GENERAL TERMS AND CONDITIONS

1. Offer and Agreement

1.1.   These General Terms and Conditions apply to all offers of PortalTalk B.V. (hereinafter called 'PortalTalk') and to all Agreements signed between PortalTalk and the Client, including all agreements for services provided by PortalTalk as well as consultancy and training. All PortalTalk offers are without any obligation, unless otherwise indicated.

1.2.   The Agreement with the Client only enters into effect after it has been signed by the authorised PortalTalk persons and the Client. Any purchase or other conditions of the Client do not apply unless accepted in writing by PortalTalk.

1.3.   The term PortalTalk-Software includes PortalTalk-software, PortalTalk documentation and all other materials made available by PortalTalk to the Client, including third-party software and services.

2. Client responsibility

2.1.   The Client is responsible for the choice, use and proper application in their organisation of the PortalTalk-Software and the services to be provided by PortalTalk, as well as securing data.

2.2.   The Client understands the functional characteristics of the PortalTalk-Software and is responsible for the PortalTalk-Software meeting their wishes. In the case of any ambiguity they can request information from PortalTalk before concluding the agreement or receive advice from an expert third party.

3. Delivery / handover

3.1.   PortalTalk will deliver a copy of the PortalTalk-software and PortalTalk documentation according to the product description at a place in the Netherlands to be determined by the Client. Unless otherwise agreed upon, the most recent version of the PortalTalk-Software will be delivered to the Client. Delivery of the PortalTalk-Software will take place on optically readable data carriers or by way of data communication. Only if agreed upon in writing, PortalTalk will install the PortalTalk-Software according to the agreement. If PortalTalk and the Client agree that the PortalTalk-Software is offered as SaaS ('Software-as-a-Service') then PortalTalk will make this available online. In that case PortalTalk can also make available a new or modified version of the PortalTalk-Software and is not obliged to maintain, modify or add certain properties or functionality of the PortalTalk -Software specifically for the Client.

3.2.   The technical possibilities and limitations for the use of the PortalTalk-Software, such as dependencies on databases, the operating system, hardware and data carriers, are stated in the hardware and software requirements communicated to the Client.

3.3.   The source code of the PortalTalk-software will not be made available to the Client.

3.4.   The information mentioned in proposals, offers, annexes, test programmes, documentation, product and project descriptions, etc., is only meant as general information and cannot be considered as a defined or guaranteed attribute.

3.5.   If parties have not agreed that an acceptance test will be executed, the Client accepts the PortalTalk-software in the state in which it is at the moment of delivery ('as is'), with all visible and invisible errors and faults. If an acceptance test has been agreed upon between the parties in writing, the following applies:

   a.   When 'errors' are mentioned here below it means a substantial failure to meet the functional and technical specifications of the PortalTalk-software stated in writing and/or agreed upon by PortalTalk. There is only an error as such if the Client can show it and if it can be reproduced. The Client is obliged to report errors to PortalTalk immediately.

   b.   If an acceptance test was agreed upon, the test period will last 14 days after completion of the installation by PortalTalk. During the test period, the Client is not entitled to use the software for productive or operational purposes. The Client will carry out the agreed upon acceptance test with enough range and depth of the PortalTalk-software and report the test results clearly and understandably in writing to PortalTalk.

   c.   If an acceptance test is agreed upon, the Client is then obliged under its entire and exclusive responsibility to test whether the delivered PortalTalk-software meets the functional and technical specifications stated in writing and/or agreed upon by PortalTalk. Unless otherwise agreed upon in writing, the assistance provided by PortalTalk when executing an acceptance test is at the risk of the Client.

   d.   If when carrying out the agreed upon acceptance test it appears that the PortalTalk-software contains errors, the Client will inform PortalTalk no later than the last day of the test period by way of a written and detailed test report about the errors. To the best of its ability PortalTalk will rectify the errors in question within a reasonable timeframe, whereby PortalTalk is entitled to apply temporary solutions, programme detours or problem-avoiding limitations to the PortalTalk-software.

   e.   Acceptance of the PortalTalk-software may not be withheld on grounds that are not related to the specifications agreed upon explicitly between the parties and also not because of small errors, such as errors that do not reasonably impede the operational or productive commissioning of the PortalTalk-software, undiminished of the obligation of PortalTalk to rectify these small errors in the first three months after delivery.

