
Annex B - NPO GENERAL TERMS AND CONDITIONS FOR IT CONTRACTS 2018

GENERAL PROVISIONS

The General Government Terms and Conditions for IT Contracts consist of these General Provisions and Special Provisions. These General Provisions relate to all IT Contracts involving the Contracting Authority. The Special Provisions relate to specific types of IT Contract involving the Contracting Authority.

Article 1. Definitions

In these General Terms and Conditions, the following terms shall have the following meanings where written with an initial capital:

- 1.1. *Acceptance*: the approval by the Contracting Authority of the Deliverable or parts thereof.
- 1.2. *Acceptance Procedure*: the procedure recorded in the Contract for use by the Contracting Authority in determining whether or not to proceed with Acceptance of the Deliverable.
- 1.3. *Delivery*: the supply by the Counterparty of Products in the manner specified in the Contract, as evidenced by a confirmation of receipt issued by the Contracting Authority.
- 1.4. *Specifications*: the documents provided to the Counterparty (including explanatory notes and amendments) that describe and explain the organisation of the Contracting Authority, the Deliverable and its intended use by the Contracting Authority, and the contract award procedure.
- 1.5. *Schedule*: an annexe to the Contract that forms part of it once it has been initialled by the parties.
- 1.6. *Source Code*: the entirety of program instructions in their original programming language, including the accompanying Documentation, intended for execution by a computer and in such a form that it can be used by a programmer who has knowledge and experience of the programming method and technology to modify the software.
- 1.7. *Documentation*: any description of the Deliverable and its properties, whether or not specifically intended for its installation, Implementation, use, management and/or maintenance.
- 1.8. *Vital Deadline*: a deadline expressly agreed as such by the parties, where failure by the party concerned to meet the deadline constitutes default without requiring notice of default.
- 1.9. *Defect*: every fault or other failure which renders the Deliverable unsuitable for the Agreed Use.
- 1.10. *Licence*: a right entitling the Contracting Authority to install and use Standard Software in accordance with the Agreed Use, including all reproductions and disclosures, whether temporary or otherwise, which may reasonably be deemed necessary for this purpose.
- 1.11. *Implementation*: the entirety of acts and measures needed in order to make the organisation of the Contracting Authority suitable for the Agreed Use of the Product and/or Software.
- 1.12. *Installation*: the placement and connection of the Product and/or the setting up of Software by the Counterparty.
- 1.13. *Supplier*: the Counterparty to the Contract who has undertaken to deliver a Product or grant a Licence.

- 1.14. *Materials*: equipment and consumables for the installation, implementation, use or maintenance of the Deliverable, such as cables, smartcards and physical data carriers on which the Software is supplied.
- 1.15. *Staff*: the members of staff and/or auxiliary personnel used by parties in performing the Contract.
- 1.16. *Additional Work*: work that is not included in the Public Service Contract and results in costs that exceed the Fee.
- 1.17. *New Version*: a subsequent version of Standard Software that contains predominantly new or modified functionalities, whether or not issued under a new name.
- 1.18. *Object Code*: translation of the Source Code into a code that can be directly read and executed by a computer.
- 1.19. *Maintenance*: work to be performed by the Contractor for the purpose of repairing and/or enhancing the Deliverable.
- 1.20. *Public Service Contract*: work to be performed by the Contractor for the Contracting Authority other than pursuant to an employment contract.
- 1.21. *Contracting Authority*: the party for whose benefit a Contract is concluded.
- 1.22. *Contractor*: a Counterparty who has undertaken to perform a Public Service Contract.
- 1.23. *Completion*: the presentation by the Contractor of (parts of) the Deliverable for Acceptance.
- 1.24. *Agreed Use*: the use that the Contracting Authority intends to make of the Deliverable as known to the Counterparty – or as the Counterparty may reasonably be expected to know – at the time of the conclusion of the Contract on the basis of the Specifications and/or on the basis of the information referred to in Article 4, in so far as such use is not expressly excluded or limited in the Contract.
- 1.25. *Contract*: the agreements between the Contracting Authority and the Counterparty of which the Terms and Conditions form part.
- 1.26. *Patch*: a correction to Standard Software that is intended to be temporary.
- 1.27. *Deliverable*: a Product to be delivered by the Counterparty, a Public Service Contract to be performed by it or a Licence to be granted by it or a combination thereof, including Materials and Documentation.
- 1.28. *Product*: the thing to be delivered by the Supplier to the Contracting Authority on the basis of the Contract.
- 1.29. *Software*: the set of program rules to be provided by the Counterparty and capable of being used, either directly or indirectly, by a computer to achieve a particular, defined result. Software can be classified as Standard Software or Custom Software.
- 1.30. *Standard Software*: Software developed for general use that is made available to the Contracting Authority on a non-exclusive basis.
- 1.31. *Enhanced Version*: a subsequent version of the Standard Software in which Defects have been repaired and/or its operation has otherwise been improved.

- 1.32. *Fee*: the total price agreed for the Deliverable.
- 1.33. *Terms and Conditions*: the NPO General Terms and Conditions for IT Contracts 2018 consisting of these General Provisions and all Special Provisions.
- 1.34. *Counterparty*: the Contractor or Supplier with whom the Contract is concluded.
- 1.35. *Working Days*: calendar days, with the exception of weekends and official public holidays within the meaning of section 3 of the General Extension of Time Limits Act.

Article 2. Contacts and Escalation

- 2.1. Each party shall designate a contact to be responsible for keeping in touch with the other party in matters relating to the performance of the Contract. The parties shall notify each other of the person they have designated as their contact.
- 2.2. The contacts may represent and bind the parties in so far as the performance of the Contract is concerned. They are not competent to alter the Contract.
- 2.3. Without prejudice to the provisions of Article 37, the parties must have an internal escalation procedure or arrange for such a procedure to be drawn up.

Article 3. Status of Notifications

Notifications by one party to the other (including undertakings, agreements or further agreements) that are of importance to the performance of the Contract shall be binding on the parties only if they are made or confirmed in writing by a person competent for this purpose.

Article 4. Duty of Inquiry and Disclosure

- 4.1. To determine the use which the Contracting Authority intends to make of the Deliverable the Counterparty must sufficiently acquaint itself with:
 - a) the objectives of the Contracting Authority in concluding the Contract
 - b) the organisation of the Contracting Authority in so far as relevant to the Contract
- 4.2. In discharging the duty of inquiry and disclosure referred to in Article 4.1, the Counterparty must also form an opinion on the feasibility of the Deliverable within the parameters specified by the Contracting Authority for this purpose.
- 4.3. For the purposes of Article 4.1, the Contracting Authority shall provide the Counterparty with sufficient information. The Contracting Authority shall supply the Counterparty, on request, with additional information in so far as this is not of a confidential nature and can reasonably be deemed relevant to the performance of the Contract. If anything is unclear, the Counterparty shall make inquiries of the Contracting Authority in good time.
- 4.4. The Parties shall keep each other informed of developments and changes that are or may be of importance to the performance of the Contract.

Article 5. Quality Assurance

- 5.1 Quality assurance is part of the Contract.

- 5.2 Quality assurance means that, in the performance of the Contract, measures shall be taken to ensure that the Contracting Authority can make the Agreed Use of the Deliverable.
- 5.3 The Counterparty shall take these measures on its own initiative. In addition, the Contracting Authority is entitled to propose such measures at any time. The Counterparty must cooperate with such measures and implement their results in such a manner as may reasonably be expected of it.

Article 6. Delivery

- 6.1. The Counterparty shall make the Delivery all at once.
- 6.2. Upon Delivery the parties shall visually check the quantity and inspect the exterior for observable damage.
- 6.3. If damage is discovered the Contracting Authority need not take receipt of the Product. This is without prejudice to the Counterparty's obligation to make timely Delivery.
- 6.4. The Contracting Authority shall provide the Counterparty with a receipt for Products it receives. This receipt is without prejudice to the rights of the Contracting Authority under the Contract.
- 6.5. The Counterparty shall make as much use as possible of sustainable packaging materials and arrange for their environmentally friendly removal.

