

G-CLOUD 15 TERMS & CONDITIONS

AEXIS MEDICAL

1. TOPIC

This document relates to the agreement between Aexis Medical (AEXIS) and any contracting authority (CUSTOMER)

2. TERM

This is linked to the defined agreement as procured via the G-Cloud Framework

3. SERVICES

- 3.1 AEXIS will provide the services as further described, subject to all terms and conditions of this agreement. The CUSTOMER will pay AEXIS for the services as set out in this agreement
- 3.2 The services will be provided by staff with appropriate knowledge and experience. AEXIS reserves the right to call on third-party personnel when it deems necessary. Under all circumstances, AEXIS will act with knowledge and reasonable care in providing its services.
- 3.3 AEXIS will strive to keep staff designated for the service throughout the term, but absences may be necessary due to holiday periods, training and external meetings or other similar causes. AEXIS will use its best efforts to replace staff who are absent with someone of equivalent knowledge and experience.
- 3.4 During and after the expiry of the warranty period of the software, AEXIS will resolve as soon as possible any problems that have been brought to its attention by the CUSTOMER through a designated and suitably trained person within the CUSTOMER organization and in a formal manner, and which are inherent to the relevant software system, investigate and acknowledge receipt of the call. AEXIS guarantees the availability of helpline staff for this, according to the timetable stated under 3.5. AEXIS will either improve the programs or, if Aexis deems that correction is not appropriate, advise the CUSTOMER on possible methods to avoid or reduce the consequences of the problem. However, this will always be placed in the context of a continuity of the CUSTOMER. AEXIS will initially attempt to resolve the problem by telephone or provide a solution via remote access. The CUSTOMER will guarantee usable and stable remote access to the installation running the software. If the problems are such that they cannot be solved remotely, an AEXIS employee will visit the CUSTOMER. However, if the trips are necessary just because the remote access is not available, the services and trips will be charged at the usual rates. In case an AEXIS employee goes on site, an employee of the CUSTOMER, who is sufficiently aware of the systems and the situation on site, will be available during the intervention.
- 3.5 The standard timetable on which maintenance services are provided is as follows:
 - From 9am to 5pm (normal business hours) Monday to Friday excluding Bank Holidays

THIS DOCUMENT IS INTENDED FOR USE BY AEXIS MEDICAL AND ITS CUSTOMERS ONLY

This service can be expanded, depending on the wishes of the CUSTOMER, and will, where appropriate, be mentioned in the specific conditions and charged according to our current rates.

- 3.6 If AEXIS provides maintenance services to the CUSTOMER that are not covered by the normal warranty provisions or covered within the obligations of this maintenance and service agreement, then these services will be charged according to the then current applicable rates for services, unless otherwise agreed in writing in advance. With regard to interfaces, this maintenance contract only applies insofar as it concerns the side of AEXIS. If the interface fails due to an error in the system to be linked, or due to an unannounced change in this system, or due to hardware failure that is not covered by the warranty of or maintenance contract with AEXIS, then the services to be provided by AEXIS to repair the interface are not covered by this agreement.
- 3.7 AEXIS will periodically send the CUSTOMER updated or improved versions of the Programs ("New Versions"). Once the New Versions are delivered, they are deemed to fall within the definition of Programs. AEXIS will only be required to provide maintenance in connection with the new versions sent to the CUSTOMER, or the second most recent version, and will not be required to continue to provide such maintenance in connection with any superseded version. The CUSTOMER undertakes to install the new version within 1 year after the new version became available and after its favourable validation. The CUSTOMER will destroy any replaced version as soon as he has put the new one into use.
- 3.8 AEXIS will only be required to provide maintenance in connection with the new versions sent to the CUSTOMER, or the second most recent version, and will not be required to continue to provide this maintenance in relation to any replaced version. The CUSTOMER undertakes to install the new version within one year of the new version being made available and after its validation. The CUSTOMER will destroy any replaced version as soon as he has put the new one into service.
- 3.9 New Versions of the software are installed during the hours specified under article 3.5. The CUSTOMER is aware that installing these New Versions, or performing maintenance work, may make the existing software temporarily unavailable. AEXIS will do everything possible to keep the nuisance and temporary unavailability as short as possible. AEXIS will inform the CUSTOMER in good time about the time when New Versions or maintenance work will be carried out. The CUSTOMER will provide all necessary support in this regard so that the installation or performance of the maintenance work can proceed as smoothly as possible. Under no circumstances will the CUSTOMER be entitled to compensation related to the temporary unavailability of the system.
- 3.10 This article covers all improvements and product evolutions that fall within the scope of the initially purchased license package. However, the CUSTOMER is not entitled to automatically obtain specific newly developed and optionally offered modules that would form part of the system in the future but that were not initially purchased. The number of updates and upgrades per year varies depending on the evolution and demand on the market. The aim is to have at least 1 major upgrade and in between 1 minor update per year. If New Versions of the software require an adjustment of the drivers or operating system of the computers or newer versions of the underlying database systems, then the purchase of these new licenses and/or upgrade will be borne by the CUSTOMER, and not part of this maintenance contract.