   f.   The PortalTalk-software will be considered accepted between the parties as follows:

       - If parties have not agreed upon an acceptance test: with the delivery, or if an installation to be carried out by PortalTalk was agreed upon in writing at the completion of the installation, or

       - If parties have agreed upon an acceptance test: on the first day after the test period, or

- If PortalTalk receives an issues list before the end of the test period: when the errors have been rectified stated in that test report.
Contrary to the PortalTalk-software, if the Client makes any use before an explicit acceptance for productive or operational purposes, it will be considered as entirely accepted from the beginning of that use.

g. If the PortalTalk-software is delivered and tested in phases and/or parts, the non-acceptance of a certain phase and/or part will not affect the acceptance of an earlier phase and/or another part.

4. Delivery deadlines

4.1.   All delivery deadlines mentioned by PortalTalk are to the best of its knowledge established on grounds of the information known to PortalTalk upon entering into the agreement and will be observed as much as possible. PortalTalk is not bound to (delivery) deadlines that cannot be met due to circumstances that have occurred after the conclusion of the agreement. If it is likely that a deadline will be exceeded, PortalTalk and the Client will consult each other as quickly as possible.

4.2.   If PortalTalk needs to wait for cooperation or information from the Client, the delivery deadlines will be extended if necessary for the duration of such a wait.

5. Payment

5.1.   All prices of PortalTalk are ex value-added tax (VAT).

5.2.   Unless otherwise agreed upon in writing, the Client shall pay the invoices of PortalTalk within 30 days after the invoice date.

5.3.   In case of late payment PortalTalk can suspend its services (for a shorter or longer period, and also on the short term), whereby PortalTalk will always inform the Client that they will suspend their services. As well, the Client will owe statutory interest. If the Client remains negligent in paying the debt, the debt may be passed on, in which case the Client is also obliged to pay 15% extrajudicial collection costs.

5.4.   Should the solvency of the Client be in question, PortalTalk may demand further security or prepayment failing which PortalTalk may suspend fulfilling the Agreement.

6. Terms of use of Software

6.1.   PortalTalk grants the Client the non-exclusive and non-transferable right to use the PortalTalk-Software listed in the Agreement, including corresponding documentation.

6.2.   The Client may use the PortalTalk-Software exclusively within its own company, organisation or institution up until the number of maximum concurrent users stated in the Agreement or for the number of actual notified named users in accordance with the provisions in the Agreement, unless the Client pays the applicable additional upgrade rates and costs according to the prices and scales in effect at that time.

6.3.   The Client will inform PortalTalk in advance in writing of changes in the circumstances that could influence its right to use the PortalTalk-Software. The Client must receive the written approval of PortalTalk and pay the applicable additional upgrade rates

and costs according to the prices and scales in effect at that time. In part to verify possible additional use, the Client will offer PortalTalk the possibility of measuring the use of the PortalTalk-Software by the Client in order to verify whether the use by the Client is in accordance with the Agreement between PortalTalk and the Client. If the Client has failed to inform PortalTalk about the additional use, PortalTalk will charge an additional fee to the Client.

6.4. The Client is entitled to make a reasonable number of backup copies of the PortalTalk-Software. The Client will only make a similar backup copy if the original solutions delivered by PortalTalk are no longer suitable for use. In this case the Client will inform PortalTalk. The backup copy must always have the same labels and indications as the original PortalTalk-Software delivered by PortalTalk.

6.5. The Client is not allowed to sell, rent, transfer in security, dispose of or in any way whatsoever render available to third parties or transfer the PortalTalk-Software unless explicitly agreed otherwise in writing. The Client shall not modify the PortalTalk-Software, release it for use by third parties or use it for the benefit of third parties. In particular, the Client is not allowed to use the PortalTalk-Software in any way whatsoever as an Application Service Provider, to use it within the scope of outsourcing, or otherwise make it available to third parties who provide similar services.

6.6. If PortalTalk and the Client agree on the periodic payment of the licensing and maintenance fee (and optional support fee), including when the PortalTalk-Software is made available as rental or as SaaS ("Software-as-a-Service"), the right to use the PortalTalk-Software expires when the Client no longer makes the agreed upon periodic payments.

