



## Qi ict bv GENERAL TERMS AND CONDITIONS

### 1. Definitions

- 1.1. Client: the party that has concluded an agreement with Qi ict.
- 1.2. Contract: the document with the terms and conditions of the agreement in writing.
- 1.3. Contract period: the period referred to in the contract stating its duration and with which the agreement is prolonged, as the case may be.
- 1.4. Contract year: successive period of one year that starts at the entry date of the agreement.
- 1.5. Dark fiber: see optical-fiber connection.
- 1.6. Invoice term: the period over which the client will be charged the premium due.
- 1.7. Firewall: a piece of equipment that consists of hardware and software, which is placed between the client's network for protection purposes and the public internet, in order to prevent giving internet users unauthorised access to the client's network.
- 1.8. Optical-fiber connection: an individual optical-fiber without connected equipment, which is not lit or activated.
- 1.9. Hardware: equipment.
- 1.10. Lease agreement: an agreement by virtue of which the client is entitled to the use the leased object as described in section 4 of Book 7 (Huur) of the Dutch Civil Code (B.W.) for the duration of the agreement. In case of optical-fibers: the exclusive right that allows the use of optical-fibers for the full duration of the lease period.
- 1.11. Lease period: the duration of the lease as laid down in the lease agreement.
- 1.12. Entry date: the date on which the agreement comes into force and the premium is due.
- 1.13. Network: a system of mutually connected pieces of equipment that enable the transfer of electronic data and that is managed as an integrated whole.
- 1.14. Approval date of the offer: date before which the client's written confirmation must have reached Qi ict by mail or fax.
- 1.15. Completion: the moment on which Qi ict have completed the installation and of which, if necessary, the client is notified.
- 1.16. Port Scan: to conduct a test by using the internet. The test includes systematic efforts to break into the client's network in order to reveal any weaknesses in the security system.
- 1.17. Premium: the periodic amount that must be paid for the supply of services described in the Service or the Lease Agreement.
- 1.18. Renewal premium: the premium due for the renewal of the contract. The renewal premium consists of the previous renewal premium increased by the premium for any extensions in the network and is adapted to rate adjustments, if any.
- 1.19. Response time: the period of time between the client's report of an incident to Qi ict according to the method described in the Service agreement and the moment when a Qi ict worker begins his support activities, by phone, or to carry out the control activities, or the arrival time at the client's site, all this depending on the services to be supplied according to the contract. The maximum response period guaranteed by Qi ict will be described in the contract.
- 1.20. Remote control: the execution of control activities at distance, such as the control of the client's network from the Qi ict remote control centre in Delft.
- 1.21. Service Level Agreement (SLA): a service agreement in which the supply of services has been meticulously described in measurable quantities.
- 1.22. Service Agreement: an agreement due to which Qi ict will execute recurring repair activities on the client's goods as laid down in the contract or supply services to the client, at a fixed rate, the premium, to be paid periodically for a longer period of time.
- 1.23. Software licence: licence that entitles the use of certain software, subject to the conditions made by its manufacturer.
- 1.24. Software release: a new, improved version of the software in accordance with the manufacturer's conditions.
- 1.25. Software update: new, improved version of software, usually, however, without any new functionality, subject to the conditions laid down by the manufacturer.
- 1.26. Software: computer programs.
- 1.27. Software support: support provided for using the software.
- 1.28. Time to fix: the time between the client's report of an incident to Qi ict according to the method laid down in the Service Contract and the moment when the most essential functions of the concerning ICT facilities been repaired.

## **2. General**

- 2.1. Only the latest version of these General Terms and Conditions that is deposited will govern all our offers, sales agreements, supplies etc, all services and notifications regardless of how they originated. This means that any general terms and conditions used by our client are excluded. Any deviations from these General Terms and Conditions to the disadvantage of Qi ict bv, to be called Qi ict below, will be applicable only if Qi ict have confirmed them in writing. These General Terms and Conditions will also apply to any contract with Qi ict the execution of which involves third parties.

## **3. Offers**

- 3.1. Our offers are always free of obligations, unless the written offer includes a term of validity. Orders, agreements and arrangements will only be binding Qi ict if and to the extent it has confirmed them in writing.

## **4. Delivery period**

- 4.1. The delivery period will start to run at the moment Qi ict have accepted the order. If the client is held to make an advance payment or, if it is to make information available that is needed for the execution of the agreement, the delivery period will only start to run at the moment when full payment has been received or all the information has been made fully available, respectively.
- 4.2. The period quoted by Qi ict will be based on circumstances known by Qi ict at the moment the agreement was concluded. Delivery periods are an estimate only. Any failure by Qi ict to observe the delivery period will never lead to the entitlement to any damages. The client which has reminded Qi ict in writing of the exceeding of the delivery period and which has given Qi ict a reasonable term in order to execute the agreement yet will be entitled to dissolve the agreement if Qi ict are unable to execute the agreement within the reasonable period stated in the reminder.

## **5. Price**

- 5.1. The price will be expressed net in euros and excluding VAT, unless parties have agreed otherwise. Qi ict will reserve the right to raise the price if, and to the extent that, the purchase price to be paid by Qi ict has risen more than 5% compared to the price that was applicable at the moment of the confirmation of the order, due to the exchange rates of foreign currencies, or raised taxes, levies or import duties due to some government measure. Such increase in the sales price does not entitle the client to the cancellation of its order.

## **6. Transport cost**

- 6.1. Orders in excess of 250 euros and up excluding VAT will be sent free of charge to the client's address in the Netherlands. The client will be charged 25 euros for shipping and administrative expenses excluding VAT if the amount is less.

