



> FOR SOCIETY

## AGREEMENT

Research Information System (RIS)

between

Stichting Fontys

<< name of contractor >>

The undersigned:

Stichting Fontys, having its registered office in Eindhoven, Rachelsmolen 1, legally represented in this matter by the Executive Board: J. Houterman (chair), G. Steenbruggen (member) and F. Möhring (member), hereinafter referred to as: 'the Client'

and

<<name of contractor>>, with its registered office in <<city/town>>, Netherlands Chamber of Commerce KvK number: <<number>>, legally represented in this matter by <<name>>, <<title>>, hereinafter referred to as: 'the Contractor'

jointly to be referred to as 'the Parties'.

Whereas

- the Client requires a single provider for an IT solution in the form of a Research Information System (RIS);
- the Client put out a European tender for this purpose under number TN465044 on <<date>>;
- the Contractor submitted a bid on <<date>>;
- the Client proceeded to the final award of the tendered contract to Contractor on <<date>>;
- The Client and the Contractor wish to lay down the arrangements regarding the performance of the tendered contract in an agreement.

The Parties have agreed as follows:

## 1. General

This article sets out definitions for a number of terms which are capitalised in this Implementation Agreement and/or in the SaaS Services Agreement. The definitions used shall have the same meaning in both the plural and singular, unless an alternative inference should be made due to the context.

- 1.1. Acceptance: the Client's approval of the object of Acceptance based on the Acceptance Test as defined in this Agreement.
- 1.2. Acceptance Test: a test used by the Client to assess whether the object of Acceptance, as defined in this Agreement, is satisfactory, based on the agreed acceptance criteria.
- 1.3. Adaptive Maintenance: the modification of the ICT Solution if required due to changes in the ICT Infrastructure, within the framework of the Contractor's normal version and release policy of the relevant component from the ICT Infrastructure as well as the adaptation of the ICT Solution due to changing circumstances and new developments occurring in the field for which the ICT Solution was designed, such as changing laws and regulations.
- 1.4. Agreement: this Agreement including the associated Annexes.
- 1.5. Annexes: the appendices to this Agreement which form an integral part thereof.
- 1.6. Availability: the extent to which the ICT Solution is actually available to the Client and can be used.
- 1.7. Completion Notice: the written notification from the Contractor to the Client that an agreed object of Acceptance (of a partial delivery) can be subjected to an Acceptance test.
- 1.8. Corrective Maintenance: performance by which the Contractor ensures that Defects in the ICT Solution are resolved.
- 1.9. Data: all data, details, information and any other material or content that the Client and/or Users enter, send, post or otherwise process in the context of the Agreement using the ICT Solution and/or parts thereof, including personal data.
- 1.10. Defect: a malfunction or imperfection in the ICT Solution as a result of which the Solution fails to meet the agreed use or otherwise causes the ICT Solution to fail.
- 1.11. Development: performance consisting of the creation of customised links and/or new functionality to be developed as part of the architecture of the ICT Solution.
- 1.12. Disaster recovery: the set of measures aimed at accommodating the ICT Solution at an alternative location in the event of a disaster rendering the ICT Solution unavailable and/or unusable. This also includes the measures taken to remedy the damage-disruption at the original location.
- 1.13. Documentation: all descriptions agreed upon in respect of the management, training and use of the ICT Solution (including Interfaces).
- 1.14. Functional management: the support of the functional, organisation-specific set-up of the ICT Solution such as assigning authorisations and user instructions.
- 1.15. Hosting: technical management and application management, keeping the ICT Solution running on the Contractor's ICT infrastructure and location and under the responsibility of the Contractor, including Interfaces.
- 1.16. ICT Infrastructure: both the physical and logical environment (physical space, equipment, network components, Interfaces, etc.) in which the ICT Solution is to become operational and in conjunction with which the ICT Solution must function.
- 1.17. ICT Solution: the solution to be provided by the Contractor under the Agreement, such as a system, platform or software including associated services and other goods (including rights of use).
- 1.18. Implementation: performance consisting of the process of various activities and measures such as installation, parameterisation, setting up, interfacing with existing ICT Solutions and training for the functional and technical commissioning of the ICT Solution envisaged by the Client.
- 1.19. Incident: a disruption in the availability and/or usability of the ICT Solution, whether or not caused by a Defect.
- 1.20. Installation: performance consisting of installing and configuring the ICT Solution on the equipment and connecting it (technically) to the ICT Infrastructure.