Article 7. Transfer of Risk and Title

- 7.1. The risk of damage to or loss of Products that constitute or form part of the Deliverable shall pass to the Contracting Authority upon Delivery.
- 7.2. Without prejudice to the provisions of Article 8, title to the Deliverable (or parts of it) shall pass to the Contracting Authority upon Acceptance.

Article 8. Intellectual Property Rights

- 8.1. All intellectual property rights that can be exercised in relation to a Deliverable, no matter where or when, are vested in:

- a) the Contracting Authority in so far as the Deliverable concerned has been or is being designed or produced specifically for the Contracting Authority and/or has been designed or is being produced under the direction or supervision of the Contracting Authority or by reference to its instructions or designs. In so far as necessary, these rights, including rights to source code and Documentation, are transferred by the Counterparty to the Contracting Authority under the Contract, such transfer being hereby accepted in advance by the Contracting Authority
- b) the Counterparty or a third party in all other cases; the Counterparty grants the Contracting Authority in such cases a non-exclusive ongoing right, as determined in the Contract, to use the Deliverable that is in any event sufficient for performance and continued use of the provisions of the Contract(s)

This right of use includes but is not limited to:

- 1 The source code, data and/or right of use of programmes developed on the instructions of the Contracting Authority as well as all technical documentation
- 2 The source code, data and/or right of use developed by the Counterparty and purchased by the Contracting Party as a service or product which is part of the Performance, as well as all technical documentation

- 3 The source code, data and/or right of use purchased or obtained by the Counterparty under the existing terms and conditions between the Counterparty and third party, as well as all technical documentation

which are provided to the Contracting Authority if required for exercising his rights of use.

- c) In both circumstances referred to in a) as well as b) the Counterparty shall guarantee access to the source code and associated technical and functional documentation if required for use of the rights by the Contracting Authority
- 8.2. The rights referred to in Article 8.1 (a) are assigned to the Contracting Authority upon signature of the Contract. In so far as a separate instrument needs to be executed at any time for the assignment of these rights, the Counterparty irrevocably authorises the Contracting Authority to draw up such an instrument and sign it on behalf of the Counterparty, without prejudice to the Counterparty's obligation to cooperate in the assignment of these rights as soon as the Contracting Authority requests, without attaching any conditions to its cooperation. In so far as necessary, the Counterparty hereby also irrevocably authorises the Contracting Authority to have the assignment of these intellectual property rights entered in the appropriate registers.
- 8.3. In the event of a disagreement between the parties about (parts of) intellectual property rights in relation to the Deliverable, it shall be assumed, in the absence of proof to the contrary, that the rights are vested in the Contracting Authority. Irrespective of the outcome of such a dispute, the Contracting Authority may continue with the Agreed Use.
- 8.4. The Counterparty hereby renounces, in so far as necessary, both in its own capacity and on behalf of its Staff, all so-called personality rights as referred to in Section 25, Subsection 1 (a) to (c) of the Copyright Act 1912, in so far as the relevant legislation permits. The Counterparty guarantees to the Contracting Authority that it is competent to renounce these rights, including on behalf of its Staff.
- 8.5. The Counterparty shall indemnify the Contracting Authority against all claims brought by third parties in respect of any breach of their intellectual property rights, including personality rights as referred to in Section 25, Subsection 1 of the Copyright Act and equivalent claims relating to knowledge, unlawful competition and so forth. The Counterparty shall be obliged, as soon as the Contracting Authority so requests, to assume responsibility for defending any proceedings brought against the Contracting Authority in connection with the Deliverable for breach of the intellectual property rights of a third party. For this purpose the Contracting Authority shall immediately inform the Counterparty of any such proceedings and provide the Counterparty with the necessary powers of attorney and assistance. The Counterparty shall also indemnify the Contracting Authority against all damages and costs that may be awarded against it in such proceedings, and against the costs of the proceedings themselves, including, but not limited to, the costs of obtaining legal advice in this connection.
- 8.6. In the event of an alleged breach of the intellectual property rights of a third party, the Counterparty shall, at its expense, take all measures that may help to prevent disruption of the operational activities of the Contracting Authority and to mitigate the costs incurred and/or loss or damage suffered as a result of such breach.
- 8.7. Without prejudice to the provisions of Articles 8.5 and 8.6, the Contracting Authority may, if a third party holds it liable for a breach of its intellectual property rights, cancel all or part of the Contract in writing without recourse to the courts and without prejudice to its other rights against the Counterparty, including, but not limited to, any right to compensation.

Article 9. Documentation

- 9.1. Documentation must be drawn up in such a way as to ensure that the Deliverable can be properly used, managed and maintained by the Contracting Authority and third parties.
- 9.2. The Contracting Authority may reproduce and amend Documentation and publish it for use within its organisation without owing a further fee, provided that any copyright acknowledgements etc. it contains, are left intact.

Article 10. Authorisations

- 10.1. The Counterparty shall be responsible for obtaining and maintaining any authorisation that may be required under any national or international regulation for the performance of the Contract.
- 10.2. The Counterparty shall immediately inform the Contracting Authority of everything that, in its view, constitutes or may constitute an infringement of the authorisation.

Article 11. Acceptance

- 11.1. The Contracting Authority shall not be obliged to make any payment to the Counterparty before Acceptance takes place. Pre-Acceptance payments are always made subject to the condition precedent of Acceptance.
- 11.2. The Contracting Authority shall notify the Counterparty within 30 days after Completion or Delivery of acceptance or otherwise of the Deliverable. It may do this by means of an explicit notification or by forwarding the test report as referred to in Article 59.3 if the Custom Software is approved in the report.
- 11.3. Acceptance includes approval of the Documentation.
- 11.4. If the Contracting Authority is unable to notify the Counterparty within the period referred to in Article 11.2 of the acceptance or otherwise of the Deliverable, it shall notify the Counterparty of its inability to do so before the expiry of the period concerned, stating its reasons and specifying the period within which it shall notify the Counterparty whether it accepts the Deliverable.
- 11.5. If no notification as referred to in Articles 11.2 or 11.4 is given or if the additional period for Acceptance as referred to in Article 11.4 expires without further notice from the Contracting Authority, the Deliverable shall be deemed to have been accepted by the Contracting Authority.
- 11.6. If the Contracting Authority accepts the Deliverable despite having discovered that it has one or more Defects, it shall inform the Counterparty of this either in the notification or in the test report referred to in Article 11.2. The Counterparty shall repair these Defects in accordance with the provisions of Article 12.5.

Article 12. Guarantees

- 12.1. The Counterparty guarantees that it will only use Staff who have the skills and qualifications that have been agreed or are necessary for the performance of the Contract, taking account of the nature of the Deliverable and the expertise claimed by the Counterparty. It also guarantees that the Staff used will meet the requirements that may be made of an equivalent service provider that is reasonably competent and acts in a reasonable manner.
- 12.2. The Counterparty guarantees that it will not supply Staff to or allow them to work for the Contracting Authority if they also work for third parties and could as a result have a conflict of interest.
- 12.3. The Counterparty guarantees that it will repair any Defects at its own expense during a period of 12 months after Acceptance. If the Contracting Authority wishes to invoke this guarantee, it shall inform the Counterparty in writing and, in emergencies, by telephone. The Counterparty shall

repair the Defects forthwith, taking account of their nature and seriousness. Repair shall be carried out, where necessary, in consultation with the Contracting Authority. If the Counterparty shows that the Defect is of a kind that the Contracting Authority should reasonably have discovered when carrying out the Acceptance Procedure, it may charge the Contracting Authority for extra costs incurred as a consequence in repairing the Defect.

