



AGREEMENT
Implementation, Hosting, Maintenance and Support
of the Midpoint solution
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. Houtermann (chair) and G. Steenbruggen (member), hereinafter referred to as: 'the Client'

and

[[name of contractor]], with its registered office in [[city/town]], Netherlands Chamber of Commerce 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 the Implementation, Hosting, Maintenance and Support of the Midpoint solution;
- the Client put out a European tender for this purpose under number TN 553831 on [[date]];
- the Contractor submitted a bid on [[date]];
- the Client definitely awarded the tendered Assignment to the Contractor on [[date]];
- The Client and the Contractor wish to lay down the arrangements regarding the performance of the tendered Assignment in an agreement.

agree as follows:

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1. Terms

This article sets out definitions for a number of terms which are capitalised in this 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. Assignment: the assignment, as further described in the Tender documents, which has been awarded by the Client to the Contractor within the framework of this tender "Implementation, Hosting, Maintenance and Support of the Midpoint solution".
- 1.2. Acceptance: the Client's approval of the object of Acceptance based on the Acceptance test as defined in this Agreement.
- 1.3. 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.
- 1.4. 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.
- 1.5. Agreement: this Agreement including the associated Annexes.
- 1.6. Annexes: the appendice(s) to this Agreement which form an integral part thereof.
- 1.7. Availability: the extent to which the ICT Solution is actually available to the Client and can be used.
- 1.8. Bid: An offer validly submitted by a Bidder in response to the Tender document provided by the Contracting Authority.
- 1.9. 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.
- 1.10. Conversion: the set of measures and activities necessary to transfer the Client's data files from the old system to the new ICT solution, without modifying the completeness, integrity and metadata of the data.
- 1.11. Corrective Maintenance: performance by which the Contractor ensures that Defects in the ICT Solution are resolved.
- 1.12. 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.
- 1.13. 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.
- 1.14. Development: performance consisting of the creation of customised Interfaces and/or new functionality to be developed as part of the architecture of the ICT Solution.
- 1.15. 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.
- 1.16. Documentation: all descriptions agreed upon in respect of the management, training and use of the ICT Solution (including Interfaces).
- 1.17. Functional management: the support of the functional, organisation-specific set-up of the ICT Solution such as assigning authorisations and user instructions.
- 1.18. 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.
- 1.19. 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.

- 1.20. ICT solution: the Midpoint software solution by Evolveum, provided as open source software under its applicable open source license (Apache 2.0)
- 1.21. Implementation: performance consisting of the process of various activities and measures such as installation, parameterisation, setting up, interfacing with existing ICT Solutions, conversion, migration and training for the functional and technical commissioning of the ICT Solution envisaged by the Client.
- 1.22. Incident: a disruption in the availability and/or usability of the ICT Solution, whether or not caused by a Defect.
- 1.23. Installation: performance consisting of installing and configuring the ICT Solution on the equipment and connecting it (technically) to the ICT Infrastructure.
- 1.24. 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.
- 1.25. Maintenance: performance consisting of the entirety of Adaptive Maintenance, Corrective Maintenance, Preventive Maintenance and Upgrade Maintenance, as defined in the Tender documents.
- 1.26. Migration: the set of measures and activities aimed at the transition of the existing work processes and data in the current systems to the work processes and systems that are part of the ICT solution to be implemented by the Contractor.
- 1.27. New version: modified version of the ICT Solution, extending its functionality through Upgrade or Adaptive Maintenance.
- 1.28. 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.
- 1.29. Office hours: office hours are from 09:00 to 17:00 CET on Working Days.
- 1.30. 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.
- 1.31. 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).
- 1.32. 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).
- 1.33. Support: Support shall in any case mean the acceptance and resolution of Defects, breakdowns, Incidents and questions from the Client by a helpdesk.
- 1.34. Technical Management: maintaining the ICT Solution, as described in the Tender documents.
- 1.35. Tender document: the Invitation to Tender including its annexes, included as Annex 3.
- 1.36. Upgrade maintenance: adjusting, improving and/or extending the functionality of the ICT Solution other than through Corrective, Adaptive and Preventive Maintenance.
- 1.37. User(s): a (natural) person in any way affiliated with Fontys, such as Fontys employees, students and/or clients, who is authorised by the Client to access (a certain part of) the ICT Solution.
- 1.38. Workaround: temporary programme workaround or problem-avoidance restriction as a result of which Client is no longer significantly inconvenienced by the Defect.
- 1.39. 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. Subject of this Agreement