- 1.21. Interface: software enabling the exchange of data between specific components of the ICT Solution and/or with elements in the ICT Infrastructure and/or third-party systems.
- 1.22. Maintenance: performance consisting of the entirety of Adaptive Maintenance, Corrective Maintenance, Preventive Maintenance and Upgrade Maintenance, as defined in the Tender Documents.
- 1.23. New version: modified version of the ICT Solution, extending its functionality through Upgrade or Adaptive Maintenance.
- 1.24. Objective(s): the Objectives that the Client aims to achieve with the ICT Solution and has made known to the Contractor in the form of the Tender Documents.
- 1.25. Office hours: office hours are from 09:00 to 17:00 CET on Working Days.
- 1.26. Performance: the work to be performed by the Contractor on behalf of the Client and/or its Users on the basis of this Agreement and deliverables within the framework thereof.
- 1.27. Preventive Maintenance: performing maintenance aimed at ensuring that the ICT Solution continues to meet the requirements established for it during the term of this Agreement (therefore including but not limited to executing releases and patches).
- 1.28. Ready-to-use delivery: the delivery of the ICT Solution, which is ready for use (GO Live) and has been accepted by the Client in accordance with this Agreement (cf. Article 5 Testing and Acceptance).
- 1.29. Support: Support shall in any case mean the acceptance and resolution of Defects, breakdowns, Incidents and questions from the Client by a helpdesk.
- 1.30. Technical Management: maintaining the ICT Solution, as described in the Tender Documents.
- 1.31. Tender document: the Invitation to Tender including its annexes, included as Annex 3.
- 1.32. Upgrade maintenance: adjusting, improving and/or extending the functionality of the ICT Solution other than through Corrective, Adaptive and Preventive Maintenance.
- 1.33. User(s): a (natural) person in any way affiliated with Fontys, such as Fontys employees, who is authorised by the Client to access (a certain part of) the ICT Solution.
- 1.34. Workaround: temporary programme workaround or problem-avoidance restriction as a result of which Client is no longer significantly inconvenienced by the Defect.
- 1.35. Working days: calendar days excluding weekends and public holidays generally recognised in the Netherlands within the meaning of the General Extension of Time Limits Act.

## 2. General

2.1. The following documents, dated as set out in the recitals above, shall form part of this agreement.

- i) The present agreement including annexes;
  - Processing agreement, Annex 1A;
  - Concerning the processing, Annex 1A-1;
  - Standard Contractual Clauses, Annex 1A-2;
- ii) Memorandum/memoranda of information, Annex 2;
- iii) Tender document Research Information System, Annex 3;
- iv) Contractor tender bid, Annex 4.

In the event of any contradictions between the Agreement and its Annexes, the order of precedence set out in Article 2.1 shall apply, with sub i ranking the highest in this order of precedence, unless the nature of the contradiction evidently compels a different order of precedence and/or a lower-ranked document places more stringent requirements on the Performances to be carried out by the Contractor under this Agreement.

2.2. Any general delivery and payment terms of the Contractor or any other general or special terms and conditions shall expressly not apply. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (the Vienna Convention) is excluded.

2.3. The Contractor shall/shall not rely on subcontractors in the provision of its services.

2.4. The Contractor will be responsible for any criminal fines and administrative sanctions that are imposed on the Contractor directly and/or are imposed on the Client and that are attributable to the acts and/or omissions of the Contractor in connection with the performance of this

Agreement.

### 3. Subject of this Agreement

- 3.1. The Contractor, in accordance with the provisions of this Agreement and in accordance with all legal requirements applicable thereto, shall undertake to perform the Performances as described in this Agreement and in the documents referred to in Article 2. Broadly speaking, the Performance consists of delivering, Implementing, Managing (Hosting and Technical Management), Developing (Development) and Maintaining (Maintenance) a future-proof and innovative ICT Solution for research information, with Saas as the form of delivery. All in accordance with the specifications set out in the documents referred to in Article 2.
- 3.2. The Contractor acknowledges that it has been sufficiently informed of the Client's Objectives with regard to the purpose of the Agreement and of the Client's organisation and processes relevant in this respect. To this end, the Client has provided the Contractor with sufficient and correct information and shall, if required, provide the Contractor with further information to the extent such information is available to the Client.
- 3.3. The Parties shall inform each other of developments underway within their organisations and relevant to the implementation of this Agreement.
- 3.4. The Client reserves the right to commission scope-related modules from the Contractor, the need for which has arisen during the term of the Agreement due to advancing insight. Where appropriate, the Parties will make further arrangements in this regard and record them in writing.