## **7. Test, acceptance and complaints**

- 7.1. The client must test the goods on delivery on quantity, quality and damage. Any visible defects must be promptly reported on the transport document or delivery receipt after receiving the goods. Qi ict must be notified, in writing, as soon as possible, though no later than 8 days after receiving the goods, of any defects that could not be detected on delivery.
- 7.2. The client must notify Qi ict of any hidden defects, in writing, without delay after discovering them, though no later than 48 hours after the moment the client discovered the defect or could have discovered it.

## **8. Transfer of ownership rights and risk**

- 8.1. With reservation to the provisions laid down in paragraph 2 and 4 of this article, the ownership rights of the goods are transferred to the client on delivery and will then be at its risk.
- 8.2. As long as the client has failed to pay the full purchase price and any additional cost or has failed to provide adequate collateral for it, the ownership rights will remain with Qi ict. The ownership rights will be transferred to the client as soon as the client has met its obligations with respect to the goods.
- 8.3. If Qi ict have reasons to doubt the client's capacity to pay, it will be entitled to postpone the delivery of the goods until the client has provided collateral for the payment. The client will be liable for the damage suffered by Qi ict due to any delays in the delivery of the goods as a result of the justified doubts about the client's capacity to pay.
- 8.4. The client may not sell, entail in any other way or pledge the goods for which it has not made the payment to Qi ict yet.

## **9. Payment**

- 9.1. Our invoices must be paid within 15 days after the invoice date, unless Qi ict have stipulated otherwise.
- 9.2. To orders in excess of 25,000 euros the previous paragraph will apply together with the following invoice schedule: 50% of the total amount of the goods will be invoiced on placing the order; 50% of the total amount of the goods will be invoiced on delivery or on the first partial delivery of the goods; services will be invoiced on completion.
- 9.3. In case of an overdue payment, the client will be charged a 1% interest over the amount due on the invoice per month. Part of the month will be considered as a full month. Any complaints submitted by the client will not suspend its obligation to pay. Any set-off of debts will only be possible if the client's claim on Qi ict has been recognised in writing by Qi ict. If the client fails to meet its payment obligations promptly, Qi ict may take or have taken any measure it deems fit to collect the debt. The cost related to this debt collection must be paid by the client who will be held to compensate all judicial and extra judicial cost related to the debt collection. The extra judicial cost are fixed at 15% of the amount that is claimed, with reservation to Qi ict's entitlement to the compensation of any further cost that was incurred by Qi ict with the collection of the debt.
- 9.4. The claims Qi ict may have on the client will become immediately due in the following cases:

- 9.4.1. if the client is liquidated, goes bankrupt or is subjected to a moratorium;
- 9.4.2. if Qi ict demanded collateral to secure observance of the agreement from the client on the conclusion of the agreement and the collateral is not provided or is inadequate. In all cases mentioned above, Qi ict will be entitled to the suspension of the execution of the agreement or proceed to dissolve the agreement, with reservation to Qi ict's right to compensation.

## **10. Risk on storage**

- 10.1. If the client fails to purchase the goods at the agreed time and place, irrespective of the reason why, Qi ict may store the goods at the client's risk and expense. If the client is unable to receive the goods after a month, it must pay the applicable invoice(s).

## **11. Amendments or cancellations**

- 11.1. Amendments or cancellation of an agreement concluded between the parties require Qi ict's written assent. The client will then be held to compensate Qi ict for all the damage and expenses arising from the amendment or cancellation for an amount of at least 15% of the invoice amount of the supplies that parties had agreed to earlier, on the understanding that the amount cannot be less than 250 Euros.

## **12. Return shipments**

- 12.1. Return shipments of goods will only be accepted by Qi ict if the client placed the return shipment number on the shipment. Shipments without postage or incomplete shipments (original packaging, manuals, cables, etc) will entitle Qi ict to charge the client with the expenses incurred by it.

## **13. Guarantee**

- 13.1. Qi ict guarantee that the goods it supplies are made from sound materials and with good workmanship. If the goods supplied by Qi ict are nevertheless defective due to manufacturing faults or material defects, Qi ict will repair these defects or make available the parts required to repair the goods in question or replace them altogether, depending on and in accordance with the guarantee given by the manufacturer or supplier of the goods in question. The guarantee given to Qi ict's supplier is passed on by Qi ict back-to-back to the client, which results in the applicability of the guarantee conditions and the guarantee period of Qi ict's supplier. This guarantee will be completely cancelled if the defects are partly or completely the result of improper use or treatment or can otherwise be blamed on the client, and if others than the service engineers designated by Qi ict have repaired the goods. Goods or parts that have been replaced due to guarantee conditions or repair orders become Qi ict's property as a result. Qi ict may demand, as a condition to which its observance of the guarantee obligations is subjected, that the client sends the goods, free of postage, to an address in the Netherlands in order to be eligible for the application of the guarantee. The client can invoke the application of the guarantee conditions by notifying Qi ict by registered mail within the period mentioned. Qi ict will never be held to observe any other obligation such as damages or dissolution of the agreement.

## **14. Dissolution**

- 14.1. Qi ict may dissolve the agreement with immediate effect if: the client is declared bankrupt, it has requested or is granted moratorium, is subjected to seizure, made a ward of court or otherwise loses the power of disposal over its assets and liabilities or if the client fails to observe its obligations arising from the agreement.
- 14.2. The dissolution of the agreement described in the previous paragraph must take place by sending a letter with acknowledgment of receipt.

