Terms & Conditions ClusterVision Solutions B.V

1. DEFINITIONS

3rd Party Products – any software, hardware or service which is not supplied by ClusterVision.

Acceptance – the acceptance by the Customer of any Delivery.

Agreement – the agreement between ClusterVision and the Customer in any form whatsoever (whether written, unwritten, and concluded by email, via an Order Confirmation or via the acceptance of a Quotation by the Customer).

Customer - any person or company that buys Products from ClusterVision as an end user.

Customer Personal Data – the personal data which belongs to the Customer

Cluster – a collection of computer servers and storage devices, possibly including networks, racks, and other Hardware, as configured by ClusterVision and which is intended to function as a single high performance computer.

ClusterVision – ClusterVision Solutions B.V. or any of its affiliated companies acting as the vendor of the Product as identified on the invoice.

ClusterVision Software - All software provided by ClusterVision to the Customer that is not (i) software governed by the GNU Public License published by the Free Software Foundation, Inc. or variants thereof; (ii) software that is governed by other open source software licenses; and (iii) software governed by the license terms of third parties.

Delivery – the delivery of the Product which is the moment that the Product is received by the Customer.

Delivery Note – the note of ClusterVision which states [the content and/or quantity] of the Product supplied.

Hardware – The physical machinery and devices that make up a computer system and all other physical material required for a functional system, amongst others listed in the Quotation.

Invoice – the invoice raised by ClusterVision.

Order Confirmation - the written acknowledgement from ClusterVision of the Purchase Order. Please check the Order Confirmation and notify ClusterVision of any mistake, in writing, within 3 working days or the details stated in the Order Confirmation will apply.

Price – the price for the Product and/or Service as stated in the Order Confirmation.

Product – the product provided or supplied by ClusterVision. Product may include Software, ClusterVision Software, Hardware, Cluster and/or Service. The delivery of Product warranty or support related services, which normally occurs after delivery of Hardware, Software or installation related services, are excluded from this.

Purchase Order – the binding purchase order as sent by the Customer to ClusterVision.

Quotation – the offer by ClusterVision containing a description of Products and/or Services and upgrades offered and the respective price(s).

Service – the service as described in the Quotation and ClusterVision Service description document.

Service Provider - ClusterVision or any of its authorized service experts.

Software - All software provided by ClusterVision as part of the Product.

Service – the general service and support carried out by ClusterVision or the Service Provider in accordance with the Quotation.

T&Cs – These general terms and conditions.

The above listed defined terms shall equally apply in both the singular and plural form.

2. APPLICATION

2.1. These T&Cs apply to all Quotations, statements, brochures, price lists, adverts (in any form whatsoever) and Agreements.

2.2. Any variations to any Agreement or these T&Cs must be confirmed by ClusterVision in writing.

2.3. Any other general terms are excluded and shall not apply to the Agreement.

2.4. These T&Cs do not apply to any agreements which are concluded between ClusterVision and any party who is not a Customer, but a reseller or distributor of Products.

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3. QUOTATIONS/ORDERS/CONTRACT

3.1. Quotations are only valid if in writing and during the period as stated therein. If no period is stated in the Quotation, the validity period of any Quotation is 5 days.

3.2. Purchase Orders must be received in writing but are only binding when accepted by ClusterVision by means of a written Order Confirmation.

3.3. The Customer is required to check the contents of the Order Confirmation and report any errors within 3 working days after the date of the Order Confirmation.

3.4. ClusterVision reserves the right supply alternative Products at any time but ClusterVision guarantees to the Customer that such alternative Products will have at least equivalent functionality and performance.

4. PRICE

The Prices and tax, shipment, insurance and installation rates are as shown on the Invoice. ClusterVision reserves the right to make any changes to the Prices as result of changes in applicable exchange rates, duties, insurance, freight and purchase costs (incl. for components and Services).

5. PAYMENT TERMS

5.1. Timing – If not agreed between parties in writing otherwise, payment of the Invoices must be made within 14 days of the date of the Invoice, which will be sent after Order Confirmation, and prior to the supply of the Product. Only if ClusterVision accepts in writing that payment can be made after the Delivery or Acceptance (Acceptance shall occur as specified in Article 9 below), then full payment is due within 14 days after the Delivery or Acceptance (whichever is applicable).

5.2. Alternative Payment Method – Payment must be made by electronic bank transfer. Alternative payment methods must be agreed in writing before the placement of the Purchase Order.

5.3. Invoice – ClusterVision will provide an Invoice after the Order Confirmation was provided or after the Delivery, whichever is applicable.