### 4. Implementation

- 4.1. The Contractor shall be responsible for implementing the ICT Solution at the Client's organisation. This will take place in accordance with the provisions of the Agreement and the implementation plan, which is jointly prepared with the Client and must be approved by the Client in writing. The costs of preparing the implementation plan are deemed to be included in the prices and rates set out in the Agreement and are not separately eligible for reimbursement.
- 4.2. The implementation plan must at least comply with and be based on the provisions of the Client's Tender Documents. The implementation plan should take into account:
- The aforementioned milestones from the Tender Document (par. 3.1.6).
  - The described demarcation from the Tender Document (par. 3.1.8).
  - The Contractor's project leader, like the other sub-project leaders, shall report to the overall Fontys project manager where the project manager take charge of the translation to the steering group.

The implementation plan shall contain at least the following components:

- Project description
  - Objectives
  - Scope
  - Principles and framework conditions
- Approach and results
  - Set-up
  - Interfaces
  - Testing
  - Training
  - Handover to Client
- Project organisation, monitoring and control
  - Organisation (incl. team composition)
  - Consultation structure

- Decision-making process
- Progress monitoring and control
- Communication
- Change procedure
- Timetable
  - Activities (plotted in time)
  - Milestones
  - Products (planning and description)
  - Finance including billing schedule
  - Resources (insight into the expected workload for contractor and client)
- Acceptance criteria
- Risks (Cause, Risk, opportunity, impact, weighting and measures)

4.3. As part of the Implementation, the Contractor will provide training, instruction and/or education to familiarise the Client and its personnel with the use of the Contractor's ICT Solution in accordance with the 'train the trainer' principle and other contents of the Tender Documents. The training, instruction and/or education will be provided as much as possible by experts involved in the Implementation.

4.4. Once the Contractor considers that the Implementation, or part of it, has been completed, the Contractor shall provide the Client with a Completion Notice. The Client shall immediately confirm such notification to the Contractor in writing. The date of receipt of this confirmation by the Contractor shall count as the date of the Completion Notice. The Completion Notice shall not affect the provisions of this Agreement regarding Acceptance and warranty.

## 5. Testing and acceptance

5.1. The Parties reserve the right to conduct multiple (Acceptance) tests as part of Implementation. These tests may focus on testing Acceptance Criteria but also on testing other requirements and criteria as set out in the Tender Documents and/or Tender.

5.2. During the various Acceptance Tests, it will be assessed whether the acceptance criteria established by the Client have been met.

5.3. The Contractor shall fully cooperate with the Client's right to have the object of Acceptance examined by a third party before approving the object of Acceptance.

5.4. For each individual phase, Implementation shall be considered to be completed after the successful completion of a full chain integration test and user acceptance test, followed by Acceptance by the Client by means of a declaration of performance as set out in Article 5.6 and Ready-to-Use delivery per phase (GO Live phase 1 and GO Live phase 2).

5.5. The chain integration test and user acceptance test shall form the final test of all functionalities and the Interfaces. The tests will be organised by the Client. The tests will take place within a Contractor test environment and will be carried out on the basis of a test plan to be drawn up by the Client and approved by the Contractor. At the Client's request, the Contractor shall assist and provide the necessary qualitative cooperation.

5.6. Immediately after an Acceptance Test, the Parties shall prepare a declaration of performance, which shall record any defects and determine whether the ICT Solution has been approved. Minor Defects which by their nature and/or number do not reasonably impede the operational commissioning of the ICT Solution shall not constitute grounds for withholding Acceptance, but must be repaired by the Contractor free of charge within a reasonable period of time.

5.7. Should the ICT Solution, or parts of it, be rejected due to Defects when going through one of the Acceptance procedures for the second time, the provisions of Article 17 of this agreement shall

apply.

5.8. If the Client should choose not to carry out, or only partially carry out, an Acceptance Test, and notify the Contractor thereof in writing, and put the completed solution into use in its production environment, then the completed solution will be considered accepted after more than twenty (20) Working Days of use. Operation shall not affect warranty rights.

5.9. GO live phase 1: If the ICT Solution, including Interfaces, is not delivered Ready-to-Use (GO live phase 1) by the agreed date of six months after the final award or is rejected by the Client, as a result of an attributable failure on the part of the Contractor, an immediately payable penalty of €1,000 will be charged to the Contractor for each day that the delay in the Ready-to-Use delivery continues, up to a maximum of €10,000, without prejudice to the right to claim damages.

GO live phase 2: If the ICT Solution, including Interfaces, is not delivered Ready-to-Use (GO live phase 2) by the agreed date of four months after GO live phase 1 or is rejected by Principal, as a result of an attributable failure on the part of the Contractor, an immediately payable penalty of €1,000 will be charged to the Contractor for each day that the delay in the Ready-to-Use delivery continues, up to a maximum of €10,000, without prejudice to the right to claim damages.