## **15. Liability**

- 15.1. In all other cases when the goods that are supplied are not working properly or if the provision of services is not up to standard, Qi ict will seek to make these work, or execute them in the way parties have agreed respectively. If, in spite of its efforts, Qi ict are in breach of contract its contractual and statutory liability will be restricted to either re-supply the defective goods free of charge, or pay compensation for an amount that does not exceed the invoice value of the goods or services the complaint is related to.
- 15.2. Qi ict, or the sub-contractors or suppliers of services employed by Qi ict, will never be liable for stagnation damage, commercial damage, consequential damage and loss of or damage to data carriers or data banks.
- 15.3. In order to restrict any damage that may be suffered as a result of defective goods, the client must make two copies of the data and documents that are destined to be processed or worked on with the help of goods or services supplied by Qi ict and keep these copies separate.
- 15.4. Qi ict will not be held liable for any damage as a result of viruses, even when the virus entered the client's network due to the activities of Qi ict workers.
- 15.5. Qi ict will not be held liable for any damage that is the result of work done under its control or if unauthorised users have gained access to the client's network, nor when the firewall that is present has been configured on the advice of Qi ict workers.

## **16. Intellectual property/licences**

- 16.1. The ownership of copyright and other intellectual property rights on all goods and services supplied by Qi ict will remain with Qi ict or Qi ict's supplier employed for the execution of the agreement, unless it has been stipulated explicitly that these rights must be transferred. The purchaser will be entitled to use the software programs in accordance with the conditions that are mentioned on delivery of the software programs.

- 16.2. Qi ict will take all reasonable precautions to prevent that the required performance does not infringe any intellectual property rights of a third party applicable in the Netherlands.

## **17. Force majeure**

- 17.1. The delivery period mentioned in article 4 will be extended by the period during which Qi ict has been unable to perform due to force majeure.
- 17.2. Force majeure on the part of Qi ict is defined as: Qi ict's inability to observe its obligations arising from this agreement or to make preparations to perform as a result of war, threat of war, riots, floods, earthquakes, fire, epidemics, water damage, natural disasters, strikes, sit-down strikes, exclusion, import or export restrictions, government measures, defective equipment, power failures, all this in Qi ict's company as well as in that of third parties from whom Qi ict must purchase all or part of the necessary material or components, also during storage or in transit, regardless of whether this is controlled by Qi ict or not, and furthermore all causes for which Qi ict cannot be blamed or which are beyond its control.
- 17.3. If a delivery is delayed for more than two months, Qi ict as well as the client will be entitled to consider the agreement as terminated. In that case Qi ict will only be entitled to payment of the expenses it made.
- 17.4. If force majeure sets in and the remaining delivery is delayed for more than two months due to force majeure and part of the agreement has already been executed, the client will have the power to either keep the goods that have already been supplied and pay the purchase price for these, or consider the agreement, including the part that is already executed, as terminated, subject to its obligation that it must return the goods that were already supplied to Qi ict at the client's expense and risk, provided the client can prove that the part of the goods that was already supplied cannot be efficiently used by the client due to the fact that the remaining goods will not be delivered.

## **18. Installation**

- 18.1. If the installation of the ordered goods is included in the agreement, the client gives the undertaking that all constructional, electric and other provisions required for the installation have been made. Qi ict may then use the necessary facilities, such as power and storage of equipment. The offer does not include any hacking or breaking, nor restoration to the original construction. The client will indemnify and hold Qi ict free with respect to any liability for this. Any orders given by the client for additional work and deliveries will be charged in an extra invoice. The completion in good condition and the acceptance of the work by the client is deemed to take place when Qi ict have completed the installation and notified the client, if necessary, unless it was stipulated otherwise in writing.

## **19. Staff**

- 19.1. The client gives the undertaking not to approach any Qi ict workers actively and/or employ them during the one year period after the order to Qi ict or one of its divisions or group members for the supply of services and/or goods. If the client fails to observe this obligation, it will become liable for a 50,000 euros' penalty for every event and 2,500 euros for every day the employment is continued. This penalty can be collected without any court intervention.

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

- 20.1. All agreements concluded with Qi ict are governed by Dutch law, with the exclusion of the Vienna Sales Convention.
- 20.2. Disputes will be brought before the competent court of the place of residence of Qi ict, unless Qi ict prefers to bring the case before the competent court of the place of residence of the client.
- 20.3. If one or more conditions of these General terms shall be found to be invalid, unenforceable or otherwise not binding by competent court, this shall not affect the other conditions of these General terms and these conditions shall remain in full force and effect. Parties hereby agree to attempt to substitute any invalid, unenforceable or otherwise not binding condition, for a valid or enforceable condition which achieves to the greatest extent possible of the invalid, unenforceable or not binding condition.

## **21. Preference Dutch version**

- 21.1. The Dutch version of these General Terms and Conditions has preference over any translation of it. These General Terms and Conditions are deposited with the Chamber of Commerce in Delft.

## **22. Escalations**

- 22.1. If the client feels that its complaint, which it has submitted through the usual channels, is not being dealt with satisfactorily, it may escalate it. It can do so by sending an e-mail to [escalatie@qi.nl](mailto:escalatie@qi.nl), which will result in the complaint being moved up to the management level of the organisation. Qi ict will contact the client to discuss the appropriate follow-up actions that must be taken in mutual consultation with the client, no later than the following work day. Qi ict gives the undertaking that it will appoint a permanent contact who will be responsible for dealing with the follow-up. Management will be informed by this contact about the status and progress of these actions on a daily basis.

## ADDITIONAL CONDITIONS FOR THE SUPPLY OF SERVICES

### **23. Execution of the agreement**

- 23.1. Qi ict's execution of the agreement will be to the best of its understanding of the situation and capabilities and in accordance with proper craftsmanship and state of the art.
- 23.2. If, and to the extent that it is required by the proper execution of the agreement, Qi ict may employ third parties to carry out certain work activities.
- 23.3. The client must ensure that all data of which Qi ict have stated that they are necessary or of which the client should understand, in all reasonableness, that these are required for the execution of the agreement, are supplied to Qi ict in due time. If the data that are required for the execution of the agreement have not been supplied to Qi ict in due time, Qi ict may suspend the execution of the agreement and/or charge the client with the additional expenses arising from the delay according to the usual rates.
- 23.4. Qi ict will not be liable for the damage, of whatever nature, by wrongly assuming that the information supplied by the client was accurate and/or complete, unless the inaccuracy or incompleteness of the information ought to have been apparent for it. If parties have agreed to execute the agreement in stages, Qi ict may suspend the execution of the next stage until the client has approved the results of the work done in the previous stage.

