**Model provisions concerning arbitration**

**Introduction**

If you and the opposing party wish to submit your disputes to the privately administered justice of SGOA (*Stichting Geschillenoplossing Automatisering,* or ‘foundation for the resolution of ICT disputes’), you must make a valid joint arbitration agreement. The law stipulates that you should agree on arbitration in writing. You can make such an agreement when the dispute arises but it is also possible to opt for arbitration in advance, i.e. in your ICT contract or in your general terms and conditions. To help you do this, we have provided you here with some model provisions concerning arbitration.

The following model clauses only contain a basic arbitration provision that you can include in your ICT contracts. In the provision, you and the other party to the contract agree to submit any contractual disputes to arbitration by SGOA. As a result, the regular courts are essentially not competent. The clause refers to the ‘vendor’ and the ‘client’, but of course it is possible for you to replace these words with ‘contractor’ and ‘client’. You can also use the names of your company and the other party to the contract.

**Model arbitration clause (1): an example provision for your national ICT contracts**

You can use the following arbitration clause in ICT contracts without any cross-border elements. The provision can therefore be used if both the vendor and the client are based in the Netherlands and the deliveries and services covered by the contract also take place in the Netherlands.

The text of this model provision is as follows:

*‘All disputes arising between the vendor and the client that are connected to this agreement or ensue from any further agreements that result from this agreement will be resolved by means of arbitration in accordance with the Arbitration Regulations of SGOA (*Stichting Geschillenoplossing Automatisering*, or ‘foundation for the resolution of ICT disputes’), which has its registered office in The Hague. This provision does not affect the right of each party to request summary arbitral proceedings, without prejudice to the right of each party to take precautionary legal measures.’*

**Model arbitration clause (2): an example provision for your international ICT contracts**

The following arbitration clause can be used in international ICT contracts. The provision states that any arbitration takes place in The Hague. The legal implication of this is that Dutch arbitration law applies as laid down in the Dutch Code of Civil Procedure. However, the actual sessions during the arbitration proceedings can be held elsewhere. It is possible to decide beforehand on the actual location for the sessions as well in order to remove any doubt concerning that location; in that case, you should insert the location yourself in the place of the dots in this clause. It is also a good idea to decide in advance on the language for the documents and the sessions. According to the Arbitration Regulations, there are two possible languages: Dutch and English. Where necessary, documents will need to be translated into the language that has been decided on. The chosen language in the following model provision is English.

The text of this model provision is as follows:

*‘All disputes arising between the vendor and the client that are connected to this agreement or ensue from any further agreements that result from this agreement will be resolved by means of arbitration in accordance with the Arbitration Regulations of SGOA (*Stichting Geschillenoplossing Automatisering*, or ‘foundation for the resolution of ICT disputes’), which has its registered office in The Hague. This provision does not affect the right of each party to request summary arbitral proceedings, without prejudice to the right of each party to take precautionary legal measures. Arbitration will take place in Haarlem. The sessions referred to in this agreement will be held in ..... The arbitration will be conducted in Dutch.’*

**Model arbitration clause (3): an example provision for your general terms and conditions**

If you wish to include an arbitration clause in your general terms general terms and conditions, you can use the following model provision:

*‘All disputes arising between the vendor and the client that are connected to an agreement governed by these general terms and conditions or ensue from further agreements that result from the agreement in question will be resolved by means of arbitration in accordance with the Arbitration Regulations of SGOA (*Stichting Geschillenoplossing Automatisering*, or ‘foundation for the resolution of ICT disputes’), which has its registered office in The Hague. This provision does not affect the right of each party to request summary arbitral proceedings, without prejudice to the right of each party to take precautionary legal measures. Arbitration will take place in Haarlem."*

**Model arbitration clause (4): an example provision for arbitration preceded by ICT mediation**

Before submitting a dispute to SGOA for arbitration, you can submit it first to the SGOA mediators for mediation. If you wish to include an agreement on this in the contract with the other party, you can use the following basic clause.

*‘1. ‘All disputes arising between the vendor and the client that are connected to this agreement or ensue from further agreements that result from this agreement will be resolved by means of arbitration in accordance with the Arbitration Regulations of SGOA (*Stichting Geschillenoplossing Automatisering*, or ‘foundation for the resolution of ICT disputes’), which has its registered office in The Hague. This provision does not affect the right of each party to request summary arbitral proceedings, without prejudice to the right of each party to take precautionary legal measures.*

*2. Before arbitration proceedings as defined in the previous clause paragraph are instituted, either party will start proceedings for ICT mediation in accordance with SGOA's ICT Mediation Rules. The other party must participate actively and constructively in ICT mediation proceedings, once started. This arrangement does not prevent a party from requesting summary arbitral proceedings or precautionary legal measures if it considers this necessary.’*