## 6. Documentation

- 6.1. The Contractor shall provide the Client with at least one complete set of Documentation that is also available online, which:
- i. Provides an accurate and comprehensive description of the ICT Solution delivered and associated functions;
  - ii. Contains all necessary functional and technical information for establishing any Interfaces;
  - iii. Allows users to easily make use of all the features of the ICT Solution.
  - iv. Can freely be used by the Client, including as regards comprehensive information for training of employees/Users for use and management.
  - v. Enables efficient Functional Management by the Client.
  - vi. May be freely reproduced and used by the Client for the purpose for which the Documentation was written, and is transferable in a broad sense.
- 6.2. The Contractor shall ensure that the Documentation is available no later than on the date of the Completion Notice or as much earlier as necessary (e.g. for the establishment of Interfaces). The Contractor shall make the Documentation available to the Client before or during the Acceptance Test in the agreed numbers.
- 6.3. During the term of the Agreement, the Contractor shall ensure, at its expense, that the Documentation provided is replaced, amended or modified as soon as possible but no later than within two (2) weeks, if it is found to contain incorrect or incomplete information, or is otherwise insufficient, unclear or outdated. The documentation version shall correspond to the version of the ICT Solution.

## 7. Staff

- 7.1. The Contractor shall only engage competent personnel for the performance of this Agreement.
- 7.2. The personnel involved in the execution of the assignment must be proficient in both spoken and written English and/or Dutch.
- 7.3. If Contractor personnel are employed by the Client, for the performance of this Agreement, the Contractor shall ensure that its personnel complies with the applicable house rules of the Client.
- 7.4. The Contractor shall endeavour to have the work performed by or under the responsibility and

supervision of a single permanent point of contact in order to make the best use of the Client's project knowledge and the situation.

- 7.5. If the Client is of the opinion that the Contractor's personnel are not performing properly, the Client has the right to demand, based on well-founded reasons, that such personnel be replaced at the shortest possible notice.
- 7.6. If replacement is required, the Contractor will provide replacement personnel of at least comparable level (expertise, training, experience) following consultation with the Client without any increase in rates. The Contractor shall bear the cost of onboarding of the new staff.
- 7.7. If the Contractor is of the opinion that personnel belonging to the Client are not performing properly, the Contractor may make this known to the Client based on well-founded reasons. The Client will consider these reasons, but is not obliged to replace the relevant personnel. The Contractor will accept the Client's decision in this regard.

## **8. Management and hosting**

- 8.1. The Contractor bears full responsibility for the Technical Management of the ICT Solution provided, in accordance with the provisions of the Tender Documents.
- 8.2. The Client is responsible for performing the Functional Management of the ICT Solution provided by the Contractor, in accordance with the provisions of the Tender Documents.
- 8.3. The Contractor is responsible for carrying out the Hosting of the ICT Solution provided, in accordance with the provisions of the Tender Documents.

## **9. Maintenance and support**

- 9.1. Maintenance shall be carried out by the Contractor and, unless otherwise agreed, shall include at least the following services:
  - i. Corrective Maintenance;
  - ii. Preventive Maintenance;
  - iii. Adaptive Maintenance;
  - iv. Upgrade Maintenance.
- 9.2. Maintenance and Support shall be performed in line with a Service Level agreed between the Parties as referred to in Article 10.
- 9.3. The Contractor guarantees that it has sufficient manpower, knowledge and expertise to properly carry out the Maintenance and Support.
- 9.4. All Maintenance will be carried out without interruption and as soon as possible.
- 9.5. Scheduled Maintenance resulting in breaking changes to the Interfaces will be reported to the Client at least twelve weeks in advance. Scheduled Maintenance that does not result in breaking changes to the Interfaces will be reported to the Client at least two weeks in advance.
- 9.6. Any repairs, if necessary, shall include the provision of temporary solutions (Workarounds), which shall be applied only after written consent from the Client, which will establish when the Workaround will be replaced by a definitive solution.
- 9.7. The Contractor shall report in writing to the Client on the assessment of reported Defects and why a Defect is or is not eligible for repair and/or Workaround.
- 9.8. The Contractor shall create backups of all data without affecting the performance of the ICT Solution. Backups shall be stored in a geographically different location from where the data of the ICT Solution is stored. In the case of Disaster recovery, the most recent backup will be restored by the Contractor according to a pre-agreed procedure.

9.9. The Contractor shall make release notes available simultaneously with each modification of the ICT Solution.

9.10. In emergencies, the Contractor shall also perform Maintenance outside Office Hours to ensure the continuity of the Client's business operations. The decision regarding work carried out outside Office Hours shall be made by mutual agreement.

## 10. Service level

10.1. The Contractor shall take measures to ensure that the ICT Solution provided has sufficient redundancy in terms of Availability, performance and Maintenance. This includes that any recovery of data and cloud services should be facilitated with a robust and redundant infrastructure and (supporting) IT services, which are periodically and demonstrably tested by the Contractor.

