

# General terms and conditions |

CaptureTech

14 January 2024

Version 3.0

These general terms and conditions apply to all offers and agreements resulting therefrom between:

- CaptureTech Corporation B.V., located at Lireweg 42, 2153PH in Nieuw-Vennep and registered with the Chamber of Commerce under number 28083956;
- CaptureTech IT Services B.V., located at Lireweg 42, 2153PH in Nieuw-Vennep and registered with the Chamber of Commerce under number 27183216;
- SDT Informatics BVBA, established at Nijverheidsstraat 72/1a, 2160 Wommelgem with company number BE 0453.373.644; and
- CaptureTech Belgium BV, located at Nijverheidsstraat 72, 2160 in Wommelgem with company number BE 0688.736.622.

("CaptureTech") and counterparties ("Client").

These general terms and conditions consist of the following modules:

- Module A - General
- Module B - Software and hosting
- Module C - Hardware
- Module D - Hardware-as-a-Service
- Module E - Development of Works
- Module F - Security services

## Module A: General

### Artikel 1. Definitions

In these General Terms and Conditions, some terms are capitalised. These terms, both in singular and plural, always have the meaning given to them in the overview below.

- 1.1. **Account:** the account that the Client and/or its Users use to access the Services.
- 1.2. **General Terms and Conditions:** the present terms and conditions, including all modules.
- 1.3. **Services means** the services provided by CaptureTech as agreed by the Parties and described in the Quotation and any SLA, or further agreed in Writing by the Parties. These services may include, among others, development and provision of software and/or other Works, provision and maintenance of hardware, software implementations, security, service and consultancy services.
- 1.4. **Users:** the natural or legal person, whether or not acting in the exercise of a profession or business, who uses the Services under the responsibility and supervision of the Client.
- 1.5. **Intellectual Property Rights:** rights (of intellectual property) including but not limited to copyrights, database rights, domain names, trade name rights, trademark rights, design rights, neighbouring rights, patent rights, as well as rights to know-how.
- 1.6. **Quotation:** a Written offer by CaptureTech containing the Services offered and the price for such Services.
- 1.7. **Online Workplace Service** means the service whereby one or more virtual workstation(s) are provided via a data connection, as described in the Quotation and provided by CaptureTech.
- 1.8. **Agreement means** the agreement between CaptureTech and the Customer, consisting of the approved Quotation, these General Terms and Conditions, if agreed an SLA, processor agreement and/or any additional Written Agreements between the Parties.
- 1.9. **Party(ies):** CaptureTech and Client together or separately.
- 1.10. **Written(e):** also communication by e-mail provided that the identity of the sender and integrity of the content are sufficiently established.
- 1.11. **SLA:** the service level agreement that may be agreed by Parties in which further arrangements concerning the Services are laid down.
- 1.12. **Third Party Software means** the software whose Intellectual Property rests with a third party, which may or may not be Microsoft software, including the relevant licence conditions, which CaptureTech provides to the Customer, either jointly or in combination with other Services.
- 1.13. **Telecom Service:** telephony service as described in the Agreement, consisting of the provision of fixed and/or mobile telephony.
- 1.14. **Works:** including websites, applications, layouts, data files, software, designs, texts, photos, films, sound recordings, images, audiovisual material, logos or house styles.
- 1.15. **Working hours:** hours on Monday to Friday (excluding holidays) from 8:30am to 5:30pm CET (MEZT).

### Artikel 2. Agreement: applicability and ranking

- 2.1. These General Terms and Conditions apply to, and form an integral part of, any Agreement between CaptureTech and Client.

- 2.2. If the Client is once informed of the existence of these General Terms and Conditions by CaptureTech, subsequent agreements entered into between CaptureTech and the Client shall be deemed to have been entered into under these terms and conditions.
- 2.3. The General Terms and Conditions consist of several modules. The specific modules apply if the Services requested fall within the scope defined in the module. If a specific module applies, it prevails over Module A.
- 2.4. The definitions set out in Module A - article 1 apply to all modules of these General Conditions, unless a different meaning is assigned elsewhere in the Agreement and/or General Conditions.
- 2.5. In case of conflict between provisions in the different applicable documents, the following order of precedence shall apply:
  - i. any additional Written and signed agreements;
  - ii. approved Quotation;
  - iii. any processing agreement;
  - iv. any SLA;
  - v. these General Terms and Conditions.

### **Artikel 3. Conclusion of Agreement**

- 3.1. The Agreement comes into effect at the time of Written acceptance of the Quotation.
- 3.2. Any Quotation or other offer by CaptureTech is without obligation and is valid for a period of thirty (30) days unless otherwise specified in the Quotation or offer. CaptureTech is not obliged to accept an acceptance after the expiry of this period, but if CaptureTech does so, the Quotation or offer shall still be deemed to be accepted.
- 3.3. CaptureTech shall only be bound by an acceptance (whether or not on minor points) deviating from an offer by CaptureTech made by the Customer, if CaptureTech expressly accepts the deviating acceptance In Writing.
- 3.4. If the Client does not expressly indicate its agreement with the Quotation, but nevertheless agrees, or gives that impression, that CaptureTech will perform work that falls within the description of the Services, the Quotation shall be deemed to be accepted. This also applies where the Client requests CaptureTech to perform certain work without waiting for a formal Quotation.

### **Artikel 4. Duration and end of the Agreement**

- 4.1. If and to the extent that the Agreement is a continuing performance agreement, and no term has been agreed between the Parties, the Agreement is entered into for the duration of one (1) year. Unless the Parties agree otherwise, at the end of the term, the Agreement will be automatically extended each time by the same period as the initial period, unless a Party terminates the Agreement In Writing by the end of the period with a notice period of three (3) months. The Agreement can only be terminated prematurely as stipulated in the General Terms and Conditions.
- 4.2. CaptureTech may suspend or terminate the Agreement at any time with immediate effect without notice of default being required if:
  - a. Client declared bankruptcy;
  - b. Client has been granted suspension of payments;
  - c. the Client's business is dissolved or liquidated;
  - d. attachment has been levied on (part of) the Client's assets;

- 4.3. e. there is a change in decisive control within (the company of) Client. Any default in the performance of any obligation of the Client shall entitle CaptureTech to terminate the relevant Agreement, in whole or in part, with immediate effect, without any notice of default or judicial intervention, by means of a Written notice to the Client without CaptureTech being liable for any compensation or undoing obligation in this regard.
- 4.4. In addition to the previous paragraph, this power shall in such case also accrue to CaptureTech, in respect of any other agreement(s) between CaptureTech and the Client, irrespective of whether there is any connection between this default and the other agreement(s).
- 4.5. In the cases referred to in paragraphs 2 and 3 in this article, all claims against Client shall also be immediately due and payable without Client being entitled to any compensation.
- 4.6. In the event of an attributable default by the Customer, CaptureTech may, at its option, also:
  - a. claim damages and/or performance, as well as
  - b. suspend all its obligations towards Client.

#### **Artikel 5. Execution of the Agreement**

- 5.1. CaptureTech shall use its best efforts to perform the Services with care, where appropriate in accordance with the agreements and procedures laid down in Writing with the Customer. Any agreements regarding a service level shall always only be expressly agreed in Writing in the Quotation or an SLA.
- 5.2. If it is agreed that the Services will take place in phases, CaptureTech is entitled to delay the commencement of the Services belonging to a phase until the Customer has approved the results of the preceding phase.
- 5.3. In performing the Services, CaptureTech shall follow reasonable, timely and responsible instructions given by the Customer. CaptureTech is not obliged to follow instructions that change or supplement the content or scope of the agreed Services; however, if such instructions are followed, the relevant work shall be charged to the Customer.
- 5.4. If an Agreement is entered into with a view to execution by a specific person, CaptureTech is always entitled after consultation with the Client to replace this person by one or more other persons with the same qualifications.
- 5.5. The Client shall provide CaptureTech with all support necessary and desirable to enable proper and timely delivery of the Services. In any event, the Client shall provide to CaptureTech:
  - a. provide all data and other information which CaptureTech indicates is necessary, or which the Customer should reasonably understand is necessary for the performance of the Agreement; and
  - b. provide access to all places, services and accounts under its control if and to the extent necessary for the performance of the Agreement.
- 5.6. CaptureTech shall be entitled, but never obliged, to examine the accuracy, completeness or consistency of the source materials, requirements or specifications made available to it and, upon discovery of any imperfections, to suspend the agreed work until such time as the Customer has removed the relevant imperfections.
- 5.7. CaptureTech is entitled to engage third parties in the execution of the Agreement. CaptureTech is authorised to charge any related costs to the Customer.

- 5.8. If the employees of CaptureTech or third parties engaged by CaptureTech perform work at the Client's office or at a location designated by the Client, the Client shall provide, free of charge, all reasonable support and facilities required for this purpose.
- 5.9. (Delivery) deadlines announced by CaptureTech are indicative and do not count as deadlines.

**Artikel 6. Prices and payment**

- 6.1. For the Services, the Client shall owe CaptureTech the price set out in the Quotation.
- 6.2. All prices are in euros, exclusive of taxes (VAT) and other government-imposed levies, unless otherwise agreed with Client.
- 6.3. Unless expressly agreed otherwise, the price does not include any:
  - a. start-up costs, including drawing and printing costs;
  - b. packaging, shipping and handling costs;
  - c. costs of insurance, import and export duties, etc;
  - d. costs for overtime, transport and accommodation of CaptureTech's personnel or auxiliary persons.
- 6.4. These and other such costs shall be borne by the Customer and charged to him separately. For order prices below €1,000 (excluding VAT), CaptureTech shall charge €40 (excluding VAT) for administration and transport costs.
- 6.5. Invoicing of one-off fees takes place immediately after the conclusion of the Agreement, unless otherwise agreed.
- 6.6. Invoicing of periodic fees shall take place monthly in advance, unless otherwise agreed. Fees that depend on consumption or take-up shall be invoiced monthly in arrears.
- 6.7. The payment term of invoices is thirty (30) days after the date of the invoice, unless another payment term is indicated in the Quotation. If the Client fails to pay on time, it shall be in default by operation of law from the due date of the invoice without any reminder or notice of default being required.
- 6.8. If the Customer believes that (part of) an invoice is incorrect, it shall notify CaptureTech within eight (8) days of the invoice date. The payment obligation of the disputed (but not the remainder) shall be suspended until CaptureTech has investigated the report. If after CaptureTech's investigation it appears that the dispute was unjustified, the Client shall still pay the disputed amount within seven (7) days.
- 6.9. In case of late payment, the Client shall owe CaptureTech the statutory commercial interest on the gross invoice amount. All costs, both in and out of court, including the costs of legal assistance, incurred by CaptureTech as a result of the Client's failure to meet its payment obligations shall be borne by the Client.
- 6.10. If the Agreement is a continuing agreement, CaptureTech is entitled to adjust the rates charged once per calendar year. CaptureTech shall notify the Client of rate changes at least two (2) months in advance. In the event of a price increase of more than twenty percent (20%), the Customer shall be entitled to terminate the Agreement, subject to a notice period of one (1) month, unless such price change corresponds to the consumer price index of the CBS.
- 6.11. All prices in any offer or Quotation of CaptureTech are subject to programming and typing errors. In case of any inconsistency, the price in the Quotation shall prevail.

