Maintenance conditions

The provisions contained in these maintenance conditions are applicable in addition to the general provisions of the General Terms and Conditions if Keyprocessor B.V. implements maintenance work.

These Maintenance conditions (together with the General Terms and Conditions) are an integral part of the continuity contract that Keyprocessor BV enters into with the client. Keyprocessor BV is further referred to in these conditions as "Keyprocessor". Insofar as provisions in the Maintenance conditions conflict with the general provisions of the General Terms and Conditions, that which is included in the General Terms and Conditions prevails.

Article 1 – Definitions

1.1   Software
Software is understood to mean that part of the system which is loaded onto the client's server, also called operating system, which enables implementation of the application as well as its user interface for the input, modification, and collection of data in iProtect.

1.2   System
The system comprises all system components connected to each other including the iProtect software and firmware, as delivered by Keyprocessor to the client.

1.3   On concluding the purchase agreement of the system, the customer obtains the non-exclusive and non-transferable right to use the software and firmware for the purpose of the system as long as the system is in use.

1.4   Support
For any user queries or disruptions the client may contact Keyprocessor. Support is understood to mean assistance via telephone, email and/or a remote connection to the software.

Article 2 – Acceptance

2.1   The composition of the system is described in the system configuration. Keyprocessor submits a signed continuity contract to the client. After receipt of the continuity contract signed by the client, Keyprocessor thus accepts the continuity contract. The client guarantees that the system is installed according to applicable installation instructions from Keyprocessor, third-party suppliers and general specifications, for example, by UNETO. The client ensures compliance with the necessary environmental factors, which may be required by suppliers for placement of the system. In this context, conditioned climatic conditions for computers/servers are of importance.

2.2   For a proper functioning of the system, it is necessary that the client's operating staff have knowledge of the system. This knowledge relates, among other things, to the networks used by the client, Windows, back-up procedures, system concept and functioning of the application.

2.3   In the event that a continuity contract is concluded for an already existing system, Keyprocessor will generally proceed with an inspection of the installation. Based on this inspection report, Keyprocessor may make recommendations for modifications or improvements. Once the client has had the modifications or improvements implemented, Keyprocessor will proceed to accept the continuity contract. The costs for the inspection report and any ensuing related activities, are for the account of the client.

Article 3 - Accessibility, personnel, identification, activities

3.1   The activities to be implemented for the continuity contract will be carried out by competent personnel. However, in consultation with the client, Keyprocessor may hire personnel from third parties at its own discretion.

3.2   Generally, all activities will be implemented continuously during normal business hours between 8:30 and 17:00 on business days.

3.3   Keyprocessor will provide all tools and measuring equipment required for the implementation of activities. Where necessary, the client must provide climbing materials, water, electricity and other necessary facilities related to the site.

3.4   If necessary for the implementation of activities, the client must ensure that the Keyprocessor technicians have unobstructed access to areas where the system is located.

3.5   At the request of Keyprocessor technicians, the client grants its cooperation by making its own personnel or that of third parties available to assist Keyprocessor technicians in specific cases where matters managed by the client itself are concerned. Any costs ensuing from or relating to this, are for the account of the client.

3.6   If, in the opinion of Keyprocessor technicians, it is necessary that one or more parts of the system should be placed out of order, the client must provide its cooperation. Any costs ensuing from this, are for the account of the client.

3.7   Keyprocessor technicians or technicians hired by Keyprocessor may be requested to show a proof of identification which includes a photograph.

Article 4 - Rights to the software

Provisions relating to intellectual property and the right of use, as stated in the General terms and conditions, remain in full force for updates, modifications or new versions of the software and its corresponding documentation, made available by Keyprocessor.

The same applies for the software and documentation modified by the client. In the absence of the provisions as meant here, these are then recorded in a separate annex to the agreement.

The client is not entitled to produce copies of standard iProtect software nor allow same to be produced. Designations of ownership and copyrights will not be removed. For the duration of this agreement and at the client's first request, Keyprocessor will make one copy of the standard software available free of charge.

