

# Terms and Conditions

Version 1.1

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## Activium



# Introduction

This document contains Activium's Terms and Conditions.

Without agreeing to the provisions and restrictions set out in an Agreement or the Terms and Conditions, you are not permitted to install, use, access or open Activium package software or Software (or have it installed, used, accessed or opened). You must carefully study the attached Agreement(s) and Terms and Conditions applicable to the use of the Activium package software and Software supplied herewith, as these apply in full to the Activium package software and Software supplied to you and – where applicable – to the maintenance and/or services provided.

These Terms and Conditions govern the legal relationship between Activium and its customers. The Terms and Conditions are divided into various modules, each tailored to the different types of services offered by Activium.

These Terms and Conditions consist of the following modules:

Module A General

Module B Activium Package software Licence Agreement

Module C Activium Package software Maintenance Agreement / Support Agreement

Module D Support Agreement for Third-Party Software

Module E Customised Software Licence Agreement

Module F Customised Solution Maintenance Agreement

Module G Customised Support Agreement

Module H Consultancy Agreement

Appendix 1 Licence Registration Card

Appendix 2 Data Processing Agreement

Annex 1 Specification of Personal Data and Data Subjects

Where a specific module applies, it takes precedence over the General Module. Insofar as the general section does not conflict with applicable provisions from specific modules, the general section shall also apply at all times. The definitions of capitalised terms apply to all modules.

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# 1. Definitions

In our Agreements and Terms and Conditions, the following terms shall have the following meanings:

**Activium:** Efficon Groep B.V. trading under the name Activium, or one of its franchisees and/or participants acting as a (sub-)licensor, being Activium or a third party to be designated or designated by Activium;

**Activium package software:** the standard executable software of Activium which has been supplied to the Customer under the Licence Agreement or made available via the Customer Portal, as well as all Updates and Upgrades provided by Activium to the Customer, excluding any third-party software supplied with the package;

**Customer Portal:** the restricted section of the website specified by Activium, to which Named Users gain access by means of a User ID provided by Activium;

**Documentation:** the Written and/or electronic documentation accompanying the Software or the Customised Software;

**Franchisee:** An independent business which, in return for a fee, acquires the right to use the name "Activium", the business format, sales activities or products of a business. The franchisee is financially independent, but decisions regarding structure and operation are made by Activium as franchisor;

**Affiliated Company:** a group company of the Customer within the meaning of Article 24b of Book 2 of the Dutch Civil Code, as well as any other company or partnership in which the Customer has a decisive say by law, agreement or otherwise;

**Licence File:** the file provided by Activium to the Customer with which accounts and/or databases and Named Users can be created in the Software; or the licence agreement entered into between the Licensor and the Customer in which arrangements have been made regarding the number of accounts and/or databases and Named Users;

**Licensor:** Activium or one of its franchisees acting as a (sub-)licensor;

**Licensee:** the natural person or legal entity that has entered into an Agreement with the Licensor;

**Licence Agreement:** the agreement between Activium and the Customer setting out the rights and obligations relating to the use of the Software, as further described in Chapter I;

**Supplier:** A third-party licensor or licence provider;

**Customised Software:** the Customised Software and/or software components developed by Activium on behalf of the Customer in accordance with the Specifications, which do not form part of the standard software;

**Employee:** a natural person employed by Activium or the Customer, or a natural person authorised to perform work on behalf of and/or under the responsibility of Activium or the Customer;

**Module:** a module of these Terms and Conditions containing provisions relating to a specific field of activity;

**Named User:** the natural person for whom a User ID has been created, which User ID grants access to the Software (regardless of whether this natural person uses the Software or not) and/or to the Customer Portal;

**Maintenance Agreement:** the agreement between Activium and the Customer setting out the rights and obligations relating to the maintenance of the Software by the Licensor, as further described in Chapter II;

**Defect:** any substantial shortcoming in the Activium package software and Software that significantly impedes its functioning as described in the accompanying Documentation. The absence of functionality in a new Upgrade and/or Update of the Software that was present in a previous Upgrade and/or Update shall not be regarded as a Defect;

**Order Confirmation:** the Written or electronic document signed by both parties containing the Licensor's commercial offer to the Customer, on the basis of which an Agreement is concluded;

**Customer:** the natural person or legal entity with whom Activium has concluded an Agreement. This also refers to the party entering into or currently negotiating such an Agreement with Activium, as well as their representative(s), authorised representative(s), assignees and heirs;

**Agreement:** the Licence Agreement and/or the Maintenance Agreement and/or the Activium REAL Software Licence and Maintenance Agreement and/or the Activium REAL Support Agreement and/or the Customised Licence Agreement and/or the Customised Maintenance Agreement and/or the Customised Support Agreement and/or the Consultancy Agreement and/or any other agreement between Activium and the Customer;

**Force Majeure:** a failure for which the debtor cannot be held responsible, if it is not attributable to his fault, nor is it for his account by virtue of law, legal act or generally accepted practice;

**Project:** the work that Activium will perform on behalf of the Customer, as described in the quotation and/or in the Agreement;

**Price List:** the official price list of Activium applicable at any given time, which is displayed as such by the Licensor on the Customer Portal or made available to the Customer in any other manner;

**Renewal Date:** the date on which the Agreement is tacitly renewed in accordance with the provisions of the relevant Agreement;

**Registration Form:** the form to be completed by (an authorised Employee of) the Customer, by which he indicates his intention to enter into an Agreement with Activium and agrees to the terms and conditions set out in the Agreement;

**Results:** the results of the work carried out by Activium under the Agreement;

**In Writing:** for the purposes of these Terms and Conditions, 'In Writing' also includes email and communication by fax, provided that the identity of the sender and the integrity of the message are sufficiently established;

**Software:** All software that does not fall within the definition of Activium Package Software supplied to the Customer under the Licence Agreement or made available via the Customer Portal, as well as all Updates and Upgrades provided by Activium to the Customer;

**Support (services):** "Support (services)" means the provision of telephone, Written and/or electronic helpdesk support relating to the use and functioning of the Activium package software;

**System requirements:** the minimum requirements for the Customer's computer system, as prescribed by Activium from time to time, with regard to third-party hardware and software;

**Update (maintenance release):** a version of the Software in which a minor adjustment, a fix for an Imperfection, or an improvement has been made;

**Upgrade (release):** a version of the Software in which a significant change has been made to the functionality;

**User ID:** a code intended exclusively for the Named User, consisting of a username and a password. The User ID may only be used by the Named User;

**Confidential Information:** the confidential information of the Customer or Licensor, including (I) information designated in Writing as "confidential", (II) information that is not in the public domain, (III) information that has not been made generally accessible by the party to which the information relates and/or from whom the information originates, and/or (IV) information the confidential nature of which the other party must reasonably be presumed to be aware of;

**Working Days:** generally accepted working days in the country from which maintenance and support (services) are provided, excluding public holidays;

**Control:** the ability, based on factual or legal circumstances, to exercise a decisive influence over the activities of an undertaking affiliated with a legal entity.

# Module A. General

## Article 1. Quotation, Offer and Acceptance

1. A quotation drawn up by Activium is non-binding and valid for fourteen days from the date of issue by Activium, unless otherwise stated in the quotation.
2. The Customer should preferably accept the quotation in Writing, but if the Customer agrees to the quotation in any manner other than in Writing or gives that impression, the quotation may be regarded by Activium as having been accepted.
3. Any terms or conditions of the Customer that deviate from, or are not included in, these Terms and Conditions shall only be binding on Activium if and insofar as they have been expressly accepted by Activium in Writing.
4. Without prejudice to Activium's right to withdraw the quotation in accordance with Article 1(1), the Agreement may, after acceptance, only be amended by mutual consent. In the event of any conflict between provisions in the documents listed below, the following order of precedence shall apply:

The Agreement;

Any appendices, with the exception of brochures;

These Terms and Conditions;

Any supplementary terms and conditions, with the exception of brochures.

## Article 2. Execution of the Project & Provision of Information

1. Following the conclusion of the Agreement, Activium shall carry out the Project as soon as possible in accordance with the quotation, taking into account the Customer's reasonable wishes.
2. Activium shall endeavour to carry out the Project to the best of its ability, exercising due care and professional skill. The Customer is obliged to facilitate the timely and correct execution of the Project. In particular, the Customer shall ensure that all information which Activium indicates is necessary, or which the Customer should reasonably understand to be necessary for the execution of the Project, is provided to Activium in a timely manner. The Customer's necessary contribution must be provided with sufficient quality and in a timely manner. This applies both to the support to be provided by the contact persons and to the planned deployment of project staff within the project activities to be carried out.
3. The Customer is aware that keeping the Activium package software and Software operational is an ongoing process, in which all parties involved must invest time, money and energy. The Customer must therefore cooperate as fully as possible with Activium in the fulfilment of its obligations under an Agreement. The Customer must at all times provide Activium with all useful and necessary information and guarantees the accuracy of the information provided by him.
4. The Customer must notify Activium in Writing and in a timely manner of any changes to the company details as stated on the Registration Form, as well as any other relevant information.
5. The Customer is responsible for (I) the correct use and application of the Activium package software and Software and services licensed by Activium; (II) the implementation within its organisation of the required procedures; (III) the security of information, such as making backup copies of data files; and (IV) compliance with the System

Requirements. The Customer shall also install all new Updates and/or Upgrades made available to the Customer by Activium in a timely and correct manner (or arrange for their installation). The Customer is not permitted to modify files, add additional files to the Activium package software and Software or, except in the cases specified in the Activium package software and Software or Documentation, modify files in any other way.

6. If it has been agreed that the Customer shall provide materials or data to Activium using third-party data carriers, the said data carriers must comply with the specifications required by Activium for the performance of these activities, and must be free from any latent threats such as viruses, worms, Trojan horses, logic bombs, etc.

7. If the Customer fails to provide the information required by Activium in order to fulfil its obligations under an Agreement in a timely manner, or if the Customer otherwise fails to fulfil its obligations under an Agreement, Activium shall be entitled to suspend its obligations under the Agreement and to charge the Customer an additional fee therefor.

8. If Activium's Employees are required to carry out their work on-site at the Customer's premises, the Customer shall ensure that these Employees are able to carry out their work without disruption. The Customer shall comply free of charge with all reasonable requests made on behalf of Activium by those Employees. The Customer shall provide the said Employees with access to all Activium package softwares and Software, Documentation and other materials, and to any location where the goods supplied by Activium are situated.

9. If the Customer fails to comply with the above, Activium is entitled to charge additional costs and the Project may be delayed. Any delay to the Project caused by the Customer shall be reported via the project management system or, if no project management system has been deployed for the Project, by email or, in the absence of functioning email correspondence, in another Written manner. Should this situation arise, Activium will inform the Customer of any additional costs that may be charged.

### **Article 3. Term, termination and cancellation**

1. The Agreement shall be deemed to have been terminated once the respective obligations have been fulfilled.

2. Notwithstanding Article 3.1, Agreements relating to services shall be tacitly renewed on an annual basis upon expiry of the term. Termination of such Agreements must be effected in Writing.

3. Delivery times specified by Activium are always indicative. Even where a deadline has been agreed, Activium shall only be in default after the Customer has given notice of default in Writing, except in situations prescribed by law where default occurs automatically.

