

**General Purchase Conditions of the  
National Library of the Netherlands**

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## Part A – General provisions

### Terms and definitions

**Acceptance:** the written or other approval by the KB of all or part(s) of the Performance;

**Acceptance Procedure:** the procedure laid down in the Agreement that the KB uses to decide whether it will proceed to Acceptance of the Performance;

**Delivery:** the provision by the Supplier of Products in the way laid down by the Agreement, as evidenced by an acknowledgement of receipt issued by the KB;

**GPC:** these general purchase conditions of the KB;

**AVG:** the (Dutch) General Regulation on Data Protection;

**Contract Documents:** the documents (including further clarifications and amendments) provided to the Supplier in which the KB describes and clarifies the Performance and the use intended by the KB thereof and the tender procedure;

**Processor (Wbp)/Processor (AVG):** a natural person or legal entity, a government agency, a department or other body that processes personal data for the Processing Officer;

**Processor's Agreement (AVG):** the agreement required by law between the Responsible Party (the Processing Officer) and the Processor that lays down how the Processor is to handle the personal data.

**Annex:** an appendix to the Agreement that becomes part of it once it has been initialled by the parties.

**Source Code:** the entirety of the software instructions in their original programming language, including the Documentation for it, intended to be executed by a computer, in such a form that a programmer who possesses knowledge and experience about the programming method and techniques used can use it to modify the Software;

**Corrective Maintenance:** the tracking down and rectification by the Supplier of Faults that the KB has reported to him or that otherwise become known to the Supplier;

**Secondment:** the provision of Personnel by the Supplier to the KB to perform work under the KB's management and supervision;

**Documentation:** each description of the Performance and its characteristics, whether or not specifically intended for the Installation, Implementation, usage, administration and/or the Maintenance thereof;

**Services:** the work to be performed by the Supplier for the KB on the basis of the Agreement;

**Escrow:** the filing of the Source Code (or of a copy thereof) with an independent third party so that - provided that certain conditions in the Escrow agreement are met - the KB can use it or allowed it to be used on the KB's own authority for the rectification of errors and for the other maintenance and administration of the Standard Software;

**Strict Deadline:** a deadline expressly agreed by the parties as such, which if exceeded will mean that the party in respect of whom the deadline was set is forthwith - that is to say without notice of default - in default;

**Function Recovery Time:** the period of time, expressed in Service hours, between the moment in time when a Fault is reported to the Supplier and the moment in time when it is rectified;

**Defect:** each Fault and/or other failure as a result of which the Performance is not suitable for the agreed usage;

**Right of Use:** the right by virtue of which the KB is authorised to install and use Standard Software in accordance with the Agreed usage, including all reproductions and disclosures that are reasonably necessary in this regard, whether or not temporary in nature;

**Implementation:** the entirety of acts and measures needed to make the KB's organisation suitable for the Agreed usage of the Product and/or Software.

**Innovative Maintenance:** the provision by the Supplier to the KB of New Versions or newly developed components of Products and/or new Documentation;

**Installation:** the siting and connecting up of the Product and/or the entering of Software by the Supplier;

**Installation Copy:** a data carrier that contains the Standard Software for which the Right of Use is granted;

**Intellectual Property Rights:** all copyrights, patent rights, trademark rights and database rights anywhere in the world, irrespective of whether they are registered or not, and including applications for their registration;

**The KB:** The National Library of the Netherlands;

**Supplier:** The Supplier with whom the Assignment or Agreement respectively is entered into for the delivery of a product and/or for the performance of Services;

**Customised Software:** Software previously (or to be) specifically developed for the KB, or modifications to the Standard Software carried out specifically for the KB;

**Contract extras:** work not included in the Assignment that results in costs that lead to total costs exceeding the Fee;

**New Version:** a subsequent version of the Standard Software that mainly consists of new or modified functionalities, whether or not issued under another name;

**Object Code:** translation of the Source Code into a code that the computer can directly read and execute;

**Maintenance:** work to be performed by the Supplier that aims to rectify and/or improve the Performance;

**Assignment:** work to be performed by the Supplier for the KB, other than by virtue of an employment contract;

**Completion:** the presentation by the Supplier of all or part(s) of the Performance for Acceptance;

**Agreed usage:** the KB's intended usage of the Performance that is or must reasonably be apparent to the Supplier at the time the Agreement was entered into on the basis of the Contract Documents and/or based on the information referred to in Article 4, the above in so far as this usage is not expressly excluded or limited in the Agreement;

**Agreement:** a written or other agreement between the KB and the Supplier, or an Assignment awarded by the KB to a Supplier, under which the Supplier undertakes to deliver one or more Products and/or Services to the KB;

**Patch:** a correction (intended to be temporary in nature) of the Standard Software;

**Personnel:** the persons to be engaged by the Supplier for the performance of the Agreement;

**Performance:** Product(s), Software or services to be delivered by the Supplier or the right of use to be provided by the latter, or a combination thereof, including Documentation and materials;

**Preventive Maintenance:** the taking of measures by the Supplier to prevent Faults, and other related forms of service provision;

**Product:** the item that the Supplier delivers to the KB under the Agreement;

**Software:** the set of program lines to be delivered by the Supplier such that they can be used directly or indirectly by a computer in order to achieve a certain result that is specified in more detail. Software can be classified as either Standard Software or Customised Software;

**Response time:** the period of time within which a Supplier (or his Personnel) must satisfactorily respond to the KB's reporting of a Fault or to other requests by the KB for service provision;

**Entitled Party:** the party in which the Intellectual Property Rights to the Standard Software are vested;

**Service Levels:** requirements set out in the Agreement regarding Maintenance and other agreed forms of service provision, such as Response Times and Function Recovery Times;

**Service hours:** hours that lie within the agreed service period;

**Standard Software:** Software developed for general use that is not provided to the KB exclusively;

**Fault:** a technical problem that occurs when making use of the Performance;

**Processing Officer (Wbp/AVG):** a natural person or legal entity, a government agency, a department or other body that, alone or together with others, establishes the purpose of and the resources for the processing of personal data;

**Improved version:** a subsequent version of the Standard Software in which Defects have been rectified and/or whose functioning has been otherwise improved.

**Fee:** the total price agreed for the Performance;

**Confidential information:** the content of the Agreement, all verbal and written communication (including electronic), personal data and all documents that contain information from or about the KB and that the KB has provided to the Supplier either directly or indirectly via any medium or that directly or indirectly comes to the attention of the Supplier in connection with the performance of the Agreement, and the results of the Services, unless this information was demonstrably already known prior to the formation of the Agreement or prior to the negotiations about its formation;

**Wbp:** The Dutch Personal Data Protection Act;

**Working Days:** calendar days, apart from weekends and generally recognised public holidays within the meaning of Article 3 of the Atw Act (the Dutch General Extension of Time Limits Act).

## **1. Applicability**

### 1.1

These GPC apply to each Agreement that the KB enters into with the Supplier. These GPC will also, once they become part of an Agreement, form part of agreements entered into subsequently between the parties, even if the applicability of the GPC is not referred to when these Agreements entered into subsequently are formed.

### 1.2

Additional or derogating conditions, this considered to include the Supplier's conditions of sale, only apply if they are expressly agreed upon in a written Agreement that is signed by representatives of the parties who according to the Commercial Register are authorised to do so.

### 1.3

The Supplier will be informed in writing about amendments to the GPC. Amendments come into force after their notification and only apply to Agreements that are formed or issued after this notification.

## **2. Formation, term and suspension**

### 2.1

All offers made by the Supplier are irrevocable. The KB is not bound by the requests it makes for offers or

tenders, which requests are merely considered to be invitations to submit an offer.

### 2.2

An Agreement cannot be formed until it has been signed by the representatives of the Supplier and the KB who are authorised to do so.

### 2.3

An Agreement that is entered into for a specified period of time ends by operation of law when this period of time has elapsed. The Supplier is obliged to inform the KB about an Agreement's expiry date in a timely way and in any case at least three months before the date in question.

### 2.4

If an Agreement is entered into for an indefinite period of time then the Agreement will stipulate whether it can be terminated and which notice period must be observed when doing so. If the Agreement does not contain a notice period then a reasonable notice period must be observed, taking all relevant circumstances into consideration.

