

GIBIT 2020

Articles



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I General section

Article 1. Concepts

In these Municipal Procurement Conditions for IT (GIBIT 2020), the following terms are used with a capital letter or initial letter:

- 1.1. **Acceptance:** the formal approval of (parts of) the ICT Performance, separately and in cohesion with each other, by means of a successfully implemented (integral) Acceptance procedure.
- 1.2. **Acceptance Procedure:** the test procedure with which it can be demonstrated that the ICT Performance does not contain any Defect(s).
- 1.3. **Application landscape:** the whole of internal and external systems, software, databases, links, equipment, ICT infrastructure and tools that form the automated information provision for the Contracting Authority within which the ICT Performance is embedded.
- 1.4. **Availability:** the extent to which the ICT Performance is actually available to Principal and can be used.
- 1.5. **Conversion:** converting and migrating data files of the Client from the old system to the new ICT Performance, without affecting the completeness, the integrity and the metadata of the data.
- 1.6. **Corrective Maintenance:** the tracing and repairing by Supplier of Defects which Customer has reported to it or which have become known to Supplier in some other way.
- 1.7. **Third Party Software:** Software of which both (a) the intellectual property rights do not rest with Supplier and/or a company affiliated to Supplier and (b) whereby Supplier is unable to enforce certain developments/changes in such software.
- 1.8. **Documentation:** the documentation referred to in Article 11.
- 1.9. **Functional Repair Time:** the period between the time when a Defect is reported to the Supplier and the time when it is remedied.
- 1.10. **Defect:** The failure of the ICT Performance to satisfy, or satisfy in full, the Agreed Use.
- 1.11. **Right of use:** the right on the basis of which Principal is authorized to use the ICT Performance within the frameworks set in the Agreement.
- 1.12. **Municipal ICT quality standards:** the document published by the Association of Netherlands Municipalities (VNG) and VNG Realisatie at www.gibit.nl and updated from time to time, containing a bundled collection of standards and norms for ICT products and services.
- 1.13. **GIBIT 2020:** the current Municipal Procurement Terms and Conditions for IT, as determined by VNG dated 26 October 2020.
- 1.14. **Hosting:** provision by Supplier of the ICT Performance to Customer by means of remote communication techniques.
- 1.15. **ICT Performance:** all goods to be delivered by Supplier under the Agreement, including items, Rights of Use and services.
- 1.16. **Implementation:** the whole of actions and activities that are necessary in order to be able to put all parts of the ICT Performance, separately and in mutual cohesion, into use in the organisation of Principal, in such a way that all users of Principal can work with it in accordance with the Agreed Use. Implementation also includes the Conversion, the realisation of the Interfaces necessary for the Agreed Use and the performance of the Acceptance Procedure.
- 1.17. **Implementation plan:** the plan of approach for the Implementation, which includes a concrete elaboration of the activities to be performed by the parties concerned in this respect, the ICT Performance to be implemented and/or developed, the responsibilities of Supplier and Customer and the time schedule.
- 1.18. **Innovative Maintenance:** the provision by Supplier to Customer of Upgrades to the ICT Performance.

- 1.19. **Interoperability Requirements:** the requirements set in the Agreement for the ICT Performance to be able to exchange data with or otherwise cooperate with other parts of the Application Landscape.
- 1.20. **Annual Fee:** the average annual fee, to be calculated by dividing the Fee by the initially intended duration of the Agreement in years. For Agreements without a term, or with a term shorter than 1 year, the Annual Fee is equal to the Fee.
- 1.21. **Link:** the system for exchanging data between the ICT Performance on the one hand and (parts of) the Application landscape on the other.
- 1.22. **Custom software:** Software specifically developed or to be developed for the benefit of Client or adaptations of Standard Software specifically for the benefit of the Client.
- 1.23. **Supplier:** the party with whom the Customer has concluded an Agreement.
- 1.24. **Maintenance:** Corrective Maintenance, Preventive Maintenance, Innovative Maintenance and user support, all insofar as agreed and detailed in the GIBIT 2020, the Agreement and the SLA (if any).
- 1.25. **Principal:** the party for whose benefit the Agreement is concluded.
- 1.26. **Agreed use:** the use of the ICT Performance as intended by Customer as was known to Supplier at the time of concluding the Agreement (whether or not on the basis of the request for quotation or other documents preceding the Agreement) or should have been known to Supplier pursuant to Article 3, all this insofar as that use is not expressly excluded or limited in the Agreement.
- 1.27. **Agreement:** the arrangements between Principal and Supplier regarding the delivery of the ICT Performance, of which the GIBIT 2020 forms part.
- 1.28. **Personnel:** the staff members and/or auxiliary persons to be engaged by the parties in the execution of the Agreement.
- 1.29. **Preventive Maintenance:** the taking of measures by the Supplier to prevent Defects and other technical problems and other related forms of service, whether or not by making Updates available.
- 1.30. **Software:** all the software to be supplied by Supplier. Software may be divided into Standard, Third Party and Custom software.
- 1.31. **Response time:** the time within which Supplier must respond adequately to a report by Customer of a Defect and other requests by Customer for services.
- 1.32. **Service Levels:** requirements and performance standards included in the Agreement with regard to Maintenance and other agreed forms of service provision, such as Response and Functional Recovery Times.
- 1.33. **Standard Software:** Software developed for general use which is not made available exclusively to the Client.
- 1.34. **Service Level Agreement (SLA):** the further agreement relating to the Maintenance, including the type of Maintenance to be provided and the applicable Service Levels.
- 1.35. **Update(s):** a subsequent version of the ICT Performance in which Defects have been repaired and/or the performance of the ICT Performance has otherwise been improved.
- 1.36. **Upgrade(s):** a subsequent version of the ICT Performance with predominantly new or changed functionalities, whether or not released under a different name.
- 1.37. **Fee:** the total agreed price for the ICT Performance, to be calculated on the basis of the initially intended duration of the Agreement and including the initial budget of the work for which no (fixed) price is agreed upon (all exclusive of VAT).
- 1.38. **Processing Agreement:** the processing agreement attached to the Agreement or, in the absence thereof, the Standard Processing Agreement declared standard by the VNG (Association of Netherlands Municipalities) at the time the Agreement was concluded, as administered by the VWO management group of the VNG.