- 12.4. If, when performing the guarantee referred to in Article 12.3, the Counterparty uses a work-around solution, it shall reimburse any loss or damage suffered by the Contracting Authority as a result. Article 26 applies *mutatis mutandis*.
- 12.5. Further to Article 12.3, the Counterparty guarantees that Defects that are discovered by the Contracting Authority during the Acceptance Procedure but are not regarded by it as a reason for not proceeding with Acceptance, shall be repaired with due dispatch at the expense of the Counterparty after Acceptance.
- 12.6. The guarantee referred to in Article 12.3 does not apply in so far as the Counterparty shows that a Defect has occurred as a consequence of a change made to the Deliverable without its consent by the Contracting Authority or a third party used by it. Nor does the guarantee apply if the Defect is demonstrably due to incorrect, careless or injudicious use of the Deliverable by the Contracting Authority.
- 12.7. The Counterparty guarantees that it can maintain the Deliverable for five years after the date of Acceptance, during at least three of which the Maintenance shall be carried out in the manner specified in the Special Provisions on Maintenance.
- 12.8. In case of (re-)transition or bankruptcy, the Contracting Authority shall be provided with all necessary data, information and resources by the Counterparty as are necessary for a smooth transfer of service provision. The Counterparty shall guarantee that no blocking constructions will be used in the service provision which could hamper a successful transition or re-transition, and that data, information and resources are as free, transferable, and usable as possible between Counterparty and Contracting Authority.
- 12.9. In case of re-transition, the Counterparty shall provide an actual re-transition plan within 4 weeks of a request by the Contracting Authority, with a complete overview of all data (including metadata), information and resources.

Article 13. Support and Maintenance

- 13.1. The Counterparty shall, on request, acquaint the Contracting Authority and its Staff with the use of the Deliverable. If the Counterparty has also been charged with Implementation of the Deliverable, this support shall, in principle, be given by Staff who have been involved in such Implementation.
- 13.2. The nature, scope, duration and (if applicable) costs of the support must be specified separately in the Contract.
- 13.3. If the Contracting Authority so wishes, the Counterparty shall maintain the Deliverable in accordance with the provisions of Article 12.7.

Article 14. Invoicing, Discounts, Fee and Additional Work

- 14.1. The Counterparty shall invoice for the work in the manner prescribed in the Contract.
- 14.2. The Counterparty shall send the invoice electronically so that it can be received and processed electronically, in accordance with the specifications given by the Contracting Authority.

- 14.3. The Contracting Authority is entitled to an agreed discount on the Fee or penalty, without prejudice to the other rights or claims, including, but not limited to:
- a) its claim to performance of the agreed obligation to perform the contractual obligations in relation to the Deliverable
 - b) its right to compensation; and/or
 - c) its right to cancellation
- 14.4. The Counterparty is not entitled to raise its prices without prior written agreement by NPO. The price rise shall never be higher per year than the CBS price index, unless the Counterparty can demonstrate that it has to adjust prices as a result of consequences outside its control.
- 14.5. Additional Work must be notified in good time to the Contracting Authority, must always be invoiced separately and does not qualify for reimbursement other than with the prior consent of the Contracting Authority.

Article 15. Payment and Invoice Audits

- 15.1. The Contracting Authority shall pay the amounts owed by it under the Contract to the Counterparty no later than 30 days after receipt of the invoice, if this complies with the provisions of Article 14.1. The period of 30 days shall start to run from the date of receipt of the invoice or the date of Acceptance, whichever is the later.
- 15.2. If the Contracting Authority fails to pay an invoice within the time limit stipulated in Article 15.1 without valid reason, it shall automatically be liable to pay compensation as referred to in Article 96, paragraph 4 of Book 6 of the Civil Code and statutory interest as referred to in Article 119a of Book 6 of the Civil Code on the amount outstanding. The compensation and interest shall be paid at the Contractor's request. The Counterparty shall not be entitled to the payment of interest if the invoice in question does not meet the agreed requirements.
- 15.3. The Contracting Authority may instruct an accountant designated by it, as referred to in Article 393, paragraph 1 of Book 2 of the Civil Code, to check that an invoice submitted by the Counterparty is accurate. The Counterparty shall allow the accountant to inspect its books and documents, and shall supply him with any data and information he requests. This audit shall be confidential and shall not involve anything more than necessary to verify the invoice. The accountant shall report the audit findings with due dispatch to both parties. The Contracting Authority shall pay the cost of the accountant's audit unless the audit reveals that the invoice in question is not accurate or complete, in which case the Counterparty shall be liable for the cost of the audit.
- 15.4. The Contracting Authority may defer payment of an invoice, or part of an invoice, about which the parties have failed to reach agreement for as long as the accountant's audit lasts. The Contracting Authority shall exercise this right only if it has reasonable doubts about the accuracy of the invoice in question.
- 15.5. The Counterparty waives any right it may have to suspend or terminate its work on account of the Contracting Authority's failure to pay an invoice within the stipulated time limit, or if the Contracting Authority does not pay all or part of an invoice because it suspects that the invoice is inaccurate or because the Deliverable is defective.

Article 16. Advances

- 16.1. If the Contracting Authority, in performing the Contract, is to make a payment for a Deliverable that has not yet been accepted, it may require the Counterparty to issue it with an on-demand bank guarantee for the value of the payment in question before it makes the payment. The

Contracting Authority shall not be required to pay any of the cost of the guarantee.

- 16.2. If the Contracting Authority does not accept the Deliverable within the stipulated time limit owing to a failure that is attributable to the Counterparty, the Counterparty shall be liable to pay statutory interest on the advance for as long as the failure persists.
- 16.3. The on-demand bank guarantee, based on the model enclosed with the Contract, shall be issued by a credit institution generally deemed to be of sound repute, as designated in the implementing regulations based on section 37 of the Government Accounts Act 2001. After final Acceptance, the document recording the guarantee shall be returned to the Counterparty.

Article 17. Duty of Confidentiality

- 17.1. The parties may not divulge in any way whatever any information that comes to their attention in the course of performing the Contract and that they know or may reasonably be assumed to know is confidential, except in so far as they are obliged to divulge such information under a statutory regulation or court ruling. Where the parties have agreed a different form of dispute resolution, a ruling of a body competent under Article 37.1 to resolve a dispute shall be equated with a court ruling for this purpose.
- 17.2. The parties shall impose on their Staff the same duty of confidentiality as is provided for in Article 17.1.
- 17.3. The Counterparty shall cooperate, at the request of the Contracting Authority, in enabling the Contracting Authority, or a third party acting on its behalf, to supervise the safekeeping and use of confidential information by the Counterparty.
- 17.4. The Counterparty shall hand over to the Contracting Authority, as soon as it requests, all information that the Counterparty has in its possession for the purpose of performing the Contract, including any copies made of such information.
- 17.5. A party that breaches the duty of confidentiality provided for in Article 17.1 shall owe the other party a penalty of €50,000, due, and payable forthwith, for each infringement.

Article 18. Information Security

- 18.1. The Counterparty must meet the Information Security Policy and Guidelines on Technical Information Security Measures by the NPO.
- 18.2. At the request of the NPO, the Counterparty must cooperate with scanning for vulnerabilities and penetration tests ('Security Tests').
- 18.3. If the Counterparty carries out its own Security Tests, the company shall provide the outcome of such Security Tests to the NPO as soon as they become available.
- 18.4. The NPO may use the outcome of the Security Tests as carried out by the NPO or the company for internal purposes and also to share the outcome of Security Tests with (chain) suppliers if the outcomes are relevant to them.
- 18.5. If the outcome of the Security Tests contains results which in the opinion of the NPO are in conflict with the Information Security Policy and Guidelines on Technical Information Security Measures by the NPO, the Counterparty must remedy those as quickly as practically possible,

in order to comply with the security standards set in the Information Security Policy and the Guidelines.

Article 19.