4. If the Customer fails to fulfil any obligation incumbent upon it under the Agreement, Activium shall be entitled to suspend the performance of all Agreements concluded with the Customer in question without any notice of default or judicial intervention being required and without prejudice to Activium's right to compensation for damages, lost profits and interest, unless the non-performance in question is of minor significance.

5. The Customer is obliged to comply with all relevant legislation and the obligations arising from the associated regulations.

6. Activium is entitled to terminate or suspend the Agreement in whole or in part with immediate effect, without judicial intervention, in Writing and without any obligation to pay compensation or damages, if:

- the Customer fails to fulfil, or fails to fulfil in full or on time, the obligations under the Agreement;
- circumstances coming to Activium's attention after the conclusion of the Agreement give good reason to fear that the Customer will not fulfil its obligations;
- upon conclusion of the Agreement, the Customer was requested to provide security for the fulfilment of its obligations under this Agreement and such security has not been provided or is insufficient;
- due to the delay on the part of the Customer, Activium can no longer be expected to fulfil the Agreement under the originally agreed terms;
- the Customer dies, applies for a moratorium on payments or files for bankruptcy;
- the Customer is declared bankrupt;
- the Customer's activities are suspended or wound up;
- any part of the Customer's assets is seized;
- there is a change in control of the Customer;
- circumstances arise which are of such a nature that performance of the Agreement becomes impossible or that Activium cannot reasonably be expected to maintain the Agreement unchanged.

7. If the Agreement is terminated, Activium's claims against the Customer shall become immediately due and payable. If Activium suspends performance of its obligations, it shall retain its rights under the law and the Agreement.

8. If the termination is attributable to the Customer, Activium shall be entitled to compensation for any direct and indirect loss or damage resulting therefrom. Under no circumstances shall Activium be obliged to pay any compensation as a result of a termination or cancellation as described in the preceding paragraphs of this article.

#### **Article 4. Procedure following termination**

1. Upon termination of the Agreement, the Parties are mutually obliged to immediately return to the other Party any property of which the other Party is the owner or rightful holder and which is in the possession of one Party. Certain goods, such as data (media), may also be erased or destroyed instead of returned, provided the entitled party has given its Written consent to this.

2. All data provided or entered by Activium shall remain the property of Activium at all times. The Customer shall only acquire a non-exclusive, transferable licence necessary for the performance of the Agreement.

3. Unless expressly agreed otherwise in any agreement, all rights, obligations and activities of the parties shall cease to exist upon termination of an Agreement at the time of termination, with the exception of the provisions of Articles 7, 8, 12, 14 and 18 of the Terms and Conditions. Upon termination of the (Licence) Agreement, the Customer shall immediately cease and desist from all use of the Activium package software and Software, Documentation and other materials supplied by Activium and shall return all such Activium package software and Software, Documentation and other materials to Activium in accordance with the provisions of Article 8.1 of these Terms and Conditions. Upon termination of an Agreement, for whatever reason, Activium shall not refund any licence and/or maintenance and/or support or other fees.

#### **Article 5. Price and payment**

1. All prices and other rates are exclusive of VAT and any other government levies for which the Customer is liable.

2. Activium is entitled to adjust the fees agreed with the Customer on an annual basis. The Customer expressly agrees to these adjustments provided they do not exceed the rate of increase of the CBS Services Price Index (DPI) (2015=100). In the event of price increases exceeding the aforementioned price index figure, the Customer may

terminate the Agreement as of the Renewal Date by giving Written notice by registered post to Activium within two weeks of the announcement of the price increase. If the Customer does not respond to an announced increase within the aforementioned two-week period, the Customer shall be deemed to have accepted Activium's new pricing terms.

3. Payment by the Customer must be made in accordance with the payment terms stated on the invoice. In the absence of such terms, payment must be made in euros within thirty calendar days of the invoice date. The total amount must be paid without any deduction or set-off. Activium reserves the right to require full or partial advance payment for the Activium package software and Software and for services to be provided.

4. If the Customer fails to fulfil, or fails to fulfil in full or on time, its payment obligations under Article 3.3 of these Terms and Conditions, it shall be in default without any further notice of default being required. The Customer shall then owe interest at a rate of 1.5% per month or part thereof, with effect from the date on which the payment became due. If, after the payment has become due and the Customer has not proceeded to pay, Activium requests payment of the principal sum only, this shall in no way imply that Activium waives the aforementioned interest. The Customer shall at all times remain liable for interest from the moment the payment became due.

5. All costs incurred by Activium, both in and out of court, including reasonable legal fees, as a result of the Customer's failure to fulfil its obligations under an Agreement shall be borne by the Customer. The extrajudicial (debt collection) costs incurred by Activium shall be set at a minimum of 15% of the principal amount of the claim, with a minimum amount of 250 euros.

6. Activium may suspend its obligations under the Terms and Conditions and the Agreements until all fees owed by the Customer have been received in full. Activium's (financial) records shall serve as conclusive evidence.

#### **Article 6. Additional work**

1. If, due to the Customer's wishes, which Activium may reasonably regard as a modification or addition to the provisions of the quotation or the Agreement (including any delay or overrun in relation to the Project attributable to the Customer), the amount of work that Activium is required to perform under this Agreement increases, this shall constitute additional work.

2. If Activium considers that additional work is required, it shall notify the Customer of this as soon as possible and request Written approval for the performance of the proposed additional work and the quotation provided by Activium for this, including the delivery period.

3. The Customer shall always decide on the proposed additional work within five working days. The work to be carried out in the context of accepted additional work shall be set out in Writing and agreed by both parties.

4. The Customer shall be solely responsible for any extension of the delivery times stated in the original quotation due to additional work.

5. The provisions of these Terms and Conditions apply to all additional work to be carried out by Activium, insofar as the parties have not agreed on terms to the contrary.

#### **Article 7. Confidentiality**

1. Neither party shall disclose or use Confidential Information relating to or from the other party other than for the purpose for which the Confidential Information was obtained, except insofar as such disclosure or use is necessary in the context of the performance of an Agreement.

2. Each party shall take all reasonable precautions to comply with its confidentiality obligations. None of the provisions contained in this Article 7 shall impose any restriction on the receiving party with regard to information or data – whether or not identical or similar to the information or data contained in the Confidential Information – if such information or data:

- I. was already lawfully in the possession of the receiving party prior to its receipt from the disclosing party;
- II. has been independently developed by the receiving party without using any information or data from the disclosing party;
- III. is or becomes generally known or is made generally available, other than through any act or omission of the receiving party; or
- IV. is disclosed to the receiving party by a third party without breaching any duty of confidentiality owed to the disclosing party.

The confidentiality obligations under this Article 7 shall also not apply insofar as Confidential Information of the other party must be disclosed pursuant to a law, a regulation, a court order or a decision by another public authority, provided that the receiving party uses its best endeavours to limit the scope of such disclosure and notifies the other party in advance of any such intended disclosure.

3. The Parties warrant that their Employees and any third parties engaged by the Parties shall comply with the confidentiality obligations as described in Articles 7.1 and 7.2 above.

4. This obligation shall continue to apply after termination of the Agreement for any reason whatsoever, and for as long as the disclosing party can reasonably claim that the information is confidential.

#### **Article 8. Retention of Title**

1. All items supplied by Activium to the Customer, such as CD-ROMs, DVDs and Documentation, are provided to the Customer on loan for the duration of the Agreement. These items remain at all times the full property of Activium. The Customer is not permitted to encumber, dispose of, let or otherwise make available to third parties the items provided on loan by Activium. Upon termination of the Agreement, the Customer is obliged to return the items supplied to him to Activium within two weeks. Without prejudice to the foregoing, at no time shall any intellectual property right or other right held by Activium in respect of the Activium package software and Software be transferred to the Customer, nor is any such transfer contemplated, intended or to be construed as such.

2. If goods or property rights supplied by Activium to the Customer under the Agreement are attached, the Customer must notify Activium thereof without delay. In the event of such attachment, or if the Customer is granted a suspension of payments or is declared bankrupt, the Customer must immediately notify the attaching bailiff, the administrator or the bankruptcy trustee of Activium's ownership rights in the goods and/or property rights.

#### **Article 9. Customer Portal**

1. Activium shall provide the Customer with access to the Customer Portal by issuing a User ID.

2. The Customer Portal can be used, amongst other things, to obtain information, download Updates and Upgrades, and to provide support to the Customer and its Employees.

3. Activium shall at all times have the right, without giving reasons, to restrict or block access to the Customer Portal for an indefinite period if there is a suspicion of misuse or otherwise improper use, whether or not caused by the Customer or one or more of its Employees.
4. The Customer shall ensure that the authority granted to it under Article 9.1 is delegated exclusively to Employees.
5. The Customer guarantees that its Employees will handle access to the Customer Portal and the information obtained therefrom in a responsible manner, whilst the Customer also retains and/or accepts unconditional responsibility for any information that its Employees add to the Customer Portal.
6. The Customer must handle the User ID with care and is responsible for it. The User ID is non-transferable and must not be used outside the Customer's organisation. The Customer and its Employees are obliged to maintain strict confidentiality regarding their User ID vis-à-vis all third parties. The Customer is liable for any use of the Customer Portal under its User ID, regardless of whether such use has been authorised by the Customer. As soon as the Customer knows or has reason to suspect that third parties are aware of its User ID, the Customer shall notify Activium thereof without delay, without prejudice to the Customer's obligation to take immediate measures against those third parties itself.
7. The Customer and its Employees shall regularly scan their (personal) computers, hardware and data storage media using the most recent versions of antivirus software and other programmes for threats such as computer viruses, worms, Trojan horses, logic bombs and other conceivable malicious programmes, and – should such threats arise – take appropriate measures without delay.
8. Unless otherwise stated, the information made available by or on behalf of Activium via the Customer Portal is provided subject to change and without the Customer or third parties being able to derive any rights therefrom.

#### **Article 10. Complaints**

The Customer must notify Activium in Writing within two weeks of the provision of licensed Activium package software and Software or following the performance of work by Activium, of any complaints regarding an incorrect delivery or the provision of an incorrect or defective service by Activium. Such notification shall not suspend the Customer's payment obligation towards the Licensor, nor shall this notification be deemed to constitute an extension of the obligations set out in the Licence Agreement regarding the functioning of the Activium package software and Software. The Customer is not permitted to return goods to Activium without Activium's prior consent.

#### **Article 11. (Delivery) periods**

All (delivery) periods are determined by Activium to the best of its knowledge and shall be complied with as far as possible. As soon as Activium becomes aware of any circumstance that may prevent the timely delivery of goods, it shall consult with the Customer. Under no circumstances shall the Customer be entitled to compensation in connection with a late delivery. Activium shall at all times be entitled to make partial deliveries.

#### **Article 12. Liability**

1. Except insofar as statutory provisions preclude a limitation of Activium's liability for damage resulting from wilful misconduct or gross negligence, Activium shall only be liable for damage as described in the following paragraphs of this Article 12.

2. In the event of personal injury, regardless of whether such injury results in death, Activium's liability is in any event limited to an amount of 500,000 euros per incident giving rise to liability. In the event of damage to property, Activium's liability shall in any event be limited to 50,000 euros per incident causing damage. In both cases, a series of related incidents shall be deemed to constitute a single incident.