5.4. Suspension – ClusterVision may suspend the Delivery or performance of any Service or obligations otherwise until full payment has been received for the respective Purchase Order.

5.5. Late Payment – If payment is late the statutory commercial interest (wettelijke handelsrente) rate will apply on the late amount. The costs of recovery shall be payable by the Customer. ClusterVision reserves the right to involve a debt collection company to collect the payable amount from the Customer, which will cause additional costs for the Customer. If collecting the payment is not possible within a month after the payment term has expired, ClusterVision reserves the right to collect all delivered hardware and software, and charge a 30% devaluation, handling and re-stocking fee over the total value of the Delivery.

6. DELIVERY

6.1. he expected delivery date stated in the Order Confirmation is approximate. ClusterVision may deliver the Product in multiple occasions.

6.2. Upon receipt of the Product, the Customer is responsible for visual inspection of the Product and must immediately, in any case no later than 7 days, report any damages or other irregularities. The Customer is also responsible for checking that the supplied Products is delivered as stated on the Delivery Note.

6.3. Unless explicitly agreed otherwise, ClusterVision is not responsible for the removal and disposal of packaging materials.

6.4. If ClusterVision is forced to postpone the Delivery beyond the mutually agreed date of Delivery as result of the Customer's fault or reasons which can be attributed to the Customer (for example, unavailability of the Customer site), the payment in full becomes due immediately and ClusterVision shall be entitled to claim any expenses or losses (including transport and storage costs) as result of the postponed Delivery.

7. INSTALLATION

The Customer is responsible for preparing and maintaining a location for the Hardware which location must meet the environmental and site conditions as communicated between Customer and ClusterVision in the Site Survey Form, Quotation, Tender Proposal or other documentation provided.

8. TITLE/RISK

The title (*eigendom*) to the supplied Product passes only on the moment that full payment is received by ClusterVision and thus ClusterVision reserves extended title (*uitgebreid eigendomsvoorbehoud*) in relation to the Product and until that moment the Customer must insure and store the Product separately and shall not be allowed to modify, pledge

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or sell the Product. ClusterVision is entitled to enter the storage premises to repossess the Product. In the event that the Customer sells the Product to another party before title to the Product has passed to the Customer, the Customer is deemed to have acted as ClusterVision's agent as result of which the proceeds of such sale shall be held separately by the Customer for the benefit of ClusterVision.

The clauses below are applicable until all invoices in relation to the Products are paid. The clauses describe the so-called "*uitgebreid eigendomsvoorbehoud*".

a) *Alle geleverde en nog te leveren zaken blijven uitsluitend eigendom van de verkoper, totdat alle vorderingen die de verkoper op zijn koper heeft of zal verkrijgen, waaronder in ieder geval de vorderingen genoemd in BW 3:92, lid 2, volledig zijn betaald.*
b) *Zolang het eigendom van de zaken niet op de koper is overgegaan mag deze de zaken niet verpanden of aan derden enig ander recht daarop verlenen, behoudens binnen de normale uitoefening van zijn bedrijf. De koper verplicht zich op eerste verzoek van de verkoper mee te werken aan de vestiging van een pandrecht op de vorderingen die de koper uit hoofde van doorlevering van zaken op zijn afnemers verkrijgt of zal verkrijgen.*
c) *De koper is verplicht de zaken die onder eigendomsvoorbehoud zijn afgeleverd met de nodige zorgvuldigheid en als herkenbaar eigendom van de verkoper te bewaren.*
d) *De verkoper is gerechtigd de zaken die onder eigendomsvoorbehoud zijn geleverd en nog bij de koper aanwezig zijn terug te nemen indien de koper in gebreke is met de nakoming van zijn betalingsverplichtingen of in betalingsmoeilijkheden verkeert of dreigt te gaan verkeren. De koper zal de verkoper te allen tijde vrije toegang verlenen tot zijn terreinen en/of gebouwen ter inspectie van de zaken en/of ter uitoefening van de rechten van de verkoper.*

Voornoemde onder a t/m d opgenomen bepalingen laten de overige aan de verkoper toekomende rechten onverlet.

9. ACCEPTANCE

9.1. The Acceptance by the Customer of a supplied Product shall take place in the following two manners, whichever is applicable:

a) If the supplied Product is a Cluster or for instance a complex solution, the Acceptance shall be deemed to have occurred according to what was mutely agreed between the Customer and ClusterVision prior to the first delivery. Without agreement, clause b) is in leading.
b) In any other case, the Customer must inspect the Product for any defects or any non-conformity and inform ClusterVision in writing within 7 calendar days of Delivery, failing which, the Customer shall be deemed to have provided the Acceptance.