Article 2. Applicability

- 2.1. GIBIT 2020 shall apply to and form part of all requests, quotations, offers, order confirmations, orders, agreements and all other legal acts between Customer and Supplier relating to the ICT Performances specified in the Agreement and related thereto.
- 2.2. The GIBIT 2020 consists of three chapters:
 - i. Chapter I (which always applies); and
 - ii. Chapter II regarding privacy, security and archive management (which is applicable if the ICT Performance processes data of Principal); and
 - iii. Chapter III on Hosting (which applies when providing Hosting).
- 2.3. The applicability of any general or specific conditions or stipulations of the Supplier, under whatever name, is expressly rejected.
- 2.4. Should any provision of GIBIT 2020 be void or be annulled, or should any provision of GIBIT 2020 in the opinion of the court be inapplicable or invalid, then only the provision concerned will be deemed not to be written, but GIBIT 2020 will otherwise remain in full force. The parties will consult with each other to replace the relevant non-applicable or invalid provision with a new provision, taking into account as much as possible the object and purport of the earlier provision.
- 2.5. In the event of any conflict between the provisions of GIBIT 2020 and those of the Agreement, the provisions of the Agreement will prevail over those of GIBIT 2020.
- 2.6. Amendments and supplements to the GIBIT 2020 shall apply only if agreed in writing between the parties. Amendments and/or supplements shall only apply to the Agreement referred to in Article 2.1.

Article 3. Realisation of the agreement

- 3.1. A request for a quotation or another invitation to make an offer does not bind the Client.
- 3.2. Before making an offer to the Customer, the Supplier has acquainted itself sufficiently with:
 - i. the objectives in connection with which the Client wishes to enter into the Agreement;
 - ii. the organisation and the Application landscape of the Customer, insofar as relevant to the application or the offer.
- 3.3. If and to the extent that Supplier does not have sufficient information to meet the obligation referred to in the previous paragraph, it must inquire about this with Customer. Customer shall provide all information reasonably requested by Supplier (unless it is of a confidential nature and cannot reasonably be provided under a confidentiality agreement).
- 3.4. When making an offer, the Supplier:
 - i. take into account the information referred to in the previous two paragraphs; and
 - ii. address the risks arising from that information and the management measures required in that respect in the offer ("risk analysis"), subject to the provisions of Article 4.3;
 - iii. comply with Article 19.1.
- 3.5. In the event of a tender within the meaning of the Dutch Procurement Act, the obligations referred to in paragraphs 2 to 4 are limited by the content, nature and scope of the information provided in the tender documents.
- 3.6. An agreement shall only be concluded after either (1) the Client has accepted in writing an offer made by the Supplier, (2) the parties have signed an agreement drawn up in writing or (3) the Supplier implements a written order from the Client.

Article 4. Execution of agreement

- 4.1. Agreed periods are only considered fixed and fatal if this has been expressly agreed in writing.
- 4.2. The following deadlines are - contrary to the previous paragraph - fatal in all cases:
 - i. a specific end date for the Implementation included in the Agreement or the Implementation Plan (whereby any related interim delivery dates are not fatal);
 - ii. if the Agreed Use includes completion of the Implementation or delivery of Updates and/or Upgrades in good time before the entry into force of any legislation or regulations, or any amendment to such legislation or regulations: the effective date of such legislation or regulations, or any amendment to such legislation or regulations.
- 4.3. The risk analysis referred to in article 3.4 ii) may also - except in the case of a tender as referred to in article 3.5 - be carried out after the Agreement has been concluded, but prior to the Implementation. If the Supplier's proposal regarding the way in which the identified risks are dealt with is not acceptable to the Customer, the Customer is entitled to terminate the Agreement with immediate effect, without being liable for compensation, but against reimbursement of the costs incurred by the Supplier up to that time (including the costs of conducting the risk analysis).
- 4.4. Insofar as it ensues from the Agreement that Supplier shall arrange for the transport of the items belonging to the ICT Performance, the risk of damage or loss during such transport shall rest with Supplier.
- 4.5. The Customer will comply with its obligations under the Agreement and the related further agreements (Implementation Plan, SLA, etc.) and will always provide the cooperation reasonably required for this purpose.

Article 5. Implementation of ICT Performance

- 5.1. Unless the Agreement expressly provides otherwise, or the ICT Performance by its nature cannot be implemented, Supplier shall provide for Implementation of the ICT Performance in Customer's organization, in accordance with the relevant provisions (if any) of the Agreement and the Implementation Plan.
- 5.2. If no Implementation Plan has been drawn up by the time the Agreement is signed, it will be drawn up within a reasonable period of time at the first request of either party, after mutual consultation between the parties. The Supplier will act as coordinator for the Implementation Plan. The costs of drawing up the Implementation Plan will be included in the Fee.
- 5.3. If an Implementation Plan is drawn up, it will include the following (always insofar as applicable):
 - i. Thorough description of the objectives of the project to achieve the Implementation of ICT Performance and the preconditions and applicable frameworks and standards, also in the light of the risk analysis carried out;
 - ii. The project organization including the method of reporting and the method of project management;
 - iii. The division of work and responsibilities, including the commitment and availability required from the Principal;
 - iv. An overview of the required Links, their functional specifications and the possible cooperation of third parties required for their creation;
 - v. The relationship between the ICT Performance and the other components of the Application Landscape and any cooperation of third parties that may be required for the Implementation in view of that relationship;
 - vi. The partial deliverables ('milestones') of the project and the functional specifications for the partial deliverables that must be met (in relation to the Agreed Use);
 - vii. The schedule of the Implementation (including partial deliveries), in accordance with the scheduling requirements of the Agreement;
 - viii. The manner in which each partial delivery is delivered;
 - ix. The manner in which the Acceptance procedure will be carried out;
 - x. The manner in which the Conversion will take place;
 - xi. The manner in which Principal shall be made familiar with the use and the (technical and functional) management of the ICT Performance through education/training, insofar as agreed upon.

- 5.4. The provisions of Article 6.6 apply mutatis mutandis with respect to any cooperation and dependence on third parties that may be required for Implementation.
- 5.5. If it emerges during Implementation that adjustments are required to the Application landscape that the Supplier did not foresee in the offer and/or the risk analysis referred to in Article 3.4(ii), but should have done so, the costs of the adjustments concerned will be borne by the Supplier.
- 5.6. The Supplier hereby declares itself willing and able, at the request of the Customer, to perform activities related to the Implementation for the duration of the Agreement after the (initial) Implementation has been completed. These activities will then be performed at the rates specified in the Agreement (with due observance of Article 9.7) or, failing that, at the Supplier's regular rates. Article 5 shall apply mutatis mutandis to this work.

