

GENERAL TERMS & CONDITIONS

Version: 15

Date: 01 August 2018

The following general terms and conditions apply to the use of Services offered by myHBMcenter to the client, with whom myHBMcenter concludes an Agreement ("**Client**")

The Services are offered by My HBM Support B.V., also trading under the name myHBMcenter, with its registered office at Burgemeester van Karnebeeklaan 15 in (2585 BA) The Hague, registered with the Chamber of Commerce under number 52193482 ("**myHBMcenter**").

ARTIKEL 1. DEFINITIONS

The capitalised terms (singular as well as plural) in these General Terms and Conditions have the following meaning:

- 1.1. **Account:** the personal accounts created by myHBMcenter for the user environment made available by myHBMcenter to the Client for the purpose of using the Services purchased or having them used (by authorised persons) or purchasing new Services.
- 1.2. **General Terms and Conditions:** these terms and conditions.
- 1.3. **GDPR** the General Data Protection Regulation.
- 1.4. **Services:** all services myHBMcenter provides to the Client under this Agreement, which at any rate include: (i) the provision of Software(-as-a-Service), (ii) the provision and maintenance of Software, (ii) the provision of (Software) products such as the ACT® measurement and the ACT® (Pre) Burn-Out, (iii) the provision of training courses and study programmes (iv) the provision of coaching and advice.
- 1.5. **End Users:** the persons who, through the Client, have access to the Services provided by myHBMcenter to the Client.
- 1.6. **Data Processing Agreement:** any so-called (sub-) processor's agreement or data exchange agreement between the Parties relating to data processing as part of the Services that, if agreed, are part of the Agreement.
- 1.7. **Intellectual Property Rights:** all intellectual property rights and related rights, including copyrights, database rights, rights to domain names, trade name rights, rights to know-how, trade mark rights, model rights, neighbouring rights and patent rights.

- 1.8. **Office Hours:** the period between 9 am and 5.30 pm from Monday to Sunday, with the exception of official Dutch holidays.
- 1.9. **Materials:** all works, such as websites and (web) applications, corporate identities, logos, folders, brochures, leaflets, lettering, advertisements, marketing and/or communication plans, drafts, illustrations, texts, sketches, documentation, recommendations, reports and other products of the mind, as well as preparatory materials of the same and (coded or uncoded) files or data carriers containing these materials.
- 1.10. **Additional Work:** additional work or services beyond the scope of the Agreement.
- 1.11. **Client:** the natural person or legal entity exercising a profession or business with whom or which myHBMcenter has concluded the Agreement.
- 1.12. **Agreement:** the quote or offer (accepted by the Client) on the basis of which myHBMcenter provides its Services to the Client, including these General Terms and Conditions and any Data Processing Agreement.
- 1.13. **Party/Parties:** the Party/Parties to the Agreement, myHBMcenter and Client jointly or separately.
- 1.14. **Written/In Writing:** correspondence put down on paper, dated and signed. In addition to correspondence committed to paper, the term written/in writing also comprises email and fax messages, in so far as the origin and integrity of these messages are sufficiently ascertained.
- 1.15. **Software:** all software that myHBMcenter makes available under the Agreement.
- 1.16. **Emergency Maintenance:** non-routine maintenance that is reasonably necessary with a view to availability, usability and/or security of the Services.
- 1.17. **Confidential Information:** information marked as confidential or that has been explicitly indicated in advance to be confidential.
- 1.18. **Website:** the website(s) of myHBMcenter.

ARTIKEL 2. FORMATION

- 2.1. All quotes and offers of myHBMcenter are free of obligation and valid until 30 days after the date on which they were drawn up. myHBMcenter is not obligated to acknowledge acceptance received after expiry of this period, but if myHBMcenter does acknowledge it, the quote or offer will be considered to be accepted.
- 2.2. If the Client's acceptance deviates from the offer (on minor points or otherwise), myHBMcenter will not be bound by it. In that case, the Agreement is not effected in accordance with this deviating acceptance, unless myHBMcenter explicitly indicates otherwise.