- 2.1. The Contractor shall, in accordance with the provisions of this Agreement and in accordance with all legal requirements applicable thereto, undertake to perform the Performances as described in this Agreement. Broadly speaking, the Performance consists of the Implementation, Hosting, Maintenance and Support of the Midpoint solution, to be provided as Software as a Service (SaaS), for the benefit of Identity Governance and Administration (IGA).

2.2. The following documents, dated as set out in the recitals above, shall form part of this agreement and jointly constitute the basis for the rights, obligations and Performances between the parties.

- a. This Agreement including annexes;
 - Processing agreement, Annex 1A;
 - Concerning the processing, Annex 1A-1;
- b. Memorandum/memoranda of information, Annex 2;
- c. Tender document "Implementation, Hosting, Maintenance and Support of the Midpoint solution, Annex 3;
- d. Contractor bid, Annex 4.
- e. Hosting, maintenance and support terms/SLA

In the event of any contradictions between the Agreement and its Annexes, the order of precedence set out in this Article shall apply, with sub a 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.

Any general delivery and payment terms of the Contractor or any other general or special terms and conditions shall expressly not apply, unless otherwise agreed in writing.

2.3. The Contractor acknowledges that it has been adequately informed of the Objectives, organisation and circumstances of the Client in relation to this Agreement, as set out in the Annexes.

2.4. The Parties shall keep each other informed of developments within their respective organisations that are relevant to the performance of this Agreement.

2.5. The Client reserves the right to commission products and/or services related to the Assignment from the Contractor, the need for which has arisen during the term of the Agreement as a result of evolving insights. In such case, the Parties shall make further arrangements in this regard and record them in writing.

2.6. Amendments or additions to the provisions of this agreement shall only be effective between the parties if agreed upon in writing. In addition, 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.

3. Duration of this Agreement

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

3.2. The Ready-to-Use delivery phase 1 (technical rollout) should have taken place nine months after final award, meaning that on this date the ICT Solution including Interfaces can actually be put into use (GO live phase 1). After the intention to award the Agreement, the maximum period of nine months (phase 1) may be shortened in consultation. The Ready-to-Use delivery phase 2 (business rollout) should have taken place (GO live phase 2) twelve months after GO live phase 1¹. The foregoing deadlines are strict deadlines.

The intended term of the Agreement shall be four years, effective from the GO live phase 1 date. After this initial term, the Client has the unilateral option to extend the Contract twice for a period of two years. Following these extensions, it will be possible to renew the Contract annually by mutual agreement.

3.3. 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 any extended term. Any contract extensions shall be subject to the terms and conditions of this Agreement in full.

¹ If the Client decides to create interfaces themselves, these interfaces are excluded.

4. Implementation

4.1. The Contractor shall be responsible for the Implementation of 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 implementation plan (phase 1 technical rollout) submitted during the tender process serves as the basis for the plan mentioned in this article. For phase 2, the Contractor will also draw up an implementation plan, which 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 (paragraph 3.1.4).
- The described demarcation from the Tender document (paragraph 3.1.5).
- The Contractor's project manager reports to the Client's projectmanager. The Clients' projectmanager will report to the steering committee IAM.

The implementation plan shall contain at least the following components:

- Project description
 - Objectives
 - Scope
 - Principles and framework conditions
- Approach and results
 - Set-up
 - Data migration
 - 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 Tender documents.