### **24. Duration of the contract; Term of execution**

- 24.1. The agreement is for an indefinite period of time, unless parties have agreed otherwise explicitly in writing.
- 24.2. Any period of time agreed by the parties within which the work must be completed can never be considered as a deadline. This means that if the term of execution of the work is exceeded, the client must declare Qi ict to be in default in writing.

### **25. Amendments of the agreement**

- 25.1. If it becomes apparent during the execution of the agreement that a proper execution of the agreement requires amending the work to be done or supplement it, parties will amend the agreement in mutual consultation.
- 25.2. Qi ict will inform the client as soon as possible if the agreement the parties have concluded to amend or supplement the agreement may affect the moment of completion of the execution.
- 25.3. If the parties' agreement to amend or supplement the agreement has financial and/or qualitative consequences, Qi ict must inform the client of this beforehand.
- 25.4. If a fixed fee has been agreed, Qi ict must inform the client on the extent in which the amendment or supplement of the agreement will lead to exceeding this fee.

### **26. Secrecy**

- 26.1. Both parties give the undertaking to keep all confidential information they have obtained from each other or from other sources related to the agreement confidential. Information is confidential when the other party has said so or when it follows from the nature of the information.

### **27. Defects; Term for complaints**

- 27.1. The client must submit complaints, in writing, about the work done to Qi ict within 8 days after its discovery and not later than 14 days after the completion of the work in question.
- 27.2. If the complaint is founded, Qi ict will still have to do the work as agreed, unless it has become apparent for the client that this has become useless. This must be notified by the client to Qi ict in writing. If the execution yet of the agreed services has become no longer possible or useful, Qi ict's liability will be restricted to the provisions of article 15 only.

### **28. Fee**

- 28.1. Unless parties have agreed a fixed fee, the fee will be determined on the basis of the hours that are actually worked. The fee will be calculated in accordance with Qi ict's customary hourly rates applicable to the period when the work is done, unless parties have agreed a different hourly rate.
- 28.2. Orders with duration of more than one month will be invoiced monthly, unless parties have agreed otherwise.

## ADDITIONAL PROVISIONS FOR SERVICE AGREEMENTS

### 29. General

- 29.1. The General Terms and Conditions mentioned above apply to Service Agreements. If the conditions are conflicting, the condition with the highest article number will prevail.

### 30. Definitions of the supply of services

- 30.1. To report a technical malfunction.
- 30.2. To receive technical support on the phone.
- 30.3. Transport: transport of Qi ict workers and the equipment to the location(s) where the products are located. An overview of the products is included in an appendix to the Service Agreement.
- 30.4. On site examination: Qi ict will examine the nature of the technical malfunction on site.
- 30.5. Replacement of faulty equipment on site: if Qi ict find the equipment to be defective, it will supply and install a replacement on the client's site within the terms laid down in the Service Agreement.
- 30.6. Replacement of faulty equipment when offered for repair: if the client's equipment appears to be defective, Qi ict will supply a replacement after receiving the faulty equipment within the terms laid down in the Service Agreement.
- 30.7. Repair of the equipment: the client offers its faulty equipment for repair to Qi ict. Qi ict ensure that the repairs are carried out. The repair cost is included.
- 30.8. Manufacturer Alcatel calamity arrangement: The client may invoke the Alcatel calamity arrangement through Qi ict if the defects in its equipment are such that it causes serious technical malfunctions leading to major disturbances in the client's commercial operations. If the client reports the technical malfunction within the coverage period to Qi ict, the manufacturer will lend technical support to Qi ict by phone, fax or e-mail for 24 hours, 7 days a week. Qi ict and the manufacturer will seek to put right the technical malfunction by way of remote diagnose troubleshooting. This calamity arrangement will only apply if the equipment can be remotely accessed. If the technical malfunction persists, the manufacturer's support engineers will lend their support on site.
- 30.9. To make available the dial-up facility by Qi ict: if the Service Agreement invoice amount exceeds 15,000 euro annually, Qi ict will make the equipment for the dial-up facilities available free of charge. The client must keep the equipment in working order. This equipment remains Qi ict's property.
- 30.10. To make new software releases and updates available.
- 30.11. To announce the new functionality of the new software releases.
- 30.12. Installation of new software releases or updates no more than twice a year. The installation cost for sites in the Netherlands are included; for locations outside of the Netherlands the client will be charged the hours worked and the travel and accommodation expenses at the then current rate.
- 30.13. To make available software updates and patches within the same release.
- 30.14. Remote Control Fault Management: to diagnose a technical malfunction at distance and remedy it if possible. If required, the technical malfunction will be diagnosed on site. Any technical malfunction found in the hardware will be remedied to the extent that it is covered by and according to the terms of the Hardware Service Agreement the parties have concluded. Software updates will be supplied to the extent that it is part of the Software Update Agreement.
- 30.15. To keep the records up to date of the configuration and the adjustment of the network part that is controlled, including the IP numbers and software versions.
- 30.16. Remote Control Change Management: to implement any changes in the configuration at distance and make new users according to the change procedure parties have agreed and the corresponding administration.
- 30.17. Remote Control Preventive Inspection: to carry out a periodic and complete analysis of the configuration of the part of the network that is controlled by Qi ict. This inspection will also include looking at the question whether it is necessary to install any new software updates or to adjust the network. The client will be notified of the results of this inspection in a summarised report, including recommendations, if any.
- 30.18. Remote Control Security Check: to carry out a periodic port scan, at distance, of the firewall, including a systematic check to see whether there are any gaps in the security. The client will be notified of the results of this check in a summarised report, including recommendations, if any. This work will only be done if Qi ict is responsible for the firewall control.
- 30.19. Remote Control Network Performance Scan, to carry out a periodic network measuring, at distance or on site if necessary, which enables an analysis of the network traffic and the capacity of the network. The client will be notified of the results of this scan in a summarised report, including recommendations, if any.
- 30.20. Automatic software updates through the internet.
- 30.21. Guaranteed time to fix of technical malfunctions in the equipment that are the result of faulty parts. The guarantee does not apply if the cause of the technical malfunction can be found in the programs or the configuration of the equipment. Installation of the most recent configuration of the equipment within the "time to fix" timeframe is only guaranteed if the equipment is covered by a remote control agreement that includes the service as described in clause 30.15 of the "Qi ict bv General Terms and conditions"
- 30.22. To keep the records of the licences up to date and to prolong them in due time.
- 30.23. Guaranteed uptime of the network subject to the additional conditions laid down in the agreement.
- 30.24. Calamity cover: Qi ict will make available an engineer to lend his support in finding solutions to the problems in the network for a fixed period of time and during an agreed maxim period.
- 30.25. Data Recovery Check: a periodic check to ensure that the backups made by client, are readable. The data recovery check be performed in the Qi ict lab at Delft. The client will be notified of the results of this check in a summarised report, including recommendations, if any.
- 30.26. System Recovery Check: (as supplement to the Data Recovery Check) a periodic check to ensure if data can be read without errors by the application software, equal of equivalent to the software that originally produced the data. The data recovery check will be performed in the Qi ict lab at Delft. The client will be notified of the results of this check in a summarised report, including recommendations, if any. A qualified staff member of client with knowledge of the appropriate application needs to be present during this check.