3.11 AEXIS will inform the CUSTOMER sufficiently about the data that must be included in the backup strategy, in order to enable a "restore" in the event of calamities.

3.12 AEXIS will keep the delivered software in accordance with the changing laws and regulations and will provide new versions within a reasonable period of time to accommodate these changes at no extra cost.

3.13 Uptime :

AEXIS offers the following service level:

- an officially reported problem (in writing via email) will be processed within a business hour and registered in the AEXIS Tracker system.
- AEXIS guarantees that in the event of unavailability of its system (at application server level), the software will be operational again in 90% of the cases within 8 hours of formal notification. In case the problem is at the hardware/network/database/operating system level, this warranty does not apply, but AEXIS will give its full cooperation to solve the problem as quickly as possible. This availability/unavailability is measured over a period of at least 1 year.
- In the event of unavailability at workstation level (only 1 workstation has a problem), the project managers of both parties will discuss the procedure and timing to be followed (bug fix, workaround, ...).
- AEXIS guarantees an application server (software) uptime of at least 99.5%, calculated outside the normal periods of maintenance, measured over a period of 1 year. Again, this warranty does not apply if the problem is at the hardware/network/database/operating system level.

4. WARRANTY

4.1. AEXIS guarantees that the Programs will run on approved equipment. This warranty will not cover defects due to improper use or failure by the CUSTOMER to comply with the instructions for using the Programs. It will also not apply if the CUSTOMER has violated any of the provisions of this maintenance contract or if the CUSTOMER has operated the Programs on equipment other than those approved.

4.2. In the event that the Programs do not function as planned, AEXIS will replace or repair them within the time limits provided for in the maintenance contract.

4.3. If, subject to the other provisions of this agreement, the CUSTOMER can demonstrate the existence of an error in the services or part thereof within a period of thirty days after the execution of (part of) the services or insofar as he can demonstrate that the service or a part thereof has been performed in a careless manner, AEXIS will investigate this complaint without delay and, if such a complaint is justified in its opinion, AEXIS will take corrective action free of charge.

5. RESPONSIBILITIES OF THE CUSTOMER

5.1 The CUSTOMER will bear all risks of loss and damage to the Programs, as from the delivery.

- 5.2 CUSTOMER shall provide AEXIS as soon as possible and in a formal manner with all information it may require from time to time to properly perform its assignment under this agreement, as well as all approvals and decisions necessary to allow an unimpeded claim of to make the service possible. The CUSTOMER guarantees that all information he provides will be correct and that he has the right to provide it. All decisions and approvals will be properly considered internally by the CUSTOMER prior to communication to AEXIS and will be given in such a way as to expedite the performance of the service. The CUSTOMER will allow AEXIS direct access to its authorized personnel for the purpose of obtaining information, decisions and approvals from these authorized personnel.
- 5.3 If AEXIS is required to operate on the CUSTOMER's premises, then the CUSTOMER shall provide access to its premises at any reasonable time as well as appropriate office accommodation and necessary services (including telephone, internet connection and photocopying). All accommodation and services will be provided free of charge and conveniently located for the purpose of performing the service.
- 5.4 The CUSTOMER is responsible for regularly creating and maintaining backups of the data of the systems. The CUSTOMER may determine the backup frequency themselves, but must take into account the limitations that this entails. AEXIS cannot be held responsible in any way for bad or incomplete backups or if the backup cannot be used for a possible restore.

