



General Purchasing Conditions Healthcare (GPCH)

Module Information and Communication Technology (ICT)

General Purchasing Conditions in Healthcare (GPCH) from the Dutch Hospital Association (NVZ), Association of the Care for People with Disabilities in the Netherlands (VGN), ActiZ, organization of healthcare entrepreneurs, Dutch Mental Health Care (GGZ), Dutch Procurement Association (Nevi), Intrakoop, the healthcare purchase cooperative, Purchase Alliance Hospitals (IAZ), Santeon, Purchase Cooperation Friesian Hospitals (IFZ), mProve and Zorgservice XL. This Information and Communication Technology (ICT) Module may be declared applicable to agreements to be concluded between institutions affiliated to the aforementioned sector associations and suppliers, together with the “General Purchasing Conditions Healthcare”, which were filed with the District Court of The Hague on 14 November 2022, under file number 2022/33. The ICT Module was filed with the District Court of The Hague on 11 September 2024, under file number 21/2024.

Intrakoop



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Article 1 Additional ICT Definitions

Acceptance: The approval of components of the Equipment, Software, Custom Software and/or results of the ICT Services provided by Supplier.

Acceptance Test: The test used to determine if the Equipment, Software, Custom Software and/or results of the ICT Services provided by Supplier meet the agreed Specifications.

Equipment: The hardware to be delivered or deployed based on the Agreement for the use of the most recent version of the Software and/or Custom Software, along with supplementary facilities, accessories and accompanying Documentation.

Documentation: System and user manuals accompanying the Equipment, Software and/or Custom Software, containing details of their structure, composition and configuration, including project documentation and Specifications.

ICT Service: Non-material services or work performed by Supplier for Client as part of the ICT Performance, such as, but not limited to, Implementation and Installation.

ICT Performance: All ICT Services and/or ICT Products delivered, offered or performed by Supplier for Client.

ICT Product: All Software, Custom Software and/or Equipment delivered or offered by Supplier, possibly in combination, to Client.

Implementation: Setting up, configuring and preparing the Equipment, Software and/or Custom Software for use and familiarizing the user with the functionality.

Installation: The connection and/or provision of the Equipment, Software and/or Custom Software.

License: The right to use the Software and/or Custom Software in accordance with the provisions of the Agreement. This right is non-exclusive, non-transferable, non-sublicensable or otherwise assignable to third parties. It includes the right to use the relevant Documentation and to use the Software in a Development, Testing, Acceptance and Production environment (DTAP).

Custom Software: Software or parts thereof (including Updates and Upgrades) specifically developed for Client by Supplier according to the Specifications agreed upon by both Parties, which are not part of Supplier's standard software. This includes associated Documentation and Materials.

Maintenance: Maintenance activities aimed at ensuring that the Software and/or Custom Software continues to meet the required standards during the Agreement's term (preventive) and fixing errors in the Software during the Agreement's term.

Software: Software, including all new versions thereof, with accompanying Documentation for which Supplier has granted Client a usage right and/or is to be maintained by Supplier.

SaaS Service: The 'remote' provision and maintenance of Software and/or Custom Software by Supplier for Client via the internet or another network, without providing Client with a physical medium containing the relevant Software and/or Custom Software. It includes additional services such as data storage, Software maintenance and the required ICT infrastructure and backups.

Specifications: The functional or technical specifications, included in a document describing the functions and data to be incorporated into the Software and/or Custom Software or the properties of the Equipment.

Test Report: The results and any approval of the Acceptance Test, recorded in writing in a test report.

Update: Adjustments to the ICT Product, both software and hardware-related, aimed at maintaining or improving its operation according to the agreed Specifications. Updates are offered by Supplier free of charge unless otherwise agreed.

Upgrade: Expansion of the ICT Product, both software and hardware-related, aimed at expanding its operation according to the agreed Specifications. Upgrades are offered by Supplier free of charge unless otherwise agreed.