3. Activium shall never be liable for indirect damage, including, but not limited to: loss of profit, lost savings, reduced goodwill, damage due to business interruption, damage resulting from failure to comply with the System Requirements, damage resulting from claims by the Customer's customers, corruption or loss of data, damage relating to the use of items, materials or third-party software prescribed by the Customer to Activium, damage relating to the engagement of suppliers prescribed by the Customer to Activium, for consequential damage, regardless of the nature of the act (breach of contract, tort or otherwise), even if Activium has been informed of the likelihood of such damage occurring. Activium shall also not be liable for damage resulting from the use of the Activium package software and Software outside the Netherlands by the Customer or its Subsidiary.

4. To the extent that Activium cannot rely on the exclusions or limitations of liability set out in this Article 12, its liability shall at all times, per event, be limited to an amount equal to 50% of all amounts invoiced, exclusive of VAT, under an Agreement concluded with the Customer in the twelve (12) months preceding the default following notice of default. Where and to the extent that an Agreement provides for periodic payments, Activium shall in no event be liable for more than 50% of all amounts invoiced in the six (6) months preceding its default. To the extent that Activium is also unable to rely on the limitation referred to in this Article 12.4, Activium's liability shall in any event be limited to EUR 10,000. Any credit notes issued by Activium to the Customer shall be deducted from the amounts referred to in this Article 12.4.

5. The Customer acknowledges and accepts that the licence fee for the Activium package software and Software has been determined with due regard to the limitation of liability as referred to in this Article 12 and the provisions referred to in Article 6 of the Licence Agreement.

6. The Customer acknowledges and accepts that the Activium package software and Software can never be perfect or 100% free of Defects, nor that all Defects will (or can) be rectified. Without prejudice to the provisions of Article 6 of the Licence Agreement, the Customer accepts the Activium package software and Software in the condition in which it is on the date of delivery ("as is").

7. The Customer indemnifies Activium against any claims by third parties arising from or in connection with the Agreement, unless the Customer could have asserted such claims against Activium in accordance with the provisions of this Article 12 had the Customer itself suffered the damage.

8. Activium's liability for attributable failure to perform an Agreement with the Customer shall arise in all cases only if the Customer promptly and properly gives Activium Written notice of default, granting a reasonable period to remedy the failure, and Activium continues thereafter to fail attributable in the performance of its obligations. The notice of default must contain as complete and detailed a description of the failure as possible, so as to enable Activium to respond adequately.

9. A condition for the entitlement to any claim for damages is always that the Customer reports the damage to Activium in Writing as soon as possible after it has arisen. Any claim for damages against Activium shall lapse by the mere expiry of twelve months after the damage has become apparent.

10. Any right to compensation shall lapse in any event if the Customer has failed to take measures to (I) limit the damage immediately after it has occurred; or (II) prevent (further or additional) damage from occurring.

11. The above limitations and exclusions apply in full to the extent permitted by applicable law, even if Activium fails to resolve issues with the Activium package software and Software.

### **Article 13. Exclusion**

1. Save as expressly set out in the Agreement, Activium gives no other or further warranties, representations or conditions with respect to the Activium package software and Software, Documentation, materials or services supplied to the Customer, and Activium hereby disclaims all other warranties, representations or conditions, whether express, implied or statutory (including, but not limited to, warranties or conditions regarding merchantability, non-infringement of other rights, fitness for a particular purpose, or arising from usage or trade custom) in respect of the Activium package software and Software, Documentation, materials and services.

### **Article 14. Intellectual Property Rights**

1. All copyrights, patent rights, trade name rights, trademark rights, other intellectual and industrial property rights in, as well as all similar rights protecting information relating to the Activium package software and Software, Customised Software and Documentation, are the exclusive property of Activium or its licensor or Supplier(s). None of the provisions contained in the Agreement may be construed as leading to a full or partial transfer of those rights to the Customer, nor is any such transfer contemplated or intended, nor may it be construed as such.

2. The Customer is not permitted to alter, remove or obscure any indication of Activium's intellectual property rights on or in the Activium package software and Software, or Documentation. The Customer is not permitted to register any trademark, design or domain name of Activium or any similar name associated therewith in any jurisdiction, anywhere in the world.

3. Activium shall indemnify the Customer against any damages and all costs and expenses which the Customer is ordered to pay as a result of a legal action brought by a third party in connection with an infringement or alleged infringement of valid patents, copyrights, trademarks or other third-party rights relating to Activium package software and Software licensed under an Agreement, or any part thereof, resulting from the Customer's use of the Activium package software and Software in accordance with the provisions of the Agreement and the Documentation, provided that the Customer immediately notifies Activium in Writing of any such legal action when it is brought and provides Activium with all relevant information.

4. If a court injunction is imposed on the Customer's use of the Activium package software and Software due to an infringing act as referred to above, or if, in Activium's opinion, there is a risk that the Activium package software and Software will be the subject of a successful claim for infringement, Activium shall be entitled, at its own discretion and at its own expense, (I) to obtain for the Customer the right to continue using the Activium package software and Software as set out in the Licence Agreement; (II) to replace the Software or adapt it in such a way that it no longer infringes, provided that its functionality remains substantially unchanged; or (III) if the preceding options (I) and (II) are not reasonably feasible, to terminate the Licence Agreement as well as the rights granted under the Licence Agreement in respect of that infringing Activium package software and Software and to refund the Customer an amount for that infringing software, on the understanding that the amount to be refunded shall not exceed the total amount paid by the Customer in licence fees for the software, which total licence fees shall be amortised on a

straight-line basis over a period of three years, with effect from the date on which the Agreement came into force or any other commencement date as explicitly agreed between Activium and the Customer, whereby the effective use of that Activium package software and Software by the Customer during that period is taken into account.

5. Without prejudice to Article 14.3, Activium shall not be liable to the Customer under this Article 14 to the extent that a claim is based on: (I) the use of the Activium package software and Software in combination with data, equipment or software not supplied by Activium, where the Activium package software and Software would not in itself infringe and would not otherwise be the subject matter of the claim; (II) improper use of the Activium package software and Software, or use thereof in a manner not described in the Documentation; (III) a modification to the Activium package software and Software made by any person or legal entity other than Activium; or (IV) Activium's compliance with the Customer's express instructions. The Customer shall indemnify Activium against claims as described in items (I) through (IV) of this Article 14.5.

6. The Customer acknowledges and accepts that Activium's full and exclusive liability for infringement of patents, copyright, trademarks or other intellectual property rights is as set out in this Article 14 and Article 12.

7. Activium is authorised to implement and maintain technical measures to protect the (intellectual property rights to the) Activium package software and Software and/or Documentation or with a view to the agreed restrictions on the use of the Software. The Customer is not permitted to circumvent or remove such technical measures.

8. The Customer shall pay Activium an immediately payable penalty of 5,000 euros for each infringing act and 25,000 euros for each intentional infringing act, without prejudice to Activium's right to be compensated for the damage caused by the breach or to take other legal measures to bring the breach to an end and/or to recover the damage. Upon the expiry of one working day after Activium has notified the Customer of a breach, the Customer shall also be liable to pay a penalty of €5,000 for each day that the breach has not been remedied.

#### **Article 15. Audit and Inspection**

Activium may carry out an audit and/or inspection (or have such an audit and/or inspection carried out) in order to verify whether the Customer is complying with the terms of an Agreement and the Terms and Conditions, provided that such audit and/or inspection is carried out during normal office hours, in such a manner that the Customer's business activities are not unreasonably impeded thereby. Such an audit shall be carried out by an expert selected and engaged by Activium. This expert shall submit a summary note setting out his findings regarding the audit of the reports issued by the Customer and the Customer's compliance with the terms of the Agreements and the Terms and Conditions, but shall under no circumstances provide Activium with any information other than that which comes to his attention during the audit and/or inspection. The costs of this audit shall be borne by Activium, unless the audit demonstrates that the Customer is not complying with the terms of the Agreements or the Terms and Conditions, in which case the costs shall be borne by the Customer.

#### **Article 16. Disruptions and force majeure**

1. Neither party shall be obliged to perform any obligation if a circumstance beyond the parties' control, which could not or should not reasonably have been foreseen at the time the Agreement was concluded, eliminates any reasonable possibility of performance. The parties may invoke Force Majeure against each other only if the party concerned notifies the other party in Writing of such reliance on Force Majeure as soon as possible after the failure has arisen, enclosing the necessary supporting evidence.

2. The circumstances as referred to in paragraph 1 may include, for example: (a) failures of the internet or other telecommunications facilities, (b) failures by parties on whom Activium depends in the provision of the services, (c) defects in items, equipment, software or materials whose use has been prescribed to Activium by the Customer, (d) the unavailability of one or more staff members (due to illness), and (e) government measures..

3. In the event of Force Majeure, the performance of the relevant obligation(s) and any related obligations shall be suspended in whole or in part for the duration of such Force Majeure, without either party being liable to the other for any compensation in this regard. The parties may only invoke Force Majeure against each other if the party concerned notifies the other party in Writing of such an invocation of Force Majeure as soon as possible after the occurrence of the failure, accompanied by supporting documents.

4. In the event of Force Majeure, the party invoking Force Majeure shall endeavour to ensure that the failure, which is caused by the Force Majeure, is of the shortest possible duration.

5. If a Force Majeure situation has lasted for thirty days, or as soon as it is established that the Force Majeure situation will last for more than three months, either party shall be entitled to terminate the Agreement in Writing, unless the nature or extent of the failure does not justify early termination. In that case, any performance already rendered under the Agreement shall be settled on a pro rata basis, without the parties owing each other anything further.

#### **Article 17. Telecommunications**

If Activium uses telecommunications facilities for the Maintenance and/or Support (services) of the Activium package software and Software or other services, each party is responsible for the selection and proper installation of the telecommunications equipment or facilities, including internet connections. Activium shall not be liable for errors in, interception of or loss of data or processing results during the transmission of such data using its telecommunications facilities.

#### **Article 18. Non-competition clause**

1. Neither party shall, without the prior Written consent of the other party, employ or engage any employees or third parties who have been involved in the performance of an Agreement during the preceding twelve (12) months. This Article 18.1 shall no longer apply if one of the parties is declared bankrupt or if one of the parties is granted a suspension of payments.

2. In the event of a breach of Article 18.1 (and without prejudice to the aggrieved party's right to other remedies), the defaulting party shall, without any prior notice, notice of default and/or judicial intervention being required, pay the other party a penalty of EUR 50,000 as compensation for that other party's lost investment in the training and expertise of the employee concerned or the engaged third party, without prejudice to Activium's right to recover its full loss.

#### **Article 19. Amendments to the Terms and Conditions**

If the Agreement is a continuing performance agreement, Activium reserves the right to amend or supplement these Terms and Conditions and all Modules forming part thereof.

2. Amendments shall also apply to Agreements already concluded, provided that a period of 30 days has elapsed after publication of the amendment on Activium's Website or by electronic communication. Amendments of minor importance may be implemented at any time.