## **3. Obligation to investigate and to provide information**

### 3.1

In order to determine the intended use that the KB is to make of the Performance, the Supplier has sufficiently informed himself about: (i) the objectives that the KB has in entering into the Agreement, and (ii) the KB's organisation, in so far as relevant to the Agreement. The Supplier must in any case bear in mind the KB's core activities. The KB's core activities are: i) offering (sustainable) access to everyone everywhere to, and sustainably preserving and storing, all text files and data files that are published in and about the Netherlands; (ii) playing a centralised role in the Dutch academic information infrastructure; (iii) performing a director's role within the network of public libraries and maintaining the national digital public library, and iv) facilitating access to digital information in both a national and international context.

### 3.2

The Supplier is obliged to investigate the feasibility of the Performance within the parameters stated for this by the KB and to inform the KB about the results of this. The Supplier acknowledges that the KB has provided him with sufficient information. Upon request, the KB will provide the Supplier with additional information, in so far as necessary for the performance of the Agreement. In the event of any

lack of clarity, the Supplier will ask the KB for clarification.

### 3.3

The Supplier will at all times inform the KB about the progress being made on the Agreement's performance. By means of these reports, the Supplier will provide useful information on the Performance performed by him in the period in question, on the number of hours spent performing it and on the costs incurred up to that point in time.

### 3.4

If the progress made on the Agreement's performance threatens to be delayed then the Supplier will inform the KB of this in writing as soon as possible. In this notification, the Supplier will inform the KB about the cause of the delay and propose measures for preventing or making good the actual or imminent delay. If the KB approves the report then this does not mean that the KB acknowledges the cause of the delay or acknowledges that it needs to pay compensation for the resulting consequences.

3.5 The parties will keep each other informed about developments and changes that could or do affect the performance of the Agreement.

## **4. Pricing**

### 4.1

If the parties agreed a fixed price/rate then the fixed price/rate will apply to the Supplier's complete Performance. The prices include the full remuneration for the Performance, including costs of storage, packing, importing, transportation, delivery, administration, dispatching, call-out and connecting up, as well as any other additional costs. Prices are always denominated in the agreed currency and are exclusive of the turnover tax owed. Fixed prices/rates are not amended if there is a change of circumstances that affects the price.

### 4.2

If the parties agree that the fee owed will be determined by subsequent calculation then the KB will owe the Supplier a sum that is determined by multiplying the number of hours spent that the Supplier can demonstrate are necessary in writing by the fixed hourly rates agreed in writing. These hourly rates will in all cases also include costs of storage, packing, importing, transportation, delivery, administration, dispatching, call-out and connecting up, as well as any other additional costs. Prices are always denominated in the agreed currency and are exclusive of the turnover tax owed. If materials are

used in this case then the Supplier will calculate the costs owed for this by multiplying the actual quantity of materials demonstrably used by the agreed unit price for that material, provided that the KB has approved in writing the costs owed for this before the materials are used.

### 4.3

In so far as it is agreed that prices and/or rates can be amended, any increase can only be submitted to the KB for its approval a maximum of once per year as at 1 January. The Supplier must notify the KB in writing by 30 November of any year at the latest about a proposed price increase. If the Supplier fails to make this written notification then the existing conditions remain in force and deliveries must be made by the Supplier in line with these old conditions.

### 4.4

Price increases must be competitive, verifiable and unavoidable and can never be greater than the adjustment known at that time in the corresponding CBS (Statistics Netherlands) indices.

### 4.5

Reduced prices that come into force after the Agreement is formed but prior to the time of delivery come into force immediately in place of the agreed price.

### 4.6

The costs of offers/quotations, participating in tender procedures, samples, trial shipments and sample materials are for the Supplier's account unless agreed otherwise in writing.

### 4.7

In no case will the KB owe a late payment surcharge.

### 4.8

Unless the parties expressly agree otherwise, a payment discount of 2% applies for payments made within eight (8) days.

## **5. Invoicing and payment**

### 5.1

Single copies of invoices must be sent by the Supplier to the invoicing address stated by the KB, and must include the VAT registration number of both the KB and the Supplier, along with the agreement reference number and the order reference number. Invoicing must take place after delivery and Acceptance of the Performance, or if agreed, after a specific agreed milestone has been reached.

5.2

Payment must be made no later than thirty (30) days after the KB has received the invoice. The KB's records are decisive in this respect, subject to proof to the contrary by the Supplier.

5.3

The invoices do not become due and payable until - and the KB is not obliged to make any payment to the Supplier until - the Performance has been Accepted, or if agreed, after a specific agreed milestone has been reached. Payments made by the KB prior to Acceptance, or if agreed prior to the reaching of a specific agreed milestone, are in all cases made under the suspensive condition of Acceptance or if agreed of a specific agreed milestone being reached.

5.4

If the KB makes payments to the Supplier prior to Acceptance of the Performance then at the KB's initial request the Supplier will provide the KB with adequate security, such as a bank guarantee.

5.5

The KB is authorised to suspend payment of an invoice if there is a reasonable suspicion that the invoice is incorrect or that the invoiced Performance was defective. If a payment deadline is exceeded, irrespective of whether this is the result of a suspension, then this does not entitle the Supplier to suspend or end the Performance. The KB will inform the Supplier without delay about any suspected inaccuracy in any invoice or that a Performance being invoiced for was defective.

**6. Contract extras and Contract reductions**

6.1

If additional demands made by the KB mean that the Performance that the Supplier must provide is demonstrably made more complex and/or is expanded then this is deemed to constitute Contract extras that qualify for remuneration. If the Supplier is of the opinion that there are Contract extras then he will inform the KB of this in writing as soon as possible.

6.2

The following are not considered to be Contract extras:

- a. Additional work that the Supplier could or should have foreseen in order to deliver the Performance in accordance with the agreed requirements, and
- b. Work that is the result of incorrect and/or incomplete (functional and/or technical) specifications - if these were drawn up by or by Assignment of the Supplier or that have been

accepted by the Supplier - and/or that results from errors in the Performance and which the Supplier should reasonably have foreseen.

6.3

If the KB's modification of its demands means that the Performance that the Supplier has to deliver is demonstrably mitigated or limited then this is deemed to constitute Contract reductions that qualify for a discount on the price originally submitted. If the KB is of the opinion that there are Contract reductions then he will inform the Supplier of this as soon as possible.

6.4

Before any work deemed to be Contract extras commences, the Supplier will provide a new written quotation that takes into account the revised nature and scope of the Performance to be delivered by the Supplier and the related costs. The Supplier is not entitled to impose additional or more onerous conditions when submitting this quotation. The Supplier will not commence the work deemed to be Contract extras until he has received an explicit written Assignment for this from the KB.

6.5

The Supplier will invoice separately for the Contract extras once they have been completed and once the KB has Accepted them. In the case of Contract reductions, once the KB has Accepted them then the Supplier will issue the KB with a credit note for the reduction. The nature and scope of the Supplier's modified Performance will be explicitly stated in the invoices and itemised using accounting records.

**7. Personnel / deployment of third parties**

7.1

The Supplier warrants that he will only deploy Personnel who are sufficiently qualified - and who if applicable are sufficiently certified - to perform the Agreement, taking into account the nature of the Performance to be delivered and the way in which the Supplier has presented himself as an expert.

7.2

If the Agreement is performed on the KB's premises then the Supplier will inform the KB before the Performance commences about the identity of the relevant Personnel. At the KB's request, the Personnel must present identification in the form of a valid proof of identity.

7.3

The Supplier declares that he will comply with the following in respect of his Personnel before this Personnel commences the work for the KB:

7.3.1

The Supplier will establish the identity of his Personnel in accordance with the applicable statutory regulations, will retain a copy in the personnel file of the proofs of identity provided and will provide the KB with these copies upon request. The Supplier is responsible for compliance with the Wav Act (the Dutch Foreign Nationals (Employment) Act) and will not directly or indirectly assign third parties to the KB (or arrange for this to be done) that do not possess the necessary TWV work permit for non-EU nationals. The Supplier explicitly indemnifies the KB against any fine levied on the KB by virtue of the Wav Act.

7.3.2

The Supplier will report to the KB's responsible officer that (and when) a member of his Personnel is going to perform work for the KB and will ensure that this officer receives a copy of the proof of identity referred to under Article 7.3.1 before this employee starts performing the Agreement. If during the Agreement this employee stops working for or on behalf of the Supplier then the Supplier will immediately inform the KB's responsible officer of this in writing.