Article 2 General Provisions

- 2.1 The definitions from the GPCH 2022 (i.e., the general section) apply unless this module specifies otherwise.
- 2.2 Supplier and Client may declare this ICT Module applicable to the Agreement for the development of Custom Software by Supplier at the request of Client, for the procurement of SaaS services, IaaS, PaaS and other current and future ICT Services from Supplier by Client and/or for the procurement of Products and/or ICT Services, where Software plays a predominant and independent role. This module may also be declared applicable for other ICT Services and ICT Products by both Parties.
- 2.3 Supplier is required to implement a form of information security. This security must be effective given the current state of technology and the sensitivity of the data. The costs associated with implementing the security must be reasonable. In addition, Supplier guarantees that it will continue to comply with the applicable regulations concerning information security in healthcare, including ISO 27001/2 or, in cases where Supplier processes personal health information for or on behalf of Client, NEN 7510, 7512 and 7513 or an equivalent international standard.
- 2.4 Access or identification codes and certificates provided by or on behalf of one Party are confidential and will be treated as such by the other Party.
- 2.5 Supplier will endeavor to ensure that the Software and/or Custom Software is as error-free and uninterrupted as possible. Supplier will make efforts to resolve errors in the Software and/or Custom Software as quickly as possible. In consultation with Client, the correction of Deficiencies may be postponed until a new version of the Software and/or Custom Software is deployed. Furthermore, a temporary solution may be provided after approval by Client.
- 2.6 In the development of Software and/or Custom Software, Supplier will align with changes in mandatory laws and regulations and, as much as possible, with changes in relevant laws and regulations.

Article 3 Intellectual Property for ICT

- 3.1 Supplier grants Client a License for all Software and/or Custom Software delivered by Supplier, as well as for the Software and/or Custom Software associated with the Equipment, for the duration of the Agreement. The License cannot be terminated by Supplier except as provided in the Agreement.
- 3.2 Client is entitled to make and use copies for non-production environments unless otherwise agreed.
- 3.3 The intellectual property rights that can be exercised anywhere and at any time regarding Custom Software belong to Client. These rights are transferred to Client upon signing the relevant Agreement, or, if necessary, by a separate deed after Acceptance. Supplier will provide all necessary cooperation to this end.
- 3.4 In the case of modification or improvement of the Software and/or Custom Software, the intellectual property rights related to the modified or improved Software and/or Custom Software will belong to the Party that holds the intellectual property rights for the original Software and/or Custom Software.

- 3.5 Supplier indemnifies Client against any claims from third parties based on the assertion that Custom Software, websites, databases, Equipment or other materials developed by Supplier infringe on a third party's intellectual property rights.
- 3.6 Supplier indemnifies Client against claims from third parties concerning infringements of intellectual property rights of those third parties, including similar claims related to know-how, unlawful competition and the like. Supplier is obligated to take, at its expense, all measures that can help prevent delays for Client and minimize any additional costs and/or damages incurred by Client as a result of such an infringement.
- 3.7 Supplier is not permitted to disclose or make Custom Software available to third parties unless written permission has been obtained from Client. Client may attach conditions to this permission.
- 3.8 Supplier commits to providing all necessary cooperation, upon Client's first request, for the deposit of the source codes and associated technical Documentation related to the Custom Software. Supplier will also ensure that Client receives an individual release right concerning the deposited materials, in cases where, for example, the continuity of Client's business operations is threatened or at risk. Upon release of the deposit, Client will receive a License to use the source code and Documentation for its own purposes, such as using and maintaining the source code and Documentation.
- 3.9 Client is entitled, at its own expense, to have the source codes and associated technical Documentation examined by an independent expert just before or immediately after filing. Supplier is obliged to lend the necessary cooperation to the examination, which may include examining:
 - whether the source code consistently generates a correct machine version of the Custom Software, as used by Client at that time (regenerability);
 - whether the source code is suitable for allowing a third party, other than Supplier, to perform continuous and efficient Maintenance or modifications to the Custom Software;
 - whether the source code contains viruses.