3. If the Customer is a natural person acting outside the course of a profession or business, and the amendment results in the Customer receiving contractual performance that differs materially from the original contractual performance, the Customer shall be entitled to terminate the Agreement with effect from the date on which the amended Terms and Conditions enter into force.

#### **Article 20. Applicable law and disputes**

1. The Agreement, as well as any agreements and other legal acts arising from or related to it, shall be governed exclusively by Dutch law.

2. All disputes, including disputes deemed as such by only one of the parties, arising out of or in connection with (the performance of) this Agreement and/or any agreements arising from or related thereto, shall be resolved by means of mediation as offered by ICTWaarborg (hereinafter referred to in this Article as "Mediation").

3. The parties mutually undertake to cooperate in the resolution of disputes through Mediation and undertake to bear half of the costs of the Mediation each.

4. Mediation consists of two phases. In the first phase, the parties shall explore a possible solution acceptable to both parties. If agreement is reached, the mediator shall record that agreement in a settlement agreement. If it proves impossible in the first phase to reach an agreement acceptable to both parties, a second phase shall commence. In the second phase, the mediator shall formulate a settlement that is binding on both parties and shall likewise record it in a settlement agreement.

5. Activium and the Customer retain the right at all times to refer disputes to the competent court, but only where both Parties give their explicit Written consent to this, whereby both Parties declare that they waive mediation.

#### **Article 21. Third-party supplier: Terms and Conditions and liability**

1. If and insofar as the Software originates from a third party (e.g. Exact Automatisering and Microsoft), the terms and conditions applicable between Activium and the said third party shall also apply between that party and the Customer. Upon the Customer's first request, the relevant terms and conditions (e.g. Microsoft End-User Licence Agreements) shall be sent or provided free of charge. The Customer declares that it has been able to take timely and sufficient note of the said terms and conditions.

2. In particular, the terms and conditions of the third party referred to in this Article 21 concerning (the limitation of) liability and warranties, shall apply between Activium and the Customer. For the avoidance of doubt, Activium accepts no liability for any damage resulting from errors and/or defects in the software of the third-party Supplier.

#### **Article 22. Processing of personal data**

1. The data that is automatically processed and possibly stored when using the Services may contain personal data. Consequently, both the Customer and Activium are subject to the General Data Protection Regulation ("GDPR"), whereby, in accordance with the terminology of the GDPR, the Customer constitutes the 'data controller' and Activium the 'data processor'.

2. If Activium processes personal data in the performance of the Services, Article 28(3) of the GDPR requires Activium and the Customer to enter into a contract or other binding legal arrangement regarding the processing of personal data carried out by Activium on behalf of the Customer. The provisions of Annex 2 shall serve as a data processing agreement within the meaning of the GDPR.

3. If Activium processes personal data via the Services for which Activium independently determines the purpose and means, the provisions of Annex 2 shall not apply, as Activium carries out such processing in its role as 'data controller'.

### **Article 23. Final Provisions – General Module**

1. Activium may use the Customer's electronic contact details obtained in the context of an existing customer relationship to send commercial communications relating to its own similar products and services, provided that the Customer is given a clear, explicit, free and easy opportunity to object both at the time those contact details are obtained and in each subsequent communication.

2. Activium may transfer or outsource its rights and/or obligations under the Agreement to a Franchisee or to another third party engaged by it for that purpose. In the event of such a transfer or outsourcing, these Terms and Conditions shall continue to apply to the Customer.

3. Any notice or other communication relating to the Agreement must be addressed in Writing to the other party's address as stated in the applicable Agreement or Registration Card.

4. Provisions of these Terms and Conditions or the Agreement to which they apply, which are expressly or implicitly intended to remain in force after the termination of the Agreement, such as, but not limited to, confidentiality or provisions regarding intellectual property rights, shall remain in force thereafter and shall continue to bind Activium and the Customer.

5. If any provision of an Agreement or of these Terms and Conditions is wholly or partly void, voidable or contrary to law, it shall be deemed to stand alone and not to apply. In such a case, parties shall consult with a view to replacing the provision in question with a provision of similar effect which is not wholly or partly void, voidable or contrary to law. The remaining provisions of the Agreement or these Terms and Conditions shall remain in full force and effect.

6. Any delay or failure on the part of Activium in enforcing any right it has under the Agreement against the Customer shall in no way constitute a waiver of that right. If a party waives a right it has under the Agreement, this shall not imply that that party also waives or is required to waive this right or any other rights in a subsequent instance.

7. Activium is permitted to include the Customer's name on Activium's internal lists of customers.

8. The Agreement constitutes the entire agreement between the parties and supersedes all prior and contemporaneous, express or implied arrangements, agreements, statements and warranties, whether Written or oral. Except as provided in Article 19 of the Terms and Conditions, the Agreement may be amended only by means of a Written agreement signed by both the Customer and Activium..

9. In the event of any disagreement, difference of opinion or ambiguity regarding the provisions of these Terms and Conditions and/or an Agreement, the Dutch text shall prevail over any translation thereof.

10. The application of all or part of any of the Customer's purchasing or other terms and conditions is expressly rejected, unless expressly accepted by Activium.

## Module B. Activium package software Licence Agreement

The Customer named on the signed registration card and Activium hereby agree as follows:

### Article 1 – Definitions

Unless otherwise specified in this Licence Agreement, the capitalised terms in this Licence Agreement shall have the meanings assigned to them in the Terms and Conditions.

### Article 2 - Right of Use

1. Activium grants the Customer the non-exclusive right and the non-exclusive licence to use the Activium package software in accordance with the provisions of this Licence Agreement, to install the Activium package software on a server (or have it installed) for this purpose on a one-off basis, and to create, by means of the Licence File, the maximum number of administrations and/or databases specified in the Licence File. The Licence File may only be used once. The Software may only be used in the Netherlands.

2. The Customer may only use the Activium package software on the computer system used for the Customer's internal business operations, using the Licence File made available by the Licensor and for the number of Named Users specified in the Licence File. The Customer may not allow the Activium package software to be used by or on behalf of any other natural or legal person, except where the Activium package software contains functionality that enables third parties to make use of that functionality via web access.

3. The right of use also includes the right to use the Documentation accompanying the Activium package software.

4. The Licence Agreement and the right to use the Activium package software shall not come into effect until the Customer has registered in the prescribed manner or has accepted the Order Confirmation and has accepted the applicable Licence Agreement and Terms and Conditions in Writing or electronically.

5. The Customer may only use the Activium package software within its own organisation on a computer system that meets the System Requirements.

6. With the exception of the provisions of Article 2.2, the Customer is expressly prohibited from using the Activium package software (or causing it to be used) for or by anyone other than, or in excess of, the maximum number of Named Users as stated in the Licence File.

7. Activium is entitled to request the Customer to register annually.

### Article 3 – Licence Fee

1. Under the Licence Agreement, the Customer is liable to pay the Licensor a licence fee for each component of the Activium package software for which a right of use is granted under this Licence Agreement. The licence fee is stated in the Price List or in another price list officially published by Activium and is payable from the date on which the Licence Agreement comes into force in accordance with Article 2.4 or any later date agreed in writing between the parties.

2. The licence fee is payable regardless of whether the Customer puts the Activium package software into use.

### Article 4 - Transferability

1. The Customer is not permitted to transfer the right to use the Activium package software to third parties, whether or not for a fee, under general or specific terms, including but not limited to by means of a merger or change of control, to lease, sub-license, sell, dispose of or pledge it.

2. The Customer is not permitted to entrust the management and/or use of the Activium package software to, or accept such management and/or use from, a third party, including hosting, timesharing or outsourcing. A third party is also understood to mean an Affiliated Company (with the exception of a Subsidiary).

3. If the Customer permits a third party to make unauthorised use of the Software as referred to in Article 4.1 and Article 4.2 of this Licence Agreement, the Customer shall remain, from the date of commencement of the right of use as referred to in Article 2.4 of this Agreement, liable for payment of the licence and/or maintenance fees both for its own use and for the unauthorised use by that third party, without prejudice to Activium's right to recover these fees directly from that third party. The right to recover licence and/or maintenance fees, as described above, does not affect Activium's right (I) to recover from the Customer the full amount of any loss suffered as a result of a breach of the provisions of Article 4.1 and/or Article 4.2 of this Agreement, nor (II) to terminate the Licence Agreement in accordance with the provisions of Article 3 of Module A of the Terms and Conditions.

4 The Licence Agreement may only be transferred with the Licensor's express Written consent. Acts, conduct or circumstances of any nature whatsoever shall not alter this. If, for example, a third party pays licence or maintenance fees to Activium on behalf of the Customer or makes use of Support (services) as described in Article 4 of the Maintenance Agreement, this shall never result in a valid transfer of the Licence Agreement.

#### **Article 5 – Manner of Use**

1. The Customer is obliged to use the Activium package software correctly, in accordance with the provisions of this Licence Agreement (including the Terms and Conditions) and the Documentation. Except as provided in Articles 5.2 and 5.3 of this Agreement, the Customer is prohibited, without the express prior Written consent of Activium, from copying, reproducing, translating, adapting, analysing, decompiling, imitating, modifying, reconstructing or otherwise reproducing and/or editing the Activium package software and/or the Documentation, in whole or in part, in any manner whatsoever.

2. The Customer is entitled to make one copy of the Activium package software as a backup and for recovery purposes. This copy shall only be used by the Customer to replace original Activium software that has become unusable.

3. The Customer must regularly make a backup of all data files generated, used and/or applied using the Activium package software.

4. Under this Licence Agreement, the Customer must:

- a) Ensure at all times that the Activium package software and Documentation are adequately protected against misuse, damage (including damage resulting from latent threats such as viruses, worms, Trojan horses, logic bombs, etc.), theft or destruction by any person;
- b) Prevent any unauthorised person from copying, reproducing, translating, adapting, analysing, decompiling, counterfeiting, modifying, reconstructing, accessing, or otherwise duplicating or editing the Activium package software and/or the Documentation;

- c) To notify Activium immediately of any details that come to the Customer's attention regarding the unauthorised copying, modification or use of the Activium package software and/or the Documentation, and regarding all other unauthorised acts referred to in this Article 5.4 and in Article 5.1;
- d) To ensure that the number of Named Users does not exceed the permitted number as stated in the Licence File.

5. The Customer bears ultimate responsibility for the correct installation and configuration of the Activium package software on its computer system. At the Customer's request, Activium shall assist the Customer with the installation and configuration of the Activium package software by providing the consultancy services referred to in Chapter VII.

6. Activium shall under no circumstances be obliged to provide the Support and Maintenance Services as described in Article 4 and Article 5.1(a) and (b) of the Maintenance Agreement if the Customer has not entered into a Maintenance Agreement for this purpose, with the exception of the provisions set out in Article 6.1 of this Licence Agreement. Maintenance is required for certain modules of the Activium package software. The Customer is aware that the continued proper functioning of the Activium package software is not possible without maintenance and that errors and/or defects may occur without maintenance. Activium accepts no liability whatsoever for any damage arising from the use of the Activium package software for which maintenance is deemed necessary, if no Maintenance Agreement has been concluded in respect of such Activium package software.