Article 6. Municipal ICT quality standards, Interoperability requirements, norms and standards

- 6.1. The Agreed Use includes that the ICT Performance complies with the:
 - i. Interoperability requirements, norms and standards prescribed in the Municipal ICT Quality Standards at the time of concluding the Agreement for the function and scope of the ICT Performance concerned;
 - ii. other Interoperability Requirements, standards and norms specified (in more detail) in the Agreement.
- 6.2. Prior to the Implementation, Supplier shall perform the preventive tests prescribed in the aforementioned norms, requirements and standards. These tests shall be performed on Supplier's environment. Supplier shall submit the test report showing that the ICT Performance meets the aforementioned standard(s).
- 6.3. Supplier shall not be required to perform the preventive tests referred to in the previous paragraph if it can submit a report showing that the aforementioned tests have already been completed positively on exactly the same version of the ICT Performance and with comparable Agreed Use.
- 6.4. During the Acceptance procedure it will be verified to what extent the ICT Performance after Implementation at Principal actually complies with what is stated in article 6.1.
- 6.5. If and insofar as the ICT Performance also consists of Interfaces, a chain test will be performed as part of the Acceptance Procedure. This involves testing all Interfaces between the ICT Performance and the Application Landscape for the agreed interoperability.
- 6.6. The Customer is responsible for the timely involvement of the suppliers of parts of the Application Landscape that will be involved in the chain test referred to in the previous paragraph. Unless otherwise agreed, the responsibility for coordinating the work of all parties concerned shall lie with Supplier.
- 6.7. If the chain test referred to in Article 6.5 fails, and Supplier demonstrates that this is not attributable to it, then:
 - i. with regard to the chain test referred to in paragraph 5, Acceptance shall be deemed to have taken place; and
 - ii. the Acceptance Procedure shall otherwise be continued; and
 - iii. a consultation meeting shall be held with all the parties involved in order to reach agreement on an appropriate solution. The initiative for these consultations will be taken by the party performing the co-ordination work on the basis of the previous paragraph. Once the parties have reached agreement on the appropriate solution, they will lay this down in an (amended or supplementary) Implementation Plan. Article 5 applies mutatis mutandis to the drawing up/modification of this plan. Insofar as the execution of this plan results in additional work, this will not commence until expressly agreed by the Customer.

Article 7. Acceptance

- 7.1. If no Implementation Plan has been drawn up, or if such plan does not contain a description of the manner in which the Acceptance procedure will be performed, the manner in which the Acceptance procedure will be performed will be laid down in a written test protocol, upon the Customer's first request. Articles 5.2 and 5.3 shall apply accordingly to the drawing up of this test protocol.
- 7.2. Unless otherwise provided in the Agreement, the Implementation Plan or the test protocol referred to in the previous paragraph, the Acceptance Procedure shall be as follows:
 - i. After every delivery of (parts of) the ICT Performance, the concerning delivery is tested for Defects by Principal. Parties will draw up and sign a test report. In this test report it will be recorded whether the ICT Performance shows Defects and furthermore whether the ICT Performance is (partly) approved or rejected;
 - ii. Within a reasonable time, or at least the time specified in the Agreement for that purpose, after the date of signing of the test report, the Supplier shall issue a schedule for remedying the Defects recorded in the test report at its own expense;
 - iii. After the period referred to in the previous paragraph has expired, Supplier shall submit (the part of) the updated ICT Performance again for Acceptance by means of the Acceptance procedure.
- 7.3. The terms and (adjusted) schedules used in the context of the Acceptance Procedure must fit in with the overall planning of the Agreement or the Implementation Plan, and may not cause any delay.
- 7.4. If and insofar as during the Acceptance procedure there is cooperation and dependence on third parties as referred to in article 5.4, the provisions of article 6.7 shall apply accordingly.
- 7.5. In case (parts of) the ICT Performance is/are rejected for Defects during the (integral) Acceptance procedure for the second time, Principal is entitled to
 - i. to dissolve the Agreement - wholly or in part - extrajudicially without further notice of default, whereby the Supplier shall then also be liable within the framework of article 13 for the damage suffered and to be suffered by the Client; or
 - ii. without prejudice to its right to compensation (within the limits of Article 13) for the damage already suffered, to allow the Supplier to repair the Defects at its own expense; or
 - iii. conditionally accept the ICT Performance under a condition to be agreed upon, whereby if Supplier does not timely perform the conditions set in the conditional acceptance, the provisions under i shall apply.
- 7.6. The provisions of the previous paragraph shall not apply if Supplier demonstrates that Acceptance is withheld as a result of Defects which should reasonably have been discovered by Customer the first time he went through the Acceptance procedure.
- 7.7. For Defects that cannot be solved within the agreed planning, it may be decided by mutual agreement to temporarily apply an acceptable workaround and/or to find a solution at a later date.
- 7.8. Defects that do not (individually or collectively) prevent the use of (the part concerned of) the ICT Performance for productive purposes, cannot form a ground for non-acceptance, without prejudice to Supplier's obligation to remedy these in the short term.
- 7.9. If the ICT Performance is delivered in partial deliveries, after each delivery an Acceptance procedure takes place and after Acceptance of the last part of the ICT Performance an integral Acceptance procedure takes place, whereby the entire ICT Performance as well as the cohesion of partial deliveries ('sum of the parts') is tested for Defects. There is only Acceptance after the successful completion of the integral Acceptance procedure.
- 7.10. Acceptance shall be deemed to have taken place if Customer has put the ICT Performance into use for productive purposes within its organisation, unless the early putting into use of the ICT Performance for productive purposes is related to delays or shortcomings on the part of Supplier.

Article 8. Maintenance and support

General

- 8.1. Unless otherwise agreed, Supplier shall provide Maintenance to the ICT Performance for the fee described in the Agreement. The Maintenance shall commence from the Acceptance of (the relevant part of) the ICT Performance.
- 8.2. The conditions set out below apply as (minimum) conditions for Maintenance, unless departed from in the Agreement/SLA.
- 8.3. Unless otherwise agreed, the Maintenance shall include at least the following services:
 - i. Corrective Maintenance;
 - ii. Preventive Maintenance;
 - iii. Innovative Maintenance;
 - iv. User Support.
- 8.4. The time at which Maintenance is to be carried out shall be determined in mutual consultation. The basic principle is that Maintenance is carried out in such a way that it causes the least possible disruption to the Customer's business processes. Maintenance that is or can be disruptive for the Customer's business processes shall, moreover, be announced in good time beforehand.

Availability, reporting failures and defects

- 8.5. Within the framework of Maintenance, the Supplier can in any case be reached on working days between 08.00 and 18.00 hours.
- 8.6. Defects and other faults may be reported to the Supplier.
- 8.7. If and to the extent that the Supplier proves that a malfunction or Defect is not attributable to it, it shall not be obliged to remedy it. If the Customer nevertheless instructs the Supplier to attempt the aforementioned rectification, the Supplier is entitled to pass on the costs involved in rectification separately.