Article 4 Installation and Implementation

- 4.1 Supplier shall complete the Installation and Implementation of the ICT Product in accordance with the agreed terms after its delivery.
- 4.2 As part of the Installation and Implementation, Supplier will conduct a test to ensure that the ICT Product functions correctly, both in terms of its individual components and as a whole, as well as in conjunction with the Equipment, Software and/or Custom Software.
- 4.3 Once Supplier believes the Implementation has been completed, Client will be notified in Writing by Supplier, after which the Acceptance Test can take place.
- 4.4 The Implementation also includes training to familiarize Client and its staff with the use of the ICT Product. This training will be provided by experts who are qualified and competent. The training will, where possible, be conducted by the experts involved in the Implementation.
- 4.5 This article does not affect the provisions regarding warranty, as described in Article 12 of the general section of the GPCH and Article 5 of this module.

Article 5 Determination of Acceptance of ICT Performance

- 5.1 The Parties shall conduct an Acceptance Test in accordance with the agreed terms. The Acceptance Test is specified separately in an annex to the Agreement. If this Acceptance Test is not included, the Acceptance Test in Article 6 will apply.
- 5.2 If the initial execution of the Acceptance Test does not result in the approval of the ICT Performance, Supplier will immediately proceed with corrections, after which the Acceptance Test will be repeated. A second Test Report will record whether the Deficiencies noted in the first Acceptance Test Report have been resolved and whether the ICT Performance has subsequently been approved.
- 5.3 If the ICT Performance is again rejected by Client after the second Acceptance Test, Client is entitled to terminate the Agreement in whole or in part without judicial intervention or further notice of default. This does not affect Client's right to compensation or the option to allow Supplier to rectify the Deficiencies at its own expense.
- 5.4 The results and any approval of the Acceptance Test will be documented in Writing in the Test Report, which will be signed by both Parties.
- 5.5 If the ICT Performance is approved by Client, the date of Client's signature on the Acceptance Test Report will be considered the date of Acceptance.
- 5.6 Deficiencies that, by their nature and/or quantity, do not reasonably prevent business use will not be grounds for withholding approval, without prejudice to Supplier's obligation to rectify such Deficiencies free of charge within an agreed-upon timeframe.
- 5.7 If the ICT Performance is accepted with reservations, the acceptance date will be the date when all conditions set by Client have been met. Client will notify Supplier in Writing when these conditions have been fulfilled.
- 5.8 Payment to Supplier does not imply Acceptance.

Article 6 Acceptance Test

- 6.1 Acceptance will only occur after an Acceptance Test.
- 6.2 Errors are defined as the failure of the Software and/or Custom Software to meet the Specifications provided by Supplier in Writing. Such an error must be reproducible.
- 6.3 The testing period for an Acceptance Test is 14 days.
- 6.4 During the Acceptance Test, Client must verify whether the delivered Software and/or Custom Software meets the Specifications communicated in Writing by Supplier and the requirements indicated by Client.
- 6.5 The Acceptance Test period begins at the time of delivery or if Installation and Implementation by Supplier has been agreed in Writing, 14 days after the completion of Installation and Implementation.

- 6.6 The Software and/or Custom Software will be deemed accepted between the Parties:
- if the errors described in the Test Report have been resolved;
 - if Client uses the Software and/or Custom Software for productive or operational purposes: at the time of the relevant commissioning.
- 6.7 If the Acceptance Test reveals that the Software and/or Custom Software contains errors, Client must report the test results to Supplier in Writing no later than the last day of the test period as stated in Article 6.3. Supplier will resolve the reported errors within a reasonable timeframe. The proposed solutions will be presented to Client before implementation.
- 6.8 If the Software and/or Custom Software is delivered and tested in stages and/or components, the non-acceptance of a specific stage and/or component does not affect the Acceptance of an earlier stage and/or component.
- 6.9 Acceptance of the Software and/or Custom Software implies that Supplier has fulfilled its obligations regarding the provision and delivery of the Software and/or Custom Software and if the Installation of the Software and/or Custom Software by Supplier has also been agreed, its obligations regarding Installation and Implementation.