10.2. Service desk. The Contractor shall provide a service desk for the reporting of Incidents and Defects, among others, by the Client. The service desk will be available on Working Days from 09:00 to 17:00 CET, by phone or MS Teams or any other communication and collaboration platform. There is also the option of reporting Incidents and Defects 24/7 via an online portal. For Class 1 incidents, the service desk will be available by phone from 09:00 to 17:00 CET at least on Working Days. The service desk will provide support in English or Dutch.

10.3. Service window. The window during in which the Contractor will actively handle, follow up, execute and/or resolve notifications shall be on Working Days from 09:00 to 17:00 CET.

10.4. Availability. The ICT Solution shall have a minimum availability of 99.5%. Availability is measured over a one-quarter period.

10.5. Maintenance window. Scheduled maintenance will be carried out on Working Days between 19:00 and 07:30 CET or on weekends (including patches, new releases, implementation of changes etc).

10.6. The downtime for the purpose of planned Maintenance shall be up to 8 hours per month.

10.7. Response and recovery times for Incidents and Defects will take place according to the matrix below, with the Client determining the priority of an Incident and Defect:

| Incident class | Response time (time within which the reporting party receives substantive acknowledgement of receipt of the report) | Recovery time (time between initial acknowledgement of receipt of notification and resolution of the problem) |
|----------------|---------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|
| Priority 1     | 1 hour                                                                                                              | 4 hours                                                                                                       |
| Priority 2     | 1 hour                                                                                                              | TBD before final award                                                                                        |
| Priority 3     | 4 hours                                                                                                             | TBD before final award                                                                                        |
| Priority 4     | 4 hours                                                                                                             | TBD before final award                                                                                        |
| Priority 5     | 24 hours                                                                                                            | TBD before final award                                                                                        |

Determining the priority of an Incident shall take place on the basis of:

|            |                                                                                                                                            |
|------------|--------------------------------------------------------------------------------------------------------------------------------------------|
| Priority 1 | A critical defect in the ICT-solution that prevents all useful work from being performed, and where no reasonable work-around is possible. |
| Priority 2 | A critical defect in the ICT-solution that prevents all useful work from being performed, where a reasonable work-around is possible.      |
| Priority 3 | A defect that prevents the use of some non-critical functions of the ICT-                                                                  |

|            |                                                                                                                                |
|------------|--------------------------------------------------------------------------------------------------------------------------------|
|            | solution, and where no reasonable work-around is possible.                                                                     |
| Priority 4 | A defect that prevents the use of some non-critical functions of the ICT-solution, where a reasonable work-around is possible. |
| Priority 5 | A problem or query that does not prevent regular operation of the ICT-solution                                                 |

10.8. The performance of the ICT Solution must consistently be at an acceptable level so that the Client's User can use it adequately. The Contractor shall guarantee that the ICT Solution is suitable and will function well for a minimum of 2,000 users.

10.9. The Contractor shall monitor the ICT Solution 24/7. In case of Incidents or Defects, Contractor shall take action, record the report and inform the Client. It will be prioritised and subsequently dealt with in accordance with paragraph 7 of this article.

10.10. If the agreed Availability is not achieved during the stipulated period, a penalty of 8% of the periodic costs per quarter shall be charged.

10.11. If the recovery time for Priority 1 reports is not resolved within the specified period of time, €250.00 will be deducted from the next invoice for each day of delay, up to a maximum of €1,000.00.

10.12. The Recovery Time Objective (RTO) / service recovery after incident is a maximum of 6 hours and Recovery Point Objective (RPO) / recovery point and acceptable data loss after incident is a maximum of 24 hours and must be guaranteed at all times

10.13. After provisional award, the parties will jointly agree the details of the SLA (including escalation procedure, recovery times (prio 2 to 5) etc.).

## 11. Version policy

11.1. Upgrading (New Version) of the Software shall be possible at any time. During the term of this Agreement, the Contractor will provide the Client with a New Version if necessary. The Contractor shall only perform automatic Upgrading of the ICT Solution without prior consent of the Client if:

- i. i. The Contractor will provide the Client with an up-to-date and freely accessible release calendar that looks at least 6 months ahead and provides insight into the changes per release.
- ii. ii. The Client shall have the opportunity to test new releases for a period of 2 weeks.

11.2. The Contractor is obliged to modify the functionality of the ICT Solution in a timely manner in accordance with legal obligations or sectoral guidelines that are necessary from a good governance perspective. The Contractor must notify the Client well in advance.

11.3. New versions delivered by the Contractor shall be considered part of this Agreement from the day they are added to the ICT Solution.

