred to in this Article shall result in iBabs being discharged of the fulfilment of its obligations in relation to the making available and delivery of the Customised Software.

## 28. MAINTENANCE

- 28.1 Unless otherwise agreed in writing, iBabs' performance obligations do not include the Maintenance and/or the providing of assistance to the Users of the Programs. If, in deviation from the above, iBabs must also provide Maintenance and/or assistance, iBabs can request the Client to enter into a separate written agreement for this.
- 28.2 iBabs will make every effort to carry out the Maintenance in accordance with the agreements and procedures that have been agreed with the Client in writing, if this has been agreed between the Parties.
- 28.3 If the maintenance relates to the programs iBabs has not delivered to the Client, the Client will make available the source code and the technical (development) documentation of the programs (including, but not limited to data models, designs, change-logs, etc) if iBabs considers this useful, necessary or desirable. The Client guarantees that it is entitled to such making available and that no rights of any third parties oppose this. The Client grants iBabs the right to use and modify the programs, including the source code and technical (development) documentation within the framework of carrying out the Maintenance. The Client indemnifies iBabs against any claims by third parties in relation to the making available and the use iBabs makes of that which has been made available within the framework of maintenance.
- 28.4 For the benefit of the execution of Maintenance, the Client binds itself to making the systems on which the Programs have been installed available at an accessible location with the required workspace, in accordance with any directions by iBabs. The Client also binds itself to making all systems linked and connected to the system, and test procedures

and data carriers thereof available in relation to the testing of their functioning. iBabs is entitled to suspend or restrict the execution of its activities if the Client's infrastructure and telecommunication facilities do not comply with the requirements set by iBabs.

- 28.5 iBabs' maintenance does not affect the Client's responsibility for the management of the Programs, including the control over the settings, the use of the Programs, the creation of Users, maintenance of equipment and hardware, and the manner in which the results of the use of the Programs are deployed. The Client is also responsible for the instruction of and the use by Users, irrespective of whether these Users have a relationship of authority with the Client. In default of express agreements concerning this, the Client itself shall install, design, parametrise, tune and, if required, adapt the used equipment, other programs and user environment and realise the interoperability required by the Client.
- 28.6 iBabs shall be informed in detail and in writing about any changes the Client carries out. The Client shall not implement any modifications without iBabs' prior consent, which will not be refused on unreasonable grounds.
- 28.7 The Client is not permitted to have the Maintenance carried out by a third party without iBabs' prior written consent.

## 29. SCOPE PROGRAMS

- 29.1 The Maintenance and the service levels stated in the Agreement entered into to this effect do not apply to the repair of Defects, faults or imperfections that are the result or are related to:
- (a) user errors or improper use of the Programs, also including defects in the Client's material;
  - (b) modifications or additions to the Programs other than for or on behalf of iBabs;
  - (c) the use of the Programs contrary to the applicable conditions or contrary to the instructions in the Documentation;
  - (d) changes in or Defects, faults or imperfections in the equipment or other programs than those that come under the Maintenance;
  - (e) the use of an old version of the Programs that is no longer supported by iBabs;



- (f) the unavailability of the Programs at the request of the Client, and/or the unavailability of the Programs during requested activities;
- (g) when establishing or isolating the problem or failure, requires assistance from the Client, which the Client cannot provide, either completely or according to iBabs' requirements for any reason;
- (h) power failure;
- (i) extreme weather conditions;
- (j) fire;
- (k) physical damage to the network, caused by a third party;
- (l) theft;
- (m) unjustified, incorrect or incomplete notifications;
- (n) other causes that cannot be attributed to iBabs, including, but not limited to force majeure.

29.2 If iBabs carries out Maintenance or other activities in relation to that which has been stipulated in Article 26.1, iBabs can charge the costs of this Maintenance or these activities according to its usual rates, leaving any other amounts the Client owes for Maintenance unimpaired.

29.3 iBabs is always entitled not to opt for the repair of Defects and replace the Customised and/or Standard Software by other, equal but not necessarily identical Customised and/or Standard Software.

29.4 iBabs is never bound to repair or reconstruct lost, corrupted or deformed data.

29.5 iBabs retains the right to temporarily take the Programs out of service for the purpose of maintenance, adaptation or improvement of iBabs' Programs and web servers. iBabs will inform the Client of a scheduled shutdown of service in good time. iBabs shall never be obliged to pay the Client any compensation because of such shutdown of service.

29.6 iBabs is entitled to adapt the programs of the Programs from time to time to improve the functionality and repair errors. If an adaptation results in a considerable change in the functionality, iBabs will inform the Client of this prior to the modification. Because the Standard Software is delivered to multiple Clients, an adaptation cannot be waived because of one Client. iBabs is not bound to any compensation of damage when adapting the Programs.

29.7 iBabs is entitled to not provide non-critical components of the Programs or maintain them any longer.

29.8 The links that iBabs creates with other service providers shall be considered an additional service. The Client cannot oblige iBabs to maintain non-critical links. In addition, the proper functioning cannot be guaranteed

## 30. CORRECTIVE MAINTENANCE

30.1 iBabs shall make an effort to carry out Corrective maintenance in accordance with the Response Times and Recovery Times as established in the Agreement.

30.2 If iBabs wants to carry out Corrective maintenance to the Programs unexpectedly, it shall announce this in advance insofar as this is reasonably possible. Critical updates – at iBabs' discretion – can be carried out quicker and without prior notification.

## 31. CONSTRUCTIVE MAINTENANCE

31.1 The Client can request iBabs to carry out Constructive Maintenance. iBabs is entitled to refuse such a request, including, but not limited to the situation in which the execution of Constructive Maintenance may have a (detrimental) effect on the functionality of the Programs; the compatibility with the Programs; falls outside the scope of the Agreement and/or concerns modifications or supplements applied by the Client.

31.2 If Constructive maintenance is carried out at the request of the Client, iBabs may invoice the Client. If the invoice is approved by the Client, the costs will be invoiced to the Client in accordance with Article 5, for which a specification of the activities carried out will be enclosed.

31.3 iBabs guarantees no compatibility if Constructive Maintenance is carried out for Customised Software. iBabs is not bound to maintain, modify or add certain properties or functionalities of the programs specifically for the Client.

- 31.4 If the Customised Software proves not to be compatible after Constructive maintenance, iBabs will make every reasonable effort to provide additional support based on subsequent calculation. The Acceptance Procedure as stated in Article 27 apply mutatis mutandis to Constructive Maintenance on Customised Software.
- 31.5 Three months after carrying out an update and/or upgrade of the Programs available, iBabs is no longer obliged to repair any Defects in the former version and to provide Maintenance in relation to the prior version.
- 31.6 iBabs can demand from the Client to adapt its equipment, software, IT infrastructure and such if this is required for the proper functioning of a new version of the Programs

## 32.REPORTS

- 32.1 iBabs can inform the Client of the hours worked, the Maintenance carried out and other activities carried out.

Note: In the event that the interpretation of these conditions leads to a dispute, the Dutch text shall take precedence.



**iBABS**

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