#### **Article 6 – Functioning of Software**

1. Activium declares that the Activium package software supplied shall, for a one-off period of ninety calendar days from the date of delivery of the Activium package software, or from any other commencement date if the Licensor has explicitly agreed such date with the Customer, function substantially in accordance with the provisions of the accompanying Documentation. Claims relating to the performance of the Activium package software must be notified to Activium in Writing by the Customer by registered post no later than five working days after the aforementioned period of ninety calendar days. If the Customer notifies Activium in accordance with the provisions of this Article 6.1 that the Software does not function substantially in accordance with the accompanying Documentation, Activium shall provide the Support and Maintenance Services as described in Articles 4 and 5.1(a) and (b) of the Maintenance Agreement, even if the Customer has not entered into a Maintenance Agreement.

2. Activium shall not be obliged, pursuant to Article 6.1, to restore corrupted or lost data or to provide Maintenance Services in connection with errors and/or Defects that are not attributable to Activium, including, but not limited to, errors and/or Defects arising as a result of:

- a) A modification to the Activium package software, of whatever nature, not made by or on behalf of Activium;
- b) The use of the Activium package software by or on behalf of the Customer in a manner or in conjunction with other software or hardware not described in the accompanying Documentation or otherwise not permitted under this Agreement;
- c) The use of an old Update or Upgrade three months after Activium has introduced a new Update or Upgrade of the Activium package software;
- d) The use of an old Upgrade six months after Activium has introduced a new Upgrade of the Activium package software;
- e) Intentional misuse of the Activium package software, whether or not by the Customer;
- f) Defects, latent issues (such as viruses, worms, Trojan horses, logic bombs, etc.) or errors in software, hardware, communication equipment, peripheral equipment or other equipment belonging to the Customer or

third parties that does not originate from the Licensor, or the Customer's failure to have such equipment and/or software serviced regularly;

- g) Input errors or errors relating to the data used by the Customer;
- h) Changes to the Activium package software with which, or on which, the licence was created, necessitating (licence) adjustments.

If Activium nevertheless decides, at its sole discretion, to carry out this work at the Customer's request, the Customer shall owe Activium a fee for this, in addition to the maintenance fee owed by the Customer under any Maintenance Agreement entered into by the parties, at the rates stated in the Price List.

3. The one-off period of ninety days referred to in Article 6.1 of this Licence Agreement for previously ordered and delivered Activium package software shall not be extended by (additional) Activium package software ordered and delivered at a later date. If additional orders are added to a licence for which the period referred to in Article 6.1 of this Licence Agreement has already expired, this period shall not come into effect again for the previously ordered and delivered Activium package software.

4. If more than three months have elapsed since the release of an Update or six months since an Upgrade of the Activium package software, Activium shall not be obliged to supply the preceding Update or Upgrade or any extension of the licence based thereon.

5. The Customer is solely responsible for ensuring that the Activium package software receives correct and correctly formatted data from all software and hardware with which data is exchanged with the Activium package software or through which data is provided to the Activium package software.

#### **Article 7 – Term and termination**

The Maintenance Agreement is entered into for a term of three years and is tacitly renewed for successive periods of one year, unless either party notifies the other party in Writing by registered post at least three months prior to the Renewal Date that it wishes to terminate the Agreement. If the Customer wishes to terminate the Agreement, the notice of termination must be sent to Activium.

#### **Article 8 – Licence Name**

1. The name specified by the Customer for the licence must correspond to the trade name used by the Customer as registered in the Trade Register of the Chamber of Commerce, or, in the event that the Customer is not registered in the Trade Register, the trade name under which the Customer operates in legal transactions.

2. Activium reserves the right to unilaterally amend a name for the licence specified by the Customer and accepted by Activium, subject to Article 7.1.

#### **Article 8 – Terms and Conditions**

Activium's Terms and Conditions form an integral part of this Licence Agreement and are deemed to be incorporated in full into this Agreement.

# Module C. Activium package software Maintenance and Support Agreement

The following terms and conditions apply between Activium and the Customer where the Customer uses the Activium package software:

## Article 1 – Definitions and applicability

1. Unless otherwise specified in this Maintenance Agreement, the words written with a capital letter in this Agreement shall have the meaning assigned to them in the Terms and Conditions.
2. This Maintenance Agreement entitles the Customer to use the Maintenance Services offered by Activium, as defined in Article 3 of Module C of this Agreement, for the duration of this Agreement.
3. If no Licence Agreement for the Activium package software is in force between Activium and the Customer, the Customer shall not be entitled to receive Maintenance Services in respect of the Software under this Maintenance Agreement.
4. The Maintenance Agreement extends to all Activium package software for which Activium has granted the Customer a valid licence.
5. The Licensor reserves the right to transfer (part of) its obligations under the Maintenance Agreement to one or more third parties, provided that such third party or parties are capable of offering equivalent services, all of which is at Activium's sole discretion.
6. The provisions of the Licence Agreement shall apply to the use and handling of all Activium package software (including Updates and Upgrades provided under the Maintenance Agreement), Documentation and other materials supplied by Activium to the Customer pursuant to this Maintenance Agreement.

## Article 2 – Maintenance Fees

1. Under the Maintenance Agreement, the Customer shall pay the Licensor a periodic maintenance fee. The maintenance fee shall be calculated on the basis of the licence value of the Software, the number of Named Users and the Price List. The Customer shall pay the maintenance fee due periodically in advance. The maintenance fee will, wherever possible, be invoiced one month prior to the applicable Renewal Date.
2. Activium may suspend its obligations under this Maintenance Agreement until it has received full payment of all outstanding maintenance fees. The maintenance fee is payable regardless of whether the Customer uses the Activium package software or makes use of Support or Maintenance Services.

## Article 3 – Maintenance Services in general

1. In this Agreement, "Maintenance Services" means (I) "Support" as described in Article 4 and (II) "Maintenance" as described in Article 5, subject to the exceptions set out in Article 6.
2. All Maintenance Services are provided on Working Days between 09:00 and 17:00. In addition, different or extended opening hours may be available, which may vary by Activium franchisee.

## **Article 4 – Support**

1. "Support (services)" means the provision of telephone, Written and/or electronic helpdesk support relating to the use and functioning of the Software.
2. When (an Employee of) the Customer requests Support, the computer system on which the Software is installed must be in the immediate vicinity of this (Employee of the) Customer and remain at their disposal at all times. Furthermore, the Customer must have a working internet connection with the Licensor. Support can only be provided if the Customer (or an Employee of the Customer) provides Activium with the correct licence number and licence name.
3. Support may only be requested by the Customer and its Employees.
4. If it turns out that the Customer was not entitled to Support or if it turns out that the action does not fall within the scope of Support, Activium may pass on the costs of the Support provided to the Customer at its then applicable rates, and the Customer shall be liable to pay the charged amount to the Licensor.

## **Article 5 - Maintenance**

1. "Maintenance" comprises:
  - a) the detection and rectification, to the best of Activium's ability, of all Defects in the Software reported by the Customer to the Licensor in accordance with Article 5.5;
  - b) making Updates and/or Upgrades to the Software available, entirely at Activium's discretion. This will be done, as far as possible, via the Customer Portal. Activium may incorporate the functionality from previous Updates and/or Upgrades of the Activium package software into an Update and/or Upgrade without modification, but does not guarantee that every new Update and/or Upgrade will contain the same functionality as the previous Updates and/or Upgrades of the Activium package software.
2. Activium may require the Customer to adapt its computer system to the new System Requirements as specified by Activium in connection with increased functionality or higher requirements of Updates or Upgrades to the Activium package software. If the Customer fails to comply with these new System Requirements and nevertheless installs an Update or Upgrade of the Activium package software, Activium shall in no way be liable for any resulting damage. If the Customer fails to comply with the System Requirements set by Activium and continues to use the old Update or Upgrade of the Software, the provisions of Article 5.4(c) and (d) shall also apply.
3. Maintenance services shall be provided online as far as possible. The Customer is solely responsible for establishing a data connection with Activium within its computer system. Activium reserves the right to suspend Maintenance services if it reasonably determines that the data connection does not meet the technical and security requirements set by Activium.
4. Activium is not obliged to provide Maintenance Services, including Maintenance Services relating to errors and/or Defects, arising as a result of:
  - a) Any modification to the Activium package software, of whatever nature, not made by or on behalf of Activium;

- b) The use of the Activium package software by or on behalf of the Customer in a manner or in conjunction with other software or hardware not described in the accompanying Documentation or otherwise not permitted under this Agreement and/or the Licence Agreement;
- c) The use of an old Update three months after Activium has introduced a new Update or Upgrade of the Software;
- d) The use of an old Upgrade six months after Activium has introduced a new Upgrade of the Software;
- e) Intentional misuse of the Activium package software, whether or not by the Customer;
- f) Defects, latent issues (such as viruses, worms, Trojan horses, logic bombs, etc.) or errors in software, hardware, communication equipment, peripherals or other equipment not supplied by Activium, belonging to the Customer or third parties, or the Customer's failure to have such equipment and/or software serviced regularly;
- g) Input errors or errors relating to the data used by the Customer.

If Activium nevertheless decides, at its sole discretion, to carry out this work at the Customer's request, the Customer shall owe Activium a fee for this, in addition to the maintenance fee, at the rates stated in the Price List.

5. If the Customer identifies a Defect, the Customer must immediately notify Activium via the Customer Portal and provide Activium with all system environment and other relevant information relating to the Defect in order to enable Activium to isolate, reproduce and resolve the Defect.

6.a) Activium shall provide an initial response to a Defect reported by the Customer within three Working Days of the Customer having reported the Defect via the Customer Portal in sufficient detail to enable Activium to reproduce the Defect. This response may include both a preliminary analysis and, where available, the provision of an already known workaround.

6.b) Activium shall use its best endeavours to rectify the Defects reported by the Customer in accordance with the provisions of Article 5.5. Activium reserves the right to prioritise the rectification of Defects based on their severity and their impact on the entire database. Activium is permitted, at its sole discretion and depending on the severity of the Defect, to resolve the reported Defect by offering the Customer a remedy or workaround.

7. The Customer shall cooperate fully with Activium's investigation into the Defect, including, at Activium's request, ceasing use of the relevant Activium package software in order to enable Activium to analyse and rectify the Defect. In the absence of such cooperation, Activium shall not be obliged to investigate or rectify the Defect further.

## **Article 6 – Exclusions**

Maintenance services under this Maintenance Agreement do not include:

- a) Services relating to system configuration, hardware and networks;
- b) Structural work such as defining layouts, overviews, annual reports, setting up chart of accounts, accounting issues, import definitions and links to third-party software;
- c) On-site support;
- d) The extended functionality of the Activium package software, as requested by the Customer;
- e) The conversion of files;
- f) Services relating to external databases from providers other than Activium;
- g) Installation, configuration, training or other services not expressly described in this Agreement;

- h) Maintenance or support for software from the Licensor other than the Activium package software and/or for (operating) software from providers other than Activium;
- i) Maintenance or support for hardware;
- j) File repairs where the cause cannot be attributed to Activium's Software;
- k) The provision of products other than the Software marketed by or on behalf of Activium;
- l) Reproduction of corrupted or lost data;
- m) Maintenance or support for Dutch licences used abroad.

