

# **General Terms and Conditions concerning the provision of the ICIPRO Cloud Services IaaS**

## **Preamble**

The General Terms and Conditions regarding the provision of the Cloud Services of the **National Institute for Research and Development in Informatics - ICI București** (hereinafter, “GTC”) apply to any and all provision of electronic communication services by the Provider to the Beneficiary. For each type of service that the Beneficiary wishes to receive, the Parties will conclude a separate agreement regulating the specific legal, commercial and technical conditions concerning the provision of the respective service (hereinafter, the “Contract”).

**The GTC, the Contract, the Addenda, and other documents signed by both Parties in connection with the Contract** constitute a whole and are to be construed accordingly. In case the **Contract** contains contradictory and/or derogatory provisions from these **GTC**, the provisions of the **Contract** shall take precedence in the relations between the Parties. All references to the GTC will contain an implicit reference to the Contract and vice versa.

## **1. Definitions and interpretation**

### **1.1. Definitions**

“**Provider**” – the **National Institute for Research and Development in Informatics – ICI București**, with its registered office at 8-10 Blv. Mareșal Al. Averescu, Sector 1, București, unique registration code 2785503, registered with the Trade Register under No. J40/11029/1999, duly represented by Adrian-Victor VEVERA, as General Manager, hereinafter referred to as *Provider*;

“**Beneficiary**” – the natural or legal person that is part of this Contract;

“**Party/Parties**” – the Beneficiary and/or the Provider;

“**Contract**” – the service agreement concluded between the Provider and the Beneficiary for the delivery of a certain type of Service, as well as any other documents concluded under the Contract (such as: appendices, addenda, equipment delivery/receipt protocols, equipment lease/sublease agreements, service delivery notifications etc.)

“**Service**” – any and all telecommunication services, information technology services or other similar services – provided by or on behalf of the Provider, under the Contract.

“**Locations**” – the headquarters, the work sites or the domicile/residence of the Beneficiary or other places where the Services are to be provided, as agreed by the Parties;

“**GQS**” – Guaranteed Quality of the Services;

“**Unavailability**” – 0% availability of the Services;

1.2. The term “day/days” or any other reference to days is to be construed as calendar days, unless otherwise specified.

1.3. Any amount mentioned in the GTC and the Contract does not include VAT.

## **2. Scope of the Contract**

2.1. The scope of the Contract, as requested by the Beneficiary, is the provision by the **National Institute for Research and Development in Informatics – ICI București** of its Services to the Beneficiary, in accordance with the terms and conditions provided in these GTC and the Contract, in exchange for the payment by the Beneficiary of the fees charged by the Provider.

2.2. The Parties understand and agree that, in order to provide the Services, the **National Institute for Research and Development in Informatics – ICI București** will use its own equipment, unless the Parties agree otherwise by Contract. All equipment owned by the Provider, necessary for the use of the Services by the Beneficiary and which will be made available to the latter, will be subject of bailment, lease or sublease agreements or will be assigned based on a delivery/receipt protocol, as the Provider shall deem necessary.

2.3. The Beneficiary will receive no right to use any element of the equipment, of the operating facilities or other infrastructure and/or network used or made available by the Provider for the provision of the Services, other than the right to use the Services, as described in the Contract.

## **3. Term of the Contract and Effective Date**

3.1. The Contract enters into force as of its signing by both Parties and will be in force for a minimum initial duration which will be negotiated by the Parties and explicitly provided in the Contract as “Initial Term”. The Initial Term will commence as of the date of commissioning of the contracted services.

3.2. After expiration of the Initial Term, the Term of the Contract will automatically be extended by similar periods of time or by another period agreed by the Parties in the Contract, unless one Party notifies the other in writing of an intention to the contrary, at least 30 days before the expiration of the current Term.

3.3. The Term of the Contract automatically extends by the period of time in which the provision of any service has been suspended for reasons attributable to the Beneficiary.

3.4. If the Beneficiary contracts new products and services in other locations, the Contract is extended exclusively for the respective locations for the duration agreed as per Art. 3.1. above, unless the Parties agree otherwise in writing.

The termination of the Contract for one of the contracted services or for one or several of the contracted locations does not entail the termination of the entire Contract, unless one of the cases described in Art. 10 occurs.

**3.5.** For the entire term of the Contract, the Parties agree not to one-sidedly terminate the Contract; otherwise, the provisions of Art. 10.2 of the GTC shall apply automatically.

#### **4. Installation and Delivery of the Services**

**4.1.** The specific conditions of installation, connection and delivery of the Services are provided in the Contract concluded between the Parties for each individual Service.

**4.2.** The installation and connection of the system and the equipment necessary for the performance of the Services at the location/locations of the Beneficiary, together with the necessary configurations and any related transformations requested by the Beneficiary after installation of the Services will be performed by the representatives of the Provider within the term agreed in the Contract, the related costs being borne by the Beneficiary under the conditions provided in the Contract.

**4.3.** The Beneficiary will ensure the necessary conditions requested by the Provider for the installation and delivery of the Services by the deadline previously specified in the Contract by the Provider; the latter has the right to refuse the completion of the works if this condition is not met. The Beneficiary will be responsible for maintaining the Location in optimal conditions, for observing the labour protection measures, for the prevention of accidents, as well as for the compliance with the security and fire protection regulations during the installation of the Services.

**4.4.** The Provider has the right to refuse to activate the Services and terminate the Contract without any compensation or prior notice, and without any other formalities, in justified circumstances including, without limitation: (i) the provision of false or incorrect data by the Beneficiary; (ii) failure to comply with any contractual commitments made by the Beneficiary towards the Provider or other associated companies; (iii) the risk of insolvency or inability to pay on the part of the Beneficiary; (iv) if the Beneficiary does not have a good payment history and is in arrears with the payment of the invoices issued by the Provider.

**4.5.** The Beneficiary undertakes to supply the Provider with all the documents and information that the latter requests in order to activate the Services within the interval communicated by the Provider. If the Beneficiary is late with providing such documents, the Service activation will be automatically postponed with the period necessary for the provision of the requested documents and information.