- 19.1. If the Counterparty processes personal data for the Contracting Authority in the context of performing the Agreement, the Parties shall agree on the processing of the personal data by the Counterparty for the Contracting Authority in a separate Data Processor Agreement as referred to in Article 28, Section 3 of the General Data Processing Regulation.
- 19.2. In as much as the Counterparty as processor referred to in the General Data Protection Regulation processes personal data for the Contracting Authority in the context of performing the Agreement, the Counterparty shall guarantee the implementation of appropriate technical and organisational measures, in order for the processing to comply with the requirements of the General Data Processing Regulation and for the data subjects to be protected. The Counterparty shall only process personal data on the orders and written instructions of the Contracting Authority, except in case of deviating legal requirements.

Article 20. Security Procedures and Internal Rules

- 20.1. In so far as the contractual obligations for the Deliverable are performed at the Contracting Authority's premises, the Counterparty shall instruct its Staff to comply with the Contracting Authority's security procedures and internal rules.
- 20.2. The Contracting Authority may require certificates of good conduct to be produced in respect of the Counterparty's Staff at least three Working Days before they start work at the Contracting Authority's premises.
- 20.3. The Contracting Authority may carry out (or cause to be carried out) a security check on the Counterparty's Staff who have been or are assigned to work on the Contract, in accordance with the rules usually applied by the Contracting Authority. The Contractor shall cooperate fully in such checks. The Contracting Authority may, on the basis of the results of a security check, refuse to allow the person in question to work on the Contract.
- 20.4. The Counterparty shall report the arrival of its Staff at a Contracting Authority's location to the Contracting Authority's contact in good time. The Counterparty shall ensure that its Staff are able, at the request of the Contracting Authority, to produce evidence of their identity and to show that they are working for or on behalf of the Counterparty. The Contracting Authority may refuse any person access to any of its locations.
- 20.5. If a person who belongs or belonged to the Staff of the Counterparty and who visits locations of the Contracting Authority in that capacity no longer works (or will no longer work) for the Counterparty for any reason whatever, the Counterparty shall immediately report this to the Contracting Authority's contact.

Article 21. Working Conditions

- 21.1. In so far as work is performed at the Contracting Authority's premises, the Contracting Authority shall ensure that the place of work is adequate and safe.
- 21.2. The Counterparty shall ensure that its Staff are aware in good time of the rules on working conditions in force at the Contracting Authority's premises and shall notify the Contracting Authority with due dispatch if it becomes aware of circumstances that breach (or may breach) these rules.

Article 22. Publicity

The Counterparty may not refer, implicitly or explicitly, to the Deliverable in publications (including press releases) or advertisements and may use the Contracting Authority's name as a reference only with the Contracting Authority's prior consent.

Article 23. Replacement of Counterparty's Staff

- 23.1. The Counterparty shall replace Staff only with the prior consent of the Contracting Authority. The Contracting Authority may not withhold its consent unreasonably and may attach conditions to its consent.
- 23.2. The Contracting Authority may demand the replacement of Staff if it considers that their continued assignment to the work is no longer desirable for reasons connected with the individuals concerned.
- 23.3. Where Staff are replaced, the Counterparty may not charge any associated costs to the Contracting Authority unless the Counterparty shows that there was no reasonable basis for the request for replacement.
- 23.4. Where Staff are replaced, the Counterparty shall provide replacements at the same rate and ensure that their expertise, qualifications and experience are at least equal to those of the original Staff or satisfy the conditions agreed by the parties.

Article 24. Subcontracting

- 24.1. In performing the Contract the Counterparty may use the services of third parties only with the prior consent of the Contracting Authority. This consent, to which the Contracting Authority may attach conditions, may not be withheld unreasonably.
- 24.2. The Contracting Authority's consent is without prejudice to the Counterparty's own responsibility and liability for discharging the obligations to which it is subject under the Contract and its obligations as an employer under the tax, healthcare insurance and social insurance legislation.
- 24.3. The Counterparty shall guarantee that any subcontractor shall comply fully with all of the provisions in the Agreement and all of the current General Terms and Conditions.

Article 25. Assignment of Rights and Obligations

- 25.1 Neither party may assign its rights and obligations under the Contract to third parties without the consent of the other party. This consent, to which conditions may be attached, may not be withheld unreasonably.
- 25.2 Article 24.1 does not apply to the establishment of limited rights such as the right to hold another's property in security.

Article 26. Impending Delay

- 26.1. In the event of an impending delay in the performance of the contractual obligations in relation to the Deliverable, the Counterparty shall immediately notify the Contracting Authority, explaining the reasons for and consequences of any delay. The Counterparty shall also propose to the Contracting Authority measures to avoid delay or further delay.
- 26.2. As quickly as possible after receiving the notification referred to Article 25.1, the Contracting

Authority shall notify the Counterparty whether or not it agrees to the proposed measures. Agreement does not imply acceptance by the Contracting Authority of the cause of the impending delay, and is without prejudice to its rights with regard to the Counterparty.

Article 27. Liability

- 27.1. If either party fails to discharge an agreed obligation, the other party may give it notice of default. In such a case the defaulting party shall be given a reasonable period in which to perform the obligation. If the party in breach still fails to perform the obligation within this further period, it shall then be deemed to be in default. Notice of default is not necessary where the period for performance constitutes a Vital Deadline or where it must be inferred from a notification from or the conduct of the defaulting party that it will fail to perform its obligation. A party that imputably fails to discharge its obligations is liable to the other party for any loss or damage suffered and/or yet to be suffered by the latter.
- 27.2. The liability referred to in Article 27.1 for loss or damage other than that referred to in Article 27.2 is limited per event to an amount not exceeding four times the Fee. For this purpose, interrelated events shall be treated as a single event.
- 27.3. The limitations of liability set out in Articles 27.2 and 27.3 do not apply:
- a) to third-party claims for compensation as a result of death or injury, and/or
 - b) if there has been intent or gross negligence on the part of the other party or its Staff, and/or
 - c) to breaches of intellectual property rights as referred to in Article 8
 - d) if an agreement has been concluded between the parties under Article 18, paragraph 2, the limitations of liability do not apply to claims for compensation in relation to failure to comply with that agreement, including any fines imposed by the supervisory authority
- 27.4. The Counterparty is liable for all obligations in respect of its Staff, including those arising under tax, healthcare insurance and social insurance legislation. The Counterparty shall indemnify the Contracting Authority against any liability in this connection.

Article 28. Force Majeure

- 28.1. A failure to perform the Contract which is not attributable to the fault of a party and for which it is also not accountable by law or juristic act or according to generally accepted standards constitutes force majeure.
- 28.2. The term force majeure in relation to the Counterparty is in any event deemed not to include staff shortages, strikes, staff illness, late delivery or unsuitability of items required for the performance of the contractual obligations in relation to the Deliverable, and liquidity or solvency problems.
- 28.3. If the Counterparty can claim some benefit in respect of a failure as referred to in Article 27.1 that it would not have had in the event of proper performance, it shall compensate the Contracting Authority for any loss or damage suffered by the Contracting Authority as a consequence of that failure, up to a maximum of the value of the benefit concerned. In that regard, the provisions of Articles 27.2 and 27.3 shall apply.

Article 29. Defects Involving Compatibility with other Software or Hardware

- 29.1. At the request of the Contracting Authority, the Counterparty shall engage in consultations with other designated counterparties and/or suppliers of the Contracting Authority if it appears at any

time that the Deliverable is not working properly with other software and/or products used or to be used by the Contracting Authority.

- 29.2. The purpose of the consultations referred to in Article 28.1 shall be to establish the cause of the incompatibility and, if possible, find a solution. Any reasonable costs incurred in participating in the consultations and finding a solution shall be borne by the Contracting Authority unless the incompatibility is imputable to the Counterparty.

Article 30. Insurance

- 30.1. The Counterparty has taken out and shall maintain liability insurance that is appropriate and customary by prevailing standards.
- 30.2. The liability insurance policy must provide cover for at least €1,250,000 per claim and for a minimum annual payment of 200% of this amount.
- 30.3. On request, the Counterparty shall immediately present proof to the Contracting Authority of the payment of premiums and, save where barred by statutory obligations, at the same time report any previous claims under the same policy in the current policy year.