- 6.12. If a price in an Offer is based on data provided by the Customer and such data proves to be incorrect, CaptureTech shall be entitled to adjust the prices accordingly, even after the Agreement has already been concluded.

**Artikel 7. Compliance/guarantees**

- 7.1. CaptureTech only warrants that the performances delivered are suitable for the use intended by the Client if the Client has expressly informed CaptureTech of its intentions In Writing before entering into the Agreement and has not subsequently made any change(s) therein. However, CaptureTech shall not be liable for the consequences of Customer's choice of colour, form, format, material, working method, etc. of the Services.
- 7.2. If agreed In Writing by the Parties, CaptureTech guarantees the soundness of Services performed by it or third parties it engages for an agreed warranty period after completion of the work.
- 7.3. In the event of inadequate performance, Principal may demand replacement of the performance delivered, if deviation of this performance from the agreed performance justifies such replacement. Improper performance shall in any case not include: deviations customarily accepted in the industry in terms of functionality, colour, shape, format, weight, capacity and other specifications and a deviation or deviating quantity of no more than approximately ten per cent (10%).
- 7.4. If the Customer can make the aforementioned claim, CaptureTech may either repair the defect or credit the Customer for the invoice value of the relevant performance, at CaptureTech's option.
- 7.5. Any right to warranty lapses:
- a. if the failure is wholly or partly attributable to the Client itself;
  - b. if the failure is due to climatic or other influences;
  - c. if CaptureTech's instructions have not been followed;
  - d. if delivered items have been used improperly and/or have been used for a purpose other than as agreed or customary with CaptureTech;
  - e. if third parties have made modifications and/or repairs to the delivered software or hardware without CaptureTech's Written consent;
  - f. if the Customer is in default in respect of any outstanding obligation to CaptureTech;
  - g. after expiry of the agreed warranty period;
  - h. for performance in relation to software: unless otherwise agreed in Writing in any case after expiry of three (3) months after the performance by CaptureTech;
  - i. for other performance: in any case after the expiry of twelve (12) months after delivery of the performance by CaptureTech.

**Artikel 8. Intellectual property rights**

- 8.1. All Intellectual Property Rights vested in the Services are and shall remain vested in CaptureTech or its licensors.
- 8.2. Client is only entitled to make changes to Services if explicitly agreed by Parties.
- 8.3. Client is granted a non-exclusive, non-transferable and non-sublicensable right to use the Services for the duration of the Agreement.



- 8.4. The Client is not allowed to remove or change any indication concerning copyrights, brands, trade names or other Intellectual Property rights from the Services, including indications concerning the confidential nature and secrecy of the Services.
- 8.5. CaptureTech is permitted to take technical measures to protect the Services. If CaptureTech has secured the Services by means of technical protection, the Customer is not permitted to remove or circumvent this security.
- 8.6. If third party licences are required for the use of the Services, the Customer shall procure such licences and ensure that the provisions contained therein are strictly complied with, unless otherwise agreed in writing. The Client shall indemnify CaptureTech against third party claims relating to installation and licensing of the Services, except to the extent the claims result from information or licences supplied by CaptureTech.
- 8.7. CaptureTech is entitled to use open source software in the Services. If CaptureTech has incorporated open source software (OSS) in the Services developed for the Client, CaptureTech shall, at the request of the Client, specify which OSS licences apply to it. Client shall strictly comply with the terms and conditions from these OSS licences.

**Artikel 9. Account**

- 9.1. If Accounts are required to use the Services, CaptureTech will create Accounts for the Customer and/or Users and provide login details (username and password). The password can be changed. It is the responsibility of the Customer that a strong password is always chosen for this purpose.
- 9.2. CaptureTech may place a limit on the number of Users allowed to use the Services.
- 9.3. An Account and the login data are strictly personal and may not be shared. Client and/or User must keep the login details confidential.
- 9.4. The use of Accounts by the Customer and/or Users is the responsibility and at the risk of the Customer. CaptureTech may assume that everything that happens from the Accounts is under the direction and supervision of the Customer.
- 9.5. If login details of an Account are lost or leaked, Client shall immediately take all measures reasonably necessary and desirable to prevent misuse of the Account. The Client will also immediately notify CaptureTech so that any additional measures can be taken to prevent misuse of the Account.

**Artikel 10. Storage, data and power limits**

- 10.1. CaptureTech may impose a limit on the amount of storage space, data traffic and/or power that the Customer may or can actually use under the Services. If the Parties have not agreed on this, a limit based on fair use applies.
- 10.2. Fair use occurs when the Customer uses a maximum of twice as much data traffic and storage as other CaptureTech customers would in a similar situation.
- 10.3. If the Customer consumes more than permitted under the Agreement, CaptureTech shall be entitled to charge an additional amount afterwards in accordance with CaptureTech's usual rates for this purpose.

- 10.4. CaptureTech shall not be liable if the Services are not approachable or do not function properly when the applicable usage limits are exceeded.

**Artikel 11. Privacy**

- 11.1. If CaptureTech processes personal data on behalf of the Customer in the performance of the Agreement, the Parties shall enter into a processor agreement.
- 11.2. To the extent CaptureTech further processes personal data for its own purposes, it does so in accordance with the General Data Protection Regulation (GDPR).

**Artikel 12. Ownership of customer data**

- 12.1. Data that the Client (and/or its Users) stores or processes through the Services is and remains the property of the Client (or its Users). Control over such data shall therefore at all times rest with the Customer (or its Users). Client hereby grants CaptureTech a limited right of use to use such data for the provision of the Services.
- 12.2. If the Client sends information to CaptureTech, for example feedback on an error or a suggestion for improvement, the Client grants CaptureTech an unlimited and perpetual right to use this information for the Services. The foregoing does not apply to information that CaptureTech expressly marks as confidential.
- 12.3. Client is solely responsible for loading all data into the Services. CaptureTech is not liable for any inaccuracies after loading or when synchronising the data, unless there is intent or deliberate recklessness.
- 12.4. CaptureTech is entitled to use the data referred to in paragraph 1 anonymously for the purpose of statistical analysis and/or benchmarking. In addition, CaptureTech is entitled to monitor the use of the Services, on the basis of which it may make recommendations to the Client.

**Artikel 13. Support**

- 13.1. CaptureTech shall endeavour to provide a reasonable level of support to the Customer and Users regarding questions about the Services. However, CaptureTech makes no guarantees in this respect, except to the extent agreed by the Parties in an SLA.
- 13.2. The support as described in the previous paragraph is offered through a helpdesk which is available on Business Hours both by telephone and e-mail, and can be accessed by creating a ticket on CaptureTech's portal.
- 13.3. CaptureTech aims to handle support requests within a reasonable timeframe. The time taken to respond to notifications and resolve reports may vary.

**Artikel 14. Consultancy**

- 14.1. If the Services extend to providing advice, the provisions of this article apply.
- 14.2. CaptureTech shall perform the Services as referred to in the previous paragraph to the best of its knowledge and ability. CaptureTech makes no warranties about results after following any advice given by the Client, unless agreed in Writing.
- 14.3. The Parties agree In Writing how the Services referred to in paragraph 1 of this article will be provided. To this end, Parties shall make



agreements on: the subject of the advice, the period and/or frequency of the advice to be given.

**Artikel 15. Telecom service**

- 15.1. If Telecom services have been agreed upon, then the provisions of this article apply.
- 15.2. Telecom services are purchased by the Customer directly from CaptureTech's designated supplier of these Telecom services on the terms and conditions set out in the agreement concluded by the Customer with this supplier. This supplier (and expressly not CaptureTech) is responsible for the correct delivery of the Telecom Service, such as the correct configuration of the telephone numbers.
- 15.3. CaptureTech shall provide support for the Telecom Service in accordance with the terms of the Quotation and/or an SLA. If support has not been agreed, support will take place on an after-the-fact basis at the then current rates. The Customer is not entitled to request support from the Telecom Service Provider.

**Artikel 16. Additional work**

- 16.1. If the Customer requests additional work or services beyond the scope of the Agreement, or requests additional work, the Parties shall consult on the matter and CaptureTech may make an offer. CaptureTech shall perform the additional work only after acceptance of the offer by the Client. Additional work shall also exist if a system analysis, design or specifications are expanded or changed.
- 16.2. Without prejudice to the other provisions of the General Terms, additional work which CaptureTech can demonstrate is reasonably necessary for the provision of the Services, or which reasonably follows from the Customer's instructions, shall not require CaptureTech's consent. Such work shall be performed on an after-the-fact basis at CaptureTech's hourly rate applicable at the time the work is performed.

**Artikel 17. Secrecy**

- 17.1. The content of the relationship between CaptureTech and the Customer as well as the data and information known to the Parties or becoming known to the Parties in the context of an Agreement between the two Parties are confidential in nature. Parties shall therefore, both during the term of an Agreement and thereafter, keep confidential and not disclose to any third party the information provided by Parties in the context of the Agreement, including, inter alia, information on promotions, regulations, working methods, cost calculations, work and relations of Parties.
- 17.2. Without the written consent of the other Party, the Parties are not allowed to reproduce, disclose, or bring to the notice of third parties the documents, data and/or information provided by the other Party.
- 17.3. Nor shall the Parties advertise, publish or otherwise disclose the existence and content of any Agreement, order or transaction, without prior Written consent of the other Party. In addition, Parties are not entitled to use the (brand) name of the other Party for advertising or publicity purposes, without Written consent of the other Party.
- 17.4. Each Party shall also impose the obligations of this article on its employees and third parties engaged in the execution of the Agreement. If an employee of a Party or a third party engaged by it breaches the duty of confidentiality laid down in this article, that Party

shall take the (legal) measures desired by the other Party to prevent further breaches.