ARTIKEL 3. PERFORMANCE OF THE AGREEMENT

- 3.1. The Agreement is only effected after acceptance of the quote by the Client. myHBMcenter undertakes to provide the Services as soon as possible, in accordance with the Agreement. Any terms indicated by myHBMcenter are indicative and should not be considered deadlines. If explicitly indicated that a term is a deadline, myHBMcenter will not be in default until it has been given notice of default and has failed to fulfil its obligations within a reasonable term.
- 3.2. The Client will give myHBMcenter all support necessary and desirable to allow proper and timely provision of the Services. The Client will, at any rate:
 - a. Provide all the information that myHBMcenter indicates to be necessary or that the Client should reasonably understand to be necessary for provision of the Services.
 - b. Give myHBMcenter access to all locations, services and accounts under its management if and in so far as this is necessary for provision of the Services.
- 3.3. myHBMcenter will, wherever possible, take reasonable requests from the Client into account in performance of the Agreement, but is not obliged to honour such requests. myHBMcenter is entitled to charge for additional work performed to fulfil such a request. If a request from the Client cannot be honoured, myHBMcenter will provide the reason for this decision.
- 3.4. myHBMcenter is entitled to engage third parties in the performance of the Agreement. Any costs related to this will only be at the expense of the Client if this has been agreed in advance.
- 3.5. If employees of myHBMcenter perform work at the offices of the Client or a different location indicated by the Client for the performance of the Agreement, the Client will offer all support and facilities necessary for performance of the work free of charge.
- 3.6. myHBMcenter will perform the agreed work as it sees fit and has the right to determine and plan the time and duration of the work as it sees fit.
- 3.7. If and in so far as agreed that the Client may add data fields to the Services, the Client will be fully responsible for the content of and control over the data fields it has added. myHBMcenter has no knowledge of the added data fields. The Client will bear full responsibility in the event that these data fields are incorrect and/or unlawful or if there are no grounds for retrieving these data.

The Client indemnifies myHBMcenter against third-party claims ensuing from the addition of data fields by the Client.

ARTIKEL 4. COURSES AND TRAINING

- 4.1. If agreed between the Parties, myHBMcenter will provide a course and/or training for the Client.
- 4.2. The course and/or training programme will be determined by the Parties in advance. After the programme and prerequisites of the course (such as duration, location and number of participants) have been determined, myHBMcenter will submit an offer.
- 4.3. After the Agreement has been concluded, myHBMcenter has the right to:
 - a) Change the course and/or training programme in order to improve the quality or because of a reprogramming of examination requirements of external examination institutes;
 - b) Change the location and time of the course and/or training;
 - c) Cancel the course and/or training in accordance with article 4.5 in writing or to stop processing new applications, for instance if there are not enough applications;
 - d) Increase the group size of the course and/or training by up to two participants.
- 4.4. myHBMcenter undertakes to inform the Client and the participants of any changes as referred to in the previous paragraph in advance of the course/training.
- 4.5. Parties are entitled to cancel the course and/or training In Writing. If the Client cancels the course and/or training, myHBMcenter is entitled to charge costs. The Client can consult the cancellation policy for courses/training programmes on the Website of myHBMcenter at [Cancellation policy 01-08-2018.](#)
- 4.6. All reasonable expenses incurred by the trainer (including travel expenses and reasonable overnight expenses) and of participants of the course and/or training will be at the Client's expense and may be invoiced separately by myHBMcenter.

ARTIKEL 5. COACHING AND ADVICE

- 5.1. In so far as it has been agreed that myHBMcenter will provide coaching and advice to the Client, Parties will determine in advance which activities will be part of coaching and advice.
- 5.2. This can be changed in mutual consultation if necessary. In that case, myHBMcenter has the right to charge any additional costs as Additional Work, which will be announced to the Client in advance wherever possible.
- 5.3. The coaching and advice activities under this Agreement are always an obligation to perform, unless agreed otherwise In Writing.