#### **5. Pricing and payment options**

**5.1.** The fees for the Services are agreed by the Parties in the Contract.

**5.2.** The fees will be paid as follows, unless the Parties agree otherwise in the Contract:

**a. non-recurring fees** (e.g., the fees for the setup and the connection of the system at the location/locations of the Beneficiary, the fee for moving an existing connection to another location etc.) will be invoiced by the Provider in advance of the date the corresponding works are due, and the performance of the works is conditioned upon the payment of such fees; the payment term will be 20 days from the date of the invoice;

**b. recurring fees** (e.g., monthly subscriptions) will be invoiced in advance on a monthly basis, with the invoice issued on the first working day of the month for the current month; and

**c. the applicable fees based on the usage level and the fees based on periods and rates** will be invoiced retroactively on a monthly basis, with the invoice issued on the first working day of the month following the provision of the service;

**5.3.** The invoices will be issued in RON, considering the RON/EUR or RON/USD exchange rate published by the National Bank of Romania, valid on the date of the invoice, based on the provisions of the Contract or the Addendum, and they will be paid in cash or by bank transfer to the Provider's account, as indicated on the invoice; the Beneficiary is solely responsible for the timely payment.

**5.4. The non-recurring fees** will be invoiced on the date of signing the Contract or the Addendum by which the Parties agree to contract the Service.

**5.5. The Service fees** are denominated differently, in either EUR, USD or RON, as required, based on the nature of the Services, per specific unit of measure for each type of service.

**5.6.** The Service invoices will give a detailed description of each pricing/fee category, and the Beneficiary will make the payments to the Provider within 20 days from the date of the invoice, unless the Parties have agreed on a different term in the Contract.

**5.7.** The Beneficiary can request the Provider to give a detailed description of the invoiced Services.

**5.8.** For the Services charged depending on the usage level (e.g., the telephone services), the Provider will facilitate the access of the Beneficiary to the usage details for the applicable invoice period. Such record can be issued by the Provider in an electronic database format, online and/or in material paper format. All objections that the Beneficiary may raise regarding such details will be notified to the Provider in writing, within the payment term. After the expiration of this term, the Provider will have the right to erase any data in their records and the Beneficiary will be deemed to have accepted the description of the usage contained in the respective invoice as fully accurate.

**5.9.** The "Services provided" shall also be construed to mean those Services installed by the Provider that are not used by the Beneficiary.

**5.10.** The Services provided to the Beneficiary are registered as such by the specific technical equipment of the Provider and by signing the Contract the Beneficiary agrees to the fact that the records generated by the Provider's specific equipment and systems, and stored in an electronic or other format by the Beneficiary provide sufficient and relevant proof of the Services provided to the Beneficiary under the Contract.

**5.11. In case of failure to pay the invoices by due date,** the Provider reserves the right to charge (i) penalties of **0.2% (zero point two percent) per day of delay**, calculated on the total amount of the unpaid invoices, (ii) the exchange rate differences between the date of the invoice and the date of the actual payment (the day the account is credited with the corresponding amount or the day the money is received, which is mentioned on the cash collection document). The exchange rate difference will be found, distinctively, in the value of the next service provision invoice. Furthermore, the delay penalties will be charged until the date of the full and effective execution of the main payment obligation, and they may exceed the debit to which they apply.

**5.12. For the first calendar month in which the Services are provided,** the Provider will issue the invoice for an amount calculated on a pro rata basis, according to the number of days for which the Services are actually provided, starting from the commissioning of the service (ascertained by signing the Service Delivery Notice), as stated in the Contract.

**5.13.** In case the Service cannot be provided on the date agreed in the Contract due to causes attributable to the Beneficiary or to third parties for which the Beneficiary is held liable (for example, its employees), the Provider will have the right to invoice the applicable fees starting with the calendar day when the Service could have been delivered if this delay had not occurred.

**5.14.** Upon written request of the Beneficiary and provided that the provisions of Art. 7.1.11 are fulfilled, the Provider may grant **non-functioning discounts** for culpable non-compliance and for reasons related to its control or the provisions concerning the GQS warranted by the Provider under the Contract. The non-functioning discounts will be operated on the invoices corresponding to the recurring fees for the month immediately following the one in which the GQS related provisions were not met. In this situation, as a result of crediting the invoices, the availability provided in the GQS will be calculated irrespective of the Service flaw, while the Service will be deemed as provided in the established parameters. The granting of non-functioning discounts is the only remedy for the non-compliance with the GQS provisions, excluding the possibility of the Beneficiary invoking termination of the Contract for failure to ensure availability according to the GQS covered by crediting the invoice, except as provided under Art. 10.3.2.

**5.15.** The non-functioning discounts that can be granted by the Provider under Art. 5.13 above will be calculated as provided in the Contract. Non-functioning discounts are not granted for service interruptions occurring under the conditions provided in Art. 9.

**5.16.** Any additional Service delivery requested by the Beneficiary will be conditional upon (i) the payment of all invoices to date, (ii) the advance payment of the relevant fees or, (iii) upon any other reasonable method the Provider deems appropriate to secure prompt payment of the fees.

**5.17.** The invoices will be e-mailed to the addresses communicated by the Beneficiary, as stated in the Contract. Upon express written request of the Beneficiary, the invoices will be sent by regular mail, by courier mail, or by fax to the addresses and/or fax numbers communicated by the Beneficiary. The invoice is deemed approved for payment by the Beneficiary, without other formalities, on the date and time registered by the e-mail application, on the day of delivery by regular mail or courier, or on the date and time registered by the fax machine. If the Beneficiary claims they have not received the invoice or refuses to receive it, they are not exempt from payment by due date; a copy of the respective invoice can be issued to the Beneficiary upon request.

**5.18.** The Beneficiary can dispute the correctness of the invoice in writing, within 20 days of the issuance of each invoice, without being exempt from the full payment of each invoice by their respective due dates, with any possible differences corrected on the next invoice issued by the Provider. The non-contestation of the invoice within the above time-limit will be deemed unconditional acceptance of the invoiced amounts, and the Beneficiary loses the right to contest the invoice, implicitly acknowledging that the invoiced value of the services representing the scope of the Contract is certain, liquid and due. The contestation will be made in writing, as per Art. 13 of the present GTC. Express approval of the Provider's invoice is not necessary for the validation of the service provided. The Provider will settle the complaints made in writing (e-mail) by the Beneficiary as provided in the present article within 72 hours of their receipt.