7.3.3

If the Supplier wishes to use the services of third parties to perform the Agreement, whether on a subcontracting basis or by temporarily hiring them in then he will only be authorised to do so once he has received the KB's written consent for this, which consent will not be withheld on unreasonable grounds and which consent the KB may attach further conditions to. The Supplier is and remains responsible and liable at all times towards the KB for the fulfilment of the obligations that rest with him by virtue of the Agreement.

7.3.4

If the Supplier infringes one of the obligations in this Article 7.3 then he will incur a penalty of €5,000.00 per infringement, which penalty is due and payable immediately and which cannot be offset. Contrary to Article 6:92 of the Netherlands Civil Code, this penalty does not affect the KB's other rights, including the right to demand additional and alternative compensation and/or fulfilment in addition to the penalty, with the penalty not being set off against the Supplier's obligation to pay compensation.

7.4

The Supplier warrants that those of his Personnel who perform the Agreement on the KB's premises will comply with the internal rules and procedures that apply at the KB, which have been made known to the Supplier.

7.5

The Supplier undertakes to solely have the obligations arising from an Agreement fulfilled by Personnel that he may reasonably believe to be trustworthy.

7.6

The Supplier will only replace Personnel with the KB's prior consent, which consent will not be withheld on unreasonable grounds. When Personnel are replaced, the Supplier will provide Personnel at the same pay rate who in terms of their expertise, training and experience are at least the equal of the Personnel originally deployed.

7.7

If a member of the Personnel is inadequate in the KB's reasoned opinion then the KB will consult with the Supplier about this. At the KB's request, the Supplier will replace this member of the Personnel as soon as possible.

7.8

When Personnel are replaced, the Supplier will not charge the KB any costs in this regard, unless the replacement is taking place at the KB's request and the Supplier has demonstrated that the request for replacement had no reasonable basis.

7.9

7.9.1

The Supplier is and remains at all times responsible and liable for the fulfilment of the obligations in respect of withholding taxes and turnover tax that rest with him in his capacity as employer by virtue of the existing tax legislation and national insurance legislation.

7.9.2

The Supplier will also agree the obligation set out in Article 7.9.1 with the subcontractors and/or labour suppliers, as they are parties obliged to withhold the turnover tax and/or are employers of, and parties obliged to withhold the withholding taxes of, those persons who are put to work at the KB. The Supplier will incorporate in his agreements with third parties an equivalent or similar provision regarding vicarious tax liability as that formulated in this Article 7.9.

### 7.9.3

The Supplier indemnifies the KB against all claims made by the Belastingdienst (the Netherlands Tax and Customs Administration) in respect of taxes, national insurance contributions (both for the employer's share and the employee's share) and against fines and interest imposed in connection with the Performance performed by the Supplier's Personnel in the context of the Agreement. If the KB has to deal after all with one or more claims made by the Belastingdienst then either the KB will recoup this/these sum(s) from the Supplier or else the KB will demand compensation from the Supplier.

## **8. Point in time of and Acceptance of the Performance**

### 8.1

The Supplier will deliver the Performance on or before the agreed point in time or by the (delivery or other) deadline(s) stated in the Agreement.

### 8.2

Within 30 days of the Completion or Delivery, the KB will inform the Supplier whether the Performance is accepted. He can do this by means of a communication explicitly intended to do so or by sending the test report as referred to in Article 47 if the Customised Software is approved therein.

### 8.3

Acceptance includes accepting the Documentation.

### 8.4

If the KB is unable to inform the Supplier by the deadline stated in Article 8.2 whether he Accepts the Performance then he will inform the Supplier of this inability before this deadline expires, stating his reasons for his inability and the deadline by which he will inform the Supplier after all whether he Accepts the Performance.

### 8.5

If any communication as referred to in Articles 8.2 and 8.4 fails to materialise, as well as in the case that the additional deadline for Acceptance as referred to in Article 8.4 expires without further communication to the Supplier, then the Performance will be deemed to have been accepted by the KB.

### 8.6

If the KB accepts the Performance despite the established presence of one or more Defects in it then he will inform the Supplier of this in his communication to the latter. The Supplier will rectify

these Defects with due observance of the provisions of Article 12.7.

## **9. Risk transfer**

### 9.1

Products are for the expense and risk of the KB from the moment in time when the KB takes delivery of them.

### 9.2

Products that are sent back because the KB has declined to Accept them are for the expense and risk of the Supplier from the moment in time when they are sent back by the KB. The moment in time when the KB sends them back is deemed to be the moment in time when the KB hands over the items to a carrier or haulier. The costs of sending the items back will be borne by the Supplier. The KB will inform the Supplier in writing in a timely way about his intention to send items back.

### 9.3

If Products become damaged or are lost, even if this is the KB's risk, then if the KB asks him to do so the Supplier will as a matter of priority do his utmost to replace the items with equivalent items. The costs associated with replacement are for the KB's account, unless the Products were damaged and/or lost as the result of the Supplier's actions.

## **10. Passing of ownership**

### 10.1

Without prejudice to the provisions of Article 15 (Intellectual Property Rights), the ownership of Products that are the subject of or part of the Performance passes from the Supplier to the KB once the KB has Accepted them.

### 10.2

Samples, trial shipments and sample materials become the property of the KB as soon as they are received by the KB, unless agreed otherwise in writing.

## **11. Items provided to and/or stored at the Supplier**

### 11.1

In all cases where the KB provides items to or stores them at the Supplier, then unless the KB has actual possession of the items the Supplier is liable for all loss/damage that occurs, including loss/damage caused by fire and theft. The Supplier will insure the items at his own expense under a comprehensive perils insurance policy. The KB continues to be the sole owner of all items provided by the KB for the execution of the Agreement by the Supplier.

11.2

The Supplier warrants that he will store the items in such a way that it is incontrovertibly clear at all times who owns which items.

## 12. Quality and warranty

12.1 The Supplier warrants that:

- a. during the agreed warranty period he will keep available the Personnel, the knowledge and the capacity needed to properly perform the warranty work;
- b. the Services performed either by him or on his behalf will be carried out competently.
- c. he will take the care that a good Supplier takes when performing the Services, which means that the Supplier will deploy such competence, prudence and take such care, diligence and precautions as may be reasonably expected of a competent and experienced person and/or enterprise who/that is working in the same or comparable circumstances and/or sector;
- d. for the duration of an Agreement, his Personnel and the third parties he engages fulfil and continue to fulfil the agreed standards in terms of training, expertise and experience.

12.2

The Supplier indemnifies the KB against all third-party claims that are the result of or that arise from (attributable or other) shortcomings on the part of the Supplier in the performance of the Agreements entered into between them and/or due to the unlawful acts of the Supplier.

12.3

Upon the KB's initial request, the Supplier will allow the KB to inspect the quality assurance system he deploys.

12.4

The Performance is specified in more detail in the Agreement. With due observance of that laid down in the Agreement and accompanying documents, such as technical and/or functional specifications, quotations, manuals and/or recommendations that come from the Supplier, the Supplier warrants that the Performance:

- a. with regard to quantity, dimensions, quality, functionality and characteristics complies with that which has been agreed;
- b. is produced from sound and new materials and is properly finished;
- c. is free from errors and Defects and is in all aspects the same as the samples or models provided by the KB and/or by the Supplier;

- d. is completely suitable both for normal usage, for the purpose for which the Assignment was awarded for the delivery of the Performance and for the special usage made known to the Supplier;
- e. is fully complete and ready for use; all components and tools that are necessary for the purpose stated in writing by the KB have to be supplied with it, even if they are not referred to by name.

12.5

The Supplier also warrants that all the certifications that have been awarded to the Supplier at the time that the Agreement is formed are retained for the term of the Agreement or else will not lapse as the result of an act or omission on the part of the Supplier.

12.6

The Supplier warrants that he complies with the legislation, regulations and sector-wide self-regulation in so far as they apply to the Supplier and/or to all or part(s) of his Performance. The Supplier will comply with all the other standards and warranties customary in his sector that a competent and careful supplier may be held to under the given circumstances, with due observance of the criteria of normal attention, normal professional knowledge and a normal way of exercising his profession. In this context, the Supplier is considered to be a specialist in his field of expertise.