- 5.4. The Client is aware that following the advice of myHBMcenter is entirely at the Client's risk. myHBMcenter is only liable for damage incurred in so far as this ensues from the Agreement.
- 5.5. Where possible, myHBMcenter will announce the time and costs related to the activities to be performed to the Client in advance. The time needed for these activities depends on different factors, such as the Client's cooperation.
- 5.6. In addition to the previous paragraph, myHBMcenter is dependent on the information provided by the Client. myHBMcenter is in no way responsible or bound to check this information.

ARTIKEL 6. ADDITIONAL WORK

- 6.1. If the Client requests additional work or Services beyond the scope of the Agreement, the Parties will consult and myHBMcenter will draft an additional quote. myHBMcenter will not perform Additional Work until after acceptance of the quote by the Client.
- 6.2. myHBMcenter does not require approval for Additional Work for which myHBMcenter can demonstrate that it is reasonably necessary for provision of the Services or that reasonably follows from instructions from the Client. Such work will be performed on the basis of actual costs against myHBMcenter's hourly rate applicable at the time the work is performed.

ARTIKEL 7. MODIFICATIONS AND IMPROVEMENTS

- 7.1. myHBMcenter may modify the Software to rectify errors, add new functionality or improve performance. myHBMcenter may discuss such modifications with the Client in advance, but the final decision on whether or not the modification will be implemented will be taken by myHBMcenter.
- 7.2. If myHBMcenter believes that modifications will result in a fundamental change in functionality of the Software, myHBMcenter will try to announce the modifications by email to the Client in advance.
- 7.3. myHBMcenter will make an effort to rectify any errors in the Software, but also depends on its suppliers for this. myHBMcenter has the right to refrain from installing certain updates or upgrades from suppliers if it believes this does not benefit performance of the Software.
- 7.4. If implementation of modifications and improvements could lead to reduced availability of the Software, this will be done outside of Office Hours wherever possible. Emergency Maintenance can be performed at any time and is not announced in advance.

ARTIKEL 8. SUPPORT

- 8.1. myHBMcenter will offer a reasonable level of support to End Users and the Client in relation to questions about the use and administration of the Software, as well as technical problems related to the Software.
- 8.2. The support described in this article 8.1 is offered via a help desk that can be contacted during Office Hours by email (at helpdesk@myhbmcenter.com) or telephone (at [+31 \(0\)88 2868 022](tel:+310882868022)).
- 8.3. myHBMcenter aims to deal with help desk requests within a reasonable period of time. The time needed to resolve reports may vary.

ARTIKEL 9. AVAILABILITY

- 9.1. myHBMcenter aims to keep the Software online as much as possible, but cannot guarantee uninterrupted availability.
- 9.2. If myHBMcenter believes that the performance of the computer system or network of myHBMcenter or third parties may be at risk, for instance in the event of a (d) dos attack or malware activities, myHBMcenter has the right to take all measures it considers reasonably necessary to avert the risk or to limit or prevent any damage. This may result in reduced availability.

ARTIKEL 10. RULES OF USE

- 10.1. The Software may not be used in a way that is contrary to these terms and conditions or applicable laws and regulations.
- 10.2. If myHBMcenter finds that the Client or an End User violates these terms and conditions or the law, or receives a complaint about this, myHBMcenter has the right to intervene to end the violation. In that case, myHBMcenter may block access to the relevant information.
- 10.3. If myHBMcenter believes that the performance of the computer systems or the network of myHBMcenter or third parties and/or service provision via the internet may be at risk due to a hindrance, damage or other hazards, particularly because of excessive sending of emails or other data, breaches of personal data or activities of viruses, trojans and similar software, myHBMcenter is entitled to take all measures it considers reasonably necessary to avert or prevent this risk. These measures include but are not limited to the suspension of the Services and termination of the Agreement.
- 10.4. The Client must protect against unauthorised access to the Account by means of a user name and password. The password in particular must be kept strictly confidential. myHBMcenter may assume that everything that is done from a Client Account is done after log-on using a user name and password and under management and supervision of the Client.
- 10.5. myHBMcenter will at all times be entitled to report criminal offences discovered and will provide assistance to orders from the competent authorities. In addition, myHBMcenter is entitled to transfer the name, address, IP address and other identifiable data on the Client/End User to a