**5.19.** To ensure the fulfilment of the obligations (mainly related to payment) assumed by the Beneficiary, the Provider can ask the Beneficiary – and the latter, in turn, undertakes to pay a certain amount of money as a **guarantee** for any and all services covered by the Contract. The amount of the said guarantee will be agreed by the Parties to the Contract.

**5.20.** The Beneficiary undertakes to pay the guarantee upon signing the Contract, if the Provider requests it, or within 3 days of the Provider's request in case there is a request to establish a guarantee during the term of the contract. Until the guarantee is constituted or reconstituted, the Provider has the right to immediately suspend the provision of any or all services provided to the Beneficiary, including the ones covered by other contracts, without prior notice or right to compensation.

**5.21.** The guarantees will not bear interest and they will be returned within maximum 30 days of termination of the Contract, provided that all payment obligations of the Beneficiary towards the Provider are met. If the Provider executes the established guarantee, the Beneficiary will be obliged to reconstitute the guarantee immediately. The Provider has the right to retain from the guarantee any amounts that the Beneficiary owes them.

5.22. Any payment made by the Beneficiary is intended to cover primarily the delay penalties and any other ancillary obligations deriving from the outstanding value of the invoice. The imputation of payment will aim at covering the liabilities in chronological order, starting with the oldest outstanding obligations.

5.23. The payment of any amounts due to the Provider by the Beneficiary under the Contract will be made by the Beneficiary, free of any deductions, compensations, discounts, commissions, bank charges, taxes etc.

## **6. The rights and obligations of the Parties**

### **6.1. Rights and obligations of the PROVIDER**

6.1.1 The Provider will perform the services as per the present GTC, the provisions of the Contract and the legal regulations in force, and will strictly observe the obligations arising from them.

6.1.2 The Provider cannot be forced to provide one or several services if it is not possible or convenient to provide them, technically, commercially, legally or if it violates the law.

6.1.3 The Provider will install the necessary Equipment for the provision of the Services at each of the agreed Locations, with the observance of the technical specifications in force, only if the Beneficiary uses the equipment of the Provider. The installation of the Equipment will be performed within the term and under the conditions agreed by the Parties under the Contract. The installation term will be extended by the period of time during which the Beneficiary cannot be contacted, is not available, does not provide access for installation or has not obtained the necessary authorizations.

6.1.4 In respect of its own equipment, the Provider retains all the rights that are not expressly granted to the Beneficiary under the Contract, for the entire duration of the Contract.

6.1.5 The Provider will supply the electronic communication services between the location/locations of the Beneficiary and the network of the **National Institute for Research and Development in Informatics – ICI București** as per the GQS and the technical specifications described in the Contract. Unless otherwise stated in the Contract, the GQS are those specified by the standards and regulations in force.

6.1.6 The Provider shall ensure the availability of the services provided under the Contract, ensuring the good functioning of its public electronic communication networks 24/7/365, so that the electronic communication networks administered can operate within the parameters established by the normative documents regulating this activity. The inspection, maintenance and repair works for the public communication networks of the Provider will be performed at the Provider's own expense, unless such works are attributable to the Beneficiary or to third parties, in which case the latter have the obligation to bear the costs of the works. The costs for the maintenance and repair of the Beneficiary's individual interior installation shall be borne by the Beneficiary.

6.1.7 Within the limits imposed by the legal regulations in force, the Provider shall observe the privacy of the Beneficiary's data transferred via the **National Institute for Research and Development in Informatics – ICI București's** network.

6.1.8 The Provider has the right to delete any information introduced by the Beneficiary in the network of the **National Institute for Research and Development in Informatics – ICI București**, if such information could affect the proper functioning of the network or could lead to the interruption of the network.

6.1.9 The Provider has the right to change the Beneficiary's username and reset the account password at any time, in case they suspect security issues with the system of the Beneficiary, immediately notifying the latter about the change.

6.1.10 The Provider has the obligation to analyse **the Beneficiary's complaints regarding the non-functioning / malfunctioning of any service** and settle them at its earliest convenience, in maximum 24 hours as per the GTC, the Contract and the legal provisions in force.

6.1.11 The Provider shall provide technical support according to the Contract.

6.1.12 The intervention and remediation of the reported malfunctions are conditioned upon the payment by the Beneficiary of all the obligations provided in the Contract or in other contracts concluded between the Beneficiary and the Provider. The deadline for the remediation of the possible malfunctions reported by the Beneficiary may be exceeded, without the Provider being held liable, if the reported malfunctions are caused by circumstances beyond the will and control of the Beneficiary (such as, for example, the inoperability of the national and international terrestrial networks, the deterioration, stealing or any other unauthorized interventions of the Beneficiary or other persons on the network, equipment, or components of any communication network of the **National Institute for Research and Development in Informatics – ICI București**, the use by the Beneficiary of such programs, equipment or devices that are inadequate or incompatible with the services of the **National Institute for Research and Development in Informatics – ICI București**, power outages etc.).

6.1.13 The Provider cannot be held responsible for such malfunctions/failures/errors of the system or which have been repaired within the term and under the conditions of the Contract.

6.1.14 The culpable non-fulfilment of the obligation to repair the malfunctions entitles the Beneficiary to request – in writing, within 30 days of the occurrence of such malfunctions – non-functioning discounts for the period exceeding the contractual term of remediation.

6.1.15 The expenses deriving from the remediation of the reported malfunctions (the equivalent value of the services, including labour costs, materials used and travel expenses) shall be borne by the culpable party.

### **6.2. Rights and obligations of the BENEFICIARY**

**6.2.1** The Beneficiary undertakes to use the Services rendered by the Provider in full compliance with the provisions of the present GTC, the Contract and the legislation in force, and to strictly observe the obligations arising from them.

**6.2.2** The Beneficiary undertakes to pay to the Provider the fees and the equivalent value of all the contracted services, in full and by due date.

**6.2.3** The Beneficiary is in default without notice at the expiry of the deadline by which they must perform their obligations as per the Contract.