Service Level Agreement

- 8.8. If and to the extent that this has not already been arranged in the Agreement, Supplier declares itself prepared to conclude one or more Service Level Agreements (SLAs) at the Customer's first request, in which specific Service Levels are laid down with regard to the Maintenance referred to in article 8.3 and which include measures with regard to whether or not the agreed Service Levels are met.
- 8.9. The consequences of failure to achieve the Service Levels will be regulated in the Agreement/SLA, on the understanding that (partial) dissolution of the Agreement and/or the SLA(s) will in any event be possible if the same Service Levels are not achieved for several consecutive measuring periods. Any measures stipulated in the SLA will not affect the Customer's other rights, including the right to recover any damage suffered in addition to the measure. Sanctions paid (as part of the agreed measures) will be deducted from any damages to be paid.

Preventive and Innovative Maintenance

- 8.10. In the framework of Preventive and/or Innovative Maintenance, Supplier guarantees at least:
 - i. that the ICT Performance shall at all times continue to meet the relevant legislation and regulations for the Agreed upon use;
 - ii. that the ICT Performance shall always remain suitable in good time for data exchange with the other relevant parts of the Application landscape (insofar as known to Supplier) and in that connection shall continue to meet the agreed Interoperability requirements;
 - iii. that the ICT Performance shall always continue to meet new versions of standards specified as required standards in the Agreement through the timely release of Updates and/or Upgrades;
 - iv. that when Updates and/or Upgrades are released the performance of the ICT Performance remains at least the same and that the ICT Performance continues to meet the Agreed upon use.
- 8.11. At Customer's request Supplier shall arrange for Implementation of Updates and Upgrades, for a fee to be agreed. The provisions regarding Implementation and Acceptance are in

in that case shall apply mutatis mutandis, on the understanding that in the event of Implementation of an Update, in principle no Acceptance procedure will take place.

- 8.12. Except in the situation referred to in Article 29.4, Customer is entitled to refuse the use and/or Implementation of Updates and Upgrades, without prejudice to the Maintenance to be provided by Supplier, on the understanding that:
- i. there is no question of a shortcoming on the part of Supplier within the framework of Maintenance if a particular Defect has been remedied in an Update and/or Upgrade and Customer refuses to put that Update or Upgrade into use;
 - ii. Customer is allowed to lag behind in taking Update and/or Upgrade into use for a maximum of 18 months, in default of which Supplier shall be entitled after the expiry of that period to charge Customer for the demonstrable additional costs of having to perform Maintenance on (the part concerned of) the ICT Performance used by Customer on a permanent basis.

Reporting and control

- 8.13. Supplier shall periodically report to Customer on its compliance with the agreed Service Levels, which shall in any case mean the Availability of the ICT Performance and the level of the services, including the Maintenance of the ICT Performance as well as the planned Innovative Maintenance. The contents and frequency of these reports are further described in the SLA.
- 8.14. After receipt of the report, Customer shall determine whether Supplier has met its obligations under the Maintenance, including its guaranteed Service Levels, whether or not by calling in a third party in accordance with Article 21.

Maintenance of Third Party Software

- 8.15. Contrary to the previous paragraphs of this Article, any conditions made known in accordance with Article 19 shall apply to the Maintenance of Third Party Software.

Subsequent Maintenance Agreement

- 8.16. Insofar as it was originally agreed that the Supplier would not provide any Maintenance or would provide only parts of the Maintenance referred to in Article 8.3, the Supplier declares that it is still prepared, at the Customer's first request, to enter into consultations with a view to concluding an Agreement for the provision of additional services with regard to Maintenance.

Article 9. Fee, invoicing and payment

- 9.1. The fees to be paid by Customer to Supplier for the ICT Performance are laid down in the Agreement.
- 9.2. Unless otherwise agreed, the invoicing of the fees shall take place as follows. 30% of one-off payments shall only become due and payable after full Acceptance. Periodic payments shall be due in advance, but 30% of the payments shall only become due and payable after full Acceptance. In the case of Third Party Software, 100% shall be due upon delivery. The provisions regarding deferred claimability shall not be applicable if no Acceptance procedure is performed for the ICT Performance .
- 9.3. If Supplier demonstrates that the activities to be performed on the basis of Article 8.10 could not reasonably have been foreseen or are disproportionate in scope, it is entitled to charge that unforeseen and/or disproportionate part of the activities as contract extras, provided that Customer's prior consent has been obtained. Failure to obtain permission shall release Supplier from the obligation to carry out the additional work.
- 9.4. Additional work shall be reported to the Client in good time, shall be invoiced separately and shall not be eligible for reimbursement until after the Client has given its approval.
- 9.5. An invoice must meet the legal requirements as well as the requirements set out in the Agreement.
- 9.6. The term of payment is 30 days after receipt of the invoice, unless otherwise agreed.
- 9.7. The Supplier shall send the invoice electronically in accordance with the applicable requirements for invoicing such as

included in the Municipal ICT Quality Standards referred to in Article 6.1, unless otherwise agreed by parties.

- 9.8. The Supplier may adjust the agreed (annual) rates and continuous payments annually with effect from 1 January, provided that notice of such adjustment is given at least one month beforehand. An increase is limited to a maximum of the (possible) increase of the latest price index figure for service prices published by Statistics Netherlands (CBS), compared to the price index figure of 12 months previously for group J62, or at least section J, in accordance with CPA 2008, or its successor.
- 9.9. The Supplier is also entitled to pass on any demonstrable price increases of Third Party Software as of 1 January, provided that this price increase was not foreseeable at the time the Agreement was concluded. If the prices of Third Party Software fall during the term of the Agreement, the Supplier shall always charge only the current (reduced) price for Third Party Software.
- 9.10. If and insofar as the fee and/or the number of Rights of Use for the use of the ICT Performance is made dependent on a number related to Principal that is subject to change (such as number of inhabitants, working area, etc.), and the Agreement does not specify a moment for determining that number (and thus the change in the fee), this will be done once a year on 1 January.
- 9.11. The provisions in this article regarding Third Party Software shall only apply to the extent that Supplier has satisfied the provisions of Article 19.1.

Article 10. Guarantees

- 10.1. Supplier guarantees that:
 - i. the ICT Performance shall contain the agreed upon characteristics and satisfy the Agreed upon use;
 - ii. he only deploys Personnel that have the agreed upon or necessary skills and qualifications for the delivery of the ICT Performance, taking into account the nature of the ICT Performance to be delivered and the way in which Supplier has presented itself as an expert. He also guarantees that the Personnel he deploys meets the requirements that may be set for a comparable service provider as a reasonably competent and reasonably acting professional;
 - iii. he can perform Maintenance on the ICT Performance until at least 2 years after the date of Acceptance.
 - iv. the ICT Performance meets and, in the event of Maintenance, shall continue to meet the Laws and regulations relevant to the Agreed use.
- 10.2. If at any time during the term of the Agreement Principal discovers that the ICT Performance or parts thereof do not meet the aforementioned guarantees, Principal shall inform Supplier thereof in writing or by e-mail, and in urgent cases also by telephone. If Supplier is of the opinion that Customer cannot invoke the provisions of the guarantee because the absence of a Defect is not among the guaranteed characteristics or because the presence of the Defect is due to causes not attributable to Supplier or to Software or equipment not supplied or advised by Supplier, the burden of proof in this matter shall rest with Supplier.