12.7

The Supplier warrants that during the period of twelve (12) months following Acceptance he will rectify any errors and Defects without delay and at his own expense, including but not limited to costs of materials and labour. Components that have to be replaced will only be replaced by those components that are at least their equivalent in terms of functionality, quality and technical specifications. If the KB wishes to invoke this warranty then the KB will inform the Supplier of this in writing and - in urgent cases - by phone. The Supplier will rectify the errors and Defects without delay, taking into account the seriousness and nature of the errors and Defects. If necessary, rectification will take place in consultation with the KB.

12.8

The Supplier warrants that he can maintain the Performance until a time 5 years after the date of Acceptance, and for at least 3 years of this period in the way laid down in the Special Stipulations regarding Maintenance.

12.9

Supplementary to Article 12.7, the Supplier warrants that upon Acceptance he will promptly rectify at his own expense those Defects that the KB identified at the time of Acceptance but that did not constitute a reason for the KB to refrain from proceeding to Acceptance.

12.10

The warranties issued and warranty periods stated by the Supplier do not affect the Supplier's obligations under the law or under the Agreement.

### 13. Services

13.1

The Supplier will perform the Services by the deadlines and at the locations agreed in the Agreement.

13.2

Modification to and/or replacement of the Products and/or Software as the result of maintenance services delivered by the Supplier will not lead to the KB being limited in its options for using the Products and/or Software.

13.3

The Supplier will do his utmost to achieve the agreed Service Levels. The consequences of a failure to achieve these Service Levels will be regulated in the Agreement. Termination of the Agreement is in all cases possible if the Supplier repeatedly fails to achieve the Service Levels. The response times and recovery times agreed in the Agreement are considered to be Strict Deadlines, unless explicitly agreed otherwise in writing. Service Levels do not affect the other provisions of the Agreement.

13.4

If a temporary or other discontinuation of the Services for the KB has direct or indirect consequences for the continuity of the KB's business operations then the Supplier cannot stop, cease or suspend (including temporarily) the performance of the Services as long as these Services are not properly operational at the KB or at a subsequent supplier, even if this means that the Supplier must continue providing the Services after the end of the Agreement, in which case the provisions of Article 23 (Exiting) apply.

### 14. Documentation

14.1

The Supplier will provide the KB with a sufficient number of copies of the Documentation (written in the Dutch language) about the characteristics and usage options of the Performance. The Documentation will

be delivered by the Supplier simultaneously with the delivery of the Performance. The Documentation will be written in such a way that:

- a. it provides an accurate, full and detailed description of the Performance delivered by the Supplier and of its functionality;
- b. users can easily utilise all the possibilities provided by the Products;
- c. the Performance can be properly installed, implemented, used, administered and maintained by the KB or third parties using the Documentation.

14.2

The KB is authorised to duplicate the Documentation and to amend and disclose it for its key tasks without any further fee being owed for this, provided that the duplications etc. still bear the copyright details present on the originals.

14.3

The Supplier will ensure that the Documentation he delivers is replaced, amended or modified as soon as possible and at his own expense if at any time during its usage by the KB it turns out that the Documentation contains incorrect information or is otherwise incomplete, inadequate, unclear or outdated.

### 15. Intellectual Property Rights

15.1

All Intellectual Property Rights relating to the Performance wherever and whenever they are or could be exercised are vested in the KB, in so far as this relates to a Performance that is designed or produced specifically for the KB and/or that is or will be achieved under the KB's management or supervision or that is based on the KB's instructions or designs. In so far as necessary, these rights are unconditionally and irrevocably transferred by the Supplier to the KB, which transfer shall be accepted by the KB if this situation arises.

15.2

By signing the Agreement, the rights referred to in Article 15.1 are transferred to the KB. In so far as the transfer of these rights requires an additional deed at any time then the Supplier hereby irrevocably authorises the KB for this case to draw up such a deed and to sign it also on the Supplier's behalf, the above without prejudice to the Supplier's obligation to assist the KB at the latter's initial request with the transfer of these rights, without the Supplier being able to impose additional conditions in this regard. The Supplier also

irrevocably authorises the KB to have the Intellectual Property Rights registered in the relevant registers.

15.3

In the event of a difference of opinion between the parties about the question of which party the Intellectual Property Rights to all or part(s) of the Performance is/are vested in then subject to proof to the contrary the parties will proceed on the basis that these rights are vested in the KB.

15.4

The Supplier hereby waives, including on behalf of his Personnel, any and all personality rights that he is entitled to as referred to in Article 25 paragraph 1 under a. to c. inclusive of the Dutch Copyright Act, to the extent that this regulation permit such waiving. The Supplier warrants that he is also authorised to undertake this waiving on his Personnel's behalf.

15.5

The Supplier indemnifies the KB against all third-party claims in respect of an actual or alleged infringement of the Intellectual Property Rights of these third parties, this including personality rights as referred to in Article 25 first paragraph of the Dutch Copyright Act, and including comparable arrangements relating to knowledge, unlawful competition and similar. At the KB's initial request, the Supplier will take on the defending of any legal action that may be initiated against the KB in connection with the Performance in relation to an infringement of a third party's Intellectual Property Rights. The KB will inform the Supplier without delay of such a legal action and will provide the Supplier with the necessary powers of attorney and assistance. The Supplier also indemnifies the KB against all loss/damage and costs that the KB may be ordered to pay in such a legal action, as well as against all costs of this legal action itself, including but not limited to the costs related to the obtaining of legal advice in this regard.

15.6

In the case of an alleged infringement of a third party's Intellectual Property Rights, the Supplier will at his own expense take all measures that can help to prevent the KB's business operations from coming to a standstill and to limit the costs to be incurred by and/or the loss/damage to be suffered by the KB as a result of this.

15.7

The KB is authorised to extrajudicially terminate the Agreement in whole or part if third parties involve the KB in law in respect of an infringement of Intellectual

Property Rights, the above without prejudice to the KB's other rights in respect of the Supplier, these including but not limited to the claiming of any form of compensation.

## 16. Confidentiality

16.1

The Supplier is obliged with respect to the KB to maintain confidentiality about the Confidential Information, subject to an obligation to this end under the GPC, the Agreement or with the prior written consent of the KB. This obligation applies both during and after the term of an Agreement, apart from in so far as this relates to information that is already publicly known, unless this is as the result of an infringement of the duty of confidentiality in this Article.

16.2

The Supplier undertakes the following in respect of the Confidential Information:

- to adequately protect and securely store it in order to prevent its loss, theft or unauthorised amendment or cognizance;
- to refrain from using it for any purpose other than in the context of the performance of the Agreement;
- to refrain from keeping it longer in his possession than reasonably necessary for the performance of the Agreement and to hand it and any copies made of it back to the KB as soon as the Agreement has ended or else to destroy it after the KB's consent for this has been obtained.

The Supplier also undertakes to fully assist with the exercising of control and supervision by or on behalf of the KB in respect of the safekeeping, protection and usage of the Confidential Information.

16.3

The Supplier warrants that his Personnel and/or the third parties he engages are aware of the aforementioned obligations and that he will impose the same duty of confidentiality on them. At the KB's request, the Supplier will get those parties involved in performing the Agreement to sign a non-disclosure agreement to be administered by the Supplier.

16.4

In the event of an infringement of the provisions of this Article by the Supplier, by his employees and/or by third parties he has engaged, the Supplier will incur a penalty, which is immediately due and payable and that cannot be set off, of €50,000.00 per event.

Contrary to Article 6:92 of the Dutch Civil Code, this penalty does not affect the KB's other rights, including

the right to demand additional and alternative compensation in addition to the penalty, with the penalty not being set off against the Supplier's obligation to pay compensation.

16.5

The obligation to maintain confidentiality does not exist to the extent that the Supplier is under a statutory obligation to disclose the Confidential Information. Before the Supplier proceeds to such disclosure, he will inform the KB of this in writing.

## **17. Privacy**

17.1

If the Supplier processes personal data in connection with the Agreement then he processes them as a 'Processor' (under both the Wbp and the AVG). The KB continues to be the Processing Officer (under both the Wbp and AVG) for all personal data that is processed by virtue of an Agreement.