7. Copyright

7.1. The copyright of all PortalTalk-Software, services or other materials (such as analyses, designs, documentation, reports, quotations etc.), including possible changes, additions and custom work delivered by PortalTalk to the Client, delivered or in any way whatsoever made available by PortalTalk, reside exclusively with PortalTalk or its licensors. Client only obtains the user-rights expressly granted in these General Terms and Conditions or the applicable general terms and conditions of the licensors.

7.2. The Client is not allowed to remove or change any designation regarding copyright or brands from the PortalTalk-Software or materials, including indications regarding the confidential nature of the PortalTalk-Software and the obligation to keep it secret.

7.3. PortalTalk is allowed to take technical measures in order to protect the PortalTalk-Software.

7.4. PortalTalk shall indemnify the Client against all actions and claims based on the assertion that the PortalTalk-Software infringes upon a copyright of third parties valid in the Netherlands. PortalTalk shall pay any costs and damages awards of a final judgement, provided that the Client informs PortalTalk immediately in writing and leaves the handling of the case exclusively to PortalTalk and provides their full cooperation.

8. Client cooperation

8.1.   The Client will ensure that a suitable computer system is present to be able to use the PortalTalk-Software. Prior to the delivery or making available of the PortalTalk-Software, the Client will ensure that the appropriate hardware, software and data and telecommunication facilities are available. PortalTalk is not responsible for the purchase and proper working of the infrastructure of the Client or that of third parties.

8.2.   Unless explicitly otherwise agreed, it is the task of the Client to deal with measures such as fallback, data protection (backup), regular verification of processed data, etc., in case the PortalTalk-Software is not fully or partially functional, is temporarily unavailable or has defects. The Client will timely provide PortalTalk with all useful and necessary information. Prior to the operational use of the PortalTalk-Software, the Client will thoroughly test for any defects and usability issues in the actual use environment. The same applies in case the Client receives or has access to new releases, whether or not within the scope of maintenance.

9. Secrecy and acquiring staff

9.1.   PortalTalk and the Client will take all reasonable precautions to keep confidential information to be received and already received from the other party. The Client will especially treat as confidential the information regarding the PortalTalk-Software and corresponding documentation, and not make it available to third parties.

9.2.   For the duration of the Agreement and during a period of one year after the end of the Agreement the Client will not actively approach the staff of PortalTalk, nor hire or otherwise have such staff work for them.

10. Liability

10.1.   If after proper notice PortalTalk repeatedly or to a substantial degree fails to fulfil its obligations, the liability of PortalTalk is limited to the additional costs of the Client that are a direct result of the resulting shortcoming. The total liability of PortalTalk is, however, limited to an amount equal to the lowest of the following two amounts: € 250,000 or the amount equal to the total price paid (ex VAT) of the work, services and deliveries agreed upon with PortalTalk.

10.2.   Any further liability of PortalTalk for damaged incurred by the Client is ruled out, regardless of basis for a claim, whether in contract, in tort or otherwise. In no event is PortalTalk liable for lost profits, consequential damages or other indirect damages, particularly including damages from lost profits, loss of expected savings or loss of data. PortalTalk is also not liable for damages that result from late delivery of the PortalTalk-Software, the execution of work or services.

11. Maintenance of PortalTalk-Software

11.1.　If PortalTalk and the Client have agreed that PortalTalk will perform maintenance of the PortalTalk-Software, then such maintenance is performed on the basis of the the additional maintenance terms of PortalTalk.

11.2.　The initial Maintenance term is one year, unless otherwise stated in the Agreement. At the end of this initial period maintenance will be implicitly renewed for periods of one year, unless PortalTalk or the Client terminates the maintenance in writing and by registered post with a term of notice of at least 3 months before the end of the applicable maintenance period.

12. Maintenance fee

12.1.　The Client owes PortalTalk the periodic maintenance fee as stated in the Agreement.

12.2.　PortalTalk may change the maintenance fee (also if it is a part of a rental or SaaS fee) at the start of every new year. At least one month before the end of the year in question PortalTalk will inform the Client in writing of the increase of the maintenance fee that applies for the next year. The increase will not be higher than 7% a year.

12.3.　The maintenance fee will be invoiced periodically by PortalTalk in advance.

13. Scope of maintenance

13.1.　The maintenance of the PortalTalk-Software contains the work as described in the generally applicable additional PortalTalk Maintenance Conditions.