Article 11. Documentation

- 11.1. The Supplier shall provide the Customer with sufficient and comprehensible Documentation.
- 11.2. The Documentation for end users is in the Dutch language, other documentation may also be in English (unless agreed otherwise).
- 11.3. The Documentation will be and remain such:
 - i. that it provides a correct, complete and detailed description of the ICT Performance to be delivered by Supplier as well as its functions;
 - ii. that it gives a correct and complete description of the settings/parameterisations made by the Supplier within the framework of the Implementation or the Maintenance;
 - iii. that users can make use of all the possibilities of the ICT Performance and that the operation

- can understand it well;
 - iv. that it is suitable to test the ICT Performance on this basis within the framework of an Acceptance procedure;
 - v. that it is suitable, on this basis, for adequately managing the ICT Performance and integrating it into the Application landscape in accordance with the documentation requirements regarding integration from the Municipal ICT Quality Standards referred to in Section 6.1.
- 11.4. As soon as it appears that the Documentation is not or no longer correct or complete, the Supplier shall update the Documentation as soon as possible and at its own expense.

Article 12. Product management

- 12.1. Without prejudice to any Maintenance agreed, Supplier shall inform Customer periodically and in good time about the planning and intended functionalities for Upgrades (sometimes referred to as 'roadmap').
- 12.2. Insofar as Supplier facilitates a generic (physical or virtual) body or platform for the benefit of (part of) its customers for sharing knowledge and experience regarding the ICT Performance and/or discussing the (expected) developments of the ICT Performance, Supplier shall grant Customer access to this free of charge and without restrictions.

Article 13. Liability

- 13.1. The party that imputably fails to comply with its obligations, or acts unlawfully towards the other party, is liable towards the other party for the damage suffered and/or to be suffered by this party.
- 13.2. Insofar as performance is not already permanently impossible, or the obligation arises from an unlawful act or serves to compensate for damage, paragraph 1 shall apply only with due observance of the provisions of Article 20.9 concerning default.
- 13.3. The liability referred to in paragraph 1 for personal injury, damage to property and loss resulting therefrom shall be limited to an amount of € 1,250,000 per event. Related events are thereby regarded as a single event.
- 13.4. Liability for other damages is limited to ten times the Annual Fee per event. The total liability per year shall however never exceed twenty times the Annual Fee (irrespective of the number of events). Related events are thereby considered to be a single event.
- 13.5. The limitations of liability included in this article shall cease to apply:
- i. in case of claims by third parties for compensation as a result of death or injury and/or;
 - ii. if there is intent or gross negligence on the part of the other party or its Staff; and/or
 - iii. in the event of infringement of intellectual property rights as referred to in Article 17;
 - iv. in respect of fines imposed by the supervisory authority:
 - (1.) to the extent that such penalties could also have been imposed directly on Supplier but were not; and
 - (2.) under the condition that Customer Supplier:
 - (a) promptly inform in writing a supervisory authority of an investigation initiated which may result in a fine and of the existence and content of the fine imposed; and
 - (b) fully involve the Supplier in conducting the defence against that penalty or at least the part of that penalty that is attributable to the Supplier.
- 13.6. All obligations, including those under tax, health and social insurance legislation, relating to Supplier's Personnel shall be for Supplier's account. Supplier shall indemnify Customer against every liability related thereto. The above limitations of liability do not apply to this indemnification.

Article 14. Insurance

- 14.1. The Supplier has insured itself in an appropriate and customary manner according to trade standards and shall keep itself so insured against all liability arising from the Agreement and the present conditions, including in any case professional and corporate liability, or at least offers sufficient guarantees to cover any liability that can be demonstrated otherwise.
- 14.2. The insurance/guarantee referred to in the previous paragraph provides cover for at least two events referred to in Articles 13.3 and 13.4 per calendar year.

Article 15. Confidentiality

- 15.1. The parties shall not in any way whatsoever disclose any information that comes to their knowledge during the performance of the Agreement and that they know or could reasonably suspect to be confidential, except insofar as any statutory regulation, investigation by a competent supervisory authority or decision by a court of law or a dispute settlement body designated by the parties obliges them to do so.
- 15.2. The obligation referred to in the previous paragraph shall continue for at least two years after the termination of the Agreement.
- 15.3. The parties shall require their staff and other auxiliary persons engaged to comply with the duty of confidentiality included in the previous paragraphs.
- 15.4. The Parties shall return on demand any information received from each other which is of a confidential nature.
- 15.5. The party that violates the secrecy obligation set out in this article will owe the other party an immediately payable penalty of four times the Fee for each violation, without prejudice to the right to recover the damage actually suffered (with due observance of article 13). However, the aforementioned penalty shall never exceed €50,000 per violation. Related breaches are thereby regarded as a single breach.

Article 16. Force majeure

- 16.1. A failure in the fulfilment of the Agreement which cannot be attributed to any fault of a party and which is not for the account of the party concerned by virtue of law, legal action or generally accepted practice constitutes force majeure.
- 16.2. Force majeure on the part of Supplier shall in any case not include: lack of Personnel, strikes, illness of Personnel (with the exception of pandemics), late delivery or unsuitability of goods required for the performance of the ICT Performance or liquidity or solvency problems. A demonstrable failure of utility/telecom facilities is regarded as Force Majeure, unless it is caused by Supplier or the ICT Performance is specifically aimed at keeping the aforementioned facilities available.

Article 17. Intellectual property

- 17.1. Unless otherwise agreed, all intellectual property rights to the ICT Performance provided by Supplier under the Agreement are vested exclusively in Supplier or its licensor(s).
- 17.2. All rights to the processed data originating from Principal with the ICT Performance (will) remain with Principal, regardless of where this data is stored and regardless of whether the data has been processed after initial receipt or not.
- 17.3. Unless otherwise agreed in the Agreement, Supplier grants a Right of Use to the ICT Performance. If a fee is periodically due for the Right of Use, the duration of the Right of Use is equal to the term of the Agreement. In other cases the User Right is perpetual and irrevocable. The Right of Use includes in any case the right to use the ICT Performance (and all information/knowledge embedded in it) for the Agreed Use, as well as for test purposes, including all reasonably necessary reproductions and disclosures, whether temporary or not. The Right of Use does not include the right to carry out exploitation activities itself, unless otherwise agreed.