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 Bid.
- 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.
- Chain integration test: The tests shall be organized by the Contractor. The tests will take place within a test environment of the Contractor and will be carried out on the basis of a test plan to be drawn up by the Contractor and approved by the Client. The Client shall assist the Contractor and provide the necessary qualitative cooperation.
 - User acceptance test: The tests shall be organized by the Client. The tests will take place within a (test) environment of the Contractor and will be carried out on the basis of a test plan to be drawn up by the Client and approved by the Contractor. The Contractor shall assist the Client 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 16 (termination) 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 (technical rollout): If the ICT Solution, including Interfaces, is not delivered Ready-to-Use (GO live phase 1: technical rollout) by the agreed date of nine 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 €50.000 will be charged to the Contractor, without prejudice to the right to claim damages.
- GO live phase 2 (business rollout): If the ICT Solution, including Interfaces, is not delivered Ready-to-Use (GO live phase 2: business rollout) by the agreed date of twelve months after GO live phase 1 or is rejected by the Client, as a result of an attributable failure on the part of the Contractor, an immediately payable penalty of €50.000 will be charged to the Contractor, without prejudice to the right to claim damages.

6. Management and hosting

- 6.1. The Contractor bears full responsibility for the Technical Management of the ICT Solution provided, in accordance with the provisions of the Tender documents.
- 6.2. 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.
- 6.3. The Contractor is responsible for carrying out the Hosting of the ICT Solution provided, in

accordance with the provisions of the Tender documents.

- 6.4. The Contractor shall not transfer personal data to or make it accessible from a country outside the EEA.

7. Maintenance and support

- 7.1. Maintenance shall be provided 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.

Maintenance of the Midpoint core software is out of scope since this is performed by Evolveum. The Contractor will make use of this and handle the coordination of the relevant Evolveum maintenance.

- 7.2. Maintenance and Support shall be performed in line with a Service Level agreed between the Parties as referred to in Article 8. The service levels apply to the entire Midpoint solution offered, including the underlying hosting infrastructure, Midpoint core software, and Interfaces for various source and target systems.
- 7.3. The Contractor guarantees that it has sufficient manpower, knowledge and expertise to properly carry out the Maintenance and Support.
- 7.4. All Maintenance will be carried out without interruption and as soon as possible.
- 7.5. 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.
- 7.6. 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.
- 7.7. 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.
- 7.8. 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.
- 7.9. The Contractor shall make release notes available simultaneously with each modification of the ICT Solution.
- 7.10. 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.

8. Service level

The minimum SLA requirements and conditions are, among others, specified in this article. Points awarded under sub-award criterion 3 SLA shall be incorporated into the final Agreement with the Contractor.

- 8.1. The Contractor shall take measures to ensure that the ICT Solution 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.
- 8.2. 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. There is also the option of reporting Incidents and Defects 24/7 via an online portal. For Priority 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.

8.3. 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.

8.4. Availability. The ICT Solution shall have a minimum availability of **99%** (24/7/365, excluding scheduled maintenance) (**sub award criterion SLA**). Availability shall be measured over a period of one (1) year.

8.5. 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).

8.6. The downtime for the purpose of scheduled Maintenance shall not exceed 8 hours per month.

8.7. Resolution times for Incidents will take place according to the matrix below, with the Client determining the priority of an Incident:

Incident class	Resolution time (time elapsed between the moment the Incident is reported and its final resolution, measured within the applicable Service Window)
Priority 1 Critical	8 hours (sub award criterion SLA)
Priority 2 High	16 hours (sub award criterion SLA)
Priority 3 Medium	TBD before final award
Priority 4 Low	TBD before final award

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

Priority 1 Critical	All primary functions are unavailable and this affects the entire service. - Incidents classified as security-related, such as data loss, unauthorized disclosure of information, or similar, shall be categorized as P1 - Critical. - Incidents related to self-service shall be classified as P1 – Critical
Priority 2 High	Several primary functions are unavailable, affecting a large number of users. There is a significant impact on business operations.
Priority 3 Medium	TBD before final award
Priority 4 Low	TBD before final award

8.8. The performance of the ICT Solution must consistently be at an acceptable level so that the Client's users can use it adequately.