Article 31. Annulment and Notice of Termination

- 31.1. Without prejudice to the remaining provisions of the Contract, either party may annul the Contract in full or in part by registered letter, without recourse to the courts, if the other party is in default or performance is permanently or temporarily impossible.
- 31.2. In the event of force majeure, the parties may not annul the Contract until a period of 15 Working Days has elapsed since the start of the force majeure.
- 31.3. The Contracting Authority may annul the Contract forthwith by registered letter, without recourse to the courts and without being required to send any prior demand or notice of default, if the Counterparty applies for a provisional or final suspension of payments or files for bankruptcy or is declared bankrupt, if its business is wound up, if it ceases trading, if control of its business operations undergoes a major change, if a substantial proportion of its assets are seized, or if it is deemed on any other grounds to be no longer capable of discharging its obligations under the Contract. This power also applies if, during the term of the Contract, other grounds for exclusion as referred to in Section 2.86 of the Public Procurement Act occur. In connection with this entitlement, the Counterparty is obliged to notify the Contracting Authority if he applies for (provisional) suspension of payments, files for bankruptcy or is declared bankrupt.
- 31.4. The Contracting Authority may also annul the Contract in the manner specified in Article 31.3 if it has good grounds for assuming that a court of law would set aside the Contract under Part 4.3.1 of the Public Procurement Act 2012 if an application to this effect were made. The Counterparty is entitled to the reimbursement of costs reasonably incurred in performing the Contract and the costs of reasonable future obligations already entered into in connection with the Contract. If, however, the Contracting Authority can demonstrate that the unlawfulness is wholly or partly attributable to the Counterparty, the Counterparty shall not be entitled to compensation.
- 31.5. If the Contracting Authority has concluded two or more interrelated Contracts with the Counterparty, the Contracting Authority may annul in the specified manner the other Contract(s) in the cases referred to in Articles 31.1 and 31.3. Evidence of an interrelationship as referred to above must be apparent from the (related) Contracts.
- 31.6. Without prejudice to the provisions laid down in the Contract or in the Terms and Conditions, the Contracting Authority may give notice annulling a Contract by registered letter, where applicable

with immediate effect. In such an event, the account between the Contracting Authority and the Contractor shall be settled on the basis of Articles 31.7 to 31.9. This method of settling accounts shall never result in the Contracting Authority owing the Counterparty more than the Fee or the as yet unpaid part thereof due to its annulment of the Contract. The Contracting Authority shall not be obliged to indemnify the Contractor in any way other than that specified in Articles 31.7 to 31.9 for the consequences of annulling the Contract.

- 31.7 In the event of the early termination of one-off or fixed-term Public Service Contracts where the obligation to pay the Fee depends on the performance of the Contract or the expiry of its term, the Contractor shall be entitled to a reasonable portion of the Fee if the Contract is annulled by the Contracting Authority on the basis of Article 31.6. In determining the amount, account shall be taken, *inter alia*, of the work already performed by the Contractor, the benefit derived by the Contracting Authority from that work and the grounds on which the Contract was terminated. The Contractor is entitled to the (full) Fee only if annulment of the Contract is attributable to the Contracting Authority and payment of the full Fee is reasonable, having regard to all the circumstances of the case. The savings accruing to the Contractor from early annulment shall be deducted from the amount of the Fee.
- 31.8 In the event of early termination of other Contracts on the basis of Article 31.6, the account between the Contracting Authority and the Counterparty shall be settled on the basis of (a) the part of the Fee that relates to the part of the Deliverable that the Counterparty has already delivered in the course of performing the Contract at the time the notice of termination is given, (b) other obligations that the Counterparty has already entered into in performing the Contract in so far as they cannot be limited and (c) loss of profit in so far as that loss is not included in the costs referred in points (a) and (b).
- 31.9 If a Contract consists of both a Public Service Contract and other Deliverables, the provisions of Articles 31.7 and 31.8 apply to the relevant parts of the Contract.

Article 32. Retention of Right to Demand Performance

If either party fails to demand performance of any provision of the Contract within a time limit set by the Contract, this is without prejudice to its right to demand performance at a later date, unless the party in question has expressly agreed to the non-performance in writing.

Article 33. Exit Clause

- 33.1. If the Contract ends early for any reason whatever, the Counterparty shall, at the first request by the Contracting Authority, take whatever action is necessary to ensure that a new counterparty or contractor can, without impediment, assume responsibility for performing the Contract and/or that a new counterparty can work on a similar Deliverable for the benefit of the Contracting Authority. The Counterparty shall also immediately return to the Contracting Authority all documents, books, papers and other items, including data and information carriers, made available to it by the Contracting Authority.
- 33.2. Other than in a case where the Contract is cancelled pursuant to the provisions of Article 31.1 or 31.3, the Counterparty shall perform the services referred to in Article 33.1 at the rates and on the terms specified in the Contract or, in their absence, at the rates generally applied by the Counterparty and on such terms as may be agreed. The services referred to in Article 33.1 shall be provided free of charge if the Counterparty imputably fails to discharge an obligation, such to include the situation referred to in the last sentence of Article 31.4.

Article 34. Bribery and Conflicts of Interest

- 34.1. The parties may not offer to each other or to third parties – or solicit, accept or obtain from each other or third parties – whether for themselves or for any other party, any gift, reward, compensation or benefit in any form whatsoever if this could be construed as an illicit practice.

Such a practice may constitute grounds for annulment of the Contract either in full or in part.

- 34.2. If it is found that a member of the Contracting Authority's Staff is also in the Counterparty's employment or was also in the Contractor's employment at the time when negotiations took place about the Contract, regardless of whether or not this is or was paid employment, and that the Contracting Authority was not informed of this prior to the conclusion of the Contract, the Contracting Authority may annul the Contract with immediate effect, without being required to give notice of default or to pay any compensation and without prejudice to any right of the Contracting Authority to compensation.

Article 35. Continuing Obligations

Termination of the Contract shall not discharge the parties from obligations which, by their nature, are intended to continue in force thereafter. These obligations include in any event the provisions on indemnification for breaches of intellectual property rights and on guarantees, liability, the duty of confidentiality, disputes and the applicable law.

Article 36. Follow-up Order

The Counterparty cannot derive any rights from the Contract to obtain a follow-up order.

Article 37. Void and Set-aside Provisions

If one or more provisions of the Contract are found to be void or are set aside by a court of law, the remaining provisions of the Contract shall retain their legal force as far as possible. The parties shall consult on the void and set-aside provisions in order to agree on an alternative arrangement. This may not affect the object and tenor of the Contract.

Article 38. Disputes and Applicable Law

- 38.1. Any dispute between the parties in relation to the Contract shall be submitted only to the competent court in the district of The Hague, unless the parties agree on an alternative means of dispute resolution at that time.
- 38.2. The Contract is governed by Dutch law, to the express exclusion of the rules of private international law, including the UN Convention on Contracts for the International Sales of Goods (CISG).

Special Terms Applicable to Purchases

These terms shall apply, together with the NPO General Terms and Conditions for IT Contracts 2018, to the purchase of IT Products (referred to below as Products) such as computers, laptops, servers and network equipment.

Article 39. Installation

- 39.1. If the nature and/or scope of the Deliverable warrants, the Supplier may inspect the place of Installation of the Product prior to Delivery.
- 39.2. If the Supplier considers the place of Installation to be unsuitable, it shall immediately notify the Contracting Authority. The Contracting Authority and the Supplier shall then consult together to determine a suitable place of Installation.

Article 40. Guarantees

Further to Article 12, the Supplier guarantees that:

- a. the Product shall be composed of new parts upon Delivery
- b. at the time of Delivery it shall have full title to the Product and that the Product is not subject to any reservation of title, limited right or seizure or attachment by a third party and is free from other encumbrances and limitations

Article 41. Special Duty to Provide Information

For at least three years after the conclusion of the Contract the Supplier shall, of its own volition, provide the Contracting Authority with information about ways of enhancing the operation of the Product.