Activium is not obliged to carry out work relating to the matters listed under a) to m). If Activium nevertheless decides, at its sole discretion, to carry out this work at the Customer's request, the Customer shall owe Activium a fee for this in addition to the maintenance fee, at the rates stated in the Price List.

#### **Article 7 – Commencement, duration and termination**

1. If a Maintenance Agreement is concluded, it shall be deemed to have come into force on the same day as the Licence Agreement relating to the Activium package software came into force. If for any period no Maintenance Agreement, but a Licence Agreement has been concluded, and the Customer decides after this period to conclude a Maintenance Agreement again or for the first time, the Customer shall owe the maintenance fee to Activium with retroactive effect from the date of termination of the previous Maintenance Agreement or from the date on which the Licence Agreement came into force.

2. The Maintenance Agreement is entered into for a term of three years and is tacitly renewed for successive periods of one year, unless either party notifies the other party in Writing by registered post at least three months prior to the Renewal Date that it wishes to terminate the Agreement. If the Customer wishes to terminate the Agreement, the notice of termination must be sent to Activium.

3. The term of this Maintenance Agreement shall not be altered as a result of the Customer adding supplementary orders to the Activium package software under the same Licence Agreement. These additional orders shall be added to the current Maintenance Agreement and the maintenance fee for Maintenance Services relating to the additional orders shall therefore be invoiced (annually) on a pro rata basis, i.e. from the date on which the additional orders are added to the Maintenance Agreement until the next Renewal Date. From the next Renewal Date, the maintenance fee will be invoiced on the basis of the total licence value of the Software.

4. If the licence agreement terminates, Activium's obligation to provide Maintenance Services under this Agreement shall automatically cease in respect of that Activium package software for which no licence exists (or no longer exists) as of the date of termination of the licence.

5. Termination of the Maintenance Agreement in respect of part of the Activium package software shall result in the loss of the right to use the modules for which maintenance has been terminated.

#### **Article 8 – Terms and Conditions**

Activium's Terms and Conditions form an integral part of this Maintenance Agreement and are deemed to be incorporated in full into this Agreement.

## Module D. Support Agreement for Third-Party Software

The following terms and conditions apply between Activium and the Customer in respect of standard third-party software if the Customer enters into a support agreement with Activium regarding standard third-party software.

### Article 1 – Definitions and applicability

1. With the exception of Articles 3.1, 5, 6, 7.1 and 7.5, the terms and conditions of the Maintenance Agreement apply mutatis mutandis to the Standard Activium Package software Software Support Agreement.
2. The Support Agreement for third-party software entitles the Customer to make use of the Support (services) offered by Activium during the term of this Agreement, as defined in Article 4.1 of the Maintenance Agreement and Article 2 of this Support Agreement for third-party software.

### Article 2 - Support

1. Activium is only obliged to provide Support (services) for the third-party software as agreed in the Support Agreement until such time as the Current Version is two Updates or Upgrades older than the most recent Update or Upgrade at that time.
2. Additional orders for third-party software as agreed in the Support Agreement shall be added to the current Support Agreement for third-party software. Upon purchase of the extension to the third-party software as agreed in the Support Agreement, Activium shall notify the Customer of the additional fee for the Support (services).

### Article 3 – Support Fees

The Customer is liable to pay Activium an annual support fee under the Support Agreement for third-party software. The support fee is calculated on the basis of the expected support efforts and the number of Users of the software as agreed in the support agreement and may be adjusted from time to time following a modification to the software's programming carried out by Activium as agreed in the support agreement.

### Article 4 – Commencement and termination

1. The Support Agreement for third-party software shall enter into force on the date of signing of the Support Agreement for third-party software.
2. Termination of the Support Agreement for third-party software by either party pursuant to this Article shall not affect the right to use the third-party software.

## Module E. Customised Licence Agreement

The following terms and conditions apply between Activium and the Customer in addition to or in deviation from the licence agreement, if the Customer enters into a licence agreement with Activium relating to Activium Customised package Software or customisation of (standard) third-party software:

### Article 1 – Definitions and Applicability

1. Unless otherwise specified in this Customised Licence Agreement, the capitalised terms used in this Customised Licence Agreement shall have the meanings assigned to them in the Terms and Conditions.

2. The following definitions apply to the Customised Software Licence Agreement:

a) "Current Version": the version of the Activium package software and Software in which the Customised Software has been implemented;

b) "Customised Software Licence Agreement": the agreement between Activium and the Customer setting out the rights and obligations relating to the use of the Customised Software;

c) "Customised Maintenance Agreement": the agreement between Activium and the Customer setting out the rights and obligations relating to the maintenance of the Customised Software;

d) "Customised Support Agreement": the agreement between Activium and the Customer setting out the rights and obligations relating to the support of the Customised Software;

e) "Additional Work": any amendment or addition to the originally agreed work which may affect the completion date and the price of such work;

f) "Specifications": the description, set out in the Order Confirmation (or in a subsequent Written confirmation), of the software to be developed by Activium and the requirements with which the software must comply.

3. Unless otherwise provided in the Customised Software Licence Agreement, the terms and conditions of the Licence Agreement relating to the Activium package software and Software shall, insofar as relevant, apply mutatis mutandis to the Customised Software Licence Agreement relating to the Customised Software.

### Article 2 – Right of Use

1. Activium grants the Customer the non-exclusive right and the non-exclusive licence to use the Customised Software in accordance with the provisions of the Order Confirmation.

2. The Customer may only use the Customised Software in the licence configuration for which the Customised Software was developed by Activium in accordance with the Order Confirmation.

3. The right of use also includes modifications to the Custom Software that have been implemented on the basis of the Custom Software Maintenance Agreement.

4. The Customer shall owe Activium a fee in respect of the right to use the Customised Software in accordance with Article 3 of this Customised Software Licence Agreement.

5. The right to use the Customised Software shall not take effect until:

- the fee as described in Article 3 of the Customised Software Licence Agreement has been paid; and
- the Licence Agreement, the Customised Software Licence Agreement and the Order Confirmation have been accepted in Writing by the Customer; and
- the Customised Software has been delivered in accordance with Article 6.1 of the Customised Software Licence Agreement; and
- where applicable in accordance with Article 1.5 of the Customised Software Maintenance Agreement, a Customised Software Maintenance Agreement has been accepted in Writing by the Customer.

### **Article 3 – Licence Fee**

Pursuant to the Customised Software Licence Agreement, the Customer shall owe a one-off fee for each component of the Customised Software upon delivery of the Customised Software in accordance with Article 6.1 of the Customised Software Licence Agreement, as set out in the Order Confirmation. Payment of this fee must also be made in accordance with the provisions of the Order Confirmation. This fee is payable regardless of whether the Customer takes the Customised Software into use or, for whatever reason, returns it.

### **Article 4 – Development of the software**

1. For the purposes of developing Customised Software for the Customer, Activium shall draw up the Specifications in detail and in Writing and provide them to the Customer. The Customer shall at all times provide Activium with all useful and necessary information in a timely manner and shall guarantee the accuracy of the information provided. The agreements regarding the Customised Software shall be set out in the Order Confirmation.

2. Activium shall carry out the development of the Custom Software to the best of its ability on the basis of the Specifications.

3. If it has been agreed in the Order Confirmation that the development of the Customised Software will take place in phases, Activium may postpone the commencement of work belonging to a subsequent phase until the Customer has approved the results of the preceding phase in Writing and Activium has received payment for the work carried out in that preceding phase.

### **Article 5 – Amendments and Additional Work**

1. If it becomes clear to Activium that Additional Work is necessary for the Custom Software, Activium shall inform the Customer of this as soon as possible.

2. If a fixed fee has been agreed for the development of the Customised Software, Activium shall notify the Customer as soon as possible of any changes to the agreed price resulting from Additional Work.

3. All terms and conditions relating to Additional Work shall be set out in (an addendum to) the Order Confirmation.

### **Article 6 – Delivery and acceptance**

1. Subject to the provisions of Article 4.2 of the Customised Software Licence Agreement, Activium shall deliver the Customised Software to be developed to the Customer in a ready-to-use state in accordance with the Specifications, meaning that the Customised Software shall be made available to the Customer on CD-ROM or via the Customer Portal.

2. The Customer shall be entitled to test the Customised Software for a period of fourteen days following delivery in a ready-to-use state.

3. The Customised Software shall be deemed to have been accepted by the Customer if, within fourteen days of delivery of the Customised Software, Activium has not received a Written response from the Customer setting out in detail that the Customised Software developed by Activium does not comply with the Specifications and also does not function substantially in accordance with the accompanying Documentation.

4. Upon receipt of the Customer's Written response in accordance with Article 6.3, Activium shall, within a reasonable period, ensure the rectification of the Customised Software, in accordance with the provisions of Article 7 of this Customised Software Licence Agreement. Such rectification shall be at Activium's expense only if the Customised Software has been developed for a fixed price.

5. Unless otherwise agreed in Writing, the Customised Software shall be deemed accepted by the Customer upon delivery of the Customised Software, which may have been amended following the tests carried out by the Customer.

#### **Article 7 – Functioning of custom software**

1. Activium declares that the Customised Software supplied shall, for a one-time period of ninety calendar days following the Customer's acceptance of the Customised Software in accordance with Article 6.3 or Article 6.5 of this Customised Software Licence Agreement, or any other commencement date as Activium has explicitly agreed with the Customer in the Order Confirmation, function substantially in accordance with the provisions of the accompanying Documentation and Specifications. If the Customer notifies Activium in accordance with the provisions of this Article 7.1 that the Customised Software does not function substantially in accordance with the accompanying Documentation, Activium shall provide the Maintenance Services as described in Article 3.1 of the Customised Software Maintenance Agreement. Activium does not in any way guarantee that the Customised Software will function without interruption or defects, or that all defects will be rectified.

2. During the one-off period of ninety days referred to in Article 7.1, the Customer shall also be entitled to Support (services) in accordance with the provisions of Article 3 of the Customised Support Agreement. Upon expiry of this period, the Customer shall only be entitled to Support (services) if the Customer has entered into a Customised Support Agreement.

## Module F. Customised Maintenance Agreement

The following terms and conditions apply between Activium and the Customer in addition to or in deviation from the maintenance agreement, if the Customer enters into a customised maintenance agreement with Activium in respect of customised software:

### Article 1 – Definitions and Applicability

1. Unless otherwise specified in the Customised Maintenance Agreement, the terms and conditions of the Maintenance Agreement relating to the Activium package software and Software shall, insofar as relevant, apply mutatis mutandis to the Customised Maintenance Agreement relating to the Customised Software.
2. The Customised Maintenance Agreement entitles the Customer to make use of the maintenance services offered by Activium for the Customised Software during the term of the Customised Maintenance Agreement.
3. Articles 4, 5 and 6 of the Customised Licence Agreement apply mutatis mutandis to this Agreement.
4. Maintenance of (parts of) the Customised Software shall be deemed necessary if the Customer holds a licence for (parts of) the Activium package software and Software for which maintenance is deemed necessary, entirely at Activium's discretion.

### Article 2 – Maintenance Fees

Under the Customised Maintenance Agreement, the Customer is liable to pay Activium a periodic maintenance fee. The maintenance fee is calculated on the basis of the licence fee for the Customised Software, the expected maintenance efforts and the number of Named Users, and may be adjusted each time following a modification to the Customised Software carried out by Activium.