8.9. Monitoring. 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.

8.10. If the agreed Availability is not achieved during the specified period (year), a discount of **5%** (**sub award criterion SLA**) of the periodic costs shall be applied to the next quarterly invoice (periodic costs).

8.11. If the resolution time for P1 and/or P2 Incidents is not met within the specified period of time, a discount of **5%** (**sub award criterion SLA**) of the periodic costs shall be applied tot the next quarterly invoice (periodic costs).

8.12. The Recovery Time Objective (RTO) / service recovery after Incidents is a maximum of 4 hours and the Recovery Point Objective (RPO) / recovery point and acceptable data loss after Incidents is a maximum of 8 hours. This must be guaranteed at all times

8.13. After provisional award, the parties will jointly agree the details of the SLA (including escalation procedure, resolution times (prio 3 and 4) etc.).

9. Version policy

- 9.1. The Contractor shall actively monitor the Evolveum Midpoint software release calendar. The Contractor shall advise the Client in writing on the relevance, risks and timing of each release.
- 9.2. Automatic upgrading of the ICT Solution shall not take place. The Contractor shall only implement new releases after prior written approval of the Client. The Contractor shall coordinate with the Client regarding testing, acceptance and the go-live moment of each release.
- 9.3. The Contractor shall ensure that the Client has timely access to release notes, documentation and pre-release versions (if made available via the subscription) for testing. A test environment shall be provided to assess the impact of a release.
- 9.4. The Contractor is obliged to modify the functionality of the ICT Solution in a timely manner to comply with legal obligations or sectoral guidelines that are necessary from a good governance perspective. The Contractor must notify the Client well in advance.
- 9.5. New versions shall be considered part of this Agreement from the day they are added to the ICT Solution

10. Documentation

- 10.1. 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 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.
- 10.2. 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.
- 10.3. 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 three (3) months, 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.

11. Guarantee

- 11.1. 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.

- 11.2. The Contractor guarantees that, throughout the term of the Agreement, it shall at all times comply with all applicable laws and regulations, including obligations relating to safety, privacy, the environment, working conditions, taxes, social security, and the Foreign Nationals Employment Act.
- 11.3. 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.

12. Prices and rates

- 12.1. The following prices and rates apply to the performance of the Agreement.
<<insert table price sheet>>.
- 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. The periodic costs for Hosting, Maintenance and Support are fixed, may be indexed in accordance with article 12.7, and include up to twelve (12) active Interfaces. These costs may be invoiced as of date Ready-to-Use Delivery phase 1 (see article 14 Invoicing and payment).
- 12.4. If the number of active Interfaces exceeds twelve (12), an additional fee per interface shall apply.
- 12.5. As of each 31 December, the periodic costs for Hosting, Maintenance and Support shall be recalculated based on the actual number of active Interfaces for the following calendar year, with a minimum of twelve (12) Interfaces applying at all times.
- 12.6. The costs for support related to Development shall be derived from the specifications submitted by the Contractor as part of its Bid (specification one-off costs phase 1 and phase 2), unless otherwise agreed in writing by the Parties.
- 12.7. The periodic costs described in this article may be indexed annually, for the first time as of 1 January 2027 by a maximum of the annual change in the Service Price Index (SPI), Commercial Services and Transport (2021=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/#/CBS/nl/dataset/85817NED/table?dl=C1D58>
- As an example, if periodic costs were to be indexed on 1 January 2025, the maximum price adjustment would have been 4,3% (annual change third quarter 2024).
 - The Contractor shall submit the new prices, including a calculation, no later than two months prior to the start of the new year via contractbeheer@fontys.nl. The calculation will be reviewed by the Contracting Authority. Price adjustments may only be implemented after written approval. Interim price changes or catch-up adjustments are not permitted.
 - The Client reserves the right, in the event of negative price developments, to implement the indexation.
 - If CBS changes the base year, the most current series shall be applied.