Any alternative criteria or procedures for the Acceptance must be confirmed by ClusterVision in writing before receipt of the Purchase Order.

9.2. If no Acceptance has been granted by the Customer, ClusterVision will be allowed to correct any defects or any non- conformity and make the Product available again for Acceptance as soon as possible. The non-Acceptance of individual units of Hardware or individual units within a Cluster, shall not withstand the Acceptance and payment of the other supplied Products.

9.3. After the Acceptance of the Product has occurred, ClusterVision may request the Customer to provide a written confirmation of the Acceptance, which confirmation must be provided by the Customer within three working days after said request.

10. WARRANTY

10.1. Unless otherwise stated in writing, ClusterVision warrants that the Product (excluding any 3rd Party Products) will be free from defects for a period of 12 months from the Delivery. If the Product is defective within this period, ClusterVision will repair or replace the Product within a reasonable time. All reasonable care and endeavour shall be used to resolve problems within a realistic period in the circumstances. ClusterVision uses components which are new or equivalent to new in accordance with industry standards and practice. This warranty is given in place of any implied (statutory) warranties and any implied (statutory) warranties are fully excluded to the extent permitted by law.

10.2. Unless otherwise stated in writing, the Customer's entitlement for Product warranties will terminate if product is improperly used. The Customer is required to investigate which specific environmental and/or other requirements are necessary to operate the

system appropriately. ClusterVision shall not be liable to repair or replace the Products or compensate damages to the Customer in the case of improper Product usage. The following cases are considered examples of improper usage:

Customer:

a) damage caused by unsuitable environmental and structural conditions
b) datacenter room temperature below 15 or above 40 degrees Celsius
c) relative humidity below 25% or above 80% non-condensing
d) damage caused by insufficient supply and circulation of cool air; and under-, over- or unstable supply of electrical power
e) damage caused by incorrect installation, use, modifications or repair, accidents, or abuse by any unauthorized 3rd party or by the Customer
f) damage caused by excessive dust or airborne floating debris in the vicinity of the Product
g) damage caused by relocation of the Product
h) damage caused by any instruction given by the Customer and performed by ClusterVision in accordance with such instruction

10.3. In relation to the supply of 3rd Party Products, the applicable warranty shall be the warranty as provided by the relevant manufacturer, supplier or license holder. ClusterVision does not provide any (implied) warranties in relation to 3rd Party Products and explicitly excludes any liability resulting from a defect in a 3rd Party Product or damages caused by 3rd Party Products.

10.4. Unless otherwise expressly stated in writing and signed on behalf of ClusterVision, ClusterVision does not warrant that the Products, or Services delivered to the Customer will operate uninterrupted, be error free, conform to any reliability or performance standards, meet Customer's needs or requirements or that ClusterVision will correct all defects. Customer is responsible for the selection of the Product for the purpose of achieving the intended results. Title 1 of Book 7 of the Dutch Civil Code is shall not apply, unless such exclusion is not possible with respect to consumers.

11. SERVICES AND REPAIRS

Services will be provided by ClusterVision or by the Service Provider. The Customer must follow the problem determination and resolution procedures that ClusterVision or the Service Provider specifies. Service may be provided via telephone or internet where appropriate. The Customer must allow ClusterVision or any Service Provider to examine the Product at the Customer's or ClusterVision's premises (as decided by ClusterVision).

11.1. Response and repair times

Response and repair times are estimates and may vary according to the remoteness or accessibility of the location of the Hardware or Cluster and the availability of spare parts. ClusterVision will use commercially reasonable efforts to meet agreed response and repair times. The Parts which are not critical to the functioning of the Hardware (e.g.: hinges, doors, cosmetic features, frames) can be serviced outside of the agreed response and repair times.

ClusterVision specifically does not represent that it will be able to repair any Product under this warranty or make any equipment exchange without risk to or loss of programs or data.

11.2. Parts replacement

If the failure of the Product involves parts that, in the opinion of ClusterVision, the Customer is capable of replacing, ClusterVision will ship such parts to the Customer. The Customer is responsible for proper installation of such parts and returning replaced parts to ClusterVision in the appropriate shipping container, as instructed by ClusterVision. ClusterVision owns any replaced Products or parts thereof and reserves the right to charge the Customer if these are not returned within 7 days upon request.