- 30.27 The use of an optical-fiber (dark fiber) connection between two locations for the transport of information for the client's own use. The transport of information for third parties is not allowed.
- 30.28 The repair of a faulty optical-fiber connection (dark fiber) within the repair period term as laid down in the lease contract.
- 30.29 Report planned maintenance in writing.

## **31. Date of entry**

- 31.1. Unless the parties have agreed otherwise in writing, the date of entry of the Service Agreement will be: - the date of installation by Qi ict of the equipment, - if the equipment is not installed by Qi ict, the date of entry will be the date of delivery of the equipment that is mentioned on the packing note.

## **32. Location of the equipment and serial number records**

- 32.1. Qi ict can specify the locations where the equipment is placed in an appendix to the Service Agreement. If the equipment is moved to other locations, the client must inform Qi ict of this prior to the move. Qi ict may refuse the new locations. Qi ict will inform the client in writing of any consequences of the change of location for the premium of the agreement.
- 32.2. If the client fails to inform Qi ict of the changed location of the equipment, a change of equipment or its replacement without reporting the serial numbers and the new location to Qi ict, Qi ict's obligation to keep the records of these data up to date, if parties have agreed to such an obligation, will be cancelled. This will not entitle the client to a reduction of the premium or termination of the agreement.

## **33. Report of technical malfunctions**

- 33.1. Technical malfunctions must be reported in accordance with the procedure that is described in the appropriate appendix to the Service Agreement and by the client's workers that are mentioned by name in the appendix.

## **34. Support by phone**

- 34.1. If the client is entitled to support with respect to the products according to the Service Agreement, it has the right to ask questions about the adjustments of the products covered by the contract. It can submit the questions by phone, by letter, fax or e-mail. The answer will mainly be given by phone, or at Qi ict's discretion, by letter, fax or e-mail. If Qi ict are of the opinion that the problem reported by the client can only be remedied on site and inform the client that this is the case, it may cease the support by phone, fax or e-mail.

## **35. Access to the equipment**

- 35.1. The client must ensure that all Qi ict workers can access the location of the equipment. Specific arrangements with respect to the access will be included in the appendix to the Service Agreement.

## **36. Extension of a network**

- 36.1. If the client's network is extended with equipment of a make that is already covered by a Service Agreement with Qi ict, this extension (as is noted in the appropriate appendix to the Service Agreement) will be implicitly included in the cover of the agreement. The premium for the extension will be invoiced in proportion of the remaining amount of the invoice arising from the agreement. The first renewal premium of the agreement will be increased as a result of the various extensions. Qi ict will confirm every extension by sending an adjusted appendix of the Service Agreement with an overview of the equipment.

## **37. Replacement of faulty components**

- 37.1. If Qi ict must replace faulty equipment that is part of the network, it may decide, at its discretion, to leave the property rights of the replacement with the client if the replacement and the piece of equipment that was replaced are identical or equivalent. The replacement and the piece of equipment will then change owner at the moment of change.

## **38. Exclusions**

- 38.1. Defects that are caused by impropriate use, repairs by third parties, use with unsuitable accessories or peripheral equipment or any other cause that cannot be considered as normal wear and tear will not be covered by the Service Agreement.
- 38.2. Goods that are no longer supported by the manufacturer will not be covered by the Service Agreement.
- 38.3. New software releases will not be covered by the Service Agreement. It is possible, however, to conclude a Software Update Agreement if the manufacturer has one and according to the conditions stipulated by the manufacturer.
- 38.4. If new software must be installed on the equipment (for example as a result of new software releases issued by the manufacturer) that require adjustments in the hardware, the costs incurred by this will not be covered by the agreement.
- 38.5. Qi ict may cease its supply of services promptly if the premium that is invoiced is not paid in due time. The client may not dissolve the agreement in that case and article 9 will apply without reservations.

## **39. Reporting and consultations**

- 39.1. Qi ict will discuss the malfunctions and defects with the workers concerned of the client. Qi ict will cancel the technical malfunction when it feels that it has been remedied. Qi ict can communicate this message, at its discretion, by letter, fax or e-mail or it can consult the client by phone or personally. At the client's request, there can be consultations on the equipment's susceptibility to technical malfunctions and about the quality of the services provided by Qi ict.