17.2

Both the KB and the Supplier are obliged to regulate the intended processing(s) of Personal Data and to set this down in the Processor's Agreement (under both the Wbp and AVG). The KB's specimen Processor's Agreement is declared to be applicable, with the Supplier undertaking to sign it, and it will be attached to the Agreement as an Annex or else will be integrated into the Agreement. In the event of conflicts between the Agreement or these GPC on the one hand and the Processor's Agreement on the other, the latter takes precedence. It is explicitly the case that the Supplier's Processor's Agreement does not apply.

17.3

The storage and processing of personal data by sub-Processors or Processors must take place within the EEA, unless expressly agreed otherwise by the Parties.

## **18. Data**

18.1

If and in so far as the Supplier, when delivering the Performance, comes into contact with data originating from the KB or from his suppliers or subcontractors that is intended to be provided to the public in the context of the KB's key activities, then the Supplier is at all times obliged to create and keep available a proper backup of the data before he starts delivering the Performance, until such time as the KB has proceeded to Accept the Performance, this in order to prevent this data being harmed by being lost or damaged. The KB can never permit such data to be lost or damaged.

## **19. Environmental matters**

19.1

The Supplier is obliged to immediately rectify any loss/damage that arises from actual or impending environmental pollution from, by or due to the delivered Performance. The Supplier also indemnifies the KB against all third-party claims related to or arising from actual or impending environmental pollution.

19.2

The Supplier will strictly comply with all regulations relating to the environment and working conditions.

19.3

The Supplier must collect environmentally harmful packaging materials and/or hazardous waste materials free of charge and hand them over in a verifiably responsible way to a recognised waste processor in accordance with the applicable environmental legislation.

19.4

If the KB requests this then the Supplier must take back discarded Products and have them processed in a way that is verifiably environmentally responsible. The Parties will set down their arrangements regarding the related costs in the Agreement.

## **20. Liability, termination, ending and indemnification**

20.1

Without prejudice to the other provisions of the Agreement and the law, if one of the parties fails to fulfil one or more of his obligations then the other party will give him a notice of default in this regard, unless fulfilment is already permanently impossible or there is a Strict Deadline, in which case the defaulting party is immediately in default. The notice of default will be made in writing, whereby the defaulting party will be given a reasonable period of time to fulfil his obligations after all. Should fulfilment still not be forthcoming after this period of time then the defaulting party is in default.

20.2

The party that fails to fulfil his obligation(s) is obliged to reimburse the other party for the loss/damage suffered by the latter, unless the shortcoming cannot be attributed to him. The liability referred to in this Article is limited as follows:

- for Assignments whose total value is less than or equal to €50,000.00: €150,000.00 per event and €300,000.00 per contractual year or part of a year that the Agreement is in force;

- for Assignments where the total value is more than €50,000.00 but less than or equal to €100,000.00: €300,000.00 per event and €500,000.00 per contractual year or part of a year that the Agreement is in force;
- for Assignments where the total value is more than €100,000.00 but less than or equal to €150,000.00: €500,000.00 per event and €1,000,000.00 per contractual year or part of a year that the Agreement is in force;
- for Assignments where the total value is more than €150,000.00 but less than or equal to €500,000.00: €1,500,000.00 per event and €3,000,000.00 per contractual year or part of a year that the Agreement is in force;
- for Assignments where the total value is more than €500,000.00: €3,000,000.00 per event and €5,000,000.00 per contractual year or part of a year that the Agreement is in force.

Connected events will be deemed to be one single event.

The limitation of liability as referred to above does not apply - with each party having unlimited liability for the reimbursement of the loss/damage incurred and/or to be incurred by the other party - if:

- a. there are third-party claims for compensation resulting from death or physical injury;
- b. if there is wilful misconduct or gross negligence on the part of the Supplier or his Personnel;
- c. in the case of infringement of Intellectual Property Rights as referred to in Article 15 of these GPC;
- d. in the case of non-compliance with Article 17 of these GPC or with the Processor's Agreement by the Supplier or his Personnel, including but not limited to claims by third parties for compensation and penalties imposed on the other party in this regard.

#### 20.3

Without prejudice to the other provisions laid down in the Agreement, each of the parties is authorised to terminate the Agreement in whole or part extrajudicially by means of a registered letter if the other party is in default or if fulfilment is permanently or temporarily impossible. In the event of force majeure, the parties will not proceed to termination until after a period of 30 days since the occurrence of the shortcoming has elapsed.

#### 20.4

The KB can terminate the Agreement early and with immediate effect by means of a registered letter without prior warning or notice of default if:

- a. The Supplier applies for a provisional or full payment moratorium or if such a moratorium is granted to him or if he applies for insolvency or is declared to be insolvent or else enters into a private settlement in this regard;
- b. The Supplier's enterprise is liquidated or dissolved;
- c. The Supplier halts his current business operations;
- d. A significant portion of the Supplier's assets is seized;
- e. The Supplier has twice incurred the penalty as referred to in Article 7.3.4;
- f. The Supplier fails to fulfil one or more of his obligations as referred to in Article 19.

This authority also exists if during the Agreement grounds for exclusion apply to the Supplier as referred to in the Dutch Works Procurement Regulations 2012 or if the KB has good reasons for presuming that a court will terminate the Agreement due to a claim to this end by virtue of Article 4.3.1 of the Dutch Works Procurement Regulations 2012.

#### 20.5

If the KB has entered into multiple related Agreements with the Supplier then in the aforementioned cases the KB is also allowed to terminate the other Agreements in the stated way.

#### 20.6

Without prejudice to the provisions of the Agreement and the GPC, the KB can also terminate an Agreement by means of a registered letter, including with immediate effect. In such a case there will be a settlement between the KB and the Supplier based on the provisions of Article 20.7 to 20.9 inclusive. This method of settlement will never lead to a situation where the KB owes the Supplier more in connection with this termination than the Fee or the as yet unpaid portion thereof. The KB is not obliged to compensate the Supplier in any way for the consequences of the termination of the Assignment other than as laid down in Articles 20.7 to 20.9 inclusive.

#### 20.7

In the case of the early ending of Assignments that are one-off in nature or that are for a specific lifetime, where the Fee's chargeability depends on the completion or on the expiry of this period of time then if the KB terminates based on the provisions of Article 20.6 the Supplier is entitled to a portion of the Fee that is to be determined based on reasonableness. When

determining this, factors that will be taken into account include the work already performed by the Supplier, the benefit that the KB receives from this, and the reasons why the Assignment was ended. The Supplier is only entitled to the full or partial Fee if the ending of the Assignment is to be attributed to the KB and that given all the circumstances of the case it is reasonable that the Fee be paid in full. The savings that arise for the Supplier from the early ending will be deducted from the amount of the Fee.

#### 20.8.

In the event of early termination of other Agreements on the basis of the provisions of Article 20.6, settlement will take place between the KB and the Supplier on the basis of (a) that portion of the Fee that relates to the portion of the Performance that the Supplier had already performed to execute the Agreement by the time that it was ended through termination, (b) other obligations that the Supplier has already entered into to execute the Agreement, in so far as these cannot be limited, and (c) lost profits, in so far as they are not included under the costs referred to under (a) and (b).

#### 20.9.

If an Agreement consists of both an Assignment and other Performances then the provisions of Articles 20.7 and 20.8 apply to the relevant portions of the Agreement.

#### 20.10

The Supplier indemnifies the KB against all third-party claims that relate to or that arise from the Supplier's failure to fulfil his obligations from the Agreement correctly or at all. The Supplier will reimburse the KB for the loss/damage that the KB incurs as the result of such arrangements.

### 21. Force majeure

None of the parties is obliged to fulfil an obligation arising from an Agreement if he is prevented from doing so by a circumstance that is neither his fault nor that is for his account by virtue of the law, legal action or according to societal views.

The party to whom the force majeure relates must as soon as possible endeavour - according to criteria of reasonableness and fairness - to make good the failure to fulfil in whole or part.

Force majeure will in no case be considered to mean: illness, unsuitability of or strikes by or lack of personnel or engaged third parties of the party invoking the force majeure, late delivery or unsuitability of materials, equipment or Software,

shortcomings on the part of suppliers or subcontractors, the impossibility of obtaining the required permits or consents, or liquidity or solvency problems on the part of the Supplier.