Article 42. Product Modifications

Where a manufacturer prescribes a Product modification, the Supplier shall ensure that the modification is made as quickly as possible and free of charge either by itself or by the manufacturer of the Product.

Special Terms Applicable to Licences

The terms of this special part apply, together with the NPO General Terms and Conditions 2018, to the acquisition of Licences by the Contracting Authority.

Article 43. Additional Definitions

Further to Article 1, the following terms, where written with initial capitals, are defined as follows in this special part of the NPO General Terms and Conditions 2018:

- 43.1. Escrow: the depositing of the Source Code (or a copy thereof) with an independent third party to enable the Contracting Authority, in cases where one or more of the conditions specified in the Escrow Agreement are fulfilled, to use the Source Code (or cause it to be used) to resolve faults and otherwise maintain and manage the Standard Software.
- 43.2. Installation Copy: a data carrier containing the Standard Software for which the Licence is granted.
- 43.3. Owner: the person in whom the intellectual property right to the Standard Software is vested.

Article 44. Nature and Content of the Licence

- 44.1. Subject to the Terms and Conditions, the Supplier grants the Contracting Authority a perpetual and irrevocable Licence to the Standard Software and to New Versions thereof if the Contracting Authority is entitled to receive them. The Licence does not entail any transfer by the Supplier to the Contracting Authority of any patent, copyright or trademark in relation to the relevant Standard Software.
- 44.2. The Licence in any event includes the following (for which the Contracting Authority is not liable for any additional fee):
 - a. the right to use all functionalities of the Standard Software that are accessible to the Contracting Authority, even if they are not listed in the Documentation
 - b. the right to make, save and regularly test copies of the Standard Software and keep them on hot standby for the purposes of disaster recovery
 - c. the right to use the Standard Software for testing and development purposes
 - d. the right to use the Standard Software without any limitation or restraint in terms of place, hardware, duration and so forth, including its use by third parties on behalf of the Contracting Authority
 - e. the right to copy the source code of the Software if the Contracting Authority needs to do so in order to exercise its right of use
- 44.3. The Contracting Authority may make and use copies of the Standard Software as often as it considers necessary for the purpose of its operational activities. If it does so and thus owes an additional payment to the Supplier it shall notify the Supplier of this with due dispatch. The Contracting Authority may not remove any notices of ownership and copyright when reproducing Standard Software.
- 44.4. Until the moment of Acceptance of the Standard Software, the Contracting Authority obtains from the Supplier a non-exclusive right to use the Standard Software for installation and testing purposes.

- 44.5. If the Supplier repairs Defects in the Standard Software only by issuing Patches or Enhanced Versions, the Contracting Authority is entitled to receive and use them free of charge during the guarantee period referred to in Article 12.3, even if it has not agreed any Maintenance with the Supplier.
- 44.6. In case of (re-)transition or bankruptcy, the Counterparty shall grant the right of use of the (Standard) Software which the Contracting Authority needs to safeguard the continuity of service provision. Remuneration for this right shall never exceed the rate which was charged (explicitly or implicitly) during the term of the Agreement.

Article 45. Guarantees

Further to Article 12, the Supplier shall guarantee that:

- a. the Standard Software does not contain any technical features, functions or other extraneous elements that could prevent the Agreed Use at any time, whether temporarily or otherwise
- b. if it is not the Owner of the Standard Software, it has been authorised by the Owner to grant this Licence to third parties on behalf of the Owner. The Supplier shall furnish the Contracting Authority, on request, with a copy of the authorisation

Article 46. Provision of an Installation Copy

- 46.1. The Supplier shall, if possible, provide the Contracting Authority with an Installation Copy or enable it to make a copy itself. The price of the copy is included in the Fee.
- 46.2. If the Contracting Authority is entitled to receive New Versions, the provisions of Article 46.1 shall also apply to them.
- 46.3. If the Installation Copy has been mislaid or has been damaged in such a way that the Agreed Use is no longer possible, the Supplier shall, on request and with due dispatch, provide the Contracting Authority with a new Installation Copy of the original version delivered to the Contracting Authority and of any Enhanced and New Versions thereof used by the Contracting Authority or shall enable the Contracting Authority itself to make such a copy. In so far as applicable, the Supplier shall be entitled only to reimbursement of the cost price of the materials of the Installation Copy.

Article 47. Conversion into other Licences

- 47.1. If the Supplier wishes at any time to convert the Licence granted to the Contracting Authority into another licence in respect of the Standard Software, it shall consult in advance with the Contracting Authority about this and about the exchange ratio to be applied in this connection. Such a conversion may not have disadvantageous consequences of any kind whatever for the Contracting Authority.
- 47.2. If the parties do not reach agreement in the consultations referred to in Article 47.1, the Contracting Authority may continue to exercise its Licence in full.

Article 48. Escrow

- 48.1. The Contracting Authority may at all times require the Supplier to provide for Escrow, even if this has not been initially agreed.
- 48.2. The Escrow must include all information not in the public domain that is reasonably needed by the Contracting Authority to resolve faults and maintain and manage the Standard Software in

such a way that it can continue to make the Agreed Use thereof. The Escrow must satisfy the conditions normally applicable to escrow in the Dutch market at the time the arrangements are made.

- 48.3. If Escrow forms part of the Contract, the Supplier shall furnish the Contracting Authority with proof that the Escrow fulfils the relevant provisions of the Contract or make provision for such an arrangement with due dispatch.
- 48.4. Even if Escrow does not form part of the Contract, the Contracting Authority is still entitled subsequently to require that such an arrangement be concluded or to accede at any time to an Escrow agreement as referred to in Article 48.2. Any reasonable costs incurred in this connection shall be borne by the Contracting Authority.

Article 49. Business Continuity

- 49.1. The Counterparty must take measures and precautions to achieve continuity of service and unhampered access to and use of the Software. For this purpose, the Counterparty must implement and document measures and precautions for business continuity management before supplying the Software to NPO. The Counterparty must ensure that such business continuity management meets ISO 22301 standards.
- 49.2. The Counterparty shall regularly test the BCM procedures and measures and have them audited by an independent external accountant. Immediately upon production of the test report and audit report, the Counterparty shall submit a copy to NPO. If the report(s) show that the BCM procedures and measures are insufficiently effective, the Counterparty must remedy the situation as soon as possible.

Special Terms Regarding Public Service Contracts

The provisions of this special part apply, together with the NPO General Terms and Conditions for IT Contracts, where the Supplier performs services for the Contracting Authority such as consultancy, development of Custom Software, directing IT projects, managing and operating IT infrastructure, provision of network and workplace services and Secondment.

General

Article 50. Additional Definitions

Further to Article 1, the following terms, where written with initial capitals, are defined as follows in this special part of the NPO General Terms and Conditions 2018:

- 50.1 Secondment: the provision of Staff by the Contractor to the Contracting Authority to carry out work under the direction and supervision of the Contracting Authority.
- 50.2 Custom Software: Software specifically developed or yet to be developed for the Contracting Authority or modifications to Standard Software specifically made for the Contracting Authority.

Article 51. Time and Place of Work

The work shall be carried out at the time and place specified in the Contract. The Contracting Authority may change the place where the work is to be carried out, provided that it notifies the Contractor no later than three Working Days before the change is to take effect. If the change demonstrably causes extra costs for the Contractor, the Contracting Authority shall reimburse such costs. If the opposite is the case, the Contracting Authority is entitled to a corresponding reduction in the Fee.

Article 52. Assignment of Specific Staff

If the Contracting Authority enters into the Contract on the basis that it shall be implemented by one or more specific persons, the Contractor shall ensure that these persons are and remain charged with its actual implementation.