11.4. Changes and/or additions to the ICT Solution provided, including New Versions, shall not lead to a limitation of the performance and/or applications or application possibilities of the ICT Solution in connection with the ICT Infrastructure used by the Client or to an increase in costs for the Client.

11.5. If a New Version imposes additional requirements on the ICT Infrastructure, the Client reserves the right to continue using the current version, at no additional cost. The Contractor shall ensure that support for this version is maintained until the end of the (agreed) term of the maintenance period of the Agreement.

## 12. Prices and rates

- 12.1. The prices and rates for performance of the Agreement are set out in Annex 4. All prices and rates are exclusive of VAT, but inclusive of all other costs associated with the performance of the Agreement.
- 12.2. The one-off costs are fixed and cannot be indexed.
- 12.3. Periodic charges are reset annually based on the actual number of active researchers<sup>1</sup> for the following year as of the reference date (31 December), with a minimum of 400 active researchers applying at all times. The quarterly amount (annual amount divided by 4) to be invoiced will be determined based on the actual number established. 603 active researchers are assumed for the first year.
- 12.4. The periodic charges described in paragraph 1 of this article may be indexed annually, initially with effect from 1 January 2026, by the annual rate of change in the Service Price Index (DPI), Commercial Services and Transport (2015=100), using the annual change from the third quarter in the year prior to the date of indexation. The table is available on the following webpage: <https://opendata.cbs.nl/statline/#/CBS/nl/dataset/83760NED/table?dl=A419B>
- As an example, if periodic costs had been allowed to be indexed on 1 January 2024, the price indexation would have been 4.5% (annual rate of change as at 3rd quarter 2023).
  - The Contractor shall submit the new rates, including calculation, to [dienstonderwijsenonderzoek@fontys.nl](mailto:dienstonderwijsenonderzoek@fontys.nl) no later than 1 month prior to the new calendar year. Verification will take place to ensure correct calculation.
  - Indexation will be monitored annually (both negative and positive price developments will be implemented).
  - The new periodic charges will take effect on 1 January and will apply until 31 December of the same calendar year.

### 13. Additional work

- 13.1. The Contractor will only commence with any additional work after it has received written instructions from the Client.
- 13.2. Additional work does not include any work, unforeseen or otherwise, required to deliver the agreed ICT Solution in working order. Additional work therefore does not include additional work which Contractor could or should have foreseen or which is necessary to deliver the ICT Solution in an operational sense in accordance with the specifications and/or to keep it operational as such.

### 14. Invoicing and payment

- 14.1. Invoicing of one-off charges will take place as follows:
- a. Any one-off costs will be invoiced for each individual phase retrospectively in proportion to progress each month based on the progress report approved by the Client's project manager.
  - b. The final 25% of total one-off costs can only be invoiced after Ready-to-Use delivery of the entire ICT Solution (phases 1 and 2).
- 14.2. Invoicing of periodic charges will take place retrospectively on a quarterly basis (annual amount divided by 4), for the first time and not earlier than at the end of the first quarter after date of Ready-to-Use Delivery Phase (GO Live Phase 1).
- 14.3. Only one order number shall be billed on an invoice.
- 14.4. The Contractor shall state the purchase order number on the invoice.

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<sup>1</sup> Active Fontys staff designated as researchers by the Client.

14.5. Invoices shall comply with all (statutory) requirements and will be addressed to:

*Stichting Fontys*  
*PO Box 2*  
*5600 AA Eindhoven*

14.6. The Contractor shall (only) invoice through [Peppol](#).

14.7. The Client shall pay invoiced amounts upon correct invoicing and approval by the Client within 30 days of receipt of the invoice.

14.8. Any additional work performed by the Contractor will be invoiced by the Contractor after completion of the relevant work and only following the Client's express acceptance thereof.

## **15. Guarantee**

15.1. During the term of this Agreement, the Contractor shall guarantee the following with respect to the ICT Solution:

- i. that it contains the agreed features as set out in this Agreement and meets the specifications set out in the Tender Documents and the Contractor's Bid;
- ii. that it has been designed and developed in a manner that is efficient, sound and coherent;
- iii. that it complies with current technical standards;
- iv. that it does not contain any security measures, functions or unusual elements other than those explicitly mentioned in the Documentation;
- v. that all necessary measures have been taken to prevent it from containing viruses, malware or Trojan horses.

## **16. Licences and (intellectual) property rights**

16.1. It is assumed that all licences required for the proper performance of the Agreement will be provided by the Contractor and are included in the prices stated in this Agreement.

16.2. It is assumed that all intellectual property rights, which can or will be exercised – wherever and whenever – with respect to the ICT Solution are vested in the Contractor or their licensor(s).