6. FEES

- 6.1 The CUSTOMER will pay the maintenance fee annually and in advance. The annual maintenance fee is 20% of the total standard license price (including modules and interfaces) as mentioned in annex 1, unless otherwise agreed in the special conditions. In case the CUSTOMER extends the number of concurrent licenses or adds modules or the interfaces in a later stadium, then these additional licenses will be added to the global maintenance contract following the then current maintenance calculation rules. Maintenance invoices will be paid within 30 days of the invoice date, unless otherwise agreed.
- 6.2 AEXIS may increase this maintenance fee provided that such increase does not exceed the officially announced increase of the Belgian Index. The increase in the Index to be taken into account extends over the period of the past calendar year.
- 6.3 The service fees billed to the CUSTOMER, falling outside the scope of the normal service provisions within the services/maintenance contract, will be calculated on the basis of the time spent on the services. The total of the time thus spent by each person (with a minimum of half a day) is multiplied by the daily rate applicable to these persons
- 6.4 The daily rates offered by AEXIS are based on a normal working day from Monday to Friday between 9am and 5pm. If AEXIS employees are required to work outside normal hours (in agreement with AEXIS) then specific rates will apply. These specific rates are outlined in the pricing document with the explicit request of the customer and subject to the agreement of AEXIS.
- 6.5 Additional costs will be charged, provided this relates to services not included in the maintenance contract. This concerns travel, overnight stays and the like.

- 6.6 All costs and expenses may be subject to VAT which will be charged additionally where necessary.
- 6.7 AEXIS will invoice the CUSTOMER at the end of the month for all charges, costs and expenses that it has incurred outside the normal maintenance contract and the CUSTOMER will pay this invoice in full within 30 days of the invoice date, unless agreed otherwise. AEXIS may (in addition to its other rights and remedies) charge an interest of 1% per month on any sum still owed to it from 8 days after sending a first reminder, as well as a compensation of 15% of the invoice amount.
- 6.8 The obligations and activities of AEXIS, as stipulated in this maintenance contract, will be suspended during the period of non-payment.

7. CONFIDENTIALITY

- 7.1 The CUSTOMER acknowledges that the programs and the related instructions for use are of a confidential nature and are the property of AEXIS. The CUSTOMER will not copy or disclose these items to any third party and will take all possible precautions to keep them confidential.
- 7.2 Each party will keep confidential and not disclose to any third party any confidential information it has obtained from the other party regarding such other party's business or processes.
- 7.3 Nothing in this agreement shall prevent AEXIS from making use in the future of the know-how or experience it has acquired in the execution of this agreement.
- 7.4 The parties are authorized to disclose the fact that they are collaborating.

8. LIMITATION OF LIABILITY

- 8.1 If a claim under this agreement arises from a cause that is not attributable to AEXIS (alone), then AEXIS may refuse to meet that claim and if it does (whether voluntarily or in error) it may charge for all work that was supplied to meet the requirement, amounting to the part that cannot be attributed to AEXIS.
- 8.2 The warranty provided in Article 4 replaces any other warranty, express or implied, as to the suitability or usefulness for a particular purpose of the service.
- 8.3 The CUSTOMER releases AEXIS from all liability for all possible direct and indirect damage that could arise from the execution of services under this agreement and indemnifies AEXIS against third parties, except in case of proven serious fault or negligence on the part of AEXIS, in which case AEXIS will limit its liability to the services price paid. In such cases, AEXIS can invoke the liability insurance that has been taken out. AEXIS assures the CUSTOMER that it will not cancel the liability insurance policy during the term of the agreement.
- 8.4 AEXIS cannot be held responsible for the temporary or permanent non-compliance with this maintenance contract if this is due to force majeure (work stoppage, strike, weather conditions, ...)