Article 7 Cooperation Obligations

- 7.1 Supplier will familiarize itself with the objectives that Client aims to achieve by entering into the Agreement. Client shall, both upon request and proactively, provide Supplier with all relevant information that contributes to this goal. Client guarantees the accuracy and completeness of the information provided for this purpose.
- 7.2 Client's workspace and facilities will comply with all legal requirements. Client will inform Supplier's personnel of any house and security regulations in effect at Client's premises before the start of the work.
- 7.3 If Supplier provides Software/Custom Software, Equipment or other resources in connection with Supplier's ICT Performance, Supplier is responsible for obtaining all necessary Licenses or approvals for the resources it may require.
- 7.4 If the Software and/or Custom Software is only to be used in combination with specific Equipment, Client is entitled, in the event of Equipment failure, to use the Software and/or Custom Software on other Equipment with the same specifications for the duration of the malfunction.

Article 8 Maintenance

- 8.1 If agreed, Supplier will perform preventive Maintenance on the Software and/or Custom Software specified in the Agreement. The maintenance obligation includes resolving errors in the Software and/or Custom Software as defined in Article 6 and, if agreed, making new versions of the Software available in accordance with Article 9.
- 8.2 Client shall report any errors in the Software and/or Custom Software in as much detail as possible. Upon receiving the report, Supplier will ensure that these errors are resolved within a reasonable timeframe. Client will discuss with Supplier the urgency and when the improvements will become available. Temporary solutions or workarounds to avoid the problem are only permitted with Client's Written consent.
- 8.3 If the preventive Maintenance pertains to Software and/or Custom Software that was not originally provided by Supplier to Client, Client shall, if necessary, provide the source code and technical (development) Documentation for the Software and/or Custom Software (including data models, designs, change logs, etc.). Client will only provide this if it is entitled to do so. Client grants Supplier the right to use and modify the Software and/or Custom Software, including its source code and technical (development) Documentation, as part of the agreed preventive Maintenance.
- 8.4 If Supplier retains the Equipment for maintenance purposes, Supplier assumes the risk of loss, theft or damage to the Equipment.

Article 9 New Versions of Software

- 9.1 If a Supplier is considering discontinuing a functionality, this is only allowed after receiving approval from Client. This approval must be documented in Writing.
- 9.2 Under no circumstances may a new Update lead to limitation of the ICT Performance in the existing environment.
- 9.3 After the release of a new version of the Software, Supplier is obliged to support the last two versions prior to this and/or to support the older versions for at least 24 months.
- 9.4 Supplier shall consult with Client in a timely manner if it is necessary to adjust Equipment for the proper functioning of the Software.
- 9.5 Updates and Upgrades must comply with the applicable laws and regulations.
- 9.6 To the extent possible, Supplier shall communicate in advance to Client about expected Updates and Upgrades.

Article 10 Support

- 10.1 If Supplier's services under the Agreement include support for users and/or administrators of the Software and/or Custom Software, Supplier will provide advice on the use and functioning of the Software and/or Custom Software. The Parties will agree on the qualifications and the number of people eligible for support.
- 10.2 If Supplier's services under the Agreement include the provision of so-called 'standby services', Supplier will ensure adequate support. In such cases, Client is entitled to call upon the standby personnel for urgent support if there is a malfunction in the operation of the Software and/or Custom Software. Supplier guarantees that malfunctions will be resolved in a timely manner.
- 10.3 Preventive Maintenance and other agreed ICT Services will be performed from the date the Agreement is entered into, unless the Parties have agreed otherwise in Writing.