**6.2.4** In case they use their own equipment, the Beneficiary takes charge of the installation of the electronic communication system within the term agreed by the Parties under the Contract. The Beneficiary's failure to comply with this obligation exonerates the Provider from any liability related to the performance of the Contract and establishes the right of the Provider to claim compensation for damages from the Beneficiary. The Beneficiary undertakes to use only authorized equipment for the Services, as per the legal regulations in force, compliant with the international standards governing the Services of the Provider, and is solely responsible for the choice of such equipment. The proper functioning of the services provided is conditioned upon the use by the Beneficiary of the equipment recommended by the Provider. Other equipment may only be used with the written consent of the Provider. The Beneficiary is solely responsible for the installation, functioning, operation, maintenance, safety and security of their own equipment and the software they provide, while the Provider bears no responsibility in this regard.

**6.2.5** The Beneficiary will ensure access of the Provider's personnel to the internal and external buildings for the implementation and connection of the electronic communication system. The Beneficiary hereby unequivocally expresses its irrevocable agreement for the performance of all the necessary works for the installation of the cables, equipment and network accessories inside, above or under the building and its annexes, including the common parts of the building where the Beneficiary's location is situated; the Beneficiary undertakes to provide at own expense all the necessary facilities for the installation and proper functioning of the service, including payment of the electricity consumed by the installed equipment, and will obtain all the permits, authorizations and approvals from third parties that are necessary for the installation and operation of the service. If the Provider cannot install the Services and/or equipment necessary for the provision of the Services in due term, because the Beneficiary has not taken all the necessary measures in this respect, the Provider is exonerated from any liability for non-compliance with the installation deadlines agreed under the contract.

**6.2.6** The Beneficiary has the obligation to sign the Service Delivery Notice and, as applicable, the delivery/receipt protocol and/or the contract transferring the rights to use the Provider's equipment (lease, sublease, bailment etc.).

**6.2.7** The Beneficiary has the obligation to return the equipment to the Provider and allow the access of the Provider to collect it, both upon the Provider's request and upon termination of the Contract, within 20 days of such request or termination, based on a delivery/receipt protocol. In case this term is exceeded, the Beneficiary will pay penalties as compensation for damages, in the amount of 0.2% per day of delay, calculated on the value of the non-returned equipment, as specified in the Contract. The total amount of penalties for delay may exceed the total value on which they were calculated.

**6.2.8** If, by fault of the Beneficiary, the term provided in Art. 6.2.7 is exceeded by more than 20 days, the Beneficiary undertakes to pay the Provider the equivalent value of the Equipment, as specified in the Contract. For each day of delay in fulfilling this obligation, the Beneficiary will pay penalties to the Provider as moratory damages, in the amount of 0.2% calculated on the value of the equipment, until full performance of the contractual obligations. The total amount of delay penalties may exceed the total value on which they were calculated.

**6.2.9** The Beneficiary undertakes not to connect to the Provider's system any data transmission equipment which the Provider has not been informed about in advance or for the connection of which the Provider has not given its consent.

**6.2.10** The Beneficiary will not charge rent for the Provider's equipment (antenna, cable location, equipment installed at the Beneficiary's location); also, the Beneficiary will not allow the owner of the building where the Beneficiary performs its activity to collect rent for the Provider's equipment installed on/in his building. If the owner of the building collects rent, then such rent is the exclusive responsibility of the Beneficiary.

**6.2.11** The Beneficiary undertakes to use any goods and/or services provided under the Contract only for personal interest. Unless the Parties expressly agree otherwise, it is not allowed to sell, transfer or make available in any way a good or service to third parties.

**6.2.12** The Beneficiary undertakes not to use outside the system, not to copy or disclose to third parties any software application and/or know-how implemented by the **National Institute for Research and Development in Informatics – ICI București**, and will be held responsible for all damages and complaints resulting from the violation of this provision.

**6.2.13** The Beneficiary is responsible for the use of its accounts, passwords and identification and/or access codes, as well as of the identification series for the Services, regardless of their nature, including for their disclosure.

**6.2.14** The Beneficiary bears full responsibility for the use of the Services, regardless of who the actual users are.

**6.2.15** The Beneficiary bears full responsibility for the information and/or content of the information transferred through the Services, for the content of the calls and/or messages and/or data communications, as well as for any damages that they may cause.

**6.2.16** The Beneficiary undertakes that, at least 30 days before the alienation of the building hosting the location/locations where the services are provided, or in any other case in which the Beneficiary moves to a different

address, they should inform the Provider in this respect, in writing, and request the transfer of the Contract to the new location. In such circumstances, the Beneficiary will pay any transfer fee, as well as the uninstallation/connection of the new location to the network of the **National Institute for Research and Development in Informatics – ICI București**. Moving a location for the reasons specified hereof will not be considered a renunciation of the Services from the part of the Beneficiary for the respective location. The Provider reserves the right to refuse the transfer of the Contract if it is too onerous, if such transfer is not possible or justified commercially, technically, legally etc., with the consequence of terminating the Contract without compensation for damages.

## **7. Liability of the Parties. Limitations of liability.**

### **7.1. Liability of the Provider:**

**7.1.1** The Provider undertakes to provide all the Services as per the GQS in the Contract and the Services will be adequate for the scope of the Contract.

**7.1.2** The Provider will not be held liable for any malfunction/interruption of the Services or for any other degradation or deviation of the Services from the GQS provided in the Contract, for any delay in their delivery, or for any damages the Beneficiary may suffer from these causes, that:

- a. may be attributed to the actions or omissions of the Beneficiary, its employees or other third parties for whom the Provider is not held liable;
- b. may be attributed to the lack of protection of the transmission equipment and devices against unauthorized users at the Locations;
- c. cannot be approached by the Provider because the Beneficiary unjustifiably refuses to allow access of the Provider to the network or installed equipment in order to test or repair the equipment;
- d. occur in any period of planned maintenance/replacement of the Provider's network, performed as provided in the Contract;
- e. may be attributed to unauthorized or abusive use of the Services by the Beneficiary;
- f. are due to software errors, network failures, modifying and/or desecuring any of the information transiting systems other than the system of the **National Institute for Research and Development in Informatics – ICI București**, or errors caused by failures in the networks of third-party operators, or other causes beyond the Provider's control;
- g. are due to Force Majeure events as described in Art. 12 below;
- h. are the result of a Service suspension by the Provider, under the circumstances provided by the present GTC and the Contract (e.g., non-payment of the services);
- i. are due to other causes beyond the Provider's control.

**7.1.3** The Provider is responsible for supplying the contracted communication service exclusively for the communication solution provided to the Beneficiary under the technical conditions stated in the Contract concluded for each individual service.