**Artikel 18. Staff**

- 18.1. The Parties shall not, without the consent of the other Party, during the execution of the Agreement as well as within one (1) year after termination of the Agreement, in any way, directly or indirectly, approach or entice employees of the other Party to terminate their employment contract with that Party in order to enter into an agreement with the other Party or an affiliate of the other Party. Such consent shall not be withheld on unreasonable grounds. If an employee of a Party himself actively approaches the other Party of his own accord, there shall be no action by that Party in violation of this Article.

**Artikel 19. Liability**

- 19.1. CaptureTech's liability for damages or other claims arising out of an attributable breach of performance (including breaches of any warranties or indemnities) of the Agreement, a tort or on any other ground, shall be limited per calendar year to the amount payable by the Customer to CaptureTech under the Agreement (excluding VAT) for a period of twelve (12) months preceding the occurrence of the damage, irrespective of the number of events.
- 19.2. Without prejudice to the foregoing, CaptureTech shall expressly not be liable for indirect damage. Indirect damage in the present case means lost profits, lost savings, reduced goodwill and damage due to business interruption.
- 19.3. CaptureTech's liability for attributable failure in the performance of the Agreement shall arise only if the Client immediately and properly gives CaptureTech written notice of default, setting a reasonable deadline to remedy the failure, and CaptureTech continues to fail attributable in the performance of its obligations even after that deadline. The notice of default shall contain as detailed a description of the default as possible, so that CaptureTech is able to respond adequately.
- 19.4. When CaptureTech engages third parties, CaptureTech shall, except for its own failures to which the **provisions** of paragraphs 1 and 2 of this article apply, never be held liable by the Client for failures of such third party. If the Client sues the third party directly, the Client shall indemnify CaptureTech against any claim by the third party in connection with such liability as well as all related costs for CaptureTech.
- 19.5. Any agreed limitation or exclusion of liability shall lapse if and insofar as the damage is the result of intentional or deliberate recklessness of CaptureTech's management.
- 19.6. In addition to indemnities included elsewhere in these General Terms and Conditions, the Customer shall indemnify CaptureTech against all third party claims, to the extent permitted by law, in respect of compensation for damages, costs or interest related to the Agreement.
- 19.7. The application of Article 6:271 et seq. of the Civil Code is excluded.

**Artikel 20. Force majeure**

- 20.1. Neither Party shall be obliged to fulfil any obligation arising from the Agreement if it is prevented from doing so due to force majeure. Force majeure includes: Force majeure of CaptureTech's suppliers; failure to properly fulfil obligations of CaptureTech's suppliers; defectiveness of

goods, hardware, software, or materials of third parties, the use of which have been prescribed by the Customer to CaptureTech; government measures; electricity failure; failure of internet, computer network or telecom facilities; war; occupation; strike; the unavailability of one or more members of staff; transport congestion; lockout; business disturbances; fire; flood; import and export impediments.

- 20.2. As soon as a Party can reasonably foresee that it will be unable to comply with its obligations as a result of force majeure, it shall be obliged to immediately notify the other Party thereof In Writing. In doing so, such Party shall state: the nature of the force majeure, the measures taken and to be taken by it, the probable duration of the force majeure situation, as well as the consequences thereof for the Agreement(s) concerned.
- 20.3. If it is established that the force majeure condition will last or has already lasted for more than fifteen (15) days, CaptureTech shall be entitled to suspend all its obligations to the Customer, as well as to terminate the relevant Agreement(s) in whole or in part with immediate effect by means of a Written notice to the Customer, without an obligation to pay compensation.

#### **Artikel 21. Penalty clause**

- 21.1. The Client owes CaptureTech an immediately due and payable penalty, not subject to set-off, of €15,000 for each breach of aArticle 8 (Intellectual Property), aArticle 17 (Confidentiality), aarticle 24 (use of software), article 34.10 or article 34.11 (retention of title) of these General Terms and Conditions.
- 21.2. CaptureTech is entitled, instead of claiming the penalty referred to in the previous paragraph, to proceed to claim the damage suffered by it, which is a direct or indirect result of the relevant violation, if this damage exceeds the amount of the penalty referred to in the previous paragraph.

#### **Artikel 22. Changes**

- 22.1. After acceptance, the Agreement may only be amended In Writing by mutual consent, except as provided in this article.
- 22.2. However, CaptureTech has the right to amend or supplement the General Terms and Conditions. CaptureTech shall announce the amendment or addition by email to the Customer at least thirty (30) days before it takes effect.
- 22.3. If the Customer does not wish to accept the amendments or additions, the Customer may object with reasons within fourteen (14) days of publication, after which CaptureTech shall reconsider the amendment or addition. If CaptureTech decides to stand by the amendment or addition, the Client may terminate the Agreement In Writing by the date on which the amendment takes effect.
- 22.4. Both Parties shall cooperate fully in the event of amendments or additions to the General Terms and Conditions that are necessary due to new or changed legislation. Such amendments or additions will be made in consultation between the Parties, without the Customer having the option to terminate the Agreement.
- 22.5. The procedure described in paragraphs 2 and 3 of this article does not apply to changes of minor importance. Such changes may be made by CaptureTech without notice, without giving the Customer the option to terminate the Agreement.

**Artikel 23. Varia**

- 23.1. The Agreement is governed by Dutch law. Any disputes which may arise as a result of the Agreement shall be submitted to the competent Dutch court of the district in which CaptureTech is located. Application of the Vienna Sales Convention is excluded.
- 23.2. If any provision of the Agreement is found to be null and void, this shall not affect the validity of the Agreement as a whole. In that case, the parties will adopt (a) new provision(s) to replace it, which will give shape to the intention of the original Agreement as much as legally possible.
- 23.3. Claims of the Customer arising out of the legal relationship existing between the Customer and CaptureTech shall lapse if they are not effectuated within twelve (12) months of the occurrence of the event giving rise to the claim by filing a legal action.
- 23.4. The version received or stored by CaptureTech of any communication, records and measurements made shall be deemed authentic, subject to evidence to the contrary to be provided by the Customer.
- 23.5. The applicability of any purchase or other conditions of the Client is expressly excluded.
- 23.6. Each Party is only entitled to transfer its rights and obligations under the Agreement to a third party with the prior Written consent of the other Party. Notwithstanding this, CaptureTech is always entitled to transfer its rights and obligations under the Agreement to a parent, subsidiary or sister company or to another third party.

## Module B: Software and hosting

In addition to the general provisions in Module A, the special provisions in this Module B shall apply insofar as the Services provided consist of providing software and/or hosting.

### Artikel 24. Software usage

- 24.1. The Customer warrants that the software will not be used for activities that violate provisions of applicable law. Client shall refrain from unauthorised use of the software and shall act and behave in accordance with what may be expected by CaptureTech from a prudent user of the software.
- 24.2. With regard to the software, the Client is not allowed to:
- a. copy the software, without the prior consent of CaptureTech, except in cases where this is permitted by provision of mandatory law;
  - b. sublet, transfer or otherwise make the software available to third parties, except where such use is for the purpose of the Agreement and in accordance with the Agreement or where permitted under mandatory law;
  - c. remove, modify or render illegible any indications of CaptureTech and/or its licensors as the rightful owner of the software or parts thereof;
  - d. make changes to the software, except in cases where this is permitted by mandatory law;
  - e. reverse engineer, decompile or disassemble the source code of the software, except in the cases permitted by provision of mandatory law;
  - f. use the software for environments or applications in which the errors in those environments or applications could result in death of a person, physical injury or serious physical, material or environmental damage.
- 24.3. The Client undertakes to inform any User who has or obtains access to the software of rightful owner of the software that this software is given in use by rightful owner and that this software may only be used in accordance with the Agreement and the associated licence conditions.
- 24.4. If the software is installed on-premise, the Customer shall, in the event of termination of the Agreement in any manner, return the carriers, the software and the associated licences to CaptureTech within ten (10) working days. In addition, the Customer is obliged to irreversibly delete all copies on of the software from its hardware.
- 24.5. CaptureTech is entitled to conduct an inspection at the Customer's premises for the purpose of verifying compliance with the obligations under this clause and the Agreement in respect of software supplied to the Customer by or through CaptureTech. CaptureTech shall conduct such inspection during Business Hours. In addition, it shall give written notice of the inspection to Client at least ten (10) working days prior to the inspection. In addition, right holder of the software shall also have the right to carry out such inspection in accordance with the following provisions of this Article.
- 24.6. Upon request by CaptureTech, the Client shall provide access to CaptureTech or a third party appointed by CaptureTech, to the Client's records and to all premises and other information relevant to determining the Client's compliance with its obligations under the Agreement. CaptureTech acknowledges that for the purposes of this

clause it will not appoint a third party that qualifies as a direct competitor of the Client. Client shall reasonably cooperate with audit investigations.

- 24.7. If there is agreement between the Customer and CaptureTech on a deficiency (nonconformity) as found in the audit investigation, the Customer shall immediately remove such deficiency or, where this is not possible, remove the deficiency within a period of time that is reasonable based on the urgency of the deficiency found.

**Artikel 25. Third-party software**

- 25.1. If the supply of third-party Software forms part of the Agreement, the following provisions shall apply in addition to those in the previous article.
- 25.2. CaptureTech shall configure, maintain and provide support to the third-party Software on behalf of the Customer. Customer is not entitled to request support in respect of the Third Party Software from these third parties.
- 25.3. For the purpose of configuration and maintenance of the Third Party Software, CaptureTech shall provide the corresponding licences and licence codes. The Client shall not use the licences for purposes other than as provided for in the Agreement.
- 25.4. If applicable, the Customer shall strictly comply with the terms and conditions belonging to the use of third-party Software. The Client shall indemnify CaptureTech against all third party claims in this respect. At the request of the Customer, CaptureTech shall make available the applicable terms and conditions.
- 25.5. In the event of non-performance of the obligations under the Agreement by the Client, the Client shall also be directly liable to the third party with whom the Intellectual Property of the Third Party Software rests and/or the licensor(s) of that software.
- 25.6. The third party with whom the Intellectual Property of the software rests and/or other licensors (which expressly does not include CaptureTech) of the Third Party Software shall in no event be liable for the improper operation of the software and/or the performance of the obligations under this Agreement.
- 25.7. If the Third Party Software concerns Microsoft software, what is stipulated in this paragraph applies in addition to the above. CaptureTech shall endeavour to ensure a high availability of the Microsoft software. In this context, however, CaptureTech cannot give any guarantees. The Microsoft software originates from the U.S. and is subject to U.S. Export Regulations. Customer shall at all times comply with the U.S. Export Administration Regulations and other applicable restrictions imposed by the U.S. For more information, see: <http://www.microsoft.com/exporting/>.