Article 11 Back-up

If Supplier's services to Client under the Agreement include Client's data, Supplier will make a full backup of Client's data in their possession once a week or according to the periods agreed in Writing. Supplier will retain the backup for the agreed term or if no term has been agreed, for the usual term applied by Supplier, all in accordance with the GDPR and other legal or contractually agreed retention periods. Supplier will safeguard the backup with due care.

Article 12 Exit Clause

If the Agreement ends, Supplier will, at the first request of Client, as soon as possible, do what is necessary - at rates consistent with the Agreement - to enable another Party to continue the ICT Performance. In doing so, Supplier will consider the continuity of Client. Additionally, Supplier will return all Documentation and data free of charge in a commonly used, structured and documented data format via electronic means, possibly with a viewer. The first request from Client will be made within a reasonable period. The Parties may jointly draw up an exit plan.

Article 13 Third-Party Software

- 13.1 If and to the extent that Supplier provides third-party Software to Client, the (License) terms of those third parties will apply to the relationship between Supplier and Client concerning that Software, superseding the provisions of this module of the General Purchasing Conditions in Healthcare, provided that Supplier has communicated the applicability of those (License) terms to Client in Writing and those terms were provided to Client before or upon entering into the Agreement and have been accepted.
- 13.2 If and to the extent that the aforementioned third-party terms are, for any reason, deemed inapplicable or are declared inapplicable to the relationship between Client and Supplier, the provisions of this module of the General Purchasing Conditions in Healthcare will apply in full.

Article 14 SaaS Service

- 14.1 Supplier is aware that Client depends on the availability and proper functioning of the SaaS service. In this regard, Supplier is not entitled to impede or block the use of the SaaS service through technical measures, other than after Supplier has given Client notice of default with regard to an attributable failure on the part of Client to fulfil its obligations under the Agreement. In doing so, Supplier offers a reasonable period for compliance and Client remains in breach of its obligations. Supplier cannot exercise this right of suspension if Client invokes its right of suspension due to a failure on the part of Supplier.
- 14.2 Unless otherwise agreed in the Agreement or SLA, Supplier will provide a solution suitable for SaaS to ensure the continuity of data and SaaS services for Client. To guarantee the continuity, availability, use and Maintenance of the SaaS service and access to Client's stored data, the Parties will strive to agree on an adequate continuity arrangement for emergencies, such as (but not limited to) the unavailability of the server hosting the SaaS service, bankruptcy or suspension of payments by Supplier, before the start date. If no adequate arrangement is made by the specified date, Client has the right to immediately terminate the Agreement.
- 14.3 To safeguard Client's data processed for the SaaS service, Supplier will ensure a daily backup of the relevant data and underlying database structures on a server designated by Client unless Supplier has previously indicated that the above is not technically feasible. Supplier will regularly provide Client with the relevant Documentation regarding that structure.

Article 15 Hosting

- 15.1 Supplier will perform the hosting services agreed with Client within the EEA.
- 15.2 If the Agreement involves the provision of disk space on Equipment, Client will not exceed the agreed disk space unless the Agreement clearly specifies the consequences. The Agreement only entails the provision of disk space on an exclusively and specifically reserved server if explicitly agreed. Unused data traffic by Client will be carried over to the next period. A fee for significant exceeding of the allocated disk space can only be charged after notification and Written consent from Client.
- 15.3 Supplier may only take the hosting service wholly or partially offline for Maintenance after receiving Written consent from Client. Supplier will provide an estimate of how long the work will take before starting and will coordinate with Client.
- 15.4 If Supplier performs ICT Services for Client regarding a domain name under the Agreement, such as registration, renewal or transfer to a third party, Client will comply with the rules and procedures of the relevant authority. Supplier guarantees the registration and application of the domain name requested by Client.
- 15.5 If items are added to the leased Equipment, Client is entitled to compensation if these added items are not removed or undone.
- 15.6 If a seizure is imposed on the leased Equipment, Client shall immediately inform Supplier of the seizure, the person levying the seizure and the reason for the seizure. Client shall allow the bailiff to inspect the lease agreement.