**7.1.4** The Provider is not responsible for the altering of the information carried outside its own communication system.

**7.1.5** The Provider will not be responsible for the content of the data communications initiated by the Beneficiary.

**7.1.6** Unless expressly agreed in writing between the Provider and the Beneficiary, the Provider will not be responsible for the space assessment, the operating facilities, the equipment and requirements related to the Beneficiary's transmission capacity and the uses to be derived from them. The Beneficiary is solely responsible for the choices made in these respects.

**7.1.7** As the Provider is not entitled to exercise control over the information circulating on the Internet, to which the Beneficiary has access through the services provided under the Contract, the Provider cannot be held responsible for:

- a. the reception by the Beneficiary of illegal or otherwise prejudicial information for itself or for third parties;
- b. the damages caused, including without limitation the loss of data or damage resulting from the use of the data and information received;
- c. the truth, accuracy and clarity of any information received by the Beneficiary by own choice during the use of the products supplied by the Provider under the Contract (even if such information was obtained by the Beneficiary from sites accessed via links created by the Provider within its own sites);
- d. the prejudices suffered by the Beneficiary as a result of unauthorized access of third parties – from within the country or from abroad – to its communication network.

**7.1.8** The Provider does not ensure or guarantee the conformity of the equipment, applications and computer programs or their effectiveness for a certain purpose, nor that they will meet all the requirements of the Beneficiary.

**7.1.9** To the maximum extent allowed by the legal regulations in force, the Provider cannot be held responsible for the services and losses and/or costs invoiced in connection therewith, for the content, manner of recording and/or advertising of calls or messages related to such services, for the content of the information sent and/or received via such services or for the results of accessing these services, if said services are accessible to the Beneficiary through the service/network of the Provider, but they are not supplied by the Provider as such.

**7.1.10** The Provider is under no circumstances liable for (direct or indirect) losses, for loss of business opportunities or for unobtained benefits either by the Beneficiary itself or by the third parties with whom the Beneficiary is in any legal relationship, as a result of non-functioning or malfunctioning of any service provided under a Contract, as the services representing the scope of the Contract are provided for the sole personal use of the Beneficiary. The Services

provided by **ICI București** cannot be part of a transaction between the Beneficiary and third parties. This clause is also valid if the parties expressly agree under the Contract that the Beneficiary may resell to third parties the electronic communication services provided by the **National Institute for Research and Development in Informatics – ICI București**, in which case the Beneficiary provides its own services to third parties, on its own behalf and account.

**7.1.11** Any alleged non-performance of the contractual obligations on the part of the Provider and/or any damages resulting from or in connection with any non-functioning, malfunction, delay, interruption, disconnection, degradation of the Services or negligent conduct of the Provider with respect to the Services will be reported to the Provider in writing, without delay, but in any case **within 4 hours of the occurrence of the Service malfunction**. The Provider will not be held liable for any such non-performance or loss that is not reported by the Beneficiary within the specified period.

**7.1.12** In case of breach by the Provider of any obligation assumed under the Contract, subject to meeting the conditions under which the Provider can be held liable, the Parties agree that the financial liability of the Provider is exclusively limited as per Arts. 5.13 - 5.14 or Art. 10.3.3., as appropriate.

## **7.2. Liability of the Beneficiary**

**7.2.1** The Beneficiary agrees to defend, indemnify and protect the Provider, its employees, affiliates, agents and subcontractors against any and all liabilities, costs and justified expenses deriving from or in connection with:

- a. the use of the Service or the Internet or posting or transferring any materials/information on the Internet by the Beneficiary itself or by its users, employees, affiliates, agents or subcontractors;
- b. the acts or omissions on the part of the Beneficiary or its users, employees, affiliates, agents or subcontractors in connection with the installation, maintenance, use or removal of equipment or software;
- c. any claims by any third parties deriving from the services to be provided by the Beneficiary to such third parties, using the Services;
- d. any claims of infringement of property rights of any third party, including intellectual property such as copyrights, patents, trade secrets and trademark rights deriving from the use of any services, equipment or software not provided by the **National Institute for Research and Development in Informatics – ICI București** or from the improper use of the services, equipment or software supplied by the Provider.

**7.2.2** The Beneficiary will not attempt to modify, transform or improve the Services without the prior written consent of the Provider.

## **8. Provider Services Use Policy**

**8.1.** The Beneficiary is bound not to use and take all the necessary measures to prevent the use of the Provider's Services and Network for illegal purposes, under the Romanian legislation in force, or in a manner that violates the public interest and morals, or for the purpose of harming in any way natural or legal third parties, from within the country or from abroad, in various ways and especially by:

- a. sending messages with the intention of harassing, threatening, insulting, slandering or otherwise disturbing the recipient, including by attacking morality;
- b. distribution of materials in violation of intellectual property rights or the right to privacy or other personal rights of third parties;
- c. unauthorized distribution of the service to third parties;
- d. any other actions that are prejudicial to the Provider or other users or that may result in criminal and/or civil liability of the Provider or any of its employees.

**8.2.** The Beneficiary is prohibited from attempting to access services, information, websites, systems or computer networks it does not normally have the right to access, as well as from attempting to identify vulnerabilities in such system, network or service.

**8.3.** The Beneficiary is bound not to harm or attempt to harm the Provider or third parties using the service, by damaging their computer system.

**8.4.** The Beneficiary is prohibited from performing IP flooding for the purpose of overloading the destination network and/or the destination computers, thus causing their improper operation, as well as from using any other method of overloading the recipient's computer system.

**8.5.** The Beneficiary is prohibited from using other IP addresses for its own network than those assigned by the Provider.

**8.6.** The Beneficiary is prohibited from using and allowing the abusive use of the Provider's network, by distributing:

- a. spam – unsolicited e-mail, whether or not commercial in nature;
- b. messages known to carry viruses, worms, Trojans or any other component likely to cause malfunctions in the recipient's system;
- c. the Beneficiary is prohibited from sending or allowing the sending via the Provider's network messages with a counterfeit header (either anonymous or under the identity of another user).