**Artikel 26. Hosting**

- 26.1. If the Services comprise services relating to storage and/or transmission of material to third parties, such as in the case of hosting or e-mail services, the provisions of this article also apply.
- 26.2. Client warrants that the Services will not be used for activities that violate any applicable laws or regulations. In addition, it is expressly prohibited (whether lawful or not) to store, offer or distribute through the Services any materials that:



- a. contain malicious content (such as malware or other malicious software);
  - b. infringe third-party rights (such as Intellectual Property Rights), or are unmistakably defamatory, libelous, insulting, discriminatory or hateful;
  - c. contain information about or may be helpful in violating the rights of third parties, such as hacking tools or computer crime explanations intended to (induce) the reader to engage in criminal behaviour and not to be able to defend themselves against it;
  - d. constitute a violation of the privacy of third parties, including at least but not limited to the dissemination of personal data of third parties without consent or necessity;
  - e. contain hyperlinks, torrents or references to (sources of) materials that infringe copyright or other Intellectual Property Rights; or
  - f. contain child pornography, bestiality pornography or animations thereof or are apparently aimed at helping others find such materials.
- 26.3. Where potentially criminal information is processed through the Services, CaptureTech is entitled to report it. In doing so, CaptureTech may hand over all relevant information about the Client and the information to the competent authorities and perform any other acts that such authorities request CaptureTech to perform as part of the investigation. The Client shall indemnify CaptureTech against any damage arising as a result.
- 26.4. CaptureTech is entitled to surrender the Customer's name, address and other identifying data to a third party complaining that the Customer is infringing its rights, provided that:
- a. it is sufficiently plausible that the information or Works, taken in isolation, are unlawful and harmful towards the third party;
  - b. the third party has a real interest in obtaining the data;
  - c. it is plausible that there is no less intrusive means of retrieving the data in the specific case; and
  - d. the balance of interests involved means that the third party's interest should prevail.
- 26.5. Client shall avoid unnecessary peak load of the Services and refrain from using the Services in such a way as to cause nuisance to other clients or internet users or damage to the systems and networks of CaptureTech or third parties.
- 26.6. If CaptureTech becomes suspicious that the terms of this article are being breached, CaptureTech shall be entitled to take all reasonable measures to put an end to such breach, including suspending the provision of the Services or terminating the Agreement, without the need for a notice of default or judicial intervention and without nullifying any obligation of the Client to CaptureTech or entitling the Client to compensation or refund of fees paid. CaptureTech shall endeavour to inform the Client accordingly and involve it where possible in the action to be taken. However, CaptureTech shall not be obliged to inform or involve the Client in any action to be taken and CaptureTech shall never be liable for compensation for any loss resulting from such action.
- 26.7. CaptureTech may recover the costs reasonably necessary associated with the measures referred to in the previous paragraph from the Customer.

- 26.8. The Client shall indemnify CaptureTech against any third party claims relating to the Client's use of the Services. If CaptureTech is required by an authorised order issued by a government authority or in connection with a legal obligation to carry out work in relation to the data of the Client, its employees or other users, all associated costs shall be charged to the Client.

**Artikel 27. Shared hosting and virtual private servers (VPS)**

- 27.1. If the Services consist of shared hosting or VPS, web space on (the virtually distributed) servers of CaptureTech will be made available to the Customer.
- 27.2. Customer may upgrade the Services concerning shared hosting and virtual private servers at any time. Unless otherwise agreed, interim downgrading is not possible; it is only possible at the time of renewal of the Agreement. The Customer must notify CaptureTech of the request for downgrading at least one (1) month before the Agreement expires.
- 27.3. CaptureTech endeavours to make its servers on which the shared hosting or VPS is hosted available on the Internet on a best-effort basis. However, with regard to availability, CaptureTech makes no guarantees unless expressly agreed otherwise in the Quotation or in an SLA.

**Artikel 28. Dedicated servers and colocated servers**

- 28.1. If the Services consist of dedicated servers, then the Customer rents rack space and one or more servers from CaptureTech. If the Services consist of colocated servers, the Customer only rents space and takes care of the hardware itself unless otherwise agreed. The provisions of Module C that relate to rented hardware shall apply mutatis mutandis in cases as referred to in this paragraph.
- 28.2. Unless explicitly agreed otherwise in writing, the Client is not allowed to sublet the rented object.
- 28.3. Unless the Parties have explicitly agreed otherwise in the Agreement, the Customer is responsible for the operation of the colocated server and software running on the colocated or dedicated server.
- 28.4. CaptureTech shall not be responsible or liable for the hardware of the Customer, which shall include (but not be limited to) the hardware of the colocated server and the software, data and applications forming part of the colocated or dedicated server. The Client shall indemnify CaptureTech against damages and claims of third parties related to the use of the aforementioned hardware by the Client and shall be liable to CaptureTech for any damages suffered by CaptureTech as a result of the use of the aforementioned hardware by the Client or third parties engaged by it and attributable to the Client.
- 28.5. Physical access to the Customer's own hardware is only possible if the Customer notifies CaptureTech at least one (1) working day in advance. CaptureTech reserves the right to refuse access to the server(s) if the Client fails to fulfil its obligations under the Agreement.
- 28.6. Client shall place its hardware in accordance with CaptureTech's instructions in the designated cabinets. CaptureTech has the right to temporarily occupy unused cabinet space itself. At the request of the Client, CaptureTech shall clear such space within two (2) working days so that the space is available to the Client.

**Artikel 29. Backups and recovery**

- 29.1. CaptureTech makes daily backups of shared servers. These backups will be stored on another server in the same data centre, unless the Parties have agreed that the backups will be stored redundantly (on a server in another data centre).
- 29.2. CaptureTech does not make backups of virtual private servers and dedicated servers. Unless agreed between the Parties, the Customer is at all times responsible for making its own backups.
- 29.3. If and to the extent agreed by the Parties, CaptureTech shall make backups of data. The Parties hereby agree whether the backups will be stored on another server in the same data centre or redundantly (on a server in another data centre). Restoration of backups shall be performed on an after-the-fact basis at the then current hourly rate.
- 29.4. The backup service from paragraphs 1 and 3 of this article does not extend to the data uploaded or modified between the time when CaptureTech was required to make the last backup and the time when the data loss occurred.
- 29.5. CaptureTech shall not retain the data in the backups longer than the retention period agreed in the Agreement. If the Agreement does not include a retention period, a retention period of two (2) weeks shall apply.
- 29.6. After termination of the Agreement, CaptureTech shall, upon the explicit request of the Customer to that effect, delete and/or destroy the backups. At any time after termination of the Agreement, CaptureTech is entitled to delete and/or destroy the backups on its own accord. It is the responsibility of the Customer to request backups in a timely manner before the termination of the Agreement.

### **Artikel 30. Implementation**

- 30.1. If the Parties have agreed on implementation of Services and/or Works, CaptureTech shall take care of this in accordance with what is provided in the General Terms and Conditions and the Quotation. In the absence of explicit agreements in this respect, the Customer shall install, set up, parameterise, tune Services and/or Works and, if necessary, adapt the hardware and user environment used for this purpose. Unless expressly agreed otherwise, CaptureTech is not obliged to perform data conversion. When implementing Services and/or Works, Customer shall provide all necessary cooperation and comply with CaptureTech's reasonable requests.
- 30.2. If, during the implementation of Services and/or Works, it appears that systems, links, hardware, software and/or the ICT infrastructure of the Customer or third parties engaged by it need to be modified in order to implement the Services and/or Works, CaptureTech shall consult with the Customer in this regard and the Parties shall make additional arrangements for implementation of the Services and/or Works. The additional costs to be incurred by CaptureTech in this respect shall be borne by the Client, unless the Parties agree otherwise in Writing.
- 30.3. The costs for implementation work are deemed to be included in the fee due for the Services, unless the Parties agree otherwise in Writing.

### **Artikel 31. Availability and maintenance**

- 31.1. The provisions of this article apply unless otherwise agreed in an SLA.
- 31.2. CaptureTech endeavours to make the Services available for use without interruption and without errors, without prejudice to any unavailability of the Services due to (un)planned maintenance. However,

- CaptureTech does not guarantee the actual and/or continuous accessibility and/or error-free availability of the Services.
- 31.3. CaptureTech shall endeavour to keep the software it uses up-to-date. However, CaptureTech is dependent on its supplier(s) in this regard. CaptureTech is entitled not to install certain updates or patches if, in its opinion, this will not benefit a correct delivery of the Services.
- 31.4. In the event that CaptureTech is of the opinion that a decommissioning of the Services - whether or not during Working Hours - is necessary for the proper functioning of the Services, it is entitled to decommission the Services immediately without prior notice to the Customer. However, CaptureTech shall never be obliged to pay any compensation for damages in connection with such decommissioning.
- 31.5. CaptureTech shall have the right to modify the Services or parts thereof from time to time to improve functionality and to fix errors. If a modification results in a significant change in functionality, CaptureTech will endeavour to notify the Client. In the case of adjustments relevant to multiple Customers, it is not possible to waive a particular adjustment only for the Customer. CaptureTech shall not be liable to Clients for any compensation for damage caused by such a modification.