third party complaining that the Client/End User violates their right or these terms and conditions, provided that:

- a) It is sufficiently plausible that the information, in itself, is unlawful or harmful towards the third party.
 - b) The third party has a real interest in obtaining the data.
 - c) It is plausible that there is no less drastic option of obtaining the data in the case in question. and
 - d) The weighing of interests has as a result that the interests of the third party prevail.
- 10.6. The Client is obliged to follow all reasonable instructions from myHBMcenter related to the use of the Software.
- 10.7. myHBMcenter may recover damage as a result of violations of the rules in this article from the Client. The Client indemnifies myHBMcenter against all third-party claims related to damage ensuing from violation of the rules in this article.

ARTIKEL 11. SECURITY AND PRIVACY

- 11.1. myHBMcenter will make every effort to protect the Services against misuse and unauthorised access to data of the Client.
- 11.2. Parties will conclude a Data Processing Agreement for the purpose of processing the data of data subjects.

ARTIKEL 12. INTELLECTUAL PROPERTY RIGHTS

- 12.1. All Intellectual Property Rights to the Services and any Materials supplied by myHBMcenter under the Agreement are vested in myHBMcenter or its licensors.
- 12.2. The Client receives from myHBMcenter the non-exclusive, non-transferable and non-sublicensable rights of use to the Services and any Materials in so far as these ensue from the Agreement or have been otherwise awarded In Writing. The rights of use are valid for the term of the Agreement.
- 12.3. The Client is not entitled to make changes to the Services and is not entitled to a copy of the source files of the Services, except if this is permitted by law.
- 12.4. myHBMcenter may take (technical) measures to protect the Services. If myHBMcenter has taken such security measures, the Client is not allowed to bypass or remove this security.
- 12.5. The Client is not allowed to remove or modify any Intellectual Property Rights statements from the Services.
It is also not allowed to remove statements regarding the confidential nature from the Services.

ARTIKEL 13. CONFIDENTIALITY

- 13.1. Parties will observe confidentiality in respect of Confidential Information that they provide to each other or incorporate into the Services before, during or after performance of the Agreement. Parties also impose this obligation on their employees and third parties engaged by them for the performance of the Agreement.
- 13.2. As regards Confidential Information, the Parties:
 - a) Will observe all reasonable measures for the safe storage or retention of the Confidential Information, for which they must apply at least the same level of security as they apply to their own Confidential Information.
 - b) Will not use the Confidential Information for any purpose other than the agreed purpose (performance of the Agreement).
 - c) Will not retain the Confidential Information longer than reasonably necessary for fulfilment of the agreed obligations and, immediately after fulfilment of the said obligations, return this information and any copies made thereof to the other Party or, after a copy of the Confidential Information has been returned to the other Party and the other Party has confirmed receipt In Writing, destroy it.

ARTIKEL 14. PAYMENT TERMS

- 14.1. myHBMcenter will send invoices for all amounts owed and, in doing so, is entitled to invoice in advance and electronically. Objections from the Client to the (amount of the) invoice do not suspend the payment obligation.
- 14.2. All invoices are subject to a payment term of 14 days, unless a different term of payment is stated on the invoice or a different term has been agreed In Writing.
- 14.3. If an invoice is not paid within the payment term, the Client is in default without notice of default being required. In that case, myHBMcenter has the right to suspend provision of the Services in whole or in part. myHBMcenter is not liable for damage incurred by the Client as a result.
- 14.4. In case of late payment, the Client is held, in addition to the amount owed and the interest on it, to full payment of both judicial and extrajudicial collection costs, including all costs for legal assistance, bailiffs and debt-collection agencies.
- 14.5. All claims from myHBMcenter are immediately payable if the Client is declared bankrupt, if the Client applies for or is granted a moratorium on payments, if the Client's activities are terminated or its business is dissolved.
- 14.6. All prices mentioned by myHBMcenter are in euros and exclusive of VAT and other government levies.