## **40. Serial number registration**

40.1. Qi ict will keep up to date the records with the serial numbers of the equipment that is covered by the Service Agreement.

## **41. Time of response**

41.1. The client may claim a 5% refund of the annual premium per event if Qi ict have exceeded the maximum time of response laid down in the agreement. The client can claim this refund by sending a notification by registered mail within 14 days after the exceeding of the maximum time of response has taken place. The total refund of the premium cannot be in excess of the amount of the invoice by more than 15% of the premium.

41.2. Exceeding of the time of response does not entitle the client to the dissolution of the agreement.

41.3. The client will not be entitled to a refund of a part of the premium such as described in the previous paragraph if the exceeding was caused by circumstances that were beyond Qi ict's control. This includes weather conditions such as black ice, snow, extreme rainfall or hail, fog, traffic situations such as traffic jams, accidents, road blocks, the cancellation or delay of ferries etc. Nor will there be a right to a refund if the delay is caused by the fact that the Qi ict worker is refused access to the location of the equipment.

## **42. Invoices**

42.1. The premium due will be invoiced before the cover provided by the agreement becomes effective. The invoice amount will be for one year, unless parties have agreed otherwise.

42.2. As a result of the client's failure to pay in due time in accordance with article 9, the cover provided by the agreement will be cancelled. This rule does not affect the client's obligation to pay the amount due. After receiving the overdue payment, the cover will revive, the entry date being the entry date of the original agreement.

## **43. Tacit renewal of the agreement**

43.1. The agreement will be renewed tacitly every time by the agreed contract period.

43.2. An agreement that was concluded for a period longer than one year will be renewed with one year after the first contract period time after time. The renewal premium over a year will be calculated in that case in proportion of the duration of the first contract period.

## **44. Rate change**

44.1. Qi ict may adjust the rates for the premium of the agreement once a year. If Qi ict employs third parties for the execution of the agreement or for the delivery of equipment, software or services, it may pass on any rate changes in the purchase price to the client by adjusting the amount of the premium. Furthermore Qi ict may pass on the cost of reasonable increases of operational cost in its rates. To compensate for inflation Qi ict may raise its rates annually, which raise will be equal to the change percentage of the previous invoice instalment of the 'consumenten prijsindex alle huishoudens (CPI)', as published by the CBS.

## **45. Dissolution**

45.1. The client may dissolve the agreement by sending a letter by registered mail. This notification must be received by Qi ict at least three months before the expiry of the contract period.

45.2. Qi ict may dissolve the agreement by sending a letter by registered mail at least three months before the expiry of the contract period.

45.3. Qi ict may dissolve the agreement with immediate effect if the manufacturer ceases its support for the equipment or software.

## ADDITIONAL CONDITIONS FOR SOFTWARE SUPPORT AND UPDATE AGREEMENTS

### **46. General**

- 46.1. The General Terms and Conditions mentioned above (including those for the supply of services and those with respect to the Service Agreements) are also applicable to Software Support and Software Update Agreements. If the conditions are conflicting, the condition with the highest article number will prevail.

### **47. Date of entry**

- 47.1. Unless parties have agreed otherwise, the date of entry of a software agreement will be the date of entry of the licence with the software's manufacturer or the date on which the contract with the manufacturer starts, depending on what is customary for the manufacturer.
- 47.2. A Software Support Agreement will become effective on the date that is mentioned in the contract. If the Software Support Agreement is combined with a Software Update Agreement, the entitlement to support will become effective at the moment the Software Update Agreement begins.

### **48. Extension of the agreement**

- 48.1. Parties can agree by mutual consent to extend a Software Update and/or Support Agreement. This mutual consent will be obtained by a written order by the client that refers to this agreement and the offer that was made by Qi ict at the client's request. Qi ict will confirm the adjusted agreement by sending the relevant and adjusted appendices to the agreement.

### **49. Software support**

- 49.1. If the agreement gives rise to the right to software support, the client may submit technical questions about the software licences that are covered by the agreement and that are specified in the appendix to the agreement. The client can submit the questions by phone, by letter, fax or e-mail. The answer will mainly be given by phone, or, at Qi ict's discretion, by letter, fax or e-mail. If Qi ict are of the opinion that the problem reported by the client can only be remedied on site and inform the client that this is the case, it may cease the support by phone, fax or e-mail

### **50. Software updates**

- 50.1. If the manufacturer of the software releases new software updates to which the client is entitled according to the conditions applicable to this manufacturer, Qi ict must notify the client of the moment when the new software will become available. This can take place, at Qi ict's discretion, by publication on a website that was made known to the client once, by e-mail, by fax or by letter. If the client informs Qi ict of its desire to have the software installed by Qi ict, this will take place against the then current rate.

### **51. Exclusions**

- 51.1. Defects in the operation of the software that are caused by beginner's mistakes, hardware, mutual incompatibility of the software and/or the peripheral equipment or extreme environmental influences do not give rise to any entitlement to support.

### **52. Changes in the hardware**

- 52.1. On the conclusion of the agreement, the software is installed on the hardware configuration that is installed or accepted by Qi ict. If the client wants to change the hardware on which the software was installed, it must inform Qi ict in writing in advance. In that case, Qi ict may give advice with respect to the changes proposed by the client. If the client chooses not to follow that advice, Qi ict may suspend its software support until its advice has been acted upon. This situation does not entitle the client to the dissolution of the agreement or suspension of its obligations to pay.

## ADDITIONAL CONDITIONS TO THE REMOTE CONTROL AGREEMENTS

### **53. General**

- 53.1. The General Terms and Conditions mentioned above (including those which govern the supply of services and the service agreements) are also applicable to Remote Control Agreements. If the conditions are conflicting, the condition with the highest article number will prevail.