### **Artikel 32. Online workplace service**

- 32.1. If an Online Workplace Service has been agreed upon, what is contained in this article applies in addition to and/or in derogation of the other applicable provisions.
- 32.2. If data from the Client is migrated to CaptureTech's Online Workplace Service, the Client warrants that all data is migratable. If this is not the case, CaptureTech may refuse the migration request or charge additional costs for the migration.
- 32.3. CaptureTech is not responsible for any damage or loss of data during the migration. The customer shall at all times make its own backup of the data to be migrated before the migration, unless otherwise agreed.
- 32.4. The Client is responsible for its Users. Any damage caused by a User will be recovered from the Client.
- 32.5. Customer is not allowed to independently install software programmes on the virtual machines through which the Online Workplace Service is provided, unless otherwise agreed in writing.
- 32.6. The customer itself is responsible for hardware and software running at its own location or at a location outside CaptureTech's sphere of influence. CaptureTech makes no warranty in this regard.
- 32.7. The aforementioned also means that the Customer must provide its own proper internet connection, hardware (router), etc., unless agreed otherwise in writing. In doing so, the Customer itself is responsible for the required minimum bandwidth. CaptureTech can advise on the required minimum bandwidth, but this advice is entirely without obligation.



## Module C: Hardware

In addition to the general provisions in Module A, the special provisions in this Module C shall apply insofar as the Services provided consist of selling and/or renting hardware, and/or performing service work in respect of hardware.

### Artikel 33. Hardware

- 33.1. The Customer bears the risk of selecting the hardware purchased or leased. CaptureTech does not warrant that the hardware is suitable for the use intended by the Customer, unless the Quotation specifies the use purposes clearly and without reservation.
- 33.2. Client accepts that the hardware contains only the functionality and other properties as Client finds them at the time of delivery. The hardware is delivered "as is" (i.e. with all visible and invisible defects), unless additional warranties are explicitly provided in the Quotation.
- 33.3. The hardware delivered by CaptureTech is subject only to the manufacturer's warranty, unless additional warranties are explicitly provided in the Agreement. Information on the manufacturer's warranty can be found on the website of the manufacturer or importer, or in the manufacturer's documentation supplied with the hardware.

### Artikel 34. Delivery of purchased hardware

- 34.1. After the conclusion of the Agreement, CaptureTech shall make every effort to deliver the sold hardware to the Customer in accordance with the Quotation or within a reasonable time. The risk of loss, theft or damage to the hardware shall pass to the Customer upon delivery of the hardware by CaptureTech. However, if a carrier is used for the purpose of delivery, whether or not at the request or instruction of the Customer, the risk of loss, theft and damage of the hardware shall already pass to the Customer at the time of delivery of the hardware to the carrier.
- 34.2. The hardware sold by CaptureTech to the Customer shall be delivered to the Customer's address unless otherwise agreed in Writing. If possible, CaptureTech shall notify the Customer in good time before delivery of the time when it or the carrier engaged intends to deliver the hardware. The delivery times indicated by CaptureTech are always indicative.
- 34.3. Delivery of hardware shall be made at the agreed purchase price. Unless expressly agreed otherwise, the purchase price of the hardware shall not include the costs of transport, insurance, hoisting and lifting, hiring temporary facilities and the like.
- 34.4. The Customer shall check the delivered hardware for any damage or other defects as soon as possible, but in any case within seven (7) days after delivery. If the Customer finds any damage or other defects, the Customer shall report this to CaptureTech in writing without delay. When reporting, the Customer shall give sufficient reasons for the damage or defects and shall send sufficient evidence to CaptureTech to assess the merits of the report.
- 34.5. If the Customer does not report any damage or defect to CaptureTech within the period referred to in the previous paragraph, the hardware shall be deemed to have been delivered without damage and defects.
- 34.6. CaptureTech shall package the hardware in accordance with its usual standards. If the Customer requires a special method of packaging, it shall bear the additional costs associated therewith. The Customer shall



deal with packaging released from the hardware supplied by CaptureTech in a manner consistent with the applicable government regulations. The Client shall indemnify CaptureTech against third party claims for non-compliance with such regulations.

- 34.7. All hardware delivered to the Customer shall remain the property of CaptureTech until all amounts due from the Customer to CaptureTech under all agreements entered into between the Parties have been paid to CaptureTech in full.
- 34.8. CaptureTech does not lose its (reserved) ownership if and/or because the Customer processes or transforms received items. The Customer shall in such case automatically hold the goods for CaptureTech. The Client does not have a lien on the goods delivered by CaptureTech.
- 34.9. The customer is not authorised to encumber or transfer ownership of the property delivered under retention of title, or to assign it to third parties for use, until it has fulfilled all its payment and other obligations to CaptureTech.
- 34.10. If the Customer fails to fulfil its obligations, or fails to fulfil them on time or properly, or if there is a well-founded fear that it will not fulfil its obligations, CaptureTech is entitled, without further notice of default or judicial intervention being required, to remove, or arrange for the removal of, the hardware delivered under retention of title from the premises of the Customer or third parties holding the goods for the Customer, at the expense and risk of the Customer. The Customer hereby grants CaptureTech an irrevocable authorisation to access the premises in which the goods delivered are located.
- 34.11. If third parties assert rights over the deliveries made by CaptureTech, the Customer is obliged to notify CaptureTech immediately In Writing.

**Artikel 35. Hardware rental**

- 35.1. After the conclusion of the Agreement, CaptureTech shall make every effort, in the event of rental of hardware, to make the hardware available to the Customer in accordance with the Quotation or within a reasonable period of time.
- 35.2. CaptureTech provides the Customer for the duration of the Agreement, or if a different rental period is agreed for the duration of the agreed rental period, the right to use the hardware in accordance with the General Terms and Conditions and any additional terms agreed by the Parties.
- 35.3. The hardware rented by CaptureTech to the Customer shall be made available to the Customer at the Customer's address, unless otherwise agreed in writing.
- 35.4. Rental of hardware shall take place at the agreed price. Unless expressly agreed otherwise, this price does not include the costs of transport, insurance, hoisting and lifting, hiring temporary facilities and the like.
- 35.5. The Customer is not permitted, without CaptureTech's prior express and Written consent, to assign, transfer, sublet, pledge or otherwise encumber the hardware to third parties.
- 35.6. The Customer shall, in the event of a (petition for) bankruptcy or suspension of payments in respect of its legal entity or a legal entity forming part of its group, notify CaptureTech thereof In Writing as soon as possible.
- 35.7. The risk of loss, theft or damage of the hardware shall pass to the Customer upon delivery of the hardware by CaptureTech.

- 35.8. The hardware shall be deemed to have been delivered undamaged, unless the Customer not later than seven (7) working days after delivery indicates In Writing and sufficiently motivated to CaptureTech that the hardware was already damaged before delivery.
- 35.9. To the extent permitted by law, the Parties agree that Articles 7:203 to 7:211 of the Civil Code are excluded.

**Artikel 36. Ownership of leased hardware**

- 36.1. The rented hardware is and remains the property of CaptureTech, or its suppliers.
- 36.2. CaptureTech, or its supplier, may provide the hardware (or the software installed on it) with markings or labels making the hardware identifiable as the property of CaptureTech or its supplier. The Customer is expressly not permitted to change, remove or make illegible such markings or labels.
- 36.3. If a third party wishes to seize, create rights to or assert rights over the hardware, the Client shall notify CaptureTech thereof in Writing without delay. The Client hereby unconditionally authorises CaptureTech in such case to enter all places where the hardware is located and to take it back.
- 36.4. The provisions of the previous paragraph also apply if Customer suspects or should reasonably suspect that third parties will seize or have seized the hardware or will lay claim to it. Such a suspicion exists in any case if Customer can no longer pay its creditors or knows that it will no longer be able to pay its creditors in the short term.
- 36.5. If the hardware is seized by creditors of the Client or because of a dispute involving the Client, this does not release the Client from its payment obligations.

**Artikel 37. Risk and insurance of rented hardware**

- 37.1. The risk of loss, theft or damage to the rented hardware rests (after delivery) with the Customer during the entire rental period, regardless of the cause of the occurrence of the damage. The Customer cannot invoke force majeure against CaptureTech in this context.
- 37.2. Loss, theft or damage of the hardware does not affect the agreed payment obligations of Customer. Any costs for repair or replacement of the hardware shall be borne by Customer.
- 37.3. In case of loss, theft or damage of the hardware, the Customer is obliged to notify CaptureTech thereof in Writing without delay. CaptureTech shall endeavour in such case to repair or replace the hardware (or have it repaired) within a reasonable time.
- 37.4. Client shall keep the hardware adequately insured (at its own expense) during the term of the Agreement against, inter alia, fire, water damage and theft of the hardware.
- 37.5. The Customer shall ensure that CaptureTech, under the aforementioned insurance, is included as a third-party beneficiary or co-insured. If this is not reasonably possible, the Customer shall assign its claim against the relevant insurer to CaptureTech.
- 37.6. At CaptureTech's first request, the Client shall provide copies of the policy for the aforementioned insurance and/or proof of full and timely premium payment.

**Artikel 38. Environmental requirements and installation**

- 38.1. The Client shall provide an environment that meets the requirements specified by CaptureTech as appropriate for the hardware (e.g. concerning temperature, humidity, technical environment requirements and the like).
- 38.2. If the Parties have expressly agreed so in Writing, CaptureTech shall install or cause to be installed the hardware. Any obligation to install hardware by CaptureTech does not include the obligation to install software or perform data conversion, unless otherwise agreed In Writing.
- 38.3. If CaptureTech has undertaken to install, the Customer shall provide a suitable installation site with all necessary facilities, such as cabling and telecommunication facilities, prior to delivery of the hardware, and comply with all instructions of CaptureTech necessary for the installation.
- 38.4. The Customer shall grant CaptureTech access to the site of installation during CaptureTech's Working Hours for the performance of the necessary work.

**Artikel 39. Terms of use rented hardware**

- 39.1. Customer shall use the hardware only for the purposes for which the hardware is, by its nature, intended and in doing so shall strictly follow any instructions provided by CaptureTech and/or CaptureTech's supplier. Customer shall in addition only use the hardware in accordance with applicable laws or regulations and, if applicable, terms of use further provided by CaptureTech's supplier or CaptureTech. In addition to any other remedies to which CaptureTech is entitled under the Agreement or law, any service or warranty claim shall lapse for the Customer upon default thereof.
- 39.2. The Customer is not permitted to make any changes to the hardware without CaptureTech's prior Written consent. If the Customer makes

any such changes without CaptureTech's prior Written consent, any repair or replacement costs shall be borne entirely by the Customer and any service or warranty claim shall lapse.

- 39.3. If the Customer independently makes changes to the hardware, CaptureTech shall not be liable for any errors or problems arising as a result of the change.