**8.7.** If the Provider considers the Beneficiary has violated any provision of this Service Use Policy, it will notify the latter in writing, requiring it to cease the said violation, and may, as it deems appropriate, temporarily suspend the services provided and/or eliminate and block access to information and/or non-contractual and/or illegal activities carried out by the Beneficiary, until the Beneficiary agrees in writing to refrain from any further violations. If the Provider deems it necessary, it may immediately suspend or discontinue the services provided to the Beneficiary,

without prior written notice. If the Beneficiary has committed a second violation of any provision in this Service Use Policy, it will be subject to immediate suspension or discontinuation of the services provided, without prior notice, and the Provider may take any action it deems appropriate under the given circumstances to eliminate or prevent such violation. The Provider will not be liable for any damages of any kind suffered by the Beneficiary or any third party, if such damages result, in whole or in part, from the Provider's exercising its rights under these policies.

**8.8.** Also, the Provider can notify the relevant bodies of the Beneficiary's committing a breach of its obligations regarding the Service Use Policy, entailing legal liability. The Provider will collaborate with the relevant bodies, at their request, within the limits of legal obligations.

## **9. Suspension of the Services**

**9.1.** The Provider will be entitled to suspend immediately, without notification, right to compensation or indemnity for the Beneficiary, the provision of part or all of the Services under the Contract(s) concluded between the Parties and (where applicable) to disconnect, to put out of service, to block direct access to and/or remove the Beneficiary's equipment, data or cables from the Provider's network, facilities and/or equipment:

- a.** if the Provider is required to do so by a government or regulatory authority, if obliged to comply with a statutory or regulatory change (or their enforcement) or if forced to do so pursuant to a decision by a court of law or arbitration court;
- b.** in case of non-payment of the invoices issued by the Provider, by their respective due dates; in this case, the Provider will be entitled to operate the suspension from the day immediately following the due date;
- c.** if the availability or the quality of the services supplied by the Provider is or threatens to be adversely affected by the conduct of the Beneficiary or of third parties for whom the Beneficiary is held liable (i.e. its users, employees, subcontractors etc.) or by the Beneficiary's equipment; also, if the Provider finds that the Beneficiary is the target of flood and denial of service attacks, in order to protect both the Provider's network and the computer system of the Beneficiary and/or other beneficiaries of the Provider, the latter has the right to take all the necessary measures to minimize the effects of such incidents, including the right to temporarily disconnect – until the problem is solved – the Beneficiary's IP addresses, notifying it by e-mail, phone or short message;
- d.** if the safety of people or property is (or threatens to be) adversely affected by the conduct of the Beneficiary and/or the conduct of third parties for whom the Beneficiary is held liable (i.e. its users, employees, subcontractors etc.);
- e.** as per the provisions of Art. 8.7;
- f.** if the Beneficiary causes damage to the Services and equipment supplied by the Provider, in violation of the provisions of these GTC and the Contract, and the Beneficiary does not reimburse the costs involved in repairing the malfunctions by the date agreed in the Contract or by the date communicated in writing by the Provider;
- g.** in any other situations explicitly provided in the Contract;

**9.2.** The Beneficiary will be obliged to pay all the amounts due, including without limitation the recurring fees, during the period of suspension stipulated under the provisions of subparagraphs (b) to (g), and also in the event of suspension as provided under subparagraph (a), if such suspension is attributable to a breach, error, act or omission on the part of the Beneficiary or third parties for whom the Beneficiary is held liable (i.e. its users, employees, subcontractors etc.). The suspension of the Services through the fault of the Beneficiary for a period longer than 30 calendar days entitles the Provider to terminate the Contract.

**9.3.** Unless otherwise stipulated in the Contract, the suspension provided under Art. 9.1 will cease within 24 hours after the circumstances that led to the suspension have ceased to exist.

**9.4.** In the event of suspension of the service for non-payment, the service can be restored within 48 hours after due payment was made in full, after the reconnection fee (if applicable) was paid by the Beneficiary and the proof of payment was shown to the Provider.

## **10. Conditions for termination of the Contract**

**10.1.** This contract may terminate:

- a.** By **immediate unilateral termination by the Provider**, if the liquidation procedure is initiated against the Beneficiary or if the Beneficiary is declared in payment default and/or under banking interdiction;
- b.** By unilateral termination by the Provider, if the latter is unable to provide services to the Beneficiary;
- c.** By **unilateral termination by the Beneficiary**, only in compliance with the provisions of Art. 10.2 of these GTC; the termination will only become effective if the obligations assumed by the Beneficiary have been fulfilled by the time the Contract is terminated.
- d.** **Termination by default, as per Art. 10.3.**, without necessity for court intervention, invoked by one of the parties by a simple notification, and without any other prior formality, with the obligation of the culpable party to pay compensation for damages;
- e.** By reaching expiry date, unless the Parties tacitly agree to extend the Contract;
- f.** In any other cases expressly provided in the Contract;



g. By unilateral termination by the Beneficiary, if the Provider unilaterally modifies the Contract, within 30 days of receiving the notification regarding the unilateral modification by the Provider.

## **10.2. Unilateral termination of the Contract by the Beneficiary**

**10.2.1** In the event of unilateral termination of the Contract by the Beneficiary, in whole or in part (for one, several or all services, for one or several locations), before expiry of the Contract term, the Beneficiary's request may not become effective before 30 days of its reception by the Provider, unless the Provider agrees otherwise in writing.

**10.2.2** In this case, the Beneficiary owes the Provider compensatory damages to be calculated as follows:

- if termination occurs during the Initial Term, the compensation will be a (RON equivalent) amount equal to the monthly value (monthly fee) of the services (as effective at the termination of the Contract) for the entire remaining period until expiration of the Contract;
- if termination occurs at a time subsequent to the Initial Term, the compensation will be a (RON equivalent) amount equal to 50% of the total amount of the monthly fees (as effective at the termination of the Contract) for the period remaining until expiration of the Contract;

**10.2.3** In case of termination of the Contract for one or several of the contracted locations, the Provider will issue an invoice representing the equivalent amount of the compensatory damages due as per Art. 10.2.2., for each individual location.

**10.2.4** The notification by the Beneficiary of its intention to totally or partially terminate the Contract shall not affect the value of the service paid by the Beneficiary and/or invoiced by the Provider, the Beneficiary being bound to pay it in full as per Art. 10.2.2.

**10.2.5** In addition to the compensations provided in Art. 10.2.2., if the Beneficiary has received a reduction or a waiver of any fees based on the duration of the Beneficiary's commitment regarding the term of the Contract, the Beneficiary shall reimburse the Provider an amount equal to the amount of such reduction.