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 costs will take place as follows:

- a. Phase 1 technical rollout: The one-off costs will be invoiced pro rata on a monthly basis based on the progress report approved by the Contractors project manager. The last 25% of the one-off costs for phase 1 can only be invoiced after Ready-to-Use delivery of phase 1 technical rollout.
 - b. Phase 2 business rollout: The one-off costs will be invoiced per interface retrospectively after the ready-to-use delivery of the relevant interface.
- 14.2. Invoicing of periodic charges will take place retrospectively on a quarterly basis, for the first time and not earlier than at the end of the first quarter after date of Ready-to-Use Delivery Phase 1 technical rollout.
- 14.3. Invoicing of all consultancy hours for Development (after phase 2) shall be charged after written approval by the Fontys Project Owner.
- 14.4. The Contractor shall invoice the amounts payable by the Client in a properly specified manner, in accordance with this Agreement and the Tender Documents
- 14.5. Each invoice shall reference only one (1) purchase order number. The relevant order number must be clearly stated on the invoice. Invoices shall comply with all statutory requirements and be addressed to:
- Fontys Hogeschool*
Rachelsmolen 1
5612 MA Eindhoven
- 14.6. The Contractor shall invoice exclusively via Peppol. For more information, see: www.fontys.nl/Over-Fontys/Contact-en-locaties/Fontys-Financien-Inkoop
- 14.7. The Client shall pay invoiced amounts, provided that the invoice is correct and approved by the Client, within 30 days of receipt of the invoice.
- 14.8. Additional work shall be invoiced separately by the Contractor only after completion of the relevant work and upon the explicit acceptance thereof by the Client

15. Staff

- 15.1. The Contractor shall only engage competent personnel for the performance of this Agreement.
- 15.2. The project team proposed by Contractor in its Bid will actually carry out the Implementation.
- 15.3. Personnel involved in the performance of the Agreement shall be proficient in both spoken and written English and/or Dutch.
- 15.4. If Contractor personnel work at the Client's premises, the Contractor shall ensure that its personnel complies with the Client's applicable [house rules](#).
- 15.5. The Contractor shall endeavour to have the work performed by or under the responsibility and supervision of a single designated person, so that knowledge regarding the performance of the Agreement is optimally utilized and the situation at the Client is properly managed.
- 15.6. 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.
- 15.7. 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.

16. Termination

- 16.1. 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.

- 16.2. 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
 - i) exclusion criteria as set out in the Tender document has become applicable to the Contractor, and/or
 - ii) 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
 - iii) 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. with 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.

17. Liability and compensation

- 17.1. In the event of a failure to comply with the obligations under the Agreement, the Contractor shall be liable. The Contractor's liability towards the Client for damages shall be limited to an amount of €2.500.000,-- per event, with a maximum of €5.000.000,-- per year. Any related claims will be considered to be one claim.
- 17.2. The limitations of liability set out in clauses 17.1 and 17.2 shall not apply in the following cases:
- In the event of intent or gross negligence on the part of the Contractor and/or its personnel.
 - In the event of breach of obligations under the applicable Data Processing Agreement. Damages shall also include fines imposed by the supervisory authority.
 - In the event of claims for damages resulting from death or personal injury.
 - In the event of infringement of intellectual property rights, except for claims solely arising from the use of unmodified open source software in accordance with its license terms.
 - In the event of breach of obligations under labor law, tax law, or social security law.
- 17.3. All extrajudicial and judicial costs incurred by the Client as a result of non-performance by the Contractor shall be borne by the Contractor.

18. Indemnity

- 18.1. 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, except to the extent that such claims arise solely from the use of the open source MidPoint software as provided under its applicable open source license (Apache 2.0). The Contractor remains liable for any modifications, integrations, or custom developments made to the open source software specifically for the Client.

19. Force majeure

- 19.1. 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.

- 19.2. 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.