16.3. The Contractor shall indemnify the Client against all (financial) consequences attributable to the Contractor of claims by third parties (where personnel of the Client are to be regarded as third parties in this respect) regarding copyright infringement. The Contractor shall furthermore guarantee that it has not entered into any agreements with its employees involved in the performance of this Agreement which involve derogations from Section 7 of the Copyright Act. Only the Contractor shall be entitled to take all actions necessary to terminate the continuation of such a breach and the Contractor shall assume the defence of any such claim and reimburse all costs and/or damages to the Client that are eventually awarded by a court. However, the Contractor shall not indemnify the Client against such costs and damages if the breach is a result of:

- i. The Client's use of the ICT Solution or any part thereof in combination with materials, hardware or other items neither provided or to be provided by the Contractor.
- ii. Use of the ICT Solution by the Client other than for which it was designed;
- iii. Modifications by the Client of the ICT Solution or any part thereof other than for which it was designed;
- iv. Failure of the Client to modify the ICT Solution or any part thereof as directed by the Contractor that could have eliminated or prevented the breach.

16.4. The Client or the User respectively is and shall remain the owner of all data generated and/or stored in the performance of the contract as well as any data that exists on and/or is retrieved from other systems of the Client with which integrations have been realised for the benefit of the

ICT Solution. Without prejudice to the above, the data must be accessible and exportable by authorised employees of the Client at all times, free of charge and without restrictions. Exporting all data should be possible with minimal effort, preferably by clicking a single download back-up button. The Contractor is only allowed to use this data for realising the required Performance and providing the desired reports, as included in this Agreement. The Contractor shall in no way be permitted to use this data for its own purposes other than for the performance of the Contract and/or to provide them to third parties, whether or not in anonymised form, without the Client's explicit and prior written consent.

## 17. Duration and termination

17.1. The Agreement shall enter into force on [date of final award].

17.2. The Ready-to-Use delivery phase 1 should have taken place <<six months after final award>> meaning that on this date the ICT Solution including Interfaces can actually be put into use (GO live phase 1). The Ready-to-Use delivery phase 2 should have taken place (GO live phase 2) <<four months after GO live phase 1>>. The foregoing deadlines are strict deadlines.

17.3. The intended term of the Agreement shall be five years, effective from the GO live phase 1 date. After this initial term, the Client has the unilateral option to extend the Contract once for a period of two years, then once for a period of one year. Following these extensions, it will be possible to renew the Contract annually by mutual agreement. The exercise of an option to extend by the Client shall be notified in writing by the Client no later than six months before expiry of the initial contract term or extension term.

With regard to the research portal (module), the Client shall reserve the right to give notice at any time, subject to three (3) month notice period.

17.4. Without prejudice to the Client's right to claim damages or exercise other powers vested in it by law, the Client shall be entitled to terminate all or part of the Agreement by written declaration, with immediate effect, in the event that:

- a. the Contractor is declared bankrupt or has applied for a suspension of payments;
- b. the Contractor's business is liquidated;
- c. a substantial proportion of the Contractor's assets has been seized;
- d. third parties, not being group companies or subsidiaries within the meaning of Section 2:24b and 2:24a of the Dutch Civil Code respectively, acquire direct or indirect control of the activities of the Contractor (change of control) and this is justified by the seriousness of the failure.

17.5. The Client shall be entitled to dissolve this agreement either wholly or in part out of court by registered letter:

- a. without notice of default being required, if
  - A) exclusion criteria as set out in the tender document has become applicable to the Contractor, and/or
  - B) if it appears that an attempt has been made by or on behalf of the Contractor to influence personnel of or persons affiliated with the Client in a positive manner by means of (promised) gifts, rewards or otherwise to be conducive to, for example, the conclusion of this Agreement and aspects of performance of this Agreement, and/or
  - C) if the agreed deadline has expired or if it can be inferred from communication from the Contractor that the Contractor will not perform its duties. Where performance become permanently impossible, damages without default may be attributed directly.
- b. a notice of default and a recovery period of twenty working days, if the Contractor no longer meets one or more of the obligations arising from this agreement.

## 18. Liability and compensation

18.1. In the event of failure to fulfil the obligations under the agreement, the damage to be compensated by the Contractor shall be limited to an amount of €500,000 per event up to a

maximum of €1,000,000 per year. Any related claims will be considered to be one claim.  
Liability shall not be limited if obligations under the data processing agreement are breached.

18.2. All extrajudicial and legal expenses incurred by the Client as a result of the Contractor's failure to comply with its obligations shall be borne by the Contractor.

## **19. Indemnity**

19.1. The Contractor shall indemnify the Client against third-party claims to compensation of loss suffered by third parties as a result of an imputable failure on the part of the Contractor or in connection with an imputable failure on the part of any third party/third parties engaged by the Contractor and or in connection with the use or application of the goods delivered or services provided by the Contractor and/or items that are the property of the Client and that are in use at the Contractor.