### 22. Insurance cover

The Supplier has taken out adequate insurance cover and will keep himself adequately insured for the liability risk by means of at least a business liability insurance policy, if applicable supplemented by a professional liability insurance policy. Upon an initial request to do so, the Supplier will submit insurance certificates to the KB as proof of this insurance cover and of the sum insured. Upon request, the Supplier will without delay provide the KB with the proofs of payment of premiums and inform the KB about previous claims under the policy in the current policy year.

### 23. Exiting

#### 23.1

If the Agreements ends early or otherwise for whatever reason then at the KB's initial request the Supplier will do that which is reasonably necessary to ensure that a new supplier or the KB itself can take over the execution of the Agreement without let or hindrance and/or can perform a similar Performance for the benefit of the KB. In addition, the Supplier will return to the KB without delay all documents, books, records, data and other items (including data carriers and information carriers) that the KB has provided him with.

#### 23.2

The Supplier performs the Services referred to in Article 23.1 at the rates and under the conditions laid down in the Agreement or - should these be lacking - at the rates generally deployed by the Supplier and under further conditions to be agreed.

### 24. Financial penalties

If it is agreed that the Supplier owes a penalty due to non-fulfilment and there has been a shortcoming on his part then contrary to the provisions of Article 6:92 of the Dutch Civil Code the KB continues to be authorised at all times to claim additional and alternative compensation and/or fulfilment in addition to the penalty, whereby the penalty is not deducted from the Supplier's obligation to pay compensation.

### 25. Audit

#### 25.1

The KB is authorised to perform an audit at the Supplier and may engage a third party for this work.

The Supplier will fully cooperate with an audit. An audit may relate to the following matters amongst others: 1) the fulfilment of the Agreement, 2) compliance with legislation and regulations, 3) important changes to the facts or circumstances that could affect the delivery and continuity of the Performance, and 4) the identification of operational, organisational and administrative risks. Those that carry out the audit will sign a suitable non-disclosure agreement in favour of the Supplier. The audit will be announced in writing in a timely way and will be carried out in such a way that it hinders the Supplier's business operations as little as possible.

#### 25.2

The reasonable costs for deploying the auditors and the KB's own personnel will be borne by the KB. The Supplier is responsible for his own costs in this regard. However, if significant irregularities are found during an initial audit then the KB or a third party engaged by the KB can perform a second audit once the Supplier has informed the KB that the irregularities found during the first audit have been rectified. If this second audit reveals that the irregularities found previously still exist then all the costs of the second audit and for any further audits will be borne by the Supplier.

### 26. Miscellaneous

#### 26.1

The KB's decision to refrain from exercising a particular right or legal remedy does not constitute a waiving of this right or legal remedy.

#### 26.2

Obligations from the GPC and/or an Agreement that by their nature are intended to continue after the Agreement has ended remain in force after the end of the Agreement. These obligations include: provisions about warranties, liability, Intellectual Property Rights, exiting, confidentiality, the resolution of disputes and applicable law. The transfer of any Intellectual Property Right to the KB shall not constitute grounds for reversal once the Agreement has ended. In so far as the KB, in line with the Agreement, has not acquired the Intellectual Property Rights to the Performance then the KB is entitled when the Agreement ends to continue to use the Performance on the basis of the Right of Use acquired.

#### 26.3

If one or more of the provisions in the GPC and/or the Agreement are void or voidable then this will not affect the validity of the remaining provisions. In the

case of such voidness/voidability of a provision, the parties will negotiate in good faith and will endeavour to reach agreement about an enforceable alternative provision that will replace the provision considered to be void or voidable.

#### 26.4

The Supplier is not authorised to transfer his rights and/or obligations under the Agreement to a third party unless the KB has given its prior written consent for this, which consent will not be refused on unreasonable grounds. The KB can attach further conditions to its consent. The KB is authorised to transfer its rights and obligations under the Agreement to a third party.

### 27. Applicable law and disputes

#### 27.1

All Agreements entered into by the KB are solely governed by Dutch law. Disputes between the parties will be solely judged by the competent court in The Hague. If the parties agree on arbitration then this will be carried out in accordance with the Rules of Procedure of the NAI (the Netherlands Arbitration Institute) in Rotterdam.

## Part B – Special Stipulations

### SPECIAL PURCHASING STIPULATIONS

These provisions are in all cases applicable in conjunction with the General provisions of these Conditions when it comes to the purchasing of IT Products (hereinafter referred to as: Products) such as computers, laptops and servers.

### 28. Installation

#### 28.1.

If the nature and/or scope of the Performance give(s) reason to do so then the Supplier may inspect the site where the Product is to be installed before the Delivery takes place.

#### 28.2.

If the Supplier feels that the site chosen for Installation is unsuitable then he will inform the KB of this as soon as possible. The KB and the Supplier will then consult with each other in order to agree a suitable site for the Installation.

### 29. Warranties

Supplementary to Article 12, the Supplier warrants that:

- a. at the time of the Product's Delivery it is composed of new components;
- b. at the time of Delivery he has full ownership of the Product, that it is not encumbered by a retention of title, limited right or attachment of a third party and that it is free of other encumbrances and restrictions.

### 30. Special obligation to provide information

For a period of at least 3 years after the Agreement is entered into, the Supplier will take the initiative to inform the KB about any options for improving the Product's operation.

### 31. Modifications of the Products

If the manufacturer of a Product prescribes a modification to it then the Supplier will ensure that this modification is carried out as soon as possible and free of charge, either by himself or by the Product's manufacturer.

### SPECIAL STIPULATIONS REGARDING RIGHTS OF USE

Should the KB acquire Rights of Use then the provisions of this special section are at all times applicable in conjunction with the General provisions of the Conditions.

### 32. Nature and content of the Right of Use

#### 32.1.

With due observance of the GPC, the Supplier grants the KB a perpetual and irrevocable Right of Use for both the Standard Software and for new Versions of it if the KB is entitled to receive them. The Right of Use does not constitute a transfer by the Supplier to the KB of patent rights, copyrights or trademark rights to the Standard Software in question.

#### 32.2.

the Right of Use will in all cases include the following, without the KB owing any additional remuneration for this:

- a. the right to use all the functionalities of the Standard Software that are accessible to the KB even if they are not stated in the Documentation;
- b. the right to produce and store copies of the Standard Software and to regularly test them and keep them on 'hot standby' in the case of an emergency;
- c. the right to use the Standard Software for the purposes of testing and development;
- d. the right to use the Standard Software without any limitation or restriction in relation to location,

equipment, duration or otherwise, this including its use by third parties for the KB.

#### 32.3.

The KB may produce copies of the Standard Software and use them as often as it deems this necessary for its business operations. If the KB proceeds to do so and for this reason owes the Supplier an additional payment then it will promptly inform the Supplier of this. When duplicating the Standard Software, the KB will not remove any indications of property rights or copyrights. Until the moment in time when the Standard Software is Accepted, the Supplier grants the KB a non-exclusive right to use it for the purposes of installation and testing.

#### 32.4.

If the Supplier only rectifies Defects in the Standard Software by issuing Patches or Improved Versions then during the warranty period stated in Article 12.7 the KB is entitled to receive and use it free of charge even if the KB has not agreed Maintenance services with the Supplier.

### 33. Warranties

Supplementary to Article 12, the Supplier warrants that:

- a. the Standard Software contains no technical facilities, functionalities or other foreign elements that do or could at any time prevent the Agreed use, whether or not temporarily;
- b. if he is not the Entitled Party for the Standard Software then he has been authorised by the Entitled Party to provide third parties with these Rights of Use on his behalf. upon request, the Supplier will provide the KB with a copy of this authorisation.

### 34. Providing an Installation Copy

#### 34.1.

If possible, the Supplier will either provide the KB with an Installation Copy or give the KB the opportunity to create its own such Copy. The price of doing so is included in the Fee.

#### 34.2.

If the KB is entitled to receive New Versions then the provisions of Article 34.1 also apply in this regard.

#### 34.3.

If the Installation Copy has become unusable or else has been so damaged that the Agreed use is no longer possible then either the Supplier will promptly provide the KB at the latter's request with a new Installation

Copy of the version that was originally delivered, along with the Improved and New Versions of it that the KB has started using, or else he will give the KB the opportunity to make them itself. In doing so, if applicable then the Supplier is only entitled to reimbursement of the cost price of the Installation Copy's materials.