ARTIKEL 15. LIABILITY AND FORCE MAJEURE

- 15.1. myHBMcenter's liability for damage arising from failure in the performance of the Agreement, an unlawful act or otherwise is limited per event to the amount (exclusive of VAT) that the Client has paid under the Agreement during the 6 months prior to emergence of the damage, for which purpose a series of consecutive events is considered a single event.
- 15.2. myHBMcenter is only liable for direct damage arising from an attributable failure in the performance of the Agreement. Direct damage is limited to any and all damage comprising:
 - a) Direct damage to material objects ("property damage").
 - b) Reasonable and demonstrable costs the Client has had to make to request proper performance of the Agreement by myHBMcenter, unless the faulty performance cannot be attributed to myHBMcenter.
 - c) Reasonable costs to determine the cause and scope of the direct damage.
 - d) Reasonable and demonstrable costs the Client has made to prevent or limit direct damage, in so far as the Client demonstrates that these costs have resulted in limitation of direct damage.
 - e) Reasonable and demonstrable costs for performance of the Agreement by a third party if myHBMcenter fails to properly comply (again) after a demand from the Client within the term set in the demand.
- 15.3. Any limitation or exclusion of liability included in the Agreement does not apply if the damage is the result of (1) intent or deliberate recklessness of the management/leadership of myHBMcenter, or (2) death or physical injury.
- 15.4. Condition for the arising of any right to damages is that the Client must report the damage to myHBMcenter within 30 days after discovering it.
- 15.5. The Client indemnifies myHBMcenter against and holds myHBMcenter fully harmless for claims from third parties (including but not limited to: customers of the Client, regulators and suppliers of the Client).
- 15.6. myHBMcenter cannot be held to comply with any obligation under the Agreement if it is prevented from doing so as a result of force majeure. myHBMcenter is not liable for any damage resulting from force majeure.
- 15.7. Force majeure will in any case include power cuts, disruptions in the internet connection, malfunctions in the telecommunication infrastructure, network attacks (including (d)dos attacks), attacks by malware or other malicious software, internal civil commotion, natural disasters, terrorism, mobilisation, war, import and export restrictions, strikes, stagnation in supply, fire, floods, and cases in which myHBMcenter is unable to comply because of its suppliers, whatever the reason may be.
- 15.8. If a force majeure situation lasts longer than 90 days, both Parties have the right to terminate the Agreement In Writing with immediate effect. Any

Services provided by myHBMcenter before and during the force majeure situation will be settled proportionally.

- 15.9. Parties agree that Section 6:271 of the Dutch Civil Code and the effect of its provisions on following Sections are excluded.