### Article 3 - Maintenance Services

1. If the Customer enters into a Customised Maintenance Agreement with Activium, the maintenance shall comprise:
  - a) To the best of Activium's ability, identifying and rectifying all Defects in the Customised Software in the Current Version reported by the Customer, as well as in any modifications thereto made by Activium;
  - b) Adapting the Customised Software to an Update or Upgrade to the best of its ability (up to a maximum of four times per contract year), insofar as the Customer is entitled to an Update and/or Upgrade under a Maintenance Agreement for the Software.
2. Subject to the provisions of Article 3.3, Activium shall be responsible for the maintenance as described in Article 3.1 of this Customised Maintenance Agreement until such time as the Current Version is two Updates and/or Upgrades older than the most recent Update or Upgrade at that time.
3. If, at Activium's discretion, the Customised Software in the Current Version can no longer be maintained and the Customer nevertheless wishes to continue using the customised functionality, the Customised Software will need to be adapted to the most recent Update or Upgrade. The costs of this adaptation are expressly not covered by the Customised Maintenance Agreement and will be quoted separately to the Customer by Activium in an Order Confirmation.

#### **Article 4 – Exceptions**

1. The maintenance services under the Customised Maintenance Agreement do not include:

- a) Modifying the Specifications;
- b) Adapting the Customised Software for a computer system other than the original one, a different licence configuration, or adapting the Customised Software for a different product line of Activium.

2. Activium is not obliged to carry out the work referred to in Article 4.1. If Activium nevertheless decides, at its sole discretion, to carry out this work at the Customer's request, the Customer shall owe Activium a fee for this in addition to the maintenance fee, at the rates stated in the Price List.

#### **Article 5 – Commencement and termination**

1. The Customised Maintenance Agreement shall enter into force on the date of signature of the Customised Maintenance Agreement.

2. In the event of termination of the Customised Maintenance Agreement in respect of part of the Customised Software in accordance with Article 7.5 of the Maintenance Agreement, any additional costs associated with such termination for necessary modifications to the Customised Software shall be borne by the Customer.

## Module G. Customised Support Agreement

The following terms and conditions apply between Activium and the Customer if the Customer enters into a support agreement with Activium relating to Activium Customised package Software or customisation of third-party software.

### Article 1 – Definitions and Applicability

1. Unless otherwise specified in this Customised Support Agreement, the capitalised terms in this Agreement shall have the meanings assigned to them in the Customised Licence Agreement and in the Terms and Conditions.
2. With the exception of Articles 3.1, 5, 6, 7.1 and 7.5, the terms and conditions of the Maintenance Agreement apply mutatis mutandis to the Customised Support Agreement.
3. The Customised Support Agreement entitles the Customer to make use of the Support (services) offered by Activium during the term of this Agreement, as defined in Article 4.1 of the Maintenance Agreement and Article 2 of this Customised Support Agreement.

### Article 2 – Support

1. Activium is only obliged to provide support services for the Customised Software until the Current Version is two Updates or Upgrades older than the most recent Update or Upgrade available at that time.
2. Additional orders for the Customised Software shall be added to the current Customised Support Agreement. Upon purchase of the extension to the Customised Software, Activium shall inform the Customer of the additional fee for the Support (services).

### Article 3 – Support Fees

Under the Customised Support Agreement, the Customer is liable to pay Activium an annual support fee. The support fee is calculated on the basis of the licence fee for the Customised Software, the expected support efforts and the number of Named Users, and may be adjusted each time Activium implements a modification to the Customised Software.

### Article 4 – Commencement and termination

1. The Customised Support Agreement shall enter into force on the date of its signing.
2. Termination of the Customised Support Agreement by either party pursuant to this Article shall not affect the right to use the Customised Software.
3. With the exception of the provisions of Article 7.4 of the Maintenance Agreement, termination of part of the Customised Support Agreement is not possible.

# Module H. Consultancy Agreement

The aforementioned Customer and Activium hereby agree as follows:

## Article 1 – Definitions

Unless otherwise specified in this Consultancy Agreement, the capitalised terms in this Consultancy Agreement shall have the meanings assigned to them in the Terms and Conditions.

## Article 2 – Consultancy Fee

Pursuant to the Consultancy Agreement, the Customer shall owe Activium the price and/or rates agreed by the Customer and Activium in the Consultancy Agreement and/or Order Confirmation. Activium reserves the right to charge other fees.

## Article 3 – Consultancy services

1. The Customer is entitled to the consultancy services to be provided by Activium, in the form and scope as set out in the Order Confirmation.

2. The consultancy services to be provided by Activium for the benefit of the Customer may relate, among other things, to the implementation and/or installation and/or configuration and/or training in the use of the Activium package software and Software and/or the Licence Holder's Customised Software, and shall be provided on a half-day basis.

3. All copyright, patent rights and other intellectual and industrial property rights in, as well as all similar rights protecting information relating to materials, 'tools', reports and documentation derived from or obtained through the consultancy services, are the exclusive property of Activium. None of the provisions contained in the Consultancy Agreement may be construed as leading to a full or partial transfer of those rights to the Customer, nor is any such transfer contemplated or intended, nor may it be construed as such. Activium grants the Customer the non-exclusive right and non-exclusive licence to use such materials, 'tools', reports and documentation for the duration of the Licence Agreement. The Customer is not permitted to transfer this right – whether or not for a fee – to third parties under general or specific terms, including but not limited to by means of a merger or change of control, or to lease, sub-license, sell, dispose of or pledge the materials, 'tools', reports and documentation derived from or obtained through the consultancy services.

## Article 4 - Confirmation of Assignment

1. If the Customer wishes to purchase consultancy services, the Customer must contact Activium at least fourteen Working Days prior to the start date requested by the Customer, whereupon Activium will schedule the consultancy services to be provided, taking into account, as far as possible, the Customer's preferred schedule.

2. Activium shall confirm the consultancy services requested by the Customer in an Order Confirmation to the Customer, setting out a schedule for the consultancy services. The consultancy services shall only be provided upon receipt of an Order Confirmation signed by the Customer for approval.

3. The Customer may, up to five Working Days prior to the (commencement) date of the consultancy services agreed in the Order Confirmation, cancel the consultancy services or request Activium to set a new (commencement) date, which new (commencement) date shall not be earlier than the original (commencement) date. A new (start) date shall be set out in the form of an Order Confirmation to be signed by the Customer for approval. If the Customer fails to observe the aforementioned period of five Working Days, Activium shall be entitled to charge the Customer for the consultancy services not yet provided.

4. Activium shall endeavour to perform the consultancy services agreed in the Order Confirmation within the agreed timeframes. All (delivery) deadlines stated by Activium have been determined to the best of its knowledge on the basis of the information known to Activium at the time the Assignment was entered into. The mere exceeding of a stated (delivery) deadline shall not constitute a default on the part of Activium.

5. Articles 9 and 15 of the Terms and Conditions apply mutatis mutandis.

#### **Article 5 – Activium’s Obligations**

1. Activium shall perform the consultancy services to the best of its ability and shall use its best endeavours to carry out the consultancy services with due care, where applicable in accordance with the agreements and procedures laid down in Writing with the Customer.

2. If it has been agreed in the Assignment that the consultancy services will be provided in phases, Activium is entitled to postpone the commencement of the services belonging to a subsequent phase until the Customer has approved the results of the preceding phase in Writing.

#### **Article 6 – Provision of consultancy services**

1. Activium is at all times entitled to replace the person actually carrying out the Agreement, namely the consultant. If the Agreement has been entered into with a view to its performance by a specific person, Activium shall at all times be entitled to replace that person with one or more other persons possessing the same qualifications.

2. Activium shall at all times be entitled – if it so wishes or deems it necessary for the proper performance of the Assignment entrusted to it – to engage other experts in the performance of the Assignment, the costs of which shall be charged to the Customer following consultation and agreement.

3. The consultancy services shall be provided on Working Days between 09:00 and 17:00.

4. Each day concludes with the consultant drawing up a visit report, which must be signed by the Customer and submitted to the Customer by Activium via the Customer Portal.

#### **Article 7 – Additional Work**

1. Only if this has been expressly agreed in Writing in the Assignment is Activium obliged, in the performance of the services, to follow timely and reasonable instructions from the Customer. Activium is not obliged to follow instructions that alter the content of the consultancy services described in the Order Confirmation; if such instructions are followed, the relevant work shall be remunerated as additional work, as set out in Article 7.2.

2. If the consultancy services requested by the Customer exceed the number of hours required for the performance of the requested consultancy services, as estimated by Activium to the best of its knowledge in the Order Confirmation, the consultancy services may be provided to the Customer on the basis of Activium’s standard rates, for which a separate Order Confirmation shall be entered into between Activium and the Customer.

#### **Article 8 – Customer’s Obligations**

1. The Customer shall at all times provide Activium in a timely manner with all data or information useful and necessary for the proper performance of the consultancy services and shall cooperate fully.

2. The Customer is responsible for the use and application within its organisation of the hardware, software and services to be provided by Activium, as well as for the control and security procedures and adequate system management.

3. The Customer is responsible for ensuring that the computer system meets the System Requirements. Should it transpire at the start of the consultancy services that this is not the case, Activium shall be entitled to invoice for the consultancy days that it could not reasonably fulfil because the Customer's computer system does not meet the System Requirements, or (at Activium's discretion) to pass on the costs that Activium has had to incur to get the computer system working in accordance with the System Requirements.

4. The Customer shall indemnify Activium against any claims by third parties, including the Customer's Employees, who suffer damage in connection with the performance of the Assignment as a result of the Customer's acts or omissions or of unsafe situations within the Customer's organisation.

#### **Article 9 –Terms and Conditions**

Activium's Terms and Conditions form an integral part of this Consultancy Agreement and are deemed to be incorporated in full into this Agreement.

# Appendix 1. Licence Registration Card

The Customer enters into a Licence Agreement with Activium in accordance with the terms of the relevant Activium package software: Licence Agreement, and a Maintenance Agreement / Support Agreement in accordance with the terms of the relevant Activium package software: Maintenance Agreement / Support Agreement.

The Customer declares that the Activium Terms and Conditions, comprising the Activium package software Licence Agreement, the Activium package software Maintenance Agreement / Support Agreement, the Support Agreement for third-party software, the Customised Licence Agreement, the Customised Maintenance Agreement, the Customised Support Agreement, the Consultancy Agreement, the Terms and Conditions, Activium Data Processing Agreement (available at [www.activium.nl/voorwaarden](http://www.activium.nl/voorwaarden)) have been provided to him/her and that he/she agrees to their contents. The Activium Terms and Conditions also apply to future deliveries and services provided by Activium to the Customer. The Customer further declares that the signatory of this Registration Card is authorised to enter into agreements with Activium on behalf of the Customer.