In the event of an infringement of the provisions of this article, the client forfeits to Keyprocessor an immediately due and payable fine of €25,000 (twenty-five thousand euro) per event. In derogation of the provisions of Section 92 of Book 6 of the Dutch Civil Code, this penalty does not prejudice the other rights of Keyprocessor, which, aside from the penalty, is understood to include the right to additional and alternative compensation or to claim performance where the penalty is not offset against the client's liability for compensation.

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Article 5 - Software Update & Helpdesk

5.1   The software update and helpdesk support provisions in the contract provide for the needs of clients to regularly receive software updates for their system. In addition, the software update and helpdesk support contract gives the client the possibility to alleviate any faults that may arise in the day-to-day use of the software. In addition, the client may contact Keyprocessor's control room for questions relating to use of the software. It is up to the client to take the initiative to allow improvements by way of software updates.

5.2   Contents of the software update and helpdesk maintenance contract
   a. To trace and rectify defects in the standard form of the software and corresponding documentation, as well as any deviations detected due to use of the software in comparison to the attributed properties and functions as stated in the corresponding documentation.

   b. To make available and likewise to document standard modifications in the software, which are necessary as a result of changes in the computer hardware, operating system and storage medium mentioned in the maintenance contract, on the proviso that these changes arise as a result of inevitable developments of the relevant computer system.

   c. To provide support via telephone, internet or email. Support is provided on business days from 08:30 am to 17:00.

   d. To make new versions of the software and corresponding documentation available, which show an actual change in functionalities in relation to the version in use, is also free of charge at the discretion of Keyprocessor. Training courses and any necessary modifications to the computer system or operating system do not form part of the contract. Keyprocessor is not obliged to include all functionality options of the existing version in a new version. In emerging cases, consultations will always be held with the client in the context of the concluded contract.

   Preparing software for another computer system than provided for in the contract, does not form part of the contract.

5.3   Keyprocessor will inform the client as soon as possible of its intention to make updates to or new versions of its software available. Keyprocessor will also inform about the contents thereof, which includes changes to the software version already in use.

5.4   As soon as an update to or a new version of the software is released, Keyprocessor will issue the corresponding documentation to the client, giving the client the opportunity to assess whether its use may have any consequences in respect of the client's programs or business operations. Keyprocessor will incorporate features which are specially designed for the client in new versions. This may only be deviated from after prior consultation with the client.

Article 6 – Escrow

   For the benefit of its clients, in 2006 Keyprocessor made an Escrow arrangement with Escrow Europe, an independent organization that specializes in source code filing and associated services.

   Under the arrangement, as provided for in the "General Terms of Escrow" Keyprocessor declares to file the source code of its iProtect™ software and the corresponding technical information and documentation with Escrow Europe on behalf of clients.

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The purpose of filing is to assure continuity of use of the licensed software for the client. The substantial investment which the user has committed in the often essential software for its business operations, as well as continuity of the automated business process continue to remain guaranteed, so too in the event of unexpected and inadvertent emergency situations.

Subscribing users obtain the right to request the source code indispensable for maintenance of their licensed software at Escrow Europe, if:

a. Keyprocessor ceases its business without legally transferring its maintenance obligations;

b. Keyprocessor is declared bankrupt;

c. Keyprocessor does not comply with its maintenance obligations in such a manner that its shortcomings endanger or threaten to endanger the business operations of the user;

d. Keyprocessor is taken over by a party which does not take over the maintenance obligations or offers same under objectively unreasonable conditions;

Twice a year, Escrow Europe takes the initiative to update the filing with the latest releases and/or modifications; an Escrow Europe authentication is carried out on every filing.

The costs for participation in the Escrow arrangement are dependent on the supplied software. This agreement will only be accepted by Keyprocessor if the client has concluded the software update and helpdesk maintenance contract.

Article 7 - Other actions for software updates

7.1 The client must immediately notify Keyprocessor of any emergent shortcomings in the software. After notification, Keyprocessor will take such measures that rectification is guaranteed as soon as possible.