- 17.4. Contrary to the provisions of paragraphs 1 and 3, the intellectual property rights to Custom software shall be held by the Customer. To the extent necessary, the rights concerned shall be transferred now for then by the Supplier to the Customer, who shall accept such transfer now for then. This transfer relates to all current and future rights in the broadest sense of the word. In addition, the Supplier hereby irrevocably waives - to the extent permitted by law - any moral rights to the Custom software. Supplier shall furthermore make all source codes of the concerning developed Custom software available to Customer. The one-off purchase price for this transfer shall be deemed to have been included in the Fee. The transfer and provision of the rights and the aforementioned source code shall take place under the suspensive condition of payment of the relevant Fee.
- 17.5. Supplier guarantees that the ICT Performance provided by him to Principal does not infringe any intellectual property rights or other rights, including personality rights, of third parties. Supplier shall indemnify and compensate Customer for all claims of third parties based on the position that ICT Performance provided by Supplier to Customer, infringes the said rights of these third parties, on the condition that Customer immediately informs Supplier in writing of the existence and the content of the claim and leaves the handling of the case, including the making of any settlements, entirely to Supplier. The Customer shall provide the necessary authorization, information and cooperation for that purpose, so that the Supplier can defend itself effectively against these claims.
- 17.6. If Principal is denied the right to use the ICT Performance or parts thereof by a third party, Supplier shall at its own expense and at its own discretion immediately either
 - i. ensure that the Customer acquires the right to continue use after all;
 - ii. replace the infringing component with another component which does not infringe such third-party rights;
 - iii. modify the infringing component in such a way as to eliminate the infringement.
- 17.7. In the event of replacement or modification as referred to under (ii) and (iii), the functionality of the replaced parts will be at least equivalent to the replaced parts and the warranties of Article 10 will remain fully intact.
- 17.8. In the event that third parties hold the Principal liable in respect of an alleged infringement of intellectual property rights, the Principal - without prejudice to the foregoing - has the right to dissolve the Agreement in writing, in full or in part, out of court. Such dissolution will not affect the other rights of the Principal.
- 17.9. The provisions in articles 17.5 to 17.8 shall not apply if the alleged breach relates to Software or other materials provided by Customer to Supplier for use, adaptation, processing or maintenance, or to changes which Customer has made to the ICT Performance without Supplier's written permission.

Article 18. Access to data and authorisations

- 18.1. For the duration of the Agreement Supplier shall enable Principal to gain access during normal office hours or agreed-upon availability times to the data processed with the ICT Performance for the benefit of Principal, as well as the (settings relating to) authorizations set and the settings (business rules, macros, etc.) made specifically for Principal.
- 18.2. The Supplier can fulfil the obligation described in the previous paragraph by, among other things:
 - i. the delivery of the data stored in the ICT Performance in accordance with the standard for data portability that forms part of the Municipal ICT Quality Standards referred to in Article 6.1 (if applicable);
 - ii. to make Links and the accompanying Documentation available to Customer in order to enable Customer to retrieve the data/authorisations via the Links;
 - iii. to provide the Principal with Documentation that is accurate, complete and detailed

- description of the data models underlying the ICT Performance, in order to enable Principal to unlock the data itself.
- 18.3. If and to the extent that by granting access to the stored data a certain security (including authorisations) is circumvented, the Supplier shall inform and explicitly warn the Customer about this.
- 18.4. The Customer is personally responsible for the use of the data obtained pursuant to Article 18. The Customer shall indemnify the Supplier against any claims by third parties arising from such use.

Article 19. Third party software

- 19.1. If the ICT Performance consists (wholly or partly) of Third Party Software, Supplier shall include in or with the offer:
- i. specify which part of the ICT Performance this comprises;
 - ii. make available any applicable (licence and maintenance) conditions;
 - iii. only if requested: to what extent it is possible to obtain the Third Party Software concerned elsewhere and to what extent the choice to do so has consequences for the Supplier's offer;
 - iv. insofar as there is a dependence between the Third Party Software and the other parts of the ICT Performance, clearly state what that dependence is and what effects it has on (the quality of) the ICT Performance to be provided by Supplier.
- 19.2. As part of Maintenance, Supplier shall issue timely Updates and Upgrades in order to continue to guarantee compatibility with Third Party Software on which the ICT Performance depends.
- 19.3. If and insofar as Supplier proves that a Defect in the ICT Performance is caused by an error in Third Party Software, the Defect concerned shall not be regarded as a Defect unless Supplier should have known of the particular error in the Third Party Software and the effect of the particular error in its own ICT Performance could reasonably have been avoided.
- 19.4. The provisions of the previous paragraph do not affect the fact that Supplier shall make every reasonable effort, where appropriate within the framework of Maintenance, to remedy the Defect as soon as possible, for example by circumventing the error in the Third-Party Software in its own ICT Performance and/or by providing Customer as soon as possible with Updates and/or Upgrades to the ICT Performance and/or the Third-Party Software.
- 19.5. The licence and maintenance conditions included in in the context of Article 19.1 shall take precedence over the provisions of the Agreement, but only insofar as the Third Party Software is concerned.
- 19.6. The provisions of Article 19.3 and 19.5 shall only apply if the Supplier has complied with the information obligations referred to in Article 19.1.

Article 20. Suspension, termination and dissolution

Suspension

- 20.1. The Supplier is not entitled to suspend its obligations until it has sent a notice of default in which the Customer is given a reasonable period of time, of at least 30 days, to fulfil its obligations after all.

Cancellation

- 20.2. Agreements for a definite period - except for the specific grounds for termination in the GIBIT 2020 or the Agreement - may not be terminated prematurely (Article 7:408(1) of the Dutch Civil Code does not apply). Agreements for an indefinite period may be terminated subject to a notice period of three (3) months for the Client and eighteen (18) months for the Supplier.
- 20.3. Even if several Agreements show mutual connections (e.g. a licence agreement and a maintenance agreement), the Customer is nevertheless entitled to terminate only part of the Agreements (selectively) by giving three (3) months' notice at the end of the term then in effect. Such termination will have no effect on the other related Agreements.

- 20.4. Client is also authorized to terminate the Agreement and all related agreements, subject to a notice period of twelve (12) months, by the date:
- i. that the rights and obligations of the Client are transferred under general title to another party (e.g. because of a municipal redivision); or
 - ii. that the relevant activities of the Client are outsourced to a joint arrangement or similar other entity with a public function.
- 20.5. If, as a result of changes in national policy that were not foreseeable at the time of concluding the Agreement, Principal is obliged to switch to a national facility that forms a (partial) functional alternative for the use agreed upon with the ICT Performance, Principal is entitled to terminate the Agreement and all related agreements (for that part) by the above-mentioned date, with due observance of a notice period of twelve (12) months.
- 20.6. In the event of termination on the grounds of articles 20.4 and/or 20.5, settlement between Customer and Supplier shall take place on the basis of the payment made by Supplier:
- i. activities already carried out in execution of the Agreement at the time of the cancellation; and
 - ii. Costs reasonably incurred; and
 - iii. obligations reasonably assumed for the future; and
 - iv. loss of profit
- 20.7. When calculating the settlement referred to in the previous paragraph, a correction shall always be made for the foreseeable and/or reasonably foreseeable redeployment of production factors by the Supplier.
- 20.8. Insofar as the parties are unable to agree on the amount referred to in the previous paragraph, that amount will be determined on the basis of generally accepted accounting principles by an independent expert third party to be appointed jointly by the two parties.