## **20. Force majeure**

20.1. In the event of force majeure on the part of the Contractor as referred to in Section 6:75 of the Dutch Civil Code, the Client shall be authorised to terminate the Agreement in writing without this resulting in a right to compensation, or to consult with the Contractor in order to agree on a term for which the parties will suspend compliance with the agreed obligations to await a potential end to the force majeure situation. Force majeure will in any case not include: a lack of personnel, strikes, illness of personnel, a shortage in raw materials, transport problems, delayed delivery, traffic issues, power failures or ICT failures or unsuitability of goods used in the performance of the work, liquidity or solvency problems on the part of the Contractor or default on the part of third parties engaged by it.

## **21. Data and data transfer upon termination**

21.1. In the event of dissolution or expiry and/or non-renewal of the Agreement, the Contractor shall be obliged at the first request of the Client to hand over all data and information necessary for a smooth exit and transfer to a third party.

21.2. Obligations which by their nature are intended to continue even after termination of this Agreement shall remain in force after termination. Termination of this Agreement does not relieve the Parties from what is stipulated with regard to confidentiality, liability, intellectual property, acquisition, applicable law and the competent court.

21.3. The Contractor must ensure that, at the Client's discretion, (i) all or a portion of the data determined by the Client made available at all locations is destroyed, (ii) all or a portion of the data determined by the Client is provided to a successor service provider, or that (iii) the Client and/or Users are given the opportunity to retrieve their data or a portion thereof determined by the Client from the hosted service, if applicable. If necessary, the Client may impose additional requirements on the method of provision, including requirements relating to file format or destruction.

21.4. The Contractor shall at all times guarantee the data portability of the data described in the previous paragraph in such a way that there is no loss of functionality or (parts of) the data.

## **22. Disclosure and confidentiality**

22.1. The Parties shall not in any way further disclose anything that comes to their knowledge in the performance of the Agreement, the confidential nature of which they will be aware of or can reasonably infer, except to the extent that any statutory regulations, a regulator or a court order requires them to disclose such information.

22.2. The Parties shall require their personnel to comply with the duty of confidentiality.

- 22.3. At the request of the Client, the Contractor shall cooperate in the exercise of supervision by or on behalf of the Client regarding the custody and use of confidential information by the Contractor.
- 22.4. The Contractor shall make all data in its possession within the framework of the performance of the Agreement, including any copies made thereof, available to the Client at its first request.
- 22.5. If the obligation of confidentiality is not complied with during the term of the Agreement, the Client will have the right to terminate the Agreement without a notice of default being required. The obligation of confidentiality will continue to apply without limitation after termination of the Agreement. A failure to comply with the duty of confidentiality after termination of the Agreement will result in the Client being entitled to an immediately due and payable penalty of five thousand euros (€ 5,000) per violation, without prejudice to the Client's right to claim any losses actually suffered or to be suffered.

### 23. Miscellaneous

- 23.1. In the event that any individual provision of this agreement is declared invalid by a judgment of the court or otherwise, such invalidity shall not affect the validity of the remaining provisions.
- 23.2. Any changes or additions to the provisions of this agreement shall be effective between the parties only to the extent agreed in writing between the parties. The Client reserves the right to amend or supplement the Agreement during the term of the Agreement if the law requires the Client to make such changes or additions.
- 23.3. The failure by either Party to demand performance of any provision within a period specified in this Agreement shall not affect the right to nevertheless demand performance, unless the Party concerned has expressly agreed in writing to the non-performance.
- 23.4. The Contractor shall not be able to transfer the rights and obligations arising from the Agreement without the Client's consent nor grant any such rights to a third party.

### 24. Disputes and applicable law

- 24.1. This Agreement shall be governed exclusively by Dutch law.
- 24.2. Disputes between the Parties shall be tried exclusively by the competent court of the district of East Brabant.

Drawn up in duplicate and signed:

City/town: .....

City/town: .....

Date .....

Date .....

For agreement,

For agreement,

.....

.....

<<name>>

J. Houterman

<<title>>

President of the Executive Board

City/town: .....

Date .....

For agreement,

.....

Dr. G. Steenbruggen  
Member of the Executive Board

City/town: .....

Date .....

For agreement,

.....

F. Möhring  
Member of the Executive Board

- Annex 1A + 1A-1 + 1A-2:** Processing Agreement, concerning the processing, Standard Contractual Clauses
- Annex 2:** Information Memorandum/memoranda
- Annex 3:** Tender document Research Information System
- Annex 4:** Contractor Bid