### **35. Conversion into other Rights of Use**

35.1.

If the Supplier wishes at any time to convert the Right of Use granted to the KB into another Right of Use in respect of the Standard Software then he will consult with the KB about this beforehand, as well as about the procedure to be deployed during conversion. No detrimental consequences of any kind are to be suffered by the KB in connection with such a conversion.

35.2.

If the parties are unable to reach agreement during the consultation referred to in Article 35.1 then the KB may continue to exercise its Right of Use in full.

### **36. Escrow**

36.1.

The KB is at all times entitled to the Supplier's provision of information in Escrow, even if this was not initially agreed.

36.2.

Escrow consists of all undisclosed information that the KB reasonably needs for the rectification of errors in, and for the Maintenance and administration of, Standard Software so that he can continue to make the Agreed use of it. Escrow complies with the norms in the Dutch market at the time the Agreement was entered into.

36.3.

If Escrow is part of the Agreement then either the Supplier will provide the KB with evidence that shows that the Escrow complies with that laid down in this regard in the Agreement or the Supplier will promptly ensure that such a facility is arranged.

36.4.

If Escrow is not part of the Agreement then the KB is entitled to require that such a facility be arranged after all, including subsequently. Reasonable costs associated with this are for the KB's account.

### **SPECIAL STIPULATIONS REGARDING ASSIGNMENTS**

If the Supplier performs Services for the KB such as consultancy services, developing Customised Software, directing IT projects, handling the managing and running of an IT infrastructure, network services, workplace/workstation services or Secondment then in all cases the provisions of this special section apply in conjunction with the General provisions of the Conditions.

#### **ASSIGNMENTS - GENERAL**

### **37. Times and places where work is carried out**

The work is performed at the time and place set down in the Agreement.

The KB can change the place where the work is to be performed, provided that it informs the Supplier of this at least 3 Working Days before the change comes into effect. If the change demonstrably leads to higher costs for the Supplier then the KB will reimburse these costs. In the opposite case, the KB is entitled to a reduction in the Fee in line with the reduction in costs.

### **38. Deployment of specific Personnel**

If the KB has entered into the Agreement with a view to it being executed by one or more specific persons then the Supplier will ensure that these persons actually are, and remain, entrusted with this execution.

### **39. Progress reports and progress meetings**

39.1.

The Supplier reports to the KB in the way laid down in the Agreement about the progress being made on the work. In doing so, he will provide useful information on the state of and progress being made on the work, on the number of hours devoted to the Assignment so far and on other matters relevant to its execution.

39.2.

The parties will consult about the work's progress as often as one of them judges it necessary to do so.

### **40. Professional liability insurance**

Without prejudice to the provisions in Article 22, the Supplier has insured himself in the usual way that is in line with commercial norms and that takes the nature and scope of the Assignment into account, and he will keep himself insured in this way against professional liability.

#### **41. Employment conditions**

41.1

When performing the Services and/or carrying out Assignments, the Supplier will comply with the applicable legislation and regulations in the area of employment conditions and with the CAO (collective bargaining agreement) that applies to him and his employees.

41.2

The Supplier will record all arrangements relating to employment conditions for the performance of Services in a way that is both transparent and accessible.

41.3

Upon request, the Supplier will without delay allow competent authorities to view these arrangements regarding employment conditions and will cooperate with inspections, audits and wage verifications.

41.4

Upon request, the Supplier will without delay allow the KB to view the arrangements regarding employment conditions referred to in paragraph 2 if the KB deems this necessary in connection with the prevention of or handling of a claim for back wages that relates to work performed to carry out the Services.

41.5

The Supplier will impose in full the obligations arising from the previous paragraphs on all parties that he enters into contracts with for the performance of Services and will also stipulate that these parties must then impose in full the obligations referred to on all parties that they in their turn enter into contracts with for the performance of the Services.

#### ASSIGNMENTS: SPECIFIC CONSULTANCY SERVICES

#### **42. Day-to-day management and supervision**

The day-to-day management and supervision of the performance of the Assignment is vested in the Supplier.

#### **43. Project leaders**

The parties can appoint a joint project leader (or appoint one each) whose powers, duties and responsibilities will be regulated in the Agreement.

#### **44. Project phases**

If a project is split into different phases then the various project phases will be stated in the Agreement. This information will include details of the work that each individual phase consists of, the work that is subject to Strict Deadlines, the requirements regarding the phase's outcome/result, and details of how and by when the phases are to be completed.

#### **DEVELOPMENT OF CUSTOMISED SOFTWARE**

#### **45. Management and supervision, appointment of project leaders and designation of project phases**

Articles 42 to 44 inclusive apply mutatis mutandis to the development of Customised Software.

#### **46. Completion of Customised Software**

The Assignment to develop Customised Software includes its Completion (i.e. including its presentation for Acceptance). Completion is made in Source Code and Object Code.

#### **47. Acceptance Procedure for Customised Software**

47.1.

Without prejudice to the provisions in Article 8, the

Acceptance of Customised Software takes place as follows:

47.2.

The Supplier will inform the KB in a timely way about the Completion of the Customised Software.

47.3.

If the KB carries out or arranges an acceptance test then he will draft a test report as soon as possible that he will sign and send to the Supplier. The test report records any Defects found, as well as whether the KB accepts or rejects the Customised Software.

47.4.

If the KB accepts the Customised Software then the date on which the test report was signed is deemed to be the date of Acceptance.

47.5.

If the KB does not accept the Customised Software upon the first performance of the acceptance test then the KB will repeat this test in whole or part by a reasonable deadline that it will set.

The KB will then record in a supplementary test report whether the Defects found during the first test have been rectified and whether the KB now accepts the Customised Software or not.

47.6.

If the KB rejects the Customised Software then the Supplier will rectify the identified Defects at his own expense and within a reasonable period of time to be granted by the KB, which period commences on the date on which the test report was signed. If the Supplier fails to comply with this then the KB may, after notifying the Supplier that it is doing this, rectify the Defects itself (or arrange for a third party to do this) at the Supplier's expense. In this case, the Supplier will fully cooperate free of charge with this rectification process, including by providing the KB with information needed for this at the KB's initial request. If the KB rectifies a Defect itself or has it rectified by a third party for the reason stated above then this has no effect at all on the Supplier's agreed responsibilities for the Customised Software.

47.7.

If the KB rejects the Customised Software again following the second acceptance test then this means that the Supplier is now in default. In this case, the KB can terminate the Agreement extrajudicially with immediate effect, without any warning or notice of default being required.

47.8.

The provisions in Article 47 do not affect the provisions in Article 20, i.e. the KB is not obliged to go through the procedure set out in Article 47 if the Supplier is in default on other grounds.

#### **48. Maintenance of Customised Software**

48.1.

If the KB maintains the Customised Software itself or has it maintained by a third party then upon request the Supplier will assist the KB in this for a competitive fee. To this end, upon request the Supplier will provide the necessary (additional and other) information to the KB or to the third party that the latter has engaged for this. The above also applies to administrative activities relating to Customised Software that the KB performs itself or has performed by a third party.

48.2.

If the KB has also agreed Maintenance services with the Supplier then that which has been laid down in this Agreement in this regard applies.

### **SECONDMENT**

#### **49. Applicability**

There is only considered to be Secondment and accordingly applicability of Articles 49 to 55 inclusive

if the parties have expressly designated the agreed Services as Secondment in the Agreement.

#### **50. Warranties**

Supplementary to the provisions in Article 7.1, the Supplier warrants that at all times he has at his disposal the Personnel to perform the Agreement properly for the KB.

#### **51. Working days and working hours**

51.1.

Working Days and Working Hours for Personnel provided by the Supplier are the same as for the KB's personnel at the site in question.

51.2.

There is only considered to be overtime if work is performed at the KB's request outside the Working Days and Working Hours referred to in Article 51.1. Work of a maximum of one half hour's duration that follows the working hours referred to in this Article is not considered to be overtime.

#### **52. Supply and employment of personnel outside the Netherlands**

52.1.

Unless the KB has the Supplier's consent, it will not supply to third parties the Personnel seconded to it (the KB).

52.2.

Unless the KB has the Supplier's consent, the KB will not set the Personnel seconded to the KB to work outside the Netherlands.