Dissolution

- 20.9. If a party fails to comply with an agreed obligation, the other party may give notice of default, in which case the defaulting party is granted a reasonable period for compliance. If the party still fails to perform, it shall be in default. Notice of default is not required if the performance is subject to a Vital Deadline, if performance is permanently impossible, or if it must be inferred from a statement or the attitude of the other party that it will fail to perform its obligation.
- 20.10. Without prejudice to the other provisions of the Agreement or any statutory provisions, each of the parties may dissolve the Agreement in whole or in part by means of a registered extrajudicial letter if the other party is in default or one of the other situations referred to in Article 20.9 arises.
- 20.11. Without prejudice to the other provisions of the Agreement, and without prejudice to the other provisions of the law, the Customer may dissolve the Agreement and all related agreements by means of a registered letter within twelve (12) months after the Customer has established that:
- i. Supplier applies for (temporary) suspension of payment; or
 - ii. Supplier files for bankruptcy or is declared bankrupt; or
 - iii. Supplier's business is dissolved; or
 - iv. Supplier discontinues his business; or
 - v. there is a radical change in the control over the activities of the Supplier's company which means that the Client cannot reasonably be expected to maintain the Agreement; or
 - vi. a considerable part of the assets of Supplier is seized (other than by Customer); or
 - vii. the Bureau BIBOB has issued a negative opinion about the Supplier's organisation; or
 - viii. to the extent that the Agreement has been concluded by means of a tendering procedure as referred to in the Dutch Tender Act, grounds for exclusion as referred to in Section 2.86 of the Dutch Tender Act occur during the term of the Agreement with regard to the Supplier.

- 20.12. Customer may also dissolve the Agreement and all related agreements if it has good grounds to believe that the court will annul the Agreement on a claim to that effect under the Dutch Tender Act (Aanbestedingswet). Clauses 20.6 to 20.8 shall in that case apply mutatis mutandis, unless Customer demonstrates that the unlawfulness is (partly) attributable to Supplier.
- 20.13. If the force majeure situation has lasted for sixty (60) consecutive days or for a total of more than ninety (90) days within a calendar year, or as soon as it is clear that the force majeure situation will last longer than such a period, the other party of the party that claims force majeure shall be entitled to dissolve this Agreement in part or in full with immediate effect.

Consequences of termination

- 20.14. Upon termination of the Agreement(s) for any reason whatsoever, the Supplier shall immediately return or remove all documents, books, documents and other items (including data and data carriers) made available to him by the Customer. In the event of premature termination, the foregoing applies mutatis mutandis.

Article 21. Right of inspection and cooperation to audits at the Client's

Control law

- 21.1. The Customer is entitled to have the Supplier's compliance with the essential obligations arising from the Agreement, the GIBIT 2020 and the associated agreements (SLA, processing agreement, etc.), as well as the correctness of invoices sent, verified within a reasonable period by an independent expert third party bound to secrecy.
- 21.2. Before carrying out an inspection, Customer shall first ask Supplier for the information required on the grounds of the previous paragraph.
- 21.3. The audit will only take place if the Customer - even after answering the request for information referred to in the previous paragraph - has reasonable doubt as to the Supplier's compliance with the obligations, or if the Customer otherwise has a legitimate interest in the audit (including a statutory duty, instructions to supervisors).
- 21.4. Supplier shall lend all reasonable cooperation to such an audit. In this context Supplier shall at least allow inspection of all relevant data and background information that may be relevant within the framework of the aforementioned audit. The Supplier shall also grant access to the location where the services are provided.
- 21.5. The Customer guarantees that the third party referred to in the first paragraph will comply with any regulations applied by the Supplier. If the inspection cannot be carried out (in full) because of the aforementioned regulations, this shall however be at Supplier's risk.
- 21.6. The costs of this audit shall be borne by the Customer (both at the Customer's own costs and at the Supplier's costs), unless the third party discovers one or more shortcomings of a non-subordinate nature on the part of the Supplier that are to the detriment of the Customer.

Co-operation audits at Client

- 21.7. To the extent that Customer is dependent on Supplier for the performance of (legally required) audits, Supplier shall render all necessary cooperation for the performance of these audits. The costs of this cooperation shall be borne by Customer.

Article 22. Exit plan, transfer, limited continuation, transfer and extended use

Exit plan

- 22.1. At the Client's first request, the Parties will draw up an exit plan setting out what needs to be done to prepare for and carry out the work described in this article. Articles 5.2 and 5.3 will apply mutatis mutandis to the exit plan.
- 22.2. The work referred to in this article - namely switching (Article 22.3 et seq.), limited continuation (Article 22.6 et seq.), transfer (Article 22.8) and limited extension (Article 22.9) - will be carried out in accordance with the exit plan and the provisions of the Agreement and the GIBIT 2020, at the Supplier's regular rates at that time.

Switch to similar ICT Performance

- 22.3. Upon termination of the Agreement(s) for whatever reason, Supplier shall, at the first request of Customer, do all that is reasonably necessary to ensure that a new supplier or Customer itself can perform a similar ICT Performance for Customer without hindrance (such with the exception of the handover of the source code of the Software).
- 22.4. The reasonable measures referred to in the previous paragraph in the context of switching to another supplier/another system are in any case understood to mean (at the Customer's discretion):
 - i. to comply with the obligations referred to in Article 18;
 - ii. the destruction of the data for which the Client is responsible (against submission of proof of destruction);
 - iii. the technical unbundling and dismantling of (part of) the ICT Presentation
- 22.5. In deviation from Article 22.2, the aforementioned services shall be performed free of charge if there is an attributable shortcoming on the part of Supplier. The activities referred to in 22.4 ii shall be performed free of charge upon request in any event.

Limited continuation of ICT Performance

- 22.6. The Supplier declares as of now that it is prepared to terminate the Agreement(s) - on any grounds whatsoever - at the first request of the Client:
 - i. to deliver a new ICT Performance or limited continuation of the existing ICT Performance with which Principal remains able to consult the data stored with the current ICT Performance; and
 - ii. to (continue to) provide a limited form of Maintenance to the ICT Performance referred to in the previous paragraph (namely within the framework of the limited functionality referred to in the previous paragraph).
- 22.7. For the duration and costs of the ICT Performance referred to in the previous paragraph:
 - i. the duration is at least such that the Principal can comply with the statutory administration obligations;
 - ii. the costs are in reasonable proportion to the original costs of the entire ICT Performance (in proportion to the reduced functionality), on the understanding that necessary extensions of Third Party Software can be charged in full.