**Artikel 40. Return**

- 40.1. The return of hardware is only possible with the prior consent of CaptureTech.
- 40.2. Any costs associated with the return shall be borne by Customer. Customer shall ensure adequate packaging of the hardware and shall return the hardware by insured shipment.
- 40.3. The Customer is obliged to return the hardware to CaptureTech or its supplier in undamaged condition, barring normal wear and tear of the hardware. If CaptureTech finds that the Client has made any changes to the hardware without CaptureTech's Written consent, or the hardware is damaged, any replacement or repair costs shall be borne in full by the Client.

**Artikel 41. Hardware service work**

- 41.1. Insofar as a warranty period applies, or if hardware service work has been agreed by the Parties, this article applies insofar as no different arrangements have been made in the Quotation.
- 41.2. The hardware service work includes repairing and/or maintaining the hardware in such a way that uninterrupted proper functioning of the hardware, in accordance with the specifications applicable to this hardware, is maintained for the agreed duration. This work is aimed at ensuring that, taking into account the consequences of normal wear and tear and ageing of the hardware, normal usability of the hardware is always achieved.
- 41.3. CaptureTech is not obliged to repair hardware that has reached the service end date. The date of the service end of the hardware is determined by the manufacturer of the hardware. However, the hardware may have reached its service end earlier, including if required parts are no longer available as well as if the repair costs are no longer proportional to the book value of the hardware. The latter is the case if the repair costs are seventy-five per cent (75%) of the book value of the hardware in question and/or if it appears that two or more of the three to four main components of the hardware are damaged and/or need to be replaced.
- 41.4. If preventive maintenance is agreed upon, such preventive maintenance shall include checking, adjusting, tuning and testing the hardware, as well as making any changes deemed necessary by CaptureTech.
- 41.5. Maintenance does not include repair or restoration of hardware as a result of:
- a. careless, incompetent or incorrect use of the hardware;
  - b. Careless performance of daily maintenance by the Customer or failure by the Customer to signal in a timely manner that the hardware is not functioning properly;
  - c. circumstances included under force majeure;
  - d. damage resulting from repairs or work carried out by the Customer or by third parties, modifications or additions to the hardware;

- e. change in the original use or location and/or connections of the hardware.
  - f. in all such aforementioned cases, CaptureTech shall be entitled to charge for the work to be performed, travel and accommodation expenses as well as consumed materials and parts at the then current rates.
- 41.6. CaptureTech shall provide a service report to the Customer after each maintenance service. The contents of that report shall be presumed to be correct and binding if the Client has not filed a Written protest against it with CaptureTech within eight (8) days from the date indicated on the report.
- 41.7. Hardware is only eligible for service work by CaptureTech if:
- a. the hardware has been purchased from CaptureTech and a warranty period applies or service work has been agreed in respect of that hardware;
  - b. the hardware has been certified by CaptureTech's authorised service centre or by a CaptureTech technician; or
  - c. in respect of that hardware after the end of a warranty period or after the end of a period in which service work has been agreed between the Parties, an inspection of the hardware by CaptureTech shows that the hardware is in an acceptable maintenance condition.
- 41.8. In respect of hardware requiring service work, CaptureTech's Return Material Authorisation (RMA) procedure applies:
- Each defective device should be registered separately by the Customer via the RMA website portal so that each device gets its own unique RMA #.
  - The following data should be entered by Client: device type, serial number and detailed problem description.
  - The defective device must be sent to the repair centre by the Customer together with the RMA form, all as detailed in the RMA website portal.
  - The defective device must be packed by the Customer in such a way that no (additional) damage can occur during transport.
  - The customer shall bear the cost of transport to the repair centre.
  - Client should NOT send the device's accessories (batteries, holsters, cords, ear cushions, etc.).
  - CaptureTech or the third party performing the service work reserves the right to return items in packaging other than that in which it was originally received.
- 41.9. Service work shall generally be performed within the normal Working Hours applicable to CaptureTech, unless expressly agreed otherwise.
- 41.10. CaptureTech is entitled to charge the work performed outside the times specified in the previous paragraph separately to the Customer at the then current rates.
- 41.11. If the service technician engaged by or on behalf of CaptureTech is unable to start the work on time at the agreed time due to causes attributable to the Client or the work has to be interrupted, CaptureTech shall be entitled to charge the Client separately for the waiting times resulting therefrom.
- 41.12. In case of replacement of parts by or on behalf of CaptureTech in the performance of the service work, the replaced parts shall remain the property of CaptureTech unless the replaced parts have been charged separately to the Customer and paid to CaptureTech or unless the replacement of parts are included in the Agreement.

**Artikel 42. Principal's obligations**

- 42.1. If hardware service work has been agreed by the Parties, this article applies insofar as no deviating agreements have been made in the Quotation and/or an SLA.
- 42.2. The Customer shall, immediately after the occurrence of a hardware malfunction, notify CaptureTech by means of a detailed description of the malfunction prepared by an appropriate employee of the Customer.
- 42.3. The customer is further obliged, possibly in consultation with CaptureTech, to provide the necessary facilities and workspace to actually enable CaptureTech to smoothly perform the service work.
- 42.4. The customer is obliged to provide CaptureTech with the necessary information and access to the use of the hardware, documentation and software as well as the necessary consumables (insofar as such may be required to perform the work in CaptureTech's opinion).



## Module D: Hardware-as-a-Service

In addition to the general provisions in Module A, the special provisions in this Module D shall apply insofar as the Services provided consist of the Hardware-as-a-Service service.

### Artikel 43. Nature Services

- 43.1. Where the 'hardware-as-a-service' service has been agreed, the agreed hardware shall be leased. For the sake of clarity, in addition to the provisions of this module and the applicable provisions of Module A, the Services referred to in this module shall be subject to, inter alia, the following provisions: aarticle 31 (availability and maintenance) article 33.1, 33.2 (hardware general), aarticle 35 (rental hardware), aarticle 36 (ownership of rented hardware), aarticle 38 (environmental requirements and installation), aarticle 39 (conditions of use of leased hardware), aarticle 24 (use of software), aarticle 25 (third-party software), aarticle 26 (hosting, to the extent agreed as part of the Services) aarticle 30 (implementation). To the extent that provisions from the other modules conflict with a provision from this module, the provision from this module shall prevail.
- 43.2. The parties agree in the Quotation on the special conditions of the Services. To this end, the following shall be laid down:
- a. the name and type of the hardware;
  - b. A brief description of the condition of the specimens;
  - c. the quantity of copies to be rented, as well as the bandwidth in which the number of copies purchased can be unilaterally reduced or increased by the Client;
  - d. the duration of the lease;
  - e. the price agreed for the rental;
  - f. any software installed on the hardware, or to be installed by CaptureTech, and the licence terms applicable thereto;
  - g. any special conditions.
- 43.3. CaptureTech is entitled to make successive partial deliveries or performances. Each partial delivery or performance may be invoiced separately to the Customer. If the Customer defaults on payment of a partial delivery or performance, CaptureTech is entitled to terminate the Agreement, insofar as it has not yet been performed by it, without judicial intervention and without any notice of default, while retaining its right to compensation.
- 43.4. Client shall, at CaptureTech's first request, provide all reasonable cooperation in audits to verify compliance with Client's obligations under the Services referred to in this module. To this end, Client shall, inter alia, provide access to all places and information to verify compliance with the obligations. CaptureTech shall give timely notice of such audit, and shall bear the costs thereof. However, CaptureTech shall be entitled to charge the costs it incurs for the audit to the Customer if a material breach of the Customer's obligations is found.

### Artikel 44. Duration

- 44.1. Unless otherwise agreed In Writing, the provisions concerning the term of the Agreement in article 4.1 in respect of the Services referred to in this module.

- 44.2. In addition to the provisions of article 4.2 CaptureTech may immediately terminate the Agreement in Writing if CaptureTech's agreement with its supplier under which the hardware may be made available has been terminated. Any prepaid fees shall be returned pro rata.

**Artikel 45. Scaling up and scaling down**

- 45.1. Within the bandwidth agreed by the Parties (in the Quotation) as referred to in article 43.2, the Customer is entitled to scale up or down the size of the rented copies of hardware and any software installed on them, by submitting a Written request.
- 45.2. CaptureTech is only entitled to refuse this request if it has compelling reasons for doing so or if CaptureTech's supplier is unable to comply with CaptureTech's scaling-up request.

**Artikel 46. Compensation and payment**

- 46.1. Invoicing of the fees due shall take place monthly in arrears, based on the actual number of copies of the hardware taken, unless otherwise agreed. Changes to be made within the agreed bandwidth in the number of rented copies shall be settled pro rata, whereby the moment that a copy is actually delivered or returned shall count as the reference moment.
- 46.2. To the extent that repair of the hardware is required or requested by the Customer, but there is no Defect as defined in this module, CaptureTech shall be entitled to compensation for the repair work.

**Artikel 47. Shipping and returns**

- 47.1. The provisions of this paragraph apply to the regular supply of hardware, not being the supply or shipment of hardware under Article 48. In accordance with what is provided in Article 35.3, the hardware leased by CaptureTech to the Customer shall be made available to the Customer at the Customer's address, unless otherwise agreed in Writing. Unless otherwise agreed, no fee shall be payable by the Customer for this, thereby explicitly deviating from the provisions of Article 35.4 regarding the non-inclusion of transport costs.
- 47.2. If the Agreement expires or is otherwise terminated, or if there is scaling down, the Customer shall ensure that the hardware copies will be returned to CaptureTech or at a place specified by CaptureTech as soon as possible, but in any case within ten (10) days after the termination of the Agreement or acceptance of the request for scaling down by CaptureTech. If the Client fails to comply with the foregoing, the Client shall owe CaptureTech the agreed rental fee for the period from the failure until the hardware is returned.
- 47.3. Unless the cost of return in connection with clause 47.6 is borne by CaptureTech, any costs associated with the return shall be borne by the Customer.
- 47.4. In all cases, Client shall ensure adequate packaging of the hardware and shall return the hardware by insured shipment.
- 47.5. If software is installed on the hardware, the Customer guarantees that in case of return of the hardware, all copies of software installed on the hardware have been removed, unless otherwise instructed by CaptureTech. In addition, the Customer is obliged to irreversibly delete all copies of the software on the hardware. This provision does not apply in respect of standard software installed by CaptureTech's supplier.