#### **53. Leave days and course days**

53.1.

The Supplier's Personnel will take leave days in consultation with the KB, and taking the normal progress of the work into account.

53.2.

Leave days taken by the Supplier's Personnel are for the Supplier's account.

53.3.

Costs of courses that are taken at the KB's request, as well as the time involved in this, will be for the KB's account.

53.4.

Each year, the KB can designate a number of days on which its office and public environment are closed for reasons to be stated in more detail. In this case, on

these days no work will be performed at this site by the Supplier's Personnel either.

#### **54. Indemnification**

The Supplier indemnifies the KB against claims made by the Supplier's Personnel that are based on the alleged existence of an employment contract with the KB.

#### **55. Recipients' liability**

55.1.

The Supplier indemnifies the KB against recipients' liability for the withholding taxes and turnover tax that the Supplier or the third parties he engages owe or will owe in connection with the Agreement's execution.

55.2.

The KB may pay into the Supplier's 'G account' (guarantee account) the withholding taxes and turnover tax that the Supplier has to pay in connection with the Agreement's execution. If the Supplier does not have a G account then if possible he will open one at the KB's initial request and will do all that he needs to do for its use.

#### **SPECIAL STIPULATIONS REGARDING MAINTENANCE**

If the KB agrees Maintenance services with the Supplier then the provisions of this special section apply at all times in conjunction with the GPC's General provisions.

#### **MAINTENANCE - GENERAL**

#### **56. Maintenance of previously performed Performances**

These Special stipulations also apply to any Maintenance that the KB subsequently agrees with the Supplier in connection with a Performance previously performed by the Supplier for the KB.

#### **57. Point in time of commencement**

The Supplier will provide Maintenance from the date/time laid down in the Agreement.

#### **58. Places and times when Maintenance is to be performed**

58.1.

The Supplier will perform Maintenance at, or based at, his site. Only if it is reasonably necessary to do so will the Supplier perform Maintenance on the KB's premises.

58.2.

Maintenance that could lead to disruption of the work process at the KB will in principle be carried out outside the KB's usual working hours.

58.3.

If disruption of the work process as referred to in Article 58.2 is unavoidable given the importance of immediate rectification of the Fault then the Supplier will inform the KB of this in a timely way before he commences the Maintenance.

#### **59. Progress reports and progress meetings**

59.1.

The Supplier reports to the KB in the way laid down in the Agreement about the progress being made on the work. In doing so, he will provide useful information on the state of and progress being made on the work, on the number of hours devoted to the work and on other matters relevant to the execution.

59.2.

The parties will consult about the work's progress as often as one of them judges it necessary to do so.

59.3.

The Supplier will ensure that the causes of Faults and the results of the Maintenance are properly recorded and archived and will also ensure that the Documentation is amended if necessary.

#### **60. Corrective Maintenance and temporary solutions**

60.1.

At minimum, Maintenance consists of Corrective Maintenance.

60.2.

The warranty set out in Article 12.8 that the Supplier must be able to perform Maintenance on the Performance during a period of at least three years after Acceptance in accordance with these provisions applies in full to Corrective Maintenance, even if the KB does not wish to proceed to purchase either New Versions or the latest models of a Product.

60.3.

The Supplier will only apply a temporary solution if he has the KB's consent for this. Unless the parties agree another arrangement about this in a specific case, the Supplier will replace a temporary solution with a definitive solution as soon as possible.

## **61. Preventive Maintenance**

As part of Preventive Maintenance, the Supplier will regularly (and at least once a year) check out the Performance to be sure that it is working properly.

## **62. Reporting, cancelling and prioritising Faults**

62.1.

The KB reports Faults and cancels the report of a Fault in the way prescribed in the Agreement.

62.2.

When reporting a Fault, the KB will determine the level of priority to be attached to it, in accordance with the provisions in the Agreement.

62.3.

The Supplier's response to a report of a Fault as referred to in Article 62.1 is at all times designed to achieve the fastest possible rectification of the Fault, including by the implementation of a temporary solution. The provisions of Article 60.3 apply in this regard.

## **63. Compliance with Service Levels**

63.1.

The Supplier will do his utmost to achieve the Service Levels. The consequences of a failure to achieve these Service Levels will be regulated in the Agreement. The provisions of Article 20.1 apply in this regard. If there is a repeated failure to achieve the Service Levels then termination of the Agreement is in all cases possible.

63.2.

Contrary to the provisions of Article 63.1, Function Recovery Times and Response Times are considered to be Strict Deadlines, unless explicitly agreed otherwise.

63.3.

Service Levels do not affect the other provisions of the Agreement.

## **64. Maintenance by parties other than the Supplier**

The KB can only have the Maintenance that it has agreed with the Supplier performed by a third party during the Agreement's term if the rights are retained and then only if the Supplier fails to fulfil his obligations from this Agreement or if the KB obtains the Supplier's consent for this.

## **65. Testing the Maintenance outcome**

The KB may carry out a test itself (or arrange its carrying out) to see if a Fault has actually been rectified. The Supplier is obliged to cooperate with this testing. If the test reveals that a Fault has not been

properly rectified then the KB can recoup the costs of the test from the Supplier.

## **66. Professional liability insurance**

Without prejudice to the provisions in Article 22, the Supplier has insured himself in the usual way that is in line with commercial norms and that takes the nature and scope of the Assignment into account, and he will keep himself insured in this way against professional liability.

## **MAINTENANCE OF SPECIFIC PRODUCTS**

### **67. Modifications to the Products**

The Supplier will carry out those Product modifications not prescribed by the manufacturer or the Supplier in consultation with the KB and then only after the latter's consent has been obtained, including for the price quoted for this.

### **68. Replacing the components**

68.1.

If the replacement of components by the Supplier could or does lead to changes in the Product's functionality then this replacement will only take place if the KB has agreed to it.

68.2.

Components will only be replaced by new components that have at least equivalent technical and other functionality.

## **SOFTWARE**

### **69. Scope of the Maintenance**

Supplementary to the provisions in Article 60.1, Maintenance of Software consists of both Corrective and Preventive Maintenance, as well as support. If the KB requests this then Maintenance of Software will also include Innovative Maintenance.

### **70. Support**

70.1.

Upon request, the Supplier will familiarise the KB and the latter's Personnel with the way in which the Performance is to be utilised. If the Supplier has also been entrusted with the Implementation of the Performance then this support will in principle be provided by the Personnel that was involved with the Performance.

70.2.

Supplementary to the provisions in Article 70.1, upon request the Supplier will provide the KB with support

in the form of advice about the Software's usage and functionality.

70.3.

The KB can ask the Supplier for support during the times stated in the Agreement on Maintenance.

70.4.

If the KB asks for support as referred to in Article 70.3 then the Supplier will arrange for a program specialist to contact the KB as soon as possible, and if applicable within the Response Time.

### **71. Improved Versions and New Versions**

71.1.

The Supplier will ensure that there is a consistent policy on versions. The basic principle here is that the Improved and New Versions become available in a timely way. With this in mind, the Supplier will regularly research whether there is a need to release a particular such version and will inform the KB as soon as possible about the results of his research.

71.2.

Interim changes made to the Software as the result of Corrective Maintenance will as far as possible be incorporated into the Improved and New Versions.

71.3.

Upon request, the Supplier will provide the KB free of charge with a copy of a New Version for the purposes of testing and evaluation. The KB is not obliged to start using New Versions.

71.4.

If it is agreed that the Supplier is to install the Software then this obligation also applies for New Versions that the KB wants to start using.

71.5.

If the Supplier decides to issue other Software instead of a New Version and to halt his Innovative Maintenance for the Software that the KB is using, then the KB is entitled to either full fulfilment of the Agreement or to a Right of Use to this new Software under the conditions set down in the Agreement for a New Version.

### **RESTORE AND RECOVERY DATA FOR CLOUD SERVICES**

#### **72. Restore and recovery**

72.1

If Cloud services are deployed then the Supplier has to have a proper and suitable policy in place for the backup, restoring and recovery of all data. Before the Agreement is entered into, the Supplier will inform the KB about this policy and about the procedures that are followed in this context.

72.2

The Supplier will adjust and/or supplement this policy and/or these procedures at the KB's reasonable request.

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*January 2018*