Article 53. Progress Reporting and Work Consultations

- 53.1. The Contractor shall report to the Contracting Authority on the progress of the work in the manner specified in the Contract. In doing so it shall provide information about the state of the work, the number of hours spent on the Public Service Contract to date and other aspects relevant to its performance.
- 53.2. The parties shall consult together as often as they consider necessary on the progress of the work.

Article 54. Professional Indemnity Insurance

Without prejudice to the provisions of Article 30, the Contractor has taken out and shall maintain professional indemnity insurance that is appropriate and, taking account of the nature and scope of the Public Service Contract, customary by prevailing standards.

Article 55. Employment Conditions

- 55.1. In performing the Public Service Contract, the Contractor shall comply with the applicable legislation on employment conditions and with the collective labour agreement applicable to its Staff.

- 55.2. The Contractor shall record all agreements on employment conditions made for the purpose of the performance of the Public Service Contract in a clear and accessible manner.
- 55.3. Upon request, the Contractor shall immediately grant competent authorities access to these agreements on employment conditions, and cooperate with any inspections, audits and salary validations.
- 55.4. Upon request, the Contractor shall immediately grant the Contracting Authority access to the agreements on employment conditions referred to in Paragraph 2, if the Contracting Authority considers this necessary to prevent or deal with a salary claim concerning work carried out for the purpose of the performance of the Public Service Contract.
- 55.5. The Contractor shall impose the obligations arising from the previous paragraphs in full on all parties with which it enters into contracts for the purpose of the performance of the Public Service Contract and shall also stipulate that these parties impose these obligations in full on all parties with which they, in turn, enter into contracts for the purpose of the performance of the Public Service Contract.

Specific Types of Public Service Contract

Consultancy Services

Article 56. Day-to-day Management and Supervision

The Contractor is responsible for the day-to-day management and supervision of implementation of the Public Service Contract.

Article 57. Project Managers

Each party may appoint a project manager whose powers, tasks and responsibilities are recorded in the Contract.

Article 58. Project Phasing

If the project is to be carried out in phases, the different phases shall be specified in the Contract. The Contract shall also state what work is to be carried out in each individual phase, to what work vital deadlines apply, what the outcome must be and when and how the phases shall be concluded.

Development of Custom Software

Article 59. Management and Supervision, Appointment of Project Managers and Project Phasing

Articles 56 to 58 apply *mutatis mutandis* to the development of Custom Software.

Article 60. Completion

A Public Service Contract to develop Custom Software includes Completion. Completion involves the handing over of the Source Code and the Object Code.

Article 61. Acceptance Procedure

- 61.1. Without prejudice to the provisions of Article 11, Acceptance of Custom Software shall take place as follows.
- 61.2. The Contractor shall give the Contracting Authority timely notice of Completion in respect of the Custom Software.
- 61.3. If the Contracting Authority carries out or commissions an acceptance test, it shall draw up and sign a test report as quickly as possible and send it to the Contractor. The test report shall record any Defects that are discovered and whether the Contracting Authority approves or rejects the Custom Software.
- 61.4. If the Contracting Authority approves the Custom Software, the date of signature of the test report shall be deemed to be the date of Acceptance.
- 61.5. If the Contracting Authority does not approve the Custom Software when carrying out the acceptance test for the first time, it shall repeat the test in full or in part within such reasonable period as it may set. Subsequently, the Contracting Authority shall record in a supplementary test report whether the Defects discovered in the first test have been repaired and whether it now approves the Custom Software.
- 61.6. If the Contracting Authority rejects the Custom Software, the Contractor shall repair the Defects

at its own expense within a reasonable period set by the Contracting Authority and starting on the date of signature of the test report. If the Contractor fails to make the repairs, the Contracting Authority may itself repair the Defects, or have them repaired by a third party, at the expense of the Contractor after giving notice to the Contractor. In such cases the Contractor shall cooperate fully and free of charge, for example by providing the necessary information to the Contractor as soon as it requests. If the Contracting Authority itself repairs a Defect, or has it repaired by a third party, for the reason referred to above, this does not in any way relieve the Contractor of its agreed responsibilities for the Custom Software.

- 61.7. If the Contracting Authority once again rejects the Custom Software after the second acceptance test, the Contractor shall be deemed to be in default as a result. In that case the Contracting Authority may cancel the Contract with immediate effect, without recourse to the courts and without any demand or notice of default being required for this purpose.
- 61.8 The provisions of Article 59 do not affect the provisions of Article 30; in other words, the Contracting Authority is not obliged to follow the procedure set out in Article 59 if the Counterparty is in default on other grounds.

Article 62. Maintenance of Custom Software

- 62.1. If the Contracting Authority itself maintains Custom Software or has it maintained by a third party, the Contractor shall assist it, on request, for a fee set at the current market rate. For this purpose, the Contractor shall, on request, provide the requisite information or supplementary information to the Contracting Authority or a third party used by it in this connection. The above also applies to management activities carried out in respect of Custom Software by the Contracting Authority itself or by a third party on its behalf.
- 62.2. If the Contracting Authority has agreed with the Contractor that the latter shall also carry out Maintenance, the relevant provisions of that Contract shall apply.

Secondment

Article 63. Applicability

Secondment exists – and hence Articles 63 to 69 apply – only if the relevant Contract has been expressly designated by the parties as a Secondment Agreement.

Article 64. Guarantees

Further to the provisions of Article 12.1, the Contractor guarantees that it shall always have sufficient Staff to perform the Contract properly for the Contracting Authority.

Article 65. Working Days and Working Hours

- 65.1. The working days and working hours of Staff provided by the Contractor shall be the same as those of the Staff of the Contracting Authority at the same location.
- 65.2. Overtime occurs only if work is carried out at the request of the Contracting Authority outside the working days and working hours referred to in Article 65.1. Work carried out for a maximum of half an hour immediately after the working hours referred to in that Article is not deemed to be overtime.

Article 66. Secondments and Foreign Postings

- 66.1. Staff seconded to the Contracting Authority may not be hired out by the Contracting Authority to third parties without the Contractor's consent.

66.2. Staff seconded to the Contracting Authority may not be posted by the Contracting Authority to work outside the Netherlands without the Contractor's consent.

Article 67. Leave and Training

67.1. Contractor Staff shall take leave only after consulting with the Contracting Authority and allowing for the normal progress of the work.

67.2. The costs of leave taken by Contractor Staff shall be borne by the Contractor.

67.3. The costs of training undertaken at the request of the Contracting Authority and the costs of the consequent time off work shall be borne by the Contracting Authority.

67.4. Each year the Contracting Authority may designate a number of days on which its office will be closed for reasons to be specified. On such days no work shall be performed by Contractor Staff at that location.

Article 68. Indemnity

The Contractor shall indemnify the Contracting Authority against claims by Contractor Staff based on the alleged existence of an employment contract with the Contracting Authority.

Article 69. Hirer's liability

69.1. The Contractor shall indemnify the Contracting Authority against the hirer's liability for salaries tax and social insurance contributions and for turnover tax that the Contractor, or third parties used by it, may be or become liable to pay in connection with the performance of the Contract.

69.2. The salaries tax and social insurance contributions and turnover tax that must be remitted by the Contractor in connection with the performance of the Contract may be paid by the Contracting Authority to a Contractor's so-called 'G account'. If the Contractor does not have a G account it shall open one, if possible at the first request by the Contracting Authority, and shall do whatever is necessary to maintain such an account.

- a. pay directly to the tax authorities or
- b. pay into a so-called Contractor's G account. If the Contractor does not have a G account it shall open one, if possible at the first request by the Contracting Authority, and shall do whatever is necessary to maintain such an account

Special provisions on maintenance

The provisions of this special part apply, together with the NPO General Terms and Conditions 2018, where the Contracting Authority agrees with the Contractor that Maintenance be carried out by the Contractor.