11.3. Excluded from service

Unless stated otherwise in the Quotation or Statement of Work, the following examples are excluded from the normal support Service:

a) work outside local office hours (normally 9:00 – 18:00), weekends or on public holidays
b) changes to the configuration
c) relocation of the Product
d) consumables, diskettes, CD-Rom, DVD
e) electrical environment
f) transfer of data or Software
g) maintenance of the Software security
h) software and data backups
i) product updates or upgrades

12. EXCLUSIONS AND LIMITATIONS TO SERVICES

12.1. Disaster and other exceptions

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ClusterVision will not be required to repair or replace any Product or perform any Service if a Product have been damaged as a result of the below events, nor will ClusterVision be liable to compensate any damages in relation thereto:

a) fire, flood, earthquake or any other circumstance beyond the reasonable control of ClusterVision Customer's (or a third party's)
b) negligence or misconduct
c) theft, misuse, transportation, alteration, modification, Customer's repair or maintenance not according to instructions by ClusterVision
d) external causes such as, but not limited to, failure of or faulty electric power or air conditioning/humidity control
e) any act or omission which cannot be attributed to ClusterVision
f) Causes resulting from other than ordinary use of the Product, unless ClusterVision agrees to provide such Services under a separate written contract and at additional cost to the Customer

12.2. Products not supplied by ClusterVision

Unless agreed otherwise in writing with the Customer, ClusterVision will not provide Services on 3rd Party Products and ClusterVision will not be liable or responsible for the performance or non-performance for 3rd Party Products, the services provided by the suppliers thereof, or incompatibility between any ClusterVision Product and such hardware and software.

12.3. Service exceptions

Unless otherwise agreed in writing, ClusterVision will not:

a) change, modify or alter any Product other than as ClusterVision reasonably determines is appropriate to comply with its warranty obligations under the Agreement and these T&Cs;
b) furnish accessories or supplies for, paint or refinish, or provide any electrical work external to the Product;
c) reinstall or de-install any Product;
d) repair or replace Product that has been defaced or damaged.

13. LIABILITY

13.1. ClusterVision shall only be liable towards the Customer for direct damages with a maximum of up to €60.000.

13.2. ClusterVision shall in any event not be liable for:

a) indirect or consequential loss, including loss of data;
b) loss of business profits, salary, revenue, savings;
c) damage remedied by ClusterVision within reasonable time;
d) loss avoidable/preventable by the Customer through reasonable conduct, such as the backing up of all data and following ClusterVision's advice;

13.3. The limitations and exclusions of ClusterVision's liability in these T&Cs shall not apply with respect to damages which have occurred as a result of gross negligence and/or wilful misconduct on the side of ClusterVision.

14. INTELLECTUAL PROPERTY (IP)

14.1. In the event of a breach of any IP-right by ClusterVision, ClusterVision shall indemnify the Customer against any damages which the Customer may suffer resulting from any breach of IP-rights which are used or integrated into the Product by ClusterVision and ClusterVision is entitled to recall and exchange or modify the relevant Product or refund the Customer, save for the amount of depreciation of the relevant Product(s). The Customer indemnifies ClusterVision against any damages which ClusterVision may suffer resulting from any breach of IP-rights which are used or integrated into the Product by the Customer.

14.2. The Customer shall, at the expense of ClusterVision, assist ClusterVision in any disputes (whether in or out of court) or settlement discussions with third parties which are connected to an alleged breach of IP-rights by ClusterVision on a Product (but not 3rd Party Product) which was supplied by ClusterVision to the Customer. Any costs associated with an alleged breach by the Customer of any third party IP-rights shall not be borne by ClusterVision. ClusterVision retains all IP-rights on the Products. The Customer is obliged to notify ClusterVision immediately of any infringing or unauthorized use of the Product or any IP-rights on the Products.

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15. SOFTWARE

The Software which is not owned by ClusterVision is supplied subject to license and warranty of the Software licensor. ClusterVision shall enclose the relevant Software license where necessary. The Customer is bound to such license and must comply with the terms as contained therein. If the Customer chooses not to accept the operating system license at start-up, if any, ClusterVision will only accept the return of the entire Product for refund.

16. MANUALS AND DOCUMENTATION

Manuals and documentation will be provided online and/or on accessible media with each shipment. Unmodified copies may be printed and duplicated solely for the Customer's internal use if the copy clearly includes all of the proprietary notices of the original.