ARTIKEL 16. TERM AND TERMINATION

- 16.1. The Agreement is entered into for the period referred to in the quote or offer from myHBMcenter.
- 16.2. If the term of the Agreement is not mentioned in the quote or offer, the Agreement is considered to be entered into for a period of 12 months, unless the Agreement ends because of a pre-determined task. The Client cannot terminate the Agreement prematurely.
- 16.3. If the Agreement is a continuing performance agreement, it can be terminated by either Party by the end of the term subject to a notice period of 3 months. If not terminated in this manner, the Agreement will be automatically renewed with the initial term of the Agreement.
- 16.4. myHBMcenter can suspend or terminate the Agreement In Writing with immediate effect without notice of default being required if the Client is in default in respect of a material obligation under the Agreement.
- 16.5. myHBMcenter can suspend or terminate the Agreement In Writing with immediate effect without notice of default being required if the Client is declared bankrupt, applies for or is granted a moratorium on payments, if the Client's activities are terminated or its business is dissolved.
- 16.6. If myHBMcenter suspends performance of the Agreement, myHBMcenter will retain its claims under the Agreement and applicable legislation and regulations.
- 16.7. If the Agreement is terminated, any claims myHBMcenter has on the Client will become immediately due and payable (regardless of the reason for termination).
- 16.8. If the Agreement is dissolved, the Client is still obliged to pay all amounts invoiced and no obligations to undo arise.
- 16.9. The Client may only dissolve the part of the Agreement that has not been performed yet by myHBMcenter.

ARTIKEL 17. PRICE CHANGES

- 17.1. myHBMcenter may change the agreed prices at any time based on the changed rates of suppliers of myHBMcenter, which will be passed on proportionally to the Client.
- 17.2. myHBMcenter may increase the agreed prices and hourly rates once per contract year by a percentage equalling the increase in the Services Price Index (DPI) as determined by Statistics Netherlands (CBS).

- 17.3. In the events described in article 17.1. and 17.2., the Client is not entitled to cancel the Agreement. Other price changes are subject to the procedure set out in article 18.

ARTIKEL 18. AMENDMENT TO THE GENERAL TERMS AND CONDITIONS

- 18.1. myHBMcenter is entitled to modify or supplement these General Terms and Conditions. myHBMcenter will announce the change or addition to the Client by email at least 30 days before they take effect.
- 18.2. If the Client does not want to accept the modifications or additions, the Client can object within 14 days after announcement, stating reasons for the objections, after which myHBMcenter will reconsider the modification or addition. If myHBMcenter decides to persist in the modification or addition, the Client may terminate the Agreement In Writing by the date on which the modification takes effect.
- 18.3. Both Parties will provide full cooperation with modifications or additions to these General Terms and Conditions that are dictated by new or amended legislation. Such modifications or additions will be implemented in mutual consultation between the Parties without the Client having the right to cancel the Agreement.
- 18.4. The procedure described in articles 18.2. and 18.3. does not apply to modifications of secondary importance. Such modifications may be implemented by myHBMcenter without being announced first and without the Client having the right to cancel the Agreement.

ARTIKEL 19. STAFF

- 19.1. During the term of the business relationship between the Client and myHBMcenter and for a period of two years after the end of it, the Client will not be permitted to hire any of the myHBMcenter's employees or have them work for the Client in any other way, either directly or indirectly, without myHBMcenter's prior Written consent.

ARTIKEL 20. EXIT

- 20.1. After termination of the Agreement, myHBMcenter will retain all data and information on the Client for a period of 5 years, unless and in so far as Parties have not agreed on a different retention term for personal data in a Data Processing Agreement. Where appropriate, the personal data are subject to a retention term as agreed in the Data Processing Agreement.

ARTIKEL 21. OTHER PROVISIONS

- 21.1. This Agreement is governed exclusively by Dutch law.
- 21.2. In so far as not described otherwise in mandatory law, all disputes between the Parties in relation to the Agreement will be brought before the competent court in the Netherlands in the district in which myHBMcenter has its registered office.
- 21.3. myHBMcenter is entitled to transfer its rights and obligations ensuing from the Agreement to a third party that takes over myHBMcenter or its business activities.
- 21.4. The Client must immediately inform myHBMcenter of any change in name, (postal) address, email address, telephone number and other information and data relevant for the performance of the Agreement.
- 21.5. The logs and communication stored by myHBMcenter are considered to be correct unless the Client provides evidence to the contrary.
- 21.6. If a provision in the Agreement is void or invalid, this will not impact the validity of the Agreement as a whole. In this case, the Parties will adopt one or more new provisions to replace the null and void ones, which reflect the intention of the original provisions as far as possible by law.