**10.2.6** The amounts provided under Arts. 10.2.2. and 10.2.5 are charged as compensation for damages for the early unilateral termination by the Beneficiary.

**10.2.7** By way of exception to the provisions of Art. 6.2.7., the Beneficiary shall be bound to return the equipment owned by the Provider within 2 working days after the expiry of the 30-day deadline for the notification of unilateral termination. In case the Beneficiary does not return the said equipment within 2 working days of termination of the Contract, the Beneficiary shall owe the Provider the equivalent value of the equipment, as provided in the Contract.

## **10.3. Termination of the Contract:**

**10.3.1. The Provider reserves the right to terminate the Contract** for non-performance, delayed performance or improper performance by the Beneficiary of any obligation assumed under the Contract, as per Art 10.1. letter c) of these GTC; **the termination takes effect immediately as of the date of the notification.** Under these circumstances, the Beneficiary owes the Provider compensation for damages, as per Art. 10.2.2. and Art. 10.2.5. of these GTC that apply accordingly. By way of exception to the provisions of Art. 6.2.7, the Beneficiary will be obliged to return the equipment owned by the Provider within 2 working days of the termination of the Contract.

**10.3.2. The Beneficiary may terminate the Contract** as per Art. 10.1. letter c) of these GTC, by a simple 30-day prior notice, only if the Services are unavailable for 3 consecutive days or in case availability drops below 99% for 3 consecutive months, with the cumulative observance of the following conditions:

- a. The Beneficiary has notified the Provider of this situation within the term provided under Art. 7.1.11; and
- b. If it turns out that the Unavailability or the drop of availability below 99% were caused by something under the exclusive control of the Provider.

**10.3.3.** In the event of any termination of the Contract by the Beneficiary, the latter will be entitled to claim compensation for damages from the Provider, consisting of the equivalent value of the services supplied by the Provider under the Contract, not exceeding the equivalent of 3 months. If the Beneficiary was granted non-functioning discounts as per Arts. 5.13 - 5.14, the amount of such discounts will be deducted from the amount representing the compensation for damages due by the Provider to the Beneficiary. Thus, the Provider shall owe the difference between the compensation for damages and the total amount of the non-functioning discounts granted to the Beneficiary as per Arts. 5.13 - 5.14.

**10.3.4.** Regardless of the manner of termination of the Contract, such termination will not affect the obligations due between the Parties.

## **11. Modification of the Contract**

**11.1.** The Provider reserves the right to modify the terms and conditions of these GTC and the Contract, including without limitation the conditions regarding the provision and/or the term of execution of any Service and/or the characteristics of the Services, including the introduction, updating and modification of prices, fees and subscriptions. The Beneficiary agrees that the **National Institute for Research and Development in Informatics – ICI București** cannot undertake to provide the services covered by the Contract under the circumstances existing at the conclusion of the contract, unless the national and international commercial and financial conditions are maintained.

**11.2.** The Provider shall inform the Beneficiary, by written notification submitted as per Art. 13, at least 30 days before the operation of the modification, and in such manner that the Beneficiary can take advantage of the 30-day period provided under Art. 11.3. below to exercise its option.

**11.3.** If the Beneficiary does not agree to these changes, it has the possibility to terminate the Contract, in whole or in part, **without paying any compensation**, within 30 days of receiving the notification of the suggested changes; otherwise, any such changes are considered tacitly accepted.

**11.4.** Throughout the terms provided under Arts. 11.2. and 11.3, the contractual clauses and fees for the Services are kept as previously agreed. In case of a change consisting in a reduction of the Service fees or in a provision of the Services in a larger quantity than originally contracted for the same prices and/or fees, they will be deemed accepted *a priori* by the Beneficiary, and they will become effective immediately, without any further formalities.

**11.5.** The updates and/or modifications of the fees or contractual clauses for reasons imposed by legislative changes or other causes of public interest (such as the modification of VAT, the modification or introduction of other taxes applicable to the electronic communication services provided, the modification of the must-carry list by the CNA etc.) will become effective by effect of law, within the terms provided by the normative acts regulating them, the Beneficiary not being able to avail itself of Art. 11.3. The Provider has the obligation to notify the Beneficiary of the changes made in accordance with this article.

**11.6.** The Parties agree that any modification or completion of the provisions of the Contract other than those related to the situations provided under Arts. 11.1. and 11.5. above, shall be made in writing by Addendum, signed by the authorized representatives of both Parties. Addendums constitute integral parts of the Contract and become effective on the date they are signed by both parties or on the date specified therein.

## **12. Force Majeure**

**12.1.** Force majeure, understood as an absolutely unpredictable and unavoidable event occurring after the Contract becomes effective, and preventing the party or parties from fulfilling their obligations under the Contract, exonerates the party invoking it under the law within 48 hours of occurrence and proving it with documents issued by competent institutions within 5 days of occurrence. Force majeure is also associated with the interdiction to provide the telecommunication service, imposed by a public authority in accordance with the legal provisions, as well as with any changes in the regulatory environment (laws, regulations, decisions or directives of any government with competent jurisdiction in matters related to this contract).

**12.2.** If the confirmed duration of the existence of the force majeure event exceeds 10 days, the parties will necessarily meet to decide on the conditions for the continuation/termination of the Contract.

## **13. Notifications**

**13.1.** For the purposes of this Contract, any notification/communication addressed by one party to the other will be deemed as valid if sent in writing, in person, by registered mail with acknowledgement of receipt, by courier mail, fax or e-mail, or by any other means that can prove the date of dispatch and the date of receipt of the respective notification at the contact details specified in the Contract. Verbal notifications or communications shall not be taken into account by either party, unless they are confirmed as set out above. The Parties shall notify each other in writing of any change in the contact details, otherwise any such change may not be enforceable to the other party.

**13.2.** Such notifications shall be deemed as received under the following circumstances:

- a. if sent by courier, the notification will be deemed as received by the consignee on the day of delivery, as confirmed by signature, or on the day the courier ascertains the refusal of receipt.
- b. if sent by registered mail with acknowledgement of receipt, the notification shall be deemed as received on the date specified on the acknowledgement of receipt or on the date indicated by the receiving post office on such acknowledgement of the refusal of receipt or the absence of the consignee; or
- c. if sent by fax, on the date and time recorded by the fax machine;
- d. if sent by e-mail, on the date and time recorded by the e-mail application.