20. Licences and Intellectual Property

- 20.1. All licences for any third-party components, modules, or extensions provided by the Contractor to properly perform this Agreement shall be supplied by the Contractor and included in the prices stated in this Agreement. The open source software itself (e.g., Midpoint) is provided under its applicable open source license (Apache 2.0), and no fees or licences for the base software are included or required.
- 20.2. Any configurations, custom developments, modifications, or integrations created by the Contractor specifically for the Client in the performance of this Agreement shall either:
- (i) become the property of the Client upon delivery, or
 - (ii) remain the property of the Contractor, in which case the Contractor grants the Client a perpetual, irrevocable, worldwide, royalty-free right to use, reproduce, modify, further develop, and share such work without any restrictions.
- 20.3. The Contractor retains intellectual property rights only on modifications, extensions, customizations, and deliverables specifically created for the Client under this Agreement unless ownership is transferred as set out in 20.2(i). Nothing in this Agreement transfers the Contractor's IP rights in any pre-existing open source software.
- 20.4. The Contractor shall indemnify and hold the Client harmless against all claims, damages, and costs arising from alleged copyright or intellectual property infringement solely related to modifications, extensions, or deliverables created by the Contractor under this Agreement. Only the Contractor shall be entitled to take all actions necessary to terminate the continuation of such a breach and manage the defence of any such claim, reimbursing all costs and/or damages to the Client eventually awarded by a court. The Contractor shall not be liable for claims related to the base open source software used in accordance with its license terms. However, the Contractor shall not indemnify the Client if the infringement is caused by:
- i. the Client's use of the ICT Solution in combination with materials, hardware, or other items not 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 implement modifications as directed by the Contractor that could have prevented the breach.
- 20.5. The Client or the User shall remain the owner of all data generated and/or stored in the performance of the Agreement, including data involved in Conversion or Migration, and any data retrieved from other systems of the Client via integrations implemented for the ICT Solution. Such data must always be accessible and exportable by authorized Client personnel, free of charge and without restrictions. The Contractor may only use this data to perform the Agreement and provide the agreed reports, and shall not use or share the data for any other purpose without the Client's prior written consent.
- 20.6. The Contractor shall ensure that the latest source code, documentation, or other materials necessary for the Client to exercise the rights under this Article are provided and maintained, including any updates or modifications made during the term of this Agreement.

21. Disclosure and confidentiality

- 21.1. 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.

- 21.2. The Parties shall require their personnel to comply with the duty of confidentiality, both during and after the term of the Agreement.
- 21.3. 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.
- 21.4. 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. This does not apply to information that the Contractor is required to retain pursuant to laws or regulations, or under generally accepted professional standards applicable to the Contractor.
- 21.5. The confidentiality obligations shall remain in effect indefinitely, even after the termination of the Agreement. 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 with immediate effect, without prior notice of default being required. In the event of a breach of confidentiality, the Client shall have the right to impose an immediately payable penalty of five thousand euros (€5,000) per violation on the Contractor, without prejudice to the Client's right to claim compensation for actual and/or future damages.
- 21.6. The Contractor shall not disclose any information regarding the Agreement to third parties or make it public without the prior written consent of the Client, nor shall the Contractor reference it in external publications or promotional materials.

22. Termination of the Agreement

- 22.1. In the event of termination, expiration, 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 the Client or a successor contractor.
- 22.2. The Contractor shall 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.
- 22.3. 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.
- 22.4. 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.

23. Miscellaneous

- 23.1. The Contractor is not entitled, without the prior written consent of the Client, which may be subject to conditions, to assign, pledge, or otherwise transfer any rights and/or obligations under this Agreement to third parties. The non-transferability referred to in Article 3:83 (2) of the Dutch Civil Code has effects under property law.
- 23.2. 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.
- 23.3. 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.

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:

Date

For agreement,

.....

<<name>>

<<title>>

City/town:

Date

For agreement,

.....

J. Houterman

President of the Executive Board

City/town:

Date

For agreement,

.....

Dr. G. Steenbruggen

Member of the Executive Board