General

Article 70. Additional Definitions

Further to Article 1, the following terms, where written with initial capitals, are defined as follows in this NPO GENERAL TERMS AND CONDITIONS FOR IT CONTRACTS 2018

special part of the NPO General Terms and Conditions 2018:

- 70.1. Corrective Maintenance: the tracing and resolution by the Contractor of Faults reported by the Contracting Authority or Faults that have otherwise become known to the Contractor.
- 70.2. Repair Time: the periods, expressed in Service Hours, between the moment when a Fault is reported to the Contractor and the moment it is resolved.
- 70.3. Innovative Maintenance: the provision by the Contractor to the Contracting Authority of New Versions or newly developed parts of Products and/or new Documentation.
- 70.4. Preventive Maintenance: measures taken by the Contractor to prevent Faults, and related forms of service.
- 70.5. Response Time: the time within which the Contractor (or Contractor Staff) must adequately respond to a report by the Contracting Authority of a Fault, and other requests by the Contracting Authority for service.
- 70.6. Service Levels: requirements such as Response Times and Repair Times included in the Contract in respect of Maintenance and other agreed forms of service.
- 70.7. Service Hours: hours that fall within the agreed service period.
- 70.8. Fault: a technical problem that occurs when using the Deliverable.

Article 71. Maintenance of Deliverables Previously Provided

Even where an agreement for Maintenance in respect of a Deliverable previously provided by the Contractor to the Contracting Authority is concluded between them at a later date, these Special Provisions shall apply to such Maintenance.

Article 72. Maintenance Starting Date

- 72.1. The Contractor shall provide Maintenance from the date specified in the Contract.
- 72.2. The Contractor shall at all times notify the Contracting Authority of planned Maintenance at least two weeks in advance, whereby the Contracting Authority shall be entitled to change the maintenance time if the proposed time threatens to disrupt the operational process and/or the digital broadcasting process or the Contracting Authority's core processes.

Article 73. Time and Place of Maintenance

- 73.1. The Contractor shall perform the Maintenance at or from its premises. The Contractor shall perform Maintenance at the Contracting Authority's premises only where reasonably necessary.
- 73.2. Maintenance that may disrupt the business operations and the digital broadcasting process of the Contracting Authority shall in principle be carried out outside the Contracting Authority's normal working hours.
- 73.3. If disruption to the business operations and digital broadcasting process referred to in Article 73.2 is inevitable, given the importance of resolving the Fault immediately, the Contractor shall give the Contracting Authority timely notice before starting the Maintenance work.

Article 74. Progress Report and Work Consultations

NPO GENERAL TERMS AND CONDITIONS FOR IT CONTRACTS 2018

- 74.1. The Contractor shall report to the Contracting Authority on the progress of the work in the manner specified in the Contract. In doing so it shall provide information about the state of the work, the number of hours spent on it to date and other aspects relevant to the performance of the Maintenance.
- 74.2. The Parties shall consult on the progress of the work together as often as either considers necessary.
- 74.3. The Contractor shall ensure that information on the causes of Faults and the result of Maintenance is adequately recorded and filed and that, if necessary, the Documentation is modified.

Article 75. Corrective Maintenance and Work-around Solutions

- 75.1. Maintenance shall in any event consist of Corrective Maintenance.
- 75.2. The guarantee in Article 12.7 that the Contractor shall maintain the Deliverable for at least three years after Acceptance in accordance with these provisions, shall apply in full to Corrective Maintenance, even if the Contracting Authority does not wish to acquire New Versions or the latest models of a Product.
- 75.3. The Contractor shall use a work-around solution only with the consent of the Contracting Authority. Unless the parties agree differently in a specific case, the Contractor shall replace a work-around solution as quickly as possible with a final solution.

Article 76. Preventive Maintenance

As part of Preventive Maintenance the Contractor shall examine the Deliverable regularly and check at least once a year that it is working properly.

Article 77. Reporting and Prioritising Faults

- 77.1. The Contracting Authority shall report Faults and their resolution in the manner prescribed in the Contract.
- 77.2. In reporting a Fault the Contracting Authority shall assign a priority level to it in accordance with the provisions of the Maintenance Contract.
- 77.3. In responding to a report as referred to in Article 77.1 the Contractor shall always aim to resolve the Fault as quickly as possible, whether or not by means of a work-around solution. The provisions of Article 73.3 apply in this connection.

Article 78. Compliance with Service Levels

- 78.1. The Contractor shall use its best endeavours to achieve the agreed Service Levels. The consequences of not achieving them are regulated in the Contract. The provisions of Article 14.3 apply in this connection. The Contract may in any event be cancelled in the event of repeated failures to achieve the Service Levels.
- 78.2. Notwithstanding the provisions of Article 76.1, Repair Times and Response Times are deemed to be Vital Deadlines.
- 78.3. Service Levels do not detract from the other provisions of the Contract.

Article 79. Maintenance by Third Parties

Where the Contracting Authority has agreed a Maintenance Contract with the Contractor, its rights under the Contract shall be preserved in respect of any maintenance carried out at the request of the Contracting Authority by a third party during the term of the relevant Contract only if the Contractor has failed to perform its obligations under the Contract or if the Contracting Authority has obtained the Contractor's consent.

Article 80. Maintenance Result Testing

The Contracting Authority may test (or cause to be tested) whether a Fault has actually been resolved. The Contractor is obliged to cooperate in such a test. If it is apparent from the test that a Fault has not been properly resolved, the Contracting Authority may recover the cost of the testing from the Contractor.

Article 81. Professional Indemnity Insurance

Without prejudice to the provisions of Article 29, the Contractor must have taken out and shall maintain professional indemnity insurance in a manner in keeping with normal business practice, taking account of the nature and scope of the Maintenance.

SPECIFIC MAINTENANCE

Products

Article 82. Product Modifications

Product modifications that are not prescribed by the manufacturer or the Supplier shall be made by the Contractor in consultation with the Contracting Authority and only after the Contracting Authority has agreed to the price quoted for the work.

Article 83. Replacement of Parts

- 83.1. If the replacement of parts by the Contractor causes or may cause changes to the functioning of the Product, this replacement shall be made only with the consent of the Contracting Authority.
- 83.2. Parts may be replaced only by new parts that are at least equivalent in functional and technical terms.

Software

Article 84. Scope of Maintenance

Further to the provisions of Article 73.1, Software Maintenance consists not only of Corrective Maintenance but also of Preventive Maintenance and support. If the Contracting Authority so wishes, Software Maintenance shall also include Innovative Maintenance.

Article 85. Support

- 85.1. Further to the provisions of Article 13, the Contractor shall provide support to the Contracting Authority, at its request, in the form of advice on the use and functioning of Software.
- 85.2. The Contracting Authority may request the Contractor for support at the times referred to in the Maintenance Contract.
- 85.3. If the Contracting Authority requests support as referred to in Article 85.2, the Contractor shall arrange as quickly as possible and, if applicable, within the Response Time for contact between a program specialist and the Contracting Authority.

Article 86. Enhanced and New Versions

- 86.1. The Contractor shall ensure a consistent policy on the release of versions. The basic principle is that Enhanced and New Versions should be provided in good time. Therefore the Contractor shall regularly investigate the need for such versions and shall inform the Contracting Authority as quickly as possible about the findings of its investigation.
- 86.2. Interim changes to Software made as a consequence of Corrective Maintenance shall, as far as possible, form part of Enhanced and New Versions.
- 86.3. The Contractor shall provide the Contracting Authority, on request, with a copy of a New Version for the purposes of testing and evaluation. The Contracting Authority shall not be obliged to upgrade to the New Versions.
- 86.4. If it has been agreed that the Contractor shall install the Software, this obligation also applies to New Versions that the Contractor wishes to use.
- 86.5. If the Contractor decides to issue different Software rather than a New Version of the existing

Software used by the Contracting Authority, and to discontinue Innovative Maintenance of the existing Software, the Contracting Authority may either demand full performance of the Maintenance Contract or claim a Licence to the new Software under the conditions that apply to a New Version as recorded in the Contract.