- 47.6. CaptureTech or its supplier shall arrange for the transport of the copies with a Defect to be repaired or replaced, as far as transport within the EU and UK is concerned. If the copy is located in an area not covered by CaptureTech's or its suppliers' carrier of choice, Client shall deliver the copy to the nearest delivery point of that carrier. CaptureTech will bear the cost of transportation. However, Customer shall bear all other costs related to delivery and return (such as customs duties, taxes, insurance and other charges). If there is a repair request or request for replacement but no Defect, all costs of transportation shall be borne by the Customer.

**Artikel 48. Replacement and repair**

- 48.1. For the purposes of this module, 'Defect(s)' shall mean a property within the meaning of Article 7:204(2) of the Civil Code that affects the normal operation of the hardware and relates to:

- a. Normal usage wear;
- b. defects in parts and components.

'Defect' may also include:

- c. damaged housing;
- d. faulty LCD screen;
- e. faulty touch panel;
- f. damaged battery cover (if not integrated with the battery);
- g. broken scanning window;
- h. faulty switch.

Does not count as Defect:

- i. a feature that already existed when the Agreement was entered into or the hardware was provided;
- j. a feature in or as a result of changes made or software installed by the Customer or on its instructions;
- k. a feature to a copy that has been modified or repaired by anyone other than CaptureTech or its supplier;
- l. defects or damage caused by third parties;
- m. any claimed defect, malfunction or damage which CaptureTech or its supplier determines was caused by misuse, abuse or improper use;
- n. defects or damage caused by natural or man-made disasters;
- o. properties of accessories, consumables or equivalent products (e.g. holsters, holders, cables, power supplies, batteries, etc.);
- p. cosmetic damage that does not affect the normal operation of the specimen.

- 48.2. The assessment of the damage, and whether or not the copy will be repaired or replaced free of charge, is the sole responsibility of CaptureTech or its supplier.

- 48.3. Notwithstanding the provisions of articles 37.1 and 37.2 CaptureTech shall, at the request of the Customer, remedy the Defects to the hardware (or have them remedied) free of charge by repairing or replacing the relevant copy. This does not apply to copies of hardware present outside the EU and the UK and to further types of hardware excluded by CaptureTech. Biologically contaminated hardware will not be repaired or replaced free of charge.

- 48.4. For specimens where no problem can be found, CaptureTech reserves the right to charge an inspection fee. In addition, CaptureTech reserves the right to replace a specimen with another, functionally equivalent, reconditioned or new specimen.
- 48.5. When repairing or replacing a copy, all data, software or other applications and user-specific configurations that were on the copy will be erased. CaptureTech is not responsible for reloading and reconfiguring the copy and the Customer must take the necessary precautions itself, unless otherwise agreed in writing in advance.
- 48.6. If a repair by CaptureTech will reasonably take longer than ten (10) working days to complete, CaptureTech shall as far as reasonably possible provide a replacement for that period, so that the Customer's enjoyment of the rental is disrupted as little as possible.
- 48.7. The period during which the Client cannot dispose of the hardware due to repair or replacement will not affect the rental price. Therefore, the Client is not entitled to any refund in that context.
- 48.8. CaptureTech reserves the right to adjust the Services referred to in this module for Customer if an above-average number of damaged copies of hardware are returned for repair or replacement by Customer. In such a case, CaptureTech may decide in its sole discretion whether additional repair costs will be charged and CaptureTech will provide Customer with a cost estimate. Upon approval of the cost estimate by Customer, the repair will be carried out.
- 48.9. CaptureTech shall engage a third party supplier when repairing and replacing hardware. The customer shall provide all reasonable and requested cooperation in a timely manner when submitting a request for repair or replacement. This may include providing all potentially relevant information, completing an RMA form and requesting an RMA number (from the third party supplier). CaptureTech or its supplier is entitled to limit the number of RMA requests per day by the Customer.
- 48.10. If the costs for repair and replacement are not included in the Services, for example if there is no Defect as referred to in this article, CaptureTech is entitled to charge the reasonable costs actually incurred or incurred by CaptureTech for the repair or replacement.

**Artikel 49. Risk and insurance**

- 49.1. The risk of loss, theft or damage to the rented hardware rests (after delivery) with the Customer during the entire rental period, regardless of the cause of the occurrence of the damage. The Customer cannot invoke force majeure against CaptureTech in this context.
- 49.2. Notwithstanding the foregoing, the risk of loss and damage to hardware in transit shall rest with CaptureTech, insofar as it is transported within the EU and the UK. This is subject to the condition that the carrier selected by CaptureTech or its supplier is used and that the copy is registered with an RMA number with CaptureTech's supplier. Excluded from the provisions of this article is damage or loss caused by negligence of the Customer.
- 49.3. In case of loss, theft or damage to the hardware, the Client is obliged to notify CaptureTech in Writing without delay. CaptureTech shall not be responsible for any errors, or for any damage arising as a result of errors, in Third Party software installed on the leased hardware by the Client. Client shall indemnify CaptureTech and/or its supplier against any third party claims on account of any alleged infringement of Third

- Party Intellectual Property Rights through the use of software installed by Client.
- 49.4. Client shall keep the hardware adequately insured (at its own expense) during the term of the Agreement against, inter alia, fire, water damage and theft of the hardware.
- 49.5. The Customer shall ensure that CaptureTech, under the aforementioned insurance, is included as a third-party beneficiary or co-insured. If this is not reasonably possible, the Customer shall assign its claim against the relevant insurer to CaptureTech.
- 49.6. At CaptureTech's first request, the Client shall provide copies of the policy for the aforementioned insurance and/or proof of full and timely premium payment.

**Artikel 50. Intellectual property rights**

- 50.1. All Intellectual Property Rights in any items, designs, sketches, drawings, models, illustrations, quotations, instructions for use, or other Works provided or made in connection with the Services referred to in this module shall rest and remain with CaptureTech or its supplier. CaptureTech hereby grants a limited, non-exclusive, non-transferable, non-sublicensable right to the Client to use the above Works for the purpose of the Agreement.
- 50.2. The Client hereby grants CaptureTech and its engaged third parties a limited right of use to use any items, designs, sketches, drawings, models, images, quotations, instructions for use, or other Works provided by the Client for the provision of the Services. The Client indemnifies CaptureTech and/or its engaged third parties against any third party claims on account of an alleged infringement of the Intellectual Property Rights of third parties through the use of these Works.

**Artikel 51. Additional provisions on deficiencies**

- 51.1. CaptureTech's liability for damages or other claims based on an attributable failure to perform the Agreement, a wrongful act or on any other ground shall be limited to an amount of 500 Euros per event (whereby a series of related events counts as one event) up to a maximum of 10,000 Euros per year, regardless of the number of events.
- 51.2. Without prejudice to the foregoing, CaptureTech shall not be liable for compensation for indirect damage, including lost profits, missed savings, reduced goodwill, damage due to business interruption, data loss, security breaches or unauthorised access to data, applications, services, networks, IT systems.
- 51.3. As soon as the Client fails in its obligations to CaptureTech, CaptureTech or its supplier shall be entitled to repossess the hardware copies without further notice of default. The Client irrevocably authorises CaptureTech or its supplier, now for then, to enter the place(s) where the copies are located for the aforementioned purpose.
- 51.4. All rights asserted by the Customer on account of defects in the performance of its obligations by CaptureTech or other faults in the Services provided by it shall lapse if the Customer has, without CaptureTech's express Written consent, attempted to remedy (or have remedied) any (alleged) Defect or other fault itself.

- 51.5. If, after the conclusion of the Agreement, circumstances arise or become known which CaptureTech did not know, nor should have known, when entering into the Agreement, and as a result of which CaptureTech cannot (timely) fulfil its obligations to the Customer, CaptureTech shall not be in default and is entitled to suspend its (delivery) obligations.
- 51.6. If as a result of the aforementioned circumstances performance by CaptureTech is permanently impossible, it shall be entitled to demand that the Agreement be amended in such a way that its performance remains possible, unless in the given circumstances this cannot reasonably be expected of the Customer and dissolution is justified. In the latter case, the Agreement concluded between the Parties may be dissolved without the Customer being able to assert any right to compensation.
- 51.7. The aforementioned circumstances shall also include any circumstance independent of the will of CaptureTech which permanently or temporarily prevents performance of the Agreement, as well as - insofar as not already included - war or danger of war, riots, strikes, (natural) disasters, accidents, government measures, delayed/delayed deliveries by suppliers (including the suppliers of fuel, energy and water), transport difficulties, fire and breakdowns in the business of CaptureTech or its suppliers.

**Artikel 52. Claims**

- 52.1. In respect of the Services referred to in this module, the Client shall not sue CaptureTech's relevant supplier if it wishes to make a claim on any grounds whatsoever.
- 52.2. To the extent that that which is stipulated in the previous paragraph is not considered reasonable, that which is stipulated in this paragraph shall apply. All limitations and exclusions of liability in these General Terms shall also apply in favour of all (legal) persons engaged by CaptureTech and its suppliers in the execution of the Agreement.

**Artikel 53. Service desk**

- 53.1. The provisions of this article apply to the extent not otherwise provided in the Quotation or an SLA.
- 53.2. CaptureTech shall endeavour to provide a reasonable level of support to the Customer in respect of queries relating to the leased hardware.
- 53.3. The support as described in the previous paragraph is offered through a helpdesk which is available on Business Hours both by telephone and e-mail, and can be accessed by creating a ticket on CaptureTech's portal.
- 53.4. CaptureTech aims to handle requests for support within a reasonable timeframe.



## **Module E: Development of Works**

In addition to the general provisions in Module A, the special provisions in this Module E shall apply insofar as the Services provided consist of developing, adapting and/or configuring Works.