7.2 To enable Keyprocessor to comply with its maintenance obligations, the client will:

a. Extend the capacity of the computer system so that it conforms to the indicated specifications.

b. Shortcomings occurring in the software must be adequately documented in accordance with a procedure agreed to between parties.

c. Where necessary for undertaking any maintenance, the computer system or part of it must be made available within a reasonable period of time and at reasonable intervals, without entailing costs for Keyprocessor.

7.3 Unless agreed to otherwise, maintenance of the software generally takes place during Keyprocessor's normal business hours.

Article 8 – Prices and costs

8.1   The price is determined in the aforesaid continuity contract. The amounts mentioned in the continuity contract exclude turnover tax (VAT).

8.2   The contract amount is also based on the costs of salaries, social security contributions, materials as well as travel and accommodation expenses as they are applicable on the date of concluding the maintenance contract. In the event of an increase or decrease of one or several of these cost factors, Keyprocessor is entitled, insofar as same is not prohibited or compulsory by or pursuant to the law, to adjust the contract amount to these changes. The index to be used for this purpose is the cost-of-living index.

8.3   Any increase, after commencement of the continuity contract, may only be passed on as at 1 January of each year. This may be deviated from on grounds of or pursuant to law regarding rates of pay or price levels (prices order). A price increase will not take effect sooner than the first day of the second calendar month following the month in which the increase is notified to the client in writing. This period may be deviated from in favour of Keyprocessor, on grounds of a measure taken as referred to in this paragraph.

Article 9 – Additional orders

If the client decides to add new Keyprocessor products, software and/or system components to the system, these expansions will be added to the continuity contract, without prior consultation between Keyprocessor and the client.

Article 10 – Payments and invoicing

10.1   Payments must be made no later than on the 30th calendar day after the date of the invoice. Payment must be made in euros, unless payment in other currencies has been agreed to with the client.

10.2   For any payment which has not been made in good time, interest will be charged in accordance with the General Terms and Conditions, which conditions are applicable to every agreement and therefore also form an inextricable part of the maintenance agreement.

Continuity contracts commence from the first day of the month in which same is concluded. The contracts are invoiced each year in advance.

10.3   For annual continuity contracts, Keyprocessor does not require an annual purchase order, based on the provisions referred to in article 15.

10.4   Failure to comply with the payment obligation could result in no support being provided until payment has been made.

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Article 11 – Confidentiality and security

11.1   Keyprocessor undertakes to take adequate measures to ensure confidentiality with regard to all information, which Keyprocessor, or persons deployed in the implementation of this agreement, have gained knowledge of during activities on behalf of the client. In the possible event of Keyprocessor keeping categorized (classified) data and data identified as such, the client's specifications that have been brought to its attention will apply.

11.2   The client must do everything that is reasonably possible and necessary to ensure confidentiality in respect of the system. The same also applies even if the client has modified or extended the system or parts thereof or has made it form part of a greater whole.

11.3   Keyprocessor provides assurance that its personnel and the persons deployed in the implementation of the agreement, are subject to the arrangements established by the client which seek to provide the greatest possible degree of security on site.

Article 12 – Liability

12.1   Keyprocessor is liable for material damage to installations and property of the client or third parties insofar as such damage is the result of negligence, carelessness or incorrect actions on the part of Keyprocessor or persons deployed by Keyprocessor in the implementation of the agreement.
The liability is limited to a maximum amount of €5,000,000 per event and a maximum of €10,000,000 per contract year, where a series of successive events is regarded as a single event.
Keyprocessor is not liable for any indirect loss or consequential damage. Keyprocessor's liability is limited to the amount that its liability insurer pays out for an occurring event.
In respect of the maintenance work to be carried out beyond the scope of the abovementioned liability, Keyprocessor's liability is limited to a maximum of 5% of the contract price.

12.2   On corruption or destruction of the Keyprocessor software or parts thereof during the implementation of activities which are carried out under this agreement, Keyprocessor is obliged to make available a copy of the same version of the software in a readable form for the computer system.