### **54. Access to the network**

- 54.1. In order to enable the remote control, the Qi ict remote control centre in Delft must be able to access the client's network electronically at all times by using the equipment supplied by Qi ict for remote control. Qi ict will not be held to meet its obligations arising from the Remote Control Agreements if, and as long as, access to the client's network from the Qi ict remote control centre is not possible due to a failure in the connection, a power failure on the part of the client, or due to activities done by or commissioned by the client. This does not entitle the client to dissolve the agreement prematurely or to a refund of (a part) of the premium.

### **55. Technical malfunctions**

- 55.1. Any technical malfunctions in the hardware will be remedied to the extent that they are covered by and in accordance with the conditions of the Hardware Service Agreement the parties have concluded. Software updates will be supplied to the extent that these are covered by the Software Update Agreement.
- 55.2. If the part of the network that is covered by the Remote Control Agreement is not or not completely included in the hardware agreement, the client will not be entitled to any remedies of the technical malfunctions in the hardware.
- 55.3. If the part of the network that is covered by the Remote Control Agreement is not or not completely included in the Software Update Agreement by Qi ict, the client will not be entitled to any remedies of technical malfunctions of the software.

### **56. Exclusions**

- 56.1. Qi ict will not be held to observe its obligations laid down in the Remote Control Agreement if the technical malfunctions are due to beginner's mistakes, hard- or software problems that are not covered by an Agreement concluded with Qi ict or incompatibility of the software.

### **57. Changes introduced by the client**

- 57.1. If the client introduces changes in the hardware, the software or the configuration of (parts of) the network that is controlled by Qi ict, it must inform Qi ict of this in writing. If Qi ict suspects these changes to cause problems its will offer its advice to adapt the network. If the client does not follow up this advice, Qi ict may cease the Service and/or Control Agreement promptly. In that case, the client must pay the premium due until the first due date.
- 57.2. If the client introduces changes as referred to in the first paragraph of this article, it will result in the cancellation of Qi ict's obligations to keep the records up to date. This does not entitle the client to the dissolution of the Agreement prematurely or to a refund of (part of) the premium.

### **58. Extra work**

- 58.1. If the client orders Qi ict to carry out control work that is not covered by the Remote Control or that will lead to the number of control activities the client is entitled to be exceeded, the client will be charged against the then current rates.

# ADDITIONAL CONDITIONS FOR THE CONSTRUCTION AND LEASE OF OPTICAL-FIBER CONNECTIONS (DARK FIBERS)

## 59. General

59.1 The General Terms and Conditions mentioned above (including those which govern the supply of services and the service agreements) are also applicable to Agreement for the construction and lease of optical-fibers. If the conditions are conflicting, the condition with the highest article number will prevail.

## 60. The use of the optical-fibers

60.1 The services provided under the agreement for the construction and lease of the optical-fiber connections include the right to use the optical-fiber(s) as described in section 4 Book 7 (Huur) Dutch Civil Code (B.W.).

60.2 The Agreement for the construction and lease of the optical-fiber connection gives the rights and duties of Qi ict and the client with regard to the exclusive use of the optical-fibers.

60.3 The client may only use the optical-fibers for data transport between its branches. The client will not be allowed to lease out, sell or make available in any other way the optical-fiber(s) and/or parts of its bandwidth to third parties.

60.4 The agreement for the construction and lease of the optical-fiber agreement will be subjected, without reservations, to the conditions the operator of the optical-fiber connections has laid down with respect to the use of optical-fibers.

60.5 The optical-fibers that have been made available to the client are described in more detail as referred to in section 224 Book 7 of the Dutch Civil Code (B.W.) and the order form.

## 61. Force majeure

61.1 The situations of force majeure of Qi ict are defined in article 17.2. Without prejudice to the validity of article 17.2, force majeure on the side of Qi ict also occurs when the supply of optical-fiber connections is delayed due to government measures, including the refusal or delay to grant the consent or permits, hold-ups due to frost or construction industry holidays and unfavourable weather conditions.

61.2 Neither party will have failed to perform or be liable for a failure to perform when the execution of agreement for the construction and lease of the optical-fiber connections or part of it is late, delayed or not performed due to force majeure. As long as the situation of force majeure continues, the obligation to perform of the relevant party will be suspended.

## 62. Delivery times

62.1 A delivery time stated by Qi ict for the construction of the optical-fiber connections is based on the circumstances known to Qi ict at the moment when the agreement for the construction and lease of the optical-fiber connection is concluded. The delivery time is an estimate.

62.2 The exceeding of the delivery time will never lead to an entitlement of compensation.

62.3 If the delivery time for the construction of a optical-fiber connection is exceeded by more than three months as a result of a cause other than force majeure or a cause that cannot be attributed to the client either (such as, but not limited to, no or no timely access to the premises and/or rooms of the client or a failure by the client to have the equipment and/or other network components or provisions ready or have them ready on time), the client will have the right to dissolve the agreement for the construction and lease of optical-fiber connections by sending Qi ict a notification by registered mail.

62.4 Exceeding the delivery time of a optical-fiber connection does not entitle the client to dissolve the Agreement for the construction and lease of optical-fiber connections.

## 63. Price

63.1 The price to be paid by the client consists of the connection cost, which must be paid once, and a periodical premium.

63.2 With regard to the once-only connection cost, the digging and installation activities on the client's premises and rooms are presumed:

- Not to exceed a distance of 100 m from the public highway and a difference in height of five storeys;
- Not to require any activities with a crane or abseil activities;
- Not to contain any polluted soil or buildings, such as but not restricted to, asbestos;
- To be delivered and completed on the SC/PC connector;
- To be executed in accordance with the Eurofiber Handbook for constructors by a constructor appointed by Eurofiber; and
- To take place on working days between 6 am and 6 pm.