**13.3.** The Beneficiary will address any requests only through authorized representatives, as specified in the Contract. If such requests are made by unauthorized persons, the Provider will collect them, will send them to the authorized representatives of the Beneficiary and will send the answer only after the said representatives have confirmed the validity of the requests in writing.

## **14. Confidentiality**

**14.1.** During the performance of the Contract and for a period of 2 years after its termination, the Parties will maintain the confidentiality of and will not disclose to third parties the confidential information originated from any of them during the performance of the Contract, the documents and contractual terms contained in these GTC, any and all the information concerning the other Party, including without limitation the information regarding the business operations and the users of the other Party, obtained during the term of the Contract and that can reasonably be assumed as confidential or that have been indicated or identified in any other way as confidential by the other Party. The Parties will maintain the confidentiality of all the documents regarding the execution of the contract, regardless of their nature and the media they are stored on. Any external disclosure of information shall only be made with the prior written consent of the originating party.

**14.2.** The obligations under this article shall not apply to information that is already public or that has been made public by the other Party, to information that was known to the Party prior to signing the Contract, or for which there was an agreement by the other Party on the disclosure of confidential information, but only within the conditions imposed in the respective written agreement, or if disclosed in response to a legally valid requirement issued by a court, by an institution with regulatory or control powers, but only within the limits and for the purposes mentioned in the respective requirement; or to information provided to the respective (legal) advisors of the Parties, provided they are bound to treat this information as confidential.

**14.3.** The obligations described in this article will be permanent for the period stipulated in Art. 14.1. and shall not terminate upon termination of this Contract for any reason.

**14.4.** In the event one of the Parties breaches its obligation of confidentiality, such Party will be bound to pay compensation for damages in sufficient amount to cover the prejudice to the other party.

### **15. Personal data**

**15.1.** The information will be processed by the Provider in accordance with the provisions of Laws No. 506/2004 and 677/2001.

**15.2.** The Beneficiary agrees /  does NOT agree/  that any personal data and any information it provides is processed and used by the Provider for any activities and purposes related to the provision of the services, to marketing, as part of the Provider's relationship with the competent authorities, for the creation and use of any databases.

**15.3.** Also, the Beneficiary expresses / does NOT express their consent to receive commercial communications/direct marketing calls, including for the promotion of the services/facilities offered by and/or through the Provider, as per Law No. 506/2004.

**15.4.** The Beneficiary is guaranteed the rights to information, access to data, intervention, objection and not to be subject to automated individual decision-making, as well as the right to refer matters to court, as provided by Law No. 677/2001.

**15.5.** The Beneficiary has the right to request in writing, free of charge, by registered mail with acknowledgement of receipt, that its personal data are not used by the Provider and/or third parties for direct marketing purposes.

**1.1.** The Provider shall not reveal the name, address and telephone number of the Beneficiary, except for the cases provided by law or expressly accepted by the Beneficiary.

### **16. Assignment of the Contract.**

**16.1.** Under the sanction of nullity, the Beneficiary may not assign to a third party the rights and obligations set out in the Contract, without the prior written consent of the Provider and without the explicit consent of the new Beneficiary to assume all the obligations deriving from this Contract, which becomes legally binding for such new Beneficiary.

**16.2.** The Provider may assign the rights and obligations/the Contract to any third party, without the written consent of the Beneficiary, who hereby expresses its prior consent for any such assignment, which assignment then becomes legally binding for the Beneficiary, after proper notification, but only to another Provider who will provide the Beneficiary with technical and commercial conditions similar to those provided by the **National Institute for Research and Development in Informatics – ICI București**.

### **17. Applicable law. Dispute settlement.**

**17.1.** The GTC, the Contract, and any other documents referred to in the Contract and executed based on the GTC or the Contract, are subject to Romanian law.

**17.2.** Disputes of any nature arising from or in connection with the interpretation, execution or termination of the GTC and the Contract, which cannot be settled amicably, shall be resolved by competent courts in the Provider's jurisdiction.

### **18. Intellectual property rights**

**18.1.** Subject to the restrictions and terms set forth in the Contract for each individual service, the Provider grants the Beneficiary a non-exclusive, non-transferrable right to use the software, equipment or other materials provided under or in connection with the Contract, exclusively for internal purposes and only to the extent necessary for the use of the Services provided under the Contract.

**18.2.** All intellectual and industrial property rights for any software, equipment or other materials, including documentation, provided to the Beneficiary under or in connection with the Contract will only be held by the Provider or the providers/other owners of such rights. The Beneficiary will only acquire such rights as they are granted to the Beneficiary under the Contract.

**18.3.** The Provider will make reasonable efforts to ensure that the Beneficiary's use of the software, equipment or other materials supplied by the Provider in connection with the Services will not infringe any third party's property rights or intellectual property rights.

### **19. Final provisions:**

**19.1.** Any waiver of any right or remedy under the Contract must be made in writing and, unless explicitly stipulated otherwise, any waiver will only be effective in the specific case and purpose for which it is given.

**19.2.** Each of the provisions of these GTC, the Contract or other documents concluded under the Contract is independent of one another. Therefore, if any such provision is or becomes null and void or if it cannot be enforced in any respect under the Law, this will not affect the validity or enforceability of all the other provisions, and the parties will make every reasonable effort to negotiate in good will to replace such null, void and unenforceable clause with one or several provisions that are satisfactory for any competent authority in the matter, but which differ as little as possible from the original provision.

**19.3.** The Parties represent and warrant that these GTC were signed by a duly authorized representative of each party hereto, and each signatory declares it is fully authorized to sign these GTC.

**19.4.** The Parties explicitly acknowledge that any and all provisions of these GTC and the Contract(s) concluded have been read, negotiated and accepted, and they represent the will of the Parties, thus replacing any other prior verbal or written agreement. This Contract does not contain standard clauses, as defined in Arts. 1202 and 1203 of the Civil Code.

**19.5.** The Beneficiary declares it has been handed a copy of these GTC and of the Contract(s) concluded.

**19.6.** The Beneficiary declares that it expressly accepts the clauses provided under Art. 10 of this Contract.