### **Artikel 54. Development of Works**

- 54.1. Prior to the execution of the Work, the parties will establish In Writing the manner and methodology in which the Work will be executed as well as the specifications to be met by the Works to be developed.
- 54.2. CaptureTech will deliver the developed Works to the Client if, in its professional opinion, they meet the predefined requirements and/or are suitable for use.
- 54.3. If the Client has pre-purchased a certain number of hours from CaptureTech, or if the Parties have agreed on a maximum number of hours, CaptureTech shall stop performing work at the time the purchased hours have been spent or the maximum number of hours has been reached. In the event that what CaptureTech has so far developed does not (fully) meet the Works intended by the Client, or if the Client has new requirements, then the Parties may agree on additional hours that CaptureTech may use for work to further develop the relevant Works.
- 54.4. If during the development of Works it becomes apparent that it is impossible for CaptureTech to realise certain requirements of the Client, CaptureTech may at its discretion choose to stop the realisation of the relevant requirement. CaptureTech will then communicate this to the Client, after which the Parties will decide by mutual agreement to delete or simplify the relevant wish.
- 54.5. If CaptureTech is required to perform work at a location other than CaptureTech's usual location (e.g. at the Client's premises), CaptureTech is entitled to charge additional costs to the Client for this purpose. Such costs include, but are not limited to: travel expenses, (travel) insurance costs, costs of accommodation and costs for food and beverages. CaptureTech and the Client shall endeavour to agree such costs in advance to the extent possible.
- 54.6. CaptureTech makes no warranties with regard to functioning when using non-standard or outdated operating systems, browsers, plugins, scripts, other software, and hardware unless otherwise stated in the Quotation.
- 54.7. CaptureTech shall inform the Client if it considers that the cooperation is not going well and/or doubts whether the agreed work can be brought to a successful conclusion. Partly to avoid unnecessary costs on both sides, CaptureTech is always entitled to immediately terminate the Agreement with the Client in the cases mentioned in the previous sentence. Any fees paid in advance by the Client for Services or hours that will no longer be delivered or spent will be refunded by CaptureTech. Fees for hours already worked do not have to be refunded by CaptureTech.

### **Artikel 55. Acceptance**

- 55.1. If the Parties agree on an acceptance test, the provisions of this article shall apply.
- 55.2. When the development of Works or part thereof is completed in CaptureTech's opinion, CaptureTech shall make such (part of the) Work available to the Client in an acceptance environment. If possible,

- CaptureTech shall also make the associated documentation, such as version information or release notes, available to the Client.
- 55.3. For two (2) weeks after CaptureTech has made the developed available in the acceptance environment, the Customer shall have the opportunity to test the developed. During this test period, the Customer is not permitted to use the Works for productive or operational purposes. CaptureTech may always require, therefore even if this is not expressly agreed, that the Customer conducts a proper test of sufficient scope and depth on (intermediate) results of the development work with suitably qualified personnel and that the test results are reported to CaptureTech in writing, clearly and comprehensibly.
- 55.4. The Works will be deemed accepted between the Parties:
- a. on the first day after the test period.
  - b. if CaptureTech is notified In Writing by the Client of errors in the Works before the end of the test period, CaptureTech shall endeavour to the best of its ability to rectify the errors within a reasonable time, whereupon the Works shall be deemed to be fully accepted after rectification of said errors.
- 55.5. After approval and at the request of the Customer, CaptureTech will place the developed on a production environment.
- 55.6. Acceptance of the Works may not be withheld on any grounds other than those related to the specifications expressly agreed between the Parties, nor because of the existence of minor errors, i.e. errors that do not reasonably prevent the operational or productive commissioning of the Works. Acceptance may furthermore not be withheld with regard to aspects of the Works that can only be assessed subjectively, such as the design of user interfaces, unless explicit and concrete agreements have been made with regard to these aspects. In the event of minor errors, CaptureTech shall remedy such minor errors within a reasonable period of time.
- 55.7. Customer is itself fully responsible for the developed Works and their use from the moment that: (i) Client starts using the developed Works, (ii) CaptureTech has put the developed Works on a production environment at the request of Client, or (iii) the Works have been accepted. CaptureTech is hereafter deemed to have fulfilled its obligations in respect of the development, provision, and if agreed, implementation of such Works.

## **Module F: Security services**

In addition to the general provisions in Module A, the special provisions in this Module F shall apply insofar as the Services provided consist of Security Services.

### **Artikel 56. Nature Services**

- 56.1. The Services referred to in this module shall only be performed by CaptureTech on the basis of an obligation of effort. CaptureTech shall therefore endeavour to provide the description of the Services agreed in the Quotation in order to mitigate security risks in the Customer's IT environment. However, CaptureTech cannot guarantee that the

Customer's IT environment is free from all security risks, partly because third-party software used by the Customer may involve security risks, and security risks may also arise from human actions on the part of the Customer itself. In addition to the provisions in article 19.2 CaptureTech shall expressly not be liable for any damage resulting from a security breach in the Customer's IT environment, unless the damage results from intent or deliberate recklessness on the part of CaptureTech's management.

- 56.2. For the sake of clarity, in addition to the provisions of this module and the applicable provisions of Module A, the Services as referred to in this module shall be subject to, inter alia, the following provisions, to the extent agreed as part of the Services: aArticle 24 (use of software), aclause 25 (third party software), aarticle 26 (hosting), aarticle 27 (shared hosting and virtual private servers) aarticle 28 (dedicated servers and colocated servers), aarticle 29 (backups and recovery), aarticle 30 (implementation), aarticle 31 (availability and maintenance).

### **Artikel 57. Responsibilities Principal**

- 57.1. In addition to the provisions of article 5.5 Client shall:
- a. Grant CaptureTech unrestricted access and permission to use and access (remotely or otherwise) the Customer's ICT infrastructure, including but not limited to software, hardware, systems and rooms in order to provide the Services, whether owned by the Customer or third parties;
  - b. by entering into the Agreement declare and warrant that all necessary licences and/or (Written) third party approvals required for the performance of the Services by CaptureTech have been obtained;
  - c. by means of the conclusion of the Agreement insofar as the Parties have agreed as part of the Services the tests referred to in Article 63 (whether or not on behalf of third parties), give permission to bypass any (security) measure already taken in or near the ICT infrastructure (in the broadest sense of the word) of the Customer, as well as give permission to modify, open, copy and/or delete the data present on the ICT infrastructure. Under no circumstances shall there be any obligation on CaptureTech to restore or restore the modified or deleted data on the ICT infrastructure during or after the performance of the Services;
  - d. have the responsibility to verify whether third party consent is required in the context of the Services. Client represents and warrants that it is authorised to grant to CaptureTech the consent and rights referred to in this article. Client further declares that it is also authorised to grant this right on behalf of relevant third parties.
- 57.2. The Client fully indemnifies CaptureTech and any third parties engaged by CaptureTech against any claims or demands (in the broadest sense of the word), from third parties, on any account whatsoever, relating to the Services and the Client's responsibilities under this Article. CaptureTech does not accept any liability for any damage arising in the performance of a test as referred to in Article 63, unless the damage is the result of intentional or deliberate recklessness of CaptureTech's management.

**Artikel 58. Onboarding**

- 58.1. Unless otherwise agreed In Writing, the first part of the Services referred to in this module consists of the onboarding. The content and method of the onboarding is included in the Quotation, or further agreed In Writing. The Client shall owe the amount included in the Quotation for the onboarding.
- 58.2. As part of onboarding, noted vulnerabilities are reported. The remediation/repair of vulnerabilities is not included in the onboarding, and counts as additional work (see aarticle 16). If the Client requests the remediation/repair of vulnerabilities, the Client hereby agrees to subsequent invoicing based on the actual hours worked.

**Artikel 59. Services package**

- 59.1. CaptureTech and the Customer, whether or not in a separate Quotation after the onboarding referred to in the previous article has taken place, agree in Writing on the package of services desired for the Customer.

**Artikel 60. Detection and monitoring**

- 60.1. If the Services consist of monitoring and detection, the detected threats and vulnerabilities will be reported to the Client. Unless expressly agreed otherwise in writing, or to the extent that the automatic response to threats and vulnerabilities is part of the standard services pursuant to the Quotation, the remediation/repair of vulnerabilities is not included in the Services, and such work shall be considered additional work (see aclause 16). If the Client requests remediation/repair of vulnerabilities, the Client hereby agrees to retrospective billing based on the actual hours worked.

**Artikel 61. Service desk availability, monitors, response times**

- 61.1. The provisions of this article apply to the extent not otherwise provided in the Quotation or an SLA.
- 61.2. The provisions of article 31 regarding availability applies in full to the availability of the software provided as part of the Services.
- 61.3. CaptureTech shall endeavour to provide a reasonable level of support to the Customer in respect of queries relating to the Services.
- 61.4. The support as described in the previous paragraph is offered through a helpdesk that is available on Business Hours both by telephone and e-mail, and can be accessed by creating a ticket on CaptureTech's portal.
- 61.5. CaptureTech shall endeavour to deal with requests for support within a reasonable period of time. The time taken to respond to notifications may vary, but CaptureTech will endeavour to respond to requests submitted through the service desk, or to notifications received as a result of monitoring the Customer's ICT infrastructure, within 1 working day of receiving the request or notification.

**Artikel 62. Consultancy and training**

- 62.1. Insofar as consultancy is part of the Services, the provisions of aclause 14.
- 62.2. In order to raise awareness in the Customer's organisation, CaptureTech will provide training, to the extent agreed in the Quotation.
- 62.3. Client is aware that, as part of the training and awareness referred to in the previous paragraph, CaptureTech may send fake phishing messages to employees of Client.

**Artikel 63. Pentesting**

- 63.1. To the extent that the Parties agree that CaptureTech shall test the security of the Client's ICT infrastructure, whether or not by performing so-called pen tests, CaptureTech shall proceed to investigate any security flaws and weaknesses in the software, ICT infrastructure, including all associated networks, systems and other objects, in use by the Client.
- 63.2. The parties will agree in Writing on a method and further scope of the test.
- 63.3. CaptureTech and any third parties engaged by it, shall exercise the care of a good contractor when performing the test, more specifically that of a reasonably acting and reasonably competent cyber security professional. This implies, inter alia, that (1) the analysis of and/or intrusion into the software, ICT infrastructure, systems and other objects, or any attempt to do so, shall be carried out on the instructions and at the express request of the Customer and in accordance with the agreements and conditions as laid down in the Agreement; and (2) that CaptureTech shall not, during the test, carry out any deliberate tests aimed at achieving a so-called 'denial of service' condition by means of excessive demands on the available network capacity (bandwidth).
- 63.4. Although CaptureTech will endeavour to carry out the tests to the best of its ability and using its professionalism, CaptureTech does not warrant that all security flaws and weaknesses present are actually identified and determined.
- 63.5. For the sake of clarity, what is provided in Article 57 shall apply in full to the tests referred to in this Article.
- 63.6. CaptureTech shall report In Writing on the testing referred to in this Article in a manner agreed by the Parties.