Article 13 – Transfer of rights and obligations

None of the parties may transfer its rights or obligations under this agreement or any endorsements that may arise in whole or in part without the prior written consent of the other party. Parties who must grant consent may subject this to certain conditions. Transfers that infringe the above provisions are null and void in respect of the other party.

Article 14 – Force majeure

14.1   In the event of force majeure, compliance by the party involved and the obligations arising from the agreement are suspended entirely or in part for the duration of such force majeure, without the parties being reciprocally obliged to pay each other any compensation of damages. Notification of a case of force majeure will be made to the other party, on submission of appropriate supporting documents.

14.2   Force majeure does not include the failure or late fulfilment by a third party of obligations that it has committed to in respect of one of the parties, unless the party concerned proves that force majeure applies to failure or late fulfilment of those obligations.

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Article 15 – Duration and termination

15.1 The agreement commences from the first day of the month in which same is concluded. The agreement is entered into for the duration specified in the contract and is tacitly extended each time for a subsequent period of one year, unless one of the parties, with due observance of a notice period of three months at the end of the current contract period, has terminated the agreement or part thereof by written notice of termination submitted by registered letter.

15.2 Discontinuation of maintenance by one of the parties pursuant to the provisions of this article in no way affects any provision in respect of the right of use of the software.

Article 16 – Premature termination

16.1 Each of the parties in the cases described below and insofar as granted hereunder, is entitled to terminate the agreement prematurely in whole or in part, with immediate effect, without any notice of default and judicial intervention.
   a. Client: in the event of a price increase as referred to in article 8 on the date on which the price increase takes effect, provided that:
      • This increase is not based on a legally authorized increase according to the current prices order as referred to in article 8 (8.2) or on an index figure on which agreement has been reached between the parties and
      • The client has terminated in writing by registered letter within one month after receipt of the relevant notification.
   b. Each party: if the other party invokes force majeure and the period of force majeure has lasted longer than three months or as soon as it is established that this will last longer than three months.
   c. Each party: if an application for suspension of payments has been submitted by the other party or alternatively the other party is declared bankrupt.

16.2 Furthermore, each of the parties is entitled to terminate the agreement without judicial intervention, in whole or in part with immediate effect if the other party fails to comply with any other obligation arising from the agreement, which non-compliance is of such a serious nature that in all reasonableness enforcement of the agreement cannot be expected and the party not meeting its obligations, after having been given notice of default by registered letter, continues to remain in default of compliance with this obligation, respectively, to take appropriate steps to rectify this.

16.3 Premature termination of the agreement, as referred to in this article takes place by registered letter to the other party.

16.4 The party who has terminated the agreement prematurely, in the cases referred to in paragraphs 16.1 or 16.2, is entitled to reimbursement of the pecuniary loss that may arise due to such termination of the agreement.

16.5 If the client does not make use of the new software updates as referred to in article 5 of this agreement, Keyprocessor may decide to terminate this agreement. This premature termination will then only come into effect a year after the first due date, calculated from the time that the client has made it known not to upgrade with the new version. Keyprocessor will inform the client in writing on termination of the agreement.

16.6 Keyprocessor may terminate the agreement with immediate effect if system modifications as referred to in article 2 (2.3) have been carried out whereby, in the opinion of Keyprocessor, maintenance cannot be carried out or cannot be carried out with adequate quality. In the event that modifications to the system are not notified to Keyprocessor, additional costs can be charged to the client retroactively from the time of modification, for the additional costs incurred by Keyprocessor for carrying out the obligations arising out of this agreement.

Article 17 – General

17.1   Amendments or additions to this agreement are only valid insofar as they have been agreed to in writing.

17.2   The agreement is governed by Dutch law.

Article 18 – Disputes

Any dispute concerning the formation, interpretation or implementation of the agreement or arrangements that may arise, as well as any other dispute in respect of or in connection with the agreement either judicially or de facto, without exception, will be submitted to a court yet to be determined in the Netherlands.

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