17. EXPORT CONTROL

The Customer acknowledges that the Product may be composed of technology or parts which are subject to export control laws and laws of the country where it is delivered to or used. The Customer shall abide by all these laws. The Product may not be sold, leased or transferred to restricted / embargoed end users or countries or for a user involved in weapons of mass destruction or genocide without the prior consent of the US or competent EU governmental authority. The Customer understands and acknowledges that US and EU restrictions vary regularly and depend on the Product, therefore the Customer shall at all-time refer to the applicable US and EU regulations in that regard.

18. FORCE MAJEURE

ClusterVision is not liable for any damages which are caused by circumstances beyond its reasonable control and ClusterVision is entitled to a time extension of at least the duration of the force majeure event for the performance of its obligations under the Agreement.

19. CONFIDENTIALITY

Each party must treat all information received from the other party which is marked as "confidential" or all information for which it can be reasonably expected to be confidential, as strictly confidential at all times.

20. TERMINATION

20.1. ClusterVision may terminate the Agreement with immediate effect by means of a written notice if the Customer:

a) fails to pay within the agreed terms for payment;
b) breaches or ClusterVision suspects that the Customer has breached the provisions of Article 17 above.

20.2. Either party may terminate the Agreement in the event that the other party: 1) commits a material or persistent breach of the Agreement and/or these T&Cs and fails to remedy such breach within 30 days of written notice from the other party; or 2) becomes insolvent, is granted a suspension of payments, is unable to pay debts as they become due, a resolution for its liquidation (ontbinding) has been passed.

21. CUSTOMERS' OBLIGATIONS

21.1. 21.1. The Customer is responsible for its own choice for one or more Products and its suitability for the desired purpose. The costs associated with telephone and/or postal charges for contacting ClusterVision shall in any event be borne by the Customer.

21.2. The Customer is obliged to ClusterVision with all reasonable courtesy, information, cooperation, facilities and access to enable ClusterVision to perform its obligations, failing which ClusterVision shall not be obliged to perform any of its obligations. The Customer is responsible for (i) the removal of 3rd Party Products during the performance of Service by ClusterVision, (ii) the backup and confidentiality of all data as stored within a Product and (iii) all legal and regulatory requirements applicable to the Customer.

21.3. The Customer understands that any relocation of the Product may change the level of or otherwise affect the Service which can be provided in relation to the Product. The Customer must consult with ClusterVision if Customer intends to relocate the Product.

22. DATA PROTECTION

The Customer Personal Data will be held and/or transferred in strict accordance with the applicable data protection laws and ClusterVision's data protection registration. The Customer may instruct ClusterVision not to use the Customer Personal Data for direct marketing or other purposes.

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In the event that, in the performance of the services, ClusterVision processes personal data, then ClusterVision shall act as the processor of the personal data within the meaning of the Act of 8 December 1992 on privacy protection in relation to the processing of personal data "Data Protection Act" (Wet Bescherming Persoonsgegevens), and this vis-à-vis the Customer, which shall act as the controller.

In such case, ClusterVision and any person acting under its authority shall only process the personal data on behalf and on the instructions of the Customer, except for an obligation imposed by or by virtue of law.

The Customer acknowledges that ClusterVision provides sufficient guarantees in respect of the technical and organizational measures governing the processing to be carried out.

The Customer warrants that all applicable statutory provisions concerning the processing of personal data, including provisions in or under the Data Protection Act, are strictly observed and that all prescribed registrations have been carried out and all required consents and/or licenses to process personal data have been obtained. The Customer shall provide ClusterVision immediately in writing with all requested information in this respect.

The Customer shall indemnify ClusterVision against all third-party claims that may be filed against ClusterVision because of a violation of statutory retention periods, of the Data Protection Act (and/or other laws concerning the processing of personal data that cannot be imputed to ClusterVision.

23. JURISDICTION

Dutch law will apply to the Agreement and these T&Cs. Any disputes arising from or in connection with the Agreement and/or these T&Cs shall be exclusively submitted to the competent court in Amsterdam, the Netherlands. The Vienna Convention on Contracts for the International Sale of Goods is excluded.

24. MISCELLANEOUS

24.1. If any provision of the Agreement or these T&Cs is found to be invalid or unenforceable by a court, the remaining provisions shall remain unaffected. The parties will in such event replace the invalid or unenforceable provision with a provision that in its aim and result will have the closest possible desired effect.

24.2. ClusterVision may subcontract, assign or transfer its obligations or rights arising out of the Agreement or these T&Cs to a competent 3rd party whether in whole or in part. The Customer may not assign or transfer any of obligations or rights to any third party without the written consent of ClusterVision.