- 8.5 AEXIS will not be liable for any economic or commercial loss or damage, unforeseeable or indirect, including loss of profits and failure to realize the anticipated savings, whether resulting from negligence or from another cause, caused in connection with the use of the Programs or otherwise in the context of this contract. Apart from the express obligations contained in this contract, AEXIS does not guarantee that the Programs will be suitable for any other use not provided for under this contract and it is agreed that AEXIS excludes all guarantees, conditions, commitments or other terms, arising from of the contract or of a law or resulting in any other way from this contract, unless a legal provision prohibits the exclusion of such liability. No oral or written commitment not expressly appearing in this maintenance contract shall bind AEXIS.
- 8.6 AEXIS' total liability under this maintenance contract will be limited to the amount of the services paid. Once this amount has been reached, whether on the occasion of one or more related events or not, AEXIS' liability will end.
- 8.7 Any complaint against AEXIS, under this maintenance contract, must be made within two months of the event giving rise to this complaint.

9. TERMINATION

- 9.1 Either party may terminate this agreement upon written notice if :
- the counterparty materially breaches any of its obligations under this agreement and it fails to remedy it within thirty days of written notification
 - the counterparty goes bankrupt or is put into liquidation, a receiver or liquidator has been appointed or any kind of agreement has been concluded for the rescheduling of its debts.
- 9.2 The CUSTOMER may cancel the services/maintenance contract giving AEXIS 3 months' notice before of the end of the initial term or after the initial term, before the end of each consecutive one year period.
- 9.3 Termination of the agreement by one of the parties must be communicated to the other party by registered letter. If AEXIS wishes to continue this agreement after the initial period of 5 years, but under modified conditions, it must inform the CUSTOMER of this, by registered letter at least 3 months before the expiry of the agreement. The CUSTOMER then has 30 days from the date of receipt of the amended terms to accept or reject these amendments. Without a response within this period, the agreement will be tacitly renewed and adjusted. In the event of bankruptcy, concordat or liquidation of one of the parties, this agreement will be automatically dissolved.
- 9.4 Upon termination of this agreement, AEXIS will be able to retain all license and services fees.

10. INTELLECTUAL PROPERTY

Copyright and all other proprietary rights in all materials created or supplied to the CUSTOMER under this agreement shall remain with AEXIS.

11. MISCELLANEOUS

- 11.1 No party shall be liable for any delay or failure to perform its obligations under this agreement as a result of any cause beyond its control.
- 11.2 If any part, term, or provision of this agreement should be unlawful or unenforceable, the validity or enforceability of the remainder of this agreement shall not be affected.
- 11.3 This agreement is the full and exclusive expression of the agreement between the parties hereto and supersedes all prior agreements whether oral or written, and all other communications between the parties relating to the subject matter hereof. The CUSTOMER acknowledges that no reliance has been placed on any statement made but not incorporated into this agreement.
- 11.4 Associated organizations, in which the CLIENT holds a majority stake, may enjoy the benefits of this maintenance contract provided that the CLIENT ensures that these organizations are bound by the conditions of this contract and faithfully comply with them. The CUSTOMER will compensate AEXIS for any breach of the conditions of this maintenance contract by any associated organization.
- 11.5 All notices required or permitted under this agreement shall be in writing and shall be sent by letter or delivered personally to the registered office or such other address as the receiving party may designate from time to time. Notifications that are not transmitted from hand to hand will be deemed to have arrived 48 hours after they were sent by registered mail.
- 11.6 This agreement may only be amended by written agreement signed by duly authorized persons on behalf of the CUSTOMER and AEXIS.
- 11.7 The failure of a party at any time to enforce any provision of this agreement shall in no event affect its right to subsequently demand full execution by the opposing party, nor shall the tolerance for failure to comply with any provision be considered a waiver of any subsequent non-compliance with a provision or a waiver of the provision itself.
- 11.8 This agreement is subject to, and construed in accordance with, Belgian law. The parties accept the jurisdiction of the courts of the judicial district of Brussels. In case of disputes arising from this agreement, the courts of Brussels are competent.