63.3 Qi ict will charge the client the costs incurred by the deviations as a result of the provisions laid down in the previous article by way of subsequent calculation. These must be paid by the client.

## 64. Maintenance

- 64.1 The operator of the optical-fiber network must maintain the optical-fiber(s) and repair them as the case may be. The client recognizes that, due to maintenance activities, the service may be interrupted.
- 64.2 The agreement for the construction and lease of the optical-fiber network does not offer any guarantee as regards the continual availability of the optical-fibers during the lease period. The client recognizes that such situations cannot be qualified as a failure to perform by Qi ict or the operator of the optical-fiber network.

## 65. Repairs after an interruption

- 65.1 The standard repair time is eight (8) hours after a report by the client that there has been an interruption of service or Qi ict has discovered the interruption and reported it to the operator of the optical-fiber network.
- 65.2 The client is entitled to a refund of a part of the premium every time when the repair time exceeds eight hours. If the client wants to claim the restitution it must send a notification, by registered mail, within 14 days after the exceeding of the repair time occurred. The amount to be refunded is:

Interruption of service	Amount to be refunded
0 up to 8 hours	No compensation.
8 up to and including 24 hours.	0.25 % of the annual premium for every hour that the interruption continues if the interruption exceeds the 8 hours' term, though no more than 16 hours.
Every additional day after the initial 24 hours, up to and including the 15th day.	0.33 % of the annual premium for every full day with which the 24 hours' term is exceeded, though no longer than 14 days.
Every additional day after the first 15 days, though no more than 30 days.	0.41 % of the annual premium for every full day with which the 15 days' term is exceeded, though no more than 15 days.

- 65.3 The premium refund described in the previous article is the only and exclusive compensation and restricts any other form of compensation the client is entitled to when there is an interruption of service.
- 65.4 The client must grant access to its several locations to the (maintenance workers of the) operator of the optical-fiber network at any time (24/7) within 1 hour after a request to that end. The client is not entitled to any premium refund or any other compensation if, as a result of its failure to comply with this obligation, the repair time is delayed.

## 66. Replacement or relocation

- 66.1 If the operator of the optical-fiber network must replace or relocate the optical-fiber network or parts of it (including the provisions used to offer the optical-fiber (s) network) as a result of a regulation or any other statutory measure given by a government body or technical reason, it will be entitled to do so without Qi ict or the operator being liable for any damage suffered or will be suffered by the client as a result of it.

## 67. Suspension

- 67.1 Qi ict is entitled to suspend its obligations under the agreement:
- If the client commits a breach of contract;
  - If the client fails to grant (timely) access to the operator of the optical-fiber network to its premises and/or rooms or fails to have the equipment and/or any other network components ready as a result of which the operator of the optical-fiber network is unable to connect a segment;
  - After the expiry or withdrawal of the telecommunications permit, registration or license, which the client is required to have as they will enable it to meet its obligations under this agreement and allow it to use the optical-fiber(s)
  - If the operator of the optical-fiber network or Qi ict must comply with a regulation, instruction or request from the government, court, a department of the emergency services or any other competent administrative government body; and
  - If the client has made an application for its bankruptcy or moratorium, it has been declared bankrupt or the moratorium is granted, an official receiver or administrator is appointed or if the client is otherwise unable to pay its creditors.

## **68. Duration and termination**

- 68.1 An agreement for the construction and lease of an optical-fiber network can only be terminated in compliance with the provisions laid down in this article.
- 68.2 After the initial lease period of an agreement for the construction and lease of an optical-fiber connection, there will be an automatic renewal of one year.
- 68.3 The agreement for the construction and lease of the optical-fiber connection cannot be terminated during the initial lease period.
- 68.4 If the client does not want an extension of the agreement for the construction and lease of the optical-fiber connection, it may cancel the agreement by sending a notification by registered mail at least three months before its expiry.
- 68.5 The parties may cancel the agreement for the construction and lease of the optical-fiber network prematurely and by sending a letter per by registered mail if:
- The other party has made an application for bankruptcy or moratorium,
  - The other party is bankrupt or has been granted moratorium,
  - An official receiver or administrator has been appointed for the other party, or
  - It is likely that the other party is no longer able to pay its creditors.
- 68.6 Qi ict may cancel, with immediate effect, the agreement for the construction and lease of the optical-fiber connection by sending a notification by registered mail if it is of the opinion, during the construction, that the realization of the optical-fiber connection appears to be impossible or if it is not possible to maintain an existing optical-fiber connection due to changes imposed by a government body or the operator of the optical-fiber connection is bankrupt or subjected to a moratorium or has made an application to that end. The client will not be entitled to any compensation in these cases.
- 68.7 The termination of the agreement for the construction and lease of the optical-fiber connection means that the parties' rights and obligations arising from this agreement end, unless it was agreed otherwise in writing, on the understanding that the client will not be entitled to any refund of the fees it has already paid to Qi ict.
- 68.8 Section 7:226 Dutch Civil Code (B.W.) applies to the agreement for the construction and lease of the optical-fiber network. As a result, the sale of the optical-fiber(s) will not end the agreement for the construction and lease of the optical-fiber network and the obligations arising from it.
- 68.9 Section 7:210 Dutch Civil Code (B.W.) does not apply to the agreement for the construction and lease of optical-fibers. This means that if any of the optical-fiber connections (s) is/are destroyed, the obligations of the agreement for the construction and lease of the optical-fiber connections, by operation of law will be effected to the optical-fiber connections as supplied or will be supplied by the operator of the optical-fiber connections to replace the original optical-fibers.

## **69. No partnership**

- 69.1 Nothing in the agreement for the construction and lease of the optical-fiber connections may be regarded as the foundation of a partnership, a joint-venture, any other corporate entity or agency agreement between the parties for whatever purpose.