Transfer of ICT Performance

- 22.8. Customer shall be entitled to transfer the ICT Performance in whole or in part, including all related rights of use and all claims in connection with Maintenance, under the same conditions (including the same scope of rights of use) to a joint scheme or other entity with a public function as part of the outsourcing of part of Customer's activities. The Supplier shall give all necessary cooperation to the aforementioned transfer. Supplier is not entitled to charge costs for the transfer as such, but for any additional work to be carried out. Third-party software is only transferable to the extent not prevented by law or the applicable licensing conditions (cf. article 19.5).

Extended Use

- 22.9. Supplier furthermore declares that it is willing to allow Customer, if so desired, to extend the use of the ICT Performance after the termination date for a reasonable period of time, if the activities in accordance with the Exit Plan have not been completed on time. For this a fee shall be charged in proportion to the last applicable user fees (whereby necessary extensions of Third Party Software may be charged in full), unless the failure to complete the Exit work on time is imputable to Supplier (the extension shall be free of charge in that case).

Article 23. Applicable law and disputes

- 23.1. The Agreement and all related agreements are governed exclusively by Dutch law.
- 23.2. The uniform laws of the 1964 Hague Diplomatic Conference on the Unification of International Sales Law ("LUF" and "LUVI") and the Vienna Sales Convention are not applicable.
- 23.3. All disputes (including disputes that only one of the parties considers as such) that may arise between the parties as a result of the Agreement or resulting agreements, shall be submitted to the competent court in the district of the Client.

II. Privacy, security and archiving

Article 24. Processor relationship

- 24.1. To the extent that the Supplier processes personal data for the Customer in the capacity of processor within the framework of the performance of the Agreement, the Processing Agreement shall apply to such processing.
- 24.2. The Processing Agreement will prevail over the other provisions of the Agreement as far as the processing of personal data is concerned.

Article 25. Information Security

- 25.1. Supplier warrants that the ICT Performance can be used by Customer to meet the standards for information security included in the Municipal ICT Quality Standards referred to in article 6.1 (insofar as relevant to the ICT Performance), or at least another agreed standard for information security.
- 25.2. If the ICT Performance is (partly) managed by the Supplier (e.g. in the case of Hosting), or concerns services provided by the Supplier, the Supplier shall also apply security to data other than personal data in accordance with the standard in the Processing Agreement, or at least the standard for information security referred to in paragraph 1, or at any other agreed standard.
- 25.3. The Supplier guarantees that all personnel and other third parties engaged by it will work in accordance with the agreed information security standards, or at least that these third parties will comply with security standards of an equivalent or higher level.
- 25.4. Information on the security measures taken shall be regarded as confidential information within the meaning of Article 15.

Article 26. Archiving

- 26.1. Unless otherwise provided in the Agreement, the Supplier shall ensure demonstrable management and protection of managed data by means of security measures, preservation measures and controls with regard to archiving, in accordance with the requirements set out in the 6.1 referred to Municipal ICT quality standards.
- 26.2. Supplier shall during the term of the Agreement (i) demonstrably retain the data processed by it on behalf of Customer to which a retention period applies pursuant to the Municipal ICT Quality Standards, or at least the Agreement, and (ii) not remove such data without Customer's permission.
- 26.3. Supplier is able to migrate archive documents to Customer's archive systems in accordance with the requirements set out in the Municipal ICT Quality Standards. Supplier shall perform the work involved in the actual migration of archive documents at the rates and on the conditions stipulated in the Agreement, or in the absence thereof at Supplier's regular rates and conditions to be agreed upon.
- 26.4. If, at the moment of suspension, termination or dissolution of the Agreement, Supplier is in possession of Customer's archive documents that, due to the placement and set-up of the ICT Performance, are not also in the possession of Customer as the party responsible for their care, Supplier undertakes to act as if it had received notification under Article 11 paragraph 1 of the 1995 Archive Act (regardless of whether the archive documents concerned are included in Third Party software).

III. Hosting

Article 27. General

- 27.1. Supplier shall provide Customer with all data, such as URLs and login data, that are necessary in order to actually make use of the ICT Performance.
- 27.2. Supplier is not entitled to suspend Hosting, except if continuation cannot reasonably be required. The mere one-time non-payment does not justify this.

Article 28. Stored data

- 28.1. Customer is at all times fully responsible for the use she makes of the Hosting and for the data she stores, retrieves, distributes and otherwise uses through the Hosting.
- 28.2. If and insofar as there are indications or suspicions that the data processed through the Hosting are unlawful towards third parties, Supplier will inform Customer about this as soon as possible.
- 28.3. Supplier shall not remove the data concerned without prior consultation with Customer, unless the data are so obviously unlawful and the urgency of the case means that prior consultation with Customer cannot be waited for.

Article 29. Maintenance and Availability

- 29.1. From the moment of Acceptance of the ICT Performance, the specific agreements regarding Maintenance will (also) apply to Hosting (such as the guaranteed Service levels and the agreed Availability).
- 29.2. If and insofar as no Service Levels are agreed in the Agreement with regard to the Availability of the Hosting, a Service Level of 98% Availability per month on weekdays between 08.00-18.00 hours applies.
- 29.3. Supplier will - notwithstanding the provisions of Article 8.10 - provide the installation of Updates and Upgrades for Hosting.
- 29.4. The right to refuse deployment of Updates and/or Upgrades as referred to in Article 8.11 does not apply in the case of generic Hosting offered by Supplier to multiple customers, unless otherwise provided in the Agreement.

Article 30. Guaranteeing continuity

- 30.1. Given the high dependence on Supplier as well as the continuity risk in case of incidents and calamities (such as bankruptcy) that exists with Hosting, Supplier declares as of now that it is willing to make additional arrangements with Customer in order to reduce said risks.
- 30.2. The additional agreements referred to in the previous paragraph may include (all for a reasonable fee):
 - i. making agreements about periodically supplying the data processed by Supplier back or to a third party ('data escrow'); and/or
 - ii. concluding an agreement with a third party whereby the third party in question undertakes to jointly and severally guarantee the fulfilment of the Agreement; and/or
 - iii. concluding a (tripartite) agreement with a third party which ensures that the third party (continuously) has all the necessary data at its disposal in order to be able, if the occasion arises, to perform (part of) the ICT Performance from the Agreement - whether or not on the basis of a new agreement - in place of the Supplier.

**Association of
Netherlands
Municipalities**

Nassaulaan 12
2514 JS The
Hague
+31 70 373 83 93
info@vng.nl

December

[vngrealisatie.nl](https://www.vngrealisatie.nl)