13.2.　To protect the secrecy and confidential information of PortalTalk, third parties are not authorised to carry out maintenance work to PortalTalk-Software delivered by PortalTalk to the Client.

14. Support of PortalTalk-Software / third-party software

14.1.   If PortalTalk and the Client agree that support of the PortalTalk-Software and/or software (including services) of third parties is to be delivered then these services will be delivered based on the additional PortalTalk Support Conditions.

14.2.   Helpdesk support starts for the period and under the conditions as stated in the PortalTalk Support Conditions.

14.3.   The support fee will be invoiced by PortalTalk periodically in advance.

15. Services

15.1.   The Client and PortalTalk will agree on all services provided by PortalTalk in writing. The Client and PortalTalk will agree in writing the specifications and planning for the services to be provided. If it is agreed that the services will be provided in phases, PortalTalk may postpone the start of the services that are part of a subsequent phase until the Client has approved the results of the previous phase in writing. When approval is not received, the only obligation of PortalTalk is to carry out the work again.

15.2.   In scheduling staff, PortalTalk will take into account the wishes of the Client, although PortalTalk will decide who will carry out the PortalTalk services. PortalTalk may if required call on third parties to carry out the work.

15.3.   If so desired, PortalTalk may carry out the work in part or in whole at the offices of the Client, and the Client will make available the necessary facilities as workspace, free of charge. The PortalTalk employees will observe the house rules of the Client.

15.4.   Due to the need for the Client to cooperate for the services to be provided, the Client will provide PortalTalk with all data or information that is necessary or useful for executing the Agreement in a timely manner, including (temporary) access to the necessary data files and experts of the Client, as well as reasonably cooperate on time as desired by PortalTalk.

15.5.   If for the execution of the agreed upon work the necessary information is not made available to PortalTalk or not made available on time or not according to the agreements made, or if the Client does not meet its obligations in another way, this can influence the anticipated time of completion. In any case PortalTalk has the right to suspend the execution of the Agreement, and may charge the costs incurred and any idling according to its usual rates.

16. Changes and additional work

16.1   If PortalTalk has executed work that falls outside of the agreed scope of the services, the Client will compensate PortalTalk according to the usual rates of PortalTalk.

16.2   If due to additional wishes of the Client requirements or specifications are extended or changed with respect to what is stated in the Agreement, this will be considered additional work that must be compensated. If PortalTalk believes that this is additional work, the Client will be informed of it as quickly as possible. PortalTalk is,

however, not obligated to execute any request of the Client to execute similar work and can request that a separate agreement be signed.

16.3   The Client accepts that, if parties agree that the services to be delivered will be extended or changed, this may influence the time of completion of the services. PortalTalk will inform the Client regarding this as quickly possible.

16.4   If PortalTalk has given an indication or estimation of the total costs of the services, this does not specifically mean that it is a fixed price. The Client is, however, entitled to decide whether the work will be carried out to completion if the indication or estimation is exceeded.

17. Software and services of suppliers

17.1.   If a supplier of PortalTalk only provides the right to use the software (whether or not as a service) according to the provisions of their license or user agreement, or if support and maintenance is executed according to the provisions of the support and maintenance agreement of such supplier, the provisions of the stated "back-to-back" agreements prevail over (whether or not as an addition to) the provisions set out in these General Terms and Conditions, and PortalTalk can rely on these conditions as if they themselves were a party to them. On request of the Client PortalTalk will inform the Client about the content of the agreements mentioned. PortalTalk is not liable for the software, hardware or services of any supplier.

18. General

18.1.   Changes and adaptations of the contracts concluded between PortalTalk and the Client must be made in writing.

18.2.   PortalTalk will meet its obligations pursuant to the legislation regarding the processing of personal data as a processor. PortalTalk will ensure suitable technical and organisational measures to protect personal data. The Client guarantees that all legal regulations regarding the processing of personal data, including the regulations of its local personal data protection act will be taken into account.

18.3.   PortalTalk is not obliged to meet any obligation if it is not possible to do so as a result of force majeure such as fire, strikes, labour unrest, illness, government measures, late or non-delivery by suppliers or any other cause beyond its control.

18.4.   Dutch law governs this agreement, excluding laws related to conflicts.

18.4.1. In the event of any dispute arising from the agreement PortalTalk and the Client will strive towards an amicable settlement. If that does not produce a result, the courts in the district of PortalTalk will have exclusive jurisdiction.