## LICENCE

Licence name (max. 30 characters) \_\_\_\_\_

Licence number \_\_\_\_\_

## CUSTOMER

Company name \_\_\_\_\_

Address \_\_\_\_\_

Postal code \_\_\_\_\_ City \_\_\_\_\_

Telephone \_\_\_\_\_

Chamber of Commerce registration number \_\_\_\_\_

Name of authorised signatory \_\_\_\_\_   M V

Position \_\_\_\_\_

Date \_\_\_\_\_

Signature

## Appendix 2. Data Processing Agreement

If Activium processes Personal Data on behalf of the Customer in the performance of the Agreement, the following terms and conditions shall apply in addition to the Terms and Conditions.

### Article 1 – General

1. The terms used in this Appendix that are defined in the General Data Protection Regulation (hereinafter: “GDPR”) shall have the meaning given to them in the GDPR.
2. When processing Personal Data, the Customer may be regarded as the Data Controller, or, if the Customer processes the Personal Data on behalf of a third party, as the Data Processor. Activium fulfils (depending on the capacity in which the Customer processes Personal Data) the role of Data Processor or sub-processor.

### Article 2 – Purposes of the processing

1. The Processor undertakes, subject to the terms of this Data Processing Agreement, to process personal data on behalf of the Data Controller. Processing shall take place exclusively within the framework of the Data Processing Agreement for the purpose of providing and maintaining software and services, as well as for the purposes set out in the Agreement with further consent.
2. The personal data that will be processed by the Processor within the framework of the Agreement, and the categories of data subjects from whom it originates, are set out in Annex 1. The Processor shall not process the personal data for any purpose other than that determined by the Controller. The Controller shall inform the Processor of the purposes of processing insofar as these are not already set out in this Data Processing Agreement.
3. The Processor has no control over the purpose and means of processing personal data. The Processor shall not make independent decisions regarding the receipt and use of the personal data, the disclosure to third parties, or the duration of the storage of personal data.

### Article 3 – Obligations of the Controller and the Processor

1. With regard to the processing operations referred to in Article 1, the Processor shall ensure compliance with the conditions imposed, under the ‘Wet bescherming persoonsgegevens’ (Dutch Data Protection Act) and the GDPR, on the processing of personal data by the Processor in its capacity as Processor.
2. The Processor shall, at the Controller’s request and within a reasonable period, inform the Controller of the measures taken by the Processor regarding its obligations under this Data Processing Agreement.
3. The obligations of the Processor arising from this Data Processing Agreement shall also apply to those who process personal data under the authority of the Processor.
4. The processing of personal data by the Processor shall never result in the Processor’s databases being enriched with data derived from the Controller’s datasets, unless such data is in an aggregated, non-traceable form. In that case, the Processor is permitted to use this data for its own other purposes.
5. The Processor shall immediately notify the Controller if, in its opinion, an instruction from the Controller contravenes the legislation referred to in paragraph 1.

#### **Article 4 – Transfer of Personal Data**

1. The Processor may process the Personal Data in countries within the European Economic Area (hereinafter: "EEA"). Transfer to countries outside the EEA is only permitted where this takes place on the basis of the Controller's prior Written instruction/consent, or where one of the appropriate safeguards within the meaning of the GDPR applies.

#### **Article 5 – Allocation of responsibilities**

1. The permitted processing operations shall be carried out by the Processor within a (semi-)automated environment.
2. The Processor is solely responsible for the processing of personal data under this Data Processing Agreement, in accordance with the instructions of the Controller and under the explicit (ultimate) responsibility of the Controller. The Processor shall not be responsible for any other processing of personal data, including but not limited to the collection of personal data by the Controller, processing for purposes not notified by the Controller to the Processor, processing by third parties and/or for other purposes. Responsibility for these processing operations rests solely with the Data Controller.
3. The Data Controller warrants that the content, use and instructions regarding the processing of personal data as referred to in this Data Processing Agreement are not unlawful and do not infringe any rights of third parties.
4. The Parties shall maintain a register of the processing activities governed by this Data Processing Agreement.

#### **Article 6 – Engagement of third parties**

1. The Data Controller hereby authorises the Processor to engage a third party in the processing of personal data under this Data Processing Agreement, subject to compliance with the applicable data protection legislation.
2. At the Data Controller's request, the Processor shall inform the Data Controller as soon as possible of the third parties engaged by it. The Data Controller has the right to object to any third parties engaged by the Processor. Should the Data Controller object to third parties engaged by the Processor, the Parties shall consult with each other to reach a solution.
3. In any event, the Processor shall ensure that these third parties undertake in Writing the same obligations as those agreed between the Controller and the Processor. The Processor guarantees the proper compliance with these obligations by these third parties and, in the event of errors by these third parties, shall itself be liable to the Controller for all damage as if it had committed the error(s) itself.

#### **Article 7 – Security**

1. The Processor shall endeavour to take appropriate technical and organisational measures in relation to the processing of personal data to be carried out, against loss or any form of unlawful processing (such as unauthorised access, damage, alteration or disclosure of the personal data).
2. The Processor shall endeavour to ensure that the security measures meet a standard which, having regard to the state of the art, the sensitivity of the personal data and the costs associated with implementing the security measures, is not unreasonable.

3. If it transpires that a necessary security measure is lacking, the Processor shall ensure that the security meets a standard which, having regard to the state of the art, the sensitivity of the personal data and the costs associated with implementing the security measures, is not unreasonable.

#### **Article 8 – Obligation to notify**

1. In the event of a data breach (meaning: a breach of security leading, accidentally or unlawfully, to the destruction, loss, alteration or unauthorised disclosure of, or unauthorised access to, data transmitted, stored or otherwise processed) Processor shall inform the Controller thereof without delay or at the latest within forty-eight (48) hours, following which the Controller shall assess whether or not to inform the supervisory authorities and/or data subjects. The Processor shall use its best endeavours to ensure that the information provided is complete, correct and accurate.

2. The Data Controller shall ensure compliance with any applicable (statutory) reporting obligations. Where required by law and/or regulations, the Data Processor shall cooperate in informing the relevant authorities and any affected parties.

3. The reporting obligation shall in any event include reporting the fact that a breach has occurred, as well as, to the extent known to the Processor:

- the date on which the breach occurred (if no exact date is known: the period during which the breach occurred);
- the (alleged) cause of the breach;
- the date and time at which the breach came to the attention of the Processor or a third party or subcontractor engaged by the Processor;
- the number of individuals whose data has been breached (if the exact number is unknown: the minimum and maximum number of individuals whose data has been breached);
- a description of the group of individuals whose data has been breached, including the type or types of personal data that have been breached;
- whether the data has been encrypted, hashed or otherwise rendered incomprehensible or inaccessible to unauthorised persons;
- what measures are planned and/or have already been taken to remedy the breach and to mitigate its consequences;
- contact details for following up on the notification.

#### **Article 9 – Rights of data subjects**

1. In the event that a data subject submits a request to the Processor to exercise his or her legal rights, the Processor shall forward the request to the Data Controller and inform the data subject accordingly. The Data Controller will then handle the request independently. If it transpires that the Data Controller requires assistance from the Processor to fulfil a data subject's request, the Processor may charge a fee for this.

#### **Article 10 – Duty of Confidentiality**

1. All personal data that the Processor receives from the Data Controller and/or collects itself within the framework of this Data Processing Agreement is subject to a duty of confidentiality vis-à-vis third parties. The Processor shall not use this information for any purpose other than that for which it was obtained, unless it has been transformed in such a way that it cannot be traced back to data subjects.

2. This duty of confidentiality shall not apply insofar as the Controller has given express consent to disclose the information to third parties, if the disclosure of the information to third parties is logically necessary in view of the nature of the assignment and the performance of this Data Processing Agreement, or if there is a legal obligation to disclose the information to a third party.

#### **Article 11 – Audit**

1. The Data Controller shall have the right to have audits carried out by an independent IT expert who is bound by a duty of confidentiality, in order to verify compliance with all provisions of this Data Processing Agreement.

2. Such an audit shall only take place after the Data Controller has requested and assessed the similar audit reports held by the Processor and has put forward reasonable arguments justifying an audit initiated by the Data Controller. Such an audit is justified where the similar audit reports held by the Processor provide no or insufficient clarity regarding the Processor's compliance with this Data Processing Agreement. The audit initiated by the Data Controller shall take place two weeks after prior notice by the Data Controller, and no more than once a year.

3. The Processor shall cooperate with the audit and make available all information reasonably relevant to the audit, including supporting data such as system logs, and employees as soon as possible and within a reasonable period, whereby a period of up to two weeks is reasonable unless an urgent interest precludes this. The Controller shall ensure that the audit causes as little disruption as possible to the Processor's other activities.

4. The findings arising from the audit carried out shall be assessed by the Parties in mutual consultation and, as a result, shall or shall not be implemented by one of the Parties or by both Parties jointly.

5. The reasonable costs of the audit shall be borne by the Data Controller, on the understanding that the costs of any third party to be engaged shall always be borne by the Data Controller.

6. The Processor shall assist the Controller in carrying out a Privacy Impact Assessment (hereinafter: 'PIA') where the Processor is obliged to do so under the GDPR. Such assistance may include, amongst other things, the Processor providing the Controller with the necessary information to ensure the PIA is carried out correctly.

#### **Article 12 – Term and termination**

1. This Data Processing Agreement is entered into for the term specified in the Agreement between the Parties and, in the absence thereof, in any event for the duration of the cooperation.

2. The Data Processing Agreement may not be terminated prematurely.

3. The Parties may only amend this Data Processing Agreement with mutual Written consent.

4. Upon termination of the Data Processing Agreement, the Processor shall destroy or return the personal data received from the Data Controller upon Written request, unless the Parties agree otherwise. The costs shall be charged to the Data Controller.

#### **Article 13 – Miscellaneous provisions**

1. The Data Processing Agreement and its performance shall be governed by Dutch law.

2. Any disputes that may arise between the Parties in connection with the Data Processing Agreement shall be submitted to the competent court in the district of in the judicial district of the court which also has jurisdiction to adjudicate matters under the Agreement.
3. If one or more provisions of the Data Processing Agreement prove to be invalid, the Data Processing Agreement shall remain in force in all other respects. In such a case, the Parties shall consult on the provisions that are invalid, with a view to agreeing on a replacement provision that is valid and, as far as possible, reflects the intent of the provision to be replaced.
4. If privacy legislation changes, the parties shall cooperate to amend this Data Processing Agreement in order to (continue to) comply with such legislation.
5. In the event of any conflict between different documents or their annexes, the following order of precedence shall apply:
  - 1) the Agreement;
  - 2) this Data Processing Agreement;
  - 3) the Processor's Terms and Conditions;
  - 4) any additional terms and conditions.

## Annex 1: Specification of personal data and data subjects

Personal data: In the context of the Agreement, the Processor shall process the following (special) personal data of business contacts and their contact persons, employees and job applicants on behalf of the Controller:

[CATEGORY A – Customer contact persons]:

In any case:

- Name and address
- Contact details
- Gender
- Payment details

[CATEGORY B – Employees]:

In any case:

- Name and address
- Contact details
- Citizen service number (BSN)
- Payment details
- Date of birth
- CV
- Personnel file
- Login details

[CATEGORY C – Applicants]:

In any case:

- Name and address
- Contact details
- CV

The Data Controller guarantees that the personal data and categories of data subjects described in this Annex 1 are complete and accurate, and indemnifies the Processor against any defects and claims resulting from an incorrect representation by the Data Controller.